

EXECUTION COPY

DATED 31 MARCH 2000

THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA

AND

KONKOLA COPPER MINES PLC

DEVELOPMENT AGREEMENT

CLIFFORD CHANCE

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THIS AGREEMENT is made on 31 March 2000

BETWEEN:

- (1) **THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA**, acting through the Minister of Mines and Minerals Development and the Minister of Finance ("**GRZ**"); and
- (2) **KONKOLA COPPER MINES PLC**, a company incorporated in the Republic of Zambia (registered no. 43628), whose registered office is at 74 Independence Avenue, Lusaka, Republic of Zambia (which shall include any permitted assigns or successors of the rights and obligations of Konkola Copper Mines Plc) ("**KCM**").

WHEREAS:

- (1) Proposals have been submitted on behalf of KCM by the KCM Consortium for the development and operation of the major mine and treatment plants and facilities of Konkola Division including the Konkola Deep Mining Project, the Nchanga Division (including the Chingola Refractory Ores), the Nampundwe Mine and associated assets (including agreed social assets) of ZCCM in the Copperbelt and Lusaka Provinces of Zambia (the "**Facilities**"), the location of which is more specifically identified by reference to the plans annexed hereto as Exhibits to Schedule 3, Part 1. The SmelterCo Option and Pre-Emption Agreement dated 31 March 2000 provides that, if KCM exercises its right thereunder to acquire the assets of SmelterCo and to novate this Agreement to cover such Assets, the provisions of this Agreement and the Schedules will apply to such assets and such assets shall be deemed to be part of the Facilities except for the purposes of the Investment Commitment.
- (2) GRZ has approved these proposals, which are hereafter referred to as the "Approved Programme of Mining and Metal Treatment Operations" and are annexed hereto as Schedule 1.
- (3) The development and operation of the Facilities shall be of major economic significance to the people of Zambia.
- (4) GRZ wishes to ensure that the continued development and exploitation of the commercial deposits of copper ore at the Facilities together with the development of KDMP shall secure the maximum benefit for, and adequately contribute to the advancement and the social and economic welfare of, the people of Zambia, including the people in the vicinity of the Contract Areas in a manner consistent with their needs and the protection of the environment and secure an appropriate return on investment for the Shareholders commensurate with the risks involved to KCM.
- (5) GRZ and KCM have agreed on a number of matters which are set out in this Agreement and wish the matters agreed upon to be an enduring arrangement of national interest.
- (6) GRZ has granted to the Minister of Mines and Minerals Development and the Minister of Finance statutory authority under Section *nine* of the Act to enter into this

Agreement on behalf of GRZ and GRZ and KCM each agrees to be bound by all the terms and conditions relating thereto. The Minister has consulted with the Minister responsible for finance and economic development as required by Section 9 of the Act, as amended, and has sought and received the advice of the Mining Advisory Committee in accordance with Section 88 of the Act and is acting in accordance with such advice.

- (7) GRZ, ZCCM and KCM have entered into a Sale and Purchase Agreement dated 15 December 1999 which requires on its Completion (as defined therein) the entry into of this Agreement.
- (8) GRZ, ZCCM and KCM have entered into an Environmental Liabilities Agreement of even date herewith which provides, *inter alia*, for responsibility for preparation and implementation of an environmental plan to be assumed by ZCCM in respect of assets not acquired by KCM pursuant to the provisions of the Sale and Purchase Agreement referred to in (7) above and for the provision by GRZ of certain indemnities in respect of liabilities under Environmental Laws and laws relating to mine safety.

**PART A
GENERAL**

1. **DEFINITIONS AND INTERPRETATIONS**

1.1 In this Agreement, unless the context otherwise requires:

"Act" means the Mines and Minerals Act, 1995 (No. 31 of 1995) as from time to time amended and in effect, and includes any regulations made thereunder, but subject, in all cases, to the provisions of Clause 13.1(b) of this Agreement;

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

- (a) any company in which KCM or a Shareholder (as the case may be) holds fifty per cent. (50%) or more of the ordinary voting shares or which holds fifty per cent. (50%) or more of KCM's or a Shareholder's (as the case may be) ordinary shares;
- (b) any person which, directly or indirectly, is controlled by or Controls, or is under Common Control with, KCM or a Shareholder (as the case may be); or
- (c) any person or group of persons being directors or executive officers of, or in the employment of, any person referred to in (i) or (ii) above,

and "Control" means:

- (d) the power (whether directly or indirectly) and whether by the ownership of share capital, the possession of voting power, contract or otherwise to appoint and/or remove all or such of the board of directors or other governing body of a person as are able to cast a majority of the votes capable of being cast by the members of that board or body; and/or
- (e) the holding and/or the ownership of the beneficial interests in and/or the ability to exercise the voting rights applicable to shares or other securities in any person which confer in aggregate on the holders, whether directly or by means of holding such interests in one or more other persons (either directly or indirectly), more than fifty per cent. (50%) of the voting rights exercisable at general meetings of that person,

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

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

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

"**Assets**" has the meaning given to it in the Sale and Purchase Agreement;

"**Business**" means the business to be carried on by KCM, namely that of (a) exploration, appraisal and mining of ore and waste; (b) the treatment of ore to produce products and (c) sale of products, in each case whether within or outside Zambia, and such other activities, including related transport and trading of metals, incidental and/or conducive to the foregoing which may be approved by the Directors from time to time;

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

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

"**Call Option Deed**" means the call option deed of even date herewith made between ZCCM, GRZ and KCM and which provides that, in certain circumstances, ZCCM may require the transfer to it of the assets of the Konkola Division and the assets comprising the KDMP;

"**CEC**" means the Copperbelt Energy Corporation PLC (as more particularly described in the Sale and Purchase Agreement);

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

"**Collective Agreement(s)**" means the Standard Conditions of Employment and Service as agreed with the Mineworkers Union of Zambia and which is/are in force at the date hereof, as these may be re-negotiated by KCM prior to Completion and which shall become effective as at Completion, as amended from time to time;

"**Companies Act**" means the Zambian Companies Act, 1994 (Act No. 26 of 1994) as from time to time amended and in effect but subject, in all cases, to the provisions of Clause 13.1(a) of this Agreement;

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

"**Confidential Information**" means any reports, records or other information or documents supplied to or made available for inspection by GRZ under Clause 10 (whether in writing, in disk or electronic form, orally or pursuant to discussions and in any form or medium in which any such information may be recorded or kept);

"**Contract Areas**" means those land areas described in Schedule 3 Part I;

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

from time to time amended and in effect but subject, in all cases, to the provisions of Clause 16.1 of this Agreement;

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

"**Copper Floor Price**" means one thousand seven hundred United States dollars (US\$1,700) per tonne adjusted annually on the first and each succeeding anniversary of the Effective Date (an "**Adjustment Date**") by the change in the Producer Price Index for Finished Goods not seasonally adjusted, as it appears in the periodical Monthly Labor Review as published by the US Department of Labor, Bureau of Labour Statistics (the "**Index**") or, if such index is not published, such other index that replaces it on the basis set out below:

$$CFP_n = (CFP_{n-1}) \times \frac{PPI_n}{PPI_{n-1}}$$

Where: CFP_n is the adjusted Copper Floor Price

CFP_{n-1} is the previous Copper Floor Price

PPI_n is the Index for the month three (3) months prior to the Adjustment Date

PPI_{n-1} is the Index for the month fifteen (15) months prior to the Adjustment Date

"**Copper Reference Price**" means the spot price per tonne of Grade A Copper of the London Metal Exchange as published in Platt's Metal Week averaged over a period of twelve (12) Calendar Months as certified by the auditors of KCM from time to time or upon the request of GRZ (as the case may be). In the event that Platt's Metal Week fails to publish quotations for Grade A Copper as aforesaid for any week, the Parties shall agree an alternative source to establish the price of Grade A Copper within five (5) Business days of notification by KCM to GRZ of the failure to publish such quotations as aforesaid, failing which the Parties may refer the matter for determination in accordance with Clause 21;

"**Dispute**" means any dispute, disagreement, controversy, claim or difference of whatsoever nature arising under, out of, in connection with or relating (in any manner whatsoever) to this Agreement including (without limitation) any dispute or difference (i) concerning the initial or continuing existence of this Agreement or any provision thereof, (ii) as to whether this Agreement or any provision thereof is invalid, illegal or unenforceable (whether initially or otherwise), (iii) as to the interpretation, performance or breach of this Agreement (including whether any default notices served under Clause 19 is valid or whether the default or failure alleged in any such Default Notice has occurred), (iv) concerning the legal capacity of any of the Parties, or the signatories on their respective behalves to this Agreement, to enter into and validly bind the Parties to the terms of this Agreement or any provisions (or any part of any provision) thereof including, in particular (but without limitation), the provisions of

Parts C and D, (v) as to whether any compensation is payable under any provision of this Agreement and as to the quantum of such compensation, or (vi) any dispute or claim which is ancillary or connected, in each case in any manner whatsoever, to the foregoing;

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

"Divisions" means the Konkola Division, the Nchanga Division (which shall be deemed to include the Chingola Refractory Ores) and the Nampundwe Mine and **"Division"** shall mean any one of them;

"Economic Force Majeure" means a situation where the Copper Reference Price has fallen and remains below the Copper Floor Price and an **"Economic Force Majeure Event"** shall mean the giving of notice of the occurrence of Economic Force Majeure pursuant to Clause 26.3 (a);

"Effective Date" means the date of Completion;

"Employment and Training Plan" means until such time as agreement is reached on the final form of such plan pursuant to Schedule 6, the programme forming Schedule 6 hereto as approved by the Minister for the purposes of Section 25(1)(e) of the Act (and appended to the Large Scale Mining Licences pursuant to Section 25(4) of the Act) and thereafter means such plan as may be approved by the Minister and which replaces Schedule 6;

"Enabling Legislation" means the following legislation:

1. the Mines and Minerals (Amendment) Act 2000;
2. the Companies (Amendment) Act 2000;
3. the National Pension Scheme (Amendment) Act 2000;
4. the Pension Scheme Regulation (Amendment) Act 2000; and
5. the Income Tax Amendment Act 2000.

"Enabling Statutory Instruments" means the following statutory instruments:

1. the Mines and Minerals (Environmental) (Exemption) Order;
2. the Pension Scheme Regulation (Investment) (Exemption) Order; and
3. the National Pension Scheme (Exemption) Order.
4. Companies (Fees) (Exemption) Order;
5. Companies (Resident Directors) Order;
6. Customs and Excise (Excise Duty) Suspension Regulations;
7. Mines and Minerals (Royalty) (Remission) Order; and
8. the Customs and Excise (Konkola Copper Mines Plc) (Remissions) Regulation 2000.

and such other statutory instruments as may be necessary to give effect to Schedule 7 of the Development Agreement.

"Environment" means any ecological system and the living organisms which live in it (including man and his property) and the following media: air (including air within buildings and the air within other natural or man made structures whether above or below ground); water (including water under or within land or in drains, culverts, sewers or other manmade structures and inland waters) and land (including land under water);

"Environmental Laws" means: the Act, the Mining (Mineral Resource Extractions) Regulations, 1994 (SI 119/1994); the Environmental Protection and Pollution Control Act (Act No.12 of 1990) and regulations enacted thereunder; and the Mines and Minerals (Environmental) Regulations 1997 (SI No.29 1997) and any other law or regulations in force from time to time in Zambia (including the common law) which have as a purpose or effect the protection of and/or prevention of harm to the Environment or to human health and/or the provision of remedies for harm or damage to the Environment or to human health save for the provisions contained in each of such laws and regulations which relate to mine safety and/or the safety of persons rather than to the Environment but subject, in all cases, to the provisions of Clause 12.3 and 13.1(d) of this Agreement;

"Environmental Condition" means any or any combination of the following, in each case to the extent they arise from, are connected with or affect the Assets or Normal Operations: (a) pollution of the Environment and/or harm to human health resulting from pollution or harm to the Environment including noise, emissions, the conditions of buildings, other man made structures or the work place, and discharges or releases of any substances into the Environment; (b) contaminated land; and (c) pollution of waters;

"Environmental Liabilities Agreement" means the agreement of even date herewith between KCM, ZCCM and GRZ providing for, *inter alia*, the adoption of a ZCCM Environmental Plan and the indemnification of KCM by GRZ in respect of certain environmental and mine safety liabilities;

"Environmental Plans" means each of the KCM Environmental Plan and the ZCCM Environmental Plan;

"Environmental Protection Fund" means the fund established by section *eighty two* of the Act as the same applies to KCM pursuant to the Enabling Statutory Instruments;

"Extension of Time Event" means an event certified as such by KCM and arising from:

- (a) any action by GRZ or action taken on its behalf other than in accordance with this Agreement; or
- (b) any action taken by a person not party to this Agreement (other than an Affiliate of a party) or any event or circumstance where such action, event or circumstance is beyond the reasonable control of KCM,

which in either case has the effect of delaying the implementation by KCM of any of its obligations under this Agreement;

"Extension Notice" means the notice served by KCM on GRZ pursuant to Clauses 2.4(c) and 27.4, notifying GRZ that it has been unable to satisfy the condition contained in Clause 2.4(b)(i) or that any of the events in Clauses 2.4(b)(ii) OR (iii) have occurred and are continuing and wishes, therefore, to delay the implementation of the KDMP;

"Facilities" has the meaning given in Recital (1);

"Force Majeure" has the meaning given to the term in Clause 26.2 and **"Force Majeure Event"** shall mean the giving notice of the occurrence of Force Majeure pursuant to Clause 26.1(b);

"Good Mining Practices" means acceptable mining and metal treatment practices conducted in Southern Africa (which shall include the right to mine and process material twenty four (24) hours a day, three hundred and sixty five (365) days a year (including public holidays), if required);

"GRZ" shall include all of its agencies and instrumentalities;

"IFC" means the International Finance Corporation, an international institution established by Articles of Agreement among its member countries, whose principal office is at 2121 Pennsylvania Avenue, Washington DC, 20433, United States of America;

"Investment Commitment" means, an investment of two hundred and eight million United States dollars (US\$208,000,000) (adjusted in accordance with Clause 37.2 and (if applicable) in accordance with Clause 2.3) and as further adjusted in accordance with Clause 37.2 to be expended in relation to the Facilities and which is capitalised in the accounts of KCM; and

"KCM Assets" has the meaning given in Clause 16.2;

"KCM Consortium" means Zambia Copper Investments Limited and IFC;

"KCM Environmental Plan" means, until such time as agreement is reached on the KCM Final Environmental Plan pursuant to Clause 12.1, the framework programme for environmental clean-up and protection, as approved by the Minister for the purposes of Section 25(1)(d) and 76(2) of the Act (and incorporated by reference in the Large Scale Mining Licences pursuant to Section 25(4) of the Act), and incorporated by reference in Schedule 4 Part I hereto, and thereafter means such programme as may be approved by GRZ as the KCM Final Environmental Plan (as amended by the Parties from time to time) and which replaces the previous version of the plan set out in Schedule 4, Part I pursuant to Clause 12.1;

"KCM Final Environmental Plan" means the plan approved by GRZ in accordance with Clause 12.1;

"**KCM Losses**" has the meaning given in Clause 16.1;

"**KCM Power Purchase Agreement**" shall have the meaning given to it in the Sale and Purchase Agreement;

"**KDMP**" means the Konkola Deep Mining Project;

"**KDMP Development Date**" means the date on which KCM notifies GRZ, in accordance with Clauses 2.5(a) and (b), that it has obtained the Third Party Finance;

"**KDMP Investment Commitment**" means an investment of five hundred and twenty three million United States dollars (US\$523,000,000) to be expended by or on behalf of KCM in connection with the KDMP at any time before or after the KDMP Development Date or, if lower, the amount required to be invested in order to achieve production at Konkola Division of at least five million seven hundred thousand (5,700,000) tonnes of ore per annum on what may reasonably be expected to be a sustainable basis, in each case subject to adjustment in accordance with Clause 2.8 and Clause 37.2 and capitalised in the accounts of KCM;

"**Konkola Large Scale Mining Licence**" means the Large Scale Mining Licence Number 34 the form of which is set out in Schedule 3, Part II;

"**Konkola Contract Area**" means the land area described in Part A of Part I of Schedule 3;

"**Konkola Division**" means the Konkola division of ZCCM, situated at Chililabombwe, Copperbelt Province, Zambia;

"**Konkola Mining Area**" means the area covered by the Konkola Large Scale Mining Licence;

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

"**Large Scale Mining Licences**" means the Konkola Large Scale Mining Licence, the Nchanga Large Scale Mining Licence, and the Nampundwe Large Scale Mining Licence each of which is held by KCM pursuant to the Act, the form of which is set out in Schedule 3 Part II;

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

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

- (a) the percentage rate per annum equal to the offered quotation which appears on the page of the Telerate Screen which displays an average British Bankers Association Interest Settlement Rate for US dollars (being currently "3750") for one month deposits at or about 11.00 am on the date which is two (2) Business Days preceding the final Business Day of each calendar month that

monies are outstanding or, if payment is not made on the final Business Day of a Calendar Month, two (2) Business Days preceding the Business Day on which payment is made or, if such page or such service shall cease to be available, such other page or such other service for the purpose of displaying an average British Bankers Association Interest Settlement Rate for one (1) month deposits in US dollars as the parties, after consultation with each other, shall select; or

- (b) if no quotation for US dollars for one month deposits is displayed and the parties have not selected an alternative service on which a quotation is displayed, the arithmetic mean (rounded upwards to four decimal places) of the rates (as notified to KCM) at which the principal London offices of each of four major banks in the London Interbank Market as selected by the parties was offering to prime banks in the London Interbank Market one (1) month deposits in US dollars at or about 11.00 am on such date;

"Local Business Development Programme" means until such time as agreement is reached on the final form of such plan pursuant to Schedule 2 the programme for local business development forming Schedule 2 hereto and thereafter means such plan as may be approved by the Minister and replaces Schedule 2;

"Material Adverse Economic Effect" means a material adverse effect on the financial condition of KCM which has or may have a material adverse effect on the KCM present or future ability to operate the Business as now conducted or to be conducted pursuant to the Approved Programme of Mining and Metal Treatment Operations;

"Material Adverse Change Event" means an event having a material adverse effect on the condition (financial or otherwise) of KCM and which is so declared pursuant to Clause 26.3;

"Mine Products" means the ores or concentrates or other minerals produced from the Mining Areas and all smelter and refinery products (produced in Zambia) derived therefrom;

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

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

"Mining" has the meaning given to it in the Act and, for the purpose of this Agreement, includes all smelting and treatment operations associated with and beneficial thereto;

"Mining Areas" means the geographic areas covered by the Large Scale Mining Licences; and a reference to the **"relevant Mining Area"** shall mean the geographic area covered by the Konkola, Nampundwe or Nchanga Large Scale Mining Licence, as the case may be;

"Nampundwe Large Scale Mining Licence" means the Large Scale Mining Licence No. 32, the form of which is set out in Schedule 3, Part II;

"Nampundwe Power Purchase Agreement" shall have the meaning given to it in the Sale and Purchase Agreement;

"Nchanga Large Scale Mining Licence" means the Large Scale Mining Licence No.33, the form of which is set out in Schedule 3 Part II;

"Normal Operations" means the operations of KCM carried on in accordance with the Approved Programme of Mining and Metal Treatment Operations, as amended from time to time;

"Notices" means any notice, consent, demand, approval or other communication required or permitted to be given under Clause 29;

"OECD" means the Organisation of Economic Co-operation and Development;

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

"Quarter" means, as the context requires:

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

"Reasonable Commercial Terms" means limited recourse financing with:

- (a) a weighted average minimum life from signing of the loans to final repayment, of twelve (12) years, where the weights are the amounts of each loan facility;
- (b) an average rate of interest, weighted both by the size of each loan facility and by the expected periods during which different rates may apply under each facility, of no more than LIBOR plus 3.25%;
- (c) any guarantees required terminating on completion of the construction of the KDMP and passing of customary completion tests; and
- (d) terms available for a transaction of a similar nature with a similar class of sponsor to that party or parties providing the pre-completion guarantees for the KDMP financing.

"Registered Dependants" means (i) the dependants of Transferring Employees who, at the date of this Agreement, are registered in the records of ZCCM and (ii) those that

shall be registered in accordance with Clause 9.1 in the records of KCM as being entitled to use some or all of the Social Assets;

"Related Agreement" means the Sale and Purchase Agreement and any agreement entered into pursuant thereto, and includes the Articles of Association of KCM;

"Resettlement Action Plan" means the report of that name, and incorporated by reference in Schedule 9 hereto and thereafter means any such report as the Parties may approve to replace the previous version set out in Schedule 9;

"Royalty" means the mineral royalty payable under the Act;

"Sale and Purchase Agreement" means the Agreement dated 15 December 1999 and made between ZCCM, KCM and GRZ vesting the Assets (as such term is defined therein) in KCM in consideration of *inter alia* the payment of cash and the issue of shares to ZCCM;

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

"Shareholder" means a registered holder of ordinary shares in KCM or the holder of the Special Share whose rights are set out in KCM's Articles of Association;

"Shareholders' Agreement" means the agreement of even date herewith amongst certain Shareholders in KCM, including ZCCM, governing the relationship between them as Shareholders in KCM;

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

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

"Stability Period" means the period commencing on the Effective Date and, subject to 18.4, ending on the twentieth (20th) anniversary of the Effective Date;

"Taxes" means any present or future taxation, statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions and levies of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed and all interest and penalties attributable to such taxes; and **"Taxation"** shall have a corresponding meaning;

"Third Party Finance" has the meaning given to that term in clause 2.4;

"Transferring Employees" means those employees previously employed by ZCCM whose employment has been transferred (with their consent), on the terms and

conditions set out in the Sale and Purchase Agreement to KCM, with effect from Completion;

"Unspent Portion of the Budgeted Commitment" means in respect of any part or parts of the Facilities where production is to be suspended or curtailed an amount equal to the product of (i) capital allocated in the Approved Programme of Mining and Metal Treatment Operations (as of the Effective Date) for expenditure on such facilities within three (3) years following the Effective Date but which remains unspent as of the date of suspension or curtailment and (ii) the quotient of \$208,000,000 and total capital projected (as of the Effective Date) to be spent at the Facilities within three (3) years following the Effective Date in accordance with the Approved Programme of Mining and Metal Treatment Operations;

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

"VAT" means value added tax payable under the Value Added Tax Act, 1995 (No. 4 of 1995) as from time to time amended and in effect;

"Zambia" means the Republic of Zambia;

"ZCI" has the meaning given to it in the Sale and Purchase Agreement;

"ZCCM Environmental Plan" means, until such time as agreement is reached on the ZCCM Final Environmental Plan pursuant to the Environmental Liabilities Agreement, the framework programme for environmental clean up and protection as approved by the Minister for the purposes of Section 25(1)(d) and Section 76 of the Act (and incorporated by reference in the Large Scale Mining Licences pursuant to Section 25(4) of the Act) and incorporated by reference in Schedule 4 Part 2 hereto, and thereafter means such programme as may be approved by GRZ as the ZCCM Final Environmental Plan (as amended from time to time by the Parties) and replaces the previous Schedule 4 Part 2 pursuant to Clause 12.2;

"ZCCM Final Environmental Plan" means the plan approved by GRZ in accordance with the Environmental Liabilities Agreement; and

"ZCCM" means Zambia Consolidated Copper Mines Limited;

1.2 In this Agreement, unless the context otherwise requires:

- (a) monetary references are references to United States dollars unless otherwise specifically expressed;
- (b) the headings do not affect the interpretation or construction;
- (c) subject to the provisions of Clauses 12.3 and 13.1(d) of this Agreement, references to an Act include the amendments to that Act for the time being in force and also any Act passed in substitution therefor and any regulations for the time being in force thereunder, except where specifically excluded;

- (d) words importing the singular include the plural and vice versa;
- (e) words importing any gender include the other gender;
- (f) references to a person include a partnership, firm or corporation and any ministry, department, agency, instrumentality or agent of GRZ or any political sub-division thereof; and
- (g) the recitals and Schedules form part of this Agreement; and
- (h) references to "reasonable" and "unreasonable" and related concepts shall be accorded their natural meaning and shall not be construed narrowly by reference to concepts of procedural or administrative law.

PART B
OPERATIONAL AND EMPLOYMENT ISSUES

2. RIGHT TO MANAGE AND OBLIGATIONS TO DEVELOP

- 2.1 (a) Except as specifically provided in this Agreement, and subject to the Act (as excluded and modified by this Agreement), KCM will have the unfettered right to manage the development and continued operation of the Facilities.
- (b) KCM shall, following the issue of the Large Scale Mining Licences and, subject to the terms of the Act, regulations made thereunder, the Large Scale Mining Licences and this Agreement, implement the Approved Programme of Mining and Metal Treatment Operations in accordance with the timetable contained therein and Good Mining Practices.
- (c) Without prejudice to the obligations contained in Clause 2.1(b), but subject to Clauses 2.2 to 2.4, KCM shall:
- (i) expend the Investment Commitment within three (3) years following the Effective Date; and
- (ii) expend the KDMP Investment Commitment;
- 2.2 KCM's obligation to expend the Investment Commitment in accordance with Clause 2.1(c)(i) shall be suspended where a Force Majeure Event has been declared and for so long as such Force Majeure Event is continuing.
- 2.3 If at any time prior to the satisfaction in full of the Investment Commitment KCM suspends or curtails production at any part or parts of the Facilities in accordance with Clause 8 and has met its associated obligations under Clause 27, the Investment Commitment shall be deemed to be reduced by, in the case of a suspension, the Unspent Portion of the Budgeted Commitment in respect of such part or parts of the Facilities or, in the case of a curtailment, by a percentage of the Unspent Portion of the Budgeted Commitment in respect of such part or parts of the Facilities where the percentage is equal to the percentage represented by the proportion which the proposed curtailment of production bears to the production budgeted for at the relevant part or parts of the Facilities had such curtailment not occurred; Provided however that, if KCM resumes operations in whole or in part at the relevant part or parts of the Facilities, the Investment Commitment shall be increased by the Unspent Portion of the Budgeted Commitment in respect thereof taking account of the extent of the resumption. The period over which the renewed portion of the Investment Commitment must be expended will be extended on a day for day basis equal to the period of suspension or curtailment; provided further that the provisions of this Clause 2.3 shall not cause the Investment Commitment to exceed two hundred and eight million United States dollars (U.S.\$208,000,000) or prohibit KCM from expending at the Facilities sums exceeding the Investment Commitment or the KDMP Investment Commitment. A working example of the operation of 2.3 is attached as Schedule 8.

- 2.4 (a) KCM shall use its best endeavours to raise third party finance for KDMP on Reasonable Commercial Terms in the amounts specified in Clause 2.4(b)(i) (the "Third Party Finance") within eighteen (18) months following Completion or, if not possible within that period, as soon as possible thereafter provided that, for the avoidance of doubt, such best endeavours shall not oblige KCM to issue (or, its shareholders to transfer) any equity in KCM to such financiers if insisted upon as a condition of provision of such Third Party Finance;
- (b) KCM's obligation to implement the KDMP and expend the KDMP Investment Commitment in accordance with Clause 2.1(c)(ii) shall be suspended:
- (i) if, and for so long as, Third Party Finance on Reasonable Commercial Terms is not available:
- (A) for three hundred and thirteen million United States dollars (US\$313,000,000), representing sixty percent (60%) of the KDMP Investment Commitment; and
- (B) in the event third party lenders to KDMP require the refinancing of pre-existing KCM third party loans which remain outstanding for a further one hundred and twenty million United States dollars (US\$124,800,000) representing sixty per cent. (60%) of the Investment Commitment;
- Provided however that the figure in (B) above shall be reduced by an amount equal to the aggregate of any repayments of principal made by KCM (and not subsequently redrawn) in respect of such pre-existing third party loans and any prior distributions made to the Shareholders;
- (ii) if, but only for so long as, KCM is unable to meet, or obtain a waiver of, conditions precedent to drawdown of third party finance required to finance the KDMP Investment Commitment as a result of circumstances beyond the control of KCM or any of the members of the KCM Consortium; provided that nothing herein shall oblige any member of the KCM Consortium providing third party finance to waive any condition precedent to drawdown;
- (iii) where a Force Majeure Event, Economic Force Majeure Event or a Material Adverse Change Event has been declared and for so long as the underlying Force Majeure, Economic Force Majeure or Material Adverse Change is continuing; provided that KCM undertakes not to declare an Economic Force Majeure Event within 18 months following Completion;
- (c) If:

- (i) despite having used its best endeavours, KCM is unable to obtain the Third Party Finance within eighteen (18) months following Completion or any of the events contained in Clause 2.4(b)(ii) or (iii) have occurred and are continuing; and
- (ii) KCM wishes to defer commencement of KDMP until it is able to satisfy such condition or until the event has ceased (as the case may be),

KCM shall notify GRZ in accordance with Clause 27.4 and, if the inability to satisfy such condition continues or any of the aforementioned events persists, and further deferrals are required, similar notices shall be delivered at six (6) monthly intervals. For the avoidance of doubt, KCM's obligation to notify GRZ of such a deferral shall not be construed such that KCM would be required to obtain GRZ's consent (or that GRZ would be required to publicly support such a deferral) for such a deferral.

2.5 KCM shall, within one (1) month of obtaining the Third Party Finance, and provided that none of the events contained in Clauses 2.4(b)(ii) or (iii) have occurred and are still continuing:

- (a) notify GRZ thereof; and
- (b) advise GRZ as to whether or not it intends to proceed or continue with the development and construction phase of KDMP in accordance with Clause 2.7 below.

2.6 In the event that:

- (a) KCM notifies GRZ in accordance with Clause 2.5(a) that it has obtained the Third Party Finance, but advises GRZ in accordance with Clause 2.5(b) that it does not intend to proceed or continue with the development and construction phase of KDMP in accordance with Clause 2.7 below (other than by reason of any of the events described in Clauses 2.4(b)(ii) or (iii) having occurred and being still continuing); or
- (b) KCM notifies GRZ in accordance with Clause 27.4 that it has been unable to obtain the Third Party Finance but such financing is in fact available on Reasonable Commercial Terms (and, in the event of a dispute, the availability has been confirmed following a determination by a Sole Expert pursuant to Clause 21 hereof).

GRZ shall have the right to exercise Clauses 2.1, 2.2 and 2.3 of the Call Option Deed.

2.7 Subject always to its continuing right to suspend pursuant to Clause 2.4(b)(ii) and (iii) and to Clause 2.8 below, KCM shall commence or continue with the development and construction phase of KDMP, as specified in and provided for by the Approved Programme of Mining and Metal Treatment Operations, no later than the date falling upon the expiry of six (6) calendar months from the KDMP Development Date and,

except as specifically provided in this Agreement, and subject to the Act (as excluded or modified by this Agreement), KCM:

- (a) shall not require any further approval or consent from GRZ to commence development of the KDMP;
- (b) shall have an unfettered right to manage the development and continued operations of the KDMP; and
- (c) shall be the sole implementor of the KDMP,

and GRZ shall cooperate with KCM to facilitate the implementation of the KDMP.

2.8 In the event that:

- (a) the Third Party Finance has not been obtained (or, in the event such Third Party Finance has been obtained, and any of the events set out in Clauses 2.4(b)(ii) or (iii) has occurred and are continuing on the fourth (4th) anniversary of the Effective Date);
- (b) the KCM Board has determined to adopt an alternative mining plan to access and develop those mineral deposits originally intended to be developed as the KDMP; and
- (c) KCM has expended one hundred and twenty five million United States dollars (US\$125,000,000) in planning, preparing and implementing such alternative mining plan,

then:

- (iii) the KDMP Investment Commitment shall be reduced to two hundred and fifty million United States dollars (U.S.\$250,000,000) or, if lower, the amount required to achieve production at Konkola Division of at least two million four hundred thousand (2,400,000) tonnes per-annum on what may reasonably be expected to be a sustainable basis; and
- (iv) notwithstanding that the conditions to development of KDMP may subsequently be satisfied, GRZ shall not be entitled to require KCM to develop KDMP in the manner contemplated by the KDMP Investment Commitment without taking account of the extent of any reduction pursuant to this Clause 2.8.

2.9 KCM shall within twenty four (24) months of the Effective Date, commence an evaluation of the Chingola Refractory Ores in accordance with the Approved Programme of Mining and Metal Treatment Operations as at the date of signature hereof.

2.10 Subject in all cases to the provisions of this Agreement, GRZ hereby acknowledges the compliance of the Scheduled Programmes with all the relevant requirements of the Act (including without limitation Section 24(3) of the Act) and the Large Scale Mining

Licences and further acknowledges, without limitation, that compliance with the Scheduled Programmes will be deemed to constitute compliance with Section 27 of the Act.

2.11 GRZ confirms that it considers (or shall consider) the proposed mining, smelting and refinery practices described in the original Approved Programme of Mining and Metal Treatment Operations or as varied from time to time by the Board of KCM in accordance with Clause 27:

- (a) to comply with Section 25(1)(b), (c) and (f) of the Act in as much as:
 - (i) the area of land over which the licence is sought is not in excess of the area reasonably required to carry out the Approved Programme of Mining and Metal Treatment Operations;
 - (ii) the proposed practices shall be considered to ensure the efficient and beneficial use of the mineral resources of the relevant Mining Area; and
 - (iii) KCM shall be considered not to be in breach of any of the provisions of the Act; and
- (b) not to constitute "wasteful mining practices" for the purpose of Section 81 of the Act and GRZ (either on its own behalf or through the Minister or the Director of Mines or the Director of Mine Safety) shall not allege that KCM is using wasteful mining practices if KCM is conducting mining in accordance with the mining practices specified in the Approved Programme of Mining and Metal Treatment Operations;

Provided that, in the case of any variation to which Clause 27 applies, the Approved Programme of Mining and Metal Treatment Operations complies in all material respects with Good Mining Practices. Any Dispute as to what constitutes a Good Mining Practice will be referred for determination by a Sole Expert in accordance with Clause 21.

2.12 Subject to the terms of this Agreement, this Agreement shall remain in force for a minimum period equal to the term of the Large Scale Mining Licences; provided that, where KCM is, at the expiry of the minimum period, compliant in all material respects with all material terms of the Large Scale Mining Licences, the term of this Agreement shall be extended (and the period of the Large Scale Mining Licences shall be deemed to be renewed) for such further period not exceeding twenty-five (25) years as KCM may reasonably require in order to complete the Approved Programme of Mining and Metal Treatment Operations being undertaken pursuant to the Large Scale Mining Licences. For the avoidance of doubt, but subject to 18.4, the Stability Period shall terminate on the twentieth (20th) anniversary of the Effective Date notwithstanding that this Agreement may remain in force after such date.

3. RIGHTS TO EXPORT AND IMPORT

3.1 Subject to Clause 4 and the payment of applicable duties and taxes not otherwise exempted or deferred pursuant to this Agreement, KCM may import without further reference to GRZ, materials, equipment and services to be used in implementing the Scheduled Programmes, provided that the import of such materials, equipment and services would not give rise to a breach or result of the kind specified in Clause 3.2(a)(i) or (ii) and GRZ has notified KCM accordingly.

3.2 KCM (including for this purpose each member of the KCM Consortium in its separate capacity where it takes Mine Products from KCM) may market and export without further reference to GRZ all Mine Products and shall have sole control and management of sale of such Mine Products, including the forward selling of all Mine Products and shall assume all risks therefor, except to the extent that:

- (a) the export of the Mine Products to a particular country would:
 - (i) breach an obligation of GRZ arising under international law (including mandatory sanctions imposed by the United Nations); or
 - (ii) result in dealing or contracting with nationals of a state with which GRZ is in a state of declared or undeclared war;

and GRZ has notified KCM of such facts accordingly; or

- (b) nationals or residents of Zambia willing and able to purchase copper in US dollars payable offshore or in Zambia (such payment to be at the direction of KCM) at the market rate are discriminated against in comparison with foreign nationals or overseas residents in so doing; provided that this Clause 3.2(b) shall not operate so as to require KCM, in any way, to prefer nationals or residents of Zambia, incur any greater cost, receive or make payment in any currency or country (other than a currency and country specified by KCM) accept a different standard of work or otherwise suffer any prejudice; or

- (c) no order has been made by the Minister on KCM pursuant to Section 69 of the Act and remains in force.

4. SUPPLY AND PROCUREMENT

4.1 KCM shall, on a regular basis, and in any event no less than annually, identify and invite by advertisement in the local press registration of businesses in Zambia which are capable of supplying materials, equipment and services to KCM and satisfy the criteria set forth in Clause 4.3.

4.2 The supply of materials, equipment and services may be tendered for and procured internationally without restriction, provided that; where such materials, equipment and services are procurable within Zambia from businesses registered pursuant to Clause 4.1, such businesses shall have the opportunity to tender and, if a tender submission

from such business meets the specifications of the invitation to tender, such businesses shall not be discriminated against in comparison with international suppliers.

- 4.3 When calling for tenders from contractors and suppliers, KCM shall invite tenders from Zambian contractors and suppliers where, to the best of KCM's knowledge (all businesses registered pursuant to Clause 4.1 shall be deemed to be within the knowledge of KCM provided that; KCM shall only be required to send the invitation to tender to the address of the contractor or supplier (as the case may be) on the register at that time):-
- (a) the contractors have proven ability and reputation in (i) performing work of a similar nature and size to that required by KCM, and (ii) completing such work within the specified time period; and
 - (b) the suppliers are established, recognised and reputable suppliers of materials and/or equipment and have previously marketed or distributed such materials and/or equipment (as applicable).
- 4.4 Nothing contained in Clauses 4.1 to 4.3 shall operate so as to require KCM, in any way, to prefer nationals or residents of Zambia, incur any greater cost, receive or make payments in any currency or country (other than a currency or country specified by KCM), accept a different standard of work or otherwise suffer any prejudice.
- 4.5 In assessing the tenders from local contractors and suppliers, KCM shall consider the extra costs it would incur if it were to grant the contract to a foreign supplier or contractor. These extra costs shall include, but are not necessarily restricted to, wharfage costs, shipping costs, stevedoring costs, customs clearance costs, customs duties, and demurrage charges.
- 4.6 Subject only to the provisions of Clauses 4.1 to 4.5, KCM shall be free to make such arrangements with suppliers or contractors as it wishes.

5. LOCAL BUSINESS DEVELOPMENT

5.1 KCM shall:

- (a) comply substantially with the Local Business Development Programme with a view to encouraging and assisting the establishment of businesses within Zambia (particularly in the Copperbelt and with a particular emphasis on businesses directly or indirectly majority owned by Zambian citizens) to supply materials, equipment and services to KCM;
- (b) conduct an annual review of progress being made on the implementation of the Local Business Development Programme and make such variations to it as KCM considers to be reasonably required by changing circumstances; and
- (c) identify a member of staff experienced in setting up and managing small business enterprises:

- (i) to assist Zambian citizens who wish to or have set up businesses to offer services to KCM and the Facilities;
 - (ii) to assist in the implementation of the Local Business Development Programme and variations thereof;
 - (iii) to liaise with the appropriate officials from GRZ; and
 - (iv) to compile and maintain the register referred to in Clause 4.1; and
- (d) inform GRZ annually on the implementation and results of the Local Business Development Plan.

5.2 Nothing in Clause 5.1 shall oblige KCM to grant or lend any money to, or to contract with, any person or organisations.

6. EMPLOYMENT AND TRAINING PLAN

6.1 KCM shall comply with the Employment and Training Plan.

6.2 Subject to KCM complying at all times with any and all applicable labour or such other relevant legislation of general application as may be in force from time to time, it may amend or alter the Employment and Training Plan, with a view to providing employees of KCM with improved opportunities to develop their potential to contribute to the operations of KCM. For the avoidance of doubt, any such amended plan, provided it complies with all relevant legislation, shall be deemed to have been approved by the Minister for the purposes of Section 25 1(e) and Section 25(4) of the Act.

6.3 If KCM is unable to comply with some aspects of the Employment and Training Plan as a result of:

- (a) circumstances or events beyond its control; or
- (b) a direction of the Director of Mine Safety under the Act (or regulations made thereunder),

then such non-compliance shall not constitute a default under this Clause 6 nor a breach of the conditions of the Large Scale Mining Licences and KCM may give notice of alternative or revised plans to that part of the Employment and Training Plan affected.

6.4 KCM shall not, save as provided below, be restricted in its employment, selection, assignment or discharge of personnel; provided however, that the employment and the terms and conditions of such employment and the discharge or disciplining of personnel within Zambia shall be carried out in compliance with (i) the laws and regulations of Zambia which are, from time to time, of general application, (ii) the Collective Agreement(s) and (iii) the terms of individual employment contracts from time to time.

6.5 KCM shall, in its recruitment, selection, promotion and assignment of personnel comply in all respects with non-discrimination laws of general application in Zambia.

- 6.6 KCM acknowledges GRZ's policy to attract qualified Zambian citizens working overseas back to employment within the Zambian mining industry. In order to facilitate the fulfilment of this policy, KCM shall take all reasonable efforts in its recruitment and employment of employees in professional, managerial, engineering and scientific grades (including, but not limited to the advertising of positions in international press and trade journals likely to have circulation amongst suitably qualified potential employees) to bring to the attention of such qualified Zambians positions of employment available within KCM.
- 6.7 KCM shall recognise, for collective bargaining purposes, (i) the trade union that at the relevant time represents the employees of KCM and (ii) the Collective Agreements covering the Transferring Employees.
- 6.8 Notwithstanding the provisions of this Clause 6, KCM (and its contractors or sub-contractors) may bring into Zambia such non-Zambian citizens as, in the reasonable judgment of KCM's management, are required to carry out operations efficiently and successfully and, at KCM's request GRZ shall cause all necessary permits (including entry and exit permits, work permits, visas and such other permits or permissions as may be requested) to be issued to such persons and their entitled dependants promptly and without hampering the continuous and efficient performance of KCM's operations and its obligations under this Agreement (including allowing such non-Zambian citizens the right to import and export personal effects free of taxes); Provided that, GRZ shall be under no such obligation to issue the permits aforesaid to any non-Zambian citizen who is disqualified from entry by reason of previous criminal convictions, health regulations and like restrictions set out in immigration regulations of general application in Zambia from time to time. Without limiting the generality of the foregoing provisions of this Clause 6.8, nothing contained in Clauses 6.1 to 6.7 shall operate so as to require KCM, in any way, to prefer nationals or residents of Zambia or accept a different standard of work from such persons, to require the Employment and Training Plan to include quotas for the employment of Zambian citizens (or other similar provisions) or for KCM to otherwise suffer any prejudice. KCM shall, in respect of such non-Zambian citizens referred to above, provide GRZ with the requisite information concerning the education, experience and other qualifications of the personnel concerned. Notwithstanding the foregoing, but subject to the rights of GRZ herein provided, the provision of such information shall in no way be construed as granting GRZ the right to object to KCM employing such persons at the Facilities or to withhold the granting of all necessary permits.

7. INSURANCE

- 7.1 The terms and conditions of the insurance by KCM of its assets and potential liabilities shall be at the sole discretion of the Board of KCM; Provided that, KCM shall ensure that it takes out such insurance as is consistent with Good Mining Practices.
- 7.2 GRZ agrees that the insurance cover specified in Schedule 6 is that which, as at the date hereof, is:

- (a) prescribed by the statutory instrument referred to in Section *one hundred and one (one)* of the Act; and/or
- (b) required by the Director of Mines pursuant to Section *one hundred and one (three)* of the Act,

and that no Statutory Instrument and/or direction of the Director of Mines as aforesaid applicable to and binding upon KCM and inconsistent with Schedule 6 shall be issued or made without the prior written consent of KCM (such consent not to be unreasonably withheld).

- 7.3 GRZ shall be advised of the insurance policy or policies in place which comply with Clause 7.2 and Schedule 6 and KCM shall forward copies to GRZ whereupon GRZ, if appropriate, shall acknowledge that such insurances constitute the insurance coverage prescribed by any statutory instrument issued under Section *one hundred and one* of the Act and/or required by or a direction of the Director of Mines pursuant to Section 101(3) of the Act. GRZ undertakes to permit, to the extent necessary, insurers resident in Zambia to assign their rights under any re-insurance contracts to which they are party to KCM or any lender to KCM.

8. SUSPENSION OR CURTAILMENT OF PRODUCTION

- 8.1 Subject to the succeeding provisions of this Clause 8, the parties acknowledge that KCM's right to suspend or curtail production is governed by Section *twenty eight* of the Act and that, in the event of any such suspension or curtailment, the Minister may exercise powers under Section *twenty eight (three)* of the Act.

- 8.2 GRZ hereby agrees that:

- (a) the Minister's approval shall be given (or failing which shall be deemed given) in accordance with Section *twenty eight (three)(a)* of the Act upon compliance by KCM with this Clause, so that, in circumstances of such compliance, the Minister shall not give KCM a direction under Section *twenty eight (three) (b)* of the Act; and
- (b) in the event of any suspension or curtailment, any direction capable of being given pursuant to Section *twenty eight (three)(b)* of the Act shall only be given either:
 - (i) in compliance with this Clause; or
 - (ii) if KCM has not complied with any material provision of this Clause and has not remedied such non-compliance within thirty (30) days of being given notice of such non-compliance by GRZ.

- 8.3 Where:

- (a) in the case of Nchanga Division, at any time prior to the fifteenth (15th) anniversary of the Effective Date;

- (b) in the case of the Nampundwe Mine and (unless (iii) below applies) Konkola Division, at any time prior to the twenty-fifth (25th) anniversary of the Effective Date; or
- (c) in the case of Konkola Division, in circumstances where KCM has expended the KDMP Investment Commitment (as adjusted, if applicable, in terms of Clause 2.8) at any time prior to the fiftieth (50th) anniversary of the Effective Date

KCM elects to suspend or curtail production in respect of a Division or Divisions or any part or parts of one or more Division or Divisions, and it has complied with its obligations under Clause 27 and continues to comply with its obligations pursuant to Clause 8.4, it shall be deemed to have complied with this Clause 8 and, accordingly:

- (i) the provisions of Clause 8.2(a) shall apply; and
- (ii) the provisions of Clause 8.5, 8.6, 8.7, 8.8, 8.9 and 8.10 shall not apply.

8.4 Where pursuant to Clause 8.3 or otherwise in accordance with Section *twenty eight* of the Act, KCM has elected to suspend production, it shall maintain, subject to fair wear and tear, the assets comprising the Division or Divisions or the relevant part or parts of such Division or Divisions in respect of which production has been suspended so as to prevent significant deterioration until operations are resumed.

8.5 Where KCM elects to suspend or curtail production in circumstances where Clause 8.3 does not apply it shall, no later than eleven (11) months from the date on which KCM suspended or curtailed production at the relevant Division or Divisions or the relevant part or parts of such Division or Divisions, submit to GRZ a report showing its projection of the Costs to Resume Operations and of projected Operating Costs and Revenues. In the event the Minister does not give a direction to resume operations in accordance with Clause 8.6, reports shall be submitted to GRZ by KCM at six (6) monthly intervals in order to allow the Minister to reassess whether it is economic to resume operations at the relevant Division or Divisions or any part or parts thereof at the date such a report is presented. KCM's obligation to submit such reports to GRZ shall terminate: (a) on the resumption of operations; or (b) in the event KCM does not resume operations, when it sells the relevant Division or Divisions or the relevant part or parts thereof; or (c) on the occurrence of the circumstances set out in Clauses 8.9(a) and (b).

8.6 Subject to Clause 8.3, in the event that production at a Division or Divisions or any part or parts thereof, has been suspended or curtailed for a continuous period of twelve (12) months or longer and it is economic to resume operations at the relevant Division or Divisions or any part or parts thereof, the Minister may direct KCM to resume operations and KCM shall, subject to Clause 8.7 below, as soon as practicable thereafter take such measures as are necessary to resume operations at the level that the Division or Divisions or part or parts thereof were operating at in the year prior to the time operations were suspended or curtailed.

- 8.7 Subject to Clause 8.3, if KCM disagrees that it is economic to resume operations in accordance with the Minister's direction pursuant to Clause 8.6, it may elect to submit the matter for determination to a Sole Expert in accordance with Clause 21.
- 8.8 Where the matter has been referred to a Sole Expert pursuant to Clause 8.7, the Sole Expert shall determine, in the light of Good Mining Practices, whether it is economic to resume production or not. The opinion of the Sole Expert shall be binding on the Parties and, if the Sole Expert determines that it would be uneconomic to resume production, the direction given by the Minister pursuant to Clause 8.6 shall be deemed to have been withdrawn.
- 8.9 Where, pursuant to Clause 8.6, the Minister has directed KCM to resume operations and such direction has not been or is not deemed to have been withdrawn, KCM, if it does not promptly take such measures as may be required either to resume operations or to sell the relevant division or divisions or part or parts thereof within six (6) months of such direction by the Minister, shall be deemed to have abandoned its operations or the relevant part of such operations (as the case may be) for the purpose of Clause 8 so that:

- (a) if such abandonment is in respect of part only of an area covered by a Large Scale Mining Licence, such Large Scale Mining Licence shall be amended to delete such area from its application; and
- (b) if such abandonment is in respect of all of such area covered by the Large Scale Mining Licence, the Large Scale Mining Licence is terminated;

provided however that, where the Minister's direction has, pursuant to Clause 8.7, been referred to a Sole Expert, the time period shall run from the date such Sole Expert gave its opinion on the projections or opinion as the case may be.

- 8.10 Nothing herein contained shall prejudice KCM's rights to suspend or curtail operations under Section *twenty eight* of the Act for any other reason or the consequent exercise by the Minister of his powers under that section.

9. SOCIAL ASSETS AND MUNICIPAL INFRASTRUCTURE SERVICES

- 9.1 The Parties acknowledge that KCM has reached agreement with the MUZ regarding the levels of remuneration and other employment benefits which shall be provided to the Transferring Employees of KCM and their Registered Dependants. These benefits include the provision or procurement of certain medical and educational services and access to other recreational assets.

9.2 Municipal Infrastructural Services

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

- (a) water;

- (b) Sewerage services;
- (c) Solid waste;
- (d) Domestic electricity supply;
- (e) Street lighting;
- (f) Storm water drainage;
- (g) Roads;
- (h) Markets; and
- (i) Cemeteries

These will be provided by the local councils, and in the case of domestic electricity supply - ZESCO Limited, except that for an interim period of approximately five years water, sewerage services and solid waste services will be provided by a wholly owned subsidiary of ZCCM under a GRZ funded program. KCM will not be required to provide these services.

KCM will co-operate with the local councils, the ZCCM subsidiary, and ZESCO Limited, in ensuring that any transitional arrangements to be agreed with KCM and put in place for recovering costs of such services from KCM's employees are effective.

10. RECORDS AND OPERATING REPORTS

- 10.1 KCM shall, pursuant to Section *one hundred and four* of the Act, keep GRZ, through the Ministry, advised concerning KCM's operations through submission of annual reports, the first report to be submitted three months after the first financial year end of KCM following the date of this Agreement, as to the progress and results of KCM's mining and smelting operations and prospecting and appraisal activities under this Agreement (such reports to contain any information relating to the progress of operations in each Mining Area as the Ministry may from time to time reasonably require).
- 10.2 Pursuant to Sections 2(d) and (e) of the Fourth Schedule to the Act, KCM shall provide quarterly reports to the Ministry, the first report to be submitted on 30th June 2000 and thereafter on 30 September, 31 December, 31 March and 30 June annually broken out on a mine by mine basis:
- (a) quantities of ore mined and average head grades;
 - (b) quantities of waste mined;
 - (c) quantities of copper and cobalt concentrates produced and quantities of contained copper and cobalt;
 - (d) quantities of own Mine Products produced and quantities sold;

- (e) prices obtained on sales of own products;
 - (f) quantities of sulphur contained in pyrite mined and quantities of pyrite concentrates produced;
 - (g) operating costs; and
 - (h) progress in implementing the Scheduled Programmes, the extent of any continuing non-compliance by KCM with Environmental Laws and progress made in remedying this in accordance with the Environmental Plan.
- 10.3 KCM shall file with the Ministry annual reports summarising any geological and metallurgical investigations and such other material data as may be obtained from any prospecting activities.
- 10.4 All information furnished to GRZ pursuant to Clause 10.2 shall be in English and United States dollars.
- 10.5 KCM shall maintain all original records and reports relating to its activities and operations under this Agreement at its principal office in Zambia. These records (other than those which are the subject of legal professional privilege) and reports shall be open to inspection by GRZ through an authorised representative during normal working hours upon GRZ giving reasonable notice of its intention to inspect the records and reports provided that GRZ may not require more than six (6) such inspections in any twelve (12) month period (for the avoidance of doubt any inspections required to be carried out pursuant to any law, statutory instrument or other regulation of general application (other than inspections required under Section 104 of the Act) shall be additional to and shall not be included within the six inspections permitted pursuant to this Clause). Such records and reports shall be maintained in the English language. All such records and reports shall be retained by KCM for a period of six years.
- 10.6 One copy of any records, reports, plans, maps, charts, accounts, and information which KCM is or may be from time to time reasonably required to supply under the provisions of this Agreement shall be supplied at the expense of KCM.
- 10.7 Compliance by KCM in all material respects with the provisions of this Clause 10 shall be deemed to constitute compliance with the provisions of *Section 104 and the Fourth Schedule* of the Act and no further reports, records or information shall be required to be submitted, kept, produced, retained, delivered or otherwise made available for inspection under those provisions of the Act.
- 10.8 GRZ undertakes that it shall (and shall procure that its relevant employees and officers shall), in relation to any Confidential Information:
- (a) use all Confidential Information only for the purpose for which it was supplied to GRZ and not for any other purpose;

(b) treat and safeguard as strictly private and confidential all Confidential Information; and

(c) ensure proper and secure storage of all Confidential Information.

10.9 Subject to the provisions of the Act, all documents, reports, records or information made available to GRZ will remain the property of KCM.

PART C
UNDERTAKINGS NECESSARY FOR OPERATIONS

11. FOREIGN EXCHANGE

11.1 The Parties acknowledge that, under legislation and practice currently in force in Zambia, there are no foreign exchange controls and KCM is free, among other things to:

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

11.2 In the event foreign exchange controls were to be re-introduced in Zambia within the Stability Period, KCM shall have (without any further approvals from GRZ or any entity thereof being required) the right to:

- (a) retain both outside Zambia and within Zambia (at KCM's discretion), in accounts established for that purpose, foreign currency, and to have paid to it and maintain in such accounts amounts arising from all sources associated with the Business, including but not limited to the following:
 - (i) sale proceeds;
 - (ii) payments made by insurers or re-insurers not resident in Zambia under contracts of insurance in KCM's favour;
 - (iii) profits;
 - (iv) proceeds of any disposal of capital assets;
 - (v) foreign loan proceeds;
 - (vi) proceeds of the issue of share capital (payable by non-residents of Zambia);
 - (vii) penalties and damages under contracts (payable by non-residents of Zambia); and
 - (viii) proceeds of swaps and hedges (payable by non-residents of Zambia);
- (b) use freely the foreign currency accounts maintained by KCM to:
 - (i) service payments of principal and interest, service charges and other fees and expenses in respect of any loans arranged with non-Zambian entities;

- (ii) make payments due to suppliers outside Zambia for the supply of goods and services to KCM;
 - (iii) finance the payment of dividends to shareholders, interest and principal on loans advanced to KCM by its shareholders or payments made by or on behalf of ZCCM in repayment of amounts advanced under repayable carried interest arrangements applicable to it; and
 - (iv) pay employees;
- (c) remit profits (in currency, products or otherwise) and repatriate capital (in cash or assets) outside Zambia (which right shall be extended to the KCM Consortium individual members in respect of the proceeds of the disposal or liquidation of all or part of their investment/shares in KCM).
- (d) fund its operations from whatever sources are deemed appropriate (including rights to borrow funds wherever it chooses and in whatever currency, subject to Clause 11.7) and to invest funds without restrictions;
- (e) pay smelters of KCM products outside Zambia;
- (f) use non-Zambian entities for the provisions of services to KCM (e.g. insurance and re-insurance); and
- (g) maintain an amount equal to thirty per cent. (30%) of all contributions to its pension funds, as well as any income or gains from such contributions, offshore. No restrictions shall apply to any pension funds maintained for expatriates. KCM shall not be discriminated against in comparison with other like mining and metal treatment operations in this regard.

11.3 KCM shall submit to the Central Bank:

- (a) within fifteen (15) days of the end of each calendar month -
 - (i) a statement of the foreign currency amounts repatriated to Zambia within the previous month from accounts maintained overseas by KCM;
 - (ii) a statement of the balance of KCM's foreign currency accounts [To be agreed by KCM] at the end of the previous month;
 - (iii) a forecast of the foreign currency amounts that KCM intends to repatriate to Zambia during the ensuing calendar month, and
- (b) within five (5) months of the end of each year, audited financial statements which comply with Zambian law and regulations.

11.4 In the absence of foreign exchange controls in Zambia, KCM shall have the same rights to buy and sell currencies from authorised dealers and enter into swaps and hedging arrangements (which expression shall include, without limitation, arrangements for taking out forward cover against local and other currency fluctuations

or other fluctuations in incomes or costs or other expenses incurred as part of the management operations but shall not include Speculative Currency Transactions) with non-Zambian entities as other commercial concerns in Zambia. In the event foreign exchange controls were to be reimposed in relation to the purchase and sale of currencies (and without prejudice to KCM's rights under Clause 11.2), such controls shall not be applied to KCM in a manner less favourable to it than the manner in which they are generally applied to other large commercial concerns in Zambia. KCM shall be entitled to buy and sell foreign currency in accordance with such controls at rates of exchange no less favourable than those available to other commercial buyers and sellers of the currency concerned.

- 11.5 KCM shall remit to Zambia, and convert into Kwacha for credit to a bank account in the name of KCM, sufficient of its foreign currency earnings to pay such commitments as KCM may have incurred in Kwacha, but only to the extent KCM does not already have Kwacha available to meet such commitments (including, without limitation, taxes, royalties and customs duties and obligations to pay dividends to local shareholders payable in local currency, if applicable). KCM shall use its reasonable endeavours to notify the Central Bank of transfers of a substantial amount which are not in accordance with the normal pattern of transfers.
- 11.6 KCM shall not engage in or use any provisions of this Clause 11 or any authority or approval given by the Central Bank, to engage in Speculative Currency Transactions. For the avoidance of doubt, this Clause shall not prohibit or prevent normal risk management operations which shall be deemed to include the entering into of hedging agreements ordinarily utilised by mining companies in the international mining industry.
- 11.7 GRZ shall not intervene to prevent access by KCM to local currency markets or to prevent exchange at market rates and on a non-discriminatory basis (and shall procure that the Central Bank will not so interfere); Provided that KCM shall ensure that any borrowings it may incur denominated in Kwacha shall not exceed five per cent (5%) of annual sales revenues as recorded in the latest set of audited annual accounts of KCM or, in the period prior to finalisation of KCM's first audited annual accounts, five per cent. (5%) of ZCCM's annual sales revenues as recorded in the latest set of audited annual accounts of ZCCM published prior to Completion.
- 11.8 In the event KCM determines to sell foreign currency held by it, it shall not discriminate against the Central Bank if the Central Bank is willing and able to purchase foreign exchange at market rates and on terms that are no less favourable to KCM than terms available from other buyers.

12. ENVIRONMENTAL ISSUES

12.1 KCM and GRZ each hereby agrees that:

- (i) subject to (ii) below, KCM shall negotiate in good faith with GRZ (which undertakes to negotiate in good faith with KCM) with a view to agreeing

within two (2) years (or such longer period as KCM and GRZ shall agree) of the Effective Date the detailed terms and conditions of the KCM Final Environmental Plan;

- (ii) KCM shall not be required to agree the KCM Final Environmental Plan with GRZ until such time as GRZ procures that ZCCM negotiates and agrees with GRZ and KCM (in a form reasonably satisfactory to KCM) the detailed terms and conditions and timetable of the ZCCM Final Environmental Plan;
- (iii) GRZ shall agree to and approve the provisions of the KCM Final Environmental Plan provided that such plan incorporates the objectives or requirements of the IFC in respect of the conduct of Normal Operations at each of the relevant Assets;
- (iv) KCM shall comply with and implement the KCM Environmental Plan in accordance with the timetable contained therein and Good Mining Practices and, without prejudice to the timetable, KCM shall achieve the objectives specified in the KCM Final Environmental Plan no later than the last day of the Stability Period.
- (v) GRZ shall promptly take all such actions as are necessary to permit the implementation of the KCM Environmental Plan.

12.2 Upon agreement of the KCM Final Environmental Plan, GRZ will take promptly, or procure that all necessary action is taken promptly, to approve and to permit the implementation of such plan. Such action shall include amending or replacing the Enabling Statutory Instruments and/or any relevant Environmental Laws and/or applicable permits to disapply the standards previously applied to the Assets under Environmental Laws and to replace these in any Environmental Laws which are applicable to KCM with those requirements specified in the KCM Final Environmental Plan for the conduct of Normal Operations at each of the relevant Assets for the period after KCM has fully implemented the other requirements of the KCM Final Environmental Plan.

12.3 Save as provided in Clause 12.4 below, GRZ hereby confirms that it shall not (and shall procure that its Ministries, and departments, and all agencies or instrumentalities acting on its behalf over which it has operational control shall not), for the Stability Period:

- 12.3.1 take any action under, or in enforcing, any applicable Environmental Laws with the intent or the effect of:
 - (i) securing KCM's compliance with Environmental Laws earlier or to a greater extent than that envisaged under the agreed timetable and conditions set out in this Agreement, the KCM Environmental Plans or the Enabling Legislation or Enabling Statutory Instruments; or

- (ii) imposing fines, penalties or work obligations upon KCM (or undertaking works and then seeking to recover the costs thereof) under Environmental Laws (or enacting new fines penalties or works obligations thereunder) in respect of matters which fall within the Environmental Plans or in respect of which exemptions have been granted to KCM pursuant to the Enabling Statutory Instruments or other Environmental Laws; or
- 12.3.2 other than as contemplated by Clause 12.2, repeal or amend the Enabling Legislation or the Enabling Statutory Instruments or otherwise effect any changes thereto; or
- 12.3.3 in the case of Environmental Laws, effect any changes thereto or enact new legislation covering the Environment which individually or cumulatively would:
 - (i) prevent KCM from complying with the terms of the KCM Environmental Plans and the timetable, contained therein without making provision for KCM to be exempted therefrom;
 - (ii) materially alter or affect the scope, enforcement or application of Environmental Laws regarding the establishment, maintenance and operation of the Environmental Protection Fund including in particular (but without prejudice to the generality of the foregoing) those provisions of such legislation or regulation regarding:
 - (a) the pre-dominance of industry representatives on the Board administering this fund;
 - (b) the independent management of cash contributed by mining companies to this fund; or
 - (iii) materially increase the cost, in real terms, of carrying out the Environmental Plans or of Normal Operations;
- 12.3.4 apply any environmental provisions to KCM under Section *seventy six* and *seventy seven* of the Act to the extent that such provisions impose requirements that are more onerous than those specified in the Environmental Plans or Enabling Statutory Instruments; or
- 12.3.5 take any other action which would inhibit, prevent or render it impractical or materially more costly for KCM to comply with the relevant Environmental Plan or to undertake Normal Operations or which impose liabilities on KCM for which KCM had not previously been liable or was not to be liable under the terms of this Agreement (and related agreements and legislation).

- 12.4 Subject to Clause 12.7, in the event that GRZ considers KCM to be in non-compliance with the KCM Environmental Plan and such non-compliance does not result from actions or omissions of GRZ and/or ZCCM, it shall:
- 12.4.1 notify KCM of such fact in writing, specifying the facts and circumstances it considers give rise to such non-compliance and the actions it considers necessary to remedy the same;
 - 12.4.2 specify in writing, a time period (being such period agreed between GRZ and KCM, failing which being not less than six (6) Calendar Months) which it considers appropriate to remedy such non-compliance and the reasons why such time period is appropriate.
- 12.5 In the event of expiry of the period specified by GRZ in Clause 12.4, (and unless KCM has referred the matter to expert determination under Clause 12.6 below) if KCM has not remedied the non-compliance notified by GRZ in the manner required by GRZ under Clause 12.4 above (or such other manner as may have been agreed in writing between GRZ and KCM), GRZ will cease to be bound by the provisions of Clause 12.3 but only in respect of such breach and matters arising out of such breach (and in respect of no other matters) and the Parties acknowledge that GRZ (or its Ministries, departments or such agencies acting on its behalf) shall be free to take such action under, or in enforcing, applicable Environmental Laws in relation thereto as it or they shall consider appropriate or necessary.
- 12.6 If KCM contests the non-compliance asserted by GRZ it shall serve a counter-notice specifying its reasons for disagreeing with GRZ within one month of receiving GRZ's notice under Clause 12.4 above. Thereafter any Dispute regarding:
- 12.6.1 whether or not GRZ is entitled to serve a notice under Clause 12.4.1; or
 - 12.6.2 whether or not the actions GRZ consider necessary to remedy such non-compliance specified in such notice are necessary and reasonable; or
 - 12.6.3 whether the time period specified by GRZ under Clause 12.4.2 is appropriate to remedy such non-compliance or not; or
 - 12.6.4 whether or not the reasons specified by GRZ as to the appropriateness of such time period are justified; or
 - 12.6.5 any action by GRZ arising out of any such matter
- may be referred by KCM to a Sole Expert in accordance with Clause 21, for determination.
- 12.7 KCM shall not be in breach of the KCM Environmental Plan or its obligations under this Clause 12 in relation to any non-compliance, partial compliance or delay in compliance with a particular aspect or aspects of the KCM Environmental Plan to the extent that this is attributable to any of the following reasons:

- 12.7.1 any failure by GRZ or ZCCM to comply with their obligations under this Agreement, the Enabling Legislation, the Enabling Statutory Instruments, the Environmental Liabilities Agreement, Environmental Laws, or the Environmental Plans;
- 12.7.2 an Environmental Condition not previously known by KCM (or its shareholders (excluding ZCCM) or those of its representatives who have responsibility for preparing and agreeing the Final KCM Environmental Plan) which renders impossible or more difficult or costly or which delays the performance by KCM of any task under the KCM Final Environmental Plan or any obligation in respect of the KCM Environmental Plan; or
- 12.7.3 any material unexpected difficulty (and any associated delay) which could not reasonably have been foreseen, or overcome without incurring material additional costs over and above the funds specified for such task by KCM, in performing a task specified in the KCM Environmental Plan or in achieving the improvement anticipated from such tasks,

PROVIDED that this Clause 12.7 shall only apply to the extent that any such non-compliance, partial compliance or delay is not attributable to either any refusal or failure on KCM's part to spend funds which it has committed to spend under the KCM Environmental Plan or the Approved Programme or the negligence of KCM or its contractors or agents or KCM's refusal to comply with such plan.

- 12.8 The Minister on behalf of GRZ may propose an amendment to the KCM Environmental Plan in the following circumstances only, if:
 - 12.8.1 at any time the conduct of Normal Operations in accordance with the relevant Environmental Plan for whatever reason poses a material danger to public health and safety; or
 - 12.8.2 the impact of Normal Operations would be likely to result in significant environmental damage which was not anticipated in the relevant Environmental Plan.

Prior to any formal proposal being made by the Minister, unless he reasonably considers such danger or damage to be imminent and acute, he shall allow a period of four (4) Calendar Months for informal discussions of any proposed amendments to an Environmental Plan.

- 12.9 Any formal proposal from the Minister to amend the KCM Environmental Plan shall be delivered in writing to KCM. This shall include a written statement of the reasons why the Minister considers the proposed variation to be necessary, setting out to the extent it is reasonably practicable to do so:
 - 12.9.1 the danger to public health and safety or the environmental damage which may result from Normal Operations if the Environmental Plan is not amended and the risk and materiality of such damage;

- 12.9.2 the actions it considers necessary to remedy the same;
 - 12.9.3 the timescale within which it considers the actions should be completed; and
 - 12.9.4 the cost of such actions.
- 12.10 In the event that the Minister proposes a variation to the KCM Environmental Plan on behalf of GRZ under the circumstances set forth in Clause 12.8, KCM undertakes to consider the proposed variation in good faith and, unless by notice of objection in writing served on the Minister within two (2) Calendar Months of receipt of the proposal made pursuant to Clause 12.9 it informs the Minister that it considers the proposed variation to be unreasonable, it shall be deemed to have agreed the same. A notice of objection shall include a written statement of the reasons why KCM considers the proposed variation to be unnecessary or unreasonable, setting out to the extent it is reasonably practicable to do so:
- 12.10.1 its estimate of the direct costs to implement such change;
 - 12.10.2 its analysis of the variation in the environmental and health and safety impact that would be effected by such change; and
 - 12.10.3 its appraisal of the economic and other effects of the change proposed by GRZ.
- 12.11 Following receipt of a notice of objection under Clause 12.10, the Minister shall, within two (2) Calendar Months and having considered the notice of objection in good faith, inform KCM by notice in writing whether or not the Minister's proposal for variation of the KCM Environmental Plan is or is not withdrawn. In the event that the Minister's proposal for variation is not withdrawn it will be deemed to have been agreed unless KCM elects; within a further period of two (2) Calendar Months from receipt of notification from the Minister that his proposal is not withdrawn, to submit the question of whether GRZ's proposal for variation is unnecessary or unreasonable for determination by a Sole Expert in accordance with Clause 21.
- 12.12 Should KCM refer the proposed change to expert determination, the determination will be binding on the parties with the effect that:
- 12.12.1 if the Sole Expert determines that GRZ's proposal for variation is not unnecessary or unreasonable the proposal for variation will be deemed to have been agreed; or
 - 12.12.2 if the Sole Expert determines that GRZ's proposal for variation is unnecessary or unreasonable the proposal will be deemed to have been withdrawn;

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

- 12.13 Where a variation to the KCM Environmental Plan has been agreed by KCM and GRZ or is determined pursuant to Clause 21, that Environmental Plan shall be amended accordingly and GRZ shall procure the amendment, if necessary, of any Enabling Statutory Instrument or Environmental Laws to reflect any such variation.
- 12.14 Nothing in this Clause 12 shall affect or limit the powers under the Act of the Director of Mine Safety designated by the Act to take such emergency actions as he considers reasonably necessary and for the purposes of safeguarding the lives or health of persons engaged in KCM's operations. To the extent that KCM is required to undertake works or incur expenditure by the Director of Mine Safety in respect of any matter addressed by the KCM Environmental Plan which go beyond the requirements of the KCM Environmental Plan, KCM shall be entitled to recover the costs of the works or expenditure from GRZ.
- 12.15 KCM shall be entitled to amend the KCM Environmental Plan from time to time:
- 12.15.1 if in its view at any time the conduct of Normal Operations in accordance with the relevant Environmental Plan for whatever reason poses a material danger to public health and safety;
 - 12.15.2 if in its view the impact of Normal Operations would be likely to result in significant environmental damage which was not anticipated in the relevant Environmental Plan;
 - 12.15.3 to make any necessary and/or reasonable amendments to take account of any issues of non-compliance, partial compliance or delay which fall within the provisions of Clause 12.7 above and which would otherwise render KCM non-compliant with the KCM Environmental Plan; or
 - 12.15.4 so as to reflect changes in operations and other circumstances considered to be appropriate by KCM, provided that following such amendment (and in respect of amendments under this Clause 12.15.4 only):
 - (i) the KCM Environmental Plan is in accordance with accepted environmental standards as applicable to Good Mining Practice; and
 - (ii) such amendment will not result in GRZ's liability under the Environmental Liabilities Agreement being materially increased or in a liability thereunder being incurred or arising on a date earlier than would otherwise have been the case but for the making of such amendment (unless the effect of such earlier incurrence is to make it materially likely that GRZ's potential exposure to claims under the Environmental Liabilities Agreement will be reduced by a more than compensatory amount).

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

- 12.16 In the event that KCM proposes a variation of the KCM Environmental Plan under the circumstances set forth in Clause 12.15, GRZ undertakes to consider the proposed variation in good faith and to accept the proposal unless it believes that the proposal falls outside the scope permitted under Clause 12.15 and unless, by notice of objection in writing served on KCM within 2 (two) Calendar Months of receipt of the proposal made pursuant to Clause 12.15, GRZ informs KCM that it considers the proposed variation to be unnecessary or unreasonable it shall be deemed to have agreed the same. A notice of objection shall include a written statement of the reasons why GRZ considers the proposed variation to be unnecessary or unreasonable setting out to the extent it is reasonably practicable to do so:
- 12.16.1 its reasons for concluding there is no risk to public health and safety or of significant environmental damage
 - 12.16.2 its reasons for concluding that the amendments proposed under Clause 12.15.3 are not necessary or reasonable; or
 - 12.16.3 in relation to amendments proposed under 12.15.4 its reasons for concluding that the amendment would not meet Good Mining Practice and/or its analysis of the increase in liabilities under the Environmental Liabilities Agreement.
- 12.17 The provisions of Clauses 12.12 and 12.13 shall apply in respect of changes proposed by KCM save that references to GRZ shall be read as KCM and references to KCM shall be read as GRZ respectively.
- 12.18 Notwithstanding the provisions of this Clause 12, KCM shall, at the invitation of the Minister responsible for the Environment, participate either individually or on an industry-wide basis, in discussions regarding environmental standards in Zambia or any prospective changes thereto on the basis that such participation will in no way qualify any rights which KCM has hereunder (including the rights to challenge amendments proposed by GRZ to the KCM Environmental Plan).
- 12.19 Pending amendment of an Environmental Plan pursuant to Clauses 12.8 to 12.17, the existing Environmental Plan shall continue to apply. In proposing or considering any such proposed amendments, the Parties shall have regard to relative costs and benefits, the potential risks and impacts of any action proposed and Good Mining Practice.
- 12.20 For the avoidance of doubt, nothing in this Clause 12 shall be construed to render KCM liable for penalties or fines imposed, or third party claims made, in respect of activities undertaken prior to the Effective Date by ZCCM.
- 12.21 GRZ agrees that a Force Majeure Event which renders compliance with the provisions of the KCM Environmental Plan impractical shall not constitute non-compliance provided that KCM shall use all reasonable endeavours to bring such Force Majeure Event to an end.
- 12.22 Nothing herein contained shall prevent GRZ assuming (through the enactment of legislation, issue of regulation, by contract or otherwise) any or all obligations of

ZCCM under the ZCCM Environmental Plan, such obligations either to be assumed by GRZ jointly with ZCCM or in place of and in substitution for, ZCCM and the discharge of ZCCM from any such obligations.

- 12.23 KCM shall provide to GRZ within one month following Closing a list of those matters relating to mine safety and/or occupational health and safety at or concerning any of the Assets, which need to be improved or upgraded, repaired or subjected to other remedial measures in order for the Assets to comply with any applicable law and regulations relating to mine safety and/or occupational health and safety (whether under Environmental Laws or other laws and regulations) and/or Good Mining Practice.
- 12.24 KCM and GRZ shall negotiate with each other in good faith with a view to agreeing within three (3) months following Closing (or such longer period as KCM and GRZ shall agree) an interim programme of upgrades, repairs, improvements and other measures necessary and/or appropriate to address the matters identified pursuant to Clause 12.23 above with a view to agreeing within six (6) months (or such longer period as KCM and GRZ shall agree) following Closing a final programme in respect thereof and the terms, conditions and timetable pursuant to which KCM shall implement them. These upgrades, repairs, improvements and other measures shall then be treated as forming part of the KCM Environmental Plan, save that the provisions relating to the agreement of a Final KCM Environmental Plan shall not apply to them.
- 12.25 The timetable which KCM and GRZ shall agree under Clause 12.24 above shall provide for all such upgrades, repairs, improvements and other measures shall each be commenced as soon as reasonably practicable and in any event no later than 12 months after Closing and each such upgrade, repair, improvement and other measure shall be completed as soon as reasonably practicable after commencement, having regard to the need to continue Normal Operations and to comply with KCM's obligations under this Agreement, any applicable permits, and any other relevant agreements.
- 12.26 While such upgrades, repairs, improvements and other measures are being planned and implemented, GRZ shall afford and extend to KCM and/or the Assets all such exemptions and/or safety letters in respect of mine safety and/or occupational health and safety matters (i) as were enjoyed by ZCCM in the period immediately prior to Closing and/or (ii) as may be necessary in view of the condition of the Assets and/or the programme agreed pursuant to Clause 12.24 above to permit the lawful operation of the Assets (and to extend the same where necessary) until such time as the planned upgrades, repairs, improvements and other measures have been completed to the satisfaction of GRZ and KCM.
- 12.27 KCM undertakes to comply with its obligations under (i) Clauses 12.23 to 12.26 above, (ii) any requirements in the KCM Environmental Plan which relate to occupational health and safety and (iii) any requirements as to mine safety in the Mining Regulations which fall outside the scope of the exemptions and/or safety letters referred to in Clause 12.26 above and GRZ undertakes in respect of any matter where KCM has complied with its obligations under (i) to (iii) above, not to enforce any applicable law or permit requirements relating to mine safety and/or occupational

health and safety in respect of matters which fall within any exemption and/or safety letter and to uphold and give full effect to such exemptions and/or safety letters.

- 12.28 GRZ shall, or shall procure that ZCCM shall, provide written confirmation to KCM within 1 month of Closing that ZCCM will finance all of the actual costs that may be incurred by KCM in relation to the implementation of the Resettlement Action Plan set out in the form incorporated by reference in this Agreement as at the date hereof. GRZ agrees that it shall guarantee the financial obligations of ZCCM under this Clause 12.28.

PART D
GENERAL STABILITY AND TAXATION

13. GENERAL STABILITY AND OPERATIONAL UNDERTAKINGS BY GRZ

13.1 GRZ undertakes that, for the Stability Period, it shall not:

- (a) in the case of legislation or regulations governing the regulation and management of companies, effect any changes thereto or to their application which would impose a requirement that the directors of KCM comprise a higher number of *Zambian residents* than that presently required by Section *two hundred and eight* of the Companies Act, being more than 30%;
- (b) in the case of legislation or regulations governing the operation of mines or related activities but subject to Clause 12, effect any changes thereto or to their application which, individually or cumulatively, would have a Material Adverse Economic Effect on the implementation of the Approved Programme of Mining and Metal Treatment Operations; and/or the conduct of Normal Operations;
- (c) in the case of import and export regulations and procedures within Zambia, effect any changes thereto or to their application which, individually or cumulatively, would have a Material Adverse Economic Effect on the implementation of the Approved Programme of Mining and Metal Treatment Operations and/or conduct of Normal Operations;
- (d) in the case of legislation or regulations governing the terms and conditions of employment within Zambia, effect any changes thereto or to their application which would prevent KCM from:
 - (i) operating on a seven (7) days a week, twenty-four (24) hours a day, three hundred and sixty five (365) days a year basis; or
 - (ii) negotiating with employees or relevant unions or engaging employees or terminating their contracts of employment in such a manner which would be likely to have a Material Adverse Economic Effect, individually or cumulatively, on the implementation of the Approved Programme of Mining and Metal Treatment Operations and/or the conduct of Normal Operations.
- (e) in the case of legislation relating to the regulation and management, insolvency, bankruptcy, receivership, administration or winding-up of companies, effect any changes thereto or to their application which, individually or cumulatively would be likely to prejudice:
 - (i) the validity or enforceability of the Pledge, the Charges (as defined in the Pledge) or the rights of the KCM Consortium under Clause 14 of the Shareholders' Agreement; or

(ii) the ranking or priority of the Charges.

- 13.2 GRZ further undertakes that, for the Stability Period, it shall not by general or special legislation or by administrative measures or decree or by any other action or inaction whatsoever (other than an act of nationalisation such as is referred to in Clause 13.7) ("**GRZ Action**") vary, amend, cancel or terminate this Agreement or any other Related Agreement or the rights and obligations of the Parties under this Agreement or any other Related Agreement, or cause this Agreement or any other Related Agreement or the said rights and obligations to be varied, amended, cancelled or terminated, or prevent or hinder performance of this Agreement or any other Related Agreement by any party thereto; Provided that this Agreement and any other Related Agreement and the rights and obligations of the Parties under this Agreement and any other Related Agreement may be varied, amended, cancelled or terminated as expressly provided therein. GRZ undertakes that KCM and its officers, directors, employees and shareholders shall be held free and made exempt from any GRZ Action or any change in the law of Zambia which would, but for such freedom or exemption, adversely affect KCM's rights under, or KCM's ability to comply with its obligations under, this Agreement or any other Related Agreement to which KCM is a party.
- 13.3 In the event that the Parties disagree as to whether any action (including changes to any legislation, regulations or procedures specified in Clause 13.1(b), (c) or (d)) will have a Material Adverse Economic Effect, any Party may refer the disagreement to a Sole Expert for determination in accordance with Clause 21 and in determining whether such changes have a Material Adverse Economic Effect, the Sole Expert shall have regard to the individual and cumulative effect (whether adverse or beneficial) of such changes compared with the position at the Effective Date. Where the Sole Expert determines that there has been a Material Adverse Economic Effect, GRZ shall compensate KCM in accordance with Clause 16.
- 13.4 GRZ shall ensure that no law, statute, regulation or enactment shall be passed or made which would discriminate against KCM in respect of any such matters as are referred to in this Clause 13 (including without limitation Clause 13.8) or Clauses 15.1 or 15.2 or otherwise in its conduct of Normal Operations or any other circumstances under this Agreement when compared to other companies or joint ventures conducting similar operations in Zambia under Large Scale Mining Licences. For the avoidance of doubt, the provisions of this Clause shall apply during and after the Stability Period.
- 13.5 GRZ shall take such action required to ensure all of its ministries, departments, agencies, instrumentalities, agents and any political sub-division thereof comply with the provisions of this Agreement applicable to GRZ and references to GRZ in such provisions shall be construed accordingly.
- 13.6 Subject to compliance by KCM with:
- (a) all applicable legislation and regulations, the Large Scale Mining Licences (in each case as modified in its application to KCM by this Agreement) and

(b) this Agreement,

GRZ undertakes to issue and renew expeditiously all necessary licences and approvals required for Normal Operations and not to withdraw or change the terms of such licences and approvals or attach any onerous conditions to them on that issue or renewal (which conditions are not reasonably justified by the operations proposed).

- 13.7 GRZ hereby covenants that it shall not acquire compulsorily the Facilities or any other assets of KCM or any interest in or over any property comprising the Facilities or any other assets of KCM, except for public purposes under an Act of Parliament relating to the compulsory acquisition of property which provides for payment of compensation at fair value as between an independent buyer and seller in respect thereof.
- 13.8 In the event that either the Energy Regulatory Board (whether by virtue of any order, resolution, notice, directive, standard, code of conduct or licence or any revocation, amendment or change of interpretation thereof or otherwise) or GRZ:
- (a) requires that KCM pays a higher electricity tariff under the KCM Power Purchase Agreement or the Nampundwe Power Purchase Agreement (the "Power Agreements") than would otherwise have been the case under these agreements;
 - (b) otherwise makes or requires any amendment, variation or modification thereof or supplements or otherwise changes the interpretation of, or terminates or cancels such agreements otherwise than in accordance with their terms; or
 - (c) otherwise adversely affects any right of KCM under the Power Agreements (or any corresponding obligation of any other party to KCM under the Power Agreements) or any right (or corresponding obligation) created pursuant to any agreement or arrangement contemplated by the Power Agreements, other than in accordance with the terms of the Power Agreements

this Clause 13 shall be deemed to be breached and GRZ will compensate KCM for any increased costs or in respect of any losses in accordance with Clause 16.

- 13.9 Notwithstanding the provisions of this Clause 13 and the terms of Schedule 7, GRZ shall in no way be restricted from introducing legislation relating to transfer pricing to ensure that all transactions between companies and their Affiliates are conducted on arms' length terms.
- 13.10 Notwithstanding termination of this Agreement by either Party, GRZ shall not take any GRZ Action which would not be permitted under any of the provisions of Parts C or D (where such provisions still in force and binding on GRZ), in respect of any action or omission of KCM taken or occurring prior to termination if KCM or any member of the KCM Consortium would be likely to suffer or be subject to any additional liability, loss, cost, expense or other obligation as a result of such GRZ Action.

14. **GENERAL OBLIGATION TO PAY TAX**

- 14.1 The provisions of Schedule 7 correctly reflect, in respect of the matters therein specifically described, the tax regime applicable to KCM in the conduct of its activities under this Agreement. Whilst Schedule 7 is not intended to override applicable legislation, in the event of any ambiguity between applicable legislation and Schedule 7, GRZ and KCM agree that the provisions of Schedule 7 shall apply, it being the intent of the parties that Schedule 7 clarify any ambiguities in the legislation and tax regime applicable to KCM or its operations.
- 14.2 Subject to Clause 14.1 and 15, KCM shall pay tax, royalties and duties from time to time in accordance with applicable legislation.

15. **TAXATION STABILITY**

15.1 GRZ undertakes that it shall not for the Stability Period:

- (a) increase any rates of Taxation (including, without limitation, corporate income tax or withholding tax rates) applicable to KCM (or change the basis of calculation which would result in a decrease of deductions, rebates or other allowances available to KCM in computing its liability to such Taxes or change the basis of computation of such Taxes) from those prevailing at the Effective Date;
- (b) increase the Royalty rate applicable to KCM or change the basis of computation of Royalties from those prevailing at the Effective Date (as set out in Schedule 7) in a manner which would result in an increase in Royalties payable by KCM;
- (c) otherwise amend the VAT and corporate Taxation regimes applicable to KCM from those prevailing as at the Effective Date (as set out *inter alia* in Schedule 7), including but not limited to, the rules regarding carry forward losses, in a manner which would result in an increase in Taxes payable by KCM;
- (d) impose new Taxes or fiscal imposts (including export duties) on the conduct of Normal Operations;
- (e) increase withholding taxes applicable to KCM, its shareholders or lenders to it on the remittance by KCM of principal, interest, dividends, royalties or management fees above the rate prevailing at the Effective Date (as set out in Schedule 7);
- (f) impose any additional Taxes or levies on KCM relating to its purchase of electricity, water or other utility services;

Provided that, in the case of Clause 15(1)(c), (d) and (f) only, amendments may be made which do not have a material adverse effect (compared with what the position would have been but for the amendment) on KCM's Distributable Profits or the dividends, interest or other amounts received by its shareholders or lenders to it.

- 15.2 Without prejudice to the provisions of Clause 13.4, GRZ further undertakes that for the Stability Period, it shall not:
- (a) alter the right of non-Zambian citizens (and entitled dependants) on their arrival or permanent departure from Zambia to:
 - (i) import within six (6) Calendar Months from the date of arrival free of duty and tax, for personal use, household and personal effects;
 - (ii) export, without hindrance or the imposition of duty or tax on export all personal effects originally imported and acquired during residency in Zambia; and
 - (b) impose new laws to remove the right of non-Zambian citizens (and entitled dependants) to freely remit all income earned within Zambia during such residency.
 - (c) increase import duty rates applicable to KCM so as to result in the weighted average import duty rate to which KCM is subject on the import of goods and materials required for the Approved Programme of Mining and Metal Treatment Operations or Normal Operations, rising above a level of fifteen per cent. (15%); or
 - (d) impose other royalties or duties on Normal Operations, so as to have a material adverse effect on KCM's Distributable Profits or cashflows or the dividends or other amounts received by its shareholders.
- 15.3 GRZ undertakes that for the Stability Period it shall ensure that VAT rebates and refunds are made within 10 days of the submission by KCM of its month-end VAT return.
- 15.4 Without prejudice to the provisions of Clause 13.4, GRZ shall be at liberty to pass or make any such law, structure, regulation or enactment to enable the performance or amendment of a development agreement entered into by it and another company or joint venture prior to the expiry of such stability period. If, after the Effective Date, there is in any respect a generally applicable more favourable Taxation, duties or royalties regime applicable to the mining industry generally, than applies to KCM at the date of this Agreement, then GRZ agrees that KCM shall be entitled to take advantage of such changes in any law, statute, regulations or enactment, and, if necessary, GRZ will agree changes to this Agreement to confirm or apply these changes and take such steps as shall be necessary including amending any applicable legislation.
- 15.5 To the extent that GRZ delegates or authorises the collection of any Taxes leviable on KCM to provincial, or local or other authorities or instrumentalities, GRZ shall procure that such authorities comply with the provisions of this Clause 15. GRZ shall also procure that such authorities or instrumentalities shall not levy or impose any Taxes on KCM.

- 15.6 In the event that the Parties disagree as to what amounts to a material adverse effect under Clause 15.1 or 15.2(d), any Party may refer the disagreement to a Sole Expert for determination in accordance with Clause 21 and, in determining whether such changes have a material adverse effect, the Sole Expert shall have regard to the individual and cumulative effect (whether adverse or beneficial) of such changes compared with the position at the date hereof. Where the Sole Expert determines that there has been a material adverse effect, GRZ shall compensate KCM in accordance with Clause 16.
- 15.7 Notwithstanding the provisions of Clause 18.4, if KCM is prevented or hindered in the manner described in Clause 18.2 as a result of actions or omissions by GRZ then:
- (a) the term of the Stability Period or other time periods set out in Clause 12, the KCM Environmental Plan, KCM Final Environmental Plan and the Environmental Liabilities Agreement shall be extended by a period equal to the period during which such prevention or hindrance continues or during the period from the time when the question, dispute or difference arose until the time of its determination by the Sole Expert or settlement by agreement or arbitration; and
 - (b) GRZ will take such administrative, legislative or other action (including, without limitation, amendment of applicable existing legislation) as is necessary or appropriate to give effect to the relevant time period extension referred to in paragraph (a) above.

16. COMPENSATION FOR BREACH OF STABILITY OR COMPULSORY ACQUISITION PROVISIONS

16.1 GRZ covenants to make such payments (net of any Taxes, withholdings or deductions) to KCM (or, at its option, make such off-setting changes in any law, statute, regulation or enactment applicable to KCM) as would result in KCM being fully and fairly compensated for any loss or detriment suffered or expenses or costs incurred by KCM ("KCM Losses") by reason of:

- (a) a breach by GRZ of any of the provisions of Parts C or D of this Agreement;
or
- (b) an act or series of acts of compulsory acquisition of any of the Facilities or other assets of KCM or any interest in or over any Property comprising the Facilities or any other assets of KCM,

to the extent such KCM Losses cannot, as a matter of law, be offset by reducing amounts otherwise payable by KCM to GRZ.

16.2 In the event of a dispute arising as to whether any compensation is payable under Clause 16.1 or whether the compensation offered or payable by GRZ under Clause 16.1 represents full and fair compensation for any KCM Losses, either Party may refer the issue to a Tribunal for arbitration under Clause 22 and can make such arguments or

assertions to the Tribunal upon such issue as it considers appropriate. Without limiting the generality of the foregoing, the Tribunal shall consider any arguments or assertions made by either Party in relation to:

- (a) the cumulative effect of any or all past and existing:
 - (i) breaches by GRZ of the provisions of Parts C or D of this Agreement, as compared with the position that existed at Completion;
 - (ii) breaches of any other provision of this Agreement where such breach has a material adverse effect on the value of the Facilities or other assets of KCM (the "KCM Assets");
 - (iii) acts of compulsory acquisition referred to in Clause 13.7;
- (b) any diminution (as a result of any of the matters referred to in (i), (ii) or (iii) above, in the market value (on a going concern basis, assuming a willing buyer and a willing seller) of:
 - (i) the KCM Assets (taken as a whole or any one or more of them); or
 - (ii) KCM's investment in KDMP; and
- (c) any other breaches or failures of either Party in respect of their obligations under this Agreement,

in each case adjusted to take into account compensation already paid by either Party (if any) in respect of any matters referred to above, including any amounts paid in respect of interest under any provision of this Agreement.

- 16.3 Where GRZ elects to reduce amounts otherwise payable to KCM by way of compensation in accordance with Clause 16.1 (either by making off-setting changes in any law, statute, regulation or enactment or by setting off amounts otherwise payable by KCM to GRZ), it will nevertheless compensate KCM for the time value of the money represented by relevant KCM Losses by payment of interest at LIBOR plus five per cent. (5%) from the date of incurrence of such KCM Losses to the date of payment.
- 16.4 Where the market value or other measures of compensation cannot be readily ascertained, the compensation shall be determined in accordance with generally accepted principles of valuation and equitable principles, taking into account the capital invested, depreciation, discounted future cash flows, capital already repatriated and other relevant factors.

PART E
FORMAL CLAUSES

17. ASSIGNMENT

- 17.1 KCM may, with the consent of the Minister (in accordance with Section *fifty four (one)* of the Act), assign its interest in a Large Scale Mining Licence and this Agreement and GRZ covenants that the consent of the Minister to such an assignment shall not be withheld in the circumstances set out in Clauses 17.3 and 17.5. No assignment of an interest in a Large Scale Mining Licence may be made without the assignment to such person of a concomitant interest in this Agreement and vice versa.
- 17.2 If KCM assigns its entire interest in a Large Scale Mining Licence and its rights and obligations under this Agreement in accordance with Clause 17.1, then upon the assignee becoming party to this Agreement, KCM shall be discharged from any further liability in respect of any obligation which accrues after the date of that assignment, without prejudice to pre-existing rights accrued to GRZ against KCM and vice versa.
- 17.3 Notwithstanding the foregoing provisions of this Clause 17, and subject to Clause 17.4, KCM may charge by way of fixed or floating charge the Large Scale Mining Licences together with this Agreement to secure the repayment of principal, and payment of interest and other fees, costs and expenses relating to all loans made to KCM to finance or refinance the Scheduled Programmes and any hedging arrangements relating thereto or other mining projects within Zambia and GRZ covenants and will procure that the consent of the Minister pursuant to Section 54 of the Act to such mortgages and charges shall be given; provided that such mortgages and charges are notified to the Minister upon their grant (and, in any event, within sixty (60) days thereof). Subject to Clause 17.4, any mortgagee or charge under a mortgage or charge given by KCM pursuant to this Clause (each a "Secured Party") may exercise all rights of sale and other rights included in such instrument of mortgage or charge provided it shall first give to GRZ at least thirty (30) days notice of its intention to exercise any rights of sale and five days notice in all other cases. For the avoidance of doubt, it is recorded that:
- (a) save as contemplated above in respect of licences and permits and this Agreement, there is no restriction on KCM's right to sell, mortgage, charge or otherwise assign or encumber the whole or part of its undertaking, including the Leases, the Facilities, the Mine Products (or the proceeds of sale), surface rights and all other rights essential to the maintenance and operation of the Facilities, together with any assets and relevant agreements to which KCM is a party;
 - (b) KCM may mortgage and charge any specified asset (whether real or personal property) to secure the purchase price thereof where such amount has been borrowed to finance the purchase of that asset and this asset is to be used as part of Normal Operations or other mining projects within Zambia.

(c) provided such mortgages and charges are notified to the Minister upon their grant (and, in any event, within sixty (60) days thereof) each member of the KCM Consortium and other shareholders in KCM from time to time may mortgage, charge, pledge, transfer in security or conditionally assign its right, title and interest in the shares ("share security") in KCM as security for the Third Party Finance or other financing raised or to be raised by KCM either to finance or re-finance the Scheduled Programmes and any related hedging arrangements or other mining projects in Zambia and GRZ confirms and agrees:

(i) that the share security may be granted without any further written consent from GRZ, whether pursuant to Section 55(1) of the Act or otherwise; and

(ii) any transferee of such shares pursuant to enforcement of the share security will be approved by GRZ subject only to such transferee meeting the criteria set out in Clause 17.5.

17.4 The rights of any mortgagee or chargee under a mortgage or charge given by KCM pursuant to Clause 17.3 shall be subject to and limited by the rights of KCM under this Agreement and, subject to cure rights granted to KCM and the Secured Parties pursuant to Clause 19, to GRZ's right to terminate those rights under Clause 19. The rights of such mortgagee or chargee to sell an interest in a Large Scale Mining Licence and this Agreement so charged shall be exercisable if the interest in such Large Scale Mining Licence and this Agreement which are charged by the mortgage or charge are sold together with all or sufficient of the assets and undertakings of KCM as are sufficient (or would be sufficient (a) following cessation of any period of suspension or curtailment of production as may then apply pursuant to Clause 8 and/or (b) in conjunction with such additional assets as the buyer may contribute) to enable the buyer to undertake Normal Operations (or with such exceptions as GRZ may agree), (approval of which sale GRZ covenants not to unreasonably withhold and not to withhold in the circumstances set out in Clause 17.5).

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

(a) a change of control under Section *fifty five (one)* of the Act; or

(b) an assignment pursuant to Clause 17.1,

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

control has or shall result from a transfer between members of the KCM Consortium or their Affiliates.

17.6 In the event that KCM considers that the Minister has acted unreasonably in considering that a proposed assignee or the acquiring party has not demonstrated such financial capacity or technical ability as is referred to in Clause 17.5, it may refer the issue to a Sole Expert for its opinion in accordance with Clause 21. If the Sole Expert determines:

- (a) that the proposed assignee or the acquiring party has not demonstrated the requisite levels of financial capacity or technical ability, the Minister's determination shall stand; or
- (b) has demonstrated the requisite levels of financial capacity or technical ability, the Minister's determination shall be set aside and the consents referred to in Clause 17.5(a) or Clause 17.5(b) (as the case may be) shall be deemed to be given and the change of control or assignment (as the case may be) shall be permitted without further action on the part of GRZ or the Minister.

17.7 In the context of the financing of the KDMP, GRZ undertakes to provide such consents, opinions and certificates to or for the benefit of senior lenders to KDMP as may be customary or otherwise reasonably required by such lenders, provided that the provision of such consents, opinions and certificates is not inconsistent with legislation or this Agreement and does not involve any attendant costs, reductions in revenue or any liability on GRZ's part (whether actual or contingent). In the event that KCM gives notice to GRZ that it has charged its interest in any Large Scale Mining Licence or this Agreement in accordance with Clause 17.3, GRZ shall if so requested by the Secured Parties, execute a consent and acknowledgement of assignment which shall:

- (a) contain GRZ' agreement to perform its obligations hereunder and thereunder for the benefit of the Secured Party if such security is enforced in accordance with the terms of this Agreement;
- (b) contain GRZ's agreement to deliver a copy of any Default Notice served on KCM pursuant to Clause 19.3 of Secured Parties at the same time as such notice is served on KCM;
- (c) recognise rights of Secured Parties to cure defaults as provided in Clauses 19.3, 19.6(a) and 19.10; and
- (d) contain GRZ's agreement to grant any statutory or regulatory consents necessary in connection with the creation or enforcement of such security in accordance with the terms of this Agreement,

in addition to such other provisions as may be reasonably requested by Secured Parties from time to time in connection with the financing of the KDMP and Scheduled Programmes which do not invoke any attendant costs, reductions in revenue or any liabilities on GRZ's part (whether actual or contingent).

18. **EXTENSIONS TO TIME**

- 18.1 Notwithstanding any provision of this Agreement, the Parties by agreement in writing between the persons responsible for giving Notices under Clause 29, may from time to time extend any period referred to in this Agreement, or substitute for any date referred to in this Agreement such later date, as they think fit.
- 18.2 If KCM is prevented or hindered by any circumstances or event of a kind set out in Clause 26 or by an Extension of Time Event or by a reference to a Sole Expert or by an arbitration under Clauses 21 and 22 respectively from undertaking all or any of its obligations hereunder or exercising any right granted, the period of time allowed for the performance of that obligation or exercise of that right and all periods of time thereafter allowed for the performance of obligations or exercise of rights which are dependent upon the first mentioned obligation or right, shall be extended by a period equal to the period during which such prevention or hindrance continues or during the period from the time when the question, dispute or difference arose until the time of its determination by the Sole Expert or settlement by agreement or arbitration, as the case may be.
- 18.3 Where any period is, or is deemed to be, extended or any later date substituted for an earlier date under this Clause, that extended or substituted period or date shall be deemed to constitute the period or date referred to in this Agreement (notwithstanding that at the time of such extension or substitution such period may have expired or such date may have passed).
- 18.4 Subject always to Clause 15.7, but notwithstanding the foregoing, the provisions of this Clause 18 and Clause 26 hereof shall not in any way be construed so as to, or be deemed to, extend the term of the Stability Period or any other time periods set out in Clause 12, the KCM Environmental Plan, the KCM Final Environmental Plan or the Environmental Liabilities Agreement.

19. **TERMINATION**

- 19.1 KCM may terminate this Agreement at any time after the twentieth anniversary of the Effective Date by giving twelve (12) Calendar Months notice to GRZ.
- 19.2 GRZ may terminate this Agreement by notice to KCM if:
- (a) all of the Large Scale Mining Licences have expired by effluxion of time and have not been renewed or deemed to have been renewed; or
 - (b) subject to Clause 8, the land the subject of the Large Scale Mining Licences is abandoned by KCM under Section 49 of the Act.
- 19.3 In the event that either GRZ or KCM (the "**Defaulting Party**"):
- (a) is in material default in the performance of any of its obligations set forth in this Agreement; or

- (b) fails to comply with any binding determination made by a Sole Expert or award made by a Tribunal pursuant to Clauses 21 and 22 respectively,

and it or, in the case of KCM (if KCM is the Defaulting Party) a Secured Party, if the Secured Party elects to do so, has not remedied such default or failure within thirty (30) days of a notice by the other Party (the "**Non-Defaulting Party**") to do so, the Non-Defaulting Party may give notice of such default or failure (hereinafter in this Clause called a "**Default Notice**") to the Defaulting Party which shall specify the default or failure alleged. In the event that KCM is the Defaulting Party, GRZ shall at the same time give a copy of the Default Notice to each lender to KCM, where the name and address of that lender has previously been notified to GRZ, and to each mortgagee or chargee of any of KCM's assets under any mortgage or charge notified to the Minister in accordance with Clause 17.3.

19.4 The issue of a Default Notice under Clause 19.3 shall be without prejudice to:

- (a) any award or determination made by a Tribunal under Clause 22 or a Sole Expert under Clause 21; and
- (b) any rights on the part of the Non-Defaulting Party to enforce such award or determination (including by the institution of legal or other proceedings),

provided, however, that the failure to make when due the payment in respect of a monetary award may result in additional compensation being payable under Clause 19.5.

19.5 Where the failure or default in respect of which the Default Notice is issued relates to a matter in respect of which compensation is payable or other payment is due under this Agreement, or otherwise results in material loss, detriment, cost, expense or damage to the Non-Defaulting Party (the "**Compensatable Losses**"), the Defaulting Party must pay to the Non-Defaulting Party (in addition to any compensation that would otherwise be payable under this Agreement in respect of the failure or default) interest calculated at LIBOR plus five per cent. (5%) on the amount of the Compensatable Losses for the period commencing on the date when the Compensatable Losses first occurred and ending on the date when the default or failure is remedied (if capable of remedy) or compensation is paid. Any amounts already paid or payable under this Agreement by the Defaulting Party during the relevant period by way of compensation (including payments in respect of interest) shall be taken into the computation of the Compensatable Losses and any interest payable thereon.

19.6 If following the expiry of a period of three hundred and sixty (360) days following the giving of a Default Notice (or such longer period as may be fixed by a Tribunal pursuant to Clause 22):

- (a) where the default or failure specified in the Default Notice is capable of remedy, such default or failure has not been remedied by the Defaulting Party, or if KCM is the Defaulting Party, by KCM or a Secured Party if the Secured

Party elects to do so, (or active steps have not been commenced and continued to remedy the default or failure if it is not capable of speedy remedy); or

- (b) whether or not the default or failure is capable of remedy, adequate compensation is not paid in respect thereof (it being agreed that such compensation shall be increased to reflect any further diminution in the value of the KCM Assets due to the delay in payment together with interest thereon, calculated at LIBOR plus five per cent. (5%) in the manner set out in Clause 19.5),

then the Non-Defaulting Party may by notice (hereinafter in this Clause 19 called a "**Termination Notice**") to the Defaulting Party (which, in the event that KCM is the Defaulting Party, shall also be copied to each lender, mortgagee or chargee who was given a copy of the Default Notice) not less than 30 days prior to the Termination Date (as hereinafter defined) bring about the termination of this Agreement on a date specified in the Termination Notice which is not less than thirty (30) days after the date of giving of the Termination Notice (in this Clause called the "**Termination Date**").

- 19.7 In the event that KCM is the Defaulting Party, GRZ shall ensure that the Minister does not make a decision to suspend or cancel any of the Large Scale Mining Licences and that no action is taken by or on behalf of GRZ without the approval of KCM to terminate such Large Scale Mining Licences or any of the Leases prior to the Termination Date.
- 19.8 In the event that either Party serves on the other Party a notice challenging the validity of a Default Notice or challenging whether the default or failure alleged in such Default Notice has occurred, the Non-Defaulting Party shall not serve a Termination Notice until the Dispute is settled by arbitration proceedings under Clause 22 or by earlier agreement between the Parties and if a Termination Notice has already been served the Determination Date shall be postponed to a date which is five (5) days after the date of settlement of such Dispute. If the Tribunal finds in favour of the Defaulting Party, or within any period fixed by the Tribunal the default or failure is substantially remedied and, if applicable, the compensation is paid, neither Party shall serve a Termination Notice and any Termination Notice already served shall be ineffective for all purposes and shall be deemed withdrawn.
- 19.9 Without prejudice to the generality of the provisions of Clause 22, if either Party contests:
 - (a) the grounds for the issue of a Default Notice; or
 - (b) the materiality of the default; or
 - (c) whether the default or failure has been remedied; or
 - (d) the adequacy of any compensation paid or offered pursuant to Clause 19.6(b),

the matter shall, subject to compliance with the provisions of Clause 20, be submitted for arbitration pursuant to Clause 22.

19.10 If the Tribunal finds (in the case of Clause 19.9(a) or (b)) that proper grounds exist for issue of the Default Notice, the Tribunal shall fix a period during which the Defaulting Party must remedy the default or failure referred to in Clause 19.6(a) and pay any compensation payable under Clause 19.6(b). The Tribunal shall also determine (if applicable) the amount of such compensation payable. If the Tribunal finds (in the case of Clause 19.9(c)) in favour of the Non-Defaulting Party and that any default or failure has not been remedied by the Defaulting Party, or in the case of KCM (if it is the Defaulting Party) by a Secured Party, if the Secured Party elects to do so, the Tribunal shall fix a period during which the Defaulting Party must remedy the default or failure and pay the compensation (if any) due in respect of such default or failure. If the Tribunal finds (in the case of Clause 19.9(d)) in favour of the Non-Defaulting Party and that any compensation paid or offered is inadequate, the Tribunal shall fix the amount of compensation payable and the date for its payment. In each case, compensation payable under this Clause shall be increased (as appropriate) in accordance with Clause 19.5.

19.11 In the event GRZ terminates this Agreement pursuant to Clause 19.2 or 19.6:

- (a) KCM shall surrender to GRZ the Large Scale Mining Licences and the Leases but without prejudice to the liability of any of the Parties in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given;
- (b) each Party shall forthwith pay to the other Party all monies that may be owing to the other Party hereunder;
- (c) GRZ shall have the option:
 - (i) to request that KCM abandon the Facilities within a reasonable timetable specified by GRZ; and
 - (ii) to purchase (subject to any encumbrances thereon) all of the Facilities at a price equivalent to the fair market value of such assets, which fair market value is to be determined by agreement between GRZ and KCM.

Such option is to be exercisable by notice to KCM given within thirty (30) days following the date of termination of this Agreement. If requested to do so by GRZ, KCM shall also assign to GRZ such contracts to which it is a party as GRZ determines and deliver all records of the Facilities held by KCM to GRZ;

- (d) KCM shall have the right, within the one (1) year period following the thirty (30) day notice period referred to in Clause 19.11(c):

- (i) to assign or otherwise dispose of all or any portion of the remaining Facilities to any person; or
 - (ii) to remove and recover from the Mining Area and export from Zambia any of the remaining Facilities on the condition that such removal does not cause irreparable damage to major assets which are not removed from the Contract Areas; and
- (e) KCM shall leave the Facilities and the relevant Mining Area in a safe and stable condition to the reasonable satisfaction of the Director of Mine Safety having regard to natural conditions in the area and applying generally accepted standards of good mining and metallurgical industry practice; provided that KCM shall not be required to alter the physical condition of the Facilities and Mining Area beyond the requirements of the Environmental Plan applicable from time to time.

19.12 In the event this Agreement is terminated by KCM pursuant to Clause 19.6:

- (a) KCM shall surrender to GRZ the Large Scale Mining Licences and the Leases but without prejudice to the liability of any of the Parties in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given;
- (b) each Party shall forthwith pay to the other Party all monies that may be owing to the other Party hereunder;
- (c) KCM shall be entitled to require GRZ to purchase all of the Facilities at a price equivalent to the fair market value of such assets (the "Put Option"), which fair market value is to be determined by agreement between GRZ and KCM.

The Put Option shall be exercisable by notice to GRZ given within thirty (30) days following the date of termination of this Agreement.

19.13 In the event that GRZ terminates this Agreement pursuant to Clause 19.2 or 19.6 and upon the expiry of the one (1) year period referred to in Clause 19.11(d) all facilities which have not been disposed of and which remain on the Contract Areas shall become the property of GRZ without any cost to GRZ or any liability for GRZ to pay compensation therefor.

19.14 Without prejudice to Clause 13.10, Clauses 16, 19.5, 19.10, 19.11 and 19.12, 20, 21, 22, 24, 25, 26, 29 and 35 shall continue in force notwithstanding the termination of the rest of this Agreement by KCM. Termination of this Agreement shall not operate so as to discharge or otherwise affect the accrued rights or obligations of either party under this Agreement.

20. **AMICABLE SETTLEMENT OF DISPUTES**

- 20.1 A Dispute shall be deemed to arise when one Party serves on the other Party a notice ("**Notice of Dispute**") stating the nature of the Dispute, provided that no Notice of Dispute may be served unless the Party wishing to do so has first taken any steps or invoked any procedure available elsewhere in this Agreement in connection with the Dispute and the other Party has either taken such step or invoked such procedure as may be required, or been allowed a reasonable time to take such step or invoke such procedure.
- 20.2 Following service of a Notice of Dispute the Parties shall attempt in good faith to settle such Dispute amicably. The provisions of Clauses 21 and 22 shall not apply to any Dispute until a period of thirty (30) Business Days, or any longer period agreed between the Parties, shall have elapsed following service of a Notice of Dispute.

21. **SOLE EXPERT**

- 21.1 Where so provided by Clauses 2.11, 12.6, 12.10, 13.3, 15.6, 17.6 and 26.5 of this Agreement any Dispute shall be referred to a Sole Expert for determination in accordance with the provisions of this Clause 21.
- 21.2 The Party wishing the appointment to be made shall serve written notice to that effect on the other Party ("**Notice to Appoint**") and with such Notice to Appoint shall give details of the matter which it is proposed shall be resolved by the Sole Expert.
- 21.3 If within ten (10) Business Days from the service of the Notice to Appoint the Parties have failed to agree upon the selection of a Sole Expert, either Party may then submit a request in writing ("**Request for Proposal**") to the ICC International Centre for Expertise (the "**ICC Centre**") for the proposal of a Sole Expert as quickly as possible. The Request for Proposal shall set out the names, description and addresses of the Parties, shall attach a copy of this Agreement, shall set out any relevant indications concerning the choice of the Sole Expert (including a reference to the provisions of this Clause 21) and shall set out a descriptive summary of the Sole Expert's brief. The Parties agree to accept the expert proposed by the ICC Centre as the Sole Expert selected under this Clause 21.
- 21.4 Upon a Sole Expert being selected under the foregoing provisions of this Clause 21, the Parties or either of them shall forthwith notify the Sole Expert of his selection and request him to confirm within five (5) Business Days after such notification whether or not he is willing and able to (and does in fact) accept appointment as Sole Expert and to confirm that the requirements of Clauses 21.8(b), (c) and (d) are all satisfied in his case.
- 21.5 If the Sole Expert shall be either unwilling or unable to accept such appointment or shall not have given the confirmation in response to the request to be made under Clause 21.4 (the "**Confirmation**") within the said period of five (5) Business Days, then (unless the Parties are able to agree upon the selection of another Sole Expert) either Party may submit a Request for Proposal in the manner provided in Clause 21.3

to the ICC Centre which shall be requested to make a proposal or (as the case may be) a further proposal and the process shall be repeated until a Sole Expert is selected who accepts appointment.

- 21.6 The Parties shall co-operate with each other to ensure that the terms of the contract of appointment of the Sole Expert are agreed with him as soon as possible. If the Parties and the Sole Expert cannot within five (5) Business Days of the giving of the Confirmation agree on the amount of remuneration to be paid to the Sole Expert or any other terms of his contract of appointment, then (unless the Parties are able to agree upon the selection of another Sole Expert) either Party may submit a Request for Proposal or (as the case may be) a further Request for Proposal in the manner provided in Clause 21.3 to the ICC Centre which shall be requested to make a proposal or (as the case may be) a further proposal and the process shall be repeated until a Sole Expert is selected who accepts appointment and whose terms of contract of appointment are agreed.
- 21.7 The appointment of the Sole Expert shall be deemed to have been made upon his signing the contract of appointment.
- 21.8 The Parties shall select or (if applicable) the ICC Centre shall propose a Sole Expert meeting the following criteria:
- (a) The Sole Expert shall be a person reasonably qualified by education, experience and training to determine the Dispute to be referred to him.
 - (b) Neither the Sole Expert nor (if he is an individual) any member of his immediate family nor (in other cases) any partner in or director of the Sole Expert shall be (or within ten (10) years before his appointment have been) a director, office holder or an employee of or directly or indirectly retained as a consultant or an adviser to either Party or an Affiliate of either Party.
 - (c) The Sole Expert shall be independent of the Parties and shall have no interest or duty which conflicts or may conflict with his function as Sole Expert.
 - (d) The Sole Expert shall not be a citizen or a national of nor a permanent resident in Zambia or South Africa.
- 21.9 If, in respect of any particular Dispute, the ICC Centre informs the Parties or either of them that is unable to propose an expert as the Sole Expert to determine that Dispute, then the said Dispute shall be referred to arbitration in accordance with Clause 22.
- 21.10 The terms of appointment of the Sole Expert shall contain confirmation from the Sole Expert as to the matters required by Clause 21.8, shall require the Sole Expert to comply with the obligations set out in Clauses 21.11 and 21.12, and shall contain at least the following provisions regarding the procedure to be followed in the proceedings before the Sole Expert (the "Expert Proceedings"):

- (a) The Sole Expert shall not later than fourteen (14) Business Days after his appointment call the Parties to a meeting at which he shall raise any matters requiring clarification (whether arising out of his contract of appointment or otherwise) and give directions as to the procedural rules to be applicable in the Expert Proceedings which rules shall comply with the terms of this Clause 21.10. Such directions may thereafter be given from time to time by the Sole Expert as he shall consider necessary. The Parties agree to comply with such directions made by the Sole Expert, and with any request the Sole Expert may make in accordance with this Agreement or with such directions.
- (b) The Parties shall be entitled to supply data, information and documentation and to make submissions (written and/or oral as the Sole Expert may direct) to the Sole Expert up to fifteen (15) Business Days after his appointment (and the Sole Expert shall ignore all data, information, documentation and submissions supplied and made after such fifteen (15) Business Days unless the same are furnished in response to a specific request from him or are made in response, in accordance with Clause 21.10(e), to data, information, documentation or submissions by the other Party).
- (c) The Sole Expert shall be entitled to obtain such independent professional and/or technical advice as he may reasonably require and to obtain any secretarial assistance as is reasonably necessary.
- (d) The Sole Expert shall be entitled to request from the Parties (and the Parties shall supply to the Sole Expert) all documents and other information which the Sole Expert shall reasonably consider to be related to the Dispute and necessary for resolution thereof, provided that neither Party shall be obliged to provide the Sole Expert with any document or information which he would in an action in the High Court be entitled to refuse to disclose on grounds of legal professional privilege.
- (e) Copies of all data, information, documentation and submissions supplied or made by any party to the Sole Expert shall be provided simultaneously to the other Party, and any data, information or submissions supplied or made orally by one Party to the Sole Expert shall be supplied or made in the presence of the other Party. The other Party shall, notwithstanding the limitations in Clause 21.10(b), have the right for the period of ten (10) Business Days from receipt of such data, information, documentation or submissions to comment in writing on it to the Sole Expert and copies of any such comments shall be promptly supplied to the other Party.
- (f) No meeting between the Sole Expert and the Parties or either of them shall take place unless both Parties are given a reasonable opportunity to attend any such meeting.
- (g) If, without showing sufficient cause, a Party fails to comply with any rule, request, direction or timetable deadline applicable to the Expert Proceedings,

or in any other way fails to comply with a requirement relating to the Expert Proceedings, the Sole Expert shall nevertheless be obliged to proceed and to issue his determination in accordance with Clause 21.10(j) and (k), and in so doing may:

- (i) continue the Expert Proceedings in the absence of that Party or of the document, information or submission;
 - (ii) draw such inferences from that failure to comply or produce as may, in the opinion of the Sole Expert, be justified; and
 - (iii) make his determination on the basis of the information before him attaching such weight as he thinks fit to any evidence submitted to him outside any period he may have requested or directed or as required by the rules applicable in the Expert Proceedings.
- (h) The Sole Expert shall have the power to open up, review and revise any certificate, opinion, decision, instruction, direction, valuation, requisition or notice issued, given or made under this Agreement and to determine all matters referred to him in accordance with the terms of his appointment.
- (i) The Sole Expert may conduct the Expert Proceedings at one or more locations in any country as may appear to the Sole Expert to be reasonable.
- (j) Not more than ten (10) Business Days after expiry of the period provided under Clause 21.10(e) the Sole Expert shall furnish the Parties with a draft of his proposed determination of the Dispute (including a draft of the reasons required by Clause 21.10(k) below) in respect of which both Parties shall be entitled to make representations to the Sole Expert for the period of five (5) Business Days after receipt of the said draft.
- (k) The Sole Expert shall issue his determination of the Dispute in writing within ten (10) Business Days after expiry of the period under Clause 21.10(j) and shall give full written reasons for that determination.

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

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

such employees or Affiliates or professional advisers have prior to such disclosure entered into specific undertakings to maintain the confidentiality of such information data and documentation.

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

21.14 If the Sole Expert:

- (a) relinquishes, resigns or abandons his appointment or dies or becomes incapacitated before the issue of his determination on costs under Clause 21.17(b); or
- (b) shall not have issued his determination within the time limit set out in Clause 21.10(k)

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

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

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

21.17

- (a) Whilst the Expert Proceedings are in progress:
 - (i) each Party shall bear the costs of providing all data, information, documentation and submissions supplied or made by it and the costs of all lawyers, advisers, witnesses, employees and other Persons retained by it; and
 - (ii) each Party shall comply with its obligations as to payment of the Sole Expert set out in his contract of appointment.
- (b) The costs referred to in (a) above and the costs and expenses of the Sole Expert and any independent advisers to the Sole Expert retained in connection with a determination hereunder and any costs of his appointment if he is proposed by the ICC Centre shall be borne as may be determined by the Sole Expert. The Sole Expert shall issue his determination on the question of how the said costs are to be borne within five (5) Business Days of the issue of his

determination of the Dispute under Clause 21.10(k). In reaching that determination the Sole Expert shall be guided by the principle that the unsuccessful Party should pay the costs of the successful Party, and shall take into account the relative extent of success or lack thereof by each Party.

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

22. ARBITRATION

22.1 Subject to the provisions of Clauses 20 and 21, GRZ and KCM hereby consent to submit to the International Centre for Settlement of Investment Disputes ("ICSID") any Dispute for settlement by arbitration pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "**Convention**"). Save where the contrary appears, terms used in this Clause 22 shall bear the same meaning as they do in the Convention.

22.2 The Parties hereby agree that KCM, because of foreign control, shall be treated as a national of a state other than the Republic of Zambia for the purposes of the Convention.

22.3 The Parties agree that the transaction to which this Agreement relates is an investment.

22.4 Any arbitral tribunal (the "**Tribunal**") constituted pursuant to this Agreement shall consist of three arbitrators. Each Party shall appoint (1) one arbitrator within fourteen (14) days of the registration of the request for arbitration. The third arbitrator, who shall be President of the Tribunal, shall be appointed by agreement of the arbitrators appointed by the Parties or, failing such agreement within twenty eight (28) days of registration of the request for arbitration by the Chairman of the Administrative Council at the request of either Party. None of the arbitrators may be a citizen or a national of, or a permanent resident in, Zambia or South Africa. Without prejudice to its other powers, the Tribunal shall have the power to fix a longer period than the period of 360 days referred to in Clause 19.6 in any case in which the question whether a Default Notice is valid or whether the default or failure alleged in any such Default Notice has occurred has been submitted for settlement by arbitration.

22.5 Any arbitration proceeding pursuant to this Agreement shall be conducted in accordance with the Arbitration Rules of ICSID in effect on the date on which the proceeding is instituted (the "**Arbitration Rules**"). Such Arbitration Rules shall be subject to the express provisions of this Clause 22. In the event of any conflict the provisions of this Clause 22 shall take precedence over such Arbitration Rules. Any communications by the Secretary-General with either Party under either the Institution

Rules or the Arbitration Rules of ICSID may be sent by the Secretary General in the manner provided in Clause 29.

- 22.6 Any arbitration proceedings commenced pursuant to this Agreement shall be held in London which shall be the seat of the arbitration proceedings. In relation to any arbitration proceedings commenced under or in connection with this Agreement, GRZ irrevocably submits to the jurisdiction of the United Kingdom and waives, to the extent permitted by applicable law, any objection to such arbitration whether on the ground of venue or on the ground that the arbitration has been commenced in an inconvenient forum.
- 22.7 The language of any arbitration proceedings shall be English.
- 22.8 Any award in arbitration proceedings held pursuant to the Convention shall be binding on the parties and judgement thereon may be entered in any court having jurisdiction for the purpose. Subject to Clause 24, GRZ irrevocably and generally consents in respect of the enforcement of any arbitral award or determination of a Sole Expert against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including, without limitation, the making, giving, enforcement or execution against or in respect of any property whatsoever (irrespective of its use or intended use) of any decision, award, order or judgment which may be made or given in such proceedings and the granting of any injunction or order for specific performance or for recovery of land or other property).
- 22.9 The Parties waive any right to appeal to any court of law or other judicial authority in connection with any arbitration proceedings conducted pursuant to this Agreement.
- 22.10 The costs incurred by the Parties in connection with any arbitration procedure (to include both Parties' legal and other professional costs and other expenses, the fees and expenses of the Tribunal, and the charges for the use of the facilities of ICSID) shall be borne:
- (a) equally by the Parties where the Dispute has been referred jointly by them; or otherwise,
 - (b) in accordance with Article 61(2) of the Convention.
- 22.11 The amount (if any) which is required by a determination or award of the Tribunal under this Clause 22 to be paid by one Party to the other Party shall be paid within ten (10) Business Days of the issue of the determination or award and, if not paid within that time, interest on that amount shall accrue and be payable at the rate of LIBOR plus five per cent. per annum (to be compounded on the first day of each Calendar Month of non-payment).
- 22.12 The provisions of this clause shall not preclude any Party from applying for interim relief on an urgent or any other basis to a court of competent jurisdiction.

23. PERFORMANCE TO CONTINUE

23.1 Unless the Agreement has already been repudiated or terminated, the Parties shall continue to observe and perform all the obligations contained in, and may exercise their rights under, this Agreement notwithstanding the reference of any Dispute to the Sole Expert or to arbitration. Neither Party shall be entitled to exercise any rights or election arising in consequence of any alleged default by the other arising out of the subject matter of the Dispute until the Dispute has been resolved by the Sole Expert or by arbitration or by agreement of the Parties as the case may be.

24. WAIVER OF SOVEREIGN IMMUNITY

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

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

25. LAW APPLICABLE

25.1 This Agreement shall be governed by and construed in accordance with the laws of Zambia as in force at the date of execution of this Agreement, supplemented by the rules of international law where necessary to give effect to the express provisions of this Agreement (in particular, but without limitation, to give effect to the provisions of Clauses 11, 13, 15 and 16).

26. FORCE MAJEURE, ECONOMIC FORCE MAJEURE AND MATERIAL ADVERSE CHANGE

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

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

- (b) has given notice to the other Party of the occurrence of Force Majeure on becoming aware of such an event.

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

- 26.2 For the purposes of this Agreement, Force Majeure means act of war (whether declared or undeclared), invasion, armed conflict, act of foreign enemy, act of terrorism, martial law, military or usurped power, insurrection, revolution, civil disturbances, blockades, riot, embargoes, strikes, lock-outs and other labour conflicts, sabotage, criminal damage, land disputes, epidemics, plague, volcanic eruptions, earthquakes, subsidence, heave, landslide, collapse, rock falls, storms, cyclones, floods (including flooding of underground mine works), explosions (including nuclear explosions), fires, lightning, methane and other underground gases and the explosion thereof, radioactive or chemical contamination or ionising radiation unless the source or cause of the contamination, radiation or other hazardous thing is brought or has been brought onto or near KCM's operations by the Party claiming Force Majeure or those employed or engaged by the Party claiming Force Majeure unless it is or was essential for the construction or operation of the Facilities, non-availability of electrical power, gas, water or other utilities other than due to the negligence or default of KCM, restrictions imposed by the government or other authorities of any country which has jurisdiction either over KCM or its operations (provided that GRZ will not be entitled to claim a Force Majeure Event as a result of restrictions imposed by Zambian governmental authorities) or destruction of, damage to or unavailability of materials, equipment or supplies and any other event which the Party claiming Force Majeure could not reasonably be expected to prevent or control.

- 26.3 KCM may, at any time, serve notice upon GRZ that either:

- (a) an Economic Force Majeure Event; or
(b) a Material Adverse Change Event;

has occurred and is continuing. The service of an Economic Force Majeure Event notice shall be accompanied by a certificate from the auditors of KCM certifying that an Economic Force Majeure Event has occurred and is continuing. The service of a Material Adverse Change Event Notice shall be accompanied by a certificate signed by two (2) Directors of KCM summarising the reasons for service of such notice and the events or circumstances constituting such material adverse change.

KCM shall procure that the delivery of a certificate(s) as referred to above, shall be repeated on a monthly basis by reference to the immediately preceding one month period until such time as the Economic Force Majeure Event and/or Material Adverse

Change Event (as the case may be) ceases to be continuing or the KCM board have adopted an alternative mining plan for the KDMP as contemplated in Clause 2.8(b).

26.4 The occurrence of a Economic Force Majeure Event and/or a Material Adverse Change Event shall have the consequences (but only those consequences) set out in Clause 2. KCM shall take all appropriate precautions, due care and reasonable alternative measures with the objective of avoiding the service of a notice of a Economic Force Majeure Event or a Material Adverse Change Event (as the case may be) and shall take all reasonable measures to overcome such events (so far as it is within its reasonable control) and to fulfil the terms and conditions of this Agreement with the minimum of delay, provided however that KCM shall not have an obligation to settle a labour dispute or test the constitutionality of any legislation or law. KCM shall forthwith give notice to GRZ of a Economic Force Majeure Event and/or Material Adverse Change Event ceasing to be continuing.

26.5 In the event that:

(a) a Economic Force Majeure Event occurs and the auditors of KCM deliver a certificate in respect thereof; or

(b) a Material Adverse Change Event occurs,

and GRZ disputes the occurrence of either of the aforementioned events, GRZ shall, within thirty (30) days of receiving the notice informing it of the occurrence and continuation of the Economic Force Majeure Event or Material Adverse Change Event (as the case may be) notify KCM that it disputes the occurrence of the relevant event and, where this matter has not been resolved within a further thirty (30) days of GRZ notifying KCM of such dispute, the matter shall be referred for determination by a Sole Expert in accordance with Clause 21 hereof.

27. VARIATION

27.1 The Parties may from time to time by agreement in writing add to, substitute for, cancel or vary all or any of the provisions of this Agreement, the Large Scale Mining Licences and the Environmental Plan for the purpose of more efficiently or satisfactorily implementing or facilitating the objectives of this Agreement.

27.2 Subject to the provisions of Clause 27.3, KCM may from time to time and without the need for agreement in accordance with Clause 27.1 add to, substitute for or vary all or any of the Scheduled Programmes (excluding the Environmental Plan changes to which shall only be made in accordance with Clause 27.1) or any other programme, proposal or plan approved for the purpose of more efficiently or satisfactorily implementing or facilitating the objectives of this Agreement.

27.3 Where KCM, in its sole discretion, proposes to modify or vary the Approved Programme of Mining and Metal Treatment Operations and as a consequence of such modification or variation any of the following occur:

- (a) the aggregate amount of capital expenditure to be expended at the Facilities is either increased or reduced by at least ten per cent. (10%) of the sum set out in the Approved Programme of Mining and Metal Treatment Operations;
- (b) the aggregate annual production levels of the Facilities is either increased or reduced by at least ten per cent. (10%) of those figures set out in the Approved Programme of Mining and Metal Treatment Operations; or
- (c) the aggregate number of people employed at the Facilities is either increased or reduced by at least ten per cent. (10%) of those employed at the Facilities prior to any such reduction.

KCM shall provide notice of such variation or modification to GRZ together with a duly varied or modified Approved Programme of Mining and Metal Treatment Operations and, within thirty (30) days of GRZ notifying KCM that it wishes to receive an explanation of such proposed changes, but without, in any way fettering or restricting KCM's discretion to make them, the parties shall meet in order that KCM may so explain the reasons for the proposed variation or modification to the Approved Programme of Mining and Metal Treatment Operations. For the avoidance of doubt, KCM's obligations to explain the factors motivating the proposed variation or modification to the Approved Programme of Mining and Metal Treatment Operations shall in no way be construed such that KCM would be required to obtain GRZ's consent (or that GRZ would be required to publicly support such a proposed variation or modification) prior to effecting the proposed variation or modification.

27.4 In the event KCM wishes to defer commencement of KDMP in accordance with Clause 2.3(c) it shall, as soon as reasonably practicable, notify GRZ of such fact by serving an Extension Notice and, within thirty (30) days of such notification, the parties shall meet in order that KCM may explain the reasons which have given rise to KCM's wish to so defer KDMP.

27.5 If:

- (a) the Investment Commitment is reduced in accordance with Clause 2.3; or
- (b) the KDMP Investment Commitment is reduced in accordance with Clause 2.8,

KCM shall notify GRZ in writing promptly following its decision to make such reduction (and in any event prior to any public announcements thereof) and (in the case of (a) only) provide GRZ with additional information setting out the amount of the Investment Commitment which is to be delayed as a result thereof.

28. ADDITIONAL CONSULTATION

28.1

- (a) KCM shall nominate a representative, who in the opinion of KCM is of appropriate seniority and experience, to a committee comprising of one member from each of the Ministry, KCM and the local government, which

shall have no powers to bind KCM but shall monitor the implementation of the Employment and Training Plan.

- (b) This committee shall operate during the term of this Agreement and KCM shall furnish it with reports every three (3) months outlining the progress of the Employment and Training Plan, problems encountered, positions filled and the number of Zambian citizens employed.
- (c) KCM shall only be liable for the costs associated with its representative in respect of the committee formed pursuant to Clause 28.1(a).

28.2

- (a) KCM shall nominate a representative, who in the opinion of KCM is of appropriate seniority and experience, to a committee, comprising of one member from each of the Ministry, the local government and KCM, which shall have no powers to bind KCM but shall monitor the supply and procurement of goods and services to the Facilities.
- (b) The committee shall operate during the term of this Agreement and KCM shall furnish it with reports every three (3) months comprising the following information:
 - (i) a list of successful tenderers which shall include the items supplied, and the residence of tenderers; and
 - (ii) a list of unsuccessful locally based tenderers.
- (c) KCM shall only be liable for the costs associated with its representative in respect of the committee formed pursuant to Clause 28.2(a).

29. NOTICES

29.1

- (a) Any notice, consent, demand, approval or other communication (a "Notice") required or permitted to be given, delivered or served under this Agreement or in connection with the transaction as evidenced by the Sale and Purchase Agreement or under the Act shall be deemed to have been given, delivered or served if -
 - (i) in the case of a Notice given by GRZ, such Notice is signed on behalf of GRZ by either the Minister or Permanent Secretary to the Ministry as their respective responsibilities require; or
 - (ii) in the case of a Notice to be given by KCM, such Notice is signed by a director or by the Secretary of KCM.
- (b) Each such Notice shall, as elected by the Party giving such notice, be personally delivered or transmitted by fax to the other Party as follows -

A Notice to GRZ

If by fax -

**Permanent Secretary
Ministry of Mines and Minerals
Development
Fax: 260 1 251 244/252916**

If by hand -

**Permanent Secretary
Ministry of Mines and Minerals
Development
PO Box 31969
Haile Salassie Avenue
Lusaka, Zambia**

A Notice to KCM

If by fax -

**The Secretary
Fax: 260 1 250 658**

If by hand -

**The Secretary
Konkola Copper Mines PLC
74 Independence Avenue
Lusaka
Zambia**

- 29.2 Except as otherwise specified herein, a Notice or other communication shall be deemed to have been duly given on the earlier of -
- (i) if delivered personally, the date at which it was left at the address referred to in Clause 29.1 and signed for at that address by someone with apparent authority to do so; or
 - (ii) if transmitted by facsimile the date of transmission to the fax number set out in Clause 29.1 with confirmed answerback.

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

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

30. WAIVER

- 30.1 The failure of any Party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of the provision or any part thereof or the right of any Party thereafter to enforce each and every part of the provision in respect of any subsequent default or breach.

31. SEVERABILITY

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

32. FURTHER ACTS

32.1 The Parties shall execute such documents and do and perform such acts that lie within their power and are necessary to give full effect to, and to give each other the full benefit of, this Agreement and GRZ undertakes, so far as possible and in accordance with the terms of this Agreement and Zambian law and regulation, to expeditiously provide all necessary approvals and assistance for the development and operation of the Facilities.

33. COUNTERPARTS

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

34. ABSENCE OF REPRESENTATIONS AND WARRANTIES

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

35. COMPENSATION AND PAYMENT

35.1 Any compensation or other amount payable under any provision of this Agreement shall be made promptly and shall be paid in any freely convertible OECD currency, fully transferable, without withholdings or deductions for taxes, levies and other duties except where those were due.

35.2 If any amount which is required by any provision of this Agreement to be paid by one Party to the other Party is not paid on the due date, interest on that amount shall (unless already payable under Clause 21 or 22) accrue and be payable at the rate of LIBOR plus five per cent. (5%) per annum (to be compounded on the first day of each calendar month of non-payment).

35.3 In the event of a dispute arising as to the compensation payable by a Party pursuant to any provision of this Agreement (including, without limitation, a dispute as to the quantum of the compensation or whether the compensation is payable or not), either Party may refer the issue to a Tribunal for determination in accordance with Clause 22.

36. **ENTIRE AGREEMENT**

36.1 This Agreement and the Environmental Liabilities Agreement together contain all the express provisions agreed on by the parties with regard to the subject matter of the agreement and the parties waive the right to rely on any alleged express provision not contained in this agreement.

37. **INDEXATION**

37.1 The Investment Commitment and the KDMP Investment Commitment shall be subject to revaluation on the basis set out in Clause 37.2 by reference to any change in the Producer Price Index for Finished Goods as it appears in the periodical Monthly Labor Review as published by the US Department of Labor, Bureau of Labor Statistics or, if such index is not published, such other index that replaces it (the "**Index**").

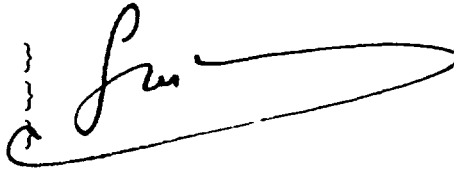
37.2 At the end of each month, the Investment Commitment and the KDMP Investment Commitment shall be adjusted by multiplication by the quotient resulting from the following:

quotient = the Index as at the end of the previous month divided by the Index as at three (3) months prior to Completion.

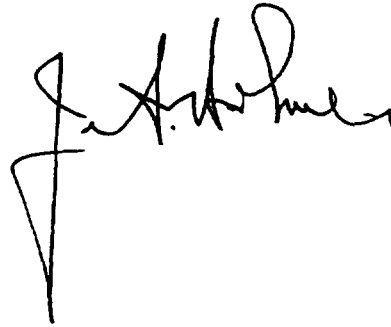
37.3 Any Party may request that an adjustment pursuant to Clause 37.2 is determined by a firm of chartered accountants of recognised international standing provided that the Party requesting such determination procures that such firm provides its determination within ten (10) Business Days of the date of adjustment specified in Clause 37.2.

IN WITNESS WHEREOF this Agreement has been duly executed by the Parties on the thirty first day of March, 2000

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

}
} 
}

SIGNED for and on behalf of
KONKOLA COPPER MINES PLC

}
} 
}

SCHEDULE 1
APPROVED PROGRAMME OF MINING AND METAL TREATMENT OPERATIONS

KONKOLA COPPER MINES PLC

**PROGRAMME OF MINING AND METAL
TREATMENT OPERATIONS**

December 1999

PREAMBLE

This document, the Programme of Mining and Metal Treatment Operations for the assets that will be owned by Konkola Copper Mines PLC (KCM), has been produced to satisfy the requirements of Part 3 of The Mines And Minerals Act, 1995 in relation to the application for a large-scale mining licence. Section 24 (3) of Part 3 of the Act states, inter alia:

- a) A comprehensive statement of the mineral deposits in the area over which the licence is sought, including details of all known minerals proved, estimated or inferred, ore reserves and mining conditions;*
- b) Every application for a large scale mining licence shall include or be accompanied by the proposed programme of mining operations, including a forecast of capital investment, the estimated recovery rate of ore and mineral products, and the proposed treatment and disposal of ore and minerals recovered.*

The Programme of Mining and Metal Treatment Operations for the KCM assets has been based, in general, on the Class 1 Feasibility Study that was undertaken by Zambia Copper Investments Limited (ZCI) in June 1999. Wherever available, the Feasibility Study programme has been updated with more recently estimated information. The Programme addresses the operations at Konkola, Nchanga and Nampundwe.

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1 DESCRIPTION OF THE OPERATIONS

1.1 Konkola

1.1.1 Underground Infrastructure

The existing hoisting installations at Konkola will be upgraded to comply with modern practice and the relevant legal requirements. The VS3B ventilation shaft (to be re-named No.4 Shaft) will be slyped and deepened to provide annual hoisting capacity for 6 million tons of ore and its associated waste. No.4 Shaft will be commissioned for hoisting in May 2006, from which date ore hoisting through No.1 and No.3 Shafts will cease.

Additional pumps will be installed in an extension to the 985mL pump chamber and a new pump chamber on the 1380mL will be established.

At present, the main surface fans at No.1 and No.3 Shafts operate at unacceptable pressures and underground booster fans are used to keep the production sections ventilated. The location and relatively small capacity of these booster fans have resulted in pressurisation of the return airways with consequent high re-circulation. In turn, this has resulted in inadequate heat dissipation and the slow clearing of fumes at blasting times.

New higher duty booster fans will be installed above the production levels to extract from the workings below and to force the air up the various upcast shafts in series with the present main surface fans. This will allow the currently installed booster fans to be removed thereby ensuring negative pressure in the return airways and the elimination of the majority of the re-circulation.

Provision has been made for new purchases and rebuilds of the underground mobile fleet.

1.1.2 Stopping Methods and Efficiencies

The current mining operation is based mainly on sub level open stopping methods (SLOS) using gravity ore flow within stopes where the orebody dip is steep and by scraping of broken ore in flatter dipping stopes. These methods have been practised extensively over a number of years at Konkola but with variations to suit the level of mechanisation, mode of stope drilling, orebody width etc.

The post pillar cut and fill method (PPCF) has been introduced at No 3 Shaft – using waste rock backfill. SLOS with benching and longitudinal room and pillar (LRP) have also been planned for use in some areas at No.1 and No.3 Shafts during the interim period before changing totally to the backfill methods for the Konkola Deep Mining Project (KDMP).

A temporary backfill plant with a capacity of about 40000m³ per month will be built at the existing concentrator and commissioned in early 2001. Following this, the bulk of the No.3 Shaft stopping will be by the post pillar cut and fill (PPCF) method.

Two fully mechanised total backfill methods have been planned for the KDMP. These are:

- Square excavation level fill (SELF); and
- Post pillar cut and fill (PPCF).

The KDMP stopping design is based on the following average dilution and extraction factors:

SELF

Dilution: 14.8%

Extraction: 84.8%

PPCF

Dilution: 13.0%

Extraction: 77.4%

A new large capacity backfill plant will be constructed next to the new concentrator at No.4 Shaft to provide the required volumes of classified tailings fill for the stoping operations. The temporary backfill plant at No.1 Shaft will be closed when the new backfill plant is commissioned.

1.1.3 Ore Production Forecast

The estimate of ore reserves and resources for Konkola as at May 1998 is shown in the following Table. The estimate is based on a 1% copper cut-off (the same as used by ZCCM) and is for Ore Shale only. All of the reserves and the indicated resources will be extracted during the project life.

Table: Konkola Ore Reserves and Resources

CATEGORY	Orebody	Tons (Mt)	% TCu	% ASCu
<u>Konkola Reserves</u>				
Proved	No 1 Shaft	3.88	4.11	0.43
	No 3 Shaft	5.68	3.18	0.24
Probable	No 1 Shaft	8.79	4.33	0.48
Total Konkola Reserve		18.35	3.93	0.40
<u>Konkola Resources</u>				
Indicated	KDMP	124.0	4.26	0.32
Inferred	KDMP	97.0	3.94	0.28
Total Konkola Resource		221.0	4.12	0.30

It is planned to increase the ore production capacity from the current level of about 2.0mtpa to 2.4mtpa in the short term and thereafter build-up production until it reaches the level of 6mtpa planned for KDMP.

The limited ore reserves remaining above 590mL at No.3 Shaft require stoping of reserves below that level to commence in about four years time. To achieve timely dewatering of those reserves, the 950mL dewatering development will re-commence after vesting.

The dewatering plan over the thirty year project period is based on the extension of the existing 950mL dewatering development and the development of the 1150mL and 1350mL levels. This has been scheduled to tie in with the establishment of No. 4 Shaft. The development is also timed to ensure that the relevant stopes will be dewatered before they are required for production.

The No.1 Shaft area has more ore reserves than No.3 Shaft, a larger geographical extent to provide for more stoping faces and a higher grade than that of No.3 Shaft. Therefore out of the total underground ore production of 2.4mtpa, 1.4mtpa will be produced from the No.1 Shaft area in the early years. No.3 Shaft's production of 1.0 mtpa will come from a limited number of stoping faces and by relatively new methods.

Ore production from the KDMP resources commences in 2004. No.3 Shaft stops hoisting ore in 2005. KDMP production increases rapidly from 2004 and reaches the rate of 6.0mtpa from January 2007. Ore hoisting through No.1 Shaft closes in 2006.

The temporary backfill plant will remain in operation until the first module of the KDMP backfill plant comes into operation in September 2005. From September 2005, all stoping will be by backfill methods and the second backfill module of the KDMP backfill plant will be commissioned in April 2006.

The combined annual ore production forecast for No.1 Shaft, No.3 Shaft and No.4 Shaft from 2000 to 2028 is shown in the following Table. The Table also shows the forecast concentrator recovery and the tons of copper in concentrate per annum.

Table: Konkola Production Forecast

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Ore Production (000 tons)	1603	2410	2400	2400	2402	2841	4636	5902	6046	6037	6038	6044	5984	6091	5980
Ore Grade %TCu	3.64	3.63	3.59	3.71	3.49	3.69	3.44	3.54	3.57	3.60	3.66	3.69	3.73	3.85	4.01
Concentrator Recovery (%)	87.00	87.00	88.00	87.23	87.43	86.34	88.90	89.59	90.06	90.05	90.04	90.06	90.09	90.22	90.11
Concentrate Grade (TCu%)	42.0	42.0	42.0	42.0	42.0	45.0	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5
Copper Contained In Cons (000 tons)	50.8	75.7	75.7	77.7	73.4	90.6	141.8	187.2	194.3	195.5	199.1	200.9	201.1	211.4	216.2

Table: Konkola Production Forecast (ctd)

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Ore Production (000 tons)	6026	6076	5910	6082	6061	5978	6060	5950	5966	6020	6039	6015	6100	5997
Ore Grade %TCu	4.03	4.14	4.16	4.13	4.19	4.19	4.19	4.27	4.28	4.26	4.21	4.14	3.98	3.87
Concentrator Recovery (%)	90.09	90.05	90.01	90.08	90.04	90.04	90.01	89.74	89.80	89.92	90.01	89.99	90.02	90.19
Concentrate Grade (TCu%)	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5	47.5
Copper Contained In Cons (000 tons)	219.1	226.6	221.4	226.3	228.6	225.4	228.4	228.0	229.2	230.5	228.9	224.1	218.7	209.1

1.1.4 Concentrator

A minor expansion will be made to the existing concentrator during 2000 to increase its capacity by 20%. The existing concentrator will be shut down following commissioning of the new plant in 2005.

The new concentrator, which will be positioned approximately three kilometres north-west of the existing concentrator, will consist of two 3 million tons per annum modules that will include mill feed silos, SAG and ball mills, large cell flotation and concentrate thickening. The thickened concentrate will be pumped to the existing concentrator site for filtering in a new filter plant.

The flotation tailings will be classified in the new backfill plant and the underflow will be used as the backfill material for the stoping operations.

1.1.5 Surface Infrastructure

Most of the surface infrastructure requires general refurbishment. Some of the surface workshop facilities will be re-equipped and others will have to be extended to cater for all of the KDMP requirements. A new changehouse will be required for the underground workers to replace the existing changehouse that will have to be demolished to make way for a major extension to the main electrical substation.

The Lubengele tailings dam wall will be raised progressively over the thirty years and a new spillway will be constructed to replace the existing decant tower.

1.2 Nchanga Mine

1.2.1 The Underground Mine

1.2.1.1 Underground Infrastructure

Provision has been made in the capital estimate to upgrade certain of the winder electrics/ mechanicals and for upgrades to the 1600 and 2800 pump stations.

The planned re-commissioning of the No 4 Shaft upcast fan will supplement the twin fan system at No 5 Shaft and will allow the use of the 735ftL drain drive as a return system from Chingola B. This will increase the total circulating quantity by 200m³/s for the remaining period during which the Chingola B reserves are being mined.

Provision has been made for new purchases and rebuilds of the underground mobile fleet.

1.2.1.2 Stopping Methods and Efficiencies

There are no planned changes to the basic design of the stopping methods. To reduce the amount of banded sandstone dilution that is encountered from the Lower Ore Body, the maximum percentage draw will be reduced from 125% to 110%.

Chingola B production will be increased from the current rate of 300000tpa to 480000tpa with an overall recovery factor will be 0.85.

1.2.1.3 Production Forecast

The estimate of ore reserves and resources for the Nchanga Underground Mine as published by ZCCM is shown in the following Table. The estimate is based on the same cut-off parameters used by ZCCM.

Table: Nchanga Underground Mine Ore Reserves and Resources

CATEGORY	Orebody	Tons (Mt)	% TCu	% ASCu	% TCo
Underground Reserves					
Proved	LOB	6.55	2.57	1.19	-
	Block A	5.39	3.13	1.40	-
	Chingola B	2.30	3.49	1.22	-
Probable	LOB	2.66	1.90	0.95	-
	Block A	2.90	2.30	1.04	-
Total Underground Copper Reserves		19.80	2.70	1.19	-
Underground Resources					
Indicated	LOB "thin rich"	6.95	6.61	2.83	-
	Block A	0.64	3.31	1.82	-
	Chingola B	1.11	5.43	3.27	-
Inferred	River Lode	1.79	3.48	1.14	-
Total Underground Copper Resources		10.49	5.75	2.53	-
Inferred	UOB Cobalt	23.16	2.15	-	0.45
Total Underground Cobalt Resources		23.16	2.15	-	0.45

The current forecast of metal prices excludes the above quoted resources from being regarded as viable at this stage. However, the resources are significant in quantum and will be the subject of careful re-evaluation when the forecast of metal prices improves.

The production forecast for the Nchanga underground mine is presented in the following Table. To reduce the amount of Banded Sandstone in the ore stream,

the maximum percentage draw has been reduced from 125% to 110%. All of the estimated reserves will be extracted during the remaining life of the mine.

The Table also shows the expected concentrator recovery and the tons of copper

in concentrate per annum.

Table: Nchanga Underground Production Summary

	2000	2001	2002	2003	2004	2005	2006	2007
Ore Production (000 tons)	2577	2916	3000	2551	2551	1905	1878	1785
Grade %TCu	3.10	3.13	3.02	3.14	2.50	2.50	2.36	2.21
Grade % ASCu	1.31	1.32	1.28	1.40	1.18	1.16	1.12	1.10
TCu Contained in Ore (000 tons)	79.987	91.355	90.640	80.123	63.772	47.681	44.334	39.443
ASCu Contained in Ore (tons)	33.871	38.491	38.462	35.817	30.183	22.061	20.950	19.570
Overall Recovery (%)	54.99	55.37	54.70	53.83	51.88	52.67	51.94	50.19
MG Cons Grade (TCu%)	30.8	30.8	30.8	30.8	40.0	40.0	40.0	40.0
HG Cons Grade (TCu%)	43.0	43.0	43.0	43.0	50.0	50.0	50.0	50.0
Cu Contained in Cons (000 tons)	43.981	50.580	49.572	43.131	33.086	25.113	23.026	19.794

1.2.2 The Openpit Mine

1.2.2.1 Openpit Infrastructure

Due to the short remaining life of the Nchanga Open Pit, only limited refurbishment of the openpit infrastructure has been allowed for in the cost estimates.

1.2.2.2 Life of Mine Design

All of the ore lying to the west of section 12 East will be mined through the underground mine and is unavailable to the openpit. A major back-filling operation has taken place in this area of the Eastern Extension. Some of the overburden removal has been capitalised.

Exploration drilling will be undertaken to evaluate the viability of any downdip extension to the Upper Orebody from the bottom of the Nchanga Open Pit. The programme, which will commence during the first year after close, is estimated to cost \$1 million and will be completed by the end of the second year. A detailed exploration programme will be compiled which will be presented as an addendum to the Programme of Mining and Metal Treatment Operations.

1.2.2.3 Production Forecast

The statement of ore reserves and resources for the Nchanga Openpit Mine as estimated in April 1999 is shown in the following Table. The estimate is based on the same cut-off parameters for copper and cobalt as are used by ZCCM. All of the estimated reserves will be extracted during the remaining life of the mine.

Table: Nchanga Open Pit Mine Ore Reserves and Resources

CATEGORY	Orebody	Tons (Mt)	% TCu	% ASCu	% TCo	% ASCo
<u>NOP Reserves</u>						
Proved Copper Reserve	LOB/UOB Copper	12.26	2.75	1.35	-	-
Proved Cobalt Reserve	UOB Cobalt	2.82	1.79	0.40	0.67	0.07
<u>NOP Resources</u>						
Measured	UOB	42.24	1.94	0.91	-	-
Indicated	LOB	11.45	4.63	1.99	-	-
Total NOP Copper Resource		53.69	2.51	1.14	-	-
Indicated	UOB Cobalt	13.05	1.22	0.33	0.31	0.04
Total NOP Cobalt Resource		13.05	1.22	0.33	0.31	0.04

The current forecast of metal prices excludes the above quoted resources from being regarded as viable at this stage. However, the resources are significant in quantum and will be the subject of careful re-evaluation when the forecast of metal prices improves. The exploration programme discussed above will contribute significantly to this re-evaluation.

The life-of-mine production forecast for the Nchanga Open Pit mine is shown in the following Table. A primary objective of the mining plan for the Nchanga Open Pit mine is to ensure that the resources tabled above are not sterilised by bad mining practices. The Table also shows the expected concentrator recovery and the tons of copper in concentrate per annum.

Table: Nchanga Openpit Production Forecast

	2000	2001	2002
Copper Ore Production (000 tons)	4681	5100	4717
Grade %TCu	2.14	2.43	2.32
Contained Copper (000 tons)	100.326	123.848	109.643
Cobalt Ore Production (000 tons)	728	807	807
Grade %TCu	0.45	0.45	0.81
Grade %TCu	1.34	1.51	1.51
Cobalt Contained in Ore (000 tons)	3.280	3.669	6.569
Copper Contained in Ore (000 tons)	109.308	136.051	121.768
Cobalt Concentrate Grade (TCu%)	6.0	6.0	6.0
Cobalt Concentrate Grade (TCu%)	24.1	13.2	13.3
Cobalt Contained in Cons (000 tons)	2.642	2.933	5.655
Copper Contained in Cons (000 tons)	48.196	64.731	59.039

1.2.3 Concentrator

Total copper flotation recoveries at Nchanga are expected to improve following the general refurbishment of the plant and the splitting of the openpit and underground flotation streams. The flotation recovery for the open pit copper ore is forecast to improve from 31% to 35% and for the underground ore from 53% to 55%.

1.2.4 Tailings Leach Plant (TLP)

General refurbishment and upgrading of the Nchanga Tailings Leach Plant will be undertaken. The maximum capacity of the TLP has been estimated at 15.5 million tons of tailings per annum. Excess capacity beyond that required for the treatment of the current arisings will be filled with reclaimed tailings. The reclamation of tailings will cease in 2007 with the final depletion of the old tailings dams. TLP recoveries are projected to increase from 68% to an estimated 74%. Production of cathodes of marketable quality is expected to increase to 90%.

The production forecast for the TLP is shown in the following Table.

Table: Nchanga Tailings Leach Plant Production Summary

	2000	2001	2002	2003	2004	2005	2006	2007
Total Flotation Tailings (000 tons)	7764	7719	7440	2424	2473	1846	1824	1739
Recovery of ASCu (%)	68.39	70.60	72.60	74.00	74.00	74.00	74.00	74.00
Cu Recovered (000 tons)	56.107	62.600	59.386	23.112	19.476	14.236	13.519	12.628
Tailings Reclamation (000 tons)	6360	10520	10799	13076	13027	13654	13676	6949
Cu Recovered (000 tons)	23.964	40.861	43.145	43.543	43.379	41.999	40.481	20.570
TLP Finished Cathodes (000 tons)	82.570	102.985	106.018	59.989	56.570	50.611	48.600	29.878
TLP Total Cu Recovered (000 tons)	80.081	103.458	102.123	66.655	62.855	56.235	54.000	33.198

1.2.5 Surface Infrastructure

General refurbishment of much of the surface infrastructure will be undertaken.

1.2.6 Chingola Refractory Ore

A comprehensive drilling, composite sampling, laboratory and pilot plant scale testwork programme will be undertaken to evaluate the technical and financial viability of the Chingola Refractory Ore at an estimated cost of US\$4.25 million. The evaluation programme will take an estimated two and a half years to complete and is scheduled to commence at the start of the third year after close.

1.2.7 Hydrometallurgical Treatment

A hydrometallurgical route will be evaluated as a possible replacement to pyrometallurgical treatment for most, if not all, of the KCM concentrates. The evaluation programme, which will include bench and pilot scale testwork, is being compiled and is expected to commence as a high priority immediately after close. If the hydrometallurgical route is shown to be the more attractive then the project would enter the financing and construction phase. Commissioning of a suitable treatment facility is not expected before the end of the third year after close. It is probable that if a hydrometallurgical route is implemented, it would to utilise the TLP facilities.

1.3 Nampundwe Mine

1.3.1 Underground Mine

1.3.1.1 Underground Infrastructure

Provision has been made in the capital estimate to upgrade certain of the winder electrics and mechanicals.

Two new 300kW centrifugal fans will be installed to provide the additional air volume required by the proposed increase in ore production.

1.3.1.2 Stopping Methods and Efficiencies

Sub-level open stoping will continue to be practised throughout the Nampundwe mine and dilution is planned at 15% and extraction at 60%.

1.3.1.3 Production Forecast

The statement of ore reserves and resources for the Nampundwe Mine as estimated by ZCCM is shown in the following Table.

Table: Nampundwe Ore Reserves and Resources

CATEGORY	LEVEL	Tons (Mt)	% S
Proven	(above 730 level)	0.7	15.0
Probable		9.5	16.4
Total in situ Reserves		10.2	16.3
Measured	(below 730 level)	0	0
Indicated		11.8	15.0
Total Resources		11.8	15.0

The current bottom production level, the 480ftL, has approximately eighteen months of ore reserves left for production at a relatively low grade. The reserves below the 480ftL are close to the shaft station and have a higher grade. To achieve the targeted concentrate requirements, the 730ftL will be equipped with tracks, pipes and a main tip grizzly as soon as possible.

The equipping of the belt level and loading boxes on the 830ftL in No.1 Shaft is a priority and B Shaft will be deepened to provide a second outlet to the lowest level.

The preliminary production forecast for Nampundwe for the first five years is shown in the following Table. The programme will be finalised when the total Zambian offtake potential is known. It is anticipated at this stage that Nampundwe will continue in operation for the thirty years.

Table: Nampundwe Production Forecast

	2000	2001	2002	2003	2004
Ore Production (000 tons)	249.852	363.519	393.070	95.929	59.828
Grade % Sulphur	10.8	10.8	10.8	12.2	14.8

1.3.2 Concentrator

Rehabilitation and extension to the existing concentrator will be undertaken to allow for the expanded underground production.

1.3.3 Surface Infrastructure

Limited refurbishment will be undertaken of the surface infrastructure.

1.4 Consolidated Sales Forecast

The following Table shows the estimated annual copper and cobalt sales over the life of project.

Table: Consolidated Sales Forecast

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Copper*	201	237	218	213	177	168	210	232	189	189
Cobalt**	2675	3937	733	0	0	0	0	0	0	0
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Copper*	192	194	194	204	208	211	218	214	218	221
Cobalt**	0	0	0	0	0	0	0	0	0	0
	2020	2021	2022	2023	2024	2025	2026	2027	2028	
Copper*	218	220	220	221	222	221	216	211	210	
Cobalt	0	0	0	0	0	0	0	0	0	

Note * 000 tons
 ** tons

2. CAPITAL COST ESTIMATE

The required capital expenditure for the mining assets at Konkola, Nchanga and Nampundwe has been estimated in detail. All costs associated with refurbishment of the assets or an increase in production have been capitalised. These include additional equipment and the development required to bring the relevant mines up to their expanded level of output.

The capital requirements have been estimated by site, with Konkola further divided into the capital required for the current mine and that required for KDMP. The scope of works that will be undertaken for the current mine at Konkola and KDMP has been detailed in the fifteen volume KDMP Feasibility Study report that has already been presented to GRZ. The details of all estimated capital costs at Nchanga are described below together with the summarised estimates of capital expenditure at each of the sites.

Table: Capital Cost Estimate Project Summary

Base Date January 1999

Description	US\$000
Konkola Deep Mining Project	522 680
Konkola Division	72 124
Nchanga Division	174 655
Nampundwe Division	10 729
Johannesburg, Zambia & Partners Cost	18 751
PROJECT TOTAL	798 939

Table: Capital Cost Estimate Project Summary Cashflow

DESCRIPTION	US\$000	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	BEYOND	TOTAL
Konkola Deep Mining Project	522 680		25 593	53 933	104 145	156 213	94 671	60 074	13 201	1 355	3 848	1 025	1 023	1 023	6 576	522 680
Konkola Division	72 124	37 652	31 149	2 362	961											72 124
Nchanga Division	174 655	81 969	50 138	26 295	7 746	5 095	2 943	469								174 655
Nampundwe Division	10 729	6 581	3 491	657												10 729
Johannesburg, Zambia & Partners Cost	18 751	9 475	6 751	2 525												18 751
PROJECT TOTAL	798 939	135 677	17 522	85 772	112 852	161 308	97 614	60 543	13 201	1 355	3 848	1 025	1 023	1 023	6 576	798 939

Table: Capital Cost Estimate Konkola Division

Base Date January 1999

Description	US\$000
Post Feasibility Engineering	—
Konkola Shafts and Underground	22 172
Konkola Concentrator	6 658
Konkola Infrastructure	6 059
Environmental	-
Indirect Costs	4 407
Mining Engineering for Dewatering	26 514
SUB TOTAL	65 810
CONTINGENCY AMOUNT	6 314
PROJECT TOTAL	72 124

Table: Capital Cost Estimate Nchanga Division

Base Date January 1999

Description	US\$000
Shafts and Underground	15 400
Open Pit	41 583
Copper Concentrator	14 563
Cobalt Concentrator	3 389
Tailings Leach Plant	54 188
Surface Infrastructure	9 463
Indirect Costs	18 462
SUB TOTAL	157 048
CONTINGENCY AMOUNT	17 607
PROJECT TOTAL	174 655

The capital estimate for Nchanga includes the following significant items:

<u>SHAFTS AND UNDERGROUND</u>	<u>US\$ '000</u>	<u>US\$ '000</u>
Localised Services	,671	
Shaft Equipment	,208	
Capital Development	2,800	
Mining Equipment	7,083	
Arterial Transport	,674	
Locomotives and Rolling Stock	,411	
Ore Storage and Transport	,595	
Ventilation	1,548	
Underground Workshops	,264	
Electrical power	,246	
Pumping and Dewatering	,900	15,400
<u>OPEN PIT</u>		
Stripping of over burden	40,700	
Miscellaneous	882	41,582

COPPER CONCENTRATOR

Civil Works	1,030	
Mechanical Equipment	6,622	
Piping and Valves	,429	
Electrics	1,674	
Instrumentation	1,631	
Preliminaries and general	2,733	
Operating spares	,444	<u>14,563</u>

COBALT CONCENTRATOR

Civil Works	,146	
Structural Steel and Platework	1,218	
Mechanical Equipment	,911	
Piping and Valves	,025	
Electrics	,040	
Instrumentation	,235	
Preliminaries and general	,759	
Operating Spares	,055	<u>3,389</u>

TAILINGS LEACH PLANT

Electrowinning Plant	13,234	
Filter Plant	12,698	
Thickening	10,469	
Solvent Extraction	5,452	
Dams	2,662	
Leaching	2,048	
Lime Plant	1,926	
Acid Offloading	1,637	
Pregnant Leach Liquor	1,384	
Muntimpa Pump House	1,345	
Kanama Pump Station	,201	
Reagent Plant Filters	,118	
Reagent Plant Thickness	,037	
General	,977	<u>54,188</u>

SURFACE INFRASTRUCTURE

Localised Services	2,109	
Housing	1,520	
Railways	1,223	
Stores, Offices and Building	,942	
Workshops	,239	
Electrical Power	,298	
Instrumentation	1,373	
Road Transport	1,760	<u>9,464</u>

INDIRECT COSTS

Reimbursables and Indirect Costs	18,462
Subtotal	157,048
Contingency	17,607
TOTAL ESTIMATE	174,655

Table: Capital Cost Estimate Nampundwe Division

Base Date January 1999

Description	US\$000
Shafts and Underground	6 662
Concentrator	1 295
Surface Infrastructure	1 553
SUB TOTAL	9 510
CONTINGENCY AMOUNT	1 219
PROJECT TOTAL	10 729

SCHEDULE 2
LOCAL BUSINESS DEVELOPMENT PROGRAMME

SCHEDULE 2: LOCAL BUSINESS DEVELOPMENT PLAN

A number of employees have been retrenched recently by ZCCM from the assets that will be owned by KCM. Further retrenchments will be necessary, both before and after transfer of ownership, to transform the operations from the previously over-manned condition to a position where they can become more competitive in terms of internationally acceptable productivity performance. In the medium term, certain of the Nchanga operations will close as they reach the end of their economic lives. This will result in additional loss of job opportunities at the KCM operations.

In years gone by, the direct impact of past ZCCM retrenchment programmes was not as obvious as those affected opted, in general, to return to their home districts. However, more recently, there has been a significant reversal of this trend and employees who lose their jobs now prefer, in the main, to remain resident on the Copperbelt. The recent decision to allow ZCCM employees to purchase their mine houses will reinforce this tendency. This has resulted in the effects of retrenchment programmes becoming more localised and with more obvious impact on the general community in which the mines operate.

Although the current formula used by ZCCM to calculate the terminal benefits is relatively generous by international standards, it is commonplace in Zambia that the affected individuals exhaust their cash retrenchment package within a short period. As most of those affected have no alternative sources of cash income, they become increasingly reliant on family support and subsistence farming.

One way of lessening the effects of retrenchment is to encourage and assist the individuals concerned to establish their own commercial enterprises. KCM, as a responsible employer, will put into place a programme to facilitate the generation of these small business initiatives. A full time facilitator will be appointed by KCM shortly after take-over whose sole task will be to nourish these alternative opportunities. The facilitator will be experienced in setting up and managing small business enterprises and he will be provided with an adequate budget by KCM to support this ideal. Emphasis will be placed on the development of businesses in which the ownership is held by Zambian citizens. The facilitator will liaise with the

appropriate officials and he will assist in maintaining a registrar of businesses in Zambia that are capable of supplying materials, equipment and services to the KCM operations.

The Anglo American Group has had a significant success with similar initiatives at its operations in South Africa and KCM will draw on that experience to ensure that its programme achieves sustainable results.

In accordance with Clause 5 of the Development Agreement, KCM will encourage and assist the establishment of businesses, particularly on the Copperbelt, to supply materials, equipment and services to KCM.

An interim Local Business Development Programme will be assembled within six months of Closure. A final Local Business Development Programme will be issued twelve months after Closure.

SCHEDULE 3

**PART I
CONTRACT AREAS**

Schedule 2 of the KCM Sale and Purchase Agreement is Incorporated here by Reference

PART II
FORM OF THE LARGE SCALE MINING LICENCE

Mines Form 103/96
Stocked by Mines Development Department
1m B1 4399/96

REGISTRATION No. LML

REPUBLIC OF ZAMBIA

LARGE-SCALE MINING LICENCE

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

Applicant's name

Address

Prospecting Licence No.

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

The Licence is granted for a period of commencing on the
..... day of

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

The following conditions included in Prospecting Licence No. PL
shall continue to apply:

Issued at this day of

.....
Director

ENDORSEMENT OF REGISTRATION

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

.....
Director

RENEWALS AND AMENDMENTS

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

**PART III
MINING AREAS**

Schedule 2 of the KCM Sale and Purchase Agreement is Incorporated here by Reference

SCHEDULE 4

PART I

THE KCM ENVIRONMENTAL PLAN IS INCORPORATED HERE BY REFERENCE

PART II

THE ZCCM ENVIRONMENTAL PLAN IS INCORPORATED HERE BY REFERENCE

SCHEDULE 5
EMPLOYMENT AND TRAINING PLAN

SCHEDULE 5: EMPLOYMENT AND DEVELOPMENT PLAN

It is recognised that appropriate training and development of the employees is central to the future success of the KCM operations. To that end, priority emphasis will be given by KCM to the provision of adequate training facilities and the requisite level of training skills. These fundamental prerequisites will be provided for through adequate funding in the operating and capital cost budgets.

A primary function that will be addressed directly after take-over is a skills needs analysis across each of the KCM operations. This, in turn, will provide a basis on which the actual details of the training requirement can be assessed and programmed. The assessment will cover the full range of training needs from the basic requirements of the semi-skilled employees to the training of supervisors and managers. The main focus in management and leadership development would be to broaden the scope and depth of these competencies at various levels throughout the organisation. The specifics of individual training will depend on a variety of factors such as the available potential, existing skills levels and defined needs.

It is planned that KCM apprentice training will be centred at the Kitwe Trades School which is included in the KCM assets.

An Interim Employment and Development Plan will be assembled within six months of closure. A Final Employment and Development Plan will be submitted to the Minister of Mines and Minerals Development for approval within twelve months after closure in accordance with Clause 6 of the Development Agreement.

**SCHEDULE 6
REQUIRED INSURANCES**

**SCHEDULE 14 OF THE KCM SALE AND PURCHASE AGREEMENT IS
INCORPORATED HERE BY REFERENCE**

SCHEDULE 7
TAX SCHEDULE

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

(1) **Income Tax:**

- (a) KCM shall pay to GRZ income tax in accordance with the provisions of this Agreement and the Income Tax Act, Chapter 323 of the Laws of Zambia as from time to time amended and in effect on its net taxable income arising from all mining, concentration, smelting and refining and other operations.
- (b) The income tax rate shall be twenty five per cent. (25%).
- (c) The carry forward of losses shall be permitted for a period of twenty (20) years from the date at which the loss was incurred. Losses should be used on a first in, first out basis with earlier losses used before later losses.
- (d) KCM shall be entitled to maintain books of account and to render income tax returns and returns in respect of royalties and customs and excise duties stated in United States dollars in accordance with generally accepted accounting principles.
- (e) For the purposes of Part VI of the Fifth Schedule to the Income Tax Act, the Facilities shall be deemed a "1975 new mine" allowing the deduction of one hundred per cent. (100%) of capital expenditure (as defined in the Act) in the year in which the capital expenditure was incurred.
- (f) In the calculation of KCM's liability for income tax, KCM shall be entitled to deduct any copper price participation payments and any cobalt price participation payments made pursuant to the Copper Price Participation and the Cobalt Price Participation Agreements respectively between KCM and ZCCM.

(2) **Royalties:**

- (i) KCM shall pay to GRZ the Royalty on the gross revenue of minerals produced in the Mining Areas at a rate of nought point six per cent. (0.6%), subject to paragraph (6) below.
- (ii) GRZ confirms that for a period of twenty (20) years from the Effective Date, the Royalty payable under the Act shall be deductible in the calculation of KCM's liability for income tax.

- (iii) The circumstances where the discretion available to GRZ under Section 67 of the Act to defer or exempt, as applicable the payment of the Royalty would be exercised are:
 - (aa) under the terms of Section 67(3) where the cash operating margin of KCM mining operations is less than nil; and
 - (bb) under the terms of Section 67(2) on samples of minerals acquired for the purposes of assay, analysis or other examination.
- (iv) For the purposes of the foregoing "cash operating margin" means the amount derived by deducting operating costs (not including capitalised expenditure during or required for the development of the Facilities) from revenue.

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

(i) **Customs and Excise Duties**

- (a) KCM shall enjoy the benefit of Section 97 of the Act namely that KCM shall be entitled to exemption from customs and excise duties, and from any other duty or impost levied under the Customs and Excise Act, in respect of all machinery and equipment (including specialised motor vehicles) required for any of the activities carried on or to be carried on in pursuance of the right or otherwise for the purposes of its investment in Mining or prospecting. For the purposes of the application of Section 97 of the Act to KCM, machines and equipment shall include all items imported for the purposes of effecting or incurring capital expenditure and which are referred to in Section 2 (Capital Cost Estimate) of the Approved Programme of Mining and Metal Treatment Operations relating to the Facilities. GRZ and KCM agree that goods imported by contractors, agents and suppliers of KCM engaged by KCM for the purposes of implementing the Approved Programme of Mining and Metal Treatment Operations ~~shall enjoy the benefit of KCM's exemption from customs and excise duties under Section 97 of the Act, such benefit to be strictly limited to the implementation of the Approved Programme of Mining and Metal Treatment Operations.~~ GRZ and KCM further agree to establish an administrative mechanism to achieve this post Completion.
- (b) Subject to the provisions of Clause 13 and Section 97 of the Act, KCM shall be liable to pay customs and excise duties on all materials and assets imported for the purposes of the Approved Programme of Mining and Metal Treatment Operations (other than those items exempt in terms of Section 97 as detailed in paragraph 3(i)(a) of this Schedule) at such rates and on the terms and conditions as are set out in the Customs and Excise Act provided that the aggregate duty payable by KCM in any one year shall not exceed a sum equivalent to fifteen per cent. (15%) of the

value of the materials and assets imported, subject to paragraph (6) below.

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

GRZ confirms that Excise Duty on power shall be levied at zero per cent. (0%).

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

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

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

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

- (i) In accordance with the provisions of the Value Added Tax Act, Chapter 331 of the laws of Zambia 1995, goods and services produced by the Facilities are taxable at a standard rate and zero rated if exported.
- (ii) GRZ confirms that input VAT in excess of VAT payable in respect of the supply of goods and services shall be credited to KCM within a reasonable period of time (and in any event within 10 days) from the date of submission of KCM's monthly VAT return in respect of each prescribed accounting period.
- (iii) For the purposes of this Clause, "input VAT" shall mean VAT claimable in respect of allowable business purchases of goods and services supplied by a registered supplier during a prescribed accounting period.

(5) ***Relief from Withholding Tax***

KCM shall pay withholding tax on dividends, royalties and management fees to Shareholders or Affiliates at a rate of zero per cent. (0%) and on interest payments to Shareholders or their Affiliates, or any lender of money to KCM at a rate of zero per cent. (0%).

(6) ***Exemption from customs and excise duties and Royalties***

The aggregate of the value of the customs and excise duty payable in terms of paragraph 3(i)(b) above and the value of the Royalty payable in terms of paragraph 2(i)

above is exempt to the extent of sixteen million United States dollars in the first year following Completion and the sum of fifteen million United States dollars per annum inclusive of the four years thereafter.

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

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

SCHEDULE 8
WORKING SCHEDULE

Working example of the operation of Clause 2.3 of The Development Agreement -
deemed reduction of the Investment Commitment

A. Suspension

Assumptions

- there are only two shafts in operation - shaft Y and shaft Z
- the Investment Commitment is US\$208m and is to be spent as to US\$104m on shaft Y and \$104m on shaft Z
- the budgeted commitment at each shaft is US\$110m (i.e. a total budgeted commitment of US\$220m)
- suspension/curtailment (in the case of B) occurs at shaft Y and at the time of suspension/curtailment (in the case of B) (a) US\$75m has been spent at shaft Y (b) nothing has been spent at shaft Y.

Calculation (a):

The Investment Commitment is deemed reduced by

$$(110 - 75) \times \frac{208}{220} = \text{US\$33.09m}$$

Calculation (b):

The Investment Commitment is deemed reduced by

$$(110 - 0) \times \frac{208}{220} = \text{US\$104m}$$

B. Curtailment

Assumption - as above plus

- budgeted production at each shaft is 100 tons over the anticipated life of each of the shafts
- production is to be curtailed at shaft Y to 75 tons over the anticipated life of the shaft i.e. a 25% reduction in production

Calculation of deemed reduction in the Investment Commitment is

$$(110 - 75) \times \frac{208}{220} \times 25\% = \text{US\$8.27m}$$

SCHEDULE 9

THE RESETTLEMENT ACTION PLAN IS INCORPORATED HERE BY REFERENCE