

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 196.

*Mining (Bougainville Copper Agreement).*

GENERAL ANNOTATION.

ADMINISTRATION.

As at 13 February 1976 (the date of gazettal of the most comprehensive allocation of responsibilities to Ministers and Departments at about the effective date), the administration of this Chapter was vested in the Minister for Natural Resources, with the exception of Sections 3(1) and 5(1) of the Act, the administration of which was vested in the Prime Minister.

Accordingly, as at that date, unless a different intention is clearly indicated, by note or in the text, and except as noted above, references in and in relation to this Chapter to—

“the Minister”—should be read as references to the Minister for Natural Resources;

“the Departmental Head”—should be read as references to the Secretary for Natural Resources<sup>1</sup>;

“the Department”—should be read as references to the Department of Natural Resources<sup>2</sup>.

TABLE OF CONTENTS.

	<i>Page.</i>
<i>Mining (Bougainville Copper Agreement) Act</i> .....	3
Regulations .....	—
Subsidiary Legislation .....	—
Appendix—	
Source of Act.	

<sup>1</sup> Previously the Director of Lands, Surveys and Mines.

<sup>2</sup> Previously the Department of Lands, Surveys and Mines.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 196.

*Mining (Bougainville Copper Agreement) Act.*

ARRANGEMENT OF SECTIONS.

1. Interpretation—  
    "the Agreement"  
    "the commencement date"  
    "the Company".
2. Approval of Agreement.
3. Variation of Agreement.
4. Effect on and of other laws.
5. Ancillary powers of the Prime Minister.
6. Offences as to Company roads.
7. Company port, etc.
8. Rights of shareholders, etc.
9. Waiver of rights under Agreement.
10. Purposes of Agreement a public purpose.
11. Appropriation.

SCHEDULES.

SCHEDULE 1.—The 1967 Agreement.

SCHEDULE 2.—The 1974 Agreement.



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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 196.

***Mining (Bougainville Copper Agreement) Act.***

Being an Act to provide for the approval and implementation of an agreement made on 6 June 1967 between the Administration of the former Territory of Papua and New Guinea and Bougainville Copper Pty. Limited, concerning the development of certain mineral deposits in Bougainville, as varied by a further agreement made on 21 November 1974 between the Government of Papua New Guinea and Bougainville Copper Limited, and for other purposes.

**1. Interpretation.**

In this Act, unless the contrary intention appears—

“the Agreement” means the agreement a copy of which is set out in Schedule 1, as varied by the agreement set out in Schedule 2, and where that agreement is further varied under Section 3 includes that agreement as so varied;

“the commencement date” means 30 November 1967 (being the date of commencement of the pre-Independence *Mining (Bougainville Copper Agreement) Act 1967*);

“the Company” means Bougainville Copper Limited, a company incorporated in Papua New Guinea and, subject to the provisions of the Agreement, includes its successors and assigns.

**2. Approval of Agreement.**

The Agreement is approved, and takes effect according to its tenor.

**3. Variation of Agreement.**

(1) The Agreement may be varied by a further agreement or agreements between the Prime Minister on behalf of the State, and the Company.

(2) A further agreement under Subsection (1) is of no force or effect until notice of its approval is published in the National Gazette by the Head of State, acting on advice.

(3) A notice under Subsection (2) shall be laid before the Parliament within 15 sitting days after the date of publication of the notice, together with a copy of the further agreement to which it relates.

(4) The Parliament may, by resolution passed at the meeting at which a notice under Subsection (2) is laid before it, or at the meeting next following that meeting, disallow the notice.

(5) If the Parliament passes a resolution disallowing a notice under Subsection (2), the approval ceases to have effect, but without prejudice to the validity of anything done or suffered in the meantime.

(6) Subject to Subsection (7), any purported variation to the Agreement, otherwise than in accordance with this section, is void.

(7) This section does not affect the operation of Clause 5, 19 or 20 of the Agreement.

**4. Effect on and of other laws.**

(1) Except as provided in Subsection (2), the Agreement has the force of law as if contained in this Act, and applies notwithstanding anything to the contrary in any other law.

(2) The provisions of Subsection (1) do not apply to or in relation to Clause 11(b), Clause 13(e) and Clause 14(a) of the Agreement.

(3) No pre-Independence law made after the commencement date, and no other law of Papua New Guinea, affects this Act or the Agreement—

(a) unless the contrary intention appears, expressly or by implication, in that law;  
or

(b) except as provided by the Agreement.

(4) Except where the contrary intention appears, either expressly or by implication, in the Agreement, and subject to the preceding provisions of this section and to Section 5, all laws that are not inconsistent with this Act or the Agreement apply to and in relation to all acts, matters or things done or suffered under the Agreement.

**5. Ancillary powers of the Prime Minister.**

(1) Notwithstanding any other law, the Prime Minister has power, on behalf of the State, to make all grants, issues, renewals and extensions required by or under the Agreement to be made by the State, and is not bound in that regard by any provisions of any such law requiring or permitting any authority, consent, approval, report, recommendation, appeal, procedure or formality, or by any similar provision.

(2) The provisions of Clause 2(c) of the Agreement do not apply to or in relation to an amendment made to Subsection (1), or that was made to Section 7(1) of the pre-Independence *Mining (Bougainville Copper Agreement) Act 1967* after the commencement date, but no such amendment relieves the State of any of its obligations or liabilities under the Agreement.

**6. Offences as to Company roads.**

(1) A person who fails to obey a direction given by the Company or by a person authorized by the Company (whether by a traffic sign or traffic line or otherwise), under the powers conferred by Clause 14 of the Agreement is guilty of an offence.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding 3 months.

(2) For the purposes of Subsection (1), "traffic line" and "traffic sign" have the same meaning and effect as in the *Motor Traffic Regulation*.

(3) It is a defence to a prosecution under this section for the defendant to prove that he honestly and reasonably believed that the direction given was not given by the Company or a person authorized by the Company.

**7. Company port, etc.**

(1) In this section—

"the Company port" has the same meaning as in Clause 11 of the Agreement;

"the Company's Port Manager" has the same meaning as in Clause 11 of the Agreement.

(2) Where the Company or the Company's Port Manager gives, in accordance with the powers conferred by Clause 11 of the Agreement, directions for regulating—

- (a) the time and manner in which any vessel shall enter into, depart from or lie in the Company port, or the position, mooring, unmooring, placing or removing of any vessel within the Company port; or
- (b) the manner in which or the time at which any vessel shall take on or discharge its cargo or any part of its cargo or shall take on or deliver ballast, water or fuel,

the master of a vessel in the Company port who fails to regulate the vessel according to the directions of the Company or of the Company's Port Manager, as the case may be, is guilty of an offence.

Penalty: A fine not exceeding K400.00.

(3) Where the Company or the Company's Port Manager has, in accordance with the powers conferred by Clause 11 of the Agreement, caused a vessel in the Company port to be moored, unmoored, placed or removed in default of compliance by the master of the vessel with a lawful direction given by the Company or the Company's Port Manager, the master of the vessel is liable to pay all expenses incurred by the Company in the mooring, unmooring, placing or removal of the vessel, and the Company may recover the amount as a debt in any court of competent jurisdiction.

(4) Neither the Company's Port Manager nor any employee or agent of the Company is personally liable for any act or default of himself or of the Company done or committed in good faith in the course of the exercise of the powers of the Company or of the Company's Port Manager in relation to the management and control of the Company port.

(5) The Company port or any other port serving any of the facilities referred to in Clause 11(a) of the Agreement shall be deemed to be a proclaimed port under the *Shipping Act 1951* (Adopted).

#### **8. Rights of shareholders, etc.**

In the event of a breach of the Agreement by the State, being a breach of a provision under which a right or benefit is granted specifically to a member of the Company or a beneficial owner of a share in the Company, any member of the Company and any beneficial owner of a share in the Company who suffers any loss by reason of the breach has the same rights and remedies as he would have had if he were a party to the Agreement.

#### **9. Waiver of rights under Agreement.**

Notwithstanding anything in this Act or in the Agreement, a party to the Agreement or any other person may waive any of his rights under the Agreement in the circumstances of any particular case, without prejudice to the exercise of those rights in any other case.

#### **10. Purposes of Agreement a public purpose.**

The purposes of the Agreement are a public purpose within the meaning of any law.

#### **11. Appropriation.**

All amounts from time to time due and payable by the State to the Company under the Agreement shall be paid out of the Consolidated Revenue Fund which, to the necessary extent, is appropriated accordingly.

## SCHEDULES.

## SCHEDULE 1.

## Sec. 1.

## THE 1967 AGREEMENT.

THIS AGREEMENT is made the sixth day of June, One thousand nine hundred and sixty-seven, between THE ADMINISTRATION OF THE TERRITORY OF PAPUA AND NEW GUINEA (hereinafter called "the Administration" which expression shall include the administration or government for the time being of the said Territory) of the one part and BOUGAINVILLE COPPER PTY. LIMITED a company incorporated in the said Territory and having its registered office at Panguna on Bougainville Island in the said Territory (hereinafter called "the Company" which expression shall include its successors and assigns) of the other part.

## WHEREAS:

(1) C.R.A. Exploration Pty. Limited, a company which is related to the Company, holds Prospecting Authorities Nos. 1 to 7 both inclusive under the *Mining Ordinance 1928-1966* of the Territory of New Guinea over an area of land on the said Bougainville Island and promising indications of the possible presence of large deposits of low grade copper ore in association with other minerals have been discovered in that area at a cost in excess of \$4,000,000;

(2) the confirmation of the presence of the said deposits and the determination of their economic significance will require continued detailed investigations and assessments in and in relation to the said area and the full investigation of the economic significance of the said deposits and the viability of a mining and concentrating operation based thereon will involve continued inquiries into roads and other access facilities, shipping facilities, power supply and water supply facilities, residential accommodation and other ancillary facilities and services required in connection therewith;

(3) the said investigations assessments and inquiries are at present estimated to involve the expenditure of at least a further \$4,000,000 and possibly \$6,000,000 and the establishment of a mining and concentrating operation as aforesaid is likely to require a total expenditure including the above-mentioned amounts of at least \$30,000,000 and possibly of the order of \$100,000,000, a large portion of which must necessarily be borrowed from international finance organizations;

(4) the Administration is satisfied that such large capital expenditure is necessary to ensure that the said deposits are efficiently and economically developed and that the Company has access to the requisite technical resources for developing the same, and that the Company intends if it proceeds with such a mining and concentrating operation to conform to good mining practice relating (*inter alia*) to the maximum recovery of ores of copper and of gold and other minerals found in association with such ores of copper;

(5) the Administration is also satisfied that the development of such a large scale operation would bring significant benefits to the Territory in respect of revenues from royalties and other forms of taxation, in respect of overseas trade balances, and in respect of the economic and social development of the people through employment opportunities, training in new skills, the purchase of local supplies, community development, improved communications and the extension of education and health services;

(6) it is intended that the products of operations carried on by the Company hereunder will after meeting local and domestic requirements be sold for consumption beyond the Territory on terms having regard to then prevailing world prices;

(7) the Administration desires to assist and co-operate with the Company so as to enable it to continue to carry out the said investigations, assessments and inquiries, and to enable it to establish and maintain such an operation and it is intended that nothing be done which might impede the Company in carrying out such investigations, assessments and inquiries, or in establishing and maintaining such an operation;

(8) it has been agreed that the Company shall offer one-fifth of its ordinary share capital for subscription by the Administration or a statutory authority of the Administration and the Administration, being satisfied that the rights attaching to those shares will be adequately safeguarded by this



Agreement and the general law of the Territory, intends subject to the Company's proposed operation proving sound and offering reasonable prospects of profitable operation that such offer will be accepted; and

(9) it is therefore desirable that in consideration of the Company entering into the obligations on its part hereinafter set out, the Company should be granted the titles, rights and privileges hereinafter mentioned.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS :—

1. DEFINITIONS.

(a) In this Agreement, unless the context otherwise requires—

"Administration land", "mineral", "mining tenement", "private land", "prospecting authority" and "secondary prospecting authority" have the meanings respectively given to them by Section 6 of the Mining Ordinance as at present in force;

"f.o.b. revenue" means—

(i) in the case of a delivery of concentrated or unconcentrated ores of copper other minerals or gold won from the area the subject of the special mining lease which is made pursuant to a sale by the Company other than a sale to which sub-paragraph (ii) of this definition applies—the value of the whole of the consideration receivable by the Company therefor less all or any costs charges and expenses bona fide incurred or suffered by the Company in respect thereof from the time when the same is loaded on board ship at a port in the said Bougainville Island until the same is delivered and accepted by the purchaser including without limiting the generality of the foregoing—

(A) taxes, dues, duties, excises, tariffs and other levies imposed on the export of the same from the Territory;

(B) trimming costs;

(C) ocean freight;

(D) marine insurance;

(E) port and handling charges at the port of discharge;

(F) costs incurred in delivering the same from the port of discharge to any place for the purpose of any further processing;

(G) weighing sampling assaying inspection representation and selling agency costs and charges;

(H) shipping agency charges after loading as aforesaid; and

(I) taxes, dues, duties, primage duties, tariffs and other levies imposed in the country of the port of discharge on the import of the same; and

(ii) in the case of any delivery of any such ores which is made pursuant to a sale by the Company for a consideration which is not a consideration which would be receivable by a willing seller from a willing buyer or which is made pursuant to a disposition by the Company other wise than by way of sale—the value of the whole of such consideration as would have been receivable by the Company if the same had been sold at the weighted average of the values of the whole of the considerations receivable by the Company (less all or any costs charges and expenses referred to in sub-paragraph (i) of this definition) in respect of deliveries of ores of substantially the same composition which were made during the period of six months immediately preceding the relative delivery and to which such sub-paragraph applied, or in the event of there being no such deliveries such amount as the parties hereto agree or failing agreement as is determined by arbitration as hereinafter provided as the amount which would be receivable therefor by a willing seller if sold to a willing buyer on a free on board basis at the port in the said Bougainville Island then serving the Company's operations;

"governmental authority" means the government of any political division or subdivision of the Territory any agency or instrumentality of the Administration or of any

*Mining (Bougainville Copper Agreement)*

such government or any local or other authority in the Territory but does not include the Administration itself;

"land" includes the sea bed;

"lease" includes easement right of way and other right over land;

"month" means calendar month;

"person" includes company and corporation;

"petroleum" has the meaning given to it by Section 6 of the Petroleum (Prospecting and Mining) Ordinance as at present in force;

"related company" means a company which is related (as that expression is used at present in Section 6(5) of the *Companies Ordinance* 1963-1966 of the Territory) to the Company;

"unimproved value" in relation to land means the capital sum which the fee simple of the land might be expected to realize if offered for sale on such reasonable terms as a bona fide seller would require assuming—

- (i) that the improvements thereon (if any) other than ground improvements as hereinafter defined did not exist at the date to which the valuation relates; and
- (ii) that the purchaser may use the land for no purpose other than the purpose for which it is being used as at the date of this Agreement,

less the ground improvements allowance as hereinafter defined (if any) applicable to the land but in calculating such capital sum no account shall be taken of the value of any gold or minerals in on or under the land or of any right to extract or to receive payments in respect of the extraction of any such gold or minerals therefrom;

In this definition "ground improvements" means in relation to land—

- (i) the reclamation of the land by draining or filling, together with the construction and maintenance of retaining walls and ancillary works;
- (ii) the excavation grading or levelling of the land;
- (iii) the clearing or thinning out of trees scrub or other vegetable growth on the land;
- (iv) the improvement of the fertility of the soil or the structure of the soil on the land; and
- (v) the construction of underground drains,

and "the ground improvements allowance" means in relation to land—

- (A) a sum equal to the expenditure (if any) in respect of ground improvements made to the land (not being ground improvements made more than fifteen years before the date of valuation or ground improvements made before any of the owners of the land as at the date of valuation became owners thereof); or
  - (B) the estimated increase which the incurring of such expenditure has made to the value of the land as at the date of valuation,
- (whichever is the less);

"the *Gazette*" means the *Papua and New Guinea Government Gazette*;

"the Land Ordinance" means the *Land Ordinance* 1962-1966 of the Territory;

"the Mining Ordinance" means the *Mining Ordinance* 1928-1966 of the Territory of New Guinea;

"the Petroleum (Prospecting and Mining) Ordinance" means the *Petroleum (Prospecting and Mining) Ordinance* 1951-1965 of the Territory;

"the Prospecting Authorities" means Prospecting Authorities Nos. 1 to 7 both inclusive under the Mining Ordinance at present vested in C.R.A. Exploration Pty. Limited and includes any extensions thereof;

"the special mining lease" means the special mining lease or special mining leases granted to the Company pursuant to Clause 5 and includes any renewal thereof;

"the Territory" means the Territory of Papua and the Territory of New Guinea together called by the name of the Territory of Papua and New Guinea in Section 10 of the *Papua and New Guinea Act 1949-1966* of the Commonwealth of Australia.

The singular includes the plural and vice versa.

The masculine gender includes the feminine and neuter genders and vice versa.

Any reference to an Ordinance or any provision thereof includes a reference to any modification or re-enactment thereof or substitution therefor.

- (b) Headings shall not affect the operation of this Agreement.
- (c) Where in this Agreement reference is made to a law in force as at a particular date, no account shall unless the context otherwise requires be taken of any modification or re-enactment thereof or substitution therefor effected by a law made after that date but deemed to have come into operation or to have been made on or before that date.
- (d) Where in this Agreement reference is made to any office authority or body that reference shall if that office authority or body is abolished be read as a reference to the then corresponding or analogous office authority or body or to such other office authority or body as is agreed upon by the Administration and the Company for the purpose.

2. RATIFYING LEGISLATION.

- (a) The Administration shall as soon as is reasonably practicable introduce and sponsor in the House of Assembly of the Territory a Bill for an Ordinance to approve this Agreement which Bill shall be in the form of the draft Bill heretofore agreed upon between the Administration and the Company and signed on their behalf for the purpose of identification.
- (b) Apart from paragraph (a) of this Clause which shall come into effect upon the execution hereof, this Agreement shall come into effect on the day on which an Ordinance in the form hereinbefore referred to (but with such amendments thereto (if any) as the parties hereto shall prior to the coming into effect of such Ordinance agree upon) comes into effect, and in the event that such an Ordinance does not come into effect prior to the thirty-first day of December, One thousand nine hundred and sixty-seven, or such later date as the parties hereto shall agree upon in writing, this Agreement other than paragraph (a) of this Clause shall be void and of no effect and neither of the parties hereto shall have any claim against the other of them with respect to any matter or thing arising out of done or performed or omitted to be done or performed under this Agreement other than under the said paragraph (a).
- (c) If such Ordinance comes into effect as aforesaid but at any time thereafter such Ordinance is expressly or impliedly amended or repealed or this Agreement is expressly or impliedly varied added to cancelled abrogated or deprived of any of the force or effect which it has upon the coming into effect of such Ordinance (except as provided by the Ordinance or this Agreement, or with the prior consent of the Company) then irrespective of whether such amendment repeal variation addition cancellation abrogation or deprivation would otherwise constitute a breach of this Agreement the Company the members of the Company and the beneficial owners of shares in the Company shall in respect of the same have all the rights and remedies which it or they would have as if the same were a breach of this Agreement by the Administration.

3. INTERIM RIGHTS OF COMPANY.

- (a) The said C.R.A. Exploration Pty. Limited shall be entitled to transfer the Prospecting Authorities to the Company and the Company shall ensure that the Prospecting Authorities are so transferred to it within one month after the whole of this Agreement comes into effect.
- (b) Unless and until the Company's rights under this Clause have terminated pursuant to paragraph (f) of this Clause—
  - (i) the Administration shall from time to time cause to be granted to the Company successive extensions of the terms of the Prospecting Authorities, which extensions shall be granted subject to the provisions of this Agreement but not to any other terms or conditions and shall unless the Company has previously and in

writing agreed otherwise be granted over the whole of the land at present the subject of the relative prospecting authority; and

- (ii) upon application from time to time by the Company any related company or the employees agents or contractors of any of them for a permit to be issued pursuant to Section 54 of the Mining Ordinance to enter and prospect any private land (being the whole or part of the area then the subject of the Prospecting Authorities) specified in the application, the applicant shall be entitled to the issue of such permit which permit shall specify that it shall remain in force for a period of six months and shall—
  - (A) if at the time of application a permit issued pursuant to this sub-paragraph is in force in respect of the whole of the land specified in such application—be issued so as to come into force upon the expiration of such current permit; and
  - (B) in any other case—be issued so as to come into force as soon as is reasonably practicable.

For the purposes of this paragraph, the right of the Company, any related company, their employees, agents and contractors and the employees of such agents and contractors to prospect on any land under the Prospecting Authorities or under any permit under Section 54 of the Mining Ordinance issued in accordance with this Clause shall be deemed to include the right to carry out any operations reasonably necessary for the carrying out of the investigations assessments and inquiries referred to in Recital 2.

- (c) During the currency of the Prospecting Authorities the Administration shall not without the prior consent of the Company (which consent shall not unreasonably be withheld) grant or permit the grant of any secondary prospecting authority or mining tenement or any other right to prospect for or to mine any gold or minerals over the whole or any part of the area then the subject of the Prospecting Authorities PROVIDED THAT nothing in this paragraph shall apply to any permit licence or lease issued or granted pursuant to the Petroleum (Prospecting and Mining) Ordinance in respect of petroleum.
- (d) Neither Section 25F nor Section 25J (a) of the Mining Ordinance shall apply to the Prospecting Authorities and the Prospecting Authorities shall be deemed hereafter not to be subject to any terms or conditions under Section 25A(1) of that Ordinance.
- (e) Nothing in this Clause shall affect the operation of Section 56 of the Mining Ordinance.
- (f) The Company's rights under this Clause the Prospecting Authorities any permit issued pursuant hereto and the Company's obligations under Clause 4 shall terminate if and when—
  - (i) the Company has not as at the end of the period mentioned in Clause 5(a) applied for the special mining lease;
  - (ii) (in the event that the Company has applied as aforesaid) the special mining lease and all other leases the grant of which the Administration is obliged to procure to the Company pursuant to such application are granted to the Company; or
  - (iii) the Company gives to the Administration notice of its intention to abandon and cancel this agreement (exclusive of Clause 21).

#### 4. COMPANY'S INVESTIGATIONS.

- (a) The Company shall ensure that the investigations assessments and inquiries referred to in Recital (2) and metallurgical and market research in relation thereto are carried out or continued with reasonable diligence and shall endeavour to make its decisions as to whether it will proceed with the establishment of a mining and concentrating operation of the kind referred to in the said Recital (2) and as to whether it will make application pursuant to Clause 5(a) as soon as is reasonably practicable.
- (b) Until such time as the investigations assessments inquiries and research referred to in paragraph (a) of this Clause have been completed or until the Company makes an application pursuant to Clause 5(a) (whichever is the later) it shall within two months of the end of the relative period make to the Administration in respect of each successive

period of six months the first of which ends on the thirty-first day of December, One thousand nine hundred and sixty-seven—

- (i) a report in reasonable detail on such investigations assessments inquiries and research (including a description of the investigations carried out in the area then the subject of the Prospecting Authorities and of the results of those investigations) and as to the expenditure incurred in connection therewith and as to any other expenditure of the kind referred to in Clause 5(b) (i) which has been incurred; and
- (ii) a report on the general progress (if any) made in the obtaining of the finance necessary to enable it to comply with its obligations under Clause 6(a).

5. LEASES AND OTHER RIGHTS.

- (a) The sum of \$4,514,851 having prior to the first day of January, One thousand nine hundred and sixty-seven, been expended on the discovery mentioned in Recital (1) the Company may (so long as the total expenditure as at the date of application is not less than the required total expenditure as at that date) apply to the Administration at any time during the period ending on the thirty-first day of December, One thousand nine hundred and seventy-one by way of a single application—
  - (i) for a special mining lease or special mining leases to be granted to it over the area or areas of land specified in such application (being the whole or part of the area then the subject of the Prospecting Authorities); and
  - (ii) for the other leases specified in the application to be granted to it over or in respect of the relative area of land specified in the application, which leases shall be those reasonably needed by the Company for its purposes under this Agreement including without prejudice to the generality of the foregoing those required for—
    - (A) mining purposes generally;
    - (B) treatment plants;
    - (C) townsites and other accommodation including any green belt or rural zone on the outskirts thereof;
    - (D) wharves, docks, piers, slips, jetties, landing stages, platforms, landing ramps, markers, buoys, beacons, leads, channels and berthing and mooring places, to be constructed, installed, provided, dredged or deepened in accordance with Clause 11;
    - (E) power stations;
    - (F) dams;
    - (G) roads, railways and other modes of access;
    - (H) tunnels, pipelines, water channels and races, transmission lines and ropeways; and
    - (I) the disposal of overburden and tailings in accordance with Clause 15.
- (b) For the purpose of paragraph (a) of this Clause—
  - (i) a reference to total expenditure as at a particular date shall be to the sum of the amounts (expressed in dollars) expended and liabilities incurred but not then satisfied on or after the said first day of January, One thousand nine hundred and sixty-seven, by the Company or by any related company or (pursuant to arrangements made with the Company or any related company) by any other company whatsoever directly or indirectly upon or in connection with—
    - (A) exploration prospecting or testing on or in relation to the areas at present the subject of the Prospecting Authorities;
    - (B) all or any of the matters referred to in Clause 4(a); or
    - (C) the provision of facilities necessary or requisite for the taking of any of the action hereinbefore referred to in this paragraph; and
  - (ii) a reference to the required total expenditure as at a particular date shall be to that sum which bears to the sum of \$4,000,000 the same proportion as the period between the said first day of January, One thousand nine hundred and sixty-seven,

*Mining (Bougainville Copper Agreement)*

and such date (exclusive of any extensions to which the Company becomes entitled under Clause 20(b) (i)) bears to five years.

For the purpose of this paragraph—

- (1) any amount expended in currency other than Australian currency shall be taken into account at its equivalent in Australian currency at the rate of exchange prevailing at the time of expenditure and any liability incurred in currency other than Australian currency shall be taken into account at its equivalent in Australian currency at the rate of exchange prevailing at the time at which the liability was incurred; and
  - (2) any reference to amounts expended, liabilities incurred or arrangements made by or with a related company shall include a reference to amounts expended, liabilities incurred or arrangements made between the said first day of January, One thousand nine hundred and sixty-seven, and the date of the incorporation of the Company by or with a company which is now a related company.
- (c) The Company may at any time after making application pursuant to paragraph (a) of this Clause apply to the Administration for further leases to be granted to it over or in respect of the relative areas of land specified in the application which leases shall be those reasonably needed by the Company for the purposes aforesaid.
- (d) Prior to the Company making application pursuant to paragraph (a) or (c) of this Clause it may from time to time notify the Administration that it intends, if it makes an application under the said paragraph (a) or (c), to apply pursuant thereto for the lease specified in the notification over or in respect of the area of land specified therein but if it does so notify the Administration and subsequently makes application under the said paragraph it shall unless the Administration agrees otherwise include in such application an application for such lease.
- (e) Any application or notification made or given under the preceding provisions of this Clause shall describe each area in respect of which it is made or given with such particularity as will enable it to be marked off and if necessary surveyed or otherwise identified.
- (f) Upon receipt from the Company of an application pursuant to paragraph (a) or (c) of this Clause the Administration shall as soon as practicable but in any event—
- (i) in the case of a lease in respect of which the Company has given a notification under paragraph (a) of this Clause—within three months after the receipt of such application or one year after such notification (whichever is the later); or
  - (ii) in any other case—within one year after the receipt of such application,
- (or within such longer period if any as the parties hereto shall agree upon) procure the grant to the Company of the leases therein specified over or in respect of the relative areas therein specified or save in the case of the special mining lease over or in respect of such other areas as the Administration demonstrates would meet the reasonable needs of the Company for the purposes aforesaid.
- (g) The special mining lease shall be in the form of the Schedule to this Agreement (but with such modifications thereto if any as the parties shall agree upon in writing) the annual rental payable thereunder shall be one dollar per acre or part thereof and the special mining lease shall be for an initial term of forty-two years with successive rights of renewal for further terms of twenty-one years which renewals shall—
- (i) in the case of the first and second renewals—be on the same terms save as to royalty and rent as those on which the special mining lease is originally granted as aforesaid, the terms of the said renewals as to royalty and rent being such as are (after discussion with the Company and consideration of all the then prevailing facts and circumstances) determined by the Administration as being fair and reasonable; and
  - (ii) in the case of the third and subsequent renewals—be on such terms as are (after discussion and consideration as aforesaid) determined by the Administration as being fair and reasonable as aforesaid.
- (h) The Company shall pay royalty at the rate of one and one quarter per cent. (or, during the currency of any renewal of the special mining lease, such other rate as is determined pursuant to paragraph (g) of this Clause) of the f.o.b. revenue applicable to deliveries

made by the Company pursuant to sales or other dispositions made by the Company of ores of copper other minerals or gold (whether or not the same have been concentrated) won from the area the subject of the special mining lease, which royalty shall be payable monthly in accordance with procedures agreed between the Administration and the Company.

- (i) For the purposes of paragraph (b) of this Clause, the processing by the Company of ores referred to in that paragraph beyond the stage of concentration shall be deemed to be a delivery by the Company (made at the time when the further processing begins) of the ores pursuant to a disposition by the Company otherwise than by way of sale.
- (j) The rentals or like charges payable under any lease granted in accordance with this Agreement (other than the special mining lease) shall be such as are prescribed by law or (in the case of any rentals or charges the amount of which is not fixed by legislation) as are fair and reasonable and subject as hereinafter provided in this Agreement the said leases (other than the special mining lease) shall be granted on such terms and for such periods as are fair and reasonable. The instrument evidencing each such lease shall—
  - (i) contain a condition that the Company will not without the consent of the Administration use the relative land for a purpose other than the purpose for which the grant is made or a purpose ancillary to that purpose;
  - (ii) oblige the Company to construct install or provide on the relative land, within the period specified in the Company's application (not being a period longer than five years) and at a cost of not less than an amount to be specified in the said application as the minimum amount which the Company proposes to expend on improvements thereon, improvements of the kind specified in the said application as those which the Company proposes to construct install or provide thereon (but shall not otherwise oblige the Company to construct install or provide improvements); and
  - (iii) shall confer on the Company rights of such renewals or extensions of the relative lease as will ensure that it may remain in force at least until the expiration of the last renewal of the special mining lease.

The rentals or like charges payable under the said renewals or extensions shall be such as are prescribed by law or (in the case of any rentals or charges the amount of which is not fixed by legislation) as are fair and reasonable and such renewals or extensions shall—

- (A) in the case of such renewals or extensions as are granted upon or prior to the expiration of the second renewal of the special mining lease—be granted on the same terms as those on which the relative lease was originally granted; and
  - (B) in the case of any renewals or extensions granted subsequently—be granted on such terms as are (after discussion with the Company and consideration of all the then prevailing facts and circumstances) determined by the Administration as being fair and reasonable.
- (k) All land the subject of any lease granted to the Company in accordance with this Agreement shall be and remain zoned and available for use by the Company for any purpose permitted under the lease and no legislation fixing or limiting rentals or restricting the present rights of sub-lessors to evict sub-lessees shall apply to any land the subject of any lease granted to the Company pursuant hereto.
  - (l) The Company shall (without prejudice to any rights which it may have to be compensated in respect thereof but subject to it doing to the relative land as little damage as may reasonably be and to any agreement which may be made between the parties hereto for the purchase of the same) have the right in the event of the expiration or sooner determination for any reason of any lease or any renewal or extension thereof granted in pursuance of this Agreement within a reasonable time after such expiration or determination to remove any improvements affixed by it or on its behalf to the relative land.
  - (m) The Administration shall not grant or permit the grant of any prospecting authority or mining tenement or any other right to prospect for or mine any gold or minerals over the whole or any part of the area then the subject of the special mining lease unless—
    - (i) the Company has previously consented thereto; or

- (ii) the Administration demonstrates that the exercise of such right to prospect or mine would not interfere with any present or prospective operation of the Company on or in the relative area and has previously made a written offer to the Company upon and subject to the same terms and conditions (whether as to rent royalty or any other matters whatsoever and whether to be contained in the instrument evidencing the grant or in any other instrument or contract) as those upon and subject to which the Administration is bona fide prepared to grant or permit the grant of the said right to any other person or company and the Company has refused such offer in writing or has failed for a period of twelve months after the date of receipt of such offer to accept the same (whichever is the earlier),

PROVIDED THAT nothing in this paragraph shall apply to any grant made pursuant to the Petroleum (Prospecting and Mining) Ordinance in respect of petroleum.

#### 6. CONSTRUCTION OBLIGATIONS OF COMPANY.

- (a) In the event that the Company makes application under Clause 5(a) it shall within five years of the granting to it of the special mining lease and the other leases the grant of which the Administration is obliged to procure pursuant to the said Clause 5(a) and at a cost of not less than \$30,000,000 construct install and provide facilities to enable it to mine ores from the land the subject of the special mining lease, to concentrate such ores, to transport the concentrates so derived to wharf facilities and to ship such concentrates from such facilities in commercial quantities and shall within the said period of five years commence so to ship such concentrates. All the expenditures costs amounts and liabilities referred to in Clauses 5(a) and 5(b) (i) (including the expenditure of \$4,514,851 specifically referred to in the said Clause 5(a)) shall be deemed to have been part of the cost incurred by the Company pursuant to this paragraph irrespective of whether they were expended or incurred by the Company or some other company and whether they were expended or incurred prior to or on or after the date hereof.
- (b) In the event that the Company fails to comply with paragraph (a) of this Clause and to remedy such default within a reasonable time after a notice specifying the default is given to it by the Administration the Administration may by notice to the Company and subject as hereinafter provided in this Clause determine this Agreement (exclusive of Clause 21) and thereupon the special mining lease and the other leases vested in the Company shall notwithstanding their terms cease and determine PROVIDED THAT if the Administration gives to the Company a notice specifying a default as aforesaid and the Company promptly refers to arbitration the question whether such alleged default has taken place then if on such arbitration it is decided that the Company has made such default but that there has been a bona fide dispute and that the Company has not been dilatory in pursuing such arbitration then neither this Agreement nor the special mining lease nor any of the said other leases may be determined under this Clause unless and until a reasonable time fixed by the award as the time within which the Company must remedy such default has elapsed without such default having been remedied.
- (c) Notwithstanding anything contained in this Agreement no default by the Company in the construction installation and provision of facilities or in the shipping of concentrates in accordance with paragraph (a) of this Clause shall constitute a breach of this Agreement and the only consequences arising therefrom shall be those set out in paragraph (b) of this Clause.
- (d) Until the Company has complied with paragraph (a) of this Clause or this Agreement has been determined as aforesaid (whichever is the earlier) the Company shall within two months of the end of the relative period make in respect of each successive period of six months the first of which ends on the thirtieth day of June or the thirty-first day of December (whichever is the earlier) next following the making of application by the Company pursuant to Clause 5(a) a report in reasonable detail to the Administration as to the progress made in complying with paragraph (a) of this Clause and as to the expenditure incurred in connection therewith.

#### 7. TAXATION.

- (a) The income of the Company shall be exempt from income tax for a period commencing on the date on which the Company first enters into commercial production of copper concentrates under this Agreement and ending on the last day of the period of three



years next following that date, but subject to paragraphs (b) (c) and (d) of this Clause no amounts which would but for this paragraph have been deducted in the determination of the amount upon which is calculated the income tax (if any) otherwise payable by the Company in respect of the tax exemption period shall be deducted in the determination of the amount on which is calculated the income tax payable by the Company in respect of any period following the tax exemption period.

- (b) Any expenditure incurred by the Company either before or during the tax exemption period which would entitle the Company to a deduction calculated in accordance with Division 10 of Part III. of the Income Tax Ordinance shall be deemed to have been incurred on the day following the day on which the tax exemption period expires and the Company shall for the purposes of the determination of the amount upon which income tax is calculated and of taxable income be entitled to deductions under the said Division accordingly.
- (c) If any expenditure is incurred by the Company either before or during the tax exemption period in borrowing money for the purpose of producing income such money shall be deemed to have been borrowed (for the period for which it was in fact borrowed) on the day following the day on which the tax exemption period expires and the Company shall for the purposes of the determination of the amount upon which income tax is calculated and of taxable income be entitled to deductions under Section 89 of the Income Tax Ordinance accordingly.
- (d) If in a year of income or part of a year of income falling within the tax exemption period the income which would but for paragraph (a) of this Clause have been assessable income of the Company under the then law relating to income tax is less than the total of the amounts which would but for the said paragraph (a) have been deducted in determining the amount upon which is calculated the income tax (if any) otherwise payable by the Company in respect of that year of income or part of a year of income (other than any of the amounts referred to in paragraphs (b) and (c) of this Clause) the difference between such income and such total shall be deemed to be an expenditure incurred on the day following the day on which the tax exemption period expires which is a deduction for the purposes of the determination of the amount upon which income tax is calculated and of taxable income.
- (e) The deductions now allowable to the Company in respect of the matters covered by Sections 68, 72, and 101 and Division 10 of Part III. of the Income Tax Ordinance and the exemption now provided for in Section 33 of the Income Tax Ordinance and Regulation 5 of the Regulations thereunder shall continue to be available to the Company and the Company shall continue to be entitled to relief from income tax accordingly.
- (f) The exemption now provided for in Section 42(1)(b) (i) of the Income Tax Ordinance shall continue to be available to members of the Company and beneficial owners of shares in the Company and such members and beneficial owners shall continue to be entitled to relief from income tax accordingly.
- (g) Neither the Company nor any other person shall have any liability to any income tax on the payment or repayment of or measured by reference to the amount of any interest payable or any other amount payable in respect of any amount which is lent to the Company by any person who is not a resident of the Territory or on or in respect of the principal of any such loan other than any liability thereto which would exist under the Income Tax Ordinance.
- (h) No alteration made to the law of the Territory (other than any alteration made to give effect to any agreement for the avoidance of double taxation entered into with the Government of the country of which the relevant member or beneficial owner is a resident) shall apply to or in respect of the Company or a member of the Company or a beneficial owner of a share in the Company if it would have the effect of increasing the amount of any tax charge due duty or other levy payable by the Company or by such a member or beneficial owner in respect of any dividends declared credited or paid by the Company to an amount in excess—
  - (i) where the member or beneficial owner is a company which is a resident of Australia (as that expression is used in the *Income Tax Assessment Act 1936-1967* of the Commonwealth of Australia)—of the amount of income tax calculated by applying to the dividend the rate of income tax payable generally by companies of

the same class for the purposes of income tax which are also residents of Australia as aforesaid on dividends derived from a source in the Territory in the year of income in which the dividend is paid or credited or the minimum rate of income tax payable generally by companies of the same class for the purposes of income tax which are residents of the Territory in respect of income derived from a source in the Territory in the said year of income (whichever is the lesser rate);

- (ii) where the member or beneficial owner is a company which is not a resident of the Territory and is not a resident of Australia aforesaid—of the amount calculated by applying to the dividend the minimum rate of income tax payable generally by companies of the same class for the purposes of income tax which are residents of the Territory in respect of income derived from a source in the Territory in the year of income in which the dividend is paid or credited; or
  - (iii) where the member or beneficial owner is an individual—of the amount calculated by applying to the dividend the rates of income tax payable by individuals who are residents of the Territory in respect of income derived from a source in the Territory in the year of income in which the dividend is paid or credited.
- (i) No rate, tax, rent, charge, due, duty, tariff or other levy and no legislation, procedure or practice relating thereto which is discriminatory (whether in law or in practice) in its effect on the Company any member of the Company or any beneficial owner of any share in the Company shall be payable by or (as the case may be) applicable to the Company or any such member or beneficial owner (as the case may be) in respect of the operations of the Company under this Agreement or of any income arising directly or indirectly therefrom.
  - (j) No local government rates or taxes on land calculated otherwise than in relation to the unimproved value of the land shall be payable by the Company.
  - (k) In addition to income tax and any other taxes, rates, charges, dues, duties, tariffs and other levies payable by the Company, the Company shall pay to the Administration by way of an additional tax in respect of each year of income after the tax exemption period such amount (if any) as is equal to the amount (if any) by which the total of the amount of income tax payable in respect of that year of income and the prescribed taxes is less than fifty per cent. of the adjusted taxable income of the Company for that year of income PROVIDED THAT no additional tax shall be payable under this paragraph in respect of the first year of income after the tax exemption period in which the Company derives a taxable income and in respect of the second third and fourth years of income after such first year the amounts of additional tax (if any) otherwise payable under this paragraph shall be reduced by 75 per cent., 50 per cent. and 25 per cent. respectively.
  - (l) If in respect of any year of income the total of the income tax payable by the Company and the prescribed taxes exceeds the greatest of—
    - (i) the prescribed proportion of the adjusted taxable income for that year of income;
    - (ii) the total of those prescribed taxes which were imposed in respect of the importation of goods into the Territory by the Company; or
    - (iii) \$275,000,
 the Administration shall (save in a year of income in which the Company is obliged to pay income tax but the adjusted taxable income does not exceed \$3,000,000) pay the excess to the Company.
  - (m) In respect of each year of income the Company shall at the time at which it lodges its return of income for purposes of income tax furnish to the Administration a return setting out the prescribed taxes.
  - (n) Any additional tax payable under paragraph (k) of this Clause or (as the case may be) any payment under paragraph (l) of this Clause shall become due and payable at the time at which the income tax (if any) payable by the Company becomes due and payable but if no such income tax is payable any payment under the said paragraph (l) shall become due and payable nine months after the end of the relative year of income.
  - (o) If by reason of any event occurring after the payment of any additional tax or the making of any payment under paragraph (l) of this Clause including (without prejudice to the generality of the foregoing) the amendment reduction increase or variation of any income tax assessment, the amount of such payment is more or less than the amount which

should in fact have been paid as the case may be the necessary adjustment shall be made as soon as practicable thereafter.

(p) In this Clause, unless the context otherwise requires—

“additional tax” means the additional tax imposed under paragraph (k) of this Clause;

“adjusted taxable income”, in relation to a year of income, means the sum of—

- (i) the taxable income of the Company in respect of that year of income; and
- (ii) the amount of the prescribed taxes which have been deducted in order to arrive at the taxable income;

“income tax” includes a like tax but does not include provisional income tax or additional tax;

“taxable income”, in relation to a year of income, means the amount which would have been the taxable income of the Company if the Income Tax Ordinance had been in force throughout that year of income;

“the Income Tax Ordinance” means the *Income Tax Ordinance 1959-1966* of the Territory and the Regulations thereunder as in force at the date of this Agreement but as amended by this Agreement;

“the prescribed proportion of the adjusted taxable income”, in relation to a year of income, means fifty per cent. of the adjusted taxable income for that year, increased by one per cent. of the adjusted taxable income for each year of income after the twenty-fifth complete year of income calculated from the end of the year of income in which the Company first enters into commercial production of copper concentrates under this Agreement but so that that proportion shall not exceed sixty-six per cent. of the adjusted taxable income;

“the prescribed taxes”, in relation to a year of income, means—

- (i) such rates taxes charges dues duties tariffs and other levies as are imposed by the Administration or a governmental authority and are deducted in order to arrive at the taxable income of the Company for that year of income; and
- (ii) such other rates taxes charges dues duties tariffs and other levies as are imposed by the Administration or a governmental authority and are paid by the Company during that year of income,

but does not include any normal charges for services rendered, local government rates or taxes on land, duties on the importation into the Territory of goods for resale or for hiring under hire-purchase agreements or the royalty payable under this Agreement;

“the tax exemption period” means the period during which the income of the Company is exempt from income tax under paragraph (a) of this Clause;

other expressions used shall have the meanings given to them in the Income Tax Ordinance.

#### 8. FINANCIAL PARTICIPATION.

- (a) The Company shall, not later than two years after the granting of the special mining lease, notify to the Administration total of the amount of the Company's ordinary share capital which is then issued and which it is then intended shall be issued and offer to the Administration or if so requested by the Administration to an approved authority for subscription in cash at par ordinary shares in the Company having a total nominal value equal to 20 per cent. of the total amount notified under this paragraph and as soon as practicable and in any event not later than six months thereafter the Administration shall or (as the case may be) shall procure the said approved authority to notify the Company whether or not it accepts such offer.
- (b) Notwithstanding any provision in the Articles of Association of the Company transfers of the Administration shares of the following kinds may be made :—
  - (i) transfers made at any time by the Administration an approved authority or approved authorities on the basis of a reasonable spread of shareholdings to eligible Territory residents (so long as the total of the shares so transferred does not prior to the prescribed date exceed 25 per cent. of the total nominal value of

- the Administration shares for the time being issued without the agreement of the Company);
- (ii) transfers made at any time among the Administration and an approved authority or approved authorities; and
  - (iii) transfers made at any time among eligible Territory residents.
- (d) The Administration shall not and shall procure that any approved authority holding Administration shares does not dispose prior to the prescribed date (otherwise than by way of transfer of the legal title therein) of any of the Administration shares or any interest in any of the Administration shares without the agreement of the Company.
- (d) The Company shall ensure that at the time at which an offer is made pursuant to paragraph (a) of this Clause its Articles of Association provide that no Administration share may be held by any person other than the Administration an approved authority or an eligible Territory resident and that such Articles of Association continue thereafter so to provide.
- (e) The Company shall if and so long as the total nominal value of the Administration shares equals not less than 15 per cent. of the adjusted share capital of the Company ensure that the holders for the time being of a majority in number of the Administration shares are entitled to appoint a director of the Company.
- (f) The Administration shall, if it or an approved authority accepts any offer made pursuant to paragraph (a) of this Clause, use its good offices as requested by the Company in assisting the Company to seek and make arrangements for loan capital from time to time required by the Company.
- (g) In this Clause—

"approved authority" means a statutory authority of the Administration approved for the purpose by the Administration;

"co-operative company" means a co-operative company within the meaning of Division 9 of Part III. of the *Income Tax Ordinance 1959-1966* of the Territory, which is a resident of the Territory;

"eligible Territory residents" means persons (being Territory residents who are individuals or co-operative companies or native bodies all of the members of which are Territory residents who are individuals) declared from time to time to be such by law;

"native body" means—

- (i) a Society as defined in the *Co-operative Societies Ordinance 1965* of the Territory;
- (ii) a society certified by the Administration to be a native rural development society; or
- (iii) any other group or body of persons resident in the Territory which is—
  - (A) a native body for the purposes of the *Income Tax Ordinance 1959-1966* of the Territory; or
  - (B) declared by the Administration and the Company to be a native body for the purposes of this Clause;

"the adjusted share capital of the Company" means an amount which is five times the nominal value of the total of—

- (i) the shares in the Company which are issued to the Administration pursuant to paragraph (a) of this Clause; and
- (ii) any other shares which are offered to holders of such shares by virtue of their holdings thereof (whether or not such shares have been taken up by such holders);

"the Administration shares" means—

- (i) the shares in the Company which are issued to the Administration or an approved authority pursuant to paragraph (a) of this Clause; and

- (ii) any other ordinary shares in the Company which are issued to the holder thereof by virtue of his holding shares of the kind mentioned in sub-paragraph (i) of this definition;

"the prescribed date" means the date fifteen years after acceptance of the offer referred to in paragraph (a) of this Clause or the first day after the Company has completed its obligations under Clause 6(a) on which it has no obligations for the repayment (otherwise than to its members) of money borrowed by it for the purposes of the performance of its obligations under that paragraph or for any re-financing in relation thereto (whichever is the earlier).

9. SUPPLIES AND CURRENCY.

- (a) The Company shall so far as is reasonably and economically practicable use supplies plant machinery and equipment manufactured or produced in the Territory.
- (b) Subject to any requirements of defence the safety of the public and quarantine and to the obligations of the Administration under multilateral international agreements entered into by the Government of the Commonwealth of Australia or the Administration and implemented by subsequent legislation, the Company any related company and the agents and contractors of the Company or of any related company shall have the right to acquire import into and move within the Territory and use any plant machinery equipment vehicles explosives fuels reagents and supplies—
  - (i) required for the construction installation provision expansion maintenance or operation of any of the facilities referred to in Clause 6(a), any facilities required for any further processing of concentrates produced as a result of the Company's operations under this Agreement or any other facilities required for the purpose of the said operations; or
  - (ii) otherwise required for the purpose of the said operations,and to export from the Territory the products (whether processed or otherwise) resulting from the said operations.
- (c) No tax, charge, due, duty, primage duty, tariff or other levy shall be imposed on—
  - (i) the acquisition importation into or movement within the Territory or use (between the period commencing on the date hereof and expiring upon the completion by the Company of the performance of its obligations under Clause 6(a)) of such of the plant machinery equipment vehicles fuels and supplies referred to in paragraph (b) of this Clause (other than articles for resale and food-stuffs) as could at present be imported into the Territory free of import duty under the *Customs Ordinance 1951-1959* of the Territory; or
  - (ii) on the acquisition importation into or movement within the Territory or use (between the period commencing on the date hereof and expiring ten years after the completion by the Company of the performance of its said obligations) of any plant machinery or equipment required for the replacement of any of the plant machinery or equipment referred to in sub-paragraph (i) of this paragraph or of such of the explosives and reagents referred to in paragraph (b) of this Clause as could at present be imported into the Territory free of import duty under the said Ordinance,

PROVIDED THAT nothing in this paragraph shall apply to the importation of any plant machinery equipment vehicles explosives fuels reagents or supplies of a kind which is at the time of such importation wholly or substantially manufactured or produced in the Territory and is available to the Company in the Territory at reasonable prices or (subject to Clause 14) to the imposition of normal motor vehicle registration fees.

- (d) No tax, charge, due, duty, excise, tariff or other levy shall be imposed on the mining production disposition or export of any of the products referred to in paragraph (b) of this Clause (other than any general export tax or levy which is imposed and levied at the same rate on all goods or merchandise of whatsoever kind produced or manufactured in the Territory and exported from the Territory in the ordinary course of trade).

10. PERSONNEL.

- (a) The Company shall so far as is reasonably and economically practicable use and train in new skills labour available in the Territory and in particular the Company shall continue

and expand the training programme instituted prior to the execution hereof with a view to the early employment by it in technical and staff positions of suitably qualified inhabitants of the Territory.

- (b) No restriction which is unreasonable shall be placed on the freedom of the employees agents and contractors of the Company or any related company and the employees of such agents and contractors and their families to enter remain and move within and depart from the Territory for the purpose of the Company's operations hereunder and neither the law of the Territory relating to the entry of persons into, the movement of persons within and the departure of persons from the Territory nor the administration of such law shall discriminate (whether in law or in practice) against any such employees agents or contractors or their families.

#### 11. PORT.

- (a) The Company shall for the purpose of its operations under this Agreement have the power on or in the waters adjacent to the said Bougainville Island to construct install provide maintain and use wharves, docks, piers, slips, jetties, landing stages, platforms, landing ramps, markers, buoys, beacons and leads and to construct dredge deepen maintain and use channels and berthing and mooring places PROVIDED THAT no such facility may be constructed installed provided dredged or deepened without the prior consent of—

(i) in the case of facilities in a port which is a declared port—the Board; or

(ii) in the case of any other facilities—the Superintendent of Marine of the Territory,

which consent shall not be withheld unless the said Board or the said Superintendent of Marine (as the case may be) believes on reasonable grounds that the construction, installation, provision, dredging or deepening of the relative facility in the manner or at the place proposed by the Company would prejudice navigation, the accessibility of other ports in the Territory or the development of any declared port within which the facility is or is to be situated.

- (b) The Company shall (to the extent to which it is not prejudiced and its operations hereunder are not interfered with) permit the Administration and other persons to use the facilities referred to in paragraph (a) of this Clause on reasonable terms and at reasonable charges.

(c) In relation to the Company port—

(i) any by-laws from time to time made by the Board relating to declared ports shall (except to the extent agreed between the Company and the board and notified in the *Gazette*) apply as if the Company port were a declared port;

(ii) the Company may with the approval of the Board make local rules for the management and control of the Company port which rules shall be deemed to be local rules made under Section 44(1) of the Harbours Board Ordinance and shall apply in the Company port as if it were a declared port; and

(iii) subject to sub-paragraph (i) of this paragraph, the Company and the Company's Port Manager shall have in relation to the management and control of the Company port all the powers which the Board or a Port Manager or Harbour Master appointed by it to manage the Company port would respectively have if the Company port were then a declared port,

PROVIDED THAT any express or implied reference to the Board its Port Manager or Harbour Master or to its other officers or employees or its agents in any of the said by-laws shall be read and construed as references to the Company the Company's Port Manager or the Company's other employees or its agents (as the case requires).

- (d) The Company shall have sole control over all wharves, docks, piers, slips, jetties, landing stages, platforms and landing ramps referred to in paragraph (a) of this Clause and the sole power to regulate the use thereof (including use permitted by paragraph (b) of this Clause) and the recruitment of labour employed in connection therewith, whether or not any such wharf, dock, pier, slip, jetty, landing stage, platform or landing ramp is situated in the Company port (if any).

- (e) No tax, charge, due, duty or other levy other than income tax, the light dues and pilotage now provided for in the Territory and import and export duties or levies which may be charged under Clause 9 shall be imposed on or in relation to—
- (i) the use of any facilities referred to in paragraph (a) of this Clause;
  - (ii) the shipment of any goods to or from any such facilities; or
  - (iii) any vessel engaged in such shipment.
- (f) The Company may for its operations under this Agreement and on the same terms as other commercial users thereof use any harbour and wharf facilities on the said Bougainville Island which are now or may in the future be under the control of the Administration or the Board or any like body and the Administration shall if requested by the Company provide in connection with any such wharf facility for use by the Company as aforesaid any lifting gear of a normal commercial nature which is or will in the reasonably foreseeable future be required for the general use of such facility and which is reasonably required by the Company for its said operations.
- (g) In this Clause—
- “declared port” has the meaning given to it by Section 4 of the Harbours Board Ordinance as at present in force;
- “the Board” means the Papua and New Guinea Harbours Board;
- “the Company port” means that area of waters adjacent to Bougainville Island and contiguous land which—
- (i) lies wholly outside a port which is now a declared port;
  - (ii) is an area reasonably required by the Company for the proper regulation of the use of the facilities referred to in paragraph (a) of this Clause and of shipping using the same; and
  - (iii) has for the time being been designated by the Company by notice in the *Gazette* as the port serving its operations under this Agreement;

“the Company’s Port Manager” means the person for the time being appointed by the Company to manage the Company port;

“the Harbours Board Ordinance” means the *Papua and New Guinea Harbours Board Ordinance* 1963-1964 of the Territory.

## 12. TOWNS AND SERVICES.

- (a) The Administration shall (except as otherwise agreed with the Company) provide education police postal telecommunication and medical facilities of the standard reasonably required to serve the Company its employees and any town camp or other accommodation established or constructed by the Company on the said Bougainville Island and shall staff and service such facilities at no cost to the Company or any of its employees other than the normal service charges (if any) made therefor.
- (b) The Company shall at a time determined by it during, but in any event prior to the expiration of, the period of five years mentioned in Clause 6 (a) construct or procure the construction to a design and at a place and at a cost approved by the Administration of a hospital of the standard reasonably required to serve (*inter alia*) employees of the Company and any town camp or other accommodation established or constructed by the Company as aforesaid and the Administration shall procure the grant to the Company of all necessary rights to enable it to do so. Unless the Company has previously agreed otherwise in writing the Administration shall forthwith upon the completion of the construction of the said hospital commence to staff and service the same and thereafter continue to do so at no cost to the Company or its employees other than the normal service charges (if any) made therefor. The Administration shall unless arrangements have previously been made with the Company for the postponement thereof reimburse to the Company the cost as aforesaid of constructing or procuring the construction of the said hospital within two months of the completion of the construction of the same.

## 13. POWER AND WATER.

- (a) The Company shall have power to generate, transmit, use for its own purposes and supply electric power to any related company, the employees agents and contractors of

the Company or of any related company and the employees of any such agents or contractors and to charge therefor.

- (b) The parties hereto shall consult with a view to the establishment by the Company of a hydro-electric power station for the generation of electric power for use by the Company, the Administration and other persons and without prejudice to paragraph (c) of this Clause the Administration shall on the request of the Company use its best endeavours to preserve the water resources necessary for the establishment of such a station and shall if the Company decides to proceed with the establishment of such a station grant or procure the grant to the Company of any further rights necessary therefor (which rights shall be granted on fair and reasonable conditions).
- (c) The Company may from time to time and whether before or after it has made application pursuant to Clause 5(a) notify the Administration that it desires the provisions of this paragraph to apply to the area specified in the notification (being an area in respect of which the Company reasonably requires the Administration to take the action hereinafter specified for the purposes of a dam which has been or may in the future be constructed by or on behalf of the Company) and thereupon the Administration shall—
- (i) either procure such last-mentioned area (or such other area as the Administration demonstrates to the Company would meet the reasonable requirements of the Company for the purpose aforesaid) to become pursuant to the *Water Resources Ordinance* 1962 of the Territory a water control district, or take such other action as will result in the use of such area (or as the case may be, such other area) being restricted to the same extent as if the same were now a water control district as aforesaid; and
  - (ii) ensure that no approval licence permit or lease pursuant to the said Ordinance or any similar right is granted to any person other than the Company over the relative area if any acts permitted by such grant would or would be likely substantially to prejudice the Company or interfere with its operations under this Agreement.
- (d) The Company shall to the extent reasonably necessary for its operations under this Agreement have power to take, use for its own purposes and reticulate water to any related company, the employees agents and contractors of the Company and of any related company and the employees of any such agents and contractors and charge therefor.
- (e) Subject to the Administration procuring the grant to the Company of all necessary rights and powers to enable it to do so the Company shall to the extent to which it is not prejudiced and its operations under this Agreement are not interfered with permit the Administration and other persons to use (on reasonable terms and at reasonable charges) electric power generated and water taken by the Company.

#### 14. ROADS.

- (a) Save in the case of any Company roads which the Company determines after consultation with the Administration should in order to ensure the proper safety and maximum efficiency of its operations under this Agreement be reserved for its exclusive use the Company shall (to the extent to which it is not prejudiced and its said operations are not interfered with and subject to the Company and related companies and the agents and contractors of the Company or any related company having absolute priority of use of the relative roads) permit the use of Company roads—
- (i) in the case of use for or in connection with agricultural or pastoral pursuits of substantially the same kind and extent as those at present followed in the area served by such Company roads or for administrative, private, domestic, social or religious purposes—free of charge to the user; and
  - (ii) in any other case—on such reasonable charges (having regard to the cost to the Company of the construction maintenance and repair of such Company roads) as are from time to time determined by the Company.
- (b) The Company shall have power to prohibit restrict or regulate the use of and traffic on all Company roads and at any time and from time to time to close any Company road to the public or to any class of users.



- (c) While any Company road is a public road or street as that expression is used in the *Motor Traffic Ordinance 1950-1965* of the Territory such Ordinance and the *Motor Vehicles (Third Party Insurance) Ordinance 1952-1956* of the Territory and the Regulations thereunder shall subject to the preceding provisions of this Clause apply to and in respect of that Company road but—
- (i) no provision of the said Motor Traffic Ordinance or the said Regulations thereunder relating to the payment of fees on or in connection with the registration of motor vehicles shall apply to motor vehicles owned by the Company any related company any employee agent or contractor of the Company or any related company or any employee of any such agent or contractor and used solely on Company roads; and
  - (ii) no provision of the said Motor Traffic Ordinance or the said Regulations thereunder (other than provisions thereof the breach of which would or might endanger the safety of other road users) shall apply to the use on any Company road of any vehicle so owned.
- (d) The Company shall not be liable to the Administration any governmental authority or any person in respect of any failure or alleged failure by it to maintain or repair any Company road or any loss damage or injury suffered by reason of any such failure or alleged failure if a Local Government Council established under the *Local Government Ordinance 1963-1967* of the Territory and having the care control and management of such a road would not have been so liable.
- (e) In this Clause "Company road" means a road constructed by or on behalf of the Company or a related company on the said Bougainville Island other than any such road which by agreement in writing between the parties hereto is not to be or is not a Company road.
- (f) The Administration shall from time to time publish in the *Gazette* details of all roads which are as at the date of the notice Company roads and shall from time to time cause that notice to be amended as necessary.

## 15. OVERBURDEN TAILINGS AND SAFETY.

- (a) The Company shall not dispose of any overburden removed in the course of, or any tailings produced as a result of, its operations under this Agreement in an area or in a manner not previously approved for that purpose pursuant to the provisions of this Clause, it being intended that such overburden and tailings shall be disposed of in a manner which is reasonably safe and results in as little damage or disturbance (having regard always to the need for the Company to carry out its said operations efficiently and economically) as may reasonably be.
- (b) The Company may at any time and from time to time hereafter submit to the Administration a proposal for the disposal of such overburden and tailings, setting out the area or areas and manner in which it is proposed to dispose of the same. Forthwith upon receipt of such proposal the Administration shall consider the same (having regard to the factors mentioned in paragraph (a) of this Clause) and shall within two months of such receipt either—
- (i) notify the Company that its proposal has been approved either without modification or with such modifications as are set out in the notification; or
  - (ii) submit to the Company an alternative approved proposal for the disposal of the said overburden and tailings, setting out the area or areas and manner in which the same are to be disposed of thereunder.
- (c) In the event that the Administration does not approve the Company's proposal without modification the Company may at any time thereafter refer to arbitration as hereinafter provided in this Agreement the question of the disposal of the said overburden and tailings. Upon such arbitration the arbitrator or arbitrators shall have regard to the factors mentioned in paragraph (a) of this Clause and shall either approve the Company's proposal or approve that of the Administration in either case without modification or with such modifications as he or they consider proper.
- (d) Notwithstanding that the same may have been disposed of in an area and in a manner approved as hereinbefore provided in this Clause the Company shall make compensation for any loss suffered by any indigenous or other inhabitant of the said Bougainville Island or the other islands adjacent thereto resulting from any damage done (whether to land,

anything on land, water or otherwise) or any interference with any right to use land or water caused by the disposal by the Company of any overburden removed in the course of, or tailings produced as a result of, its operations under this Agreement, but nothing in this paragraph shall oblige the Company to make any compensation to the Administration or any governmental authority. Such compensation shall be provided either in cash or by way of provision on reasonable terms and conditions of land or other facilities or benefits or partly in one form and partly in another and in default of agreement thereon between the Company and the person seeking such compensation the entitlement to and the amount and nature of such compensation shall upon application by such person be determined in accordance with the procedures provided for in Part VII. of the Mining Ordinance, such person or (as the case may be) the Company having from such determination the rights of appeal set out in the said Part VII.

- (e) The Company shall not save as is hereinbefore provided in this Clause be liable for any loss damage disturbance or interference caused by the disposal by the Company of any of the said overburden or tailings and save as aforesaid neither the Administration nor any governmental authority or person shall be entitled to any remedy in respect thereof but nothing in this paragraph shall exclude any liability for negligence.
- (f) In addition to complying with the present provisions of the Regulations made under the *Mines and Works Regulation Ordinance 1935-1962* of the Territory relating to safety and protection the Company—
- (i) shall when any dump for overburden and tailings established by it for the purpose of its operations under this Agreement ceases to be utilized for such purpose ensure that in order to facilitate the rapid regeneration of vegetation thereon such dump is left with a reasonably flat upper surface; and
  - (ii) shall within a reasonable time after any such dump ceases to be utilized as aforesaid carry out experiments for the determination of whether vegetation can be established thereon and use its best endeavours to establish thereon vegetation of a type which can be so established,

but the Company shall not be required to do any further or other acts or carry out any further or other works for the rehabilitation or restoration of any of the areas affected by its operations under this Agreement.

#### 16. FURTHER PROCESSING.

The Company may at any time and from time to time after it makes application pursuant to Clause 5(a) submit to the Administration a proposal for the establishment by it in the area in the Territory specified in the proposal of facilities for the processing to the metallic or some further stage of any concentrates produced as a result of the Company's operations under this Agreement and the Administration shall within two months of such submission notify the Company whether or not it objects (on the ground that the same would have a substantially detrimental effect on the agriculture and general amenity of the surrounding area) to the establishment of such facilities in the area specified in the proposal and provide to the Company the detailed reasons for its decision and the Company may within two months of such notification refer to arbitration as hereinafter provided in this Agreement the question whether any objections made by the Administration were justified on such ground. If the Administration does not so object, or it objects but upon the arbitration it is determined that the Administration's objections were not so justified the Company shall be at liberty at any time thereafter to establish facilities in accordance with its proposal and carry out processing at such facilities and the Company may at any time and from time to time thereafter apply to the Administration for the leases specified in the application to be granted to it over or in respect of the relative areas specified in the application which leases shall be those reasonably needed by the Company therefor including (without prejudice to the generality of the foregoing) those needed for adequate buffer zones covering areas likely to be affected by fume dispersal. The provisions of paragraphs (d) (e) (f) (j) (k) and (h) of Clause 5 shall apply mutatis mutandis to such application and the leases granted pursuant thereto.

#### 17. NO INTERFERENCE OR EXPROPRIATION.

- (a) The Company shall be at all times entitled and permitted fully to enjoy all the rights, benefits and privileges granted or intended to be granted by or as a result of this Agreement and the same and also the rights of all past present and future members of the Company and beneficial owners of shares in the Company fully to enjoy the benefit of their shareholdings or their interests in shares and other rights arising therefrom shall at no time be to the detriment of the Company or such members or beneficial owners

substantially altered or impaired impeded or interfered with by executive or administrative action or in any other manner whatsoever (whether directly or indirectly) and without affecting the generality of the foregoing—

- (i) subject to the provisions of this Agreement, the Company's present freedom of choice of directors, managers, executives, advisers, consultants, associates, employees, contractors, suppliers and customers and its present freedom to declare credit and pay dividends and to grant other rights to its members shall continue without substantial interference; and
  - (ii) no discriminatory action whether by way of industrial fiscal or social legislation or otherwise shall be taken against the Company or all or any of the members of the Company or the other persons mentioned in sub-paragraph (i) of this paragraph in their capacities as such in relation to the Company.
- (b) So long as the Company complies with this Agreement and with any lease granted thereunder, the Administration—
- (i) shall not cancel or permit the cancellation of any such lease or require the surrender of the whole or any part of any area the subject of any such lease; and
  - (ii) shall not resume or expropriate or permit the resumption or expropriation of any asset (whether movable or not) of the Company used in connection with any of its operations under this Agreement, any of the products (whether processed or otherwise) resulting from such operations, the business of the Company, or any shares held or owned by any person in the Company.

PROVIDED THAT nothing in this paragraph shall prevent the acquisition pursuant to the provisions of the Land Ordinance of any land or interest therein the subject of any such lease—

- (A) if such acquisition is necessary for the defence of the Commonwealth of Australia or of the Territory or for securing the public safety of the said Commonwealth or of the Territory; or
- (B) if such acquisition is for a purpose which is at present a public purpose under the Land Ordinance and does not prejudice the Company or interfere with its present or prospective operations under this Agreement.

For the purposes of this paragraph "expropriation" includes in the case of an asset, product or share any substantial interference with the rights of the owner fully to utilize and enjoy or to deal with or dispose of the asset product or share and in the case of a business any substantial interference with the rights of the owner to control or carry on or to deal with or dispose of that business but does not include any action which would not but for this definition constitute expropriation and which is equitable and is in the circumstances of the case and having regard to similar action taken in relation to other persons in the Territory reasonable and necessary for the peace order and good government of the Territory.

- (c) Nothing in this Clause shall derogate from any other provision of this Agreement limiting the action which may be taken or permitted to be taken against the Company.

#### 18. ASSIGNMENT.

The Company shall have the right to—

- (i) assign mortgage charge sublet or dispose of the whole or any part of the rights of the Company under this Agreement including its rights to or as holder of any lease granted hereunder, to any wholly-owned subsidiary of the Company and, in the case of subletting of any land on which a dwelling is erected, to any person, as of right and save as aforesaid with the consent in writing of the Administration (which consent shall not be unreasonably withheld); and
- (ii) appoint a wholly-owned subsidiary of the Company or with the consent of the Administration (which consent shall not be unreasonably withheld) any other person to exercise all or any of the powers functions and authorities conferred on the Company under this Agreement,

subject in the case of any assignment under this Clause to the assignee undertaking to the Administration to observe and comply with all the obligations of the Company in relation to the matter

assigned. Upon the giving of any such undertaking the Company shall have no further obligation in relation to the matter assigned.

#### 19. VARIATION OF LEASES.

The Administration and the Company may from time to time by mutual agreement in writing add to cancel or vary any of the provisions of any instrument evidencing any lease granted under this Agreement.

#### 20. EXTENSIONS OF TIME.

- (a) Notwithstanding any provision of this Agreement the Administration may at the request of the Company from time to time extend any period referred to in this Agreement for such period or substitute for any date referred to in this Agreement such later date as it thinks fit.
- (b) If and whenever the Company is prevented or hindered by any circumstance or event of a kind set out in Clause 24 from undertaking (at a time at which the Company reasonably desires to do so) all or any of the activities referred to in Clause 5(b) (i) or Clause 6(a) then—
  - (i) in the case of prevention or hindrance of all or any of the activities referred to in Clause 5(b) (i)—the period mentioned in Clause 5(a) shall be extended by a period equal to the period during which such prevention or hindrance continues; and
  - (ii) in the case of prevention or hindrance of all or any of the activities referred to in the said Clause 6(a)—the period of five years mentioned in the said Clause 6(a) shall be extended by a period equal to the period during which such prevention or hindrance continues.
- (c) If at any time or from time to time prior to the expiration of the relative period (and any extension thereof) the Company notifies the Administration that in the conditions then prevailing (whether in the Territory or elsewhere) it requires an extension, for the period specified in the notice, of the period of five years mentioned in Clause 6(a) in order to enable it to complete all marketing and financial arrangements necessary or requisite for the proper and profitable development of the deposits referred to in Recital (1) and submits to the Administration its detailed reasons for concluding that it will require such an extension, then unless within two months of such notification the Administration refers to arbitration as hereinafter provided in this Agreement the question of whether the Company reasonably requires such an extension or if on reference to arbitration the Administration is unable to substantiate that the Company does not reasonably require such an extension and (if the question arises) that the period specified in the said notice to the Administration is not the proper length of such extension, the said period shall be deemed to be extended accordingly. If on reference to arbitration the Administration is able to substantiate that the period specified in the said notice is not the proper length of such extension then the said period shall be deemed to be extended by the period determined upon the arbitration to be necessary or requisite.
- (d) Where any period is or is deemed to be extended or any later date substituted for an earlier date under this Clause, that period as so extended or that later date shall be deemed for all the purposes of this Agreement to be substituted for the relative period or date referred to in this Agreement (notwithstanding that at the time of such extension or substitution such period may have expired or such date may have been passed).

#### 21. COMPANY'S RIGHTS OF FIRST REFUSAL.

Notwithstanding anything hereinbefore contained in this Agreement, if the Company's rights under Clause 3 have previously terminated under paragraph (f) (i) or (f) (iii) thereof or if this Agreement has previously been determined under Clause 6 the Administration shall not within ten years thereafter grant or permit the grant or undertake to grant or permit the grant to any person other than the Company (whether by way of mining tenement or otherwise) of the right to mine copper or any ore of copper from (in the case of termination under paragraph (f) (i) or (f) (iii) of Clause 3) any part of the area the subject of the Prospecting Authorities at the time of termination or from (in the case of determination under Clause 6) any part of the area the subject of the special mining lease at the time of determination unless it has first made an offer to the Company to grant or procure the grant to the Company of such right upon and subject to the same terms and conditions (whether as to rent, royalty or any other matters whatsoever and whether or not to be contained in the instrument

evidencing such mining tenement or other right itself or in any other instrument or contract) as those upon and subject to which the Administration is bona fide prepared to grant or permit the grant of the said mining tenement or other right to such other person and the Company shall have failed for a period of twelve months after the date of receipt of such offer to accept the same PROVIDED THAT for the purpose of this Clause the Administration shall be deemed to have made an offer to the Company upon and subject to the same terms and conditions as those upon and subject to which it is bona fide prepared to grant or permit the grant of the said mining tenement or other right to another person as aforesaid if—

- (i) the only difference between the relative terms and conditions is that any period specified in the terms and conditions offered to the Company within which the Company may apply for such mining tenement or other right to be granted to it is shorter than any corresponding period specified in the terms and conditions upon which the Administration is bona fide prepared to grant or permit the grant of the said mining tenement or other right to any other person as aforesaid; and
- (ii) the difference between such periods is not more than is fair and reasonable having regard to the investigations assessments and inquiries already made prior to the execution of or under this Agreement and to whether such other person has or will have access to the results of the same.

## 22. SECRECY.

- (a) The Administration shall not without the prior consent of the Company divulge to any person (not being an officer of the Administration or of the Government of the Commonwealth of Australia engaged in his duties) any of the information provided to it by the Company pursuant to Clause 4(b) or 6(d) and shall use its best endeavours to prevent information being divulged in a manner contrary to the provisions of this paragraph by any persons who are or have at any time whether before or after the date hereof been officers of the Administration.
- (b) Nothing in this Clause shall prevent the disclosure of information relating solely to the nature and results of prospecting operations conducted by the Company in an area which is not at the time of disclosure the subject of the Prospecting Authorities or the special mining lease.

## 23. ARBITRATION.

- (a) If at any time there is any dispute question or difference of opinion between the parties hereto concerning or arising out of this Agreement or its construction meaning operation or effect or concerning the rights duties or liabilities of either of the parties hereto or there is any dispute question or difference of opinion which by the preceding provisions of this Agreement is to be or may be referred to arbitration, the same shall subject to paragraph (b) of this Clause stand referred to the arbitration of a single arbitrator and such reference shall be considered a submission within the meaning of that expression given by the *Arbitration Ordinance* 1951 of the Territory.
- (b) After any such dispute question or difference of opinion has arisen either party hereto may at any time prior to the appointment of an arbitrator by concurrence of the parties or pursuant to the said Ordinance by notice to the other party elect that the provisions of this paragraph shall apply to such dispute question or difference of opinion and in such event—
  - (i) the dispute question or difference of opinion shall stand referred to the arbitration of three arbitrators one of whom shall be appointed by each of the parties hereto and the third of whom (who shall unless the parties hereto otherwise agree in writing be ordinarily resident outside the Territory and the Commonwealth of Australia) shall be agreed upon by the parties in writing and in default of agreement within fourteen days after one party gives notice to the other party requiring the appointment of such a third arbitrator shall be appointed by the President of the International Chamber of Commerce;
  - (ii) if any arbitrator refuses to act is incapable of acting or dies a new arbitrator shall be appointed by the party appointing the original arbitrator or (in the case of the third arbitrator) in accordance with the procedure provided for in sub-paragraph (i) of this paragraph;

- (iii) if on such a reference one party fails to appoint an arbitrator either originally or by way of substitution as aforesaid within fourteen days after the other party (having appointed its arbitrator) has given to it notice to appoint such arbitrator the arbitration may proceed in the absence of such arbitrator;
  - (iv) such arbitration shall be held at such place (whether within or outside the Territory) as the arbitrators determine; and
  - (v) subject to the preceding provisions of this paragraph, the provisions of paragraph (a) of this Clause shall apply to such arbitration.
- (c) If either party to any arbitration under this Clause so requests the arbitrator or arbitrators shall state in the form of a special case for the opinion of the Supreme Court of the Territory any question of law arising in the course of the reference and any opinion given shall be subject to the normal right of appeal.

**24. FORCE MAJEURE.**

- (a) The Administration shall not be liable to the Company nor shall the Company be liable to the Administration for any delay or failure in the performance of obligations under this Agreement, if such delay or failure is beyond the reasonable control of the party so delaying or failing and is caused by or arises from Acts of God, force majeure, floods, storms, tempests, washaways, earthquakes or other seismic disturbances, fires, acts of war (whether declared or undeclared), revolutions, acts of public enemies, riots, civil commotions, strikes, lockouts, stoppages, restraints of labour or other similar acts (whether partial or general), shortages of labour or essential materials, failure to secure contractors, delays of contractors or any other cause or causes whatsoever PROVIDED THAT no delay or failure on the part of the Administration shall be deemed to be beyond the reasonable control of the Administration for the purposes of this Clause if it was caused by or arises from any act or omission of any governmental authority.
- (b) Any party hereto who is relieved by paragraph (a) of this Clause of the consequences of any delay or failure shall take all reasonable steps to minimize the effect of such delay or failure as soon as possible after the occurrence of the cause or causes thereof.

**25. STAMP DUTY.**

No stamp duty shall be payable on or in respect of—

- (i) the transfer to the Company of the Prospecting Authorities;
- (ii) any instrument evidencing the grant of any lease to the Company under this Agreement;
- (iii) any assignment, mortgage, charge, sublease, disposition or appointment made pursuant to Clause 18;
- (iv) any instrument evidencing or relating to or securing the repayment of any loan made or to be made to the Company; or
- (v) any instrument evidencing or relating to an issue of shares by the Company,

PROVIDED THAT nothing in this Clause shall apply to any transfer, instrument, assignment, mortgage, charge, sublease, disposition or appointment executed more than ten years after the Company has completed the performance of its obligations under Clause 6(a).

**26. NOTICES.**

All notices notifications consents approvals undertakings applications requests offers reports returns and proposals required to be or which may be given made furnished or submitted under this Agreement shall unless the context otherwise requires be in writing signed by the Administrator or (as the case may be) a Director or the Secretary of the Company and if in writing shall be sufficiently given made furnished or submitted if delivered at or posted by prepaid post to the address for service of the party to whom it is to be given made furnished or submitted and all such communications if posted as aforesaid shall be deemed to have been received in the ordinary course of post. The address for service of the Administration shall be Konedobu in the Territory or such other address as the Administration from time to time by notice to the Company substitutes for such address and the address for service of the Company shall be Panguna on the Island of Bougainville or such other address as the Company from time to time by notice to the Administration substitutes for such address.

27. GOVERNING LAW.

This Agreement shall be governed by the law of the Territory.

SCHEDULE.

TERRITORY OF PAPUA AND NEW GUINEA.

*Mining Ordinance 1928-1966 of the Territory of New Guinea.*

Special Mining Lease.

I, \_\_\_\_\_, Administrator of the Territory of Papua and New Guinea, by virtue of the powers conferred by the *Mining Ordinance 1928-1966* of the Territory of New Guinea and the *Mining (Bougainville Copper Agreement) Ordinance 1967* of the Territory of Papua and New Guinea and all other powers me enabling, hereby grant and demise to BOUGAINVILLE COPPER PTY. LIMITED (hereinafter called "the Company" which expression shall include its successors and assigns) ALL THAT piece of land being the whole of the land particularly described and delineated on the plan annexed hereto and signed by me for the purpose of identification and all those mines veins seams lodes and deposits of copper and such gold and other minerals as are combined in the land with such copper in such a way that they must necessarily be mined in the mining of such copper in on or under the said land together with the right and liberty to use the said land for the mining of such minerals and for all purposes necessary for the effectual carrying on of such mining or for the carrying out of any of the other operations of the Company under the Agreement made the \_\_\_\_\_ day of June, One thousand nine hundred and sixty-seven, between the Administration and the Company (hereinafter called "the Agreement") or the said *Mining (Bougainville Copper Agreement) Ordinance 1967* including without prejudice to the generality of the foregoing all of the purposes for which a mining purposes lease may be granted under the *Mining Ordinance 1928-1966* of the Territory of New Guinea TO HOLD the said land and the said mines veins seams lodes and deposits for the term of forty-two years from the \_\_\_\_\_ day of \_\_\_\_\_, One thousand nine hundred and \_\_\_\_\_, with the right to renew the same for further periods each of twenty-one years as provided in the Agreement but upon and subject to the provisions of the Agreement and the *Mining (Bougainville Copper Agreement) Ordinance 1967* and subject thereto to the *Mining Ordinance 1928-1966* of the Territory of New Guinea YIELDING and paying therefor the rent and royalty provided for in the Agreement PROVIDED THAT without the prior written consent of the Company this lease may not be determined or forfeited the Company may not be required to surrender this lease and the said land or any part thereof may not be resumed otherwise than in accordance with the Agreement.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, One thousand nine hundred and \_\_\_\_\_

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first above-written.

SIGNED SEALED AND DELIVERED for and on behalf of the Administration of the Territory of Papua and New Guinea by DAVID OSBORNE HAY the Administrator of the Territory in the presence of:

(Sgd.) D. O. HAY.

(Sgd.) F. C. Henderson.

THE COMMON SEAL of BOUGAINVILLE COPPER PTY. LIMITED was hereto affixed by authority of a resolution of the Board of Directors:

L.S.

(Sgd.) F. Espie, Director.

(Sgd.) P. W. Quodling, Secretary.

SCHEDULE 2.

Sec 1.

THE 1974 AGREEMENT.

THIS AGREEMENT is made the twenty-first day of November One thousand nine hundred and seventy-four, between THE GOVERNMENT OF PAPUA NEW GUINEA (hereinafter called "the Government") of the one part and BOUGAINVILLE COPPER LIMITED a Company incorporated in Papua New Guinea and having its registered office at Panguna on Bougainville Island in Papua New Guinea (hereinafter called "the Company" which expression shall include its successors and assigns) of the other part.

WHEREAS:

(1) On the sixth day of June, One thousand nine hundred and sixty-seven The Administration of the Territory of Papua and New Guinea of the one part and Bougainville Copper Pty. Limited of the other part entered into a certain agreement (hereinafter called "the 1967 Agreement") relative, inter alia, to the terms and conditions upon which the said Bougainville Copper Pty. Limited should be permitted to mine ores from certain land on Bougainville Island, to concentrate such ores, to transport the concentrates so derived to wharf facilities and to ship such concentrates from such facilities in commercial quantities.

(2) On the ninth day of August, One thousand nine hundred and seventy-three the said Bougainville Copper Pty. Limited did convert to a public company and the name of the said Bougainville Copper Pty. Limited is now Bougainville Copper Limited.

(3) Section 9A of the Papua New Guinea Act 1949-1973 of the Commonwealth of Australia provides that the Government is a body politic with perpetual succession by the name "The Government of Papua New Guinea" and is (subject to that Act) capable by that name of suing and being sued, making contracts, acquiring, holding and disposing of real and personal property, and doing and suffering all other matters and things a body corporate may do or suffer.

(4) Section 13 of the Papua New Guinea Act 1949-1973 of the Commonwealth of Australia provides that subject to that Act the Government shall be administered by the High Commissioner of Papua New Guinea.

(5) Section 37 of the Papua New Guinea Act (No. 2) 1973 of the Commonwealth of Australia provides that on the date of commencement of Section 5 thereof, all real and personal property of the Administration is, by force of that Section 37, transferred to, and vested in, the Government and there are also transferred to, and vested in, the Government.

- (a) all rights and liabilities of the Administration subsisting immediately before that date; and
- (b) all rights and liabilities of the Commonwealth of Australia subsisting immediately before that date by virtue of a contract or agreement entered into on behalf of the



Commonwealth of Australia in accordance with the Administration Contracts Ordinance 1950 or that Ordinance as amended or in accordance with a law repealed and replaced by that Ordinance.

(6) The Government and the Company have after a series of negotiations in the year One thousand nine hundred and seventy-four agreed that certain changes should be made to the 1967 Agreement and in particular to Clause 7 thereof.

(7) Such negotiations took account of the establishment by the Company on Bougainville Island pursuant to the provisions of the 1967 Agreement of a copper mine, copper concentrating facilities, roads and wharf facilities, and other facilities relative thereto at a total cost of over \$400 000 000, and further took account of the profits realised by the Company and of the expectation that its operations would continue to be profitable.

(8) Such negotiations also took account of the change in status of Papua New Guinea since the year One thousand nine hundred and sixty-seven to a stage of emerging nationhood and imminent independence and the need to modify certain provisions of the 1967 Agreement to accord with that change in status.

(9) Such negotiations also took account of the fact that the minerals mined and converted by the Company into saleable form are a non-renewable asset belonging to Papua New Guinea and that accordingly it is the responsibility of the Government to ensure that the taxes to be paid by the Company provide at all times for Papua New Guinea an equitable return on the minerals which the Company is extracting.

(10) The Government recognizes the role of the Company as the major pioneer investor in Papua New Guinea and recognizes further that any variations to the 1967 Agreement should be framed bearing that fact in mind.

(11) The Government and the Company while acknowledging that legislative sovereignty in Papua New Guinea is vested in Parliament wish the 1967 Agreement, as varied hereby, to be an enduring arrangement and do not intend that it should be altered by any unilateral action but only with the mutual consent of the Government and the Company.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1. Clause 1 of the 1967 Agreement is varied
  - (a) by the addition of the following definition after the definitions of "Administration land", "mineral", "mining tenement", "private land", "prospecting authority" and "secondary prospecting authority":

"Amendment Date" means the date upon which the Agreement made the twenty-first day of November, One thousand nine hundred and seventy-four between the Government of the one part and the Company of the other part comes into effect; and
  - (b) by the addition of the following definition after the definition of "f.o.b. revenue":

"the Government" means The Government of Papua New Guinea;
2. Clause 1 of the 1967 Agreement is further varied by the addition of the following paragraph after paragraph (d) thereof:

"(e) In this Agreement, unless the context otherwise requires a reference to the Administration shall be read as a reference to the Government and a reference to the Territory shall be read as a reference to Papua New Guinea."
3. Clause 5(l) of the 1967 Agreement is varied by the addition of the following after the word "land" at the end thereof:

"PROVIDED THAT the parties hereto shall, at the meeting which takes place pursuant to Clause 26A hereof during the twenty-first year after the year in which the Amendment Date occurs consider whether it would be appropriate to adopt arrangements other than those set out in the provisions of this paragraph".
4. Clause 5 of the 1967 Agreement is varied by the addition of the following paragraphs after paragraph (m) thereof:

"(n) Notwithstanding anything contained in the foregoing paragraphs of this Clause or otherwise but subject always to paragraph (o) hereof the Government may to the extent that such lease or leases or special mining lease or special mining leases would be over or in respect of all or part of the Mainoki and Karato areas delay procuring the grant to the

Company of the lease or leases (including, but without in any way whatsoever limiting the generality of the foregoing, any special mining lease or special mining leases) specified in any application by the Company pursuant to paragraph (a) or (c) of this Clause until such time as the Government in its absolute discretion decides that development of the Mainoki and Karato areas may proceed.

- (o) Until such time as the Government shall have notified the Company in writing that in the exercise of its discretion aforesaid it has decided that development of the Mainoki and Karato areas may proceed
- (i) any application by the Company pursuant to paragraph (a) or (c) of this Clause for a lease or leases (including, but without in any way whatsoever limiting the generality of the foregoing, any special mining lease or special mining leases) the grant of which to the Company the Government is permitted pursuant to paragraph (n) of this Clause to delay procuring will to the extent that such lease or leases or special mining lease or special mining leases would be over or in respect of all or part of the Mainoki and Karato areas stand deferred PROVIDED THAT notwithstanding anything contained in this Clause or in any law any application which so stands deferred shall continue in full force and effect; and
- (ii) the Company shall not without the prior consent of the Government engage in any further prospecting or exploration activities on areas (other than any area which falls within the area or areas of land over which the special mining lease extends) the subject of the Prospecting Authorities PROVIDED THAT this sub-paragraph is without prejudice to the continued validity of the Prospecting Authorities and does not derogate from the obligations of the Government to cause to be granted to the Company successive extensions of the terms thereof.
- (p) If, at any time before the Government has pursuant to paragraph (o) notified the Company that it has decided that development of the Mainoki and Karato areas may proceed, the Government so requests the parties shall meet together with a view to considering in good faith the manner in which such development should proceed, if it were to do so, and with a view further to discussing inter alia:
- (i) whether or not any other company or other enterprise should conduct such development and, if so, the extent to which each of the Government and the Company should beneficially be interested in such other company or other enterprise and the manner in which and the consideration for which their respective interests (if any) should be taken up (it being contemplated by the parties that the Government shall have the right to take up a majority beneficial interest should it so desire); and
- (ii) whether or not the relevant lease or leases (including, but without in any way whatsoever limiting the generality of the foregoing, any special mining lease or special mining leases) should, notwithstanding anything contained in this Clause or in any law, be granted direct to any such other company or other enterprise as is referred to in sub-paragraph (i) hereof and; if so, the terms upon which it or they should be so granted.
- (q) For the purposes of this Clause, the Mainoki and Karato areas are those areas on Bougainville Island within Prospecting Authority 7B held by the Company and being more particularly described in the plan and description accompanying that plan initialled on behalf of the parties for identification prior to the execution hereof."

5. The 1967 Agreement is varied by the deletion therefrom of Clause 7 thereof and by the substitution therefor of the following:

- "7. (a) Except where the contrary intention appears, either expressly or by implication, the provisions of the Income Tax Act which are not inconsistent with the provisions of this Agreement are applicable to the Company.
- (b) The income of the Company for the period from the 1st day of April, 1972, the date on which the Company first entered into commercial production of copper concentrates under this Agreement, to the 31st day of December, 1973 is and shall continue to be exempt from income tax; save as hereafter provided no amounts which would but for such exemption have been deducted in the determination of the amount of taxable income derived during the aforesaid period shall be deducted in the determination of the

amount on which is calculated the income tax payable by the Company in respect of any period following that period.

- (c) If the rate of tax in respect of the taxable income of the Company for the Tax year commencing on the 1st day of January, 1975, and for any subsequent Tax year, determined in accordance with the provisions of Part I of the Second Schedule hereto, is higher than the rate of tax which would otherwise be applicable in respect of the taxable income of the Company for that Tax year the Company will be liable to pay income tax on its taxable income for that Tax year calculated at the rate determined in accordance with such provisions.
- (d) For the purpose of determining the amount of income tax payable by the Company in respect of the Tax year commencing on the 1st day of January, 1974 the Chief Collector shall assess tax on the basis that the first six months of that Tax year and the second six months of that Tax year comprised separate and distinct periods of taxable income and in determining the taxable income of the Company for each of those periods one half of the total amount which would otherwise have been allowable as deductions from the assessable income derived by the Company during the whole of that Tax year shall be allowable as a deduction from the assessable income derived by the Company during each of those periods.
- (e) The tax payable by the Company in respect of the Tax year commencing on the 1st day of January 1974 shall be the total of the amount of tax payable in respect of the taxable income of the Company for the first six months of that Tax year determined in accordance with the provisions of Part II of the Second Schedule hereto and the amount of tax payable in respect of the taxable income of the Company for the second six months of that Tax year determined in accordance with the provisions of Part III of the Second Schedule hereto.
- (f) In respect of the Tax year commencing on the first day of January, 1974 and in respect of each subsequent Tax year the company shall be entitled to deductions from its assessable income in respect of expenditure of a capital nature as follows :—
  - (i) Where that expenditure relates to a unit of property in respect of which depreciation is an allowable deduction under the provisions of Subdivision A of Division 3 of Part III of the Income Tax Act or otherwise under that Act howsoever than under the provisions of Division 10 of Part III the amount of allowable deduction in respect of any such unit of property in relation to each Tax year (the first of which shall be the Tax year during which that unit of property was first used by the Company or installed ready for use) shall be the greater of one-twentieth of the cost of that unit or such proportion of that cost as may be allowable as a deduction from assessable income under the Income Tax Act PROVIDED THAT the amount of deduction allowable in respect of the Tax year in which such unit of property was first used or installed ready for use shall be such proportion of the amount which would have been allowable as a deduction if such unit of property had been first used or installed ready for use on the first day of that Tax year as bears to such lastmentioned amount the same proportion which the unexpired period of the Tax year at the time such unit was first used or installed ready for use bears to the whole period of that Tax year.
  - (ii) Where any unit of property of the kind referred to in sub-paragraph (i) above is by reason of the provisions set out in sub-paragraph (C) below deemed to have been first used on the first day of January, 1974 but was disposed of lost or destroyed prior to that date the cost of that unit of property on the first day of January, 1974 shall be deemed to be the actual cost thereof less any consideration received or receivable by the Company in respect of such disposal loss or destruction.
  - (iii) Where that expenditure does not relate to a unit of property in respect of which depreciation is an allowable deduction as mentioned in sub-paragraph (i) above the amount of allowable deduction in respect of such expenditure in relation to each Tax year shall be the greater of one-twentieth of that amount or such amount as may be allowable as a deduction for tax under the Income Tax Act including the provisions of Division 10 of Part III thereof.
  - (iv) Where any expenditure of a capital nature of the kind referred to in sub-paragraph (iii) above is by reason of the provisions set out in sub-paragraph (B) below

*Mining (Bougainville Copper Agreement)*

deemed to have been incurred on the 1st day of January, 1974 but the property in respect of which such expenditure was incurred has been disposed of lost or destroyed prior to that date the cost of that property on the 1st day of January, 1974 shall be deemed to be the actual cost thereof less any consideration received or receivable by the Company in respect of such disposal loss or destruction.

- (v) The total of any deductions allowable pursuant to sub-paragraph (i) above in respect of any unit of property shall not exceed the cost of that unit of property and the total of any deductions allowable pursuant to sub-paragraph (iii) above in respect of any item of capital expenditure shall not exceed the cost of that item of capital expenditure.
- (vi) For the avoidance of doubt it is declared that the provisions of the Income Tax Act relating to the disposal, loss or destruction of any unit of property or of property in respect of which expenditure of a capital nature was incurred (which provisions are at the Amendment Date contained in Sections 78 and 160 of the Income Tax Act) shall apply to the Company.

For the purposes of this paragraph

(A) expenditure of a capital nature means

- (1) all expenditure incurred by the Company prior to the 1st day of January, 1974 for the purposes of its activities in Papua New Guinea and being expenditure of the kind in respect of which a deduction was allowable under Division 10 of Part III of the Income Tax Act as it existed on the 31st day of December, 1973, expenditure on plant, machinery, equipment, buildings (including houses), roads, earthworks, development of the Company's mining property, and any improvements on any leasehold property, exploration and prospecting expenditure, and all expenditure on units of property in respect of which depreciation was an allowable deduction under Division 3 of Part III of the Income Tax Act as it existed on the 31st day of December, 1973; and
  - (2) all expenditure of a capital nature incurred by the Company after the 31st day of December, 1973 for the purposes of its activities in Papua New Guinea and being expenditure in respect of which a deduction is allowable from gross income for the ascertainment of taxable income for income tax purposes under the Income Tax Act.
- (B) all expenditure of a capital nature incurred by the Company prior to the 1st day of January, 1974 shall be deemed to have been incurred on the 1st day of January, 1974;
- (C) any unit of property which was first used by the Company or installed ready for use before the 1st day of January, 1974 shall be deemed to have been first used by the Company on the 1st day of January, 1974; and
- (D) all interest capitalised by the Company in respect of any period prior to the 1st day of April, 1972 shall be deemed to be expenditure of a capital nature.
- (g) As from the 1st day of January, 1974 the provisions of the now repealed Section 33 of the Income Tax Act 1959 (as then amended) referred to in Clause 7(e) of this Agreement prior to its variation by the Variation Agreement dated 21st November, 1974 shall not so long as that Section remains repealed apply to the Company.
- (h) (i) All expenditure incurred by the Company prior to the 1st day of January, 1974 in borrowing money used by the Company for the purpose of producing income shall for the purposes of Section 89 of the Income Tax Act be deemed to have been incurred on the 1st day of January, 1974 and the period for which the money was borrowed shall be deemed to be a period of five years commencing on the 1st day of January, 1974 and ending on the 31st day of December, 1978.
- (ii) Notwithstanding anything contained in Sections 68 or 89 of the Income Tax Act or in this Agreement the Company shall not be entitled to any deduction for any interest paid by it before the 1st day of January, 1974 other than interest referred to in paragraph (f) (D) above.

- (i) The Government recognises that abnormal conditions of inflation would cause the formula set out in Part I of the Second Schedule hereto to bear more severely on the Company in future years than is intended. In the event therefore of the occurrence of abnormal conditions of inflation in any Tax year commencing after 31st December, 1974 the Company may claim an increase in the amount of "N" in that formula. Upon receipt of any such claim the Minister for the time being responsible for finance and the Company will forthwith confer with a view to deciding by mutual agreement having regard to all the circumstances whether and if so to what extent "N" in that formula should be increased, such increase to be effected by a variation of this Agreement pursuant to Section 5 of the Act referred to in Clause 2 hereof, PROVIDED ALWAYS THAT if no agreement is reached to vary this Agreement as aforesaid the Company shall not be entitled to refer the matter to arbitration under Clause 23 of this Agreement. The Company shall not as a result of all or any of the provisions of this paragraph have any enforceable claim right of action or other remedy whatsoever (whether in respect of any obligation to confer as above or otherwise).

For the purpose of this paragraph abnormal conditions of inflation shall be deemed to occur in any Tax year if in that Tax year the annual rate of inflation as measured by the average annual increase in the consumer price index of the United States of America (as published on the Amendment Date in the International Monetary Fund's International Financial Statistics) in that year exceeds by 20 per cent or more the average rate of increase in that index in the five years ending at the end of that Tax year.

- (j) If at the end of any Tax year or years the U.S. dollar value of the International Monetary Fund Special Drawing Rights has varied by more than 10% from such value on the 15th day of November, 1974 then if the Government and the Company agree that the factor  $\frac{F}{B}$  as used in the ascertainment of "N" as provided in the Second Schedule hereto is producing unintended or abnormal results, the Government and the Company will as soon as conveniently possible after the end of the relevant Tax year confer with a view to making appropriate adjustments to that factor.

- (k) (i) In this paragraph, unless the context otherwise requires, "dividend (withholding) tax" means

(A) "dividend (withholding) tax" as defined by the Income Tax Act as in force on the 1st day of January, 1974 as that definition may from time to time be amended and

(B) any tax of a similar nature payable in respect of dividends or other distributions of profits to shareholders; and

"gross dividend" means

the dividend which would have been payable by the Company but for the deduction therefrom of dividend (withholding) tax.

- (ii) Subject to sub-paragraph (iii) hereof, the amount of income tax payable by the Company in respect of any Tax year shall be determined by reducing the amount of income tax which would, but for this paragraph, have been payable by the Company in respect of that Tax year by an amount (herein called "the deduction amount") equal to the aggregate of the following two amounts, or, where only one such amount is payable or deductible by the Company in respect of any particular Tax year by that amount:

(A) an amount equal to the excess (if any) of

(1) the amount equal to the aggregate of the dividend (withholding) tax payable in respect of gross dividends payable by the Company to non-residents of Papua New Guinea in the relevant Tax year;

over

(2) the amount equal to 15% of the gross dividends payable by the Company to non-residents of Papua New Guinea in the relevant Tax year;

and

(B) the amount payable by the Company in the relevant Tax year in respect of any rate, tax, rent, charge, due, duty, tariff or other levy whatsoever (including but without in any way whatsoever limiting the generality of the foregoing excises, royalties, and the like impositions) raised, levied, charged or otherwise imposed by

*Mining (Bougainville Copper Agreement)*

or payable to the Government or any other government established by or under any law in force in Papua New Guinea (whether supreme provincial district municipal local or otherwise) or any authority department or official whatsoever of or under the Government or any other government as aforesaid other than:

- (1) income tax,
- (2) import duties as permitted under Clause 9 (c) of this Agreement,
- (3) stamp duties as permitted under this Agreement,
- (4) royalties payable pursuant to and in accordance with Clauses 5 (h) and 5 (i) hereof,
- (5) rent payable in accordance with Clause 5 hereof,
- (6) light dues and pilotage referred to in Clause 11 (e) hereof,
- (7) local government rates or taxes on land used for housing where such rates or taxes are calculated in relation to the unimproved value of the land,
- (8) vehicle registration taxes as permitted under this Agreement,
- (9) any rent payable under any lease granted by the Government (other than as referred to in (5) above) where such rent
  - (a) is payable pursuant to the provisions of any such lease; or
  - (b) is in whole or in part payable in respect of any such lease under the provisions of a law of general application which does not discriminate or (having regard to reasonable standards) result in discrimination against the Company,
- (10) charges for services rendered,
- (11) payments made pursuant to Clause 16B hereof,
- (12) export duties as permitted under Clause 9(d) hereof,
- (13) other taxes or charges of a minor nature,

PROVIDED THAT there shall be deducted from the deduction amount the amount (if any) by which the tax payable by the Company is reduced as the result of the deduction from its assessable income of all or any part of the amount referred to in sub-paragraph (B) of sub-paragraph (ii) of this paragraph.

- (iii) If the provisions of sub-paragraph (ii) hereof would have the effect of reducing the tax payable by the Company in respect of any Tax year below the amount which but for the provisions of paragraphs (c), (d) and (e) of this Clause would be payable by the Company in respect of that Tax year, the tax payable by the Company in respect of that Tax year shall be the amount calculated in accordance with the provisions of this Clause 7, but not including the provisions of paragraphs (c), (d) and (e) of this Clause.
- (iv) The Government will not impose dividend (withholding) tax on dividends payable by the Company otherwise than at a single flat rate and shall not impose such tax at a rate higher than the rate payable in respect of dividends payable by other companies to non residents of Papua New Guinea and if there is more than one such rate, the Government will impose on such dividends the lowest of such rates.
- (l) No rate, tax, rent, charge, due, duty, tariff or other levy and no legislation, procedure or practice relating thereto which discriminates against or (having regard to reasonable standards) results in discrimination against the Company any member of the Company or any beneficial owner of any share in the Company shall be payable by or (as the case may be) applicable to the Company or any such member or beneficial owner (as the case may be) in respect of the operations of the Company under this Agreement or of any income arising directly or indirectly therefrom.
- (m) No local government rates or taxes on land calculated otherwise than in relation to the unimproved value of the land shall be payable by the Company in respect of land held by the Company pursuant to the provisions of Clause 5 hereof.
- (n) (i) The Chief Collector shall on the application of the Company grant, upon the terms and conditions hereinafter appearing, an extension of time for the payment of part of the income tax payable in respect of all or any of the Tax years ending 31st December, 1975, 31st December, 1976 and 31st December, 1977.

- (ii) Any application for an extension of time pursuant to the provisions of this paragraph shall be in writing, shall expressly state that it is made pursuant to the provisions of this paragraph and shall be lodged with the Chief Collector not later than the later of fourteen (14) days before the due date for payment of the income tax payable in respect of the relevant year and thirty (30) days after the service upon the Company of the Notice of Assessment in respect of that Tax year.
- (iii) The amount of tax in respect of which the Company shall, at its election and upon application made in the manner hereinbefore provided, be entitled to be granted an extension of the time pursuant to this paragraph in respect of each of the said Tax years shall be the whole or such part of the amount determined in accordance with Part IV of the Second Schedule hereto as the Company shall notify to the Chief Collector at the time of making application pursuant to sub-paragraph (ii) hereof.
- (iv) Any tax for the payment of which an extension of time is granted pursuant to this paragraph shall, in lieu of any penalty for unpaid tax or additional tax and subject to the provisions of sub-paragraph (vi) hereof, bear interest calculated from the original due date for payment thereof until payment at the rate (compounded annually) which is five percentage points higher than the rate of interest per annum on four year Papua New Guinea Government Bonds which have most recently been issued (and even if by then matured) at the time the Company makes its application pursuant to sub-paragraph (ii) hereof in respect of the relevant Tax year.
- (v) Any amount of tax in respect of which an extension of time is granted pursuant to this paragraph and the interest payable thereon shall be paid to the Chief Collector in three (3) equal instalments on 30th September, 1980, 30th September, 1981 and 30th September, 1982 respectively. For the purpose of calculating the interest payable on the 30th September, 1980, the 30th September, 1981 and the 30th September, 1982 it shall be assumed that the amount of tax in respect of which the relevant extension of time was granted and which shall remain outstanding after the date in respect of which such calculation is being made shall be duly paid on the extended date or dates for payment thereof, to the effect that the amounts of the payments to be made on the abovementioned three (3) dates shall be equal and shall each include one-third of the total amount of interest, calculated at the rate first mentioned in sub-paragraph (iv) hereof, which will if all payments are duly made on the extended dates be payable in respect of the relevant overall extension of time for payment.
- (vi) In the event that default is made in the due payment on the extended dates of any amount of tax in respect of which an extension of time has been granted pursuant to this paragraph or of any interest payable in respect thereof the total of all outstanding income tax in respect of which any such extension of time has been granted together with the total amount of interest calculated at the appropriate rate (or rates) in sub-paragraph (iv) payable in respect of any income tax in respect of which any such extension of time has been granted, subject to an allowance in respect of any interest already paid, shall immediately become due and payable. In the event of such default, interest shall be payable to the Chief Collector at the rate at which interest would have been payable pursuant to sub-paragraph (iv) hereof (or if more than one such rate is applicable in respect of different parts of the outstanding income tax at the highest of such rates) upon the outstanding income tax and the total of interest owing at the date of such default or so much thereof as shall be from time to time outstanding provided that any payment or payments made after the date of such default shall be credited first to interest accruing and becoming payable after such default and then to interest accrued up until such default and then to the reduction of the outstanding income tax.
- (vii) For the avoidance of doubt :
  - (A) the Company shall be entitled, pursuant to this paragraph, to apply for an extension of time in respect of the relevant amount referred to in sub-paragraph (iii) hereof in respect of any one or more of the Tax years ending 31st December, 1975, 31st December, 1976 and 31st December, 1977;
  - (B) the Company shall be entitled to apply, pursuant to this paragraph, for an extension of time for the whole or any part of the amount calculated in accordance with paragraph (iii) hereof in respect of each or any of the said Tax years;

(C) in the event that default is made in payment of outstanding tax in respect of any of the said three Tax years (or in payment of interest payable in respect of an extension of time granted in respect of any such Tax year), the whole of the outstanding tax in relation to any other Tax year or years in respect of which an extension of time has been granted pursuant to this paragraph (and all interest in relation thereto) shall also immediately become due and payable in accordance with sub-paragraph (vi) hereof;

(D) the time within which such an application for an extension of time must be lodged in accordance with sub-paragraph (ii) hereof shall be calculated by reference to the due date for payment of income tax pursuant to the original assessment issued in respect of the relevant tax year to the effect that such time shall not be extended by the subsequent issue of any amended assessment provided that if the Company objects to such original assessment and the total amount of tax payable pursuant to such original assessment is subsequently reduced an appropriate adjustment shall be made in respect of the amount of tax for which an extension of time has been granted and interest payable in respect thereof.

(viii) The amount of any interest payable by the Company pursuant to the provisions of this paragraph shall for the purposes of the Income Tax Act be deemed to be interest payable by the Company on money borrowed by the Company and an outgoing of the Company incurred in gaining assessable income.

(o) Neither the Company nor any other person shall have any liability to any income tax on the payment or repayment of or measured by reference to the amount of any interest payable or any other amount payable in respect of any amount which is lent to the Company by any person who is not a resident of Papua New Guinea or on or in respect of the principal of any such loan if the amount in respect of which such interest or other amount is payable was lent to the Company before the 1st day of January, 1974.

(p) The Company has, with the leave of the Chief Collector, adopted the period of a calendar year as its accounting period pursuant to Section 12 of the Income Tax Act.

(q) In this Clause, unless the context otherwise requires—

"the Income Tax Act" means the Income Tax Act 1959 as amended from time to time

"Tax Year" means the calendar year in respect of which the amount of tax payable by the Company is to be calculated

and other expressions shall have the same meanings given to them in the Income Tax Act.

(r) The provisions of Clause 23 hereof shall not apply in respect of any dispute, question or difference of opinion relating to the liability or the quantum of liability of the Company to income tax or in respect of any other matter arising under any paragraph of this Clause."

6. The 1967 Agreement is varied by the addition of the following Clauses after Clause 8 thereof:

**"8A. BORROWINGS BY THE COMPANY WITHIN PAPUA NEW GUINEA**

No loan other than normal bank overdraft shall be raised by the Company within Papua New Guinea without prior notice to the Minister for the time being responsible for finance.

**8B. DONATIONS**

The Company shall not (without the prior approval of the Directors of the Company nominated by the Government) make any donation in excess of an amount to be agreed upon from time to time between the parties."

7. Clause 9(a) of the 1967 Agreement is varied by the addition of the following after the word "fees" at the end thereof:

"AND PROVIDED FURTHER THAT notwithstanding anything contained in this paragraph the Government may impose import duties on the Company under the Customs Act (but only if such import duties are of general application in Papua New Guinea and, as required by Clause 7(l) hereof, do not discriminate against or (having regard to reasonable standards) result in discrimination against the Company) in respect of the importation into Papua New Guinea on and after the Amendment Date by the Company of any plant machinery or equipment required for the replacement of any of the plant machinery or equipment referred to in sub-paragraph (i) of this paragraph or of such of the explosives and reagents referred to in paragraph (b) of this



Clause as could on the sixth day of June, One thousand nine hundred and sixty-seven have been imported into the Territory of Papua and New Guinea free of import duty under the Customs Ordinance 1951-1959 of that Territory".

8. Clause 9 of the 1967 Agreement is varied by the addition of the following paragraph after paragraph (d) thereof:

"(e) Any import duty which is sought to be imposed on the importation of any plant machinery equipment explosives or reagents which at the time when such duty is sought to be imposed are imported into Papua New Guinea solely for the purpose of mining operations or of operations in connection therewith and which is sought to be imposed at a rate in excess of the average rate of duty from time to time payable on the importation into Papua New Guinea of the Customs Tariff items numbered 118, 275, 284, 309, 313, 320 and 341.04 as set out on the Amendment Date in the Second Schedule to the Customs Tariff 1959-1974 shall, without in any way whatsoever limiting the interpretation of Clause 7(l) hereof or clause 9(c) hereof, be deemed to discriminate against the Company within the meaning of both Clause 7(l) and Clause 9(c) hereof."

9. The 1967 Agreement is varied by the addition of the following Clause after Clause 9 thereof:

"9A. APPROVAL OF CONTRACTS, ETC.

- (a) Notwithstanding anything contained in any other provision of this Agreement where any law which is of general application in Papua New Guinea and which does not discriminate against or (having regard to reasonable standards) result in discrimination against the Company includes provisions for regulation of foreign investment in Papua New Guinea or for regulation of dealings in foreign exchange in Papua New Guinea or for control over exports from or imports into Papua New Guinea the Company shall be subject to those provisions on and after the Amendment Date PROVIDED THAT no breach of the provisions of any such law shall be constituted by any act or omission or commission or any event occurring or any circumstances otherwise existing before the Amendment Date.
- (b) If and to the extent that any law which includes provisions for regulation of foreign investment in Papua New Guinea or for regulation of dealings in foreign exchange in Papua New Guinea or for control over exports from or imports into Papua New Guinea applies to or in relation to any agreement or arrangement (including but without limiting the generality of the foregoing any agreement or arrangement for the sale or export of concentrates produced by the Company or for the borrowing of money by the Company or for payments by the Company in foreign exchange) entered into or made by the Company before the Amendment Date or to any business or activity carried on by the Company at or prior to the Amendment Date then any approval authorisation licence permission registration or other thing whatsoever required under any such law in respect of or in relation to any such agreement arrangement business or activity (including without limiting the generality of the foregoing investment by the Company necessary to maintain the Company's present activity of producing copper (contained in concentrates) at the rate of approximately 190 000 tonnes per annum) shall be deemed to have been duly and unconditionally given granted made or done (as the case may be) and shall not be capable of cancellation revocation variation or other modification or of otherwise being limited or affected in any way whatsoever except with the prior written consent of the Company or at the written request of the Company.
- (c) Without limiting the provisions of paragraph (b) hereof where under the provisions of any law an agreement or arrangement for the sale or export of any of the Company's products has been approved by the appropriate authority or a licence issued for the export of such products the approval so granted or the licence so issued shall not thereafter be revoked cancelled or in any way varied.
- (d) Notwithstanding anything expressly or impliedly to the contrary contained in the National Investment and Development Act and in particular notwithstanding the provisions of Section 4 of that Act the Company, in respect of the existing activities—
- (i) is hereby deemed to have complied with the said National Investment and Development Act in all respects and accordingly shall not be required to give any notice or information thereunder;
  - (ii) is hereby deemed to be registered in respect of each such activity;

- (iii) shall not be precluded from carrying on or (as the case may be) continuing to carry on business in respect of any such activity; and
  - (iv) shall be entitled, subject to the remaining provisions of this Agreement and to any other law not inconsistent with this Agreement which applies to the Company to carry on its business in respect of such activities to the full extent and without any impediment or hindrance whatsoever.
- (e) Notwithstanding anything expressly or impliedly to the contrary contained in the National Investment and Development Act and in particular notwithstanding the provisions of Section 4 of that Act such deemed registration as is referred to in paragraph (d) hereof in respect of existing activities as are hereinbefore referred to shall not be cancelled (in whole or in part) and shall not except at the request of the Company in accordance with the said National Investment and Development Act be varied (in whole or in part).
- (f) In this Clause unless the context otherwise requires words and expressions which are used in the National Investment and Development Act shall have the meanings which are assigned to them in that Act and any reference to that Act shall include a reference to that Act as it may from time to time be altered amended or re-enacted and "existing activities" means.
- (i) activities which the Company was carrying on at the Amendment Date; and
  - (ii) activities carried on thereafter in order to maintain the Company's production of copper (contained in concentrates) at the rate of approximately 190 000 tonnes per annum (including, but without in any way whatsoever limiting the generality of the foregoing, any expansion or other increase necessary for such purpose in the whole or any part of the mining and concentrating activities of the Company, including the addition of more ball mills and the increase in the facilities of the Company for the generation of power and the shipment of concentrates)."

10. The 1967 Agreement is varied by the addition of the following Clause after Clause 10 thereof:

**"10A. CONDUCT OF THE COMPANY'S BUSINESS ADVISORY SERVICES**

- (a) The Company shall conduct its business advisory services under the general policy direction of a steering committee to be established by the Bougainville Provincial Government and the Company shall, if such general policy direction requires, make its said business advisory services available on as widespread a basis as is reasonably possible to all areas of the Bougainville District.
- (b) Notwithstanding anything in paragraph (a) hereof the Company shall not be required to spend more on its said business advisory services in any year than the amount so spent by it in the year ending the thirty-first day of December, One thousand nine hundred and seventy-four."

11. Clause 14(c) of the 1967 Agreement is varied by the deletion therefrom of sub-paragraph (i) and by the substitution therefor of a new sub-paragraph (i) as follows:

"no provision of the said Motor Traffic Ordinance or the said Regulations thereunder relating to the payment of fees on or in connection with the registration of motor vehicles shall apply to motor vehicles owned by the Company, any related company, or by any agent or contractor of the Company or any related company if the same are used solely on Company roads and are by reason of the manner in which they have been constructed or adapted unsuitable for use on Company roads otherwise than for or in relation to all or any of the Company's operations of mining and concentrating ore and moving concentrates to wharf facilities and into ships and the Company's road construction and road maintenance operations; and".

12. The 1967 Agreement is varied by the deletion therefrom of Clause 16 thereof and by the substitution therefor of the following:

**"16. FURTHER PROCESSING**

- (a) The Company shall commission a pilot study to consider the potential economic feasibility of the establishment in Papua New Guinea of facilities for the processing to the metallic or some further stage of concentrates produced as a result of the Company's operations under this Agreement and the Company shall provide the Government with the data and conclusions resulting from that pilot study.

- (b) The pilot study referred to in paragraph (a) hereof shall be completed within one year after the Amendment Date and shall consider, inter alia, all relevant social and environmental factors.
- (c) If the pilot study referred to in paragraph (a) hereof indicates that such further processing could be feasible the Company and the Government shall confer together with a view to deciding whether a full feasibility study should be undertaken and, if so, the extent to which each of them shall contribute to the cost thereof.
- (d) Thereafter the Company may at any time and from time to time submit to the Government a proposal for the establishment by it in the area in Papua New Guinea specified in the proposal of facilities for processing to the metallic or some further stage of any concentrates produced as a result of the Company's operations under this Agreement and the Government shall within two months of such submission have the right to be exercised by notice to the Company in writing to reject any such proposal on the ground that it would have a substantially detrimental effect on the agriculture and general amenity of the surrounding area.
- (e) If the Government does not pursuant to paragraph (d) of this Clause so reject any such proposal submitted by the Company, but not otherwise, the Company shall be at liberty at any time thereafter to establish facilities in accordance with that proposal and carry out processing at such facilities and the Company may at any time and from time to time thereafter apply to the Government for the leases specified in the application to be granted to it over or in respect of the relative areas specified in the application which leases shall be those reasonably needed by the Company therefor including (without prejudice to the generality of the foregoing) those needed for adequate buffer zones covering areas likely to be affected by fume disposal, and the provisions of paragraphs (d) (e) (f) (j) (k) and (l) of Clause 5 shall apply mutatis mutandis to such application and the leases granted pursuant thereto.
- (f) A decision by the Government pursuant to paragraph (d) of this Clause to reject a proposal submitted by the Company pursuant to that paragraph shall be final and conclusive and shall not be referable to arbitration under Clause 23 of this Agreement, or be otherwise justiciable."

13. The 1967 Agreement is varied by the addition of the following Clauses after Clause 16 thereof:

**"16A. ENVIRONMENTAL IMPACT STUDY**

For the purpose of enabling the Government to conduct a study of the impact on the environment of the mining and related operations of the Company under this Agreement the Company shall:—

- (a) (to the extent to which the operations of the Company are not interfered with) allow the Government and its agents access to the mine site and all other areas in Papua New Guinea under the control of the Company; and
- (b) upon request, make available to the Government and its agents any factual information in the possession of the Company relating to the impact on the environment of the said mining and related operations, and in respect of such information permit the Government or its agents to inspect and take copies of any relevant documents.

**16B. BOUGAINVILLE NON-RENEWABLE RESOURCES FUND**

The Company shall pay to the Government fifty cents per tonne of contained copper shipped on and after the Amendment Date and such payments shall be credited by the Government to the Bougainville Non-Renewable Resources Fund."

14. Clause 17(a) of the 1967 Agreement is varied by the deletion of the full stop at the end of sub-paragraph (ii) thereof and by the addition of the following words and full stop to clause 17(a) such words and full stop to be inserted immediately following the said sub-paragraph (ii) but in such a fashion that the said words do not qualify the said sub-paragraph (ii) alone but qualify instead the paragraph as a whole:

"PROVIDED THAT this paragraph shall be read and construed subject to the laws of Papua New Guinea of general application whether enacted before or after the Amendment Date which do not discriminate against or (having regard to reasonable standards) result in discrimination against the Company its members or the beneficial owners of its shares, and nothing contained in any such law

Ch. No. 196 *Mining (Bougainville Copper Agreement)*

shall give rise to any claim by the Company, its members or the beneficial owners of its shares by reason only of the provisions of this paragraph."

15. Clause 23 of the 1967 Agreement is varied by

- (a) the addition before the commencement of paragraph (a) of the words "Subject to the provisions of Clause 7 and Clause 16 hereof" and by changing to the lower case the letter "I" in the word "If" immediately following; and
- (b) the deletion from paragraph (b) of sub-paragraph (i) thereof and the substitution therefor of the following:

"(i) the dispute question or difference of opinion shall stand referred to the arbitration of three arbitrators one of whom shall be appointed by the Government and one of whom shall be appointed by the Company and the third of whom shall be agreed upon by the Government and the Company in writing and in default of agreement within fourteen days after the Government or the Company (as the case may be) gives notice to the other of them requiring the appointment of such a third arbitrator shall be appointed in accordance with the provisions of the Arbitration Act 1951 of Papua New Guinea from a panel of five arbitrators to be nominated within a further period of fourteen days thereafter by the President and Chairman of the Board of Directors (or failing him the Chief Executive) of the Asian Development Bank (or, failing such nomination, from any panel of arbitrators which the person or body appointing the third arbitrator considers satisfactory) PROVIDED THAT no person shall be eligible for appointment as a third arbitrator (unless the Government and the Company otherwise agree in writing in any particular case) if at the time of his proposed appointment, he is, or has been at any time prior thereto a citizen or resident of Papua New Guinea, the Commonwealth of Australia, or, if any person other than the Company or the Government is or indicates prior to the appointment of the third arbitrator that he intends to be a party to the submission (and unless the Government the Company and each such other person otherwise agree in writing in any particular case), a citizen or resident of the country of which that person is a citizen or resident;"

16. Clause 25 of the 1967 Agreement is varied by the deletion of the words figure brackets and letter "more than ten years after the Company has completed the performance of its obligations under Clause 6(a)" and by the substitution therefor of:

"after the Amendment Date if the stamp duty in question is of general application in Papua New Guinea and, as required by Clause 7(f) hereof, does not discriminate against or (having regard to reasonable standards) result in discrimination against the Company".

17. The 1967 Agreement is varied by the addition of the following Clause after Clause 26 thereof:

"26A. REVIEW

The parties shall co-operate with each other in carrying out the purposes of this Agreement and shall meet together during the seventh year after the year in which the Amendment Date occurs, and at intervals of seven years thereafter, with a view to considering in good faith whether this Agreement is continuing to operate fairly to each of them and with a view to considering in good faith whether this Agreement is continuing to operate fairly to each of them and with a view further to discussing in good faith any problems arising from the practical operation of this Agreement. If at any such meeting it is agreed that this Agreement is not so continuing to operate fairly to each of the parties, or the parties agree that there exist problems arising from the practical operation of this Agreement, then they shall confer together in good faith in an endeavour to ensure that this Agreement shall operate fairly to both of the parties or to resolve such problems (as the case may be) and, in particular, and without prejudice to the generality of the foregoing, they shall use their best endeavours to agree upon such changes to this Agreement as may be requisite in that regard."

18. The 1967 Agreement is varied by the addition of the following immediately after the Schedule thereto:

## THE SECOND SCHEDULE.

In this Schedule:

"Tax year" means the calendar year in respect of which the amount of tax payable by the Company is to be calculated.

"Adjustment year" means the calendar year immediately preceding the Tax year.

"P" (except where used in Parts II and III of this Schedule) means and equals the number of dollars of taxable income of the Company for the Tax year.

The value of "N" in the formula in Part I of this Schedule shall be calculated, for the purpose of ascertaining the rate of tax (expressed as a percentage of taxable income) payable on the taxable income of the Company derived during a Tax year, in accordance with the following formula, namely:

$$N = M \times \frac{C}{K} \times \frac{F}{B}$$

and for the purpose of this formula

"M" equals "N" at the end of the Adjustment year.

"N" for the purposes of the Tax year 1974 equals 32,000,000.

"K" equals an amount (called the Capital Factor) at the end of the calendar year preceding the Adjustment year, the agreed amount of the Capital Factor at 31st December, 1973 being \$390,000,000.

"C" equals the Capital Factor at the end of the Adjustment year and equals K + E - R.

"E" equals expenditure of a capital nature relating to the mining of ores from Bougainville Island (including, without limiting the generality of the foregoing, the following: the further exploration and development of the Company's mine on the areas comprised in the special mining lease held by the Company on the Amendment Date; the transportation of such ores; the concentration of such ores; the drying, handling and movement of the concentrates so derived to wharf facilities and into ships; the construction and maintenance of roads; earthworks; facilities for power generation; housing and facilities for employees; and works of reclamation and regeneration) and activities connected therewith, but excluding

- (a) expenditure relating to smelting or other treatment subsequent to concentration and drying of the product; and
- (b) expenditure which by reason of Clause 7(f) (B) or (C) hereof is deemed to have been incurred on 1st January, 1974.

"R" equals the sum of

- (a) the total amount of depreciation for tax purposes of units of property in respect of which depreciation at a rate in excess of 5% per annum is allowable as a deduction in respect of the Adjustment year; and
- (b) the original cost of other items of a capital nature (not being items in respect of which depreciation at a rate in excess of 5% per annum is allowable as a deduction in respect of the Adjustment year) replaced, disposed of, lost or destroyed in the Adjustment year.

"B" equals the average of the daily published buying rate of the unit of currency to be adopted by Papua New Guinea (hereinafter called "the Kina") against the U.S. dollar during the Adjustment year (expressed in terms of Kinas per U.S. dollar) provided that for the Adjustment year 1974 "B" shall be the first published buying rate of the Kina against the U.S. dollar on or following the date on which the Kina first becomes currency in Papua New Guinea.

"F" equals the average of the daily published buying rate of the Kina against the U.S. dollar during the Tax year (expressed in terms of Kinas per U.S. dollar) except that in respect of the Tax year 1975 "F" shall equal the average of the daily published buying rate of the Kina against the U.S. dollar from and

including the date on which the Kina first becomes currency in Papua New Guinea up to and including 31st December, 1975 and the formula for the calculation of "N" for the Tax year 1975 will be

$$N = M \times \frac{C}{K} \times [1 + (\frac{F}{B} - 1) \frac{X}{365}]$$

where X equals the number of days from and including that date to and including the 31st December, 1975.

"The daily published buying rate" means the buying rate from time to time published by the Bank of Papua New Guinea or other the buying rate from time to time published and recognized by the Government as the official buying rate and in calculating the average of the daily published buying rate the total of each of the daily published buying rates in a particular year shall be divided by the number of occasions in that year on which that buying rate was published.

Until such time as the Kina first becomes currency in Papua New Guinea both "B" and "F" shall equal one and if the Kina does not become currency in Papua New Guinea during 1975 the reference to 1974 in the definition of "B" above shall become a reference to the year immediately preceding the year in which the Kina first becomes currency in Papua New Guinea and the references to 1975 in the definition of "F" above shall become references to the year in which the Kina first becomes currency in Papua New Guinea.

#### Part I

The amount of tax payable on the taxable income of the Company derived during the Tax year commencing on the first day of January, 1975 and on the taxable income of the Company derived during each subsequent Tax Year shall be the amount determined by the application to such taxable income of a rate (expressed as a percentage of taxable income) determined by the formula

$$\frac{7}{10} - \frac{N}{P}$$

#### Part II

The amount of tax payable on the taxable income of the Company derived during the period 1st January, 1974 to 30th June, 1974 shall be the amount determined by the application to such taxable income of the higher of a rate of tax of 33½% and a rate of tax (expressed as a percentage of taxable income) determined by the formula:

$$\frac{1}{3} + \frac{1}{2} \left[ \left( \frac{7}{10} - \frac{N}{2P} \right) - \frac{1}{3} \right] \text{ where:}$$

N = 32,000,000.

P = the number of dollars of taxable income for the said period of six months.

#### Part III

The amount of tax payable on the taxable income of the Company derived during the period 1st July, 1974 to 31st December, 1974 shall be the amount determined by the application to such taxable income of the higher of a rate of tax of 33½% and a rate of tax expressed as a percentage of taxable income determined by the formula:

$$\frac{7}{10} - \frac{N}{2P} \text{ where:}$$

N = 32,000,000 and

P = the number of dollars of taxable income for the said period of six months.

#### Part IV

An amount equal to the lesser of:—

1. Seventy per centum of the excess of the amount of capital expenditure incurred by the Company in the relevant Tax year over the amount actually allowed by the Chief Collector as a deduction for the Company in respect of that expenditure pursuant to the provisions of Section 73 of the Income Tax Act or Division 10 of Part III of that Act, and
2. The excess of the amount of tax payable by the Company in respect of the taxable income of the Company for that Tax year over the amount of tax which would have been payable by the Company in respect of the taxable income of the Company for that Tax year if paragraph (c) of Clause 7 of this Agreement were deleted therefrom. For the purposes of this Part "capital expenditure" shall include all expenditure of a capital nature, as defined in the definition of "E"

*Mining (Bougainville Copper Agreement)*

Ch. No. 196

in this Schedule where such expenditure is incurred in order to maintain the Company's present activity of the production of copper (contained in concentrates) at the rate of approximately 190,000 tonnes per annum."

19. This Agreement shall not come into effect unless prior to the thirty-first day of December, One thousand nine hundred and seventy-four or such later date as is nominated by the Company to the Government in writing before that date

- (a) it has been approved by the shareholders of the Company in general meeting; and
- (b) an Act (in the form of the draft Bill heretofore agreed upon between the Government and the Company and signed on their behalf for the purpose of identification or in any varied form hereafter agreed between them) has been passed by the House of Assembly of Papua New Guinea and that Act has been duly assented to.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first above-written.

SIGNED SEALED AND DELIVERED for and on behalf of The Government of Papua New Guinea by MICHAEL THOMAS SOMARE the Chief Minister of Papua New Guinea in the presence of:  
Rabbie L. Namaliu.

} Michael Thomas Somare

THE COMMON SEAL of BOUGAINVILLE COPPER LIMITED was hereto affixed in the presence of:

} R. W. Ballmer

Director

J. Rennie  
Secretary

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 196.

*Mining (Bougainville Copper Agreement).*

APPENDIX.

SOURCE OF THE MINING (BOUGAINVILLE COPPER AGREEMENT) ACT.

Part A.—Previous Legislation.

1. *Mining (Bougainville Copper Agreement) Act 1967* (No. 70 of 1967).
2. *Mining (Bougainville Copper Agreement) (Amendment) Act 1974* (No. 79 of 1974).

Part B.—Cross References.

NOTE.—In this table “1974” refers to the *Mining (Bougainville Copper Agreement) (Amendment) Act 1974* set out in Part A.

Section, etc., in Revised Edition.	Previous Reference <sup>1</sup> .
1	3
2	4
3	5
4	6
5	7
6	8
7	9
8	10
9	11
10	12
11	13
Schedules—	Schedules—
Schedule 1	Schedule
Schedule 2	1974 Schedule

<sup>1</sup> Unless otherwise indicated, references are to the *Mining (Bougainville Copper Agreement) Act 1967* set out in Part A.

