

DATED 30 SEPTEMBER 1997

(1) THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA

and

(2) CHIBULUMA MINES PLC

DEVELOPMENT AGREEMENT

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THIS AGREEMENT is made on 30 September 1997

BETWEEN:

- (1) **THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA**, acting through the Ministry of Mines and Minerals Development and the Ministry of Finance ("**GRZ**"); and
- (2) **CHIBULUMA MINES PLC**, a company incorporated in the Republic of Zambia (registered no. 39097), whose registered office is at Second Floor, Kafue House, 1 Nairobi Place, Cairo Road, Lusaka, Zambia (Box 30030, Lusaka) ("**ChibCo**") and who shall include any permitted assigns or successors of the rights and obligations of ChibCo).

WHEREAS:

- (1) Proposals have been submitted on behalf of ChibCo by the Metorex Consortium for the acquisition and subsequent rehabilitation, development and operation of the facilities at Chibuluma West Mine and the Chibuluma South area in the Copperbelt Province of Zambia (the "**Facilities**"), the location of which is more specifically identified by reference to the plan annexed hereto as Exhibit 1 to the First Schedule.
- (2) GRZ has approved these proposals, which are hereafter referred to as the "**Approved Programme of Mining Operations**".
- (3) The rehabilitation, development and operation of the Facilities will be of major economic significance to the people of Zambia.
- (4) GRZ wishes to ensure that the continued development and exploitation of the commercial deposits of copper and cobalt ore at the Chibuluma West Mine and future development of Chibuluma South will secure the maximum benefit for, and adequately contribute to the advancement and the social and economic welfare of, the people of Zambia, including the people in the vicinity of the Contract Area in a manner consistent with their needs and the protection of the environment and secure an appropriate return on investment commensurate with the risks involved to ChibCo.
- (5) GRZ and ChibCo have agreed on a number of matters which are set out in this Agreement and wish the matters agreed upon to be an enduring arrangement of national interest.
- (6) GRZ has granted to the Minister of Mines and Minerals Development and the Minister of Finance statutory authority under Section 9 of the Act to enter into this Agreement on behalf of GRZ, and GRZ and ChibCo agree to be bound by all the terms and conditions relating thereto. The Minister has sought and received the advice of the Mining Advisory Committee in accordance with Section 88 of the Act and is acting in accordance with such advice.
- (7) GRZ, ChibCo, ZCCM and the Metorex Consortium have entered into the Sale and Purchase Agreement which requires on its Completion (as therein defined) the entry into of this Agreement.

PART A

GENERAL

1. Definitions and Interpretations

1.1 In this Agreement, unless the context otherwise requires:

"Act" means the **Zambian Mines and Minerals Act, 1995 (Act No. 31 of 1995)** as from time to time amended and in effect;

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

- (i) any company in which ChibCo or a Shareholder (as the case may be) holds twenty per cent. (20%) or more of the ordinary voting shares or which holds twenty per cent. (20%) or more of ChibCo's or a Shareholder's (as the case may be) ordinary shares;
- (ii) any person which, directly or indirectly, is controlled by or Controls, or is under Common Control with ChibCo or a Shareholder (as the case may be); or
- (iii) any person or group of persons being directors or executive officers of, or in the employment of any person referred to in (i) or (ii) above,

and "**Control**" means:

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

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

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

"**Approved Programme of Mining Operations**" means the proposals for rehabilitating, developing and operating the Facilities submitted on behalf of ChibCo by the Metorex Consortium which have been approved by the Ministry and which is set out in Schedule 1.

"Arms' Length Terms" means a transaction where:

- (a) the parties in negotiating the transaction have sought to promote their own best interests in accordance with fair and honest business methods;
- (b) the consideration expressed in the agreement for the transaction entered into is the only consideration for the transaction;
- (c) the price and other terms of the transaction have not been affected by, nor determined as a consequence of, any other agreement or any direct or indirect relationship (other than the relationship created by the transaction agreement) between the selling party or shareholders of the selling party, or a company in which the selling party is a shareholder, and buying party or shareholders of the buying party, or a company in which the buying party is a shareholder; 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" means all the property and assets to be transferred by ZCCM to ChibCo pursuant to the provisions of the Sale and Purchase Agreement as are more particularly described therein;

"Bulk Supply Agreement" has the definition given in the Sale and Purchase Agreement;

"Business Day" means a day, other than a Saturday or Sunday upon which banks are open for business in London, New York and Lusaka;

"Central Bank" means the Bank of Zambia;

"Collective Agreement(s)" means the Standard Conditions of Employment and Service as agreed between ZCCM and the Mineworkers Union of Zambia in effect at the date of closing of the Sale and Purchase Agreement (which for the avoidance of doubt includes the Standard Code Book, the Disciplinary Code Book, the 1981 Joint Job Evaluation Agreement and the 1997 Redundancy Agreement), as these may be renegotiated by ChibCo from time to time following the expiry thereof;

"Companies Act" means the Zambian Companies Act, 1994 (Act No. 26 of 1994) as from time to time amended and in effect;

"Contract Area" means that land area covered by the Leases and which is described in Schedule 3 Part I;

"Control of Goods Regulations" means the Control of Goods (Import Declaration Fee) Regulations, 1995 (S.I. No.148 of 1995) as executed under the Control of Goods Act (Chapter 690 of the Laws of Zambia) as from time to time amended and in effect;

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

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

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

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

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

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

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

"Environmental Clean Up Obligations" means those obligations more particularly described in Schedule 5, Part II;

"Environmental Laws" means the Mining (Mineral Resource Extractions) Regulations, 1994 (SI 119/1994); the Environmental Protection and Pollution Control Act, 1990 (Act No. 12 of 1990) and regulations enacted thereunder; and Sections 75 to 82 of the Mines and Minerals Act, 1995 (Act No. 31 of 1995) and the Mines and Minerals (Environmental) Regulations, 1997, save for the provisions contained in each of such laws and regulations which relate to mine safety and/or the safety of persons rather than to the protection of the environment, as each may from time to time be amended and in effect;

"Environmental Plan" means the programme for environmental clean up and protection and, where applicable, the proposals to bring ChibCo into compliance with the Environmental Laws with which it is not in compliance as at the Effective Date, as set out in Schedule 5 Part I;

"Environmental Protection Fund" means the fund set up for environmental protection by Section 82 of the Act and the Mines and Minerals (Environmental) Regulations SI No. 29 of 1997;

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

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

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

of the Government of the Republic of Zambia;

"Import Declaration Fee" means the fee payable under the Control of Goods Regulations;

"Investment Commitment" means the obligation to develop Chibuluma South as specified as such in the Approved Programme of Mining Operations and the other Scheduled Programmes;

"Kwacha" means the lawful currency of Zambia;

"Large Scale Mining Licences" means Large Scale Mining Licence Numbers 23 and 24 held by ChibCo pursuant to the Act (or any successor or additional licences issued in replacement or substitution therefor), the current form of which being set out in Schedule 3 Part II;

"Leases" means the leases set out in the Sale and Purchase Agreement;

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

"Local Business Development Programme" means the programme for local business development which is described in Clause 5 and which is set out in Schedule 2;

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

"Mine Products" means the ores or concentrates or other Minerals produced from the Mining Area and all smelter and refinery products produced in Zambia (including acid) derived therefrom;

"Minerals" means all minerals excluding petroleum and other hydrocarbons, as the same may be located in the Contract Area;

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

"Mining" has the meaning given to the term in the Act and, for the purpose of this Agreement, includes all concentrating, smelting, refining and treatment and transport operations associated with and necessary for the production of marketable products thereto;

"Mining Area" means the areas covered by the Large Scale Mining Licences, the same being set out in Schedule 3 Part III;

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

"Municipal Infrastructural Services" means the municipal infrastructural services as set out

in Schedule 4, Part IV;

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

"Notices" means any notice, consent, demand, approval or other communication required or permitted to be given under Clause 24;

"Operating Costs" for any period means the costs incurred by ChibCo during Normal Operations excluding (a) depreciation and other non-cash costs (b) capital costs other than replacement capital costs and (c) financing charges;

"Parties" means the persons who are for the time being original parties to this Agreement or parties added or substituted pursuant to Clause 16;

"Physical Social Assets" means those assets listed in Schedule 4, Part V;

"Quarter"; means:

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

"Recreational Services" means the libraries, social clubs, canteens and sports facilities as the same are listed in Schedule 4, Part III;

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

"Registered Dependants" means the dependants of employees who, at the date of this Agreement, are registered and thereafter those that shall be registered in accordance with Clause 9.1, in the records of ZCCM as being entitled to use some or all of the ZCCM Social Service Assets;

"Rural Electrification Levy" means the rural electrification levy initially agreed between ZCCM and subsequently with the purchaser of ZCCM Power Division and the Zambia Electricity Supply Corporation for the electrification of the rural areas of Zambia;

"Sale and Purchase Agreement" means the agreement for the sale and purchase of the assets of Chibuluma West Mine and Chibuluma South and certain assets at Kalulushi dated 30 September 1997 and made between ZCCM, the Metorex Consortium, ChibCo and GRZ;

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

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

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

"Social Assets" means the Physical Social Assets and the Social Service Assets;

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

"Sole Expert" means a person appointed (i) pursuant Clauses 3.3(c), 6.4, 7.3, 8.8, 9.10, 12.5, 12.8, 16.5(b)(ii), 16.7, 18.6(c), 22.2(b) and 22.4(d) of this Agreement or (ii) by agreement between the parties to resolve any difference of view or disagreement between them and, in the event the parties in dispute fail to agree on the person to be so appointed, a person appointed on an application by either party by the Secretary-General for the time being of the International Centre for the Settlement of Investment Disputes (ICSID). For the purposes of this agreement, the Sole Expert shall not be, or have been an employee of GRZ or ChibCo or any Shareholder or any of their respective Affiliates or any authority or corporation of GRZ;

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

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

"Transferring Employees" means those employees previously employed by ZCCM whose employment has been transferred (with their consent) to ChibCo with effect from the Closing of the Sale and Purchase Agreement;

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

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

"Zambia" means the Republic of Zambia;

"ZCCM" means Zambia Consolidated Copper Mines Limited;

"ZCCM Social Services Access Agreement" means the agreement concluded between ZCCM and ChibCo of even date with this Agreement affording (on the terms and conditions therein contained) certain persons access to certain of the Social Service Assets;

"Zambia Electricity Supply Corporation Tariff" means the tariff payable by ZCCM under the terms of the Bulk Supply Agreement;

1.2 In this Agreement, unless the context otherwise requires:

- (a) monetary references are references to United States dollars unless otherwise specifically expressed;**
- (b) the headings do not affect the interpretation or construction;**
- (c) references to an Act includes the amendments to that Act for the time being in force and also to any Act passed in substitution therefor and any regulations for the time being in force thereunder;**
- (d) words importing the singular include the plural and vice versa;**
- (e) words importing any gender include the other gender;**
- (f) references to a person include a partnership, firm or corporation and any instrumentality of GRZ or any political sub-division thereof; and**
- (g) the recitals form part of this Agreement.**

PART B

OPERATIONAL AND EMPLOYMENT ISSUES

- 2. Obligations to Develop**
- 2.1 ChibCo shall, following the date on which the Large Scale Mining Licences are granted to ChibCo 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 Operations in accordance with the timetable contained therein and good international mining and metal treatment standards and practices.
- 2.2 Without prejudice to the obligation contained in Clause 2.1, ChibCo shall expend the Investment Commitment substantially in the manner, on the terms and in the amounts set out in the Scheduled Programmes. It being specifically recorded that completion of the Approved Programme of Mining Operations in respect of the development of Chibuluma South for less than the amount specified as the Investment Commitment shall constitute the satisfactory discharge of the Investment Commitment provided that the development of the Chibuluma South No. 1 Shaft and the construction of the Chibuluma South new concentrator have been completed in accordance with the Approved Programme of Mining Operations and that payment is made to ZCCM in accordance with Clause 2.3 below.
- 2.3 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 Section 24(3) of the Act and further acknowledges that the Scheduled Programmes comply with Section 25(1) of the Act.
- 2.4 GRZ confirms that it considers the proposed mining and treatment practices described in the Approved Programme of Mining Operations not to constitute "wasteful mining practices" for the purposes of Section 81 of the Act. This confirmation is without prejudice to the rights of the Director of Mines Safety (acting on behalf of GRZ) to determine that mining practices not specifically referred to in the Approved Programme of Mining Operations constitute wasteful mining practices for the purposes of Section 81 of the Act. Nothing in this Clause 2.4 shall prevent or restrict or otherwise limit GRZ from taking all actions within its power to protect public health and safety.
- 2.5 GRZ confirms that it shall procure that no action shall be taken by the Water Development Board against ChibCo for its operation without Water Rights (as defined in the Sale and Purchase Agreement) for a period of ninety (90) days hereof or in the event of any action being taken, fully compensate ChibCo for any costs or penalties incurred.
- 2.6 ChibCo confirms that it shall use its best endeavours to obtain a full public listing in Lusaka, Johannesburg and/or London within a two (2) year time period from the date hereof subject to suitable market conditions prevailing at the time.
- 3. Rights to Export and Import and Arms' Length Dealings**

- 3.1 Subject to Clause 4 and the payment of applicable duties and taxes not otherwise exempted or deferred pursuant to this Agreement, ChibCo may import and where it so desires, re-export without further reference to GRZ, materials, equipment and services to be used in implementing the Scheduled Programmes provided that GRZ has not notified ChibCo that the import and/or re-export (as applicable) of such materials, equipment and services would give rise to the matters specified in Clause 3.2(b)(i) or (ii).
- 3.2 ChibCo may market and export without further reference to GRZ all Mine Products and shall have sole control and management of the sale of such Mine Products, including the forward selling of such Mine Products, and shall assume all risks therefor, provided that:
- (a) ChibCo sells its products on Arms' Length Terms;
 - (b) GRZ has not notified ChibCo that the export of the Mine Products would:
 - (i) breach an obligation of GRZ arising under international law (including mandatory sanctions imposed by the United Nations); or
 - (ii) result in dealing or contracting with nationals of a state with which GRZ is in a state of declared or undeclared war;
 - (c) manufacturers of processed and semi-processed goods involving copper content with processing facilities located in Zambia which are willing and able to purchase copper cathode or other products at currently prevailing international market prices payable in US dollars to ChibCo's account outside Zambia shall be afforded a preference over manufacturers whose processing facilities are not so located Provided that this obligation shall only apply to an amount of copper which does not exceed ten per cent. (10%) of ChibCo's annual copper production from time to time and that the application of this preference shall not result in ChibCo breaching its delivery obligations with respect to any of the sales contracts which are transferred to ChibCo pursuant to the Sale and Purchase Agreement; and
 - (d) no order has been made by the Minister pursuant to Section 69 of the Act.
- 3.3 ChibCo shall advise GRZ of each agreement concerning sales or processing of Mine Products, patent licensing, engineering, construction or management services which is entered into with an Affiliate. Such agreements shall be copied to GRZ forthwith upon execution. If, in the opinion of GRZ, any such agreement is not on Arms' Length Terms, GRZ may, within thirty (30) days of receipt of such agreement, give notice to ChibCo of the terms which GRZ considers to be Arms' Length Terms.

Upon receipt of GRZ's notice ChibCo:

- (a) may terminate the agreement; or
- (b) may renegotiate the agreement using the terms considered arms' length by GRZ; or
- (c) if ChibCo disagrees with the terms so considered by GRZ, it may refer the dispute

to a Sole Expert in accordance within Clause 19 for a determination as to what are Arms' Length Terms.

Upon receipt of the Sole Expert's determination, ChibCo shall renegotiate the agreement, if necessary, to embody those terms decided by the Sole Expert to be Arms' Length Terms or terminate the agreement.

4. Procurement

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

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

- (i) meets the specifications of the invitation to tender;
- (ii) is competitive in cost with international sources; and
- (iii) meets the delivery requirements of the Facilities,

then the Company shall not discriminate against such businesses in its award of such tender.

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

4.4 ChibCo shall advise GRZ of each such agreement for the supply of goods and services where the counterparty is an Affiliate in which event the provisions of Clause 3.3 (other than the first sentence) shall apply *mutatis mutandis*.

5. Local Business Development

5.1 ChibCo shall:

- (a) comply with the Local Business Development Programme so as to encourage and assist the establishment of businesses within Zambia (particularly in the Copperbelt and with a particular emphasis on businesses directly or indirectly majority owned by Zambian citizens) to supply materials, equipment and services to ChibCo, provided that ChibCo shall not be obliged to grant or lend money to any person;
- (b) conduct an annual review of progress being made on the implementation of the Local

Business Development Programme and make such variations to it as required by changing circumstances; and

- (c) designate a responsible and experienced person to be involved in setting up and managing small business enterprises:**
 - (i) to assist Zambian citizens who wish to or have set up businesses to service ChibCo and the Facilities;**
 - (ii) to assist in the implementation of the Local Business Development Programme and variations thereof;**
 - (iii) to liaise with the appropriate officials from GRZ; and**
 - (iv) to compile and maintain the register referred to in Clause 4.1.**

6. Training and Human Resources Management

6.1 ChibCo shall comply with the Training and Human Resources Management Programme.

6.2 ChibCo may, with the consent of GRZ (which consent shall not be unreasonably withheld), amend or alter the Training and Human Resources Management Programme, with a view to securing the maximum training of and benefits to Zambian citizens from the Facilities. If ChibCo is unable to comply with some aspects of the Training and Human Resources Management Programme as a result of:

- (a) circumstances or events beyond its control; or**
- (b) 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 and ChibCo may give notice of alternative or revised plans to the part of the Training and Human Resources Management Programme affected.

6.3 Should ChibCo give notice pursuant to Clause 6.2 (a) or (b), GRZ shall within thirty (30) days either:

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

6.4 If the discussions under Clause 6.3 do not lead to GRZ's approval of alternative or revised plans and ChibCo considers GRZ's decision to be unreasonable, ChibCo may elect to refer the reasonableness of GRZ's decision to a Sole Expert in accordance with Clause 19.

6.5 If the Sole Expert determines that GRZ's decision is not unreasonable, he shall identify to ChibCo the changes to the Training and Human Resources Management Programme as will be necessary to bring such programme into compliance with GRZ's requirements in this

regard. However, if the Sole Expert determines that GRZ's decision is unreasonable, he shall declare his determination to both parties and the proposed amendment or alternation to the Training and Human Resources Management Programme shall deemed approved.

- 6.6 ChibCo shall not, save as provided below, be restricted in its employment, selection, assignment or discharge of personnel Provided, however, that the employment and the terms and conditions of such employment and the discharge or disciplining of personnel within Zambia shall be carried out in compliance with (i) the laws and regulations of Zambia which are, from time to time, of general application, (ii) the Collective Agreements and (iii) the terms of individual employment contracts from time to time. The Training and Human Resources Management Programme identifies a minimum number of employees necessary to conduct Normal Operations from time to time. ChibCo will ensure that the number of its employees will not be reduced below such levels without ninety (90) days prior notification to GRZ.
- 6.7 ChibCo will, in its recruitment, selection, promotion and assignment of personnel not discriminate against comparably qualified and experienced Zambian citizens.
- 6.8 ChibCo 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, ChibCo will take all reasonable efforts in its recruitment and employment of employees in professional, managerial, engineering and scientific grades (including, but not limited to the advertising of 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 ChibCo.
- 6.9 ChibCo will honour and perform the terms and conditions of the contracts of employment of the Transferring Employees save that such contracts may be varied with the Transferring Employees' consent, such variation to be made and obtained in compliance in all respects with Zambian law and regulations and the terms of the relevant Collective Agreements.
- 6.10 ChibCo will recognise, for collective bargaining purposes, the trade union currently representing the Transferring Employees and the Collective Agreements covering the Transferring Employees in force at the date hereof.
- 6.11 ChibCo adopts the Redundancy Terms currently applicable to Transferring Employees (and agrees that years previously worked for ZCCM shall form part of the accrued service of such Transferring Employees when calculating any subsequent redundancy payment to which they may become entitled upon being terminated by ChibCo) and agrees that no amendment or variation will be proposed or made to the Redundancy Terms which would adversely affect the Transferring Employees (or any of them) if such Redundancy Terms were to be implemented without the Transferring Employees' consent.
- 6.12 Notwithstanding the provisions of this Clause 6, ChibCo (and its contractors or sub-contractors) may bring into Zambia such non-Zambian citizens as, in the reasonable judgment of ChibCo's management, are required to carry out specified operations efficiently and successfully and, at ChibCo's request (which shall be accompanied by the requisite information concerning the education, experience and other qualifications of the personnel

concerned) GRZ shall cause all necessary permits (including entry and exit permits, work permits, visas and such other permits or permissions as may be requested) to be issued to such persons and their entitled dependents without undue delay and without hampering the continuous and efficient performance of ChibCo's obligations under this Agreement. Provided that GRZ shall be under no such obligation to issue the permits aforesaid to any non-Zambian citizen who is disqualified from entry by reason of previous criminal convictions, health regulations and like restrictions set out in immigration regulations of general application in Zambia from time to time.

7. Insurance

7.1 ChibCo shall ensure that those aspects of the Facilities that are normally and commercially insurable (and where such insurance is customarily obtained in the mining industry in accordance with good international mining practice) are insured and GRZ shall be advised of the policy or policies in place and shall forward copies to GRZ.

7.2 GRZ agrees that the insurances specified in Schedule 7 are those which, as at the date hereof, would otherwise be required by:

- (a) statutory instrument referred to Section 101(1) of the Act; and/or
- (b) the Director pursuant to Section 101(3) of the Act.

7.3 ChibCo shall, unless the policies of the insurance or any of its loan agreements state otherwise or GRZ otherwise agrees, use any amount paid to it pursuant to any damage or destruction provisions in any contract of insurance to reinstate such elements of the Facilities (except for Mine Products) in respect of which such amount was paid, provided that ChibCo shall not be required to repair or restore any portion of the Facilities that, prior to the damage or destruction, had been obsolete or were of no material value to the actual or potential operations of ChibCo or where ChibCo, following a review of the facts with GRZ, has notified GRZ that in its judgement the cost of so doing is not justified by the incremental economic benefit which ChibCo will derive therefrom. In the event that GRZ notifies ChibCo that it disagrees with such judgement, the matter shall be referred for determination to a Sole Expert in accordance with Clause 19.

8. Suspension of Production

8.1 The parties acknowledge that ChibCo's right to suspend and curtail production is governed by Section 28 of the Act and that, in the event of any such suspension or curtailment, the Minister may exercise powers under Section 28(3) of the Act.

8.2 GRZ hereby agrees that:

- (a) the Minister's approval shall be deemed given in accordance with Section 28(3)(a) of the Act upon compliance by ChibCo with this Clause; and
- (b) in such event, any direction capable of being given pursuant to Section 28(3)(b) of the Act will only be given either:

- (i) in compliance with this Clause; or
 - (ii) if ChibCo 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.

- 8.3 ChibCo may elect to suspend production if in its reasonable opinion the Company forecasts in the following six (6) month period operating losses, shortages of supplies and materials, interruption of transportation, smelting, power, labour and other services essential to Normal Operations, or other economic or practical reasons making it prudent to suspend production. As soon as possible after giving notice under this Clause, ChibCo shall submit a report giving reasons why, in its opinion, it is necessary to cease production.

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

- 8.5 No later than twelve (12) months from the date on which ChibCo suspended production pursuant to Clause 8.3 or otherwise in accordance with Section 28 of the Act and thereafter at no longer than twelve (12) month intervals until Normal Operations are resumed, ChibCo shall submit a further report showing its projection of the Costs to Resume Operations and of revenue from Normal Operations (if resumed) for the same period.

- 8.6 If a report submitted pursuant to Clause 8.5 shows ChibCo's projection of revenues from Normal Operations for the succeeding twelve (12) month period is greater than its projection of the Costs to Resume Operations for the said twelve (12) month period then ChibCo shall promptly take such measures necessary to ensure that Normal Operations are resumed within a reasonable time period.

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

- 8.8 If ChibCo disagrees with the Minister's direction pursuant to Clause 8.7 it may elect to submit GRZ's and ChibCo's respective projections of revenue from Normal Operations and the Costs to Resume Operations to a Sole Expert for his opinion in accordance with Clause 19.

- 8.9 Where projections made by GRZ and ChibCo have been referred to the Sole Expert pursuant to Clause 8.8, the Sole Expert shall determine what projections would be reasonable to make in respect of the twelve (12) month period under review and the opinion of the Sole Expert shall be binding on the Parties so that in the event that the Sole Expert accepts the projections of ChibCo or is otherwise of the opinion that if Normal Operations were resumed ChibCo's revenue from the Facilities would be less than the Costs to Resume Operations in respect of the twelve (12) month period, the direction given by the Minister pursuant to Clause 8.7 shall be deemed to have been withdrawn.

- 8.10 Where pursuant to Clause 8.7 the Minister has directed ChibCo to resume Normal Operations and that direction has not been or is not deemed to have been withdrawn, ChibCo, if it does not promptly take such measures to ensure that Normal Operations are resumed within a reasonable time period, shall be deemed for the purposes of this Agreement to have abandoned all the land subject to the Large Scale Mining Licences pursuant to Section 49 of the Act Provided however, that where projections of revenue from Normal Operations and the Costs to Resume Operations have, pursuant to Clause 8.8, been referred to a Sole Expert, the time period shall run from the date the Sole Expert gave his opinion on the projections.
- 8.11 Nothing herein contained shall prejudice ChibCo'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 said section save as specifically described herein.

9. Social Assets

- 9.1 The Parties acknowledge that ChibCo has, as at the date hereof, assumed ownership and operational control of, and responsibility for the Social Assets, which comprise the Physical Social Assets, the Medical Services, the Education Services, the Municipal Infrastructural Services and the Recreational Services. ChibCo agrees to continue to employ the same registration practice for determining the eligibility of dependants to qualify as Registered Dependants as the practice for determining the same which was in place at the date of this Agreement.

9.2 Medical Services

Subject to Clause 9.8, ChibCo shall:

- (a) ensure that the Medical Services are available to:
- (i) all employees of ChibCo and the Registered Dependants of such employees (including for the avoidance of doubt all persons to whom access to the Medical Services is granted by virtue of relevant redundancy or retirement provisions); and
 - (ii) such persons as may be entitled to the provision of the Medical Services under the terms of the ZCCM Social Services Access Agreement,

provided, in the case of persons entitled to access pursuant to paragraph (ii) above, that the agreement is being performed by the counterparty thereto

- (b) make available the Medical Services at the following levels:
- (i) at the time of this Agreement coming into effect, at the level prevailing at the date hereof which is specified in Schedule 4, Part I;
 - (ii) thereafter, at a level appropriate to the number of persons entitled thereto from time to time, namely the sum of (aa) the number of ChibCo employees

and their Registered Dependants (including persons to whom access to the Medical Services is granted by virtue of redundancy or retirement provisions) and (bb) the number of personnel entitled to Medical Services pursuant to the provisions of the ZCCM Social Services Access Agreement,

taking into account improvements in efficiency and/or technology which result in the same standards of services capable of being provided by fewer people.

- (c) ensure that the Medical Services are provided to such persons described in Clause 9.2(a) above at least to the same standard (as to range and quality of service) as that currently available as at the date of this Agreement; and
- (d) ensure that charges for the provision of Medical Services:
 - (i) to such persons described in Clause 9.2(a)(i) above are no greater in real terms than those levied by ZCCM immediately prior to completion of the Sale and Purchase Agreement;.
 - (ii) to such persons described in Clause 9.2(a)(ii) above are charged in accordance with the relevant provisions of the ZCCM Social Services Access Agreement.

9.3 Education Services

Subject to Clause 9.8, ChibCo shall:

- (a) provide the Education Services in full compliance with the Education Act (CAP 234) and the rules, regulations, curricula and standards of general application in Zambia imposed by the Ministry of Education;
- (b) ensure that the children of:
 - (i) all employees of ChibCo (including for the avoidance of doubt, all persons to whose children access to the Education Services is granted by virtue of relevant redundancy or retirement provisions); and
 - (ii) such persons as may be entitled to the use of the Education Services under the terms of the ZCCM Social Services Access Agreement,shall be considered for places at the relevant educational facilities (recognising that such children will be subject to selection for such places as is currently the practice);
- (c) make Education Services available at the following levels:
 - (i) at the time of this Agreement coming into effect, at the level prevailing at the date hereof which is specified in Schedule 4, Part II; and
 - (ii) thereafter, at a level appropriate to the number of persons entitled to

consideration for access thereto from time to time, namely the sum of (aa) the number of children of ChibCo employees of school age (including children to whom access to Educational Services is granted by virtue of redundancy or retirement provisions) and (bb) the number of children of personnel entitled to Education Services pursuant to the provisions of the GRZ Social Services Access Agreement;

- (d) ensure that the Education Services are provided to such persons described in Clause 9.3(b) above at least to the same standard (as to range and quality of service) as that currently available as at the date of this Agreement; and
- (e) ensure that charges for the provision of Education Services:
 - (i) to such persons described in Clause 9.3(b)(i) above are no greater in real terms than those levied by ZCCM immediately prior to the closing of the Sale and Purchase Agreement; and
 - (ii) to such persons described in Clause 9.3(b)(ii) above are charged in accordance with the relevant provisions of the ZCCM Social Services Access Agreement.

9.4 Recreational Services

Subject to Clause 9.8, ChibCo shall:

- (a) ensure that the Recreational Services are available to:
 - (i) all employees of ChibCo and the Registered Dependants of such employees (including for the avoidance of doubt, all persons to whom access to the Recreational Services is granted by virtue of relevant redundancy or retirement provisions); and
 - (ii) such persons as may be entitled to the use of the Recreational Services under the terms of the ZCCM Social Services Access Agreement;
- (b) make available to those persons described in Clause 9.4(a), the Recreational Services at the time of this Agreement coming into effect, at the level and standard then applying and thereafter, at a level appropriate to the number of persons entitled thereto, namely the sum of (aa) the number of ChibCo employees their Registered Dependants from time to time, and (bb) the number of personnel entitled to Recreational Services pursuant to the provisions of the ZCCM Social Services Access Agreement;
- (c) ensure that the Recreational Services are provided to such persons described in Clause 9.4(a) at least to the same standard (as to range and quality of service) as that currently available at the date of this Agreement; and
- (d) ensure that the charges for the provision of the Recreational Services:

- (i) to such persons described in Clause 9.4(a)(i) above are no greater in real terms than those currently levied as at the date of this Agreement; and
- (ii) to such persons described in Clause 9.4(a)(ii) above are in accordance with the relevant provisions of the ZCCM Social Services Access Agreement.

9.5 Municipal Infrastructural Services

Subject to Clause 9.8, ChibCo shall, until such time as alternative arrangements are agreed with GRZ by twenty four (24) months from the date hereof:

- (a) provide the Municipal Infrastructural Services in full compliance with the public health legislation and the rules, regulations and standards of general application in Zambia imposed by the Ministry of Local Government and Housing;
- (b) ensure that the Municipal Infrastructural Services are available to:
 - (i) all employees of ChibCo and their Registered Dependants (including, for the avoidance of doubt), all persons to whom access in the Municipal Infrastructural Services is granted by virtue of relevant redundancy and retirement provisions) ; and
 - (ii) such persons as may be entitled to receive the Municipal Infrastructural Services under the terms of the ZCCM Social Services Access Agreement;
- (c) make available the Municipal Infrastructural Services at the time of this Agreement coming into effect, at the level and standard then applying and thereafter, at a level appropriate to the number of persons entitled thereto, namely, the sum of (aa) the number of ChibCo employees with their Registered Dependants from time to time and (bb) the number of personnel entitled to Municipal Infrastructural Services pursuant to the provisions of the ZCCM Social Services Access Agreement; and
- (d) ensure that the charges for the provisions of the Municipal Infrastructural Services:
 - (i) to those persons described in Clause 9.5(b)(i) above are no greater in real terms than those levied by ZCCM immediately prior to the closing of the Sale and Purchase Agreement; and
 - (ii) to such persons described in Clause 9.5(b)(ii) above, are in accordance with the relevant provisions of the ZCCM Social Services Access Agreement.
- (e) In addition to the foregoing, ChibCo will:
 - (i) allow the public and GRZ to use free of charge any roads constructed (and/or maintained) by ChibCo which by custom and practice have been freely available for public use, provided however, that such use shall not unduly prejudice or interfere with ChibCo's operations hereunder;

- (ii) allow GRZ and third parties to have access over the Contract Area, provided that such access does not unduly prejudice or interfere with ChibCo's operations hereunder; and
- (iii) allow GRZ to place, free of charge at its own expense, telegraph and telephone wires on the poles of the lines of ChibCo, provided that such installation does not unduly interfere with ChibCo's efficient use of such poles and lines.

9.6 Physical Social Assets

ChibCo has agreed that it will maintain the Physical Social Assets in a good state of repair and, except as may be agreed pursuant to Clause 9.8 below, will only dispose of the Physical Social Assets:

- (a) to the extent they are surplus to the level of Physical Social Assets required by ChibCo in order to meet its commitments as set out in Clauses 9.2(b)(ii), 9.3(c)(ii), 9.4(b) and 9.5(c) above; or
- (b) to the extent such Physical Social Assets may be outsourced pursuant to 9.7(b).

9.7 ChibCo will be free to effect the maintenance of the Medical Services, the Education Services, the Recreational Services, the Municipal Infrastructural Services and the Housing Services pursuant to Clauses 9.2, 9.3, 9.4 and 9.5 either:

- (a) itself; or
- (b) through outsourcing or other third party provision, such outsourcing or third party provision being effected by persons of suitable competence or professional standing. For the avoidance of doubt, if ChibCo wishes to sell the Physical Social Assets and contract with third parties for the provision of the Medical Services, the Education Services, the Recreational Services and the Municipal Infrastructural Services it shall be entitled to do so provided that ChibCo continue to comply with Clause 9.3(d), 9.4(c) and 9.5(c).

9.8 In the event that ChibCo determines that it will become unable to comply with the provisions of Clauses 9.2, 9.3, 9.4, 9.5, 9.6 for any reason whatsoever, it shall forthwith give notice to GRZ of this fact. GRZ agrees that it will accept such non-compliance with Clauses 9.2, 9.3, 9.4, 9.5 and 9.6 (as the case may be) and that no action will be taken under this Agreement if, simultaneously with the giving of such notice, (i) ChibCo submits proposals to GRZ for:

- (a) an increase in general levels of remuneration or other employment benefits to employees of ChibCo; and
- (b) compensation to be paid to ZCCM in order to compensate ZCCM for the withdrawal of rights to occupy or use (as the case may be) the Physical Social Assets, the Medical Services, the Education Services, the Recreational Services and the Housing

Services and (ii) if ChibCo also provides GRZ with reasonable evidence that such proposals are agreed with any trades union(s) then representing employees of ChibCo.

9.9 Pending confirmation from GRZ that such proposals for increases in general levels of remunerations or other benefits are acceptable to it, ChibCo will comply in all respects with Clauses 9.2, 9.3, 9.4, 9.5 and 9.6 and GRZ agrees that it will respond to ChibCo's proposal within sixty (60) days of receipt of the same from ChibCo.

9.10 If the Parties disagree about:

- (a) the level of Social Assets to be maintained and the availability of the Social Service Assets pursuant to Clause 9.2(a) and 9.2(b), Clauses 9.3(b) and 9.3(c), Clauses 9.4(a) and 9.4(b), Clauses 9.5(b) and 9.5(c), and/or Clause 9.6 (as the case may be);
- (b) the state of repair of Physical Social Assets or the extent that ChibCo is permitted to dispose of the same pursuant to Clause 9.7;
- (c) the standard of, or charges made for, the provision of the Medical Services, the Education Services, the Recreational Services, the Municipal Infrastructural Services and/or the Housing Services pursuant to Clauses 9.2(c) and 9.2(d), Clauses 9.3(d) and 9.3(e), Clauses 9.4(c) and 9.4(d) and Clause 9.5(d);
- (d) the competence of persons or companies providing outsourcing or third party provision pursuant to Clause 9.7(b); or
- (e) the acceptability of proposals made by ChibCo pursuant to Clause 9.8,

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

9.11 ChibCo will not be required to make Social Service Assets available to persons who are not:

- (a) employees of ChibCo or their Registered Dependants (including for the avoidance of doubt all persons to whom access to the Social Service Assets is granted by virtue of relevant redundancy or retirement provisions); and
- (b) entitled to the use of the Social Service Assets under the terms of the ZCCM Social Services Access Agreement.

10. Records and Operating Reports

10.1 ChibCo shall, pursuant to Section 104 of the Act, keep GRZ, through the Ministry, advised concerning ChibCo's operations through submission of progress reports, beginning with the first quarter following the date of this Agreement, as to the progress and results of ChibCo's mining operations and any prospecting and appraisal activities under this Agreement.

10.2 Pursuant to Sections 2(d) and (e) of the Fourth Schedule to the Act, ChibCo shall provide

quarterly reports to the Ministry, broken out on a mine by mine basis in the case of (a) to (c) below on:

- (a) quantities of ore mined and average head grades;
 - (b) quantities of waste mined;
 - (c) quantities of copper and cobalt concentrates produced and quantities of contained copper and cobalt;
 - (d) Operating Costs; and
 - (e) progress in implementing the Scheduled Programmes, the extent of any continuing non-compliance by ChibCo with Environmental laws and progress made in remedying this in accordance with the Environmental Plan.
- 10.3 ChibCo shall file with the Ministry a summary of any geological and metallurgical investigations and such other material data may be obtained from any prospecting activities and a sample representative of each principal type of mineralisation encountered in such investigations subject to the Ministry retaining such data in accordance with Section 89 of the Act.
- 10.4 ChibCo shall provide quarterly reports relating to any prospecting, appraisal and development activities to the Ministry which shall include such information as to the progress of operations in the Mining Area as the Ministry may from time to time reasonably require.
- 10.5 All information furnished to GRZ shall be in English and, in the event that such information is a translation from the original, shall be a certified true translation. All financial data shall be recorded in U.S. dollars.
- 10.6 ChibCo shall maintain all original records and reports relating to its activities and operations under this Agreement including all documents relating to financial and commercial transactions with independent parties and Affiliates in its principal office in Zambia. These records and reports shall be opened to inspection by GRZ through an authorised representative during normal working hours. Such reports and records shall be maintained in the English language and all financial data shall be recorded in U.S. dollars.
- 10.7 All records, reports, plans, maps, charts, accounts, and information which ChibCo is or may be from time to time required to supply under the provisions of this Agreement shall be supplied at the expense of ChibCo.

PART C

UNDERTAKINGS NECESSARY FOR OPERATIONS

11. Foreign Exchange

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

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

11.2 In the event foreign exchange controls were to be re-introduced in Zambia within fifteen (15) years of the date hereof, ChibCo shall have the right to:

- (a) retain both outside Zambia and within Zambia, in accounts established for that purpose, foreign currency, and to have paid to it and maintain in such accounts the following:**
 - (i) proceeds of the sale of Mine Products;**
 - (ii) payments made by insurers not resident in Zambia under contracts of insurance in ChibCo's favour;**
 - (iii) proceeds of any disposal of capital assets received from persons not resident in Zambia for foreign exchange purposes;**
 - (iv) the amount of any funds received pursuant to any loan finance provided by persons not resident in Zambia for foreign exchange purposes;**
 - (v) any share capital received in foreign currency from persons not resident in Zambia for foreign exchange purposes; and**
 - (vi) any other foreign currency earned or accrued in the ordinary course of business from persons not resident in Zambia for foreign exchange purposes.**
- (b) use freely the foreign currency accounts maintained by ChibCo to:**
 - (i) service payments of principal and interest, service charges and other fees and expenses in respect of any loans arranged with non-Zambian institutions to implement the Scheduled Programmes or otherwise finance or refinance the Facilities;**
 - (ii) make payments due (aa) to suppliers outside Zambia for the supply of goods and services to ChibCo (including capital goods and services of foreign**

employees and consultants) where goods and services are required to implement the Scheduled Programmes; (bb) to suppliers inside Zambia with respect to the treatment/refining of ores and concentrates and to the supply of electricity or acid to the Facilities; (cc) in respect of the payment of management fees under the Management Agreement which is Schedule 28 to the Sale and Purchase Agreement;

- (iii) finance the payment of dividends to shareholders who are not resident in Zambia for foreign exchange purposes Provided that such payments are made out of Distributable Profits (as defined in the Companies Act);
- (iv) pay expatriate employees whose contracts of employment specify that they be paid (in whole or in part) in a currency other than Kwacha; and
- (v) effect such other payments in foreign currency to persons not resident in Zambia for foreign exchange purposes as may be necessary or desirable in the ordinary course of ChibCo's business.

11.3 ChibCo shall submit to the Central Bank:

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

11.4 In the absence of exchange controls in Zambia, ChibCo shall have the same rights to buy and sell currencies from authorised dealers as other commercial concerns in Zambia. In the event exchange controls were to be reimposed (and without prejudice to ChibCo's rights under Clause 11.2) such controls shall not be applied to ChibCo in a manner less favourable to it than the manner in which they are generally applied to other large commercial concerns in Zambia. ChibCo shall be entitled to buy and sell foreign exchange in accordance with such controls at rates of exchange no less favourable than those available to other commercial buyers and sellers of the currency concerned.

- 11.5 ChibCo shall remit to Zambia and convert into Kwacha for credit to a bank account in the name of ChibCo in an orderly fashion sufficient of its foreign currency earnings to pay such commitments as ChibCo may have incurred in Kwacha (including, without limitation, obligations to pay dividends to local shareholders payable in local currency, taxes, royalties and customs duties).
- 11.6 ChibCo shall not engage in or use any provisions of this Clause 11 or any authority or approval given by the Central Bank to engage in Speculative Currency Transactions. If ChibCo is in breach of this Clause 11 it shall pay to GRZ as liquidated damages an amount equal to the amount of any net after tax profit or gain which ChibCo makes on the Speculative Currency Transaction and any cost incurred by GRZ in establishing that the transaction was a Speculative Currency Transaction.
- 11.7 Where any right or assurance given to ChibCo under this Clause 11 requires the Central Bank:
- (a) to approve any act, matter or thing; or
 - (b) to grant authority under applicable law and regulations for its exercise or performance,
- and ChibCo has supplied any necessary information to the Central Bank and otherwise met the conditions of this Clause 11, GRZ shall, upon request from ChibCo, ensure by policy directions to the Central Bank or otherwise that such approval is given or such authority is granted.
- 11.8 ChibCo will ensure that (unless otherwise agreed with the Ministry and the Central Bank) any borrowings it may incur denominated in Kwacha will not exceed the Kwacha equivalent from time to time of ten million United States dollars (US\$10,000,000).
- 11.9 ChibCo will ensure that the Central Bank will not suffer discrimination by ChibCo in access to foreign exchange sold by ChibCo for Kwacha.

12. Environmental Issues

- 12.1 ChibCo will (subject to the provisions of and save to the extent provided otherwise in this Clause 12) comply with:
- (i) environmental and safety laws and regulations enacted or promulgated within Zambia from time to time which are of general application (including, for the avoidance of doubt, make such contribution as is required under Section 82 of the Act for the Environmental Protection Fund); and
 - (ii) the Environmental Plan.
- 12.2 Without prejudice to the foregoing, ChibCo shall perform the Environmental Clean Up Obligations in accordance with the provisions thereof and of the Environmental Plan and within the timescale and subject to the conditions therein set out.

12.3 Subject to compliance by ChibCo with the Environmental Plan and the Environmental Clean Up Obligations and save as provided in Clause 12.6 below, GRZ hereby confirms that it will not for a period of fifteen (15) years from the Effective Date take any action (and will procure no action is taken by any of its Ministries, departments or agencies over which it has operational control acting on its behalf) under, or in enforcing, any applicable Environmental Laws with the intent of:

- (a) securing ChibCo's earlier compliance with Environmental Laws or earlier implementation of the Environmental Clean Up Obligations than that envisaged by the timetable and conditions set out in the Environmental Plan; or
- (b) requiring ChibCo to clean up and/or remove any stock of pollutants which was pre-existing as at the Effective Date and which is not included as an Environmental Clean Up Obligation; or
- (c) imposing fines or penalties upon ChibCo payable under Environmental Laws (or enacting new fines and penalties thereunder) which are payable in respect of ChibCo's non-compliance with such Environmental Laws and where the Environmental Plan provides for the remedy of the same in accordance with a specified timetable and ChibCo is in compliance with that timetable; or
- (d) imposing increased fines or penalties in respect of ChibCo's breach of Environmental Laws in excess of those applying on the Effective Date, adjusted (where denominated in Kwacha) to take account of Zambian inflation since that date,

having, in the case of (a) and (b) above, a material adverse economic effect on the implementation of the Approved Programme of Mining Operations and/or Normal Operations.

12.4 In the event of a material non-compliance with the Environmental Plan or the Environmental Clean Up Obligations, GRZ will (in the event that such material non-compliance is not remedied within three (3) months notice thereof being provided by GRZ to ChibCo or, in the event of a dispute regarding non-compliance being referred to the Sole Expert pursuant to this Clause 12.4, such period as the Sole Expert may decide in any determination that he makes) cease to be bound by the provisions of Clause 12.3 and the Parties acknowledge that GRZ (or its Ministries, departments or such agencies acting on its behalf) shall be free to take such action under, or in enforcing, applicable Environmental Laws as it or they shall consider appropriate or necessary.

12.5 Any dispute regarding a material non-compliance with the Environmental Plan or the Environmental Clean Up Obligations may be referred by either Party to a Sole Expert in accordance with Clause 19, for determination within thirty (30) days of notice given by a Party to the other of its intention to refer to the matter to the Sole Expert.

12.6 The Minister on behalf of GRZ may propose an amendment to the Environmental Plan if:

- (a) at any time the conduct of Normal Operations in accordance with the Environmental Plan for whatever reason poses a material danger to public health and safety or may result in significant damage to the ecology of the area which was not contemplated

in the original Environmental Plan and is or may become irreversible or only become reversible or only be reversed after the lapse of fifteen (15) years; or

- (b) the environmental impact of Normal Operations shall prove substantially more adverse than anticipated in the Environmental Plan; or
- (c) technology or procedures, or improvements thereof shall have been available and economic subsequent to the Effective Date and, if applied to the operation of the Facilities, could materially mitigate the environment impact of Normal Operations.

12.7 In the event of a variation of the Environmental Plan proposed by the Minister on behalf of GRZ under the circumstances set forth in Clause 12.6, ChibCo undertakes to consider the proposed variation in good faith and, unless by notice of objection served on the Minister within fourteen (14) days of receipt of the proposal made pursuant to Clause 12.6, it informs the Minister that it considers the proposed variation to be unreasonable it shall be deemed to have agreed the same. A notice of objection shall include a written statement of the reasons why ChibCo considers the proposed variation to be unreasonable setting out:

- (a) its estimate of the direct costs to implement such change;
- (b) its analysis of the variation in the environmental impact that would be effected by such change; and
- (c) its appraisal of the economic and other effects of the change proposed by GRZ.

12.8 Following receipt of a notice of objection under Clause 12.7, the Minister shall, as soon as possible, inform ChibCo by notice in writing whether or not the Minister's proposal for variation of the Environmental Plan is or is not withdrawn. In the event that the Minister's proposal for variation is not withdrawn it will be deemed to have been agreed unless ChibCo elects to submit for the opinion of a Sole Expert in accordance with Clause 19, the question of whether GRZ's proposal for variation is unreasonable. Should ChibCo make that election, the opinion of the Sole Expert will be binding on the parties with effect that:

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

Provided that the Sole Expert may in his sole discretion suggest alternative proposals or time schedules or mitigation of cost proposals to the Parties who will consider the same in good faith prior to the determination being rendered by the Sole Expert. The period during which such proposals shall be considered by the Parties shall not exceed three (3) months.

12.9 Where a variation to the Environmental Plan proposed by the Minister has been agreed by ChibCo or is deemed to have been agreed by them pursuant to this Clause 12, the

Environmental Plan shall be amended accordingly.

- 12.10 Nothing in this Clause 12 shall be deemed to limit the right of GRZ to take such other actions within its power, such as those rights given to the Director of Mine Safety under Section 81 of the Act, to protect the public health and safety.
- 12.11 ChibCo shall be entitled to amend the Environmental Plan or the Environmental Clean Up Obligations from time to time, provided that following such amendment the Environmental Plan or the Environmental Clean Up Obligations (as the case may be) conforms to specifications and practices established by Zambian standards for the management of the environment as it is affected by mining operations, so as to reflect changes in operations and other circumstances considered to be appropriate by ChibCo and shall deliver a copy of such amended plan or obligations (as the case may be) to the Minister whereupon it shall be annexed to the Large Scale Mining Licenses in substitution for the Environmental Plan or the Environmental Clean Up Obligations (as the case may be) so amended. If however, GRZ considers that any such amendment would constitute a Major Change (as defined in Clause 22.3 herein) the provisions of Clause 23 shall apply.
- 12.12 Notwithstanding the provisions of this Clause 12, ChibCo shall, at the invitation of the Minister responsible for the environment, participate either individually or on an industry-wide basis, in discussions relating to the impact and effectiveness of the Environmental Laws or on any prospective changes thereto.
- 12.13 For the avoidance of doubt, nothing in this Clause 12 shall be construed to render ChibCo liable for penalties or fines imposed, or third party claims made, in respect of activities undertaken prior to the Effective Date by ZCCM.

PART D

TAXATION

13. General Obligation to Pay Tax

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

14. Vat Refunds

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

15. **Taxation Stability**

15.1 GRZ undertakes that it will not for a period of fifteen (15) years commencing on the date hereof:

- (a) increase corporate income tax or withholding tax rates applicable to ChibCo (or decrease allowances available to ChibCo in computing its liability to such taxes) from those prevailing at the date hereof; or
- (b) otherwise amend the VAT and corporate tax regime applicable to ChibCo from that prevailing as at the date hereof (as set out in Schedule 8); or
- (c) impose new taxes or fiscal imposts on conduct of Normal Operations, or
- (d) alter the right of any non-Zambian citizens (and entitled dependents) (on his or their arrival or permanent departure from Zambia) to:
 - (i) import free of duty and tax, for personal use, household and personal effects;
 - (ii) export, without let or hindrance or the imposition of duty or tax on export, all personal effects originally imported or acquired during residency in Zambia; and
 - (iii) freely remit all income earned within Zambia during such residency,

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

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

- (d) increase:
 - (i) the rate of royalty from the level prevailing at the date hereof; or
 - (ii) import duty rates applicable to ChibCo (including the IDF) so as to result in the weighted average import duty rate (inclusive of the IDF) to which ChibCo is subject on the import of goods and materials required for the Approved Programme of Mining Operations or Normal Operations and which would, at the date hereof, be exempt from customs and excise duties under Section 97(1) of the Act, above a level of five per cent. (5%); or
 - (iii) import duty rates (including the IDF) applicable to ChibCo so as to result in

the weighted average import duty rate (inclusive of the IDF) to which ChibCo is subject on the import of other goods and materials required for the Approved Programme of Mining Operations or Normal Operations and which do not fall under Clause 15.1(d)(ii), above a level of twenty per cent. (20%);
or

(iv) the Rural Electrification Levy applicable to ChibCo's purchases of power from the level applicable on the date hereof; or

(e) impose other royalties or duties on Normal Operations, so as to have a material adverse effect on ChibCo's Distributable Profits or the dividends received by its shareholders.

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

15.3 GRZ covenants to reimburse ChibCo (or, at its option, make offsetting changes in any law, statute, regulation or enactment applicable to ChibCo) to ensure ChibCo is fully and fairly compensated for any costs incurred by it by reason of a failure by GRZ to comply with the provisions of Clauses 15.1 and Clause 15.2 provided that (if GRZ opts to make such legislative changes) GRZ shall reimburse ChibCo for any costs incurred along with interest at a rate of six (6) month LIBOR whilst offsetting changes in any law, statute, regulation or enactment are being enacted. ChibCo acknowledges that this will be its sole remedy for such failure to comply with Clause 15.1 and Clause 15.2.

PART E

FORMAL CLAUSES

16. Assignment

16.1 ChibCo may, with the consent of the Minister, assign its interest in any or all of the Large Scale Mining Licences and GRZ covenants that the consent of the Minister to such an assignment will not be withheld in the circumstances set out in Clauses 16.4 and 16.6.

16.2 If ChibCo assigns its entire interest in all the Large Scale Mining Licences and its rights and obligations under this Agreement in accordance with Clause 16.1, then upon the assignee becoming party to this Agreement, ChibCo 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 ChibCo.

16.3 If ChibCo assigns its interests in less than all of the Large Scale Mining Licences and the rights and obligations attaching thereto under this Agreement, then ChibCo shall be discharged from any further liability in respect of any obligation which accrues after the date of that assignment as they relate to the Large Scale Mining Licence(s) so assigned which accrues after the date of that assignment without prejudice to pre-existing rights accrued to GRZ against ChibCo.

16.4 Notwithstanding the foregoing provisions of this Clause 16, ChibCo may:

- (a) charge by way of fixed or floating charge the whole or any part of its undertaking and assets including the Large Scale Mining Licences, the Leases, the Facilities, the Mine Products and uncalled capital (and premiums) to secure the repayment of principal, and payment of interest and other fees, costs and expenses relating to all loans made to ChibCo to finance or refinance the Scheduled Programmes; and
- (b) mortgage and charge any specified asset (whether real or personal property) to secure the purchase price thereof where such amount has been borrowed to finance the purchase of that asset and this asset is to be used as part of Normal Operations;

and GRZ covenants that the consent of the Minister to such mortgages and charges shall be given provided that such mortgages and charges are notified to the Minister upon their grant (and, in any event, within sixty (60) days thereof). Subject to Clause 16.5, any mortgagee or chargee under a mortgage or charge given by ChibCo pursuant to this Clause may exercise all rights of sale and other rights included in such instrument of mortgage or charge provided it shall first give to GRZ at thirty (30) days notice of its intention to exercise any rights of sale and five (5) days' notice in all other cases.

16.5 The rights of any mortgagee or chargee under a mortgage or charge given by ChibCo pursuant to Clause 16.4 shall be subject to and limited by the rights of ChibCo under this Agreement and to GRZ's right to terminate those rights under Clause 18.2. The rights of such mortgagee, chargee or lender to sell the assets of ChibCo so charged shall not be exercisable:

- (a) unless all those assets and undertakings of ChibCo which are charged by the mortgage or charge are sold as a going concern (or with such exceptions as GRZ may agree) to a purchaser approved by GRZ (which approval GRZ covenants not to unreasonably withhold); or
- (b) if GRZ has within the thirty (30) day period of notice under Clause 16.4 given notice to the mortgagee, chargee, or lender that it will purchase some or all the assets which the mortgagee, chargee or lender wishes to sell at a price which is equivalent to:
 - (i) the highest price which a *bona fide* purchaser who is at arms' length from ChibCo, its shareholders and the mortgagee, chargee or lender has offered to pay for the assets and undertakings; or
 - (ii) if there is no such offer, at a total price equal to the fair market value of the same as an ongoing concern to be determined by agreement between the parties but failing such agreement to be determined by a Sole Expert in accordance with Clause 19,

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

16.6 Where the Minister's consent is necessary to effect:

- (a) an assignment under Section 54(1) of the Act or a change of control under Section 55(1) of the Act; or
- (b) an assignment pursuant to Clause 16.1,

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

16.7 In the event that ChibCo considers that the Minister has acted unreasonably in considering that a proposed assignee or the acquiring party has not demonstrated such financial capacity or technical ability as is referred to in Clause 16.6, it may refer the issue to a Sole Expert for its opinion in accordance with Clause 19. If the Sole Expert determines that the Minister:

- (a) has behaved reasonably in determining that the proposed assignee or the acquiring party has not demonstrated the requisite levels of financial or technical ability, the Minister's determination shall stand; or
- (b) has behaved unreasonably in so determining, the Minister's determination shall be set

aside and the consents referred to in Clause 16.6(a) or Clause 16.6(b) (as the case may be) shall be deemed given.

17. Extensions to Time

17.1 Notwithstanding any provision of this Agreement, the Parties by agreement between the persons responsible for giving Notices under Clause 24, may from time to time extend any period referred to in this Agreement, or substitute for any date referred to in this Agreement such later date, as they think fit.

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

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

18. Termination

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

18.2 GRZ may terminate this Agreement by notice to ChibCo if:

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

18.3 In the event that:

- (a) ChibCo is in material default in the performance of the obligations of ChibCo set forth in Clauses 2, 3, 4, 5, 6, 9 and 12 or is in material and persistent default of the performance of the obligations of ChibCo set forth in Clause 9; or
- (b) ChibCo fails to treat as binding and comply with any award made by a Sole Expert or in an arbitration pursuant to Clause 19,

GRZ may give notice of such default or failure (hereinafter in this Clause called a "Default Notice") to ChibCo which shall specify the default or failure alleged. ChibCo shall at the same time give a copy of the Default Notice to each lender to ChibCo, where the name and address of that lender has previously been notified to GRZ, and to each mortgagee or chargee of any of ChibCo's assets under any mortgage or charge notified to the Minister in accordance with Clause 18.4. If ChibCo disputes the subject matter of the Default Notice, it may refer the issue to arbitration pursuant to Clause 19.

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

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

then, subject to Clauses 18.5, GRZ may by notice (hereinafter in this Clause called a "Termination Notice") to ChibCo (which shall be copied to each lender, mortgagee or chargee who was given a copy of the Default Notice) bring about the termination of this Agreement on a date which is not less than one (1) month thereafter (hereinafter in this Clause called the "Termination Date"). GRZ shall ensure that the Minister does not make a decision to suspend or cancel any of the Large Scale Mining Licences, and that no other action is taken by or on behalf of GRZ without the approval of ChibCo to terminate such Large Scale Mining Licences or any of the Leases prior to the Termination Date.

18.5 If ChibCo or GRZ contest:

- (a) the grounds for the issue of the Default Notice; or
- (b) whether the default or failure has been remedied; or
- (c) the adequacy of any compensation paid pursuant to Clause 18.4(b),

the matter shall be submitted for arbitration pursuant to Clause 19. If the arbitrator finds (in the case of paragraph (a) above) that adequate grounds exist for issue of the Default Notice, he shall fix a period during which ChibCo must comply with Clause 18.4(a) or 18.4(b) and the amount of compensation payable (if applicable). If the arbitrator finds (in the case of paragraph (b) above) in favour of GRZ, he shall fix a period during which ChibCo must remedy the default or failure. If the arbitrator finds (in the case of (c) above) in favour of GRZ, he shall fix the amount of compensation payable and the period for its payment.

GRZ shall not serve a Termination Notice while arbitration between GRZ and ChibCo under this subclause is in progress and any Termination Notice already served will be suspended immediately upon the commencement of such arbitration for the duration of any such

arbitration. If the arbitrator finds in favour of ChibCo, or within the period fixed by the arbitrator the default or failure is substantially remedied or the compensation is paid, GRZ shall not serve a Termination Notice and any Termination Notice already served shall be deemed withdrawn.

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

- (a) ChibCo will surrender to GRZ the Large Scale Mining Licences and the Leases but without prejudice to the liability of any of the Parties in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given;
- (b) each Party shall forthwith pay to the other Party all monies that may be owing to the other Party hereunder;
- (c) GRZ shall have the option to request that ChibCo abandon the Facilities within the reasonable timetable specified by GRZ and the option 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 ChibCo but failing such agreement by a Sole Expert in accordance with Clause 19. Such option to be exercisable by notice to ChibCo within thirty (30) days following termination of this Agreement. If requested to do so by GRZ, ChibCo shall also assign to GRZ such contracts to which it is a party as GRZ determines and deliver all records of the Facilities held by ChibCo to GRZ;
- (d) ChibCo shall have the right, within the one (1) year period following the thirty (30) day notice period referred to in Clause 18.6(c):
 - (i) to assign or otherwise dispose of all or any portion of the remaining Facilities to any person; or
 - (ii) to remove and recover from the Mining Area and export from Zambia any of the remaining Facilities on the condition that such removal does not cause irreparable damage to major assets which are not removed from the Mining Area; and
- (e) ChibCo shall leave the Mining Area in a safe and stable condition to the reasonable satisfaction of the Director of Mine Safety having regard to natural conditions in the area and applying generally accepted standards of good mining practice, provided that ChibCo shall not be required to alter the physical condition of the mines, the tailings disposal sites, or other Facilities beyond the requirements of the Environmental Plan.

18.7 Upon the expiry of the one (1) year period referred to in Clause 18.6(d), all Facilities which remain on the Mining Area shall become the property of GRZ without any cost to GRZ or any liability for GRZ to pay compensation therefor.

18.8 Clauses 18.6, 18.7, 19, 20 and 21 shall continue in force notwithstanding the termination of the rest of this Agreement.

18.9 GRZ covenants that it will not acquire compulsorily the Facilities or any interest in or over a property comprising the Facilities except for public purposes under an Act of Parliament relating to the compulsory acquisition of property which provides for payment of compensation in respect thereof.

19. **Arbitration and Sole Expert**

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

19.2 GRZ and ChibCo hereby consent to submit to the International Centre for Settlement of Investment Disputes (the "**Centre**") any Dispute for settlement by arbitration pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "**Convention**"). Arbitration shall be held in London, or such other place as the Parties may agree in writing.

19.3 It is hereby agreed that, although ChibCo is a national of Zambia, it is controlled by nationals of South Africa and shall be treated as a national of South Africa for the purposes of the Convention.

19.4 Any arbitral tribunal (the "**Tribunal**") constituted pursuant to this agreement shall consist of a sole arbitrator appointed by agreement, and an arbitrator, who shall be President of the Tribunal, appointed by agreement of the parties or, failing such agreement by a neutral official.

19.5 Any arbitration proceeding pursuant to this Agreement shall be conducted in accordance with the arbitration rules of the Centre in effect on the date on which the proceeding is instituted.

19.6 An award in arbitration proceedings held pursuant to the Convention shall be binding on the parties and judgement thereon may be entered in any court having jurisdiction for the purpose.

19.7 GRZ hereby irrevocably waives any claim to immunity -

(a) in respect of proceedings to enforce any such award including, without limitation, immunity from service of process and from the jurisdiction of the Court, and

(b) in respect of execution of any such award against the property of GRZ outside Zambia.

19.8 The waiver of immunities referred to herein constitutes only a limited and specific waiver for the purposes of this Agreement and under no circumstances shall it be interpreted as a general waiver by GRZ or a waiver with respect to proceedings unrelated to this Agreement. GRZ has not waived such immunity in respect of property which is (i) located in Zambia; (ii) used

by a diplomatic or consular mission of GRZ (except as may be necessary to effect service of process), (iii) property of a military character and under the control of a military authority or defence agency, or (iv) located in Zambia.

- 19.9 Unless otherwise agreed or provided, the cost of any arbitration procedure will be borne -
- (a) equally by the two (2) parties to the Dispute where it has been referred jointly by them, or otherwise,
 - (b) by the unsuccessful party.
- 19.10 Where a Dispute has been referred to the Centre for arbitration then the Parties to the extent practicable may otherwise exercise their rights and perform their obligations under this Agreement. Neither Party shall be entitled to exercise any rights or election arising in consequence of any alleged default by the other arising out of the subject matter of the Dispute until the Dispute has been resolved by the decision of the arbitrators.
- 19.11 A difference of view or disagreement may be referred by a Party to a Sole Expert pursuant to Clauses 3.3(c), 6.4, 7.3, 8.8, 9.11, 12.5, 12.8, 16.5(b)(ii), 16.7, 18.6(c), 23.2 and 23.4 hereof. Where any difference of view or disagreement is referred by a Party or Parties to the Sole Expert, the other Parties shall have twenty (20) days to consent to such referral and upon the consent of all the Parties, the difference of view or disagreement shall be referred promptly upon consent. In the absence of consent in writing by all the Parties, such difference of view or disagreement may be considered a Dispute pursuant to Clause 19.1. Any such reference may be made by a Party may be made by notice served pursuant to Clause 24.
- 19.12 To the extent practicable, a party intending to make a reference to a Sole Expert shall provide reasonable advance notice to the Party(s) of such intention and shall allow such Party(s) to discuss the basis for such reference and affording a reasonable opportunity to such Party(s) to take whatever steps it/they considers appropriate to remove the basis of the dispute.

Where any difference of view or disagreement is referred by an individual Party to the Sole Expert, consideration of the difference of view or disagreement in question shall be initiated by the Party who is seeking consideration of the difference of view or disagreement by the Sole Expert submitting to both the Sole Expert and the other Party written materials setting forth:

- (i) a description of the difference of view or disagreement;
 - (ii) a statement of the submitting Party's position; and
 - (iii) copies of records (if relevant) supporting the submitting Party's position.
- 19.13 Where any difference of view or disagreement is referred by the Parties jointly to the Sole Expert, consideration of the difference of view or disagreement in question shall be initiated by the Parties jointly by each party submitting to the Sole Expert and the other Party or Parties (as the case may be) the written materials referred to in Clause 19.12.

- 19.14 Within ten (10) Business Days of the date that a Party has submitted written materials to the Sole Expert pursuant to Clause 19.12, the other Party or Parties (as the case may be) may each submit to the Sole Expert:
- (i) a description of the difference of view or disagreement;
 - (ii) a statement of their position; and
 - (iii) copies of records (if relevant) supporting their position.
- 19.15 The Sole Expert shall consider any information submitted by the responding Party/Parties within the period provided for in Clause 19.14 and, in the Sole Expert's discretion, may consider any additional information submitted by any Party at a later date.
- 19.16 The Parties shall not be entitled to apply for discovery of documents but shall be entitled to have access to the other Party or Parties (as the case may be) relevant records and to receive copies of the records submitted by the other Party or Parties (as the case may be).
- 19.17 Each Party shall designate one person knowledgeable about the issue which has been referred to the Sole Expert who shall be available to the Sole Expert to answer questions and provide any additional information requested by the Sole Expert. Except for such person, a Party shall not be required to, but may, provide oral statements or presentations to the Sole Expert or make any particular individuals available to the Sole Expert.
- 19.18 Except as provided in Clause 19.20 with respect to the payment of costs, the determination of the Sole Expert shall be without prejudice to any Party and any evidence given or statements made in the course of this process may not be used against a Party in any other proceeding. The process shall not be regarded as an arbitration and the laws relating to commercial arbitration shall not apply.
- 19.19 When a Sole Expert's determination is initiated, the Sole Expert shall be requested to provide a determination within fifteen (15) Business Days after the ten (10) Business Day response period provided in Clause 19.14 above has run. If the Sole Expert's determination is given within such fifteen (15) Business Day period, or if the Sole Expert's determination is given at a later time and no Party has at such time initiated any other proceeding concerning the difference of view or disagreement, the Parties shall review and discuss the determination with each other in good faith for a period of ten (10) Business Days following deliver of the determination before proceeding with any other actions.
- 19.20 The costs of engaging a Sole Expert shall be borne by the unsuccessful party.
- 19.21 The Sole Expert's determination shall be final and binding on the Parties save in the case of manifest error.
- 20. Law Applicable**
- 20.1 This Agreement shall be governed by and construed in accordance with the laws of Zambia which the Parties acknowledge and agree includes, so far as they are relevant, the rules of

international law.

21. Force Majeure

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

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

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

21.2 For the purposes of this Agreement, Force Majeure shall include war, insurrection, civil disturbances, blockades, riot, embargoes, strikes, lock-outs and other labour-conflicts, land disputes, epidemics, volcanic eruptions, earthquakes, cyclones, floods, explosions, fires, lightning, governmental restrictions, change in applicable law or unavailability of materials or equipment and any other event which the party claiming Force Majeure could not reasonably be expected to prevent or control.

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

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

22. Variation

22.1 The Parties may from time to time by agreement in writing add to, substitute for, cancel or vary all or any of the provisions of this Agreement, the Approved Programme of Mining 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.

- 22.2 (a) Except as otherwise provided in Clause 22.4, where ChibCo proposes to modify or vary the Approved Programme of Mining Operations (hereinafter called a "Modification") and by such Modification ChibCo would not be in substantial compliance with the Approved Programme of Mining Operations, ChibCo shall provide notice of such Modification to GRZ. Such Modification shall be deemed to be approved by GRZ and the Approved Programme of Mining 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 ChibCo that GRZ considers the Modification to be a Major Change. If ChibCo accepts that the Modification is a Major Change it is deemed that notice has been given pursuant to Clause 22.4(a) on the date GRZ gave notice it considered the Modification is a Major Change.
- (b) If ChibCo does not agree that the Modification is a Major Change then it may refer to the Sole Expert in accordance with Clause 19, the question whether the Modification is a Major Change. If the Sole Expert determines that the Modification is a Major Change then it is deemed that notice has been given pursuant to Clause 22.2(a) as of the date of the Sole Expert's decision and the provisions of Clause 22.4(b) to (e), inclusive, apply, unless ChibCo has implemented or commenced implementation of the Major Change. If such implementation has occurred or commenced then the Sole Expert shall also determine:
- (i) what action ChibCo must take; or
 - (ii) what compensation ChibCo 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 Mining Programme of Operations shall be amended to the extent necessary to reflect such Modification without further variation or payment of compensation by ChibCo.

22.3 For the purpose of this Clause 22, a proposed Major Change to the Approved Programme of Mining Operations means a proposed material change involving the elimination or material dilution in the capacity or availability of the Facilities or in the mine plan or mine production schedule if a consequence of such proposed material change would be to materially reduce or materially delay receipt of GRZ's tax revenues or royalties derived from the Facilities' operations or in a material respect adversely impact or increase the adverse impact of ChibCo's mining activities on the environment.

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

- (a) ChibCo 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 Operations”;

- (b) if GRZ does not notify ChibCo that it objects to the Major Change within thirty (30) days of the notice, GRZ shall be deemed to have approved the Major Change;
 - (c) where GRZ requires additional time to evaluate the Major Change, it shall within the thirty (30) days stipulated in Clause 22.4(b), extend the period by an additional thirty (30) days and if within that thirty (30) day period GRZ does not notify ChibCo of any objections it shall be deemed to have approved the Major Change;
 - (d) where GRZ objects to the Major Change and ChibCo considers the objection to be unreasonable, ChibCo may elect to refer the question of the reasonableness of GRZ's objection to the Sole Expert under Clause 19. In assessing the reasonableness or otherwise of GRZ's objections the Sole Expert shall have regard to the impact which withholding approval to the change would have on the economic viability of the project, as well as the impact on GRZ revenues;
 - (e) if the Sole Expert determines that GRZ's objection is unreasonable, GRZ shall be deemed to have approved the Major Change.
- 22.5 Where GRZ approves or is deemed to have approved a Major Change, the Approved Programme of Mining Operations shall be varied or amended to the extent necessary to reflect the Major Change.
- 22.6 For the purposes of this Agreement, a reduction in the number of employees of ChibCo notified (where applicable) to GRZ in accordance with Clause 6.6 shall not, in and of itself, constitute a Major Change.
23. **Consultation**
- 23.1 (a) A Committee shall be formed, comprising of one member from each of the Ministry, ChibCo and the Municipal Council and chaired by a representative of the Ministry of Employment, which shall have no powers to bind the Company but shall monitor the implementation of the Training and Human Resources Management Programme.
- (b) This Committee shall operate during the term of this Agreement and ChibCo shall furnish it with quarterly reports outlining the progress of the Training and Human Resources Management Programme, problems encountered, positions filled and the number of local people employed.
- 23.2 (a) A Committee shall be formed, comprised of one member from each of the Ministry of Mines and Minerals Development, the local Government and ChibCo and chaired by a representative of the Ministry of Commerce, Trade & Industry, which shall monitor the supply and procurement of goods and services to the Facilities.
- (b) The Committee shall operate during the term of this Agreement and ChibCo shall furnish it with six monthly reports setting out the contracts awarded during the six month period comprising the following information:

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

24. Notices

24.1 (a) Any notice, consent, demand, approval or other communication (a "Notice") required or permitted to be given shall be deemed to have been given if -

- (i) in the case of a Notice given by GRZ, such Notice is signed on behalf of GRZ by either the Minister or Permanent Secretary to the Ministry as their respective responsibilities require; or
- (ii) in the case of a Notice to be given by ChibCo, such Notice is signed by a director or by the Secretary of ChibCo.

(b) Each such Notice shall, as elected by the Party giving such notice, be personally delivered or transmitted by telex to the other Party as follows -

A Notice to GRZ

If by facsimile -

**Permanent Secretary
Ministry of Mine and Minerals
Development**

+ 260 1 251244/252916

If by hand -

**Permanent Secretary
Ministry of Mine and Minerals
Development**

P O Box 31969
Haile Selassie Avenue
Lusaka, Zambia

A Notice to ChibCo

If by facsimile -

**The Secretary
Fax number:**

09260 1 226915

If by hand -

The Secretary

Chibuluma Mines Plc
c/o DP Services Limited
2nd Floor, Kafue House
1 Nairobi Place, Cairo Road
Lusaka

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

- (i) the date of receipt if delivered personally and receipt acknowledged; and

- (ii) the date of transmission with confirmed answerback if transmitted by telex.

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

- 24.3 Where ChibCo 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.

25. Waiver

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

26. Severability

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

27. Further Acts

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

28. Counterparts

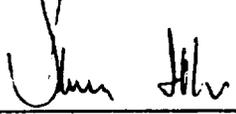
- 28.1 This Agreement may be executed in any number of counterparts, each of which executed shall be deemed to be an original, and such counterparts shall together constitute one Agreement.

29. Representations and Warranties

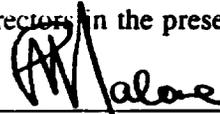
- 29.1 Except as expressly stated in this Agreement, no representation, inducement or warranty was, prior to the execution of this Agreement, given or made by one of the Parties hereto with the intent of including the other Party to enter into this Agreement, and any representations, inducements or warranties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

IN WITNESS WHEREOF this Agreement has been duly executed by the Parties on the
day of , 1997

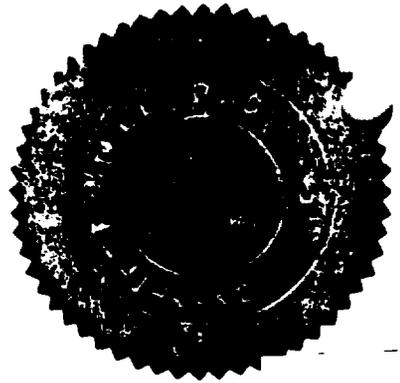
SIGNED for and on behalf of the }
GOVERNMENT OF THE }
REPUBLIC OF ZAMBIA }



THE COMMON SEAL of }
CHIBULUMA MINES PLC }
was hereunto }
affixed by authority of the Board }
of Directors in the presence of }


_____ Director


_____ Secretary



SCHEDULE 1
APPROVED PROGRAMME OF MINING OPERATIONS

Chibuluma West

The mine will remain in production using existing methods or variations thereof for as long as possible at current levels and the emphasis will be placed on maximum recovery of known ore resources and the search for extensions. Ore would continue to be railed to the Nkana concentrator, and copper and cobalt metal will be produced on a toll basis at the rate of approximately 9,500 tons of "A" Grade copper cathode and 200 tons of cobalt of various grades per annum. Sufficient reserves exist to maintain a mill feed rate of 390,000 tons per annum at a grade of approximately 2,5% Cu for 3 to 4 years. Reserves indicated by initial drilling below the 620 level will be accessed by a subvertical or inclined shaft, and the mining method will be adapted for the shallow dip of the orebody. Production levels will decrease progressively as the orebody approaches exhaustion and ore remnants are mined.

Chibuluma South

The Chibuluma South sulphide orebody is scheduled to be developed to the production stage to coincide with the decline of Chibuluma West as early as is consistent with the establishment of the necessary infrastructure and the rate of shaft sinking and plant construction. The orebody has an average dip of 40° and width of 15 metres, necessitating a horizontal slice cut and fill method of mining to minimise dilution and maximise extraction. Suitable fill will be sourced from classified tailings on site.

A vertical shaft system will be sunk to the north of the orebody to a minimum level of 700m. More rapid production may be achieved by the sinking of a shaft to 400m and mining ore above 350 level followed by a later subvertical shaft for lower levels. Level intervals are expected to be 60m. Interlevel development will be by footwall ramps for trackless mining equipment comprising scooptrams, drill jumbos and utility vehicles. Ore at the rate of approximately 40,000 tons per month will be transported to the shaft orepasses by articulated trucks or by rail over a projected life of 11 years and hoisted for milling and concentration by flotation on site.

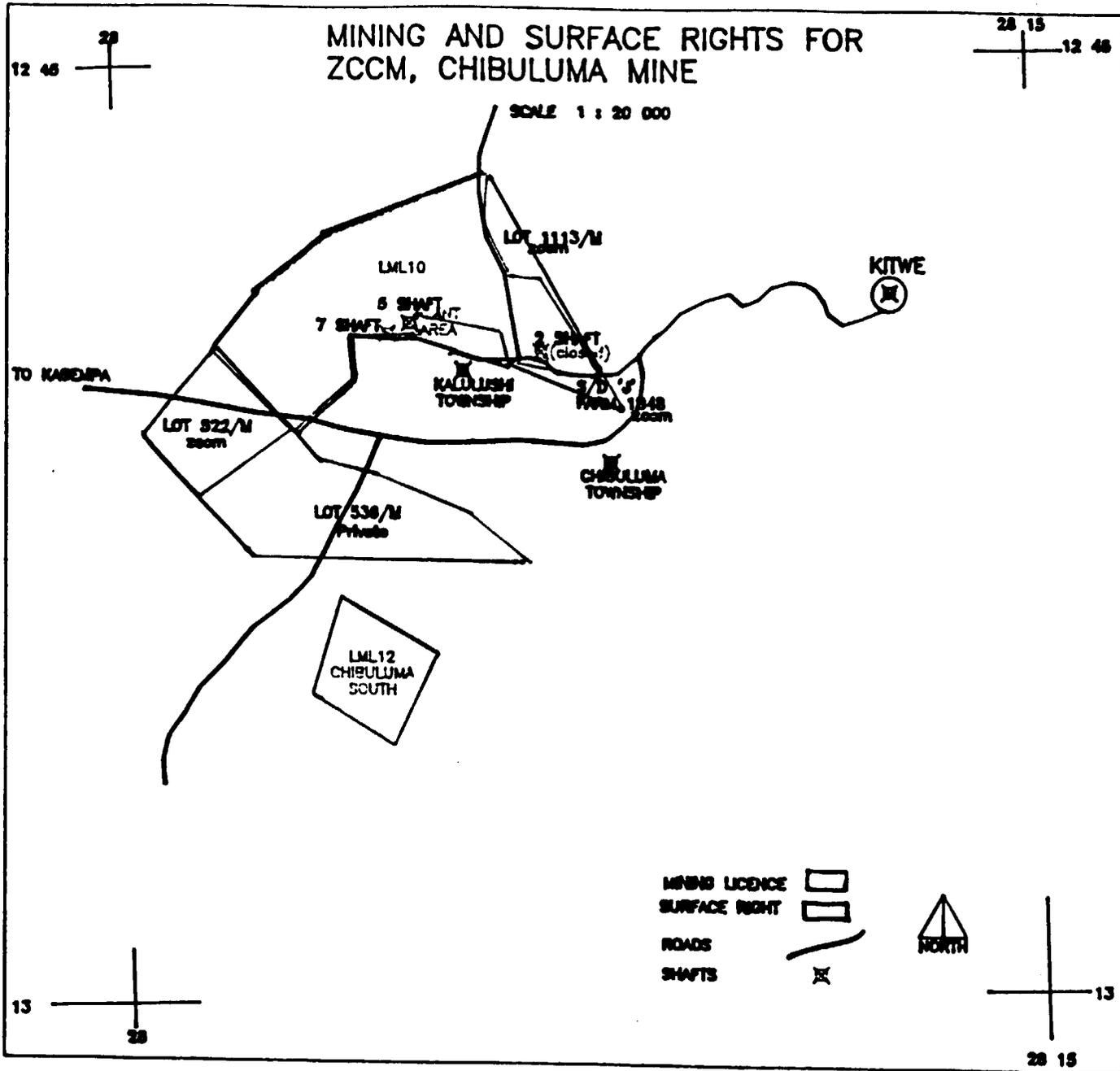
A milling and ore flotation plant capable of treating the entire output of the mine will be constructed adjacent to the shaft. Copper concentrates are to be transported to the Nkana smelting/refining complex for treatment in terms of a tolling agreement with the owners of the Nkana complex for the production of grade "A" cathode amounting to between 15,000 and 17,000 tons per annum.

The development commitment of approximately \$34million will be expended on surface infrastructure such as power, buildings, roads and drainage, shaft sinking, mine development and mining equipment, a milling and flotation plant and various ancillaries. The development programme will take approximately 3 years.

Exhibit 1

Map of facilities at Chibuluma West Mine and Chibuluma South.

MINING AND SURFACE RIGHTS FOR ZCCM, CHIBULUMA MINE



46A

SCHEDULE OF CAPITAL EXPENDITURE

FIGURES IN US\$ X 1000

YEAR

	1	2	3	4	5	6	7on	Total
Infrastructure	1500	50						1550
Surface Plant and Equipment	350		150					500
Concentrator		2000	2550					4550
Mining Equipment		2200	1500	1200	800			5700
Surface Shaft Sinking	2300	2680	350					5330
Level and Stope Development		800	2820	200				3820
Sub-Vertical Shaft				1600	2060			3600
Level and Stope Development					100	1180		1900
Ongoing Capex							500	2400
Sub-Totals	4150	7730	7370	3000	2960	1800	500	29410
Contingency (20%)	830	1546	1474	600	592	360		5402
TOTAL	4980	9276	8844	3600	3552	2160	500	34812

SCHEDULE 2 LOCAL BUSINESS DEVELOPMENT PROGRAMME

Philosophy

There is an expectation by ChibCo that local business will benefit from the opportunities arising from the privatisation and combined operation of a successful mine. ChibCo believes in helping and facilitating local business and will support the development of local entrepreneurs.

Mechanism

The development of local business will occur as the programme of capital expenditure for the development of Chibuluma South commences with emphasis on both the formal and informal sectors of the economy. As the Chibuluma West operation becomes a decentralised profit centre, competitive local suppliers of goods and services will be encouraged to deal directly with the mine. ChibCo will submit to GRZ a detailed programme for local business development within 12 months of Closing.

Specific Examples

1. Specific local business developments to be facilitated by ChibCo include the privatisation of the Kalulushi Hospital and the primary school. Both institutions provide services of high quality to the local community, and ChibCo is committed to maintaining the benefits currently enjoyed by ZCCM employees. Current staff would be fully engaged in the transformation process, which would in turn create a number of local ancillary service suppliers. A formal proposal for privatisation will be formulated in due course.
2. Within the means available, ChibCo will endeavour to utilise the assets of the Engineering Department to spawn a number of smaller private engineering enterprises to serve Chibuluma initially and ultimately the entire Copperbelt. Local entrepreneurs will be encouraged to compete for non-core items required by ChibCo.
3. It is also anticipated that as the privatisation of ZCCM progresses, many of the technical services now provided on a group basis will derive from smaller specialised units on a market basis. Again, ChibCo would support such development of local businesses.
4. It is likely that other opportunities for local business development by Chibco will be identified in the future.

Personnel

ChibCo has designated Mr E. Legg as the responsible person within the company to take an active role in assisting Zambian citizens in the setting up and management of small business enterprises, liaising with GRZ, compiling and maintaining a register in compliance with Clause 4.1 of the Development Agreement and assisting generally with the implementation of the Local Business Development Programme.

**PART II
FORM OF LARGE SCALE MINING LICENCE**

Mines Form 103/96
Sucked 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

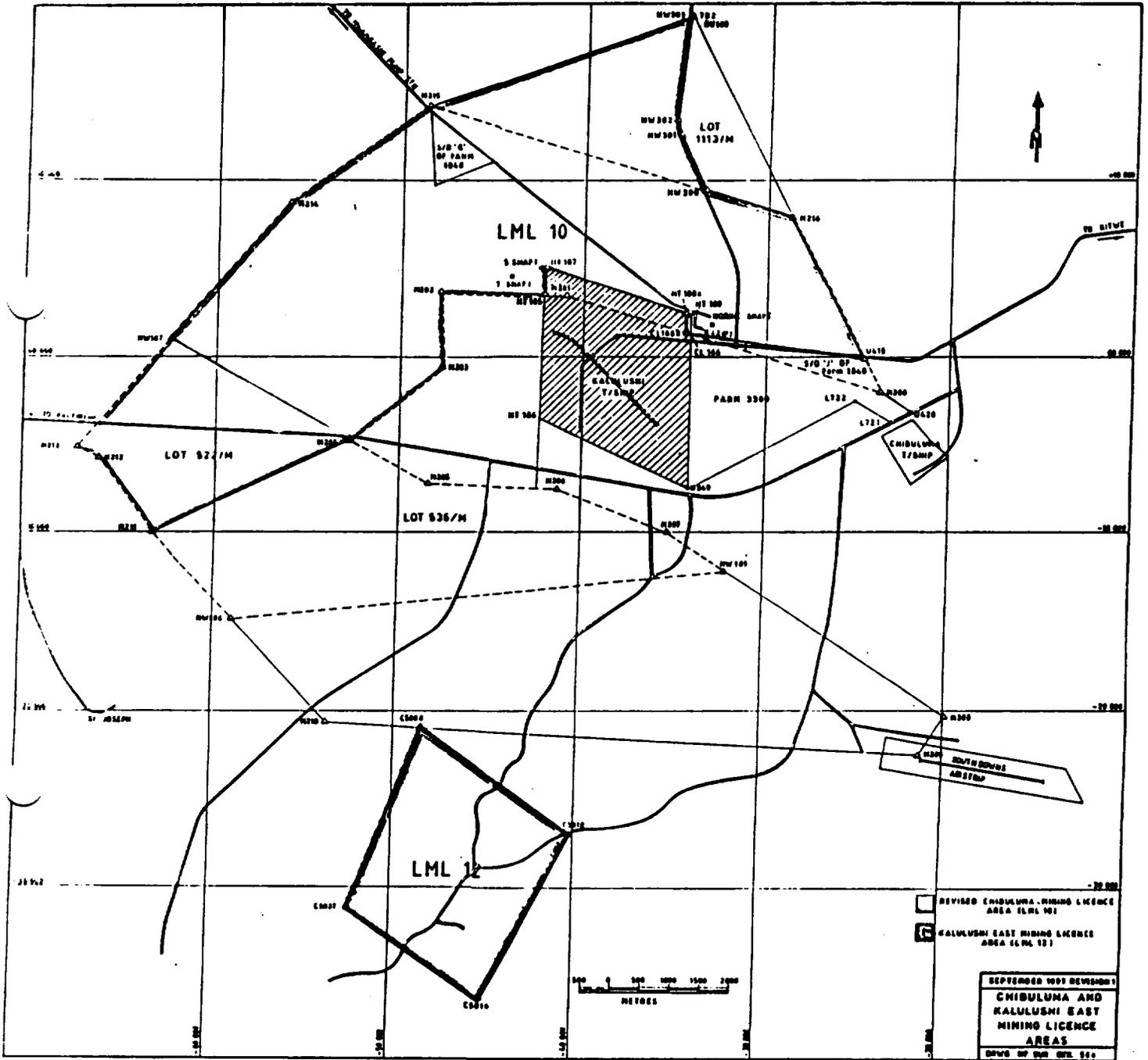
This large-scale mining licence has this day of
been registered in the Register of Mining Rights.

.....
Director

RENEWALS AND AMENDMENTS

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

**PART III
MINING AREA**



SCHEDULE 4

PART I MEDICAL SERVICES

The existing hospital and clinics provide a range of medical services to both ChibCo employees, other ZCCM personnel and outside parties. ChibCo, as tendered, will attempt to privatise the hospital but will retain both of the clinics for treatment of minor ailments prior to hospital services being sought. Non-Chibuluma employees using the hospital services on ZCCM/ACo payroll will be charged for use of hospital services effective 1 October 1997. In the initial period ZCCM will be charged for these services pending privatisation of ACo. Charges are as per Social Access Agreement.

An "Audit" procedure will be established to ensure that the quality and standard of service at the hospital will be maintained both prior to and after privatisation. Both ZPA and ZCM will be consulted during the privatisation process.

CHIBULUMA MINE HOSPITAL

Chibuluma mine hospital is situated in Kalulushi 15 km north west of Kitwe and caters for Mine employees and their dependants and fee paying non-mine patients. The hospital caters for both contributory (high cost) and non-contributory (low cost) clients. In-patient and out-patient care in addition to specialised clinical services and paramedical services are available. The four clinics at Chibuluma and two clinics at Chambishi are run by Chibuluma mine hospital public health services and compliment that of the local municipality and District Health Board. The hospital has a bed capacity of 162 (116 beds and 46 cots/cribs). Bed occupancy is 37.5% at High cost and 41.9% at Low cost.

Table 1: LABOUR DISTRIBUTION BY FUNCTION

CATEGORY	LOCAL	EXPATRIATE	TOTAL
Doctors	* 10	3	13
Nurses	117	0	117
Paramedical	27	0	27
Admin Staff	47	0	47
Total	201	3	204

*Two on specialist training in the UK - Dr. U Simanwe and Dr D Mweemba

Table 2: LABOUR DISTRIBUTION BY GRADE

CATEGORY	LOCAL	EXPATRIATE	TOTAL
G14	2	2	4
G13	1	0	1
G12	8	1	9
G11	6	0	6
G1	16	0	16
G2	45	0	45
G3	73	0	73
G4	5	0	5
G5	10	0	10
G6	16	0	16
G7	19	0	19
TOTAL	201	3	204

PART II EDUCATION SERVICES

The primary school provides an education service for the benefit of the children of Chibuluma Mine employees and the general populace.

The mine primary school will continue to operate and to offer a standard of education and child care no less than that currently pertaining. It is envisaged that whilst day to day affairs and teaching practice of the school will continue largely as they are, the school will become more financially self supporting. This will be achieved by offering education facilities to children of ChibCo employees and other residents on a fee-paying basis related to the quality of service provided. ChibCo employees currently at Kalulushi primary school will continue to be paid the school fees as at present and fees will be charged as per the social access agreement.

ChibCo will for pay its proportionate share of the school until such time as it becomes a fully privatised and self-sustaining entity, and will continue support in the form of sponsorship for specific projects. Limited use of school facilities may also be required for adult education and community development after normal school hours.

Payments for other school fees of Chibuluma employees currently being paid will continue to be paid.

KALULUSHI PRIMARY SCHOOL

Established in 1973 to cater for children of expatriate miners.

Zambian boys	109	<u>1997/98 Budget</u>
Zambian girls	122	Capacity 250 Actual 235
Expatriate boys	1	Cost per Child: K800 000/
Expatriate girls	3	year
Mine pupils	222	School Fees Per Child
Non-Mine pupils	13	- Mine: K79 500/year
Chibuluma Mine children	76	- Non-Mines: K1 200 000/
Nkana Mine children	35	year
Non Chib/Nkana	96	
Retired Miners children	5	
Deceased Parents children	3	
Redundancy Package children	2	
Medical Discharge children	5	
Non-Mine (Economic Fees) children	13	

STAFFING

Apart from the Headteacher, all member of staff are Zambian employees broken down as

follows:-

Deputy Headteacher	G12	1
School Teachers	G1	6
Class Teachers	G2	6
Secretary	G4	1
Teacher Aides	G4	2
Crew Boss	G5	1
Sanitary Hand	G7	1
Pool Attendant	G7	1
General Workers	G8	4
Casual Teacher Aidea		2

**PART III
RECREATIONAL SERVICES**

Various sports and recreational clubs and facilities exist for the benefit of Chibuluma and non-Chibuluma employees. These include the Recreational Club, Golf Club, Tennis Club, Bowling Club, Squash Club, Rugby Club. The clubs are autonomous concerning management, administration and policy, and are subsidised by ZCCM. ZCCM also have a power of veto in the affairs of the clubs.

ChibCo will continue to offer sports and recreation facilities of standard no less than those currently available to employees and club members, and will be supportive of proposals to improve facilities. The ZCCM veto will be transferred to ChibCo to be utilised in the event the affairs of a particular club are being mismanaged.

WOMEN CENTRES

Number of Women Centres:	01
Name of Women Centres:	Lubuto Women Centre
Location:	In the ZCCM Medium Cost Residential Area at No. 1 Mululu Avenue
Facilities Offered:	Offers training to young women and wives of miners in Home Economics and cover the following subjects:- <ul style="list-style-type: none">- House wifery- Knitting- Sewing- Embroidery- Cookery- Nutrition and- Child Care
Number of trainees per year:	Eighty (80) Sixty (60) in the Basic Class Twenty (20) in the Advance Class
Number of full time ZCCM staff:	Two (2) assisted by one (1) part-time employee.

**PART IV
MUNICIPAL INFRASTRUCTURAL SERVICES**

The Municipal Infrastructural Services currently comprise normal township services managed and funded by Kalulushi Municipality, ZCCM and Chibuluma Mine. Chibuluma Mine provides and manages drinking water and sewage treatment facilities, and electric power is distributed to the township from the mine busbar. These services are provided on a reimbursable basis. In addition, Chibuluma Mine provides labour for other municipal requirements such as storm water drain cleaning. Residents pay for such services at a nominal rate.

Municipal Infrastructure Services will continue at a current level and standard no worse than that applying prior to this agreement, and made available to residents of Kalulushi and Chibuluma townships on commercial terms related to the cost of provision of such services. Subsequent to privatisation and the allocation of ZCCM houses for purchase by employees the occupants of such houses are liable for municipal charges for water, electricity, sewage and refuse disposal, road and parks maintenance, all other municipal services together with rates appropriate to the development of a viable municipal administrative and execution unit, ChibCo will procure that payment for municipal services provided to the houses of ChibCo employees and its proportional share of other municipal services. On the basis of the number of Chibuluma housing units Kalulushi as a proportion of the total number of housing units.

ChibCo will charge ZCCM on a monthly basis for all municipal services rendered to ZCCM employees in Kalulushi. All non-Chibuluma, ZCCM residents will be levied directly by ChibCo.

ChibCo will work towards transferring of these Services to the Municipality and assist in establishing a commercially viable municipality within 2 years of the date of Completion.

The following broad financial support was provided by ZCCM for the municipal services before the Completion Date. ChibCo will continue to provide their proportional share of these expenses and services at the same standard as currently being supplied. It is intended that these services of the assets necessary to provide their services will be transitioned by the Chibuluma Town Council on an ordered manner on a commercial basis over a 24 month period from date of Completion. The agreed objective of both ChibCo and ZCCM is to establish a commercially viable municipality at the town of Kalulushi..

ROADS IN TOWNSHIPS

Maintenance is done by the Municipal Council. However ZCCM gets involved when the Municipal Council fails.

REFUSE COLLECTION

Responsibility of the Municipal Council, ZCCM helps when the need arises.

SEWAGE SERVICES

An average of K100 000 on a monthly basis is spent on Sewage Lift Pump maintenance supervision. A further K180 000 is spent on unblocking choked sewer lines per month.

WATER PROVISION

ZCCM spends about k10.7 million per month in providing treated water to the Council.

CEMETERY

Responsibility of the Local Council.

STREET LIGHTING

Responsibility of the Local Council but ZCCM helps if where ZCCM employees stay are badly affected.

PART V
PHYSICAL SOCIAL ASSETS

1. **The Physical Social Assets owned by ChibCo Kalulushi Hospital and clinics**
2. **Kalulushi Primary School**
3. **Golf Club**
4. **Recreational Club**
5. **Tennis Club**
6. **Rugby Club**
7. **Badminton Club**
8. **Bowling Club**

SCHEDULE 5
PART I
ENVIRONMENTAL PLAN

The Chibuluma Mine has been in production for more than 40 years and, under new ownership, is approaching the end of its life. ChibCo undertakes to conduct rehabilitation relating to previous and current mining operations identified in the Environmental Impact Statement prepared by Steffan Robertson and Kirsten, to conduct an environmental management plan ("the **Environmental Plan**") to an acceptable standard designed to minimise the effect of mining on the environment, and to effect a closure certificate for Chibuluma West. ChibCo will also adhere to the plan for environmental protection prepared for the Environmental Impact Statement as part of the mining licence protocol for Chibuluma South Mine.

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

- (i) dust and water pollution will be minimised by revegetation of disturbed areas and by control of stormwater through crest and toe paddocks and related drainage of tailings and rock disposal areas.
- (ii) a monitoring programme for water flow, levels, qualities and discharges into the Fikondi Stream will be established.
- (iii) Old shafts will be sealed and the concentrator site rehabilitated by removal of foundations, structures and scrap prior to contouring and revegetation.
- (iv) Surface caving resulting from mining will be monitored and land use restricted in areas of potential danger.

The Environmental Plan incorporates the clean up obligations described in Part II, and will constitute a significant component of operations prior to and post closure of Chibuluma West and Chibuluma South. Regular audits will be made of the environmental management issues covered by the Environmental Plan and the post closure monitoring period will continue until stable conditions at a satisfactory standard are achieved.

Timetable	Date
Production of the EIS	Chib South: 6 months from the date hereof
Production of the Environmental Plan	Chib South: 9 months from the date hereof
	Chib West : 6 months from the date hereof

PART II ENVIRONMENTAL CLEAN UP OBLIGATIONS

ChibCo will assume responsibility for the historic liabilities and obligations of ZCCM relating to impacts on the environment of previous and current mining operations as defined in the Environmental Impact Statement (EIS) for the Nkana Division, Chibuluma Mining Licence Area - ML18 prepared by Steffen Robertson and Kirsten in 1996 and 1997. The company will also assume all obligations for clean up following mine closure until such time as a closure certificate is granted.

The principal components of the Chibuluma Mining Lease Area affecting rehabilitation, decommissioning and closure activities have been identified in the EIS and are as follows: shafts, buildings and land subsidence at Chibuluma East and Chibuluma West; Ore Stockpile No. 3; Waste Rock Dump No. 5; Tailings Dams TD1 and TD2; the old Concentrator. Progressive rehabilitation of old mine workings and monitoring of water and air quality will be undertaken prior to and during mine closure and decommissioning.

1. Ongoing Rehabilitation and Clean Up Obligations

- 1.1 **Ore Stockpile No. 3:** the 3 ha site requires final clean up and development of a vegetative cover after removal of contaminated soil and/or the laying of a 0.5m thick soil cover.
- 1.2 **Waste Rock Dump No. 5:** this comprises scattered waste rock piles 2 - 3m high over a total area of less than 1 ha. Some of the piles are metalliferous and may be reclaimed. Stormwater and run-off are to be controlled.
- 1.3 **Tailings Dams TD1 and TD2:** dust and erosion control measures will be introduced to the bare areas on dam surfaces. Critical areas will be covered with material such as laterite, mulch or slag. Crest bund walls and toe paddocks will be constructed and decants will be plugged. The No. 2 dam breached wall is to be sealed. Dams are to be vegetated with suitable trees and grasses.
- 1.4 **Old Concentrator:** Plant facilities have been partially removed and ongoing rehabilitation will comprise: disassembly of buildings and steel structures not required for future use; break-up and removal of concrete slabs, foundations and other structures and the removal of scrap steel and other materials; removal or treatment of soils contaminated by chemicals, concentrates, fuels and oils; top soiling and revegetation. A survey of soil contamination over 24 ha of the plant site will aid in assessing the need and extent of the top soil.
- 1.5 **Chibuluma East:** The environmental impacts relate to the sealing of three surface shafts, and land subsidence over an area of approximately 4 ha. The progressive rehabilitation programme will include concrete capping of the three shafts and appropriate fencing, surveying and monitoring of the area affected by mining

subsidence and the posting of warning signs for the small area of potential caving south of Chibuluma East, the removal of any associated surface structures and rehabilitation of the local surface.

- 1.6 **General:** The company will establish disposal sites for contaminated soil and scrap materials. Monitoring and maintenance of vegetated areas and pollution control measures such as crest and toe paddocks will be conducted regularly until closure. A water flow and quality monitoring system will be established, particularly with regard to discharges into the Fikondi Stream.

2. **Mine Closure**

Mine closure will follow exhaustion of ore reserves at Chibuluma West. ChibCo will undertake to decommission 7 Shaft by sealing according to appropriate regulations all openings to surface after salvage of underground equipment, dismantling and removal of all surface structures for which there is no use, and contouring and revegetating of disturbed surfaces. Surface caving over a potential area of approximately 25 ha north of 7 Shaft will be monitored and warning notices placed. A water monitoring programme will record ground water levels and qualities until such time as results indicate that conditions have stabilised and are representative of post-closure conditions.

3. **Chibuluma South**

An Environmental Impact Statement will be prepared for the new mine in accordance with the timetable in Part I and the environmental management plan defined and approved therein will be adhered to.

SCHEDULE 6

TRAINING AND HUMAN RESOURCES MANAGEMENT PROGRAMME

It is the intention of the Consortium to undertake a comprehensive education and training programme aimed at ensuring the technical competence and productivity and higher safety standards of all employees. Basic skills training will ensure that every employee possesses the technical knowledge to successfully complete the job required of him. Courses will be aimed at ensuring technical competence together with the acquisition of knowledge in areas unfamiliar to the particular employee. An Advanced Skill Training Programme will ensure that each higher level employee reaches a level of competence in his or her specified field. The training given at this level may take place outside Zambia, depending on requirements, and will be undertaken at the expense of the Company. It will be aimed at expanding the knowledge base and will also ensure that the mine employees import a range of skills that may not be available within Zambia at the time.

The Consortium is prepared to work with local administration in providing assistance with schooling facilities for employees. Mine workers and their immediate family members will be encouraged to have access to these facilities. The education would be designed to have a positive impact on the general abilities of all mine workers and their family members, and will comprise basic courses such as English, Maths and technical subjects. The curriculum will be based on the needs of the community, wherever possible.

Especially gifted employees or immediate family members, may be offered the chance of furthering their studies at a reputable institution within Zambia or internationally at a private school, technical college or university. Bursaries and loans may be set up to assist employees in this regard.

The development of human resources at Chibuluma will be of paramount importance in the strategy for improving efficiencies, reducing costs and promoting job satisfaction and safety amongst employees. The importance of correct assessment of individual character, experience and potential is recognised and a competent human resource team on mine will monitor individual performance and encourage each employee to define goals and to attain them. Conversely, staff identified as unsuitable for their posts will be counselled and encouraged.

The human resource management plan adopted will be similar to others applied successfully throughout industry, with local adaptations to fit unique circumstances. The budget for such plan has not been defined.

It is in the interests of the mine operator to maintain as high a level of Zambian employment as possible in view of the general level and depth of education, experience and competence within the industry. The terms of Clause 6.7 and 6.12 of the Development Agreement will be adhered to. There will be occasion, particularly at the start-up of Chibuluma South, when the requisite knowledge and skills for successful commissioning and operation of the mine, machinery and processing plant will derive from non-Zambians, and the number of "expatriates" will decline as the mine reaches maturity. ChibCo will be in the position to submit a detailed training

programme within 12 months of Close.

The minimum number of employees necessary to conduct Normal Operations from time to time is 700 persons, which number may be reduced to 100 in the event of Force Majeure to conduct basic pumping, security and municipal services.

SCHEDULE 7
REQUIRED INSURANCES

The following insurance policies shall be taken out with insured amounts and excesses appropriate to the ChibCo scale of Operation and the risk profile pertaining from time to time. This summarised schedule conforms to the details of Schedule 11 of the Sale and Purchase Agreement relating to the types of insurance policies taken out by ZCCM.

1. Property Insurance
2. Motor Insurance
3. Money Insurance
4. Fidelity Guarantee
5. Liability Insurance
6. Umbrella Excess Liability
7. Plant All Risks Insurance

SCHEDULE 8
TAX SCHEDULE

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

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

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

(2) ***Royalties:***

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

processing costs except such other processing costs as relate to processing normally carried out in Zambia in the Mining Area; and

- (bb) the term "market value" means the realised price for a sale free-on-board at the point of export from Zambia or point of delivery within Zambia,
- (iii) GRZ confirms that for Stability Period, royalty payable under the Act shall be deductible against liability for income tax.
- (iv) The circumstances where the discretion available to GRZ under Section 67 of the Act to defer the payment of royalty would be exercised are:
 - (aa) under the terms of Section 67(1) where the cash operating margin of ChibCo mining operations is less than nil; and
 - (bb) under the terms of Section 67(2) on samples of minerals acquired for the purposes of assay, analysis or other examination.
- (v) For the purposes of the foregoing "cash operating margin" means the amount derived by deducting operating costs (not including capital expenditure during or required for the development of the Facilities) from revenue.

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

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

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

(ii) ***Import Declaration Fee ("IDF"):***

In accordance with the Control of Goods (Import Fee) Regulations, 1995 ChibCo shall be required to pay the IDF at a rate of five per cent. (5%) on the value of all imported goods save where these goods comprise capital expenditure (as defined in the Third Schedule of the Mines and Minerals Act) where value is calculated by adding together the free-on-board value, all transportation costs, insurance costs and freight costs.

(iii) ***Rural Electrification Levy:***

GRZ confirms that this will be ten per cent. (10%) of the levy paid initially by ZCCM and subsequently by the purchaser of the ZCCM Power Division.

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

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

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

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

- (i) In accordance with the provisions of the Value Added Tax Act, 1995 Mine Products are chargeable to VAT at a rate of zero per cent. (0%).
- (ii) GRZ confirms that input VAT shall be credited to ChibCo within a reasonable period of time from the date of submission of ChibCo's monthly VAT return in respect of each accounting period.
- (iii) For the purposes of this Clause, "input VAT" shall mean VAT payable in respect of the supply of goods or services supplied to a registered supplier during a prescribed accounting period for the purposes of the facilities comprising the Facilities.

(5) ***Relief from Withholding Tax***

The rate of withholding tax applicable to ChibCo shall be ten per cent. (10%).

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

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

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

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

- (7) The matters referred to in Paragraphs 1(iii), 1(v), 2(i), 2(ii) and 7 have not, as at the date hereof, been incorporated into applicable Zambian legislation. GRZ hereby confirms its intent to propose the same to the National Assembly for enactment at the earliest practicable opportunity. Pending enactment, GRZ confirms that it will treat ChibCo as liable to tax on the basis of the concessions set out in these paragraphs.