No. 27 of 1986.

***Mining (Ok Tedi Sixth Supplemental Agreement) Act* 1986.**

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. 27 of 1986.

Mining (Ok Tedi Sixth Supplemental Agreement) Act 1986.

ARRANGEMENT OF SECTIONS.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

AN ACT

entitled

***Mining (Ok Tedi Sixth Supplemental Agreement) Act* 1986,**

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

1. INTERPRETATION.

In this Act, **"the Sixth Supplemental Agreement"** means the supplemental agreement a copy of which is set out in Schedule 1 .

2. APPROVAL OF AGREEMENT.

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

3. EFFECT IN RELATION TO LAWS OF PAPUA NEW GUINEA.

The Sixth Supplemental Agreement has the force of law for the full term provided for therein as if contained in this Act and shall apply notwithstanding anything to the contrary in any other law in force in the country.

4. ANCILLARY POWERS OF MINISTER.

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

SCHEDULE 1

SIXTH SUPPLEMENTAL AGREEMENT

BETWEEN
THE INDEPENDENT STATE OF PAPUA NEW GUINEA,
AMOCO CORPORATION,
AMOCO MINERALS PNG COMPANY,
THE BROKEN HILL PROPRIETARY COMPANY LIMITED,
BHP MINERALS HOLDINGS PROPRIETARY LIMITED,
METALLGESELLSCHAFT AG,
DEGUSSA AG,
DEG-DEUTSCHE FINANZIERUNGSGESELLSCHAFT FUER BETEILIGUNGEN IN ENTWICKLUNGSLAENDERN GMBH
and
OK TEDI MINING LIMITED

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28. Counterparts
29. Governing law

IN WITNESS whereof the parties hereto have executed this Agreement the 28th day of February 1986.

SIGNED for and on behalf of THE INDEPENDENT STATE OF PAPUA NEW GUINEA by KINGSFORD DIBELA, Governor-General, acting with and in accordance with the advice of the National Executive Council, in the presence of:	K. DIBELA
H. INGIRIN	
SIGNED for and on behalf of AMOCO CORPORATION by its duly authorized signatory in the presence of:	ROBERT D. AGDERN
CAROLYN CURTIS	
SIGNED for and on behalf of AMOCO MINERALS PNG COMPANY by its duly authorized Vice President in the presence of:	S.K. WELCH
CAROLYN CURTIS	
SIGNED for and on behalf of THE BROKEN HILL PROPRIETARY COMPANY LIMITED by its duly constituted attorney in the presence of:	E. MILLER
ROBERT REID	
SIGNED for and on behalf of BHP MINERALS HOLDINGS PROPRIETARY LIMITED by its duly constituted attorney in the presence of:	E. MILLER
ROBERT REID	
SIGNED for and on behalf of METALLGESELLSCHAFT AG by its duly constituted attorney the presence of:	M. VON MUELLER
TOM POULTON	

SIGNED for and on behalf of DEGUSSA AG by it duly constituted attorney in the presence of: TOM POULTON	)))	ALEXANDER MENTZ
SIGNED for and on behalf of DEG-DEUTSCHE FINANZIERUNGSGESELLSCHAFT FUER BETEILIGUNGEN IN ENTWICKLUNGSLAENDERN GMBH by its duly constituted attorney in the presence of: TOM POULTON	))))))	M. VON MUELLER
SIGNED for and on behalf of OK TEDI MINING LIMITED by its duly authorized signatory in the presence of: TOM POULTON	))))	H.R. SHIPES

SIXTH SUPPLEMENTAL AGREEMENT

THIS SIXTH SUPPLEMENTAL AGREEMENT is made as of the 28th day of February 1986

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

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

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

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

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

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

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

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

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

WHEREAS:

A. By an Agreement dated 22 March 1976 between the State of the first part and BHP Minerals Limited (then named Dampier Mining Company Limited) of the second part the State granted to the said BHP Minerals Limited certain rights, set out in detail in that Agreement, including rights to carry out investigations and studies in relation to, and to undertake a Project involving the exploitation of, the Ok Tedi Deposits in Papua New Guinea.

B. The Agreement referred to in Recital A has been varied, amended and supplemented by, and assigned as set out in, a Supplemental Agreement (the "First Supplemental Agreement" which expression includes the same as varied, amended and supplemented by the Second Supplemental Agreement, the Fourth Supplemental Agreement and the Fifth Supplemental Agreement) dated 26 June 1980, a Second Supplemental Agreement (the "Second Supplemental Agreement") dated 26 February 1981, a Third Supplemental Agreement dated 4 March 1982, a Fourth Supplemental Agreement (the "Fourth Supplemental Agreement") dated as of 1 March 1984 and a Fifth Supplemental Agreement (the "Fifth Supplemental Agreement") dated as of 1 August 1985, and, as so varied, amended and supplemented, is hereinafter referred to as the "Principal Agreement".

C. By Clause 19.1 of the Fifth Supplemental Agreement the State and the Company agreed to discuss options designed to maximize the efficiency of the Project and the profitability of the Company that may be proposed from time to time by the Company, with the object of agreeing on options to be implemented and thereafter implementing the options agreed to.

D. The State and the Company have discussed certain of such options and have negotiated and have agreed on certain changes in respect of the Project, including the development of the Project, the staging of such development and an increase in the ultimate ore-processing capacity of the Project. The State and the Company are therefore entering into this Agreement in order, inter alia, to give effect to certain of such changes. Certain others of such changes were proposed in Change Notices No. 32/4.2; 14/29.2, 33/4.2, 34/4.2, and 35/4.2; 15/29.2 which were delivered by the Company to the State on 28 February 1986, and which were approved by the State on 28 February 1986. The parties are entering into this Agreement in order to give effect to a financial restructuring of the Company and to modify the obligations of the State to support debt of, and subscribe for equity in, the Company.

E. In order to give effect to Clauses 2, 15, 22 and 29 hereof, Amoco Corporation, Amoco, BHP, BHP Minerals Holdings, MG, DG and DEG have agreed to become parties hereto.

NOW IT IS HEREBY AGREED AND DECLARED as follows:

1. **Definitions and Interpretation**

1.1 This Agreement is supplemental to the Principal Agreement and accordingly, unless otherwise defined herein, words and expressions which are given a certain meaning in the Principal Agreement (as amended or prospectively amended hereby) are used herein with the same meanings.

1.2 The rules of interpretation set out in Clause 2 of the Principal Agreement shall, unless the context or subject matter otherwise requires, apply in this Agreement. References herein to Recitals and Clauses are, unless otherwise specified, references to the Recitals and Clauses to and of this Agreement.

1.3 Unless the context or subject matter otherwise requires, whenever any agreement or other instrument is referred to herein, such reference shall be deemed to include such agreement or other instrument as it may heretofore have been, or may simultaneously herewith or from time to time hereafter be, modified, amended, supplemented or restated in accordance with the terms applicable thereto.

2. **Effect on and of other laws**

Clause 3 of the Principal Agreement and Clause 2 of each of the First, Second, Third, Fourth and Fifth Supplemental Agreements thereto are hereby deleted. This Agreement, the Principal Agreement and each agreement that is supplemental to the Principal Agreement shall have the force of law for the full term provided for herein and therein, as the case may be, and shall apply notwithstanding anything to the contrary in any other law in force in Papua New Guinea.

3. **Conditions precedent**

3.1 The parties declare that this Agreement (other than the provisions specified in Clause 3.2(a)) constitutes a material or substantial alteration of the Principal Agreement and accordingly pursuant to Clause 42.2 of the Principal Agreement the State shall as soon as is reasonably practicable introduce and sponsor in the National Parliament a Bill for an Act to approve this Agreement, which Bill shall be in a form previously agreed upon between the parties.

3.2 (a) This Clause 3 and Clauses 1, 4, 5.1, 5.2, 5.3, 6.1, 10, 11 and 15.1 shall come into effect on 28 February 1986.

(b) Clauses 2, 18, 23, 25.6, 26, 27, 28 and 29 shall not operate unless and until the Bill referred to in Clause 3.1 shall have been passed as an Act and shall have come into force.

(c) Clauses 5.4, 6.2, 7, 8, 9, 12, 13, 14, 15.2, 16, 17, 19, 20, 21, 22, 24, 25.1, 25.2, 25.3, 25.4 and 25.5 shall not operate unless and until the Recapitalization Closing shall have occurred.

4. **Amendments to definitions**

4.1 Clause 4 of the Fifth Supplemental Agreement is deleted, and the Principal Agreement shall accordingly henceforth be read and construed and take effect for all purposes as if the amendments made by that Clause had not been made.

4.2 Clause 1 of the Principal Agreement is amended;

(a) by substituting the following definitions for the definition therein of "Agreement":

"'Acceptable Particulate Level" has the meaning given to it in Clause 29.14(d).

"Agreement" means this agreement, including the Schedules hereto, as it may be varied or supplemented from time to time in accordance with the terms hereof.';

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

"'Chemical and Metal Levels" has the meaning given to it in Clause 29.14(b).'

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

"'Construction Schedule" has the meaning given to it in Clause 13.1.

"Construction Stage" means the period from and including the date on which the Special Mining Lease and all other leases, licences, rights and grants referred to in Clause 12.3(a) have been granted to and including the date by which construction of the Expanded Copper Facilities is due to be completed (as such date may be changed from time to time (with the State's approval, where required pursuant to this Agreement)) or such later date as the State may approve or as may result from the application of Clause 36 or Clause 37.

"Corporate Sponsors" has the meaning given to it in Clause 5.5 of the First Supplemental Agreement.

"Criteria" has the meaning given to it in Clause 29.14(d).';

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

"'Development Plan" has the meaning given to it in Clause 13.2.

"Discrete Port Facilities" has the meaning given to it in Clause 14.10.

"Environmental Expert" means the independent consulting firm or individual that shall be designated by the State and the Company as the "Environmental Expert" for the purposes of this Agreement, such designation to be made not later than the date which is 30 days after the State or the Company shall have elected, by notice to the other of them, to refer a question for determination pursuant to Clause 29.14(h). In making such designation, the State and the Company shall meet together and shall endeavour to agree upon a firm or individual that has had relevant experience in advising both private industry and governments on the engineering of facilities for the environmental control of mine wastes and tailings disposal, and on the transport of sediment in rivers, associated with major mining projects in locations comparable to that of the Project. Failing such designation by such date, "Environmental Expert" means, instead, the independent consulting firm or individual that shall be appointed as the "Environmental Expert" for the purposes of this Agreement by a person or office-holder (the "nominator") who shall be agreed upon between the Company and the State by not later than the Recapitalization Closing (or such later date as the State and the Company may agree). The nominator shall be instructed by the State or the Company to appoint an "Environmental Expert" that has had the experience referred to above, but the parties shall be bound by the appointment once made. If the "Environmental Expert" for the time being for the purposes of this Agreement should cease to exist or otherwise cease to be available, or should become incapable of acting or unwilling to act, a replacement "Environmental Expert" shall be agreed upon by the State and the Company or, if the State or the Company so requires by notice to the other of them, shall be appointed (subject always to the immediately preceding sentence) by the nominator.

"Environmental Study" has the meaning given to it in Clause 29.14(c).

"Expanded Copper Facilities" has the meaning given to it in Clause 13A.1(a) .

"Exploitation Suspension Period" has the meaning given to it in Clause 47.3(a).

"Fifth Supplemental Agreement" means the agreement dated as of 1 August 1985 headed "Fifth Supplemental Agreement" between the State, Amoco Corporation, Amoco Minerals PNG Company, The Broken Hill Proprietary Company Limited, BHP Minerals Holdings Proprietary Limited, Metallgesellschaft AG, Degussa AG, DEG-Deutsche Finanzierungsgesellschaft fuer Beteiligungen in Entwicklungslaendern GmbH and the Company, as the same may be modified, amended, supplemented or restated in accordance with the terms applicable thereto

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

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

""Gold to Copper Conversion Date" means the date which is the later of:

(a) the date at which the ore feeding, conveying and grinding sections of the Company's gold plant (including, without limitation, the primary SAG mill referred to in Clause 13.3(a)(iii) and the Carr Fork secondary ball mill) first switches from processing gold ore to processing copper ore; and

(b) the date on which the Quintana ball mill referred to on the Construction Schedule shall be operational.

"Holding Company" has the meaning given to it in Clause 23.17(a).

"Implementation Date" has the meaning given to it in clause 29.14(m).";

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

""Northern Waste Dumps" has the meaning given to it in Clause 29.14(a).";

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

""Pre-Default Rate" has the meaning given to it in Clause 13A.3(i).";

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

""Recapitalization Closing" has the meaning given to it in a letter dated 28 February 1986 from the Minister for Minerals and Energy of the State to the Company, and agreed to by the Company and each of the Corporate Sponsors, or such other meaning that the State, the Company and the Corporate Sponsors shall agree upon for the purposes of this definition.";

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

""River System" has the meaning given to it in Clause 29.14(a).

"Sixth Supplemental Agreement" means the agreement dated as of 28 February 1986 headed "Sixth Supplemental Agreement" between the State, Amoco Corporation, Amoco Minerals PNG Company, The Broken Hill Proprietary Company Limited, BHP Minerals Holdings Proprietary Limited, Metallgesellschaft AG, Degussa AG, DEG-Deutsche Finanzierungsgesellschaft fuer Beteiligungen in Entwicklungslaendern GmbH and the Company, as the same may be modified, amended, supplemented or restated in accordance with the terms applicable thereto.

"Sponsors" has the meaning given to it in Clause 5.5 of the First Supplemental Agreement.

"State-Acquired Facilities" has the meaning given to it in Clause 14.7(a).'; and

(j) by inserting the following definition after the definition therein of "United States Dollars":

'"Waste Rock" means mine waste, and does not include:

(a) materials that are impounded in the Company's tailings system; and

(b) tailings discharges that are of a particle size smaller than the minimum size required to be impounded in the Company's tailings system.'.

5. Fifth Supplemental Agreement, etc.

5.1 The Company's obligations under the amendments to the Principal Agreement and to the First Supplemental Agreement that were made by the Fifth Supplemental Agreement are hereby waived until the date (the "Cut-Off Date") which is the earlier of:

(a) the Recapitalization Closing and

(b) 30 September 1986 or such other date as the State and the Company shall agree upon for the purposes of this paragraph (b).

If the Recapitalization Closing shall not have occurred on or before 30 September 1986 or such other date as the State and the Company shall agree upon for the purposes of paragraph (b) above, the Company shall proceed promptly to fulfill the obligations referred to in this Clause 5.1, but shall be entitled to a reasonable period within which to resume such obligations, and shall be entitled to a reasonable extension of the dates by which such obligations are to be performed.

5.2 The Company's obligations, pursuant to Section 1.1 of Schedule A to the instrument dated as of the 29th day of February 1980 and headed "Approval of Proposals", to carry out photogrammetric and associated studies of the Fly River as required by Clause 5.1(c)(ii) of the Principal Agreement are hereby waived until the Cut-off Date.

5.3 The Company's obligations to comply with the ratio of Debt to Equity set forth in Clause 5.3(a)(iii) (excluding the provisions of Clause 5.3(a)(iii)(B)) of the First Supplemental Agreement are hereby waived until the Cut-off Date.

5.4 The Fifth Supplemental Agreement is amended by deleting Clauses 5, 6, 7, 8.2, 12.1, 12.2, 12.3, 14 and 18 thereof, and the Principal Agreement and the First Supplemental Agreement shall accordingly henceforth be read and construed and take effect for all purposes as if the amendments made by those Clauses had not been made.

6. Copper development.

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

'Clause 13. Development Plan

13.1 On or before 28 February 1986 the Company has delivered to the State, and the State has approved, Change Notice No. 34/4.2. Such Change Notice includes a schedule relating to the construction of Expanded Copper Facilities, which facilities the Company shall be obligated to construct pursuant to Clause 13A (as set forth in Clause 6.2 of the Sixth Supplemental Agreement) and the Approved Proposals. Such schedule sets forth a series of "construction benchmark" dates by which certain events, specified in such schedule, in the construction of such facilities are reasonably expected by the Company to have occurred in all material respects. (Such schedule, as amended or modified from time to time in accordance with this Agreement, is herein referred to as the "Construction Schedule".)

13.2 On or before 31 August 1986 the Company will deliver to the State a plan (which, as revised from time to time, is herein referred to as the "Development Plan") relating to the construction of the Expanded Copper Facilities. The Development Plan shall reflect the stages of the Project referred to in Change Notice No. 35/4.2; 15/29.2, as approved by the State on 28 February 1986, and as the same may be amended from time to time in accordance with this Agreement.

13.3 The Development Plan shall provide, as a minimum, for:

(a) (i) the mine facilities;

(ii) the ore feeding, conveying and storage facilities;

(iii) the primary SAG mill;

(iv) the power source; and

(v) project infrastructure

in existence at the date of preparation of the Development Plan, as any of the same may thereafter be added to or otherwise changed (with the State's approval, where required pursuant to this Agreement);

(b) additional mine equipment and facilities that the Company reasonably believes to be necessary or appropriate for inclusion in the Expanded Copper Facilities, including (to the extent that the Company reasonably believes the same to be necessary or appropriate as aforesaid):

(i) additional ore feeding, conveying and storage facilities;

(ii) a second primary SAG mill;

(iii) secondary ball mills and cyclone circuits;

(iv) a flotation plant, including regrinding, concentrate thickening and filtering facilities; and

(v) additional sources of power;

(c) (i) arrangements that the Company reasonably believes to be appropriate (which may include arrangements with third parties and which may include a copper concentrate pipeline) for the transport of copper concentrates from the copper plant to Kiunga; and

(ii) development, to the extent that the Company reasonably believes to be appropriate, of the Kiunga wharf area to receive, store and handle outgoing copper concentrates and incoming fuel and general cargo;

(d) arrangements that the Company reasonably believes to be appropriate (which may include arrangements with third parties) for transporting copper concentrates from Kiunga to an ocean port (which may consist of a floating port, located in Port Moresby harbour or elsewhere, or a land-based port) or other trans-shipment facilities;

(e) arrangements that the Company reasonably believes to be appropriate (which may include arrangements with third parties) at or for an ocean port (which may consist of a floating port, located in Port Moresby harbour or elsewhere, or a land-based port), or other trans-shipment facilities, for handling, unloading and storing copper concentrates and loading the same on to ocean-going vessels and

(f) a schedule showing the approximate dates by which the Company expects, in the exercise of its reasonable judgment, that notices will be delivered to the Secretary of Minerals and Energy pursuant to Clause 4.2 of the First Supplemental Agreement in accordance with Clause 13A.1.

The Company shall from time to time provide the State with any revisions that shall have been made to the Development Plan.".

6.2 The Principal Agreement is amended by inserting the following provisions after Clause 13 thereof;

"Clause 13A Construction of the expanded copper facilities.

13A.1 The Company will from time to time deliver to the Secretary of Minerals and Energy one or more notices pursuant to Clause 4.2 of the First Supplemental Agreement or Clause 8.5 of this Agreement (as appropriate) which provides or provide for:

(a) construction, in accordance with the Approved Proposals, of the facilities referred to in Clause 13.3 in connection with the production of copper concentrates that have a design capacity of 60,000 tonnes of copper ore per day (such facilities as changed from time to time (with the State's approval, where required pursuant to this Agreement), are herein referred to as the "Expanded Copper Facilities"); and

(b) construction of the Expanded Copper Facilities in a manner that will enable the Company to meet the "construction benchmarks" set forth in the Construction Schedule.

13A.2 Each notice referred to in Clause 13A.1 shall be dealt with in accordance with the provisions and procedure set out in Clause 4.2 of the First Supplemental Agreement or Clause 9 of this Agreement (as appropriate); provided that:

(a) the State shall not, pursuant to the said Clause 4.2 or the said Clause 9, raise an objection to or seek to defer consideration of or a decision upon the proposed change or changes set forth in such notice, or impose any condition in relation to the State's approval thereof, if the intention or effect of such objection, deferral or condition would be to change materially the facilities that are to form part of the Expanded Copper Facilities from those provided for in Clause 13;

(b) any disapproval by the State, pursuant to the said Clause 4.2 or the said Clause 9, of any such change or changes shall be deemed to be unreasonable if the intention or effect of such disapproval would be to change materially the facilities that are to form part of the Expanded Copper Facilities from those provided for in Clause 13; and

(c) the Company shall not (unless the State otherwise agrees) submit a notice pursuant to the said Clause 4.2 or pursuant to Clause 8.5 of this Agreement the effect of which would be to frustrate the intention of Clause 13A.1 (including any such notice that seeks to reduce in any material respect the design capacity of the Company's facilities in connection with the production of copper concentrates from 60,000 tonnes of copper ore per day).

13A.3 If the Company has failed to make reasonable progress on construction of the Expanded Copper Facilities in accordance with the Construction Schedule (as defined in Clause 13A.4), and:

(a) in the case of any such failure that shall have been due to events or circumstances entirely or substantially beyond the Company's control (it being understood that non-availability of internally generated funds shall not constitute such an event or circumstance), the Company shall not have resumed such progress within 14 days after (x) the consequences of such events or circumstances shall have ceased to prevent or hinder the Company from doing so, and (y) the Company shall have received written notice from the State specifying such failure and stating that in the State's opinion the consequences of such events or circumstances shall have ceased so to prevent or hinder the Company; and

(b) in the case of any other such failure, the Company shall not be taking reasonable steps to remedy such failure within 14 days after the Company shall have received written notice from the State specifying such failure,

then, so long as the Company shall not be taking reasonable steps to remedy such failure, and subject always to the last sentence of this Clause 13A.3, the average rate at which the Company shall be permitted to process ore will, if the Minister for Minerals and Energy shall so direct, be reduced to:

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

$$P_1 \times R$$

where

P_1 is such percentage (not being less than 90%) as the Minister shall have directed from time to time by notice to the Company for the purposes of this paragraph (i); and

R is the rate (the "Pre-Default Rate") which is the higher of (x) the design capacity of the Company's plant and (y) the average of the daily processing rates of the Company's plant over the 30 days up to and including the day preceding the date of such reduction; and

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

$$P_2 \times R$$

where

P_2 is such percentage (which may be less than 90%) as the Minister shall have directed from time to time by notice to the Company for the purposes of this paragraph (ii); and

R is the Pre-Default Rate;

provided that, notwithstanding any such direction of the Minister for Minerals and Energy pursuant to this paragraph (ii), the Company shall be entitled to continue production, for a period which, when aggregated with all previous periods (if any) during which the Company has continued production pursuant to this proviso, does not exceed three months, to the extent that it is necessary for the Company so to continue production to enable it to fulfil its obligations in connection with any forward product sale or gold loan transaction:

(A) that shall have been entered into or assumed prior to the date on which the Company shall have received written notice from the State pursuant to paragraph (a) or (b) above; and

(B) pursuant to which the Company shall be obligated to deliver mine products or make a payment in lieu thereof;

and provided further that, to the extent that the Company is unable, pursuant to the foregoing proviso, to effect an orderly reduction of processing rates to the rate directed from time to time by the Minister for Minerals and Energy in accordance with this paragraph (ii), the Company shall be entitled to a reasonable period within which to proceed with such an orderly reduction.

The provisions of the Clause 13A.3, and of any direction from time to time given pursuant to paragraph (i) or (ii) above, shall cease to be of any further force or effect on the Gold to Copper Conversion Date.

13A.4 For the purposes of Clause 13A.3, the Company shall have failed to make reasonable progress on construction of the Expanded Copper Facilities in accordance with the Construction Schedule if and to the extent that any event set forth on the Construction Schedule as a "construction benchmark" shall not have occurred, in any material respect, by the date provided therefor in the Construction Schedule.

13A.5 The Company agrees that, in any case where:

(a) the Company shall have failed to make reasonable progress on construction of the Expanded Copper Facilities in accordance with the Construction Schedule (as defined in Clause 13A.4,); and

(b) the Company shall have received written notice thereof, in accordance with Clause 13A.3(a) or (b) (as applicable),

the Company shall submit to the State a notice pursuant to Clause 4.2 of the First Supplemental Agreement whereby the Company proposes changes to the Construction Schedule, and to the "construction benchmarks" set forth therein, so as to enable the Company to resume progress in accordance with the Construction Schedule as so changed, and the State shall deal with such Change Notice in accordance with the said Clause 4.2, provided that the State shall not be obligated to approve the changes set forth in such Change Notice if the same includes a change to the date by which construction of the Expanded Copper Facilities is due to be completed as set forth on the Construction Schedule, as such date may be changed from time to time (with the State's approval, where required pursuant to this Agreement). The provisions of this Clause 13A.5 shall cease to be of any further force or effect on the Gold to Copper Conversion Date.'.

7. Port

7.1 The Principal Agreement is amended by deleting Clause 14.1 thereof.

7.2 Clause 14.2 of the Principal Agreement is amended by substituting "Clause 13A" for "Clause 14.1".

7.3 Clause 14.6 of the Principal Agreement is amended by inserting ", at the cost of the State," after "such transfer".

7.4 The Principal Agreement is amended by substituting the following for Clause 14.7 thereof:

'14.7 (a) If and to the extent that the State at any time acquires, pursuant to Clause 21.3(a), any facilities that shall have been constructed by the Company (the "State-Acquired Facilities"), the State shall from the effective date of such acquisition, at the cost of the State, maintain and be responsible for the maintenance of the State-Acquired Facilities. The Company will, if the State so requires, pay to the State a maintenance user charge in respect of the State-Acquired Facilities calculated on the basis of what is fair and reasonable having regard to the cost (excluding any profit to the State) incurred by the State in respect of work which the Company has agreed, in advance, that the State should undertake in respect of the maintenance and operation of the State-Acquired Facilities (and the Company hereby agrees that the State may carry out normal maintenance in respect of the State-Acquired Facilities).

(b) With respect to any facilities referred to in this Clause 14 constructed, established or provided by the Company and not acquired by the State pursuant to Clause 21.3(a), the Company will, if the State so requires, pay to the State a charge calculated on the basis of what is fair and reasonable having regard to the cost (excluding any profit to the State) incurred by the State in respect of any services which the Company has agreed, in advance, that the State should provide in respect of such facilities.

(c) Except as provided for in this Clause 14.7, and except as provided in Clause 21.1, the Company shall not be required to pay any rates, taxes, rents, charges, dues, duties, tariffs or other levies, or other fees or charges whatsoever (other than non-discriminatory rents and service charges), in respect of (or in respect of the use of, or otherwise in connection with) any ports, wharves, berths and facilities (including trans-shipment facilities) from time to time constructed and developed by the Company.".

7.5 Clause 14.9 of the Principal Agreement is amended by substituting "Clause 13A" for "this Clause".

7.6 Clause 14 of the Principal Agreement is amended by inserting the following provisions at the end thereof:

"14.10 The provisions of Clause 14.11 shall apply, to the exclusion of Clauses 14.3, 14.4, 14.5 and 14.9, in respect of any ports (including floating ports), wharves, berths and facilities (including trans-shipment facilities) that shall be constructed and developed by the Company in a location that is physically separate from any port that is, at the time that the Company informs the State that the Company proposes to commence such construction and development, a declared port for the purposes of the Harbours Act Chapter 240 of the Revised Laws (the "Discrete Port Facilities").

14.11(a) Subject always (to the extent that the same are applicable to the Discrete Port Facilities) to all laws, rules and regulations of general application in Papua New Guinea relating to customs, health, navigational, safety and immigration matters, the Company shall have complete ownership (subject to Clause 21), management and control of any Discrete Port Facilities including, without limitation, as to the recruitment of labour employed in connection therewith. Notwithstanding the provisions of Clause 22, use of such Discrete Port Facilities by vessels other than those servicing the Company's operations, and the scheduling of such use, shall be at the discretion of the Company, provided that the Company shall (to the extent to which it is not prejudiced and its operations are not interfered with) grant to such other vessels reasonable access to such Discrete Port Facilities. Without limitation to the foregoing, vessels used to service the Company's operations shall be entitled at all times to priority in the use of such Discrete Port Facilities.

(b) Notwithstanding the provisions of Clause 22, the Company may require any vessels which use any Discrete Port Facilities to pay to the Company reasonable charges in respect of such use. The Company shall give reasonable consideration, upon request of the Papua New Guinea Harbours Board, to passing on to such Harbours Board some part of the charges that the Company may from time to time be paid in respect of cargoes for third parties.

(c) Unless the State and the Company otherwise agree, no port that constitutes part of any Discrete Port Facilities shall, after the Company shall have notified the State of the proposed location of such port, be declared a declared port for the purposes of the Harbours Board Act Chapter 240 of the Revised Laws.

(d) The State shall, if the Company shall apply therefor, cause to be granted to the Company an appropriate lease in respect of the area the subject of any Discrete Port Facilities, including any area reasonably required by the Company for the proper regulation of the use of such Discrete Port Facilities and for the proper regulation of shipping using such Discrete Port Facilities.

(e) In relation to any port that constitutes part of any Discrete Port Facilities:

(i) any by-laws from time to time made pursuant to the Harbours Board Act Chapter 240 of the Revised Laws relating to declared ports (within the meaning of such Act) shall, except to the extent agreed between the Company and the Papua New Guinea Harbours Board and notified in the Gazette, apply as if such port were a declared port (within such meaning);

(ii) the Company may, with the approval of the Papua New Guinea Harbours Board, make local rules for the management and control of such port which rules shall apply to such port as if such rules were by-laws made pursuant to Section 30 of the Harbours Board Act and as if such port were a declared port for the purposes of such Act; and

(iii) the Company or the person appointed for the time being by the Company to manage such port shall have in relation to the management and control of such port (to the extent that the Company or such person reasonably considers it necessary or desirable that it or he should do so) all the powers which the Papua New Guinea Harbours Board or a Port Manager appointed by it to manage such port would respectively have had if the port had been a declared port for the purposes of the Harbours Board Act.".

7.7 Clause 21 of the Principal Agreement is amended by inserting the following provision at the end thereof:

"21.6 Notwithstanding anything hereinbefore contained, the State may not require the Company to transfer to it, pursuant to Clause 21, ownership of any or all of the ports, wharves, berths and facilities (including trans-shipment facilities) referred to in Clause 14 unless the State and the Company shall have first agreed that such a transfer would be in the best interests of the Project.".

8. Environment

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

"29.14(a) Except for the Company's obligations (i) with respect to the Chemical and Metal Levels referred to in paragraph (b) below, (ii) to pay the cost of the Environmental Study described below and referred to in Change Notice No. 32/4.2; 14/29.2 delivered by the Company to the State on 28 February 1986 and approved by the State on 28 February 1986, and (iii) with respect to the disposition of tailings, which obligations are set forth in the Approved Proposals, including the maintenance of the existing interim tailings system or the application of any other appropriate manner of treating such tailings in compliance with the Approved Proposals, every capital spending obligation of the Company in respect of facilities to mitigate the impact of the Company's operations on the Fly River below the confluence of the Ok Tedi and the Fly River down to and including the delta of the Fly River (the "River System"), including, without limitation, in respect of a permanent tailings facility and the northern waste dumps, a stable dump in accordance with the intent of the Approved Proposals as in effect on 28 February 1986 (hereinafter referred to as the "Northern Waste Dumps") shall be suspended until 1 January 1990, provided that the foregoing shall not limit the Company's obligation to comply with Clause 29.15.

(b) Acceptable levels for chemicals and heavy metals (the "Chemical and Metal Levels") have been established pursuant to Change Notice No. 32/4.2; 14/29.2(delivered by the Company to the State on 28 February 1986 and approved by the State on 28 February 1986).

(c) The Company shall undertake, or cause to be undertaken, a rigorous and detailed study (the "Environmental Study"), which shall be commenced or commissioned by the Company by not later than 1 July 1986. The Environmental Study will be directed towards determining, so far as it is practicable to do so, the impact, except in respect of the Chemical and Metal Levels in the River System, that the mining operations of the Company have had and are likely thereafter to have on the River System. The Environmental Study will be conducted substantially in accordance with terms of reference (which shall include the date for completion of the Environmental Study) that shall be agreed between the State and the Company by not later than 1 July 1986.

(d) The Company shall provide to the State the findings of the Environmental Study as soon as practicable after such findings have become available to the Company. On the basis of those findings, and on the basis inter alia of the criteria (the "Criteria") set forth in paragraph (e) below, the State will establish, by not later than 1 January 1989, the acceptable level (the "Acceptable Particulate Level") of suspended particulate matter in the River System resulting from the Company's mining operations. The Acceptable Particulate Level shall be determined at a compliance point to be agreed between the State and the Company.

(e) The Criteria are as follows:

(i) Recognition is to be given to the State's need to ensure that the Company's mining operations do not cause unacceptable environmental damage to the River System.

(ii) Recognition is to be given to the limited use of the area concerned, the need for its development, the State's desire for the Project to proceed and be economically viable, and the effect the Project must necessarily have on the Environment.

(iii) The Acceptable Particulate Level should tend toward the maximum level at which significant environmental damage to the River System will not occur, giving recognition to the agreement of the Company and the State that the cost of facilities to moderate the impact of the Company's mining operations on the River System that are not necessary facilities for that purpose are unacceptable costs.

(iv) Recognition is to be given to a cost/benefit assessment of the facilities necessary to achieve compliance with incremental levels of suspended particulate matter. In particular, but without limitation, recognition is to be given to the estimated cost associated with each incremental reduction in the level of suspended particulate matter. In this regard the Company shall be entitled to submit to the State, and the State shall have due regard to (but not to the exclusion of other relevant material), the Company's estimate of the cost of facilities that would be necessary to reduce the level of suspended particulate matter by decrements between the projected level for 1992, without any additional facilities to control the level of suspended particulate matter beyond those facilities in place on 28 February 1986, down to the level that could be reasonably expected to be achieved if a permanent tailings system of the nature described in Change Notice No. 26/4.2; 8/29.2 and the Northern Waste Dumps were constructed. The Company's estimate shall be accompanied by, and the State shall have due regard to (but not to the exclusion of other relevant material), detailed supporting data, including cost calculations, underlying pertinent assumptions, and assessments of relevant technical risk factors.

(v) The Acceptable Particulate Level shall be determined having due regard to the fact that conventional data developed from studies in temperate regions and regions of lower rainfall may be of limited applicability to the River System.

(f) After the Acceptable Particulate Level has been established, and by not later than 30 June 1989, the Company, if it believes that facilities different from (i) the permanent tailings system described in Change Notice No. 26/4.2; 8/29.2 and (ii) the Northern Waste Dumps would be materially adequate to control the level of suspended particulate matter in order to ensure compliance with the Acceptable Particulate Level, will advise the State of such different facilities. If the Company believes that no additional facilities beyond those at the time in place are necessary, it will so advise the State. If the Company believes that no additional facilities are necessary or that facilities different from the said permanent tailings system and Northern Waste Dumps will be materially adequate, the Company will submit one or more notices in accordance with the provisions of Clause 29 of this Agreement in that regard.

(g) If the State considers that the steps, if any, which the Company proposes to take as advised by the Company to the State pursuant to paragraph (f) are materially adequate to ensure compliance with the Acceptable Particulate Level, it shall notify the Company accordingly and, if the Company has submitted one or more notices in accordance with the provisions of Clause 29 of this Agreement, shall approve the same in accordance with that Clause.

(h) If the State considers that the steps, if any, which the Company proposes to take, as advised by the Company to the State pursuant to paragraph (f), are materially inadequate to ensure compliance with the Acceptable Particulate Level, it shall notify the Company accordingly and the State and the Company shall negotiate in good faith and shall endeavour to agree upon a solution to the differences between them. If such a solution has not been agreed within 30 days after the date of the giving of the State's notification, the State and the Company shall each have the right to elect, by notice to the other of them, to refer for determination by the Environmental Expert the question whether the steps, if any, which the Company proposes to take are materially adequate to ensure compliance with the Acceptable Particulate Level and, if not, as to the minimum changes that are necessary to such steps in order to ensure such compliance.

(i) Where a difference between the Company and the State has been referred for determination by the Environmental Expert pursuant to paragraph (h) above the Environmental Expert shall determine the following questions:

(i) in the case where the Company has informed the State that no additional steps beyond facilities at the time in place are necessary to ensure compliance with the Acceptable Particulate Level, whether or not the existing facilities and procedures employed by the Company are materially adequate to ensure compliance with the Acceptable Particulate Level; and

(ii) in the case where the Company has informed the State of steps that it proposes to take to ensure compliance with the Acceptable Particulate Level, whether or not those steps are materially adequate to ensure compliance with the Acceptable Particulate Level;

(iii) in the case where the Environmental Expert has determined negatively pursuant to sub-paragraph (i) or (ii), as the case may be, what additional steps, including facilities to control the level of suspended particulate matter in the River System resulting from the Company's mining operations, are necessary to ensure compliance with the Acceptable Particulate Level.

The determination of the Environmental Expert of any question pursuant to sub-paragraph (i) or (ii), as the case may be, and (where applicable) (iii) above shall be final and binding on both the State and the Company and neither the State nor the Company shall be entitled to refer the resolution of that question to arbitration pursuant to this Agreement or any Supplemental Agreement. The Environmental Expert shall in all matters act as an expert and not as an arbitrator and his costs shall be borne by the Company.

(j) The Environmental Expert shall be bound to base his determination solely on the results of the Environmental Study, the Acceptable Particulate Level, the Company's then current mining plan, and any materials that the State and the Company may submit to the Environmental Expert in order to assist the Environmental Expert in reaching a determination. The Environmental Expert shall have the option, at the Company's expense, and in accordance with a reasonable budget to be agreed between the Company and the Environmental Expert, to obtain the opinion of qualified consultants as to the material adequacy of the Company's proposed steps, if any, and as to any changes that are necessary thereto. In order to assist them in providing an informed opinion to the Environmental Expert, such consultants shall be given all the information, results and materials on which the Environmental Expert is bound to base his determination.

(k) Upon agreement between the State and the Company, or a determination by an Environmental Expert pursuant to paragraph (h) above, that the Company's proposed steps, if any, are materially adequate to ensure compliance with the Acceptable Particulate Level, the Company shall be obligated to implement such steps as soon as reasonably practicable (subject nevertheless to paragraph (a) above and to paragraph (n) below), and shall, where necessary, submit one or more notices in accordance with the provisions of this Clause 29 in that regard, which the State shall approve in accordance with that Clause.

(l) If the determination of the Environmental Expert is that the Company's proposed steps, if any, are materially inadequate to ensure compliance with the Acceptable Particulate Level, and the Environmental Expert determines the minimum changes that are necessary to such steps in order to ensure such compliance, the Company shall (unless the State and the Company shall otherwise agree) be obligated to implement such changed steps as soon as reasonably practicable (subject nevertheless to paragraph (a) above and to paragraph (n) below), and shall, where necessary, submit one or more notices in accordance with the provisions of this Clause 29 in that regard, which the State shall approve in accordance with that Clause.

(m) If during the measurement period that may be established by the State occurring at any time after three months after the Implementation Date the level of suspended particulate matter in the River System resulting from the Company's mining operations exceeds the Acceptable Particulate Level (other than as results from a non-recurring incident, so long as, if appropriate, the Company is diligently pursuing remedial steps), the Company shall be obligated (subject nevertheless to paragraph (n) below) promptly, if the State reasonably requires, to take such further steps and construct such further facilities as shall be sufficient to ensure compliance with the Acceptable Particulate Level. For purposes of this paragraph (m), "Implementation Date" means whichever of the following dates shall be applicable:

(i) the date on which the Company completes the steps required to be taken by it pursuant to this Clause 29.14 and the Approved Proposals to control the level of suspended particulate matter in the River System resulting from its mining operations; or

(ii) if the Company advised the State pursuant to paragraph (f) that no additional facilities beyond those at the time in place were necessary to ensure compliance with the Acceptable Particulate Level and the State agreed pursuant to paragraph (g) or the Environmental Expert determined in favour of the Company, the date on which the State advised the Company of its agreement or the date on which the Environmental Expert tendered his determination, as the case may be.

(h) In no circumstances shall the Company be obligated, in accordance with the foregoing procedures, to construct any facilities that are more costly (in the reasonable estimate of the Company agreed to by the State) than the aggregate costs (in the reasonable estimate of the Company agreed to by the State) of:

(i) the permanent tailings system described in Change Notice No. 26/4.2; 8/29.2; and

(ii) the Northern Waste Dumps.

Should the State and the Company fail to agree on the reasonable cost of such permanent tailings system, such reasonable cost shall be determined by Klohn Leonoff Limited or, if such firm is unwilling or unable to act, an expert to be designated by applying, mutatis mutandis, the provisions of the definition of "Environmental Expert". Should the State and Company fail to agree on the reasonable cost of the Northern Waste Dumps or the facilities that the Company would otherwise be obligated to construct in accordance with the foregoing procedures, such reasonable cost or costs shall be determined by an expert to be designated by applying, mutatis mutandis, the provisions of the definition of "Environmental Expert". Any cost determination made by Klohn Leonoff Limited or other expert pursuant to this paragraph (h) shall be final and binding on the State and the Company, and neither the State nor the Company shall be entitled to refer the resolution of such cost determination to arbitration pursuant to this Agreement. Klohn Leonoff Limited and any other expert acting pursuant to this paragraph (h) shall in all matters act as an expert and not as an arbitrator and the costs of any such expert shall be borne by the Company.

The Company shall have the right, at any time prior or subsequent to the approval by the State of one or more notices in accordance with paragraph (g), (k) or (l) above, to elect by notice to the State to proceed instead with construction of the permanent tailings system described in the said Change Notice No. 26/4.2; 8/29.2 and the Northern Waste Dumps, whereupon any notice submitted pursuant to paragraph (f) above or (as the case may be) pursuant to the said paragraph (k) or (l) shall be deemed withdrawn.

(o) The State shall ensure that the Company shall not be required, under the procedures set forth in this Clause 29.14, to bear any part of the cost of preventing or ameliorating any detrimental effect on the River System that the operations of third parties may have, and the State shall ensure that any arrangements that it may hereafter enter into with third parties whose operations may have such a detrimental effect shall include appropriate provisions in this regard.

(p) Notwithstanding anything elsewhere contained in this Agreement, any Supplemental Agreement, the Approved Proposals or any laws, rules or regulations of the State, the Company shall not be obligated to undertake any capital spending to mitigate the impact of the Company's operations on the River System except in accordance with this Clause 29.14 and the State shall not use any rights elsewhere set forth in this Agreement, any Supplemental Agreement, the Approved Proposals or any such laws, rules or regulations to frustrate or alter the effect of the application of this Clause 29.14. The provisions of this Clause 29.14, including the expenditure limit set forth in paragraph (n), shall not apply in respect of the Company's continuing obligations to comply with the Chemical and Metal Levels and its obligations referred to in clause (iii) of Clause 29.14(a).

29.15 The Company may continue to dump Waste Rock into failing dumps which are expected to erode over time, provided that the Company shall not at any time (the "Dump Time") dump a quantity of Waste Rock greater than that which, when added to the quantity of Waste Rock theretofore dumped, the State, in consultation with the Company, reasonably expects will result within one month of the Dump Time in an eroded quantity of not greater that 100 million tonnes of Waste Rock passing into the Fly River at its confluence with the Ok Tedi. The Company will report to the State at the end of each calendar quarter, beginning with the fourth calendar quarter of 1986, the cumulative total of Waste Rock dumped into failing dumps since 1 June 1984, the types and quantities of Waste Rock dumped during such quarter and an estimate of the cumulative total of Waste Rock that has reached the Fly River from such failing dumps since 1 June 1984.".

9. **Manpower, training and localisation**

Clause 30.2 of the Principal Agreement is amended by substituting "will be expeditiously granted" for "will be granted".

10. **Infrastructure**

10.1 Clause 7.2(b) of the First Supplemental Agreement is amended by:

(a) inserting after "A$1,514,000" the following: "or such other amount as shall be determined pursuant to the letter dated 28 February 1986 from the Company to the Minister for Minerals and Energy of the State"; and

(b) inserting after "A$785,300" the following: "or such other amount as shall be determined pursuant to such letter".

10.2 The Company's obligation to make the payments with respect to Stages II and III referred to in Clause 7.2(b) of the First Supplemental Agreement, as amended by Clause 10.1 of this Agreement, is hereby waived (if and to the extent that such payments would otherwise be due prior thereto) until the date which is 60 days after the date on which the amounts of such payments shall have been determined as referred to in the said Clause 7.2(b).

11. Exploration commitments

11.1 Clause 47.1 of the Principal Agreement is amended by substituting "prospects in relation to copper, gold, silver, lead, zinc, nickel, molybdenum, limestone, coal or other metals or minerals (or any combination of the foregoing) and their ores" for "copper prospects".

11.2 Clause 47 of the Principal Agreement is amended by substituting "Additional Prospects" for "Additional Copper Prospects" wherever appearing therein.

11.3 Clause 47.1 of the Principal Agreement is amended by substituting the following for all material appearing between the expressions "or comprised in—" and "without first affording":

"(a) Prospecting Authority No. 581 as at 28 February 1986; and

(b) the Mining Area to the extent that it includes areas of land not covered by the Prospecting Authority Referred to in paragraph (a) above.

(The areas of land referred to in paragraphs (a) and (b) above are hereinafter referred to together in this Clause 47 as "Additional Prospects")."

11.4 Clause 47 of the Principal Agreement is amended by inserting the following provision at the end thereof:

"47.3 Notwithstanding anything elsewhere contained in this Agreement, the Mining Act Chapter 195 of the Revised Laws, the Approved Proposals, or any prospecting authority or mining tenement held by the Company:

(a) all prospecting authorities held by the Company on 28 February 1986 shall be automatically suspended (without any further action on the part of the State or the Company) on 28 February 1986 and shall remain suspended for the period (the "Exploration Suspension Period") from and including 28 February 1986 to and including the earliest of:

(i) the date by which construction of the Expanded Copper Facilities is due to be completed as set forth on the Construction Schedule, as such date may be changed from time to time (with the State's approval, where required pursuant to this Agreement), or such other date that the State and the Company shall agree upon for the purposes of this sub-paragraph (i);

(ii) the date on which the Company resumes, on the areas the subject of Prospecting Authority No. 581, activities with respect to which a prospecting authority is required pursuant to the said Mining Act (and the Company hereby agrees that prior to such date it will notify the State that the Company will resume such activities on such date); and

(iii) (if the Recapitalization Closing has not theretofore occurred) the date specified in Clause 5.1 (b) of the Sixth Supplemental Agreement;

(b) the Company shall have no obligation to satisfy any work or expenditure requirements, or any similar requirements, during the Exploration Suspension Period in relation to the prospecting authorities referred to in paragraph (a) but such requirements shall, subject to paragraph (c), be reinstated on the first day following the end of the Exploration Suspension Period;

(c) the time or respective times for the satisfaction of the requirements referred to in paragraph (b), as the same were originally scheduled to be satisfied, shall be extended by a period equal to the Exploration Suspension Period;

(d) upon termination of the Exploration Suspension Period, the prospecting authorities referred to in paragraph (a) shall resume effect and shall continue in effect for a period equal to their unexpired period as at 28 February 1986, provided that, notwithstanding the effects of any suspension of such prospecting authorities pursuant to paragraph (a), such prospecting authorities shall expire on the date which is 329 days after the end of the Exploration Suspension Period, or on such other date that the State and the Company shall agree upon or that may result from an extension of such prospecting authorities in accordance with the Mining Act Chapter 195 of the Revised Laws or the Regulations thereunder or that may otherwise result from any applicable provision of law; and

(e) the State shall not during the Exploration Suspension Period grant any prospecting authority to any other person in respect of any part of the area the subject of the prospecting authorities referred to in paragraph (a).".

12. **M**ining plans, ore grade cut-offs and production rates

Clause 43.2 of the Principal Agreement is amended by inserting the following provisions at the end thereof:

"(f) The State shall not refuse to approve:

(i) any mining plan delivered by the Company, or any ore grade cut-off or mining or processing rate provided for therein; or

(ii) any variation of proposals proposed in a notice delivered pursuant to Clause 4.2 of the First Supplemental Agreement or Clause 8.5 or 29.2 of this Agreement, to the extent, if any, that such notice proposes a change to any mining plan or ore grade cut-off or mining or processing rate forming part of the Approved Proposals;

except to the extent, if any, that the same fails to comply with mine safety requirements of general application in Papua New Guinea, or with the environmental requirements set forth in Clause 29 of this Agreement, or fails adequately to ensure maximization of the economic return (consistent with existing facilities and the Development Plan) over the life of the mine.".

13. Implementation of shut-downs

The Principal Agreement is amended by inserting the following provisions immediately after Clause 43 thereof:

"Clause 43A Implementation of shut-downs

Without limitation to the provisos to Clause 13A.3, if the Company should at any time be required to cease production it shall be entitled to a reasonable period within which to proceed with an orderly shut-down of operations. Without limiting the generality of the foregoing, the Minister for Minerals and Energy may in his discretion permit the Company to continue production for an additional period and, in making such determination, shall take into account, among other things, any obligations of the Company in connection with any forward product sale or gold loan transaction:

(i) that shall have been entered into or assumed prior to the date on which the Company would, but for this Clause 13A, have been required to cease production; and

(ii) pursuant to which the Company shall be obligated to deliver mine products or make a payment in lieu thereof.".

14. Fly river survey

Notwithstanding anything contained or implied in the Principal Agreement (and, in particular, Clause 5.1(c)(ii) thereof), and notwithstanding Clause 10 of the Fourth Supplemental Agreement, Section 1.1 of Schedule A to the instrument dated as of the 29th day of February 1980 and headed "Approval of Proposals" is hereby deleted.

15. State equity participation and debt support; Recapitalization

15.1 Clause 11.12 of the Principal Agreement is amended:

(a) by inserting "and before the Cut-Off Date (as defined in Clause 5.1 of the Sixth Supplemental Agreement)" after "1 August 1985" in the fourth and ninth lines thereof; and

(b) by substituting "the Cut-Off Date (as so defined)" for "28 February 1986" in paragraph (a) thereof.

15.2 The First Supplemental Agreement is amended by inserting the following provisions immediately after Clause 5 thereof:

"Clause 5A Recapitalization

5A.1 At the Recapitalization Closing each Sponsor (or, in the case of Amoco Minerals PNG Company, an affiliate of Amoco Corporation) will, in accordance with the Export Agencies' Completion and Cash Deficiency Agreement (as defined in Clause 5.5 of this Agreement), deliver to the Lenders (as defined in the Export Agencies' Completion and Cash Deficiency Agreement) notes pursuant to Section 5.02(a)(ii)(y) of the Export Agencies' Completion and Cash Deficiency Agreement, such notes having an aggregate principal amount of:

(a) in the case of the State—US $20,000,000; and

(b) in the case of each Corporate Sponsor—such Corporate Sponsor's percentage (being 37.500% in the case of Amoco Corporation, 37.500% in the case of The Broken Hill Proprietary Company Limited, 9.375% in the case of Metallgesellschaft AG, 9.375% in the case of Degussa AG, and 6.250% in the case of DEG-Deutsche Finanzierungsgesellschaft fuer Beteiligungen in Entwicklungslaendern GmbH) of the difference between:

(i) the aggregate principal amount outstanding under the Loan Agreements (as defined in the Export Agencies' Completion and Cash Deficiency Agreement) immediately prior to the Recapitalization Closing; and

(ii) US $20,000,000.

The aggregate principal amount outstanding under the Loan Agreements referred to in (i) above shall be deemed to have been repaid in full by the Company as of the Recapitalization Closing.

5A.2 At the Recapitalization Closing the Company will issue to each Sponsor (or as directed by it), in consideration of such Sponsor's relinquishment of any rights which such Sponsor shall have acquired from the Lenders referred to in Clause 5A.1 in connection with the issuance of the notes referred to in such Clause, preference shares in the capital of the Company (which shall be designated as Series A Cumulative Redeemable Preference Certificates and which shall carry the rights and preferences that shall have been agreed to, on or before 28 February 1986, by the State and the Corporate Sponsors) having an aggregate value (being the aggregate of the nominal values of, and the issuance premiums applicable to, such shares) equal to the aggregate principal amount of the notes which shall be issued by such Sponsor in accordance with Clause 5A.1. Such preference shares are herein referred to as "Preference Certificates". For the purposes of determining the State's Support Obligation (as defined in Clause 5.5 of this Agreement) after the Recapitalization Closing, the aggregate value of the Preference Certificates (being the aggregate of the nominal values of, and the issuance premiums applicable to, such Preference Certificates) shall be treated as shareholder loans and shall be included in calculating "Supported Stage I Loans" and "Total Supported Loans" (as defined in Clause 5.5 of this Agreement). Redemptions of Preference Certificates shall for such purposes be treated as repayments of shareholder loans and, accordingly, upon redemption of Preference Certificates, the amounts included as Supported Stage I Loans and Total Supported Loans shall be reduced by an amount equal to the aggregate of the nominal values of, and the issuance premiums applicable to, the Preference Certificates, so redeemed.

5A.3 At or before the Recapitalization Closing, the State will subscribe for, and make payment in full in respect of, the number of additional ordinary shares in the capital of the Company necessary to increase to 20% the State's percentage (including direct and indirect holdings of such ordinary shares) of the total of such ordinary shares outstanding immediately after such subscription.

5A.4 In addition to the obligations of the State under Clauses 5A.1 and 5A.3, the State will, subject to the next succeeding sentence:

(a) furnish Support (as defined in Clause 5.5 of this Agreement) in respect of the State's percentage shareholding, direct and indirect, of ordinary shares in the capital of the Company (the "State's Shareholding Percentage") of all Loans (as likewise defined) advanced or otherwise made available to the Company after the Recapitalization Closing (regardless of the Company's use of the proceeds of such Loans), if one or more Corporate Sponsors in the aggregate furnish Support in respect of the percentage which is equal to the difference between 100% and the State's Shareholding Percentage of such Loans; and

(b) subscribe for 20% of any additional ordinary shares issued after the Recapitalization Closing (regardless of the Company's use of the proceeds of such ordinary shares), if one or more Corporate Sponsors subscribe (directly or indirectly) in the aggregate for 80% of such additional ordinary shares.

Notwithstanding paragraphs (a) and (b) above:

(i) the aggregate of the payments required to be made by the State in connection with the subscription for ordinary shares for which the State shall be obligated to subscribe pursuant to paragraph (b) above shall not, on a cumulative basis, exceed US $20,000,000 (or the equivalent thereof in one or more currencies), and the State's obligation under paragraph (b) above shall be limited accordingly;

(ii) the aggregate sum of:

(A) the percentage (expressed as a monetary amount) of the principal amount of any such Loans in respect of which the State shall be obligated to furnish Support pursuant to paragraph (a) above; and

(B) the aggregate of the payments required to be made by the State in connection with the subscription for ordinary shares for which the State shall be obligated to subscribe pursuant to paragraph (b) above

shall not exceed, on a cumulative basis, US $40,000,000 (or the equivalent thereof in one or more currencies), and the State's obligations under paragraphs (a) and (b) above shall be limited accordingly, provided that if the State does not subscribe and pay for 20% of additional ordinary shares, or does not furnish Support in respect of the State's Shareholding Percentage of additional Loans, after such aggregate sum has been reached, the State's preference shares will be diluted in accordance with the "dilution formula" from time to time applicable to the Corporate Sponsors with respect to such preference shares (it being recognized that such "dilution formula" may provide that the shares of a diluting Sponsor shall be transferred, together with all accrued and unpaid dividends in respect thereof, to the non-diluting Sponsors), provided that the State's shareholding shall not be diluted on a basis greater than "two for one" and shall not be diluted less favourably than as would occur under the dilution provisions applicable to the Corporate Sponsors; and

(iii) the State's Support Obligation with respect to any such Loans shall be subject to adjustment in the event that any such Loans are allocated to Stage I and treated as Supported Stage I Loans as a consequence of the provisions of Section 3 of the Heads of Agreement dated as of 28 February 1986 relating to, among other things, the Recapitalization Closing, but the principal amount of any Loans so allocated shall be disregarded for purposes of determining whether or not the aggregate sum set forth in sub-paragraph (ii) above shall have been reached.".

18. Limitation on dividends and other distributions

The Principal Agreement is amended by deleting Clause 11.13 thereof.

17. Additional profits tax

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

"R = the percentage rate determined in respect of such Tax Year in accordance with Clause 23.7(a)(ii);".

17.2 The provisions of Clause 17.1 shall be deemed at all times to have had effect from, 28 February 1986.

18. Preference shares

The Principal Agreement is amended by substituting the following for Clause 11.3(f)(ii) thereof:

"(ii) notwithstanding the provisions of sub-paragraph (i) above, the Company may, by special resolution, resolve to issue preference shares, including cumulative redeemable preference shares (and, for avoidance of doubt and without limitation, it is hereby declared that such shares (and any preference shares that may be created and issued by Star Mountains Holding Company Pty. Limited, a company incorporated in Papua New Guinea) may be denominated in a currency other than the currency of the State);".

19. Debt: equity ratio

19.1 Clause 5.3 of the First Supplemental Agreement is amended:

(a) by substituting the following for sub-paragraph (ii) of paragraph (a) thereof:

"(ii) authorities under the Central Banking (Foreign Exchange and Gold) Regulation Chapter 138 of the Revised Laws are obtained from the Bank of Papua New Guinea in respect of such loans or commitments; and";

(b) by deleting the word "and" at the end of subparagraph (iii) of the definition of "Debt" in paragraph (b) thereof;

(c) by inserting the word "and" at the end of subparagraph (iv) of the definition of "Debt" in paragraph (b) thereof; and

(d) by inserting the following provision after subparagraph (iv) of the definition of "Debt" in paragraph (b) thereof:

"(v) the aggregate of the nominal values and the issuance premiums applicable to all outstanding shares in the capital of the Company which shall have been designated as Series A Cumulative Redeemable Preference Certificates;".

19.2 The Company shall have no further obligation to comply with the ratio of Debt to Equity set forth in Clause 5.3(a)(iii) of the First Supplemental Agreement (excluding the provisions of Clause 5.3(a)(iii)(B) which shall apply, mutatis mutandis, in respect also of any shares in the capital of the Company which shall be included in Debt by virtue of sub-paragraph (v) of the definition of that term in Clause 5.3(b)).

20. Foreign exchange

20.1 The Principal Agreement is amended by substituting the following for Clause 26.2 thereof:

"26.2 The Company shall be entitled to retain in foreign exchange outside Papua New Guinea the proceeds of sale of all products of the Company exported overseas to the extent necessary to enable the Company to meet its obligations during the ensuing three months to pay foreign exchange, to pay dividends to overseas shareholders and to each Holding Company and to make payments to overseas shareholders and to each Holding Company in connection with the redemption of its share capital, in respect of—

(a) the principal of, interest and service charges on and other fees and expenses related to loans made to the Company in foreign exchange by persons not resident in Papua New Guinea;

(b) commitments in foreign exchange to persons not resident in Papua New Guinea for the supply of goods and services to the Company (including capital goods and services of foreign employees and consultants of the Company);

(c) commitments in respect of dividends (other than dividends referred to in paragraph (d) below) payable to shareholders resident out of Papua New Guinea and to each Holding Company;

(d) commitments in respect of dividends payable to shareholders resident out of Papua New Guinea and to each Holding Company in respect of any shares in the capital of the Company that shall have been designated as Series A Cumulative Redeemable Preference Certificates; and

(e) commitments in respect of payments to persons resident out of Papua New Guinea and to each Holding Company in connection with the redemption of any shares in the capital of the Company that shall have been designated as Series A Cumulative Redeemable Preference Certificates;

provided that, the amounts concerned are established (in the case of paragraphs (d) and (e) above, prior to the Recapitalization Closing (or such other date as the State and the Corporate Sponsors shall agreed to)) to the reasonable satisfaction of the State on the basis of loans and commitments which have been approved by the Bank of Papua New Guinea. The Company shall be entitled, without the need for any further action or authorization (by the Bank of Papua New Guinea or otherwise), to make payments in respect of such obligations out of the foreign exchange so retained.".

20.2 Clause 26 of the Principal Agreement is amended by inserting the following provision at the end thereof:

"26.6 Each Holding Company shall be entitled:

(a) to retain in foreign exchange outside Papua New Guinea the proceeds of any dividend, redemption or other payment or distribution received from the Company in respect of any shares in the capital of the Company; and

(b) without the need for any further action or authorization (by the Bank of Papua New Guinea or otherwise), to make payments out of such proceeds.".

21. Taxation

The Principal Agreement is amended by substituting the following provisions for Clause 23.13 thereof:

"23.13(a) Subject only to Clause 5.3(a)(iii) of the First Supplemental Agreement, each dividend in respect of any share in the capital of the Company that shall have been designated as a Series A Cumulative Redeemable Preference Certificate shall be an allowable deduction for the purposes of the Income Tax Act in the year in which it is paid or credited against any outstanding obligation of the payee.

(b) Any exchange gain or loss that shall be made or incurred by the Company in direct consequence of the redemption of any share in the capital of the Company that shall be designated as a Series A Cumulative Redeemable Preference Certificate shall form part of the assessable income of the Company, or shall be an allowable deduction, as the case may be, in the year in which the same is so made or incurred if the Company would have been obliged to include in its assessable income, or would have been entitled to an allowable deduction, in respect of an exchange gain or loss (had such a gain been made or loss incurred) upon repayment in such year (had such a repayment been made) of any amount outstanding (had such an amount been outstanding) under any one or more of the Loan Agreements referred to in Clause 5A.1(b)(i) of the First Supplemental Agreement.

23.14 No withholding tax shall be payable in respect of:

(a) any dividend paid, credited or accrued in favour of a non-resident of Papua New Guinea in respect of any share in the capital of the Company that shall have been designated as a Series A Cumulative Redeemable Preference Certificate; or

(b) the payment, crediting or accrual of any moneys, or the distribution of any property, in favour of a non-resident of Papua New Guinea in connection with the redemption of any share such as is referred to in paragraph (a) above, or in connection with any reduction of capital or distribution on a winding-up in respect of such share.

23.15 No stamp duties or other taxes, charges or other levies, and no capital registration or like fees or charges, shall be applicable to, or be payable in respect of, the authorization, creation, issuance or transfer of any shares in the capital of the Company that shall have been designated as Series A Cumulative Redeemable Preference Certificates.

23.16 The Company shall not be liable to any tax, charge or other levy in respect of any gain, whether realized or unrealized, that may be derived (or in the case of an unrealized gain may be expected to be derived) by the Company in direct consequence of the financial restructuring of the Company's debt and capital structure that is due to be effected at the Recapitalization Closing, nor shall any such gain otherwise be taken into account in determining the assessable income of the Company for the purposes of the Income Tax Act.

23.17(a) Clause 23.9 shall apply in respect of Gross Dividends payable by a company (a "Holding Company"), through which a Sponsor holds its shares in the Company indirectly, in the same manner in which it applies to Gross Dividends payable by the Company.

(b)(i) Each dividend in respect of any preference share in the capital of a Holding Company that shall have been created and issued principally in order to pass on to a Sponsor the benefit of the holding, by such Holding Company, of shares in the capital of the Company that shall have been designated as Series A Cumulative Redeemable Preference Certificates shall be an allowable deduction for the purposes of the Income Tax Act in the year in which it is paid or credited against any outstanding obligation of the payee.

(ii) Any exchange gain or loss that shall be made or incurred by a Holding Company in direct consequence of the redemption of any preference share in the capital of such Holding Company of the kind referred to in sub-paragraph (i) above shall form part of the assessable income of such Holding Company, or shall be an allowable deduction, as the case may be, in the year in which the same is so made or incurred if the Company would have been obligated to include in its assessable income, or would have been entitled to an allowable deduction, in respect of an exchange gain or loss (had such a gain been made or loss incurred) upon repayment in such year (had such a repayment been made) of any amount outstanding (had such an amount been outstanding) under any one or more of the Loan Agreements referred to in Clause 5A.1(b)(i) of the First Supplemental Agreement.

(c) Every dividend paid, credited or accrued in favour of a Holding Company in respect of any share in the capital of Company that shall have been designated as a Series A Cumulative Redeemable Preference Certificate, and every payment, credit or accrual of any moneys, or distribution of any property, in favour of a Holding Company in connection with the redemption of any such share, or in connection with any reduction of capital or distribution on a winding-up in respect of such share, shall constitute exempt income for the purposes of the Income Tax Act.

(d) Clause 23.14 shall apply in respect of payments, credits, accruals and distributions made by or in respect of a Holding company in the same manner in which it applies to payments, credits, accruals and distributions made by or in respect of the Company, to the extent that the relevant payment, credit, accrual or distribution is made by or in respect of the relevant Holding Company in order to pass on to a Sponsor the benefit of a payment, credit, accrual or distribution that was made by or in respect of the Company in favour of such Holding Company.

(e) No stamp duties or other taxes, charges or other levies, and no capital registration or like fees or charges, shall be applicable to, or be payable in respect of, the authorization, creation, issuance or transfer of any shares in the capital of a Holding Company that is carried out in order to effect indirectly, within the context of such Holding Company's capital structure, a participation by a Sponsor in the financial restructuring of the Company's debt and capital structure that is due to be effected at the Recapitalization Closing, or a dealing that is consequential upon such participation.

(f) A Holding Company shall not be liable to any tax, charge or other levy in respect of any gain, whether realized or unrealized, that may be derived (or in the case of an unrealized gain may be expected to be derived) by such Holding Company in direct consequence of the financial restructuring of the Company's debt and capital structure that is due to be effected at the Recapitalization Closing, or in consequence of any financial restructuring of the Holding Company's debt and capital structure that is consequential thereupon, nor shall any such gain otherwise be taken into account in determining the assessable income of such Holding Company for the purposes of the Income Tax Act.

(g) A Sponsor that holds its shares in the Company through a Holding Company shall be treated in all other respects, so far as the taxation laws of the State are concerned, as if such Sponsor instead held such shares in its own name.'.

22 Arbitration

22.1 Clause 38 of the Principal Agreement is amended by deleting Clauses 38.1, 38.2, 38.3, 38.4 and 38.5 and substituting therefor the following provisions:

'38.1 If at any time there is any dispute, question or difference of opinion between the Parties hereto concerning or arising out of this Agreement or its construction, meaning, operation or effect or concerning the rights, duties or liabilities of any of the Parties hereto other than a dispute, question or difference of opinion arising under Clause 23 in respect of which provision for settlement or determination thereof is provided in the Income Tax Act, or if there is any dispute, question or difference of opinion which by the provisions of this Agreement other than this Clause 38.1 is to be or may be referred to arbitration the same shall be subject to arbitration as provided in Clauses 38.2 to 38.8. Each party to any agreement that, pursuant to Clause 42.2, has been approved by a Bill for an Act that has been passed as an Act and has come into force, shall be a "Party hereto" for purposes of this Clause 38.

38.2 If any Party hereto considers that it and one or more of the other Parties hereto have been unable to settle amicably through negotiations any dispute, question or difference of opinion (a "Dispute") that, pursuant to Clause 38.1, may be referred to arbitration, such Party may by notice in writing (a "Notice of Arbitration"), notify each other Party hereto that it regards the Dispute referred to as one to be submitted to arbitration. Any Party hereto that is neither the Party hereto giving a Notice of Arbitration nor a Party hereto named in such Notice as a party to the arbitration may by notice to the Party hereto that gave such Notice of Arbitration, given with 15 days after the date of such Notice of Arbitration, elect to participate in the arbitration of such Dispute. If a Notice of Arbitration is given with respect to a Dispute, then such Dispute shall be finally settled by arbitration in accordance with the UNCITRAL Arbitration Rules as in force at 28 February 1986 except as modified herein:

(a) if, after giving effect to any elections to participate given within the 15-day period following such Notice of Arbitration, there are three or more parties to the arbitration of such Dispute,

(i) by a sole arbitrator to be appointed by agreement of the Party hereto that gave such Notice of Arbitration, the other Party or Parties hereto named in such Notice as a party to the arbitration and each other Party hereto that has elected to participate in such arbitration and each other Party hereto that has elected to participate in such arbitration within the period of 30 days after the end of the 15-day period referred to in the preceding sentence; or

(ii) failing agreement on the appointment of such an arbitrator pursuant to paragraph (a) above, then by a sole arbitrator to be appointed by the appointing authority designated in Clause 38.3; and

(b) in all other cases, by three arbitrators, one of whom shall be appointed by the Party hereto that gave such Notice of Arbitration, one of whom shall be appointed by the other party to such arbitration (or, if either of such Parties hereto fails to appoint an arbitrator within the period of 30 days after the end of the 15-day period referred to in the preceding sentence, such arbitrator shall be appointed by the appointing authority designated in Clause 38.3) and the third of whom shall be appointed by agreement of the parties to such arbitration or, failing such agreement within such 30-day period, by the appointing authority designated in Clause 38.3.

Neither a sole arbitrator appointed pursuant to paragraph (a) of this Clause 38.2 nor a third arbitrator appointed pursuant to paragraph (b) of this Clause 38.2 shall (unless each party to the arbitration in question otherwise agree) be a citizen or resident of the country that is the country in which any Party hereto is incorporated.

38.3 The appointing authority shall be the Lord Chief Justice of England unless he is unable or unwilling to make such appointment. If for any reason whatever the Lord Chief Justice of England does not make an appointment within the period of 30 days after application to him or if, prior to the expiration of such period of 30 days, he declines to make such appointment, the appointing authority shall be the President of the Supreme Court of Denmark and if he fails to make an appointment within the period of 30 days after application to him or if, prior to the expiration of such period of 30 days, he declines to make such appointment, then the appointing authority shall be the appointing authority specified in the UNCITRAL Arbitration Rules at the time in force.

38.4 The place of arbitration shall be London, England unless the parties to the arbitration agree upon another place.

38.5 All arbitrators shall be fluent in the English language and the arbitration shall be conducted in English.

38.6 For the avoidance of doubt, it is specified that the arbitrator or arbitrators, as the case may be, may not decide any dispute ex aequo et bono.

38.7 The Parties hereto agree that an arbitration award as between any two or more of them in the arbitration of a Dispute shall be final and binding upon all the parties to the arbitration of such Dispute.

38.8 The Parties hereto agree to exclude any right of appeal to any court which would otherwise have jurisdiction in the matter in connection with any question of law arising in the course of the arbitration reference or out of the award.

However, the parties to any arbitration of a Dispute may make an application to any court having jurisdiction for registration and/or judgment on the award entered or for enforcement of any award (including execution on such judgment), including enforcement of any award granting interlocutory relief, against a relevant Party, and for the obtaining of any evidence (whether by discovery of documents, interrogatories, affidavits or testimony of witnesses or otherwise howsoever) which the arbitrator directs shall be admitted in the arbitral proceedings. The State expressly disavows and waives any right to claim sovereign immunity in connection with any proceedings to compel enforcement of this Clause 38 or any proceedings to enforce or execute upon any award made by arbitration under this Clause 38.".

23. **Taxation of the Lamin Trust**

23.1 The Lamin Trust (being the Trust constituted pursuant to a certain Deed of Settlement dated 27 November 1985 (the "Deed of Settlement") made between Harold Roy Shipes (as Settlor) and the Secretaries for the time being of the Departments of Minerals and Energy, Finance, National Planning and Development and Provincial Affairs of the State (as Trustee)) shall be deemed to be a company within the meaning of that term as defined in section 4(1) of the Income Tax Act 1959 of the State and any distribution made to a beneficiary of the Lamin Trust pursuant to the provisions of the Deed of Settlement shall be deemed to be a dividend within the meaning of that term as likewise defined.

23.2 The provisions of Clause 23.1 shall be deemed at all times to have had effect from 27 November 1985, being the date of the Deed of Settlement.

24. **Approved proposals**

24.1 The Company has, on 28 February 1986, delivered to the State the following notice pursuant to Clause 4.2 of the First Supplemental Agreement, namely, Change Notice No. 34/4.2—Expanded Copper Facilities Construction Schedule. The parties acknowledge that such notice shall constitute a valid and effective notice pursuant to the said Clause 4.2.

24.2 The Principal Agreement is amended by substituting the following for Clause 9.8 thereof:

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

(a) this Agreement (excluding the amendments made by the Sixth Supplemental Agreement) or the Approved Proposals (excluding the variations made by the State's approval of Change Notices No. 32/4.2; 14/29.2, 33/4.2, 34/4.2 and 35/4.2; 15/29.2 and the Change Notices from time to time delivered pursuant to the amendments made by the Sixth Supplemental Agreement); and

(b) the amendments made by the Sixth Supplemental Agreement and the variations made by the State's approval of Change Notices No. 32/4.2; 14/29.2, 33/4.2, 34/4.2 and 35/4.2; 15/29.2 and the Change Notices from time to time delivered pursuant to the amendments made by the Sixth Supplemental Agreement, with respect to the timing and manner of the development of the Project,

the amendments made by the Sixth Supplemental Agreement and the variations made by the State's approval of Change Notices No. 32/4.2; 14/29.2, 33/4.2, 34/4.2 and 35/4.2; 15/29.2 and the Change Notices from time to time delivered pursuant to the amendments made by the Sixth Supplemental Agreement shall govern and this Agreement (excluding the amendments made by the Sixth Supplemental Agreement) and the Approved Proposals (excluding the variations made by the State's approval of Change Notices No. 32/4.2; 14/29.2, 33/4.2, 34/4.2 and 35/4.2; 15/29.2 and the Change Notices from time to time delivered pursuant to the amendments made by the Sixth Supplemental Agreement), as the case may be, shall be deemed changed accordingly, without any further action on the part of the State or the Company.".

25. **Miscellaneous changes**

25.1 Clause 43.2 (a) of the Principal Agreement is deleted.

25.2 Clause 43.2 (b) of the Principal Agreement is amended by substituting the following for the last sentence thereof:

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

25.3 Clause 43.2 (c) of the Principal Agreement is amended by deleting "(a)," from the last line thereof.

25.4 Clause 43.2 (d) of the Principal Agreement is amended by deleting "(a) or" from the sixth line thereof.

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

"(e) each of the dates referred to in, or in any instrument referred to in, Clause 13A of the Principal Agreement, and each of the periods specified in such Clauses and instruments for the performance of the Company's obligations, including, without limitation, the dates and periods respectively referred to in the Change Notices referred to in such Clauses, shall be automatically extended by the period of time from the Company's election under paragraph (d) until the arbitration award is given.".

25.6 Clause 19.2 of the Fifth Supplemental Agreement is amended by substituting "28 November 1985" for "the Enactment Date".

26. Enurement

This Agreement, and the Principal Agreement, the First Supplemental Agreement and the Fifth Supplemental Agreement as respectively amended hereby, shall enure for the benefit of the parties hereto and thereto and their respective permitted assignees. Nothing contained in this Agreement, nor the amendments to the Principal Agreement, the First Supplemental Agreement and the Fifth Supplemental Agreement provided for herein (other than Clause 5A.1 of the First Supplemental Agreement, as inserted by Clause 15.2 of this Agreement and Clause 38 of the Principal Agreement, as amended by Clause 22 of this Agreement, to the extent therein provided), shall impose any obligations on any one or more of the Corporate Sponsors .

27. Consolidation

If:

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

(b) the First Supplemental Agreement and all amending agreements,

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

28. Counterparts

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

29. Governing law

Clause 39.1 of the Principal Agreement and Clause 23 of the Fifth Supplemental Agreement are deleted in their entirety and the following provision is substituted for Clause 39.1 of the Principal Agreement.

"39.1 This Agreement and each agreement that is supplemental to this Agreement shall be governed by the law of Papua New Guinea, which the Parties acknowledge and agree includes, so far as they are relevant, the rules of international law.".

Office of Legislative Counsel, PNG