

Chapter 363.
Mining (Ok Tedi Agreement) Act 1976.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 363.

Mining (Ok Tedi Agreement) Act 1976.

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SCHEDULE 1 – The Agreement.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Mining (Ok Tedi Agreement) Act 1976,

Being an Act to provide for the approval and implementation of an agreement relating to the development of certain mineral deposits in the Ok Tedi region of the Western Province.

1. INTERPRETATION.

In this Act—

“**the Agreement**” means the agreement a copy of which is set out in Schedule 1;

“**the commencement date**” means 29 June 1976 being the date on which the *Mining (Ok Tedi Agreement) Act 1976* came into force.

2. APPROVAL OF AGREEMENT.

The Agreement is approved and has effect according to its tenor.

3. EFFECT IN RELATION TO LAWS OF PAPUA NEW GUINEA.

¹The Agreement has the force of law for the full term provided for therein as if contained in this Act and shall apply notwithstanding anything to the contrary in any other law in force in the country.

4. ANCILLARY POWERS OF MINISTER.

Notwithstanding anything in any other law in force in the country at any time (whether before or after the commencement of this Act), the 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.

¹ Section 3 repealed and replaced by the *Mining (OK Tedi Agreements) (Amendment) Act 1986* (No. 26 of 1986), s 1.

5. PURPOSES OF AGREEMENT TO BE PUBLIC PURPOSE.

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

SCHEDULE 1 – THE AGREEMENT.

AGREEMENT

THE AGREEMENT.

THIS AGREEMENT made the twenty second day of March One thousand nine hundred and seventy-six BETWEEN THE INDEPENDENT STATE OF PAPUA NEW GUINEA (hereinafter called "the State") of the first part AND DAMPIER MINING COMPANY LIMITED a wholly owned subsidiary of The Broken Hill Proprietary Company Limited (hereinafter called "Danco") of the second part.

WHEREAS

(1) Ok Tedi Development Company Pty. Limited is a company wholly owned by the State and holds Prospecting Authority No. 211(P) under the Mining Act 1937 (Papua) over the Ok Tedi Copper prospect areas and promising indications of large deposits of copper and gold ore in association with other minerals have already been discovered in that area.

(2) Confirmation of the existence and extent of the said deposits and determination of their economic significance and the viability of a mining and concentrating operation based thereon is estimated to require expenditure of at least K3,500,000 and possibly K7,000,000 or more.

(3) The establishment of an economically viable mining and concentrating operation based on the said deposits is likely to involve a total expenditure further to the above amounts to the order of K350,000,000 or possibly significantly more than this including substantial amounts for the establishment of roads and other access facilities, shipping and barge facilities, power and water supply facilities, residential accommodation and other ancillary facilities and services required in connection therewith.

(4) The State is satisfied that the expenditure of such large sums is necessary to ensure that the said deposits are efficiently and economically developed and is anxious to ensure that the development of such a large scale operation will adequately contribute to the advancement of the social and economic welfare of the people of Papua New Guinea and the people of the area in a manner consistent with their needs and the protection of their environment.

(5) The State wishes the commercial viability of the deposits to be determined as soon as possible and to encourage the development of the mining and concentrating operation upon terms and conditions which will both secure maximum benefits for the people of Papua New Guinea and also secure an appropriate return on investment commensurate with the risks involved to the company or companies which will conduct the operation and the efficient development and maintenance of the Project.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

CLAUSE 1 DEFINITIONS

In this Agreement unless the context otherwise requires—

"Agreement" means this agreement including the Schedules thereto, as they may be varied from time to time in accordance with the terms hereof.

"Approved Proposals" means proposals submitted to the State under Clause 8 which have been approved by the State with or without alteration, or are deemed to have been approved pursuant to Clause 9.5 or have been otherwise agreed upon between the State and the Company as provided in Clause 9.7.

- "Commencement of Commercial Production" has the meaning ascribed to it in Clause 23.1.
- "Commencement of Construction" has the meaning ascribed to it in Clause 23.1.
- "Commencing Date" means the date as from which this Agreement, other than Clause 4, operates in accordance with the provisions of Clause 4.
- "Company" means any company nominated by Damco pursuant to Clause 10.1 and includes its permitted assigns and any corporation which shall for the time being hold the rights and be bound to perform the obligations imposed on the Company pursuant to this Agreement or any agreement referred to in Clause 10.1.
- "Damco" includes any permitted assigns of the rights and obligations of Damco under this Agreement.
- "Gazette" means the gazette issued by the State.
- "Mining Area" prior to the time when there are Approved Proposals for the whole of the Project means the area within a radius of 25 kilometres from Mt. Fubilan and within Papua New Guinea but excluding the area within Prospecting Authority No. 415(NG) as at the date of this agreement and thereafter shall mean all areas to be included in any Special Mining Lease or lease for mining purposes for the disposal of overburden, tailings and other waste from mining operations as provided in the Approved Proposals and any other areas which shall be designated as part of the Mining Area in the Approved Proposals and any areas over which Special Mining leases or leases for the mining purposes referred to in this definition are subsequently granted.
- "Ocean Port" means the port and other facilities to be constructed and developed for the purpose of stock-piling trans-shipment and loading for shipment of mine products for export and for purposes incidental to the Project, in accordance with Clause 14.
- "Ok Tedi Copper Prospect Areas" means the areas the subject of Prospecting Authority No. 211(P).
- "Ok Tedi Deposits" means the deposits of copper, gold and other minerals within the Mining Area.
- "Parties" means the persons who are for the time being, either as original parties to this Agreement or pursuant to Clauses 4.3, 10 or 40 or to any covenants or agreements entered into pursuant to such Clauses, bound or entitled to perform and observe any of the obligations or exercise any of the rights contained in or granted by this Agreement or by any agreement entered into pursuant to Clause 10.
- "Project" means the development contemplated by this Agreement for the mining, concentrating, transporting and shipping of ores of copper, gold and other minerals and concentrates or other derivatives thereof from the Ok Tedi Copper Prospect Area and includes all facilities constructed and developed therefor in accordance with Approved Proposals but does not include any smelting or refining operations related to minerals other than gold which may be developed in association with the Project.

"River Port" means the port and other facilities to be constructed and developed in the Fly River or one of its tributaries for the purpose of loading mine products on barges for delivery to the Ocean Port and for purposes incidental to the Project, in accordance with Clause 14.

A company shall be deemed to be related to another company if it is related to that other company within the meaning of Section 6(3) of the *Companies Act* 1963.

CLAUSE 2 INTERPRETATION

2.1 In this Agreement unless the context otherwise required—

- (a) monetary references are references to Papua New Guinea currency unless otherwise specifically expressed;
- (b) the headings do not affect the interpretation or construction;
- (c) reference to an Act includes the amendments to that Act for the time being in force and also to any Act passed in substitution thereof and any regulations for the time being in force thereunder;
- (d) words importing the singular include the plural and vice versa;
- (e) words importing any gender include the other genders; and
- (f) references to a person include a corporation.

2.2 Where any provision of this Agreement constitutes an undertaking by one of the Parties to make a payment or to perform some act or to carry out some obligation or to assume some responsibility or liability or to grant some right, concession or advantage that Party shall by its execution hereof be deemed to have covenanted and agreed with the other Party accordingly.

CLAUSE 3 EFFECT ON AND OF OTHER LAWS

3.1 This Agreement is to have the force of law and apply notwithstanding anything to the contrary in any other law in force in Papua New Guinea and no law at any time in force in Papua New Guinea made after the commencement of this Agreement shall affect this Agreement—

- (a) unless the contrary intention appears, either expressly or by implication in that law; or
- (b) except as provided by this Agreement.

CLAUSE 4 CONDITIONS PRECEDENT

4.1 The State shall as soon as is reasonably practicable introduce and sponsor in the National Parliament a Bill for an Act to approve this Agreement, which Bill shall be in a form agreed upon between the Parties.

4.2 This Agreement other than this Clause 4 shall not operate unless and until the Bill referred to in Clause 4.1 is passed as an Act and comes into force and in the event that such an Act does not come into force on or before the 30th June 1976 (or such later date to which the Parties may agree) this Agreement shall be void and of no effect and neither of the Parties shall have any claim against the other of them with respect to any matter or thing arising out of, done or performed under this Agreement.

4.3(1) The obligation of Damco to commence Investigations and Studies under Clause 5.1 and all succeeding obligations hereunder shall, unless this condition shall be waived by Damco, be conditional upon Damco forming a consortium with persons other than Damco, satisfactory to Damco and the State, who propose to take equity interests in the Project and who are ready and able to proceed in conjunction with Damco with the said Investigations and Studies and the possible development and operation of the Project in accordance with and subject to the terms and conditions of this Agreement.

(2)(a) Damco shall actively and diligently seek parties who may be prepared to take equity interests in the Project and shall keep the State informed from time to time as to its progress in forming the said consortium and shall as soon as practicable after it is satisfied that it is able to form the same, notify the State that it will proceed with the Investigations and Studies and the possible development and operation of the Project in accordance with and subject to the terms and conditions of this Agreement.

(b) if Damco notifies the State that it will proceed in accordance with this Agreement and each of the persons other than Damco proposing to take an equity interest in the Project, covenants with the State and Damco to join with Damco in performing and observing all the obligations contained in this Agreement and on Damco's part to be performed and observed, the condition referred to in Clause 4.3(1) will be deemed to be fully discharged and the Parties shall, subject to the terms and conditions of this Agreement proceed with the Investigations and Studies as soon as practicable thereafter.

(c) This Agreement shall be void and of no effect and neither party shall have any claim against the other of them with respect to any matter or thing arising out of, done or performed under this Agreement if the condition referred to in Clause 4.3(1) is not either waived by Damco or discharged pursuant to Clause 4.3(2)(b) by the 30th June, 1976 or by such later date as may be agreed by the Parties, provided that in agreeing to such later date agreement shall also be reached on the level of work to be carried out by Ok Tedi Development Company Pty. Limited and payment of that Company's expenses for the period between the 30th June 1976 and such later date.

CLAUSE 5 INVESTIGATIONS AND STUDIES

5.1 Damco shall as soon as is reasonably practicable commence and, within thirty-one (31) months from the thirtieth of June 1976 or from such later date as may be agreed upon in accordance with Clause 4.3(2)(c) or with such other period as may result from the application of Clauses 36 or 37 hereof, complete at its own expense (except to the extent that the State has by this Agreement agreed to carry out or cause to be carried out or contribute to the same) detailed investigations and studies, insofar as results from investigations and studies previously carried out are not available, into the feasibility of the constitution, establishment and operation of a mining industry in the Mining Area with a minimum capacity to mine and concentrate 20,000 tonnes of ore per day and the provision of ancillary facilities and matters mentioned hereunder. Without limiting the generality of the foregoing the investigations and studies shall include—

- (a) a thorough geological investigation and proving of the copper and gold ore deposits in the Mining Area to the extent necessary for the economic feasibility of the Project to be judged and the testing and sampling of those deposits substantially in accordance with the agreed work programme as set out in Schedule 1 to this Agreement or as it may be varied from time to time by agreement between the parties;
- (b) a reconnaissance of sites for the operations included in the Project together with the preparation of suitable maps and drawings of such sites;
- (c) (i) a study of the technical and economic feasibility of the mining, transporting handling and shipping of ores, concentrates and other forms of copper, gold and other metals from the Mining Area including engineering investigations of possible shipping channels in the Fly River, of possible port sites, road links from mine sites to the river terminals and other appropriate means of transport;
- (ii) an investigation into the possible effects of any proposed barging or shipping transportation along the course of the Fly River, including dredging of navigable channels, upon the banks and the natural course of that river where it forms an international border between the State and the Republic of Indonesia; such investigation shall include a photogrammetric study of the river (aerial photographs to be taken from a height to be specified by the State) and studies into the possible erosive effects that the wash from any such proposed barging or shipping transportation is likely to have upon the banks and the natural course of the river where it forms the border as aforesaid;
- (d) metallurgical and market research to establish the recoverability of ore and the possibility of selling ore concentrates and likely contract terms on which such products could be sold;
- (e) a preliminary investigation, at a cost of not more than K50,000, into the feasibility of establishing a smelting and refining operation within Papua New Guinea sufficient to indicate the approximate capital and operating costs thereof and having regard to the possible use of such an operation by other producers of copper ore concentrates and to possible future sources of power;
- (f) a thorough financial analysis, based on parameters agreed with the State, of prospective cash flows and rates of return of the Project.
- (g) an investigation into suitable water supply facilities for mining, industrial and town purposes;
- (h) an investigation into the location and design of an airstrip and associated landing and terminal facilities;
- (i) investigation and planning for the development of a suitable town, including design of housing facilities and associated social, cultural and civic facilities as may be necessary to meet the needs of a community of such a size as is likely to be generated by the Company's operations within a period of five years following the Commencement of Commercial Production;

- (j) a study into future work force requirements for the Project with a view to estimating the kind and extent of training required to ensure the replacement of foreign workers by Papua New Guineans and the maximum rate of localization as is consistent with the safe and efficient operation of the Project, having regard to the likely availability of manpower based (among other things) on State manpower projections and plans and of prospective labour turnover rates;
- (k) physical impact studies, at a cost of not more than K.150,000, into the likely effects of the operation of the Project on the environment, such studies to be carried out under the supervision of appropriately qualified independent consultants and under the terms of reference set out in Schedule II to this Agreement; and
- (l) an investigation into the number and types of local business likely to be required to service the needs of the Project and the town likely to be generated thereby within a period of five years following the Commencement of Commercial Production.

All the investigations and studies and other matters referred to in this subclause shall hereinafter be called "the Investigations and Studies" and the period required by this sub-clause for the completion of the Investigations and Studies together with any extension thereof shall hereinafter be called "the Investigations and Studies Stage".

5.2 The State shall forthwith make available to Danco all information in its possession and shall make available all information which it is able to obtain relating to or resulting from investigations and studies previously carried out in relation to the Ok Tedi copper prospect areas.

- 5.3 (a) The State shall use its best efforts to provide funds for, carry out and, not later than 6 months prior to the end of the period for the completion of the Investigations and Studies Stage, complete studies and investigations in relation to the following—
- (i) the feasibility and cost of establishing suitable telecommunications facilities; and
 - (ii) the feasibility and cost of constructing and operating facilities to supply the power required for construction, mining, industrial and town use in connection with the Project;
- all to a scope and at a cost agreed by the Parties.
- (b) In the event that the State is unable to provide sufficient funds for either of the matters referred to in Clause 5.3(a) or if for any other reason it appears that the State may be unable to complete the said matters or either of them in accordance with Clause 5.3(a) the State shall notify the Company to that effect on or before 30th June 1976 and the Company shall carry out or complete the said matters or either of them at its own cost.

5.4 Damco shall collaborate with and keep the State informed by regular reports as to the progress and results of and costs incurred in respect of the Investigations and Studies and shall as and when the State may reasonably require furnish the State with copies of all appropriate reports from consultants in connection with the Investigations and Studies referred to in Clause 5.1 and with copies of all relevant findings made and reports prepared by Damco and the State will cooperate with Damco and promptly and to the best of its knowledge and ability furnish Damco with all information and assistance which Damco may seek in connection with the carrying out of the Investigations and Studies.

5.5 The State shall keep Damco fully informed by regular reports as to the progress and results of and costs incurred in respect of the studies and investigations to be carried out by the State under Clause 5.3.

5.6 The State shall in the period of twelve months ending 30th June 1976, complete the expenditure of a sum of not less than K2,000,000 in carrying out its own investigations and works as agreed with Damco in regard to all or any of the matters mentioned in Clause 5.1 and Damco shall cooperate with the State therein and shall consult with the representatives or officers of the State and make full disclosures regarding such matters and the State shall make full disclosure to Damco as well regarding such matters.

5.7 Damco shall at the completion of all the Investigations and Studies submit to the State a final report stating the results of and the cost incurred in respect of the Investigations and Studies and Damco's analysis of and its conclusions and projections in respect of those results, and such other information relating to the Project or the Mining Area which is in the possession of Damco and which the State may reasonably request.

5.8 All reports and information, other than in respect of any of the matters referred to in paragraph (c)(ii)(g), (h), (i), (k) and (l) of clause 5.1, supplied to the State under this Clause shall be treated as confidential provided that if this Agreement is terminated pursuant to Clause 34 hereof the reports and information shall become the property of the State and may be used by the State in such manner as it thinks fit.

5.9 The State will ensure that consistent with requirements of national security, foreign workers and their dependents to be employed in carrying out the Investigations and Studies, where requested by Damco, will be granted such permits as may be necessary for them to enter, remain in, move within and depart from Papua New Guinea and to work on or in connection with the Investigations and Studies.

CLAUSE B ACCESS TO LAND

6.1 In order to fulfil its obligations under Clause 5 Damco or any person authorized by Damco may, during the Investigations and Studies Stage and thereafter during the continuance of this Agreement until the grant of a Special Mining Lease pursuant to Clause 12, enter upon any land owned, leased, occupied or controlled by the State for the purposes of undertaking any investigations and studies related to this Agreement.

6.2 If for the purposes of undertaking such investigations and studies Damco reasonably requires to enter upon any area of land not owned, leased, occupied or controlled by the State, the State will use its best endeavours to ensure that Damco is permitted to enter upon such land to carry out such investigations and studies without cost to Damco.

6.3 The State will ensure that, during the Investigations and Studies Stage and thereafter during the continuance of this Agreement until the grant of a Special Mining Lease pursuant to Clause 12, no person shall be granted authority to carry out any exploration or prospecting on the Mining Area or on the land presently the subject of Prospecting Authority No. 211(P) other than Danco and persons authorized by Danco.

CLAUSE 7 OK TEDI DEVELOPMENT COMPANY STAFF AND FACILITIES

7.1 During the Investigations and Studies Stage and thereafter during the continuance of this Agreement until the grant of a Special Mining Lease pursuant to Clause 12, the State will retain sole beneficial ownership of Ok Tedi Development Company Pty. Limited (hereinafter called "Ok Tedi DC") and will ensure that Ok Tedi DC—

- (a) shall retain and make available for use by Danco the land held by Ok Tedi DC under lease from Dillingham Corporation of New Guinea Pty. Ltd. being allotments 15, 16 and 17 Section 35, Botoko, Town of Port Moresby;
- (b) shall make available to Danco such employees of Ok Tedi DC as Danco may require;
- (c) shall make available for use by Danco such plant and equipment owned by Ok Tedi DC as Danco may require;
- (d) shall use its best endeavours to maintain in force and if so requested by Danco exercise the option to purchase the land referred to in paragraph (a) of this subclause and acquire such land; and
- (e) shall not without Danco's approval engage in any business other than the holding of Prospecting Authority No. 211(P), the carrying out of such studies and investigations as it may be required by the State to do in connection with matters related to this Agreement, the making available to Danco of land, employees and plant and equipment in accordance with this Clause and activities incidental thereto.
- (f) shall maintain its corporate existence, retain all property and assets (not including Prospecting Authorities) acquired by it for the purpose of and in connection with the Ok Tedi Copper Prospect and the carrying out by the State of its obligations hereunder and shall not mortgage or charge any of its property and assets nor shall it incur obligations except in or as a result of carrying on its business in accordance with this Clause except if otherwise agreed by the Parties.

7.2 Subject to the provisions of Clause 5.6, Danco shall bear the costs of Ok Tedi DC in relation to the Project for carrying out work in accordance with a budget approved between Danco and the State including (without limiting the generality of the foregoing)—

- (a) the costs to be incurred in relation to any of the matters referred to in Clause 7.1;
- (b) the cost of continuing to perform any contract or arrangement (including a contract of employment) entered into and disclosed to Danco before the date hereof or entered into thereafter with Danco's approval by Ok Tedi DC in relation to the Project;

- (c) the cost of wages, salaries, annual holiday pay, provision for long service leave and other overheads to be paid by Ok Tedi DC in relation to the Project as approved by Damco from time to time, such approval not to be unreasonably withheld;
- (d) the costs to be incurred in maintaining and continuing to maintain the existing civic and community and educational facilities in the Ok Tedi Copper Prospect Area except that the State will meet the cost of teachers' salaries and educational and medical supplies.

7.3 The provisions of Clause 7.2 shall operate whether or not Damco elects to acquire the share capital of Ok Tedi DC.

7.4 At any time after there are Approved Proposals for the carrying out of the Project as a whole and prior to nomination of the Company pursuant to Clause 10.1, Damco may by notice in writing to the State elect to acquire the whole of the issued capital of Ok Tedi DC for the sum of K10,000, provided that if Ok Tedi DC is not nominated by Damco as the Company pursuant to Clause 10.1 the State may re-acquire the whole of the Shares of Ok Tedi DC from Damco for the same sum and Damco will ensure that, at the time of re-acquisition, the property and financial position of Ok Tedi DC are not materially different from at the time of acquisition.

7.5 If Damco does not elect to acquire Ok Tedi DC or does not nominate it as the Company pursuant to Clause 10.1 but nominates another company thereunder the State will procure the sale to the Company at reasonable prices, not exceeding their original cost to Ok Tedi DC, of such of the property of Ok Tedi DC as the Company may wish to purchase and the assignment to the Company of such existing contracts of Ok Tedi DC as the Company may wish to acquire, and the Company will meet any outstanding obligations of Ok Tedi DC in relation to contracts previously entered into by it with Damco's approval in accordance with Clause 7.2 or which had been disclosed to Damco in accordance with Clause 7.2(b).

CLAUSE 8 PROPOSALS

8.1 Damco may, within the period or extended period allowed by Clause 5.1 for completion of the Investigations and Studies, submit to the State detailed proposals for the construction, establishment and operation of all mining facilities and other facilities required to be constructed and established for the development and operation of the Project together with detailed proposals as to measures for the protection of the environment and all programme studies and analyses mentioned hereunder. Such proposals shall include detailed and comprehensive information as to the Investigations and Studies and where appropriate plans and specifications and detailed particulars as to the location, area, layout, design, number, materials to be used in and time programme for the commencement and completion of the construction or provision (as the case may be) of each of the matters to which they related and in particular and without limiting the generality of the foregoing Damco shall submit to the State its proposals in respect of each of the matters mentioned and described in paragraphs (a) to (k) inclusive and paragraph (p) of this subclause and the programmes, studies and analysis mentioned and described in paragraphs (l) to (o) inclusive of this subclause—

- (a) the construction, establishment and operation of mining and concentrating facilities capable of treating not less than 20,000 tonnes of ore per day;

- (b) the construction of river port facilities, wharf installations and navigational aids and where required any dredging and disposing and depositing of spoil and having regard to the possible use of the port facilities and wharf installations by others;
- (c) the construction of an ocean port or trans-shipment facilities or such adaptation of existing ports as will permit the overseas shipping of ores, concentrates and other forms of copper, gold and other metals;
- (d) (i) the construction of shipping channels from the river port site in the Fly River to the mouth of the Fly River including where necessary dredging thereto and the disposal and depositing of spoil and the provision of navigational aids;
- (ii) the measures, if any, the Company proposes to take to minimise the effects of dredging of any navigable channels and banking and shipping transportation upon the banks and the natural course of that part of the Fly River which forms part of the international border between Papua New Guinea and the Republic of Indonesia;
- (e) the construction of tunnels, pipelines, conveyors and other works for the transmission of goods, materials and personnel required for the purposes of the Company's operation;
- (f) the construction of roads and other transportation systems required for the purposes of the Company's operations;
- (g) the construction of an airstrip with a minimum length of 1800 metres and associated terminal and landing facilities;
- (h) a town plan and the construction and development of a town in the vicinity of the Mining Area including services and facilities in relation thereto;
- (i) water works, treatment, transmission and reticulation works for the supply of water for mining, industrial and town purposes;
- (j) housing and accommodation at the port sites for the Company's employees and their immediate families;
- (k) the generation, transmission and distribution of electricity;
- (l) the results of the preliminary investigations into the feasibility of establishing a smelting and refining operation referred to in Clause 5.1(e);
- (m) the financial analysis of prospective cash flows and rates of return referred to in Clause 5.1(f);
- (n) a training and localization programme based on the study referred to in Clause 5.1(j);
- (o) a business development programme based on the investigation referred to in Clause 5.1(l) which shall provide for those matters set out in Clause 32; and
- (p) any other works, services or facilities proposed or required by the Company.

8.2 Danco shall in its proposals as to measures to be taken for the protection of the environment referred to in Clause 8.1 make specific provision for—

- (a) the disposal of any overburden removed in the course of or any tailings produced as a result of the Company's operations;
- (b) the disposal of all other wastes;
- (c) the control of pollution arising from the industry;

- (d) monitoring overburden, tailings and all other wastes produced as a result of the Company's operations; and
- (e) any other matter arising from the environmental impact study required under Clause 5.1(k) or from the State's own environmental investigations which requires remedial action.

8.3 The proposals may be submitted separately and in any order as to the matter or matters mentioned in one or more paragraphs (a) to (p) of Clause 8.1.

8.4 All material and information other than in respect of the matters referred to in paragraphs (d)(ii), (g), (h), (i), (j), (k), (o) and (p) of Clause 8.1 and in Clause 8.2 supplied to the State under this Clause shall be treated as confidential provided that if this Agreement is terminated in accordance with Clause 34 hereof the material and information shall become the property of the State and may be used by the State in such manner as it thinks fit.

8.5 If the Company at any time during the continuance of this Agreement desires to modify, expand or otherwise substantially vary its activities beyond those specified in any Approved Proposals, either by undertaking any new activity including smelting or refining of mine products or derivatives thereof or by a major expansion of activities specified in the Approved Proposals, the Company shall give notice of such desire to the State and within two months thereafter shall submit to the State detailed proposals in respect of the desired modification, expansion or variation including such of the matters mentioned in paragraphs (a) to (p) of Clause 8.1 as the State may reasonably require. The provisions of Clause 9 shall *mutatis mutandis* apply to the detailed proposals submitted pursuant to this subclause. For the purposes of this clause major expansion shall mean any expansion of facilities in order to provide additional capacity of more than 10% of the capacity in terms of copper output of the mining and treatment operations included in the Project as provided for in any previously Approved Proposals.

CLAUSE 9 CONSIDERATION OF PROPOSALS

9.1 Within three (3) months of its receipt of proposals referred to in Clause 8 the State shall—

- (a) approve of the said proposals either wholly or in part without qualification or reservation; or
- (b) defer consideration of or decision upon the same until such time as Danco submits a further proposal or proposals in respect of some matter mentioned in Clause 8.1 not covered by the said proposals and in such case the State shall disclose to Danco the reasons therefor and specify the further proposal or proposals required; or
- (c) approve of the said proposals subject to Danco making such alteration thereto or complying with such conditions as the State thinks reasonable and in such a case the State shall disclose its reasons for requiring such alterations or imposing such conditions.

9.2 If the decision of the State is as mentioned in either of Clause 9.1(b) or (c) the State shall afford Danco full opportunity to consult with it and, should Danco so desire, to submit new proposals either generally or in respect of some particular matter.

9.3 If the decision of the State is as mentioned in either paragraph (b) or (c) of Clause 9.1 and Danco considers that the decision of the State is unreasonable Danco may within two (2) months after receipt of the notice mentioned in Clause 9.1 elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision.

9.4 In reaching his decision on any matter referred to him pursuant to Clause 9.3 the arbitrator shall judge the reasonableness of any decision of the State having regard to whether the proposals are based on sound mining and engineering practice, take reasonable account of the interests of the people of Papua New Guinea and of employees who will be working on the Project, include reasonable steps to protect the environment, are consistent with securing an equitable return on investment to the Company having regard to the risks associated with the Project and the efficient development and maintenance of the Project and are not inconsistent with the balanced development of the area, recognizing the limited present use of the area, the need for its development, the State's desire for the Project to proceed and be economically viable, and the effect the Project must necessarily have on the environment.

9.5 An award made on an arbitration pursuant to Clause 9.3 shall have force and effect as follows—

- (a) if by the award it is adjudged that the decision of the State is reasonable then the decision of the State in respect to the said proposals shall stand but shall be deemed to have been made at the time of the making of the award by the arbitrator; or
- (b) if the arbitrator adjudges that the decision is unreasonable then he shall further adjudge what further proposals are to be made or what alterations to Danco's proposals (if any) shall be reasonable or what conditions should be imposed under the circumstances in which event—
 - (i) if the arbitrator in his award adjudges that an alteration or variation of Danco's proposals other than that required by the State under Clause 9.1(c) is reasonable under the circumstances, or that any conditions should be imposed, the said proposals as adjudged altered or varied, or the proposals subject to such conditions, shall be deemed to be approved by the State in that form; or
 - (ii) if the arbitrator in his award adjudges that it would be unreasonable under the circumstances for Danco's proposals to be altered or varied, or for any conditions to be imposed, the said proposals shall be deemed to have been approved in the form in which they were submitted.

9.6 If pursuant to Clause 9.1(b) or to an award pursuant to Clause 9.5(b) Danco shall be required to submit further proposals in order to have the proposals as a whole approved, Danco may do so within the period nominated by the State or fixed by the arbitration award as the case may be, and any proposals so submitted shall be deemed to be new proposals made under Clause 8.1 and subsequent subclauses of Clause 8 and the provisions of Clause 9 shall apply accordingly.

9.7 Any proposals approved by the State, whether following their initial submission or following consultation between the State and Damco, and any proposals deemed to have been approved pursuant to Clause 9.5 and any proposals otherwise agreed to between the State and Damco shall be Approved Proposals for the purposes of this Agreement.

CLAUSE 10 THE COMPANY, FINANCE AND MARKETING ARRANGEMENTS

10.1 Within twelve (12) months from the date when these are, pursuant to Clause 9, Approved Proposals for the carrying out of the Project as a whole or within such extended period as may result from the operation of Clauses 36 or 37, Damco may nominate by notice in writing to the State a company (which company shall have been incorporated for the purposes of implementing this Agreement or alternatively shall be Ok Tedi DC) incorporated in Papua New Guinea as "the Company" under this Agreement to undertake the Project and such Company shall enter into a deed with the State (which the State hereby agrees to execute and deliver) to be bound by the terms of this Agreement in so far as they purport to impose obligations on the Company and under which the Company shall have all the rights and be bound to perform all the obligations which it would have had and which it would have been bound to perform had it originally been a party hereto and to undertake, construct, develop and operate the Project substantially in accordance with the Approved Proposals.

10.2 Unless, by agreement with the State upon such terms as may be negotiated between the State and Damco, Ok Tedi DC shall be nominated as the Company pursuant to Clause 10.1, the Company to be nominated shall at the time of nomination have no liabilities and shall be wholly owned by Damco.

10.3 Within the twelve month period referred to in Clause 10.1 or such extended period as may result from the operation of Clauses 36 and 37 the Company may give notice to the State that it proposes to proceed with the development and operation of the Project in accordance with the Approved Proposals and shall furnish to the State such evidence as the State may reasonably require as to—

- (a) the Company's marketing arrangements;
- (b) the availability of finance to the Company necessary for the development and operation of the Project;
- (c) the persons other than Damco and the State proposing to take equity interests in the Project and their financial standing; and
- (d) the readiness and ability of the Company to embark upon and proceed with the development and operation of the Project in accordance with the Approved Proposals.

CLAUSE 11 EQUITY PARTICIPATION

11.1 Within the twelve month period referred to in Clause 10.1 the State will give notice to the Company and Danco of the amount of equity (expressed as a percentage of the Company's issued share capital and being up to 20% thereof or such higher percentage as may be agreed with the Company) which the State wishes to take up. If this notice is given more than six months after the commencement of the twelve month period the time limited for the Company to give notice and furnish evidence under Clause 10.3, to furnish to the State the information required by this Clause 11 and to apply for the Special Mining Lease and other leases, licenses, rights and grants under Clause 12, will be extended by the excess over six months of the time elapsed after the commencement of the said twelve months period before the giving of the said notice.

11.2 At the time of submitting evidence of financial capability in accordance with Clause 10.3 the Company shall inform the State of—

- (a) the amount of capital which the Company intends to raise by issuing shares;
- (b) the persons (other than Danco) who propose to take up a portion of the Company's issued share capital;
- (c) the amount of equity (expressed as a percentage of the Company's issued share capital) which each of those other persons (whichever the case may be) proposes to take up; and
- (d) the terms upon which each of those other persons propose to take up the said amount of equity.

11.3 Within one month of the Company giving notice to the State under Clause 10.3 the State and Danco shall consult together on the timing of the State's taking on allotment the percentage specified under Clause 11.1 of the issued shares of the Company and the payment of the subscription moneys thereof. Unless otherwise agreed by the State and Danco at that time, the following shall apply—

- (a) shares having a par value equal to the amount of expenditure of the State referred to in Clause 11.5 shall be issued to the State credited as fully paid;
- (b) shares to be subscribed for by the State for cash shall be issued by the Company at par and upon terms as to payment not less favourable to the State than the terms applicable to all shares subscribed for for cash by others including Danco; and
- (c) the State shall not be required to pay for shares subscribed for or to be subscribed for by the State for cash while the amount of capital credited as paid up on shares issued to the State pursuant to paragraph (a) of this Clause 11.3 exceeds the percentage nominated by the State under Clause 11.1 of the total capital paid up or credited as paid up on all the issued capital of the Company, and thereafter shall only be required to pay for such shares by contributing in cash sums which will keep the amount of share capital in the Company issued to the State and paid up, or credited as paid up, equal to the State's specified percentage of the total share capital issued and paid up from time to time.
- (d) The Articles of Association of the Company shall provide that—

- (i) subject to the provisions of sub-paragraph (ii) below, all the shares of the Company shall be classified as ordinary shares and no special voting or other rights shall be attached to any particular share;
- (ii) notwithstanding the provisions of sub-paragraph (i) above, the Company may, by special resolution, resolve to issue preference shares, including redeemable preference shares;
- (iii) on any fresh issue of shares after the amount of capital referred to in information furnished to the State pursuant to Clause 11.2 has been subscribed, except if otherwise agreed, the existing shareholders shall have, pro rata, the right to participate in such issue on equal footing as to their respective proportions;
- (iv) on a transfer of shares, other than shares listed for quotation on an official Stock Exchange, each shareholder shall have, pro rata, an equal right of pre-emption in respect of its respective proportion of the shares proposed to be transferred, such shares to be offered to shareholders as aforesaid at their then current market value.

11.4 Danco shall be issued with shares in the Company credited as fully paid up to the amount of all expenditure incurred by Danco in and incidental to carrying out its obligations and exercising its rights under this Agreement up to the time when the Company shall have entered into the deed with the State referred to in Clause 10.1

11.5 It is acknowledged that the State should receive credit from the Company for the following amounts—

- (a) the total sum advanced by the State to Ok Tedi DC by way of grant between 14th March 1975 and 30th June 1976 and expended within a budget or as otherwise agreed by Danco in connection with this Agreement and in connection with the maintenance and development of the Ok Tedi Copper Prospect Areas and all moneys otherwise expended under Clause 5.6;
- (b) the amounts actually spent by Kennecott Copper Corporation and its affiliates and subsidiaries on exploration and development and maintenance of the Ok Tedi project prior to 14th March 1975 (estimated at between K.12,000,000 and K.15,000,000) or as otherwise agreed by the Parties less payments made by Ok Tedi DC for plant, stock and equipment or other assets received from the State provided that these amounts have been paid or secured to Kennecott Copper Corporation by the State; and
- (c) subject to Clause 21.2 the amounts expended by the State on Investigations and Studies under Clause 5.3 and on facilities provided by the State for the purposes of the Project under Clause 21.1(a), unless in the case of such facilities the State elects to charge the Company a capital user charge in accordance with Clause 21.1(b).

11.6 At the time the State makes application in accordance with the foregoing provisions for allotment of shares in the Company, the State shall give notice to the Company accompanied by itemised accounts where appropriate of the amounts claimed as credits under Clause 11.5 (hereinafter called "Equity Credits"). If the Company disputes any of the amounts of the Equity Credits it may within twenty-one days call for further evidence of those amounts or for a meeting with the State to discuss the matter in dispute. If the dispute has not been settled within one month of the State's notice under this subclause it shall be referred to arbitration under Clause 38. The State's obligation to pay for shares to be issued by the Company shall be postponed to the extent of the amount in dispute until any dispute over the Equity Credits is settled by arbitration or otherwise.

11.7 The Equity Credits as varied by agreement, arbitration or otherwise shall, subject to Clause 21.2, be applied in or towards payment by the State to the Company of the subscription moneys of any shares to be issued by the Company to the State pursuant to this Clause.

11.8 The Company and Damco shall ensure that at all relevant times there are sufficient unissued shares of the Company for the State to take on allotment the number of shares for which it applies in accordance with this Clause and shall immediately upon the payment or crediting of the full amount of the subscriptions moneys for any shares to be allotted to the State issue or cause to be issued share certificates covering the appropriate number of shares in the name of the State.

11.9 The State shall be entitled to appoint directors of the Company as follows—

- (a) one director when the State's shareholding reaches five percent (5%) of the issued share capital of the Company;
- (b) two directors when the State's shareholding reaches ten percent (10%) of the issued share capital of the Company;
- (c) such additional directors when the State's shareholding exceeds 10% of the issued share capital of the Company as may be necessary to maintain the proportion appointed by the State of the directors of the Company (to the nearest whole number) in direct relation to its shareholding in the Company.

11.10 All or any of the rights of the State under this Clause (including the right to take up shares in the Company and the right to appoint directors) may be exercised with the consent of the State by a nominee or nominees of the State being a statutory body or other instrumentality of the State either solely or jointly with the State and in accordance with the terms of this Clause, but so that the total entitlement of the State and its nominee or nominees either solely or jointly shall not exceed that which the State would have been allowed under this Clause if it had exercised those rights solely. For the purpose of determining the number of directors which the State is entitled to appoint under Clause 11.9, any shareholding of a nominee of the State shall be deemed to be a shareholding of the State.

11.11 The Articles of Association of the Company shall contain a provision setting forth the various rights conferred upon the State by this Clause and shall contain a further provision that none of such rights shall be in any way varied or modified or otherwise prejudicially affected without the consent in writing of the State.

CLAUSE 12 LEASES AND OTHER RIGHTS

12.1(a) Within two (2) months after notice has been given by the Company under Clause 10 and Clause 11.2 has been complied with the Company shall apply for and within two (2) months after application is made the State shall cause to be granted to the Company a Special Mining Lease under the Mining Act 1937 (Papua) in the form and upon the terms and conditions set out in Schedule III to this Agreement (but with such modifications thereto (if any) as the parties shall agree upon in writing) for the mining of the minerals specified therein from so much of the Mining Area as is contained within Prospecting Authority No. 211(P) as at the date of this Agreement.

(b) At any time and from time to time after the grant of the Special Mining Lease referred to in paragraph (a) of this sub-clause and within five years after the Commencement of Commercial Production the Company may apply for and the State shall grant to the Company a further Special Mining Lease over any other area within the boundaries of Prospecting Authority No. 211(P) as at the date of this Agreement nominated by the Company upon the same terms as those provided herein in relation to the Special Mining Lease referred to in paragraph (a) of this sub-clause, for the balance of the term thereof and any renewed terms (if any) of the said Special Mining Lease.

12.2 The Special Mining Lease shall be for an initial term of twenty-one (21) years with a right of renewal for a further term of twenty-one years upon the same terms (excluding this right of renewal) as apply to the initial term. The Company shall be entitled to further renewals thereafter provided that reasonable terms and conditions can be agreed without recourse to arbitration and the Parties shall negotiate in good faith with a view to determining terms and conditions which are fair and reasonable.

12.3(a) Within two (2) months after notice has been given by the Company under Clause 10 and Clause 11.2 has been complied with the Company shall apply for and the State shall within six months of application cause to be granted to the Company such leases for mining purposes, leases under the Lands Acts and all such other leases, licences, rights and grants as may be reasonably necessary or desirable for the development and operation of the Project (the State acquiring any land required for this purpose) and in particular and without limiting the generality of the foregoing such leases, licences, rights and grants as are required in connection with—

- (i) ore treatment and concentrating operations;
- (ii) roads airstrips and other modes of access;
- (iii) railways and conveyors;
- (iv) power stations;
- (v) dams;
- (vi) treatment plants and other plants and water supply stations;
- (vii) town sites and accommodation and other incidental facilities;
- (viii) tunnels, pipe lines, dams, water channels and races and transmission lines and ropeways;

- (ix) disposal of overburden, tailings, other waste, and spoil from dredging;
 - (x) stockpile areas, shiploaders, warehouses, tanks, wharves, docks, silos, ships, jetties, landing stages, markets, buoys, beacons, leads, channels and berthing and mooring places;
 - (xi) quarrying for stone, gravel, limestone or other materials to be used for construction or operation of the Project; and
 - (xii) transport of mine products and supplies by river or canal.
- (b) At any time thereafter the Company may apply for and the State shall grant to the Company such further leases of a similar nature which may be reasonably required by the Company for any of such purposes.

12.4 The State may require the Company to carry out at the Company's expense a survey of any areas of land in respect of which leases, licences, rights and grants are applied for if the State in its discretion considers such survey necessary.

12.5 The State shall, in consultation with the Company, negotiate and settle all questions of compensation or costs arising out of acquisition of land in relation to the grant of Special Mining Leases and other leases, licences, rights and grants hereunder at the cost of the Company.

12.6 The leases, licences, rights and grants referred to in Clauses 12.1 and 12.3 shall contain such terms and conditions (including provisions for rent at a rate of not more than K2.50 per hectare per annum for the Special Mining Leases and for leases for mining purposes and at such rates as are determined under the Land Act 1962 for other leases, and other charges) as are fair and reasonable and which shall include provisions that—

- (a) the Company will not, without the consent of the State, use the land for any purpose other than that for which it was granted under this Agreement;
- (b) the Company will construct or provide on the land contained in the lease, within the period specified in the Approved Proposals, improvements substantially as specified in the Approved Proposals or as otherwise agreed between the Company and the State;
- (c) the Company will do all things necessary to surrender the lease to the State in the event that the State acquires the facilities erected or constructed thereon pursuant to Clause 21; and
- (d) the lease will terminate on termination of this Agreement or the Special Mining Lease.

12.7 The leases, licences, rights and grants to be granted pursuant to Clause 12.3 shall give to the Company all such rights as are reasonably necessary to use the land subject to those leases, licences, rights and grants so as to enable the Company to carry out all its operations, functions and obligations under this Agreement and under the Special Mining Lease.

CLAUSE 13 CONSTRUCTION OF PLANT

13.1 The Company shall within five (5) years (or such longer period as may be provided in the Approved Proposals) following the date on which the Special Mining Lease and all other leases, licences, rights and grants referred to in Clause 12.3(a) have been granted or such later date as the State may approve or may result from the application of Clauses 36 or 37 (hereinafter called "the Construction Stage") substantially in accordance with the Approved Proposals, construct, install, provide, and do all things necessary to enable it to mine and concentrate ores from the Mining Area, to transport the concentrates to wharf facilities and to ship such concentrates from such facilities in commercial quantities and without limiting the generality of the foregoing the Company shall within the aforesaid period or extended period as the case may be—

- (a) construct, install and provide upon or within the vicinity of the Mining Area mining plant and equipment, crushing, screening, concentrating, stockpiling and loading plant and facilities, workshop and other facilities of a design and capacity adequate to enable the Company to meet and discharge its obligations under this Agreement, and to mine, handle, load and deal with not less than 20,000 tonnes of ore per day;
- (b) actually commence operation of the Project.

CLAUSE 14 WHARVES BERTHS AND FACILITIES

14.1 The Company shall during the Construction Stage and substantially in accordance with the Approved Proposals, at its own cost save as provided in Clause 14.2, construct and develop all necessary ports, wharves and port and wharf facilities and carry out any necessary dredging and provide all necessary navigational aids, services and facilities to enable it to transport and ship ore, concentrates and other mine products to overseas ports.

14.2 The Company shall maintain at its own cost all the wharves, berths and facilities constructed, developed or provided under Clause 14.1 in relation to an ocean port or trans-shipment facilities other than as hereinafter provided and shall be similarly responsible for the maintenance of the facilities constituting the river port.

14.3 The Company shall permit the said ports, wharves, berths and facilities to be used by vessels other than those servicing the Company's operations provided that any vessel used to service the Company's operations shall have priority in the use of the said ports, wharves, berths and facilities.

14.4 The Company may require all vessels other than those used to service the Company's operations which use the said ports, wharves, berths and facilities to pay to the Company reasonable charges in respect thereof providing such charges do not exceed those prescribed under the Harbours Board Act 1963.

14.5 In relation to the port or ports—

- (a) any by-laws from time to time made by the Harbours Board relating to declared ports under the *Harbours Board Act 1963* shall (except to the extent agreed between the Company and the Harbours Board and notified in the Gazette) apply as if the ocean port were a declared port; and
- (b) the Company may with the approval of the Board make local rules for the management and control of the port or ports which rules shall be deemed to be local rules made under Section 44(1) of the *Harbours Board Act 1963* and shall apply in the port or ports as if they were declared ports.

14.6 The Company shall if requested by the State to do so as soon as practicable transfer and do all things necessary to vest in the State all navigational aids, without cost to the State, in which event the State shall from the date of such transfer maintain and become responsible for the maintenance of the same except to the extent that the State and the Company may agree otherwise.

14.7 In the event that the State acquires any of the facilities constructed and developed under this Clause pursuant to Clause 2.1, the State shall from the effective date of such acquisition maintain and be responsible for the maintenance of the facility so acquired and the Company will pay to the State a maintenance user charge calculated on the basis of what is fair and reasonable having regard to the cost (excluding any profit to the State) of the maintenance and operation of that facility.

14.8 Notwithstanding anything herein contained the State will carry out at its own cost all work in relation to the construction and development of the port or ports or river channels or canals the cost of which, if borne by the Company, would not be deductible under Division 10 of Part III or depreciable under Division 3 of Part III of the *Income Tax Act 1959*, and, if requested to do so by the State, the Company will advance by way of interest free loan to the State or any Harbour Board carrying out the work monies to meet the cost of carrying out such work and the Company will pay any port or river improvement rate levied by the State or any Harbour Board in order to provide funds for repayment by the State or the Harbour Board of the Company's advances. If required by the State the Company will carry out the work as its agent.

14.9 The Company shall have the right to operate, maintain and manage as agent for the State all or any of the facilities constructed and developed under this Clause including any facilities which might be provided and used by the Company in connection with the ports and other facilities referred to in this Clause at any time during the continuance of this Agreement.

CLAUSE 15 AIRSTRIP AND FACILITIES

15.1 The Company shall at its own cost, during the Construction Stage and substantially in accordance with the Approved Proposals construct and establish an airstrip having a minimum length of 1800 metres together with all necessary terminal and landing facilities.

15.2 The said airstrip and facilities shall be constructed to the minimum standard of a Class C aerodrome (as prescribed by the Papua New Guinea Aeronautical Information Publication).

15.3 The Company shall maintain and be responsible for the maintenance and operation of the said airstrip and facilities at all times in compliance with the safety requirements of the Controller of Civil Aviation.

15.4 Any airstrip and facilities constructed established and maintained by the Company under this Clause shall be made available as required for the use of the State and others. The Company will be entitled to charge for the use of the said airstrip and facilities by the State and others as may be authorized from time to time under its Instrument of Authorization relating to the airstrip which shall allow for the imposition of reasonable charges.

15.5 In the event that the State acquires the said airstrip and facilities pursuant to Clause 21 the State shall (unless otherwise agreed with the Company) from the effective date of such acquisition maintain and be responsible for the maintenance of the said airstrip and facilities.

CLAUSE 16 ROADS

16.1 The Company shall during the Construction Stage and substantially in accordance with the Approved Proposals at its own cost construct such new roads together with all warning devices, bridges and crossings as may be necessary for the purposes of this Agreement.

16.2 Except to the extent that the Approved Proposals otherwise provide the Company shall allow the State and the public to use free of charge and without obstruction any roads outside the Mining Area constructed or upgraded pursuant to or for the purposes of this Agreement to the extent that such use does not hinder the use of such roads by the Company or its employees, agents and contractors for the purposes of the Project in priority to others.

16.3 All roads constructed by the Company outside the Mining Area shall be public streets for the purposes of the provisions of the *Motor Traffic Act 1950* and the *Motor Vehicles (Third Party Insurance) Act 1974* and the Regulations thereunder. To the extent that the Approved Proposals so provide and thereafter from time to time the State will make such special regulations under the Motor Traffic Act as it considers necessary or desirable for the proper safety of users of the said roads. The State will consult with the Company in regard to the making of such regulations.

16.4 The Company shall maintain and be responsible for the maintenance of all roads in the Mining Area and unless and until the State or other authority becomes responsible under the *Roads Maintenance Act 1971* for the maintenance of roads other than roads within the Mining Area the Company shall maintain and be responsible for the maintenance of those roads and the State shall make a fair and equitable contribution to the cost thereof having regard to the use by persons other than the Company of such roads.

16.5 The Company shall have the right to use any public roads that may from time to time exist in the area of its operations under this Agreement. If the exercise by the Company of such right results in or is likely to result in use of any public road whereby significant damage or deterioration is caused thereto or whereby the road becomes inadequate for use by the Company and the public, the Company shall pay to the State or other authority having control over that road the cost (or an equitable proportion thereof having regard to the use of such road by others) of preventing or making good such damages or deterioration or of upgrading to a standard necessary having regard to the increased traffic and in addition the State or other authority having control over that road may require the Company to pay a maintenance user charge based upon what is fair and reasonable having regard to the continuing cost (excluding any profit to the State or such other authority) of operation and the maintenance of that road and the use of that road by others.

CLAUSE 17 WATER SUPPLY

17.1 The Company shall at its own cost and substantially in accordance with the Approved Proposals construct and provide all storage dams, water works, treatment, transmission and reticulation works (hereinafter called "the Water Works") necessary to supply adequately the needs of the Company's operations and the needs of the town required to be provided pursuant to Clause 20.1 of this Agreement.

17.2 The Company shall at its own cost operate and maintain and be responsible for the maintenance of that part of the Water Works necessary to supply the town from the point where such part is separated from the rest of the Water Works unless and until the State acquires the same pursuant to Clause 21.3 in which event the State will maintain and be responsible for the maintenance of that part of the Water Works and the company and its employees shall thereafter pay reasonable rates and service charges for the water supply. The Company may charge reasonable rates and service charges for the water supply.

17.3 In the event that the Water Works require upgrading because of the expansion of the Company's operations the Company shall be responsible for the cost thereof unless and to the extent that unused capacity previously available has been used by others.

CLAUSE 18 POWER SUPPLY

18.1 Except as otherwise provided in the Approved Proposals, the State acting through the agency of the Electricity Commission of Papua New Guinea (in this Clause called "the Commission") or otherwise shall engage the Company as its agent for the design and construction of all necessary plant, equipment and systems including power stations, high voltage transmission lines and distribution network (hereinafter called "Power Supply Facilities") for the generation and transmission of electricity sufficient to meet the needs of the Company's operations under this Agreement and of the town and other facilities obliged to be constructed by the Company under this Agreement. The whole of the Power Supply Facilities shall be constructed during the Construction Stage.

18.2 All costs of and incidental to the establishment of the Power Supply Facilities within a scope and budget agreed between the State and the Company or an equitable portion thereof if such facilities are in excess of the Company's needs shall be borne by the Company. Such costs shall include the cost of and incidental to the design, staffing and co-ordination of the Power Supply Facilities in addition to the prime cost of construction which term shall include but not be limited to the cost of all contracts, labour, equipment, transport, accommodation and materials made or used in connection with the construction of the Power Supply Facilities.

18.3 Except as otherwise provided in the Approved Proposals the Commission shall manage, maintain and operate the Power Supply Facilities and may charge the Company for the supply of electricity generated thereby a maintenance user charge which shall exclude any profit to the Commission and shall be fair and reasonable having regard to operating and maintenance costs, costs in relation to the administration by the Commission of and incidental to the Power Supply Facilities and the supply of electricity to the Company and the use of such Power Supply Facilities and the consumption of electricity by others.

18.4 The Commission shall have the right to sell electricity generated by the Power Supply Facilities to consumers in the area other than the Company and where necessary shall improve, extend or expand the Power Supply Facilities so that the Company's operations under this Agreement are not prejudiced by the consumption of electricity by others. Nothing in this subclause shall preclude the Company agreeing with the State to improve, extend or expand the Power Supply Facilities itself. The Company shall be entitled to share equitably in the proceeds of the sale of electricity having regard to its capital contribution hereunder or the amount of any credit allowed under Clause 21.1(a).

CLAUSE 19 TELECOMMUNICATIONS

19.1 The State shall be responsible in consultation with the Company for the design, planning, construction and installation of all telecommunications facilities sufficient to meet the needs of the Company's operations under this Agreement and of the town and other facilities obliged to be constructed by the Company under this Agreement and shall construct the same during the Construction Stage.

19.2 The Company shall advance to the State by way of a loan from time to time prior to the Commencement of Commercial Production such amounts as may be required by the State to provide for the design, planning, construction and installation of all telecommunications facilities within a scope and budget agreed between the State and the Company and otherwise in accordance with Clause 19.1 such advances shall be the subject of a separate loan agreement to be entered into between the Parties forthwith upon the proposals referred to in Clause 8 being approved pursuant to Clause 9 which loan agreement will make provision for, inter alia—

- (a) the Company to make advances from time to time on request by the State up to an agreed amount;
- (b) the said advances to be repayable over a period of fifteen years commencing from the Commencement of Commercial Production (hereinafter called "the Repayment Period") by thirty equal six monthly instalments;
- (c) interest to be payable in arrears on the balance of principal outstanding from time to time at a fixed rate being the rate of interest applicable in respect of loans advanced by the International Bank for Reconstruction and Development at the date on which the proposals are approved under Clause 9 and shall be payable—
 - (i) prior to the Commencement of Commercial Production—on each advance on the last day of each period of six calendar months the first of such periods to commence from the date on which that advance was made except that the last payment of interest in respect of each advance shall fall due on the day preceding the date of Commencement of Commercial Production;

- (ii) after the Commencement of Commercial Production—on the total of all advances to be paid on the last day of each six calendar month period the first of such periods to commence from the date of Commencement of Commercial Production;

provided that if an instalment of interest becomes due and payable prior to the Commencement of Commercial Production the State may elect to defer payment of that instalment in which event the amount thereof shall be capitalised forthwith and shall thereafter be treated for the purposes of this Agreement as an advance made in accordance with Clause 19.2(a) and repayable in accordance with Clause 19.2(b).

- (d) the State shall have the right at any time during the Repayment Period to repay the said advances in whole or in part.

19.3 Ownership of the said telecommunications facilities shall be vested in the State and the State shall maintain and operate the same and may charge the Company for the supply of telecommunication services provided to it, the standard charges for telecommunication services applicable throughout Papua New Guinea as published from time to time in the Posts and Telegraphs Charges Manual.

19.4 Until the construction and installation of the said telecommunications facilities, as provided in this Clause the Company shall have the right at its own cost to install and maintain High Frequency or Very High Frequency facilities for such period and of such standard as is approved by the State and subject to the Radio Communications Act 1973 and regulations thereunder and internal facilities.

CLAUSE 20 TOWN DEVELOPMENT

20.1 The Company shall at its own cost and substantially in accordance with the Approved Proposals construct and establish and develop town facilities sufficient to service the needs of the Company's operations and make provision if required by the Approved Proposals for a town of a size likely to be generated by the Company's operations within five (5) years from the commencement of commercial production. The Company shall (where provided in the Approved Proposals) construct the said facilities so that the same shall be capable of expansion to meet the needs of the eventual size of the town. Without limiting the generality of the foregoing the Company shall substantially in accordance with the Approved Proposals—

- (a) provide all necessary town roads;
- (b) provide serviced allotments for all areas and buildings constructed by it for its operations, together with such further number of serviced allotments as are required by the Approved Proposals to be provided for basic community needs relating to State and Local Authority services and community welfare, supply of goods and services and local business development;
- (c) provide buildings and install fixtures and fittings for the provision of a sub-provincial office, post office, educational, hospital, police, fire prevention services together with housing for State personnel staffing those services and dependents;
- (d) provide social amenities including buildings for a trade store, a cinema, a community centre, an employee training centre and a guest house, and provide recreation areas;

- (e) provide works and services for drainage, sewerage, garbage and sillage treatment and disposal which are adequate for the Company's operations and for the town;
- (f) provide housing and accommodation for all its employees connected with the Company's operations and their dependents; and
- (g) provide such other facilities as are required to be provided in the Approved Proposals.

20.2 Unless and until the State acquires any housing accommodation services or works mentioned in Clause 20.1(a) to (g) inclusive the Company shall (unless otherwise provided in this Agreement)—

- (a) service and maintain and where necessary repair and renovate that facility; and
- (b) charge its employees and other persons such rental for the occupation of any housing or accommodation provided by the Company as is consistent with the State's economic rental policy from time to time, and the Company shall as a condition of employment require the said rental to be deducted from each employee's salary.

20.3 Upon acquisition by the State of all or any of the facilities provided for in this Clause the State shall become responsible for the maintenance and maintain and where necessary repair and renovate any facility so acquired and may charge persons using the facilities such rental or maintenance user charge (as the case may be) as is fair and reasonable having regard to the cost of maintenance and operation of that facility provided that profit to the State shall be excluded from any maintenance user charge to be levied by the State upon the Company, its employees and agents in respect of the use by them of any such facility. Following acquisition by the State of houses the State will provide such of the houses so acquired as the Company may require for use by its employees.

CLAUSE 21 STATE ACQUISITION AND OWNERSHIP OF FACILITIES

21.1 Notwithstanding anything contained in Clause 14 to 20 (inclusive) the State may prior to the commencement of the Construction Stage elect to provide the establishment costs of any of the works and facilities referred to in Clauses 14 to 19 or to provide any or all of the facilities referred to in Clause 20 other than the items excluded from the State's power of acquisition under Clause 21.3(a) in which event the State may either—

- (a) credit an amount equal to such establishment costs and the cost of providing any such facility in and towards equity in accordance with Clause 11.5(c); or
- (b) in addition to any maintenance user charge or rent or service charge otherwise provided for in this Agreement charge the Company a capital user charge on the basis of what is fair and reasonable having regard to the capital cost of the relevant facility.

21.2 If the aggregate amount of the Equity Credits referred to in Clause 11.6 shall exceed the nominal amount of the percentage of equity nominated by the State pursuant to Clause 11.1, the Company shall pay to the State the amount of the excess as contribution to the establishment costs of any of the works and facilities referred to in Clauses 14 to 19 and of providing the facilities referred to in Clause 20 and deductions in respect of the payment shall be allowable to the Company under Division 10 of Part III of the *Income Tax Act*.

21.3(a) Except as otherwise provided in the Approved Proposals at any time after the completion of the Construction Stage the State may require the Company to transfer to its ownership of any or all of the facilities referred to in Clauses 14 to 20 (inclusive) and constructed, established and provided by the Company, other than the water works (except that portion referred to in Clause 17.2), roads in the Mining Area and those facilities referred to in Clause 14 which are provided for loading, unloading, trans-shipment and stockpiling of mine products and loading unloading trans-shipment and storage of plant, equipment and materials for the Project, including associated wharves, for a purchase price equal to the then depreciated value of that facility, which expression shall mean the original cost of that facility less all deductions allowed under the *Income Tax Act* or Clause 23 in respect of that facility, for the purposes of assessment of income tax and the Company shall as soon as practicable after notice of such request to transfer ownership by the State do all things necessary to effect the transfer to the State of the facility stated in the notice.

(b) The said purchase price shall be payable by the State to the Company by annual instalments each of which is equal to the sum that the Company would have claimed (and would have been entitled to claim) as a deduction under the *Income Tax Act* or Clause 23 as applicable for the purpose of assessment of income tax in respect of that facility but for the transfer of ownership of that facility to the State (such sum to be nominated each year by the Company).

(c) The Company shall pay to the State at the same time as any instalment referred to in paragraph (b) of this subclause is paid or becomes payable, and in addition to any maintenance user charge in respect of the said facility otherwise provided for in this Agreement, a capital user charge equal to the said instalment.

21.4 Where the State has provided or acquired facilities for the purposes of or under this Agreement and fails properly to maintain the same the Company may, after 30 days notice to the State, carry out such work as is necessary to bring the same up to a proper standard and the cost thereof shall be recoverable from the State.

21.5 Notwithstanding any acquisition of facilities by the State hereunder the Company shall have priority of use of the facilities during the continuance of this Agreement.

CLAUSE 22 USE OF FACILITIES BY THIRD PARTIES

22.1 A third party will be permitted to use for the purposes of undertaking another mining project or other major resources project, all or any of the facilities provided by the Company or the cost of which has been borne by the Company under clauses 14 to 20 inclusive of this Agreement (whether or not acquired by the State under Clause 21) or in respect of the cost of which credit has been given under Clause 21.1(a) and the State undertakes to ensure that—

- (a) the third party will be required to pay a proportionate share of any operating, maintenance and overhead costs in respect of the facility used for the purposes of such undertaking, such proportionate share to be on the basis of what is fair and reasonable having regard to:
 - (i) the extent of the proportionate usage and likely future usage of the facility by the third party and the Company;
 - (ii) the respective tonnages of plant and equipment used and respective tonnages of produce likely to be carried by the Company and the third party (where the shared facility is a transport facility);
 - (iii) the respective workforces used by the Company and the third party in the performance of their respective undertakings (where the facility is a town or community facility);
 - (iv) the respective volumes of air traffic servicing the operations of the Company and the third party (where the facility is an airstrip or associated facility);
 - (v) the respective extents to which services are provided to the Company and the third party (where the facility is a service facility); and
 - (vi) any other factor which results in or is likely to result in significant damage or deterioration of the said facility;
- (b) the third party will be required to provide the cost of any modification, improvement, extension or expansion of any facility provided by the Company or the cost or part of the cost of which has been borne by the Company or for which credit has been given under Clause 21.1(a) under this Agreement which is necessary as a result of the third party's undertaking;

(c) the third party will be required to pay to the Company (notwithstanding any prior transfer of the relevant facility to the State under the Agreement) in United States dollars or the Kina equivalent at the date of payment a capital contribution reflecting the extent of the third party's intended use of the facility which shall be equal to the product—

$$W \times V \times Y \times Z$$

where—

W = the proportion that the third party's use of the facility bears to the total use of that facility over the then remaining life of that facility;

V = $\frac{T - U}{T}$ where U is the number of years that has passed between the installation of the facility and the commencement of use of that facility by the third party and T is the total of the number of years of the past and estimated future life of the facility;

Y = the original capital expenditure in United States dollars on the facility borne by the Company or for which credit has been allowed under Clause 21.1(a); and

Z = 100% plus the percentage increase in the implicit price deflator for Gross National Product in the Survey of Current Business published by the United States Department of Commerce from the installation of the facility to the commencement of use of that facility by the third party.

22.2 Where, in respect of any facility provided for under this Agreement, the State provides the cost of any modification, improvement, extension or expansion of any facility which is necessary to meet the needs of the Company's operations the State may charge the Company a capital user charge in respect of that facility to allow for the recoupment over a reasonable period of the amount so expended in providing the said cost by the State together with a reasonable return thereon.

22.3 Notwithstanding anything herein contained use by others of any of the facilities provided will only be permitted if such use will not adversely affect the Company's use or intended use thereof. All such facilities shall continue to be managed by the Company and the Company shall have priority of use thereof over all other users.

CLAUSE 23 TAXATION

23.1 In this Clause, unless the context otherwise requires:—

"Additional Profits Tax" means tax payable by the Company under this Clause which is in addition to normal income tax;

"Capital Expenditure" means all expenditure of a capital nature incurred by the Company in connection with the Project including expenditure on plant, machinery, equipment, land, buildings (including houses), roads, earthworks, development of the Company's mining property, works, including dredging, carried out in connection with the establishment, operation, or use of a port or other facilities for ships or barges and any improvements on any leasehold property, exploration and prospecting expenditure, compensation or other acquisition costs in relation to the grant of leases, licenses rights and grants and all other expenditure of the kind in respect of which a deduction is allowable under Division 10 of Part III of the *Income Tax Act* at the date hereof, and all other expenditure on units of property in respect of which depreciation is an allowable deduction under Division 3 of Part III of the *Income Tax Act* at the date hereof and includes as well all expenditure of Damco incurred pursuant to Clauses 5.1 and 8 of this Agreement and all amounts and expenditure in respect of which shares in the Company are issued to the State pursuant to Clause 11.3(a) and all expenditure by the State financed by the Company in accordance with Clause 14.8;

"Commencement of Commercial Production" means the last day of the first month during which the Company achieves an average rate of production of ore concentrates for sale from the Project in excess of 70% of the operating capacity of the plant installed as nominated in the Approved Proposals or the last day of the month in which shipments of contained copper aggregating 30,000 tonnes is achieved whichever be the earlier;

"Commencement of Construction" means the date on which Capital Expenditure exceeds K50,000,000;

"Dividend (Withholding) Tax" means—

- (a) dividend (withholding) tax as defined in the *Income Tax Act*; and
- (b) any tax of a similar nature payable in respect of dividends or other distributions of profits to shareholders;

"Gross Dividends" means the dividends which would have been payable by the Company but for the deduction therefrom of Dividend (Withholding) Tax;

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

"Investment Recovery Period" means the period from the Commencement of Commercial Production until—

- (a) the sum of the Company's taxable incomes (as determined in accordance with the *Income Tax Act*) in all Tax Years from and including the year of Commencement of Commercial Production; plus
- (b) the sum of all deductions for depreciation under Division 3 and all deductions under Division 10 of Part III of the *Income Tax Act* which have been allowed to the Company under the *Income Tax Act* or under this Clause in those Tax Years; less
- (c) the sum of the amounts of income tax payable by the Company in respect of those Tax Years; first exceeds Total Investment at the Commencement of Commercial Production.

"Net Cash Receipts" means the result (which may be negative) in any Tax Year of—

- (a) the sum of all proceeds of sales of ores and concentrates by the Company made in that Tax Year and other receipts of the Company which are properly taken into account in determining the assessable income of the Company under the Income Tax Act and which accrue in that Tax Year (other than interest which accrues to the Company), and any capital contribution paid by any third party to the Company under Clause 22.1 hereof; less
- (b) the sum of all Capital Expenditure incurred in that Tax Year revenue expenditure and any other payments which would be an allowable deduction under the Income Tax Act (other than interest payments) in that Tax Year and the amount of income tax actually paid by the Company in that Tax Year but shall not include capital user charges payable under Clause 21.3;

and for the purposes of this definition all expenditure by the Company, Damco or the State which is included in Capital Expenditure prior to Commencement of Construction including an amount equal to the face value of shares in the Company issued to the State under Clause 11.5(b) which shall be deemed to have been expended when the amount concerned has been paid or secured to Kennecott Copper Corporation by the State, will be treated as a payment made in the year in which Commencement of Construction occurred;

"Replacement Expenditure" means the expenditure incurred in providing units of property to replace (after the Commencement of Commercial Production) units of property which have been provided for use in the Project provided that a unit of property shall be deemed to be so provided only when the principal reason is to replace existing rather than to add new capacity notwithstanding some enhancement of such capacity does occur;

"Tax Year" means each period of twelve months being a year of income for the company;

"Total Investment" means the aggregate amount of Capital Expenditure and Working Capital;

"Working Capital" means the book value of stocks determined by the Commissioner General of Internal Revenue at a date being three months after the Commencement of Commercial Production;

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

23.2 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, and the Company shall pay income tax at the normal rates at which companies are liable to pay income tax in Papua New Guinea from time to time except that during the Investment Recovery Period if the normal rate of income tax for companies exceeds thirty five per cent (35%) the Company shall pay income tax at the rate of thirty five per cent (35%) only.

23.3(a) Whenever under the *Income Tax Act* the Commissioner General of Internal Revenue must form a judgment as to the life of the mine, he will until the tenth anniversary of the Commencement of Commercial Production judge the life of the mine to be not more than fifteen years.

(b) For the purposes of the *Income Tax Act* all roads constructed by the Company outside the Mining Area for the purposes of the Project shall be deemed to have been constructed in connection with access to or communications with the site of prescribed mining operations carried on, or to be carried on, by the Company.

23.4 For the purposes of assessment of income tax under the *Income Tax Act* payable by the Company and for the purposes of this Agreement all expenditure by Danco in connection with the Project to the extent to which it has not already been allowed as a deduction under the *Income Tax Act* and the par value of all shares issued to the State pursuant to Clause 11.3(a) shall be treated as deductible under Division 10 of Part III of the *Income Tax Act* as if it were expenditure of the Company which qualified for deduction under the said Division 10 and the cost of navigational aids shall be deductible from assessable income of the Company upon their becoming the property of the State to the extent that deductions in respect thereof have not already been allowed.

23.5 In any Tax Year prior to the time when the sum of the Company's taxable incomes (as determined in accordance with the *Income Tax Act* and the preceding sub-clauses of this clause) in all Tax Years since the Commencement of Commercial Production plus the sum of all deductions for depreciation under Division 3 and all deductions under Division 10 of Part III of the *Income Tax Act* allowed to the Company under the *Income Tax Act* or under this Clause in those Tax Years less the sum of the amounts of income tax payable by the Company in respect of those Tax Years exceeds Initial Capital Expenditure as hereinafter defined, in which—

- (a) the taxable income of the Company as otherwise determined under the *Income Tax Act* and the preceding sub-clauses of this clause plus—
- (b) the sum of deductions for depreciation under Division 3 and deductions under Division 10 of Part III of the *Income Tax Act* and under the preceding sub-clauses of this clause which would have been allowed to the Company in that Tax Year; less—
- (c) income tax which would have been payable by the Company in respect of that Tax Year,

is less than one quarter of Initial Capital Expenditure (hereinafter called "the Target Income Level") the Company may elect, by notice in writing to the Commissioner General of Internal Revenue at the time when it submits its income tax return for that Tax Year, for additional deductions in accordance with this subclause. For the purposes of this sub-clause "Initial Capital Expenditure" means—

- (i) total Investment to end of the Tax Year for which additional deductions are sought or to the end of the fourth year after the Commencement of Commercial Production, whichever is the earlier; less—
- (ii) Replacement Expenditure to the end of the Tax Year for which additional deductions are sought or to the end of the fourth year after the Commencement of Commercial Production whichever is the earlier.

The Company's notice of election for any Tax Year to which this subclause applies shall specify the amount, being not more than the amount required to reduce income tax payable so as to achieve the Target Income Level as calculated in accordance with this Clause for that Tax Year, for which it claims additional deductions and the Commissioner General of Internal Revenue shall subject to Clause 23.6 allow that amount as a deduction from the Company's income for the purpose of determining its taxable income for that Tax Year. The additional amounts so deducted under this subclause shall be applied first against amounts of Capital Expenditure which are deductible under Division 10 of Part III of the *Income Tax Act* and under Clause 23.4 in that Tax Year proportionately between the various items in respect of which deductions are allowable thereunder.

23.6 Notwithstanding the foregoing provisions—

- (a) no deduction under Division 3 for depreciation or under Division 10 of Part III of the *Income Tax Act* shall be allowed under the *Income Tax Act* or under this Clause to the extent that that deduction would make the total deductions in respect of any one item of Capital Expenditure exceed the original cost of that item; and
- (b) no deduction under this Clause shall be allowed to the extent that it would cause the Company to suffer a loss for income tax purposes in the Tax Year in which that deduction is claimed.

23.7 The Company shall pay Additional Profits Tax in accordance with the following provisions—

- (a) at the Commencement of Commercial Production the Company shall by notice in writing to the Commissioner General of Internal Revenue choose an accumulation rate for the purposes of this subclause which shall be either—
 - (i) twenty per cent (20%); or
 - (ii) the percentage rate for each Tax Year which is equal to the percentage rate of interest per annum on domestic corporate borrowings rated AAA in the United States of America as published in the Survey of Current Business by the United States Department of Commerce/Bureau of Economic Analysis and averaged over that Tax Year or if such rate is not published a rate determined in such manner as the Parties shall agree from time to time, plus ten (10) percentage points.

This choice once made shall be binding on the Company during the currency of this Agreement.

- (b) At the end of the Tax Year during which the Commencement of Construction occurred, the accumulated value of the Net Cash Receipts shall be the aggregate of Net Cash Receipts in that Tax Year and preceding years. For each Tax Year after that Tax Year, the accumulated value of Net Cash Receipts shall be calculated in accordance with the following formula:

$$A = \frac{E}{E} \times B (100\% + R) + C$$

where—

- A = accumulated value of Net Cash Receipts at the end of the Tax Year for which the calculation is being made;
- B = accumulated value of Net Cash Receipts at the end of the Tax Year immediately preceding the Tax Year for which the calculation is being made;
- R = accumulation rate as determined under paragraph (a) above;
- C = Net Cash Receipts in the Tax Year for which the calculation is being made;
- E = the average of the Daily Published Buying Rates of the Kina against the United States dollar during the Tax Year immediately preceding the Tax Year for which the calculation is being made (expressed in terms of Kina per United States dollar);
- F = the average of the Daily Published Buying Rates of the Kina against the United States dollar during the Tax Year for which the calculation is being made (expressed in terms of Kina per United States dollar).

PROVIDED THAT the value of "B" shall be deemed to be zero when Additional Profits Tax is payable in respect of the Tax Year immediately preceding the Tax Year for which the calculation is being made. In this paragraph, the Daily Published Buying Rate means the buying rate from time to time published by the Bank of Papua New Guinea or such other buying rate as may from time to time be published and recognised by the State as the official buying rate and in calculating the average of the Daily Published Buying Rates 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.

- (c) If the accumulated value of Net Cash Receipts in any Tax Year is positive, the Company shall pay Additional Profits Tax calculated in accordance with the following formula:

$$APT = A \times (70\% - T)$$

where—

- APT = amount of Additional Profits Tax in Kina;
- A = accumulated value of Net Cash Receipts in Kina for the Tax Year in respect of which the calculation is being made;
- T = the normal percentage rate of company income tax in Papua New Guinea for the Tax Year in respect of which the calculation is being made.

23.8 Neither the Company nor any person shall have any liability to any income tax on the payment or repayment of or 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 end of the Investment Recovery Period.

23.9 If at any time the normal rate of Dividend (Withholding) Tax exceeds fifteen per cent (15%) Dividend (Withholding) Tax shall be payable in respect of Gross Dividends payable by the Company to non-residents of Papua New Guinea at the rate of 15% only.

23.10 In the event of the Company or of any related corporation engaging in operations under this Agreement but outside the scope of the Project in Papua New Guinea, the provisions of this clause shall not apply to the taxation of the income or profits thereby derived to the intent that such income or profits shall be taxed in accordance with the relevant provisions of the Income Tax Act.

CLAUSE 24 ROYALTY

24.1 In this Clause—

"F.O.B. Revenue" means—

- (a) in the case of a delivery of ores of copper, concentrated ores of copper, other minerals or gold won from the area the subject of the Special Mining Lease (hereinafter called "Mine Products") which is made pursuant to a sale by the Company other than a sale to which paragraph (b) of this definition applies 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 Papua New Guinea until the same is delivered and accepted by the purchaser including without limiting the generality of the foregoing—
- (i) taxes, dues, duties, excise, tariffs and other levies imposed on the export of the same from Papua New Guinea;
 - (ii) titling costs;
 - (iii) ocean freight;
 - (iv) marine insurance;
 - (v) port and handling charges at the port of discharge;
 - (vi) costs incurred in delivering the same from the port of discharge to any place for the purpose of any further processing;
 - (vii) weighing, sampling, assaying, inspection, representation and selling agency costs and charges;
 - (viii) shipping agency charges after loading as aforesaid; and
 - (ix) taxes, dues, duties, portage duties, tariffs and other levies imposed in the country of the port of discharge on the import of the same; and

(b) in the case of any delivery of any Mine Products which is made pursuant to a sale by the Company for 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 otherwise than by way of sale, an amount equal to the whole of such consideration as would have been receivable by the Company if such Mine Products had been sold at the weighted average of the whole of the considerations receivable by the Company (less all or any costs, charges and expenses referred to in paragraph (a) of this definition) in respect of deliveries of Mine Products of substantially the same composition which were made during the period of sixty days immediately preceding the relevant delivery and to which paragraph (a) applied, or in the event of there being no such deliveries such amount as a mining warden nominated by the State may determine to be the value of the Mine Products after the Company has presented to him evidence of its value.

"Net Smelter Returns" means—

- (a) in the case of the Company operating a smelter or a smelter and refinery in Papua New Guinea for the smelting or the smelting and refining of Mine Products the value of the products of the smelter or the smelter and refinery (as the case may be) less all or any costs, charges and expenses bona fide incurred or suffered by the Company in respect thereof from the time when the Mine Products are delivered to the smelter until the time when the smelter or refinery products are delivered to and accepted by the purchasers thereof, including without limiting the generality thereof—
- (i) smelting and refining costs which shall include a reasonable profit element but which shall be no greater than amounts that are or would be charged to any other company for the smelting or smelting and refining (as the case may be) of similar products;
 - (ii) realisation costs; and
 - (iii) the costs itemised in the definition of F.O.B. Revenue to the extent they are payable by the Company in respect of shipping of the smelter or refinery products to the point of delivery to the purchasers thereof; and
- (b) in the case of any other company operating a smelter in Papua New Guinea for the smelting or the smelting and refining of Mine Products (hereinafter called "the Processing Company") the value of the products of the smelter or the smelter and the refinery (as the case may be) from Mine Products supplied by the Company less all or any costs, charges and expenses bona fide incurred or suffered in respect thereof, including without limiting the generality thereof—
- (i) smelting and refining charges payable by the Company to the Processing Company (which if the Processing Company is a related company shall be no greater than amounts that are or would be charged to any unrelated company);
 - (ii) realisation costs incurred by the Processing Company or by the Company; and

- (iii) the costs itemised in the definition of F.O.B. Revenue to the extent they are payable by the Processing Company or by the Company in respect of the shipping of the smelter or refinery products to the point of delivery to the purchasers thereof.

24.2 The Company shall pay royalty at the rate of one and one quarter per cent (1¼%) of the sum of—

- (a) the F.O.B. Revenue applicable to deliveries by the Company pursuant to sales or other dispositions made by the Company of Mine Products where such deliveries are directly or indirectly for export; and
- (b) the Net Smelter Returns applicable to such Mine Products where they are smelted or smelted and refined in Papua New Guinea.

The royalty shall be paid monthly in accordance with procedures to be agreed between the State and the Company or in default of agreement as determined by the State.

CLAUSE 25 RATES AND DUTIES

25.1 Subject to any requirement of defence, the safety of the public and quarantine and to the obligations of the State under multilateral international agreements to which the State is a party 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 Papua New Guinea and use any plant, machinery, equipment, vehicles, explosives, fuels, reagents and supplies—

- (a) required for the construction, installation, provision, expansion, maintenance or operation of any of the facilities referred to in Clauses 13 to 20 inclusive, or any other facilities required for the Project; or
- (b) otherwise required for the purposes of the Project;

and to export from Papua New Guinea the products (whether processed or otherwise) resulting from the operation of the Project.

25.2 The Company shall be subject to import duties and levies of general application in accordance with Papua New Guinea law from time to time except as hereinafter provided.

25.3 No rate, tax, charge, due, duty, tariff or other levy shall be applied to, or be payable by, the Company in respect of the export from Papua New Guinea by the Company or a related company of—

- (a) Mine Products; or
- (b) the derivatives of any such Mine Products which are the result of any smelting or refining operations in Papua New Guinea.

25.4 No rate, tax, rent, charge, due, duty, tariff or other levy and no legislation which discriminates against the Company or any member of the Company or any beneficial owner of shares in the Company or any person engaged in the operations of the Project shall be payable by or (as the case may be) applicable to the Company or any such member or beneficial owner or person (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.

25.5 Any import duty which is sought to be imposed on the importation of any plant, machinery, equipment, explosives, reagents or other supplies 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 at the date hereof in the Second Schedule to the Customs Tariff 1959 shall, without in any way whatsoever limiting the interpretation of Clause 25.4 above, be deemed to discriminate against the Company within the meaning of Clause 25.4.

CLAUSE 26 CURRENCY

26.1 Words and expressions which have a certain meaning where used in the Foreign Exchange Regulations made under the Central Banking Act 1973 shall have the same meaning where used in this Clause.

26.2 The Company shall be entitled to retain in foreign exchange outside Papua New Guinea the proceeds of sale of all products of the Company exported overseas to the extent necessary to enable the Company to meet its obligations to pay foreign exchange or pay dividends to overseas shareholders during the ensuing three months in respect of—

- (a) the principal of, interest and service charges on and other fees and expenses related to loans made to the Company in foreign exchange by persons not resident in Papua New Guinea;
- (b) commitments in foreign exchange to persons not resident in Papua New Guinea for the supply of goods and services to the Company (including capital goods and services of foreign employees and consultants of the Company); and
- (c) commitments in respect of dividends payable to shareholders resident out of Papua New Guinea;

provided that the amounts concerned are established to the reasonable satisfaction of the State on the basis of loans and commitments which have been approved by the Bank of Papua New Guinea.

26.3 Except as provided in Clause 26.2, the Company shall convert all its foreign exchange earnings in Kina and remit the proceeds to Papua New Guinea.

26.4 Where amounts of foreign exchange expected to be required by the Company for the purposes described in Clause 26.2 above in any three month period exceed the amounts of foreign exchange earnings expected to be received by the Company in that period, the Company may request the State to hold foreign exchange for it to the level of the possible shortfall but not exceeding foreign exchange requirements for purposes of loan repayments whereupon—

- (a) the Company shall notify the State of the amount of the expected shortfall and the currencies in which the shortfall is likely to occur;
- (b) the State, after consultation with the Bank of Papua New Guinea, will advise the Company of the Kina equivalent of the shortfall at the exchange rates then prevailing;
- (c) the Company will lend to the State and the State will borrow from the Company that amount in Kina;

- (d) the State through the Bank of Papua New Guinea will hold deposits of foreign exchange in the currency to which payments will be made and of amounts sufficient to make such payments in accordance with the notice which the Company has given to the State under this subclause;
- (e) the State will pay interest to the Company on such foreign exchange deposits at a rate per annum which is the rate which the Bank of Papua New Guinea earns for the State on those deposits less one half of one per cent (0.5%) per annum to cover the Bank of Papua New Guinea's administrative and overhead costs; and
- (f) the State will repay any loan made by the Company under this subclause in the currencies in which the deposits are held at the time payments in those currencies by the Company are due, such amounts in foreign currency to be applied in discharge of the Kina amount of the original loan at the exchange rate ruling at the time of the original loan.

26.5 The Company its members and Danco will not be subject to or limited by regulations or statutes relating to foreign exchange and the control thereof that are less favourable to the Company its members and Danco (as the case may be) than the regulations and statutes of general application to persons dealing with foreign exchange in Papua New Guinea nor will regulations or statutes relating to foreign exchange and the control thereof be applied in relation to the Company its members and Danco in a manner less favourable to them than the manner in which they are generally applied to others to whom they are applicable.

CLAUSE 27 MARKETING AND CONTRACTS

27.1 The Company shall be responsible for marketing of all Mine Products and all smelter and refinery products derived by the Company from such Mine Products, shall have sole control and management of sales of such Mine Products and products and shall assume all risks thereof, provided that—

- (a) the Company shall sell its products at prices which are reasonable judged on an arm's length basis in a transaction confined to the products of the Company or otherwise with the approval of the State subject only to normal deductions for shipping, smelting and refining, and other realisation costs; and
- (b) all sales contracts in excess of 25,000 tonnes of Mine Products will be submitted to the State for prior approval, and all other sales contracts (whether they relate to ores, concentrates or smelter or refinery products) other than sales of gold on normal market terms will be submitted to the State within thirty days of execution. Approval where required will be given within 14 days and will not be unreasonably withheld in the case of a contract at prices which are reasonable judged on an arm's length basis in a transaction confined to the products of the Company nor be revoked or varied unless the National Executive Council shall determine that the export of any goods could—
 - (i) breach any obligations of the State arising under international law; or
 - (ii) prejudice national security; or
 - (iii) prejudice the international relations of the State by the export of goods to another State with which it may be contrary to the interests of the State to engage in international trading.

27.2 All sales contracts shall be exempt from any requirement to be submitted for approval under Part VIII of the National Investment and Development Act 1974.

CLAUSE 28 NIDA REGISTRATION

28.1 Notwithstanding anything expressly or by implication to the contrary contained in the National Investment and Development Act 1974 and in particular notwithstanding the provisions of Section 4 of that Act, the Company and Damco are hereby deemed to be registered under that Act in respect of the activities of exploitation for minerals, mining copper and gold ores and minerals found therewith and concentrating the same and other activities incidental thereto and contemplated by or required to carry out the Approved Proposals on the following conditions—

- (a) the Company shall not without the approval of the National Investment and Development Authority carry on its exploitation or mining activities other than in the Mining Area, and
- (b) the registration shall be for the duration of this Agreement and shall be deemed to have been cancelled upon the termination of this Agreement for any reason.

28.2 If the Company considers it necessary to carry out any other activities within the meaning of the National Investment and Development Act 1974 to comply with its obligations under this Agreement, it shall give notice of those activities to the National Investment and Development Authority and, if within a period of thirty (30) days from the date of that notice, the Company has not been informed by the said Authority that the Minister for National Development objects to its carrying on the notified activities, then the Company shall be deemed to be registered under the National Investment and Development Act 1974 in respect of the notified activities, subject to the condition in Clause 28.1(b).

CLAUSE 29 ENVIRONMENTAL MANAGEMENT AND PROTECTION

29.1 In this Agreement—

"Beneficial Use" means a use of the Environment or any element or segment of the Environment that is conducive to public benefit, welfare, safety or health and which requires protection from the effects of Waste discharges, emissions and deposits.

"Environment" means physical factors of the surroundings of human beings including land, water, atmosphere, climate, sound, odours, tastes and biological factors of animals and plants and the social factors of aesthetics.

"Pollution" means any direct or indirect alteration of the physical, thermal, chemical, biological or radio-active properties of any part of the Environment by discharging, emitting, or depositing Wastes so as materially to affect any Beneficial Use adversely, or to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants and "Pollute" has a corresponding meaning.

"Waste" includes any matter whether liquid, solid, gaseous or radio-active, which is discharged, emitted, or deposited in the Environment in such volume, constituency, or manner as to cause an alteration of the Environment.

29.2 The Company shall implement all Approved Proposals relating to environmental management and protection and shall not dispose of the overburden, tailings or other Waste otherwise than in a manner which is substantially as previously approved provided that if the Company is of the opinion that circumstances have changed so that previously approved plans and proposals are no longer applicable or desirable, then it may give notice to the State of those circumstances together with alternative or revised plans and the State shall within two (2) months of that notice—

- (a) approve the alternative or revised plans, or
- (b) meet with the Company to discuss the alternative or revised plans.

If the discussions under paragraph (b) do not lead to the approval of alternative or revised plans by the State (which approval shall not be unreasonably withheld) the alternative or revised plans shall be treated as a new proposal under Clause 8 and the provisions of Clause 9 so far as appropriate shall apply thereto.

29.3 The Company shall install and maintain suitable equipment of a standard approved by the State for the purpose of measuring and analysing all Waste discharges and deposits from the Company's operations hereunder and shall forward regular reports to the Government after the commencement of such operations on the quantity and quality of all Waste discharges and deposits so measured and analysed.

29.4 The Company shall within a reasonable time after any dump ceases to be utilized carry out experiments for the determination of whether it is reasonably practicable for vegetation to be established thereon and shall so far as is practicable establish thereon vegetation of a type which can be so established.

29.5 The Company shall when any dump for the overburden, tailings or other Waste ceases to be utilized ensure that, in order to facilitate the rapid regeneration of vegetation thereon, unless such regeneration is impracticable, such dump is left with a surface on which such regeneration can be carried out.

29.6 The Company shall at all times endeavour to overcome and minimize any deleterious effects resulting from the Company's operations upon the physical Environment, the streams and rivers, the inhabitants and the biota of the Mining Area or the land, streams and rivers flowing therefrom.

29.7 If the Company contravenes any of these provisions, the State may serve notice upon the Company requiring it to take within the time specified in the notice such reasonable steps as are necessary (which steps may be specified by the State) to prevent the continued or repeated contravention of such provisions, and the Company shall forthwith comply with such notice.

29.8 If the Company fails to comply with such notice the State may take such reasonable steps including entering by its servants or agents upon any land occupied by the Company as are necessary to prevent the continued or repeated contraventions of such provisions and the Company shall indemnify the State for all costs and expenses incurred in connection therewith.

29.9 If any segment or element of the Environment is Polluted as a result of a contravention of such provisions, the State may serve notice upon the Company requiring it to take such reasonable steps as are necessary to remove, disperse, destroy or mitigate the Pollution within the time specified in the notice, and the State may specify the particular method to be used to remove, disperse, destroy or mitigate the Pollution. The Company shall forthwith comply with any notice properly given by the State.

29.10 If the Company fails to comply with such notice or if immediate action is necessary to remove, disperse, destroy or mitigate the Pollution referred to in Clause 29.9 (notwithstanding that no notice pursuant to that subclause has been given to the Company), the State may take such reasonable steps including entering by its servants or agents upon any land occupied by the Company as are necessary to remove, disperse, destroy or mitigate the Pollution and the Company shall indemnify the State for all costs and expenses incurred in connection therewith.

29.11 The State shall notify the Company prior to taking any action under Clause 29.10.

29.12 Notwithstanding that a plan or proposal has been approved by the State, the Company shall compensate for any loss suffered by any person or persons as a result of the Company's operations resulting from any damage (whether to land, anything on land, water or otherwise), or interference with any right to use land or water existing prior to the date hereof caused by disposal by the Company of the overburden, tailings or other Waste.

29.13 Without in any way limiting the Company's obligation to implement the Approved Proposals relating to environmental management and protection and the disposal of overburden tailings and other waste in accordance with Clause 29.2, regard to determining the extent and limits of the Company's obligations under this Clause 29 shall be had to the limited present use of the area, to the need for its development, to the State's desire for the Project to proceed and be economically viable, and to the effect the Project must necessarily have on the Environment. The Company's obligation will be to act reasonably to mitigate damage to the Environment in these acknowledged circumstances.

CLAUSE 30 TRAINING AND LOCALISATION

30.1 The Company shall employ Papua New Guineans in all of its activities under this Agreement and in all ancillary and related activities except where the employment of non Papua New Guineans is in accordance with the approved training and localisation programme or is otherwise approved by the State.

30.2 The State will ensure that, consistent with requirements of national security, foreign workers and their dependents to be employed on the Project in accordance with the approved training and localisation programme where requested by the Company will be granted such permits as may be necessary for them to enter, move within, remain in and depart from Papua New Guinea and to work on or in connection with the Project.

30.3 The Company shall progressively replace foreign technicians, operators, supervisory, clerical, semi-professional, professional, administrative and managerial staff employed with the approval of the State with Papua New Guineans in accordance with the training and localisation programme which forms part of the Approved Proposals provided that if the training and localisation programme is disrupted by circumstances or events (whether or not they constitute force majeure within Clause 36) which in the Company's view make it difficult or impossible for the Company to comply with its obligations under the training and localisation programme or to operate profitably by reason of that programme, the Company may give notice thereof to the State together with alternative or revised plans to achieve the objects of the part of the training and localisation programme which is affected and the State shall within one month of that notice either—

- (a) approve those alternative or revised plans, or
- (b) meet with the Company to discuss the alternative or revised plans.

If the discussions under paragraph (b) do not lead to the State's approval of alternative or revised plans (which approval shall not be unreasonably withheld) the Company shall be bound by its original obligations under the training and localisation programme except that it shall not be liable for any delay caused by following the procedures under this subclause and subject always to the Company being able to claim force majeure under Clause 36 hereof.

30.4 The State shall give such assistance to the Company as is reasonably required in the compilation of its training and localisation programme and in the recruitment of Papua New Guinean staff, and shall make available under normal conditions its facilities in vocational and technical training.

30.5 The Company shall ensure that training and instruction for Papua New Guineans pursuant to the training and localisation programme shall be given by employees or agents of the Company who are proficient in the English language.

30.6 The Company shall in so far as is practicable give first preference in employment to the landowners in and other people originating from the Kiunga and Telefomin sub-provinces of the Western Province.

CLAUSE 31 SUPPLIES

31.1 The Company shall use services, foodstuffs, supplies, fuels, materials, plant and machinery supplied, produced or manufactured in Papua New Guinea whenever the same can be obtained in economic quantities, at a competitive price and of a quality comparable with those available from outside Papua New Guinea.

31.2 The Company shall, where it is necessary to import vehicles, machinery, plant or equipment and such items are not purchased direct from the manufacturer by the Company, effect the purchase of such items through traders operating in Papua New Guinea provided that such items are available through such traders at a competitive price and on competitive terms and provided always that the Company shall not be bound to comply with this Clause in any case where compliance would adversely affect its financing of the Project or any part thereof.

CLAUSE 32 LOCAL BUSINESS DEVELOPMENT

32.1 The Company shall promote, support, encourage and lend assistance to Papua New Guineans desirous of establishing enterprises and businesses providing goods and services for the Project and for the town constructed by the Company and the residents thereof, and shall generally promote, support, encourage and assist the establishment and operation of local enterprises in the Mining Area, provided that nothing in this Clause shall oblige the Company to lend money to any Papua New Guinean or local enterprise.

32.2 The Company shall make maximum use of Papua New Guinean sub-contractors where services are available from them at competitive prices and of comparable standards with those obtainable from elsewhere, whether inside or outside Papua New Guinea.

32.3 Insofar as it is practicable the Company shall give first preference in its assistance hereunder to landowners in and other people originating from the Kiunga and Telefomin sub-provinces of the Western Province.

32.4 The Company shall appoint for such period as is reasonably necessary, a member of its staff who has had experience within Papua New Guinea of the establishment, control and day-to-day running of enterprises controlled and run by Papua New Guineans and who shall, in consultation with the Department of Business Development—

- (a) identify activities related to the Project including the provision of goods and services as described above which can be carried on by Papua New Guineans or local enterprise;
- (b) advise and assist Papua New Guineans desirous of carrying on those activities or of establishing enterprises to do the same; and
- (c) implement, or assist in the implementation of, the business development programme as hereinafter described on behalf of the Company.

The staff member appointed for this purpose shall be a full time employee of the Company.

32.5 Danco shall, in consultation with the State, prepare a business development programme for the development of Papua New Guinean businesses and enterprises associated with or incidental to the Project which shall be submitted as part of Danco's proposals under Clause 8.

32.6 The business development programme will make provision as far as is practicable for the following—

- (a) enterprises involved in the supply and maintenance of mining equipment (other than that carried out by the Company) and the provision of consumable supplies;
- (b) subcontracting to self-employed equipment operators of road construction and maintenance;
- (c) subcontracting of site preparation, construction and maintenance of houses, government buildings, industrial facilities and other works and buildings and facilities to be established, including concreting, welding, tank constructions, steel fabrication, plumbing, electrical work and timberwork;

- (d) enterprises involved in town services such as sewerage and garbage collection, treatment and disposal, passenger transport, freight carriage of consumer items and stevedoring (except in relation to the shipping of the produce of the mine);
- (e) enterprises involved in trade stores, supermarkets, other retail outlets, canteens, restaurants, taverns, cinemas, social clubs, cleaning and laundry, and vehicle maintenance and repair facilities;
- (f) enterprises involved in the supply of fresh fruits, vegetables, meat and fish;

and may include provision for other activities agreed to by the Company and the State.

32.7 The business development programme shall also include details of—

- (a) the time schedule for its implementation;
- (b) those additional activities which could be established by Papua New Guineans;
- (c) those activities in which the Company intends to commence operating but which will be transferred to Papua New Guineans at a later date, on a commercial basis; and
- (d) any facilities by way of training, technical or financial assistance which can be made available to facilitate the smooth transition of ownership and operation to Papua New Guineans.

32.8 The business development programme shall be reviewed annually by the Company, in consultation with the State, and may be altered by mutual consent between the Company and the State with a view to securing the maximum benefit to Papua New Guineans and local enterprises from the operations of the Company and the carrying out of the Project.

CLAUSE 33 INSPECTION

33.1 The Company shall allow the State at all reasonable times to inspect the books of account and records of the Company relating to the Company's operations under this Agreement and to any shipment, sale or use of products of such operations to the extent necessary to determine F.O.B. Revenue and Net Smelter Returns from products, and to take extracts or copies therefrom.

33.2 Throughout the continuance of this Agreement, the Company shall allow the State at all reasonable times to inspect any aspect of the Company's operations hereunder.

33.3 The Company is not obliged to comply with Clause 33.1 and 33.2 unless it is dealing with a properly accredited servant or agent of the State who shall establish his authority if so requested by the Company.

33.4 The provisions of this Clause do not in any way limit or affect any power of inspection given to any person under the *Mining Act* or any other law now or hereafter in force in Papua New Guinea.

CLAUSE 34 TERMINATION

34.1 Danco may terminate this Agreement by notice to the State in the following events—

- (a) if an assessment carried out by Damco promptly after completion of Phase I of the Agreed Work Programme or after the completion of the first four thousand metres of drilling by Damco pursuant thereto, whichever shall first occur, reveals that indicated ore reserves are less than 250 million tonnes of ore having an average grade of more than .85% copper within an area in the immediate vicinity of Mt. Eubilan, recoverable by open pit mining at a total-waste to ore ratio of not greater than three to one, and such assessment is accepted by an independent authority selected by the State, if Damco notifies the State within one month after the acceptance of Damco's assessment that it proposes to abandon the Project;
- (b) if at any time before completion of the Investigations and Studies it demonstrates to the State's satisfaction that on the results of the Investigations and Studies then carried out the establishment and operation of a mine and other facilities provided for in this Agreement is not for the time being economically viable;
- (c) if after the completion of the Investigations and Studies before giving notice to the State under Clause 10 it notifies the State that it proposes to abandon the Project.

34.2 The State may terminate this Agreement by notice to Damco or, after nomination of the Company by notice to the Company, in any of the following events—

- (a) if Damco or the Company makes default which the State considers material in the due performance and observance of any of the covenants or obligations to the State herein or in the deed referred to in Clause 10 or in any lease, sublease, licence or other title or document granted or assigned under this Agreement on its part to be performed or observed and such default is not remedied (or active steps are not commenced and continued to remedy the same if the default is of a type not capable of speedy remedy) or compensation paid in respect thereof (in the case of a default not capable of remedy but for which payment of compensation is adequate recompense to the State or others affected by the default) within a period of sixty days after notice as provided in Clause 34.3 is given by the State to the Company, or if the alleged default is contested by the Company and within thirty days after such notice it is submitted to arbitration hereunder then within a reasonable time fixed by the arbitration award where the question is decided against the Company;
- (b) if the Company abandons the Project or repudiates its obligations under this Agreement and operations are not resumed within a period of sixty (60) days after notice as provided in Clause 34.3 is given by the State to the Company;
- (c) if the Company becomes insolvent, or a resolution is passed by the Company for its voluntary winding up (other than for the purposes of reconstruction in a manner which has been approved by the State), or an order is made by the Court for the winding up of the Company by the Court, or the Company makes any composition or arrangement with its creditors which has not been approved by the State;
- (d) if the Company makes a statement to the State in its proposals under Clause 8 or otherwise upon which the State relies and which is material in the State granting its approval to those proposals and the Company knew that the Statement was false or misleading;

- (e) if the Special Mining Lease or any extensions or renewal thereof is properly forfeited due to default by the Company or is surrendered under the Mining Act;
- (f) if Damco does not submit proposals in accordance with Clause 8;
- (g) if the State does not approve Damco's proposals pursuant to Clause 9 and Damco fails to refer the matter to arbitration in accordance with the provisions of Clause 9.3;
- (h) if Damco does not comply with any award made after reference to arbitration as aforesaid; or
- (i) if Damco does not nominate the Company pursuant to Clause 10.1 or the Company fails to enter into a deed with the State in accordance with that Clause, the State being ready and willing to do so.

34.3 The notice to be given by the State in terms of Clause 34.2 shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the Party or Parties responsible therefor and shall be given to the Company and Damco.

34.4 For the purposes of Clause 34.2(b) and (c) the Company shall not be deemed to have abandoned the Project or repudiated its obligations not to have been wound up unless all persons for the time being bound, whether as assignees of the Company or otherwise, to perform the obligations of the Company hereunder, have abandoned the Project or repudiated the obligations or been wound up.

34.5 If the default referred to in Clause 34.2(a) shall not have been remedied (or if active steps have not been commenced and continued to remedy the same if the default is of a type not capable of speedy remedy) or if compensation in respect thereof is not paid (in the case of a default not capable of remedy but for which payment of compensation is adequate recompense to the State or others affected by the default) after such notice or within the time fixed by the arbitration award as aforesaid the State instead of terminating the Agreement because of such default, may itself remedy such default or cause the same to be remedied (for which purpose the State by agents, workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant, machinery, equipment and installations thereon) and the costs and expenses incurred by the State in so doing shall be a debt payable by the Company to the State on demand.

34.6 Except as provided by Clauses 34.1 and 34.2, or as is otherwise mutually agreed, this Agreement shall terminate upon the expiry of the Special Mining Lease or any extension or renewal thereof.

CLAUSE 35 CONSEQUENCES OF TERMINATION

35.1 If this Agreement is terminated in accordance with its terms for any reason at any time:

- (a) the Company shall leave the Mining Area in a safe condition to the reasonable satisfaction of a mining inspector who shall apply generally accepted standards of good mining practice.

- (b) the rights of the Company and those of any assignee or mortgagee of the Company under this Agreement or under the Special Mining Lease or any other lease, licence, right or grant granted hereunder or pursuant hereto and all the rights, titles, and interests of the Company and of any such assignee or mortgagee in and to any land in Papua New Guinea granted to the Company or to such assignee for any other of the purposes of this Agreement shall thereupon cease and determine and (as the case may require) shall revert to the State free from any encumbrances whatsoever, but without prejudice to the liability of any of the Parties in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder;
- (c) the Company shall forthwith pay to the State all moneys that may then have been payable or accrued due hereunder; and
- (d) except as provided in this Clause or otherwise provided in this Agreement none of the Parties shall have any claim against another of them in respect to any matter or thing contained in or arising out of this Agreement.

35.2 If this Agreement is for any reason terminated prior to the Commencement of Construction the State will allow the Company and Damco a reasonable period not exceeding six months within which they may remove from the Mining Area any structures or installations which can be removed without irreparable damage to the Mining Area or any remaining structures or installations, and any removable assets, where such structures, installations and assets were placed by the Company or Damco in the Mining Area after the date of their acquisition by the Company or Damco hereunder. Upon expiry of that period, if not removed, all such structures, installations and assets shall become the property of the State without any cost to the State or any liability for the State to pay compensation therefor, and freed and discharged from all mortgages and other encumbrances.

35.3 If this Agreement is for any reason other than under Clause 34.2(c) terminated after the Commencement of Construction, all structures and installations as are referred to in Clause 35.2 and all other plant, equipment and non-movable assets of the Company in the Mining Area shall thereupon become the property of the State without any cost to the State or any liability for the State to pay compensation therefor, and freed and discharged from all mortgages and other encumbrances. All materials, supplies and other movable assets of the Company in the Mining Area which are fully depreciated for tax purposes shall likewise become the property of the State, but any such materials, supplies and other movable assets which are not fully depreciated for tax purposes shall be offered by the Company for sale to the State at their depreciated value.

35.4 The Company shall do and execute all such deeds, documents and other acts, matters and things (including attendants) as the State may reasonably require to give effect to the provisions of this Clause and the Company shall make available to the State the results of the Investigations and Studies to the extent that they have been carried out by the Company before the date of termination.

35.5 This Clause shall continue in force notwithstanding the termination of the rest of this Agreement and may be sued upon or enforced against the Company or Damco by action in the National Court of Papua New Guinea to the jurisdiction of which for this purpose the Company and Damco hereby submit.

CLAUSE 36 FORCE MAJEURE

36.1 Any failure on the part of a Party hereto to comply with any of the terms conditions and provisions of this Agreement (except any obligation of the Company to make payment of money to the State) shall not be grounds for termination or give another Party hereto any claim for damages insofar as such failure arises from force majeure, if the first-mentioned Party has taken all appropriate precautions, due care and reasonable alternative measures with the objective of avoiding such failure and of carrying out its obligations under this Agreement. That Party shall take all reasonable measures to remove such inability to fulfil terms and conditions of this Agreement with the minimum of delay.

36.2 For the purposes of this Agreement, force majeure shall include war, insurrection, civil disturbances, blockades, riots, embargoes, strikes and other labour conflicts, land disputes, epidemics, earthquakes, storms, floods or other adverse weather conditions, explosions, fires, lightning, breakdown of machinery facilities or shortages of labour, transportation, fuel, power or essential plant, equipment or materials or any other event which the Party claiming force majeure could not reasonably be expected to prevent or control, and in the case of the Company and Damco shall include any delay or failure by the State to give any consent or approval required hereunder or under any applicable law but shall not include any event caused by a failure to observe good mining industry practice nor any event caused by negligence in the provision of adequate supervision of the Project.

36.3 The Company or Damco (as the case may be) shall notify the State on its becoming aware of an event or force majeure affecting its ability to fulfil the terms and conditions of this Agreement, or of any event which results in the death or the serious injury of any person in the Mining Area or any event which may endanger the natural resources and similarly notify the State on the restoration of normal conditions.

CLAUSE 37 EXTENSIONS OF TIME

37.1 Notwithstanding any provision of this Agreement the State may at the request of the Company or Damco 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.

37.2 If and whenever the Company or Damco is prevented or hindered by any circumstances or event of a kind set out in Clause 36 from undertaking all or any of its obligations hereunder or exercising any right granted hereunder or if and whenever a question dispute or difference concerning the exercise of a right is referred to arbitration hereunder, the period of time allowed for the performance of that obligation or exercise of that right and all periods of time thereafter allowed for the performance of obligations or exercise of rights which are dependent upon the first mentioned obligation or rights shall be extended by a period equal to the period during which such prevention or hindrance continues or during the period from the time when the question dispute or difference arose until the time of its settlement by agreement or award, as the case may be.

37.3 If at any time or from time to time prior to the expiration of the relative period (and any extension thereof) the Company or Damco notifies the State that in the conditions then prevailing (whether in Papua New Guinea or elsewhere) it requires an extension, for the period specified in the notice, of the period mentioned in Clause 10 in order to enable it to complete all marketing and financial arrangements, including the obtaining of equity capital, necessary or requisite for the proper and profitable development of the deposits in the Mining Area and furnishes to the State its detailed reasons for concluding that it will require such an extension, then the State shall approve such extension (if any) for that purpose as is reasonable in the circumstances.

37.4 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 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).

CLAUSE 38 ARBITRATION

38.1 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 any of the Parties hereto other than a dispute, question or difference of opinion arising under Clause 23 in respect of which provision for settlement or determination thereof is provided in the Income Tax Act, or other than a dispute question or difference arising under or in relation to any matter dealt with in Clauses 24 or 25.2 or if 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 Clause 38.2 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 Act 1951.

38.2 After any such dispute, question or difference of opinion has arisen between the State on the one hand and the Company or Damco or both of them on the other hand any Party to that dispute, question or difference of opinion may at any time prior to the appointment of an arbitrator by concurrence of the Parties or pursuant to the said Act by notice to the other Party or Parties thereto elect that the provisions of this subclause shall apply to such dispute, question or difference of opinion and in such event—

- (a) the dispute, question or difference of opinion shall stand referred to the arbitration of three arbitrators one of whom shall be appointed by the State and one of whom shall be appointed by the Company or Damco (whichever is more concerned with the dispute, question or difference of opinion in issue) and the third of whom shall be agreed upon by the State and the Company or Damco (as the case may be) in writing and in default of agreement within fourteen days after the State gives notice to the Company or Damco (as the case may be) or the Company or Damco (as the case may be) gives notice to the State requiring the appointment of such a third arbitrator shall be appointed in accordance with the provisions of the Arbitration Act 1951 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 State and the Company or Damco as the case may be 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 or the Commonwealth of Australia, or, if any person other than the Company, Damco or the State is or indicates prior to the appointment of the third arbitrator that he intends to be a party to the submission (and unless the State, the Company or Damco as the case may be 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;
- (b) 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 Clause 38.2(a);
- (c) 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;
- (d) such arbitration shall be held at such place (whether within or outside Papua New Guinea) as the arbitrators determine; and
- (e) subject to the preceding provisions of this subclause the provisions of Clause 38.1 shall apply to such arbitration.

38.3 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 National Court of Papua New Guinea any question of law arising in the course of the reference and any opinion given shall be subject to the normal right of appeal.

38.4 Arbitrators shall have the power to order specific performance of an obligation to be performed under this Agreement and may, if they think fit, make an interim award.

CLAUSE 39 LAW APPLICABLE

39.1 This Agreement shall be governed by and construed in accordance with the law of Papua New Guinea.

39.2 The Company shall in the construction, operation, maintenance and use of any work, installation, plant machinery, equipment, service or facility provided or controlled by the Company comply with and observe the provisions of this Agreement and, to the extent not inconsistent therewith, the laws for the time being in force in Papua New Guinea.

CLAUSE 40 ASSIGNMENT

40.1 Subject to Clause 40.2 and with the consent of the State, which consent shall not be unreasonably withheld either Damco or the Company may assign, or otherwise dispose of their interest or rights under this Agreement;

40.2 In the case of any assignment under this clause the assignee shall undertake to the State to assume, observe and comply with all the obligations of the Company or Damco in relation to the matter assigned or to the extent of the interest assigned as the case may be and, in the case of an assignment of all the Company's or Damco's obligations hereunder to a wholly-owned subsidiary of the Company or Damco, that subsidiary shall undertake to the State to assume, observe and comply with all the remaining obligations of Damco or the Company under this Agreement. After the giving of any such undertaking the Company or Damco (as the case may be) shall be relieved of its obligations under this Agreement in relation to the matter assigned or to the extent of the interest assigned as the case may be without prejudice to pre-existing rights accrued to the State against the assignor.

40.3 Notwithstanding the foregoing provisions of this Clause but subject to normal statutory approvals in force from time to time, the Company may—

- (a) charge by way of a fixed or floating charge the whole or any part of its undertaking and assets including its uncalled capital to secure the repayment of, and payment of interest and other fees, costs and expenses related to, all loans made to the Company to finance the project; and
- (b) mortgage and charge any specific asset (whether real or personal property) to secure the purchase price thereof where such amount has been borrowed to finance the purchase of that asset;

and any mortgagee or chargee under a mortgage or charge given by the Company may exercise all rights of sale and other rights included in any instrument of mortgage or charge given by it provided it shall first give the State at least twenty-eight days' notice of intention to exercise the rights.

CLAUSE 41 INDEMNITY

41.1 The Company shall indemnify and keep indemnified the State and its servants, agents and contractors in respect of all actions, suits, claims, demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Company pursuant to this Agreement or relating to its operations or arising out of or in connection with the construction, maintenance, operation or use by the Company or its servants, agents, contractors, appointees or assignees of the work constructed, maintained and operated or services provided by it under this Agreement or the plant, apparatus or equipment installed in connection therewith.

CLAUSE 42 VARIATION

42.1 The Parties may from time to time by agreement in writing add to, substitute for, cancel or vary all or any of the provisions of this Agreement, the Special Mining Lease, any Lease for Mining Purposes, or any lease, licence, right or grant granted hereunder or pursuant hereto or to any programme, proposal or plan approved hereunder for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

42.2 Where an agreement made pursuant to Clause 42.1 constitutes a material or substantial alteration of this Agreement the agreement shall contain a declaration to that effect and the State shall as soon as is practicable introduce and sponsor in the National Parliament a Bill for an Act to approve that agreement and give force of law to the alteration of the rights hereunder. That agreement shall be subject to the coming into effect of the approving Act.

42.3 Any other agreement made pursuant to Clause 42.1 shall be tabled in the National Parliament by the State within the twelve sitting days next following its execution.

CLAUSE 43 CONSULTATION

43.1 The Company shall consult from time to time with representatives of the State and furnish the State at six monthly intervals with a report concerning the following—

- (a) the implementation of the training and localisation programme;
- (b) the implementation of provisions relating to local purchasing of supplies;
- (c) the implementation of provisions relating to local business development; and
- (d) the implementation of provisions relating to environmental management.

CLAUSE 44 PATENT AND TECHNOLOGY RIGHTS

44.1 All new processes, new methods of manufacture and other mechanical or technological innovations developed within the Project shall remain the property of the Company. The Company shall apply for, take out and retain such patents and other technology rights and registrations as may be available, necessary or desirable to protect the same.

44.2 The Company shall not sell, assign, licence, surrender or otherwise dispose of any of its patents and other technology rights except—

- (a) on the basis of an armslength transaction, and
- (b) with the prior approval of the State.

CLAUSE 45 INTERNATIONAL OBLIGATIONS

45.1 A section of the Fly River forms an international boundary between Papua New Guinea and the Republic of Indonesia and any damage to its banks or any change in the course of the river in the said section will be of concern to the Government of the Republic of Indonesia as well as to the State. Accordingly, the Company will obtain the approval of the State to the manner in which its activities in the said section will be carried out.

45.2 The State will use its best endeavours to reach agreement with the Republic of Indonesia so as to ensure that the Company is able to use the said section of the Fly River for the purposes of the Project without undue interference.

CLAUSE 46 NOTICES

46.1 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 a Minister of the State or (as the case may be) a Director of the Secretary of the Company or Danco and if in writing shall be sufficiently given, made, furnished or submitted if delivered at or posted by a prepaid post to the address for service of the party or parties 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.

46.2 The address for service of the State shall be—

The Director,
Office of Minerals and Energy,
P.O. Box 2352,
KONEDOBU, P.N.G.

and of Danco shall be—

Dampier Mining Company Limited,
140 William Street,
Melbourne,
VICTORIA, 3000 AUSTRALIA.

and of the Company shall be its registered office for the time being in Papua New Guinea. Any Party may change its address for service by prior notice in accordance with this Clause.

46.3 Where Danco or the Company is required to submit any plans, proposals or other material for the approval of the State, the date of submission shall be deemed to be the date on which the State receives the said plans proposals or other material.

CLAUSE 47 ADDITIONAL COPPER PROSPECTS

47.1 The State agrees that it will not from the date hereof until the expiration or earlier determination of the initial term of the Special Mining Lease to be granted to the Company under Clause 12.1(a) or the determination of this Agreement whichever shall first occur (for the purpose of this clause hereinafter referred to as "the Term of this Agreement"), grant rights to any other person, except to Ok Tedi D.C. or to some other person being either another company wholly owned by the State and formed for the purpose of holding any of the Prospecting Authorities referred to in this Clause or a person appointed by the State to hold the same wholly for the benefit of the State, for the exploitation or development of any copper prospects within the area of land described in Prospecting Authority No. 211(P) or comprised in—

- (a) Prospecting Authority No. 415(N.G.) at the date of signing this Agreement,
- (b) Prospecting Authorities Nos. 28(P), 35(P), 71(P) and 137(P) as at 13th March 1975, to the extent that the areas contained in this sub-paragraph (b) are not included in Prospecting Authority No. 211(P) as at the Commencing Date, and

(c) the Mining Area to the extent that it includes areas of land not covered by Prospecting Authorities referred to in (a) and (b) above,

(Such areas of land referred to in (a), (b), and (c) above being hereinafter referred to together in this clause as the "Additional Copper Prospects")

without first affording Danco (prior to the Company being nominated under Clause 10.1) or the Company (after its nomination under Clause 10.1) an opportunity of negotiating with the State with a view to the State's granting rights to enable the Additional Copper Prospects to be developed by the Company in association with the Project on no less favourable terms than are contained in this Agreement in respect of the Project, except to the extent that the State may require Danco or the Company (as the case may be) to implement a programme of work in respect of any such Additional Copper Prospects, equivalent to a work programme the subject of a bona fide offer from any other person interested in exploring or developing the Additional Copper Prospects.

47.2(a) Danco shall have the right, within the period or extended period referred to in Clause 5.1 for the completion of Investigations and Studies, to prospect and carry out exploration in consultation with the State on any part or parts of land described in the Prospecting Authorities 211(P) and 415(NG) or any other lands the subject of the Prospecting Authorities referred to in Clause 47.1(a) and (b) and which are at the time the subject of any Prospecting Authorities held by any company wholly owned by the State or by any person wholly for the benefit of the State, the rights to which have not otherwise been granted to some other person pursuant to Clause 47.1.

(b) Subject to the proviso hereinafter contained in this sub-clause Danco or the Company may at any time during the Term of this Agreement unless rights have otherwise been granted to some other person pursuant to Clause 47.1, apply for and be granted a Prospecting Authority over any part or parts of the land described in Prospecting Authority No. 211(P) and over any Additional Copper Prospects or part or parts thereof provided the applicant agrees with the State to carry out an exploration programme satisfactory to the State in respect of the land concerned provided that Danco or The Company shall not be entitled to apply for and the State shall not be obliged under this sub-clause to grant a Prospecting Authority over any of the land at present the subject of Prospecting Authority 415(NG) until 27th September 1977 and the State may satisfy any obligation to grant a Prospecting Authority by causing an assignment, to the person entitled to the grant, of a Prospecting Authority over the land concerned held by some other person.

(c) The State agrees that if during the term of any Prospecting Authority granted under Clause 47.2(b) or any renewal thereof the Company submits proposals to the State for the development and operation of a mine in respect of any such Additional Copper Prospects the State will negotiate with the Company with a view to granting the Company a Special Mining Lease in respect of such Additional Copper Prospects on terms no less favourable than are contained in this Agreement.

IN WITNESS whereof this Agreement has been duly executed by the Parties the day and year first hereinbefore written.

SIGNED for and on behalf of THE)	
INDEPENDENT STATE OF PAPUA)	
NEW GUINEA by the Governor-General,)	John Guise
SIR JOHN GUISE, acting with and)	
in accordance with the advice of the)	
National Executive Council in the)	
presence of)	
Joseph S. Aoa		
THE COMMON SEAL of DAMPLER)	Common Seal
MINING COMPANY LIMITED was)	
hereto affixed by authority of the)	Director
Board of Directors in the presence of:)	Secretary
Alan W. Ogilvy		
G.D. Stephenson		

Schedule 1.—Agreed work programme.

SCHEDULE I AGREED WORK PROGRAMME

I OBJECTIVES

- A to complete the Investigations and Studies Stages of the Ok Tedi Project, including determination of the optimum development pattern for the exploitation of copper, gold and any other minerals of commercial importance.
- B Investigation of marketing and financial matters associated with commercial development of the Project, and detailed engineering evaluation, sufficient to permit immediate commencement of construction of mining facilities once a decision with the Project has been made.

II TIMING

The Agreed Work Programme will be completed in accordance with Clause 5.1 of the Agreement.

III DETAILS OF WORK PROGRAMME

Subject to Clause 34 of the Agreement the Agreed Work Programme will be in two stages.

PHASE I—drilling programme with objectives as follows—

- (i) to drill and confirm the margins of the Mt. Fubilan copper orebody, especially potential extensions of the orebody in porphyry to the south east;
- (ii) to drill and assess the potential of copper-mineralized skarns which may be included in the potential open pit mining;
- (iii) to prove the continuity and extent of the assumed gold reserve in the leached cap at Mt. Fubilan and to drill out these reserves at a spacing sufficient for detailed mine planning and ore reserve estimation.

These objectives will be implemented as follows—

- (i) Copper—approximately 15 to 20 holes totalling 2000 metres to test the margin of the Mt. Fubilan intrusion and to firm up the boundary of the copper orebody. The areas of significance are the southern area and the north and east margins;
- (ii) Copper—ten holes totalling 2000 metres to test skarns which bound the porphyry and which could be included in the proposed open pit. Two areas of significance are the Edinburgh skarn in the north-west and the Gold Coast skarn in the south-east;
- (iii) Gold—a total of 2000 metres in six or seven holes. Three of these holes to be 400 or 500 metres deep to penetrate the copper orebody below the base of the proposed open pit.

The total drilling contemplated in Phase I is 6000 metres. Ok Tedi Development Company Pty. Ltd. is presently carrying out a limited drilling programme which will amount to 3000 to 4000 metres of which 2000 metres is estimated to contribute directly to the objectives outlined above. The Phase I programme is thus budgeted for 4000 metres of additional drilling.

PHASE II—a further drilling programme, mine planning and metallurgical and engineering design work.

PHASE II DRILLING—the objectives are—

- (i) to drill out the Ok Tedi porphyry copper orebody on approximately 100 metre centres to provide data for detailed ore reserve estimation and pit design;
- (ii) if justified by Phase I results, drill out on approximately 50 metre centres skarns which may be included in the proposed open pit.

These objectives will be implemented as follows—

- (i) approximately 25 holes drilled to the average depth of the base of the proposed open pit (a total of 9000 metres);
- (ii) if justified at least 20 holes to an average depth of 200 metres (totalling 4000 metres) in skarns.

Additional confirmatory drilling will be undertaken if necessary in both porphyry and skarn type copper mineralisation.

MINE PLANNING—to run throughout the period of the work programme with the following objectives—

- (i) calculation of mineable ore reserves and estimation of the effect of selective mining on grade and tonnage;
- (ii) determination of the optimum mining plan for cost and capacity assumptions that are set by the limiting factors on project throughput and also to determine if the limitation is a function of the pit;
- (iii) completion of rock mechanics investigations to determine final pit slopes;
- (iv) evaluation of materials handling systems involving excavation and transportation of ore and waste;

(v) generation of capital and operating cost estimates for the mine area.

In particular the mine planning will also take account of the presence of gold in the leached copper capping and ensure that operating plans are both realistic and allow for the extraction of minerals occurring in economic quantities.

METALLURGY—a continuous programme of metallurgical test-work on copper ores will be undertaken throughout Phase II of the work programme with the major objective of establishing design parameters for the proposed copper concentrator. In order to achieve significant savings in development time it is not planned to construct a pilot plant on site.

The required bulk metallurgical sample is estimated at 400 tonnes and is likely to be obtained from lateral underground development. The bulk sample will be transported to a pilot plant and subjected to a full range of metallurgical testing.

Initial metallurgical test work on gold contained in the leached copper capping will be conducted on composite drill core samples early in Phase II. A bulk sample of approximately 10 tonnes will then be obtained either from a large diameter core or underground development and transported to consultant laboratories for testing in a small pilot plant. The resultant data will be used in gold process plant design.

In conjunction with the metallurgical programme it is anticipated that about 800 metres of underground development will be completed with the multiple purpose of examining horizontal ore variation, correlating bulk sampling with diamond drill sampling, and obtaining the bulk metallurgical samples.

ENGINEERING—in undertaking and completing the engineering aspects of the work programme the concepts developed in the 1972 McKee study will be fully reviewed. One of the objectives will be to examine the possibility of an early gold development and its influence on, or benefit to, copper construction and development. Another objective is the detailed assessment of the skarn mineralization and its position in the development schedule. Full cognisance will be taken of the integration of the proposed copper and gold processing facilities.

It is proposed to complete preliminary design of all facilities within the period of the work programme so that the technical viability of the project can be firmly established.

SCHEDULE II

SCHEDULE II

ENVIRONMENTAL IMPACT STUDY

I OBJECTIVE

The objectives of the environmental impact study are to ensure that—

- (a) the effects of the Project on the existing environment are investigated;
- (b) alternative ways of achieving the Project's objectives are investigated and assessed in order to minimise the effects on the environment;
- (c) the means to protect the Environment from adverse effects are proposed and evaluated;
- (d) the proposed Project is examined in relation to existing local land-use and the potential regional development of the area;

- (e) the interested public and people in the area affected are given the opportunity to participate in consideration of the environmental effects;
- (f) an environmental management programme is prepared to apply from the time the Project commences construction which management programme will include provision for appropriate continuing monitoring and assessment of the effects of the Project on the Environment and will also take account of the limited present use of the area, the need for the development of the area, the State's desire for the Project to proceed and be economically viable, and the effect the Project must necessarily have on the Environment;
- (g) an environmental impact statement is prepared detailing the results of the environmental impact study and the impact the Project may have on the Environment.

II TIMING

The environmental impact study including the preparation of the environmental impact statement will be completed in accordance with the time specified in Clause 5.1 of the Agreement.

III SCOPE OF THE STUDY

The study will cover the full range of environmental consequences of the Project.

The environmental impact statement should be a self-contained document and include a statement of the objectives of the Project, a description of the proposed Project and operations with maps, photos, technical data and other information relevant to an assessment of the environmental effects, and reference to various non-environmental factors which may be of importance in making a decision about the proposal. The statement will include a summary of recommendations including the rationale supporting the selected plan of action and the sources of information, reference documents, literature sources, and research reports used in the Study. It is to be an objective evaluation of the environmental impact of the Project. Summaries which avoid technical jargon as far as possible should be available in English, Motu and Pidgin.

The study will be divided into two parts concentrating respectively on—

- (a) the Ok Tedi River and catchment; and
- (b) the Fly River waterway and estuary.

PART A OK TEDI RIVER AND CATCHMENT

This part of the study will cover the following specific points—

- (i) an analysis of the existing Environment. This analysis will include the following:

- (a) a photogrammetric evaluation of land classes on the basis of vegetative cover, slope and susceptibility to major soil movement and the preparation of maps based on a suitable photomosaic correlating this study with data from sufficient field traverses to characterise the main soil groups, erosion classes, drainage classes and an assessment of current land use capability. The completed maps and accompanying descriptive reports should indicate actual soil distribution and derived assessment classes, and thus take into account climatic factors and allow for further interpretation in the light of possible major changes to soil and topography following mining development. The study will include the area designated for tailings disposal;
 - (b) a description of streamflow discharge and flood peaks by continuous recording on the Ok Tedi above the townsite, the Ok Tedi at Ningetun and on the Ok Mani and the Ok Menga at their respective confluences with the Ok Tedi;
 - (c) a biogeochemical study of the catchment taking into account the flow of elements from abiotic to biotic and back to a biotic components of the ecosystem together with a description of streamflow turbidity and suspended sediment levels and analyses of water and sediments (if appropriate) for biological oxygen demands, chemical oxygen demand, cations, dissolved oxygen, fecal coliforms, inorganic carbon, inorganic nitrogen, inorganic phosphorus, acidity and alkalinity, temperature, total dissolved solids and trace elements such as lead, copper, molybdenum, mercury, cadmium and zinc;
 - (d) a description of the ecology of the Ok Tedi River and catchment area including species and populations of terrestrial and aquatic organisms, habitats and communities, ecosystems and an evaluation of the heavy metal levels in the aquatic organisms of the catchment streams;
 - (e) a sociographic survey of village communities in the area including present population structure, population growth, settlement patterns, inter-clan and inter-hamlet relations, traditional movements, land use patterns, water availability, natural resource use, nutritional and health status and cultural or archeological sites of importance to the people.
- (ii) an assessment of the environmental impact of the Project by considering the effects of each of the component phases of mine and ancillary developments on the basic environmental studies detailed in item (i) of this part. It is accepted that the mine pit site is a fixed entity and no alternative can be considered. For each of the other components of the mine development alternative practical locations or treatments should be considered in principle and reported. The component studies will include the following aspects of mine development—
- (a) location of water intake including access road and pipeline structures;

- (b) location of hydroelectric generating station including the dam and pond structure, road access and power transmission lines;
 - (c) location of tailings disposal including alternative disposal possibilities and access road location;
 - (d) location of waste dumps;
 - (e) construction of access road including power transmission lines where these are adjacent to the road;
 - (f) construction of cableway and transmission lines;
 - (g) construction and continuing habitation of town sites at the River Port, Ningetun and Tabubil;
 - (h) operation of the mine and concentrator including transportation, storage and transshipment of concentrate at the River Port.
- (iii) identification of the safeguards to be incorporated into the Project in order to avoid or minimise the adverse environmental effects of each of the component phases of the mine and ancillary developments. This section should also review the overall environmental impact of the Project on this area;
 - (iv) choice of action including the rationale for the choice of a particular course of action. The analysis should include comparative benefits and costs (if available) and environmental considerations up to the final selection of the preferred proposal. Alternative locations listed for each of the component phases of the Project in their order of preference should be fully discussed;
 - (v) the impact of the Project on the resident population assessed in terms of the results obtained from the study outlined in item (i) (e), of this part the population's reactions to the Project and the long and short term community benefits;
 - (vi) follow up action required and planned for monitoring and assessment after final Project decisions are made. This will include proposals for the restoration and subsequent use of the mine site, tailings and waste dump after the completion of mining activity.

PART B THE FLY RIVER WATERWAY AND ESTUARY

This part of the study will cover the following specific points—

- (i) analysis of the existing Environment. This analysis will include the following—
 - (a) hydrologic study of streamflow, sediment and bedload by seasonal sampling from the estuary to D'Albrett's Junction. In the study, measurements should be made of the chemical composition of water and sediment as detailed in Item (i)(c) for the Ok Tedi River and catchment;

- (b) a survey at selected points along the Fly River of aquatic life for species evaluation and chemical analyses. From the results of the survey a prediction should be attempted to indicate what effects incremental changes in metal ion or metal salt concentrations in the river will have on the accumulation of these elements in aquatic organisms;
 - (c) a survey of the major terrestrial communities adjacent to the Fly River and along the post-mine access road and the proposed Ocean Port;
 - (d) a survey of the population structure, population growth, settlement patterns, employment and mobility, land use patterns, natural resource use, nutritional and health status and cultural or archaeological sites of river villages, villages along the post-mine access road and port site area;
- (ii) an assessment of the environmental impact of the mining proposal will be made considering the effects of the component phases of the mine and ancillary developments on each of the basic environmental studies detailed in item (1) of this part. For each of the component phases of the ancillary developments alternative locations will be considered in principle and reported. The component structure will include the following aspects of the development—
- (a) a summary evaluation of all construction phases in relation to tributary stream sedimentation and seasonal variation in stream-flow and sediment flow;
 - (b) an evaluation of heavy metal input and dilution as a result of continuous mining operations in the Ok Tedi headwaters;
 - (c) an evaluation of the impact of dredging operations at the port site;
 - (d) an evaluation of local contamination and impact at the port site and along the barge routes in relation to water and aquatic organisms;
 - (e) an evaluation of the project in its totality on the terrestrial communities along the Fly River waterway, the post-mine access road and port site;
- (iii) identification of the safeguards to be incorporated into the Project in order to avoid or minimise the material adverse environmental effects of each of the component phases of the mine and ancillary developments on the Fly waterway and estuary. This section should also review the overall environmental impact of the Project on this area;
- (iv) choice of action including the rationale for the choice of a particular course of action;
- (v) the impact of the Project on the resident population of river villages, villages along the post-mine access road and port site area, including opportunities for business development. This section should also include the reactions of the resident population to the Project;
- (vi) follow up action required and planned for monitoring and assessment after the final Project decision is made.

SCHEDULE III

THE INDEPENDENT STATE OF PAPUA NEW GUINEA

Mining Act 1937 (Papua) of the Independent State of Papua New Guinea

SPECIAL MINING LEASE

I, JOHN GUISE, Governor-General of the Independent State of Papua New Guinea by virtue of the powers conferred by the Mining Act 1937 (Papua) of the Independent State of Papua New Guinea and the Mining (Ok Tedi Copper Agreement) Act of the Independent State of Papua New Guinea and all other powers me enabling hereby grant to ... (hereinafter called "the Company" which expression shall include its successors and assigns) a SPECIAL MINING LEASE over all those mines veins seams lodes and deposits of copper and gold as are contained in on or under 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 such other minerals as are combined in the land with such copper and gold in such a way that they must necessarily be mined in the mining of such copper and gold in on or under the said land together with the right and liberty to use the said land for the mining of such minerals TO HOLD the said mines veins seams lodes and deposits for the term of twenty one years from the ... day of ... One thousand nine hundred and ... with the right to renew the same as provided in the agreement made the ... day of ... One thousand nine hundred and ... between the State and the Company (hereinafter called "the Agreement") YIELDING and paying therefor a tent of K2.50 per hectare per annum and paying the royalty provided for in the agreement and upon and subject to the provisions of the Agreement and the Mining (Ok Tedi Copper Agreement) Act ... and subject thereto to the Mining Act 1937 (Papua) of the Independent State of Papua New Guinea and subject to the following terms and conditions:

1. Subject to the provisions of the Agreement, the Company shall and will observe, perform and carry out the provisions of the Mining Act 1937 (Papua) and all amendments thereof for the time being in force and the regulations for the time being in force made thereunder, and (subject to and as modified by the Agreement) those of the Mining Act insofar as the same affect or have reference to this lease.
2. Without limiting obligations imposed on the Company by the Mining Act 1937 (Papua) the Company covenants to compensate the owners of private land in accordance with that Act.
3. This lease shall terminate on the termination of the Agreement or upon its forfeiture under the Mining Act 1937 (Papua) whichever shall first occur.

Sch. 1

Mining (Ok Tedi Agreement) 9999

Office of Legislative Counsel, PNG