

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 363E.

Mining (Ok Tedi Fifth Supplemental Agreement).

GENERAL ANNOTATION.

ADMINISTRATION.

The administration of this Chapter was vested in the Minister for Minerals and Energy at the date of its preparation for inclusion.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of the Constitution.

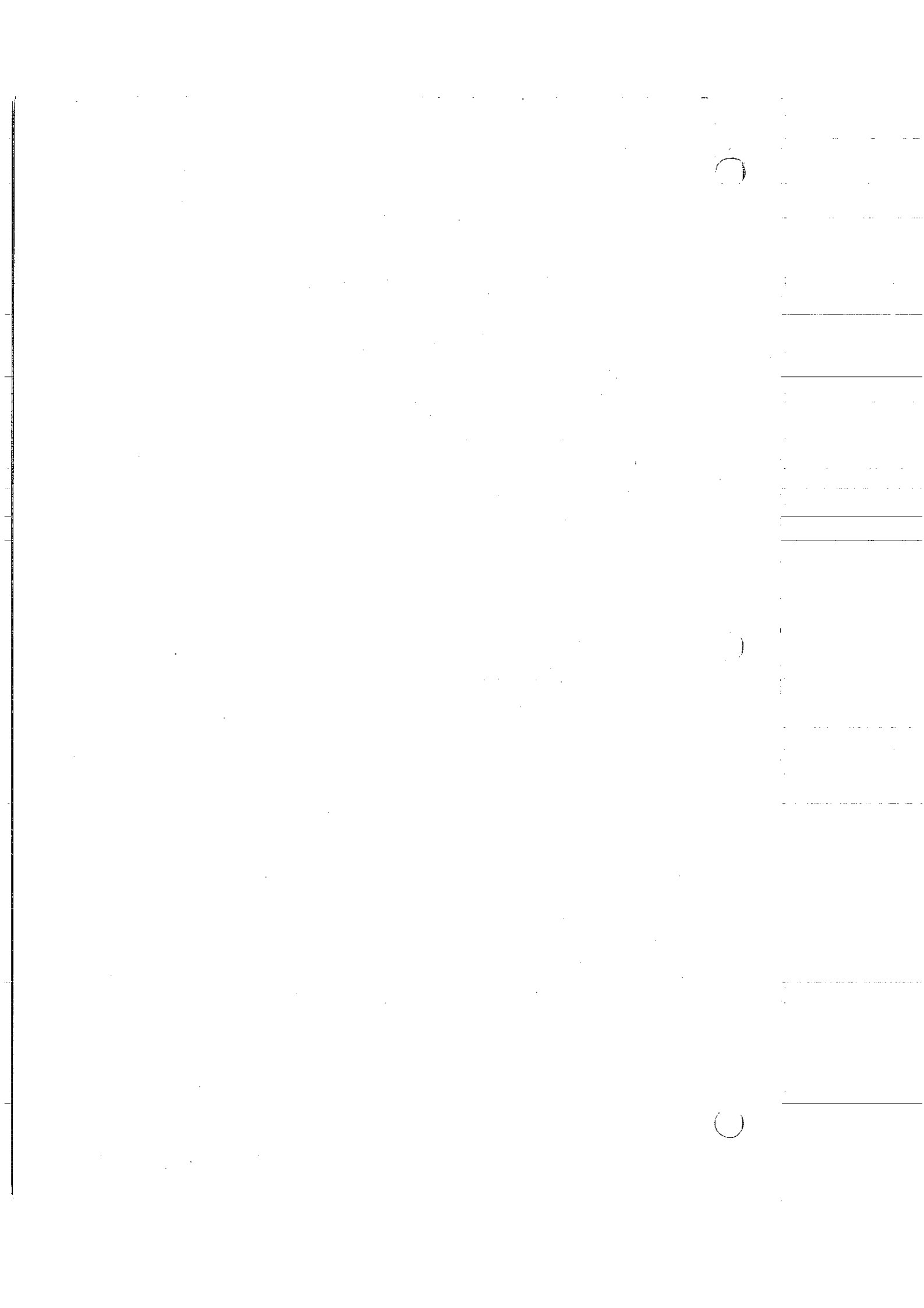
References in and in relation to this Chapter to—

“the Departmental Head”—should be read as references to the Secretary for Minerals and Energy;

“the Department”—should be read as references to the Department of Minerals and Energy.

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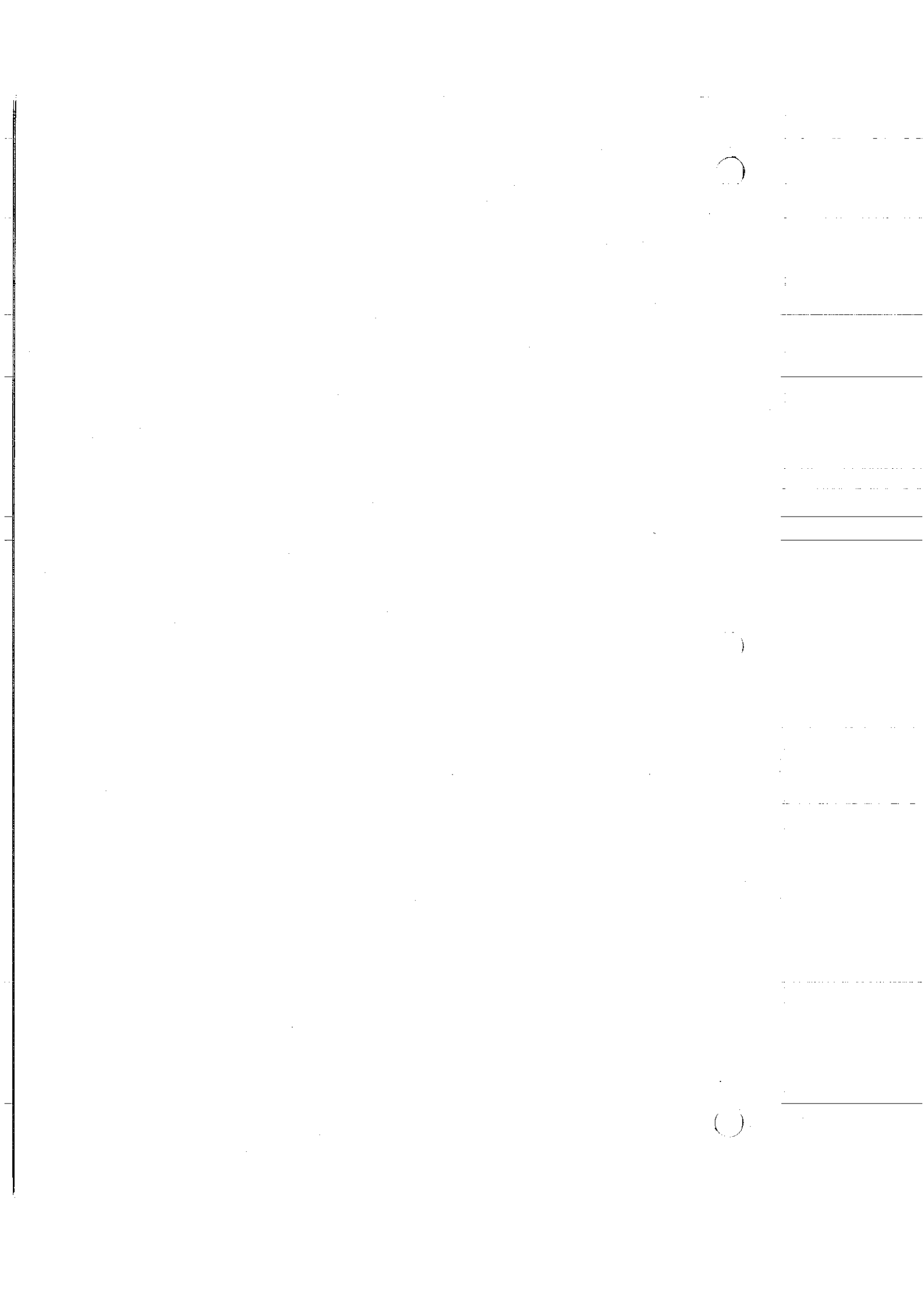
CHAPTER NO. 363E.

Mining (Ok Tedi Fifth Supplemental Agreement) Act.

ARRANGEMENT OF SECTIONS.

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 “the commencement date”
 “the Fifth Supplemental Agreement”.
2. Approval of Agreement.
3. Effect in relation to laws of Papua New Guinea.
4. Ancillary powers of Minister.

SCHEDULE.—Fifth Supplemental Agreement.



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 363E.

Mining (Ok Tedi Fifth Supplemental Agreement) Act.

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

1. Interpretation.

In this Act—

“the commencement date” means 28 November 1985, being the date on which the *Mining (Ok Tedi Fifth Supplemental Agreement) Act 1985* came into force;

“the Fifth Supplemental Agreement” means the supplemental agreement, a copy of which is set out in the Schedule.

2. Approval of Agreement.

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

3. Effect in relation to laws of Papua New Guinea.

(1) The Fifth Supplemental Agreement has the force of law as if contained in this Act, and applies notwithstanding anything to the contrary in any other law in force in the country.

(2) No law at any time in force in the country made after the commencement date shall affect this Act or the Fifth Supplemental Agreement—

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

(b) except as provided by the Fifth Supplemental Agreement.

(3) Except where the contrary intention appears, either expressly or by implication, in the Fifth Supplemental Agreement, and subject to this section and to Section 4, all laws at any time in force in the country which are not inconsistent with this Act or the Fifth Supplemental Agreement apply to and in relation to all acts, matters or things done or suffered under the Fifth Supplemental Agreement.

4. Ancillary powers of Minister.

Notwithstanding anything in any other law in force in the country at any time (whether before or after the commencement date), the Minister has power, on behalf of the State, to make all grants, issues, renewals and extensions required by or under the Fifth Supplemental Agreement to be made by the State, and is not bound in that regard by any provisions of any such law requiring or permitting any authority, consent, approval, report, recommendation, appeal, procedure or formality, or by any similar provision.

Sec. 1.

SCHEDULE.

Sec. 1

FIFTH SUPPLEMENTAL AGREEMENT.

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FIFTH SUPPLEMENTAL AGREEMENT

THIS FIFTH SUPPLEMENTAL AGREEMENT is made as of the 1st day of August 1985

BETWEEN THE INDEPENDENT STATE OF PAPUA NEW GUINEA (hereinafter called the "State") of the first part,

AMOCO CORPORATION (formerly Standard Oil Company), a corporation incorporated in the State of Indiana in the United States of America (hereinafter called "Amoco Corporation"), of the second part,

AMOCO MINERALS PNG COMPANY, a corporation incorporated in the State of Delaware in the United States of America (hereinafter called "Amoco"), of the third part,

THE BROKEN HILL PROPRIETARY COMPANY LIMITED, a company incorporated in the State of Victoria in the Commonwealth of Australia (hereinafter called "BHP") of the fourth part,

BHP MINERALS HOLDINGS PROPRIETARY LIMITED, a company incorporated in the State of Victoria in the Commonwealth of Australia (hereinafter called "BHP Minerals Holdings"), of the fifth part,

METALLGESELLSCHAFT AG, a corporation incorporated in the Federal Republic of Germany (hereinafter called "MG"), of the sixth part,

DEGUSSA AG, a corporation incorporated in the Federal Republic of Germany (hereinafter called "DG"), of the seventh part,

DEG-DEUTSCHE FINANZIERUNGSGESELLSCHAFT FUER BETEILIGUNGEN IN ENTWICKLUNGSLAENDERN GMBH (formerly Deutsche Gesellschaft fuer wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH), a corporation incorporated in the Federal Republic of Germany (hereinafter called "DEG"), of the eighth part,

AND OK TEDI MINING LIMITED, a company incorporated in Papua New Guinea (hereinafter called the "Company"), of the ninth part.

WHEREAS:

- A. By an Agreement dated 22 March 1976 between the State of the first part and BHP Minerals Limited (then named Dampier Mining Company Limited) of the second part the State granted to the said BHP Minerals Limited certain rights, set out in detail in that Agreement, including rights to carry out investigations and studies in relation to, and to undertake a Project involving the exploitation of, the Ok Tedi Deposits in Papua New Guinea.
- B. The Agreement referred to in Recital A has been varied amended and supplemented by, and assigned as set out in, a Supplemental Agreement (the "First Supplemental Agreement", which expression includes the same as varied, amended and supplemented by the Second Supplemental Agreement and the Fourth Supplemental Agreement) dated 26 June 1980, a Second Supplemental Agreement (the "Second

Supplemental Agreement") dated 26 February 1981, a Third Supplemental Agreement dated 4 March 1982 and a Fourth Supplemental Agreement (the "Fourth Supplemental Agreement") dated as of 1 March 1984, and, as so varied, amended and supplemented, is hereinafter referred to as the "Principal Agreement".

- C. Representatives of the State, the Company and the Corporate Sponsors have executed certain Heads of Agreement dated 20 March 1985 (the "Heads of Agreement"). The Heads of Agreement contemplated that further documentation would be entered into to give effect to the Heads of Agreement.
- D. The parties hereto have negotiated and agreed on certain changes in respect of the Project and, in order to give effect to the Heads of Agreement, the State and the Company are entering into this Agreement and, in order to give effect to Clause 10 hereof, Amoco Corporation, Amoco, BHP, BHP Minerals Holdings, MG, DG and DEG have agreed to become parties hereto.

NOW IT IS HEREBY AGREED AND DECLARED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 This Agreement is supplemental to the Principal Agreement and accordingly, unless otherwise defined herein, words and expressions which are given a certain meaning in the Principal Agreement are used herein with the same meanings.
- 1.2 The rules of interpretation set out in Clause 2 of the Principal Agreement shall, unless the context or subject matter otherwise requires, apply in this Agreement. References herein to Recitals and Clauses are, unless otherwise specified, references to the Recitals and Clauses to and of this Agreement.
- 1.3 Unless the context or subject matter otherwise requires, whenever any agreement or other instrument is referred to herein, such reference shall be deemed to include such agreement or other instrument as it may heretofore have been, or may simultaneously herewith or from time to time hereafter be, modified, amended, supplemented or restated in accordance with the terms applicable thereto.

2. EFFECT ON AND OF OTHER LAWS

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

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

3. CONDITIONS PRECEDENT

- 3.1 The parties declare that this Agreement constitutes a material or substantial alteration of the Principal Agreement and accordingly pursuant to Clause 42.2 of the Principal Agreement the State shall as soon as is reasonably practicable introduce and sponsor in the National Parliament a Bill for an Act to approve this Agreement, which Bill shall be in a form previously agreed upon between the parties.
- 3.2 This Agreement other than this Clause 3 shall not operate unless and until the Bill referred to in Clause 3.1 is passed as an Act and comes into force.

4. AMENDMENTS TO DEFINITIONS

4.1 Clause 1 of the Principal Agreement is amended:

(a) by inserting the following definitions after the definition therein of "Approved Proposals":

"Auditor" means, at any time, the firm of accountants then acting as the Company's outside auditor.

"Award Date" has the meaning given to it in Clause 29.14(a) or Clause 13.3(a), as the case may be.

"Capital Cost Component" has the meaning given to it in Clause 13A.8(d)(i).

"Capital Expenditures" means, for any period, all expenditures of a capital nature incurred by the Company in such period in connection with the Project, including expenditure on plant, machinery, equipment, land, buildings (including houses), roads, earthworks, development of the Company's mining property, works, including dredging, carried out in connection with the establishment, operation, or use of a port or other facilities for ships or barges and any improvements on any leasehold property, exploration and prospecting expenditure, compensation or other acquisition costs in relation to the grant of leases, licences, rights and grants, and all other expenditures of a capital nature.

"Cash Flow Cut-Off Date" means:

(a) with respect to the Updated Single Line Plan, the last day of the fiscal year included in the Equity Basis Real Terms Cash Flow Forecast applicable thereto that is immediately prior to the first fiscal year (the "Single Line Initial Negative Year") in which such Forecast forecasts a negative "Net Cash Flow" which together with any negative "Net Cash Flow" forecasts (on a year-by-year, cumulative basis) in respect of any fiscal year subsequent to the Single Line Initial Negative Year, cannot be offset by any positive "Net Cash Flow" forecasts (on a year-by-year, cumulative basis) in respect of any fiscal year subsequent to the Single Line Initial Negative Year, all as set forth in such Equity Basis Real Terms Cash Flow Forecast; and

(b) with respect to any Expansion Development Plan, the last day of the fiscal year included in the Equity Basis Real Terms Cash Flow Forecast applicable thereto that is immediately prior to the first fiscal year (the "Expansion Plan Initial Negative Year") in which such Forecast forecasts a negative "Net Cash Flow" which, together with any negative "Net Cash Flow" forecasts (on a year-by-year, cumulative basis) in respect of any fiscal year subsequent to the Expansion Plan Initial Negative Year, cannot be offset by any positive "Net Cash Flow" forecasts (on a year-by-year, cumulative basis) in respect of any fiscal year subsequent to the Expansion Plan Initial Negative Year, all as set forth in such Equity Basis Real Terms Cash Flow Forecast;

provided that in determining, with respect to any Equity Basis Real Terms Cash Flow Forecast applicable to the Updated Single Line Plan or to any Expansion Development Plan, whether the "Net Cash Flow" forecast for any fiscal year is positive or negative, there shall be excluded from such "Net Cash Flow" forecast any Capital Expenditures incurred in connection with the Single Copper Line or the Expanded Copper Facility included in such

Expansion Development Plan, as the case may be, prior to the Date of Practical Completion of the Single Copper Line or such Expanded Copper Facility, as the case may be. Any reference in this Agreement to the "Cash Flow Cut-Off Date" with respect to any Equity Basis Real Terms Cash Flow Forecast or Debt Basis Escalated Cash Flow Forecast means the Cash Flow Cut-Off Date, defined as set forth above, in respect of the Updated Single Line Plan or the Expansion Development Plan in relation to which such Forecast shall have been prepared.;

- (b) by inserting the following definitions after the definition therein of "Completion of Stage II":

"Construction Stage" means the period of five years (or such longer period as may be provided in the Approved Proposals) following the date on which the Special Mining Lease and all other leases, licences, rights and grants referred to in Clause 12.3(a) have been granted or such later date as the State may approve or may result from the application of Clause 36 or Clause 37.

"Contingency Amount" has the meaning given to it in Clause 13A.5(d) (ii) (C).;

- (c) by inserting the following definitions after the definition therein of "Damco":

"Date of Practical Completion", with respect to the Single Copper Line or any Expanded Copper Facility, shall occur when:

- (a) the construction of the copper plant forming part of the Single Copper Line or such Expanded Copper Facility, as the case may be, shall have been practically completed in accordance, mutatis mutandis, with the definition of "Practical Completion" in Clause 1 of Australian Standard 2124-1978; and
- (b) the Company's General Manager shall have delivered to the State a certificate to the foregoing effect.

"Debt Basis Escalated Cash Flow Forecast" has the meaning given to it in Clause 13A.4.

"Economic Test" means, in respect of any Test Date, the procedure to be followed in order to determine whether the conditions required to be satisfied under Clauses 13A.9(d), 13A.10(b)(i) and (ii) and 13A.11, for the purposes of determining whether the Company shall be obligated to select an Expansion Development Plan, shall have been satisfied.

"Equity Basis Real Terms Cash Flow Forecast" has the meaning given to it in Clause 13A.4.

"Expanded Copper Facility" has the meaning given to it in Clause 13A.3.

"Expansion Change Notice" has the meaning given to it in Clause 13A.12(a).

"Expansion Development Plan" has the meaning given to it in Clause 13A.1.

"Expert" means the person who, prior to 28 February 1986 (or such other date as the State and the Company shall agree upon), shall be designated by the State and the Company as the "Expert" for the purposes of this Agreement, provided that if such person or any other person who at any time constitutes the "Expert" for the purposes of this Agreement should die or otherwise become incapable of acting or become unwilling to act, a replacement Expert shall be agreed upon by the State and the Company or, if the State or the Company so requires by notice to the other of them, shall be designated by the person then serving as the President of the Institution of Mining and

Metallurgy (U.K.), or any other Fellow of such Institution designated by such President, and such President, or other Fellow, as the case may be, shall be instructed to designate a replacement Expert who has experience and expertise in the construction, development and operation of mining projects in remote locations, including the acquisition and (where applicable) installation and operation of plant, property and equipment, and the providing of services with respect thereto, and has a general familiarity with budgetary matters and principles of cost accounting.

"Fifth Supplemental Agreement" means the agreement dated as of 1 August 1985 headed "Fifth Supplemental Agreement" between the State, Amoco Corporation, Amoco Minerals PNG Company, The Broken Hill Proprietary Company Limited, BHP Minerals Holdings Proprietary Limited, Metallgesellschaft AG, Degussa AG, DEG-Deutsche Finanzierungsgesellschaft fuer Beteiligungen in Entwicklungslaendern GmbH and the Company.

"First Supplemental Agreement" means the agreement dated 26 June 1980 headed "The Supplemental Agreement" between the State, BHP Minerals Limited (then named Dampier Mining Company Limited), the Company (then Named Mt. Fubilan Development Co. Pty. Ltd.), and Kupferexplorationsgesellschaft mbH, as the same may be modified, amended, supplemented or restated in accordance with the terms applicable thereto.

"fiscal year" means, with respect to any Forecast Period, a year beginning on the Test Date on which such Forecast Period commences, or beginning on an anniversary of such Test Date.

"Forecast Period" has the meaning given to it in Clause 13A.2(b).

"Forty-Five Plan" has the meaning given to it in Clause 13A.11(a).;

(d) by inserting the following definitions after the definition therein of "Gazette":

"ICA" means The Institute of Chartered Accountants in Australia.

"Incremental Cash Flow" means, with respect to any fiscal year included in an Equity Basis Real Terms Cash Flow Forecast applicable to an Expansion Development Plan, the remainder of:

- (a) the "Net Cash Flow" for such fiscal year, as set forth in such Forecast; minus
- (b) the "Net Cash Flow" for the corresponding fiscal year, as set forth in the Equity Basis Real Terms Cash Flow Forecast applicable to the Single Copper Line.

"Incremental Expenditures" means, with respect to any Expansion Development Plan, the remainder of:

- (a) the aggregate amount of Capital Expenditures forecast to be made, in connection with the Expanded Copper Facility included in such Expansion Development Plan, prior to the forecast Date of Practical Completion of such Expanded Copper Facility, as set forth in the Equity Basis Real Terms Cash Flow Forecast applicable thereto; minus
- (b) the aggregate amount of Capital Expenditures forecast to be made in connection with the Single Copper Line, as set forth in the Equity Basis Real Terms Cash Flow Forecast applicable thereto.

"Infrastructure Agreement" means the agreement dated 30 November 1981 between North Fly Highway Development Company Pty. Limited and the

Company relating to the construction of the access road between Kiunga and Tabubil in the Western Province of Papua New Guinea, as such agreement may be modified, amended, supplemented or restated in accordance with the terms applicable thereto.

"Interbank Rate" means, with respect to the principal amount of any debt forecast to be outstanding in any six-month period commencing on the first day or the 181st day of each fiscal year (a "Semi-Annual Interest Period") included in any Forecast Period, as set forth in the related Debt Basis Escalated Cash Flow Forecast, the per annum interest rate at which deposits in US Dollars in an amount comparable to such principal amount are offered to prime banks for a period of six months in the London interbank market at approximately 11:00 a.m. London time on the date which is two days (on which dealings are carried on in the London interbank market) prior to the commencement of such Semi-Annual Interest Period.

"Interim Tailings System" means the system described in condition A.1 to the Variation of Proposals approved by instrument dated 20 March 1985, as such system may be changed from time to time (with the State's approval, where required).

"Last Published Year" has the meaning given to it in Clause 13A.5(d)(i)(A).

"Lowest NPC Plan" has the meaning given to it in Clause 18.5(f)(ii)(B).

"Milling Costs" means all operating and maintenance costs attributable to the comminution and beneficiation of ores and the extraction from ores of metals or concentrates (or both) and to the disposal of tailings.;

(e) by inserting the following definitions after the definition therein of "Mining Area":

"Mining Costs" means all operating and maintenance costs attributable to the winning and transportation of ores and to the disposal of mine waste.

"Multiple 20M Plus Forty-Five Plans" has the meaning given to it in Clause 13A.11(b).

"Multiple 40M Plus Forty-Five Plans" has the meaning given to it in Clause 13A.11(d).

"Net Present Cost" means, with respect to the forecast of Operating Costs and Capital Expenditures prepared in respect of any power source pursuant to Clause 18.5, the sum of the "Net Present Costs" for each fiscal year included in such forecast, determined in accordance with Schedule VI hereto.

"Net Present Value" means, with respect to any Equity Basis Real Terms Cash Flow Forecast, the sum of the "Net Present Value of Net Cash Flow for Each Year" for each fiscal year included in such Forecast, determined in accordance with Schedule V hereto. Any reference in this Agreement to the "Net Present Value" of the Updated Single Line Plan or of any Expansion Development Plan shall mean the "Net Present Value for Forecast Period" forecast in the Equity Basis Real Terms Cash Flow Forecast applicable to the Updated Single Line Plan or such Expansion Development Plan (as the case may be).;

(f) by inserting the following definitions after the definition therein of "Ok Tedi Deposits":

"Operating Costs" means all Mining Costs, Milling Costs and costs of transporting products from the copper plant to the ocean port or other transshipment facilities.

"Other Cost Category" has the meaning given to it in Clause 13A.8(d)(ii).

"OTML Plan" has the meaning given to it in Clause 18.5(f)(ii)(A).

"Panel" means, in respect of any Expansion Development Plan, the panel of three members selected in accordance with Clause 13A.8(g).

"Parallel Test" has the meaning given to it in Clause 13A.12(c)(ii)(A).';

(g) by inserting the following definitions after the definition therein of "Parties":

"Payout" shall be deemed to occur, with respect to any Expansion Development Plan, on the last day of the first calendar month in which positive Incremental Cash Flow applicable to such Plan is forecast which, when added to the aggregate of all positive Incremental Cash Flows applicable to such Plan for all calendar months prior thereto, is in excess of the aggregate of all negative Incremental Cash Flows applicable to such Plan for all calendar months prior thereto. For the purposes of this definition, the Incremental Cash Flow for any calendar month in any fiscal year included in a Forecast Period shall be equal to the quotient obtained by dividing the Incremental Cash Flow for such fiscal year by 12.

"Payout Period" means, with respect to any Expansion Development Plan, the number of calendar months included in the period from and including the calendar month in which the applicable Test Date falls to but excluding the calendar month in which Payout with respect to such Plan is forecast to occur.

"Permanent Tailings System" means the "Tailings System" as defined in condition 1 to the Variation of Proposals approved by instrument dated 31 May 1985 (as amended by the State's approval, on 1 August 1985, of Change Notice No. 27/4.2; 9/29.2) as such system may be changed from time to time (with the State's approval, where required).

"Permanet Tailings System Pre-Default Rate", in respect of any failure of the kind referred to in Clause 29.14(a) or (b), has the meaning given to it in Clause 29.14(A).

"Plus Forty-Five Plan" has the meaning given to it in Clause 13A.11(a).';

(h) by inserting the following definitions after the definition therein of "Project":

"Published Copper Price" means the "LME H GRADE CASH" (or its successor quotation) weekly average price in United States cents per pound as set forth in "Metals Week", New York, or its successor publication.

"Published Gold Price" means the weekly average price in United States Dollars per troy ounce for gold in bars for good delivery with a minimum 995 parts per thousand fine published by the London Bullion Dealers (as set forth in "Metals Week", New York, or its successor publication, as the "LONDON FINAL \$/TR OZ" quotation), or the successor quotation.

"Real Terms" means, with respect to any price, cost, expense or other amount to be included in any Equity Basis Real Terms Cash Flow Forecast, such price, cost, expense or other amount determined without regard to the effect thereon of any inflation subsequent to the date 180 days prior to the Test Date in respect of which such Forecast shall be prepared.;

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(i) by inserting the following definitions after the definition therein of "River Port":

"Single Copper Line" has the meaning given to it in Clause 13.1.

"Single Copper Line Pre-Default Rate", in respect of any failure of the kind referred to in Clause 13.3(a) or (b), has the meaning given to it in Clause 13.3(A).

"Single 20M Plus Forty-Five Plan" has the meaning given to it in Clause 13A.11(b).

"Single 40M Plus Forty-Five Plan" has the meaning given to it in Clause 13A.11(d).

"Special Payout Period" means, with respect to any Expansion Development Plan, the number of calendar months in the period from and including (x) the calendar month in which the Equity Basis Real Terms Cash Flow Forecast applicable to such Plan forecasts that the amounts the Company will have expended on Incremental Expenditures shall first be equal to 50% of the aggregate amount forecast therein to be expended in respect of Incremental Expenditures, to and including (y) the last of the calendar months included in the relevant Payout Period.;

(j) by inserting the following definitions after the definition therein of "Stage I", "Stage II" and "Stage III":

"Support Costs" means all Operating Costs (other than Mining Costs and Milling Costs) and selling, general and administrative expenses.

"Tailings Major Contract" means any of the following contracts, namely:

- (a) the Permanent Tailings System contracts for Adits, Grouting, Diversional Tunnel, Diversion Structures, Cofferdam, Starter Dam and Ok Kumiup Diversion; and
- (b) any other contract that the State and the Company may agree should constitute a "Tailings Major Contract" for the purposes of this definition.

"Test Conditions" has the meaning given to it in Clause 13A.11(a).

"Test Date" means each of the following:

- (a) 1 March 1987;
- (b) the third anniversary thereof (or, if required pursuant to the last paragraph of this definition, the second anniversary thereof); and
- (c) each third anniversary (not being later than 31 December 1996) of the date determined in accordance with paragraph (b) above,

as any such date may be extended (but not beyond 31 December 1996) pursuant to this Agreement or by agreement between the State and the Company, provided that if any such date shall be so extended (the date to which such date shall be extended being herein referred to as the "Extension Date"), the "Test Date" shall be the first day of the calendar month in which the Extension Date falls (or, if the Extension Date is the first day of a calendar month, the Extension Date).

For the purposes of paragraph (b) above, the Company will determine as of the Test Date referred to in paragraph (a) above which Expansion Development Plan (the "Closest Plan") prepared with respect to such Test Date was closest,

based upon the Equity Basis Real Terms Cash Flow Forecast and the Debt Basis Escalated Cash Flow Forecasts applicable thereto, to satisfying all of the Test Conditions. The Company will then determine:

- (i) what Real Terms copper price assumption would have been required (the "Requisite Copper Price"), for each fiscal year covered by the Closest Plan, to have enabled the Closest Plan to satisfy all of the Test Conditions if the gold price assumption made for each such fiscal year had been the average of the Published Gold Prices for the period of six months ending on the Test Date referred to in paragraph (a) above; and
- (ii) what Real Terms gold price assumption would have been required (the "Requisite Gold Price") for each fiscal year covered by the Closest Plan to have enabled the Closest Plan to satisfy all of the Test Conditions if the copper price assumption made for each such fiscal year had been the average of the Published Copper Prices for the period of six months ending on the Test Date referred to in paragraph (a) above.

If either:

- (A) the average of the Published Copper Prices for the period of six months ending on the date which is ten months after the Test Date referred to in paragraph (a) above (as such date may be extended by agreement between the State and the Company) is not less than the Requisite Copper Price; or
- (B) the average of the Published Gold Prices for such period of six months is not less than the Requisite Gold Price,

then the Test Date referred to paragraph (b) above will be the second anniversary of the Test Date referred to in paragraph (a) above; and

- (k) by inserting the following definitions after the definition therein of "United States Dollars" and the sign "US\$":

"United States GNP Deflator" means the Implicit Price Deflator for Gross National Product published from time to time in "Economic Indicators" by the United States Department of Commerce, Bureau of Economic Analysis, or its successor publication.

"Updated Single Line Plan" has the meaning given to it in Clause 13A.1(a).

5. PERMANENT TAILINGS LICENCE

Clause 29 of the Principal Agreement is amended by inserting the following provision at the end thereof:

29.14 If:

- (a) the Company fails to let (by entering into a contract or by issuing a letter of award accepting a contractor's bid, in either case providing for construction the timing of which is consistent with the construction schedule referred to in Clause 29.14(b) (as the same may be amended or modified from time to time by agreement between the State and the Company)) any contract that is a Tailings Major Contract by any date (the "Award Date") that shall have been agreed upon from time to time by the State and the Company for that purpose, provided that the Company may in its discretion determine to construct the facilities that would otherwise be covered by any such Tailings

Major Contract and, if the Company shall have given notice to the State to such effect on or prior to the Award Date relating to such Tailings Major Contract, the State shall not be permitted to invoke any penalties referred to in this Clause 29.14 arising from the Company's failure to let such Tailings Major Contract by such Award Date (provided that nothing contained in this paragraph (a) shall affect the State's rights under Clause 29.14(b) in any case where the Company determines to construct any such facilities); or

- (b) the Company fails to make reasonable progress on construction in accordance with the construction schedule agreed upon between the State and the Company (and incorporated as the annexure to Change Notice No. 27/4,2; 9/29.2), as such construction schedule may be amended or modified from time to time by agreement between the State and the Company;

and:

- (i) in the case of any such failure that shall have been due to events or circumstances entirely or substantially beyond the Company's control, the Company shall not have so let such Major Tailings Contract or resumed such progress, as the case may be, within 14 days after (x) the consequences of such events or circumstances shall have ceased to prevent or hinder the Company from doing so, and (y) the Company shall have received written notice from the State specifying such failure and stating that in the State's opinion the consequences of such events or circumstances shall have ceased so to prevent or hinder the Company; and
- (ii) in the case of any other such failure, the Company shall not be taking reasonable steps to remedy such failure within 14 days after the Company shall have received written notice from the State specifying such failure,

then, so long as the Company shall not be taking reasonable steps to remedy such failure, the average rate at which the Company shall be permitted to process gold ore will, if the Minister for Minerals and Energy shall so direct, be reduced to:

- (A) for the first period of 60 days, during which such failure continues and the Company shall not be taking reasonable steps to remedy such failure, beyond any period of 14 days referred to above—the rate determined in accordance with the formula

$$PP_1 \times PR$$

where

PP_1 is such percentage (not being less than 90%) as the Minister shall have directed from time to time by notice to the Company for the purposes of this paragraph (A); and

PR is the rate (the "Permanent Tailings System Pre-Default Rate") specified in the Approved Proposals as being the average rate at which the Company was, immediately prior to such reduction, permitted to process gold ore; and

- (B) thereafter, and so long as such failure continues and the Company shall not be taking reasonable steps to remedy such failure—the rate determined in accordance with the formula

$$PP_2 \times PR$$

where

PP₂ is such percentage (which may be less than 90%) as the Minister shall have directed from time to time by notice to the Company for the purposes of this paragraph (B); and

PR is the Permanent Tailings System Pre-Default Rate.

The Company agrees that, in the case of any failure referred to in paragraph (a) or (b) of this Clause 29.14 and after the Company shall have received written notice thereof, as aforesaid, the Company shall submit to the State a program of the steps that the Company proposes to take in order to remedy such failure and shall thereafter keep the State informed of the steps being taken with respect thereto.

6. COPPER CONCENTRATE FACILITIES

The Principal Agreement is amended by substituting the following for Clause 13 thereof:

Clause 13 CONSTRUCTION OF PLANT

- 13.1 By not later than 1 July 1986, or such other date that the State and the Company shall agree upon, the Company will deliver to the Secretary of Minerals and Energy a notice pursuant to Clause 4.2 of the First Supplemental Agreement which notice will include the Company's development plan with respect to the construction of facilities for the production of copper concentrates that:

- (a) have a design capacity of 30,000 tonnes of ore per day; and
- (b) include the facilities referred to in Clause 13.2(a).

Such facilities, as changed from time to time (with the State's approval, where required), are herein referred to as the "Single Copper Line". Such development plan will provide for the completion of construction of all facilities that are necessary to enable the processing of copper ore by the use of such facilities to commence not later than 31 December 1988, or such other date as the State and the Company may agree that the leached cap gold ore will be substantially exhausted.

- 13.2 (a) The development plan referred to in Clause 13.1 shall provide, as a minimum, for:

- (i) (A) the mine facilities;
- (B) the ore truck dump;
- (C) the ore feeding, conveying and storage facilities;
- (D) the power source;
- (E) the primary SAG mill and gravity plant; and
- (F) project infrastructure

in existence at the date of preparation of such development plan, as any of the same may thereafter be added to or otherwise changed (with the State's approval, where required); and

- (ii) the following (together with any other facilities or arrangements that the Company reasonably believes are necessary or appropriate):
 - (A) secondary ball mill and cyclone circuit;
 - (B) flotation plant, including regrind ball mill circuit, concentrate thickener and filtering plant;
 - (C) facilities or arrangements (which may include arrangements with third parties) for the transport of copper concentrates from the copper plant to an ocean port or other transshipment facilities;
 - (D) appropriate development of the Kiunga wharf area to receive, store and handle outgoing copper concentrates and incoming fuel and general cargo;
 - (E) arrangements (which may include arrangements with third parties) at or for an ocean port, or other transshipment facilities, for the handling, unloading, storage and loading of the copper concentrates on to ocean-going vessels; and
 - (F) additional housing and community facilities, including expansion of utilities, that are necessary to support any increase in work force required for the production of copper concentrates at the rate of 30,000 tonnes of ore per day.
- (b) Any reasonable potential interconnections that will facilitate an expansion of the type referred to in Clause 13A shall be designed in such a way as to permit such interconnections.

13.3 At least three months prior to delivery of the notice referred to in Clause 13.1, the State and the Company will commence good faith negotiations relating to, and on or prior to the date of such delivery the State and the Company will agree upon, a construction schedule providing for the construction of the facilities that are to form part of the Single Copper Line, as set forth in the development plan that the Company proposes to include in such notice, and the respective dates by which the Company is to let (by entering into contract or by issuing a letter of award accepting a contractor's bid, in either case providing for construction the timing of which is consistent with such construction schedule (as the same may be amended or modified from time to time by agreement between the State and the Company)) each contract that the State and the Company shall, in connection with their negotiation and agreement on such construction schedule, have together designated as a "major contract" for the purposes of this Clause 13.3. If:

- (a) the Company fails so to let any such major contract by any date (the "Award Date") that shall have been agreed upon from time to time by the State and the Company for that purpose pursuant to this Clause 13.3, provided that the Company may in its discretion determine to construct the facilities that would otherwise be covered by any such major contract and, if the Company shall have given notice to the State to such effect on or prior to the Award Date relating to such major contract, the State shall not be permitted to invoke any penalties referred to in this Clause 13.3 arising from the Company's failure to let

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such major contract by such Award Date (provided that nothing contained in this paragraph (a) shall affect the State's rights under Clause 13.3(b) in any case where the Company determines to construct any such facilities); or

- (b) the Company fails to make reasonable progress on construction in accordance with such construction schedule, as such construction schedule may be amended or modified from time to time by agreement between the State and the Company

and:

- (i) in the case of any such failure that shall have been due to events or circumstances entirely or substantially beyond the Company's control, the Company shall not have so let such contract or resumed such progress, as the case may be, within 14 days after (x) the consequences of such events or circumstances shall have ceased to prevent or hinder the Company from doing so, and (y) the Company shall have received written notice from the State specifying such failure and stating that in the State's opinion the consequences of such events or circumstances shall have ceased so to prevent or hinder the Company; and
- (ii) in the case of any other such failure, the Company shall not be taking reasonable steps to remedy such failure within 14 days after the Company shall have received written notice from the State specifying such failure,

]then, so long as the Company shall not be taking reasonable steps to remedy such failure, the average rate at which the Company shall be permitted to process gold ore will, if the Minister for Minerals and Energy shall so direct, be reduced to:

- (A) for the first period of 60 days, during which such failure continues and the Company shall not be taking reasonable steps to remedy such failure, beyond any period of 14 days referred to above—the rate determined in accordance with the formula

$$SP_1 \times SR$$

where

SP_1 is such percentage (not being less than 90%) as the Minister shall have directed from time to time by notice to the Company for the purposes of this paragraph (A); and

SR is the rate (the "Single Copper Line Pre-Default Rate") specified in the Approved Proposals as being the average rate at which the Company was, immediately prior to such reduction, permitted to process gold ore; and

- (B) thereafter, and so long as such failure continues and the Company shall not be taking reasonable steps to remedy such failure—the rate determined in accordance with the formula

$$SP_2 \times SR$$

where

SP_2 is such percentage (which may be less than 90%) as the Minister shall have directed from time to time by notice to the Company for the purposes of this paragraph (B); and

SR is the Single Copper Line Pre-Default Rate.

The Company agrees that, in the case of any failure referred to in paragraph (a) or (b) of this Clause 13.3 and after the Company shall have received written notice thereof, as aforesaid, the Company shall submit to the State a program of the steps that the Company proposes to take in order to remedy such failure and shall thereafter keep the State informed of the steps being taken with respect thereto.

13.4 The notice referred to in Clause 13.1 shall be dealt with in accordance with the provisions and procedure set out in Clause 4.2 of the First Supplemental Agreement; provided that the State may not utilize such provisions and procedure in such a manner as to change materially the facilities that are to form part of the Single Copper Line from those provided for in this Clause 13. After the State's approval of such notice:

- (a) the Company shall be obligated, in accordance with this Agreement and the Approved Proposals, to proceed, in accordance with the construction schedule referred to in Clause 13.3 (as such construction schedule may be amended or modified as aforesaid), with construction of the Single Copper Line provided for in the development plan included in such notice; and
- (b) the Company will not utilize the variation procedure set forth in Clause 4.1 or 4.2 of the First Supplemental Agreement or the procedure set forth in Clause 29.2 hereof, and the State will not utilize the approval procedures in such Clauses, in such a way as to seek changes to the Approved Proposals, with respect to the construction of the Single Copper Line, that are inconsistent with Clauses 13.1 and 13.2.

7. COPPER EXPANSION

The Principal Agreement is amended by inserting the following provisions immediately after Clause 13 thereof:

'Clause 13A COPPER EXPANSION

13A.1 The Company will prepare and deliver to the State copies of:

- (a) a development plan (the "Updated Single Line Plan") relating to the construction and operation of the Single Copper Line, as approved by the State in accordance with Clause 13, and updated to reflect any changes (with the State's approval, where required); and
- (b) one or more development plans relating to the construction and operation of an Expanded Copper Facility.

In addition, each Sponsor (as defined in Clause 5.5 of the First Supplemental Agreement) at its option may (but shall not be obligated to) deliver to the Company, by not later than the date which is eleven months prior to the date determined in accordance with paragraph (a) of the definition of "Test Date" (or, where the Economic Test is to be repeated in accordance with Clause 13A.11(f), by not later than the date which is eleven months prior to the next succeeding Test Date), not more than two development plans relating to the construction and operation of an Expanded Copper Facility and, if a Sponsor so delivers such a development plan (or plans) to the Company, the Company will (after any optimization thereof by the Company in accordance with Clause 13A.2(c) deliver a copy of each such development plan to the

State. Each development plan referred to in (b) above, and each development plan which has been delivered by a Sponsor to the Company and (where applicable) which has been optimized by the Company in accordance with Clause 13A.2(c), is herein referred to as an "Expansion Development Plan". The Updated Single Line Plan and each Expansion Development Plan shall be prepared and contemporaneously delivered to the State by not later than the date which is two months prior to the date determined in accordance with paragraph (a) of the definition of "Test Date" (or, where the Economic Test is to be repeated in accordance with Clause 13A.11(f), by not later than the date which is two months prior to the next succeeding Test Date).

13A.2 The Updated Single Line Plan and each Expansion Development Plan shall:

- (a) include uncosted basic process flow diagrams and mining plans and shall be accompanied by supporting data sufficient to enable interpretation, for the purposes of the Economic Test, of such Updated Single Line Plan or Expansion Development Plan (as the case may be) by competent professional engineers;
- (b) cover the period of 24 fiscal years (a "Forecast Period") commencing on the relevant Test Date; and
- (c) (in the case of any Expansion Development Plan prepared by a Sponsor and delivered to the Company) be optimized by the Company (so as to promote efficiencies of operations, without changing the basic elements of such Expansion Development Plan), to the extent that the Company considers appropriate, provided that such optimization shall be done in a consistent manner with respect to all Expansion Development Plans.

13A.3 Each Expansion Development Plan shall:

- (a) provide for facilities for the production of copper concentrates which, including the Single Copper Line, have a design capacity of not less than 45,000 tonnes of ore per day nor more than 60,000 tonnes of ore per day;
- (b) provide for the following:
 - (i) all additions to mining, grinding, flotation, regrinding, thickening and filtering capacities that are necessary to achieve the design capacity provided for in such Expansion Development Plan;
 - (ii) an appropriate manner (which may include arrangements with third parties) of transporting copper concentrates from the copper plant to Kiunga;
 - (iii) an appropriate manner (which may include arrangements with third parties) of transporting copper concentrates from Kiunga to an ocean port or other transshipment facilities, and for handling, unloading and storing such concentrates and loading the same on to ocean-going vessels;
 - (iv) a power source determined in the manner set forth in Clause 18.5 (or for the purposes of Clause 13A.12, a power source which, together with any power source in existence at the date of preparation of such Expansion Development Plan, is capable of generating sufficient power to operate the Expanded Copper Facility provided for in the Expansion Development Plan included

- in the relevant Expansion Change Notice at the design capacity provided for in such Expansion Development Plan); and
- (v) such additional housing and community facilities, including expansion of utilities, as are necessary to support any increase in work force relating to the design capacity provided for in such Expansion Development Plan; and
- (c) provide for production from the expanded facility to commence by not later than:
- (i) the date which is four years after the date determined in accordance with paragraph (a) of the definition of "Test Date"; or
 - (ii) where the Economic Test is to be repeated in accordance with Clause 13A.11(f) (or, for the purposes of Clause 13A.12, where an Expansion Change Notice is submitted after the Test Date determined in accordance with paragraph (a) of the definition of Test Date):
 - (A) if the power source provided for in such Expansion Development Plan does not include hydro power—the date which is three years after the relevant Test Date (or, for the purposes of Clause 13A.12, the date which is three years after an Expansion Change Notice is approved or deemed approved by the State or otherwise becomes effective); or
 - (B) if the power source provided for in such Expansion Development Plan includes hydro power—the date which is four years after the relevant Test Date (or, for the purposes of Clause 13A.12, the date which is four years after an Expansion Change Notice is approved or deemed approved by the State or otherwise becomes effective).

The expanded facility that is provided for in any Expansion Development Plan that meets the criteria set forth in (a), (b) and (c) above is herein referred to as an "Expanded Copper Facility".

13A.4 The Company shall prepare, for the Updated Single Line Plan and each Expansion Development Plan, a statement of forecast cash flow (an "Equity Basis Real Terms Cash Flow Forecast"), in accordance with Clause 13A.7, for each fiscal year included in the relevant Forecast Period. The forecast of "Income Tax Expense" to be included in the Equity Basis Real Terms Cash Flow Forecast in respect of any Updated Single Line Plan or Expansion Development Plan will be derived from a separate statement of forecast cash flow (a "Debt Basis Escalated Cash Flow Forecast") that shall be prepared by the Company, for each fiscal year included in such Forecast Period, in accordance with Clause 13A.5 for the Updated Single Line Plan or such Expansion Development Plan (as the case may be). Each Equity Basis Real Terms Cash Flow Forecast and Debt Basis Escalated Cash Flow Forecast shall indicate the fiscal year included therein in which the Cash Flow Cut-Off Date falls and, for the purposes of determining whether the Test Conditions shall be satisfied as of any Test Date:

- (a) in the case of any Equity Basis Real Terms Cash Flow Forecast—the "Annual Cash Flow"; and

- (b) in the case of any Debt Basis Escalated Cash Flow Forecast—the “Cash Surplus” or “Cash Shortfall”, as the case may be, for each fiscal year subsequent thereto shall be zero.

13A.5 Each Debt Basis Escalated Cash Flow Forecast shall:

- (a) be substantially in the form of Schedule IV hereto;
- (b) take account of:
 - (i) all depreciation expense in respect of any asset acquired or forecast to be acquired prior to the commencement of the relevant Forecast Period and in respect of any asset that is forecast to be acquired therein;
 - (ii) all interest expense on any debt incurred or forecast to be incurred prior to the commencement of the relevant Forecast Period and on any debt that is forecast to be incurred therein;
 - (iii) the carry-forward of any losses incurred or forecast to be incurred prior to the commencement of the relevant Forecast Period and of any losses that are forecast to be incurred therein, to the extent that such losses have not previously been utilized or previously forecast to have been utilized; and
 - (iv) any payment in respect of any liabilities (that would be disclosed in a balance sheet of the Company prepared in accordance with generally accepted accounting principles in Papua New Guinea) incurred or forecast to be incurred prior to the commencement of the relevant Forecast Period and in respect of any such liabilities that are forecast to be incurred therein (in the case of debt, in accordance with Clause 13A.5(d)(v));
- (c) compute income tax expense by applying the provisions of Clause 23; and
- (d) be prepared on the basis of the following assumptions:
 - (i) “FOB Revenue” shall be determined, as set forth in Schedule IV hereto, by subtracting (x) the aggregate of “Smelting and Refining Charges” and “Direct Charges to Sales” from (y) “Gross Revenue”. In calculating “Gross Revenue” for any fiscal year included in such Debt Basis Escalated Cash Flow Forecast, the following metal price assumptions will be made:
 - (A) The copper price to be used for each fiscal year included in the relevant Forecast Period shall (subject to the last sentence of this Clause 13A.5(d)(i)) be the Real Terms price agreed between the State and the Company. Failing agreement by not later than the date which is five months prior to the relevant Test Date, such price shall (subject to the last sentence of this Clause 13A.5(d)(i)) be the arithmetical average of the prices quoted as “most likely” or, to the extent that “most likely” quotes are not made, the arithmetical average of the midpoint prices, forecast (in Real Terms) to the Company for that fiscal year by the following four forecasting sources, namely, Metal and Mineral Research Service, Ltd., CRU Consultants, Inc., Resource Strategies,

Inc. and Chemical Bank. Each of such forecasting sources will be instructed to provide forecasts for each fiscal year included in the relevant Forecast Period, provided that if the latest fiscal year for which such forecasting source would customarily publish or otherwise provide a forecast (the "Last Published Year") is prior to the last fiscal year in the relevant Forecast Period, then, for each fiscal year in the relevant Forecast Period that is subsequent to the Last Published Year, the forecast of such forecasting source shall be, for the purposes of this Clause 13A.5(d)(i)(A), the average of the forecasts provided to the Company by such forecasting source for the Last Published Year and the two fiscal years immediately preceding the Last Published Year.

- (B) The gold price to be used for each such fiscal year shall (subject to the last sentence of this Clause 13A.5(d)(i)) be the monthly average of the price in United States Dollars per troy ounce for gold in bars for good delivery with a minimum 995 parts per thousand fine published by the London Bullion Dealers (as set forth in "Metals Week", New York, or its successor publication, as the "LONDON FINAL \$/TR OZ" quotation), or the successor quotation, for each of the 18 calendar months immediately preceding the date which is two months prior to the relevant Test Date and aggregating such monthly averages and dividing such aggregate by 18.
- (C) The silver price to be used for each such fiscal year shall (subject to the last sentence of this Clause 13A.5(d)(i)) be the monthly average of the price in United States cents per troy ounce for silver in bars for good delivery with a minimum 999 parts per thousand fine (as set forth in "Metals Week", New York, or its successor publication, as the "LDN SPOT/US EQV\$/TR OZ" quotation), or the successor quotation, for each of the 18 calendar months immediately preceding the date which is two months prior to the relevant Test Date and aggregating such monthly averages and dividing such aggregate by 18.
- (D) The molybdenum price to be used for each such fiscal year shall (subject to the last sentence of this Clause 13A.5(d)(i)) be the quotient obtained by aggregating the Midpoint Quotation (as hereinafter defined) for each week in the 18 calendar months immediately preceding the date which is two months prior to the relevant Test Date and dividing such aggregate by the number of weeks in such period of 18 calendar months. The "Midpoint Quotation" shall be the average of the high and low quotations for the MW Dealer Oxide price in United States Dollars per pound of molybdenum oxide (as set forth in "Metals Week", New York, or its successor publication, as the "MW DEALER OXIDE" quotations), or the successor quotations.

Each of the prices so to be used for each fiscal year included in the relevant Forecast Period shall be escalated by applying the United States GNP Deflator for such year (determined in accordance with Clause 13A.5(d)(iii)(A)).

(ii) Operating Costs; Capital Expenditures; Selling, General and Administrative Expenses; Working Capital Requirements and Other Items:

Operating Costs, Capital Expenditures, selling, general and administrative expenses, working capital requirements, mineral royalties, costs attributable to the user charge payable under the Infrastructure Agreement and depreciation, amortization and other non-cash charges will be as forecast by the Company (subject, in the case of Capital Cost Components and Other Cost Categories (including any Contingency Amounts to be included with respect to such Capital Cost Components and Other Cost Categories in accordance with Clause 13A.5(d)(ii)(C)), to review in accordance with Clause 13A.8). Such forecasts will not include any amounts in respect of contingencies except in accordance with the next sentence. Operating Costs, Capital Expenditures, selling, general and administrative expenses, working capital requirements, costs attributable to the user charge payable under the Infrastructure Agreement and depreciation, amortization and other non-cash charges will, in respect of each fiscal year included in the relevant Forecast Period:

(A) first be calculated in Real Terms except that:

- (1) costs attributable to the user charge payable under the Infrastructure Agreement will be the amount determined in accordance with the Infrastructure Agreement and any other applicable assumptions contained herein; and
- (2) any forecast depreciation expense in respect of any asset acquired or forecast to be acquired prior to the commencement of the relevant Forecast Period and in respect of any asset that is forecast to be acquired therein will be determined in a manner not inconsistent with Papua New Guinea tax law, except that the Company's forecast shall assume that the Company seeks to minimize "Income Tax Expense";

(B) then be escalated (except for the amounts referred to in Clauses 13A.5(d)(ii)(A)(1) and (2)) by applying the United States GNP Deflator for such fiscal year (determined in accordance with Clause 13A.5(d)(iii)(A)) (provided that while the base amount on which any royalties are calculated will be escalated, such royalties will not themselves be further escalated); and

(C) in the case of Operating Costs and Capital Expenditures, be increased by an amount (the "Contingency Amount") reflecting project contingencies, which:

- (1) will be based upon the Company's previous operating and construction experience, the engineering completed at that time and uncertainties arising from, among other things, the location and nature of the Project; and

- (2) could average up to approximately 30%, provided that such average, and any particular Contingency Amount, could be less than or greater than 30%.

(iii) Inflation and interest rates:

(A) Inflation:

The Company will submit to the State, by not later than the date which is five months prior to the relevant Test Date, the Company's forecast of the United States GNP Deflator for each fiscal year included in the relevant Forecast Period. If the State notifies the Company within one month after submission of such forecast that such forecast is not acceptable to the State, then the United States GNP Deflator to be used for each fiscal year included in the relevant Forecast Period shall be the arithmetical average of the United States GNP Deflator forecasts from Data Resources, Inc., Chase Econometrics Associates, Inc. and Wharton Economic Forecasting Associates, Inc. If the State does not so notify the Company that the Company's forecast is not acceptable, the Company's forecast will be used.

(B) Interest rates:

- (1) In respect of fixed rate debt outstanding on or prior to the commencement of the relevant Forecast Period, actual interest rates applicable to such debt, as set forth in the documentation that shall have been entered into in relation to such debt, will be used.
- (2) The Company will submit to the State, by not later than the date which is five months prior to the relevant Test Date, the Company's forecast of Interbank Rates for each Semi-Annual Interest Period (as defined in the definition of "Interbank Rate") included in the relevant Forecast Period. If the State notifies the Company within one month after submission of such forecast that such forecast is not acceptable to the State, the arithmetical average of the forecasts of Interbank Rates from Data Resources, Inc., Chase Econometrics Associates, Inc. and Wharton Economic Forecasting Associates, Inc. will be used. If the State does not so notify the Company that the Company's forecast is not acceptable, the Company's forecast will be used.
- (3) In respect of floating rate debt outstanding at the commencement of the relevant Forecast Period, it shall be assumed that (x) interest on such debt will accrue for each Semi-Annual Interest Period included in the relevant Forecast Period (on the basis of the actual number of days elapsed in such Semi-Annual Interest Period and a year of 360 days) and (y) the forecast interest rate to be used for such Semi-Annual Interest Period will be equal to the sum of the forecast Interbank Rate for such Semi-Annual Interest Period, determined in accordance with Clause 13A.5(d)(iii)(B)(2), and the margin applicable to such debt for such Semi-Annual Interest

Period, as set forth in the documentation that shall have been entered into in relation to such debt.

- (4) In respect of all debt assumed to be drawn down after the commencement of the relevant Forecast Period, it shall be assumed that such debt is floating rate debt and that (x) interest on such debt will accrue for each Semi-Annual Interest Period included in the relevant Forecast Period (on the basis of the actual number of days elapsed in such Semi-Annual Interest Period and a year of 360 days) and (y) the forecast interest rate to be used for such Semi-Annual Interest Period will be equal to the sum of the forecast Interbank Rate for such Semi-Annual Interest Period, determined in accordance with Clause 13A.5(d)(iii)(B)(2), plus a margin of 0.25%.
- (iv) Exchange rates:
- (A) All amounts included in such Debt Basis Escalated Cash Flow Forecast will be expressed in United States Dollars. Any amounts in currencies other than United States Dollars will be converted to United States Dollars on the basis of the appropriate rate, as specified in Clause 13A.5(d)(iv)(B).
 - (B) For the purposes of Clause 13A.5(d)(iv)(A):
 - (1) Australian dollars shall be converted into United States Dollars at the arithmetical average of the buying rates of exchange for United States Dollars against Australian dollars as quoted by the principal Sydney branch of Westpac Banking Corporation at approximately 11:00 a.m. Sydney time on each of the days for which such a quote is so provided during the period of six months ending on the date which is two months prior to the relevant Test Date;
 - (2) Kina shall be converted into United States Dollars at the arithmetical average of the telegraphic transfer buying rates of exchange for United States Dollars against Kina as quoted by the Port Moresby branch of Westpac Bank—PNG—Limited as its indicative morning rate on each of the days for which such a quote is so provided during the period of six months ending on the date which is two months prior to the relevant Test Date; and
 - (3) each currency other than Australian dollars and Kina shall be converted into United States Dollars at the arithmetical average of the quoted spot rates at which the principal London branch of Citibank, N.A. offers to exchange United States Dollars for such currency at approximately 11:00 a.m. London time on each of the days for which such a quote is so provided during the period of six months ending on the date which is two months prior to the relevant Test Date.
- (v) Debt:
- The following assumptions will be made:

- (A) debt outstanding or forecast to be outstanding at the commencement of the relevant Forecast Period, or forecast to be drawn down therein, under documentation theretofore entered into will be repaid in accordance with the repayment provisions of such documentation;
- (B) all Capital Expenditures (other than amounts expended for replacement of plant, property and equipment or for repairs and maintenance of any plant, property and equipment) of the Company forecast to be made during the relevant Forecast Period will be financed from external sources with 75% of such financing to be provided from new debt and 25% of such financing to be provided from equity contributions to be made in cash by the shareholders of the Company;
- (C) the Company will not exceed the ratio of Debt to Equity set forth in Clause 5.3 of the First Supplemental Agreement; and
- (D) repayments of principal in respect of debt (other than debt referred to in Clause 13A.5(d)(v)(A)) to be incurred for the purposes of financing Capital Expenditures in respect of the Single Copper Line will commence six months after the date on which the first production of copper concentrates from the Single Copper Line is forecast to occur, all as set forth in the Updated Single Line Plan, and repayments of principal in respect of debt (other than debt referred to in Clause 13A.5(d)(v)(A)) to be incurred for the purposes of financing the Capital Expenditures referred to in Clause 13A.5(d)(v)(B) will commence six months after the date on which the first production of copper concentrates from the Expanded Copper Facility included in the Expansion Development Plan to which such Debt Basis Escalated Cash Flow Forecast relates is forecast to occur, all as set forth in such Expansion Development Plan, and all such repayments will be made on a straight-line basis, with the final repayment being made:
 - (1) in the case of debt forecast to be incurred in respect of the Single Copper Line—on the date which is nine years after the date of first drawdown thereof; and
 - (2) in the case of debt forecast to be incurred in respect of an Expanded Copper Facility (other than debt referred to in Clause 13A.5(d)(v)(D)(1))—on the date which is nine years after the first drawdown thereof.

If, on the basis of such Debt Basis Escalated Cash Flow Forecast, the Company forecasts that "Income Tax Expense" will be payable in any fiscal year included in the relevant Forecast Period, the amount of "Income Tax Expense" so forecast to be payable will be de-escalated to a Real Terms amount by applying the United States GNP Deflator for such fiscal year (determined in accordance with Clause 13A.5(d)(iii)(A)) and such Real Terms amount will be included as the forecast "Income Tax Expense" component for the relevant fiscal year in the relevant Equity Basis Real Terms Cash Flow Forecast.

- 13A.6 The Company will, where necessary, commission the forecasting sources referred to in Clause 13A.5 to prepare the relevant forecasts specifically for the purposes of the provisions of Clause 13A.5 and to provide such forecasts

to the Company not later than the date which is two months prior to the relevant Test Date. If any forecasting source referred to in Clause 13A.5 should cease to exist or otherwise become incapable of providing a forecast or become unwilling to provide a forecast, a replacement forecasting source shall be agreed by the State and the Company or, if the State or the Company so requires by notice to the other of them, shall be nominated by an expert to be agreed upon by the State and the Company.

13A.7 Each Equity Basis Real Terms Cash Flow Forecast shall:

- (a) be substantially in the form of Schedule V hereto; and
- (b) be prepared on the the basis of the following assumptions:
 - (i) "FOB Revenue" shall be determined, as set forth in Schedule V hereto, by subtracting (x) the aggregate of "Smelting and Refining Charges" and "Direct Charges to Sales" from (y) "Gross Revenue". In calculating "Gross Revenue" for any fiscal year included in such Equity Basis Real Terms Cash Flow Forecast, the following metal price assumptions will be made:

Copper, gold, silver and molybdenum prices to be used for each fiscal year included in the relevant Forecast Period will be the Real Terms prices to be used for such fiscal year in accordance with Clauses 13A.5(d)(i)(A), (B), (C) and (D) respectively, but such prices will not be escalated in accordance with the last sentence of Clause 13A.5(d)(i).
 - (ii) Operating Costs; Capital Expenditures; Selling, General and Administrative Expenses; Working Capital Requirements and Other Items:

Operating Costs, Capital Expenditures, selling, general and administrative expenses, working capital requirements, mineral royalties and costs attributable to the user charge payable under the Infrastructure Agreement will be the Real Terms amounts calculated in accordance with Clause 13A.5(d)(ii) (excluding Clause 13A.5(d)(ii)(B)) except that costs attributable to the user charge payable under the Infrastructure Agreement, with respect to any fiscal year included in the Relevant Forecast Period, will be determined in accordance with the Infrastructure Agreement, and any other applicable assumptions contained herein, and then will be de-escalated to a Real Terms amount by applying the United States GNP Deflator for such fiscal year (determined in accordance with Clause 13A.5(d)(iii)(A)).
 - (iii) Taxation:
 - (A) If in any fiscal year included in the relevant Forecast Period "Income Tax Expense" is forecast to be payable on the basis of the Debt Basis Escalated Cash Flow Forecast, the Real Terms amount of such forecast "Income Tax Expense" will be included as the forecast "Income Tax Expense" for such fiscal year in the Equity Basis Real Terms Cash Flow Forecast.
 - (B) For each fiscal year in which the "Annual Cash Flow" forecast in the Equity Basis Real Terms Cash Flow Forecast is positive, such positive "Annual Cash Flow" shall be reduced to the

product obtained by multiplying such positive "Annual Cash Flow" by the factor "1-X", where "X" is the rate (expressed as a decimal) at which dividends payable by the Company (to shareholders that are non-residents of Papua New Guinea) are subject to withholding tax, in accordance with Clause 23.9.

(iv) Exchange rates:

All amounts included in such Equity Basis Real Terms Cash Flow Forecast will be expressed in United States Dollars. Any amounts in currencies other than United States Dollars will be converted to United States Dollars at the applicable exchange rates determined in accordance with Clause 13A.5(d)(iv).

- 13A.8 (a) The Company will permit the Expert to review and comment on each Expansion Development Plan prior to delivering a copy of such Expansion Development Plan to the State pursuant to Clause 13A.1 and the Company will consult with the Expert and keep the Expert fully informed in connection with each such Expansion Development Plan. The Company will take account of suggestions of the Expert in connection with the Company's optimization of each such Expansion Development Plan in accordance with Clause 13A.2(c).
- (b) The Expert shall be present in Papua New Guinea to the extent necessary for the due performance of his duties and shall have full access to all relevant estimating guides, books, records, information and facilities and all plans, studies and current operating information that may directly or indirectly affect future plans for the Single Copper Line or an Expanded Copper Facility or both.
- (c) By such date as the State and the Company shall agree upon, for the purposes of this Clause 13A.8(c), at the time of designating the Expert, the state and the Company shall agree (such agreement to be set forth in a side letter between the State and the Company) on a budget for the Expert including amounts that may be paid to any outside consultants that may be retained by the Expert, provided that the compensation of the Expert will be as agreed between the Company and the Expert prior to the appointment of the Expert and will be paid by the Company.
- (d) The Company and the Expert shall use their best efforts to agree, for the purposes of Clause 13A.5(d)(ii), on the Real Terms amounts of the Capital Cost Components and of the Other Cost Categories. If the Expert determines, within 30 days after the Company has established its forecast of such Real Terms amounts, that:
- (i) the Real Terms total amount of any of the following components (each of which is herein referred to as a "Capital Cost Component") of Capital Expenditures, namely:
 - (A) mine facilities;
 - (B) copper plant;
 - (C) transportation;
 - (D) power supply;
 - (E) town facilities; and
 - (F) other

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is overstated by more than 12.5%; or

- (ii) the Real Terms amount of any of the following (each of which is herein referred to as an "Other Cost Category"), namely:
 - (A) Mining Costs;
 - (B) Milling Costs; and
 - (C) Support Costs

is overstated for any fiscal year by more than 10%,

the Company may accept the Expert's determination or request that the matter be referred for determination by the Panel. If and to the extent that the Expert does not so determine that a Capital Cost Component or an Other Cost Category has been overstated as aforesaid, the Company's forecasts shall be final.

- (e) If the Company so requests that a matter be referred for determination by the Panel, the Panel shall consider the views of the Company and of the Expert and shall review such materials as the Company or the Expert may submit, and shall be instructed promptly to issue a determination (by majority vote if necessary), which determination shall be conclusive and binding on the parties. It shall not be open to the Panel to determine that:
 - (i) the Real Terms total amount of any Capital Cost Component is overstated; or
 - (ii) the Real Terms amount of any Other Cost Category is overstated for any fiscal year

by more than the amount (if any) determined by the Expert. The State, the Company and the Expert will co-operate with the Panel and assist it in issuing a prompt determination. The members of the Panel shall act as experts and not as arbitrators.

- (f) If the Expert determines, in respect of any Debt Basis Escalated Cash Flow Forecast relating to any Expansion Development Plan, that the Real Terms total amount of any Capital Cost Component is overstated by more than 12.5% or that the Real Terms amount of any Other Cost Category is overstated for any fiscal year by more than 10% and the Company accepts such determination, then each Debt Basis Escalated Cash Flow Forecast and the Equity Basis Real Terms Cash Flow Forecast relating to such Expansion Development Plan will be modified accordingly. If the Company does not accept such determination, the matter is referred for final determination by the Panel and the Panel upholds the Expert's determination or the Panel determines that the Real Terms total amount of any Capital Cost Component is overstated by any amount, or that the Real Terms amount of any Other Cost Category is overstated for any fiscal year by any amount (provided that in each case the Panel shall not be permitted to issue a determination that any such amount has been overstated by an amount in excess of the Expert's determination), then each Debt Basis Escalated Cash Flow Forecast and the Equity Basis Real Terms Cash Flow Forecast relating to such Expansion Development Plan will be modified accordingly. If any modification is made to a Debt Basis Escalated Cash Flow Forecast, as set forth above, the Company may at its

option make appropriate adjustments to each Debt Basis Escalated Cash Flow Forecast and the Equity Basis Real Terms Cash Flow Forecast applicable to the Updated Single Line Plan to reflect such modification. Any adjustments so made shall be subject to the Expert's review, but such review shall be limited to a determination as to the consistency of such adjustments (and such determination shall be referable for determination by the Panel in accordance with this Clause 13A.8).

- (g) Any Panel to which a matter is referred for determination as hereinbefore provided shall consist of three members who shall be selected as follows and any fees or expenses of any member of the Panel incurred in connection with any such reference shall be paid by the Company. The State and the Company shall negotiate in good faith and shall endeavour to agree, as soon as reasonably practicable after the Company shall have requested that such matter be so referred for determination, on the members of the Panel. If the State and the Company shall not have agreed, within the period of 30 days after the Company shall have requested that such matter be so referred, on all members of the Panel in accordance with the next preceding sentence, then, within a further period of 30 days, the State shall nominate one such member, the Company shall nominate another such member, and the third such member shall be nominated by the person then serving as the President of the Institution of Mining and Metallurgy (U.K.), or any other Fellow of such Institution designated by such President; provided that a person:
- (i) who is a citizen of any country of which either of the other members of the Panel shall be a citizen; or
 - (ii) who has at any time received any remuneration as a consultant, adviser, employee, member or officer (as defined in Section 1(1) of the Companies Act Chapter 146 of the Revised Laws as in force on 20 March 1985) of, or of a consultant or adviser to:
 - (A) the Company;
 - (B) any Sponsor (as defined in Clause 5.5 of the First Supplemental Agreement); or
 - (C) any corporation that at the time of the receipt of such remuneration is (or, if the State were itself a corporation, would be) deemed to be a related company, as defined in the said Section 1(1) as in force on 20 March 1985, of a Sponsor; or
 - (iii) who does not have experience and expertise in the construction, development and operation of mining projects in remote locations, including the acquisition and (where applicable) installation and operation of plant, property and equipment, and services with respect thereto, or who does not have a general familiarity with budgetary matters and principles of cost accounting

shall not be eligible for nomination as the third such member of the Panel. If any member of the Panel should die or otherwise become incapable of acting or become unwilling to act, a replacement member shall be agreed upon by the State and the Company or, if the State or the

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Company so requires by notice to the other of them, shall be nominated by:

- (1) where the member who is to be replaced was nominated by the State or the Company in accordance with the next preceding sentence—the State or the Company, as the case may be; and
 - (2) in all other cases—the person then serving as the President of the Institution of Mining and Metallurgy (U.K.), or any other Fellow of such Institution designated by such President, in accordance with the foregoing provisions of this Clause 13A.8(g).
- (h) Each of the dates referred to in the definition of "Test Date" (except 31 December 1996) or in this Clause 13A, and each of the periods specified in this Clause 13A for the performance of the Company's obligations, shall be automatically extended by:
- (i) any additional time taken in the event that any question is referred to outside consultants by the Expert;
 - (ii) the time taken in the event that a determination of the Expert is referred to a Panel for its determination;
 - (iii) any time taken in selecting any Panel or any replacement to a Panel or any replacement Expert; and
 - (iv) any other delays beyond the reasonable control of the Company.
- 13A.9 (a) By not later than the relevant Test Date, the Company will, for each Expansion Development Plan, prepare and deliver to the State a Debt Basis Escalated Cash Flow Forecast in respect of the Company's "Cash Surplus" or "Cash Shortfall", as the case may be (which will include, without limitation, forecasts relating to the Expanded Copper Facility included in such Expansion Development Plan), for each fiscal year included in the relevant Forecast Period until the Cash Flow Cut-Off Date. Except as otherwise provided in this Clause 13A.9, such Debt Basis Escalated Cash Flow Forecast shall be prepared in accordance with Clauses 13A.5 (excluding Clause 13A.5(d)(v)(C)) and 13A.6.
- (b) For the purposes of each Debt Basis Escalated Cash Flow Forecast to be delivered to the State in accordance with Clause 13A.9(a), it shall be assumed that:
- (i) except as otherwise provided in Clauses 13A.9(b)(ii) and (iii), all debt of the Company will be repaid in accordance with the scheduled maturities thereof (and all payments of interest, fees and other amounts payable in respect thereof will be made when due) and any restructuring or proposed restructuring of the Company's debt or shareholders' equity, or a combination thereof (including, without limitation, any voluntary prepayment of such debt by, and any assumption of such debt by, or assignment or other transfer of such debt to, any Sponsor (as defined in Clause 5.5 of the First Supplemental Agreement)), and all effects, actual and forecast, of such restructuring, shall be disregarded;

- (ii) if, in respect of any fiscal year covered by the Debt Basis Escalated Cash Flow Forecast, such Forecast forecasts a "Cash Shortfall", or a "Cash Surplus" that is less than the aggregate principle amount of debt that is scheduled to be repaid in such fiscal year, then:
 - (A) in the case of any such fiscal year in which such a "Cash Shortfall" is forecast—such principle amount; and
 - (B) in the case of any such fiscal year in which such a "Cash Surplus" is forecast—the portion of such principle amount in excess of such "Cash Surplus",

will be rolled over and advanced to the Company as a loan (and, for the purposes of determining the amount of interest that shall accrue in respect of such loan, it shall be assumed that such loan was outstanding for the Semi-Annual Interest Period commencing on the 181st day of such fiscal year) and such loan will not be repaid until (and to the extent that) the "Cash Surplus" forecast in respect of succeeding fiscal years is sufficient to cover such repayment in accordance with Clause 13A.9(b)(iii); and

- (iii) any "Cash Surplus" in respect of each fiscal year covered by the Debt Basis Escalated Cash Flow Forecast that remains after application against the aggregate principle amount of debt that is scheduled to be repaid in such fiscal year in accordance with Clause 13A.9(b)(ii) will be used to prepay debt forecast to be outstanding at the end of such fiscal year, such prepayment to be applied to the instalments of such debt in the inverse order of the maturities thereof (being the actual maturities, in the case of debt in respect of which documentation shall have been entered into, and the assumed maturities, in the case of all other debt).
- (c) If such Debt Basis Escalated Cash Flow Forecast forecasts that, by the Cash Flow Cut-Off Date, the total debt of the Company forecast to be outstanding will not be reduced to US\$357,613,000 or less, then the Economic Test will be deemed not to have been met in respect of the Expansion Development Plan to which such Debt Basis Escalated Cash Flow Forecast relates.
- (d) If such Debt Basis Escalated Cash Flow Forecast forecasts that, by the Cash Flow Cut-Off Date, the total debt of the Company forecast to be outstanding will be reduced to US\$357,613,000 or less, as set forth in Clause 13A.9(c), then the Company will determine whether the conditions set forth in Clauses 13A.10(b)(i) and (ii) shall be met in respect of the Expansion Development Plan to which such Debt Basis Escalated Cash Flow Forecast relates.

- 13A.10 (a) On or prior to the relevant Test Date, the Company will deliver to the State each Equity Basis Real Terms Cash Flow Forecast prepared by the Company pursuant to Clause 13A.4. The Company shall include with each such Equity Basis Real Terms Cash Flow Forecast, if the Debt Basis Escalated Cash Flow Forecast in respect of the Expansion Development Plan to which such Equity Basis Real Terms Cash Flow Forecast relates shall have satisfied the condition set forth in Clause 13A.9(d), the Company's calculation of the Net Present Value of:

- (i) the Updated Single Line Plan; and
 - (ii) the Expansion Development Plan to which such Equity Basis Real Terms Cash Flow Forecast relates.
- (b) The Company will determine, for each Expansion Development Plan referred to in Clause 13A.9(d), whether both of the following conditions are met:
- (i) the Net Present Value of such Expansion Development Plan is at least US\$30 million greater than the Net Present Value of the Updated Single Copper Line, in each case calculated as set forth in Clause 13A.10(a); and
 - (ii) the Equity Basis Real Terms Cash Flow Forecast relating to such Expansion Development Plan forecasts that the number of months in the Special Payout Period applicable to such Expansion Development Plan is:
 - (A) if the power source provided for in such Expansion Development Plan in accordance with Clause 13A.3(b)(iv) is hydro power—84 or less; or
 - (B) if such power source is a power source other than hydro power—78 or less.
- 13A.11 (a) If one or more Expansion Development Plans with a design capacity of 45,000 tonnes of ore per day (a "Forty-Five Plan") satisfies or satisfy all of the conditions (the "Test Conditions") set forth in Clauses 13A.9(d) and 13A.10(b)(i) and (ii) and no Expansion Development Plan with a design capacity in excess of 45,000 tonnes of ore per day (a "Plus Forty-Five Plan") satisfied all of the Test Conditions, then the Company shall be obligated to select, for the purposes of Clause 13A.11(e), a Forty-Five Plan that satisfies all of the Test Conditions, but shall be permitted to select any such Forty-Five Plan.
- (b) If one or more Forty-Five Plans and one or more Plus Forty-Five Plans satisfies or satisfy all of the Test Conditions, then the Company will determine which of such Plus Forty-Five Plans has a Net Present Value of not less than US\$20 million greater than the highest Net Present Value of any Forty-Five Plan that satisfies all of the Test Conditions. If no such Plus Forty-Five Plan has such a Net Present Value, then the Company shall be obligated to select, for the purposes of Clause 13A.11(e), a Forty-Five Plan or a Plus Forty-Five Plan that satisfies all of the Test Conditions, but shall be permitted to select any such Forty-Five Plan or Plus Forty-Five Plan. If only one such Plus Forty-Five Plan (the "Single 20M Plus Forty-Five Plan") has such a Net Present Value, then the Company shall be obligated to select, for the purposes of Clause 13A.11(e), a Plus Forty-Five Plan that satisfies all of the Test Conditions and has a design capacity that is equal to or greater than the design capacity of the Single 20M Plus Forty-Five Plan, but shall be permitted to select any such Plus Forty-Five Plan. If more than one such Plus Forty-Five Plan (the "Multiple 20M Plus Forty-Five Plans") has such a Net Present Value, then the Company shall be obligated to select, for the purpose of Clause 13A.11(e), a Plus Forty-Five Plan that satisfies all of the Test Conditions and has a design capacity that is equal

to or greater than the design capacity of the Multiple 20M Plus Forty-Five Plan with the highest Net Present Value, but shall be permitted to select any such Plus Forty-Five Plan.

- (c) If no Forty-Five Plan satisfies all of the Test Conditions, and only one Plus Forty-Five Plan satisfies all of the Test Conditions, then the Company shall be obligated to select such Plus Forty-Five Plan for the purposes of Clause 13A.11(e) only if such Plus Forty-Five Plan has a Net Present Value of not less than US\$40 million greater than the Net Present Value of the Updated Single Line Plan. If such Plus Forty-Five Plan does not have a Net Present Value of not less than US\$40 million greater than the Net Present Value of the Updated Single Line Plan, then the Company shall not be obligated to select any Expansion Development Plan for the purposes of Clause 13A.11(e).
- (d) If no Forty-Five Plan satisfies all of the Test Conditions, and more than one Plus Forty-Five Plan satisfies all of the Test Conditions, then the Company will determine which of such Plus Forty-Five Plans has a Net Present Value of not less than US\$40 million greater than the Net Present Value of the Updated Single Line Plan. If no such Plus Forty-Five Plan has such a Net Present Value, then the Company shall not be obligated to select any Expansion Development Plan for the purposes of Clause 13A.11(e). If only one such Plus Forty-Five Plan (the "Single 40M Plus Forty-Five Plan") has such a Net Present Value, the Company shall be obligated to select, for the purposes of Clause 13A.11(e), a Plus Forty-Five Plan that satisfies all of the Test Conditions and has a design capacity that is equal to or greater than the design capacity of the Single 40M Plus Forty-Five Plan, but shall be permitted to select any such Plus Forty-Five Plan. If more than one such Plus Forty-Five Plan (the "Multiple 40M Plus Forty-Five Plans") has such a Net Present Value, then the Company shall be obligated to select, for the purposes of Clause 13A.11(e), a Plus Forty-Five Plan that satisfies all of the Test Conditions and has a design capacity that is equal to or greater than the Multiple 40M Plus Forty-Five Plan with the highest Net Present Value, but shall be permitted to select any such Plus Forty-Five Plan.
- (e) If the Company shall be obligated to select an Expansion Development Plan in accordance with the preceding provisions of this Clause 13A.11, the Company shall:
 - (i) deliver to the State, as soon as reasonably practicable after the Economic Test has been met, a notice pursuant to Clause 4.2 of the First Supplemental Agreement proposing the construction and operation of the Expanded Copper Facility included in such Expansion Development Plan (subject to Clause 18.5) which notice shall, subject to Clause 4.2A of the First Supplemental Agreement, be dealt with in accordance with the provisions and procedure set out in Clause 4.2 of the First Supplemental Agreement; and
 - (ii) be obligated, in accordance with this Agreement and the Approved Proposals, to proceed, promptly after the State's approval of such notice, with the construction of the Expanded

Copper Facility included in such Expansion Development Plan (subject to Clause 18.5), such construction to be conducted in accordance with such Expansion Development Plan.

- (f) If, in respect of any Test Date:
 - (i) no Expansion Development Plan satisfies all of the Test Conditions; or
 - (ii) the Company is not obligated to select an Expansion Development Plan hereunder,

the Company will, subject to Clause 13A.12, repeat the Economic Test on the next ensuing Test Date.

- 13A.12 (a) Notwithstanding anything to the contrary herein contained, the Company may at any time submit to the State a notice (an "Expansion Change Notice") pursuant to Clause 4.2 of the First Supplemental Agreement that includes a proposed Expansion Development Plan which notice shall, subject to Clause 4.2A of the First Supplemental Agreement, be dealt with in accordance with the provisions and procedure set out in Clause 4.2 of the First Supplemental Agreement. If an Expansion Change Notice shall be approved or deemed approved by the State or shall otherwise become effective, the Company shall be obligated, in accordance with this Agreement and the Approved Proposals, to proceed, promptly after the State's approval of such Expansion Change Notice, with the construction of the Expanded Copper Facility included in such Expansion Change Notice, such construction to be conducted in accordance with such Expansion Change Notice, and shall not thereafter be obligated to prepare any Equity Basis Real Terms Cash Flow Forecast or Debt Basis Escalated Cash Flow Forecast or to prepare or submit to the State any Updated Single Line Plan or any Expansion Development Plan or to construct any Expanded Copper Facility pursuant to Clause 13A.11.
- (b) If the State rejects an Expansion Change Notice on the basis that it does not satisfy the requirements set forth in Clauses 13A.3(a), (b) and (c), the Company may submit to the Expert for determination (but shall not be permitted to refer to arbitration under Clause 38) the question whether such Expansion Change Notice satisfies such requirements. Either the State or the Company may request that the Expert's determination be referred to the Panel (in which event the provisions of Clauses 13.A.8(e) (other than the second sentence thereof) and (g) shall, *mutatis mutandis*, apply), provided that such request must be made within 30 days after issuance of any such determination by the Expert.
- (c) If the question of whether an Expansion Change Notice satisfies the requirements set forth in Clauses 13A.3(a), (b) and (c) is submitted to the Expert or referred to the Panel:
 - (i) the next ensuing Test Date shall not, as a result thereof, be extended; and
 - (ii) if:
 - (A) a determination is delivered by the Expert or the Panel (as the case may be) before the results of the next ensuing

Economic Test (the "Parallel Test") become binding on the parties, then:

- (1) if such determination is to the effect that the Expansion Change Notice satisfies the requirements set forth in Clauses 13A.3(a), (b) and (c), such determination shall be conclusive and binding on the parties and neither the State nor the Company will be entitled to refer any dispute, question or difference of opinion with respect to whether such Expansion Change Notice satisfies such requirements to arbitration pursuant to this Agreement; and
 - (2) if such determination is to the effect that such Expansion Change Notice does not satisfy the requirements set forth in Clauses 13A.3(a), (b) and (c), the Company shall be obligated (subject to any subsequent application of the provisions of this Clause 13A.12) to perform the Economic Test on the next ensuing Test Date in accordance with this Agreement; and
- (B) the results of the Parallel Test become binding on the parties before a determination is delivered by the Expert or the Panel (as the case may be), then:
- (1) if the Economic Test is met with respect to one or more Expansion Development Plans, the Company shall be obligated to select and develop an Expansion Development Plan in accordance with Clause 13A.11;
 - (2) if the Economic Test is not met with respect to any Expansion Development Plan and the Expert or the Panel (as the case may be) thereafter determines that the Expansion Change Notice satisfies the requirements set forth in Clauses 13A.3(a), (b) and (c), such determination shall be conclusive and binding on the parties and neither the State nor the Company will be entitled to refer any dispute, question or difference of opinion with respect to whether such Expansion Change Notice satisfies such requirements to arbitration pursuant to this Agreement; and
 - (3) if the Economic Test is not met with respect to any Expansion Development Plan and the Expert or the Panel (as the case may be) thereafter determines that the Expansion Change Notice does not satisfy the requirements set forth in Clauses 13A.3(a), (b) and (c), the Company shall be obligated (subject to any subsequent application of the provisions of this Clause 13A.12) to repeat the Economic Test on the next ensuing Test Date in accordance with this Agreement.
- (d) If the State disapproves of the proposed Expansion Development Plan set forth in an Expansion Change Notice and the Company elects (subject to Clauses 13A.12(b) and (c)) to refer the reasonableness of the disapproval to arbitration under Clause 38:

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- (i) the provisions of Clause 4.2(e) of the First Supplemental Agreement shall apply; and
- (ii) if:
 - (A) the arbitration award is to the effect that the State's disapproval was unreasonable—the Expansion Change Notice shall be deemed approved; and
 - (B) such award is to the effect that such disapproval was reasonable—the Company shall be obligated (subject to any subsequent application of the provisions of this Clause 13A.12) to perform the Economic Test on the next ensuing Test Date in accordance with this Agreement.

13A.13 (a) In respect of any Test Date, the State may elect, within 14 days after delivery to the State by the Company of:

- (i) any Debt Basis Escalated Cash Flow Forecast prepared for the purposes of Clause 13A.9(a);
- (ii) any Equity Basis Real Terms Cash Flow Forecast delivered pursuant to Clause 13A.10 (including any Debt Basis Escalated Cash Flow Forecast prepared for the purposes of determining for each fiscal year included in such Equity Basis Real Terms Cash Flow Forecast whether "Income Tax Expense" is to be included in the cash flow forecast for such fiscal year); or
- (iii) the results of any determination made pursuant to Clause 13A.10, 13A.11 or 18.5(c)(ii),

that the Company's calculations be referred to the Auditor. If the State so elects that the Company's calculations be so referred, the Auditor shall:

- (A) check such calculations for mathematical accuracy; and
- (B) (where applicable) determine in respect of the preparation of such Debt Basis Escalated Cash Flow Forecasts and Equity Basis Real Terms Cash Flow Forecasts:
 - (1) whether the same have been prepared in accordance with the applicable provisions of this Agreement; and
 - (2) whether the principles of financial analysis applied in relation to such preparation have been applied consistently.

The Auditor shall be instructed to carry out his duties in a timely fashion, and the State and the Company will co-operate with the Auditor and assist him in so carrying out his duties. If the Auditor disagrees in any material respect with the mathematical accuracy of the Company's calculations or (where applicable) determines that in respect of the preparation of any such Debt Basis Escalated Cash Flow Forecast or Equity Basis Real Terms Cash Flow Forecast the same has not, in any material respect, been prepared in accordance with the applicable provisions of this Agreement or the principles of financial analysis applied in relation to such preparation have not, in any material respect, been applied consistently, the Company may accept the Auditor's view or request that the matter be referred for determination by a nominee

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of the person then serving as the President of the ICA. If the Auditor does not so disagree or (where applicable) determine as aforesaid, the Company's calculations, the Debt Basis Escalated Cash Flow Forecasts and the Equity Basis Real Terms Cash Flow Forecasts (as the case may be) shall be deemed approved.

- (b) If the Company so requests that a matter be referred for determination by a nominee of the person then serving as the President of the ICA, such nominee shall consider the views of the Company and of the Auditor and shall review such materials as the Company or the Auditor may submit and shall be instructed promptly to issue a determination which determination shall be conclusive and binding on the parties. The State, the Company and the Auditor will co-operate with such nominee and assist him in issuing a prompt determination. Such nominee shall act as an expert and not as an arbitrator.
- (c) Each of the dates referred to in the definition of "Test Date" (except 31 December 1996) or in this Clause 13A and each of the periods specified in this Clause 13A for the performance of the Company's obligations, shall be automatically extended by:
 - (i) the time taken by the Auditor in considering the Company's calculations and reviewing the preparation of the Debt Basis Escalated Cash Flow Forecasts and of the Equity Basis Real Terms Cash Flow Forecasts;
 - (ii) the time taken in the event that the Auditor's view is referred for determination by a nominee of the person then serving as the President of the ICA; and
 - (iii) any other delays beyond the reasonable control of the Company.

8. POWER

8.1 Clause 18.1 of the Principal Agreement is amended by deleting the last sentence thereof.

8.2 Clause 18 of the Principal Agreement is amended by inserting the following provisions at the end thereof:

'18.5 (a) By not later than the date which is two months prior to the date determined in accordance with paragraph (a) of the definition of "Test Date" (or, where the Economic Test is to be repeated in accordance with Clause 13A.11(f), by not later than the date which is two months prior to the next succeeding Test Date), the Company will prepare and deliver to the State a separate set of power source plans for each different design capacity provided for in any Expansion Development Plan.

- (b) Each such set of power source plans shall:
 - (i) provide for the construction of a power source which, together with any power source in existence at the date of preparation of such power source plans, is capable of generating sufficient power to operate the Expanded Copper Facility at the design capacity provided for in the Expansion Development Plan to which it relates; and
 - (ii) include separate plans for hydro power and any other power source that the Company may choose, including any combination of power sources.

- (c) Each such power source plan shall contain:
 - (i) for each fiscal year included in the relevant Forecast Period, a forecast of all Capital Expenditures and Operating Costs, including any Contingency Amounts, expressed in annual US Dolar Real Terms, forecast in connection with the construction and operation of the power source (or any combination of power sources) included in such power source plan and taking taxes into account in accordance with Schedule VI hereto; and
 - (ii) a determination of the Net Present Cost of the power source included in such plan,
all in accordance with Schedule VI hereto.
- (d) The power source plan in a particular set of power source plans that contains the lowest Net Present Cost in such set will be included in each Expansion Development Plan to which such set relates.
- (e) If in respect of any Test Date the State disagrees with the fuel price forecasts included in the sets of power source plans delivered pursuant to Clause 18.5(a) and notifies the Company of such disagreement within 14 days after delivery of such sets, the fuel price forecasts to be contained in each of the power source plans shall be the average of the prices forecast by an expert to be agreed upon by the State and the Company. If the State does not so notify the Company of such disagreement, the fuel price forecasts of the Company shall be used. In other respects the power source plans will only be subject to review by the Auditor, as set forth in Clause 13A.13, or the Expert, to the extent that Capital Expenditures and Operating Costs contained in the Expansion Development Plan to which such power source plans relate are subject to review as set forth in Clause 13A.8.
- (f) If the Company shall be obligated to construct an Expanded Copper Facility hereunder, the Expansion Development Plan selected by the Company for that purpose shall provide for the construction of a power source selected by the Company (which may but need not be the power source included in the power source plan that contains the lowest Net Present Cost as referred to in Clause 18.5(d), and if the power source so selected by the Company is different from the power source included in such power source plan then the power source so selected by the Company shall be substituted therefor) so long as:
 - (i) such power source, together with any power source in existence at the date of preparation of such Expansion Development Plan, is capable of generating sufficient power to operate such Expanded Copper Facility at the design capacity provided for in such Expansion Development Plan selected by the Company; and
 - (ii) a comparison of:
 - (A) the Net Present Cost of the power source in the plan selected by the Company (the "OTML Plan"); and
 - (B) the Net Present Cost of the power source in the plan of the same set with the lowest Net Present Cost in such set (the "Lowest NPC Plan"),

reveals that the Net Present Cost of the Lowest NPC Plan is not less than 85% of the Net Present Cost of the OTML Plan.

If the Net Present Cost of the Lowest NPC Plan is less than 85% of the Net Present Cost of the OTML Plan, then the Expansion Development Plan for any Expanded Copper Facility that the Company is obligated to proceed to construct under Clause 13A.11(e) shall provide for the construction of the power source in the Lowest NPC Plan.

- (g) The State may elect that the Company's calculations of the comparison referred to in Clause 18.5(f) be referred to the Auditor. If such an election is made, the Auditor shall:
- (i) check, such calculations for mathematical accuracy; and
 - (ii) determine whether:
 - (A) such calculations have been made in accordance with the applicable provisions of this Agreement; and
 - (B) the principles of financial analysis applied in relation to such calculations have been applied consistently.

The Auditor shall be instructed to carry out his duties in a timely fashion, and the State and the Company will co-operate with the Auditor and assist him in so carrying out his duties. If the Auditor disagrees in any material respect with the mathematical accuracy of the Company's calculations or (where applicable) determines that the same have not, in any material respect, been prepared in accordance with the applicable provisions of this Agreement or the principles of financial analysis applied in relation to such preparation have not, in any material respect, been applied consistently, the Company may accept the Auditor's view or request that the matter be referred for determination by a nominee of the person then serving as the President of the ICA. If the Auditor does not so disagree or (where applicable) determine as aforesaid, the Company's calculations of the comparison referred to in Clause 18.5(f) shall be deemed approved.

- (h) If the Company so requests that a matter be referred for determination by a nominee of the person then serving as the President of the ICA, such nominee shall consider the views of the Company and of the Auditor and shall review such materials as the Company or the Auditor may submit and shall be instructed promptly to issue a determination which determination shall be conclusive and binding on the parties. The State, the Company and the Auditor shall co-operate with such nominee and assist him in issuing a prompt determination. Such nominee shall act as an expert and not as arbitrator.

9. MINING PLANS

Clause 43 of the Principal Agreement is amended by inserting the following provisions at the end thereof:

- 43.2 (a) In order to assist any Sponsor (as defined in Clause 5.5 of the First Supplemental Agreement) in exercising its option referred to in Clause 13A.1, the Company shall deliver to each Sponsor, on or before:
- (i) the date which is 13 months prior to the date determined in accordance with paragraph (a) of the definition of "Test Date"; or

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- (ii) the date which is 30 days after the date on which the Bill referred to in Clause 3.1 of the Supplemental Agreement dated as of 1 August 1985 and headed "Fifth Supplemental Agreement" is passed as an Act and comes into force,

whichever is the later, mining plans and extraction schedules in five yearly intervals covering the period from 1 January 1991 until 31 December 2011 based on the following ore processing rates: 30,000 tonnes of ore per day, 45,000 tonnes of ore per day and 60,000 tonnes of ore per day, with the following cut off grades:

Copper Ore Cu not less than 0.3%,
with oxide Cu not more than 25% of total Cu.

Such mining plans shall be subject to the State's approval.

- (b) On or before 31 December 1988, the Company will submit to the State mining plans in five yearly intervals covering the period from 1 January 1991 until 31 December 2011 or the date on which the agreed mineable ore reserves, as set forth in the Approved Proposals, shall be exhausted, whichever is the earlier. Such mining plans shall be subject to the State's approval if and to the extent that they differ in any material respect from the plans delivered under Clause 43.2(a).
- (c) Prior to the commencement of each calendar year (commencing with the calendar year 1986), the Company will deliver to the State a copy of the Company's mining plan for such year, for information purposes. Such mining plan shall be generally consistent with the five yearly plan that is then current and that has been delivered pursuant to Clause 43.2(a), (b) or (d).
- (d) If the Company proposes to deliver a mining plan pursuant to Clause 43.2(c) which would not be generally consistent with the five yearly plan that is then current and that has been delivered pursuant to Clause 43.2(a) or (b) or pursuant to this Clause 43.2(d), the Company will, as soon as practicable, deliver to the State for approval by the State a revised five yearly plan with which such mining plan would be consistent.
- (e) The Company will advise the State if any changes to the yearly mining plan (including waste disposal programs) become necessary that will have any material effect on the gross or net revenues of the Company during the year the subject thereof or that are likely to have any material financial effect on the Company's operations in subsequent years.

10. STATE EQUITY PARTICIPATION AND DEBT SUPPORT; LIMITATION ON DIVIDENDS AND OTHER DISTRIBUTIONS

Clause 11 of the Principal Agreement is amended by inserting the following provisions at the end thereof:

- 11.12 Notwithstanding anything to the contrary contained in this Agreement or in the First Supplemental Agreement, the obligation of the State to subscribe on or after 1 August 1985 for shares in the Company or to furnish Support (as defined in Clause 5.5 of the First Supplemental Agreement) in respect of Loans (as likewise defined) advanced or otherwise made available on or after 1 August 1985 shall be only as set forth in this Clause 11.12. The State shall:

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- (a) subscribe directly or indirectly, during the period from and including 1 August 1985 to and including 28 February 1986 or such later date as the State may agree to (the "Participation Period"), for 20% of any shares in the capital of the Company; and
- (b) furnish Support in an amount equal to 20% of any Total Supported Loans (as defined in Clause 5.5 of the First Supplemental Agreement) advanced or otherwise made available to the Company during the Participation Period;

provided that the State shall not be obligated to subscribe for any such shares or furnish Support in respect of any such Total Supported Loans to the extent that the amount paid up in respect of shares in the Company for which the State shall have subscribed during the Participation Period or the amount of Total Supported Loans in respect of which the State shall have furnished Support during the Participation Period, or any combination thereof, would thereby exceed US\$10,000,000 or such greater amount as the State may agree to (the "Participation Period Limit"). The provisions of Clause 5.20 of the First Supplemental Agreement shall apply, mutatis mutandis, to this Clause 11.12.

11.13 Prior to the earlier of:

- (a) the Date of Practical Completion in respect of the Single Copper Line; and
- (b) the Date of Practical Completion in respect of the Expanded Copper Facility provided for in the Expansion Development Plan included in an Expansion Change Notice that shall have been approved or deemed approved by the State or that shall otherwise have become effective

the Company's board of directors will not declare any dividends and the Company will neither repay any shareholder loans nor return any capital to its shareholders, in each case unless the State otherwise agrees in writing.

11. ADDITIONAL PROFITS TAX

Clause 23.7 of the Principal Agreement is amended by substituting the following for the definition of "R" in paragraph (b) thereof:

"R = the accumulation rate as determined under paragraph (a) above, provided that R shall be zero in respect of the period from (and including) 1 October 1986 to (but excluding) whichever is the earlier of:

- (i) the Date of Practical Completion in respect of the Single Copper Line; and
- (ii) the Date of Practical Completion in respect of the Expanded Copper Facility provided for in the Expansion Development Plan included in an Expansion Change Notice that shall have been approved or deemed approved by the State or that shall otherwise have become effective;"

12. APPROVED PROPOSALS

12.1 Clause 9 of the Principal Agreement is amended by inserting the following provision at the end thereof:

9.8 To the extent that there is any inconsistency between the Company's obligations under:

- (a) this Agreement (excluding the amendments made by the Fifth Supplemental Agreement) or the Approved Proposals; and
- (b) the amendments made by the Fifth Supplemental Agreement with respect to the timing and manner of the development of the Project, the amendments made by the Fifth Supplemental Agreement shall govern and this Agreement (excluding the amendments made by the Fifth Supplemental Agreement) or the Approved Proposals, as the case may be, shall be deemed changed accordingly, without any further action on the part of the State or the Company.

12.2 Clause 4 of the First Supplemental Agreement is amended by inserting the following provision after Clause 4.2 thereof:

'4.2A If the Economic Test is met with respect to any Expansion Development Plan or if the Company shall submit to the State an Expansion Change Notice in accordance with Clause 13A.12:

- (a) the Company will not utilize:
 - (i) the variation procedure set forth in Clause 4.1 or 4.2 hereof; or
 - (ii) the procedure set forth in Clause 29.2 of the Principal Agreement; and
- (b) the State will not utilize the approval procedures in such Clauses in such a way as to seek changes to the Approved Proposals that are inconsistent with the amendments to the Principal Agreement that are set forth in the Supplemental Agreement dated as of 1 August 1985 and headed "Fifth Supplemental Agreement" (other than the amendment set forth in Clause 6 of such supplemental Agreement).

12.3 Clause 4.2 of the First Supplemental Agreement is amended by substituting the following for paragraph (e) thereof:

"(e) each of the dates referred to in the definition of "Test Date" (except 31 December 1996), 13 and 13A of the Principal Agreement, and each of the periods specified in Clauses 13 and 13A of the Principal Agreement for the performance of the Company's obligations, shall be automatically extended by the period of time from the Company's election under paragraph (d) until the arbitration award is given."

13. FORCE MAJEURE

Clause 36.1 of the Principal Agreement is amended by:

- (a) inserting "or the Approved Proposals" before "shall not be grounds"; and
- (b) inserting the following after "claim for damages":

"or to invoke any penalty provided for herein or in the Approved Proposals, including, in the case of the State, the right to require a reduction in any rate at which the Company shall be permitted to process ore,".

14. MODIFICATION OF ARBITRATION PROCEDURE

Clause 38 of the Principal Agreement is amended by inserting the following provision at the end thereof:

'38.5 Notwithstanding anything elsewhere herein contained, neither the State nor the Company will be entitled to refer any dispute, question or difference of

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opinion with respect to anything contained in Clause 13A (other than as referred to in Clause 13A.12(d)) or 18.5 to arbitration pursuant to this Agreement.

15. TAXATION EFFECTS ON SPONSORS

Clause 23 of the Principal Agreement is amended by inserting the following provisions at the end thereof:

'23.13 Clause 23.9 shall apply in respect of Gross Dividends payable by a company (a "Holding Company"), through which a Sponsor (as defined in Clause 5.5 of the First Supplemental Agreement) holds its shares in the Company indirectly, in the same manner in which it applies to Gross Dividends payable by the Company and a Sponsor (as so defined) that holds its shares in the Company through a Holding Company shall be treated in all other respects, so far as the taxation laws of the State are concerned, as if such Sponsor instead held such shares in its own name.'

16. RATES AND DUTIES

Clause 25.4 of the Principal Agreement is amended by inserting "direct or indirect" before "beneficial" in two places where it appears.

17. CURRENCY

Clause 26.5 of the Principal Agreement is amended by inserting "(including direct and indirect holders of shares in the Company)" after "members" in three places where it appears.

18. SCHEDULES IV, V AND VI

The Principal Agreement is amended by inserting immediately after Schedule III thereto the matter appearing in the Schedule to this Agreement.

19. CERTAIN OTHER MATTERS RELATING TO THE PROJECT

19.1 The State and the Company agree to discuss options designed to maximize the efficiency of the Project and the profitability of the Company that may be proposed from time to time by the Company, with the object of agreeing on options to be implemented and thereafter implementing the options agreed to.

19.2 Upon the Enactment Date, Change Notices No. 24/4.2; 6/29.2 and No. 25/4.2; 7/29.2 shall be deemed automatically to have been withdrawn by the Company with the concurrence of the State.

20. ENUREMENT

This Agreement, and the Principal Agreement and the First Supplemental Agreement as respectively amended hereby, shall enure for the benefit of the parties hereto and thereto and their respective permitted assignees. Nothing contained in this Agreement, nor the amendments to the Principal Agreement and to the First Supplemental Agreement provided for herein, shall impose any obligations on any one or more of the Corporate Sponsors.

21. CONSOLIDATION

If:

- (a) the Principal Agreement and all amending agreements, or

(b) the First Supplemental Agreement and all amending agreements, (whether made before or after this Agreement) are consolidated by the State into one agreement, and each of the Company and the other parties thereto (or their respective assignees) notifies the State that it is satisfied that the consolidation is accurate (notwithstanding any renumbering of the provisions of the amending agreements necessary to effect such a consolidation), then the State may cause notice of such consolidation to be published in the Gazette, and thereupon such consolidation shall have the same force and effect as the equivalent provisions of the Principal Agreement and amending all agreements or (as applicable) as the equivalent provisions of the First Supplemental Agreement and all amending agreements.

22. COUNTERPARTS

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

23. GOVERNING LAW

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

IN WITNESS whereof the parties hereto have executed this Agreement the 1st day of August 1985.

SIGNED for and on behalf of THE
INDEPENDENT STATE OF PAPUA NEW
GUINEA by KINGSFORD DIBELA,
Governor-General, acting with and in accordance with the advice of the National Executive Council, in the presence of:

H. INGIN

K. DIBELA

SIGNED for and on behalf of AMOCO
CORPORATION by its duly authorised
Executive Vice-President in the presence of:

ROBERT D. AGDERN

LELAND C. ADAMS

SIGNED for and on behalf of AMOCO
MINERALS PNG COMPANY by its duly
authorised Vice-President in the presence of:

ROBERT D. AGDERN

RALPH E. ANDERSON

SIGNED for and on behalf of THE
BROKEN HILL PROPRIETARY COMPANY LIMITED by its duly constituted
attorney in the presence of:

R.A. DRUCKER

R.J. CARTER

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SIGNED for and on behalf of BHP MINERALS HOLDINGS PROPRIETARY LIMITED by its duly constituted attorney in the presence of:

TOM POULTON

R.J. CARTER

SIGNED for and on behalf of METALLGESELLSCHAFT AG by its duly constituted attorneys in the presence of:

TOM POULTON

M. VON MUELLER

SIGNED for and on behalf of DEGUSSA AG by its duly constituted attorneys in the presence of:

R.A. DRUCKER

E. GUMRICH

SIGNED for and on behalf of DEG—DEUTSCHE FINANZIERUNGSGESELLSCHAFT FUER BETEILIGUNGEN IN ENTWICKLUNGSLAEDERN GMBH by its duly constituted attorneys in the presence of:

TOM POULTON

M. VON MUELLER

SIGNED for and on behalf of OK TEDI MINING LIMITED by its duly constituted attorney in the presence of:

J.W. TURNER

H.R. SHIPES

SCHEDULE IV

Debt Basis Escalated Cash Flow Forecast

Years of Forecast Period (Example)

Line No.	Item	Years of Forecast Period (Example)														
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1.	Gross Revenue															
2.	Smelting and Refining Charges															
3.	Direct Charges to Sales															
4.	FOB Revenue															
5.	Operating Costs															
6.	Depreciation, Amortization and Other Non-Cash Charges															
7.	Mineral Royalties															
8.	Selling, General and Administrative Expenses															
9.	Net Trading Margin															
10.	Roadco Payment															
11.	Interest Expense															
12.	Profit Before Tax															
13.	Income Tax Expense															
14.	Net Income															
15.	Cash from Operations															
16.	Capital Expenditures—Development															
17.	Capital Expenditures—Sustaining															
18.	Increases or Decreases in Working Capital															
19.	Loan Fees															
20.	Cash Surplus (Cash Shortfall)															
21.	Loan Repayments															
22.	Loan Drawdowns															
23.	Capitalized Interest															
24.	Cash Equity Contributions from Shareholders															
25.	Dividends or Returns of Capital															
26.	Outstanding Debt															
27.	Notional Equity Balance															

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DEBT BASIS ESCALATED CASH FLOW FORECAST

Line No.	Item	Explanation
1.	Gross Revenue	The sum of all gross sales of (a) gold, silver and copper whether sold as metals or as metals contained in concentrates, (b) molybdenum whether sold as metal contained in concentrates or in molybdenum oxide and (c) any other product sales. Unit sales volumes in (a), (b) and (c) above will be consistent with the operating plan and the mining plan of the Company relating to the Expanded Copper Facility or the Single Copper Line, as applicable, in respect of which the Debt Bases Escalated Cash Flow Forecast is prepared. In forecasting Gross Revenue, the forecast metal prices determined in accordance with Clause 13A.5(d) (i) will be used.
2.	Smelting and Refining Charges	All charges or other adjustments to convert gold, silver, copper, molybdenum and any other minerals (whether contained in metallic form or in concentrates or any other form) into products sold as referred to in Gross Revenue (1). The Company's forecast of Smelting and Refining Charges will: (a) be consistent with any contracts that the Company shall have entered into or that the Company shall assume to be entered into for the purposes of the Debt Basis Escalated Cash Flow Forecast, together with any relevant operating experience of the Company; and (b) be adjusted to reflect discounts or premiums in respect of product sales.
3.	Direct Charges to Sales	All freight, insurance, and other charges to sales, as forecast by the Company, which forecast will be consistent with any contracts that shall have been entered into or are assumed by the Company to be entered into for the purposes of the Debt Basis Escalated Cash Flow Forecast, together with any

Line No.	Item	Explanation
		relevant operating experience of the Company.
4.	FOB Revenue	Result of Gross Revenue (1) minus Smelting and Refining Charges (2) minus Direct Charges to Sales (3).
5.	Operating Costs	As defined in Clause 1 and determined in accordance with Clause 13A.5(d)(ii).
6.	Depreciation, Amortization and Other Non-Cash Charges	Non-cash expenses determined in a manner not inconsistent with Papua New Guinea tax law, except that the Company's forecast shall assume that the Company seeks to minimize Income Tax Expense (13).
7.	Mineral Royalties	All royalties payable by the Company, as forecast by the Company.
8.	Selling, General and Administrative Expenses	All expenses excluding Operating Costs (5), Depreciation, Amortization and other Non-cash Charges (6), Mineral Royalties (7), Roadco Payment (10), Interest Expense (11) and Income Tax Expense (13).
9.	Net Trading Margin	Result of FOB Revenue (4) minus Operating Costs (5) minus Depreciation, Amortization and Other Non-Cash Charges (6) minus Mineral Royalties (7) minus Selling, General and Administrative Expenses (8).
10.	Roadco Payment	Costs attributable to the user charge payable under the Infrastructure Agreement, determined in accordance with the Infrastructure Agreement and any applicable assumptions contained in the amendments made by the Fifth Supplemental Agreement.
11.	Interest Expense	Interest Expense will be calculated applying interest rates, determined in accordance with Clause 13A.5(d)(iii)(B), to debt forecast to be outstanding.
12.	Profit Before Tax	Result of Net Trading Margin (9) minus Roadco Payment (10) minus Interest Expense (11).

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Line No.	Item	Explanation
13.	Income Tax Expense	Income taxes calculated in accordance with Clause 13A.5(c). It will be assumed that the Company seeks to minimize Income Tax Expense (including utilization of any available loss carry forwards).
14.	Net Income	Result of Profit Before Tax (12) minus Income Tax Expense (13).
15.	Cash from Operations	Sum of Net Income (14) plus Depreciation, Amortization and Other Non-Cash Charges (6).
16.	Capital Expenditures—Development	Capital Expenditures described in Clause 13A.5(d)(v)(B) that is, all Capital Expenditures (other than Capital Expenditures—Sustaining (17)).
17.	Capital Expenditures—Sustaining	Capital Expenditures expended for replacement of plant, property and equipment or for repairs and maintenance of any plant, property and equipment.
18.	Increases or Decreases in Working Capital	Total Working Capital in each year ("Working Capital") will be as forecast by the Company (consistent with, where applicable, the operating experience of the Company). For each year (the "Applicable Year") of the Forecast Period until the Cash Flow Cut-Off Date, increases or decreases in Working Capital are calculated by subtracting Working Capital for the year immediately preceding the Applicable Year from Working Capital for the Applicable Year. A positive result denotes an increase in Working Capital in the Applicable Year while a negative result denotes a decrease in Working Capital for the Applicable Year.
19.	Loan Fees	Commitment fees, agency fees, management fees and all other fees and expenses which are payable under loan documentation that shall have been entered into or which could reasonably be expected to be payable in connection with new debt facilities for the Company.

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Line No.	Item	Explanation
20.	Cash Surplus (Cash Shortfall)	Result of Cash from Operations (15) minus Capital Expenditures—Sustaining (17) minus Increases or Decreases in Working Capital (18) minus Loan Fees (19). A positive result denotes a Cash Surplus and a negative result denotes a Cash Shortfall.
21.	Loan Repayments	Loan Repayments to be made in accordance with the amendments made by the Fifth Supplemental Agreement.
22.	Loan Drawdowns	Loan Drawdowns to be made in accordance with the amendments made by the Fifth Supplemental Agreement.
23.	Capitalized Interest	Capitalized Interest, if any, is interest which is not paid or forecast to be paid as incurred but which is to be deferred and become part of the principal of the loan to which it relates and amortized in accordance with the applicable repayment schedule.
24.	Cash Equity Contributions from Shareholders	Cash Equity Contributions from Shareholders to be made in accordance with the amendments made by the Fifth Supplemental Agreement.
25.	Dividends or Returns of Capital	It shall be assumed for each fiscal year that any positive remainder of (a) the sum of Cash Surplus (Cash Shortfall) (20), plus Loan Drawdowns (22), plus Capitalized Interest (23), plus Cash Equity Contributions from Shareholders (24), minus (b) Loan Repayments (21), minus Capital Expenditures — Development (16), all for such fiscal year, shall be paid to the Shareholders as a dividend or a return of capital. This assumption shall be made only for any Debt Basis Escalated Cash Flow Forecast prepared pursuant to Clause 13A.5 (from which the forecast of "Income Tax Payable" to be included in the related Equity Basis Real Terms Cash Flow Forecast will be derived) and not for any Debt Basis Escalated Cash Flow Forecast prepared pursuant to Clause 13A.9.
26.	Outstanding Debts	For the first fiscal year in the Forecast Period, Outstanding Debt equals debt forecast to be outstanding as of the first

Line No.	Item	Explanation
27.	Notional Equity Balance	<p>day of such fiscal year, minus Loan Repayments (21), plus Loan Drawdowns (22), plus Capitalized Interest (23), all as forecast to be made or to occur in such fiscal year, and for each fiscal year thereafter (a "Subsequent year"), Outstanding Debt equals Outstanding Debt in respect of the fiscal year next preceding the Subsequent Year, minus Loan Repayments (21), plus Loan Drawdowns (22), plus Capitalized Interest (23), all as forecast to be made or to occur in the Subsequent Year.</p> <p>For the first fiscal year in the Forecast Period, Notional Equity Balance equals Cash Equity Contributions from Shareholders (24) [minus Dividends or Returns of Capital (25)] forecast to be made [or paid] in such fiscal year, and for each succeeding fiscal year (a "Subsequent Year"), Notional Equity Balance equals Notional Equity Balance in respect of the fiscal year next preceding the Subsequent Year, plus Cash Equity Contributions from Shareholders (24) [minus Dividends or Returns of Capital (25), all as] forecast to be made [or paid] in the Subsequent Year. The foregoing square bracketed items are only to be included in any Debt Basis Escalated Cash Flow Forecast prepared pursuant to Clause 13A.5 (from which the forecast of "Income Tax Payable" to be included in the related Equity Basis Real Terms Cash Flow Forecast will be derived) and not in any Debt Basis Escalated Cash Flow Forecast prepared pursuant to Clause 13A.9.</p>

SCHEDULE V

Equity Basis Real Terms Cash Flow Forecast

Years of Forecast Period (Example)

Line No.	Item	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1.	Gross Revenue															
2.	Smelting and Refining Charges															
3.	Direct Charges to Sales															
4.	FOB Revenue															
5.	Operating Costs															
6.	Mineral Royalties															
7.	Selling, General and Administrative Expenses															
8.	Net Trading Margin															
9.	Roadco Payment															
10.	Income Tax Expense															
11.	Net Cash Income															
12.	Capital Expenditures															
13.	Increases or Decreases in Working Capital															
14.	Annual Cash Flow															
15.	Withholding Tax															
16.	Net Cash Flow															
17.	Net Present Value of Net Cash Flow for Each Year															
18.	Net Present Value for Forecast Period:															

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EQUITY BASIS REAL TERMS CASH FLOW FORECAST

Line No.	Item	Explanation
1.	Gross Revenue	The sum of all gross sales of (a) gold, silver and copper whether sold as metals or as metals contained in concentrates, (b) molybdenum whether sold as metal contained in concentrates or in molybdenum oxide and (c) any other product sales. Unit sales volumes in (a), (b) and (c) above will be consistent with the operating plan and the mining plan of the Company relating to the Expanded Copper Facility or the Single Copper Line, as applicable, in respect of which the Equity Basis Real Terms Cash Flow Forecast is prepared. In forecasting Gross Revenue, the forecast metal prices determined in accordance with Clause 13A.7(b) (i) will be used.
2.	Smelting and Refining Charges	All charges or other adjustments to convert gold, silver, copper, molybdenum and any other minerals (whether contained in metallic form or in concentrates or any other form) into products sold as referred to in Gross Revenue (1). The Company's forecast of Smelting and Refining Charges will: (a) be consistent with any contracts that the Company shall have entered into or that the Company shall assume to be entered into for the purposes of the Equity Basis Real Terms Cash Flow Forecast, together with any relevant operating experience of the Company; and (b) be adjusted to reflect discounts or premiums in respect of product sales.

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Line No.	Item	Explanation
3.	Direct Charges to Sales	All freight, insurance and other charges to sales, as forecast by the Company, which forecast will be consistent with any contracts that shall have been entered into or are assumed by the Company to be entered into for the purposes of the Equity Basis Real Terms Cash Flow Forecast, together with any relevant operating experience of the Company.
4.	FOB Revenue	Result of Gross Revenue (1) minus Smelting and Refining Charges (2) minus Direct Charges to Sales (3).
5.	Operating Costs	As defined in Clause 1 and determined in accordance with Clause 13A.7(b)(ii).
6.	Mineral Royalties	All royalties payable by the Company, as forecast by the Company.
7.	Selling, General and Administrative Expenses	All expenses excluding Operating Costs (5), Mineral Royalties (6), Roadco Payment (9), Income Tax Expense (10) and depreciation, amortization and other non-cash charges.
8.	Net Trading Margin	Result of FOB Revenue (4) minus Operating Costs (5) minus Mineral Royalties (6) minus Selling, General and Administrative Expenses (7).
9.	Roadco Payment	Costs attributable to the user charge payable under the Infrastructure Agreement, determined in accordance with the Infrastructure Agreement and any applicable assumptions contained in the amendments made by the Fifth Supplemental Agreement, and de-escalated in accordance with Clause 13A.7(b)(ii).
10.	Income Tax Expense	Income taxes calculated in accordance with Clause 13A.5(c).
11.	Net Cash Income	Result of Net Trading Margin (8) minus Roadco Payment (9) minus Income Tax Expense (10).
12.	Capital Expenditures	As defined in Clause 1 and determined in accordance with Clause 13A.7(b)(ii).
13.	Increases or Decreases in Working Capital	Total working capital in each year ("Working Capital") will be as forecast by the Company (consistent with, where applicable, the operating

Line No.	Item	Explanation
		experience of the Company). For each year (the "Applicable Year") of the Forecast Period until the Cash Flow Cut-Off Date, increases or decreases in Working Capital are calculated by subtracting Working Capital for the year immediately preceding the Applicable Year from Working Capital for the Applicable Year. A positive result denotes an increase in Working Capital in the Applicable Year while a negative result denotes a decrease in Working Capital for the Applicable Year.
14.	Annual Cash Flow	Net Cash Income (11) minus Capital Expenditures (12) minus Increases or Decreases in Working Capital (13).
15.	Withholding Tax	Zero where Annual Cash Flow (14) is a negative number. Where Annual Cash Flow (14) is a positive number, Withholding Tax is the product of Annual Cash Flow (14) multiplied by the rate (expressed as a decimal) at which dividends payable by the Company (to shareholders of the Company that are non-residents of Papua New Guinea) are subject to Withholding Tax in accordance with Clause 23.9.
16.	Net Cash Flow	Result of Annual Cash Flow (14) minus Withholding Tax (15).
17.	Net Present Value of Net Cash Flow for Each Year	The product of Net Cash Flow (16) times the arithmetical average of the amounts determined under (a) and (b) below:

$$(a) \frac{e^{-i(n-1)} [1-e^{-i}]}{i}$$

where:
n = the respective year of the Forecast Period to which the Net Cash Flow (16) relates. For example, if the Forecast Period were to commence in the year 1987, then, in calculating the Net Present Value of Net Cash Flow for 1987, n would equal 1; for 1988 n would equal 2; and so forth.

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Line No.	Item	Explanation
		$i = 14\%$, the annual discount rate.
		$e =$ the base of the natural logarithm system having the approximate value of 2.71828; and
		(b) $(1+i)^{(1/2-n)}$
		where:
		n and i are the amounts set forth in (a) above.
18.	Net Present Value for Forecast Period	As defined in Clause 1.

SCHEDULE VI
Net Present Cost Derivation

Years of Forecast Period (Example)

Line No.	Item	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1.	Power Operating Expenses															
2.	Depreciating, Amortization and Other Non-Cash Charges															
3.	Power Expenses Before Income Tax Adjustment															
4.	Income Tax Expense Effect Attributable to Power															
5.	Power Expense Adjusted for Taxes															
6.	Operating Cost of Power															
7.	Capital Expenditures Attributable to Power															
8.	Net Power Cost															
9.	Net Present Cost for Each Year															
10.	Net Present Cost for Forecast Period:															

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NET PRESENT COST DERIVATION

Item	Explanation
Power Operating Expenses	All operating expenses, determined in accordance with generally accepted accounting principles in Papua New Guinea, relating to operation of power (increased by Contingency Amounts determined in accordance with Clause 13A.5(d)(ii)) excluding Depreciation, Amortization and Other Non-Cash Charges (2).
Depreciation, Amortization and Other Non-Cash Charges	Non-cash expenses attributable to power, determined in a manner not inconsistent with Papua New Guinea tax law, provided that in determining for any fiscal year the amount of depreciation expense in respect of any Capital Expenditures Attributable to Power (7), a useful life of 5 years shall be assumed and such depreciation expense shall be calculated on a straight-line basis.
Power Expenses Before Income Tax Adjustment	Sum of Power Operating Expenses (1) plus Depreciation, Amortization and Other Non-Cash Charges (2).
Income Tax Expense Effect Attributable to Power	The product of Power Expenses Before Income Tax Adjustment (3) times 30%.
Power Expense Adjusted for Taxes	Result of Power Expenses Before Income Tax Adjustment (3) minus Income Tax Expense Effect Attributable to Power (4).
Operating Cost of Power	Power Expense Adjusted for Taxes (5) minus Depreciation, Amortization and Other Non-Cash Charges (2).
Capital Expenditures Attributable to Power	All Capital Expenditures (as defined in Clause 1 and determined in accordance with Clause 13A.5(d)(ii)) attributable to power.
Net Power Cost	Sum of Operating Cost of Power (6) plus Capital Expenditures Attributable to Power (7).
Net Present Cost for Each Year	The product of Net Power Cost (8) times the arithmetical average of the amounts determined under (a) and (b) below:

$$(a) \frac{e^{-i(n-1)} [1-e^{-i}]}{i}$$

Item

Explanation

where:

n = the respective year of the Forecast Period to which the Net Power Cost (8) relates. For example, if the Forecast Period were to commence in the year 1987, then, in calculating the Net Power Cost for 1987, n would equal 1; for 1988 n would equal 2; and so forth.

i = 14%, the annual discount rate.

e = the base of the natural logarithm system having the approximate value of 2.71828; and

(b) $(1+i)^{(1/2-n)}$

where:

n and i are the amounts set forth in (a) above

Net Present Cost for Forecast Period

As defined in Clause 1.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 363E.

Mining (Ok Tedi Fifth Supplemental Agreement).

APPENDIX.

SOURCE OF MINING (OK TEDI FIFTH SUPPLEMENTAL AGREEMENT) ACT.

Part A—Previous Legislation.

Mining (Ok Tedi Fifth Supplemental Agreement) Act 1985 (No. 16 of 1985).

Part B.—Cross References.

Section, etc. in Revised Edition.	Previous Reference ¹
1	1
2	2
3	3
4	4
Schedule	Schedule

¹Unless otherwise indicated, references are to the Act set out in Part A.

