

THE INDEPENDENT STATE OF PAPUA NEW GUINEA

and

RAMU NICKEL LIMITED

OROGEN MINERALS (RAMU) LIMITED

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MINING DEVELOPMENT CONTRACT  
RAMU NICKEL PROJECT

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THIS CONTRACT is dated the 26<sup>th</sup> day of July 2000 and is made between -

- (1) THE INDEPENDENT STATE OF PAPUA NEW GUINEA (hereinafter called the "State"); and
- (2) RAMU NICKEL LIMITED, a company incorporated in Papua New Guinea with its registered office at Level 9 Pacific Place, Musgrave Street, Port Moresby and OROGEN MINERALS (RAMU) LIMITED a company incorporated in Papua New Guinea with its registered office at Level 2, Ela Beach Tower, Musgrave Street, Port Moresby (the "Joint Venturers").

#### WHEREAS

- A. Promising indications of commercial deposits of minerals (nickel and cobalt) have been discovered in the area of the Exploration Licences and the Joint Venturers have applied for a Special Mining Lease.
- B. In order to maximise the benefits of the Project to the people of Papua New Guinea, development of the minerals within the Exploration Licences will be accompanied by the construction of associated processing facilities, including:
  - (i) a slurry pipeline from the mine site to the refinery at Basamuk on the Rai coast; and
  - (ii) the Basamuk refinery which will produce nickel and cobalt, together with associated power, port and other facilities to export this product.
- C. The State may exercise its right under the Exploration Licences to purchase up to a 30% interest in the mineral discovery and associated processing facilities in which case it may nominate Mineral Resources Development Company Limited ("MRDC") as the purchaser and the existing Joint Venturers, in proportion to their existing interests, will be obliged to sell that interest to MRDC.
- D. Under the Option Agreement dated 13 September 1996 between the State, MRDC and Orogen Minerals (Ramu) Limited ("Orogen"), Orogen has an option to acquire a 25% interest in the Project (including the associated processing facilities) from MRDC.
- E. Orogen has been given notice pursuant to Section 33 (3) of the Mining Act that the Head of State acting on advice may grant a Special Mining Lease for the development of a commercial mining project in the area of the Exploration Licences and Orogen may exercise its option to acquire a 25% interest in the Project from MRDC.
- F. The balance of the 30% interest in the Project may be purchased by MRDC, namely 5%, to be held by a subsidiary of MRDC for the future benefit of the Landowners.

- G. Development of the Project will be of major economic significance to the people of Papua New Guinea.
- H. The State wishes, subject to the provisions of Recital I, to ensure that the development of any commercial mineral deposits and associated processing facilities will secure the maximum benefit for, and adequately contribute to the advancement and the social and economic welfare of the people of Papua New Guinea, including the people in the vicinity of the Joint Venturers' operations, in a manner consistent with their needs and the protection of the environment.
- I. The State wishes to encourage the development of the mining and processing operations and the optimisation of its natural resources upon terms and conditions which, it is anticipated at the time of the execution of this Contract, will secure maximum benefits for the people of Papua New Guinea and secure to the Joint Venturers and their shareholders an appropriate return on investment commensurate with the risks involved.
- J. The State and the Joint Venturers have agreed on a number of matters which are set out in this Contract and which are to be an enduring arrangement of national interest and which are to be continuing legal and binding obligations of the State and the Joint Venturers (and their respective successors and permitted assigns) subject to alteration or termination only in the circumstances set forth in this Contract.

**NOW IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:**

**1. DEFINITIONS**

In this Contract, unless the context otherwise requires -

"Approved Financial Plan" means the plan submitted by a Joint Venturer and approved by the Secretary responsible for financial matters in accordance with Clause 9, which upon approval will form part of the Approved Proposals for Development;

"Approved Finance" means debt financing which is-

- (a) within the scope of a Joint Venturer's Approved Financial Plan; and
- (b) on terms and conditions which have been approved by the Central Bank in accordance with Clause 10,

but does not include any part of the Equity of the Joint Venturer;

"Approved Proposals for Development" means the proposals for development submitted by the Joint Venturers which have been approved by the Minister pursuant to Section 43 of the Mining Act, as such proposals may be modified, varied, amended or altered as permitted under this Contract;

"Approved Reduction of Capital" means:

- (a) where a Joint Venturer is a single purpose company, a reduction in its Equity (in accordance with the Companies Act 1997 in the case of a company incorporated in Papua New Guinea); or
- (b) where a Joint Venturer is a multi-purpose company, a reduction in the Equity of its Branch,

where the reduction is made in accordance with Clause 10.10 or 10.23;

"Branch" means the facilities and other resources of a multi-purpose company (whether incorporated in Papua New Guinea or elsewhere) that are used, fully or partially, for the Project and the costs of which are identified in the Branch Accounts;

"Branch Accounts" means accounts prepared on a quarterly basis, and in accordance with generally accepted accounting principles, which relate solely to a Joint Venturer's expenditure on, revenue from and financing of, the Project and which clearly identify head office advances, and the respective balances thereof, as Equity or Approved Finance;

"Central Bank" means the Bank of Papua New Guinea created pursuant to the Central Banking Act 2000 and its successors;

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

"Commencement of Commercial Production" means the day on which the aggregate production of Mine Products from the beneficiation plant reaches 80% of designed production capacity (as set out in the Approved Proposals for Development) for a continuous period of 30 days;

"Costs to Resume Operations" means one and two-tenths(1.2) times the costs (which includes the cost of new capital expenditures) required to resume Normal Operations plus one and two-tenths(1.2) times the sum of the Joint Venturers' estimate of:

- (a) royalties and mining levy,
- (b) Operating Costs, and
- (c) all other incidental costs,

necessary to continue Normal Operations for a further period of twelve months;

"Department" means the Department of Mining or such other department of the State as is for the time being responsible for mining matters;

"Effective Date" means the date on which this Contract was executed by the Parties, and in the event that it was executed by different Parties on different dates means the date on which it was executed by the Party who was the last Party to execute the same;

"Environmental Plan" means the environmental plan for the Project submitted under Section 4 (6) of the Environmental Planning Act (Chapter 370) and approved under that Act by the Minister responsible for environmental matters, which also forms part of the Approved Proposals for Development as such plan may be varied or amended as permitted under Clause 14;

"Equity" means:

- (a) where a Joint Venturer is a single purpose company, its issued ordinary shares (to the extent that they are paid up), its issued preference shares (to the extent that they are paid up and have been designated at the time of their issue as "equity" in a notice to the Central Bank) and its undistributed accounting profits; and
- (b) where a Joint Venturer is a multi-purpose company, non-interest bearing advances made by the head office to the Branch which are designated as "equity" or "branch capital" in a notice to the Central Bank and entered in the Branch Accounts so designated;

"Exploration Licences" means Exploration Licence No.193, Exploration Licence No. 1178 and Exploration Licence No 1247 granted pursuant to the Mining Act;

"Feasibility Study" means a study into the feasibility of the Project which forms part of the Approved Proposals for Development;

"Force Majeure" has the meaning given to that term in Clause 28.2;

"Foreign Currency Account" means an account denominated in a currency other than Kina and opened by a Joint Venturer with a bank which may be (at the discretion of the Joint Venturer) either in Papua New Guinea or outside Papua New Guinea;

"Foreign Exchange Regulations" means the regulations made pursuant to the Central Banking Act (Chapter 138);

"Income Tax Act" means the Income Tax Act 1959;

"Joint Venturers" means the second parties to this Contract and includes any permitted assigns or successors of the rights and obligations of any of them;

"Joint Venture Agreement" means the agreement dated 21 January 2000 as subsequently amended, which as a result of various assignments and accessions is now between the Joint Venturers and may later include such other parties as may

acquire an interest in the Project, relating to the way in which exploration, mining and processing operations shall be conducted under this Contract;

"Land Act" means the Land Act 1996;

"Landowners" means members of any landowning group, which has its origin in the Madang Province and owns land within the Special Mining Lease, mining leases, lease for mining purposes and mining easements and other tenements related to the Project that have been granted, and whose customary ownership of that land has been verified by the District Officer Lands for the Madang Province;

"Local Level Government" means the Usino, Bundi, Astrolabe Bay and Rai Coast Local Government Councils;

"Manager" means the person from time to time appointed, with the consent of the State, by the Joint Venturers to conduct operations pursuant to the Joint Venture Agreement;

"Mine Products" means the ores or concentrates or other minerals produced from the area of the Special Mining Lease and all refinery products from the Refinery;

"Minister" means the person for the time being entitled to exercise the powers of the Minister under the Mining Act ;

"Mining Act" means the Mining Act 1992;

"Mining Area" means the area within the Special Mining Lease;

"Mining Equity Agreements" means the agreements under which Orogen and a MRDC subsidiary may acquire their interests in the Project;

"Mining Operations" means the exploration, development and mining operations carried on by the Joint Venturers within the Exploration Licences and the Mining Area;

"Normal Operations" means the operation of the Project carried on in accordance with the Approved Proposals for Development;

"Operating Costs" for any period means the costs incurred by the Joint Venturers during Normal Operations excluding depreciation and other non-cash costs and financing charges;

"Parties" means the persons who are for the time being original parties to this Contract or parties added or substituted pursuant to Clause 21 and "Party" means any one of them;



"Processing Operations" means those parts of the Project which are not Mining Operations, and includes the transporting of the beneficiated ore from the Mining Area to the Refinery through the slurry pipeline and the refining of the ore to produce nickel and cobalt at the Refinery;

"Project" means the mining and any processing development contemplated by this Contract and described in the Approved Proposals for Development;

"Project Area" prior to the time when the leases referred to in Clauses 3.1 and 3.2 are granted means the area of the Exploration Licences and thereafter means all areas included in the leases, easements, licences, rights and grants referred to in Clauses 3.1 and 3.2.

"Project Assets" means:

- (a) the Special Mining Lease and any other leases issued pursuant to the Mining Act for Project purposes;
- (b) all other leases, rights, permits, licenses, grants, authorisations and approvals referred to in Clauses 3.1 and 3.2 which are required for the Project;
- (c) all plant, buildings, installations, infrastructure and other facilities located on the Special Mining Lease or on any other lease from the State under the Mining Act or under the Land Act which are required for the Project (subject to the terms of such a lease); and
- (d) all other property (tangible or intangible) and assets in Papua New Guinea held by the Joint Venturers for the purposes of the Project (including ore in process and Mine Products produced by the Project);

"Provincial Government" means the Madang Provincial Government;

"Quarter"; means -

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

"Refinery" means the refinery to be constructed at Basamuk in the Madang Province which will produce nickel and cobalt;

"Related Corporation" means a related corporation as defined in Section 2 of the Companies Act 1997;

"Sole Expert" means a person appointed by agreement between any two or more Parties to resolve any difference of view or disagreement between them and in the event the Parties in dispute fail to agree on the person to be so appointed, such appointment shall be made by the Chairman of the Administrative Council of the International Centre for the Settlement of Investment Disputes, provided that the person so appointed, whether by agreement or otherwise, does not by virtue of nationality, personal connection or commercial interests have a conflict between his own interest and his duty as a sole expert to act impartially;

"Special Mining Lease" means the special mining lease (or leases) and any renewals thereof, granted under the Mining Act to the Joint Venturers pursuant to Clause 3;

"Speculative Currency Transaction" means a transaction involving the purchase or sale of Papua New Guinea 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 in respect of anticipated purchases or sales of goods and services or loan obligations denominated or payable in foreign currency in accordance with the guidelines issued from time to time by the Central Bank;

"State" means the first party to this Contract and includes any authorised agent of the State;

"Test Date" means 30 June and 31 December each year; and

"Training and Localisation Programme" means the training and localisation programme prepared by the Manager pursuant to and in accordance with the Employment of Non-citizens Act (Chapter 374) and the guidelines for training plans, which also forms part of the Approved Proposals for Development, as such programme may be amended or altered as permitted under Clause 15.

## 2. INTERPRETATION

### 2.1 General

In this Contract, unless the context otherwise requires -

- (a) monetary references are references to Papua New Guinea currency unless otherwise specifically expressed;
- (b) the headings and subheadings do not affect the interpretation or construction;
- (c) reference to an Act includes the amendments to that Act for the time being in force and also to any Act passed in substitution therefor and any regulations for the time being in force thereunder;
- (d) words and expressions which have a certain meaning in the Foreign Exchange Regulations or the Income Tax Act, as the case may be, are used with the same meanings in this Contract;

- (e) words importing the singular include the plural and vice versa;
- (f) words importing any gender include the other gender;
- (g) references to a person include a partnership, firm or corporation and any instrumentality of the State; and
- (h) the recitals form part of this Contract.

## 2.2 Joint and Several Obligations

Any covenant or agreement on the part of the Joint Venturers made pursuant to this Contract (including any covenant or agreement made by all the Parties) shall, unless otherwise provided, or the context otherwise requires, be read and construed as a covenant or agreement by all of the Joint Venturers jointly and each of them severally. For the avoidance of doubt, the following obligations, to the extent that they arise from covenants or agreements of the Joint Venturers in this Contract, are several ( and not joint and several) obligations of the Joint Venturers:

- (a) obligations to pay income tax or any other tax, duty, charge or impost payment (other than royalty) which is not included in any joint venture budget or funded by cash calls on the Joint Venturers under the Joint Venture Agreement;
- (b) obligations under Clause 9 with respect to the submission of a financial plan and the maintenance of a debt to Equity ratio;
- (c) obligations under Clause 10 with regard to accounts, dividends, currency, reporting, and other matters;
- (d) obligations under Clause 11 with regard to sale or other disposition of Mine Products;
- (e) obligations under Clause 13 with regard to the Investment Promotion Authority certification;
- (f) obligations arising as a consequence of termination under Clause 22, but not including:
  - (i) any obligation to pay moneys under Clause 22.1(b) which arises in respect of an obligation which is a joint and several obligation of the Joint Venturers; and
  - (ii) any obligations arising under Clause 22.1(e);
- (g) obligations under Clause 23 with regard to assignment; and
- (h) obligations with regard to arbitration under Clause 25, but not including an obligation arising out of arbitration proceedings which relate to an

obligation or liability which is a joint and several obligation or liability of the Joint Venturers.

### 3. LEASES AND OTHER RIGHTS FOR MINING DEVELOPMENT

#### 3.1 State's Obligations to Grant

Subject to the requirements of law and compliance with procedures under the Mining Act, the Land Act and other applicable laws, the State will -

- (a) on or within one month after the Effective Date, grant to the Joint Venturers as tenants in common the Special Mining Lease, in accordance with the form of lease annexed as Schedule I;
- (b) within two months after the application by the Joint Venturers or within two months after the Effective Date, whichever is later, grant to the Joint Venturers as tenants in common such of the following as may be reasonably required for the purpose of carrying out the Project:
  - (i) a mining lease for the mining of limestone near the Special Mining Lease, other mining leases, leases for mining purposes, mining easements, rights, permits, licences and grants pursuant to the Mining Act;
  - (ii) leases, rights, permits, licences and grants pursuant to the Land Act; and
  - (iii) leases, rights, permits, licence and grants pursuant to legislation other than the Mining Act and the Land Act, including in particular the grant of water use permits allowing the extraction of water in sufficient quantities to meet the needs of the Mining Operations and the Processing Operations, and the discharge of tailings from the Processing Operations into the sea.

#### 3.2 Provincial and Local-level Governmental Approvals

If the Joint Venturers require any lease, right, permit, licence, grant, authorisation or approval of the Provincial Government or Local-level Government, for the construction or operation of the Project in accordance with the Approved Proposals for Development, the Joint Venturers, shall make application therefor to the responsible authorities within the Provincial Government or Local-level Government. Recognising that discretion and/or authority with respect to such matters rest with the Provincial Government or Local-level Government, the State shall nonetheless, at the request of the Joint Venturers to the extent the applicable law permits, use its good offices to assist in obtaining such lease, right, permit, licence, grant, authorisation or approval.

### 3.3 Modifications or Variations

If, in accordance with Clause 31, the Joint Venturers modify or vary the Approved Proposals for Development and such modification or variation is approved or deemed approved by the State, the Joint Venturers may apply for and (subject to the requirements of law and compliance with procedures under the Mining Act, the Land Act and other applicable laws) the State shall, within two months of the date of application, grant or cause to be granted to the Joint Venturers any additional special mining lease, lease, right, permit, licence, grant or approval or allow variations to any existing special mining lease, lease, right, permit, licence, grant or approval required to give effect to any such modification or variation to the extent that they are reasonably required for the purpose of carrying out the Project.

### 3.4 Landowner Compensation

The Joint Venturers, after consultation with the State, shall negotiate a relocation agreement and a compensation agreement covering the relocation of and compensation or costs payable to the Landowners as a result of the use of the area of land covered by the Special Mining Lease and other necessary leases, rights, permits, licences, and grants, which compensation and costs shall be borne by the Joint Venturers. If requested by the Joint Venturers, the State shall use its good offices to assist the parties to conclude the negotiation of the compensation agreement on fair and reasonable terms. During the life of such a compensation agreement:

- (a) the Joint Venturers will, in a timely manner, report to the State any circumstances, happenings or events which might lead to disputes relating to compensation and relocation or the orderly implementation of the agreement; and
- (b) the State will use its best endeavours to ensure that the institutions established for the management and resolution of land disputes will be able to carry out their duties so that any such disputes between the Joint Venturers and the landowners, or between the Landowners themselves, are settled in an orderly and expeditious fashion in accordance with such agreements and the applicable law, and will upon request of the Joint Venturers use its good offices to help ensure that the compensation and relocation agreements are respected by the Landowners.

### 3.5 Content, Form and Term of Leases etc.

The leases, rights, permits, licences and grants referred to in Clauses 3.1 and 3.2, shall contain -

- (a) in the case of the Special Mining Lease, such terms and conditions in the form appearing in Schedule I; and

- (b) in any other case, such terms and conditions as are fair and reasonable to the Joint Venturers, which may include, where applicable, provisions that -
- (i) Joint Venturers shall not, without the consent of the State, which consent shall not be unreasonably withheld, use the land for any purpose other than that for which it was granted;
  - (ii) the Joint Venturers shall construct or provide improvements substantially as specified in the Approved Proposals for Development or as otherwise agreed between the Joint Venturers and the State;
  - (iii) the leases, rights, permits, licences and grants will terminate on the earlier of the termination of this Contract and the Special Mining Lease, subject to any need for any of them to continue to permit rehabilitation and the processing on a contract basis of ore from other projects in Papua New Guinea or from overseas after mining on the Special Mining Lease has ceased; and
  - (iv) the Joint Venturers shall use their best efforts to accommodate traditional land uses to the degree that such uses are consistent with economic, efficient, safe mining practices and do not interfere with the construction and operation of the Project in accordance with the Approved Proposals for Development.

### 3.6 Leases etc as required for the Project

The leases (other than the Special Mining Lease), rights, permits, licences, and grants to which the Joint Venturers are entitled under this Clause will be drawn up in a form and on terms which will ensure that the land to which these leases, rights, permits, licences and grants relate may be used by the Joint Venturers in a manner which will enable them to carry out the Project in accordance with the Approved Proposals for Development.

## 4. PROJECT IMPLEMENTATION

### 4.1 Joint Venturer's Obligations

Subject to and following upon:

- (a) the grant of the Special Mining Lease; and
- (b) the approval of each Joint Venturer's Financial Plan,

the Joint Venturers, using their best efforts, shall:

- (c) construct, install and provide all such plant, equipment, prepared sites and facilities of the design and capacity specified in the Approved Proposals for Development; and

(d) commence Normal Operations.

#### 4.2 Progress Reports

Until the Commencement of Commercial Production, the Joint Venturers through the Manager, shall supply on a quarterly basis a progress report to, and meet with, the Department.

#### 4.3 Liaison Office

The Joint Venturers through the Manager shall maintain a liaison office in Port Moresby until the Commencement of Commercial Production and will, during the life of the Project, designate a representative located in Papua New Guinea who will be responsible for ensuring the implementation of the provisions of this Contract relating to supply and procurement.

#### 4.4 Contractors and Subcontractors

The Joint Venturers shall ensure that their contractors and subcontractors are legally bound to comply with the provisions of this Contract insofar as such provisions are applicable to them. Without limiting the generality of the foregoing the Joint Venturers shall ensure that their contractors and subcontractors shall comply with approved Training and Localisation Programme and Business Development Plan of the Joint Venturers.

#### 4.5 Expatriate Workers

Subject to:

- (a) the requirements of law and national security; and
- (b) compliance with procedures under the Migration Act (Chapter 16) and other laws of general application relating to the entry of non-citizens into Papua New Guinea and their employment within the country;

the State covenants that it will expeditiously approve the job descriptions for expatriate workers in accordance with the approved Training and Localisation Programme and grant permits and multiple-entry visas, as required, for the entry and re-entry of expatriate workers (and their dependants) whose job descriptions have been approved.

### 5. INFRASTRUCTURE FACILITIES

#### 5.1 Works and Facilities

In this Clause, "Works and Facilities" means any of the installations and infrastructure specified in the Approved Proposals for Development for use of the Joint Venturers and which are capable of being used by the State but shall not include:



- (a) administrative buildings and buildings and other improvements allocated for the accommodation of the Joint Venturers' employees and their families;
- (b) installations and infrastructure directly used in the mining and processing of ore including, without limitation, the slurry pipeline from the Mining Area to the Refinery, the wharf and the power station ; or
- (c) roads (other than existing public access routes) constructed for and on behalf of the Joint Venturers and situated within the Mining Area or the lease upon which the Refinery is situated.

#### 5.2 State's Election to provide Works and Facilities

Within sixty days of the Effective Date, the State may, by notice to the Joint Venturers, elect to provide the costs, or part thereof, of any Works and Facilities. The State may further elect to recoup such costs by the payment to the State of a charge which shall be agreed between the State and the Joint Venturers. Such charge will allow for the recoupment over a reasonable period of the amount of such costs provided by the State, together with a reasonable return thereon. Such return will be determined having regard to the State's expected risk in outlaying the funds for the Works and Facilities and the cost of borrowing such funds as are required. If the amount of such charge cannot be agreed, it shall be determined by a Sole Expert.

#### 5.3 Transfer of Works and Facilities

At any time after the Commencement of Commercial Production, but subject to Clause 5.4, the State may, by notice, require the Joint Venturers to transfer to the State their ownership of any Works and Facilities. As soon as practicable after such notice, the Joint Venturers shall do all things necessary to transfer to the State their title to the Works and Facilities. Upon vesting title in the State, the Joint Venturers shall cease to have any liability or risk in respect of these Works and Facilities except so far as they continue to manage them and except for any liability which may have accrued prior to the date of transfer to the State. The Joint Venturers shall at all times have first priority of use of such Works and Facilities and that the State's ownership shall not unreasonably interfere with the use of such Works and Facilities by the Joint Venturers.

#### 5.4 Payment for Works and Facilities

Where the State requires the Joint Venturers to transfer to it any Works and Facilities as provided in Clause 5.3:

- (a) upon transfer of title, the State shall pay to the Joint Venturers a purchase price equal to the then residual value after tax depreciation of their interest in the Works and Facilities. The purchase price shall be paid in annual instalments commencing at the end of the financial year in which title was transferred, and shall be equal to the sum of the annual amounts of



depreciation that each Joint Venturer could have claimed as a deduction allowable under the Income Tax Act. The State shall ensure that the annual instalment payment is a capital receipt and will not constitute assessable income under the Income Tax Act; and

- (b) for so long as the State makes the payments under Clause 5.4 (a), the Joint Venturers shall pay to the State on the day of the receipt of an annual instalment under Clause 5.4 (a) a facilities user charge equal to such instalment. The State shall ensure that the facilities user charge will constitute a deemed outgoing pursuant to Section 68 of the Income Tax Act.

#### 5.5 Management and Maintenance

If, at any time, the State acquires or provides any Works and Facilities or part thereof under this Contract, the State may either:

- (a) require the Joint Venturers at their own cost to manage and maintain those Works and Facilities to a reasonable standard provided that the State shall pay its equitable proportion of such costs; or
- (b) assume responsibility for maintaining such Works and Facilities to a reasonable standard and charge the Joint Venturers a maintenance charge to cover an equitable proportion of the costs of maintenance and the direct costs of operating such Works and Facilities.

In either case the equitable proportion shall be determined on the basis of the proportionate use of the Works and Facilities by the Joint Venturers and other users. If the equitable proportion cannot be agreed it shall be determined by a Sole Expert.

#### 5.6 Proper Standard

Where the State has provided or acquired Works and Facilities pursuant to this Contract and fails to properly maintain same, the Joint Venturers may, without prejudice to any other rights they may have, after giving no less than ten days' notice to the State, carry out such work as is necessary to bring such Works and Facilities up to the proper standard required for the purposes of the Project and set off the expense incurred against the maintenance charge payable under Clause 5.5 (b). The Joint Venturers may carry out such work immediately in the case of emergency, giving notice to the State thereafter.

#### 5.7 Sale of Electricity

If:

- (a) the Approved Proposals for Development provides for the Project electric power supply facilities to generate electric power in excess of the Project's needs in order to meet local rural requirement; or

- (b) subsequent to the Approved Proposals for Development, the Joint Venturers decide that the Project electric power supply capacity exceeds the needs of the Project at any time;

and the Electricity Commission makes an Order under Section 31 of the Electricity Commission Act (Chapter 78) permitting the sale of electricity to other users, the Joint Venturers shall sell to the appropriate governmental agency such excess electricity produced by the facilities for resale and distribution to rural electrical loads. The Joint Venturers shall under no circumstances be required to increase the capacity of its electric power supply facilities or transmission facilities beyond that required by the Approved Proposals for Development to meet the needs of any other users or to construct or maintain any off-site grid or distribution system. The price of electricity to be purchased by the appropriate governmental agency shall be negotiated between the Joint Venturers and such governmental agency and shall be subject to the approval of the Electricity Commission. The approved price and formula for future adjustments will be included in the Order issued by the Electricity Commission.

#### 5.8 Telecommunications

The State shall ensure that Telikom PNG provides data-quality international telecommunication facilities for the Project in accordance with the Approved Proposals for Development. The State shall, through Telikom PNG or other responsible agency, charge the Joint Venturers for the supply of telecommunication services either at the tariff rate specified in the Approved Proposals for Development or such reasonable commercial rate as is agreed to between Telikom PNG and the Joint Venturers.

#### 5.9 Third Party Access

Third parties will be permitted by the Joint Venturers to use the Works and Facilities which they own, operate and maintain, but only if such use will not adversely affect the Joint Venturers' use or intended use thereof. Such Works and Facilities will continue to be managed by the Joint Venturers and the Joint Venturers will have the priority use thereof over all other users. The Joint Venturers may charge a reasonable fee to allow third parties to use the Works and Facilities. Third parties will also be permitted to use any of the Works and Facilities vested in the State but managed and maintained by the Joint Venturers under Clause 5.5(a) ( but only if such use will not adversely affect the Joint Venturers' use or intended use thereof) and in those circumstances the costs will be shared in accordance with Clause 5.5 and the Joint Venturers shall not charge the third parties any fee for use.

#### 5.10 Title to Interest in Property

Except as otherwise provided in this Clause, nothing in this Clause shall take effect to divest the Joint Venturers of their title to or interest in any property or to require the Joint Venturers to transfer same to the State.

## 6. RATES AND DUTIES

### 6.1 Right to Import and Export

Subject to:

- (a) any requirement of defence and the safety of the public and quarantine;
- (b) the obligations of the State pursuant to multilateral international agreements to which the State is a party;
- (c) any general, non-discriminatory determination by the National Executive Council of the State notice of which has been given to the Joint Venturers that the import of goods from a particular place or the export of Mine Products to a particular place is not permitted; and
- (d) Clause 16;

the State shall ensure that the Joint Venturers, and the agents and contractors of the Joint Venturers shall have the right to acquire, import into and move within Papua New Guinea and use any plant, machinery, equipment, temporary buildings and structures, vehicles, explosives, fuels, reagents, supplies, materials and any other assets:

- (e) required for the construction, installation, provision, expansion, maintenance or operation of any of the facilities required for the Project; or
- (f) otherwise required for the purposes of the Project;

and to export from Papua New Guinea -

- (g) subject to Clause 22.1(c), any plant, machinery, equipment, temporary buildings and structures, vehicles, explosives, fuels, reagents, supplies, and any other asset imported into Papua New Guinea for the construction, installation, provision, expansion, maintenance or operation of any of the facilities required for the Project; and
- (h) subject to Clause 11.1, the Mine Products resulting from the operation of the Project.

### 6.2 Export Taxes and Duties

The State covenants to reimburse the Joint Venturers for any rate, tax, charge, due, duty, excise, tariff or other levy (except the royalty on Mine Products and the mining levy on assessable income from mining operations) imposed by the State, any province or local-level government and applied to, or payable by, the Joint Venturers in respect of the export from Papua New Guinea by the Joint Venturers of Mine Products.

### 6.3 Import and Excise Duties

The State shall ensure that, until the Commencement of Commercial Production, all goods within the tariff classification items specified in Schedule II which are imported by or on behalf of the Joint Venturers or any contractor or subcontractor and are to be used or consumed in the construction of the facilities for the Project will be free of import duty.

If necessary, the State shall promulgate exemptions under the Customs Tariff Act 1990 for this purpose. If at any time the relevant duty exemptions are not in force, the State covenants to reimburse the Joint Venturers for any import duty paid on the goods covered by this clause.

### 6.4 Discriminatory Taxes and Duties

In addition and without prejudice to the provisions of Clause 27, the State covenants to reimburse the Joint Venturers:

- (a) for any payment made by them in connection with the Project (including payments made by any of them pursuant to an obligation to reimburse employees) on account of any rate, tax, rent, charge, due, duty, excise, tariff or other levy by the State, any province or local-level government;
- (b) for any withholding tax on, or compulsory deduction of equivalent effect from, dividends or interest payable by the Joint Venturers to any registered or beneficial holders of shares in the Joint Venturers or to any lenders of Approved Finance; and
- (c) for any costs incurred by them to the extent that such costs arise as a result of any law, statute, regulation or enactment of the State, any province or local-level government,

to the extent that any of the above discriminates (either specifically or as a result of the way it applies) against the Joint Venturers in respect of either its Mining Operations or its Processing Operations under this Contract or against their employees.

### 6.5 Payment of Reimbursement

Any amount owed to the Joint Venturers in respect of reimbursement pursuant to Clause 6.2, 6.3 or 6.4 shall be paid by the State not later than one (1) month following the making of the payment in respect of which reimbursement is due, together with interest on the amount of any such payment from the date paid until so reimbursed by the State at the same rate per annum as is payable from time to time by the State on its 30-day treasury bills, failing which any amount owed pursuant to this clause shall be recoverable by credit against other taxes or duties due and payable to the Commissioner General of Internal Revenue.

## 7. VALUE ADDED TAX

### 7.1 Application of VAT

For purposes of the Value Added Tax Act 1998, the State shall ensure that:

- (a) the export of Mine Products from the Project is zero-rated;
- (b) until the Commencement of Commercial Production, value added tax levied on the importation of any plant, machinery, equipment, temporary buildings and structures, vehicles, explosives, fuels, reagents, supplies, materials and other assets which are imported into Papua New Guinea by or on behalf of the Joint Venturers or any contractor or subcontractor solely for the purpose of the Project will not be payable until the 21<sup>st</sup> day of the month following the month in which the importation occurs; and
- (c) notwithstanding that the payment of value added tax is deferred in accordance with paragraph (b), those imported goods are entered for home consumption under the Customs Act (Chapter 101 of the PNG Revised Laws) and released to the Joint Venturers, contractor or subcontractor (as the case may be) without delay.

### 7.2 Recovery of VAT

Where as a result of the Value Added Tax Act 1998 or Clause 7.1 an amount is due to the Joint Venturers or any contractor or subcontractor as a refund of value added tax paid or borne, that amount may be recovered by the Joint Venturers, contractor or subcontractor (as the case may be) by way of:

- (a) monthly refund from the Commissioner General of Internal Revenue; or
- (b) credit against other taxes or duties due and payable to the Commissioner General of Internal Revenue,

and in either case may be set off against further value added tax due and payable pursuant to Clause 7.1(b).

## 8. FISCAL PROVISIONS

### 8.1 Ring Fencing of Mining Operations

The State shall ensure that, for taxation purposes only, the Mining Operations will be considered and treated as a mining project for the purposes of Part III Division 10, especially Subdivision CA of the Income Tax Act and the Processing Operations will be considered and treated separately, and that as a result:

- (a) the value (as determined in accordance with Clause 8.2) of the beneficiated but unrefined ore from the Special Mining Lease, at the input flange of the

slurry pipeline will be deemed to be assessable income from mining operations for each of the Joint Venturers;

- (b) allowable exploration expenditure incurred by each of the Joint Venturers in relation to the Mining Operations will be deductible against that assessable income from mining operations;
- (c) allowable capital expenditure incurred by each of the Joint Venturers in relation to the Mining Operations will be deductible against that assessable income from mining operations;
- (d) the calculation of net cash receipts for additional profits tax purposes will be done for each Joint Venturer on the basis of its receipts from and outgoings in respect of the Mining Operations.
- (e) income from the sale of the Mine Products from the Project's refinery will be assessable income for each of the Joint Venturers under the general provisions of the Income Tax Act;
- (f) the value (as determined in accordance with Clause 8.2) of the beneficiated but unrefined ore from the Special Mining Lease, at the input flange of the slurry pipeline, will be deemed to be a deductible outgoing incurred by each of the Joint Venturers in carrying on business for the purpose of gaining or producing the assessable income referred to in paragraph (e);
- (g) without limiting the application or generality of provisions in the Income Tax Act, expenditure on:
  - (i) facilities for carrying on the Mining Operations;
  - (ii) the beneficiation plant to be constructed adjacent to the Mining Operations;
  - (iii) the housing and related infrastructure to be provided in Madang for persons employed in the Mining Operations; and
  - (iv) the access roads, bridges and transport infrastructure necessary for or associated with the Mining Operations,

will be accepted and treated as allowable capital expenditure and be deductible as such, or will be deductible as depreciation (including where applicable, accelerated depreciation), against assessable income from the Mining Operations;

- (h) without limiting the application or generality of provisions in the Income Tax Act, expenditure on:
  - (i) facilities for carrying on the Processing Operations;

- (ii) facilities for the provision of power, water and other utilities required by the Refinery;
- (iii) the housing and related infrastructure to be provided for persons employed in the Processing Operations; and
- (iv) the marine facilities (including the wharf and storage) associated with the Refinery,

will be deductible against assessable income from the Processing Operations either as an allowable deduction in the year in which the expenditure is incurred or as depreciation (including, where applicable accelerated depreciation); and

- (i) expenditure on the limestone mining operations will be deductible against assessable income from the Processing Operations as allowable capital expenditure under Part III Division 10.B of the Income Tax Act.

## 8.2 Transfer Price

The transfer price, being the value at which the beneficiated but unrefined ore from the Special Mining Lease is deemed to be transferred from the Mining Operations to the Processing Operations for the purposes of Clause 8.1, will be determined quarterly in accordance with the following formula:

$$TP = PR \times \frac{MOC + MD}{TOC + TD}$$

Where:

- TP = Transfer Price
- PR = Project Revenues, being the net revenues for the Project as a whole from the sale of Mine Products derived from the Mining Area, based on the sale price of the recoverable metal less all marketing, selling and freight costs.
- MOC = Mining Operating Costs, being the operating costs of the Mining Operations
- TOC = Total Operating Costs, being the aggregate operating costs of both the Mining Operations and the Processing Operations
- MD = Mining Depreciation, being the accounting or book depreciation of all the depreciable assets (including assets the value of which is

deductible as allowable exploration expenditure or allowable capital expenditure) used in Mining Operations.

TD = Total Depreciation, being the aggregate accounting or book depreciation of all the depreciable assets used in the Project as a whole.

### 8.3 Income Tax

Subject to and in accordance with Clauses 8.1 and 8.2, each of the Joint Venturers will be subject to dual assessment of its income from the Project, and shall submit separate tax returns, in respect of:

- (a) its taxable income from mining operations on the Special Mining Lease; and
- (b) its other taxable income derived from the Project.

### 8.4 Additional Profits Tax

Subject to and in accordance with Clauses 8.1 and 8.2, the taxable additional profits derived by each of the Joint Venturers from the Mining Operations will be determined in accordance with the Mining Division of the Income Tax Act (presently Division 10 of Part III in particular Subdivision D).

### 8.5 Royalty

Each of the Joint Venturers will be liable to pay royalty on its "net smelter returns", which will be determined in accordance with Section 107 of the Mining Act (Chapter 195) as continued in force by the transitional provisions of the Mining Act.

### 8.6 Tax Remittance

The Manager on behalf of the Joint Venturers will maintain US dollar denominated accounting books and records for the Project, and on the basis of these each Joint Venturer will prepare its tax returns in relation to the Project in US dollars. The State shall ensure that the Commissioner General of Internal Revenue assesses the income tax and additional profits tax (if any) for each Joint Venturer in relation to the Project in US dollars and arrangements are made to allow each Joint Venturer to pay such tax in US dollars.

## 9. FINANCING OF THE PROJECT

### 9.1 Submission of Financial Plan

Each Joint Venturer shall submit to the State and the Central Bank its financial plan for financing its participation in the Project. The financial plans will:



- (a) set out in full detail the manner in which the Joint Venturer intends to finance the cost of its participation in the Project through to Commencement of Commercial Production, including a reasonable provision for working capital to maintain Normal Operations;
- (b) identify capital to be used by the Joint Venturer for this purpose as Equity and/ or debt, as the case may be, and the ratio of debt to Equity which will not exceed 3:1;
- (c) identify sources of the proposed debt finance and the terms and conditions of such debt finance, including in particular the cost of funds (identifying all fees, charges and commissions as well as interest rates and or interest margins);
- (d) describe the security to be provided for the financing; and
- (e) identify the Joint Venturer's need for Foreign Currency Accounts.

## 9.2 Consideration and Approval of Financial Plan

The State shall ensure that its department responsible for financial matters and the Central Bank give expeditious consideration to the financial plan and requests for any further information required from the Joint Venturer. The State may by notice to the Joint Venturer request a revised financial plan if the one submitted by the Joint Venturer does not comply with the provisions of the Contract or otherwise does not commercially or economically satisfy the State or the Central Bank. Within one (1) month after the date of receipt from the Joint Venturer of:

- (a) the financial plan or revised financial plan; and
- (b) such further information as may have been reasonably requested,

the State shall notify the Joint Venturer whether or not it has been approved by the Secretary of the department responsible for financial matters. If it has not been approved, but the Joint Venturer is of the view that it provides for the financing of its participation in the Project in a manner which is commercially and economically reasonable, the Joint Venturer may require the decision to be reviewed jointly by the Secretary for the department responsible for financial matters and the Governor of the Central Bank and a recommendation to be made to the Minister responsible for financial matters for a binding decision, within a further period of one (1) month.

## 9.3 Maintenance of Debt: Equity Ratio

Each Joint Venturer shall ensure that, on each successive Test Date, the outstanding balance of its Approved Finance (converted into Kina from the currency of drawdown at the rate which is the average of the buying and selling rates quoted for the currency by Australia and New Zealand Banking Group

(PNG) Limited at 11:00 am on the date of each drawdown) does not exceed seventy five percent (75%) of the Joint Venturer's share of the sum of-

- (a) allowable exploration expenditure, allowable capital expenditure and expenditure on any plant or article in respect of which an election has been made under Section 163AW of the Income Tax Act incurred by the Joint Venturers on the Project;
- (b) expenditure on the slurry pipeline, the Refinery and other transportation and processing facilities;
- (c) any net trade debt owing to the Joint Venturers in the ordinary course of business in respect of operations of the Project; and
- (d) the value of the uninvoiced inventory of the Joint Venturers held in the ordinary course of business in respect of operations under the Project.

Expenditure by the Joint Venturer on the Project, that falls outside the scope of Approved Finance as permitted by this subclause, will be financed by Equity.

## 10. CURRENCY AND EXCHANGE CONTROL

### PART A

#### 10.1 Application and Definitions

This Part A of Clause 10 applies to any Joint Venturer which is a single purpose company incorporated in Papua New Guinea. In this Part:

"Accounting Profits" means the Joint Venturer's book profits, calculated in accordance with generally accepted accounting principles and arrived at after deduction of:

- (a) in relation to each Year of Income, the Income Tax and Additional Profits Tax which have been paid or will be payable by the Joint Venturer on its income from the Project for that year; or
- (b) in relation to an interim period prior to the finalisation of the annual accounts, the Income Tax and Additional Profits Tax which would be payable by the Joint Venturer in respect of the income from the Project derived by the Joint Venturer during that period on the basis that the Joint Venturer continued to derive income during the whole of the year of income of which the period forms a part, at the same daily average rate as in that period;

"Approved Dividends" means dividends of the Joint Venturer which have been approved by the Central Bank pursuant to Clause 10.4(a); and

"Distributable Profits" means in relation to any date of determination, the sum of a Joint Venturer's current year's undistributed Accounting Profits plus its retained earnings as of that date.

#### 10.2 Foreign Currency Accounts

In accordance with the provisions of this Clause 10, the Joint Venturer shall apply to the Central Bank for authority to maintain Foreign Currency Accounts. The Central Bank shall approve those Foreign Currency Accounts which are required by the Joint Venturer's Approved Financial Plan. Funds in such accounts may be invested in such liquid or marketable financial instruments (other than in instruments of the Joint Venturer or its Related Corporations) as the Joint Venturer may elect and the earnings in such financial instruments shall be treated for the purpose of this clause as if they were earnings from the sale of Mine Products for export from Papua New Guinea.

#### 10.3 Approved Finance

- (a) Within the scope of the Approved Financial Plan and the required 3:1 debt to Equity ratio, the State shall procure all the necessary authorities and approvals for the following arrangements to be treated as Approved Finance:
  - (i) loans to be used exclusively for the purpose of financing the Project or Normal Operations, which are on terms no less favourable to the Joint Venturer than those generally available from banks and financial institutions lending to similar mining projects in terms of risk and location, and any refinancing of such loans on similar or more favourable terms, provided that loans to a Joint Venturer from a Related Corporation will be on terms (including interest rate and fees) which are no more favourable to the Related Corporation than terms given to third party lenders of equally ranking loan); and
  - (ii) issues of redeemable preference shares at par to finance major capital expenditure on the Project, which is within the Approved Proposals for Development, where the dividend rate on such shares is no more than the market rate of interest at that time for secured loans to the Project and other projects comparable to the Project in terms of risk and location.
- (b) The Joint Venturer shall not at any time give notice to the Central Bank designating the redeemable preference shares referred to in paragraph (a) above as Equity.
- (c) Preference shares constituting Equity of the Joint Venturer once designated as such shall not at any time thereafter be converted into, or deemed to be, Approved Finance.

- (d) Within thirty (30) days of each Test Date the Joint Venturer shall submit to the Central Bank:
- (i) a statement showing the balance of Approved Finance as of the preceding Test Date (if any) expressed in US Dollars;
  - (ii) a schedule of drawdowns and repayments of Approved Finance made prior to the Test Date and after the preceding Test Date (if any), detailing the foreign currency (and if necessary the US Dollar equivalent amount) and date of each drawdown and repayment; and
  - (iii) cumulative figures expressed in US Dollars for each of the categories of expenditure described in Clause 9.3 certified by a duly authorised officer of the Joint Venturer as having been derived in accordance with the last audited profit and loss statement.

#### 10.4 Distributable Profits

- (a) Before paying any dividend to a shareholder outside Papua New Guinea, the Joint Venturer shall present to the Central Bank a full set of audited profit and loss statements and balance sheet with accompanying notes which :
- (i) have been certified by a duly authorised officer of the Joint Venturer as having been prepared in accordance with generally accepted accounting principles; and
  - (ii) show that there are Distributable Profits in respect of which, or in respect of part of which, the dividends are to be declared.
- (b) Within a period of two (2) weeks the Central Bank may, if on reasonable grounds it is not satisfied that there are Distributable Profits out of which the dividend is to be paid, require the Joint Venturer to submit an audited profit and loss statement showing that there are sufficient Distributable Profits.

#### 10.5 Approved Dividends

- (a) A dividend of the Joint Venturer payable to a shareholder resident outside Papua New Guinea which is :
- (i) one of a series of dividends declared not more frequently than once each Quarter; and
  - (ii) payable directly or indirectly out of Distributable Profits in respect of which, or in respect of part of which, that dividend has been declared and cleared for taxation purposes and relevant Dividend Withholding Tax has been remitted to the Internal Revenue Commission,

shall be approved by the Central Bank.

- (b) Approval pursuant to Clause 10.5(a) shall be given by the Central Bank within thirty (30) days from the date on which the statements referred to in Clause 10.4(a) were submitted or, in a case where the Central Bank has required an audited profit and loss statement, within thirty (30) days from the date on which the Central Bank has received an audited profit and loss statement showing that there are sufficient Distributable Profits.

#### 10.6 Retention of Foreign Currency

The Joint Venturer may retain in foreign currency outside Papua New Guinea in its approved Foreign Currency Accounts:

- (a) the amount of any funds received or transferred in foreign currency pursuant to Approved Finance and Equity in respect of :
  - (i) commitments due or to become due during the ensuing Quarter in foreign currency to persons resident outside Papua New Guinea for the supply of goods, and services for the Project (including capital goods, insurance premiums and obligations due to non-resident employees and consultants); and
  - (ii) any other payment approved by the Central Bank; and
- (b) proceeds of the sale by the Joint Venturer of Mine Products exported overseas, and its share of the settlement of insurance claims received in foreign currency, in an aggregate amount (subject to Clause 10.8) not to exceed the sum of the amounts due or to become due during the ensuing Quarter, or such longer period as may be approved by the Central Bank, in respect of -
  - (i) the discharge of obligations, arising out of Approved Finance, designated in a currency other than Kina, but only to the extent that Approved Finance did not, at the last Test Date, exceed the proportion of expenditure referred to in Clause 9.3;
  - (ii) commitments in foreign currency to persons resident outside Papua New Guinea for the supply of goods and services for the Project (including capital goods, insurance premiums and obligations due to non-resident employees and consultants);
  - (iii) the forecast amount of Approved Dividends declared or to be declared by the Joint Venturer in accordance with Clause 10.5 and payable to shareholders resident outside Papua New Guinea where such dividends relate to profits derived from the Project;

- (iv) payments to be made by the Joint Venturer for the purpose of effecting an Approved Reduction of Capital in accordance with Clause 10.10;
- (v) payments of Papua New Guinea income tax, additional profits tax and dividend withholding tax which are payable or forecast to be payable in foreign currency; and
- (vi) any other payment approved by the Central Bank.

#### 10.7 Purchase of Foreign Currency

When at any time after the first sale of Mine Products:

- (a) the amount of foreign currency held by the Joint Venturer in its approved Foreign Currency Accounts under Clause 10.6 is as a result of any circumstances of Force Majeure insufficient (before taking into account payment of Approved Dividends) to meet its obligations of the type referred to in Clause 10.6(b)(i) and (ii); and
- (b) the Joint Venturer has surplus funds held in Papua New Guinea in Kina, the Joint Venturer may purchase foreign currency with those surplus Kina funds and remit it overseas to meet its obligations of the type referred to in Clause 10.6(b)(i) and (ii) as they fall due, until foreign currency is again available for this purpose under Clause 10.6.

#### 10.8 Reporting to Central Bank

The Joint Venturer shall submit to the Central Bank :

- (a) within ten (10) working days after the end of each calendar month, a report on all inflows and outflows from its approved Foreign Currency Accounts during that calendar month, in the form required by the Central Bank;
- (b) within fifteen (15) working days after the end of each Quarter -
  - (i) a report on the foreign currency which it has retained in its approved Foreign Currency Accounts under this Clause 10 during the Quarter, if any, accounting for funds retained pursuant to Clause 10.6 by identifying the purposes in the categories (a)(i) and (ii) and (b)(i) to (vi) for which the foreign currency is being retained and disbursed; and
  - (ii) a report certified by a duly authorised officer of the drawdown, transfer or subscription of Approved Finance and any collateral obligation pertaining thereto during that Quarter and the outstanding balances at the end of the Quarter; and

- (iii) a forecast of the foreign currency which it expects to retain in its approved Foreign Currency Accounts under this Clause 10 during the ensuing Quarter, if any; and
- (c) within five (5) months after the end of each year of income audited accounts showing the amount of Distributable Profits for the year of income and the balance of Approved Finance at the end of the year of income.

#### 10.9 Return of Surplus Foreign Currency

Except as provided in Clause 10.6 the Joint Venturer shall convert all its foreign currency earnings from the Project into Kina and remit the proceeds to Papua New Guinea to a bank account in the name of the Joint Venturer for its use or pledged to lenders of Approved Finance.

#### 10.10 Remittance of Equity

- (a) After the date upon which all Approved Finance has been repaid the Joint Venturer may request from the Central Bank agreement on a schedule providing, for a reduction in Equity of the Joint Venturer, which separates Equity provided in Kina and Equity provided in a currency other than Kina. Such a schedule will be agreed within twelve (12) months, or such shorter period as the Central Bank may specify, of this request and will, for the purposes of effecting the reduction in Equity, authorise payments in the currency in which the Equity was provided to be made over a period being not less than three (3) years and covering, so far as practicable, the estimated period during which the Project will continue, provided that no such payment will be authorised in respect of any period during which the Joint Venturer is holding unremitted Distributable Profits other than earnings of the current Quarter.
- (b) Where a schedule has been agreed under paragraph (a) the Joint Venturer may, to the extent that the Equity to be reduced was supplied in a currency other than Kina, purchase foreign currency with funds held in Kina for the purpose of making payments required in foreign currency in order to give effect to the Approved Reduction of Capital.

#### 10.11 Non-discrimination

In addition to, and without derogating from, its rights under this Contract, the Joint Venturer, in relation to the Project, shall not be subject to any legislative or regulatory action of the State in regard to foreign exchange, and control thereof, which:

- (a) is less favourable than the general application of legislative and regulatory action which applies to persons dealing with foreign exchange in Papua New Guinea; and

- (b) in particular, prevents the Joint Venturer from buying and selling Kina, in accordance with the Foreign Exchange Regulations and this Clause 10, and at rates of exchange as favourable as those available to other commercial buyers and sellers of that currency in similar sized transactions.

#### 10.12 State's Action to Ensure Compliance

Where any right or assurance given to the Joint Venturer under this Clause 10 requires the Central Bank: -

- (a) to approve or authorise any act, matter or thing; or
- (b) to grant authority under the Foreign Exchange Regulations for its exercise or performance,

and the Joint Venturer has supplied any information to the Central Bank required by, and otherwise met the conditions of, this Clause 10 and the Central Banking Act, the State shall, upon request from the Joint Venturer ensure by policy directions to the Central Bank or otherwise that such approval is given or such authority is granted.

#### 10.13 Speculative Currency Transactions

Without limiting the provisions of the Central Banking Act the Joint Venturer shall not use any provisions of this Clause 10 or any authority or approval given by the Central Bank or by an authorized dealer under the Foreign Exchange Regulations to engage in Speculative Currency Transactions. If the Joint Venturer is in breach of this subclause, it shall pay to the State as liquidated damages an amount equal to the amount of any profit or gain which the Joint Venturer makes on the Speculative Currency Transaction and any cost incurred in establishing that the transaction was a Speculative Currency Transaction.

### PART B

#### 10.14 Application and Definitions

This Part B of Clause 10 applies to any Joint Venturer which is a multi-purpose company incorporated in Papua New Guinea. In this Part:

"Accounting Profits" means the Branch's book profits, calculated in accordance with generally accepted accounting principles and arrived at after deduction of:

- (a) in relation to each Year of Income, the Income Tax and Additional Profits Tax which have been paid or will be payable by the Joint Venturer on its income from the Project for that year; or
- (b) in relation to an interim period prior to the finalisation of the annual accounts, the Income Tax and Additional Profits Tax which would be payable by the Joint Venturer in respect of the income from the Project



derived by the Joint Venturer during that period on the basis that the Joint Venturer continued to derive income during the whole of the year of income of which the period forms a part, at the same daily average rate as in that period;

"Approved Dividends" means dividends of the Joint Venturer declared in respect of Branch Profits and approved by the Central Bank pursuant to Clause 10.17(a);

"Branch Capital" means a non-interest bearing advance made by the head office of the Joint Venturer to its Branch, which has been designated as branch capital in a notice to the Central Bank given pursuant to this Contract;

"Branch Profits" means in relation to any date of determination, the sum of the Branch's current year's undistributed Accounting Profits plus its retained earnings as of that date; and

"Distributable Profits" means in relation to any date of determination, the sum of a Joint Venturer's current year's undistributed Accounting Profits plus its retained earnings as of that date.

#### 10.15 Foreign Currency Accounts

In accordance with the provisions of this Clause 10, the Joint Venturer shall apply to the Central Bank for authority to maintain Foreign Currency Accounts to be used exclusively for the activities of the Branch in relation to the Project. The Central Bank shall approve those Foreign Currency Accounts which are required by the Joint Venturer's Approved Financial Plan. Funds in such accounts may be invested in such liquid or marketable financial instruments (other than in instruments of the Joint Venturer or its Related Corporations) as the Company may elect and the earnings on such financial instruments shall be treated for the purpose of this Clause as if they were earnings from the sale of Mine Products for export from Papua New Guinea.

#### 10.16 Approved Finance

- (a) Within the scope of the Approved Financial Plan and the required 3:1 debt to Equity ratio, the State shall procure all the necessary authorities and approvals for advances from the head office to the Branch (other than Branch Capital), which are to be used exclusively for the purpose of financing the Project or Normal Operations and are on terms no less favourable to the Branch than those generally available from banks and financial institutions lending to similar mining projects in terms of risk and location, to be treated as Approved Finance.
- (b) Within thirty (30) days of each Test Date the Joint Venturer shall submit to the Central Bank:
  - (i) a statement showing the balance of Approved Finance as of the preceding Test Date (if any) expressed in US Dollars;

- (ii) a schedule of advances entered in the Branch Accounts in respect of Approved Finance, and debits made in the Branch Accounts in respect of repayments thereof, made prior to the Test Date and after the preceding Test Date (if any), detailing the foreign currency (and if necessary the US Dollar equivalent amount) and date of each advance and debit; and
- (iii) cumulative figures expressed in US Dollars for each of the categories of expenditure described in Clause 9.3, certified by a duly authorised officer of the Joint Venturer as having been derived in accordance with the last audited profit and loss statement for the Branch.

#### 10.17 Branch Profits and Distributable Profits

- (a) If the Joint Venturer wishes to make a debit in the Branch Accounts against Branch Profits it shall present to the Central Bank profit and loss statements for the Branch which:
  - (i) have been certified by a duly authorised officer of the Joint Venturer as having been prepared in accordance with generally accepted accounting principles; and
  - (ii) show that there are Branch Profits in respect of which, or in respect of part of which, the debit is to be made.
- (b) The Joint Venturer may make a debit in the Branch Accounts, against the Branch Profits, of an amount no greater than the Branch Profits as shown in the profit and loss statements under paragraph (a).
- (c) Before paying any dividend in respect of Branch Profits to a shareholder outside Papua New Guinea, the Joint Venturer shall present to the Central Bank profit and loss statements which :
  - (i) have been certified by a duly authorised officer of the Joint Venturer as having been prepared in accordance with generally accepted accounting principles; and
  - (ii) show that there are Distributable Profits in respect of which, or in respect of part of which, the dividends are to be declared.
- (d) Within a period of two (2) weeks the Central Bank may, if on reasonable grounds it is not satisfied that there are Branch Profits or Distributable Profits out of which the dividend is to be paid, require the Joint Venturer to submit an audited profit and loss statements for the Branch and the Joint Venturer showing that there are sufficient Branch and Distributable Profits.

### 10.18 Approved Dividends

- (a) A dividend of the Joint Venturer, in respect of Branch Profits, payable to a shareholder resident outside Papua New Guinea which is :
- (i) one of a series of dividends declared not more frequently than once each Quarter; and
  - (ii) payable directly or indirectly out of that part of Distributable Profits that are Branch Profits in respect of which, or in respect of part of which, that dividend has been declared and cleared for taxation purposes and relevant Dividend Withholding Tax has been remitted to the Internal Revenue Commission,

shall be approved by the Central Bank.

- (b) Approval pursuant to Clause 10.18(a) shall be given by the Central Bank within thirty (30) days from the date on which the statements referred to in Clause 10.17(a) and (c) were submitted or, in a case where the Central Bank has required an audited profit and loss statement, within thirty (30) days from the date on which the Central Bank has received audited profit and loss statement showing that there are sufficient Branch and Distributable Profits.

### 10.19 Retention of Foreign Currency

The Joint Venturer may retain in foreign currency outside Papua New Guinea in its approved Foreign Currency Accounts:

- (a) the amount of any funds, received or transferred in foreign currency pursuant to Approved Finance and Branch Capital in respect of -
  - (i) commitments due or to become due during the ensuing Quarter in foreign currency to persons resident outside Papua New Guinea for the supply of goods, and services for the Project (including capital goods, insurance premiums and obligations due to non-resident employees and consultants); and
  - (ii) any other payment approved by the Central Bank; and
- (b) proceeds of the sale by the Joint Venturer of Mine Products exported overseas, and its share of the settlement of insurance claims received in foreign currency, in an aggregate amount (subject to Clause 10.21) not to exceed the sum of the amounts due or to become due during the ensuing Quarter, or such longer period as may be approved by the Central Bank, in respect of -
  - (i) the discharge of obligations arising out of Approved Finance as being designated in a currency other than Kina, but only to the extent

that Approved Finance did not, at the last Test Date, exceed the proportion of expenditure referred to in Clause 9.3;

- (ii) commitments in foreign currency to persons resident outside Papua New Guinea for the supply of goods and services for the Project (including capital goods, insurance premiums and obligations due to non-resident employees and consultants);
- (iii) the forecast amount of Approved Dividends declared or to be declared by the Joint Venturer in accordance with Clause 10.18 and payable to shareholders resident outside Papua New Guinea where such dividends relate to profits derived from the Project;
- (iv) payments to be made by the Joint Venturer for the purpose of effecting an Approved Reduction of Capital in accordance with Clause 10.23;
- (v) payments of Papua New Guinea income tax, additional profits tax and dividend withholding tax which are payable or forecast to be payable in foreign currency; and
- (vi) any other payment approved by the Central Bank.

#### 10.20 Purchase of Foreign Currency

When at any time after the first sale of Mine Products:

- (a) the amount of foreign currency held by the Joint Venturer in its approved Foreign Currency Accounts under Clause 10.19 is as a result of any circumstances of Force Majeure insufficient (before taking into account payment of Approved Dividends) to meet its obligations of the type referred to in Clause 10.19(b)(i) and (ii); and

- (b) the Joint Venturer has surplus funds held in Papua New Guinea in Kina,

the Joint Venturer may purchase foreign currency with those surplus Kina funds and remit it overseas to meet its obligations of the type referred to in Clause 10.19(b)(i) and (ii) as they fall due, until foreign currency is again available for this purpose under Clause 10.19.

#### 10.21 Reporting to Central Bank

The Joint Venturer shall submit to the Central Bank:

- (a) within ten (10) working days after the end of each calendar month, a report on all inflows and outflows from its approved Foreign Currency Accounts during that calendar month, in the form required by the Central Bank,
- (b) within fifteen (15) working days after the end of each Quarter -

- (i) a report on the foreign currency which it has retained in its approved Foreign Currency Accounts under this Clause 10 during the Quarter, if any, accounting for funds retained pursuant to Clause 10.19 by identifying the purposes in the categories (a)(i) and (ii) and (b)(i) to (vi) for which the foreign currency is being retained and disbursed; and
  - (ii) a report certified by a duly authorised officer of the advances and debits pertaining to Approved Finance and any collateral obligation pertaining thereto during that Quarter and the outstanding balances at the end of the Quarter; and
  - (iii) a forecast of the foreign currency which it expects to retain in its approved Foreign Currency Accounts under this Clause 10 during the ensuing Quarter, if any; and
- (c) within five (5) months after the end of each year of income audited accounts showing the amount of Distributable Profits for the year of income and the balance of Approved Finance at the end of the year of income.

#### 10.22 Return of Surplus of Foreign Currency

Except as provided in Clause 10.19 the Joint Venturer shall convert all its foreign currency earnings from the Project into Kina and remit the proceeds to Papua New Guinea to a bank account in the name of the Joint Venturer for the use of the Branch or pledged to lenders of Approved Finance.

#### 10.23 Remittance of Equity

- (a) After the date upon which all Approved Finance has been repaid the Joint Venturer may request from the Central Bank agreement on a schedule providing for a reduction of Branch Capital which separates Branch Capital supplied in Kina and Branch Capital in a currency other than Kina. Such a schedule will be agreed within twelve (12) months, or such shorter period as the Central Bank may specify, of this request and will, for the purposes of effecting the reduction of Branch Capital, authorise payments in the currency in which the Branch Capital was provided to be made over a period being not less than three (3) years and covering, so far as practicable, the estimated period during which the Project will continue, provided that no such payment will be authorised in respect of any period during which the Joint Venturer is holding unremitted Branch Profits other than earnings of the current Quarter.
- (b) Pursuant to the schedule agreed under paragraph (a), the Joint Venturer will make a debit in the Branch Accounts against Branch Capital, effecting a Kina transfer of the Branch Capital scheduled in Kina and otherwise required in Kina, and may, to the extent that Branch Capital was supplied in currency other than Kina, purchase foreign currency, with funds held in

Kina, for the purpose of making payments required in foreign currency, in order to give effect to the Approved Reduction of Capital.

#### 10.24 Non-discrimination

In addition to, and without derogating from, its rights under this Contract, the Joint Venturer, in relation to the Project, shall not be subject to any legislative or regulatory action of the State in regard to foreign exchange, and control thereof, which:

- (a) is less favourable than the general application of legislative and regulatory action which applies to persons dealing with foreign exchange in Papua New Guinea; and
- (b) in particular, prevents the Joint Venturer from buying and selling Kina, in accordance with the Foreign Exchange Regulations and this Clause 10, and at rates of exchange as favourable as those available to other commercial buyers and sellers of that currency in similar sized transactions.

#### 10.25 State's Action to Ensure Compliance

Where any right or assurance given to the Joint Venturer under this Clause 10 requires the Central Bank -

- (a) to approve or authorise any act, matter or thing; or
- (b) to grant authority under the Foreign Exchange Regulations for its exercise or performance,

and the Joint Venturer has supplied any information to the Central Bank required by, and otherwise met the conditions of, this Clause 10 and the Central Banking Act, the State shall, upon request from the Joint Venturer ensure by policy directions to the Central Bank or otherwise that such approval is given or such authority is granted.

#### 10.26 Speculative Currency Transactions

The Joint Venturer shall not use any provisions of this Clause 10 or any authority or approval given by the Central Bank or by an authorized dealer under the Foreign Exchange Regulations to engage in Speculative Currency Transactions. If the Joint Venturer is in breach of this Clause 10.26, it shall pay to the State as liquidated damages an amount equal to the amount of any net after tax profit or gain which the Joint Venturer makes on the Speculative Currency Transaction and any cost incurred by the State in establishing that the transaction was a Speculative Currency Transaction.

## 11. MARKETING AND OTHER CONTRACTS

### 11.1 Right to Market Mine Products

A Joint Venturer may market without further reference to the State its share of Mine Products and shall have sole control and management of sale and delivery of such Mine Products, including the forward selling of all Mine Products, and shall assume all risks therefor, provided that -

- (a) such marketing is consistent with the Approved Proposals for Development;
- (b) the Joint Venturer:
  - (i) sells its share of Mine Products on an arms' length basis (or, in the case of sales to Related Corporations, on terms and conditions no more favourable to the buyer than those which may apply in sales made on an arm's length basis) subject only to normal deductions for shipping (where applicable) and other realisation costs; or
  - (ii) delivers its share of Mine Products in repayment of loans which form part of Approved Finance; and
- (c) the State has not notified the Joint Venturer that the export of its share of Mine Products to buyers in a specified jurisdiction could -
  - (i) breach an obligation of the State arising under international law;
  - (ii) prejudice national security; or
  - (iii) prejudice the international relations of the State by the export of Mine Products to another country with which it has been declared by the State to be contrary to the interests of the State to be engaged in international trading.

### 11.2 Agreements on Competitive Commercial Terms

Each Joint Venturer shall inform the State of each agreement concerning sales or processing of Mine Products, patent licensing, engineering, construction or management services which is with a Related Corporation or is otherwise not an agreement entered into on an arm's length basis. If, in the opinion of the State, such agreement is not on competitive commercial terms, the State may, within thirty (30) days of receipt of information about such an agreement, give notice to such Joint Venturer of the terms which the State determines to be competitive commercial terms.

Upon receipt of the State's notice the Joint Venturer may -

- (a) terminate the agreement;



- (b) renegotiate the agreement using the terms determined by the State; or
- (c) refer the dispute, within thirty (30) days, to a Sole Expert for a determination as to what are competitive commercial terms in the circumstances.

Upon receipt of the expert's decision, which shall be binding on the Parties, the Manager and each Joint Venturer shall renegotiate the agreement, if necessary, to embody those terms decided by the Sole Expert to be competitive commercial terms or terminate the agreement.

### 11.3 Arms Length Basis

For purposes of this Clause 11, a sale is at arm's length or a transaction is on an arm's length basis where -

- (a) the buyer and the seller in negotiating the sale have sought to promote their own best interests in accordance with fair and honest business practices;
- (b) the consideration expressed in the agreement for sale is the only consideration for the sale;
- (c) the price and other terms of the sale have not been affected by, nor determined as a consequence of, any other agreement or any direct or indirect relationship (other than the relationship created by the agreement for sale between the sellers or shareholders of the seller, or a company in which the seller is a shareholder, and the buyer or shareholders of the buyer, or a company in which the buyer is a shareholder); and
- (d) neither the seller, nor any person or company connected with it through shareholding or otherwise, has any direct or indirect interest in the subsequent re-sale or disposal by the buyer of any of the products purchased pursuant to the agreement or sale.

### 11.4 Sale of State's Share of Mine Products

At any time after the State has elected to participate in the Project (whether directly or through its nominee) under provisions of a Mining Equity Agreement or other like agreement, the State or its nominee, as the case may be, may require, by notice in writing, all of the Joint Venturers (in proportion to their participating interests under the Joint Venture Agreement) to sell, on its behalf, its share of the Mine Products. The State agrees to, or to procure its nominee, to reimburse out-of-pocket expenses incurred by the Joint Venturer in selling its share of the Mine Products and pay a mutually acceptable marketing fee.



## 12. ACQUISITION OF STATE INTEREST

### 12.1 State's Option

Further to Recitals C, D, E and F the State has an option but not the obligation to acquire at cost from the Joint Venturers a 30% interest in the Project.

### 12.2 Mining Equity Agreement

If the State exercises its option in whole or in part, such acquisition shall be effected under a Mining Equity Agreement or such other agreement pursuant to and consistent with the Option Agreement as defined under the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*.

### 12.3 Orogen Option

If Orogen exercises its option under the Option Agreement to acquire a 25% interest from the State or MRDC, this interest will be in addition to the existing interest it holds under the Joint Venture Agreement but that existing interest will be subject to proportional reduction as a result of the State exercising its option. In addition, a 5% interest shall be taken up and funded by an MRDC subsidiary to be held in trust for the benefit of the Landowners.

## 13. INVESTMENT PROMOTION AUTHORITY CERTIFICATION

Each Joint Venturer shall apply to be certified under the Investment Promotion Act 1992 in respect of its activities contemplated by or required to be carried out under the Approved Proposals for Development. The State shall ensure that each Joint Venturer is issued with a certificate, in which any conditions are consistent with this Contract and the Approved Proposals for Development, in accordance with its application for the duration of the Project or for any period until the Joint Venturer ceases to have an interest in the Project (whichever period is shorter).

## 14. ENVIRONMENTAL MANAGEMENT AND PROTECTION

### 14.1 Compliance with Environmental Plan

The Joint Venturers shall comply in all material respects with the approved Environmental Plan.

### 14.2 Variation of Environmental Plan

The Environmental Plan may be varied by the Joint Venturers pursuant to the Environmental Planning Act (Chapter 370) and as provided for in Clause 31. Where pursuant to Clause 31.2 any variation of the Environmental Plan requires the approval of the State, the Joint Venturers shall submit such variation to the Minister responsible for environmental matters.

#### 14.3 Amendment required by State

Subject to Clause 14.5, the Minister responsible for environmental matters may, on behalf of the State, initiate amendment to the Environmental Plan if:

- (a) at any time the conduct of Normal Operations in accordance with the Environmental Plan for whatever reason poses a material danger to public health and safety; or
- (b) the conduct of Normal Operations results in significant damage to the ecology of the area which was not contemplated in the Environmental Plan; or
- (c) the environmental impact of Normal Operations shall prove substantially more adverse than anticipated in the Environmental Plan; or
- (d) technological procedures or improvements thereof shall have become available and economic subsequent to the Effective Date and, if applied to the operations of the Project, could materially mitigate the environmental impact of Normal Operations.

#### 14.4 Disputed Amendments

In the event that there is a dispute in respect of any amendment initiated by the Minister responsible for environmental matters on behalf of the State in any of the circumstances set out in Clause 14.3, the dispute shall be referred to arbitration under Clause 25 and the amendment shall not become effective unless and until it is upheld by the resulting arbitration award.

#### 14.5 Amendments while Approved Finance outstanding

During the period for which any Approved Finance is outstanding, the State shall ensure that the Minister responsible for environmental matters does not initiate any amendments to the Environmental Plan in the circumstances set out in Clause 14.3(d) which make the cost to the Joint Venturers of carrying out the Project materially greater.

#### 14.6 Application of Environmental Laws Generally

The Joint Venturers shall not be subject to any laws and regulations relating to the environment that are in their general application less favourable to the Joint Venturers than the laws and regulations relating to the environment which apply to all other persons engaged in natural resource projects in Papua New Guinea nor will the laws and regulations relating to environment in Papua New Guinea be applied to the Joint Venturers in a manner less favourable to the manner in which they are generally applied to others to whom they are applicable.

## 15. TRAINING AND LOCALISATION

### 15.1 Compliance with Programme

The Joint Venturers will comply with the approved Training and Localisation Programme and priority in employment will be given in the following order, firstly to the residents of the Usino – Bundi and Rai Coast Districts, then to other Madang Province residents, and then to residents of Papua New Guinea.

### 15.2 Alteration of Programme

(a) The Joint Venturers may, with the consent of the State (which consent shall not be unreasonably withheld), amend or alter the Training and Localisation Programme with a view to securing the maximum training of and benefits to Papua New Guineans from the Project. If the Programme is disrupted by circumstances or events (whether or not they constitute Force Majeure under Clause 28.2) which make it difficult or impossible for the Joint Venturers -

- (i) to comply with their obligations under the Programme; or
- (ii) to operate the mine site in accordance with the standard as outlined in the Mining (Safety) Act (Chapter 195A);

the Joint Venturers may give notice of alternative or revised plans to the part of the programme affected.

(b) Should the Joint Venturers give notice pursuant to paragraph (a) the State shall within thirty (30) days either -

- (i) approve those alternative or revised plans, or
- (ii) meet with the Joint Venturers to discuss and agree upon the alternative or revised plans.

### 15.3 Disputed Alterations

If the discussions under Clause 15.2 (b) do not lead to the State's approval of alternative or revised plans and the Joint Venturers consider the State's decision to be unreasonable, the Joint Venturers may within sixty (60) days, elect to refer the matter to arbitration. In reaching a decision the arbitrator shall judge the reasonableness of the State's decision.

### 15.4 State Assistance

The State shall give such advice to the Joint Venturers as is reasonably required in the development and implementation of the Training and Localisation Programme and in the recruitment of Papua New Guinean staff.

## 16. SUPPLY AND PROCUREMENT

### 16.1 Registration of Local Suppliers

The Joint Venturers shall, on an annual basis, identify and invite registration of businesses in Papua New Guinea, particularly in the Madang Province and the area of the Project, which are capable of supplying materials, equipment and services to the Project, but pre-qualification and registration does not provide assurance to a business that it will be invited to tender or be awarded any contract.

### 16.2 PNG Contractors and Suppliers

- (a) When calling for tenders from contractors and suppliers, the Joint Venturers shall include Papua New Guinean contractors and suppliers where -
  - (i) the contractors have proven ability in performing work of a similar nature and size to that required for the Project, within the specified time period; and
  - (ii) the suppliers are established and recognised suppliers of materials and equipment who have marketed or distributed such materials and equipment and who have applied in writing to be registered with the Joint Venturers.
- (b) The Joint Venturers shall ensure that its contractors are bound by obligations comparable to those set out in paragraph (a) when the contractors call for tenders from sub-contractors.

### 16.3 PNG and International Procurement

The supply of materials, equipment and services may be tendered for and procured internationally provided that where such materials, equipment and services are procurable within Papua New Guinea from businesses pre-qualified and registered pursuant to Clause 16.1 and meet the requirements of Clause 16.2, such businesses shall be given a reasonable opportunity to tender and if a tender submission from such business -

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

then such materials, equipment and services shall be procured from sources within Papua New Guinea with preference being given to businesses including joint ventures with substantial interests, firstly from the Usino – Bundi and Rai Coast Districts, then from other parts of the Madang Province and then from other parts of Papua New Guinea. With respect to all tendered contractors and suppliers,

whether Papua New Guinean or otherwise, the final determination to award a particular contract shall be made by the Joint Venturers.

#### 16.4 Costs to be considered

In assessing the tenders from local contractors and suppliers, the Joint Venturers will consider the extra costs they would incur if they 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.

#### 17. LOCAL BUSINESS DEVELOPMENT

The Joint Venturers, in consultation and cooperation with the State and the Provincial Government, will-

- (a) comply with and carry out the Business Development Plan which forms part of the Approved Proposals for Development; and
- (b) conduct an annual review of progress being made on the implementation of the Business Development Plan and make such variations to it as required by changing circumstances and are agreed by the Minister responsible for trade and industry matters.

#### 18. INSURANCE

##### 18.1 Insurance required

From the commencement of construction, the Joint Venturers shall ensure that those aspects of the Project that are normally insured in accordance with the practice of the mining industry and are commercially insurable at a reasonable cost are insured and the State shall be advised of the policy or policies in place.

##### 18.2 Insurance of PNG Risks

For all matters which involve Papua New Guinea risks, the Joint Venturers shall obtain and maintain their insurance from Papua New Guinea insurers or through Papua New Guinea insurance brokers, as required by the Insurance Act 1995, except to the extent that:

- (a) adequate insurance from companies having financial capacity to meet any claims is not obtainable from or through such insurance brokers at a price which is commercially competitive with the price for such insurance obtainable elsewhere; or
- (b) the agreements relating to Approved Finance require otherwise.

If paragraph (a) or (b) applies, the State shall grant or procure the grant by the relevant government agency of an exemption from the requirement of the

Insurance Act 1995 to obtain and maintain certain insurance in Papua New Guinea subject to any tax, duty or levy as required by legislation or regulation.

### 18.3 Application of Insurance Proceeds

The Joint Venturers shall, unless the insurance policies or loan agreements state otherwise or the State otherwise agrees, use any amount paid to it pursuant to any damage or destruction provisions in any contract of insurance to reinstate the Project Assets (except for Mine Products) in respect of which such amount was paid, provided that the Joint Venturer shall not be required to repair or restore any portion of the Project Assets:

- (a) that, prior to the damage or destruction, had been obsolete or were of no material value to the operation of the Project; or
- (b) where the Joint Venturers, following a review of the facts with the State, has notified the State that in their judgement the cost of doing so is not justified by the incremental economic benefit which the Project will derive therefrom. In the event that the State notifies the Joint Venturers within thirty (30) days of receipt of such notice that it disagrees with such judgement, the matter shall be referred for determination to a Sole Expert.

## 19. PATENT AND TECHNOLOGY RIGHTS

All know-how within the meaning of section 163N of the Income Tax Act developed within the Project shall remain the property of the Joint Venturers. If the Joint Venturers apply for, take out and retain patent or other technology rights or registrations to protect all or any portion of the know-how, the State shall have a royalty free right to use such protected know-how on and in respect of the Project.

## 20. SUSPENSION OF OPERATIONS

### 20.1 Election to suspend

After consultation with the State and on giving the State not less than thirty (30) days notice, the Joint Venturers may elect to suspend production if, in the three (3) months immediately preceding the date of the notice, the Joint Venturers' revenues from the Project are less than the sum of royalties, mining levy and Operating Costs. As soon as possible after giving notice under this Clause, the Joint Venturers shall submit a report giving details of revenue, royalties, mining levy and Operating Costs of the Project for the period of three (3) months aforesaid giving the reasons why, in their opinion, it is necessary to cease production.

### 20.2 Maintenance

Where pursuant to the Clause 20.1 the Joint Venturers have elected to suspend production they shall maintain, subject to fair wear and tear, the Project Assets so as to prevent significant deterioration until Normal Operations are resumed.

**20.3 Report on Costs to Resume Operations**

No later than twelve (12) months from the date on which the Joint Venturers suspended production pursuant to Clause 20.1 and thereafter at no longer than twelve (12) month intervals until Normal Operations are resumed, the Joint Venturers shall submit a further report showing their projection of the Costs to Resume Operations and of revenue for the same period.

**20.4 Resumption of Operations**

If a report submitted pursuant to Clause 20.3 shows the Joint Venturers' projection of revenue from the Project for the succeeding twelve (12) month period is greater than their projection of Costs to Resume Operations for that twelve (12) month period if Normal Operations were to be resumed, then the Joint Venturers shall promptly take such measures necessary to ensure that Normal Operations are resumed within a reasonable time period.

**20.5 Direction to Resume Operations**

Where production has been suspended for a continuous period of not less than three (3) years, the Minister may direct the Joint Venturers to resume Normal Operations if he is of the reasonable opinion that the Costs to Resume Operations are less than the revenue from the Project for the same period. The Minister will provide the Joint Venturers with a copy of the State's projections of costs and revenues.

**20.6 Disputed Resumptions**

If the Joint Venturers disagree with the Minister's direction pursuant to Clause 20.5, they may elect to submit the State's and the Joint Venturers' projections of revenue and Costs to Resume Operations to a Sole Expert for his opinion.

**20.7 Sole Expert Determinations**

Where projections made by the State and the Joint Venturers have been referred pursuant to Clause 20.6, the Sole Expert shall determine what projections would be reasonable to make in respect of the twelve (12) month period under review and the opinion of the Sole Expert shall be binding on the Parties so that in the event that the Sole Expert accepts the projections of the Joint Venturers or is otherwise of the opinion that if Normal Operations were resumed the Joint Venturers' revenue from the Project would be less than Costs to Resume Operations in respect of the twelve (12) month period, the direction given by the Minister pursuant to Clause 20.5 shall be deemed to have been withdrawn.

**20.8 Deemed Abandonment**

Where pursuant to Clause 20.5 the Minister has directed the Joint Venturers to resume Normal Operations and that direction has not been or is not deemed to have been withdrawn, the Joint Venturers, if they do not promptly take such

measures to ensure that Normal Operations are resumed within a reasonable time period, shall be deemed to have abandoned the Project for the purpose of Clause 21.2(c) provided however, that where projections of revenue and Costs to Resume Operations have, pursuant to Clause 20.6, been referred to a Sole Expert, the time period shall run from the date the Sole Expert gave his opinion on the projections.

#### 20.9 Other Suspensions

Nothing in this Clause 20 shall be deemed to limit the right of the Joint Venturers to suspend or limit production:

- (a) as part of Normal Operations (for example, for engineering, maintenance or other technical reasons); or
- (b) when it is permitted to do so for reasons of Force Majeure pursuant to Clause 28.

### 21. TERMINATION

#### 21.1 Joint Venturers' Right to Terminate

The Joint Venturers may terminate this Contract at any time after the Commencement of Commercial Production by giving twelve (12) months' notice to the State.

#### 21.2 State's Right to Terminate

The State may terminate this Contract by notice to each of the Joint Venturers if:

- (a) the Special Mining Lease expires by effluxion of time and is not renewed;
- (b) the Special Mining Lease is surrendered under the Mining Act other than for the purpose of the Joint Venturers being issued a renewal or extension thereof or being issued a new Special Mining Lease in respect of the Project; or
- (c) the Joint Venturers shall have abandoned the Project (within the meaning of Clause 20.8) and not resumed it within a period of sixty (60) days after notice is given by the State to each of the Joint Venturers.

#### 21.3 Default Notice

In the event that:

- (a) the Joint Venturers are in material default of any of the joint and several obligations set forth in Clauses 4.1, 14.1, 15.1, 17 or 20, or fail to treat as binding and comply with any award made in an arbitration pursuant to Clause 25 in respect of any of those aforesaid obligations; or



- (b) any Joint Venturer is in material default of any of the several obligations set forth in 10.9, 10.22, or 11.1(c), or fail to treat as binding and comply with any award made in an arbitration pursuant to Clause 25 in respect of any of those aforesaid obligations;

the State may give notice of such a default or failure (hereinafter in this Clause called the "Default Notice"):

- (c) in the case of the situation to which paragraph (a) applies, to each of the Joint Venturers, which shall specify the default or failure alleged. The State shall at the same time give a copy of the Default Notice to each lender to any of the Joint Venturers under any Approved Finance, and each mortgagee under any mortgage or charge of any of the Project Assets, where the name and address of that lender, mortgagee or chargee has previously been notified to the State; or
- (d) in the case of the situation to which paragraph (b) applies, to the Joint Venturer, which shall specify the default or failure alleged. The State shall at the same time give a copy of the Default Notice to each lender to the Joint Venturer under any Approved Finance, and each mortgagee under any mortgage or charge of any of the Project Assets, where the name and address of that lender, mortgagee or chargee has previously been notified to the State.

#### 21.4 Termination or Assignment Notice

If within a period of one hundred and eighty (180) days following a Default Notice (or such longer period as may be fixed by an arbitration award where the subject matter of the Default Notice is submitted to arbitration under Clause 21.5) either:

- (a) the default or failure specified in the Default Notice has not been remedied (or active steps have not been commenced and continued to remedy the default or failure if it is not capable of speedy remedy); or
- (b) compensation is not paid in respect thereof (in the case of a default or failure not capable of remedy but where payment of compensation would be adequate recompense to the State),

then, subject to Clauses 21.5 and 21.6, the State may :

- (c) in the case of the situation to which Clause 21.3(a) applies, by notice (hereinafter in this Clause called a "Termination Notice") to each of the Joint Venturers (which shall be copied to each lender, mortgagee or chargee who was given a copy of the Default Notice) bring about the termination of the Contract on a date which is not less than one (1) month thereafter (hereinafter in this Clause called the "Termination Date"). The State shall ensure that the Minister does not make a decision to forfeit the Special Mining Lease, and that no other action is taken by or on behalf of the State

to terminate the Special Mining Lease or any other leases granted under the Mining Act for the purposes of the Project, before the Termination Date; or

- (d) in the case of the situation to which Clause 21.3(b) applies, by notice (hereinafter in this Clause called an "Assignment Notice") to the defaulting Joint Venturer ("Defaulting Venturer") (which shall be copied to each lender, mortgagee or chargee who was given a copy of the Default Notice) will require the Defaulting Venturer, unconditionally and without consideration and free from encumbrances, to assign its entire undivided interest in the Project Assets to the other Joint Venturers in undivided proportionate shares in proportion to their undivided interest in the Project Assets, on a date which is not less than one (1) month thereafter (hereinafter in this Clause called the "Assignment Date").

#### 21.5 Disputed Termination

If the Joint Venturer(s) or the State contest:

- (a) the grounds for the issue of the Default Notice; or  
 (b) whether the default or failure has been remedied; or  
 (c) the adequacy of any compensation paid pursuant to Clause 21.4(b),

the matter shall be submitted for arbitration pursuant to Clause 25. If the arbitrator finds (in the case of paragraph (a)) that adequate grounds exist for issue of the Default Notice, he shall fix a period during which the Joint Venturer(s) must comply with Clause 21.4(a) or (b) and the amount of compensation payable (if applicable). If the arbitrator finds (in the case of paragraph (b)) in favour of the State, he shall fix a period during which the Joint Venturer(s) must remedy the default or failure. If the arbitrator finds (in the case of paragraph(c)) in favour of the State, he shall fix the amount of compensation payable and the period for its payment.

The State shall not serve a Termination Notice or Assignment Notice, as the case may be, while arbitration between the State and the Joint Venturer(s) under this subclause is in progress and any Termination Notice or Assignment Notice already served will be suspended immediately upon the commencement of such arbitration for the duration of any such arbitration. If the arbitrator finds in favour of the Joint Venturer(s) or within the period fixed by the arbitrator the default or failure is substantially remedied or the compensation is paid, the State shall not serve a Termination Notice or Assignment Notice and shall withdraw any Termination Notice or Assignment Notice already served.

#### 21.6 Where Receiver or Manager appointed

If at any time following a Default Notice but prior to the Termination Date or Assignment Date, as the case may be, a receiver or manager or other administrator acting on behalf of lenders who jointly or severally have provided Approved

Finance to all or any of the Joint Venturers secured by a mortgage or charge, is appointed in respect of the relevant portion of the Project Assets and his administration covers or is extended to cover an undivided interest (in aggregate) in the Special Mining Lease of more than fifty (50) per cent, or he otherwise demonstrates to the satisfaction of the Minister that he has the power to procure the remedy of the default or failure or the payment of compensation in respect thereof, the State shall not give a Termination Notice or Assignment Notice, and any Termination Notice or Assignment Notice already served will be suspended, until the expiry of two (2) years after the date on which the Default Notice is given or one (1) year after the determination (by award or otherwise) of any arbitration under Clause 21.5, whichever is later. Within this period, the receiver or manager or other administrator may either:

- (a) remedy the default or failure which gave rise to the Default Notice or pay compensation in respect thereof in accordance with Clause 21.4; or
- (b) (subject to the requirements of the Joint Venture Agreement and the Mining Act) sell or otherwise dispose of the relevant interest in the Project Assets to any other person approved by the Minister (such approval not to be unreasonably withheld) on condition that such person shall within this period remedy the default or failure which gave rise to the Default Notice or pay compensation in respect thereof in accordance with Clause 21.4.

If in either case the relevant default or failure is substantially remedied or compensation is paid in respect thereof, the State shall not serve a Termination Notice or Assignment Notice following upon that Default Notice and any such Termination Notice or Assignment Notice which has been suspended will be deemed to be withdrawn.

#### 21.7 Continuing Compliance

The extra period permitted under Clause 21.6 to a receiver or manager or other administrator prior to the Termination Date or Assignment Date shall be subject to compliance with the condition that during that extra period the receiver or manager or other administrator shall:

- (a) comply with this Contract and the Mining Act; and
- (b) use such powers as are available to it to ensure that the Project Assets are maintained, subject to fair wear and tear, so as to prevent significant deterioration of such assets.

If during such period a receiver or manager or other administrator sells the relevant portion of Project Assets, the obligations under paragraphs (a) and (b) shall cease to apply to the receiver, manager or other administrator.

## 21.8 Assignment of Defaulting Venturer

Following an Assignment Notice, the Defaulting Venturer shall do all things necessary to effect the assignment of the Defaulting Venturer's entire interest in the Project Assets to the other Joint Venturers by or on the Assignment Date. The Defaulting Venturer will be discharged from any further liability in respect of any obligation under this Contract which accrues from the date that assignment has been effected but without prejudice to pre-existing rights accrued to the State against the Defaulting Venturer.

In the case where the Defaulting Venturer expresses in writing an inability to meet, or fails to meet, the Assignment Date deadline then the Minister may by notice declare a later Assignment Date. If in the Minister's reasonable opinion there are no extenuating circumstances whereby the Assignment Date should be changed, then at any time after the Assignment Date the Minister shall exercise a power of attorney hereby given in respect of doing all things and executing all documents necessary, directly or indirectly, to effect the assignment of the Defaulting Venturer's undivided interest in the Project to the remaining Joint Venturers.

## 22. CONSEQUENCES OF TERMINATION

### 22.1 Obligations of Parties

If this Contract is terminated -

- (a) the Joint Venturers will surrender to the State the Special Mining Lease and every other tenement which forms part of the Project Assets but without prejudice to the liability of any of the Parties in respect of any antecedent breach or default under this Contract or in respect of any indemnity given;
- (b) each Party shall forthwith pay to the other Party all moneys that may be owing to the other Party hereunder;
- (c) the State shall have the option to purchase (subject to any encumbrances thereon) exercisable by notice to the Joint Venturers within thirty (30) days following termination of this Contract all or any portion of the Project Assets not surrendered pursuant to paragraph (a) at a price equivalent to the lesser of the then residual value of such assets after tax depreciation or the fair market value of such assets, which fair market value is to be determined by agreement between the Parties but failing such agreement by a Sole Expert;
- (d) the Joint Venturers shall have the right, within the one (1) year period following the thirty (30) day notice period referred to in paragraph (c):
  - (i) to assign or otherwise dispose of all or any portion of the remaining Project Assets to any person; or

- (ii) to remove and recover from the Mining Area and export from Papua New Guinea, unless otherwise specified in the Approved Proposal for Development, any of the remaining Project Assets on the condition that such removal does not cause irreparable damage to major assets which are not removed from the Mining Area; and
- (e) the Joint Venturers shall leave the Mining Area in a safe and stable condition to the reasonable satisfaction of an inspector under the Mining (Safety) Act (Chapter 195A), having regard to natural conditions in the area and applying generally accepted standards of good mining practice, provided that the Joint Venturers shall not be required to alter the physical condition of the mine, the tailings disposal site, or other Project facilities beyond the requirements of the Environmental Plan.

#### 22.2 Reversion of Property to State

Upon expiry of the one (1) year period referred to in Clause 22.1 (d), all Project Assets which remain on the Mining Area shall become the property of the State without any cost to the State or any liability for the State to pay compensation therefor.

#### 22.3 Continuance in Force

Clauses 22.1, 22.2 and 25 shall continue in force notwithstanding the termination of the rest of this Contract.

### 23. ASSIGNMENT

#### 23.1 Right to Assign

A Joint Venturer may, with the consent of the Minister, assign its entire interest or an undivided proportionate share of its interest in:-

- (a) the Project Assets ; and
- (b) its rights and obligations under this Contract.

The State covenants that the consent of the Minister to an assignment will not be unreasonably withheld. The consent of the Minister will not be required where Clauses 23.4 or 23.5 apply.

#### 23.2 Effect of Assignment

If a Joint Venturer assigns -

- (a) its entire interest in the Project Assets and its rights and obligations under this Contract, then upon the assignee giving the State the undertaking referred to in Clause 23.3, the Joint Venturer shall be discharged from any further liability in respect of any obligation which arises after the date of

that assignment without prejudice to pre-existing rights accrued to the State against the Joint Venturer; or

- (b) an undivided proportionate share of its interest in the Project Assets and its rights and obligations under this Contract, then upon the assignee giving the State the undertaking referred to in Clause 23.3 -
  - (i) the obligations under this Contract assumed by the assignee and the continuing obligations under this Contract of the Joint Venturer shall be the joint and several obligations, or the several obligations of the Joint Venturer and the assignee;
  - (ii) the Joint Venturer, if it is then the Manager shall, during the period that it retains ownership of an undivided proportionate interest in the Project Assets and in all of its rights and obligations under this Contract, be the Manager and no change in the Manager shall take place without the consent in writing of the State (which consent shall not be unreasonably withheld); and
  - (iii) every agreement made between the Joint Venturer and any assignee shall be consistent with this Contract and a copy thereof will be furnished to the State as soon as it has been executed.

### 23.3 Assumption by Assignee

Where an assignment takes effect pursuant to Clause 23.1 -

- (a) the Joint Venturer shall enter into a Contract with the assignee wherein the assignee -
  - (i) agrees to become a party to this Contract; and
  - (ii) undertake to assume, observe and comply with all obligations of the Joint Venturer; and
- (b) the assignee shall be a permitted assignee and have the same rights of assignment as the Joint Venturer under this Contract.

### 23.4 Mortgages, Charges etc

Notwithstanding the foregoing provisions of this Clause 23, but subject to generally applicable legal requirements for the creation, perfection and enforcement of security interests -

- (a) each Joint Venturer may mortgage, charge by way of fixed or floating charge or otherwise assign or encumber by way of security its entire interest or an undivided proportionate share of its interest in the Project Assets, this Contract, its share of Mine Products, its rights under any sales agreements for Mine Products, its proceeds from the sale of Mine Products (including

such proceeds in any of the accounts referred in Clause 10) and any of its other assets and its uncalled capital (and premiums) to secure its Approved Finance ; and

- (b) subject to Clause 23.5, any mortgagee, chargee or other secured party under any mortgage, charge or other security given by a Joint Venturer pursuant to this subclause may exercise all rights of sale and other rights included in any instrument of mortgage or charge given by it under any Approved Finance, provided that it first gives to the State thirty (30) days notice of its intention to exercise any rights of sale and five (5) days notice in all other cases.

The State shall ensure that all statutory approvals required in Papua New Guinea are given for each mortgage, charge or other security to be given or granted by a Joint Venturer pursuant to this subclause.

### 23.5 Rights of Mortgagee or Chargee

No mortgagee or chargee or other secured party that acquires by assignment or otherwise any rights of a Joint Venturer under this Contract shall have any greater rights than a Joint Venturer hereunder, and its exercise of those rights shall be subject to all of the terms, conditions and requirements of this Contract. The rights of any such mortgagee, chargee, or secured party to sell a Joint Venturer's interest in the Project or any of the Project Assets shall not be exercisable:

- (a) unless the whole or part of the Joint Venturer's undivided interest in the Project and the Project Assets which are mortgaged, charged or otherwise subject to a security interest is sold as a going concern (or with such exceptions as the State may agree) to a purchaser to which the State does not reasonably object on grounds of:
  - (i) national security or national foreign policy; or
  - (ii) insufficient financial standing to perform the obligations that the purchaser will be assuming as a Joint Venturer under this Contract, within thirty (30) days of being notified of the identity of such purchaser and being given information sufficient for the State to assess the financial standing of the purchaser; or
- (b) except in accordance with any provisions in the Joint Venture Agreement relating to pre-emptive rights.

### 23.6 Consents and Approvals

The State shall ensure that, subject to compliance with applicable procedures, all required statutory approvals are given to the assignment of this Contract and all or any of the Project Assets or of an undivided interest therein, to the person that purchases from a mortgagee, chargee, or other secured party in accordance with



the requirements of Clause 23.5. Any such purchaser shall be required to comply with the requirements of Clause 23.3.

## 24. EXTENSIONS TO TIME

### 24.1 Extensions by Agreement

Notwithstanding any provision of this Contract, the Parties by agreement between the persons responsible for giving Notices under Clause 33, may from time to time extend any period referred to in this Contract for such period, or substitute for any date referred to in this Contract such later date, as they think fit.

### 24.2 Automatic Extensions

If a Joint Venturer is prevented or hindered by any circumstances or event of a kind set out in Clause 28 or by an arbitration under Clause 25 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 settlement by agreement, its determination by the Sole Expert or by arbitration, as the case may be.

### 24.3 Effect on Periods and Dates

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 Contract (notwithstanding that at the time of such extension or substitution such period may have expired or such date may have passed).

## 25. ARBITRATION

### 25.1 Meaning of Dispute

For purposes of this Clause, "Dispute" means any dispute, disagreement, controversy or claim arising out of or relating to this Contract, or the interpretation or performance of provisions of this Contract or the breach, termination or validity thereof, which the Parties are unable to resolve by mutual agreement within a reasonable time. It does not include any difference of view or disagreement which, pursuant to provisions of this Contract, has been submitted for determination of a Sole Expert.

### 25.2 Submission to ICSID

The Parties irrevocably consent to submit any Dispute between the State and the Joint Venturers to the International Centre for Settlement of Investment Disputes



("ICSID") for settlement by arbitration pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "Convention").

### 25.3 ICSID Arbitration

- (a) For the purposes of Article 25(2)(b) of the Convention the Parties agree that:
- (i) although Ramu Nickel Limited is a national of Papua New Guinea, it will because of foreign control be treated as a national of Australia;
  - (ii) although Orogen Minerals (Ramu) Limited is a national of Papua New Guinea because it is a 100% subsidiary of Orogen Minerals Limited, if the State's indirect shareholding in Orogen Minerals Limited falls below 50%, Orogen Minerals (Ramu) Limited will because of foreign control be treated as a national of Australia; and
  - (iii) if an incoming Joint Venturer, although incorporated in Papua New Guinea and therefore a national of Papua New Guinea, is foreign controlled, it will be treated as a national of the contracting state under the Convention of which it gives notice to the State at the time of acceding to this Contract.
- (b) An ICSID Arbitral Tribunal constituted pursuant to this Contract (the "Tribunal") shall consist of a single arbitrator appointed by agreement between the parties to the Dispute, but if the parties are unable to agree on the identity of the single arbitrator to be so appointed within forty-five (45) days of the date on which the Secretary-General of ICSID has dispatched notification of the registration of a request for arbitration, the Tribunal shall consist of three arbitrators. In that event, one arbitrator shall be appointed by each party to the Dispute and the third arbitrator, who shall be the President of the Tribunal, shall be appointed by agreement between the parties or in the absence of such agreement by the Chairman of the Administrative Council of ICSID in accordance with Article 38 of the Convention.
- (c) Nothing in any notice by the State pursuant to Article 25(4) of the Convention shall be read or construed as limiting the jurisdiction which a Tribunal established under the Convention pursuant to this Contract would otherwise have to settle a Dispute by arbitration.
- (d) For the purposes of submission of any Dispute to arbitration by ICSID, the Parties agree (without limitation) that a Dispute about any of the following is fundamental to the investment by the Joint Venturers in the Project:
- (i) the continuation of the Special Mining Lease or any other mining lease, lease for mining purposes or mining easement granted pursuant to Clause 5;

- (ii) the operation of Clause 6 in respect of rates and duties;
- (iii) the ability of any Joint Venturer to obtain financing for its participation in the Project in accordance with Clause 9 and on commercial terms;
- (iv) the right to retain foreign currency in foreign currency accounts and to convert Kina into foreign currency which can be remitted out of PNG, as provided for in Clause 10;
- (v) the right to export the Mine Products and to market them in accordance with Clause 11;
- (vi) the Agreed Terms under Clause 27;
- (vii) non-discrimination and related matters under Clause 30; and
- (viii) the termination of this Contract.

#### 25.4 Submission to UNCITRAL Arbitration

Any Dispute between the State and any one or more of the Joint Venturers which cannot be referred to ICSID arbitration under Clauses 25.2 and 25.3 shall be settled by arbitration under the Arbitration Rules, as at present in force, of the United Nations Commission on International Trade Law (hereinafter in this Clause called the "UNCITRAL Arbitration Rules"), subject to such modifications as the parties to the Dispute may agree in writing at the time.

#### 25.5 Application of UNCITRAL Arbitration Rules

For the purposes of the arbitration of any Dispute under the UNCITRAL Arbitration Rules:

- (a) the appointing authority shall be the Chairman of the Administrative Council of ICSID;
- (b) an agreed appointee shall be appointed as a single arbitrator, but if within thirty (30) days of the receipt by the respondent of the notice of arbitration the parties have not agreed on a single arbitrator, the number of arbitrators shall be three;
- (c) the place of arbitration shall be Port Moresby, Papua New Guinea or such other place as the parties to the Dispute may agree; and
- (d) the language to be used in the arbitral proceedings shall be English.

**25.6 Award Binding**

An award in arbitration proceedings under this Clause shall be binding on the parties to the Dispute and judgement thereon may be entered in any court having jurisdiction for the purpose.

**25.7 Waiver of Immunity**

The State hereby irrevocably waives any claim to immunity -

- (a) in respect of proceedings on the merits of the claim which is the subject of such arbitration;
- (b) in respect of proceedings to enforce any such award including, without limitation, immunity from service of process and from the jurisdiction of the Court; and
- (c) in respect of execution of any such award against the property of the State, being property of the State held for commercial purposes.

**25.8 Cost of Arbitration**

Unless otherwise agreed or provided, the cost of any arbitration procedure will be borne -

- (a) equally by the two parties to the Dispute where it has been referred jointly by them; or
- (b) otherwise, by the unsuccessful party in accordance with the ICSID Arbitration Rules or the UNCITRAL Arbitration Rules, as the case may be.

**25.9 Stay of Other Rights**

Where a Dispute has been referred to arbitration pursuant to this Clause, 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 decision of the arbitrators.

**25.10 Sole Expert**

Where any difference of view or disagreement between any two or more of the Parties is, pursuant to any other provision of this Contract, submitted for determination of a Sole Expert, the Sole Expert shall act as an expert and not as an arbitrator, and accordingly the foregoing provisions of this Clause do not apply. A determination by a Sole Expert shall be binding on the Parties. Unless otherwise agreed, the cost of submitting any such matter to a Sole Expert will be borne:

- (a) if one Party calls for the matter to be determined by the Sole Expert and loses, by that Party;

- (b) if one Party calls for the matter to be determined by the Sole Expert and wins, equally by all Parties to the determination; and
- (c) if a number of Parties jointly submit the matter to be determined by the Sole Expert, equally by all of them.

## 26. LAW APPLICABLE

This Contract shall be governed by and construed in accordance with the law of the Independent State of Papua New Guinea and such rules of international law as may be applicable.

## 27. STABILITY OF TERMS

### 27.1 Agreed Terms and Material Adverse Change

The State is committed to maintaining the long term stability of the fiscal terms under which the Project is developed. The fiscal terms outside this Contract which are important for the Joint Venturers are the fiscal provisions set out in Clauses 7 and 8, whether they apply by force of existing legislation or otherwise, and the royalty, taxes, levies and charges applicable to the Project or the Joint Venturers, or dividends or interest payable by any of the Joint Venturers, as at the date of this Contract at the rates in force as at such date (the "Agreed Terms").

For the purposes of this Clause 27:

"Material Adverse Change" means a change which materially or substantially impairs, erodes or diminishes the financial results derived or expected from the Project by a Joint Venturer or the dividends or other payments payable by a Joint Venturer.

### 27.2 Stabilisation

If at any time during the period of ten (10) years after the Commencement of Commercial Production the Agreed Terms are altered or affected by any legislative or administrative action of the National Government, any provincial or local-level government or any government agency in such a way as to cause a Material Adverse Change for any Joint Venturer, the State shall indemnify the Joint Venturer, but only to the extent of the financial loss to the Joint Venturer or the reduction in dividends or other payments payable by it caused by the Material Adverse Change when assessed on its own and not in concert with factors which do not form part of the Agreed Terms.

### 27.3 Claim by Joint Venturer

The Joint Venturer may, by notice to the State, claim payment of any amount to which the indemnity in Clause 27.2 relates (including any amounts payable to providers of Approved Finance under an increased costs clause in a finance agreement or otherwise). The notice must specify the amount and the Material

Adverse Change that is the basis of the claim. If the State disputes the claim, it must give notice to this effect to the Joint Venturer making the claim within two(2) months after the State's receipt of the Joint Venturer's notice. If the dispute is not resolved within a further period of four (4) months, then it will be referred to an arbitration under Clause 25.

#### 27.4 Payment of a Claim

The State shall pay to the Joint Venturer making a claim:

- (a) if the claim is undisputed, the amount of the claim within three (3) months after the State's receipt of the notice from the Joint Venturer; or
- (b) if the claim is disputed, the amount, if any, determined by the arbitrator as being the proper amount of the claim within three (3) months after the arbitrator makes his determination.

If the amount under paragraph (a) or (b) is not paid within the period of three (3) months, the State shall become liable to pay interest on that amount from the end of that period until actual payment at the same rate per annum as is payable from time to time by the State on its 30-day treasury bills, and the Joint Venturer shall be entitled to recover such amount (plus interest) by credit against taxes or duties due and payable to the Commissioner General of Internal Revenue.

#### 27.5 Payments grossed up

If any payment made by the State under Clause 27.4 is subject to any taxes in Papua New Guinea in the hands of the Joint Venturer, or if any deductions or withholdings are made from any such payment on account of taxes, the sum due from the State under Clause 27.4 will be increased to the extent necessary to ensure that, after the application of such taxes or the making of such deductions or withholdings, the Joint Venturer receives a net sum equal to the sum which it would have been left with or have received if no such taxes were applicable or no such deductions or withholdings were required to be made.

#### 27.6 Termination

Subject to Clause 27.7 and to any claim outstanding and unpaid at the time, the foregoing provisions of this Clause 27 shall terminate and cease to have effect on and from the tenth anniversary of the Commencement of Commercial Production.

#### 27.7 Most Favoured Investor

If at any time an investor in a development project in Papua New Guinea is accorded by a contract or agreement with the State or otherwise more favourable treatment in respect of the stability of fiscal and other terms than has been given to the Joint Venturers under this Clause 27, that more favourable treatment (including, if appropriate, those fiscal and other terms) will apply to the Joint Venturers by force of this provision.

## 28. FORCE MAJEURE

### 28.1 Effect of Force Majeure

Any failure on the part of a Party hereto to comply with any of the terms, conditions and provisions of this Contract (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 Contract; 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 Contract 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.

### 28.2 Meaning of Force Majeure

For the purposes of this Contract, Force Majeure shall include war, insurrection, civil disturbances, terrorism, sabotage, blockades, riot, embargoes, strikes and other labour conflicts, land disputes, epidemics, volcanic eruptions, earthquakes, cyclones, floods, tidal waves, explosions, fires, lightning, governmental restrictions or unavailability of materials or equipment and any other event which the party claiming force majeure could not reasonably be expected to prevent or control, and in the case of the Joint Venturers shall include any delay or failure by the State to give any consent or approval required under this Contract or under any applicable law.

## 29. INDEMNITY

### 29.1 State indemnified

Except as otherwise provided in this Contract, the Joint Venturers shall indemnify and hold harmless the State against all claims made by or on behalf of any third party in respect of injury, loss or damage resulting from work carried out or goods or services supplied by the Joint Venturers pursuant to this Contract provided, however, that such indemnity shall not apply to the extent, if any, that such injury, loss or damage resulted from wrongful acts or omissions of the State.

## 29.2 Liability limited

In the absence of negligence of the Joint Venturers, their servants or agents, the Joint Venturers shall not be liable to indemnify and save harmless the State pursuant to Clause 29.1 except where injury, loss or damage was caused to a third party by work carried out or goods or services supplied by the Joint Venturers of a kind or in circumstances in respect of which the law of Papua New Guinea imposes liability for injury, loss or damage without proof of negligence.

## 29.3 Defence of Claims

If any claim, demand, or writ, in respect of the liability referred to in this Clause 29, is brought or alleged against the State, in respect of which indemnity is to be sought from the Joint Venturers, the State shall forthwith notify the Joint Venturers and the Joint Venturers shall have the option to assume the defence thereof. Unless the Joint Venturers fail to assume such defence, they will not be liable to the State for any legal or other expenses subsequently incurred by the State in connection with such defence. The State agrees to provide reasonable co-operation to the Joint Venturers and their legal advisers in the defence of such alleged liability. The Joint Venturers shall not be liable to indemnify the State for any settlement of any such action effected without the written consent of the Joint Venturers. The compliance by the State with this Clause 29 shall be a condition precedent to any liability of the Joint Venturers under such clause.

## 30. NON-DISCRIMINATION

The State shall treat the investments and activities of the Joint Venturers in Papua New Guinea pursuant to this Contract on a basis no less favourable than that accorded to investments and activities associated with investments of foreign owned or controlled companies in Papua New Guinea under any bilateral investment protection treaty between the State and any other country, and accordingly, if under any such treaty companies receive the benefit of any undertakings by the State relating to expropriation and nationalisation and compensation therefor, the Joint Venturers will be treated as though those undertakings were extended to them.

## 31. VARIATION

### 31.1 Variations by Agreement

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 Contract, the Approved Proposals for Development, the Special Mining Lease, Leases for Mining Purposes, Mining Easements and all other leases, licences, rights or grants granted or any programme, proposal or plan approved for the purpose of this Contract to more efficiently or satisfactorily implement or facilitate the objectives of this Contract.



### 31.2 Modifications to Approved Proposals for Development

- (a) Subject to Clauses 14.2 and 14.3 in respect of the Environmental Plan and Clause 15.2 in respect of the Training and Localisation Programme, Modifications to the Approved Proposals for Development may at any time during the life of the Project be made by the Joint Venturers without reference to the State unless by making any such Modification the Joint Venturers would cease to be in substantial compliance with the Approved Proposals for Development.
- (b) If the Joint Venturers wish to make a Modification to the Approved Proposals for Development which falls outside the scope of Clause 31.2(a) the Joint Venturers shall notify the State in writing of the Modification which they wish to make, and unless the State within thirty (30) days informs the Joint Venturers by notice in writing that the Modification is one on which further consultation between the State and the Joint Venturers is required the Modification will be deemed to have been approved by the State and the Approved Proposals for Development shall stand amended accordingly.
- (c) In the event that the State pursuant to Clause 31.2(b) informs the Joint Venturers that a Modification to the Approved Proposals for Development requires further consultation between the State and the Joint Venturers the Modification shall not take effect unless it has been approved by the State, provided, however, that;
  - (i) the State undertakes that its approval of any such Modification will not be unreasonably withheld; and
  - (ii) the State will be deemed to have approved any such Modification if either :-
    - (A) the State, within thirty (30) days from the date on which notice was given to the Joint Venturers pursuant to Clause 31.2(b), has not informed the Joint Venturers that it declines to approve the proposed Modification; or
    - (B) a refusal by the State to approve a Modification has been referred to arbitration under Clause 25 and the arbitrator has (or arbitrators have) made an award finding that the refusal of the State to approve the Modification is unreasonable.
- (d) Where pursuant to Clause 31.2(c) a Modification has been approved or is deemed to have been approved by the State the Approved Proposals for Development shall stand amended accordingly.

### 31.3 Definitions

For the purpose of this Clause :-



- (a) "Approved Proposals for Development" includes in relation to each Joint Venturer its Approved Financial Plan and for a Modification of an Approved Financial Plan references in Clause 31.2 to the "Joint Venturers" shall be read as the Joint Venturer whose Approved Financial Plan is being modified.
- (b) "Modification" includes variation or amendment or any alteration by deletion or addition.
- (c) The approval by the State of any Modification of the Approved Proposals for Development in respect of Clauses 9, 14, 15 and 17, shall be signified in writing by, respectively, the secretary of the department responsible for finance matters, the minister responsible for environmental matters, the minister responsible for labour matters and the minister responsible for industry matters. In any other, case approval by the State of a Modification of the Approved Proposals for Development shall be signified by any instrument under the hand of the Minister.

## 32. CONSULTATION

### 32.1 Training and Localisation Committee

- (a) A Committee shall be formed, comprising one member each from the Department, local landowners, the Joint Venturers and the Provincial Government and chaired by a representative of the department responsible for labour matters, which shall monitor the implementation of the approved Training and Localisation Programme.
- (b) This Committee shall operate during the term of this Contract and the Joint Venturers shall furnish it with quarterly reports outlining the progress of the approved Training and Localisation Programme, problems encountered, positions filled and the number of Papua New Guineans employed (including from the particular province and local area).

### 32.2 Supply and Procurement Committee

- (a) A Committee shall be formed, comprising one member each from the Department, the Provincial Government, local landowners and the Joint Venturers and chaired by a representative of the department responsible for commerce and industry matters, which shall monitor the supply and procurement of goods and services to the Project.
- (b) The Committee shall operate during the term of this Contract and the Joint Venturers shall furnish it with quarterly reports conforming in form and content to that agreed for major project operators in the minerals sector. The reporting format and content and any revisions thereto shall be mutually agreed to achieve the following objectives:

- (i) to provide the information necessary to evaluate the economic impact of procurement of goods and services for the Project;
- (ii) to enable the monitoring of the Papua New Guinean content of goods and services procured for the Project;
- (iii) to assist in the identification of industries which could be established in Papua New Guinea to supply the Project; and
- (iv) to provide suitable and reliable statistics to be used by the State.

### 32.3 Environmental Committee

A Committee shall be formed, comprising one member each from the Department, the Provincial Government, local landowners and the Joint Venturers and chaired by the representative of the department responsible for environmental matters, which shall review environmental matters concerning the Project.

### 32.4 Committee Meetings

All of the above Committees will meet quarterly on the same dates and in the same location (Madang or Port Moresby) and prior to their meetings will receive from the Joint Venturers an update of the Project.

## 33. NOTICES

### 33.1 Notice Procedure

- (a) Any notice, consent, demand, approval or other communication (a "Notice") required or permitted to be given shall be deemed to have been given if -
  - (i) in the case of a Notice given by the State other than a Notice given pursuant to Clause 14, such Notice is signed on behalf of the State by either the Minister or the Secretary of the Department, as their respective responsibilities require; or
  - (ii) in the case of a Notice to be given by the Joint Venturers, such Notice is signed by a duly authorised representative of the Joint Venturers or Joint Venturer as the case may be.
- (b) Each such Notice shall, as elected by the Party giving such notice, be personally delivered or transmitted by telex or facsimile to the other Party at the address in Papua New Guinea as given below.

**Notice to the State –**

The Secretary  
 Department of Mining,  
 Konedobu, PNG  
 Telex No. NE22211  
 Answerback: WABRO  
 Fax No: (675) 321-3701

**Notice to the Joint Venturers –**

The Manager  
 Ramu Nickel Limited  
 9<sup>th</sup> Floor, Pacific Place  
 Musgrave Street  
 Port Moresby, PNG  
 Fax No: (675) 321-7633

**with copies to –**

Highlands Pacific Limited  
 Level 4, 167 Eagle Street  
 Brisbane Qld 4000  
 Australia  
 Fax No: (61-7) 3221-6727

Orogen Minerals (Ramu) Limited  
 Level 2, Ela Beach Tower  
 Musgrave Street  
 Port Moresby, PNG  
 Fax No: (675) 320 2209

**33.2 Notices deemed given**

Except as otherwise specified herein, all Notices shall be deemed to have been duly given on the earlier of -

- (a) the date of receipt if delivered personally;
- (b) the next business day after the date of transmission with confirmed answerback if transmitted by telex; and
- (c) two (2) business days after the time recorded on the transmitting machine if transmitted by facsimile, unless -
  - (i) within those two (2) business days the intended recipient has informed the sender that the transmission was received in an

incomplete or garbled form and is able subsequently to produce the transmission evidencing the fact; or

- (ii) the transmission result report of the sender indicates a faulty or incomplete transmission.

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

### 33.3 Plans, Proposals etc.

Where the Joint Venturers are required to submit any plans, proposals or other material for the approval of the State, the date of submission shall be deemed to be the date on which the State received those plans, proposals or other materials.

## 34. REPRESENTATIONS AND WARRANTIES

### 34.1 Representations and Warranties by Each party

Each of the Parties represents and warrants that:

- (a) it has the capacity to enter into and perform its obligations under this contract and that all corporate and other internal actions required to authorise it to enter into and perform its obligations under this Contract have been or will be properly taken;
- (b) its execution, delivery and performance of this Contract have been duly authorised by all required actions of its governing authority or owners and do not and will not:
  - (i) violate any law, rule, regulation, order or decree applicable to it; or
  - (ii) violate its constitution or organisational documents;
- (c) this Contract is a legal and binding obligation of the Party, enforceable against that Party in accordance with its terms, except to the extent enforceability is modified by bankruptcy, reorganisation and other similar laws affecting the rights of creditors generally and by general principles of equity; and
- (d) it will not breach any other agreement or arrangement by entering into or performing its obligations under this Contract and this Contract when signed will have been duly executed by it and will be valid and binding upon it in accordance with its terms.

### 34.2 Representations and Warranties by the Joint Venturers

Each Joint Venturer represents and warrants that:

- (a) it is duly organised, validly existing and in good standing under the laws of its place of incorporation; and
- (b) it has the corporate power to carry out the Project and achieve Commencement of Commercial Production.

**34.3 No Other Representations and Warranties**

Except as set out in Clause 34.1 and 34.2 or expressly stated elsewhere in this Contract, no representation, inducement or warranty was, prior to the execution of this Contract, given or made by any one of the Parties with the intent of inducing any other party to enter into this Contract, and any representations, inducements or warranties that may have been so given are hereby denied and negated.

**35. WAIVER**

The failure of any Party to enforce at any time any of the provisions of this Contract 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.

**36. SEVERABILITY**

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

**37. FURTHER ACTS**

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

**38. COUNTERPARTS**

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

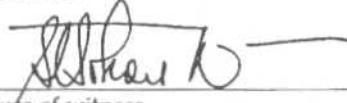
IN WITNESS WHEREOF this Contract has been duly executed by the Parties

on the *26<sup>th</sup>* day of *July* 2000.

SIGNED for and on behalf of the  
INDEPENDENT STATE OF PAPUA NEW  
GUINEA by the Governor General SIR  
SILAS ATOPARE, G.C.M.G., K. St.J acting  
with and in accordance with the advice of  
the National Executive Council in the  
presence of:



Signature of Governor General

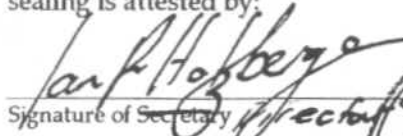


Signature of witness

STEVIE T.S. NION

Name of witness

THE COMMON SEAL of RAMU NICKEL  
LIMITED was affixed by authority of the  
Board of Directors in the presence of, and the  
sealing is attested by:



Signature of Secretary



Signature of director

IAN A HOZBE

Name of Secretary Director

MOSELEY MORAMORO

Name of director

THE COMMON SEAL of OROGEN  
MINERALS (RAMU) LIMITED was affixed  
by authority of the Board of Directors in the  
presence of, and the sealing is attested by:



*[Handwritten signature]*

Signature of Secretary

*[Handwritten signature]*

Signature of director

MICHAEL I. UIARI

Name of Secretary

J.F. KURSA

Name of director

INDEPENDENT STATE OF PAPUA NEW GUINEA

Mining Act 1992

Mining Regulation 1992

Act, Sec. 33, 36  
Reg. Sec. 2

FORM 3

**SPECIAL MINING LEASE No. 8**

I, **SILAS ATOPARE, G.C.M.G, K.St.J.**, Governor General of the Independent State of Papua New Guinea (the State) by virtue of the powers conferred by the **Mining Act 1992** (the "Act") and all powers me enabling, and in accordance with the Mining Development Contract dated *26<sup>th</sup> July*, 2000 (the "Mining Development Contract") acting with and in accordance with the advice of the National Executive Council, **HEREBY GRANT** to **Ramu Nickel Limited**, a company incorporated in Papua New Guinea with its registered office at Level 9, Pacific Place, Musgrave Street, Port Moresby, and **Orogen Minerals (Ramu) Limited**, a company incorporated in Papua New Guinea with its registered office at Level 2, Ela Beach Tower, Musgrave Street, Port Moresby, (collectively referred to as the "Lessee") **Special Mining Lease No.** (the "Lease") over land situated at Kurumbukari in the District of Usino-Bundi in the Madang Province and more particularly described in **Appendix 1** (the "Land"), as may be varied from time to time, for a term of **Forty (40)** years from the date hereof, and such extensions of the term as may be endorsed hereon for the purpose of mining minerals in accordance with the Act and subject to the following conditions:-

- (1) The Lessee shall comply with the Approved Proposals for Development attached hereto as **Appendix 2**, as may be varied from time to time;
- (2) The Lessee shall adhere to the conditions of the Mining Development Contract.
- (3) The Lessee shall commence construction of the Mine within 36 months of grant of the Special Mining Lease or from the date of financing being secured whichever occurs first.
- (4) Without limiting the obligations imposed on the Lessee, the Lessee shall compensate the owners of land which is located within the boundaries of this Special Mining Lease in accordance with the Act and the Approved Proposals for Development;
- (5) The Lessee shall provide the Department of Mining six monthly reports on any exploration activity carried out on the Land;



- (6) The Lessee shall construct or provide improvements on the Land, substantially as specified in the Approved Proposals for Development, or as otherwise agreed from time to time between the Lessee and the State;
- (7) The Lessee shall not, without the consent of the State, which consent shall not be unreasonably withheld, use the Land for any purpose other than for which it was granted pursuant to the Act, the Mining Development Contract and the Approved Proposals for Development;
- (8) The Lessee shall use its best efforts to accommodate traditional land uses to the degree that such uses are consistent with efficient and safe mining practices and are compatible with the performance of the Lessee's obligations under the Mining Development Contract;
- (9) This Special Mining Lease, or any renewal thereof, may not be cancelled under the Mining Act unless the Mining Development Contract has been terminated and therefore this Special Mining Lease shall only terminate:
  - (a) if the Mining Development Contract is properly terminated in accordance with its terms or by the agreement of all the parties to the Mining Development Contract for the time being; or
  - (b) on the expiry of its term including any extension thereof, whichever occurs first.

Dated at Port Moresby this 26<sup>th</sup> day of July 2000.

Signed for and on behalf of the )  
 INDEPENDENT STATE OF PAPUA )  
 NEW GUINEA by the Governor-General )  
 ..... )  
 Sir Silas Atopare, G.C.M.G, K.St.J acting )  
 with and in accordance with the advice of the )  
 National Executive Council in the presence of: )

Governor General

..... )  
 Witness )  
 Name (printed): STEVIE T.S. NION )

**SCHEDULE II**  
**DUTIES ON IMPORTED GOODS**

Under Customs Tariff Act 1990

Tariff Classification *	General Description
Chapter 25 – all items including:  2523.21.00 2523.29.00	Salt; sulphur; earths and stone; plastering materials, lime and cement
Chapter 32:  3208.10.00 3208.20.00 3208.90.10 3208.90.90 3209.10.00 3209.90.10 3209.90.90	Paints, varnishes etc
Chapter 34:  3402.11.00 3402.12.00 3402.13.00 3402.19.00 3402.90.00	Soap, detergent, cleaning agents etc

<p>Chapter 39 – all items except:</p> <p>3923.21.10  3923.21.30  3923.29.00  3923.3  3923.6  3923.90.90  39.24  3924.90.50  3926.40.00</p>	<p>Plastics and articles thereof</p>	
<p>Chapter 44 – all items except:</p> <p>44.13  4413.00.10  44.14  4415.20.00  44.18  44.19  44.20  44.21  4421.90.40</p>	<p>Wood and articles of wood, wood charcoal</p>	
<p>Chapter 68:</p> <p>68.08  6810.20.00  6810.91.00  68.12</p>	<p>Articles of stone, plaster, cement, asbestos, mica or similar materials</p>	

Chapter 69 – all items except: 69.11 69.13 69.14	Ceramic products	
Chapter 72 – all items including 7210.41.00	Iron and steel	
Chapter 73 – all items except: 7310.21.00 7310.29.10 7321.13.00 73.23 7323.99.10	Articles of iron and steel	
Chapter 76 – all items except: 7615.11.00 7615.19.10	Aluminium and articles thereof	
Chapter 78 – all items including: 7806.00.20 7806.00.90	Lead and articles thereof	

Chapter 85 – all items including: 85.06 8507.1	Electrical machinery and equipment and parts thereof	
Chapter 94: 94.06	Prefabricated buildings	

\* As set out in Customs Tariff (Tariff Reform 1999) Act 1998