

THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA

AND

KONKOLA COPPER MINES PLC

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

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THIS AMENDED AND RESTATED AGREEMENT is made on [•] 2004

BETWEEN:

THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA, acting through the Minister of Mines and Minerals Development and the Minister of Finance and National Planning ("**GRZ**"); and

KONKOLA COPPER MINES PLC, a company incorporated in the Republic of Zambia (registered no. 43628), whose registered office is at Stand M/1408, Fern Avenue, Chingola, Republic of Zambia (which shall include any permitted assigns or successors of the rights and obligations of Konkola Copper Mines plc) ("**KCM**").

WHEREAS:

1. Proposals were submitted in 1999 on behalf of KCM by Zambia Copper Investments Limited and the International Finance Corporation for the development and operation of the major mine and treatment plants and facilities of Konkola IBU including the Konkola Deep Mining Project, the Nchanga IBU (including the Chingola Refractory Ores), the Nampundwe Mine and associated assets (including agreed social assets) of Zambia Consolidated Copper Mines Limited ("**ZCCM**") in the Copperbelt and Lusaka Provinces of Zambia, the location of which was more specifically identified by reference to the plans originally annexed hereto as Exhibits to Schedule 2, Part I.
2. GRZ approved these proposals, which were incorporated in this Agreement from 31 March 2000 until the date hereof and which are now superseded by the Approved Programme of Mining and Metal Treatment Operations annexed hereto as Schedule 1 and the plans annexed hereto as Exhibits to Schedule 2, Part I.
3. GRZ, ZCCM and KCM entered into a Sale and Purchase Agreement dated 15 December 1999 which required on its Completion (as defined therein) the entry into of this Agreement. Completion occurred on 31 March 2000 when this Agreement was originally entered into.
4. GRZ, ZCCM and KCM entered into an Environmental Liabilities Agreement on 31 March 2000 which provided, *inter alia*, for responsibility for preparation and implementation of an environmental plan to be assumed by ZCCM in respect of assets not acquired by KCM pursuant to the provisions of the Sale and Purchase Agreement referred to in (C) above and for the provision by GRZ of certain indemnities in respect of liabilities under Environmental Laws and laws relating to mine safety.
5. On 22 January 2002, Anglo American plc ("**Anglo**") announced its intention to withdraw from its investment in KCM and on 19 August 2002 entered into a Deed with, *inter alia*, International Finance Corporation ("**IFC**"), CDC Financial Services (Mauritius) Limited ("**CDC**"), GRZ and KCM (the "**Anglo Exit Deed**") enabling Anglo, IFC and CDC to withdraw from their respective investments in KCM. Anglo's exit was completed in 16 September 2002 when, *inter alia*, the option to acquire the shares of ZCCM (SmelterCo) Limited under the SmelterCo Option and Pre-emption Agreement was exercised and ZCCM (SmelterCo) Limited became a wholly owned subsidiary of KCM. ZCCM (SmelterCo) Limited changed its name to KCM (SmelterCo) Limited on 17 September 2002.

6. Following the exit of Anglo, IFC and CDC and the resulting restructuring of KCM, approximately 42% of the issued share capital of KCM is held by ZCCM, approximately 58% of the issued share capital of KCM is held by ZCI Holdings S.A. ("**ZCI Holdings**") (a wholly owned subsidiary of Zambia Copper Investments Limited ("**ZCI Bermuda**")) and GRZ holds one special share in the share capital of KCM.
7. KCM acquired substantially all of the assets and liabilities of SmelterCo with effect from 1 April 2003. The Development Agreement dated 31 March 2000 between SmelterCo and GRZ was transferred to KCM on 3 April 2003 with the intent that the operations and activities of the Nkana IBU be covered by this Agreement and the Approved Programme of Mining and Metal Treatment Operations set out herein as Schedule 1 and the plans set out herein as Parts I and III of Schedule 2.
8. Vedanta Resources PLC ("**Vedanta**"), having conducted due diligence on KCM and its assets, has offered to subscribe through its wholly-owned subsidiary, Vedanta Resources Holdings Limited ("**VRHL**"), for a fifty one per cent. (51%) interest in KCM on a fully dilutive basis, on the terms and conditions of a Subscription Agreement dated 19 August 2004 (the "**Subscription Agreement**"). KCM's Board of Directors, having duly considered this offer and having consulted with the Boards of Directors of its respective shareholders (including GRZ), have decided to accept Vedanta's offer on the terms and conditions contained, *inter alia*, in the Subscription Agreement and in this Agreement.
9. Vedanta, VRHL, ZCCM, ZCI Bermuda, ZCI Holdings, KCM and GRZ have recorded their agreement as to the future operations and management of KCM in a Shareholders' Agreement dated on or about the date hereof (the "**Shareholders' Agreement**")
10. Pursuant to the provisions of a Call Option Deed dated on or about the date hereof (the "**Vedanta Call Option Deed**"), Vedanta holds an option over ZCI Holdings' shares in KCM, exercisable in certain circumstances.
11. Pursuant to the provisions of a Call Option Deed dated on or about the date hereof (the "**ZCI / ZCCM Call Option Deed**"), ZCI Holdings and ZCCM hold options over VRHL's shares in KCM, each exercisable in certain circumstances.
12. The development and operation of the Facilities shall be of major economic significance to the people of Zambia.
13. GRZ wishes to ensure that the continued development and exploitation of the commercial deposits of copper ore at the Facilities, which are a strategic national asset, shall secure the maximum benefit for, and adequately contribute to the advancement and the social and economic welfare of, the people of Zambia, including the people in the vicinity of the Contract Areas in a manner consistent with their needs and the protection of the environment and secure an appropriate return on investment for the Shareholders commensurate with the risks involved to KCM.
14. GRZ and KCM have agreed on a number of matters which are set out in this Agreement and wish the matters agreed upon to be an enduring arrangement of national interest. GRZ and KCM also wish to amend and restate this Agreement to reflect Vedanta's proposed Scheduled Programmes (or amendments thereto) and agreements reached with Vedanta during the course of negotiations.
15. GRZ has granted to the Minister of Mines and Minerals Development and the Minister of Finance and National Planning statutory authority under Section 9 of the Act to enter

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

NOW IT IS HEREBY AGREED as follows:

**PART A
GENERAL**

1. DEFINITIONS AND INTERPRETATIONS

In this Agreement, unless expressly stated otherwise:

"**Act**" means the Mines and Minerals Act, Cap No. 213 of the Laws of Zambia as from time to time amended and in effect, and includes any regulations made thereunder, but subject, in all cases, to the provisions of Clause 13 of this Agreement;

"**Affected Party**" means a person, other than a financial institution, who has previously liquidated, closed or abandoned any of its investments in Zambia or who has threatened to do so;

"**Affiliate**" means:

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

and "**Control**" means:

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

including in either case where persons, pursuant to an agreement or understanding (whether formal or informal) actively so operate, through the acquisition by any of those persons of shares in the share capital of a person, to obtain or consolidate "**Control**" as defined under paragraphs (d) or (e) 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;

"**Agency**" means any national, provincial, local or other ministry, department, agency or instrumentality of GRZ but excluding any Statutory Autonomous Body;

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

"**Approved Programme of Mining and Metal Treatment Operations**" means the proposals for rehabilitating, developing and operating the Facilities and associated production schedules which are set out in Schedule 1 (as varied from time to time in accordance with Clause 26);

"**Arm's Length Terms**" means, in respect of a transaction, terms 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;
- (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 this transaction) 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; and
- (d) neither the selling party, nor any person or company connected with it through shareholding or otherwise, has any direct or indirect interest in the subsequent disposal, if applicable, by the buying party of any of the products or services obtained pursuant to the transaction agreement;

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

"**Business**" means the business to be carried on by KCM, namely that of:

- (a) exploration, appraisal and mining of ore and waste;
- (b) the treatment of ore to produce products; and
- (c) sale of products,

in each case whether within or outside Zambia, and such other activities, including related transport and trading of metals, incidental and/or conducive to the foregoing which may be approved by the board of directors of KCM from time to time;

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

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

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

"**Collective Agreements**" means the Standard Conditions of Employment and Service as agreed with the Mineworkers Union of Zambia and which are in force at the date hereof as amended from time to time or any other arrangements with the Mineworkers Union of Zambia, the National Union of Mine and Allied Workers or any other trade unions from time to time recognised as representing some or all of KCM's employees;

"**Companies Act**" means the Zambian Companies Act (Cap 388 of the Laws of Zambia) as from time to time amended and in effect but subject, in all cases, to the provisions of Clause 13 of this Agreement;

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

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

"**Contract Areas**" means those land areas described in Schedule 2, Part I;

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

"**Copper Product**" means finished copper metal cathode produced by KCM from the Konkola Ore Body. For the avoidance of doubt, Copper Product excludes any copper product produced from third party ores or concentrates under tolling or other arrangements;

"**Costs to Resume Operations**" means all costs (which includes the cost of new capital expenditures) required to resume Normal Operations;

"**Dispute**" means any dispute, disagreement, controversy, claim or difference of whatsoever nature arising under, out of, in connection with or relating (in any manner whatsoever) to this Agreement including (without limitation) any dispute or difference:

- (a) concerning the initial or continuing existence of this Agreement or any provision thereof;
- (b) as to whether this Agreement or any provision thereof is invalid, illegal or unenforceable (whether initially or otherwise);
- (c) as to the interpretation, performance or breach of this Agreement (including whether any default notice served under Clause 18 is valid or whether the default or failure alleged in any such Default Notice has occurred);
- (d) concerning the legal capacity of any of the Parties, or the signatories on their respective behalves to this Agreement, to enter into and validly bind the Parties to the terms of this Agreement or any provisions (or any part of any provision) thereof including, in particular (but without limitation), the provisions of Parts C and D;

- (e) as to whether any compensation is payable under any provision of this Agreement and as to the quantum of such compensation; or
- (f) which is ancillary or connected, in each case in any manner whatsoever, to the foregoing;

"Effective Date" means the date of Completion;

"Employment and Training Plan" means the programme forming Schedule 4 as approved by the Minister for the purposes of Section 25(1)(e) of the Act (and appended to the Large Scale Mining Licences pursuant to Section 25(4) of the Act) and thereafter means such plan as may be approved by the Minister and which replaces Schedule 4;

"Enabling Legislation" means the following legislation:

- (a) the Mines and Minerals (Amendment) Act 2000;
- (b) the Companies (Amendment) Act 2000;
- (c) the National Pension Scheme (Amendment) Act 2000;
- (d) the Pension Scheme Regulation (Amendment) Act 2000; and
- (e) the Income Tax Amendment Act 2000;

"Enabling Statutory Instruments" means the following statutory instruments:

- (a) the Mines and Minerals (Environmental) (Exemption) Order;
- (b) the Pension Scheme Regulation (Investment) (Exemption) Order; and
- (c) the National Pension Scheme (Exemption) Order.
- (d) Companies (Fees) (Exemption) Order;
- (e) Companies (Resident Directors) Order;
- (f) Customs and Excise (Excise Duty) Suspension Regulations;
- (g) Mines and Minerals (Royalty) (Remission) Order; and
- (h) the Customs and Excise (Konkola Copper Mines Plc) (Remissions) Regulation 2000;

and such other statutory instruments as may be necessary to give effect to Schedule 6 of this Agreement.

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

"Environmental Condition" means any or any combination of the following, in each case to the extent they arise from, are connected with or affect the Assets or Normal Operations:

- (a) pollution of the Environment and/or harm to human health resulting from pollution or harm to the Environment including noise, emissions, the conditions of buildings, other man made structures or the work place, and discharges or releases of any substances into the Environment;
- (b) contaminated land; and
- (c) pollution of waters;

"Environmental Laws" means the Act, the Mining (Mineral Resource Extractions) Regulations, 1994 (SI 119/1994); the Environmental Protection and Pollution Control Act (Cap 204 of the Laws of Zambia) and regulations enacted thereunder; and the Mines and Minerals (Environmental) Regulations 1997 (SI No.29 1997) and any other law or regulations in force from time to time in Zambia (including the common law) which have as a purpose or effect the protection of and/or prevention of harm to the Environment or to human health and/or the provision of remedies for harm or damage to the Environment or to human health save for the provisions contained in each of such laws and regulations which relate to mine safety and/or the safety of persons rather than to the Environment but subject, in all cases, to the provisions of Clause 0 and 13 of this Agreement;

"Environmental Liabilities" shall have the meaning given to it in the Environmental Liabilities Agreement;

"Environmental Liabilities Agreement" means the agreement dated 31 March 2000 between KCM, ZCCM and GRZ providing for, *inter alia*, the adoption of an environmental plan for ZCCM and the indemnification of KCM by GRZ in respect of certain environmental and mine safety liabilities;

"Environmental Protection Fund" means the fund established by Section 82 of the Act as the same applies to KCM pursuant to the Enabling Statutory Instruments;

"ETB Cash Reserve Account" has the meaning given in the Shareholders' Agreement;

"ETB Liabilities" has the meaning given in the Shareholders' Agreement;

"Facilities" means the mine and treatment plants and facilities of Konkola Integrated Business Unit, the Nchanga Integrated Business Unit, the Nampundwe Integrated Business Unit, the Nkana Integrated Business Unit and associated assets, including the social assets of KCM;

"Final Environmental and Social Management Plan" means the programme for environmental clean-up and protection, social management and local business development, as approved by the Minister for the purposes of Section 25(1)(d) and 76(2) of the Act (and incorporated by reference in the Large Scale Mining Licences pursuant to Section 25(4) of the Act), and incorporated by reference in Schedule 3;

"**Force Majeure**" has the meaning given to the term in Clause 0 and "**Force Majeure Event**" shall mean the event giving rise to the notice of Force Majeure pursuant to Clause 25.1.2;

"**Good Mining, Metal Treatment and Environmental Practices**" means acceptable mining, metal treatment and environmental practices conducted in Southern Africa (which shall include the right to mine and process material twenty four (24) hours a day, three hundred and sixty five (365) days a year (including public holidays), if required) which shall, in any event, be no less than acceptable mining, metal treatment and environmental practices conducted in Zambia;

"**GRZ Director**" has the meaning given in the Shareholders' Agreement;

"**IBU**" means any of the Konkola Integrated Business Unit, the Nchanga Integrated Business Unit, the Nkana Integrated Business Unit and the Nampundwe Integrated Business Unit;

"**KCM Assets**" has the meaning given in Clause 15.1.12(b);

"**Konkola Integrated Business Unit**" means the former Konkola division of ZCCM, situated at Chililabombwe, Copperbelt Province, Zambia;

"**Konkola Large Scale Mining Licence**" means the Large Scale Mining Licence No. 35 the form of which is set out in Schedule 2, Part II;

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

"**Konkola Ore Body**" means the ore reserves and resources which are the subject of the Large Scale Mining Licences;

"**Konkola Ore Body Extension Feasibility Study**" means the feasibility study to extend the current Konkola Ore Body to be carried out pursuant to Clause 2;

"**Konkola Ore Body Extension Project**" means, in the event of the Konkola Ore Body Extension Feasibility Study being approved by the Board of KCM and an application being made by KCM pursuant to Clause 0 of this Agreement and being approved by GRZ, the project providing for the extension of the Konkola Ore Body as set out in the Scheduled Programmes;

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

"**Large Scale Mining Licences**" means the Konkola Large Scale Mining Licence, the Nchanga Large Scale Mining Licence, the Nkana Smelter Large Scale Mining Licence, and the Nampundwe Large Scale Mining Licence held by KCM (or SmelterCo, in the case of the Nkana Large Scale Mining Licence) pursuant to the Act, the form of which is set out in Schedule 3 Part II, in each case effective to 31 March 2025;

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

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

- (a) the percentage rate per annum equal to the offered quotation which appears on the page of the Telerate Screen which displays an average British Bankers Association Interest Settlement Rate for US dollars (being currently "3750") for one month deposits at or about 11.00 am on the date which is two (2) Business Days preceding the final Business Day of each calendar month that monies are outstanding or, if payment is not made on the final Business Day of a Calendar Month, two (2) Business Days preceding the Business Day on which payment is made or, if such page or such service shall cease to be available, such other page or such other service for the purpose of displaying an average British Bankers Association Interest Settlement Rate for one (1) month deposits in US dollars as the parties, after consultation with each other, shall select; or
- (b) if no quotation for US dollars for one month deposits is displayed and the parties have not selected an alternative service on which a quotation is displayed, the arithmetic mean (rounded upwards to four decimal places) of the rates (as notified to KCM) at which the principal London offices of each of four major banks in the London Interbank Market as selected by the parties was offering to prime banks in the London Interbank Market one (1) month deposits in US dollars at or about 11.00 am on such date;

"Local Business Development Programme" means those parts of the Final Environmental and Social Management Plan as relate to the development of local businesses in Zambia;

"Major Change" means:

- (a) a material change involving the elimination or material reduction in the capacity of KCM's operations if a consequence of such material change would be to reduce materially or delay materially receipt by GRZ of tax revenues or royalties derived from KCM's operations;
- (b) a material reduction in:
 - (i) the life of mine; or
 - (ii) the ore production rate per annum, in aggregate,in either case in respect of the mines operated by KCM under the Large Scale Mining Licences from that specified in the Approved Programme of Mining and Metals Treatment Operations and save, in either case, where such material reduction is outside the control of KCM;
- (c) a material reduction in the volume of ore, tailings or concentrate per annum treated or refined by KCM's tailings leach plant or the Nkana smelter and refineries from that specified in respect of the relevant facility in the Approved Programme of Mining and Metals Treatment Operations; or

- (d) a material change involving in a material respect an adverse impact of KCM's operations on the environment;

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

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

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

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

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

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

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

"Nampundwe Integrated Business Unit" means the former Nampundwe division of ZCCM, situated at Mumbwa, Central Province, Zambia;

"Nchanga Large Scale Mining Licence" means Large Scale Mining Licence No. 34, the form of which is set out in Schedule 3 Part II;

"Nchanga Integrated Business Unit" means the former Nchanga division of ZCCM, situated at Chingola, Copperbelt Province, Zambia;

"Nkana Integrated Business Unit" means the assets transferred from SmelterCo to KCM in or around March 2003;

"Nkana Smelter Large Scale Mining Licence" means Large Scale Mining Licence No. 38 the form of which is set out in Schedule 3, Part II;

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

"Notice" means any notice, consent, demand, approval or other communication required or permitted to be given under Clause 28;

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

"**Operating Costs and Revenues**" for any period means the costs incurred or to be incurred by KCM during Normal Operations (including financing charges and depreciation) and the gross revenues arising from the conduct of Normal Operations;

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

"**Real Hurdle Rate of Return**" means a rate of return calculated as Vedanta's then prevailing real weighted cost of capital plus a commercially reasonable risk premium (reflecting the risk of an investor already active in Zambia continuing to be so active and such risk premium not in any event exceeding 10%);

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

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

"**Scheduled Programmes**" means the Approved Programme of Mining and Metal Treatment Operations, the Final Environmental and Social Management Plan and the Employment and Training Plan;

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

"**Share Security**" has the meaning given in Clause 16.1.7;

"**Shortfall Funding Commitment**" has the meaning given in the Shareholders' Agreement;

"**SmelterCo**" means KCM (SmelterCo) Limited, a company incorporated in the Republic of Zambia with registered number 44055 (formerly known as ZCCM (SmelterCo) Limited);

"**Sole Expert**" means a person appointed in accordance with the provisions of Clause 20;

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

"**Stability Period**" means the period commencing on the Effective Date and, subject to Clauses 0 and 0, ending on 31 December 2009;

"**Statutory Autonomous Body**" means any authority, entity, organisation or other body that is created by statute and is independent of GRZ;

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

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

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

"**Vedanta Group**" means Vedanta and its Affiliates;

"**Zambia**" means the Republic of Zambia;

"**ZCI**" means ZCI Holdings S.A.; and

"**ZCCM**" means ZCCM Investments Holdings PLC (formerly known as Zambia Consolidated Copper Mines Limited or ZCCM).

In this Agreement, unless expressly stated otherwise:

- 1.1.1 monetary references are references to United States dollars unless otherwise specifically expressed;
- 1.1.2 the headings do not affect the interpretation or construction;
- 1.1.3 subject to the provisions of Clause 13, references to the Act or any other statute or statutory legislation or law include the amendments thereto for the time being in force and also any such instrument passed in substitution therefor and any regulations for the time being in force thereunder, except where specifically excluded;
- 1.1.4 words importing the singular include the plural and vice versa;
- 1.1.5 words importing any gender include the other gender;
- 1.1.6 references to a person include a partnership, firm or corporation and, in the case of GRZ, its Agencies and/or any political sub-division of GRZ or its Agencies;
- 1.1.7 references to Clauses and Schedules are to clauses of and schedules to this Agreement;
- 1.1.8 the recitals and Schedules form part of this Agreement; and
- 1.1.9 references to "reasonable" and "unreasonable" and related concepts shall be accorded their natural meaning and shall not be construed narrowly by reference to concepts of procedural or administrative law.

PART B

OPERATIONAL AND EMPLOYMENT ISSUES

2. APPROVED PROGRAMME OF MINING AND METAL TREATMENT OPERATIONS AND OBLIGATIONS TO DEVELOP

Subject to the provisions of applicable legislation (as excepted and modified by this Agreement) and except as specifically provided in the Large Scale Mining Licences, this Agreement and the agreements referred to in this Agreement, KCM shall be free to operate in and manage the Mining Areas and the Facilities.

KCM shall, following the issue of the Large Scale Mining Licences and, subject to the terms of the Act, regulations made thereunder, the Large Scale Mining Licences and this Agreement, implement the Approved Programme of Mining and Metal Treatment Operations (including the associated production schedules) in accordance with the timetable contained therein and Good Mining, Metal Treatment and Environmental Practices.

KCM shall use reasonable endeavours to ensure that Vedanta or VRHL discharges the Shortfall Funding Commitment and provides or, as the case may be, procures financing for the Konkola Ore Body Extension Project, in each case, substantially in the manner, on the terms and in the amounts set out in the Shareholders' Agreement.

Subject in all cases to the provisions of this Agreement, GRZ hereby acknowledges its agreement to the Scheduled Programmes and the compliance of the Scheduled Programmes with all the relevant requirements of the Act (including without limitation Section 24(3) of the Act) and the Large Scale Mining Licences and further acknowledges, without limitation, that compliance with the Scheduled Programmes will be deemed to constitute compliance with Section 27 of the Act.

KCM undertakes to GRZ to undertake the Konkola Ore Body Extension Feasibility Study, such Konkola Ore Body Extension Feasibility Study to be delivered to GRZ (for information purposes only) no later than 31 December 2006.

In the event KCM determines to proceed with the further development of the Konkola Ore Body as contemplated by the Konkola Ore Body Extension Feasibility Study, it shall, prior to commencing development, first apply to GRZ to do so in accordance with Clause 0 below.

An application further to develop the Konkola Ore Body shall be made in accordance with Section 24(3) of the Act and shall include or be accompanied by:

- 2.1.1 a comprehensive statement of the mineral deposits delineated in the relevant Mining Area including details of all known minerals proved, estimated or inferred, ore reserves and anticipated mining conditions;
- 2.1.2 a proposed programme of mining operations covering the period from commencement of the Konkola Ore Body Extension Project to mine closure and site rehabilitation, including a forecast of capital investment, the estimated recovery rate of ore and mineral products, and the proposed treatment and disposal of ore and minerals recovered;
- 2.1.3 KCM's environmental plan for the period from commencement of Konkola Ore Body Extension Project to mine closure and site rehabilitation, including its

proposals for the prevention of pollution, the treatment of wastes, the protection and reclamation of land and water resources, and for eliminating or minimising the adverse effects on the environment of its mining operations;

- 2.1.4 details of expected infrastructure requirements including electrical power requirements;
- 2.1.5 KCM's proposals with respect to the employment and training of citizens of Zambia and, if necessary, an amendment to the Employment and Training Plan;
- 2.1.6 in the event that KCM considers (by reference to the then prevailing facts and circumstances) that, notwithstanding the automatic extension to the Stability Period that would occur pursuant to Clause 0, it will not have a reasonable opportunity to achieve the Real Hurdle Rate of Return over the remainder of the life of mine (as extended) and wishes to request GRZ to grant a further extension to the Stability Period (in excess of that provided for in Clause 0), supporting documentation in sufficient detail to substantiate such request (including, without limitation, a calculation of KCM's proposed Real Hurdle Rate of Return), for the purposes of Clause 2.1.27; and
- 2.1.7 a description of any conditions the approval of which by GRZ is a precondition to KCM's application and willingness to implement the Konkola Ore Body Extension Project (including a condition relating to any further extension to the Stability Period as described in Clause 2.1.6, if such further extension is a condition (and not merely a request)).

GRZ shall, within ninety (90) days of receipt of an application by KCM in accordance with Clause 0, grant its consent to the Konkola Ore Body Extension Project in accordance with the proposals submitted if:

- 2.1.8 KCM's environmental plan conforms to specifications and practices established by generally acceptable national standards for the management of the environment as it is affected by mining operations;
- 2.1.9 taking account of the size and nature of the proposed mining operations, KCM's proposals for the employment and training of Zambian citizens meet the criteria of Schedule 4;
- 2.1.10 neither KCM nor SmelterCo is in material and substantial breach of any conditions of any of their respective Large Scale Mining Licences or of any provision of the Act or regulations made thereunder or of this Agreement;
- 2.1.11 the Konkola Ore Body Extension Project would, if approved, entail production of a further two million six hundred and fifty thousand (2,650,000) tonnes of Copper Product (in excess of the budgeted production, not taking into account the implementation of the Konkola Ore Body Extension Project) over the duration of the proposed extended life of mine for the Konkola Ore Body; and

- 2.1.12 KCM's application does not include any conditions the approval of which by GRZ is a precondition to KCM's application and willingness to implement the Konkola Ore Body Extension Project (as described in Clause 2.1.7).

GRZ shall not reject an application without affording KCM full opportunity to consult with it and, should KCM so desire, to submit new or revised proposals either generally or in respect of any particular matter.

If, in the event of its application being rejected, KCM considers that the criteria set out in Clause 0 are satisfied, it may within two (2) months after receipt of the rejection notice elect to refer the matter to a Sole Expert (or Tribunal) for his (or its) determination pursuant to Clauses 20 or 21 respectively.

A determination of the Sole Expert (or Tribunal) made pursuant to Clause 0 shall have force and effect as follows:

- 2.1.13 if the Sole Expert (or Tribunal) determines that the criteria set out in Clause 0 are not satisfied, KCM shall be given a further period of ninety (90) days to re-submit the relevant part of the application to the Sole Expert (or Tribunal) (and/or, in the case of the criterion set out in Clause 2.1.10, to remedy the relevant breach of condition) should it choose to do so, in which case the provisions of Clauses 0 to Clause 0 shall apply *mutatis mutandis*; or
- 2.1.14 if the Sole Expert (or Tribunal) determines that the criteria set out in Clause 0 are satisfied, the application shall be deemed approved by GRZ in accordance with the provisions of Clause 0.

If GRZ approves KCM's application pursuant to Clause 0 or is deemed to do so pursuant to Clause 2.1.14, such approval shall be irrevocable, provided always that:

- 2.1.15 such approval shall be revocable at any time prior to commencement of implementation of the Konkola Ore Body Extension Project in the event that it becomes apparent that any fact or assumption on which such application was based is materially inaccurate (and, for the purposes of this Clause 2.1.15, a fact or assumption shall be materially inaccurate only if GRZ would not have approved the application had it been aware of such inaccuracy when it gave its approval); and
- 2.1.16 such approval shall be revocable at any time after implementation of the Konkola Ore Body Extension Project has commenced where such implementation of the Konkola Ore Body Extension Project is materially inconsistent with that contemplated in such application, provided always that suspension or termination of the Konkola Ore Body Extension Project by KCM in accordance with the other provisions of this Agreement, the Act and the Large Scale Mining Licences shall not constitute such a material inconsistency for the purposes of this Clause 2.1.16.

In the event that KCM disputes the grounds for any such revocation, it shall be entitled to refer the matter for resolution by a Sole Expert, whose determination shall be binding on the Parties.

Any proposals approved by GRZ, whether following their initial submission or following consultation between GRZ or KCM, and any proposals deemed to have been approved pursuant to Clause 2.1.14 and any proposals otherwise agreed to between GRZ and KCM shall, following such approval:

- 2.1.17 in the case of the proposals required by Clause 2.1.2 hereof, thereafter constitute the Approved Programme of Mining and Metal Treatment Operations for the purpose of this Agreement and the "programme of mining operations" for the purposes of the Act, and in accordance with Section 25(4)(a) thereof, shall be appended to and form a condition of the Konkola Large Scale Mining Licence *in lieu* of any such programme previously so appended (and pursuant to Section 46 of the Act, the Konkola Large Scale Mining Licence shall be deemed amended accordingly);
- 2.1.18 in the case of proposals required by Clause 2.1.3 hereof, thereafter constitute the Final Environmental and Social Management Plan for the purposes of this Agreement, and as such shall thereafter form Schedule 3 replacing the previous Schedule 3 for all subsequent purposes of the Agreement. These same proposals shall thereafter also constitute KCM's environmental plan for the purposes of the Act and, in accordance with Section 25(4)(b) thereof, shall be appended to and form a condition of the Konkola Large Scale Mining Licence *in lieu* of the previously appended plan (and pursuant to Section 46 of the Act, the Konkola Large Scale Mining Licence shall be deemed amended accordingly); and
- 2.1.19 in the case of proposals required by Clause 2.1.5 hereof, thereafter constitute the Employment and Training Plan for the purposes of this Agreement and as such shall form Schedule 4, replacing the previous Schedule 4 for all subsequent purposes of this Agreement. These same proposals shall constitute KCM's proposals for the employment and training of citizens of Zambia for the purposes of the Act and, in accordance with Section 25(4)(c) thereof, shall be appended to, and form a condition of the Konkola Large Scale Mining Licence in lieu of the previously appended plan (and pursuant to Section 46 of the Act, the Konkola Large Scale Mining Licence shall be deemed amended accordingly).

GRZ confirms that it considers any proposals approved by GRZ, whether following their initial submission or following consultation between GRZ and KCM, any proposals otherwise agreed to between GRZ and KCM, the proposed mining, smelting and refinery practices described in the Approved Programme of Mining and Metal Treatment Operations and any proposals approved by it in accordance with Clause 0 (or deemed approved by it pursuant to Clause 2.1.14):

- 2.1.20 to comply with Section 25(1)(b), (c) and (f) of the Act in as much as:
 - (a) the area of land over which the licence is sought is not in excess of the area reasonably required to carry out the Approved Programme of Mining and Metal Treatment Operations;

- (b) the proposed practices shall be considered to ensure the efficient and beneficial use of the mineral resources of the relevant Mining Area; and
- (c) KCM shall be considered not to be in breach of any of the provisions of the Act; and

2.1.21 not to constitute "wasteful mining practices" for the purpose of Section 81 of the Act and GRZ (either on its own behalf or through the Minister or the Director of Mines or the Director of Mine Safety) shall not allege that KCM is using wasteful mining practices if KCM is conducting mining in accordance with the mining practices specified in the Approved Programme of Mining and Metal Treatment Operations.

This confirmation is without prejudice to the rights of the Director of Mine Safety (acting on behalf of GRZ) to determine that mining practices not described (or reasonably inferred from the practices described) in the Approved Programme of Mining and Metal Treatment Operations constitute wasteful mining practices for the purposes of Section 81 of the Act. Nothing in this Clause 0 shall prevent or restrict or otherwise limit GRZ from taking all actions within its power to protect public health and safety.

Subject to the terms of this Agreement, this Agreement shall remain in force for a period equal to the term of the Large Scale Mining Licences and for such further period as the Large Scale Mining Licences may be renewed from time to time provided that, where KCM, at the expiry of the initial period on 31 March 2025, applies to GRZ for the renewal of any of the Large Scale Mining Licences and:

2.1.22 GRZ rejects the application for renewal; or

2.1.23 any of such Large Scale Mining Licences are renewed in a manner other than in accordance with KCM's application for renewal under Section 26(3) of the Act,

KCM may refer the dispute to a Sole Expert in accordance with Clause 20 for a determination as to whether GRZ's rejection of the application for renewal or any of the terms on which any such Large Scale Mining Licence is renewed is unreasonable. Upon receipt of the Sole Expert's determination that either GRZ's rejection of the application or the terms of the renewal are unreasonable, GRZ shall forthwith renew the relevant Large Scale Mining Licence in accordance with KCM's application for renewal under Section 26(3) of the Act and the term of this Agreement shall be extended for a period equal to the term of the renewal of the Large Scale Mining Licences.

The Stability Period shall terminate on 31 December 2009 notwithstanding that this Agreement may remain in force after such date, provided always that the Stability Period shall be extended:

2.1.24 where GRZ approves KCM's application pursuant to Clause 0 or is deemed to do so pursuant to Clause 2.1.14, pursuant to Clause 0; and

2.1.25 where KCM does not submit an application pursuant to Clause 0 or such application is submitted but not approved pursuant to Clause 0 or deemed approved pursuant to Clause 2.1.14, pursuant to Clause 0.

If GRZ approves KCM's application pursuant to Clause 0 or is deemed to do so pursuant to Clause 2.1.14 and Vedanta are in compliance with their obligations under the Shareholders' Agreement, the Stability Period shall be extended automatically upon such approval being given or deemed to have been given:

2.1.26 by fifty per cent. (50%) of the period by which the Konkola Ore Body Extension Project would extend the life of mine; and

2.1.27 in the event that:

(a) KCM's application included a request for a further extension to the Stability Period as described in Clause 2.1.6; and

(b) the Minister grants such request in writing when giving such approval or upon such approval being deemed given,

by a period of time equal to such further extension, provided always that, although GRZ agrees that the Minister shall consider any request for such further extension in good faith, KCM acknowledges that the granting of such further extension shall be within the Minister's sole discretion.

In circumstances where the Stability Period has not been extended pursuant to Clause 0 but KCM has provided evidence to the reasonable satisfaction of GRZ that, during the five (5) year period from 1 January 2013 to 31 December 2017, more than one hundred and seventy five thousand (175,000) tonnes of Copper Product per annum in each such year may be extracted pursuant to the Large Scale Mining Licences (and, if applicable, from the areas adjacent to the land covered by the Large Scale Mining Licences), the Stability Period shall be extended until 30 April 2013.

3. RIGHTS TO EXPORT AND IMPORT

Subject to Clause 4, compliance with normal licensing and administrative procedures in Zambia relating to imports and the payment of applicable duties and taxes not otherwise exempted or deferred pursuant to this Agreement, KCM may import, subject to the issuance of any requisite licences by GRZ, the grant of which shall not be unreasonably withheld or delayed, materials, equipment and services to be used in implementing the Scheduled Programmes, provided that the import of such materials, equipment and services would not give rise to a breach or result of the kind specified in Clause 3.1.1(a) or (b) and GRZ has notified KCM accordingly.

KCM may market both Mine Products and Copper Product and may export Copper Product (but, save where Clause 0 applies, shall not export Mine Products). KCM shall have sole control and management of sale of such Copper Product, including in relation to forward selling and shall assume all risks therefor, except to the extent that:

3.1.1 an export of Copper Product (or, where Clause 0 applies, Mine Products) to a particular country would:

(a) breach an obligation of GRZ arising under international law (including mandatory sanctions imposed by the United Nations); or

- (b) result in dealing or contracting with nationals of a state with which GRZ is in a state of declared or undeclared war,

and GRZ has notified KCM of such facts accordingly;

- 3.1.2 nationals or residents of Zambia willing and demonstrably able to purchase such Copper Product (or, where Clause 0 applies, Mine Products) in United States dollars payable offshore or in Zambia (such payment to be at the direction of KCM) at the market rate are discriminated against in comparison with foreign nationals or overseas residents in so doing provided that this Clause 3.1.2 shall not operate so as to require KCM, in any way, to prefer nationals or residents of Zambia, incur any greater cost, receive or make payment in any currency or country (other than a currency and country specified by KCM) accept a different standard of work or otherwise suffer any prejudice; or
- 3.1.3 an order has been made by the Minister on KCM pursuant to Section 69 of the Act and remains in force.

4. SUPPLY AND PROCUREMENT

KCM shall, on a regular basis, and in any event no less than annually, identify and invite registration of businesses in Zambia, by reasonably effective means which would ensure adequate dissemination of the registration opportunity and which shall include advertisement in the local press and on KCM's website or such other effective means as may be available from time to time thereafter, which are demonstrably capable of supplying materials, equipment and services of a reasonably acceptable standard to KCM and satisfy the criteria set forth in Clause 0.

The supply of materials, equipment and services may be tendered for and procured internationally without restriction, provided that:

- 4.1.1 where such materials, equipment and services are procurable within Zambia from businesses registered pursuant to Clause 0, such businesses shall have the opportunity to tender and, if the initial tender submission from such business meets the specifications of the invitation to tender and such businesses are demonstrably capable of supplying the particular materials, equipment or services which are the subject of the tender, such businesses shall not be discriminated against in comparison with international suppliers; and
- 4.1.2 in the event of parity between the initial tender submissions from businesses registered pursuant to Clause 0 and from international businesses, including consideration of the matters referred to in Clauses 4.1.3 and 4.1.4, KCM shall be obliged to award the tender to the business registered pursuant to Clause 0.

When calling for tenders from contractors and suppliers, KCM shall invite tenders from Zambian contractors and suppliers where, to the best of KCM's knowledge (all businesses registered pursuant to Clause 0 shall be deemed to be within the knowledge of KCM provided that KCM shall only be required to send the invitation to tender to the address of the contractor or supplier (as the case may be) on the register at that time);

- 4.1.3 the contractors have proven ability and reputation in:
- (a) performing work of a similar nature, quality and size to that required by KCM; and
 - (b) completing such work within the specified time period; and
- 4.1.4 the suppliers are established, recognised and reputable suppliers of materials and/or equipment and/or services and have previously marketed or distributed such materials and/or equipment and/or services (as applicable).

Nothing contained in Clauses 0 to 0 shall operate so as to require KCM, in any way, to incur any greater cost, accept an inferior standard of work, accept a delay in supply or otherwise suffer any prejudice.

In assessing the tenders from local contractors and suppliers, KCM shall consider the extra costs it would incur if it were to grant the contract to a foreign supplier or contractor. These extra costs shall include, without limitation, any wharfage costs, shipping costs, stevedoring costs, customs clearance costs, customs duties, and demurrage charges.

In determining the denomination and currency of payment of the obligations of any business pre-qualified pursuant to Clause 0 to whom a contract is awarded pursuant to this Clause 4, KCM shall continue to recognise the voluntary code of conduct of the Zambia Business Forum in relation to compliance with currency regulations.

KCM shall submit to GRZ every twelve (12) months a written report specifying:

- 4.1.5 the number of businesses registered pursuant to Clause 0;
- 4.1.6 the number of tenders received from businesses registered pursuant to Clause 0;
- 4.1.7 the number of tenders received from businesses not registered pursuant to Clause 0;
- 4.1.8 a breakdown of tenders awarded to businesses registered pursuant to Clause 0 compared with businesses not so registered, by way of percentage and the total value of tenders;
- 4.1.9 where a tender was received from a business registered pursuant to Clause 0 and the tender was awarded to a business not so registered on grounds other than cost; and
- 4.1.10 where KCM has taken strategic measures in relation to supply and procurement during the first twelve (12) months after the date hereof as contemplated in Clause 0, an explanation of how such strategic measures were intended to increase the long-term competitiveness within the local supply and procurement market in Zambia,

provided that the content of such reports shall be reviewed from time to time.

The Parties acknowledge the importance of increasing the long-term competitiveness within the local supply and procurement market in Zambia and agree that, notwithstanding any other

provision of this Clause 4, KCM shall be entitled, for a period not exceeding twelve (12) months from the date hereof, to take strategic measures in relation to supply and procurement which, but for this Clause 0, would or might be a breach of the foregoing provisions of this Clause 4, in order to achieve this aim.

The Parties further acknowledge the importance of improving the quality of goods and services supplied to KCM and, without prejudice to any other provision of this Agreement, to the extent that KCM wishes to source such goods or services from suppliers and contractors located outside Zambia, GRZ undertakes to consider in good faith all visa and other applications from such suppliers and contractors and their respective employees and their dependants made from time to time under applicable immigration law.

5. LOCAL BUSINESS DEVELOPMENT

KCM shall:

- 5.1.1 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 KCM;
- 5.1.2 conduct an annual review of progress being made on the implementation of the Local Business Development Programme and make any variations to it as may be reasonably required by changing circumstances from time to time;
- 5.1.3 employ one or more persons full time who are experienced in setting up and managing small business enterprises to:
 - (a) assist Zambian citizens who wish to or have set up businesses to offer services to KCM and the Facilities;
 - (b) assist in the implementation of the Local Business Development Programme and variations thereof;
 - (c) liaise with the appropriate officials from GRZ;
 - (d) compile and maintain the register referred to in Clause 0; and
 - (e) provide advice and assistance in the development and implementation of long term business enterprises which can continue after the Approved Programme of Mining and Metal Treatment Operations is completed; and
- 5.1.4 inform the GRZ nominee on the KCM Board of Directors at least annually on the implementation and results of the Local Business Development Plan,

in each case in the same manner and to the extent such functions are being carried out by KCM as at the date hereof.

Nothing in Clause 0 shall oblige KCM to grant or lend any money to, or to contract with, retain or, save as expressly provided in Clause 5.1.3, employ any specific person or organisations.

KCM may, with the consent of GRZ (which consent shall not be unreasonably withheld or delayed), amend or alter the Local Business Development Programme pursuant to Clause 5.1.2 with a view, *inter alia*, to securing the maximum benefit to the establishment of Zambian businesses from the Facilities. If KCM is unable to comply with some or all of the Local Business Development Programme as a result of:

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

then such non-compliance shall not constitute a default under this Clause 5 or a breach of the conditions of the Large Scale Mining Licences. KCM shall promptly give notice to GRZ of alternative or revised plans for the Local Business Development Programme.

Should KCM give notice pursuant to Clause 0, GRZ shall within thirty (30) days either:

- 5.1.7 approve those alternative or revised plans; or
- 5.1.8 meet with KCM to discuss and agree upon the alternative or revised plans.

If the discussions under Clause 5.1.8 do not lead to GRZ's approval of alternative or revised plans and KCM considers GRZ's decision to be unreasonable, KCM may elect to refer the reasonableness of GRZ's decision to a Sole Expert in accordance with Clause 20.

If the Sole Expert determines that GRZ's decision is not unreasonable, the Sole Expert shall identify to KCM the changes to the Local Business Development Programme as will be necessary to bring such programme into compliance with GRZ's requirements in this regard. However, if the Sole Expert determines that GRZ's decision is unreasonable, the Sole Expert shall declare its determination to both parties and the proposed amendment or alteration to the Local Business Development Programme shall be deemed approved.

6. EMPLOYMENT AND TRAINING PLAN

KCM shall comply in all material respects with the Employment and Training Plan.

Subject to KCM complying at all times with any and all applicable labour or such other relevant legislation of general application as may be in force from time to time, KCM may with the consent of GRZ (which consent shall not be unreasonably withheld) amend or alter the Employment and Training Plan (upon giving notice to GRZ of the alternative or revised plans for the Employment and Training Plan), with a view to providing employees of KCM with improved opportunities to develop their potential to contribute to the operations of KCM.

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

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

then such non-compliance shall not constitute a default under this Clause 6 or a breach of the conditions of the Large Scale Mining Licences and KCM may give notice of alternative or revised plans to that part of the Employment and Training Plan affected.

KCM may further give notice of alternative or revised plans to part or all of the Employment and Training Plan if, in the reasonable opinion of KCM, such alternative or revised plans are necessary to improve productivity or the financial condition of KCM, or to enable KCM to implement the Approved Programme of Mining and Metal Treatment Operations in accordance with the timetable contained therein.

Should KCM give notice pursuant to Clauses 0 to 0, GRZ shall within thirty (30) days, either:

- 6.1.3 approve those alternative or revised plans; or
- 6.1.4 meet with KCM to discuss and agree upon the alternative or revised plans.

If the discussions under Clause 6.1.4 do not lead to GRZ's approval of alternative or revised plans and KCM considers GRZ's decision to be unreasonable, KCM may elect to refer the reasonableness of GRZ's decision to a Sole Expert in accordance with Clause 20. If the Sole Expert determines that GRZ's decision is not unreasonable, he shall identify to KCM the changes to the Employment and Training Plan as will be necessary to bring such programme into compliance with GRZ's requirements in this regard and the Employment and Training Plan shall be amended accordingly. However, if the Sole Expert determines that GRZ's decision is unreasonable, the Sole Expert shall declare his determination to both parties and the proposed amendment or alteration to the Employment and Training Plan shall be deemed approved. For the avoidance of doubt, any such amended plan following the determination by the Sole Expert, provided it complies with all relevant legislation, shall be deemed to have been approved by the Minister for the purposes of Section 25 1(e) and Section 25(4) of the Act.

KCM shall not, save as provided below, be restricted in its employment, selection, assignment or discharge of personnel provided however, that the employment and the terms and conditions of such employment and the discharge or disciplining of personnel within Zambia shall be carried out in compliance with:

- 6.1.5 the laws and regulations of Zambia which are, from time to time, of general application;
- 6.1.6 the Collective Agreements; and
- 6.1.7 the terms of individual employment contracts from time to time.

Notwithstanding the provisions of Clauses 0 to 0, KCM shall amend the Employment and Training Plan on a regular basis, and no less than annually, to identify a minimum number of employees necessary to conduct Normal Operations for the forthcoming twelve (12) month period. KCM will ensure that the number of its employees will not be reduced below such levels without ninety (90) days' prior notification to GRZ.

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

KCM acknowledges GRZ's policy to attract qualified Zambian citizens working overseas back to employment within the Zambian mining industry. In order to facilitate the fulfilment of this policy, KCM shall make all reasonable efforts in its recruitment and employment of employees in professional, managerial, engineering and scientific grades (including but not limited to taking steps such as advertising positions in international press and trade journals likely to have circulation amongst suitably qualified potential employees) to bring to the attention of such qualified Zambians positions of employment available within KCM. Nothing in this Clause 0 shall oblige KCM to offer employment to, employ or retain any specific person.

KCM shall recognise, for collective bargaining purposes:

- 6.1.8 the trade union(s) that at the relevant time represent(s) the employees of KCM; and
- 6.1.9 the Collective Agreements.

Subject to Clauses 0 to 0, in respect of any employment vacancies which arise in KCM from time to time, provided that KCM has:

- 6.1.10 sought to identify, by reasonably effective means which would ensure adequate dissemination of the fact of the existence of such vacancies (which shall include advertisement for a reasonable period of time in the local press and on KCM's website or such other effective means as may be available from time to time thereafter); and
- 6.1.11 offered the relevant positions to all suitably qualified applicants who are Zambian citizens,

KCM may fill such vacancies with non-Zambian citizens. KCM shall, in respect of such non-Zambian citizens, provide GRZ with the requisite information concerning the education, experience and other qualifications of the personnel concerned as required by law or practice in Zambia.

Notwithstanding the foregoing provisions of this Clause 6, and without prejudice to Clause 0 but subject to Clause 0, KCM may bring into Zambia non-Zambian citizens to perform those functions set out in Schedule 8 (provided only that the performance of such functions by such non-Zambian citizens does not result in the dismissal of any individuals employed by KCM as at the date hereof) for a period not exceeding three (3) years from the date of this Agreement.

Without prejudice to Clause 0, in the event that the board of directors of KCM considers, on the basis of its experience of managing KCM's operations after the date of this Agreement, that there are functions in addition to those identified in Schedule 8 which should be performed by non-Zambian citizens, KCM shall be entitled at any time during the first six (6) months after the date of this Agreement to submit to GRZ (acting through the GRZ Director) a list of such functions for approval. Such list shall contain no more than twenty-five (25) such functions (in addition to those identified in Schedule 8) and shall be accompanied by such documentation in support of KCM's request as KCM sees fit. GRZ shall be entitled to approve all, some only or none of such functions in its sole discretion and shall procure that the GRZ Director responds to KCM in this regard promptly after receiving such list from KCM. Upon such approval being given, such functions as have been approved shall be subject to the same immigration

procedures as apply to, and shall otherwise be treated in all respects for the purposes of this Agreement in the same way as, those functions identified in Schedule 8 (and referred to in Clause 0), as if they had been included in Schedule 8 (and referred to in Clause 0) at the date of this Agreement.

GRZ shall, in respect of any non-Zambian citizens identified by KCM pursuant to Clauses 0 or 0 or approved by GRZ pursuant to Clause 0 (if any), consent (such consent not to be unreasonably withheld or delayed) to and cause all necessary permits (including entry and exit permits, work permits, visas and such other permits or permissions as may be requested) to be issued to such persons and their entitled dependants promptly and without hampering the continuous and efficient performance of KCM's operations and its obligations under this Agreement (including allowing such non-Zambian citizens the right to import and export personal effects free of taxes), provided always that such non-Zambian citizens:

- 6.1.12 qualify for entry under immigration laws, regulations and practices of general application within Zambia as in force from time to time (other than by reason of a prohibition inconsistent with the provisions of this Agreement) relating to previous criminal convictions, public health and national security (but excluding any laws, regulations and practice relating to the education, experience and qualifications of such non-Zambian citizens); and
- 6.1.13 in relation only to those non-Zambian citizens identified by KCM pursuant to Clause 0 have the educational qualifications and sufficient experience and any other necessary qualifications to perform the relevant functions as required under immigration laws, regulations and practice of general application within Zambia as in force from time to time (other than by reason of a prohibition inconsistent with the provisions of this Agreement).

The Ministry shall use its best endeavours to ensure that any dispute regarding whether any such permits should be issued shall be resolved as swiftly as possible in accordance with the applicable dispute resolution procedures in connection therewith in place from time to time.

7. **INSURANCE**

The terms and conditions of the insurance by KCM of its assets and potential liabilities shall provide coverage:

- 7.1.1 on terms no less comprehensive in relation to the risks covered; and
- 7.1.2 for an insured amount no less,

than that set out in Schedule 5 and shall in any event carry coverage in accordance with the requirements of the Act and be consistent with Good Mining, Metal Treatment and Environmental Practices.

GRZ agrees that the insurance cover specified in Schedule 5 is that which, as at the date hereof, is required by the Director of Mines pursuant to Section 101(3) of the Act. In the event that GRZ intends to issue a statutory instrument referred to in Section 101(1) of the Act or the Director of Mines as aforesaid intends to make a direction, in either case applicable to and

binding upon KCM and inconsistent with Schedule 5, GRZ shall provide a draft of the statutory instrument or direction, as the case may be, to KCM which shall confirm in writing to GRZ no later than thirty (30) days following receipt by KCM of such draft whether or not it considers the insurance coverage, the amount of such insurance coverage or the types of risks specified in such draft to be:

7.1.3 unreasonable; or

7.1.4 inconsistent with Good Mining, Metal Treatment and Environmental Practices.

If KCM does so object, the dispute shall be referred to a Sole Expert in accordance with Clause 20 for determination as to whether the draft is unreasonable or inconsistent with Good Mining, Metal Treatment and Environmental Practices. In the event the Sole Expert determines that the draft statutory instrument or direction by the Director of Mines is unreasonable or so inconsistent, the draft statutory instrument or direction shall be withdrawn or amended to be consistent with the determination of the Sole Expert prior to issuance or implementation by GRZ.

GRZ shall be advised of the insurance policy or policies in place which comply with Clause 0 and Schedule 5 and KCM shall forward copies to GRZ whereupon GRZ, if appropriate, shall acknowledge that such insurances constitute the insurance coverage prescribed by any statutory instrument issued under Section 101 of the Act and/or required by or a direction of the Director of Mines pursuant to Section 101(3) of the Act. GRZ undertakes to permit, to the extent necessary, insurers resident in Zambia to assign their rights under any re-insurance contracts to which they are party to KCM or any lender to KCM.

8. SUSPENSION OR CURTAILMENT OF PRODUCTION

Subject to the succeeding provisions of this Clause 8, the parties acknowledge that KCM's right to suspend or curtail production is governed by Section 28 of the Act and that, in the event of any such suspension or curtailment, the Minister may, subject to the provisions of this Agreement, exercise powers under Section 28(3) of the Act.

GRZ hereby agrees that:

8.1.1 the Minister's approval shall be given (or failing which shall be deemed given) in accordance with Section 28(3)(a) of the Act upon compliance by KCM with this Clause; and

8.1.2 in such event, any direction capable of being given pursuant to Section 28(3)(b) of the Act shall only be given either:

(a) in compliance with this Clause; or

(b) if KCM has not complied with any provision of this Clause and has not remedied such non-compliance within thirty (30) days of being given notice of such non-compliance by GRZ.

KCM may, by giving written notice to GRZ, elect to suspend or curtail production in respect of any IBU or IBUs if, in relation to that IBU or those IBUs:

- 8.1.3 KCM reasonably considers it is or will be uneconomic to continue production without a curtailment or suspension;
- 8.1.4 a Force Majeure Event has occurred; or
- 8.1.5 KCM reasonably considers suspension or curtailment is or will be in the interests of public health or safety or that the conduct of Normal Operations may result in significant damage to the ecology or the environment not contemplated in the Final Environmental and Social Management Plan.

As soon as reasonably practicable after giving notice under this Clause 0, KCM shall submit in the case of a suspension or curtailment under Clause 8.1.3, a report giving details of historic and projected Operating Costs and Revenues giving the reasons why, in its opinion, it is necessary to suspend or curtail and demonstrating how it is or will be uneconomic to continue production; in the case of a suspension or curtailment under Clause 8.1.4, a report specifying the Force Majeure Event and stating how or why the Force Majeure Event necessitates the proposed suspension or curtailment; and in the case of a suspension or curtailment under Clause 8.1.5, a report specifying why suspension or curtailment is in the interests of public health or safety or why significant damage to the ecology or the environment not contemplated in the Final Environmental and Social Management Plan may occur.

Where pursuant to Clause 0 or otherwise in accordance with Section 28 of the Act, KCM has elected to suspend production, it shall maintain, subject to fair wear and tear, the assets comprising the IBU or IBUs so as to prevent significant deterioration until Normal Operations are resumed (and shall use funds available under the Shortfall Funding Commitment to the extent necessary to enable it to perform its obligations pursuant to this Clause 0). Without prejudice to the generality of the foregoing, such maintenance obligations shall include, without limitation, the obligation to:

- 8.1.6 continue to comply with its environmental, health and safety obligations;
- 8.1.7 maintain and preserve the security of its physical assets;
- 8.1.8 pump water from its mines and otherwise maintain them in a state whereby Normal Operations can be resumed promptly upon cessation of their suspension or curtailment;
- 8.1.9 continue to pay salaries and other benefits to its employees; and
- 8.1.10 incur any other expenditure as is demonstrably necessary to enable it to ensure the preservation of the value of KCM as whole as a going concern notwithstanding the suspension or curtailment of Normal Operations,

provided always that nothing in this Clause 0 shall require KCM to incur any significant capital expenditure during a period of suspension or curtailment, whether or not such capital expenditure is contemplated in its then prevailing operating budget.

No later than six (6) months from the date on which KCM suspended or curtailed production pursuant to Clause 0 or otherwise in accordance with Section 28 of the Act and thereafter at no

longer than three (3) month intervals until Normal Operations are resumed, KCM shall submit a further report showing, in the case of a suspension or curtailment under Clause 8.1.3, its projection of the Costs to Resume Operations and of projected Operating Costs and Revenues or, in the case of a suspension or curtailment under Clause 8.1.4 or Clause 8.1.5, a report specifying the current status of the Force Majeure Event, why suspension or curtailment continues to be in the interests of public health or safety or why and how significant damage to the ecology or the environment not contemplated in the Final Environmental Management Plan may occur or has occurred as aforesaid.

If KCM and the Minister disagree, based on a report submitted pursuant to Clause 0 as to whether it is economic to resume operations and in the cases of Clause 8.1.4 or Clause 8.1.5, whether the Force Majeure Event no longer necessitates suspension or curtailment, or whether the (risk of) damage to public health or safety, or (risk of) damage to the ecology or the environment has ceased, then either Party may elect to refer the matter for determination by a Sole Expert in accordance with Clause 20 in the light of Good Mining, Metal Treatment and Environmental Practices and the Sole Expert's determination shall be binding on the Parties and GRZ undertakes to procure that the Minister shall exercise his discretion under Section 28 of the Act accordingly.

In assessing whether continuing production should be curtailed or suspended because it is uneconomic or in assessing whether it is economic to resume (whether in part or fully) such production (when curtailed or suspended), the test to be considered by KCM, the Minister or the Sole Expert (as the case may be) is that of prudent business operations in the mining industry in the context of KCM's operations or the relevant part of its operations. In this regard, KCM, the Minister or the Sole Expert (as the case may be) shall consider (or be directed to consider), *inter alia*:

- 8.1.11 whether the operations, or in the case of a curtailment, the relevant part of the operations is generating or may reasonably be expected to generate sufficient income to meet all of its operating and maintenance costs; and
- 8.1.12 whether further capital is required and, if so, whether KCM may reasonably be expected to generate the Real Hurdle Rate of Return on any such capital and, if further capital comprises debt, whether such debt is reasonably likely to be available on commercial terms from lenders experienced in international mining financing,

provided always that it shall be irrelevant to such assessment that it is or may be more economic or less uneconomic to undertake such production at facilities not owned by KCM.

Nothing herein contained shall prejudice KCM's rights to suspend or curtail operations under Section 28 of the Act for any other reason and the exercise by the Minister of his powers under that section.

9. SOCIAL ASSETS AND MUNICIPAL INFRASTRUCTURE SERVICES

The Parties acknowledge that KCM has reached agreement with the Mineworkers Union of Zambia and the National Union of Mine and Allied Workers regarding the levels of

remuneration and other employment benefits which shall be provided to KCM's employees and their registered dependants. These benefits include the provision or procurement of certain medical and educational services and access to other recreational assets.

GRZ agrees to use its best endeavours to facilitate the continued provision of the following municipal infrastructure services by the relevant private companies and local councils and KCM agrees that it will co-operate with such private companies and local councils in ensuring that any transitional arrangements to be agreed with KCM and put in place for recovering the costs of such services from KCM's employees are effective:

- 9.1.1 water;
- 9.1.2 sewerage services;
- 9.1.3 solid waste;
- 9.1.4 domestic electricity supply;
- 9.1.5 street lighting;
- 9.1.6 storm water drainage;
- 9.1.7 roads;
- 9.1.8 markets; and
- 9.1.9 cemeteries.

In relation to the municipal services used by KCM, which include those services set out in Clauses 9.1.5 to 9.1.9:

- 9.1.10 GRZ and KCM acknowledge that the cost to KCM of the municipal services in aggregate at the date of this Agreement is approximately one million United States dollars (US\$1,000,000) per annum; and
- 9.1.11 GRZ undertakes to procure that the costs payable by KCM for such services are not increased in United States dollar terms during the Stability Period (save in line with United States dollar inflation).

10. RECORDS AND OPERATING REPORTS

KCM shall, pursuant to Section 104 of the Act, keep GRZ, through the Ministry, advised concerning KCM's operations through submission of annual reports, the first report to be submitted three months after the first financial year end of KCM following the date of this Agreement, as to the progress and results of KCM's mining and smelting operations and prospecting and appraisal activities under this Agreement (such reports to contain any information relating to the progress of operations in each Mining Area as the Ministry may from time to time reasonably require having given at least thirty (30) days' advance notice).

Pursuant to Sections 2(d) and (e) of the Fourth Schedule to the Act, KCM shall provide quarterly reports to the Ministry broken out on a mine by mine basis:

- 10.1.1 quantities of ore mined and average head grades;

- 10.1.2 quantities of waste mined;
- 10.1.3 quantities of copper and cobalt concentrates produced and quantities of contained copper and cobalt;
- 10.1.4 quantities of own Mine Products produced and quantities sold;
- 10.1.5 prices obtained on sales of own Mine Products;
- 10.1.6 quantities of sulphur contained in pyrite mined and quantities of pyrite concentrates produced;
- 10.1.7 operating costs; and
- 10.1.8 progress in implementing the Scheduled Programmes, the extent of any continuing non-compliance by KCM with Environmental Laws and progress made in remedying this in accordance with the Final Environmental and Social Management Plan.

KCM shall file with the Ministry annual reports summarising any geological and metallurgical investigations and such other material data as may be obtained from any prospecting activities.

All information furnished to GRZ pursuant to Clause 0 shall be in the English language and monetary information shall be furnished in US dollars, provided always that if, as a matter of applicable law or prevailing practice, such information should be furnished in Zambian Kwacha (or if GRZ so requests on reasonable notice from time to time), then KCM shall convert such information accordingly.

KCM shall maintain all original records and reports relating to its activities and operations under this Agreement at its principal office in Zambia. These records (other than those which are the subject of legal professional privilege) and reports shall be open to inspection by GRZ through an authorised representative during normal working hours upon GRZ giving reasonable notice of its intention to inspect the records and reports provided that GRZ may not require more than two (2) such inspections in any twelve (12) month period (for the avoidance of doubt any inspections required to be carried out pursuant to any law, statutory instrument or other regulation of general application (other than inspections required under Section 104 of the Act) shall be additional to and shall not be included within the two (2) inspections permitted pursuant to this Clause). Such records and reports shall be maintained in the English language. All such records and reports shall be retained by KCM for a period of six (6) years.

One copy of any records, reports, plans, maps, charts, accounts, and information which KCM is or may be from time to time reasonably required to supply under the provisions of this Agreement shall be supplied at the expense of KCM.

Compliance by KCM in all material respects with the provisions of this Clause 10 shall be deemed to constitute compliance with the provisions of Section 104 and the Fifth Schedule of the Act and no further reports, records or information shall be required to be submitted, kept, produced, retained, delivered or otherwise made available for inspection under those provisions of the Act.

GRZ undertakes in relation to any Confidential Information which it may receive from KCM pursuant to this Agreement that it shall (and shall procure that its relevant employees and officers shall), subject as may be required by law:

- 10.1.9 use all such Confidential Information only for the purpose for which it was supplied to GRZ and not for any other purpose;
- 10.1.10 not disclose and treat and safeguard as strictly private and confidential all such Confidential Information; and
- 10.1.11 ensure proper and secure storage of all such Confidential Information.

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

PART C
UNDERTAKINGS NECESSARY FOR OPERATIONS

11. FOREIGN EXCHANGE

The Parties acknowledge that under legislation and practice currently in force in Zambia, subject to Clause 0, KCM is free to:

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

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

- 11.1.4 retain both outside Zambia and within Zambia (at KCM's discretion), in accounts established for that purpose, foreign currency, and to have paid to it and maintain in such accounts amounts arising from all verifiable sources associated with the Business, including but not limited to the following:
 - (a) sale proceeds;
 - (b) payments made by insurers or re-insurers not resident in Zambia under contracts of insurance in KCM's favour;
 - (c) profits;
 - (d) proceeds of any disposal of capital assets;
 - (e) foreign loan proceeds;
 - (f) proceeds of the issue of share capital (payable by non-residents of Zambia);
 - (g) penalties and damages under contracts (payable by non-residents of Zambia); and
 - (h) proceeds of swaps and hedges (payable by non-residents of Zambia);
- 11.1.5 use freely, subject to Clause 0, the foreign currency accounts maintained by KCM to:
 - (a) service payments of principal and interest, service charges and other fees and expenses in respect of any loans arranged with non-Zambian entities;
 - (b) make payments due to suppliers outside Zambia for the supply of goods and services to KCM;

- (c) finance the payment of dividends to shareholders, interest and principal on loans advanced to KCM by its shareholders or payments made by or on behalf of ZCCM in repayment of amounts advanced under repayable carried interest arrangements applicable to it; and
 - (d) pay employees;
- 11.1.6 remit profits (in currency or otherwise) and repatriate capital (in cash or assets) outside Zambia (which right shall be extended to KCM's shareholders in respect of the proceeds of the disposal or liquidation of all or part of their investment/shares in KCM);
 - 11.1.7 fund its operations from whatever sources are deemed appropriate (including rights to borrow funds wherever it chooses and in whatever currency, subject to Clause 0) and to invest funds without restrictions;
 - 11.1.8 pay for processing of Mine Products outside Zambia (to the extent permissible under this Agreement);
 - 11.1.9 use non-Zambian entities for the provisions of services to KCM (including without limitation insurance and re-insurance); and
 - 11.1.10 maintain an amount equal to thirty per cent. (30%) of all contributions to its pension funds, as well as any income or gains from such contributions, offshore. No restrictions shall apply to any pension funds maintained for expatriates. KCM shall not be discriminated against in comparison with other like mining and metal treatment operations in this regard.

KCM shall submit to the Central Bank:

- 11.1.11 within fifteen (15) days of the end of each calendar month:
 - (a) a statement of the foreign currency amounts repatriated to Zambia within the previous month from accounts maintained overseas by KCM;
 - (b) a statement of the balance of KCM's foreign currency accounts at the end of the previous month; and
 - (c) a forecast of the foreign currency amounts that KCM intends to repatriate to Zambia during the ensuing calendar month;
- 11.1.12 within five (5) months of the end of each year, audited financial statements which comply with Zambian law and regulations;
- 11.1.13 bi-annually (in December and June of each year) monthly projections for the forthcoming six (6) month period of:
 - (a) production, sales, earnings and total costs;
 - (b) all payments to foreign entities, including for goods and services and interest on capital or loans; and

- 11.1.14 any other information or reports as may be reasonably requested under section 54 of the Bank of Zambia Act of 1996.

In the absence of foreign exchange controls in Zambia, KCM shall have the same rights to buy and sell currencies from authorised dealers and enter into swaps and hedging arrangements (which expression shall include, without limitation, arrangements for taking out forward cover against local and other currency fluctuations or other fluctuations in incomes or costs or other expenses incurred as part of the management operations but shall not include Speculative Currency Transactions) with non-Zambian entities as other commercial concerns in Zambia. In the event foreign exchange controls were to be reimposed in relation to the purchase and sale of currencies (and without prejudice to KCM's rights under Clause 0), such controls shall not be applied to KCM in a manner less favourable to it than the manner in which they are generally applied to other large commercial concerns in Zambia. KCM shall be entitled to buy and sell foreign currency in accordance with such controls at rates of exchange no less favourable or otherwise prejudicial than those available to other commercial buyers and sellers of the currency concerned.

KCM shall remit to Zambia, and convert into Kwacha for credit to a bank account in the name of KCM, sufficient of its foreign currency earnings to pay such commitments as KCM may have incurred in Kwacha, but only to the extent KCM does not already have Kwacha available to meet such commitments (including, without limitation, taxes, royalties and customs duties and obligations to pay dividends to local shareholders payable in local currency, if applicable). KCM shall use its reasonable endeavours to notify the Central Bank of transfers of a substantial amount which are not in accordance with the normal pattern of transfers.

KCM shall not engage in or use any provisions of this Clause 11 or any authority or approval given by the Central Bank, to engage in Speculative Currency Transactions. For the avoidance of doubt, this Clause shall not prohibit or prevent normal risk management operations which shall be deemed to include the entering into of hedging agreements ordinarily utilised by mining companies in the international mining industry.

KCM shall ensure that any borrowings it may incur denominated in Kwacha shall not exceed five per cent (5%) of annual sales revenues as recorded in the latest set of audited annual accounts of KCM.

In the event KCM determines to sell foreign currency held by it, it shall not discriminate against the Central Bank if the Central Bank is demonstrably willing and able to purchase foreign exchange at market rates and on terms that are no less favourable to KCM than terms available from other buyers.

For the avoidance of doubt, nothing in this Clause 11 shall affect KCM's obligation to comply with applicable laws and regulations in Zambia in relation, *inter alia*, to:

- 11.1.15 money laundering;
- 11.1.16 disclosure of holdings in Kwacha and foreign currencies;
- 11.1.17 market manipulation; and

- 11.1.18 in the case of the circumstances referred to in Clause 0, procedures relating to the conduct of foreign currency transactions as at the date hereof, and, otherwise, such procedures in force from time to time.

12. ENVIRONMENTAL ISSUES

KCM will comply with the Final Environmental and Social Management Plan in accordance with the timetable contained therein and Good Mining, Metal Treatment and Environmental Practices to ensure the minimisation of any harmful effects of KCM's operations on the environment. KCM shall achieve the objectives specified in the Final Environmental and Social Management Plan no later than the date specified in the relevant plan for the achievement of such objectives.

GRZ acknowledges its agreement to the Final Environmental and Social Management Plan and its compliance with Section 24(3)(d) of the Act. GRZ further acknowledges that the Final Environmental and Social Management Plan complies with Section 25(1)(d) of the Act in that GRZ considers that they conform to specifications and practices established by national standards for the management of the environment as it is affected by mining and metal treatment operations.

Subject to compliance by KCM with the Final Environmental and Social Management Plan applicable from time to time in all material respects and save as provided in Clause 0 below, GRZ hereby confirms that it will not (for the Stability Period):

- 12.1.1 take any action (and will procure no action is taken by any of its Agencies) under, or in enforcing, any applicable Environmental Laws with the intent of:
- (a) securing an earlier and/or higher standard of compliance with Environmental Laws other than that envisaged by the timetable and conditions set out in, or imposing more onerous requirements than those specified in, the Final Environmental and Social Management Plan, the Enabling Legislation or the Enabling Statutory Instruments as applicable from time to time;
 - (b) imposing or charging fines or penalties in respect of Environmental Liabilities chargeable or payable under Environmental Laws (or enacting new fines and penalties in respect of matters which fall within the Final Environmental and Social Management Plan, in respect of matters for which exemptions have been granted to KCM or SmelterCo pursuant to the Enabling Legislation, to the Enabling Statutory Instruments or other Environmental Laws) and which are payable in respect of periods arising after the Effective Date in respect of KCM's non-compliance with Environmental Laws and where the Final Environmental and Social Management Plan provides for the remedy of the same within a specific timetable and that timetable has not yet expired;
 - (c) repealing or amending the Enabling Legislation or the Enabling Statutory Instruments or otherwise effect any changes thereto; or

- (d) imposing increased fines or penalties chargeable in respect of breach of Environmental Liabilities in excess of those applying on the Effective Date adjusted (where denominated in Kwacha) to take account of Zambian inflation since that date,

having (in the case of paragraphs (a) or (c) only) individually or cumulatively a Material Adverse Economic Effect.

In the event of non-compliance in all material respects with the Final Environmental and Social Management Plan, GRZ will, subject to Clause 0, cease to be bound by the provisions of Clause 0 and the Parties acknowledge that GRZ and its Agencies shall be free to take such action permitted under applicable law as it or they shall consider appropriate or necessary under, or in enforcing, applicable Environmental Laws.

Any dispute regarding non-compliance with the Final Environmental and Social Management Plan may be referred by either Party to a Sole Expert, within thirty (30) days of notice given by a Party to the other of its intention to refer the matter to the Sole Expert for determination in accordance with Clause 20.

The Minister on behalf of GRZ may:

12.1.2 only propose an amendment to the Final Environmental and Social Management Plan if:

- (a) the conduct of Normal Operations in accordance with the Final Environmental and Social Management Plan for whatever reason poses a material danger to public health and safety or may result in significant damage to the ecology of a Mining Area which was not anticipated in the existing Final Environmental and Social Management Plan and which cannot be addressed;
- (b) the environmental impact of Normal Operations shall prove substantially more adverse than anticipated in the Final Environmental and Social Management Plan; or
- (c) environmental standards that have been recommended for adoption by international or multinational environmental bodies are introduced subsequent to the date hereof and given effect under Zambian law, which, if KCM were to comply with such standards, could materially mitigate the environmental impact of Normal Operations; and

12.1.3 not propose an amendment to the Final Environmental and Social Management Plan which would result in KCM having liability for damage principally caused by events which occurred prior to Completion.

In the event of a variation of the Final Environmental and Social Management Plan proposed by the Minister on behalf of GRZ under the circumstances set forth in Clause 0, KCM undertakes to consider the proposed variation in good faith and, unless KCM serves a notice of objection on the Minister within thirty (30) days, it shall be deemed to have agreed the same. A notice of

objection shall include a written statement of the reasons in appropriate detail why KCM objects which may include:

- 12.1.4 its estimate of the direct costs to implement such change;
- 12.1.5 its analysis of the variation in the environmental impact that would be effected by such change; and
- 12.1.6 its appraisal of the economic and other effects of the change proposed by the Minister.

Following receipt of a notice of objection under Clause 0, the Minister shall, as soon as possible, inform KCM by notice in writing whether or not the Minister's proposal for variation of the Final Environmental and Social Management Plan is or is not withdrawn. In the event that the Minister's proposal for variation is not withdrawn it will be deemed to have been agreed unless KCM elects to submit for the determination of a Sole Expert the matter of whether the Minister's proposed variation is unnecessary or unreasonable with reference to Clause 0. Should KCM make that election, the determination of the Sole Expert will be binding on the parties with effect that:

- 12.1.7 if the Sole Expert determines that the Minister's proposed variation is unnecessary or unreasonable, the proposal for variation will be deemed to have been withdrawn; or
- 12.1.8 if the Sole Expert determines that the Minister's proposed variation is not unreasonable or unnecessary, the proposal will be deemed to have been agreed.

Where a variation to the Final Environmental and Social Management Plan proposed by the Minister has been agreed by KCM or is deemed to have been agreed by KCM pursuant to this Clause 12, the Final Environmental and Social Management Plan shall be amended accordingly.

Nothing in this Clause 12 shall affect or limit the powers of the Director of Mine Safety to take such emergency actions as the Director of Mine Safety considers reasonably necessary and which are within its jurisdiction and power for the purposes of safeguarding the lives or health of persons engaged in the operations of KCM.

KCM shall be entitled to amend the Final Environmental and Social Management Plan from time to time:

- 12.1.9 if in its view at any time the conduct of Normal Operations in accordance with the Final Environmental and Social Management Plan for whatever reason poses a material danger to public health and safety;
- 12.1.10 if in its view the impact of Normal Operations would be likely to result in significant environmental damage which was not anticipated in the Final Environmental and Social Management Plan; or
- 12.1.11 so as to reflect changes in operations and other circumstances considered to be appropriate by KCM provided that following such amendment:

- (a) the Final Environmental and Social Management Plan is in accordance with accepted environmental standards as applicable to Good Mining, Metal Treatment and Environmental Practices; and
- (b) such amendments will not result in GRZ's liability under the Environmental Liabilities Agreement being materially increased or in a liability thereunder being incurred or arising on a date earlier than would otherwise have been the case but for the making of such amendment (unless the effect of such earlier incurrence is to make it materially likely that GRZ's potential exposure to claims under the Environmental Liabilities Agreement will be reduced by a more than compensatory amount).

Prior to any formal proposal being made by KCM, it shall allow a period of four (4) calendar months for informal discussions of any proposed amendments to the Final Environmental and Social Management Plan. Following such discussions, KCM shall deliver a formal proposal to the Minister. If the Minister:

- 12.1.12 does not object to such formal proposal within thirty (30) days, the Approved Programme of Mining and Metal Treatment Operations shall be amended as set out in such formal proposal;
- 12.1.13 notifies KCM that, in his opinion, any part of such formal proposal would constitute a Major Change, the provisions of Clause 0 shall apply; or
- 12.1.14 notifies KCM that, in his opinion, any part of such formal proposal is unreasonable or unnecessary, Clause 0 shall apply.

Following receipt of a notice under Clause 12.1.14, KCM shall as soon as possible, inform GRZ by notice in writing whether or not (and to what extent) KCM's proposal for variation of the Final Environmental and Social Management Plan is or is not withdrawn. In the event (and to the extent) that KCM's proposal for variation is not withdrawn the matter of whether KCM's proposed variation is unnecessary or unreasonable shall be referred to a Sole Expert for determination. The opinion of the Sole Expert will be binding on the parties with effect that:

- 12.1.15 if the Sole Expert determines that KCM's proposed variation is unnecessary or unreasonable, the proposal for variation will be deemed to have been withdrawn; or
- 12.1.16 if the Sole Expert determines that KCM's proposed variation is not unnecessary or unreasonable, the proposal will be deemed to have been agreed.

Where a variation to the Final Environmental and Social Management Plan proposed by KCM has been agreed by GRZ or is deemed to have been agreed by GRZ pursuant to this Clause 12, the Final Environmental and Social Management Plan shall be amended accordingly.

Subject to Clause 0, GRZ further confirms that it will not take any action (and will procure no action is taken by any of its Agencies or its or their employees, officials or representatives) which would inhibit, prevent or render it impracticable for KCM to comply with the Final Environmental and Social Management Plan. GRZ also agrees that a Force Majeure Event

which renders compliance with the provisions of the Final Environmental and Social Management Plan impossible or impractical shall not constitute non-compliance provided that KCM shall, to the extent within its control, use all reasonable endeavours to bring such Force Majeure Event to an end.

Notwithstanding the provisions of this Clause 12, KCM shall, at the initiative of the minister responsible for the environment, use reasonable efforts to participate either individually or on an industry wide basis, in discussions regarding environmental standards in Zambia or any prospective changes therein on the basis that such participation will in no way qualify, restrict, abrogate or limit any rights that KCM has hereunder (including the rights to challenge amendments proposed by GRZ to the Final Environmental and Social Management Plan).

GRZ undertakes:

- 12.1.17 upon the enforcement of any security granted by KCM over or in respect of the ETB Cash Reserve Account or otherwise upon GRZ gaining access to the funds standing to the credit of the ETB Cash Reserve Account, to procure that all such funds are applied towards satisfaction of the ETB Liabilities; and
- 12.1.18 in the event of KCM's insolvency, to disapply or suspend or procure the disapplication or suspension of any mandatory provisions of any insolvency or other applicable legislation to the extent that such mandatory provisions would, but for such disapplication or suspension, operate in such a way as to prevent the application of funds standing to the credit of the ETB Cash Reserve Account as contemplated in Clause 12.1.17.

PART D
GENERAL STABILITY AND TAXATION

13. GENERAL STABILITY AND OPERATIONAL UNDERTAKINGS

GRZ undertakes that, during the Stability Period, it shall not in the case of:

- 13.1.1 legislation or regulations governing the regulation and management of companies, effect any changes thereto or to their application which would impose a requirement that the directors of KCM comprise a higher number of Zambian residents than that presently required by Section 208 of the Companies Act;
- 13.1.2 legislation or regulations governing the operation of mines or related activities but subject to Clause 12, effect any changes thereto or to their application which, individually or cumulatively, would have a Material Adverse Economic Effect;
- 13.1.3 regulations and procedures governing imports and exports within Zambia, effect any changes thereto or to their application which, individually or cumulatively, would have a Material Adverse Economic Effect;
- 13.1.4 legislation or regulations governing the terms and conditions of employment within Zambia, effect any changes thereto or to their application which would prevent KCM from:
 - (a) operating on a seven (7) days a week, twenty-four (24) hours a day, three hundred and sixty five (365) days a year basis; or
 - (b) negotiating with employees or relevant unions or engaging employees or terminating their contracts of employment in such a manner which would be likely to have a Material Adverse Economic Effect, individually or cumulatively.

GRZ further undertakes that, during the Stability Period, it shall not by general or special legislation or by administrative measures or decree or by any other action or omission whatsoever (other than an act of nationalisation such as is referred to in Clause 0) ("**GRZ Action**") vary, amend, cancel or terminate this Agreement or the rights and obligations of the Parties under this Agreement, or cause this Agreement or the said rights and obligations to be varied, amended, cancelled or terminated, or prevent or hinder performance of this Agreement by any party thereto, provided always that this Agreement and the rights and obligations of the Parties under this Agreement may be varied, amended, cancelled or terminated as expressly provided herein. GRZ undertakes that KCM and its officers, directors, employees and shareholders shall be held free and made exempt from any GRZ Action or any change in the law of Zambia which would, but for such freedom or exemption, adversely affect KCM's rights under, or KCM's ability to comply with its obligations under, this Agreement.

In the event that the Parties disagree as to whether any action (including changes to any legislation, regulations or procedures specified in Clauses 13.1.2 to 13.1.4) will have a Material Adverse Economic Effect, any Party may refer the disagreement for determination in

accordance with Clauses 19 and 21 but subject to Clause 22. In determining whether such changes would have a Material Adverse Economic Effect, regard shall be had to the individual and cumulative effect (whether adverse or beneficial) of such changes compared with the position at the Effective Date.

GRZ shall ensure (both during and after the Stability Period) that no law, statute, regulation or enactment shall be passed or made which would discriminate against KCM in respect of any such matters as are referred to in this Clause 13 or Clauses 0 or 0 or otherwise in its conduct of Normal Operations or any other circumstances under this Agreement when compared to other companies or joint ventures conducting similar operations in Zambia under large scale mining licences.

GRZ shall take such action as is required to ensure that its Agencies comply with the provisions of this Agreement applicable to GRZ.

Subject to compliance by KCM with:

13.1.5 all applicable legislation; and

13.1.6 this Agreement,

GRZ undertakes to issue and renew expeditiously all necessary licences and approvals required for Normal Operations within the confines of the Laws of Zambia and not to withdraw or change the terms of such licences and approvals or attach any onerous conditions to them without reasonable justification in view of the operations proposed.

GRZ hereby covenants that it shall not acquire compulsorily any assets of KCM or any interest in or over any property comprising the assets of KCM, except for public purposes under an Act of Parliament relating to the compulsory acquisition of property which provides for payment of compensation at fair market value as between an independent buyer and seller in respect thereof.

Notwithstanding the provisions of this Clause 13 and the terms of Schedule 6, GRZ shall in no way be restricted from introducing legislation relating to transfer pricing to ensure that all transactions between companies and their Affiliates are conducted on Arm's Length Terms.

14. GENERAL OBLIGATION TO PAY TAX

The provisions of Schedule 6 correctly reflect, in respect of the matters therein specifically described, the tax regime applicable to KCM in the conduct of KCM's activities under this Agreement, and in the event of any inconsistency in the provisions of Part D of this Agreement or Schedule 6, the provisions of Schedule 6 shall apply.

Subject to Clauses 0 and 15, KCM shall pay tax, royalties, duties, fees, charges and other levies from time to time in accordance with applicable legislation.

15. TAXATION STABILITY

GRZ undertakes that it shall not during the Stability Period:

15.1.1 increase any rates of Taxation (whether direct or indirect and including, without limitation, corporate income tax or withholding tax) applicable to KCM (or

change the basis of calculation which would result in a decrease or increase of deductions, rebates or other allowances available to KCM in computing its liability for such Taxes or change the basis of computation of such Taxes) from those prevailing at the Effective Date;

- 15.1.2 increase the royalty rate applicable to KCM or change the basis of computation of Royalty from that prevailing at the Effective Date set out in Schedule 6, in a manner that increases the Royalty payable by KCM;
- 15.1.3 amend the VAT and corporate Taxation regimes applicable to KCM from those prevailing as at the Effective Date (as set out inter alia in Schedule 6), including but not limited to, the rules regarding carry forward losses, in a manner which would result in an increase in Taxes payable by KCM;
- 15.1.4 impose new or additional Taxes or fiscal imposts (including export duties) on the conduct of Normal Operations; or
- 15.1.5 increase withholding taxes applicable to KCM and its shareholders on the remittance by KCM of principal, interest, dividends, royalties or management fees above the rate prevailing at the Effective Date (as set out in Schedule 6),

provided always that nothing in this Clause 0 shall restrict the ability of GRZ or any Agency to impose new, incidental and one-off levies in order to fund programmes relating to public health, education, utility or benefit, provided always that the imposition of such levies is not inconsistent with Schedule 6 and does not result in increased cost to KCM in excess of two hundred and fifty thousand United States dollars (US\$ 250,000) per annum.

GRZ further undertakes that during the Stability Period, it shall not:

- 15.1.6 alter the right of non-Zambian citizens (and entitled dependants) on their arrival or permanent departure from Zambia to:
 - (a) import within six (6) Calendar Months from the date of arrival free of duty and tax, for personal use, household and personal effects; and
 - (b) export, without hindrance or the imposition of duty or tax on export all personal effects originally imported and acquired during residency in Zambia;
- 15.1.7 impose new laws to remove the right of non-Zambian citizens (and entitled dependants) to freely remit outside Zambia all income earned within Zambia during such residency;
- 15.1.8 increase import duty rates applicable to KCM on the import of goods and materials required for the implementation of the Approved Programme of Mining and Metal Treatment Operations or Normal Operations so as to result in the weighted average import duty rate to which KCM is subject on the import of consumable goods and materials required for the Approved Programme of

Mining and Metal Treatment Operations or Normal Operations, rising above a level of fifteen per cent. (15%); or

15.1.9 impose other royalties or duties on Normal Operations.

GRZ undertakes that during the Stability Period it shall ensure that VAT rebates and refunds are made within thirty (30) days of the submission by KCM of VAT returns.

If, after the Effective Date, there is in any respect a generally applicable more favourable Taxation, duties or royalties regime applicable to the mining industry generally than applies to KCM at the date of this Agreement, KCM shall be entitled to take advantage of such changes in any law, statute, regulation or enactment, and, if necessary, GRZ will agree changes to this Agreement to confirm or apply these changes and take such steps as shall be necessary including amending any applicable legislation, provided always that nothing in this Clause 0 shall entitle KCM to take advantage of any more favourable regime applicable specifically to and agreed individually with any company whether in a development agreement or otherwise.

To the extent that GRZ delegates or authorises the collection of any Taxes leviable on KCM to any Agencies, GRZ shall procure that such Agencies comply with the provisions of this Clause 15.

Notwithstanding the provisions of Clause 0, if KCM is prevented or hindered in the manner described in Clause 0 as a result of actions or omissions by GRZ then:

15.1.10 the term of the Stability Period or other time periods set out in Clause 12, the Final Environmental and Social Management Plan shall be extended by a period equal to the period during which such prevention or hindrance continues until the time any related Dispute is determined by arbitration, settlement and/or agreement; and

15.1.11 GRZ shall take such administrative, legislative or other action as is necessary or appropriate to give effect to the relevant time period extension referred to in Clause 15.1.10.

GRZ undertakes to procure that its Agencies will fully comply with the provisions of this clause and further covenants to compensate, fully and fairly, KCM for any loss that KCM may suffer as a result of any breach of this Clause 15 by GRZ or its Agencies. Any disputes in relation to either the obligation of GRZ to compensate KCM or the fullness and/or fairness of any compensation paid in either case pursuant to this Clause 0 shall be referred for resolution by arbitration pursuant to Clause 21. Without limiting the generality of the foregoing, the Tribunal shall consider any arguments or assertions made by either Party in relation to:

15.1.12 the cumulative effect of any or all past and existing:

- (a) breaches by GRZ of the provisions of Parts C or D of this Agreement, as compared with the position that existed at the Effective Date;
- (b) breaches of any other provision of this Agreement where such breach has a material adverse effect on the value of the Facilities or other assets of KCM (the "**KCM Assets**"); and

(c) acts of compulsory acquisition referred to in Clause 0;

15.1.13 any diminution (as a result of any of the matters referred to in Clause 15.1.12) in the market value (on a going concern basis, assuming a willing buyer and a willing seller) of the KCM Assets (taken as a whole or any one or more of them); and

15.1.14 any other breaches or failures of either Party in respect of its obligations under this Agreement,

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

PART E
FORMAL CLAUSES

16. ASSIGNMENT

KCM may, with the consent of the Minister (in accordance with Section 54(1) of the Act), assign its interest in a Large Scale Mining Licence and this Agreement and GRZ covenants that the consent of the Minister to such an assignment shall not be withheld in the circumstances set out in Clauses 0 and 0. No assignment of an interest in a Large Scale Mining Licence may be made without the assignment to such person of a concomitant interest in this Agreement and vice versa.

If KCM assigns its entire interest in a Large Scale Mining Licence and its rights and obligations under this Agreement in accordance with Clause 0, then upon the assignee becoming party to this Agreement, KCM shall be discharged from any further liability in respect of any obligation which accrues after the date of that assignment, without prejudice to pre-existing rights accrued to GRZ against KCM and *vice versa*.

Notwithstanding the foregoing provisions of this Clause 16, and subject to Clause 0, KCM may charge by way of fixed or floating charge the Large Scale Mining Licences together with this Agreement to secure the repayment of principal, and payment of interest and other fees, costs and expenses relating to all loans made to KCM to finance or refinance the Scheduled Programmes and any hedging arrangements relating thereto or other mining projects within Zambia and GRZ covenants and will procure that the consent of the Minister pursuant to Section 54 of the Act to such mortgages and charges shall be given provided that:

16.1.1 such mortgages and charges:

- (a) are notified to the Minister upon their grant (and, in any event, within thirty (30) days thereof); and
- (b) impose on the mortgagee or chargee the obligation to comply with Clause 0 on exercising any rights of sale and other rights as contemplated in that Clause; and

16.1.2 the proposed mortgagee or chargee, as the case may be, is not an Affected Party.

Subject to Clause 0, any mortgagee or chargee under a mortgage or charge given by KCM (each a "**Secured Party**") pursuant to Clause 0 may exercise all rights of sale and other rights included in such instrument of mortgage or charge provided that:

16.1.3 it shall first give to GRZ at least thirty (30) days' notice of its intention to exercise any rights of sale and five (5) days' notice in all other cases; and

16.1.4 the purchaser under such power of sale (if applicable):

- (a) is not an Affected Party; and
- (b) undertakes to GRZ to procure that neither the Large Scale Mining Licences nor this Agreement nor any interest therein are subsequently

sold, secured or otherwise disposed of or transferred to or dealt with in favour of an Affected Party.

It is acknowledged and agreed that:

- 16.1.5 save as contemplated in Clauses 0 and 0 in respect of the Large Scale Mining Licences and this Agreement, there is no restriction on KCM's right to sell, mortgage, charge or otherwise assign or encumber the whole or part of its undertaking, including the Leases, the Facilities, the Mine Products (or the proceeds of sale), surface rights and all other rights essential to the maintenance and operation of the Facilities, together with any assets and relevant agreements to which KCM is a party;
- 16.1.6 KCM may mortgage, charge or otherwise encumber any specified asset (whether real or personal property) to secure the purchase price thereof where such amount has been borrowed to finance the purchase of that asset and this asset is to be used as part of Normal Operations or other mining projects within Zambia; and
- 16.1.7 provided such mortgages, charges and other encumbrances are notified to the Minister upon their grant (and, in any event, within thirty (30) days thereof) and provided further that the proposed mortgagee or chargee, as the case may be, is not an Affected Party, each shareholder in KCM from time to time may mortgage, charge, pledge, transfer in security or conditionally assign its right, title and interest in the shares ("**Share Security**") in KCM as security for any financing raised or to be raised by KCM either to finance or re-finance the Scheduled Programmes and any related hedging arrangements or other mining projects in Zambia and GRZ confirms and agrees:
- (a) that the Share Security may be granted without any further consent from GRZ, whether pursuant to Section 55(1) of the Act or otherwise; and
 - (b) any transferee of such shares pursuant to enforcement of the Share Security will be approved by GRZ subject only to such transferee:
 - (i) not being an Affected Party;
 - (ii) undertaking to GRZ to procure that such shares will not subsequently be sold, secured or otherwise disposed of or transferred to or dealt with in favour of an Affected Party; and
 - (iii) otherwise meeting the criteria set out in Clause 0.

The rights of any Secured Party pursuant to Clause 0 shall be subject to and limited by the rights of KCM under this Agreement and, subject to cure rights granted to KCM and the Secured Parties pursuant to Clause 18, to GRZ's right to terminate those rights under Clause 18. The rights of such mortgagee or chargee to sell an interest in a Large Scale Mining Licence and this Agreement so charged shall be exercisable if the interest in such Large Scale Mining Licence and this Agreement which are charged by the mortgage or charge are sold together with all or sufficient of the assets and undertakings of KCM as are sufficient (or would be sufficient) (a)

following cessation of any period of suspension or curtailment of production as may then apply pursuant to Clause 8 and/or (b) in conjunction with such additional assets as the buyer may contribute) to enable the buyer to undertake Normal Operations (or with such exceptions as GRZ may agree), (approval of which sale GRZ covenants not to unreasonably withhold and not to withhold in the circumstances set out in Clause 0 subject to the proviso therein contained).

Where the Minister's consent is necessary to effect:

- 16.1.8 a change of control under Section 55(1) of the Act; or
- 16.1.9 an assignment pursuant to Clause 0,

GRZ shall procure that the Minister shall not withhold his consent where, in the case of an assignment, the proposed assignee has demonstrated its financial capacity and technical ability to meet its obligations hereunder or, in the case of a change of control of KCM, the acquiring party has demonstrated that it is of appropriate financial standing having regard, *inter alia*, to the obligations it shall assume under the Shareholders' Agreement, Vedanta Call Option Deed, ZCI / ZCCM Call Option Deed and Subscription Agreement, provided that in no circumstances shall GRZ be obliged to procure that the Minister shall not withhold his consent where the proposed assignee or acquiring party, as the case may be, is an Affected Party. GRZ shall further procure that the Minister shall not withhold his consent where, in the case of a change of control of KCM, such change of control has or shall result from a transfer between members of the Vedanta Group.

In the event that KCM considers that the Minister has acted unreasonably in considering that a proposed assignee or the acquiring party has not demonstrated such financial capacity or technical ability as is referred to in Clause 0, KCM may refer the issue to a Sole Expert for its determination in accordance with Clause 20. If the Sole Expert determines that the proposed assignee or the acquiring party:

- 16.1.10 has not demonstrated the requisite levels of financial capacity or technical ability, the Minister's determination shall stand; or
- 16.1.11 has demonstrated the requisite levels of financial capacity or technical ability, the Minister's determination shall be set aside and the consents referred to in Clause 16.1.8 or Clause 16.1.9 (as the case may be) shall be deemed to be given and the change of control or assignment (as the case may be) shall be permitted without further action on the part of GRZ or the Minister.

GRZ undertakes to provide such consents, opinions and certificates to or for the benefit of any senior lenders to KCM as may be customary or otherwise reasonably required by such lenders, provided that the provision of such consents, opinions and certificates is not inconsistent with applicable Zambian legislation or this Agreement and does not involve any attendant material costs, reductions in revenue or any liability on GRZ's part (whether actual or contingent). In the event that KCM gives notice to GRZ that it has charged its interest in any Large Scale Mining Licence or this Agreement in accordance with Clause 0, GRZ shall if so requested by the Secured Parties, execute a consent and acknowledgement of assignment which shall:

- 16.1.12 contain GRZ's agreement to perform its obligations hereunder and thereunder for the benefit of the Secured Parties if such security is enforced in accordance with the terms of this Agreement;
- 16.1.13 contain GRZ's agreement to deliver a copy of any Default Notice served on KCM pursuant to Clause 0 to the Secured Parties at the same time as such notice is served on KCM;
- 16.1.14 recognise rights of Secured Parties to cure defaults as provided in Clause 0; and
- 16.1.15 contain GRZ's agreement to grant any statutory or regulatory consents necessary in connection with the creation or enforcement of such security in accordance with the terms of this Agreement,

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

17. EXTENSIONS TO TIME

Notwithstanding any provision of this Agreement, the Parties by agreement in writing between the persons responsible for giving Notices under Clause 28, 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.

If KCM is prevented or hindered by any circumstances or event of a kind set out in Clause 25 or by a reference to a Sole Expert or by an arbitration under Clauses 20 and 21 respectively from undertaking all or any of its obligations hereunder or exercising any right granted, the period of time allowed for the performance of that obligation or exercise of that right and all periods of time thereafter allowed for the performance of obligations or exercise of rights which are dependent upon the first mentioned obligation or right, shall be extended by a period equal to the period during which such prevention or hindrance continues or during the period from the time when the question, dispute or difference arose until the time of its determination by the Sole Expert or settlement by agreement or arbitration, as the case may be.

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

Notwithstanding the foregoing, the provisions of this Clause 17 shall not (save as provided in Clause 0, or in relation to any circumstances or events of a kind set out in Clause 25) in any way be construed so as to, or be deemed to, extend the term of the Stability Period or any other time periods set out in Clause 12, the Final Environmental and Social Management Plan or the Environmental Liabilities Agreement.

18. TERMINATION

KCM may terminate this Agreement at any time on or after 1 January 2008, by giving twelve (12) Calendar Months' prior notice to GRZ, upon which both parties shall be discharged from

any further liability in respect of any obligation under this Agreement which accrues after the date of termination but without prejudice to any liability that has accrued prior to such date.

GRZ may terminate this Agreement by notice to KCM if:

- 18.1.1 each of the Large Scale Mining Licences has expired and has not been renewed or is not the subject of an application for renewal or has been cancelled pursuant to Section 50 of the Act; or
- 18.1.2 subject to Clause 8, all, but not part only, of the land the subject of the Large Scale Mining Licences is abandoned.

In the event that either GRZ or KCM (the "**Defaulting Party**"):

- 18.1.3 is in material default in the performance of any of its obligations hereunder; or
- 18.1.4 fails to treat as binding and comply with any award made by a Sole Expert or by a Tribunal pursuant to Clauses 20 and 21 respectively,

and the Defaulting Party or a Secured Party (where KCM is the Defaulting Party), if the Secured Party determines to do so, has not remedied such default or failure within sixty (60) days of receiving notice from the other Party (the "**Non-Defaulting Party**") to remedy the default or failure, the Non-Defaulting Party may give notice of such default or failure (hereinafter in this Clause called a "**Default Notice**") to the Defaulting Party which shall specify the default or failure alleged. Where KCM is the Defaulting Party, GRZ shall at the same time give a copy of the Default Notice to each lender to KCM, where the name and address of that lender has previously been notified to GRZ, and to the Secured Party notified to the Minister in accordance with Clause 0. If the Defaulting Party disputes the subject matter of the Default Notice, it may refer the issue to arbitration in accordance with Clause 21.

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 pursuant to Clause 21) either:

- 18.1.5 where capable of being remedied the default or failure specified in the Default Notice has not been remedied by the Defaulting Party (or a Secured Party where KCM is the Defaulting Party) (or active steps have not been commenced and continued to remedy the default or failure if it is not capable of speedy remedy); or
- 18.1.6 compensation satisfactory to the Non-Defaulting Party is not paid in respect thereof (in the case of a default or failure not capable of remedy but where payment of compensation would be adequate recompense to the Non-Defaulting Party),

then, subject to Clause 0, the Non-Defaulting Party may by notice (a "**Termination Notice**") to the Defaulting Party (which if KCM is the Defaulting Party shall be copied to each lender and Secured Party who was given a copy of the Default Notice) bring about the termination of this Agreement on a date which is not less than one (1) Calendar

Month thereafter (the "**Termination Date**"). If KCM is the Defaulting Party GRZ shall ensure that the Minister does not make a decision to suspend or cancel the Large Scale Mining Licences and that no action is taken by or on behalf of GRZ without the approval of KCM to suspend or cancel any of the Large Scale Mining Licences or terminate any of the Leases prior to the Termination Date.

If the Defaulting Party contests:

- 18.1.7 the grounds for the issue of a Default Notice; or
- 18.1.8 whether the default or failure specified in a Default Notice has been remedied; or
- 18.1.9 the adequacy of any compensation offered or paid pursuant to Clause 18.1.6,

the matter shall be submitted for arbitration pursuant to Clause 21. If the Tribunal finds (in the case of Clause 18.1.7) that adequate grounds exist for issue of the Default Notice, the Tribunal shall fix a period during which the Defaulting Party must comply with Clause 18.1.5 or 18.1.6 and the amount of compensation payable (if applicable). If the Tribunal finds (in the case of Clause 18.1.8) in favour of the Non-Defaulting Party, the Tribunal shall fix a period during which the Defaulting Party must remedy the default or failure. If the Tribunal finds (in the case of Clause 18.1.9) in favour of the Non-Defaulting Party the Tribunal shall fix the amount of compensation payable and the period for its payment.

The Non-Defaulting Party shall not serve a Termination Notice while arbitration under Clause 0 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 Tribunal finds in favour of the Defaulting Party on any dispute under this Clause 0, the Default Notice shall be deemed withdrawn and the Default Party shall not be, nor considered to be, in default or failure hereunder, and the Non-Defaulting Party shall not serve a Termination Notice and any Termination Notice served shall be deemed withdrawn. If, within the period fixed by the Tribunal under this Clause 0, the default or failure in question is substantially remedied or the compensation is paid, the Non-Defaulting Party shall not serve a Termination Notice and any Termination Notice already served shall be deemed withdrawn.

If this Agreement is terminated by GRZ pursuant to Clause 0 or 0:

- 18.1.10 KCM shall surrender to GRZ all of 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;
- 18.1.11 each Party shall forthwith pay to the other Party all monies that may be owing to the other Party hereunder;
- 18.1.12 GRZ shall have the option:
 - (a) to request that KCM abandon the Facilities within a reasonable timetable specified by GRZ; and

- (b) to purchase (subject to any encumbrances thereon) all or any portion of the Facilities at a price equivalent to the fair market value of such assets, which fair market value is to be determined by agreement between GRZ and KCM but failing such agreement by a Sole Expert in accordance with Clause 20.

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

- 18.1.13 KCM shall have the right, within the one (1) year period following the thirty (30) day notice period referred to in Clause 18.1.12 (save where the option referred to in such Clause was exercised) to assign or otherwise dispose of all or any portion of the remaining Facilities to any person.
- 18.1.14 KCM shall leave the Facilities and the Mining Areas in a safe and stable condition to the reasonable satisfaction of the Director of Mine Safety having regard to natural conditions in the area and applying generally accepted standards of good mining and metallurgical industry practice; provided that KCM shall not be required to alter the physical condition of the mines, the tailings disposal sites or other Facilities beyond the requirements of the Final Environmental and Social Management Plan.

Upon the expiry of the one (1) year period referred to in Clause 18.1.13 all Facilities which remain on the Mining Areas shall become the property of GRZ without any cost to GRZ or any liability for GRZ to pay compensation therefor.

Clauses 0, 0, 19, 20, 21, 23, 24, 25, 28 and 34, shall continue in force notwithstanding the termination of the rest of this Agreement.

19. AMICABLE SETTLEMENT OF DISPUTES

A Dispute shall be deemed to arise when one Party serves on the other Party a notice ("**Notice of Dispute**") stating the nature of the Dispute, provided that no Notice of Dispute may be served unless the Party wishing to do so has first taken any steps or invoked any procedure available elsewhere in this Agreement in connection with the Dispute and the other Party has either taken such step or invoked such procedure as may be required, or been allowed a reasonable time to take such step or invoke such procedure.

Following service of a Notice of Dispute the Parties shall attempt in good faith to settle such Dispute amicably. If the Parties agree, the Zambia Association of Arbitrators shall be requested to nominate a mediator to assist in attempting to settle the Dispute. The provisions of Clauses 20 and 21 shall not apply to any Dispute until a period of thirty (30) Business Days, or any longer period agreed between the Parties, shall have elapsed following service of a Notice of Dispute.

20. **SOLE EXPERT**

Where so provided under this Agreement any Dispute shall be referred to a Sole Expert for determination in accordance with the provisions set out in Schedule 7.

21. **ARBITRATION**

Subject to the provisions of Clauses 19 and 20, GRZ and KCM hereby consent to submit any Dispute to be resolved by arbitration in accordance with the UNCITRAL Arbitration Rules (the "**Rules**") as in force and effect on the date of service of Notice of Dispute under Clause 19 above, save as modified by the provisions of this Clause 21. The tribunal shall consist of a sole arbitrator (the "**Tribunal**") and the appointing authority shall be the Secretary General of the Permanent Court of Arbitration at the Hague. The place of arbitration shall be Johannesburg and the language of the arbitration shall be English.

The Tribunal shall be instructed time is of the essence in proceeding with its determination on any Dispute, and unless otherwise agreed by the Parties, the decision of the Tribunal shall be rendered within thirty (30) days of the conclusion of the final hearing of the Dispute. The decision of the Tribunal shall be in writing and reasons for the decision shall be given.

An award in proceedings under the Rules shall be final and binding on the parties and judgement thereon may be entered in any court having jurisdiction for the purpose of enforcing the award. The Parties undertake to keep strictly confidential the content of the Arbitral Proceedings and any arbitral award made in such proceedings.

Where a Dispute has been referred for settlement by arbitration in accordance with the Rules, then the Parties shall not be entitled to exercise any rights or election arising in consequence of any alleged default by a Party 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.

22. **PERFORMANCE TO CONTINUE**

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

23. **WAIVER OF SOVEREIGN IMMUNITY**

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

The waiver of immunities referred to in Clause 0 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:

- 23.1.1 located in Zambia;
- 23.1.2 used by a diplomatic or consular mission of GRZ (except as may be necessary to effect service of process); or
- 23.1.3 property of a military character and under the control of a military authority or defence agency.

24. **GOVERNING LAW**

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

25. **FORCE MAJEURE**

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:

- 25.1.1 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
- 25.1.2 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.

For the purposes of this Agreement, Force Majeure means act of war (whether declared or undeclared), invasion, armed conflict, act of foreign enemy, act of terrorism, martial law, military or usurped power, insurrection, revolution, civil disturbances, blockades, riot, embargoes, strikes, lock-outs and other labour conflicts, sabotage, criminal damage, land disputes, epidemics, plague, volcanic eruptions, earthquakes, subsidence, heave, landslip, collapse, rock falls, storms, cyclones, floods (including flooding of underground mine works), explosions (including nuclear explosions), fires, lightning, methane and other underground gases and the explosion thereof, radioactive or chemical contamination or ionising radiation unless the source or cause of the contamination, radiation or other hazardous thing is brought or has been brought onto or near KCM's operations by the Party claiming Force Majeure or those employed or engaged by the Party claiming Force Majeure unless it is or was essential for the construction or operation of the Facilities, non-availability of electrical power, gas, water or other utilities other than due to the negligence or default of KCM, restrictions imposed by the government or other authorities of any country which has jurisdiction either over KCM or its

operations (provided that GRZ will not be entitled to claim a Force Majeure Event as a result of restrictions imposed by Zambian governmental authorities) or destruction of, damage to or unavailability of materials, equipment or supplies and any other event which the Party claiming Force Majeure could not reasonably be expected to prevent or control.

26. VARIATION

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 Mining and Metal Treatment Operations, the Large Scale Mining Licences or any programme (including all of the Scheduled Programmes), proposal or plan approved for the purpose of more efficiently or satisfactorily implementing or facilitating the objectives of this Agreement.

26.1.1 Except as otherwise provided in Clause 0, where KCM proposes to modify or vary the Approved Programme of Mining and Metal Treatment Operations (hereinafter called a "**Modification**") and by such Modification KCM would not be in substantial compliance with the Approved Programme of Mining and Metal Treatment Operations in place at the Effective Date, KCM shall provide notice of such Modification to GRZ. Such Modification shall be deemed to be approved by GRZ and the Approved Programme of Mining and Metal Treatment Operations shall be amended to the extent necessary to reflect such Modification, unless GRZ within thirty (30) business days of the notice being given to it notifies KCM that GRZ reasonably considers the Modification to be a Major Change. If KCM accepts that the Modification is a Major Change it is deemed that notice has been given pursuant to Clause 26.1.3 on the date GRZ gave notice it considered the Modification to be a Major Change.

26.1.2 If KCM does not agree with any assertion by GRZ that the Modification is a Major Change then it may refer to a Sole Expert in accordance with Clause 20, the question whether the Modification is a Major Change. If the Sole Expert determines that the Modification is a Major Change then it shall be deemed that notice has been given pursuant to Clause 26.1.3 as of the date of the Sole Expert's decision and the provisions of Clauses 26.1.4 to 26.1.7, inclusive, apply, unless KCM has implemented or commenced implementation of the Major Change. If such implementation has occurred or commenced then the Sole Expert shall also determine:

- (a) what action KCM must take; or
- (b) what compensation KCM must pay and to whom such compensation shall be paid.

If the Sole Expert determines that the Modification is not a Major Change, such Modification shall be deemed approved by GRZ and the Approved Programme of Mining and Metal Treatment Operations shall be amended to the extent necessary to reflect such Modification without further variation or payment of compensation by KCM.

No Major Change shall take effect unless it has been approved or is deemed to have been approved by GRZ and where KCM intends to make a Major Change the following provisions shall apply:

- 26.1.3 KCM shall, by notice to GRZ of the proposed Major Change, give full details including an economic analysis of the proposed Major Change entitled "Proposed Major Change to the Approved Programme of Mining and Metal Treatment Operations";
- 26.1.4 if GRZ does not notify KCM that it objects to the Major Change within thirty (30) days of the notice, GRZ shall be deemed to have approved the Major Change;
- 26.1.5 where GRZ requires additional time to evaluate the Major Change (except where notice of the Major Change is deemed to have been given in accordance with Clause 26.1.1), it shall be entitled, within the thirty (30) days stipulated in Clause 26.1.4, to extend the period by an additional thirty (30) days and if within that thirty (30) day period GRZ does not notify KCM of any objections it shall be deemed to have approved the Major Change;
- 26.1.6 where GRZ objects to the Major Change and KCM considers the objection to be unreasonable, KCM may elect to refer the question of the reasonableness of GRZ's objection to the Sole Expert under Clause 20. In assessing the reasonableness or otherwise of GRZ's objections, the Sole Expert shall have regard to prudent business operations in the mining industry in the context of KCM's operations or the relevant part of its operations and the impact on GRZ's revenues, provided always that where the Major Change:
 - (a) comprises an event described in paragraph (c) of the definition thereof; and
 - (b) has been proposed by KCM on grounds that such Major Change is necessary for economic reasons,it shall be irrelevant to such assessment that it is or may be more economic to undertake ore treatment or refining activities at facilities not owned by KCM; and
- 26.1.7 if the Sole Expert determines that GRZ's objection is unreasonable, GRZ shall be deemed to have approved the Major Change.

Where GRZ approves or is deemed to have approved a Major Change, the Approved Programme of Mining and Metal Treatment Operations shall be varied or amended to the extent necessary to reflect the Major Change.

Without prejudice to paragraph (c) of the definition of "Major Change", the export by KCM of Mine Products for processing outside Zambia shall constitute a Major Change save to the extent that:

- 26.1.8 such export is necessary due to insufficient smelting capacity in Zambia; and

26.1.9 such Mine Products:

- (a) are processed on a "toll charge / refining charge" basis pursuant to a contract or contract(s) entered into:
 - (i) on Arm's Length Terms;
 - (ii) in accordance with the then prevailing market practice; and
 - (iii) in compliance with Clause 11 of the Shareholders' Agreement, if applicable; and
- (b) remain the property of KCM until completion of the smelting and refining process and subsequent sale by KCM.

27. ADDITIONAL CONSULTATION

The Minister shall establish an employment and training committee in accordance with this Clause 0 (the "**Employment and Training Committee**").

27.1.1 The Employment and Training Committee shall comprise:

- (a) a representative from KCM (who shall have appropriate seniority and experience);
- (b) the Permanent Secretary from the Ministry (or its representative);
- (c) the Permanent Secretary from the Ministry of Labour and Social Security (or its representative);
- (d) the Permanent Secretary from the Ministry of Justice (or its representative);
- (e) the Permanent Secretary from the Ministry of Science and Technology (or its representative);
- (f) a representative from the municipal council;
- (g) a representative from the Mineworkers Union of Zambia; and
- (h) a representative from the National Union of Mine and Allied Workers.

27.1.2 The Employment and Training Committee shall monitor the implementation of the Employment and Training Plan but shall have no powers to bind or direct KCM.

27.1.3 The chairperson of the Employment and Training Committee shall be the Permanent Secretary from the Ministry of Labour and Social Security (or its representative).

27.1.4 This Employment and Training Committee shall operate during the term of this Agreement and KCM shall furnish it with reports every three (3) months

outlining the progress of the Employment and Training Plan, problems encountered, positions filled and the number of Zambian citizens employed.

- 27.1.5 KCM shall only be liable for the costs associated with its representative in respect of the Employment and Training Committee and shall not be required to pay the costs of any other representative. Any additional remuneration payable to KCM's representative in consideration of his or her membership of the Employment and Training Committee shall be a matter solely within KCM's discretion.

The Minister shall establish a supply and procurement committee in accordance with this Clause 0 (the "**Supply and Procurement Committee**").

- 27.1.6 The Supply and Procurement Committee shall comprise:
- (a) a representative from KCM (who shall have appropriate seniority and experience);
 - (b) the Permanent Secretary from the Ministry (or its representative);
 - (c) the Permanent Secretary from the Ministry of Commerce, Trade and Industry (or its representative);
 - (d) the Permanent Secretary from the Ministry of Justice (or its representative); and
 - (e) the Permanent Secretary from the Ministry of Finance and National Planning (or its representative) .
- 27.1.7 The Supply and Procurement Committee shall monitor the supply and procurement of goods and services to the Facilities but shall have no powers to bind or direct KCM.
- 27.1.8 The chairperson of the Supply and Procurement Committee shall be the Permanent Secretary from the Ministry of Commerce, Trade and Industry (or its representative).
- 27.1.9 The Supply and Procurement Committee shall operate during the term of this Agreement to review the report required to be provided to GRZ pursuant to Clause 0.
- 27.1.10 KCM shall only be liable for the costs associated with its representative in respect of the Supply and Procurement Committee and shall not be required to pay the costs of any other representative. Any additional remuneration payable to KCM's representative in consideration of his or her membership of the Supply and Procurement Committee shall be a matter solely within KCM's discretion.

Save as expressly stated otherwise in this Clause 27, the Employment and Training Committee and the Supply and Procurement Committee shall formulate their own rules of procedure.

28. NOTICES

28.1.1 Any notice, consent, demand, approval or other communication (a "Notice") required or permitted to be given, delivered or served under this Agreement or in connection with the transaction as evidenced by the Sale and Purchase Agreement or under the Act shall be deemed to have been given, delivered or served if:

- (a) 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
- (b) in the case of a Notice to be given by KCM, such Notice is signed by a director or by the Secretary of KCM.

28.1.2 Each such Notice shall, as elected by the Party giving such notice, be personally delivered or transmitted by fax to the other Party as follows:

A Notice to GRZ:

To: Permanent Secretary, Ministry of Mines and Minerals Development

If by fax:

Fax: +260 1 253568 / 252916

If by hand:

PO Box 31969
Haile Salassie Avenue
Lusaka, Zambia

A Notice to KCM:

To: The Company Secretary

If by fax:

Fax: +260 2 351357

If by hand:

Konkola Copper Mines PLC
Stand M/1408
Fern Avenue
Chingola
Zambia

Except as otherwise specified herein, a Notice or other communication shall be deemed to have been duly given on the earlier of:

28.1.3 if delivered personally, the date at which it was left at the address referred to in Clause 0 and signed for at that address by someone with apparent authority to do so; or

28.1.4 if transmitted by facsimile the date of transmission to the fax number set out in Clause 0 with confirmed successful transmission from the sender's fax machine.

Either Party may change its address by Notice to the other Party given in accordance with the provisions of this Clause. All Notices and all communications, documents or

instruments given, transmitted, delivered or served under this Agreement or in connection with this transaction shall be in the English language.

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

29. WAIVER

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.

30. SEVERABILITY

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.

31. FURTHER ACTS

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

32. COUNTERPARTS

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

33. ABSENCE OF REPRESENTATIONS AND WARRANTIES

Except as expressly stated in this Agreement, the Subscription Agreement and the Shareholders' 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.

34. COMPENSATION AND PAYMENT

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

If any amount which is required by any provision of this Agreement to be paid by one Party to the other Party is not paid on the due date, interest on that amount shall (unless already payable under Clause 20 or 21) accrue and be payable at the rate of LIBOR plus five per cent. (5%) per annum (to be compounded on the first day of each calendar month of non-payment).

In the event of a dispute arising as to the compensation payable by a Party pursuant to any provision of this Agreement (including, without limitation, a dispute as to the quantum of the compensation or whether the compensation is payable or not), either Party may refer the issue to a Tribunal for determination in accordance with Clause 21.

35. ENTIRE AGREEMENT

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

IN WITNESS WHEREOF this Agreement has been duly executed by the Parties on the [•] day of [•], 2004

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

Minister of Mines

Minister of Finance and National Planning

SIGNED for and on behalf of }
KONKOLA COPPER MINES PLC }

SCHEDULE 1
APPROVED PROGRAMME OF MINING AND METAL TREATMENT OPERATIONS

SCHEDULE 2
CONTRACT AREAS, LICENCES AND MINING AREAS

Part I
Contract Areas

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

Part II
Form Of The Large Scale Mining Licence

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

REGISTRATION No. LML

REPUBLIC OF ZAMBIA

LARGE-SCALE MINING LICENCE

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

Applicant's name

Address
.....
....

Prospecting Licence No.
.....

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

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

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

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

Issued at this day of
.....
Director

ENDORSEMENT OF REGISTRATION

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

.....
Director

RENEWALS AND AMENDMENTS

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

Part III
Mining Areas

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

SCHEDULE 3
FINAL ENVIRONMENTAL AND SOCIAL MANAGEMENT PLAN

SCHEDULE 4
EMPLOYMENT AND TRAINING PLAN

SCHEDULE 5
REQUIRED INSURANCES

1. ASSETS / PROPERTY INSURANCE

1.1 Property / Risk Insured

1.1.1 Buildings, contents, stores, plant and machinery and all other real and personal property of KCM.

1.1.2 Business interruption, including contingent extra expenses as a result of loss / damage to property in 1.1 above.

1.2 Perils Covered

All risks of physical loss and/or damage including fire, lightning, explosion, malicious damage, impact from aircraft and own vehicles, storm, bush fire, flood through man-made opening on the surface, machinery breakdown and resulting business interruption.

1.3 Sum Insured

1.3.1 Up to US\$ 130 million each loss, combined single limit for property damage and business interruption.

1.3.2 Up to US\$ 5 million in respect of incidental construction risks.

1.3.3 Up to US\$ 50 million each loss and in aggregate per annum, combined single limit for property damage and business interruption for flood damage, earthquake / tremor.

1.4 Exclusions

War, nuclear risks, and a deductible / excess of US\$ 1 million each loss for property damage and 30 days' waiting period, a minimum US\$ 5 million each loss, combined for material damage and business interruption.

1.5 Period of Cover

12 Months from 1 July 2004.

1.6 Insurers

A consortium of local insurance companies led by Madison Insurance Company Zambia Limited.

2. MOTOR INSURANCE

2.1 Property / Risk Insured

All on-highway motor vehicles owned by KCM and first registered on or after 1 January 1998.

2.2 **Perils Covered**

Physical loss of or damage to the motor vehicles by any cause, including legal liability to third parties up to US\$ 50,000.

2.3 **Exclusions**

2.3.1 Depreciation, wear and tear, deductible of 10% of each loss.

2.3.2 On-highway vehicles registered before 1 January 1998: covered on full third party basis only. Limit of cover, up to US\$ 50,000

2.4 **Period of Cover**

12 months from 1 April 2004.

2.5 **Insurer**

Professional Insurance Corporation Zambia Limited.

3. **MONEY INSURANCE**

3.1 **Property / Risk Insured**

"Money" defined as cash, bank notes, cheques, postal and money orders and all forms of negotiable documents.

3.2 **Perils Covered**

"All Risks" of loss or damage.

3.3 **Sum Insured**

Up to US\$ 1 million per loss.

3.4 **Exclusions**

First 10% of each loss, minimum US\$ 10,000, fraud or dishonesty of employees, shortage due to error or omission.

3.5 **Period of Cover**

12 months from 1 July 2004.

3.6 **Insurer**

Goldman Insurance Limited.

4. **FIDELITY GUARANTEE**

4.1 **Property / Risk Insured**

Pecuniary loss to KCM through fraud or dishonesty of an employee(s).

4.2 **Sum Insured**

US\$ 1 million any one loss and in aggregate per year.

4.3 **Exclusions**

An excess of 10% each loss, minimum US\$ 10,000 for each and every loss.

4.4 **Period of Cover**

12 months from 1 July 2004.

4.5 **Insurer**

Goldman Insurance Limited.

5. PRIMARY LEGAL LIABILITY INSURANCE

5.1 **Property / Risk Insured**

Public, employer's medical malpractice, motor third party and contract works legal liability for death, disease or bodily injury to employees and the general public, loss of or damage to their property.

5.2 **Sum Insured**

Limit of indemnity of US\$ 1 million for any one accident, no limit in number in any one year, but in total for products and pollution.

5.3 **Period of Cover**

12 months from 1 July 2004.

5.4 **Insurer**

Professional Insurance Corporation Zambia Limited (PICZ).

6. EXCESS LEGAL LIABILITY INSURANCE

6.1 **Property / Risk Insured**

As per paragraph 0 above and also including directors' and officers' liability.

6.2 **Sum Insured**

Limit of indemnity of US\$ 10 million any one accident and in aggregate any one year over and above US\$ 1 million.

6.3 **Period of Cover**

12 months from 1 July 2004.

6.4 **Insurer**

Professional Insurance Corporation Zambia Limited.

7. MARINE INSURANCE (METALS EXPORTS)

7.1 **Property / Risk Insured**

Metals and all interests incidental to KCM's business.

7.2 **Perils Covered**

All and every risk, subject to Institute Cargo clauses, General Average, Salvage and Salvage Charges.

7.3 **Sum Insured**

Up to US\$ 10 million per vessel, aircraft or conveyance; 200% any one location.

7.4 **Voyages**

Lost or not lost, at and from anywhere in the world via any route, from mines in Zambia to customer's premises.

7.5 **Period of Cover**

Continuous cover, always open.

7.6 **Insurer**

Professional Insurance Corporation Zambia Limited.

8. MARINE INSURANCE (IMPORTED ORDERS)

8.1 **Property / Risk Insured**

Mining equipment, materials, stores and/or goods of every description.

8.2 **Perils Covered**

Against all and every risk per Institute Cargo Clauses (A), General Average, Salvage and Salvage Charges.

8.3 **Sum Insured**

Up to US\$ 2 million any on bottom, conveyance: 200% any one location.

8.4 **Voyages**

From supplier's warehouse anywhere in the world to KCM's warehouse in Zambia.

8.5 **Period of Cover**

Continuous cover, always open.

8.6 **Insurer**

Professional Insurance Corporation Zambia Limited.

9. STORAGE COVER (FINISHED METALS)

9.1 **Property / Risk Insured**

Stocks of Copper and Cobalt whilst at KCM's premises, awaiting transportation to ports of export.

9.2 **Perils Covered**

Against physical loss or damage from whatever cause, excepting wear and tear, inherent vice or defect.

9.3 **Period of Cover**

12 months from 1 April 2004.

9.4 **Insurer**

ZIGI Insurance company Limited.

10. LEASED / HIRED-IN EQUIPMENT AND PLANT INSURANCE

10.1 **Property / Risk Insured**

Plant and / or equipment belonging to other parties while on hire or lease to KCM.

10.2 **Perils Covered**

Against physical loss or damage, excepting wear and tear, mechanical or electrical breakdown.

10.3 **Exclusions**

Excess of 10% each loss, minimum US\$ 3,000 for repairs, US\$ 7,500 for total loss.

10.4 **Period of Cover**

12 months from 1 April 2004.

10.5 **Insurer**

ZIGI Insurance Company Limited.

11. PERSONAL ACCIDENT INSURANCE

11.1 **Property / Risk Insured**

In respect of both local and expatriate staff.

11.2 Perils Covered

Accidental death only; cover on 24-hour basis, taking in both occupational and non-occupational accidents.

11.3 Sum Insured

5 times and 2.5 times annual basic salary for local staff employed before and after 31 March 2000 respectively and 2 times annual basic pay for expatriate staff.

11.4 Exclusions

Death from natural causes, war including passive war.

11.5 Period of Cover

12 months from 1 April 2004.

11.6 Insurer

Goldman Insurance Limited.

SCHEDULE 6
TAX SCHEDULE

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

1. Income Tax

- 1.1 KCM shall pay to GRZ income tax in accordance with the provisions of this Agreement and the Income Tax Act (CAP 668) as amended on its net taxable income arising from all minimum concentration, smelting, refining and other mining operations.
- 1.2 The income tax rate applying as at the date of this Agreement shall be twenty five per cent (25%).
- 1.3 The carry forward of losses shall be permitted for a period not exceeding:
- (a) sixteen (16) years, in respect of losses incurred up to and including 31 December 2003;
 - (b) ten (10) years, in respect of losses incurred after 31 December 2003 but up to and including expiry of the Stability Period; and
 - (c) the expiry of the period for carry forward of losses under applicable legislation, in respect of those losses incurred after expiry of the Stability Period,
- provided always that all such losses should be used on a first in, first out basis with earlier losses used before later losses. Subject to Clause 0, KCM shall be entitled to maintain books of account and to render income tax returns stated in United States dollars in accordance with generally accepted accounting principles.
- 1.4 For the purposes of Fourth Schedule to the Act in determining permitted deductions and calculating income tax payable, 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. Withholding Tax

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

3. Royalties

KCM shall pay to GRZ the royalty on the gross revenue of minerals produced in the Mining Areas at a rate of nought point six per cent (0.6%).

4. Other Taxes, Charges and Fees

- 4.1 KCM shall be exempt from the following:

- (a) rural electrification levy;
 - (b) excise duty on electrical energy; and
 - (c) all customs and excise duties and any other duty or impost levied under the Customs and Excise Act 1995 (Cap. 322) in respect of all machinery and equipment (including specialised motor vehicles) required for any of the activities carried on or to be carried on in pursuance of the right or otherwise for the purposes of its investment in Mining or prospecting, as provided for under section 97 of the Act.
- 4.2 KCM shall continue to be entitled to all Taxation concessions it currently enjoys until such concessions expire on 31 March 2005 as documented in the Development Agreement dated 31 March 2000 between GRZ and KCM.

5. Value Added Tax (VAT)

- 5.1 In accordance with the provisions of the Value Added Tax Act, Chapter 331 of the Laws of Zambia 1995, goods and services produced by the facilities are taxable at a standard rate and zero rated if exported.
- 5.2 GRZ confirms that input VAT in excess of VAT payable in respect of the supply of goods and services shall be credited to KCM within a reasonable period of time (and in any event within 30 days) from the date of submission of KCM's monthly VAT return in respect of each prescribed accounting period.
- 5.3 For the purposes of this Clause, "input VAT" shall mean VAT claimable in respect of allowable business purchases of goods and services supplied by a registered supplier during a prescribed accounting period.

SCHEDULE 7

SOLE EXPERT

1. Where so provided under this Agreement any Dispute shall be referred to a Sole Expert for determination in accordance with the provisions of this Schedule.
2. The Party wishing the appointment to be made shall serve written notice to that effect on the other Party ("**Notice to Appoint**") and with such Notice to Appoint shall give details of the matter which it is proposed shall be resolved by the Sole Expert.
3. If within ten (10) Business Days from the service of the Notice to Appoint the Parties have failed to agree upon the selection of a Sole Expert, either Party may then submit a request in writing ("**Request for Proposal**") to the ICC International Centre for Expertise (the "**ICC Centre**") for the proposal of a Sole Expert as quickly as possible. The Request for Proposal shall set out the names, description and addresses of the Parties, shall attach a copy of this Agreement, shall set out any relevant indications concerning the choice of the Sole Expert (including a reference to the provisions of this Schedule) and shall set out a descriptive summary of the Sole Expert's brief. The Parties agree to accept the expert proposed by the ICC Centre as the Sole Expert selected under this Schedule.
4. Upon a Sole Expert being selected under the foregoing provisions of this Schedule, the Parties or either of them shall forthwith notify the Sole Expert of his selection and request him to confirm within five (5) Business Days after such notification whether or not he is willing and able to (and does in fact) accept appointment as Sole Expert and to confirm that the requirements of paragraphs 8.2, 8.3 and 8.4 of this Schedule are all satisfied in his case.
5. If the Sole Expert shall be either unwilling or unable to accept such appointment or shall not have given the confirmation in response to the request to be made under paragraph 3 (the "**Confirmation**") within the said period of five (5) Business Days, then (unless the Parties are able to agree upon the selection of another Sole Expert) either Party may submit a Request for Proposal in the manner provided in paragraph 2 to the ICC Centre which shall be requested to make a proposal or (as the case may be) a further proposal and the process shall be repeated until a Sole Expert is selected who accepts appointment.
6. The Parties shall co-operate with each other to ensure that the terms of the contract of appointment of the Sole Expert are agreed with him as soon as possible. If the Parties and the Sole Expert cannot within five (5) Business Days of the giving of the Confirmation agree on the amount of remuneration to be paid to the Sole Expert or any other terms of his contract of appointment, then (unless the Parties are able to agree upon the selection of another Sole Expert) either Party may submit a Request for Proposal or (as the case may be) a further Request for Proposal in the manner provided in paragraph 2 to the ICC Centre which shall be requested to make a proposal or (as the case may be) a further proposal and the process shall be repeated until a Sole Expert is selected who accepts appointment and whose terms of contract of appointment are agreed.

7. The appointment of the Sole Expert shall be deemed to have been made upon his signing the contract of appointment.
8. The Parties shall select or (if applicable) the ICC Centre shall propose a Sole Expert meeting the following criteria:
 - 8.1 The Sole Expert shall be a person reasonably qualified by education, experience and training to determine the Dispute to be referred to him.
 - 8.2 Neither the Sole Expert nor (if he is an individual) any member of his immediate family nor (in other cases) any partner in or director of the Sole Expert shall be (or within ten (10) years before his appointment have been) a director, office holder or an employee of or directly or indirectly retained as a consultant or an adviser to either Party or an Affiliate of either Party.
 - 8.3 The Sole Expert shall be independent of the Parties and shall have no interest or duty which conflicts or may conflict with his function as Sole Expert.
 - 8.4 The Sole Expert shall not be a citizen or a national of nor a permanent resident in Zambia or India.
9. If, in respect of any particular Dispute, the ICC Centre informs the Parties or either of them that is unable to propose an expert as the Sole Expert to determine that Dispute, then the said Dispute shall be referred to arbitration in accordance with Clause 21.
10. The terms of appointment of the Sole Expert shall contain confirmation from the Sole Expert as to the matters required by paragraph 7, shall require the Sole Expert to comply with the obligations set out in paragraphs 11 and 12, and shall contain at least the following provisions regarding the procedure to be followed in the proceedings before the Sole Expert (the "**Expert Proceedings**"):
 - 10.1 The Sole Expert shall not later than fourteen (14) Business Days after his appointment call the Parties to a meeting at which he shall raise any matters requiring clarification (whether arising out of his contract of appointment or otherwise) and give directions as to the procedural rules to be applicable in the Expert Proceedings which rules shall comply with the terms of this paragraph 10. Such directions may thereafter be given from time to time by the Sole Expert as he shall consider necessary. The Parties agree to comply with such directions made by the Sole Expert, and with any request the Sole Expert may make in accordance with this Agreement or with such directions.
 - 10.2 The Parties shall be entitled to supply data, information and documentation and to make submissions (written and/or oral as the Sole Expert may direct) to the Sole Expert up to fifteen (15) Business Days after his appointment (and the Sole Expert shall ignore all data, information, documentation and submissions supplied and made after such fifteen (15) Business Days unless the same are furnished in response to a specific request from him or are made in response, in accordance with paragraph 10.5, to data, information, documentation or submissions by the other Party).

- 10.3 The Sole Expert shall be entitled to obtain such independent professional and/or technical advice as he may reasonably require and to obtain any secretarial assistance as is reasonably necessary.
- 10.4 The Sole Expert shall be entitled to request from the Parties (and the Parties shall supply to the Sole Expert) all documents and other information which the Sole Expert shall reasonably consider to be related to the Dispute and necessary for resolution thereof, provided that neither Party shall be obliged to provide the Sole Expert with any document or information which he would in an action in the High Court be entitled to refuse to disclose on grounds of legal professional privilege.
- 10.5 Copies of all data, information, documentation and submissions supplied or made by any party to the Sole Expert shall be provided simultaneously to the other Party, and any data, information or submissions supplied or made orally by one Party to the Sole Expert shall be supplied or made in the presence of the other Party. The other Party shall, notwithstanding the limitations in paragraph 10.2, have the right for the period of ten (10) Business Days from receipt of such data, information, documentation or submissions to comment in writing on it to the Sole Expert and copies of any such comments shall be promptly supplied to the other Party.
- 10.6 No meeting between the Sole Expert and the Parties or either of them shall take place unless both Parties are given a reasonable opportunity to attend any such meeting.
- 10.7 If, without showing sufficient cause, a Party fails to comply with any rule, request, direction or timetable deadline applicable to the Expert Proceedings, or in any other way fails to comply with a requirement relating to the Expert Proceedings, the Sole Expert shall nevertheless be obliged to proceed and to issue his determination in accordance with paragraphs 10.10 and 10.11, and in so doing may:
- 10.7.1 continue the Expert Proceedings in the absence of that Party or of the document, information or submission;
 - 10.7.2 draw such inferences from that failure to comply or produce as may, in the opinion of the Sole Expert, be justified; and
 - 10.7.3 make his determination on the basis of the information before him attaching such weight as he thinks fit to any evidence submitted to him outside any period he may have requested or directed or as required by the rules applicable in the Expert Proceedings.
- 10.8 The Sole Expert shall have the power to open up, review and revise any certificate, opinion, decision, instruction, direction, valuation, requisition or notice issued, given or made under this Agreement and to determine all matters referred to him in accordance with the terms of his appointment.
- 10.9 The Sole Expert may conduct the Expert Proceedings at one or more locations in any country as may appear to the Sole Expert to be reasonable.
- 10.10 Not more than ten (10) Business Days after expiry of the period provided under paragraph 10.5 the Sole Expert shall furnish the Parties with a draft of his proposed

determination of the Dispute (including a draft of the reasons required by paragraph 10.11 below) in respect of which both Parties shall be entitled to make representations to the Sole Expert for the period of five (5) Business Days after receipt of the said draft.

- 10.11 The Sole Expert shall issue his determination of the Dispute in writing within ten (10) Business Days after expiry of the period under paragraph 10.10 and shall give full written reasons for that determination.
11. The Sole Expert shall act impartially in carrying out his duties and shall do so in accordance with any relevant terms of this Agreement and shall make his determination in accordance with the applicable law in relation to this Agreement.
12. All data, information or documentation disclosed or delivered to the Sole Expert in connection with his appointment as Sole Expert shall be treated as confidential and the Sole Expert shall not disclose to any person or company any such data, information or documentation. All such data, information and documentation shall remain the property of the Party disclosing or delivering the same and shall (together with all copies thereof) be returned to that Party on completion of the Sole Expert's work or his discharge from office under paragraph 14. Provided that the Sole Expert may disclose any data, information or documentation to employees of the Sole Expert or his firm or company or Affiliates (if any) of the Sole Expert or his or its professional advisers if such employees or Affiliates or professional advisers have prior to such disclosure entered into specific undertakings to maintain the confidentiality of such information data and documentation.
13. Without prejudice to the Parties' obligation to comply with any request made by the Sole Expert under paragraph 10.4 above, the Parties shall not be entitled to, or to apply for, discovery of documents in the Expert Proceedings.
14. If the Sole Expert:
 - 14.1 relinquishes, resigns or abandons his appointment or dies or becomes incapacitated before the issue of his determination on costs under paragraph 17.2; or
 - 14.2 shall not have issued his determination within the time limit set out in paragraph 10.11, then, at the request of either Party, a replacement Sole Expert shall be appointed in accordance with the provisions of paragraphs 2 to 5 and on such appointment being made (as defined in paragraph 6) the appointment of the Sole Expert shall cease unless prior to the date of appointment of the replacement Sole Expert the Sole Expert shall have rendered his determination thereunder in which case such determination shall be binding on the Parties and the proposed appointment of the replacement Sole Expert shall be withdrawn.
15. The Sole Expert shall act as an expert and not as an arbitrator and the laws relating to arbitration shall not apply to the Sole Expert or his determination or the Expert Proceedings or the procedure by which he reaches his determination.
16. Any determination of the Sole Expert shall be final and binding upon the Parties save in the event of fraud or manifest error.

17.
 - 17.1 Whilst the Expert Proceedings are in progress:
 - 17.1.1 each Party shall bear the costs of providing all data, information, documentation and submissions supplied or made by it and the costs of all lawyers, advisers, witnesses, employees and other Persons retained by it; and
 - 17.1.2 each Party shall comply with its obligations as to payment of the Sole Expert set out in his contract of appointment.
 - 17.2 The costs referred to in paragraph 17.1.1 above and the costs and expenses of the Sole Expert and any independent advisers to the Sole Expert retained in connection with a determination hereunder and any costs of his appointment if he is proposed by the ICC Centre shall be borne as may be determined by the Sole Expert. The Sole Expert shall issue his determination on the question of how the said costs are to be borne within five (5) Business Days of the issue of his determination of the Dispute under paragraph 10.11. In reaching that determination the Sole Expert shall be guided by the principle that the unsuccessful Party should pay the costs of the successful Party, and shall take into account the relative extent of success or lack thereof by each Party.
18. The amount (if any) which is required by a determination of the Sole Expert under this Schedule (including, without limitation, any costs under paragraph 17.2) to be paid by one Party to the other Party shall be paid within ten (10) Business Days of the issue of the determination, and if not paid within that time, interest on that amount shall accrue and be payable at the rate of LIBOR plus 5% per annum (to be compounded on the first day of each calendar month of non-payment).

SCHEDULE 8
SPECIFIED POSITIONS AND PERIODS

	PROPOSED POSITION	NO.	JOB DESCRIPTION
	KEY POSITIONS		
1.	Chief Executive Officer	1	
	Chief Financial Officer	1	
	Chief Commercial Officer	1	
	Head - Mining Operations	1	
	Head - Smelter/Refinery/TLP/Acid Plant Operation	1	
	Head - Engineering Services	1	
	Head - Projects	1	
	MANAGERIAL POSITIONS		
	Finance, Accounts and Taxation	3	
	<ul style="list-style-type: none"> • Head of finance and accounts 		Responsible for statutory accounts. Dealing with statutory auditors.
	<ul style="list-style-type: none"> • Business controller 		Overall responsibility for cost control, scrutiny of capex proposals (both project and sustaining).
	<ul style="list-style-type: none"> • MIS 		Preparation / evaluation of periodic MIS. Responsible for "Management Assurance" function.

	PROPOSED POSITION	NO.	JOB DESCRIPTION
	Commercial	3	
	<ul style="list-style-type: none"> Regular purchase and project purchase 		2 positions (vendor base development, floating new tenders, supplier negotiation, e-procurement, delivery deadlines).
	<ul style="list-style-type: none"> Logistics 		Heading logistics requirement for entire operation (both inbound and outbound).
	Engineering Services	4	Two positions in mechanical maintenance (one mining, one smelter), one in electricals, one in instrumentation.
	Smelter, refinery and acid plant operation	5	Two for smelter operation, one for refinery operation, one for acid operation, one for leaching plant operation.
	Mine operation and planning	3	One for mine operation, one for exploration, one for mine production planning (including mine development schedule).
	TOTAL	25	