

DATED 11 September 1998

(1) THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA

and

(2) CHAMBISHI METALS PLC

**CHAMBISHI COBALT AND ACID PLANTS
AND NKANA SLAG DUMPS
DEVELOPMENT AGREEMENT**

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THIS AGREEMENT is made on 11 September 1998

BETWEEN:

- (1) **THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA**, acting through the Minister of Mines and Minerals Development and the Minister of Finance and Economic Development ("GRZ"); and
- (2) **CHAMBISHI METALS PLC**, a company incorporated in Zambia (registered no. 41151), whose registered office is at c/o KPMG Peat Marwick, Kambendekela House, Dedan Kimathi Road, Lusaka, Republic of Zambia ("the Company") and who shall include any permitted assigns or successors of the rights and obligations of the Company.

WHEREAS:

- (1) Proposals have been submitted on behalf of the Company by Avmin for the acquisition and subsequent rehabilitation, development and operation of the cobalt, roast, leach, electrowin and acid production plants located at Chambishi in the Copperbelt Province of Zambia and the Nkana Slag dumps numbers 48 and 67 and certain smelter and waste disposal sites (the "Facilities") the location of which is more specifically identified by reference to the area above the red line in the plan annexed hereto as Schedule 3 Part I.
- (2) GRZ has approved these proposals, which are hereafter referred to as the "Approved Programme of Operations".
- (3) The rehabilitation, development and operation of the Facilities will be of major economic significance to the people of Zambia.
- (4) GRZ wishes to ensure that the rehabilitation, development and continued operation of the Facilities will secure the maximum benefit for, and adequately contribute to the advancement and the social and economic welfare of, the people of Zambia, including the people in the vicinity of the Facilities in a manner consistent with their needs and the protection of the environment and secure an appropriate return on investment commensurate with the risks involved to the Company and its legitimate commercial expectations.
- (5) GRZ and the Company have agreed on a number of matters which are set out in this Agreement and wish the matters agreed upon to be an enduring arrangement of national interest.
- (6) GRZ has granted to the Minister of Mines and Minerals Development and the Minister of Finance and Economic Development statutory authority under Section 9 of the Act to enter into this Agreement on behalf of GRZ, and GRZ and the Company agree to be bound by all the terms and conditions relating thereto. The Minister has sought and received the advice of the Mining Advisory Committee in accordance with Section 88 of the Act and is acting in accordance with such advice.

- (7) GRZ, the Company, ZCCM and Avmin have entered into the Sale and Purchase Agreement dated 11 September, 1998 which requires on its Completion (as therein defined) the entry into of this Agreement.

PART A

GENERAL

1. Definitions and Interpretations

1.1 In this Agreement, unless the context otherwise requires:

"Act" means the **Zambian Mines and Minerals Act, Chapter 213 of the Laws of Zambia** as from time to time amended and in effect;

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

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

and "Control" means:

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

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

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

"Approved Programme of Operations" means until such time as agreement is reached pursuant to Clause 2.1 on the final form of the Approved Programme of Operations the

framework proposals for rehabilitating, developing and operating the Facilities submitted on behalf of the Company by Avmin which have been approved by the Ministry and which is set out in Schedule 1 and, after agreement on the final form of such programme pursuant to Clause 2.1, shall mean the Approved Programme of Operations so agreed.

"Arms' Length Terms" means a transaction where:

- (a) the parties in negotiating the transaction have sought to promote their own best interests in accordance with fair and honest business methods;
- (b) the consideration expressed in the agreement for the transaction entered into is the only consideration for the transaction; and
- (c) the price and other terms of the transaction have not been affected by, nor determined as a consequence of, any other agreement or any direct or indirect relationship (other than the relationship created by the transaction agreement between the selling party or shareholders of the selling party, or a company in which the selling party is a shareholder, and buying party or shareholders of the buying party, or a company in which the buying party is a shareholder).

"Assets" shall have the meaning ascribed to it in the Sale and Purchase Agreement;

"Avmin" means Avmin Limited, a company incorporated in the Republic of South Africa (registered no. 05/04469/06) whose registered office is at 56 Main Street, Johannesburg 2001, South Africa;

"BATNEEC" means the best available technology not entailing excessive cost as that term is normally interpreted in accordance with best environmental practice;

"Business Day" means a day on which commercial banks are generally open for business in each of the Republic of Zambia, the Republic of Ireland and the Republic of South Africa;

"Central Bank" means the Bank of Zambia;

"Cobalt Concentrate Tolling Agreement" means the agreement entered into between the Company and ZCCM for the treatment of cobalt concentrate at the Facilities;

"Collective Agreement" means the agreement between ZCCM and the Mineworkers Union of Zambia dated 14 August 1997 (effective from 9 April 1997) as amended from time to time which, for the avoidance of doubt, includes the Standard Code Book 1996, the Disciplinary Code Book, the 1981 Joint Job Evaluation Agreement, the 1997 Redundancy Agreement and Administrative Rules Governing Payment for Service Held in Trust dated 15 September 1997;

"Companies Act" means the Zambian Companies Act, Chapter 388 of the Laws of Zambia as from time to time amended and in effect;

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

"Contingent Commitment" means fifty million United States dollars (US\$50,000,000) to be expended in the manner and amounts specified in the Approved Programme of Operations in the event that the contingencies attaching thereto are fulfilled;

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

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

- (a) royalties;
- (b) operating costs; and
- (c) all other incidental costs,

necessary to continue Normal Operations for a further period of twelve (12) months;

"Distributable Profits" means after tax profits and accumulated reserves of the Company, available for distribution as dividends in accordance with Section 84 of the Companies Act, as shown in the financial statements of the Company;

"Education Services" means the education services set out in Schedule 4, Part II;

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

"Environmental Laws" means the Mining (Mineral Resource Extractions) Regulations, 1994 (SI 119/1994); the Environmental Protection and Pollution Control Act, Chapter 204 of the Laws of Zambia and regulations enacted thereunder; and Sections 75 to 82 of the Act, Chapter 213 of the Laws of Zambia and the Mines and Mine Products (Environmental) Regulations SI No. 29 1997, save for the provisions contained in each of such laws and regulations which relate to mine safety and/or the safety of persons rather than to the protection of the environment, as each may from time to time be amended and in effect;

"Environmental Plan" means until such time as agreement is reached pursuant to Clause 12.1 on the final form of the Environmental Plan, the framework programme for environmental protection and compliance as set out in Schedule 5 and, after agreement on the final form of the plan pursuant to Clause 12.1, shall mean the Environmental Plan so agreed;

"Environmental Protection Fund" means the fund set up for environmental protection by Section 82 of the Act and the Mines and Mine Products (Environmental) Regulations, 1997 (SI29/1997);

"Excise Duty on Power" means the excise duty on power levied under the Customs and Excise Act, Chapter 322 of the Laws of Zambia as amended and currently set at ten per cent. (10%);

"Facilities" has the meaning ascribed to it in Recital (1);

"Force Majeure" has the meaning given to the term in Clause 21.2;

"GRZ" means the Government of the Republic of Zambia and includes any authorised agent of the Government of the Republic of Zambia;

"Investment Commitment" means seventy million United States dollars (US\$70,000,000) to be expended in the manner and amounts specified in the Approved Programme of Operations;

"Kwacha" or "K" means the lawful currency of Zambia;

"Large Scale Mining Licences" means Large Scale Mining Licences numbers 30 and 31 held by the Company pursuant to the Act;

"Leases" means the leases set out in Schedule 4 to the Sale and Purchase Agreement.

"LIBOR" means the London Interbank Offered Rate for US dollars for one month advances which appears on the Telerate Page 3750 as of 11.00 am, London time, on the date which is two (2) Business Days preceding the final Business Day of each month monies are outstanding or, if payment is not made on the final Business Day of a month, two (2) Business Days preceding the Business Day on which payment is made;

"Local Business Development Programme" means the programme for local business development which is described and set out in Schedule 2;

"Major Change" has the meaning given to it in Clause 22.3;

"Management Agreement" shall have the meaning ascribed to it in the Sale and Purchase Agreement;

"Medical Services" means the medical services as set out in Schedule 4, Part I;

"Mine Products" means the ores, concentrates or minerals produced from the Facilities;

"Mining Area" means the area covered by the Large Scale Mining Licences, more specifically delineated in red on the maps in Schedule 3 Parts I and II together with the additional area comprising the Nkana Slag Dump Extension Area (as defined in the Sale and Purchase Agreement) marked in green thereon;

"Minister" means the Minister of Mines and Minerals Development under the Act;

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

"Municipal Infrastructural Services" means the municipal infrastructural services as set out in Schedule 4, Part IV;

"Normal Operations" means the operation of the Facilities in accordance with the Scheduled Programmes;

"Notices" means any notice, consent, demand, approval or other communication required or permitted to be given under Clause 23;

"Parties" means the persons who are for the time being original parties to this Agreement or parties added or substituted pursuant to Clause 16, and **"Party"** means any one of them;

"Plant Products" means the finished metal, sulphuric acid and other end-products produced by the Facilities;

"Quarter"; means:

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

"Recreational Services" means the facilities as the same are listed in Schedule 4, Part III;

"Redundancy Terms" means those terms relating to entitlement to certain payments and other rights in the event of loss of employment due to redundancy which are applicable to the Transferring Employees as set out in the Collective Agreement;

"Registered Dependants" means the dependants of employees who, at the date of this Agreement, are registered in the records of ZCCM as being entitled to use some or all of the Social Services;

"Sale and Purchase Agreement" means the agreement between the Company, Avmin Limited, ZCCM and GRZ for the vesting of the Assets (as such term is defined therein) in the Company in consideration of the payment of cash and the issue of shares to ZCCM;

"Scheduled Programmes" means the Approved Programme of Operations, the Environmental Plan, the Training and Human Resources Management Programme and the Local Business Development Programme;

"Shareholder" means a holder of ordinary shares in the Company or the holder of the Special Share (as defined in the Sale and Purchase Agreement);

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

"Social Services" means the Medical Services, Education Services, Recreational Services and the Municipal Infrastructural Services;

"Sole Expert" means a person appointed (i) pursuant to Clauses 5.4, 6.4, 7.2, 8.8, 9.8, 12.4, 12.8, 15.4, 16.6(b)(ii), 16.8, 22.2(b), 22.5 and 22.6 of this Agreement or (ii) by agreement between the Parties to resolve any difference of view or disagreement between them and, in the event the Parties in dispute fail to agree on the person to be so appointed, a person appointed on an application by either Party by the President for the time being of the London Court of International Arbitration. For the purposes of this Agreement, the Sole Expert shall not be, or have been an employee of GRZ or the Company or any Shareholder or any of their respective Affiliates or any authority or corporation of GRZ;

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

"Taxes" shall include all taxes, royalties, duties, levies and imposts of any kind;

"Training and Human Resources Management Programme" means the programme which is set out in Schedule 6;

"Transferring Employees" shall have the meaning ascribed to it in the Sale and Purchase Agreement;

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

"VAT" means value added tax payable under the Value Added Tax Act, Chapter 331 of the Laws of Zambia as from time to time amended and in effect;

"Zambia" means the Republic of Zambia;

"ZCCM" means Zambia Consolidated Copper Mines Limited;

1.2 In this Agreement, unless the context otherwise requires:

- (a) monetary references are references to United States dollars unless otherwise specifically expressed;
- (b) the headings do not affect the interpretation or construction;

- (c) references to an Act includes the amendments to that Act for the time being in force and also to any Act passed in substitution therefor and any regulations for the time being in force thereunder;
- (d) words importing the singular include the plural and vice versa;
- (e) words importing any gender include the other gender;
- (f) references to a person include a partnership, firm or corporation and any reference to GRZ includes any instrumentality of GRZ or any political sub-division thereof; and
- (g) the recitals form part of this Agreement.

PART B

OPERATIONAL AND EMPLOYMENT ISSUES

2. Commitment to Operate

2.1 The Company shall, following the Completion of the Sale and Purchase Agreement:

- (a) negotiate in good faith with GRZ (which undertakes to negotiate in good faith with the Company) with a view to agreeing within six (6) months (or such longer period as the Parties may agree) of the Effective Date the detailed terms and conditions of the Approved Programme of Operations;
- (b) subject to the terms of this Agreement, the Large Scale Mining Licences and laws and regulations of general application in Zambia from time to time, implement the Approved Programme of Operations in accordance with the timetable contained therein and good international mining and metal treatment standards and practices.

2.2 Without prejudice to the obligation contained in Clause 2.1, the Company shall (and Avmin shall procure that the Company shall):

- (a) expend the Investment Commitment substantially in the manner, on the terms and in the amounts set out in the Scheduled Programmes; and
- (b) in the event that the contingencies in the Approved Programme of Operations are fulfilled, expend the Contingent Commitment substantially in the manner, on the terms and in the amounts set out in the Scheduled Programmes.

2.3 Subject in all cases to the provisions of this Agreement, GRZ hereby acknowledges its agreement to the Scheduled Programmes.

2.4 GRZ confirms that it considers the proposed mining and metal treatment practices described in the Approved Programme of Operations not to constitute "*wasteful mining practices*" for the purposes of Section 81 of the Act. This confirmation is without prejudice to the rights of the Director of Mining Safety (acting on behalf of GRZ) to determine that mining practices not specifically referred to in the Approved Programme of Operations constitute wasteful mining practices for the purposes of Section 81 of the Act. Nothing in this Clause 2.4 shall prevent or restrict or otherwise limit GRZ from taking all actions within its power to protect public health and safety.

3. Rights to Export and Import and Arms' Length Dealings

3.1 The Company may market and export without further reference to GRZ the Plant Products and shall have sole control and management of the sale of such Plant Products, including the forward selling of such Plant Products, and shall assume all risks therefor, provided that:

- (a) the Company sells its products on Arms' Length Terms;

- (b) GRZ has not notified the Company that the export of the Plant Products would:
 - (i) breach an obligation of GRZ arising under international law (including mandatory sanctions imposed by the United Nations); or
 - (ii) result in dealing or contracting with nationals of a state with which GRZ is in a state of declared or undeclared war.

3.2 Subject to Clause 4 and the payment of applicable duties and taxes not otherwise exempted or deferred pursuant to this Agreement, the Company may import and where it so desires, re-export without further reference to GRZ, materials, equipment and services to be used in implementing the Scheduled Programmes provided that GRZ has not notified the Company that the import and/or re-export (as applicable) of such materials, equipment and services would give rise to the matters specified in Clause 3.1(b)(i) or (ii).

4. Procurement

4.1 The Company shall, on a periodic basis, identify and invite registration of businesses in Zambia (particularly in the Copperbelt and with particular emphasis on businesses directly or indirectly majority owned by Zambian citizens) which are capable of supplying materials, equipment and services to the Company.

4.2 Where materials, equipment and services required for the implementation of the Scheduled Programmes are manufactured or substantially assembled (or in the case of services, are procurable) within Zambia from a business or businesses registered pursuant to Clause 4.1, such business(es) shall have the opportunity to tender and if a tender submission from any such business:

- (i) meets the specifications of the invitation to tender;
- (ii) is competitive in price with international sources; and
- (iii) meets the quality standards and delivery requirements of the Company;

then the Company shall not discriminate against such business(es) in its award of such tender.

4.3 In assessing the tenders from local contractors and suppliers, the Company will consider the extra costs it would incur if it was to grant the contract to a foreign supplier or contractor. These extra costs shall include, but are not necessarily restricted to, wharfage costs, shipping costs, stevedoring costs, customs clearance costs, customs duties, and demurrage charges.

4.4 A Committee shall be formed, comprised of one member from each of the Ministry, the local government, the Company and a representative of the Ministry of Commerce, Trade & Industry, which shall monitor the supply and procurement of goods and services to the Facilities.

4.5 The Committee shall operate during the term of this Agreement and the Company shall furnish it with reports every six (6) months comprising the following information:

- (i) a list of successful tenderers which shall include the items supplied, residence of tenderers and the reasons for awarding the tender; and
- (ii) a list of unsuccessful locally based tenderers which shall include reasons for not awarding the tender.

5. Local Business Development

5.1 The Company shall:

- (a) comply with the Local Business Development Programme so as to encourage and assist the establishment of businesses within Zambia (particularly in the Copperbelt and with a particular emphasis on businesses directly or indirectly majority owned by Zambian citizens) to supply materials, equipment and services to the Company, provided that the Company shall not be obliged to grant or lend money to any person or provide technical or other support to them;
- (b) conduct an annual review of progress being made on the implementation of the Local Business Development Programme and make such variations to it as required by changing circumstances; and
- (c) designate a responsible person experienced in setting up and managing small business enterprises:
 - (i) to assist Zambian citizens who wish to or have set up businesses to offer services to the Company and the Facilities;
 - (ii) to assist in the implementation of the Local Business Development Programme and variations thereof;
 - (iii) to liaise with the appropriate officials from GRZ; and
 - (iv) to compile and maintain the register referred to in Clause 4.1.

5.2 The Company may, with the consent of GRZ (which consent shall not be unreasonably withheld), amend or alter the Local Business Development Programme, with a view to securing the maximum benefit to the establishment of Zambian businesses from the Facilities. If the Company is unable to comply with some or all of the Local Business Development Programme as a result of circumstances or events beyond its control then such non-compliance shall not constitute a default under this Clause 5 and the Company may give notice of alternative or revised plans for the Local Business Development Programme.

5.3 Should the Company give notice pursuant to Clause 5.2, GRZ shall within thirty days (30) either:

- (a) approve those alternative or revised plans; or
- (b) meet with the Company to discuss and agree upon the alternative or revised plans.

- 5.4 If the discussions under Clause 5.3 do not lead to GRZ's approval of alternative or revised plans and the Company considers GRZ's decision to be unreasonable, the Company may elect to refer the reasonableness of GRZ's decision to a Sole Expert in accordance with Clause 19.
- 5.5 If the Sole Expert determines that GRZ's decision is not unreasonable, he shall identify to the Company such changes to the Local Business Development Programme as will be necessary to bring such programme into compliance with GRZ's requirements in this regard and the Company shall elect whether to amend the programme accordingly or to retain the original programme. However, if the Sole Expert determines that GRZ's decision is unreasonable, he shall declare his determination to both Parties and the proposed amendment or alteration to the Local Business Development Programme shall be deemed approved.

6. Training and Human Resources Management

- 6.1 The Company will comply with the Training and Human Resources Management Programme applicable from time to time.
- 6.2 The Company may, with the consent of GRZ (which consent shall not be unreasonably withheld), amend or alter the Training and Human Resources Management Programme, with a view to securing the maximum training of and benefits to Zambian citizens from the Facilities. If the Company is unable to comply with the Training and Human Resources Management Programme due to circumstances beyond its control, then such non-compliance shall not constitute a default under this Clause 6 and the Company may give notice of alternative or revised plans to the part of the Training and Human Resources Management Programme affected.
- 6.3 Should the Company give notice pursuant to Clause 6.2, GRZ shall within thirty (30) days either:
- (a) approve those alternative or revised plans; or
 - (b) meet with the Company to discuss and agree upon the alternative or revised plans.
- 6.4 If the discussions under Clause 6.3 do not lead to GRZ's approval of alternative or revised plans and the Company considers GRZ's decision to be unreasonable, the Company may elect to refer the reasonableness of GRZ's decision to a Sole Expert in accordance with Clause 19.
- 6.5 If the Sole Expert determines that GRZ's decision is not unreasonable, he shall identify to the Company the changes to the Training and Human Resources Management Programme as will be necessary to bring such programme into compliance with GRZ's requirements in this regard and the Company shall elect whether to amend the programme accordingly or to retain the original programme. However, if the Sole Expert determines that GRZ's decision is unreasonable, he shall declare his determination to both Parties and the proposed amendment or alteration to the Training and Human Resources Management Programme shall be deemed approved.

- 6.6 The Company shall not, save as provided below, be restricted in its employment, selection, assignment or discharge of personnel Provided, however, that the employment and the terms and conditions of such employment and the discharge or disciplining of personnel within Zambia shall be carried out in compliance with (i) the laws and regulations of Zambia which are, from time to time, of general application, (ii) the Collective Agreement and (iii) the terms of individual employment contracts from time to time.
- 6.7 The Company will, in its recruitment, selection, promotion and assignment of personnel not discriminate against comparably trained, qualified and experienced Zambian citizens.
- 6.8 The Company acknowledges GRZ's policy to attract qualified Zambian citizens working overseas back to employment within the Zambian mining and metallurgical industry. In order to facilitate the fulfilment of this policy, the Company will take all reasonable efforts in its recruitment and employment of employees in professional, managerial, engineering and scientific grades to bring to the attention of such qualified Zambians, positions of employment available within the Company (including, but not limited to the advertising of positions in international press and trade journals likely to have circulation amongst suitably qualified potential employees).
- 6.9 The Company will honour and perform the terms and conditions of the contracts of employment of the Transferring Employees save that such contracts may be varied provided that any variance shall be made in compliance with all aspects of Zambian law and regulations and the terms of the relevant Collective Agreement.
- 6.10 The Company will recognise, for collective bargaining purposes, the trade union currently representing the Transferring Employees.
- 6.11 The Company adopts the Redundancy Terms currently applicable to Transferring Employees (and agrees that years previously worked for ZCCM shall form part of the accrued service of such Transferring Employees when calculating any subsequent redundancy payment to which they may become entitled upon being terminated by the Company) and agrees that no amendment or variation will be proposed or made to the Redundancy Terms which would adversely affect the Transferring Employees (or any of them) if such Redundancy Terms were to be implemented without the Transferring Employees' consent.
- 6.12 Notwithstanding the provisions of this Clause 6, the Company (and its contractors or sub-contractors) may bring into and retain in Zambia such non-Zambian citizens as, in the reasonable judgment of the Company's management, are required for the efficient and successful operation of the Facilities and, at the Company's request (which shall be accompanied by such information concerning the education, experience and other qualifications of the personnel concerned as may be required by regulations of Zambia of general application in Zambia from time to time) GRZ shall cause all necessary permits (including entry and exit permits, work permits, visas and such other permits or permissions as may be requested) to be issued to such persons and their dependants without undue delay and without hampering the continuous and efficient operation of the Facilities. Provided that GRZ shall be under no such obligation to issue the permits aforesaid to any non-Zambian citizen who is disqualified from entry by reason of previous criminal convictions, health

regulations and like restrictions set out in immigration regulations of general application in Zambia from time to time.

- 6.13 A committee shall be formed, comprising of one member from each of the Ministry, the Company, Ministry of Labour and the local government, which shall have no powers to bind the Company but shall monitor the implementation of the Training and Human Resources Management Programme.
- 6.14 Such committee shall operate during the term of this Agreement and the Company shall furnish it with reports every six (6) months outlining the progress of the Training and Human Resources Management Programme, problems encountered, positions filled and the number of local people employed.

7. Insurance

- 7.1 The Company shall insure and keep insured with a reputable insurance company the Assets under new policies from Completion. Such policies shall be in accordance with good risk management practice having regard to the nature, age and condition of the Assets and having regard to terms of insurance set out in Schedule 6 to the Sale and Purchase Agreement. The Company shall advise GRZ of the policy or policies and shall forward copies to GRZ.
- 7.2 The Company shall, unless the policies of the insurance or any of its loan agreements state otherwise or GRZ otherwise agrees, use any amount paid to it where such amount is greater than or equal to five hundred thousand US dollars (US\$500,000) pursuant to any damage or destruction provisions in any contract of insurance to reinstate such elements of the Facilities (except for Plant Products) in respect of which such amount was paid, provided that the Company shall not be required to repair or restore any portion of the Facilities that, prior to the damage or destruction, had been obsolete or were of no material value to the actual or potential operations of the Company or where the Company, following a review of the facts with GRZ, has notified GRZ that in their judgement the cost of doing so is not justified by the incremental economic benefit which the Company will derive therefrom. In the event that GRZ notifies the Company that it disagrees with such judgement, the matter shall be referred for determination to a Sole Expert in accordance with Clause 19.

8. Suspension of Normal Operations

- 8.1 The Parties acknowledge that the Company's right to suspend and curtail (hereinafter referred to as "suspend") Normal Operations is governed by Section 28 of the Act and that, in the event of any such suspension or curtailment, the Minister may exercise powers under Section 28(3) of the Act.
- 8.2 GRZ hereby agrees that:
- (a) the Minister's approval shall be deemed given in accordance with Section 28(3)(a) of the Act upon compliance by the Company with this Clause; and
 - (b) in such event, any direction capable of being given pursuant to Section 28(3)(b) of the Act will only be given either:

- (i) in compliance with this Clause; or
 - (ii) if the Company has not complied with any provision of this Clauses and has not remedied such non-compliance within thirty (30) days of being given notice of such non-compliance by GRZ.

- 8.3 The Company may elect to suspend Normal Operations if in its reasonable opinion the Company forecasts in the following six (6) month period operating losses, shortages of supplies and materials, interruption of transportation, smelting, power, labour and/or other services utilised in Normal Operations, or for any other operational, economic or practical reason considers it prudent to do so. As soon as possible after receiving notice under Clause 8.2(b)(ii), the Company shall submit a report to GRZ giving reasons why, in its opinion, it is necessary to suspend Normal Operations.

- 8.4 Where pursuant to Clause 8.3 or otherwise in accordance with Section 28 of the Act, the Company has elected to suspend Normal Operations it shall maintain, subject to fair wear and tear, the Facilities so as to prevent significant deterioration until Normal Operations are resumed.

- 8.5 No later than twelve (12) months from the date on which the Company suspended Normal Operations pursuant to Clause 8.3 or otherwise in accordance with Section 28 of the Act and thereafter at no longer than twelve (12) month intervals until Normal Operations are resumed, the Company shall submit a further report to GRZ:
 - (i) showing its projection of the Cost to Resume Operations and of revenue from Normal Operations (if resumed) for the same period; and
 - (ii) giving reasons why in its opinion it considers it prudent not to resume Normal Operations in such period.

- 8.6 If a report submitted pursuant to Clause 8.5 shows that:
 - (a) the Company's projection of revenues from Normal Operations for the succeeding twelve (12) month period exceeds projection of the Cost to Resume Operations for the said twelve (12) month period; and
 - (b) that there are no other relevant commercial considerations including without limitation the after tax value of return to the Shareholders that would make it economically unreasonable and uncommercial to do so,

then the Minister may direct the Company to promptly take such measures necessary to ensure that Normal Operations are resumed within a reasonable time period.

- 8.7 Where Normal Operations have been suspended for a continuous period of not less than three (3) years, the Minister may direct the Company to resume Normal Operations if he is of the reasonable opinion that:

- (a) the Cost to Resume Operations is less than revenue from Normal Operations for the same period (the Minister will provide the Company with a copy of GRZ's projections of costs and revenues supporting such opinion); and
 - (b) there are no other relevant and extraordinary commercial considerations that would make it economically unreasonable and uncommercial to do so.
- 8.8 If the Company disagrees with the Minister's direction pursuant to Clauses 8.6 and 8.7 it may submit the matter to a Sole Expert for his determination in accordance with Clause 19.
- 8.9 Where a matter has been referred to the Sole Expert pursuant to Clause 8.8, the Sole Expert shall determine whether it is economically reasonable and commercial to resume Normal Operations. The opinion of the Sole Expert shall be binding on the Parties so that in the event that the Sole Expert determines that it would be economically unreasonable and uncommercial to resume Normal Operations then the direction given by the Minister pursuant to Clauses 8.6 and 8.7 shall be deemed to have been withdrawn.
- 8.10 Where pursuant to Clause 8.7 the Minister has directed the Company to resume Normal Operations and that direction has not been or is not deemed to have been withdrawn, the Company, if it does not promptly take such measures to ensure that Normal Operations are resumed within a reasonable time period, shall be deemed for the purposes of this Agreement to have abandoned all the land subject to the Large Scale Mining Licences pursuant to Section 49 of the Act Provided however, that where the issue has been referred to a Sole Expert pursuant to Clause 8.8, the time period shall run from the date the Sole Expert gave his determination.
- 8.11 Nothing herein contained shall prejudice the Company's rights to suspend Normal Operations under Section 28 of the Act for any other reason and the exercise by the Minister of his powers under said section save as specifically described herein.

9. Social Assets

- 9.1 The Company agrees to continue to employ the same registration practice for determining the eligibility of dependants to qualify as Registered Dependants as is set forth in the ZCCM Standard Codebook of 1996.

9.2 Medical Services

The Company shall:

- (a) enter into service agreements with one or more third party providers of the Medical Services in the vicinity (meaning within the area commonly known as the Copperbelt of Zambia) of the Facilities to:
 - (i) make the Medical Services available to all employees of the Company and the Registered Dependants of such employees (including for the avoidance of doubt all persons to whom access to the Medical Services is granted by virtue of relevant redundancy or retirement provisions);

- (ii) make the Medical Services available at a level appropriate to the number of persons entitled thereto from time to time, namely the number of the Company employees and their Registered Dependants (including persons to whom access to the Medical Services is granted by virtue of redundancy or retirement provisions); and
 - (iii) ensure, to the extent possible in terms of such agreements, that the Medical Services are provided to such persons described in Clause 9.2(a) (i) and (ii) above at least to the same standard (as to range and quality of service) as that currently available as at the date of this Agreement; and
- (b) ensure that the costs for the provision of Medical Services to such persons described in Clause 9.2(a) above are no greater in real terms than those levied by ZCCM for such services immediately prior to Completion;

Provided that, in respect of 9.2(a) and (b) above, the obligations of the Company shall survive only for such period as such Medical Services are reasonably available in the vicinity of the Facilities. For the avoidance of doubt, the obligations of the Company hereunder are to procure the provision of Medical Services from a provider of such services by means of the execution and enforcement of agreements on Arms' Length Terms between them and do not require the Company to become a primary service provider itself by, *inter alia*, the construction and operation of hospitals, clinics (other than clinics required to be provided pursuant to statutory regulations) etc, or to assist the service provider if the service provider itself becomes incapable of providing the Medical Services.

9.3 Education Services

The Company undertakes to:

- (a) provide as a condition of service an education allowance of K9,000 per child per school term or such amount as may be agreed under the terms of the Collective Agreement from time to time payable up to a maximum of six (6) children per employee. In order to receive this allowance, an employee will be required to provide proof of registration of such child at a school;
- (b) sponsor all children of the employees of the Company who are currently enjoying subsidised schooling at ZCCM schools in Kitwe, Kalulushi and the Mpelembe Secondary School in Kitwe (whether or not the same continue to be owned by ZCCM) (the "Education Services") and whose access to the Education Services is currently funded by the Seller, such sponsorship to continue until they either complete the school curriculum at the school they are currently attending or leave such school; and
- (c) use its best endeavours after Completion to establish a sponsorship scheme in respect of the children of all of its employees to subsidise access to the Education Services (provided the Educational Services are available), by not less than one (1) child per year at each standard level or not more than fourteen (14) children in aggregate at all standard levels.

Provided that, in respect of 9.3(a), (b) and (c) above, the obligations of the Company shall survive only for such period as such Education Services are reasonably available in the vicinity of the Facilities. For the avoidance of doubt, the obligations of the Company hereunder are to procure the provision of Education Services from ZCCM and do not require the company to become a primary service provider itself by, *inter alia*, the construction and operation of schools etc.

9.4 Recreational Services

The Company shall provide funding for the continued provision of the Recreational Services or any other services of a similar nature which the Company may in its sole discretion wish to support at the level that such funding was extended by ZCCM immediately prior to the Completion provided that such funding in aggregate shall not exceed two hundred thousand United States dollars (US\$200,000) per annum.

9.5 Municipal Infrastructural Services

The Company shall:

- (a) provide the Housing Allowance to those employees who are entitled to the same (as such entitlement is set out in the employees' conditions of service in place immediately prior to Completion); and
- (b) offer employees the facility of the payment of municipal rates and taxes through the payroll services.

9.6 In the event that the Company determines that it will become unable to comply with the provisions of Clauses 9.2, 9.3, 9.4 or 9.5, for any reason whatsoever, it shall forthwith give notice to GRZ of this fact. GRZ agrees that it will accept such non-compliance with Clauses 9.2, 9.3, 9.4 or 9.5, (as the case may be) and that no action will be taken under this Agreement if, simultaneously with the giving of such notice, (i) the Company submits proposals to GRZ for an increase in general levels of remuneration or other employment benefits to employees of the Company in order to compensate such persons for the withdrawal of rights to use or for the Company's employees or Registered Dependants to use the Social Services, and (ii) if the Company also provides GRZ with reasonable evidence that such proposals are (in the case of (i) above) agreed with any trades union(s) then representing employees of the Company.

9.7 Pending confirmation from GRZ that such proposals for increases in general levels of remunerations or other benefits are acceptable to it, the Company will comply in all respects with Clauses 9.2, 9.3, 9.4 and 9.5 and GRZ agrees that it will respond to the Company's proposal within sixty (60) days of receipt of the same from the Company.

9.8 If the Parties disagree about:

- (a) the level of Social Services to be maintained and the availability of the Social Services pursuant to Clauses 9.2(a) and 9.2(b) and/or Clauses 9.3(b) and 9.3(c);
- (b) the standard of or charges made for the provision of the Medical Services, Education Services and/or Municipal Infrastructural Services pursuant to Clauses 9.2(a), 9.2(b), 9.3 (a), 9.3(b) and 9.3(c);
- (c) the acceptability of proposals made by the Company pursuant to Clause 9.7,

either Party may elect to submit the matters in issue to a Sole Expert for determination in accordance with the provisions of Clause 19.

9.9 The Company will not be required to make Social Services available to persons who are not employees of the Company or immediate families of such employees (including for the avoidance of doubt all persons to whom access to the Social Services are granted by virtue of relevant redundancy or retirement provisions).

10. Records and Operating Reports

10.1 The Company shall, for a period of fifteen (15) years from the Effective Date, provide quarterly reports to the Ministry on:

- (a) quantities of tolled Plant Products returned to owner;
- (b) quantities of Plant Products produced and sold for its account;
- (c) prices obtained on sales of own Plant Products;
- (d) progress in implementing the Scheduled Programmes, the extent of any continuing non-compliance by the Company with Environmental Laws and progress made in remedying this in accordance with the Environmental Plan; and
- (e) any other relevant matters as to the progress and results of the Company's metallurgical operations.

10.2 All information furnished to GRZ shall be in English and, in the event that such information is a translation from the original, shall be a certified true translation. All financial data shall be recorded in US dollars.

10.3 The Company shall maintain all original records and reports relating to its activities and operations under this Agreement including all documents relating to financial and commercial transactions with independent parties and Affiliates in its principal office in Zambia. These records and reports shall be opened to inspection by GRZ through an authorised representative during normal working hours. Such reports and records shall be maintained in the English language.

- 10.4 All information acquired by GRZ in pursuance of this Clause 10 shall be retained in strictest confidence and shall not be disclosed to any third party other than to an officer or employee of GRZ whose function requires him to have such information or save for the purpose of enforcing the provisions of this Agreement or as required by applicable Zambian law or regulation.
- 10.5 All records, reports, plans, maps, charts, accounts, and information which the Company is or may be from time to time reasonably required to supply under the provisions of this Agreement shall be supplied at the expense of the Company.

PART C

UNDERTAKINGS NECESSARY FOR OPERATIONS

11. Foreign Exchange

11.1 The Parties acknowledge that under legislation and practice currently in force in Zambia, the Company is free to:

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

11.2 In the event foreign exchange controls were to be re-introduced in Zambia within fifteen (15) years of the Effective Date, the Company shall notwithstanding such reintroduction have the right to:

- (a) retain both foreign currency outside Zambia and within Zambia, in foreign currency accounts established for that purpose and to have paid to and maintain in such accounts the following:
 - (i) proceeds of the sale of its Plant Products, including proceeds received from third parties resident in Zambia for foreign exchange purposes;
 - (ii) tolls received pursuant to third party cobalt concentrate contracts including tolls received from third parties resident in Zambia for foreign exchange purposes;
 - (iii) payments made by insurers not resident in Zambia under contracts of insurance in the Company's favour;
 - (iv) proceeds of any disposal of capital assets received from persons not resident in Zambia for foreign exchange purposes;
 - (v) the amount of any funds received pursuant to any loan finance provided by persons not resident in Zambia for foreign exchange purposes;
 - (vi) any share capital received in foreign currency from persons not resident in Zambia for foreign exchange purposes; and
 - (vii) any other foreign currency earned or accrued in the ordinary course of business from persons not resident in Zambia for foreign exchange purposes.
- (b) use freely the foreign currency accounts maintained by the Company to:

- (i) service payments of principal and interest, service charges and other fees and expenses in respect of any loans arranged with non-Zambian institutions to implement the Scheduled Programmes, finance or refinance the Facilities or otherwise;
- (ii) make payments due to (aa) suppliers not resident in Zambia for foreign exchange purposes for the supply of goods and services to the Company inside and outside Zambia (including capital goods and services of foreign employees and consultants) where goods and services are required to implement the Scheduled Programmes or conduct Normal Operations and (bb) suppliers resident in Zambia for foreign exchange purposes with respect to the supply of electricity to the Facilities;
- (iii) finance the payment of dividends to shareholders who are not resident in Zambia for foreign exchange purposes Provided that such payments are made out of Distributable Profits (as defined in the Companies Act);
- (iv) pay expatriate employees whose contracts of employment specify that they be paid (in whole or in part) in a currency other than Kwacha; and
- (v) effect such other payments in foreign currency to persons not resident in Zambia for foreign exchange purposes as may be necessary or desirable in the ordinary course of the Company's business.

11.3 The Company shall submit to the Central Bank:

- (a) within fifteen (15) days of the end of each Quarter -
 - (i) a statement of the foreign currency accounts maintained overseas by the Company showing movements on the accounts during the Quarter with Quarter-end balances;
 - (ii) a statement of the foreign currency accounts maintained at banks within Zambia by the Company showing movements on the accounts during the Quarter with Quarter-end balances;
 - (iii) a statement of the foreign exchange converted into Kwacha and the total amount of Kwacha converted into foreign exchange during the Quarter; and
 - (iv) a forecast of the foreign currency which it expects to receive and retain in a foreign currency account overseas or within Zambia and that which it expects to convert into Kwacha during the ensuing Quarter; and
- (b) within five (5) months of the end of each year, audited financial statements showing the amount of Distributable Profits.

11.4 In the absence of foreign exchange controls in Zambia, the Company shall have the same rights to buy and sell currencies from authorised dealers as other mining companies or such

ventures conducting similar operations on a scale similar to those conducted by the Company in Zambia. In the event exchange controls were to be reimposed (and without prejudice to the Company's rights under Clause 11.2) such controls shall not be applied to the Company in a manner less favourable to it than the manner in which they are generally applied. the Company shall be entitled to buy and sell foreign exchange in accordance with such controls at rates of exchange no less favourable than those available to other commercial buyers and sellers of the currency concerned.

11.5 The Company shall remit to Zambia and convert into Kwacha for credit to a bank account in its name in an orderly fashion sufficient of its foreign currency earnings to pay such commitments as the Company may have incurred in Kwacha (including, without limitation, obligations to pay dividends to local shareholders payable in local currency, taxes, royalties and customs duties) which cannot be met by its Kwacha balances from time to time.

11.6 The Company shall not engage in or use any provisions of this Clause 11 or any authority or approval given by the Central Bank to engage in Speculative Currency Transactions. If the Company is in breach of this Clause it shall pay to GRZ as liquidated damages an amount equal to the amount of any net after tax profit or gain which the Company makes on the Speculative Currency Transaction plus any cost reasonably incurred by GRZ in establishing that the transaction was a Speculative Currency Transaction.

11.7 Where any right or assurance given to the Company under this Clause 11 requires the Central Bank:

- (a) to approve any act, matter or thing; or
- (b) to grant authority under applicable law and regulations for its exercise or performance,

and the Company has supplied any necessary information to the Central Bank and otherwise met the conditions of this Clause 11, GRZ shall, upon request from the Company, ensure by policy directions to the Central Bank or otherwise that such approval is given or such authority is granted.

11.8 The Company will ensure that any borrowings it may incur denominated in Kwacha will not exceed the Kwacha equivalent from time to time of ten million US dollars (US\$10,000,000).

11.9 The Company will ensure that the Central Bank will not suffer discrimination by the Company in access to foreign exchange sold by the Company for Kwacha.

12. Environmental Issues

12.1 The Company will:

- (a) negotiate in good faith with GRZ (which undertakes to negotiate in good faith with the Company) with a view to agreeing within eighteen (18) months (or such longer period as the Parties may agree) of the Effective Date the detailed terms and conditions of the Environmental Plan; and

(b) subject to the provisions of and save to the extent provided otherwise in this Clause 12 comply with:

(i) environmental and safety laws and regulations enacted or promulgated within Zambia from time to time which are of general application (including, for the avoidance of doubt, making such contribution as is required under Section 82 of the Act for the Environmental Protection Fund);

For the purposes of Section 82 of the Act, the Facilities shall be deemed to be a Category 2 Mine (or such other category of mine for environmental fund contribution purposes as the Parties may agree from time to time); and

(ii) the Environmental Plan.

12.2 Subject to compliance by the Company with the Environmental Plan and save as provided in Clause 12.5 below, GRZ hereby confirms that for a period of fifteen (15) years from the Effective Date, it will not take any action (and will procure no action is taken by any of its ministries, departments or agencies over which it has operational control acting on its behalf) under or enforcing, any applicable Environmental Laws with the intent of:

(a) securing the Company's earlier compliance with Environmental Laws other than that envisaged by the timetable and conditions set out in the Environmental Plan;

(b) requiring the Company to clean-up or remove any stock of pollution which was pre-existing at the Effective Date;

(c) imposing fines or penalties upon the Company payable under Environmental Laws (or enacting new fines and penalties thereunder) which are payable in respect of the Company's non-compliance with such Environmental Laws and where the Environmental Plan provides for the remedy of the same in accordance with a specified timetable and the Company is in compliance with that timetable; or

(d) imposing fines or penalties in respect of the Company's breach of Environmental Laws in excess of those applying on the Effective Date, adjusted (where denominated in Kwacha) to take account of Zambian inflation since that date.

12.3 (a) GRZ hereby confirms that the Company and Avmin are not responsible for nor will be held liable for harm, damage, claims and losses of any kind whatsoever incurred or suffered in the past or in the future arising out of or in relation to or in connection with activities undertaken by ZCCM prior to the Effective Date.

(b) Without limiting the generality of the foregoing, GRZ:

(i) perpetually indemnifies the Company and Avmin against any and all liabilities, damages, losses, cost, claims and demands suffered or incurred arising out of or in relation to or in connection with activities conducted by ZCCM prior to the Effective Date;

- (ii) indemnifies the Company for the period envisaged by the timetable and conditions set out in the Environmental Plan (which, for the purposes of this Clause 12.3(b)(ii) is limited to the detailed final form Environmental Plan agreed pursuant to Clause 12.1 and shall not, for the avoidance of doubt, include the framework Environmental Plan therein referred to and originally scheduled hereto but which will, when such final form is agreed, be effective from the date hereof but only to the extent that the Company has not exacerbated the extent of non-compliance over and above that existing at the date hereof) against any and all liabilities, damages, losses, cost, claims and demands suffered or incurred relating to the Facilities as they exist at the date hereof (together "Environmental Claims"), which matters giving rise to such Environmental Claims would, but for the provisions Clause 12.2 hereof, leave the Company open to action by GRZ ministries, departments and agencies to enforce applicable Environmental Laws. For the avoidance of doubt, such indemnity to endure only while the Company is operating in full compliance with the terms of the Environmental Plan; and
- (iii) undertakes that it will not take any action (which will include a proposal to amend the Environmental Plan other than as permitted pursuant to Clause 12.5) and will procure no action is taken by any of its said ministries, departments or agencies with the intent of making or rendering the Company liable for any environmental liabilities of ZCCM to third parties (whether disclosed or undisclosed and including without limitation those arising out of stocks of pollutants created in the conduct of ZCCM's operations prior to the Effective Date) to the extent that they either arose prior to, or arose after but relate to activities carried on by or on behalf of ZCCM prior to, the Effective Date.

The liabilities specified in Clause 12.3(b)(i) and (iii) will remain the responsibility of ZCCM as a matter of current Zambian law. In order to provide certainty to the Company, GRZ hereby confirms that should common law applicable to Zambia be interpreted differently, it will take such action open to it (including, but not limited to, the passing of appropriate legislation or regulation) to ensure that the legal position set out above is maintained.

- 12.4
- (a) In the event GRZ considers in its reasonable opinion that the Company is in material non-compliance with the Environmental Plan, GRZ shall have the right to serve a written notice on the Company identifying the alleged material non-compliance and subject to Clause 12.4(b), the Company shall have three (3) months from the receipt of such notice within which to remedy the alleged material non-compliance.
 - (b) In the event that such alleged material non-compliance is not remedied within the three (3) months notice period, either Party may refer the matter to a Sole Expert, for determination, in accordance with Clause 19. Following such referral, the Sole Expert shall determine whether or not the alleged material non-compliance has occurred and if the Sole Expert determines that the alleged material non-compliance has occurred, the Sole Expert shall determine the remedy for such non-compliance and the timescale within which such remedy must be carried out.

- 12.5 The Company shall be entitled to amend the Environmental Plan from time to time, provided that following such amendment the Environmental Plan (as the case may be) conforms to specifications and practices established by Zambian standards for the management of the environment as it is affected by ore treatment processes so as to reflect changes in operations and other circumstances considered to be appropriate by the Company and shall deliver a copy of such amended plan or obligations (as the case may be), to the Minister in substitution for the Environmental Plan (as the case may be), so amended. If however, GRZ considers that any such amendment would constitute a Major Change (as defined in Clause 22.3 herein) the provisions of Clause 22 shall apply.
- 12.6 The Minister on behalf of GRZ may propose an amendment to the Environmental Plan if:
- (a) at any time the conduct of Normal Operations in accordance with the Environmental Plan for whatever reason poses a material danger to public health and safety or may result in significant damage to the ecology of the area which was not contemplated in the original Environmental Plan and is or may become irreversible or only become reversible or only be reversed after the lapse of fifteen (15) years;
 - (b) the environmental impact of Normal Operations shall prove substantially more adverse than anticipated in the Environmental Plan; or
 - (c) tested and established technology or procedures, or improvements thereof has become available and economic (subject to the principle of BATNEEC) subsequent to the Effective Date and, if applied to the operation of the Facilities, could materially mitigate the environment impact of Normal Operations.

A notice proposing an amendment to the Environmental Plan shall include, together with the proposed amendment, a detailed written statement of the reasons why the Minister considers the proposed amendment to be necessary.

- 12.7 In the event of a variation of the Environmental Plan proposed by the Minister on behalf of GRZ under the circumstances set forth in Clause 12.5, the Company undertakes to consider the proposed variation in good faith and, unless by notice of objection served on the Minister within sixty (60) days of receipt of the proposal made pursuant to Clause 12.5, it informs the Minister that it considers the proposed variation to be unreasonable it shall be deemed to have agreed the same. A notice of objection shall include a written statement of the reasons why the Company consider the proposed variation to be unreasonable setting out:
- (a) its estimate of the direct costs to implement such change;
 - (b) its analysis of the variation in the environmental impact that would be effected by such change; and
 - (c) its appraisal of the economic and other effects of the change proposed by GRZ.
- 12.8 Following receipt of a notice of objection under Clause 12.7, the Minister shall within sixty (60) days of receipt thereof inform the Company by notice in writing whether or not the Minister's proposal for variation of the Environmental Plan is or is not withdrawn. In the

event that the Minister's proposal for variation is not withdrawn, the question of whether GRZ's proposal for variation is unreasonable shall be submitted for the opinion of a Sole Expert in accordance with Clause 19 who shall in his determination of reasonableness consider the principle of BATNEEC. The opinion of the Sole Expert will be binding on the Parties with the effect that:

- (a) if the Sole Expert determines that GRZ's proposal for variation is not unreasonable, the proposal for variation will be deemed to have been agreed; or
- (b) if the Sole Expert determines that GRZ's proposal for variation is unreasonable, the proposal will be deemed to have been withdrawn,

Provided that the Sole Expert may in his sole discretion suggest alternative proposals or time schedules or mitigation of cost proposals to the Parties who will consider the same in good faith prior to the determination being rendered by the Sole Expert. The period during which such proposals shall be considered by the Parties shall not exceed thirty (30) days or such longer period as the Sole Expert may designate.

12.9 Where a variation to the Environmental Plan proposed by the Minister has been agreed by the Company or is deemed to have been agreed by them pursuant to this Clause 12, the Environmental Plan shall be amended accordingly.

12.10 Nothing in this Clause 12 shall be deemed or construed to:

- (a) limit the right of GRZ to take such other actions within its power to protect the public health and safety; or
- (b) render the Company liable for penalties or fine imposed, or third party claim made, in respect of activities undertaken by ZCCM prior to the Effective Date.

12.11 The Company shall, at the invitation of the Minister responsible for the environment, participate either individually or on an industry-wide basis, in discussions relating to the impact and effectiveness of the Environmental Laws or on any prospective changes thereto.

PART D

TAXATION

13. General Obligation to Pay Tax

- 13.1 The provisions of Schedule 8 correctly reflect, in respect of the matters therein specifically described, the current tax regime applicable to the Company in the conduct of its activities under this Agreement. Whilst Schedule 8 is not intended to override applicable legislation, in the event of any ambiguity between applicable legislation and Schedule 8, GRZ and the Company agree that the provisions of Schedule 8 shall apply, it being the intent of the Parties that Schedule 8 clarify any ambiguities in the legislation and tax regime applicable to the Company or its operations.
- 13.2 Subject to Clause 15 the Company shall pay tax, royalties and duties from time to time in accordance with applicable legislation.

14. VAT Refunds

- 14.1 GRZ shall ensure that VAT collected on goods and services procured by the Company is refunded to the Company as soon as practicable from the date of submission of the Company's monthly VAT return.

15. Taxation Stability

- 15.1 GRZ undertakes that it will not for a period of fifteen (15) years commencing on the Effective Date:
- (a) increase corporate income tax or withholding tax rates applicable to the Company (or decrease allowances available to the Company in computing its liability to such taxes) from those prevailing at the date hereof; or
 - (b) otherwise amend the VAT and corporate tax regimes applicable to the Company from those prevailing as at the date hereof; or
 - (c) impose new taxes or fiscal imposts on the conduct of Normal Operations,
 - (d) alter the right of any non-Zambian citizens (and entitled dependants) (on his or their arrival or permanent departure from Zambia) to;
 - (i) import within six (6) months from the date of arrival free of duty and tax, for personal use, household and personal effects;
 - (ii) export, without let or hindrance or the imposition of duty or tax on export, all personal effects originally imported or acquired during residency in Zambia; and

- (iii) freely remit all income earned in Zambia during such residency,

so as to have, in each case, a material adverse effect (the issue of whether or not such effect is materially adverse to be determined by a Sole Expert in accordance with Clause 19 in the event of disagreement between the Parties) on the Company's Distributable Profits or the dividends received by its shareholders.

GRZ further undertakes that for the same period of fifteen (15) years, it will not:

- (e) increase
 - (i) the rate of Royalty referred to in Schedule 8 from the level prevailing at the date hereof; or
 - (ii) import duty rates applicable to the Company so as to result in the weighted average import duty rate to which the Company is subject on the import of goods and materials required for the Approved Programme of Operations or Normal Operations and which would, at the date hereof, be exempt from customs and excise duties under Section 97(1) of the Act, above a level of zero per cent. (0%); or
 - (iii) import duty rates applicable to the Company so as to result in the weighted average import duty rate to which the Company is subject on the import of goods and materials required for the Approved Programme of Operations or other Normal Operations and which do not fall under Clause 15.1(d)(ii) above a level of fifteen per cent. (15%); or
 - (iii) the Excise Duty on Power applicable to the Company's electricity purchases above the rate prevailing at the date hereof,

For the purposes of Clause 15.1(e)(ii) and (iii) the Facilities will be deemed to be a "mine" and the operations conducted in connection therewith to be "mining" for the purposes of Section 97 of the Act.

- (f) impose other royalties or duties on Normal Operations, so as to have a material adverse effect on the Company's Distributable Profits or the dividends received by its shareholders.
- 15.2 Upon expiry of the period specified in Clause 15.1, GRZ shall ensure that no law, statute, regulation or enactment shall be passed or made which would discriminate against the Company in respect of any such matters as are referred to in Clause 15.1 or otherwise in its conduct of Normal Operations or any other circumstances under this Agreement when compared to other mining companies or joint ventures conducting similar operations on a scale equivalent to those conducted by the Company in Zambia provided that GRZ will be at liberty to pass or make any such law, structure, regulation or enactment to enable the performance or amendment of a development agreement entered into by it and another mining company or joint venture prior to the expiry of such period.

- 15.3 GRZ covenants to reimburse the Company as soon as is practicable (or, at its option, make offsetting changes in any law, statute, regulation or enactment applicable to the Company) to ensure the Company is fully and fairly compensated for any losses, costs or other adverse effects on its Distributable Profits incurred by it by reason of a failure by GRZ to comply with the provisions of Clauses 15.1 and 15.2 provided that (if GRZ opts to make such legislative changes) GRZ shall reimburse the Company for any loss, costs or effects incurred along with interest at a rate of one (1) month LIBOR whilst offsetting changes in any law, statute, regulation or enactment are being enacted. The Company acknowledges that this will be its sole remedy for such failure to comply with Clauses 15.1 and 15.2.
- 15.4 In the event there is a dispute as to whether or not the Company has suffered any losses, costs or other adverse effect on its Distributable Profits the matter shall be referred to a Sole Expert in accordance with Clause 19.

PART E

FORMAL CLAUSES

16. Assignment

- 16.1 The Company may, with the consent of the Minister, assign the whole or part only of its rights and obligations under this Agreement and its interest in the Large Scale Mining Licences and GRZ covenants that the consent of the Minister to such an assignment will not be withheld in the circumstances set out in Clauses 16.4 and 16.7.
- 16.2 If the Company assigns its entire interest in the Large Scale Mining Licences and its rights and obligations under this Agreement in accordance with Clause 16.1, then upon the assignee becoming party to this Agreement, the Company shall be discharged from any further liability in respect of any obligation which accrues after the date of that assignment without prejudice to pre-existing rights accrued to GRZ against the Company.
- 16.3 Where an assignment takes effect pursuant to Clause 16.1, the Company shall enter into an agreement with the assignee wherein the assignee agrees with the Company and undertakes to GRZ that it will:
- (i) become a party to this Agreement; and
 - (ii) assume, observe and comply with all obligations of the Company under the Act, regulations made thereunder and this Agreement.
- 16.4 If the Company assigns part only of its interests in the Large Scale Mining Licences and the rights and obligations attaching thereto under this Agreement, the Company shall be discharged from any further liability in respect of any obligation which accrues after the date of that assignment as they relate to the interest so assigned.
- 16.5 Notwithstanding the foregoing provisions of this Clause 16, the Company may:
- (a) charge by way of fixed or floating charge the whole or any part of its undertaking and assets including the Leases, the Facilities, the Mine Products and uncalled capital (and premiums) to secure the repayment of principal, and payment of interest and other fees, costs and expenses relating to all loans made to the Company to finance or refinance the Scheduled Programmes; and
 - (b) mortgage and charge any specified asset (whether real or personal property) to secure the purchase price thereof where such amount has been borrowed to finance the purchase of that asset and this asset is to be used as part of Normal Operations;

and GRZ covenants that the consent of the Minister to such mortgages and charges shall be given provided that such mortgages and charges are notified to the Minister upon their grant (and, in any event, within sixty (60) days thereof). Subject to Clause 16.6, any mortgagee or chargee under a mortgage or charge given by the Company pursuant to this Clause may

exercise all rights of sale and other rights included in such instrument of mortgage or charge provided it shall first give to GRZ at thirty (30) days notice of its intention to exercise any rights of sale and five (5) days notice in all other cases.

16.6 The rights of any mortgagee or chargee under a mortgage or charge given by the Company pursuant to Clause 16.5 shall be subject to and limited by the rights of the Company under this Agreement and the rights of GRZ to terminate this Agreement under Clause 18.3. The rights of such chargee or lender to sell the assets of the Company so charged shall not be exercisable:

- (a) unless all or each of those assets and undertakings of the Company which are charged by the mortgage or charge are sold (or with such exceptions as GRZ may agree) to a purchaser approved by GRZ (which approval GRZ covenants not to unreasonably withhold); or
- (b) if GRZ has within the thirty (30) day period of notice under Clause 16.5 given notice of the mortgagee, chargee, or lender that it will purchase some or all the assets which the mortgagee, chargee or lender wishes to sell at a price which is equivalent to:
 - (i) the highest price which a *bona fide* purchaser who is at Arms' Length Terms from the Company, its shareholders and the mortgagee, chargee or lender has offered to pay for the assets and undertakings; or
 - (ii) if there is no such offer, at a total price equal to the fair market value of the same as a going concern to be determined by agreement between the Parties but failing such agreement to be determined by a Sole Expert in accordance with Clause 19,

and settles the purchase by making full payment of the price at the principal address of the mortgagee, chargee, or lender and in the currency denominated in the loan between the mortgagee, chargee or lender and the Company within ninety (90) days after notification to GRZ of such place for payment and designated currency or otherwise on terms agreed with the mortgagee, charge or lender.

16.7 Where the Minister's consent is necessary to effect an assignment pursuant to Clause 16.1, GRZ will procure that the Minister will not withhold his consent where, in the case of an assignment, the proposed assignee has demonstrated its financial capacity and technical ability to meet its obligations hereunder or, in the case of a change of control of the Company, the acquiring party has demonstrated that it is of appropriate financial standing having regard *inter alia*, to the obligations it will assume under the Shareholders' Agreement.

16.8 In the event that the Company considers that the Minister has acted unreasonably in considering that a proposed assignee or the acquiring party has not demonstrated such financial capacity or technical ability as is referred to in Clause 16.7, it may refer the issue to a Sole Expert for its opinion. If the Sole Expert determines that the Minister:

- (a) has behaved reasonably in determining that the proposed assignee or the acquiring party has not demonstrated the requisite levels of financial or technical ability, the Minister's determination shall stand; or
- (b) has behaved unreasonably in so determining, the Minister's determination shall be set aside and the consent referred to in Clause 16.7 shall be deemed given.

17. Extensions to Time

17.1 Notwithstanding any provision of this Agreement, the Parties by agreement between the persons responsible for giving Notices under Clause 23, may from time to time extend any period referred to in this Agreement, or substitute for any date referred to in this Agreement such later date, as they think fit.

17.2 If the Company is prevented or hindered by any circumstances or event of a kind set out in Clause 21 or by a reference to a Sole Expert or by an arbitration under Clause 19 from undertaking all or any of its obligations hereunder or exercising any right granted, the period of time allowed for the performance of that obligation or exercise of that right and all periods of time thereafter allowed for the performance of obligations or exercise of rights which are dependent upon the first mentioned obligation or right, shall be extended by a period equal to the period during which such prevention or hindrance continues or during the period from the time when the question, dispute or difference arose until the time of its determination by the Sole Expert or settlement by agreement or arbitration, as the case may be.

17.3 Where any period is, or is deemed to be, extended or any later date substituted for an earlier date under this Clause 17, that extended or substituted period or date shall be deemed to constitute the period or date referred to in this Agreement (notwithstanding that at the time of such extension or substitution such period may have expired or such date may have passed).

18. Termination

18.1 The Company may terminate this Agreement at any time after the fifteenth anniversary of the Effective Date by giving twelve (12) months notice to GRZ.

18.2 GRZ may terminate this Agreement by notice to the Company if:

- (a) all of the Large Scale Mining Licences have expired by effluxion of time and have not been renewed; or
- (b) the land the subject of the Large Scale Mining Licences is abandoned or for the purposes of this Agreement is deemed to have been abandoned by the Company under Section 49 of the Act.

18.3 In the event that either Party:

- (a) is in material default in the performance of its obligations set forth in this Agreement;
or

- (b) fails to treat as binding and comply with any award made by a Sole Expert or in an arbitration pursuant to Clause 19,

and has not remedied such default or failure within thirty (30) days of a notice by the other Party to do so, the other Party may give notice of such default or failure (hereinafter in this Clause called a "Default Notice") to the defaulting Party which shall specify the default or failure alleged. If the Company receives a default notice it shall at the same time give a copy of the Default Notice to each lender to the Company, where the name and address of that lender has previously been notified to GRZ, and to each mortgagee or chargee of any of the Company's assets under any mortgage or charge notified to the Minister in accordance with Clause 18.5. If the defaulting Party disputes the subject matter of the Default Notice it may refer the issue to arbitration pursuant to Clause 19.

18.4 For the purposes of Clause 18.3(a), "*material default*" shall mean a default which is material in nature and effect including, without limitation, a failure by a Party to comply in all material respects with all material terms and conditions and provisions of this Agreement which fall to be performed by it.

18.5 If within a period of three hundred and sixty (360) days following a Default Notice (or such longer period as may be fixed by a tribunal where the subject matter of the Default Notice is submitted to arbitration under Clause 19) either:

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

then, subject to Clause 18.7, GRZ may by notice (hereinafter in this Clause 18 called a "Termination Notice") to the Company (which shall be copied to each lender, mortgagee or chargee who was given a copy of the Default Notice) bring about the termination of this Agreement on a date which is not less than thirty (30) days thereafter (hereinafter in this Clause called the "Termination Date"). GRZ shall ensure that the Minister does not make a decision to suspend or cancel any of the Large Scale Mining Licences and that no action is taken by or on behalf of GRZ without the approval of the Company to terminate such Large Scale Mining Licences or any of the Leases prior to the Termination Date.

Provided that GRZ shall not serve a Termination Notice while arbitration between GRZ and the Company under this Subclause is in progress and any Termination Notice already served will be suspended immediately upon the commencement of such arbitration for the duration of any such arbitration. If the arbitrator finds in favour of the Company, or within the period fixed by the arbitrator the default or failure is substantially remedied or the compensation is paid, GRZ shall not serve a Termination Notice and any Termination Notice already served shall be deemed withdrawn.

18.6 If the Company or GRZ contest:

- (a) the grounds for the issue of the Default Notice; or
- (b) the materiality of the default; or
- (c) whether the default or failure has been remedied; or
- (d) the adequacy of any compensation paid pursuant to Clause 18.5(b),

the matter shall be submitted for arbitration pursuant to Clause 19. If the arbitrator finds (in the case of Clause 18.6(a) that adequate grounds exist for issue of the Default Notice, he shall fix a period during which the Company must comply with Clause 18.5(a) or 18.5(b) and the amount of compensation payable (if applicable). If the arbitrator finds (in the case of Clause 18.6(c) in favour of GRZ, he shall fix a period during which the Company must remedy the default or failure. If the arbitrator finds (in the case of Clause 18.6(d) in favour of GRZ, he shall fix the amount of compensation payable and the period for its payment.

18.7 If this Agreement is terminated by GRZ pursuant to Clauses 18.2 or 18.3:

- (a) the Company will surrender to GRZ the Large Scale Mining Licences and the Leases but without prejudice to the liability of any of the Parties in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given;
- (b) each Party shall forthwith pay to the other Party all monies that may be owing to the other Party hereunder;
- (c) GRZ shall have the option to request that the Company abandon the Facilities within a reasonable timetable specified by GRZ and the option to purchase (subject to any encumbrances thereon) all of the Facilities at a price equivalent to the fair market value of such assets, which fair market value is to be determined by agreement between GRZ and the Company but failing such agreement by a Sole Expert in accordance with Clause 19. Such option to be exercisable by notice to the Company within thirty (30) days following termination of this Agreement. If requested to do so by GRZ, the Company shall also assign to GRZ such contracts to which it is a party as GRZ determines and deliver all records of the Facilities held by the Company to GRZ;
- (d) the Company shall have the right, within the one (1) year period following the thirty (30) day notice period referred to in Clause 18.7(c):
 - (i) to assign or otherwise dispose of all or any portion of the remaining Facilities to any person; or
 - (ii) to remove and recover from the Mining Area and export from Zambia any of the remaining Facilities on the condition that such removal does not cause irreparable damage to major assets which are not removed from the Contract Area; and

- (e) the Company shall leave the Facilities and Mining Area in a safe and stable condition to the reasonable satisfaction of the Director of Mine Safety having regard to natural conditions in the area and applying generally accepted standards of good mining and metallurgical industry practice, provided that the Company shall not be required to alter the physical condition of the Facilities and Mining Area beyond the requirements of the Environmental Plan applicable from time to time.
- 18.8 Upon the expiry of the one (1) year period referred to in Clause 18.7(d), all Facilities which remain on the Contract Area shall become the property of GRZ without any cost to GRZ or any liability for GRZ to pay compensation therefor.
- 18.9 Clauses 12, 18.7, 18.8, 19, 20 and 21 shall continue in force notwithstanding the termination of the rest of this Agreement.
19. **Arbitration and Sole Expert**
- 19.1 Subject to Clause 19.7 below any dispute, disagreement, controversy or claim arising out of or relating to this Agreement, including the interpretation or performance of provisions of this Agreement or the breach, termination or validity thereof (a "Dispute") shall be referred to and finally resolved by arbitration in accordance with the rules of the London Court of International Arbitration (the "Rules") subject to such modifications as the Parties may agree in writing. Unless otherwise agreed in writing, the appointing authority shall be the London Court of International Arbitration. The tribunal shall consist of a sole arbitrator (the "Tribunal") and the place of arbitration shall be London and the language of the arbitration shall be English.
- 19.2 An award in proceedings under the Rules shall be binding on the Parties and judgement thereon may be entered in any court having jurisdiction for the purpose of enforcing the award.
- 19.3 GRZ hereby irrevocably waives any claim to immunity:
- (a) in respect of proceedings to enforce any such award including, without limitation, immunity from service of process and from the jurisdiction of the London Court of International Arbitration; and
 - (b) in respect of execution of any such award against the property of GRZ outside Zambia.
- 19.4 The waiver of immunities referred to herein constitutes only a limited and specific waiver for the purposes of this Agreement and under no circumstances shall it be interpreted as a general waiver by GRZ or a waiver with respect to proceedings unrelated to this Agreement. GRZ has not waived such immunity in respect of property which is (i) located in Zambia; (ii) used by a diplomatic or consular mission of GRZ (except as may be necessary to effect service of process), (iii) property of a military character and under the control of a military authority or defence agency, or (iv) located in Zambia and dedicated to a public or governmental use.

- 19.5 Unless otherwise agreed by the Parties or determined by the Tribunal the cost of any arbitration procedure will be borne by the unsuccessful Party in accordance with the Rules.
- 19.6 Where a Dispute has been referred for settlement by arbitration in accordance with the Rules then either Party shall be entitled to exercise any rights or election arising in consequence of any alleged default by the other arising out of the subject matter of the Dispute until the relevant part of the Dispute has been resolved by an award of the Tribunal.
- 19.7 Notwithstanding the above, the Parties may by mutual agreement in writing, refer a Dispute arising out of or in connection with Clauses 6.4, 7.2, 9.8, 12.4, 12.8, 15.4, 16.6(b)(ii), 16.8, 22.2 and 22.4 hereof to be finally resolved by the determination of a Sole Expert (rather than arbitration).
- 19.8 Where any difference of view or disagreement is referred by the Parties to the Sole Expert, consideration of the difference of view or disagreement in question shall be initiated by the Parties jointly and by each Party submitting to the Sole Expert and the other Party the following written materials:
- (i) a description of the difference of view or disagreement;
 - (ii) a statement of the submitting Party's position; and
 - (iii) copies of records (if relevant) supporting the submitting Party's position.
- 19.9 Within ten (10) Business Days of the date that a Party has submitted written materials to the Sole Expert and the other Party pursuant to Clause 19.8, the Party receiving such written materials shall, if it has not already done so pursuant to Clause 19.9, within ten (10) Business Days of receipt of such written materials submit to the Sole Expert and the other Party the written materials set out in Clause 19.8 (i), (ii) and (iii) above.
- 19.10 The Sole Expert shall consider any information submitted by the Parties under Clauses 19.8 and 19.9 and may in his sole discretion and subject to the timetable imposed by Clause 19.11 consider any additional information submitted by any Party at a later date.
- 19.11 The Parties shall be entitled to have access to the other Party's relevant records and to receive copies of the records submitted by the other Party to the Sole Expert.
- 19.12 Each Party shall designate one (1) person knowledgeable about the issue which has been referred to the Sole Expert who shall be available to the Sole Expert to answer questions and provide any additional information requested by the Sole Expert. Except for such person, a Party shall not be required to, but may, provide oral statements or presentations to the Sole Expert or make any particular individuals available to the Sole Expert.
- 19.13 Except as provided in Clause 19.15 with respect to the payment of costs, the determination of the Sole Expert shall be without prejudice to any Party and any evidence given or statements made in the course of this process may not be used against a Party in any other proceeding. The process shall not be regarded as an arbitration and the laws relating to commercial arbitration shall not apply.

- 19.14 When a Sole Expert's determination is initiated, the Sole Expert shall be requested to provide a determination within fifteen (15) Business Days after the receipt of the written materials from both Parties pursuant to Clauses 19.8 and 19.9. For the avoidance of doubt, the fifteen (15) Business Day period will commence on receipt of the written materials from both Parties or the expiration of the response period referred to in Clause 19.9, whichever is the earlier.
- 19.15 The costs of engaging a Sole Expert shall be borne by the unsuccessful Party.
- 19.16 The Sole Expert's determination shall be final and binding on the Parties save in the case of manifest error.
- 19.17 Any proceedings held hereunder shall be private and confidential and shall not be open or attended by third parties. The provisions of Clause 17 of the Sale and Purchase Agreement shall apply to any information which any Party receives or acquires in any way arising out of such proceedings.

20. Law Applicable

- 20.1 This Agreement shall be governed by and construed in accordance with the laws of Zambia which the Parties acknowledge and agree includes, so far as they are relevant, the rules of international law.

21. Force Majeure

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

- (a) has taken all appropriate precautions, due care and reasonable alternative measures with the objective of avoiding such failure and of carrying out its obligations under this Agreement; and
- (b) has given notice to the other Party of the occurrence of Force Majeure on becoming aware of such an event.

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

- 21.2 For the purposes of this Agreement, Force Majeure shall include war, insurrection, civil disturbances, blockades, riot, embargoes, strikes, lock-outs and other labour-conflicts, land disputes, epidemics, volcanic eruptions, earthquakes, cyclones, floods, explosions, fires, lightning, governmental restrictions, change in applicable law or unavailability of materials or equipment failure by GRZ to grant or issue to Avmin as consultant/operator or any

contractors or sub-contractors appointed by Avmin as consultant/operator the necessary consents and permissions to enable them to operate within Zambia, to import equipment into Zambia and to permit the entry into Zambia of employees of the Company and any other event which the Party claiming Force Majeure could not reasonably be expected to prevent or control.

21.3 In the event of any circumstances or event of a kind set out in this Clause 21 the period of time allowed for the performance of those obligations or exercise of those rights which are delayed by such event of Force Majeure and the periods of time thereafter allowed for the performance of obligations or exercise of rights which are dependant upon the first mentioned obligations or rights, shall be extended by a period equal to the period during which such event of Force Majeure continues until the time of its settlement by agreement.

21.4 Where any period is, or is deemed to be, extended or any later date substituted for an earlier date under this Clause 21, that extended or substituted period or date shall be deemed to constitute the period or day referred to in this Agreement (notwithstanding that at the time of such extension or substitution such period may have expired or such date may have passed).

22. Variation

22.1 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 Approved Programme of Operations (including for the avoidance of doubt the Investment Commitment and the Contingent Commitment), the Large Scale Mining Licences, the Leases, special easements and all other leases, licences, rights or grants granted or any programme, proposal or plan approved for the purposes of more efficiently or satisfactorily implementing or facilitating the objectives of this Agreement.

22.2 The Company shall have the right to modify or vary the Approved Programme of Operations (hereinafter called a "**Modification**") if such Modification is not a Major Change. No Major Change shall be effected unless it has been approved or is deemed to have been approved by GRZ, provided that such approval is not to be unreasonably withheld.

22.3 For the purpose of this Clause 22, a Major Change means, without limiting the generality of the term:

- (a) any Modification by which the Company shall not remain in substantial compliance with the Approved Programme of Operations; or
- (b) any material change involving the elimination or material dilution in the capacity of the Facilities or in the Approved Programme of Operations if a consequence of such proposed material change would be to materially reduce or materially delay receipt of ZCCM's dividends or royalties derived from the Facilities or in a material respect adversely impact or increase the adverse impact of the Company's activities on the environment

provided that a reduction in the number of employees of the Company shall not, in and of itself, constitute a Major Change.

- 22.4 Where the Company proposes a Modification, it shall deliver notice of such Modification to GRZ, such notice to include full details including an economic analysis of the proposed Modification entitled "Proposed Modification to the Approved Programme of Operations". Such Modification shall be deemed to be approved by GRZ and the Approved Programme of Operations shall be amended to the extent necessary to reflect such Modification, unless GRZ within thirty (30) days of the notice being delivered notifies the Company that it considers the Modification a Major Change and that it does not approve it.
- 22.5 If the Company does not agree that the Modification is a Major Change then it may refer the question of whether the Modification is a Major Change to the Sole Expert in accordance with Clause 19, and if the Sole Expert determines that the Modification is not a Major Change, GRZ shall be deemed to have approved the Modification as at the date of the Sole Expert's determination.
- 22.6 If the Company considers the withholding of approval by GRZ to be unreasonable, it may refer the question of the reasonableness of GRZ's objection to the Sole Expert in accordance with Clause 19 and if the Sole Expert determines that GRZ's objection is unreasonable, GRZ shall be deemed to have approved the Modification as at the date of the Sole Expert's determination. In assessing the reasonableness or otherwise of GRZ's objections the Sole Expert shall have regard to the input which withholding approval to the change would have on the economic variability of the project, as well to the impact on government revenues described in Clause 22.3(b) above.
- 22.7 Where GRZ approves or is deemed to have approved a Modification, the Approved Programme of Operations may be varied or amended to the extent necessary to reflect the Modification.
- 22.8 For the purposes of this Agreement, a reduction in the number of employees of the Company shall not, in and of itself, constitute a Major Change.

23. Notices

- 23.1 (a) Any notice, consent, demand, approval or other communication (a "Notice") required or permitted to be given shall be deemed to have been given if:
- (i) in the case of a Notice given by GRZ, such Notice is signed on behalf of GRZ by either the Minister or Permanent Secretary to the Ministry as their respective responsibilities require; or
 - (ii) in the case of a Notice to be given by the Company, such Notice is signed by a director or by the Secretary of the Company.
- (b) Each such Notice shall, as elected by the Party giving such notice, be personally delivered or transmitted by telex to the other Party as follows -

A Notice to GRZ

If by facsimile:

**Permanent Secretary
Ministry of Mines and Minerals
Development
+260 1 251244 / 252916**

If by hand:

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

A Notice to the Company

If by facsimile:

**The Secretary
Chambishi Metals PLC
+ 260 1 225 903**

If by hand -

**The Secretary
Chambishi Metals PLC
c/o KPMG Peat Marwick
Kambendekela House
Dedan Kimathi Road
Lusaka
Zambia**

- 23.2 Except as otherwise specified herein, all Notices and other communications shall be deemed to have been duly given on the earlier of:
- (i) the date of receipt if delivered personally; and
 - (ii) the date of transmission with a confirmed receipt of transmission if transmitted by facsimile.

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

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

24. Waiver

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

25. Severability

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

26. **Further Acts**

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

27. **Counterparts**

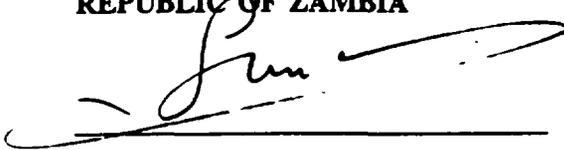
This Agreement may be executed in any number of counterparts, each of which executed shall be deemed to be an original, and such counterparts shall together constitute one Agreement.

28. **Representations and Warranties**

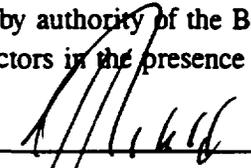
28.1 Except as expressly stated in this Agreement, no representation, inducement or warranty was, prior to the execution of this Agreement, given or made by one of the Parties hereto with the intent of including the other Party to enter into this Agreement, and any representations, inducements or warranties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

IN WITNESS WHEREOF this Agreement has been duly executed by the Parties on the
day of _____, 19____

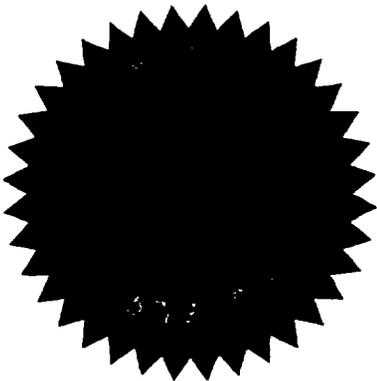
SIGNED for and on behalf of the)
GOVERNMENT OF THE)
REPUBLIC OF ZAMBIA)



THE COMMON SEAL of)
CHAMBISHI METALS PLC was hereunto)
affixed by authority of the Board)
of Directors in the presence of)


_____ Director


_____ Secretary



SCHEDULE 1

FRAMEWORK APPROVED PROGRAMME OF OPERATIONS

Cobalt Slag Smelter and Hydro-Metallurgical Plant

Chambishi Metals PLC has bid to acquire the discard slag dumps from the Nkana smelter with a view to processing this material in order to produce finished cobalt and copper. The development plan involves reclamation of material from the slag dump via ripping and loading onto trucks. The production rate of material from the slag dump is planned at 700,000 tpa. The trucks will transport the material from Nkana to Chambishi where the material will be dumped on a stockpile to be fed into a crushing circuit to be crushed to - 10 mm. The crusher products will be blended with coal and fed into the newly constructed smelter of approximately 45 MVA.

The smelter will procure a high grade matte alloy assaying around 10% cobalt and 25% copper which will be leached in a newly constructed leach plant. The current hydro metallurgical plant will be adapted and expanded to receive and process the leach solution coming from the new matte leach section. The production from the new facility will total 4,200 tpa of cobalt and 7,700 tpa of copper. The copper circuit will be modified to produce A grade cathode while the cobalt tankhouse will be expanded to produce 6,600 tpa of cobalt including the production from toll treatment.

Normal operations

The development of the process flow sheets, detailed descriptions of what constitutes normal operations in terms of costs and production levels will be finalised and made available when the detailed design study has been completed. The programme of operations will be submitted for approval within a period of six (6) months (pursuant to Clause 2.1).

Investment commitment

The committed capital in respect of the initial capital program is as follows:

Mining and transport	\$ 1 million
Material Handling	\$ 2 million
Crushing	\$ 3 million
Smelter and ancillaries	\$ 30 million
Discard facilities	\$ 2 million
Leach section	\$ 6 million
Plant Reconditioning	\$ 14 million
Cobalt tank house expansion	\$ 7 million
Copper tank house expansion	\$ 5 million
Total committed capital	\$ 70 million

Timetable

The realistic timetable for bringing the smelter into production, commencing from the date of completion, is approximately as follows:

Detailed design of smelter and hydro-metallurgical facility additions	4 months
Preparation of tender documents, submission of tenders and adjudication	2 months
Constructions of smelter and additions to hydro-metallurgical facilities	22 months
Commissioning	3 months
Total time from Completion	31 months

The project has a life of approximately thirty (30) years.

Contingent commitment

Nature of contingency

If, in the sole discretion of Chambishi Metals PLC, certain technical commercial and economic criteria (including without limitation, the possible impact thereof of a possible Konkola North mine are satisfied), Chambishi Metals PLC will undertake a further capital programme, for the construction of a second smelter and a further expansion of the hydro-metallurgical plant. The anticipated capital in respect of this programme is:

Allocation of expenditure

Additional Smelter	\$ 30 million
Further plant expansion	\$ 20 million
Total contingent capital	\$ 50 million

Toll treatment of cobalt concentrates

In addition to the slag treatment facility the Chambishi plants taken over by Avmin will be operated on a basis similar to the current mode of operation toll treating cobalt concentrates supplied by Nchanga, Nkana and Baluba. Chambishi Metals PLC will act as the coordinator of the distribution of the cobalt concentrates and pyrite between the two cobalt plants on the Copperbelt.

Under the toll treatment agreements concluded as part of this transaction the plant will continue to output cobalt at a rate of approximately 2,400 tpa copper at a rate of 15,000 tpa and acid at 60,000 tpa (dependent on concentrate availability). The surplus acid of about 40,000 tpa will be available for sale to ACo.

SCHEDULE 2

LOCAL BUSINESS DEVELOPMENT PROGRAMME

Chambishi Metals PLC believes that Zambian, and specifically Copperbelt, industry and business will benefit from the continued operation of the Chambishi Cobalt and Acid Plants and from the construction of the slag smelter. It believes that the company will benefit from the presence of strong local business and will facilitate its further development and growth.

In order to achieve this, Chambishi Metals PLC will initiate a plan that will provide an impetus for the development of local business. The broad strategy to achieve this will be as follows:

- Identification of business opportunities/mines outsourcing
 - > The company will identify areas of operation which are not part of its core business or which it does not want to carry out. These areas will be designated for outsourcing.

- Identification of existing entrepreneurs in the area
 - > Local businessmen and entrepreneurs who will be able to provide these services to the mines will be identified. Should there be no-one who can do so, the company will use its best endeavours to foster partnerships between foreign businesses who can provide these services and local businessmen who are interested in participating in these areas.

- Identification of training/skills required.

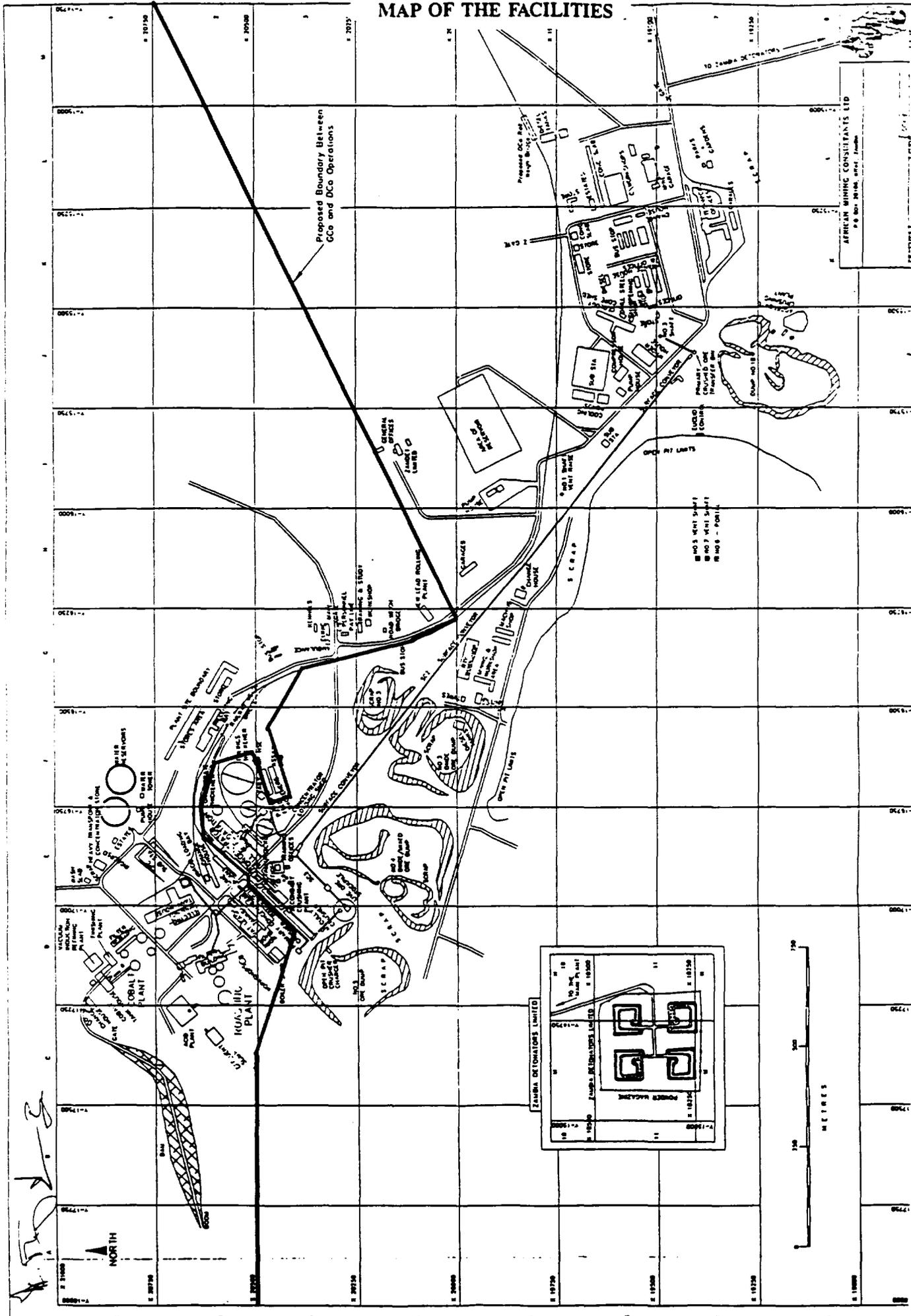
This will initially be focused on the formal sectors of the economy through a programme of:

 - > Wherever possible utilising local business in the capital expansion and maintenance programme.
 - > Encouraging contractors to do likewise.

- The company will investigate mechanisms to:
 - > Assist Zambian citizens to effectively service the company through the provision of materials, equipment and services.
 - > Advise and assist the establishment of long term business enterprises.
 - > Maintain a register of Zambian businesses in terms of the provision of above-mentioned services to allow for the easier identification of potential providers.

Chambishi Metals PLC has designated Messrs R Duvel and M Uys of Avmin to be the responsible persons to facilitate the success of the Local Business Development Plan. At a later stage this role will be fulfilled by a company employee.

**SCHEDULE 3
PART I
MAP OF THE FACILITIES**



PART II
MAP OF THE MINING AREA

SLAG DUMP No. 48

SLAG DUMP No. 48
QASIM MINING LTD. RECOVERY AREA

FARM 839

RELIERY PURCHASER

RELIERY
ELECTROLYTIC TANK HOUSE

TANK HOUSE

ELECTROLYTIC SECTION

LEACHING SECTION

WATER SECTION

SHELTER

RECEIVING STATION

RECEIVING STATION

WINE STORES

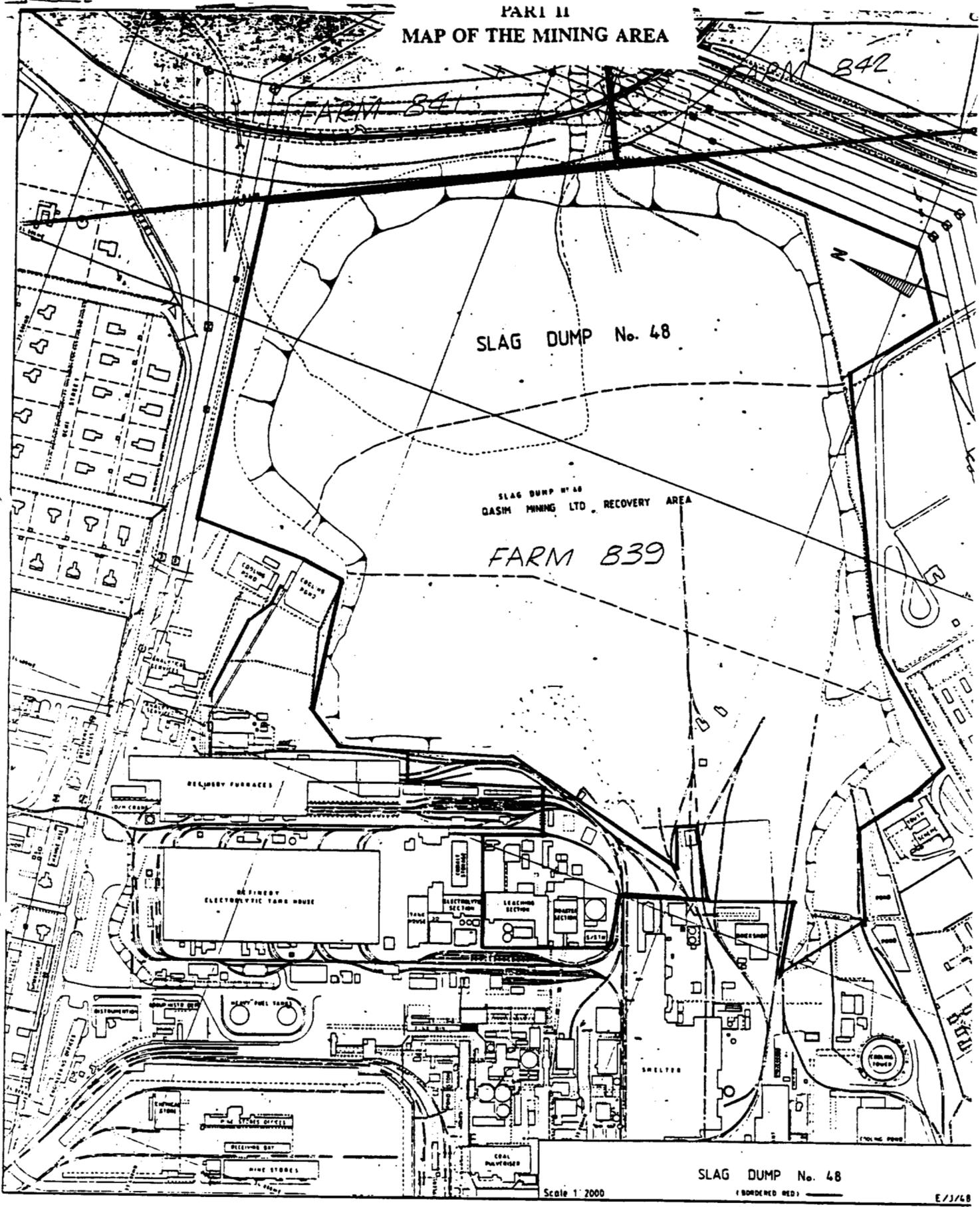
COAL
PULVERISER

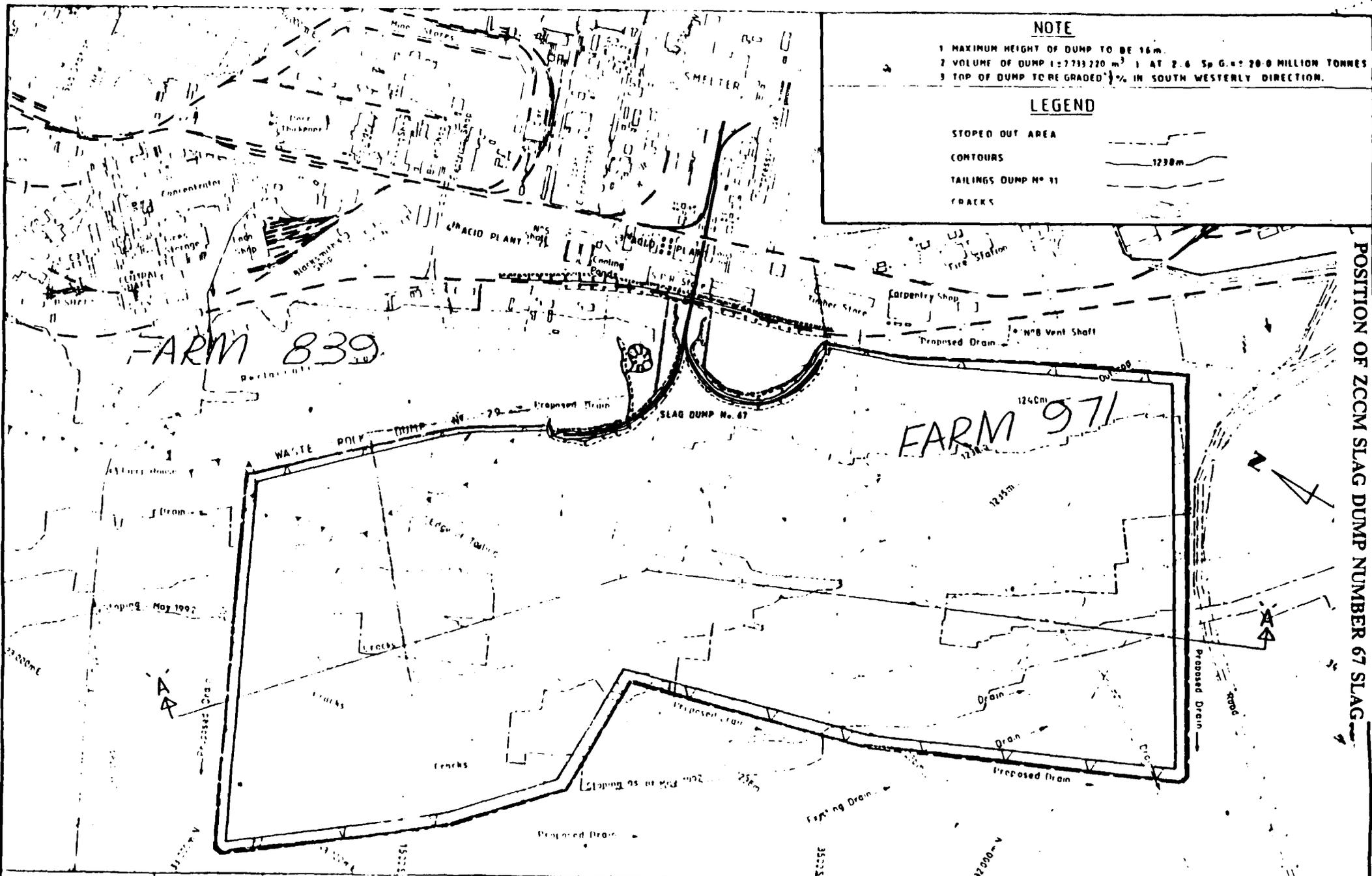
SLAG DUMP No. 48

Scale 1:2000

(BORDERED RED)

E/3/68





NOTE

- 1 MAXIMUM HEIGHT OF DUMP TO BE 16m.
- 2 VOLUME OF DUMP 1:2733220 m³ 1 AT 2.6 Sp.G.= 20.0 MILLION TONNES
- 3 TOP OF DUMP TO BE GRADED 1/4% IN SOUTH WESTERLY DIRECTION.

LEGEND

- STOPPED OUT AREA
- CONTOURS 1230m
- TAILINGS DUMP No 11
- TRACKS

POSITION OF ZCCM SLAG DUMP NUMBER 67 SLAG

PART III

SCHEDULE 4

PART I MEDICAL SERVICES

1. MEDICAL SERVICES IMMEDIATELY PRIOR TO COMPLETION

The Chambishi Cobalt & Acid Plant operates under the Nkana Division of ZCCM which administers two hospitals both of which are based in Kitwe. Prior to the take over of Chibuluma Mine by the Metorex Consortium, Nkana Division was responsible for a third hospital based at Kalulushi. The three hospitals thus made up the medical services which catered for all ZCCM employees based in Kitwe, Kalulushi and Chambishi. Employees of ZCCM had a choice of three hospitals depending on where they lived. The hospitals are supplemented by clinics based in the townships in the three towns as well as clinics in the plant and works areas at Chambishi.

CHAMBISHI CLINICS

Chambishi employees and their registered dependants residing at Chambishi township are served by two clinics, one is situated in the township and caters for employees' registered dependants, while the other is located in the plant and works areas and caters for mine employees as well as ZAMDET employees. Both clinics are run and maintained by ZCCM on a 24 hour service. They are staffed by ZCCM employees and are visited three days a week by doctors from Nkana hospital or, by arrangement, from Kalulushi hospital.

All employees of Chambishi Cobalt & Acid Plant and their registered dependants are entitled to free medical services and to attend hospitals at Kalulushi, and in some cases, Nkana. ZCCM provides a bus service to enable dependants to visit the sick at Kalulushi hospital and an ambulance service is available at Chambishi to ferry cases which need to be attended to by a Doctor or require hospitalisation at Kalulushi/Nkana hospitals. In line with ZCCM practice, employees have a choice to use the contributory or the non-contributory section of the hospital at Kalulushi or Nkana.

HOSPITAL SERVICES

Chambishi employees needing hospitalisation or specialised medical attention attend the Kalulushi or Nkana hospitals.

2. STANDARD AND COSTS TO SERVICE USERS

The information set forth in the remainder of this Part I is intended to facilitate the identification and establishment of the standard of Medical Services prevailing at the date of Completion.

The information is not certified as true, correct or complete and nothing herein contained shall be construed as preventing either Party from accessing primary and other data regarding the historical provision of Medical Services by ZCCM in order to correct, clarify and/or

elaborate upon such information for purposes of compliance with Clauses 9.2(a)(iii) and 9.2(b) of this Agreement.

NKANA DIVISION MEDICAL SERVICES (also utilised by Chambishi Cobalt and Acid Plant employees)

1.0 TYPES OF SERVICES

The following services are provided by ZCCM hospitals to serve mine employees, their dependants and others.

a) CLINICAL SERVICES

Surgery, Internal medicine, Paediatrics, Obstetrics and Gynaecology, Orthopaedic surgery, Anaesthesia, Ophthalmology, Dental and Accident and Emergencies.

b) OTHER SPECIALISED SERVICES

Intensive Care Therapy, Computer Tomographic Scanner and Ultrasound (only at Nkana Division), Radiology and Histopathology (only at Nkana Division).

c) MATERIAL AND CHILD HEALTH SERVICES

Immunisation, Antenatals, Post Natal, Family Planning Nutrition Surveillance and Home Based Care for HIV/Aid patients and the terminally ill.

d) OTHER

**PUBLIC HEALTH
LABORATORY**

LOCATION OF MEDICAL SERVICES AT NKANA DIVISION

Nkana Division - 2 hospitals Nkana and Wusakile Hospitals and 14 Township and Plantsite Clinics. The clinics include the following:

Mindolo 2, Mindolo 1, Miseshi Maternity, Twibukishe, Nkana West. Mumana (C7), Chamboli, (J) Chamboli (P) Maternity, Natwange, Nkana East.

The Plantsite Clinics (ie. SOB Clinic. Central Shaft. Refinery, Mindolo Main, and Mindolo North) are located in their respective Plant Areas.

All the Clinics at Nkana Division except for Nkana West Clinic Operate for 24 hours but have limited bed capacity.

2.0 STAFFING

These include Nursing staff, Paramedical staff, Professional staff ie. Doctors and Consultants in different fields of specialisation and interest.

At Nkana Division the total number of staff running the medical services is 611. Appendix 1 shows the labour distribution by category.

2.1 NURSING STAFF

These are enrolled or registered nurses. Other nurses are in specialised fields (including theatre nursing, midwifery, intensive care nursing, ophthalmology, public health etc). At Nkana Division the total number of nurses is 373 as shown in Appendix 1.

2.2 PARAMEDICAL STAFF

These include the following: Laboratory Technicians, Pharmacists and Pharmacy Technicians, Radiographers, Physiotherapists, etc. At Nkana Division the total number of paramedical staff is 44, as shown in Appendix 1.

3.0 OUTPATIENT ATTENDANCES, OCCUPANCY RATE, ADMISSIONS

The statistics of outpatient attendances, Bed Capacity and occupancy rates are as shown in Appendix 2, tables 1 and 2.

Overall, the major activity in outpatient attendance is with dependents at 70% (366,298), employees 22% (117,003), non-mine 7% (33,948) and interdivisional activities at 2% (9315).

The average bed capacity for mine hospitals is 204 ranging from 26 to 450. The average stay in the hospital is 4.8 days ranging from 4 days to 8 days. The average occupancy rate is 41.9%. The highest occupancy rate is in the low cost units. Appendix 2, table 2 gives the details.

On admissions the greatest activity is on dependants 54% (26,456), mine employees 23% (11,229) non-mine 22% (10,545), interdivisional 0.8% (394).

4.0 PEOPLE EXPECTED TO USE MEDICAL FACILITIES POST PRIVATISATION

By and large, the greatest number of users of medical facilities post privatisation will be working employees and their dependants 89% (180,441), followed by Mpelembe drilling 5% (9336), Ndola Lime 1.4% (2802), Ndola Copper Refinery 1% (1149), Retired 1% (1062), Techpro (Z) Limited 0.3% (549), Medical Discharge 0.2% (504) etc. Appendix 3, tables 1 and 2 below and Table 4 show the picture:

Appendix 1

LABOUR DISTRIBUTION BY FUNCTION

CATEGORY	LOCAL	EXPAT	TOTAL
Doctors	34	7	41
Nurses	373	0	373
Paramedicals	44	0	44
Administration Staff	153	0	153
TOTAL	604	7	611

Appendix 2

Table 1

OUT PATIENTS ATTENDANCE by Mine Hospital for Mine Employees, dependents, interdivisional and non mine

FACILITY TYPE	NCHANGA		NKANA		TOTAL
	HIGH	LOW	HIGH	LOW	
MINE EMPLOYEES	382	2089	8612	13844	24927
DEPENDENTS	1932	1470	19140	36371	58913
INTERDIVISIONAL			101	8325	8426
NON MINE	287	1117	4107	6507	12019
TOTAL	2601	4676	31961	65047	104285

Table 2

BED CAPACITY, OCCUPANCY RATE (Average stay in hospital, bed occupancy rate, inpatient days)

By different Mine Hospitals

FACILITY TYPE	NCHANGA		NKANA	
	HIGH COST	LOW COST	HIGH COST	LOW COST
Bed Capacity	110	450	101	338
Average Stay in Hospital	5	6	4	5
Bed Occupancy Rate %	30	52	40	48
In Patient Days	7030	45630	11800	48462

Appendix 3

Table 1

PEOPLE EXPECTED TO USE MEDICAL FACILITIES POST PRIVATISATION at Mine Hospitals

DIVISION/PT TYPE NO.	NCHANGA		NKANA/WUSAKILE	
	EMP	DEP	EMP	DEP
ZCCM LIMITED				
Working	8,766	20,153	10,962	55611
Retired	12	-	230	
Medical Discharge	20	-	203	
Inter Divisional	9	-	-	
SUBSIDIARY				
Mpelembe Properties	-	-	-	
Mpelembe Drilling	331	1,655	699	1004
Prosec (Z) Limited	-	-	-	
Ndola Lime	-	-	-	
Techpro (Z) Limited	-	-	-	
Ndola Copper Refinery	-	-	-	
ZAM DET	-	-	-	
Scaw Limited	-	-	51	278
MUZ	-	-	40	232
Other	1,352	4,056	-	
TOTAL	10,490	25,864	12,185	57,125

LEGEND:

Emp = Employee. Dep = Dependent of employee

Table 2

PEOPLE EXPECTED TO USE MEDICAL FACILITIES POST PRIVATISATION

CATEGORY	NUMBER	%
Working Employees & Dependents	180441	89
Mpelembe Drilling	9336	5
Ndola Lime	2802	1.4
Ndola Copper Refinery		
Retired		
Techpro (Z) Limited		
Medical Discharge		
Prosec (Z) Limited		
Zamdets		
Scaw Limited		
MUZ (Mine Workers Union of Zambia)		
Interdivisional		
Mpelembe Properties		
Others		
Total		

* Rounding error Source: Submissions from Chief Medical Officers

NKANA HOSPITAL - MEDICAL COSTS TO OCTOBER 1997

	94/95		95/96		96/97 To date	
	KM	US\$000	KM	US\$000	KM	US\$000
Budget	4376	5830	4611	6360	6923	5835
Actual	3848	5850	4881	5209	5909	4699

NKANA DIVISION MEDICAL COSTS TO OCTOBER 1997

COST BY ELEMENT

	94/95		95/96		96/97 Year To date	
	KM BUDGET	ACTUAL	KM BUDGET	ACTUAL	BUDGET	ACTUAL
Local Labour	1309	1767	2124	2228	3782	3349
Expatriate Labour	363	241	188	409	558	600
Stores (General)	3672	2922	3466	3107	4374	3168
Drugs & Dressing	804	1958	1963	1108	22375	1595
Chemicals/Reagents	360	206	409	241	371	321
Food Stuff	306	240	246	290	271	387
P/Clothing	157	19	36	33	58	19
Stationery	88	13	78	22	45	24
Cleaning Materials	227	31	32	37	71	52
Medical Gases	41	44	59	59	73	82
MV Spares	21	6	12	20	55	16
Reallocated Expenses	149	118	172	185	2279	404
Sundry Expenses	152	15	44	55	28	29
Working Cost Projects	41	8	72	0	120	21
Contractors	253	14	40	68	72	92
Inter Div Charges	-1277	-829	-1091	-629	-1784	-1291

LOCAL EMPLOYEES Professional Staff (Alphabetical Order)

NAME	QUALIFICATION	SPECIALISATION
Chiponda Charles Dr	Bsc (HB) MBBS (OSM)	Assistant Chief Medical Officer (Health Services Management)
Kabole Mwape Mbewe (Dr)	Bsc MB ChB MRCP - UK	Consultant Paediatrician Paediatrics
Maboshe Patrick Mwanawina	Bsc MB ChB MRCP - UK	Senior Consultant Physician Internal Medicine (Physician)
Mulenga Hentry (Dr)	Bsc MB ChB MRCP - UK	Consultant Physician Internal Medicine (Physician)
Mutale Chola Baldwin (Mr)	MD/FRCS Higher Surgical Training in orthopaedics UK GDR	Senior Consultant Orthopaedic Surgeon Orthopaedics
Ngome Charles Caleb (Dr)	Bsc MB ChB FRCR	Consultant Radiologist Radiology
Sendama John (Dr)	Bsc MB ChB, FRCS I London, FRCS I Dublin	Specialist Ophthalmologist Ophthalmology
Simukonde Musyani (Dr)	BSc MB ChB M Comm H Dip HSM (UK)	Group Medical Adviser and Chief Medical Officer, Public/Community Health, Health Service Management
Simwizye Tresphor Kapupula (Mr)	Bsc MB ChB FRCS - UK	Consultant Surgeon General Surgery
Tembo Dixon Chaponda (Dr)	Bsc MB ChB FRCA II - UK DA - UK	Consultant Anaesthetist Anaesthesia

EXPATRIATE EMPLOYEES

NAME	QUALIFICATION	SPECIALISATION
Desai H M (Dr)	BDS, D Orth, RCS	Orthodontic Dentistry
Goel R G (Professor)	MBBS Dip Chin Path.MD Pathology	Consultant Pathologist Histopathology
Menon G K (Dr)	MB BS DA	Consultant Anaesthetist Anaesthesia
Patel C K (Dr)	MB BS DD MRE MB	Consultant Radiologist Radiology
Sinha P (Mr)	MB BS FRCS	Consultant Surgeon Surgery
Sathya Naathan (Dr)	BDS	Dental Surgeon Dentistry/Acupuncture
Waloch M (Dr)	PdD (University Medical School Warsaw)	Consultant Obs/Gynae Obstetrics and Gynaecology

APPENDIX IV

CHAMBISHI CLINICS (TOWNSHIP AND PLANT SITE) ACTUAL COST AGAINST BUDGET APRIL TO OCTOBER 1997		
COST ELEMENT	BUDGET K'000	ACTUAL K'000
LOCAL LABOUR (31)	95,037	90,298
DRUGS	3,249	7,486
STATIONERY	56	108
CLEANING MATERIAL	1,809	242
FOOD STUFFS	366	169
OTHER MTCE STORES	53,842	0
TOTAL	154,359	98,303

PART II
EDUCATION SERVICES

1. EDUCATION SERVICES IMMEDIATELY PRIOR TO COMPLETION

ZCCM Nkana Division runs two primary schools, one in Kitwe and the second school at Kalulushi which has now been taken over by the Metorex Consortium.

There are no ZCCM schools at Chambishi township. Employees' children and dependents attend local (government) primary schools and a junior secondary school at Chambishi township. The majority of secondary school children attend the Government Secondary School in Kalulushi. ZCCM provides a bus service to employees' children and dependents attending secondary school education (Government schools) in Kalulushi. Estimated cost of this bus service is K100 million per annum.

Like all ZCCM employees, the children of Chambishi Cobalt & Acid Plant employees and their registered dependents are eligible to be considered for enrolment at the education facilities run by ZCCM in Kitwe, Kalulushi and the Mpelembe Secondary School in Kitwe subject to the children meeting the selection criteria currently in practice.

2. STANDARD AND COSTS TO SERVICE USERS

The information set forth in the remainder of this Part II is intended to facilitate the identification and establishment of a standard of education services prevailing at the date of Completion.

The information is not certified as true, correct or complete and nothing herein contained shall be construed as preventing either party from accessing primary and other data regarding the historical provision of Education Services by ZCCM in order to correct, clarify and/or elaborate upon such information for purposes of compliance with Clause 9.3(b) and (c) of this Agreement.

EDUCATION FACILITIES (NKANA PRIMARY SCHOOL)

School Enrolment = 870 (920 in 1998)

Number of classes = 32 (34 in 1998)

Number of Teachers = 42

Administrative Staff = 03

Breakdown of Staff by Grade

ADMIN STAFF		TEACHING STAFF		SUPPORT STAFF						TOTAL
G12	G11	G1	G2	G3	G4	G5	G6	G7	G8	
3	0	22	20	0	9	2	0	2	8	66

Type of syllabus followed: Basic Zambia Primary Course

High Quality cost-effective education is offered.

- NB:
1. Will be recruiting 5 Class Teachers and 1 Computer Science Teacher by November 1997.
 2. Will lose one Class Teacher on transfer to Nkwazi Primary School in Lusaka at end of this term.

**PART III
RECREATIONAL SERVICES**

RECREATIONAL SERVICES - CHAMBISHI TOWNSHIP IMMEDIATELY PRIOR TO COMPLETION

1. SOCIAL CLUBS

There is one Social Club run by ZCCM through a Club Committee and two other clubs which operate autonomously. See *Appendix 1*.

All these clubs are in the Council area but use ZCCM facilities. Services provided by ZCCM are water, electricity, general maintenance of the buildings lawns and surroundings.

The Company provides assistance to a number of youth programmes and youth clubs which are suitably registered under Community Services. The services provided by ZCCM include transport for outside sporting activities, meal expenses for team members and officials, the sports kits and where necessary registration and affiliation fees with National Sports Bodies. Details are given in *Appendix 1, table 1*.

FOOTBALL FIELDS

There are two playing fields in Chambishi township; one is a football pitch and the other a rugby field. The fields and associated infrastructure buildings are maintained by ZCCM. One stadium is used by the First Division Chambishi Football club which is sponsored by ZCCM through the Community Services. ZCCM subsidises the costs of the team's kit, travel expenses, hotel accommodation, food and transport and other costs incidental thereto. ZCCM also bears winning bonus, camp and training allowances for the players including local cup games. Details of expenses for the current year are given in *Appendix 2*.

WOMEN CENTRES

There is one Women Centre situated in the main Chambishi Township. The centre has one ZCCM employee who is assisted by one casual worker. All equipment, teaching aids, and material are funded by ZCCM. The centre caters for an average of 60 women per year. They are trained in Basic and Advanced Home Economics, Mothercraft, Nutrition and Hygiene. Trainees are spouses of ZCCM employees and their dependents.

2. STANDARD AND COSTS TO SERVICE USERS

The information set forth in the remainder of this Part III is intended to facilitate the identification and establishment of a standard of recreational services prevailing as at the date of Completion.

The information is not certified as true, correct or complete and nothing herein contained shall be construed as preventing either party from accessing primary and other data as regards the historical provision of the Recreational Services by ZCCM in order to correct, clarify

and/or elaborate upon such information for purposes of compliance with Clause 9.5 of this Agreement.

NKANA DIVISION/CHAMBISHI MINE

COMMUNITY SERVICES

DETAILS OF SOCIAL AND MUNICIPAL SERVICES AT THE CHAMBISHI MINE AS AT 9 DECEMBER 1997

APPENDIX 1

SOCIAL CLUBS

Table 1 CLUBS WITH CLUB HOUSES

NAME OF CLUB	LOCATION/TOWNS HIP	STATUS	SERVICES PROVIDER		COST (IF ANY)	REMARKS
			WATER	ELECTRIC		
RUGBY	KABANGA - CHAMBISHI	AUTONOMOUS	ZCCM	ZCCM	Difficult to quantify but cost are mainly through services provided to the club. Cost of maintenance buildings also borne by the company.	
TENNIS	CHAMBISHI	AUTONOMOUS	ZCCM	ZCCM		
MINE CLUB	CHAMBISHI	AUTONOMOUS	ZCCM	ZCCM		
FOOTBALL	CHAMBISHI	ZCCM SPONSORED	ZCCM	ZCCM		

Table 2

1.1b CLUBS WITHOUT CLUB HOUSES

NAME OF CLUB	LOCATION/TOWNSHIP	STATUS	HALL/FACILITY USED	REMARKS
DARTS	CHAMBISHI	ZCCM SPONSORED	TENNIS CLUB	Refer to section 1a
CHESS	CHAMBISHI	ZCCM SPONSORED	MINE REC. CLUB	
BADMINTON	CHAMBISHI	ZCCM SPONSORED	MINE REC. CLUB	
CROQUET	CHAMBISHI	ZCCM SPONSORED	MINE REC. CLUB	
DRAUGHTS	CHAMBISHI	ZCCM SPONSORED	MINE REC. CLUB	
NETBALL	CHAMBISHI	ZCCM SPONSORED	GOVT SCHOOL	
BASKETBALL	CHAMBISHI	ZCCM SPONSORED	MINE REC. CLUB	
TABLE TENNIS	CHAMBISHI	ZCCM SPONSORED	MINE REC. CLUB	
VOLLEY BALL	CHAMBISHI	ZCCM SPONSORED	GOVT SCHOOL	
HAND BALL	CHAMBISHI	ZCCM SPONSORED	GOVT SCHOOL	
JUDO	CHAMBISHI	ZCCM SPONSORED	MINE REC. CLUB	
BOXING	CHAMBISHI	ZCCM SPONSORED	MINE REC. CLUB	
YOUTH SOCCER	CHAMBISHI	ZCCM SPONSORED	STADIUM	
ATHLETICS	CHAMBISHI	ZCCM SPONSORED	STADIUM	
KARATE	CHAMBISHI	ZCCM SPONSORED	MINE REC. CLUB	
DRAMA	CHAMBISHI	ZCCM SPONSORED	MINE REC. CLUB	

Appendix 2

CHAMBISHI FOOTBALL CLUB EXPENDITURE ON LEAGUE/CUP GAMES

NO. OF GAMES	WINNING ALLOWANCES K	TRAINING ALLOWANCES K	CAMPING ALLOWANCES K	MATCH OFFICIALS K	TOTALS K
15 (HOME)	7125000	1950000	1950000	810072	11835072
15 (AWAY)	7125000	1950000	1950000	0	11025000
5 (HOME)	2375000	650000	650000	630000	4305000
TOTAL	16625000	4550000	4550000	1440072	27165072

NOTE

1. Winning allowances are paid to 16 players and 3 officials ie. Coach, Assistant Coach and first aider.
2. Camping expenses are spent on food, cleaning materials and toiletries for the team for one night. Three meals are prepared.
3. Match officials are paid to 3 Referees and 1 Match Commissioner.
4. The home games are expected to attract gate takings. However, these have not been to expectations since the team entered 1st division. An average of K250,000 is collected per game.

SCHEDULE 5

FRAMEWORK ENVIRONMENTAL PLAN

This document is intended to form the framework Environmental Plan referred to in Clause 12.3(b)(ii) of the Development Agreement and sets out the Company's environmental policies and broad outline plans.

The plan is subject to changes arising from a base-line study of the operations and will be replaced by a more detailed plan in accordance with the timetable below and when agreed in accordance with Clause 12.1 of the Development Agreement. The Company will be responsible for meeting the terms and conditions specified in the Environmental Plan and the Environmental Licences. Terms and conditions of existing operating permits and licences will be adhered to consistent with the terms of the Environmental Plan.

It is envisaged that the Environmental Plan will cover the following aspects:

1. **Pollution Prevention**

Priority will be given to technological modernisation and improved process maintenance, monitoring and control to complement conventional pollution control systems for atmospheric emissions and effluent discharges.

This approach will:

- reduce the volume of water requiring treatment by increased recycling of process water and minimise the use of fresh water. This will improve the efficiency of metals and solids removal in effluent treatment systems; and
- minimise process upset conditions and spills to the environment.

2. **Reduction of Risks**

Incidents of inadvertent releases will be minimised by an improved capacity for the containment of untreated water and reduced external storage of sludges and residues. The implementation of spill prevention plans will further reduce risks.

3. **Reduction of Environmental Impacts**

Treated water discharges into the environment will be consolidated into one stream for Operations, wherever possible. This will result in improved treatment efficiency and will reduce stress on the number of streams currently receiving untreated or partially treated water.

4. **Conducting Progressive Rehabilitation**

Where appropriate, progressive rehabilitation will be exercised over the operating life of facilities when areas become inactive and plant units redundant.

General housekeeping improvements within the plant site are part of the process capital investment programme. This includes appropriate storage for concentrates, residues, full and empty barrels containing chemicals, sludges and so forth.

5. Achieving Production Efficiency

A fundamental objective for the Company will be to achieve production efficiency. High losses of metals through discharges of concentrates and process solutions present an unacceptable economic cost and environmental effects. Optimising process and production efficiency will have a favourable environmental benefit.

6. Protection of Human Health

The Company commits to a modernisation program at Chambishi that will reduce emissions, discharges and releases into the environment and address, inter alia, the issue of the protection of human health. Major environmental capital expenditures as contemplated in the Development Agreement will be required to bring these operations to an acceptable standard.

7. Phased Compliance

The final Environmental Plan will describe the Company's commitment to bring the environmental performance of the Chambishi operation into compliance, over time, with the Environmental Laws. This technological modernisation programme is expected to be completed within 31 months of Completion.

Areas of non-compliance will be discussed and agreed to with GRZ. The time required to bring each process into compliance will be detailed in the final Environmental Plan. Meeting these time schedules, within the 31 month completion period, will guarantee the maintenance of the indemnification.

8. Smelter Operation

Environmental planning for the smelter will not include any aspect of indemnification.

Timetable

Date

Production of the Baseline Study

12 months from the date hereof

Production of the Environmental Plan

18 months from the date hereof

SCHEDULE 6

TRAINING AND HUMAN RESOURCES MANAGEMENT PROGRAMME

In the operation of the Chambishi Cobalt and Acid Plants, Chambishi Metals PLC will focus extensively on the training and development of its employees. As is practice on Avmin's other operations, the company will ensure that technical excellence is part of each employee's make-up. The company's approach will be a pragmatic bottom-up developmental approach to human resource development, with selective initiatives to accelerate the development of managers.

The company will develop and empower current employees to make best use of the opportunities for advancement. Merit alone will guide the selection criteria for filling vacancies and will not be limited to academic qualification, but will include informal qualifications and work experience. The criteria will be set at appropriate levels to avoid excluding employees from training and development.

In the interim, the company will provide on-the-job training to enhance existing skills. Ongoing safety training will be an important part of this process. It is planned to provide opportunities to appropriate employees to develop and grow through rotational training at other Avmin operations in Africa.

During the planning and construction stage of the new plant, the company will provide the employees with the new skills required to effectively manage the new technology. Also this period will be used to evaluate and effect organisational re-engineering to set in place the most effective and efficient organisational structure required by the new company.

Chambishi Metals PLC believes that it is in its best interest to maintain a high level of Zambian employment and will endeavour to attract qualified and experienced Zambians. Recruitment will not be limited to the Republic of Zambia but will also concentrate on attracting Zambians back to the Copperbelt from other parts of Africa and the rest of the world.

Chambishi Metals PLC has designated Mr R Duvel of Avmin to be the responsible person to take an active role in facilitating the success of the Training and Human Resource Development Plan. At a later stage, a company employee will be identified to fulfil this role.

The company will carry out a detailed evaluation of current employees' in order to determine their current capacity and future potential. This evaluation will enable a detailed employee-specific training and development matrix to be developed. Chambishi Metals PLC will submit a detailed Training and Human Resource Development Plan within 12 months of Completion.

SCHEDULE 7

REQUIRED INSURANCES

The following insurance policies shall be taken out with insured amounts and excesses appropriate to the Company scale of operation and the risk profile pertaining from time to time. This summarised schedule conforms to the details of Schedule 6 of the Sale and Purchase Agreement relating to the types of insurance policies taken out by ZCCM.

1. **Property Insurance**
2. **Motor Insurance**
3. **Money Insurance**
4. **Fidelity Guarantee**
5. **Legal Liability Insurance**
6. **Cobalt Storage Cover**
7. **Metal Export Insurance**

SCHEDULE 8

TAX SCHEDULE

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

(1) ***Income Tax:***

- (1) The Company shall pay to GRZ income tax in accordance with the provisions of this Agreement and the Income Tax Act, Chapter 668 of the Laws of Zambia as from time to time amended and in effect on its net income arising from all mining, concentration, smelting and refining and other operations.
- (2) The income tax rate applying as at the date of this Agreement shall be thirty five per cent (35%) save that if the Company were to obtain a full listing on the Lusaka Stock Exchange such rate shall be thirty per cent (30%) from the year of such listing.
- (3) The carry forward of losses shall be permitted for a period of ten (10) years from the date at which the loss was incurred. Losses should be used on a first in, first out basis with earlier losses used before later losses.
- (4) The Company shall be entitled to maintain books of account stated in United States dollars in accordance with generally accepted accounting principles.
- (5) For the purposes of the Third Schedule to the Act, the Facilities shall be deemed a "1975 new mine" allowing the deduction of one hundred per cent. (100%) of capital expenditure (as defined in the Act) in the year in which the capital expenditure was incurred.

(2) ***Royalties:***

- (i) The Company shall pay to GRZ Mineral Royalty tax (the "Royalty") on the net back value of minerals produced in the Mining Area at a rate of two per cent (2%).
- (ii) For the purpose of the foregoing, the words "net back value" shall mean:
 - (aa) the market value of Mine Products free-on-board at the point of export from Zambia or, in the case of consumption within Zambia, at the point of delivery within Zambia, less:
 - (i) the cost of transport, including insurance and handling charges, from the Contract Area to the point of export or delivery; and

- (ii) the cost of smelting and refining (where applicable) or other processing costs except such other processing costs as relate to processing normally carried out in Zambia in the Contract Area;
 - (iii) payments made under the Cobalt Price Participation Agreement;
- (bb) the term "market value" means the realised price for a sale free-on-board at the point of export from Zambia or point of delivery within Zambia,
- (iii) GRZ confirms that for a period of fifteen (15) years from the Effective Date, royalty payable under the Act shall be deductible against liability for income tax.
 - (iv) The circumstances where the discretion available to GRZ under Section 67 of the Act to defer the payment of royalty would be exercised are:
 - (aa) under the terms of Section 67(1) where the cash operating margin of the Company mining operations is less than nil; and
 - (bb) under the terms of Section 67(2) on samples of minerals acquired for the purposes of assay, analysis or other examination.
 - (v) For the purposes of the foregoing "cash operating margin" means the amount derived by deducting operating costs (not including capital expenditure during or required for the development of the Facilities) from revenue.

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

(i) ***Customs and Excise Duties***

Subject to the provisions of Clause 13 and Section 97 of the Act, the Company shall be liable to pay customs and excise duties on all assets imported for the purposes of the Approved Programme of Operations at such rates and on the terms and conditions as are set out in the Customs and Excise Act.

The Company will also enjoy the benefit of S97 of the Act namely that the Company shall be entitled to exemption from customs and excise duties, and from any other duty or impost levied under the Customs and Excise Act, in respect of all machinery and equipment (including specialised motor vehicles) required for any of the activities carried on or to be carried on in pursuance of the right or otherwise for the purposes of his investment in mining or prospecting. GRZ and the Company agree that goods imported by contractors of the Company engaged by the Company for the purposes of implementing the Approved Programme of Operations shall enjoy the benefit of the Company's exemption from customs and excise duties under Section

97 of the Act, such benefit to be strictly limited to machinery and equipment imported for the implementation of the Approved Programme of Operations. GRZ and the Company further agree to establish an administrative mechanism to achieve this post Completion.

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

GRZ confirms that this will be ten per cent. (10%) of the amount paid to ZESCO by the Copperbelt Energy Corporation PLC for the purchase of electricity.

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

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

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

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

- (i) In accordance with the provisions of the Value Added Tax Act, 1995, Plant Products are chargeable to VAT at a rate of zero per cent. (0%).
- (ii) GRZ confirms that input VAT shall be credited to the Company within a reasonable period of time from the date of submission of the Company's monthly VAT return in respect of each accounting period.
- (iii) For the purposes of this Clause, "input VAT" shall mean VAT payable in respect of the supply of goods or services supplied by a registered supplier during a prescribed accounting period for the purposes of the Facilities and/or the activities contemplated in the Scheduled Programmes and/or the conduct of Normal Operations.
- (iv) Provided Company submits the appropriate applications, the Company shall be deemed to be registered under the VAT Deferment Scheme from the date of Completion.

(5) **Relief from Withholding Tax**

The rate of withholding tax applicable to the Company and to Avmin in respect of payments made under the Management Agreement shall be ten per cent. (10%).

GRZ confirms its intention to enter into Double Taxation Agreements with its major trading partners which should, inter alia, reduce the level of withholding tax suffered on distributions and payments of interest by the Company.

For the purposes of Second Schedule to the Act, the Facilities shall be deemed a "1975 new mine".

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

For the purpose of ascertaining the Company's allowable deductions under Section five (one) (5(1)) of the Third Schedule to the Act, the Facilities shall at all times be regarded as a single large scale mining and metal treatment operation.