

DRAFT – Nov 28, 2008

MINERAL DEVELOPMENT AGREEMENT

Between

**THE GOVERNMENT OF
THE REPUBLIC OF LIBERIA**

and

.....

Dated as of _____, 20__

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MINERAL DEVELOPMENT AGREEMENT

This Mineral Development Agreement (hereinafter referred to as the “Agreement”) is made the [DAY] day of [MONTH], [YEAR] by and between

THE GOVERNMENT OF THE REPUBLIC OF LIBERIA

represented by the Minister of Lands, Mines and Energy, the Minister of Finance, and the Chairman of the National Investment Commission, and attested to by the Minister of Justice, and

[.....],

a corporation organized under the laws of Liberia, (as hereinafter defined, the “Company.”) Capitalized terms used in this Agreement without other definition have the respective meanings assigned thereto in Section 1 of this Agreement.

WITNESSETH:

- A. Every Mineral on the surface of the ground or in the soil or sub-soil, rivers, water courses, territorial waters and continental shelf of Liberia is the property and national wealth of Liberia and all rights related to the exploration for and exploitation of Minerals belong exclusively to Liberia.
- B. The Government desires to encourage the further exploration and development of Minerals in Liberia, and wishes to promote and facilitate the operation of mining companies in connection therewith.
- C. The Government also desires, through the operation of mining companies, to benefit regions in which Minerals are developed, including facilitating growth centres and education for sustainable regional development, to create more employment opportunities, to encourage and develop local business and ensure that skills, know-how and technology are transferred to citizens of Liberia, to acquire basic data regarding and related to the country’s Mineral resources and to preserve and rehabilitate the natural environment for further development of Liberia.
- D. [*A statement as to the legal and factual basis for the issuance of MDAs to AmLib should be inserted here.*]
- E. The Government is willing to grant the Company rights with respect to Mineral exploration and mining in Liberia on the terms and conditions set forth herein, and the Company is willing to accept such rights on the terms and conditions set forth herein.

NOW, THEREFORE, the parties hereby agree as follows:

SECTION 1 – DEFINITIONS, TERMINOLOGY AND INTERPRETATION

The following terms wherever used in this Agreement shall have the respective meanings set forth below:

“Affiliate” of any Person means any other Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with, such Person.

“Agreement” means this Mineral Development Agreement and any amendments to it made pursuant to its terms as well as all schedules and exhibits annexed to it.

“Approval Date” has the meaning given in Section 2.

“Business Day” means any day other than a Saturday or Sunday or a holiday declared by the Government.

“Change of Control” has the meaning given in Section 23.8.

“Commission “ has the meaning given in Section 25.5.

“Company” means [_____], a corporation organized under the laws of Liberia, and its successors by operation of law and permitted assigns.

“Company Event of Default” has the meaning given in Section 25.2.

“Competent Person” has the meaning given in SAMREC. If SAMREC is no longer in effect or no longer defines a “Competent Person” with regard to mineral resource evaluation, the Minister will by regulation provide a substantially similar substitute definition for a “Competent Person.”

“Confidential Information” has the meaning given in Section 21.1(i).

“Control” (including the terms “Controlled by” and “under common Control with” and “Controls”) means the possession, directly or indirectly, of the ability to direct the management and policies of a Person. Without limiting the generality of the preceding sentence, such ability is presumed to exist as to a Person if another Person or Group holds or can direct the exercise of at least 25% of the Management Rights with respect to such first Person and no other Person or Group holds or can direct the exercise of a greater percentage of the Management Rights of such first Person.

“Development” means all preparation for the removal and recovery of Minerals, including the construction, installation of all Mining Plant, Infrastructure and other equipment to be used in connection with the mining, handling, milling, beneficiation or other processing or transportation of Minerals.

“Development Plan” has the meaning given in Section 5.4(a).

“Dollar” and “US\$” means the lawful currency of the United States of America.

“Effective Date” means the date upon which this Agreement becomes effective as provided in Section 2.

“EIS” has the meaning given in Section 5.4(b).

“EPA” means the Environmental Protection Agency of Liberia and any other ministry, department or agency of Liberia that succeeds to its environmental protection functions.

“EMP” has the meaning given in Section 5.4(b).

“Event of Default” means a Government Event of Default or a Company Event of Default.

“Exploration” means activities directed toward ascertaining the existence, location, quantity, quality or commercial value of deposits of Minerals using geological, geophysical and geochemical methods, including without limitation drilling, bore holes, test pits, trenches, surface or underground headings, drifts or tunnels, as well as non-obtrusive methods, in order to distinguish the nature, shape and grade, physical and chemical characteristics, and size of Mineral deposits, and unless the context shall otherwise require, includes laboratory testing and assays carried out in connection with the foregoing activities. “Explore” has a corresponding meaning.

“Exploration Area” means the area described in Exhibit __ to this Agreement.

“Exploration Regulations” means the regulations of the Ministry from time to time in effect governing Exploration under a Minerals Exploration License of Liberia, provided that pending the formal adoption by the Minister of such regulations, “Exploration Regulation” means the draft Exploration Regulations as noticed for hearing on November 17, 2008, or any subsequent draft Exploration Regulations noticed for hearing.

“Feasibility Report” has the meaning given in Section 5.1(e).

“Financial Year” means January 1 through December 31, or such other period of twelve calendar months ending on March 31, June 30 or October 31 as may be agreed by the parties.

“Force Majeure” has the meaning given in Section 29.2.

“GAAP” has the meaning given in Section 17.5(a).

“GDP Implicit Price Deflator” means the GDP Implicit Price Deflator as published from time to time by the U.S. Department of Commerce, Bureau of Economic Analysis, as the “revised” GDP Implicit Price Deflator for the specified calendar quarter. If such index is no longer published, the parties shall agree on adjustments that will substantially preserve the economic impact and timing of this periodic adjustment.

“Government” means the Government of Liberia, including all of the branches, divisions, political subdivisions, instrumentalities, authorities and agencies of its government.

“Government Event of Default” has the meaning given in Section 25.1.

“Group” means two or more Persons who are acting together for the purpose of acquiring, holding, voting or disposing of Management Rights of a Person. The parties to a shareholders agreement with respect to a corporation that establishes how directors of the corporation are to be chosen or how the parties must vote their shares in certain cases, and the parties to any similar agreement with respect to any other business entity, are in each case members of a Group.

“ICSID” means the International Centre for Settlement of Investment Disputes.

“IFRS” has the meaning given in Section 17.5(a).

“Immovable” means, when referring to tangible property, all improvements to the land, such as roads, dams, and canals, and all items of tangible property that are securely affixed and attached to the land or to buildings or other structures on the land. All other items of tangible property are “Movable”.

“Indebtedness” has the meaning given in Section 20.4(c).

“Indicated Mineral Resource” has the meaning given in and is to be determined as prescribed in SAMREC.

“Infrastructure” includes all facilities and, to the extent provided below, equipment acquired or constructed by the Company¹ (other than Mining Plant) and used by the Company in connection with Operations (other than in Exploration), including (by way of example):

- a. Immovable transportation and communication facilities (including roads, bridges, railroads, airports, landing strips and landing pads for aircraft, hangars and other airport facilities, garages, channels, tramways, pipelines and Immovable installations for radio, telephone, telegraph, telecommunications, and electronic or other forms of communications).
- b. Immovable port facilities (including docks, harbours, piers, jetties, breakwaters, terminal facilities and warehouses, and loading and unloading facilities).
- c. Immovable power, water and sewerage facilities (including electrical generating plants and transmission lines, dams, water drains, water supply systems and systems for disposing of tailings, plant waste and sewage).
- d. Immovable public welfare facilities (including schools, clinics and public halls).
- e. Miscellaneous Immovable facilities used primarily in connection with the operation of any of the foregoing (including offices, machine shops, foundries, repair shops, employees’ housing and warehouses).
- f. Movable equipment used as an integral part of the Immovable facilities described above.

“International Standards” means any of the standards of professional care, skill, diligence, practices and methods generally followed by prudent professionals employed by leading international firms regarding the conduct of similar activities or the provision of similar services, provided that the Government may by law or regulation designate a particular International Standard as being generally applicable to all holders of Class A mining licenses or exploration licenses issued under the Mining Law.

“Land” means any land in Liberia including any creeks, streams, rivers or bodies of water (and their residue) contained on or within all such land.

“Landowner” has the meaning given in the Mining Law.

¹ The treatment of leased property is still under discussion.

“Law” means any constitution, treaty obligation, law, statute, decree, rule, regulation, judicial act or decision, judgment, order, proclamation, directive, executive order or other sovereign act of the Government other than this Agreement.²

“Lien” means any mortgage, lien, pledge, charge, security interest or other encumbrance on any property or asset of the Company, or any interest or title of any vendor, lessor, lender or other secured party in or to any property or asset of the Company under any conditional sale or other title retention agreement.³

“Liberian Currency” means any currency, except Dollars, that is legal tender in Liberia, or circulates freely in any part of Liberia by virtue of any Law or authority as a medium of exchange for the purchase or sale of goods and services.

“Management Rights” means, with respect to a Person not an individual, the right to participate in the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise, including (by way of example and not limitation) (i) the power to direct the vote of shares entitled to participate in the election of directors of such Person, (ii) any other right to participate in the designation of the directors of such Person, (iii) the power to act as, or to direct the vote of a voting partner of, any such Person that is a partnership, or (iv) the contractual right to act as a manager or operator of any such Person that is a limited liability company or similar entity, or to participate in the direction of such manager or operator.

“Measured Mineral Resource” has the meaning given in and is to be determined as prescribed in SAMREC.

“Mine,” when used as a verb, means to intentionally extract or win Minerals and includes any Operations directly or indirectly incidental thereto. “Mining”, when used as a verb, has a corresponding meaning. “Mine,” when used as a noun, refers to the tangible shafts, cuttings, excavations and diggings from which or through which Minerals are extracted from the earth.

“Mineral” or “Minerals” means a naturally occurring element or compound having an orderly internal structure and characteristic chemical composition, crystal form, and physical properties, formed by or subject to a geological process but not including hydrocarbons.

²/ This Agreement, if approved by the Legislature and signed by the President of Liberia, may become law, but it will not be “Law” as defined herein, in order to avoid confusion in those provisions that refer to the application of Liberian Law.

³ The treatment of leased property (see the note to the definition of Infrastructure) may affect this definition.

“Minerals Technical Committee” means the Minerals Technical Committee constituted under the Mining Law, or any other inter-ministerial committee hereafter designated by law to assume the functions of the Minerals Technical Committee.

“Mining Law” means the Minerals and Mining Law 2000 Part I of Title 23 of the Liberian Code of Law Revised, as from time to time amended, supplemented or modified.

“Mining License” means a Class A mining license granted by the Government to the Company under the Mining Law and Section 5 of this Agreement to Mine and produce specific Minerals in a specified area in Liberia.

“Mining License Area” means the area subject to a Mining License issued pursuant to this Agreement.

“Mining Plant” means all facilities and equipment acquired or constructed by the Company that are directly used in the extraction, milling, beneficiation or other processing of Minerals into the form in which they are marketed by the Company, including both Immovable Items and Movable Items. For the avoidance of doubt, facilities and equipment used to transport Minerals after extraction and through the final stage of processing by the Company (including direct Mineral load-out facilities integrated into the final processing facility and transport from the final processing facility to adjacent storage areas) constitute Mining Plant, while such things as facilities and equipment used to load and transport Minerals onward from the point of final processing constitute Infrastructure.

“Mining Term” has the meaning given in Section 5.11(a).

“Minister” has the meaning given in the Mining Law.

“Ministry” means the Ministry of Lands, Mines and Energy of Liberia and any other ministry, department or agency of Liberia that succeeds to its responsibilities of supervising the undertaking of mineral exploration and mining activities in Liberia.

“Mortgage” has the meaning given in Section 23.4.

“Net Worth” has the meaning given in Section 20.4(d).

“Occupant of Land” has the meaning given in the Mining Law.

“Operations” means all activities and transactions conducted by or on behalf of the Company with respect to, under or incidental to this Agreement including Exploration, Development, Production and restoration or remediation.

“Operations Plan” has the meaning given in Section 5.4(a).

“party” means either the Government or the Company and, in the plural form, both the Government and the Company.

“Permitted Transferee” has the meaning given in Section 23.5.

“Person” means any natural person and any partnership, joint venture, corporation, limited liability company, trust, estate or other entity that is recognized by the laws of any jurisdiction as a distinct body possessing the right to enter into contracts or to own, lease or possess real or personal property, as well as a government or state, and any branch, division, political sub-division, instrumentality, authority or agency of any government or state.

“Prevailing Market Rate of Exchange” means the predominant rate, expressed in Dollars, at which willing sellers and willing buyers, acting at arms length and in the ordinary course of business, are, on the day that the transaction takes place (or, if that day is not a business day, the preceding business day), prepared to purchase or sell (as appropriate for the applicable transaction) any currency issued by authority of the Central Bank of Liberia or any successor governmental agency of Liberia or any relevant currency of another jurisdiction (as the case may be) in [New York, New York, U.S.A.] and “business day” means a day on which banks are open for normal banking business in [New York, New York , U.S.A.].ble

“Probable Mineral Reserve” has the meaning given in and is to be determined as prescribed in SAMREC.

“Product(s)” means [the elemental Mineral constituent or constituents]⁴ in the final mined and/or processed product or products produced by the Company under the authority of a Mining License granted under this Agreement to the extent that such products have commercial value and such product or products are destined for sale by the Company, be it ore, mill concentrates, smelter matte matter or refined metal.

“Production” means the commercial exploitation of Minerals found in the Exploration Area and authorized to be exploited under a Mining License granted under this Agreement and all other activities incidental thereto including the design, construction, installation, fabrication, operation, maintenance and repair of Mining Plant, Infrastructure and any other equipment, and the Mining, processing, stockpiling, transportation, export and sale of such Minerals.

⁴ The appropriateness of these words is under consideration.

“Production Area” means any of the areas in the Exploration Area designated by the Company as a “Proposed Production Area” pursuant to Section 5.1 for which the Government has granted a Mining License to the Company pursuant to Section 5.3.

“Production Operating Period” means the period of time during which the Mining Plant is being operated, maintained and repaired and the Mining, processing, stockpiling, transportation, export and sale of Minerals is occurring.

“Profound Changes in Circumstances” means such changes, since the relevant base period under Section 31.1, in the economic conditions of the mineral and mining industry worldwide or in Liberia, or such changes in the economic, political or social circumstances existing in Liberia specifically or elsewhere in the world at large as to result in such a material and fundamental alteration of the conditions, assumptions and bases relied upon by the parties at such base period that the overall balance of equities and benefits reasonably anticipated by them will no longer as a practical matter be achievable.

“Prohibited Person” has the meaning given in Section 23.5.

“Proposed Production Area” means an area or area designated as such by the Company pursuant to Section 5.1.

“Proven Mineral Reserve” has the meaning given in and is to be determined as prescribed in SAMREC.

“RAP” has the meaning specified in Section 5.6(b).

“Regulations” means the regulations at the time in effect issued by the Minister pursuant to Chapter 21 of the Mining Law.

“Reference Price” shall have the meaning set forth in Section 20.8.

“Resource Area Fee” means a fee payable to the Government for the right to explore for or exploit mineral resources of Liberia.

“Restricted Payment” has the meaning given in Section 20.5(e).

“Revenue Code” means the Revenue Code of Liberia 2000, (“Phase One of the Reform Tax Code”) of Liberia, as from time to time amended, supplemented or modified, or any successor revenue code of Liberia.

“SAMREC Code” means The South African Code for the Reporting of Exploration Results, Mineral Resources and Mineral Reserves as from time to time in effect. If SAMREC is no longer in effect or no longer defines a term defined herein by

reference to SAMREC, the Minister will by regulation after providing the holders of licenses issued under the Mining Law with opportunity to comment provide qualitatively similar sources for or definitions of terms defined in this Agreement by reference to SAMREC.

“SAP” has the meaning specified in Section 5.4(c).

“SIA” has the meaning specified in Section 5.4(c).

“Subsidiary” means, as to any Person, any other Person in which such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such second Person, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such first Person and/or one or more of its Subsidiaries.

“Taxes and Duties” means any and all direct and indirect income, profit, excess profit, additional profit, gains, capital gains, corporation, dividend, interest, financing, net worth, sales, transaction, payroll, import, export, customs, consul, inspection, value added, consumption, supply, use, turnover, severance, stumpage, cash flow, rental, land rental, surface rental, property, stamp, withholding and other taxes, duties, fees, levies, excises, rates, charges, imposts, surcharges, royalties and other Government imposed revenue payments of whatever nature and however called and whether paid to the Government or to any other Person at its directive or pursuant to Law.

“Term” means the term of this Agreement set forth in Section 3, as it may from time to time be extended in accordance with the provisions of this Agreement.

This Agreement shall be read with such changes in gender or number as the context shall require. Headings to the clauses and sections of this Agreement are inserted for convenience only and shall not affect its construction. All references to Law or to any specific laws or regulations of Liberia shall mean such laws and/or regulations as are at the time in effect. References to “Sections,” “Appendices,” “Schedules” and “Exhibits” without other attribution are references to Sections, Appendices, Schedules and Exhibits forming part of this Agreement.

Unless otherwise stated, a reference to “hereof,” “hereunder,” “herein,” or words of similar meaning, means this Agreement. The words “and” and “or” will include the conjunctive and disjunctive, as the context may require or permit. The word “include” (and any variation of that word) means “including but not limited to.” All of the parties having participated in its negotiation and drafting, this Agreement shall not be construed against any party as the drafting party.

SECTION 2 – EFFECTIVE DATE

This Agreement, after having first been signed on behalf of the parties as provided on the signature pages of this Agreement, shall become effective and be binding on them on the later of the date on which it is approved by the President of Liberia [and]⁵ (the last to occur of such dates, the “Approval Date”), provided that under no circumstances will this Agreement become effective prior to the date upon which the Company shall have cured any and all arrearages in payments to the Government under all prior agreements with or licenses or permits from the Government creating exploration rights in favour of the Company in the Exploration Area accruing after January 16, 2006.⁶

SECTION 3 – TERM OF THE AGREEMENT

The term of this Agreement commences on the Effective Date. The term of this Agreement is 25 years, subject to earlier termination as provided in this Agreement, and will be automatically extended to match any extension under Section 5.8 of the term of any Mining License issued pursuant to this Agreement.

SECTION 4 – INTERIM EXPLORATION RIGHTS

4.1 Interim Exploration Rights.

- a. The Company may continue Exploration within the Exploration Area in accordance with the terms of this Agreement and the terms of the Exploration Regulations, provided that the rights granted under this sentence extend only to those minerals for which Exploration was authorized under the terms of the prior agreements with or licenses or permits from the Government creating exploration rights in favour of the Company in the Exploration Area. This Agreement shall supersede any conflicting provisions of the Exploration Regulations as follows: [*to be discussed*]
- b. The rights granted under this Section shall terminate as the later of April 1, 2010 and the first anniversary of the Approval Date. Subsequent Exploration rights shall exist only to the extent that Section ___ provides for the continuation of Exploration within a Proposed Production Area.

⁵ Add a reference to Legislative approval if required under the circumstances of the particular agreement.

⁶ Time periods by which the Company is bound prior to the issuance of a Class A Mining License run from the Approval Date, but the Company does not derive any rights under this agreement unless all amounts due and unpaid under prior agreements have been paid to the extent they accrued after the Johnson-Sirleaf government took office.

- c. The time for filing a work program and budget under the Exploration Regulations shall run from the Approval Date
- d. The date from which the requirement to incur Eligible Exploration Costs (as such term is defined in the Exploration Regulations) and the date from which the obligation to pay Resource Area Fees accrues is the Approval Date.⁷
- e. The Company may conduct only such Exploration as does not require the filing with or application to, or the obtaining of any consent, approval, license or permit from, the EPA unless such filing or application has duly occurred and any such consent, approval, license or permit has been duly obtained. A copy of each such consent, approval, license or permit obtained by the Company from the EPA shall be promptly filed with the Minister. The Minister may approve the Company's work program under the Exploration Regulations in the absence of compliance by the Company with the provisions of the Exploration Regulations relating to filings with the EPA, provided that the Company's work program includes an "environmental management program" reasonably satisfactory to the Minister.

4.2 Termination of Exploration Rights and Lapse of Exploration Area.

On the later of April 1, 2010 and the first anniversary of the Approval Date, (a) the rights of the Company to conduct Exploration in the Exploration Area shall terminate except as provided in Section 5.1(d) with respect to Exploration conducted in a Proposed Production Area timely designated in compliance with the requirements of Sections 5.1(a) and 5.1(b), and (b) the Company shall have no further rights under this Agreement or any prior agreement with or license or permit from the Government with respect to any portion of the Exploration Area other than that encompassed by Proposed Production Areas timely designated in compliance with the requirements of Sections 5.1(a) and 5.1(b)..

SECTION 5 – MINING LICENSES

5.1 Designation of Proposed Production Areas and Application for a Mining License.

- a. If the Company has identified potentially exploitable Mineral deposits in the Exploration Area of a type covered by its original exploration license or agreement with respect to such Exploration Area that constitute Indicated Mineral Resources, it may designate by notice to the Minister

⁷ The current draft of the Exploration Regulations refers to "Surface Rights Payments". The term will be changed to "Resource Area Fees"

that all or one of more portions of the Exploration Area are proposed production areas (each, a "Proposed Production Area"). The Company may give more than one notice under this Section 5.1(a). Each such notice must set forth

- i) the proposed boundaries of each Proposed Production Area covered by such notice,
- ii) the nature, location and estimated quality of the Indicated Mineral Resources in, and the Mineral(s) proposed to be extracted from, such area and
- iii) the Product(s) expected to be marketed by the Company,

Each such notice must be accompanied by (x) the report of a Competent Person setting forth his or her conclusion that the deposit(s) constitute Indicated Mineral Resources, and the basis for such conclusion, in the form required by SAMREC for the public reporting of mineral resources, and setting forth the scope of any Inferred Mineral Resources located within the Proposed Production Area, (y) an application for a Class A Mining License to permit the mining of such deposits in the form required by the Mining Law and such Regulations as are then in effect and (z) evidence of payment of the processing fee required by Section 16.1.

If no notice complying with the requirements of this Section 5.1(a) and designating a Proposed Production Area in compliance with Section 5.1(b) is not delivered to the Minister by the later of April 1, 2010 and the first anniversary of the Approval Date, then this Agreement shall automatically terminate without requirement of action by the Minister or the Government.

- b. Each Proposed Production Area (i) shall consist of such part of the Exploration Area as in the light of International Standards is reasonable, taking into account the extent and nature of the Indicated Mineral Resources and any Inferred Mineral Resources, for the mining and recovery of such Mineral Resources, and (ii) shall form a compact block as much as possible, with the borders aligned to the true north-south and east-west.
- c. The Company shall submit to the Government within [60] days following the notice given under Section 5.1(a) detailed maps for each Proposed Production Area, based on actual surveys using the most current technology, that set forth the boundaries and coordinates of the area containing the deposits from which Minerals are expected to be Mined.

The maps shall be of such scale and contain such detail, including geographical and topographical information, as may reasonably be necessary to identify accurately the boundaries of the Mineral deposits and as may otherwise reasonably be required by the Minister.

- d. If the Company wishes to carry out additional Exploration within a Proposed Production Area it may do so provided that the work is covered by an exploration work program that has been approved under the terms of the Exploration Regulations. No budget or annual expenditure requirements apply to such work, but all other provisions of the Exploration Regulations as to the manner of carrying out such work and as to reporting the results of such work remain applicable.
- e. Unless the Company has complied with Sections 5.2(a) and (b) (implementing the “marginal deposit” provisions of Section 5.3(l) of the Mining Law), the Company must within 18 months of the date of designation of an area as a Proposed Production Area:
 - i) present to the Minister a plan for the efficient and economic Mining of such Proposed Production Area (the “Feasibility Report” prepared by an internationally recognized mine engineering consulting firm not affiliated with the Company or any of its principal direct or indirect shareholders substantially complying with Section 5.4 through 5.9, and
 - ii) a certificate of the chief executive officer of the Company dated the date of submission to the effect that (x) the Company has complied through the date of such certificate in all material respects with its obligations under this Agreement (except as to such defaults in the performance by the Company of any of such obligations that have been cured to the reasonable satisfaction of, or waived by, the Minister), and (y) the Company is prepared to develop the Mine, Mining Plant and Infrastructure in the manner set forth in the Feasibility Report (other than as may reasonably be required to respond to facts and circumstances not known to the Company at the time the Feasibility Report was filed), and setting forth the manner in which the Company proposes to finance the construction and acquisition of the Mine, the Mining Plant, the Infrastructure and the related equipment (including the proposed proximate and ultimate sources of such funds).
- f. The Feasibility Report required by Section 5.1(e) must be accompanied by evidence of the payment by the Company of the processing fee required by Section 16.1.

- g. ⁸If the Company proposes to produce the same Minerals from two or more separate sites (in one or more Proposed Production Areas) using similar extraction techniques and shared processing or beneficiation facilities, a single Feasibility Report shall be required and a single Mineral License shall be issued covering all such sites, subject to the approval of the Minister of Finance for the treatment of such operations and facilities as a single “mining project”. If the Company proposes to use materially different extraction techniques or substantially independent processing or beneficiation facilities for different Proposed Production Areas, separate Mineral Licenses and Feasibility Reports shall be required for each proposed site.
- h. If multiple Mining Licenses are required by Section 5.1(h), the Ministry will notify the Ministry of Finance of the applications of the Company, and the Minister of Finance is entitled to impose such conditions upon such Mining Licenses as the Minister of Finance reasonably deems necessary to comply with Revenue Code requirements of separating the costs and expenses of separate “mining projects.” The Minister of Finance reserves the right to require that a separate company be formed to hold each Mining License and related assets if it determines that to be the most appropriate means of separating the costs and expenses of separate “mining projects”.
- i. Except as otherwise provided in this Section 5.1(i),
- i) the Company’s rights in the Exploration Area expire as to any portion of such area as to which no Proposed Production Area is timely designated under and in compliance with the requirements of Section 5.1(a) and (b), and
 - ii) the Company’s rights in any Proposed Production Area timely designated under and in compliance with the requirements of Section 5.1(a) and (b) expire if the Company does not timely file either the maps required by Section 5.1(c) or the Feasibility Report and related materials as provided in Section 5.1(e) and (f).

The Company may extend either but not both of (A) the time for designating Proposed Production Areas in compliance with Sections 5.1(a) and (b) or (B) the time for filing the Feasibility Report and related materials required by Sections 5.1(e) and (f) for a period of six months by payment, at least 30 days prior to the expiration of the time period

⁸ This and the following Section will need “sign-off” from the Minister of Finance”.

otherwise applicable, of the extension fee provided for in Section 16.1, provided that clause (B) is not available in the case of any Proposed Production Area which has become entitled to the development postponement permitted by Section 5.2.

5.2 Postponement of Development.

- a. If the Company believes that the “marginal deposit” provisions of Section 5.3(l) of the Mining Law are applicable to the mineral resources contained in a Proposed Production Area, it shall apply to the Minister in accordance with Section 5.3(l) of the Mining Law within 12 months of the date of designation of such Proposed Production Area under Section 5.1(a) for postponement of the obligation to deliver a Feasibility Report and related materials under Sections 5.1(e) and (f) for up to two years.⁹ The application shall be accompanied by
 - i) a certificate of a Competent Person to the effect that in his or her reasonable judgment sufficient information is available about the mineral resource involved to conclude that it is not exploitable under current technical and economic conditions, and the production from such deposit cannot reasonably be expected to be commercially exploitable for a period of at least two years (plus a reasonable period for Mine and Mining Plant construction) from the date on which the Feasibility Report is otherwise required to be filed under Section 5.1(e), and
 - ii) a certificate of the chief executive officer of the Company to the effect that the Company has given the Competent Person referred to in clause (i) of this Section 5.2(a) all information available to the Company relating to a determination in accordance with SAMREC as to the scope and other characteristics of the mineral resources included in the such Proposed Production Area.
- b. The Minister shall approve the application unless the Company is at the time in default in the performance of its obligations under this Agreement in a material respect. Any such delay period, if approved, will operate to extend the due date of the Feasibility Report to be filed under Section 5.1(e) of this Agreement for a period of two years from the date originally due under Section 5.1(e) this Agreement or such lesser period of time as is requested by the Company. Not more than 180 and not less than 90 days prior to the end of the initial delay period, the Company may apply for a

⁹ The possibility of delayed development is based on Section 5.3(l) of the Mining Law.

second delay period of up to two years upon complying in full with the requirements of Section 5.2(a) as though they were applicable by their terms to a second delay period.

- c. In order to retain its rights in a Proposed Production Area following an approval by the Minister of a delay period, the Company:
 - i) in addition to the Resource Area Fees payable with respect to such Proposed Production Area must pay an annual postponement fee for each year of the delay, as determined in Section 16.1, and
 - ii) must file the Feasibility Report and related materials required by Sections 5.1(e) and (f) applicable to such Proposed Production Area prior to the end of the delay period (or the second delay period, if applicable).
 - d. All rights of the Company to such Proposed Production Area automatically terminate if a payment due under Section 5.2(c)(i) is not timely made, or if a Feasibility Report and related materials complying with Sections 5.1(e) and (f) and applicable to such Proposed Production Area are not timely filed under Section 5.2(c)(ii).
- 5.3 Mining License. The Minister will grant the Company a Class A Mining License for the Mining of the Minerals proposed to be extracted from each Proposed Production Area subject to the satisfaction of the requirements set forth below in this Section 5.3. Any Mining License issued pursuant to this Agreement shall recite that it is issued subject to the terms and conditions contained in such License and this Agreement, and that it is not assignable or transferable in any way other than as permitted by the terms of this Agreement.
- a. The Company timely complied with the requirements of Sections 5.1(a) through (c).
 - b. The Company has complied in all material respects with its obligations under this Agreement and under the Exploration Regulations except as to such defaults in the performance by the Company of any of such obligations as have been cured to the reasonable satisfaction of, or waived by, the Minister.
 - c. The Company has timely submitted a Feasibility Report in accordance with Sections 5.1(e) and (f) that complies with the requirements of Sections 5.4 through 5.9, and the Feasibility Report has been approved by the Minister pursuant to Section 5.10.

- d. The Company has granted the Government any equity interest in the Company at the time required by the Mining Law and has entered into a Shareholders' Agreement with the Government respecting such equity interest substantially in the form of Exhibit 1 hereto.
- e. The Company has furnished the guaranty required by Section 20.6.

For the avoidance of doubt, if the Company initially sought one Mining License for multiple Proposed Production Areas as contemplated by Section 5.1(g), and then elected to postpone the submission of a Feasibility Report for one or more but less than all of such Proposed Production Areas in accordance with Section 5.2, this Agreement is to be interpreted as required a separate Feasibility Report with respect to the development of the Proposed Production Area(s) for which the delay was obtained, and as requiring the amendment of the original Mining License to include the operations contemplated by the later Feasibility Report if and when the conditions set forth in this Section 5.3 are satisfied with respect to the later Feasibility Report, including any changes that may be appropriate under Sections 5.3(d) and (e) because of the increased size of the total project.

5.4 Feasibility Report.

- a. The Feasibility Report for a Proposed Production Area shall comply with applicable Law and International Standards, shall include the basic technical and financial components described in this Section 5.4(a) and shall also include the additional components set forth in Sections 5.4(b) through (f):
 - i) description of the Minerals to be Mined, the Mining and processing methods proposed to be used, and the quality of the Product(s) to be marketed,
 - ii) a statement of the expected recovery rate for the Minerals to be Mined over the term of the Mining License and for the output of the expected Product(s),
 - iii) a report of a Competent Person setting forth his or her conclusion as to the amount of the Proven Mineral Reserves and Probable Mineral Reserves in the Proposed Production Area, and the basis for such conclusion, in the form required by SAMREC for the public reporting of mineral resources,
 - iv) a development plan setting forth the basic design and operating specifications for the proposed Mine, Mining Plant, Infrastructure and equipment (the "Development Plan"), including maps at the

scale required by the Bureau of Mines setting forth the proposed location of the Mine, Mining Plant and Infrastructure, and any other activities or improvements described in Section 6.7(e) or 11.6 of the Mining Law and, in the case of each activity referred to in Section 6.7(e) or Section 11.6(c), (e) or (f) of the Mining Law, setting forth the capacity expected to be available for public utilization, provided that activities described in Section 11.6(a) or 11.6(b) of the Mining Law must be limited to those reasonably necessary for the implementation of the Development Plan.;

- v) a capital expenditure plan (in reasonable detail) and a construction (or acquisition), completion and commencement of operations schedule for the Mine and all Mining Plant, Infrastructure and equipment proposed in the Development Plan, which schedule shall provide for the occurrence of the scheduled completion tests not later than [six] months after such date as the independent engineer referred to in clause (vii) of this Section 5.4(a) certifies is reasonably achievable if the Development Plan is implemented in good faith by the Company through competent contractors and reliable suppliers and funds and assuming funds are timely available for such implementation,
- vi) a plan for Operations (an “Operations Plan”) that sets forth the Company’s plan for operating the Mine and Mining Plant, including expected staffing requirements
- vii) a plan for marketing and selling the Products (including projected principal customers and projected means of transporting Product(s) from Liberia to such customers) for the Mining Term,
- viii) a financing plan, setting forth the manner in which the Company proposes to fund the Development Plan and the methods the Company proposes to use to fund the EMP, the SIA and the SAP referred to in Sections 5.4(b) and (c),
- ix) an opinion of the mine engineering firm referred to in Section 5.1(e)(i) to the effect that [*details to come; substance will at a minimum relate to (1) compliance of the Development Plan with the last paragraph of this Section 5.4(a,) (2) suitability of the proposed Development plan for the nature and size of the Proven and Probable Mineral Reserves involved, on the basis that such reserves should be substantially completely exploited within 50 years, (3) ability to complete the mine within the stated schedule, (4) production capacity and operating costs of the mine if built as*

designed and well maintained, and (5) useful life of the mine if built as designed and well maintained.], and

- x) representations and warranties of the Company as set forth in Schedule 5.4(a) to this Agreement.

If the Company proposes to contract the operations of any portion of the Mine, Mining Plant or Infrastructure to a third party, that fact, and the identity, experience and financial capacity of the third party must be disclosed in the Feasibility Report and taken into account by the opinion referred to in clause (ix) of this Section 5.4.

The Development Plan must provide (and show the location of) sufficient land under the control of or otherwise available to the Company (x) to accommodate in an environmentally sound manner in accordance with International Standards and applicable Law all Mining Plant and Infrastructure expected to be necessary for the Mining (and all proposed processing) of Minerals from the Proposed Production Area, (y) reasonably to insulate surrounding areas from possible adverse impacts of Operations, and (z) to provide within the boundaries of the Proposed Production Area adequate pollution control and other environmental protection facilities for all activities proposed to be conducted within the Proposed Production Area. It is recognized that certain Infrastructure such as transportation, water supply and electric generating facilities is likely to be, and certain Mining Plant may be, located other than in areas adjacent to the proposed mine.

- b. The Feasibility Report shall include an Environmental Impact Assessment Study Report (“EIA”) and an Environmental Management Plan (“EMP”) complying with Section 5.5 and applicable Law, as filed by the Company with the EPA.
- c. The Feasibility Report shall include a Social Impact Assessment (“SIA”) and Social Action Plan (“SAP”) complying with Section 5.6 and applicable Law.
- d. The Feasibility Report shall include a mineral beneficiation study complying with Section 5.7 and any applicable Law.
- e. The Feasibility Report shall include a project linkages plan complying with Section 5.8 and any applicable Law;
- f. The Feasibility Report shall include a skills and technology development plan complying with Section 5.9 and any applicable Law.

5.5 The Environmental Impact Assessment Study Report and the Environmental Management Plan.

- a. The EIA and the EMP must comply with applicable requirements imposed by the EPA and with this Section 5.5. The EIA must identify pre-existing environmental conditions and set forth the potential adverse impact of the construction and operation of the Mining Plant and the Infrastructure proposed in the Feasibility Report, must take into account all activities or improvements to be undertaken by the Company and referred to in Section 6.7(d), 6.7(e) or 11.6, and shall otherwise comply with applicable Law. The EMP must set forth detailed plans consistent with the EIA for the mitigation of environmental harm attributable to, and the restoration or remediation of the environment to the extent affected by, the implementation of the Development Plan and subsequent Operations, including the actions to be taken by the Company to comply with Sections 8.1 through 8.3 of the Mining Law, International Standards and other applicable Law, and shall in any event comply with applicable EPA requirements and Section 5.5(b). The Minister shall not approve the Feasibility Report until the EPA has approved the EMP and the EIA as complying with the requirements of this Agreement, International Standards and applicable Law.
- b. The EMP must include a closure management plan and a closure management budget designed to ensure that upon closure (i) the Mining Plant and Infrastructure shall not present any health or safety issues (including provision for the control of acid drainage and other long-term environmental hazards) and (ii) the Production Area and the surroundings of any Mining Plant or Infrastructure not located in a Production Area shall be restored to productive use or reforested or where restoration is impractical, suitably remediated. The closure management plan must include a list and assessment of risk and any uncertainties associated with the preferred closure option, address the social aspects of closure and rehabilitation, and provide a process for participation by the community and other stakeholders in the development of a plan for post closure management and monitoring. The closure management budget shall provide a realistic initial estimate of the expected closure cost, broken down by principal activities.
- c. The closure management plan must also set forth the means by which the Company proposes to ensure the availability of funds to finance its environmental restoration and remediation obligations under Sections 8.2 and 8.3 of the Mining Law so that the cost of closure will be borne by the Company and not the public or the Government. If the Company does not

agree in writing with the Government to a “pay-as-you-go” funding scheme, then a funding guarantee reasonably satisfactory to the Minister of Finance from a third party financial institution with a long-term credit rating of at least A (or its equivalent) from at least two internationally recognized credit-rating agencies with provision reasonably acceptable to the Minister of Finance and the Minister for redetermination of estimated closure costs at least triennially and adjustments in the amount of the funding guarantee will normally be acceptable. In the case of third party credit support, if the party supplying the funding guarantee no longer has a long-term credit rating of at least A (or its equivalent) from at least two internationally recognized credit-rating agencies, the funding guarantee must provide that if the Company does not within 90 days thereafter secure a substitute funding guarantee from another third party financial institution satisfying the requirements of this section, the funding guarantee may be called upon for the maximum amount then available thereunder, subject to the requirement that such amount be deposited in a trust account from which it may be withdrawn only for the purposes of financing the Company’s environmental restoration and remediation obligations.

5.6 Social Impact Assessment and Social Action Plan.

- a. The SIA shall set forth the potential adverse impact of the construction and operation of the Mining Plant and the Infrastructure on the individuals and communities resident in and around (a) such Proposed Production Area and any Mining Plant or Infrastructure not located on such Proposed Production Area, or (b) areas affected by the proposed processing or transport of Product whether using Company-provided Infrastructure or equipment or facilities or equipment provided by the Government or third parties.
- b. The SAP shall set forth reasonable procedures, in light of the costs involved, for the mitigation of such adverse impact. The SAP shall include a Resettlement Action Plan (“RAP”) component if communities located in or adjacent to such Proposed Production Area or to Mining Plant or Infrastructure not located in the Proposed Production Area should under International Standards be resettled for health or safety reasons. The RAP shall provide for (but not be limited to) suitable area(s) of resettlement with key emphasis on shelter and livelihood continuity.
- c. The Company shall have held public hearings on the SIA and the SAP in Monrovia and in the county seat of the county in which the Proposed Projection Area(s) are located, and shall have included as part of the Feasibility Report a statement of the means taken to publicize the

hearings, an indication of the numbers of persons who attended such hearings and their affiliates, a summary of the issues raised at such hearings, and a discussion of the actions taken by the Company in response to such hearings.

5.7 Mineral Beneficiation Study

The Feasibility Report shall include an addendum that assesses possible further value addition of the Mineral Products within Liberia and identifies the critical conditions for the realisation of such downstream investments. It shall also describe the interventions that the Company proposes to undertake to increase the value addition of the Mineral Products within Liberia and the region. [*minimum intervention requirements to come*]

5.8 Project Linkages Plan

The Feasibility Report shall include a project linkages plan that identifies all the potential for local supplier businesses to service the project, identifies key interventions to grow the minerals input industrial sector, and sets out a project local purchase plan with clear milestones identified in terms of an increasing percentage of local purchases of goods and services.

5.9 Skills and Technology Development Plan

The Feasibility Report shall include an addendum that contains an annual projection of the Company's commitments to the development of local human resources and planned expenditure on research & development within Liberia and the region [*minimum requirements of this plan to come*]. This shall include detailed plans and programs for the recruitment and training of citizens of Liberia, including timetables and schedules, in connection with the construction and operation of the Mine, Mining Plant and Infrastructure.

5.10 Approval of the Feasibility Report and Grant of Mining License.

- a. The Minister may (i) reasonably request additional information with respect to any aspect of the Feasibility Report, and (ii) recommend changes in any component of the Feasibility Report to the extent the Minister or the Minerals Technical Committee deems the changes necessary to satisfy applicable requirements of this Agreement.
- b. The Minister may not unreasonably withhold approval of the Feasibility Report if:

- i) the Feasibility Report complies with the provisions of the Mining Law and the terms of this Agreement,
 - ii) a Competent Person reasonably selected by the Government has concluded that the Development Plan, the basic design and material and operating specifications, the capital expenditure plan and construction schedule included in the Feasibility Report and the Company's Operations Plan are sufficient if implemented as contemplated by the Feasibility Report to support the efficient and economic Mining, processing and marketing of the Minerals proposed to be Mined from such Proposed Production Area,
 - iii) the proposed SIA and RAP satisfy the requirements of Section 5.5,
 - iv) the EIA and the EMP have received the approval of the EPA,
 - v) the capital expenditure plan shows that the debt/equity ratio of the investment taking into account initial working capital at commencement should not exceed 3:1, and
 - vi) the Company has provided an opinion of an internationally recognized investment banking firm that is not regularly engaged to advise the Company or any of its principal shareholders on financial matters to the effect that it has reviewed the Company's plan to finance the construction, equipping, start-up and entry into commercial production of the Mine, the Mining Plant and all related Infrastructure, and that it is reasonable to conclude that Company has available to it the financial resources necessary to carry out all such activities in keeping with the schedule and other terms of the Feasibility Report, this Agreement, the Mining Law and other applicable Law (such report to specify the bases for its conclusion), provided that to the extent the conclusion of such investment banking firm is based on funding to be provided by or through its shareholders or their related Persons, such shareholders or related Persons must have agreed with the Government to be jointly and severally liable to provide funding to the Company up to 110% of the estimated total development cost as set forth in the Feasibility Report, less such debt financing for which such investment bankers advise that the Company can reasonably be expected to be able to raise on the strength of its own balance sheet.
- c. The Minister shall be deemed to have approved the Feasibility Report unless the Minister has notified the Company in writing of the reasons for

disapproval not later than [120] days after the Ministry receives from the Company a Feasibility Report and related materials substantially complying with the requirements of this Agreement. Following any such disapproval and the resubmission by the Company of an amended, modified or supplemented application or Feasibility Report, the Minister shall be deemed to have approved the Feasibility Report unless within [60] days of such amendment, modification or supplement the Minister has notified the Company in writing of the reasons for disapproval.

- d. Upon the approval of the Feasibility Report, the Minister must grant the Company a Class A Mining License covering the Proposed Production Area that was the subject of the license application filed under Section 5.1, in which case the Proposed Production Area shall become an approved Production Area. Notwithstanding the preceding sentence, a Proposed Production Area may not include land the use of which for Mining operations would violate Section 10.1 of the Mining Law.

5.11 Term of Mining Licenses.

- a. The term of any Mining License granted to the Company under this Agreement (the “Mining Term”) shall commence on the date such license is issued, and shall end on the date requested by the Company (not beyond the end of the original term of this Agreement), unless earlier terminated sooner pursuant to Section 25. The Company is entitled to renewal of renew any Mining License granted under this Agreement for consecutive additional terms not to exceed 25 years each if the Company has complied with all of its payment obligations under this Agreement and under the Revenue Code, and has complied in all material respects with its other obligations under this Agreement and the Mining Law (except for such defaults in the performance by the Company of any of such obligations that have been cured to the reasonable satisfaction of, or waived by, the Inter-Ministerial Concessions Committee established under the Public Procurement And Concessions Act of 2005, as then in effect, or any similar successor body (failing the existence of any such body, by the Minister) on (i) demonstration by the Company that there continues to exist in the Production Area Proved Mineral Reserves of the Minerals covered by such Mineral License in sufficient quantities to support continued mining for at least 80% of the renewal term requested by the Company (assuming no interruptions to production), (ii) delivery by the Company and approval by the Minister in the manner provided in Section 5.10 of an updated Feasibility Report setting forth the Company’s Mining and capital expenditure plan for the extended term and otherwise complying with the requirements of Section 5.4 through Section 5.9, and (iii) satisfaction of

such other conditions as otherwise may be required by applicable Law. The Company may apply for renewal of a Mining License not more than three years and not less than one year prior to the date of expiration of the current Mining License.

- b. The Company may relinquish a Mining License (and be relieved of further obligations under this Agreement) on at least [180] days notice to the Government if (i) on the date of such notice and the date set as the effective date of relinquishment there is no payment default and no other material default unwaived by the Government in the performance by the Company of its obligations under this Agreement, (ii) the Company confirms in such notice its obligation to and willingness to carry out the approved closure management plan applicable to the relinquished license, and (iii) the Minister of Finance and the [Minister][head of the EPA] have reasonably determined that (x) the arrangements made by the Company for funding the performance of its approved closure management plan are sufficient to secure such performance, and (y) as of the date of termination the Company has complied with Section 26 in all material respects.

SECTION 6 – CONSTRUCTION AND OPERATIONS

6.1 Capital Expenditures; Construction.

- a. Upon the issuance to the Company of a Mining License pursuant to Section 5, the Company shall use commercially reasonable efforts to incur capital expenditures and commence and continue construction, acquisition and installation of its Mine, Mining Plant, Infrastructure and related equipment, all in accordance in all material respects with the Development Plan and schedule set forth in the approved Feasibility Report relating to such Mining License. The Company shall cause the construction, acquisition and installation of the Mine, Mining Plant, Infrastructure and equipment provided for in the approved Feasibility Report to be completed in accordance in all material respects with the Development Plan set forth in the approved Feasibility Report, and shall use commercially reasonable efforts in good faith to cause the capacity demonstration test provided for in Section 6.2 to occur within the period of time provided in Section 5.4. The Company may not make material changes in the Development Plan unless it applies for and receives the approval of the Minister to appropriate amendments to the Feasibility Report, which approval may not be unreasonably withheld. Any such application shall be accompanied by the processing fee required by Section 16.1.

- b. The Company must deliver, prior to undertaking the required capacity demonstration set forth in Section 6.2,
- i) a certificate of [*insert name of a internationally recognized independent mining engineering firm acceptable to the Company and the Minister*] to the effect that (x) such firm has reviewed the approved Feasibility Report and the records of the Company pertaining to such construction, acquisition and installation and has inspected the Mine, Mining Plant, Infrastructure and equipment provided for in the approved Feasibility Report (y) based on such review and inspection such firm believes that the construction, acquisition and installation of such Mine, Mining Plant, Infrastructure and equipment has been completed in accordance in all material respects with the designs, plans and specifications set forth in the approved Feasibility Report (except to the extent not scheduled for completion until after the commencement of production of Product(s) in commercial volumes), and
 - ii) a certificate of the chief executive officer of the Company to the effect that the construction, acquisition and installation of the Mine, Mining Plant, Infrastructure and equipment has been completed in accordance in all material respects with the designs, plans and specifications set forth in the approved Feasibility Report (except to the extent any portion thereof is not scheduled for completion until after the commence of production of Product(s) in commercial volumes).
- 6.2 Completion. The Company shall demonstrate the capacity to produce marketable Product(s) of the quality specified in the approved Feasibility Report in an amount equal to at least [80%] of design capacity as specified in the Feasibility Report over a 30-day period within six months of the date scheduled for such capacity demonstration in the approved Feasibility Report (which may not be more than _____ months after the approval of the Feasibility Report and grant of the Class A Mining License), subject to delay on account of force majeure. The Company shall give the Ministry notice of, and the opportunity to have representatives witness, the capacity tests and shall evidence the satisfaction of the required capacity demonstration by the timely delivery to the Minister of a certificate of the engineering firm referred to in Section 6.1 to the effect that the Company has demonstrated the required capacity (setting out the requirements and the time period covered by the demonstration and certifying specifically as to the actual results of the demonstration). The Company shall pay minimum royalties under this Agreement based on the greater of actual Product shipments and assumed Product shipments equal to [80%] of design capacity from the outside day for

the capacity demonstration required by this Section until the date on which such capacity demonstration has been certified as required by this Section.¹⁰

6.3 Mining Term Operations.

- a. The Company shall use commercially reasonable efforts to produce Minerals during the Mining Term from the Measured Mineral Resource identified under Section 5.1(a) at the rates contemplated by the approved Feasibility Report.
- b. The Company may not undertake any activity referred to in Section 6.7(d), 6.7(e) or Section 11.6 of the Mining Law except to the extent expressly provided for in an approved Feasibility Report covered in the Company's EIS and approved in the context of the Company's EMP and, then only within a Production Area or an area in which the Company is otherwise entitled by Law and by agreement with any relevant Landowner to carry on such activities. The Company may not transfer to any Person timber removed from the land pursuant to Section 6.7(d)(4) or 11.6(a) without the consent of the [*insert appropriate Government agency for regulation of the timber trade*]. For the avoidance of doubt, the Company shall not deprive any Person of a constant and reasonable supply of usable water from a previously utilized traditional source without replacing it, nor shall the Company, without the Minister's consent, interfere with any water rights enjoyed by any user under any agreement with the Government made prior to the date of execution of this Agreement. Use of water will be subject to charges as provided in applicable Law or in the absence of applicable law, as provided in Section 15.7.
- c. Before entering upon and utilizing any land, the Company shall make reasonable inquiries as to the existence of, and shall not use, land of long standing socio-cultural or sentimental value except with the consent of the officials authorized by law or by custom to administer or control the affairs of such land and the approval of the Minister.
- d. All mining, processing or treatment of ore by the Company shall be conducted in accordance with International Standards and applicable Law. The Company undertakes to use all reasonable efforts in accordance with such standards and law to optimize the recovery of Minerals from the Mine, provided it is economically and technically feasible to do so, and on

¹⁰ The Government understands that the Company has no obligation to work the mine, once completed, but it must demonstrate that it has invested the amount required to completed the mine and related facilities and have satisfied the capacity test before it is free not to run the mine.

request shall submit evidence to the Minister of compliance with this undertaking.

- e. The Company must cause the Mine and all Mining Plant, Infrastructure and equipment constructed or acquired by it to be maintained throughout the Mining Term in a safe and sound condition in accordance with International Standards.
- f. The Company may not make any material changes in the Mine, Mining Plant or Infrastructure or in the Operations Plan unless it applies for and receives the approval of the Minister to appropriate amendments to the Feasibility Report. Any such application shall be accompanied by the processing fee required by Section 16.1.
- g. The Company shall construct and operate the Mine, the Mining Plant and the Infrastructure in accordance with the Development Plan and Operations Plan set forth in the approved Feasibility Report. The Company may not make material changes in the Development Plan or the Operations Plan unless it applies for and received the approval of the Minister to appropriate amendments to the Feasibility Report. Any such application shall be accompanied by the processing fee required by Section 16.1.
- h. In the event of any loss or damage to the property of the Company, the Company shall promptly proceed to restore such property to the extent necessary to resume Operations as contemplated by the Feasibility Report.
- i. If the Company does not itself operate any portion of the Mine, Mining Plant or Infrastructure but instead contracts its operation to a third party, the Company is responsible to the Government for the compliance of such third party with all requirements of this Agreement applicable to the activities of such contractor as though such operations were performed by the Company. The percentage requirements of Section 11.1(a) shall apply to the operations in the aggregate of the Company and any such contractor(s). Any such contracting must have been disclosed in the approved Feasibility Report.

6.4 Recovery Shortfalls.

- a. If in the opinion of the Government, the Company is failing without good cause to produce Product(s) at the rate indicated in the approved Feasibility Report, it may give notice in writing to the Company. Within three months of the receipt of this notice the Company must (a) commence work to improve its mining method, treatment and processing facilities to

the reasonable satisfaction of the Government, provided that the Company shall in no event be obliged to conduct Mining, processing or treatment activities otherwise than is economically and technically feasible at the time, and (b) submit to the Government evidence that the steps it is taking will lead to compliance with Section 6.3(a) and the second sentence of Section 6.3(d).

- b. If the Government remains unsatisfied with the Company's response to such notice, the Government may commission an independent technical study to determine a fair average recovery rate taking into account the nature of the reserves then being mined, the nature of the Mine, Mining Plant, Infrastructure and other equipment (assuming they are of the design and quality set forth in the Feasibility Report and have been prudently maintained and operated), and the economic and technical feasibility of achieving increased recovery by the Company in accordance with the standards set forth in Section 6.3(a) and the second sentence of Section 6.3(d). Such study shall be carried out by an internationally recognized independent mining engineering consultant appointed by the Government from a list of three such consultants named by the Company on the request of the Government. Each of the Government and the Company may submit information to the consultant. The fees and expenses of such consultant shall be borne by the Company, but unless the consultant concludes the performance of the Company's Production is at least 10% less than the fair average recovery rate referred to in the first sentence of this Section 6.4(b), the Company shall be entitled to offset the fees and expenses of such consultant against royalties subsequently payable by the Company under Section 15.1 of this Agreement.
- c. If following the completion of such study, the Company fails within a reasonable period to achieve the fair average recovery rate indicated by such study, the Government may increase the royalty applicable to such Products under Section 15.1 in proportion to the extent that recovery of such Products by the Company is less than 90% of the fair average rate indicated by such studies. But at no time shall the payment of such increased royalty free the Company from its obligation to satisfy Section 6.3(a) and the second sentence of Section 6.3(d).

6.5 Increasing Liberia-Based Value-Added Production Capacity.

- a. The Company will work towards and assist the Government in achieving the policy of the establishment or expansion of downstream metals processing facilities in Liberia in relation to smelting, refining and/or metals manufacturing and fabricating (to the extent not already carried out by the Company pursuant to an approved Feasibility Report) if, in light of

recognized economic, technical and scientific standards, the Minerals to be mined by the Company are of sufficient tonnage and are Minerals amenable to smelting, refining or metal manufacturing and provided it is economically and practically feasible to do so.

- b. At any time if the Company wishes to establish its own smelting, refining or manufacturing facilities in Liberia, it can do so pursuant to applicable Law, provided that any such smelting, refining or manufacturing facilities shall be deemed additional Mining Plant to be incorporated in an amended Feasibility Study and EIA/EMP satisfying the requirements of Section 5.
- c. The Company shall submit to the Minister copies of any studies relating to the feasibility of establishing in Liberia the facilities as described in Section 6.5(a) prepared by or at the direction of the Company.
- d. In the event that smelting, refining or manufacturing facilities are proposed to be established in Liberia by an entity other than an Affiliate of the Company for the further processing of products of the type produced by the Company, the Company shall agree to make its Product(s) available to that entity for further processing on conditions not less favourable than the conditions that can be obtained by the Company for such products outside of Liberia. This obligation of the Company is subject and subordinate to any smelting, refining, manufacturing or marketing contracts with third parties entered into by the Company prior to the Company's receipt of a request to commit Product(s) to such facilities, but in the case of any such contract, only for such period of time as the Company has no right to terminate (or to decline to renew or extend) such contract.

6.6 Company Reporting Requirements.¹¹

The Company shall submit to the Minister (and the Minister of Finance, in the case of Sections 6.6(d) and (f) the following Production and financial reports, in addition to the financial statements required by Section 17.5:

- a. prior to satisfaction of the capacity demonstration requirement set forth in Section 6.2, a monthly report on the progress of construction of the Mining Plant and Infrastructure provided for in the approved Feasibility Report, indicating progress and expenditures to date, and estimated date of satisfaction of the capacity demonstration requirement;

¹¹ This Section is subject to further refinement.

- b. a monthly statistical report beginning with the month in which commencement of the Production Operating Period occurred, setting forth (i) the amount of material Mined, processed, exported and stocks, (ii) the number and location of the workings on which work was begun during the preceding month, (iii) the number of workmen employed thereon at the end of the month, (iv) a list of the equipment at each working at the end of the month, and (v) a brief description of the work in progress at the end of the month and of the work contemplated during the following month;
- c. a quarterly operating report, beginning with the calendar quarter in which the commencement of the Production Operating Period, concerning the progress of its operations in the Production Areas that are the subject of its Mining License , specifying in full:
 - i) those workings in which mineral/ore is considered to have been found, regardless of whether the deposits are deemed to be commercial or not (together with all data relative to the estimated volumes of the reserves, the kind or kinds of such ore encountered and the analyses thereof), the number and description of workings which have been placed in commercial production and full particulars concerning the disposition of such production, the number of workmen employed on each of such workings, the work in progress at the end of the quarter in question, and the work contemplated during the ensuing quarter; and
 - ii) the work accomplished during the quarter in question with respect to all installations and facilities directly or indirectly related to its exploitation program, together with the work contemplated for the ensuing quarter with respect to the same installations and facilities and indicating both actual and estimated investment in such installations and facilities made, committed or to be committed with respect to such installations and facilities;
- d. a quarterly financial report beginning with the calendar quarter in which the commencement of the Production Operating Period occurred, setting forth the quantity of Minerals produced and shipped from Liberia or transferred to a third party in Liberia during the quarter and the computation of the royalties paid or remaining to be paid on such shipments or transfers;
- e. an annual operating report, beginning with the Financial Year in which the commencement of the Production Operating Period occurred, which shall include:

- i) the number and description of the workings which were in progress at the end of the Financial Year preceding the Financial Year in question (with a showing as to which were then in commercial production), the number and description of workings abandoned during the Financial Year in question; the production of each of the workings, regardless of whether in commercial production or not, with a full description of the kind and quality and analyses of ore produced from each working, and the number of workings on which activities are continuing at the end of the Financial Year in question, but which have not gone into commercial production;
 - ii) the total volume of ores, kind-by-kind, broken down into volumes Mined, volumes transported from the Mines and their corresponding destination, volumes stockpiled at the Mines or elsewhere in Liberia, volumes sold or committed for export (whether actually shipped from Liberia or not), volumes actually shipped from Liberia (with full details as to purchaser, destination and terms of sale), and if known to the Company after diligent inquiry volumes refined, processed and or manufactured within Liberia with full specifications as to the intermediate products, by-products, or final products, out turned within Liberia (with full showing as to the disposition of such intermediate products, by-products or final products and of the terms on which they were disposed);
 - iii) work accomplished and work in progress at the end of the year in question with respect to all of the installations and facilities related to the production program, together with a full description of all work programmed for the ensuing Financial Year with respect to such installations and facilities including a detailed report of all investment actually made or committed during the year in question and all investment committed for the ensuing Financial Year or Financial Years; and
 - iv) a report on all other Production and activities for that Financial Year; and
- f. an annual financial report, beginning with the Financial Year in which the commencement of the Production Operating Period occurred, setting forth the quantity of Minerals produced and shipped from Liberia or transferred to a third party in Liberia during the calendar year and the computation of the royalties paid or remaining to be paid on such shipments or transfers.

- The Company shall also provide such additional information as is necessary to keep the Government fully informed of all operations and activities, wherever conducted in Liberia, and of its plans in respect thereof. All monthly and quarterly reports required under this Section 6.6 shall be submitted within 30 days of the end of the month or quarter in question, and all annual reports required under this Section 6.6 shall be submitted within 60 days of the end of the Financial Year in question. Each report referred to in Sections 6.6(a), 6.6(b), 6.6(c) and 6.6(e) shall be certified as true and correct by the chief executive officer and the chief operating officer of the Company. Each report referred to in Sections 6.6(d) and 6.6(f) shall be certified as true and correct by the chief executive officer and the chief financial officer of the Company.
- 6.7 Access to Books and Records. The Company shall maintain at its principal office in Liberia, or at such other offices as the Minister may approve, copies of all maps, geological, mining or other earth science reports and mineral analyses (together with all field data which support such reports or data), production records, marketing and financial reports and other data obtained or compiled by the Company as a result of exploration and/or mining Operations. The Government shall have full access to all such information, data and material, on at least two business day's prior written notice to the Company, where "business day" means any day other than a Saturday or Sunday or a holiday declared by the Government.
- 6.8 Inspection. The Ministry and other agencies of the Government having jurisdictions (such as the EPA and any governmental entity at the time responsible for employee safety and welfare) shall have the right to monitor the Company's Operations from time to time and may, without prior notice but at reasonable times of day and without materially interfering with the normal conduct of the Company's business, visit and inspect any of the facilities and Operations of the Company in Liberia.
- 6.9 Insurance. At all times during the Mining Term (including during the construction period) the Company will maintain with financially sound and reputable insurers, insurance with respect to its properties against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of entities of established reputations engaged in the same or a similar business. Such insurance shall include protection against loss or damage to property of the Company, third-party liability insurance and to the extent commercially available on reasonable terms, business interruption insurance. The Company must provide the Government at least annually with evidence as to the existence of such insurance.

SECTION 7 – LAND AND FACILITIES

- 7.1 Surface Rights. Subject to Sections 6.3(b) and (c), the Company shall have the right, subject to the requirements of applicable Law, to enter upon and utilize land included in a Production Area for purposes of and incidental to Operations; subject to the payment of reasonable compensation to the Landowners or Occupants of Land so utilized for diminution in the value of such land or the products thereof attributable to the Company's Operations.
- 7.2 Limitation on Exploration and Production. This Agreement may not be construed to permit the Company to explore for Minerals outside of the Exploration Area or, following the end of the Exploration period under this Agreement, other than in a Proposed or actual Production Area, or to produce Minerals from outside an approved Production Area.
- 7.3 Acquisition of Land Use Rights Outside a Production Area.
- a. To the extent otherwise permitted by applicable Law and relevant Landowners or Occupants of Land, the Company is permitted to acquire surface land use rights sufficient to entitle it to construct, install and operate Mining Plant or Infrastructure provided for in an approved Feasibility Report on land located outside of a production Area,, and the Government will make available to the Company for such purposes land owned by the Government and not otherwise required for the achievement of other Government programs. If the Government cannot make available to the Company surface rights in land controlled by it for such purposes and the Company is unable to acquire sufficient surface land use rights from relevant Landowners or Occupants of land on reasonable terms and conditions, the Company may apply to the Government for assistance in acquiring sufficient rights for such purposes. If no other surface rights is reasonably available to the Company for such purposes the Government will use its powers of eminent domain to obtain such rights from an unwilling Landowner or Occupant of Land.
 - b. Surface rights made available by the Government from its own stock of land shall be made available without cost to the Company on the condition that the Company may not utilize such surface rights for any commercial purpose other than the production and sale of Product(s) and the conduct of Operations permitted or required under this Agreement.
 - c. All costs incurred by the Company or by the Government at the request of the Company in connection with the acquisition by the Company from parties other than the Government of rights in land sufficient to permit it to acquire, construct, install and operate Mining Plant or Infrastructure

provided for in an approved Feasibility Report are for the account of the Company.

SECTION 8 – COMMUNITY RESOURCES

- 8.1 Community Responsibility. It is the policy of the Government and the obligation of the Company that Operations shall be carried out by the Company in a manner that is consistent with the continuing economic and social viability of centres of population that have formed and which may form as a result of Operations during the term of this Agreement. Upon request of the Government at any time, but without limitation of the obligations of the Company under the SAP and the RAP approved as part of the Feasibility Report to individuals and communities directly impacted by Operations, the Company shall consult with the Government and the local communities affected by the Company's operations to mutually establish plans and programs for the implementation of this objective, and thereafter the Company shall in good faith cooperate with the Government with regard to its efforts concerning the realization of such plans and programs.
- 8.2 Community Funding Obligation.
- a. To facilitate such continuing community economic and social viability, the Company shall provide an annual social contribution determined as set forth below which shall be managed and disbursed for the benefit of Liberian communities in the counties affected by its Operations.
 - b. The social contribution is initially an annual amount equal to [__%] of the Company's estimated capital expenditure through the commencement of the Production Operating Period, as set forth in the initial approved Feasibility Report.¹² Beginning with the second complete Financial Year following the Financial Year in which the capacity demonstration requirement set forth in Section 6.2 is satisfied and for each following Financial Year the social contribution is an annual amount equal to the greater of the amount set forth in the prior sentence, escalated in the manner provided in Section ___ or [__%] of the Company's taxable income for the prior Financial Year. The annual social contribution shall be paid in semi-annual instalments in arrears, on the last day of the second and fourth quarters of each Financial Year, commencing on the first such day that is more than six months after the issuance of a Mining License to the Company. Each such payment shall be made to the Minister of Finance for deposit in the general revenue account.

¹² The formula set forth in this Section is subject to adjustment.

- c. A development committee shall be appointed by or selected in accordance with procedures established by _____ from time to time to obtain significant participation of non-Governmental representatives of the affected communities. Such committee shall develop an annual budget in consultation with _____ and the Company based on the payments by the Company pursuant to Section 8.2(b) (and any similar payments made by other Class A Mining License holders operating in the same area (as determined by the Minister)), and the Minister of Finance shall make disbursements from the general revenue account in which such funds are deposited in accordance with such budget and the instructions of the committee. The budget and disbursements shall be matters of public record and shall be subject to the same audit procedures provided for expenditures by the Government and as may be further provided by applicable Law.

SECTION 9 – PUBLIC HEALTH AND SAFETY

- 9.1 Safety Procedures and Notifications. In connection with Operations, the Company shall install, maintain and use such modern health and safety devices, work gears and equipment, and shall practice such modern health and safety procedures and precautions (including regular safety training instruction for its employees) as are in accordance with applicable Law and International Standards. The Company shall notify the Government promptly of any death of or serious injury to any employee of the Company or any of its contractors that occurs as a result of Operations. For the purposes of this Section 9, a serious injury means an injury that is likely to cause the injured Person to lose 3 or more working days.
- 9.2 Security.
- a. Following the grant to the Company of a Class A Mining License, the Company may, directly or by contract with a responsible provider of security services, establish, manage and maintain its own asset and employee security and protection service for the purpose of maintaining law, order and security in each Production Area and in the immediate vicinity of other locations at which Company has or maintains property and assets through its own security force and to do so always being subject to applicable Law (including all Laws relating to apprehension and detention and human rights) and the “Voluntary Principles on Security and Human Rights” (as of May 2008 located at: <http://www.voluntaryprinciples.org>). Those members of the Company’s (or such contractor’s) security force certified by name by the Company to the Ministry of Justice as being literate, as having have received at least [___] weeks of full time training in police and law enforcement procedures given by an outside contractor satisfactory to the Ministry of

Justice and as having been provided with operating manuals approved by the Ministry of Justice shall have enforcement powers within the areas described in the preceding sentence, always being subject to applicable Law.

- b. The Company's security force will have (i) the power of apprehension and detention in accordance with applicable Law, and (ii) the power, subject to applicable Law, to search and exclude or evict unauthorized Persons from the areas described in Section 9.2(a). If any person is detained by the Company's security force, the appropriate Government authority must be notified immediately, and the person detained must be handed over to such authority as soon as practical and in no case later than the earlier of 24 hours from the time of detention and when requested by Liberian National Police. The Company's security force may not use unreasonable force in detaining, excluding or evicting persons, whatever the nature of their intrusion, and any detention facilities must be adequately ventilated, reasonably clean and with access to sanitary toilet facilities.
 - c. The Company must coordinate the activities of the Company security force with the Government's police and law enforcement authorities and report monthly to the Minister of Justice (with a copy to the Minister) on the activities of the Company security force, including numbers of persons detained and excluded or evicted, the reason for, the place of and the period of any detention, and the disposition of each detained person.
 - d. The Company is fully responsible for the compliance of the members of its security force, whether its employees or the employees of a contractor, with all requirements of this Section and for all consequences of any breach of those requirements.
- 9.3 Employee Housing. The Company shall provide housing for its employees and shall ensure that all such housing shall conform to the minimum standards set forth in Schedule 9.3, such other standards as may be required by applicable Law and the applicable requirements of Sections 9.4 and 9.5.
- 9.4 Sanitation. The Company shall construct bathroom facilities with a minimum shower and toilet for each unit of Company-provided housing units. The Company shall also provide clean and accessible toilet (and, where the nature of the work makes it appropriate shower) facilities at its workplaces.
- 9.5 Water Supply; Clean and Safe Drinking Water. The Company shall provide clean and safe pipe borne water system in all Company-provided housing units. In addition, the Company shall construct hand pumps or other sources of water at its workplaces that ensure a convenient and uninterrupted supply of clean and safe

drinking water. All drinking water shall meet or exceed the approved Government standards for drinking water quality.

SECTION 10 – MEDICAL CARE

Upon the commencement of construction of Mining Plant and Infrastructure, the Company shall construct or cause to be constructed, and during the period that a Mining License is in effect under this Agreement the Company shall maintain and operate or cause to be operated, health facilities to ensure the availability in each Production Area of medical treatment, care and attention in accordance with applicable Law, and such other improved standards as may be agreed between the parties. Such treatment, care and attention shall be free of charge for its employees and their resident spouses and dependents. Government officials and/or employees assigned to and regularly employed in the Production Area in an official capacity, and resident in or adjacent to the Production Area, and their resident spouses and dependants, shall, during the time of such assignment, employment and residence, also be entitled to receive medical care on the same basis as Company employees. The Company shall further provide reasonable access to such health facilities to members of local communities for ambulatory or emergency care. It is understood that “reasonable access” may include the imposition of fees that are reasonable in light of the economic level of such communities, it being understood that such fees are unlikely to cover the cost of service. .

SECTION 11 – EMPLOYMENT, TRAINING AND FOUNDATION

11.1 Employment.

- a. Employment practices of the Company must conform to applicable labor practices Law and other applicable Law. The Company may not hire individuals who are not citizens of Liberia citizens for unskilled labour positions either prior to or after the grant to the Company of a Mining License under this Agreement. Following the grant to the Company of a Mining License under this Agreement, the Company must employ and give preference to the employment of qualified citizens of Liberia for financial, accounting, technical, administrative, supervisory, managerial and executive positions and other skilled positions as and when they become available, it being the objective of the parties as soon as is practicable that the Operations of the Company under this Agreement should be conducted and managed primarily by citizens of Liberia. In furtherance of the Company’s obligations under the preceding sentence, the parties shall agree prior to the approval of the Feasibility Report on progressive implementation of an employment schedule so as to cause citizens of Liberia to hold at least [30%] of all management positions including [30%] of its ten most senior positions within five years of the initial grant to the Company of a Mining License under this Agreement,

and at least [70%] of all management positions including [70%] of its ten most senior positions within ten years of such Date. Appointment of a citizen of Liberia to a particular position does not preclude subsequent employment of a citizen of another country in such position as long as the percentage requirements are otherwise met.

- b. Subject to the above, the Company may at all times choose its employees and shall be free to employ such Persons who are not nationals of Liberia as are required for the efficient conduct of Operations in Liberia. Where applicable Law stipulates minimum technical qualifications and/ or minimum levels of competence for any technical post, the Government undertakes to recognise equivalent technical qualifications and/ or certificates of competency held by Persons who are not nationals of Liberia, provided that such qualifications and/ or certificates of competency shall have been issued by a recognised institution or statutory authority in any other country having a substantial mining industry.
- 11.2 Training of Liberians. Following the grant to the Company of a Mining License under this Agreement, the Company must provide on a continuing basis for the training of citizens of Liberia in order to qualify them for financial, accounting, supervisory, managerial, executive positions and other skilled positions and as required by the Company's Operations provide on-the-job training, operate vocational training facilities, and utilize whatever other measures are necessary and reasonable to achieve the objectives stated in Section 11.1 (including, subject to operational needs and economic conditions, scholarships for qualified employees who are citizens of Liberia to pursue relevant advanced studies abroad).
- 11.3 General Education Funding. Following the grant to the Company of a Mining License under this Agreement, the Company shall (a) provide through a Company administered program a total of [\$ _____] annually in scholarships, escalated one quarter of such amount to be reserved for students who are permanent residents of the county or counties in which the Company's Production Areas are located, (b) provide a [\$ _____] contribution towards the creation and operation of a Mining and Geology Institute at the University of Liberia for students majoring in mining engineering and geology, and (c) promote graduate training programs in Geology and Mining Engineering or other related disciplines at the University of Liberia or such other state operated higher education institutions and facilitate graduate training of and sponsor exchange programs for said students in universities in other parts of the world (it being understood that such programs should be structured to provide reasonable incentive for such employees to return to Liberia on completion of their training). The amount referred to in

clause (b) shall be paid to the general revenue account and earmarked for the University of Liberia.

SECTION 12 – USE OF LIBERIAN GOODS AND SERVICES

When purchasing goods and services related to Company's Operations, the Company must, and must cause its major contractors to, give preference to the maximum extent possible to materials and goods produced in Liberia and services provided by citizens[nationals] resident in Liberia or entities incorporated or formed in Liberia where citizens of Liberia resident in Liberia are entitled to receive 60% or more of all profits from such entities, provided that such goods and services are at least comparable in quality, terms, delivery, service, quantity and price to goods and services obtainable from other sources. Subject to the foregoing, the Company and its major contractors may freely contract with any Person. The Company must report to the Minister within 60 days following the end of each Financial Year on the extent to which the Company and its major contractors acquired during such year materials, goods and services from the preferred sources described in the first sentence of this Section.

SECTION 13 – ENVIRONMENTAL PROTECTION AND MANAGEMENT

- 13.1 The Company's Duty. The environmental responsibilities of the Company during Exploration Operations are as set forth in the Exploration Regulations. Following the grant of a Class A Mining License to the Company, the Company must conduct its Operations in accordance with Sections 8.1 through 8.3 of the Mining Law, other applicable environmental Law, International Standards, the approved EMP and this Agreement. The Company must in any event take appropriate preventive measures to protect all streams and water bodies within or bordering Liberia, all dry land surfaces, and the atmosphere from pollution, contamination or damage resulting from Operations. If the Company's Operations violate any requirement referred to in the two previous sentences or otherwise damage the environment, the Company must proceed diligently to restore the environment as much as possible to its original and natural state (or to remediate the damage where restoration is impractical) and must take appropriate preventive measures to avoid further damage to the environment.
- 13.2 Annual Environmental Audit. The Company must deliver to the Minister, within 60 days after (a) each anniversary of the date of issue to it of a Mining License and (b) the last day of the Mining Term if it does not end on an anniversary of such date of issue, an environmental audit and assessment of the Production Areas under such license plus all areas outside of the Production Areas in which the Company conducts Operations. . The audit must be performed or supervised by an environmental consultant who is not a regular employee of the Company or an Affiliate of the Company and who is a registered engineer with at least 10 years of experience in making environmental compliance assessments and audits in the

- mining industry. The audit and assessment are for the purpose of determining whether the Company's Operations since the beginning of the current year of the Mining Term are being conducted in conformity with applicable environmental Law and the other requirements of this Agreement and the Company's approved EMP. Such audit and assessment will also include an assessment of the status of the Company's provision for restoration or remediation of the Production Areas and such other areas in which the Company conducts or has conducted Operations and its conformity with the requirements of the approved EMP. The audit and assessment must also include a full accounting for all changes during such year in the balance of any account established pursuant to the approved EMP to fund such restoration and reclamation. If any such audit and assessment for any year identifies any failure to comply with the requirements of Section 13.1 or the EMP, the Company must promptly remedy such situation at its own expense.
- 13.3 Government Environmental Inspections. The Minister or the EPA may conduct periodic inspections of Exploration Areas, Production Areas and other areas in which the Company conducts Operations at its own expense (but the failure of either to make any such inspection or ascertain in any such inspection the existence of any breach by the Company of its obligations under this Section 13 or the EMP shall not affect the ability of the Minister or the EPA to require full compliance by the Company with such obligations).
- 13.4 Updating the EIA and the EMP. The Company shall periodically (not less frequently than every four years, or as may otherwise be required by applicable Law) update the EIA and the EMP to reflect the actual status of the Company's Operations at the time, updated risk assessments, any additional requirements of applicable Law generally applicable with respect to mine closure, and updated estimates of the cost of carrying out the closure management plan. The Company shall also update the EIA and the EMP as a condition to making any material changes in Operations, Mining Plant or Infrastructure. The updated EIA and EMP (including an updated closure management plan and budget) are to be submitted to and are subject to the review and approval of the EPA in accordance with then-applicable environmental Law. As a condition of approval, the Minister or the EPA may require additional financial assurances or security including financial deposit if it determines that such action is required to assure adequate and secure funding of estimated closure costs. The Company shall in any event comply with its undertakings contained in the most recently approved EIA and EMP.
- 13.5 Scope of Duty to Cease Operations during Remediation. Any environmental remediation required by applicable Law or this Agreement to occur during the Mining Term, shall not require the Company to cease Operations during the restoration or remediation period (except to the extent necessary to correct a

violation of applicable Law or to carry out such restoration or remediation) so long as the Company is proceeding diligently to undertake the required restoration or remediation and has ceased any activities that constituted a violation of applicable Law or a breach of the obligations of the Company under Section 13.1. This Section does not limit the right of the Minister to suspend Operations under Section 24 when Operations are causing environmental damage.

SECTION 14 – TAXATION

- 14.1 Law of General Applicability. The Company shall pay all Taxes and Duties pursuant to applicable Law except as may otherwise be provided in this Agreement.
- 14.2 Fiscal Regime. Exhibit 2 to this Agreement sets forth the Government's proposed fiscal regime for mining.¹³ This regime is set forth as proposed amendments to the Revenue Code and shall be read in conjunction with the Revenue Code as if such proposed amendments were in force for the purpose of determining the liabilities of the Company under the Revenue Code.

SECTION 15 – ROYALTIES AND RESOURCE AREA FEES

- 15.1 Royalties. Except as may be provided by amendment to the Revenue Code subsequent to the Effective Date, the Company shall no later than three business days following the date of (i) shipment (in the case of exports by the Company); or (ii) of sale or other disposition (whichever is earlier), in the case of transactions in which the Company transfers title to Product(s) before the Product(s) leave Liberia, pay the Government a royalty for Product(s) in that shipment (or subject to such sale or other disposition) at the rate set forth in the Revenue Code (assuming the Revenue Code had been amended effective on the Effective Date as set forth in Exhibit 2) and to the extent a rate for a Product has not been so set forth, at a rate of [three percent] ad valorem. Such Product(s) shall be valued in accordance with the Revenue Code (assuming the Revenue Code had been amended effective on the Effective Date as set forth in Exhibit 2) and the applicable royalty determined as set forth in Schedule 15.2 . Each payment shall be made to the general revenue account of the Government in Dollars, accompanied by a statement from the Company showing in such reasonable detail as the Ministry of Finance may require the computation of the royalties due.
- 15.2 Agreement on Deemed Value Determination. As contemplated by the provisions of Exhibit 2, the parties have agreed on the methodology (including indices to be

¹³ Exhibit 2 will be the current version of Annex B to the Bong tender addendum of April, 2008.

- consulted) for establishing the deemed value at the time of shipment under international standards of the Product(s) to be produced by the Company, against which deemed value the royalty rate referred to in Section 15.1 shall be applied. This agreed methodology is set forth in Schedule 15.2. If the methodology and/or indices set forth in such Schedule are no longer representative of arms-length prices for export sales, the parties will agree upon a new methodology and/or indices for determining the deemed value of the Product(s).
- 15.3 Royalties on Minerals Purchased by the Company for Sale or Processing and Sale. Unless otherwise provided in generally applicable regulations issued by the Minister of Finance, royalties will not be payable on purchases of minerals and materials from other parties for processing, smelting, refining or manufacturing by the Company locally. The Company shall maintain such records as the Minister of Finance may require with respect to such purchases.
- 15.4 Resource Area Fees. The Company shall pay an annual Resource Area Fee of US\$0.50 per hectare for land in the Exploration Area. The Company shall pay an annual Resource Payment Fee for land in a Production Area of US\$12.50 per hectare from the date the Company designates such area as a Proposed Production Area to but not including the tenth anniversary of such date, and of US\$25.00 per hectare from the tenth anniversary of such date through the end of the term of the Mining License, as such term may from time to time be extended as contemplated by Section 5.8.
- 15.5 Periodic Adjustment of Resource Area Fees. The Dollar amounts determined pursuant to the preceding Section shall be adjusted, as of July 1, 2013 and every fifth July 1 thereafter, in proportion to the change in value of the GDP Implicit Price Deflator from the fourth quarter of 2007 to the fourth quarter of the preceding calendar year. If such index is no longer published, the parties shall agree on adjustments that will substantially preserve the economic impact and timing of this periodic adjustment. The Government's determination of such change in value shall be final, absent manifest error.
- 15.6 Due Date of Resource Area Fees. Resource Area Fees under this agreement are due and payable annually in advance on each July 1, except that (a) the initial payment due on account of the Exploration Area shall cover the period from the Approval Date to the next following June 30, shall be reduced proportionately to reflect the portion of a year covered by such payment, and shall be due and payable 10 days after the date on which the Company receives notice of such issuance, and (b) the initial payment due on account of a Production Area shall cover the period from the date of designation of a Proposed Production Area to the next following June 30, shall be reduced proportionately to reflect the portion of a year covered by such payment, and shall be due and payable within 10 days of the date on which the Company designated the Proposed Production Area. The

Company is not entitled to a refund of any amounts paid under Sections 15.4 and 15.5 if its rights in the Exploration Area or any Production Area terminate other than on a June 30, or if the Company withdraws its application for a Mining License with respect to all Proposed Production Area or withdraws any Proposed Production Area from its application or is finally denied a Mining License for such areas.

- 15.7 Water Use Levy. The Company shall be liable to the payment of a water use levy to be negotiated between the parties in light of the requirements of the Company as set forth in the Feasibility Report submitted pursuant to Section 5.4 and prior to the grant of a Mining License under Section 5.

SECTION 16 – OTHER PAYMENTS TO THE GOVERNMENT

- 16.1 Processing and Delay Fees.¹⁴ Until replaced by Regulations equally applicable to all Persons seeking or holding Exploration Licenses or Class A Mining Licenses, as the case may be (except that the fees for filing applications for Class A Mining Licenses may be a function of the planned or actual capital investment), the following processing fees apply under this Agreement:

- a. The processing fee for the filing of a notice designating one or more Proposed Production Areas and the accompanying Mining License application is US\$ _____ per Proposed Production Area .
- b. The processing fee for the filing of a Feasibility Report is US\$ _____.
- c. The fee for a six months extension of the time to designate Proposed Production Areas under Section 5.1(1) is an amount equal to [__%] of the required annual Exploration budget for the Exploration Area under the Exploration Regulations for the year in which such fee is paid.¹⁵
- d. The fee for a six months extension of the time to file a Feasibility Report under Section 5.1(e) is the greater of \$500,000 and one-fourth of one percent (0.25%) of the capital expenditure budget set forth in the filed Feasibility Report, but not more than \$2,000,000. The Company shall pay \$500,000 when applying for the extension, and the balance, if any, on the filling of the Feasibility Report.
- e. The fee for a postponement of development under Section 5.2 is US\$500,000 per year, payable in advance within 15 days after the

¹⁴ The concept of a series of fees comes from the draft Exploration Regulations.

¹⁵ This subparagraph (c) and subparagraphs (d) and (e) are under review.

commencement of each year of the postponement period, plus, on the filing of the Feasibility Report, an amount equal to one-tenth of one percent of the capital expenditure budget set forth in the filed Feasibility Report for each year or portion of a year between the commencement of the delay period and the date the Company files a Feasibility Report substantially complying with the requirements of Section 5.4 is filed.

- f. The processing fee for an application to modify or amend a Feasibility Report is US\$_____ .
 - g. The processing fee in connection with a consent required under Section 23 is US\$_____.
- 16.2 ECOWAS Trade Levy. The Company shall be subject to the ECOWAS Trade Levy on all goods from non-ECOWAS states which it imports into Liberia at the rate established by applicable Law.
- 16.3 Mineral Development and Research Fund. On the Approval Date and pursuant to Section 18.4 of the Mining Law, the Company shall make a one-time payment to the Government of US\$50,000. On the grant of a Class A Mining License to the Company, the Company shall make an additional payment to the Government pursuant to Section 18.4 of the Mining Law equal to one-twentieth of one percent (0.05%) of the capital expenditure budget set forth in the approved Feasibility Report. Such amounts shall be paid into the general account of the Minister of Finance for the Mineral Development Fund.
- 16.4 Other Support. The Company shall also make an annual contribution equal to one fiftieth of one percent (0.02%) of the capital expenditure budget set forth in the approved Feasibility Report for the Term of this Agreement, with the first annual payment due upon the on the July 1 next following the issuance to the Company of a Mining License under Section 5. Such amounts shall be paid into the general revenue account of the Government for the Scientific Research Fund. Such amount shall be adjusted for inflation in accordance with the GDP Implicit Price Deflator when and in the manner provided in Section 15.5.

SECTION 17 – FINANCIAL REPORTING AND CURRENCY

- 17.1 Accounting. All of the Company's accounting under this Agreement shall be in Dollars and all amounts paid or received, and obligations incurred or transactions carried out, in currency that is Liberian Currency or in any other currency other than Dollars shall be converted to Dollars in accordance with and pursuant to generally accepted accounting principles based upon the Prevailing Market Rate of Exchange of Dollars and any such currency at the date of the applicable transaction.

- 17.2 Exchange Control. The Company shall at all times have the right, without restriction, directly or indirectly, to obtain, hold, deal with and disburse funds in such manner, currencies and places as it chooses. Without prejudice to the generality of the foregoing, the Company shall have the unrestricted and unencumbered right to sell and receive payment for Product(s) in any currency, including the currency in which the Product(s) are sold, and all proceeds therefrom may be deposited in bank accounts outside of Liberia and held there or remitted therefrom to anywhere in the world, in any currency. Notwithstanding the foregoing, the Company shall maintain at least one account with a bank or financial institution in Liberia . The Company shall also have the right to acquire from, and sell to, any Person currency that is legal tender in Liberia at the Prevailing Market Rate of Exchange. Additionally, any and all transactions between the Government and the Company dealing with or referring to currency that is legal tender in the Liberia will be converted to Dollars at the Prevailing Market Rate of Exchange on the date of such transaction. Currency gains or losses for purposes of Section 14 shall be determined by reference to the Prevailing Market Rate of Exchange.
- 17.3 Currency of Payment. Except as otherwise expressly provided in this Agreement, payment of the Company's obligations to the Government under this Agreement, including obligations for Taxes and Duties payable as a consequence of the Company's Operations, shall be in Dollars. Any obligation originally stated in Liberian Currency shall be converted to Dollars at the Prevailing Market Rate of Exchange. The Company shall make payments of sums it collects on behalf of the Government, including, but not limited to, taxes withheld from the salaries or wages of its employees, and any other sums payable to other Persons from which a portion is required by applicable Law to be withheld or retained by it on behalf of the Government, in the currency in which such salaries or wages or such other sums are paid. For purposes of determining compliance by the Company of required payments in Liberian Currency under any applicable Law (including without limitation any Law determining minimum wages) the amount of any payment by the Company made in Dollars shall be converted to Liberian Currency at the Prevailing Market Rate of Exchange as of the date of payment.
- 17.4 Right to Remit and Receive Payments. The Company shall have the right to remit and receive in Dollars all payments of dividends, interest, finance charges, principal, management fees and other properly payable items arising from, as a result of, or related to Operations. All remittances and receipts of such payments shall be free of any penalties in connection with such remittances or receipts, any required total or partial surrender, exchange or confiscation of Dollars received or to be remitted, and any other direct or indirect restriction on such remittances or receipts.

17.5 Financial Statements and Audit.

- a. The Company shall deliver to the Government within 90 days after the end of each Financial Year of the Company, or within such shorter period as may then be required by applicable Law:
 - i) a balance sheet of the Company as at the end of such year, and
 - ii) statements of income, changes in shareholders' equity and cash flows of the Company for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, and certified by the chief financial officer of the Company as having been prepared in accordance with generally accepted accounting principles in the United States ("GAAP") or International Financial Reporting Standards ("IFRS"), consistently applied except as otherwise noted.

- b. Such financial statements shall be accompanied by an opinion thereon of independent public accountants of recognized international standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP or IFRS, consistently applied except as otherwise noted, that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances.
- c. Each year's financial statements shall be accompanied by a certificate of the senior financial officer of the Company to the effect that during the Financial Year then ended the Company was in compliance with (1) Section 20.3, (2) Section 20.4 (setting forth in such certificate the value of the ratio provided for in such Section as at the end of each quarter of such Financial Year) and (3) Section 20.7 (or setting forth the extent of non-compliance at such time (if any) and the actions taken and being taken to remedy such non-compliance), and has made all deposits or contributions (if any) required by the closure management component of the Company's approved EMP.
- d. Each year's financial statements shall be accompanied by a listing of all transactions with Affiliates of the Company or any of its shareholders reflected in such financial statements, identifying the amount of the transaction, the Affiliate involved, the shareholder of which such entity is

an Affiliate, and the nature of the transaction, certified by the chief financial officer of the Company as being correct and complete. Transactions of the same type with the same entity that are individually immaterial may be aggregated rather than separately listed.

- e. If the Minister or the Government determines that it is necessary for it to cause an independent review or audit the Company's own records or books or those of any Affiliate outside of Liberia, the Company will cooperate to provide the Government with copies of the information, books and records needed to complete the review or audit. If the Government nonetheless deems it necessary for any part of such audit to be performed outside of Liberia, the cost of associated travel will be borne by the Government except to the extent that the Company is unable to provide the information, books or records needed to complete the audit in Liberia, in which case the Company shall bear both the reasonable travel cost of a reasonable number of auditors selected by the Government to travel to the place where such information, books and records may be obtained and their accommodation costs for a reasonable amount of time necessary to complete their review.

SECTION 18 – INCIDENTAL RIGHTS AND OTHER MATTERS

- 18.1 Imports. The Company may, in accordance with applicable Law, import and use for Operations, and subsequently export, any and all machinery, equipment, vehicles, supplies, consumable items, fuels, petroleum products, explosives and any other thing whatsoever reasonably required with respect to Operations. The Company must at all times comply with applicable Law regarding the safe use, sale, disposal and security of fuels, petroleum products, and explosives.
- 18.2 Taxes on Resale of Imported Items. The Company may sell, in Liberia, all imported items that are no longer needed for Operations, except that the Company may not sell explosives, gasoline or diesel within Liberia to third parties without the Government's consent. If such imported items were exempted in all or part from Taxes and Duties on import into Liberia, then the Company must upon their sale pay to the Government those Taxes and Duties that would otherwise have been payable under applicable Law on such items and fulfil all formalities required by Law in connection with such sales.
- 18.3 Right to Export Minerals and Other Rights. The Company (i) may, directly or through appropriate contractual arrangements, market and sell (at arms-length international market and competitive prices) the Product(s) obtained from Mining Operations during the Term of the relevant Mining License to any Person in any country or state, subject in all cases to applicable Law and the provisions of this Agreement, and (ii) subject to its obligations to pay royalty, Taxes and Duties and

such other payments to the Government under this Agreement, may receive all income and proceeds from such sales and deposit them in banks within Liberia and outside of Liberia of its own choosing (provided that the approval of the Central Bank of Liberia for the choice of external bank, if required by applicable Law, shall be obtained in accordance with applicable Law).

- 18.4 Dealership Licenses. The Company is not entitled to acquire a dealership license under the Mining Law. This restriction does not bar an Affiliate of the Company from acquiring such a license if the Affiliate does not purchase Minerals or Products from the Company.

SECTION 19 – ADDITIONAL UNDERTAKINGS OF THE GOVERNMENT

- 19.1 Access to Information. The Company is entitled to obtain access to all geological or other information relating to the Exploration Area that is owned by or subject to the control of the Government, except for information required to be kept confidential pursuant to the terms of Exploration Licenses or other specific arrangements. The Government agrees to provide such information within a reasonable time after receipt of notice of a request for such information. The costs charged by the Government shall not exceed the rates generally charged other holders of Exploration Licenses or Class A Mining Licenses, as the case may be, for similar information in similar quantities.
- 19.2 Provision of Documents. Subject to Section 11.1 and except to the extent any such Person may be disqualified by applicable Law, the Government shall promptly furnish to each officer, director and employee of the Company who is not a citizen of Liberia, and to the spouse and minor children of each such Person, all documents and visas necessary to enable such Person to enter and to leave, or travel within, the territory of Liberia.
- 19.3 Electricity Generation and Transmission.¹⁶ The Company is entitled to provide in its Feasibility Report for the installation of electric generating capacity to meet its reasonable needs for conducting Operations in Liberia and to construct necessary Infrastructure in connection with all the foregoing, provided that any proposed installation of hydropower capacity must have the prior approval of the Minister and may not be approved unless sized to utilize the optimal energy potential of the hydropower resources involved, as reasonably determined by the Minister after consultation with internationally recognized hydropower consultants. To the extent power is solely for the Company's own use, (including use in housing constructed by the Company for its employees and in community facilities constructed or funded by the Company) the Company shall have no liability for

¹⁶ This section is still under consideration.

any franchise, license or similar fees otherwise imposed by applicable Law on or in connection with the generation, transmission or sale of electricity. The preceding sentence shall be also be applicable to power sold to third parties if sold at prices not exceeding the price that covers the Company's generating and transmission running costs (averaged over all generation) plus a return of [12% per annum on the marginal cost of the installed installation and transmission capacity in excess of the normal maximum requirements of the Company (including use in housing constructed by the Company for its employees and in community facilities constructed or funded by the Company)], provided that if the Government commits to purchase all available excess electricity at the price provided in this sentence for a period of at least [_____] years , the Company shall generate and sell such electricity to the Government and not to third parties for the term of such commitment. In all cases, the Company will be subject to the requirements of any applicable Law regulating the manner in which any such facilities shall be constructed and operated for the safety of the public. The Minister may impose by regulation such reporting and audit requirements as are reasonable for the fair determination of running and capital costs required by the second preceding sentence.

19.4 Communications Facilities, Systems and Frequencies. Provided that the Company complies with applicable Law, the Government will use its reasonable efforts to facilitate (a) the receipt by the Company from the Government of such rights, licenses, registrations, permits and other authorisations as may be required by applicable Law in connection with the possession, use, importation or purchase of such communications systems as are necessary for internal communications, including radio, telecommunications, electronic mail systems, satellite networks, cellular systems, microwave devices and other communications devices and systems, and (b) to the extent available from the Government, the obtaining by the Company of the right to utilize, at generally available rates, of a number reasonably adequate for Operations of broadcast and communications frequencies for both domestic and international use.

19.5 Expropriation. Subject to Article 24 of the Constitution of Liberia, the Government undertakes not to expropriate except upon payment of prompt and adequate compensation:

- a. any Mining Plant, Infrastructure or other property of the Company to the extent used in, connected with or affecting Operations; or
- b. Minerals the Mining of which is authorized under the Company's Mining License(s) resulting from Operations or the Product(s) derived therefore; or

- c. any equity, shares or ownership interests of whatever nature held in or issued by the Company.

19.6 Use of Existing Public Utilities and Facilities; Integration with Company Infrastructure.

- a. The Company may purchase services from public utilities and other facilities (such as toll bridges, airports and harbour facilities) operated or provided by the Government, or by any other Person under license or authority of the Government, to the extent adequate (after taking into account the public use thereof) in the reasonable judgment of the Government to meet the Company's needs with respect to Operations. The Government shall ensure that all charges for, and other terms and conditions of, the use by the Company of public infrastructure are fair and reasonable, taking into account the cost of providing such infrastructure and the relative availability of alternatives to the Company and to other users of such Infrastructure. The Government may limit the access of the Company to any such public infrastructure to the extent necessary to meet the demands of the general public, but in any such case of insufficient capacity to provide for the needs of both the general public and the Company (and users similarly situated with the Company), the Minister and the Company (and such similarly situated users) shall in good faith consider how additional capacity can be provided in a manner that fairly allocates the additional costs of providing and operating capacity in excess of that required by the general public to the Company (and others similarly situated).
- b. The Government shall use its reasonable efforts to assist the Company to integrate any item of Infrastructure acquired or constructed by the Company under an approved Feasibility Report with similar existing public utilities or facilities operated or provided by the Government, or by any other Person under license or authority of the Government, to the extent reasonable in connection with Operations and consistent with the needs of the general public.
- c. The Government reserves the right (either directly or through such state owned or controlled corporations or entities as are permitted by applicable Law to exercise such a right), on reasonable notice to and after consultation with the Company, to construct roads, highways, railroads, power, telegraph and telephone lines and other lines of communication within the Exploration Area or the Production Areas if such action is in the public interest. The Government will take account of the reasonable concerns of the Company, and seek to minimize any disruption or interruption to the conduct of Operations. In the event of unavoidable

disruption or interruption to Operations in a Production Area attributable to such construction, the Government shall compensate the Company for any verifiable direct, out of pocket additional costs incurred by the Company and attributable to such disruption or interruption and shall indemnify and hold harmless the Company from all claims by third parties for damages attributable to the negligence or misconduct of the Government or contractors retained by the Government in connection with such construction.

SECTION 20 – OTHER UNDERTAKINGS OF THE COMPANY

- 20.1 Indemnification of the Government by the Company. The Company shall at all times indemnify and hold harmless the Government and its officers and agents from all claims and liabilities for death or injury to Persons or damage to property from any cause whatsoever arising out of its Operations or as a result of its failure to comply with any Law to which it is subject.
- 20.2 Books and Records. The Company will maintain proper books of record and account in conformity with GAAP or IFRS, as applicable under Section 17.5(a), and with all applicable requirements of Law.
- 20.3 Subsidiaries; Investments. The Company may not have Subsidiaries or make investments in others. For the purposes of this Section 20.4, an “investment” includes any investment, made in cash or by delivery of property, by the Company in any Person, whether by acquisition of stock, indebtedness or other obligation or security of any Person, or by loan, guaranty, advance, capital contribution or otherwise in favour of any Person, or in any property other than property acquired in carrying out a Development Plan embedded in an approved Feasibility Report. This Section does not limit the ability of the Company to invest excess funds in debt instruments, money market funds, or similar obligations issued (in each case) by entities that are not Affiliates of the Company, or to make reasonable prepayments and progress payments in connection with the construction of the Mine, Mining Plant and Infrastructure.
- 20.4 Adequate Capital.
- a. Prior to satisfaction of the capacity demonstration test as provided in Section 6.2 the Company must maintain a ratio of Indebtedness to Net Worth that is equal to or lower than 3:1, and may make no Restricted Payment. .
 - b. After satisfaction of such test, the Company may make no Restricted Payment unless after giving effect thereto, the ratio of Indebtedness to Net Worth of the Company does not exceed 3:1. For purposes of this Section

20.4, the amount of any restricted payment made in property is be the greater of (x) the fair market value of such property (as determined in good faith by the board of directors of the Company and (y) the net book value thereof on the books of the Company, in each case determined as of the date on which such payment is made.

- c. “Indebtedness” means, at any time, without duplication,
- i) the liabilities of the Company for borrowed money and the redemption obligations of the Company in respect of mandatorily redeemable shares or other securities of the Company that are entitled to preference or priority over any other shares of the capital stock of such corporation in respect of payment of dividends or distribution of assets upon liquidation;
 - ii) the liabilities of the Company for the deferred purchase price of property acquired by the Company (excluding accounts payable arising in the ordinary course of business but including all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property);
 - iii) all liabilities appearing on the Company’s balance sheet in accordance with GAAP or IFRS, as applicable under Section 17.5(a) in respect of leases with respect to which the Company is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP or IFRS, as applicable under Section 17.5(a);
 - iv) all liabilities for borrowed money secured by any Lien upon or with respect to any property or asset of the Company (whether or not it has assumed or otherwise become liable for such liabilities);
 - v) all its liabilities in respect of letters of credit or instruments serving a similar function issued or accepted for its account by banks and other financial institutions representing or supporting the payment of obligations referred to in clauses (i) through (iv) hereof; and
 - vi) any guaranty or similar undertaking of the Company with respect to liabilities of a type described in any of clauses (i) through (v) hereof.

Indebtedness of the Company shall also include all obligations of the Company of the character described in clauses (i) through (v) to the extent the Company remains legally liable in respect thereof notwithstanding that

any such obligation is deemed to be extinguished under GAAP or IFRS, as applicable under Section 17.5(a).

- d. “Net Worth” means:
- i) the total assets of the Company which would be shown as assets on a balance sheet of the Company as of such time prepared in accordance with GAAP or IFRS, as applicable under Section 17.5(a), minus
 - ii) the total liabilities of the Company which would be shown as liabilities on a balance sheet of the Company as of such time prepared in accordance with GAAP or IFRS, as applicable under Section 17.5(a),
- e. “Restricted Payment” means (i) any dividends or other distributions or payments on capital stock or other equity interest of the Company (except distributions in such stock or other equity interest); and the redemption or acquisition of any stock or other equity interests in the Company or of warrants, rights or other options to purchase such stock or other equity interests (except when solely in exchange for such stock or other equity interests) unless made, contemporaneously, from the net proceeds of a sale of such stock or other equity interests, including, without limitation, any such action resulting in the acquisition by the Company of securities that would constitute treasury stock, and (ii) any payment, repayment, redemption, retirement, repurchase or other acquisition, direct or indirect, by the Company of, on account of, or in respect of, the principal of any subordinated debt (or any instalment thereof) held by the Company, any shareholder of the Company, or any Affiliate of either.
- f. The deductibility or other treatment of any interest payments by the Company for purposes of Taxes and Duties shall be governed by applicable Law and shall be unaffected by this Section 20.4.
- 20.5 Provision of Funds. The Company shall ensure that it has a prudent capital structure and is provided with adequate funds as and when needed to ensure timely Development and performance of Operations in accordance with and within the limits defined in the approved Feasibility Report and compliance with the requirements of Section 20.4.
- 20.6 Guarantee. Prior to issuance to the Company of a Mining License the Company shall provide the Government an executed guarantee from an entity, parent or third party, holding an investment grade long term debt rating, [substantially in the form attached as Exhibit 3 hereto] [in form and substance satisfactory to the

Government], guaranteeing the obligations of the Company under its approved EMP, Section 6.2 (Completion), Section 13 (Environmental Protection and Management) and Section 20.5 (Provision of Funds).

- 20.7 Transactions with Affiliates. The Company will not enter into directly or indirectly any transaction or group of related transactions (including without limitation the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate, except in the ordinary course and pursuant to the reasonable requirements of the Company's business and upon fair and reasonable terms no less favourable to the Company than would be obtainable in a comparable arm's-length transaction with a Person not an Affiliate. The Company may not make or hold any investment, made in cash or by delivery of property, in any Affiliate, whether by acquisition of stock, indebtedness or other obligation or security of such Affiliate, or by loan, guaranty, advance, capital contribution or otherwise. In addition, any transaction between the Company and an Affiliate involving Product(s) shall be on the basis of competitive international prices and such other terms and conditions as would be fair and reasonable had the transaction taken place between unrelated parties dealing at arms' length. [Such prices, in the case of export sales of Product(s) for export sales shall be determined on the basis of the Reference Prices(s) set out in Schedule 15.2. The parties hereto agree that if the indices and methodology set forth in Schedule 15.2 are no longer representative of arms-length prices for export sales, they will agree upon an index and methodology for determining the deemed value of the Product(s). The Reference Price(s) shall be public.]
- 20.8 The Company. The Company must at all times be a corporation organized under the laws of Liberia.
- 20.9 Inspections. The Company is subject to inspection on all imports and exports. The Company shall utilize the services of the inspection entities approved by the Minister of Finance at rates to be negotiated between the Company and the designated inspection entity. Failing agreement on rates, the Company may select another internationally recognized inspection company. Such inspection company shall maintain all pre-shipment information and the reporting mechanism shall be subject to the prior written approval of the Minister of Finance.

SECTION 21 – REPRESENTATIONS AND WARRANTIES

- 21.1 Representations and Warranties of the Company. The Company represents and warrants to the Government as follows:
- a. The Company is a corporation duly organized, validly existing and in good standing under the laws of Liberia, and has the corporate power and

authority to execute, deliver and perform its obligations under this Agreement.

- b. This Agreement has been duly authorized by all necessary corporate action on the part of the Company, and this Agreement constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- c. Schedule 21.1(c) contains (except as noted therein) complete and correct lists or tables setting forth:
 - i) the Company's Shareholders,
 - ii) the Company's and each Shareholder's Affiliates showing forth, in each case, its relationship to the Company or the Shareholder and the jurisdiction in which it is organized,
 - iii) the directors and senior officers of the Company, each Shareholder of the Company, and each Person or Group deemed to Control the Company, and
 - iv) each Person or Group that is the ultimate beneficial owner of [5%] or more of (x) the voting rights ordinarily empowered to control the management of the Company or (y) the rights to share in the profits of the Company, and the chain through which such rights are exercised.
- d. None of the Affiliates, directors, officers or other Persons identified in the Schedule 21.1(c) is a Prohibited Person and the Company, its Shareholders and each of their officers and directors are "Eligible Applicant" under the Mining Law.
- e. The execution, delivery and performance by the Company of this Agreement will not (i) contravene, result in any breach of, or constitute a default under any agreement or instrument to which the Company is a party or by which or any of its properties are bound or affected, (ii) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or governmental authority applicable to the Company or (iii) violate any

provision of any statute or other rule or regulation of any governmental authority applicable to the Company.

- f. There are no actions, suits, investigations or proceedings pending or, to the knowledge of the Company, threatened, against or affecting the Company or any property of the Company in any court or before any arbitrator of any kind or before or by any governmental authority that call into question the right of the Company to enter into and perform its obligations under this Agreement or that would, if resolved against the Company, would materially adversely affect its ability to perform its obligations under this Agreement.
- g. Except as has previously been disclosed to the Minister and the EPA Government in writing, neither the Company nor any other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with, the Company has been determined under any order, judgment, decree or ruling of any court, arbitrator or governmental authority to be in material violation of (i) any applicable law, ordinance, rule or regulation relating to the protection of the environment of any governmental authority or (ii) any agreement pursuant to which it is entitled to extract Minerals or hydrocarbons under the laws of any jurisdiction.
- h. The Company has the experience, finance, expertise, technical know-how and systems required for the conduct of the activities contemplated by this Agreement.
- i. None of the Company, any Affiliate of the Company or any Person acting on behalf of the Company or any Affiliate of the Company has made or promised to make any payment or transfer of anything of value, directly or indirectly, to or for the benefit of an Official or an Official's family member or to an intermediary for payment to or for the benefit of an Official or an Official's family member in connection with this Agreement or the transactions contemplated hereby. (For the purposes of this paragraph, "Official" means any employee or officer of the Government, including any regional or local department or agency thereof, any enterprise owned or controlled by the Government, any official of a political party in Liberia, any official or employee of a public international organization, any other person acting in an official capacity for, or on behalf of, any such entity, or any candidate for political office in Liberia.)

21.2 Representations and Warranties of the Government. The Government represents and warrants to the Company that on the Effective Date, the execution, delivery and performance of this Agreement will have received all necessary governmental

approvals and authorizations and will constitute the legal, valid and binding obligation of the Government.

SECTION 22 – CONFIDENTIALITY

22.1 Confidential Information.

- a. Subject to the limitations below and subject to applicable Law, for a period of [three] years from disclosure, each party agrees not to divulge information designated in writing at the time of delivery as confidential information (“Confidential Information”) by the other party to any other Person without the prior written consent of the designating party. By designation of information as Confidential Information a party will be deemed to have represented that after review of such information it has reasonably determined that the release of such information to third parties would materially adversely affect the party or its economic well-being. In any event Confidential Information does not include information that (a) was publicly available or otherwise known to a party prior to the time of disclosure to it and not subject to a confidentiality obligation, (b) subsequently becomes publicly known through no act or omission by a party, (c) otherwise becomes known to a party other than through disclosure to such party by the other party, (d) constitutes financial statements delivered to the Government under Section 17.5 that are otherwise publicly available, (e) is mainly of scientific rather than commercial value, such as geological and geophysical data relating to areas in which the Company no longer holds a valid exploration license and has not designated as a Proposed Production Area, or (f) has been disclosed pursuant to generally applicable Law or a final order of any court having jurisdiction that is not subject to appeal.
- b. Each party will maintain the confidentiality of Confidential Information disclosed to it in a manner consistent with procedures adopted by such party to protect its own confidential information, provided that such party may deliver or disclose Confidential Information to (i) its financial, legal and other professional advisors (to the extent such disclosure reasonably relates to the administration of this Agreement), or (ii) any other Person to which such delivery or disclosure may be necessary or appropriate (1) to effect compliance with any law, rule, regulation or order applicable to such party, (2) in response to any subpoena or other legal process, (3) in connection with any litigation to which such party is a party if reasonably delivered necessary to protect such party’s position in such litigation or (4) if an Event of Default has occurred and is continuing but only to the extent such party reasonably determines such delivery and disclosure to be

necessary or appropriate in the enforcement or for the protection of the rights and remedies under this Agreement

- c. This Agreement is not confidential, and the Company is not entitled to confidential treatment of information relating to the timing and amount of royalties and other payments specifically due under the terms of this Agreement or of Taxes and Duties payable by the Company or the rates at which such royalties, other payments or Taxes and Duties become due or are assessed, or information that is necessary to compute the amount of such royalties or other payments becoming due.

SECTION 23 – ASSIGNMENT, ENCUMBRANCE AND CHANGE OF CONTROL¹⁷

23.1 General Rules. Except as provided in this Section 23, (1) no sale, assignment, pledge or other transfer of the rights of the Company under this Agreement or under a Mining License issued pursuant to this Agreement, by operation of law or otherwise, (2) no direct or indirect transfer of Management Rights with respect to the Company, or of the right to share in profits of the Company, by operation of law or otherwise, and (3) no transfers by the Company other than in the ordinary course of renewal and replacement of its properties of any interest in the Mine, Mining Plant, Infrastructure or material items of equipment to any Person is valid unless it has received the prior written consent of the Government. Terms used in this Section 23 are defined in Section 23.8.

23.2 Transfers permitted Without Prior Consent.

- a. The transfer of rights under this Agreement and any related Mining License issued pursuant to this Agreement as a consequence of a merger or consolidation of the Company with another entity does not require such consent if the transaction does not result in a Change of Control, the surviving entity is a corporation organized under the laws of Liberia that delivers to the Minister concurrently with such merger or consolidation written representations and warranties as to such corporation as set forth in Section 21.1 immediately after giving effect to such merger or consolidation and assumes in a writing satisfactory to the Government all liabilities of the Company under this Agreement and such Mining Licenses, and (i) the Guaranty provided for in Section 20.7 is modified to the satisfaction of the Government to apply to such transferee, (ii) there is compliance as though the survivor were the Company with the

¹⁷ As indicated in the public discussion of the draft Exploration Regulations, this section is to be changed; the changes are expected to ease and simplify the restrictions on transfer.

requirements of Section 5.3(e), (iii) the survivor is an “Eligible Applicant” under the Mining Law and a Permitted Transferee under Section 23.5, and (iv) the survivor has in the reasonable judgment of the Minister the technical skills, experience, and financial resources necessary to carry out its obligations under this Agreement and such Mining Licenses.

- b. A transfer by the Company of all of its interest in this Agreement, any related Mining License issued pursuant to this Agreement and to the related Mine, Mining Plant and Infrastructure to an Affiliate of the Company at a time at which the Company is not in default in the performance of its obligations under this Agreement does not require such consent if the beneficial owners of the right to share in profits of the Affiliate and the holders of Management Rights with respect to the Affiliate are the same as for the Company immediately prior to such action, the Affiliate is a corporation organized under the laws of Liberia that delivers to the Minister concurrently with such transfer written representations and warranties as to such corporation as set forth in Section 21.1 made immediately after giving effect to such transfer and assumes in a writing satisfactory to the Government all liabilities of the Company under this Agreement and such Mining Licenses, and (i) the Guaranty provided for in Section 20.7 is modified to the satisfaction of the Government to apply to such transferee, (ii) the Company remains jointly and severally liable for the performance of its obligations under this Agreement, (iii) there is compliance as though the transferee were the Company with the requirements of Section 5.3(e), and (iv) the transferee is an “Eligible Applicant” under the Mining Law and a Permitted Transferee under Section 23.3.
 - c. A direct or indirect transfer of Management Rights in the Company independently of any transfer or purported transfer of any interest in this Agreement and any related Mining License issued pursuant to this Agreement does not require such consent if it does not result in a Change of Control, or in a Prohibited Person acquiring Management Rights in the Company.
 - d. A direct or indirect transfer of any right to share in the profits of the Company does not require such consent if it does not result in a Prohibited Person or the members of the immediate family of such Prohibited Person being deemed entitled to receive in excess of 5% of the profits of the Company.
- 23.3 Transfers with Consent. Any other transfer referred to in Section 23.1 requires the prior written consent of the Government, provided that the consent of the Government shall not be unreasonably withheld in the case of a transfer after

completion as described in Section 6.2 of all of the Company's interest under this Agreement, each Mining License issued pursuant to this Agreement and all Mining Plant, Infrastructure and other property of the Company used in connection at a time at which the Company is not in default in the performance of its obligations under this Agreement if the transferee is a corporation organized under the laws of Liberia that delivers to the Minister concurrently with such transfer written representations and warranties as to such corporation as set forth in Section 21.1 made immediately after giving effect to such transfer and assumes in a writing satisfactory to the Government all liabilities of the Company under this Agreement and such Mining Licenses, and (a) the Guaranty provided for in Section 20.7 is modified to the satisfaction of the Government to apply to such transferee, (b) there is compliance as though the transferee were the Company with the requirements of Section 5.3(e), (c) the transferee is an "Eligible Applicant" under the Mining Law and a Permitted Transferee under Section 23.3, and (d) the transferee has in the reasonable judgment of the Minister the technical skills, experience, and financial resources necessary to carry out its obligations under this Agreement and such Mining Licenses.

23.4 Right to Encumber.

- a. The Company may mortgage, charge or otherwise encumber (collectively, "Mortgage") all but not less than all of its interest under this Agreement to finance a portion of the cost of constructing and acquiring the Mine, Mining Plant, Infrastructure and other property contemplated by the Development Plan contained in the approved Feasibility Report. In any such case, (a) the Mortgage must extend to all rights of the Company under its Mining License(s) issued under this Agreement and to substantially all of such Mining Plant, Infrastructure, and other property (including intellectual property) necessary for Operations ("Pledged Assets"), and (b) the holder of such Mortgage has agreed in writing with the Government to the terms of this Section 23.4 and to any transfer restrictions set forth in the Mining License.
- b. Any foreclosure or other exercise of remedies under such Mortgage must result in a transfer of the rights of the Company under this Agreement and the Pledged Assets to a single Person who satisfies all the requirements for an assignee set forth in the proviso contained in Section 23.3.

23.5 Permitted Transferee. A "Permitted Transferee" is a Person defined as such in regulations issued by [*the Minister, the Minister of Finance and the Minister of Justice????*] specified as being for the purpose of identifying eligible recipients of Mining Licenses issued under the Mining Law.

Pending the issuance of such Regulations, a Person is a “Permitted Transferee” if (i) it is not a Prohibited Person, does not have an officer or director who is a Prohibited Person, and is not controlled by a Prohibited Person, and (ii) no Person or Persons holding in the aggregate (x) in excess of __ % of the voting rights ordinarily empowered to control the management of such Person or (y) in excess of __ % of the rights to share in the profits of such Person is or are Prohibited Persons. A “Prohibited Person” for the purposes of this Section 23.2(c) is a Person identified as such in regulations issued under the authority of the Ministry of Finance and the Ministry of Justice and applicable to the holders of licenses issued under the Mining Law. Pending the issuance of such regulations, a “Prohibited Person” is a Person:

(A) who is identified on any of the following lists maintained by the United States government: (1) the United States Department of Commerce Denied Persons list (as of May, 2005 located at <http://www.bxa.doc.gov/DPL/Default.shtm>) and Entity list (as of May 2005, located at <http://www.bxa.doc.gov/Entities/Default.htm>); (2) the United States Department of the Treasury Specially Designated Nationals and Blocked Persons lists (both as of May, 2005 located at <http://www.ustreas.gov/offices/eotffc/ofac/sdn/t11sdn.pdf>); (3) United States Department of State Terrorist Organizations list (as of May, 2005 located at <http://www.state.gov/s/ct/rls/fs/2001/6531.htm>) or Debarred Parties list (as of May, 2005 located at <http://www.pmdtc.org/debar059.htm>); (4) the Financial Action Task Force on Money Laundering list (as of May, 2005 located at http://www.oecd.org/fatf/pdf/40Recs-2003_en.pdf); or

(B) who is (i) identified on the European Union Sanctions list (http://ec.europa.eu/external_relations/cfsp/sanctions/list/consol-list.htm), (ii) identified on a Sanctions List published by a Sanctions Committee of the United Nations Security Council, (iii) identified on the Interpol Red Notice List (<http://www.interpol.int/Public/Wanted/Search/Form.asp>), (iv) the subject of an arrest warrant issued by the International Criminal Court, (v) identified on the World Bank ineligible firms list (<http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>).¹⁸

¹⁸ The foregoing internet locations are valid as of July, 2008 and should be verified prior to signature of a contract utilizing this form.

“Prohibited Person” also includes any Person that issues bearer shares or other instruments to evidence ownership of such Person that do not permit the identification of the owners of such Person.

- 23.6 Responsibility of Licensee. It is the responsibility of the Company and its Controlling Persons to ensure that Management Rights with respect to the Company and the rights to share in the profits of the Company are structured and held in such a manner that transfers of such rights are made in compliance with this Section 23.
- 23.7 Disclosure; Consents; Exceptions; Fees.
- a. If the Minister questions whether a transfer occurred without a required consent, the relevant Licensee has the burden of demonstrating that consent was not required.
 - b. A transfer does not comply with the requirements of this Section 23 if any representations and warranties required to be delivered in connection with such transfer were not true and correct as of the date as of which they were made.
 - c. If the Company determines that a transfer occurred that did not comply with this Section 23, and reports such transfer to the Minister promptly thereafter, the Company is not in breach of its obligations under this Section 23 if within 60 days of such report it takes such actions as will result in such unpermitted transfer being reversed or otherwise remedied to the satisfaction of the Minister.
 - d. A Ministerial or Governmental consent required under this Section 23 will not be given prior to payment of the processing fee provided under Section 16.1.
- 23.8 Terms used in Section 23. For the purpose of this Section 23:
- a. a “Change of Control” with respect to the Company occurs if a Person or Group other than the Person or Group that had Control of the Company at the time it executed this Agreement was granted acquires Control of the Company, or if there is a Change of Control within the Group that Controls the Company;
 - b. a Change in Control” within a Group is deemed to occur if there is a change in the beneficial ownership of at least 33 1/3% of the Management Rights of the Company held within such Group (including both a change

that comes about by expansion of a Group and a change that comes about through a transfer of Management Rights within a Group);

- c. a “Controlling Person” is a Person who Controls the Company or who is a member of a Group that Controls the Company;
- d. a “holder” of a Management Right includes any Person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares the power to direct the exercise of such Management Right;
- e. a Person holding the right to share in distributions from a Person that holds a right to share in the profits of the Company has the right to share in the profits of the Company if the second Person passes through distributions from the Company to the first Person without reflecting in the distribution its own income and expenses, or if the right to share in the profits of the Company is represents a principal asset of the second Person.
- f. if a trust or other entity holds the rights to share in the profits of a Person, the beneficiaries of such trust are deemed to hold the rights to share in the profits of that Person.

If Person A Controls Person B, and Person B has a 25% voting interest in the Company, then Person A is deemed to hold 25% of the Management Rights in the Company. And if Person Z Controls Person A, then Person Z is deemed to hold 25% of the Management Rights in the Company, and a transfer of Person Z’s rights to a third party is within the scope of Section 23.2(c). But if there is no Person (or Group) that Controls Person B, then the Company does not have to look beyond Person B for persons who may be said to have Management Rights with respect to the Company.

Similarly, if Person A is entitled to a 10% share of the profits of Person B, and Person B’s sole asset is a 25% interest in the Company, then Person A is deemed to hold the rights to share in 2.5% of the profits of Licensee.

SECTION 24 – SUSPENSION

- 24.1 Power of Minister to Suspend Work. After the issuance of a Mining License pursuant to Section 5 the Minister may order the suspension of all or the relevant portion of any Operations being carried on by the Company under the authority of this Agreement and such Mining License if any of the following events or conditions relating to the Company has occurred and is continuing:

- a. the Company did not pay a Resource Area Fee when due and the failure is not cured within [10] days after the Company receives notice of the failure from the Minister or the Minister of Finance; or
 - b. the Minister has determined that continuation of such Operations would constitute a material continuing violation of Section 9.1 or would otherwise pose significant risks to the health and safety of workers engaged in or affected by such Operations or of individuals residing in or near any Production Area or any other area in which the Company is conducting Operations; or
 - c. an environmental assessment and audit under Section 13 has demonstrated, or the Minister or the EPA, as the case may be, has determined that there exist material failures to comply with the approved EMP and the Company has not remedied such failures to the reasonable satisfaction of the Minister or the EPA, as the case may be, within 60 days from notice to the Company from either of them as to the nature of such failures; or
 - d. any representation or warranty of the Company made in writing to the Minister proves to have been false or incorrect in any material respect on the date as of which made; or
 - e. the Company is in violation of Section 6.3(b) or (c) (other than an isolated immaterial violation); or
 - f. the Company is conducting Mining Operations outside of the Production Area that is the subject of such Mining License; or
 - g. the Company is in breach of any its obligations under Section 17.5, 20.3, 20.4 or 20.7 and has not cured such breach within 60 days after receiving notice from the Minister of such breach; or
 - h. the Company is in default of its obligation to pay royalties under Section 15.1 in excess of \$100,000, and such default has not been cured within 30 days after notice from the Minister or the Minister of Finance.
- 24.2 Order Suspending Work. Except as provided in the following sentence, a suspension order must be in writing and signed by the Minister, and will be effective the Business Day following its receipt by the Company at its address for notices, or, if delivered to a field office or other location at which the Operations to be suspended are being performed and at which a person with supervisory responsibilities is present, is effective on delivery. An order of suspension based on a violation of Section 9.1 that has resulted in (or is determined by the Minister

to create a serious risk of resulting in) death or severe personal injury may be given by telephone confirmed in writing within 24 hours, and is effective immediately. Any suspension order (except a telephone order under the preceding sentence) must set forth in a summary manner the facts relied upon for the issuance of the order and the name, location and telephone number of a responsible person at the Ministry (or the Ministry of Finance, as the case may be) who may be contacted for additional information. Neither the Company's payment obligations under nor the term of this Agreement or the term of the relevant Mining License are suspended by an order of suspension under this Section.

- 24.3 Compliance with Suspension Order. The Company must comply with an order of suspension properly given under this Section 24 until such order is withdrawn (or deemed withdrawn) pursuant to Section 24.4 or is directed to be withdrawn pursuant to a final administrative order in a hearing held pursuant to the Administrative Procedure Act of Liberia, or a final order in a judicial proceeding, or pursuant to an arbitration under Section 27.
- 24.4 Resumption of Work. The Company at any time submit a request that a suspension order be withdrawn, setting forth in reasonable detail the facts and circumstances relied upon to demonstrate the elimination or correction of the event or condition that supported the issuance of the order. The Minister must withdraw the order if the event or condition no longer exists or has been remedied to the reasonable satisfaction of the Minister. If within 10 Business Days of receiving such submission the Minister neither grants such request nor notifies the Company of the reasons for not granting such request, the order involved will be deemed withdrawn. If within 5 Business Days of receiving a resubmitted request for withdrawal of the same order, the Minister does not either grant such request or give notice to the Company setting forth reasons for not granting such request, the order involved will be deemed withdrawn. The initial and each subsequent resubmission (if any) shall be conspicuously marked to show all changes (additions and deletions) from the previous submission.

SECTION 25 – TERMINATION

- 25.1 Government Event of Default. A “Government Event of Default” shall exist if the Government shall have failed in a serious and prolonged manner to comply with its material obligations under this Agreement and such failure is continuing for more than [90] days after notice thereof to the Government from the Company or any representation or warranty of the Government continued in Section 21.2 proves to be false or incorrect in any material respect on the date as of which made.

- 25.2 Company Events of Default. A “Company Event of Default” shall have occurred if any of the following conditions or events shall occur and be continuing:
- a. the Company shall have failed to make any payment due under Section 15.4 not cured within [150] days of notice from the Minister or the Minister of Finance;
 - b. the Company shall have failed to make any other payment due under this Agreement, any Mining License issued pursuant to this Agreement or any undertaking of the Company provided for in this Agreement and such failure is not cured within [30] days of notice from the Minister or the Minister of Finance; or
 - c. the issuer of the guaranty delivered pursuant to Section 20.7 shall no longer have an investment grade long-term debt rating or shall for any reason no longer be enforceable in accordance with its terms, and the Company shall have failed to provide a replacement guaranty within [60] days after having notice or actual knowledge thereof; or
 - d. any representation or warranty of the Company contained in Section 21 proves to have been false or incorrect in any material respect on the date as of which made; or
 - e. the Company shall default in the performance of any other obligation of the Company under this Agreement, the Mining License or any undertaking of the Company provided for in this Agreement and shall have failed to cure such default within [60] days after notice thereof from the Minister)from the Minister of Finance, in the case of a failure to pay any Taxes or Duties within the grace period provided by applicable Law; or
 - f. the Company shall (i) voluntarily make an assignment of all or substantially all of its assets for the benefit of creditors other than an assignment made to secure indebtedness incurred in the ordinary course of business, (ii) file a petition or application to any tribunal for the appointment of a trustee or receiver for all or any substantial part of its assets, (iii) commence any proceedings for its bankruptcy, reorganisation, arrangement (other than a scheme of arrangement not involving an insolvent company) or insolvency under any laws applicable it whether now or hereafter in effect, or if any such petition or application is filed, or any such proceedings are commenced against it, indicate its approval thereof, consent thereto or acquiescence therein, or (iv) if any order is entered appointing any such trustee or receiver, or adjudicating it bankrupt

or insolvent, or approving the petition in any such proceedings, permit such order to remain in effect for more than [90] days.

- 25.3 Nature of Notice of Default. Any notice of an alleged Event of Default by either party shall identify with reasonable clarity the principal provision or provisions with respect to which the default arises and the facts alleged to constitute such default.
- 25.4 Notice of Termination; Termination When a Mortgage Exists; Arbitration of Disputes as to Existence of Event of Default.
- a. If an Event of Default with respect to a party has occurred and is continuing, the other party may give the defaulting party notice of termination. This Agreement and each Mining License issued pursuant to this Agreement shall terminate [30] days after receipt of such notice by the defaulting party (or at such later time as may be provided in such notice), subject to Sections 25.4(b) and (c).
 - b. If a Mortgage permitted under Section 23.4 exists, the notice of termination will not be effective so long as the Company, the holder of the Mortgage and the responsible officer of any relevant tribunal referred to in Section 25.2(i) are diligently seeking to transfer the rights and obligations of the Company under this Agreement, any Mining License issued pursuant to this Agreement, the Mine and substantially all of the Mining Plant, Infrastructure and related property of the Company to a transferee that would be permitted under Section 23.2 so long as (i) such a transfer is completed within [18] months from the commencement of such proceedings, (ii) the operations of the Company continue on a commercial scale throughout such period (subject to force majeure) in substantial compliance with the requirements of this Agreement, the relevant Mining License and applicable Law, and (iii) the Company becomes and remains in compliance with its EMP and its payment obligations under this Agreement.
 - c. If a party asserts the existence of an Event of Default under this Agreement and the other party refers to arbitration in accordance with this Agreement a dispute as to the existence of such Event of Default, termination of this Agreement may not take effect other than after the finality of, and in accordance with, an arbitration award upholding the existence of such Event of Default. The Company shall reimburse the Government for all expenses incurred by it in connection with arbitration held pursuant to this Section 24.4 if the Government's determination that an Event of Default exists is upheld in the arbitration.

25.5 Winding-up Commission.

- a. Except as provided in Section 25.5(c), if a notice of termination has been given, the parties hereto shall set up a winding up commission (hereinafter referred to as the “Commission”) which shall consist of two directors of the Company, two members appointed by the Government and a member of an internationally recognized accounting or law firm selected by the Government and reasonably acceptable to the Company, who will be the Chairperson of the Commission.. The fifth member may not in the last ten years have represented the interests of the Government and his or her firm may not in the past five years have been regularly retained by the Government. The Chairperson will be responsible for scheduling meetings, for establishing the agenda of meetings, and for keeping the record of meetings.
- b. The Chairperson of the Commission shall issue a notice and agenda for the first meeting of the Commission, which shall be held no later than three weeks after the establishment of the Commission. Thereafter, the Commission shall hold periodic meetings at least once a calendar month.
- c. The Company shall present to the Commission within 30 days of its establishment a summary report, and within 60 days of its establishment a detailed report, on the status of the Operations of the Company under this Agreement as of the date of termination so that the Commission will be able to make recommendations to the Government as to whether the Commission and the Company should seek to transfer the assets and operations of the Company to a third party, or should establish plans for the full or partial cessation of operations including the disposition of assets and their demolition or removal according to Section 26 and the restoration of the Mining License areas to such condition as prescribed in the closure management plan provided for in the EMP.
- d. The operation of this Section 25.5 is suspended under the circumstances contemplated by Section 25.4(b) or during the pendency of an arbitration challenging such termination commenced under Section 27. The notice of arbitration is automatically terminated if a transfer contemplated by Section 25.4(b) is timely completed or if a final decision in an arbitration commenced under Section 27 determines that the notice of termination is invalid or should be disregarded.

SECTION 26 – DISPOSITION OF ASSETS¹⁹

- 26.1 General Provision. Prior to the termination of this Agreement, the Company shall have the right to control all its Mining Plant, Infrastructure and other assets, whether or not the same may revert to and become the property of the Government upon such termination, and, to the extent no longer required for Operations or for compliance with any specific provision of this Agreement, to dispose of in the ordinary course of its business any such assets (other than land leased from the Government or its rights under any Mining License).
- 26.2 Disposition of Assets on Termination by the Government or Expiration of the Term. Upon a termination of this Agreement for any reason other than termination by the Company upon the occurrence and continuation of a Government Event of Default, the following rules apply:
- a. The Company shall deliver to the Government, not more than 60 days after the termination date a list (the “Property List”) describing in reasonable detail and locating
 - i) all Mining Plant and Infrastructure constituting structures or installations of any kind (i.e., that do not constitute roads, earthworks, roads, bridges, dams or similar improvements to the land), and any Moveable assets or intellectual property required for the full use or operations of any such Mining Plant and Infrastructure (such as, by way only of example, as computers and computer programs controlling the operation of Mine ventilation systems and elevators), but excluding other Moveable assets, identifying which thereof could be used in continued Operations or otherwise and which in the good faith judgment of the Company have no further utility,
 - ii) the Mine, any intellectual property required for the full use or operations of the Mine and all Mining Plant and Infrastructure constituting improvements to the land (including such things as roads, earthworks, bridges and dams), and
 - iii) all Moveable assets not referred to in clause (i) of this Section 26.2(a) (other than ordinary office equipment, furnishings and supplies and consumables reasonably expected to be consumed before the Termination Date) and any intellectual property required for the full use or operation or such Moveable assets,.

¹⁹ Consideration is being given to simplification of this Section.

The Property List shall also set forth the estimated fair market value and book value of each Moveable asset contained on such list,

Moveable assets identified in clause (iii) of this Section 26.2 may be grouped for valuation purposes by generic type of asset and physical location, so that, for example, all Moveable assets in a particular heavy equipment maintenance shop might be classified for valuation purposes as “mine truck parts and supplies,” “dragline and shovel parts and supplies” and “maintenance equipment”, but such grouping for valuation purposes does not excuse the Company from the duty to describe such Moveable assets in reasonable detail.) The Property List shall be accompanied by a certificate of the chief executive officer of the Company to the effect that such list is complete and correct in all material respects. “Intellectual property” includes trademarks, patent licenses, copyrights, software, electronically stored data and “know-how”.

- b. Failure of the Company timely to deliver the Property List or delivery by the Company of a Property List that is significantly deficient or incomplete shall be deemed an offer by the Company to sell to the Government all assets referred to in clause (iii) of Section 26.2(a) for a purchase price of US\$1.00.
- c. The Company shall, as part of its closure responsibilities, remove all such structures and installations described in the Property List pursuant to clause (i) of Section 26.2(a) except insofar as the Government, within 90 days of receipt of such list, has directed the Company to transfer to the Government such structures or installations, related rights to land (in the case of any such assets not located on Government land), and any required Moveable Assets or intellectual property identified in the Property List. The Company shall transfer to the Government, without charge, all of its right title and interest in each structure or installation and its related property promptly following its receipt of such authorization or direction as to such property.
- d. The Company shall transfer to the Government, without charge, all of its right, title and interest in all property described pursuant to clause (ii) of Section 26.2(a) within 10 days of the delivery of the Property List.
- e. The delivery of the Property List shall constitute an offer by the Company to sell to the Government or its designee any or all Moveable assets and related intellectual property described pursuant to clause (iii) of Section 26.2(a) at a purchase price equal to the lesser of the fair market value or the depreciated book value of each such asset, an as is and where is basis. If the Government does not exercise such purchase right as to any

Movable asset included in the Property List by notice to the Company within 90 days after delivery of the list, then the Company may sell such asset to any Person for such price as it may be able to obtain therefore or remove such asset from Liberia. If the Government exercises its purchase right with respect to any Moveable asset and related intellectual property, it shall pay the purchase price within 90 days of the date upon which such purchase price is established, against transfer by the Company to the Government of all of its right title and interest in such Moveable asset.

- f. The Government, by notice to the Company within a reasonable period but not to exceed one year after any termination of this Agreement, may require the Company to dispose of in accordance with applicable Law any Movable assets not sold to the Government that remain on Government land or in Mining Plant or Infrastructure that has been transferred to the Government. If the Company does not reasonably dispose of or remove such asset or assets within a reasonable period after said notice, the Government may effect such reasonable disposal or removal at the expense of the Company.
- g. No transfer to the Government of any assets pursuant to this section with or without compensation shall release the Company from any of its environmental restoration or remediation obligations under this Agreement or applicable Law, or entitle the Company to release to it of any amounts set aside to fund the performance of such obligations. However, if the Government arranges for a qualified replacement operator to acquire all of the assets on the Property List and to continue the operations of the Mine, it will release the Company from such obligations and make such set-aside amounts available to fund the environmental restoration or remediation obligations of the replacement operator. In any such case, the Company must at the request of the Government transfer directly to such replacement operator all assets otherwise to be transferred to the Government under this Section 26.2, in the manner provided for in this Section 26.2, provided that the Company is not obligated to transfer assets for which payment is required under the Section 26.2 except against payment of the purchase price required by this Section 26.2.
- 26.3 Special Provisions for Public Use Infrastructure. To the extent the Company has built and is operating under its Mining License or this Agreement facilities required by Regulations, this Agreement or other applicable Law to be made available for use by third parties (such facilities could include, by way of example and not limitation, highways, railroads, port facilities, water supplies, electrical supplies, hospitals or schools), the Government may, in lieu of the procedures set forth in Section 26.2, require (by notice to the Company within 90 days after the

- delivery of the Property List) the Company to transfer all of its right title and interest, in and to any such facility (including all Moveable Assets normally used in conjunction therewith and all intellectual property required for the full use or operation of such facility) to a Person designated by the Government for the purchase price attributable to such Moveable assets and related intellectual property determined as provided in Section 26.2(e), on an as is, where is basis. If the Government so designates a facility for purchase by a third party, the third party must pay the relevant purchase price within 120 days of the later of the date upon which such purchase price is established and the date such purchaser is designated.
- 26.4 Certain Insurance and Maintenance Obligations of the Company. The Company shall insure in accordance with the requirements of this Agreement and maintain (in accordance with applicable Law and the requirements of this Agreement) the Mine, all Mining Plant and Infrastructure and all Moveable assets until (i) 30 days after title is transferred to the Government by the Company, where transfer of the property is required under this Section 26 without action by the Government, (ii) 30 days after payment is to be made for such property under this Section 25, where such transfer is required to be made against payment by the Government or a third party following election of transfer by the Government, or (iii) at such time as the right of the Government under this Section 25 to elect to require the transfer of such property to it or a third party has expired, in the case of property the transfer of which is not timely required by the Government.
- 26.5 Determination of Moveable Asset Fair Market Value. Unless the Government notifies the Company that it disagrees with the Company's fair market value estimates for a Moveable asset (and related intellectual property) included in the Property List at or prior to the time it notifies the Company of its desire to acquire such asset, the Company's valuation shall be final. If the Government does give notice of disagreement, fair market value shall be determined by internationally recognized appraisal firm experienced in the valuation of mining moveable assets. The firm will be selected by the Government, but must be from a list of three such firms selected by the Company if the Company provides such list when it provides the Property List. The costs of the appraiser in respect of each appraisal shall be allocated by the appraiser and shall be borne by the Company unless the valuation placed on the asset by the appraiser is at least 95% of the valuation placed on the asset by the Company, in which case the cost of the appraiser shall be by the Government. If the Company is unable or fails to provide for the transfer of any intellectual property required for the full use or operation of any Moveable Asset (or if for any reason the Government or a purchaser designated by the government elects not to acquire and such intellectual property), its fair market value shall be determined based on its value to a Person who must acquire in the marketplace the necessary intellectual property.

- 26.6 Disposition of Mining Plant and Infrastructure on Termination by the Company. Upon a termination of this Agreement by the Company upon the occurrence and continuation of a Government Event of Default, all Mining Plant and Infrastructure constituting improvements to the land become the property of the Government except to the extent the Government elects to transfer the relevant land to the Company. All other Mining Plant and Infrastructure and all Moveable assets, to the extent not constituting Mining Plant or Infrastructure, shall be and remain the property of the Company. The Company must remove all such property from land owned or leased by the Government within two years of the date of termination and until removal must maintain third party liability insurance as required by this Agreement.
- 26.7 Miscellaneous. In connection with any transfer of rights in property pursuant to this Section 26, the Company shall execute such instruments of transfer sufficient to transfer all right, title and interest of the transferor as the transferee may reasonably request.
- 26.8 Liens. Any transfer of property to the Government or a third party pursuant to this Section 26 shall be free and clear of Liens or other charges and encumbrances of any kind arising out of any action or inaction of the Company or any Person claiming by, through or under the Company.

SECTION 27 – ARBITRATION

- 27.1 Submission to Arbitration. Any dispute, controversy, or claim arising under this Contract, or in connection with an assertion as to the breach, termination, or validity or invalidity thereof, shall be finally settled by arbitration under the then-prevailing rules of arbitration of ICSID by a panel of three arbitrators appointed in accordance with such rules, provided that in a dispute arising out of the assertion by the Government that the Company is in violation of Law, the Company shall not initiate arbitration prior to the earlier of (a) a final determination under appropriate Liberian dispute resolution proceedings of the existence or the consequences of such violation or (b) 15 months from the date of initiation by the Government or the Company, as the case may be, of appropriate dispute resolution proceedings to determine the existence or consequences of such a violation, and provided, further, that if the Company has initiated such dispute resolution proceedings and subsequently requests arbitration, the arbitrators shall determine as a condition to hearing the merits of the arbitration that the Company has proceeded with reasonable diligence in advancing such dispute resolution procedures. The seat of the arbitration shall be [*to be selected for each contract; it need not be Washington*], and the proceedings shall be conducted in the English language. The parties submit to jurisdiction in the [*identify appropriate specific court in the jurisdiction in which the arbitration is to occur*] for the limited purpose of enforcing this agreement to arbitrate.

- 27.2 Special Provisions. The decision of the arbitrators shall be public. Any monetary award shall be assessed and payable in Dollars (determined at the Prevailing Market Rate of Exchange if the award involved an obligation expressed in any currency other than Dollars). The arbitrators may not award specific performance or similar equitable remedies against the Government. Neither party shall have any liability for either consequential damages (except for purposes of set-off) or exemplary or punitive damages.

SECTION 28 – NOTICES

- 28.1 Written Communications. All orders, approvals, declarations and notices of any kind between the parties (hereinafter each referred to as a “Communication”) shall be in writing and delivered by hand, by fax, by electronic mail, by postage prepaid registered mail, by prepaid internationally recognized courier service, or by any other means of communication agreed upon by the parties. Communication by fax or electronic mail is valid under this Agreement only to fax numbers or electronic email addresses set forth below or identified as acceptable to a party by notice to the other party pursuant to this Section 28. A Communication other than an electronic mail shall bear an original or facsimile reproduction of the signature of a representative of the sending party responsible for such Communication and all Communications shall indicate the identity of such representative and state how he or she may be reached by telephone and, if practical, electronic mail. A Communication under this Agreement is not effective until delivery.
- 28.2 Delivery. Subject to Section 28.5, delivery of a Communication to a party shall be deemed to have occurred in any one of the following circumstances:
- a. Fax confirmation of receipt is electronically issued to the sender by the fax receiving device.
 - b. Electronic mail confirmation of receipt originated by the recipient is received at the electronic mail address of the sender.
 - c. Written confirmation of receipt is received by the postal or courier service delivering the Communication.
 - d. The recipient has otherwise directly or indirectly acknowledged receipt of the Communication in writing.
 - e. Verification of receipt of the Communication has been obtained in any manner specifically agreed to in writing by the parties. Other confirmation of receipt acceptable to the recipient is obtained by the sending party.

28.3 Addresses. All Communications from the Government to the Company shall be addressed as follows:

[to be supplied]

All Communications from the Company to the Government shall be addressed as follows:

The Minister of Lands, Mines and Energy
Ministry of Lands, Mines and Energy
[add street address to permit local hand and courier service delivery as well as any other instructions necessary to make sure the delivery agent gets to the appropriate office within a building]
P.O. Box 10-[XXXX]
Monrovia, Liberia

And

The Minister of Finance
Ministry of Finance
[add street address to permit local hand and courier service delivery as well as any other instructions necessary to make sure the delivery agent gets to the appropriate office within a building]
P.O. Box 10-9013
Monrovia, Liberia

And

The Chairman, National Investment Commission
National Investment Commission
[add street address to permit local hand and courier service delivery as well as any other instructions necessary to make sure the delivery agent gets to the appropriate office within a building]
P.O. Box 10-9043
Monrovia, Liberia

With a copy to

The Minister of Justice

Ministry of Justice

[add street address to permit local hand and courier service delivery as well as any other instructions necessary to make sure the delivery agent gets to the appropriate office within a building]

P.O. Box 10-[XXXX]

Monrovia, Liberia

- 28.4 Change of Address. Any party may, upon prior notice to the other party, at any time change the designation of a Person named to receive Communications under this Agreement, or the address or fax number of the office in Liberia or elsewhere authorised to receive such Communications.
- 28.5 Quantities. All notices, reports, applications, feasibility reports and related plans and documents, financial statements and similar materials furnished to the Government by the Company under this Agreement shall be delivered to each Government addressee provided for under Section 28.3 or Section 28.4 (but not more than five addressees at any one time) in duplicate paper copies, and, if more than six pages long, shall be accompanied by a reproducible electronic copy in Microsoft Word or Adobe PDF format that is compatible with versions of such program that have been readily available in Monrovia for at least 48 months. The Government may change the required electronic data format for such documents to any other readily available format on at least 60 days prior notice to the Company.

SECTION 29 – FORCE MAJEURE

- 29.1 Application. In the event of a party being rendered unable, in whole or in part, by force majeure to carry out any obligation under this Agreement, other than an obligation of the Company to make payments of money to the Government, the party shall give notice and the particulars of such force majeure in writing to the other party as soon as practicable after the occurrence of the cause relied on. Thereafter, any obligation of the party giving such notice that such party is unable to carry out because of such force majeure shall be suspended during the continuance of any such inability so caused, but for no longer period, and such inability shall, as far as practicable, be remedied with all reasonable dispatch. All time periods specified in this Agreement for the performance of obligations or the enjoyment of rights that are affected by force majeure, except in connection with an obligation to make payments of money, but including the Exploration Term or the Mining Term, as the case may be, shall be extended until the effect of such force majeure is remedied as above provided or otherwise ceases.

- 29.2 Definition. The term “force majeure” as used in this Agreement shall mean acts of God, accidents, wars, acts of war, invasions, acts of public enemies, hostilities (whether war is declared or not), restrictions on trade or other activities imposed by any sovereign nation or state, embargoes, blockades, revolutions, riots, civil commotions, acts of terrorism, sabotage, strikes and/or other industrial, labour or employer-employee disputes(if not cured for a period of more than two months), fires, explosions, earthquakes or any other natural disasters, expropriation of facilities or goods, epidemics, public health emergencies and any similar cause, provided any such cause was not within the reasonable control of the party claiming the benefit of force majeure and could not have been avoided or overcome by such party through the exercise of due diligence.
- 29.3 No Required Settlement. Nothing in Sections 29.1 or 29.2 above shall, in and of itself, be construed to require the Company to settle any strike, lockout or other labour or industrial dispute except as may be required by applicable Law.
- 29.4 Surface Rentals. Notwithstanding Section 29.1, for so long as events of force majeure constituting war, act of war, invasion, act of public enemies, hostilities (whether war is declared or not), revolution, riot, civil commotion, or acts of terrorism prevent the Company from carrying out Operations, the Company shall be excused from the payment of Resource Area Fees due accruing during such period under Section 15.

SECTION 30 – GOVERNING LAW

- 30.1 Applicability of Liberian Law. Except as explicitly provided in Section 14 to this Agreement, the Company shall be subject to all of the internal laws of Liberia as in effect from time to time, including with respect to labour, environmental, health and safety, customs and tax matters, and shall conduct itself in a manner consistent with Liberia’s obligations under international treaties and agreements.
- 30.2 Construction and Interpretation. This Agreement and the rights, obligations and duties of the parties hereunder shall be construed and interpreted in accordance with Liberian law and by such rules and principles of international law as may be applicable.

SECTION 31 – PERIODIC REVIEW

- 31.1 Profound Changes in Circumstances. For the purpose of considering Profound Changes in Circumstances from those existing on the Effective Date or on the date of the most recent review of this Agreement pursuant to this Section 40, Government on the one hand and Company jointly on the other hand, shall at the request of the other consult together. The parties shall meet to review the matter raised as soon after such request as is reasonably convenient for them both. In

case Profound Changes in Circumstances are established to have occurred, the parties shall effect such change in or clarification of this Agreement that they in good faith agree is necessary.

- 31.2 Five Year Review. This Agreement shall be subject to periodic review once every five (5) years after the date of the start of Production for the purpose of good faith discussions to effect such modifications to this Agreement as may be necessary or desirable in the light of any substantial changes in circumstances which may have occurred during the previous five years.
- 31.3 Other Consultation. In addition to the consultation and review provided by Section 30.1 and 30.2, each party may at any time request a consultation with the other party with respect to any matter affecting the rights and obligations of the parties pursuant to this Agreement or any matter relating to Company Operations. The parties shall meet to review in good faith the matter raised as soon after such request as is reasonably convenient for them both. Subsequent to such consultation, the parties shall take such action, if any, that is mutually agreed to address the matter.

SECTION 32 – WAIVER OF SOVEREIGN IMMUNITY

The Government hereby irrevocably waives all claims of immunity from the jurisdiction of, and from the enforcement of any arbitral award rendered by, a arbitral tribunal constituted pursuant to this Agreement as well as all claims of immunity from the service of process or the jurisdiction of any court situated in any state, country or nation in aid of the jurisdiction of such arbitral tribunal or in connection with the enforcement of any such award.

SECTION 33 – MISCELLANEOUS

- 33.1 Entire Agreement. Save as set out in this Section, this Agreement, including the Schedules and Exhibits attached to it, represents the entire agreement between the parties and shall with effect from the Effective Date, supersede all previous oral and written negotiations and agreements between the parties, save as may be hereafter set out in this Section 33.1.
- 33.2 Amendment. Any modification or amendment of any terms of this Agreement shall be by the mutual written agreement of the parties and, except as otherwise specifically provided in this Agreement, shall not become effective until approved by the President.
- 33.3 Limitation of Liability. Neither party shall have any liability under this Agreement for consequential damages (except for purposes of set-off) or any form of exemplary or punitive damages.

- 33.4 Non-Waiver of Rights. The non-exercise or partial exercise by one or the other of the parties of any of its rights under the terms of this Agreement shall not in any case constitute a waiver of that right.
- 33.5 Assignment and Succession. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the successors by operation of law and permitted assignees of the parties including without limitation in the case of the Government, all future manifestations or forms of public power exercising sovereign authority over all or part of the present territory of Liberia.
- 33.6 Survival. Notwithstanding termination of this Agreement by any party or for any reason, including a termination due to a finding that this Agreement or a portion thereof is void, invalid, or unenforceable, Sections 1, 20.1, 20.5, 25.5, 26, 27, 28, 30, 32.6 and 32.7 of this Agreement, all liabilities accruing prior to such termination and all closure management and environmental remediation, restoration or reforestation obligations of the Company under this Agreement or the EMP shall survive such termination and shall remain effective as to any matters which are the subject of this Agreement or which arise out of, in relation to or in connection with this Agreement. Moreover, any such termination shall be without prejudice to rights, duties and obligations that have accrued prior to termination and, notwithstanding such termination, such provisions of this Agreement as are reasonably necessary for the full enjoyment and enforcement of such rights, duties and obligations shall survive such termination for the period necessary.
- 33.7 Severability. Should any Section of this Agreement, or any provision or term of any section, be found, pursuant to Section 27, to be void, invalid or unenforceable, in whole or in part, then the remaining sections, and those unaffected provisions or terms of any other sections which contain some void, invalid or unenforceable provisions or terms, shall nevertheless remain valid and subsisting and shall be construed as if this Agreement had been executed without such void, invalid or unenforceable sections, provisions or terms. Any otherwise void, invalid or unenforceable section, term or provision of this Agreement shall be so construed, or reformed, as to alter, amend or change any such term, provision or condition to the extent necessary to render it valid, lawful and enforceable, while also giving maximum effect to the parties' originally intended purpose or result, short of creating any void, invalid or unenforceable provision, term or condition.
- 33.8 Publication. The Government shall make public this Agreement and any amendments thereof.

IN WITNESS WHEREOF, the parties have signed this Agreement, through their respective duly authorised representatives, on the day, month and year indicated below.

Signed in _____ originals on the _____ day of _____ 20__.

IN PRESENCE OF:

FOR THE GOVERNMENT OF THE REPUBLIC
OF LIBERIA

By:
THE MINISTER OF LANDS, MINES AND
ENERGY

By:
THE MINISTER OF FINANCE

By:
THE CHAIRMAN OF THE NATIONAL
INVESTMENT COMMISSION

ATTESTED BY:

THE MINISTER OF JUSTICE

FOR THE COMPANY:

By:
DULY AUTHORISED REPRESENTATIVE