

**MINERAL AGREEMENT**

**AMONG**

**THE COOPERATIVE REPUBLIC  
OF GUYANA**

**- AND -**

**CAMBIOR INC.**

**- AND -**

**OMAI BAUXITE MINING INC.**

*Handwritten signatures and initials:*  
A signature that appears to be "My" followed by a circled "M" and some scribbles.  
A signature that appears to be "G.C." or similar.

## TABLE OF CONTENTS

|     |   |    |
|-----|---|----|
| 1.  | INTERPRETATION.....   | 4  |
| 2.  | NATURE OF AGREEMENT.....  | 11 |
| 3.  | THE COMPANY, REPORTING OBLIGATIONS AND CONFIDENTIALITY .....  | 12 |
| 4.  | MINING AND PROSPECTING LICENSES, ENVIRONMENTAL AUTHORIZATION, RIGHT OF FIRST REFUSAL AND FORCE MAJEURE..... | 15 |
| 5.  | USE AND ACQUISITION OF LANDS WITHIN THE MINING AREA.....  | 18 |
| 6.  | CONDUCT OF PROJECT OPERATIONS AND ASSUMPTION OF PRIOR LIABILITIES RELATING TO ENVIRONMENTAL CONDITION ..... | 19 |
| 7.  | INITIAL FUNDING AND INVESTMENT INTO GUYANA.....   | 22 |
| 8.  | IMPORTING PROPERTY INTO GUYANA.....   | 24 |
| 9.  | DUTIES, TAXATION, FEES, RENTS: .....  | 25 |
| 10. | IMMIGRATION AND EXPATRIATE PERSONNEL .....  | 30 |
| 11. | LABOUR MATTERS .....  | 30 |
| 12. | EXPORTING BAUXITE AND OTHER PROPERTY FROM GUYANA .....  | 31 |
| 13. | REPATRIATION OF CAPITAL AND PROFITS FROM GUYANA .....   | 32 |
| 14. | INSURANCE MATTERS.....  | 32 |
| 15. | REPRESENTATIONS, WARRANTIES, COVENANTS AND UNDERTAKINGS.....  | 32 |
| 16. | DEFAULTS AND REMEDIES.....  | 36 |
| 17. | GOVERNING LAW, DISPUTE RESOLUTION AND JURISDICTION .....  | 38 |
| 18. | TERM AND TERMINATION .....  | 40 |
| 19. | INDEMNIFICATION .....   | 42 |
| 20. | ASSIGNMENT .....  | 43 |
| 21. | FURTHER ACTIONS .....   | 44 |
| 22. | MISCELLANEOUS AND FINAL PROVISIONS .....  | 44 |
|     | SCHEDULE "A" - MINING AND PROSPECTING LICENSES.....   | 48 |
|     | SCHEDULE "B" - COMPANY ARTICLES OF INCORPORATION AND BY-LAWS .....  | 49 |
|     | SCHEDULE "C" - LANDS COVERED BY RIGHT OF FIRST REFUSAL .....  | 50 |
|     | SCHEDULE "D" - LIST OF EQUIPMENT TRANSFERRED TO THE COMPANY.....  | 51 |
|     | SCHEDULE "E" - WAIVER LETTER FOR WITHHOLDING TAXES .....  | 52 |
|     | SCHEDULE "F" - WAIVER LETTER FOR DUTIES AND TAXES ON SUPPLIES ETC.....                                      | 53 |
|     | SCHEDULE "G" - WAIVER LETTER FOR PROPERTY TAXES.....  | 54 |
|     | SCHEDULE "H" - ROYALTIES LETTERS .....  | 55 |

M M GA IR

THIS MINERAL AGREEMENT is made as of December <sup>th</sup> 8, 2004, with effect as of the same day by and among:

1. **THE COOPERATIVE REPUBLIC OF GUYANA**, a sovereign state organized in such territory, on such principles and according to such rules as are described in the Constitution of the Cooperative Republic of Guyana proclaimed into operation as of October 6, 1980, as amended, said party being represented for the purposes hereof by its Government, acting by and through the Prime Minister, Wights Lane, Kingston, Georgetown, Guyana;

(hereinafter, "Guyana" as represented herein by the "Government")

2. **THE GUYANA GEOLOGY AND MINES COMMISSION**, an agency of the Government and a body corporate duly established under the Geology and Mines Commission Act 1979 (Guyana), as amended;

(hereinafter, the "Commission" or the "GGMC")

3. **CAMBIOR INC.**, a company incorporated under the laws of the Province of Québec, Canada, having its registered office at 1075, 3<sup>rd</sup> Avenue East, Val d'Or, Québec J9P 6M1, Canada;

(hereinafter, the "Foreign Party")

4. **OMAI BAUXITE MINING INC.**, a company incorporated under the Companies Act, No. 29 of 1991, having its registered office at 176-D Middle Street, Cummingsburg, Georgetown, Guyana;

(hereinafter, the "Company")

Guyana, the Commission, the Foreign Party and the Company are hereinafter sometimes referred to individually as a "Party" and collectively as "Parties"; the Foreign Party and the Company are also hereinafter sometimes referred to collectively as the "Private Parties".

**WHEREAS:**

- A. The Foreign Party has been active in the gold mining industry in Guyana, principally with the commercial exploitation of the Omai gold mine, through OMAI Gold Mines Limited, its subsidiary incorporated and existing under the laws of Guyana (hereinafter, "OGML");
- B. Guyana is the sole beneficial shareholder of Linden Mining Enterprise, Limited (hereinafter, "Linmine"), a company owning and operating bauxite mining and related

AM for M.D.

- activities in or around the town of Linden, Guyana, and which is owned legally by NICIL (as defined herein);
- C. Linmine holds various mineral rights and interests to explore for and exploit bauxite in or around Linden;
- D. Linmine is also the sole owner and operator of buildings, surface rights, facilities, equipment and other assets relating to the exploration, development, extraction, handling and processing of bauxite, all being located in or around Linden;
- E. After Guyana had assessed various alternatives to operate and exploit Linmine's bauxite assets and had sought proposals from interested Persons to enter into arrangements for the privatization of its bauxite activities, Guyana and Linmine entered into, with the Foreign Party, as of June 6, 2002, the Linmine Restructuring Project Agreement (hereinafter, the "Heads of Agreement") providing for the following actions and transactions:
- (i) the completion by the Foreign Party of a Bankable Feasibility Study (as defined herein);
  - (ii) the incorporation of the Company with its share capital to be held, at Closing, as to 30% by Guyana (either directly or through Linmine or another Affiliate) and as to 70% by the Foreign Party, either directly or through an Affiliate;
  - (iii) the reconveyance and transfer to the Government prior to Closing, of certain of Linmine's mineral rights, followed by the issue, grant and conveyance, at Closing, of Mining Licenses and Prospecting Licenses to the Company, conferring upon the Company the exclusive right and interest in and to such mineral rights;
  - (iv) the granting, at Closing, by Guyana to the Company of a right of first refusal for the acquisition of certain of Linmine's mineral rights not to be made part of the aforementioned Mining Licenses and Prospecting Licenses;
  - (v) the assignment, conveyance and transfer, at Closing, to the Company of certain buildings, equipment, facilities and assets of Linmine (the "Vested Assets") by means of a Vesting Order of the Government, conferring upon the Company the exclusive ownership thereto;
  - (vi) a contribution of US \$10 million by the Foreign Party to the Company through a combination of a cash investment and the assignment of mining and mining-related equipment;
  - (vii) the use of the Foreign Party's best efforts to provide arrangements satisfactory to the Government for third party financing;
  - (viii) the assumption by Linmine and Guyana of all costs, obligations, undertakings and liabilities that are ensuing from all activities and operations performed as well as decisions made prior to Closing in respect of all mineral rights and assets of Linmine, to the full exoneration of the Foreign Party and the Company; correspondingly, the assumption by the Company of all costs, obligations,



- undertakings and liabilities that will be ensuing from its own activities, decisions and operations following Closing;
- (ix) the termination of Linmine's employees, the assumption by Linmine and Guyana of all costs, obligations, undertakings and liabilities ensuing therefrom, and the hiring by the Company of new employees; and
  - (x) the entering into by Guyana, the Company and the Foreign Party of this Agreement being drafted and structured along the lines of the Mineral Agreement dated August 16, 1991 and relating to OGML and the Omai gold mine, with the necessary adaptations;
- F. OMAI Bauxite Company Inc. ("OBC"), a wholly-owned subsidiary of the Foreign Party incorporated under the laws of Guyana, entered into an agreement (the "OBC Agreement") as of December 10, 2002 to provide Linmine with its services as contractor to perform overburden stripping and bauxite mining operations at the mineral deposits known as East Montgomery and Dacoura Mines;
- G. The Foreign Party completed the Bankable Feasibility Study in February 2003 and the Government and the Commission approved same in October 2004;
- H. The Government caused Linmine to terminate the employment of all its employees, with effect as of July 31, 2003 and, pursuant to a Management Agreement made as of July 24, 2003 and effective as of August 1, 2003 (the "Management Agreement"), assigned, on a contractual basis, the overall management of Linmine to OGML;
- I. The Government and the Foreign Party agreed to terminate the OBC Agreement and the Management Agreement at Closing;
- J. Each of Guyana, the Company and the Foreign Party is satisfied that substantially all conditions precedent to Closing as set forth in Article 5 of the Heads of Agreement have been fulfilled and each of them agreed to enter into this Agreement providing for the terms and conditions pursuant to which bauxite operations shall be developed and exploited by the Company;
- K. Guyana deemed it appropriate to provide for the making of such lawful Orders and administrative acts by such Ministers, Government Authorities and the giving of such undertakings by Guyana in respect of such matters as are hereinafter described;
- L. The Foreign Party and the Government caused the Company to be incorporated under the Companies Act 1991 of Guyana on June 25, 2004;
- M. The Company has satisfied all the prerequisites to the issue of Mining Licenses and Prospecting Licenses which are set forth in Sections 30 and 46 of the Mining Act; Section 47(1)(b) of the Mining Act, 1989, provided that Mining Licenses may contain provisions relating to such matters as the Commission may determine for the purposes of the Mining Act;

MM  
SW  
RD  
10.

- N. The Company has also satisfied all the prerequisites to the issue of an Environmental Permit (as defined herein) by Guyana's Environmental Protection Agency ("EPA"); and
- O. Section 19 of the Mining Act authorizes the Commission, with the approval of the Minister under the Mining Act, to enter into a mineral agreement (not inconsistent with the Mining Act) with respect to the matters enumerated in Section 19 thereof and, in particular, with respect to the granting of Mining Licenses and any matter incidental thereto or connected therewith.

**NOW, THEREFORE**, with a view to ensuring the efficient, effective and orderly operations and mining exploitation of bauxite as more particularly detailed hereinafter, for the greater benefit of the people of Guyana, its Government and the shareholders and employees of the Company and those of the Foreign Party, the Parties hereby formally agree and declare as follows:

1. **INTERPRETATION**

- 1.1 **Definitions:** In addition to terms defined elsewhere in this Agreement (including in the above preamble) and unless otherwise required or indicated by the context, the following terms shall respectively have the following meanings:

"Act" means any written law of Guyana made in the manner prescribed by Article 170 of the Constitution and any other act as defined in the Interpretation Act.

"Affiliate" means, in relation to a Party, a body corporate:

- (i) which is directly or indirectly controlled by such Party; or
- (ii) which directly or indirectly controls such Party; or
- (iii) which is, directly or indirectly, controlled by a company or corporation that also, directly or indirectly controls such Party.

For the purpose of this definition, "control" of a body corporate means the power to direct, administer and dictate policies of such body corporate, it being understood and agreed that control of a body corporate can be exercised without direct or indirect ownership of fifty percent (50%) or more of its voting shares, provided always that direct or indirect control of fifty percent or more of such voting shares shall be deemed to be effective control.

"Agreement", "hereby", "herein" "hereof" "hereto" and "hereunder" and similar expressions refer to in this Agreement as the same may be amended from time to time, and not to any part or other provision hereof.

"Applicable Law", means any and all Acts (including Subsidiary Legislation), laws, statutes, regulations, ordinances, rules, guidelines, policies, notices, Orders and directions or other requirements of any Government Authority applicable to the Parties, this Agreement and the transactions set forth herein, the Company, the Mining and Prospecting Licenses, the Environmental Permit, the Project or the Assets.

*Handwritten signatures and initials:*  
NY, SAA, M, R.

**"Applied Tax Laws"** shall have the meaning ascribed thereto in Section 9.6 hereof.

**"Articles"** means the Articles of Incorporation of the Company dated June 25, 2004, and its By-Laws, annexed hereto as Schedule "B", and any amendments thereto.

**"Assets"** means, collectively, the Vested Assets and all such other assets, facilities, buildings, equipment and machinery to be acquired by the Company subsequent to Closing for the purposes of the Project.

**"Bankable Feasibility Study"** shall have the meaning ascribed thereto in the Heads of Agreement.

**"Closing"** means the closing session upon which, *inter alia*, the transactions set forth in the Heads of Agreement and enumerated in clause E of the preamble hereof, shall be effective.

**"Commission"** means the Guyana Geology and Mines Commission and any successor thereto which is a body corporate or other agency of the Government; and **"Commissioner"** has the meaning ascribed to it in the GGMC Act.

**"Company"** means OMAI Bauxite Mining Inc. and any successor body corporate.

**"Constitution"** means the Constitution of the Cooperative Republic of Guyana 1980 proclaimed into operation as of October 6, 1980, as amended.

**"Corrective Action"** shall have the meaning ascribed thereto in clause 15.6.

**"Development"** means all work that may reasonably be required in connection with the preparation of a Mine, or any portion thereof, for the conduct of Mining including, but not limited to, the construction and installation of facilities and the procurement of materials, tools, equipment and supplies.

**"Effective Date"** means the commencement date of this Agreement as set forth in clause 18.1.

**"EIA"** means the Environmental Impact Assessment dated January 2003 and revised on August 2004, and prepared by Senes Consultants Ltd., a Canadian company on behalf of and at the request of the Foreign Party, which EIA describes the anticipated impact of Operations on various aspects of the environment in Guyana and was filed with the Commission in March 2003.

**"EMP"** means the Environment Management Plan outlined in the EIA.

**"Environmental Permit"** means the Environmental Permit granted to the Company by the EPA pursuant to the 1996 Guyana Environmental Protection Act.

**"Expatriate", "Expatriate Employee" and "Expatriate Personnel"** shall respectively have the meanings ascribed thereto in clause 10.1.

*AM* *SM* *MD*

“**Exploration**” means any activity performed with a view to determining the existence, location, quantity or quality of bauxite ore in Guyana.

“**Food**” means any solid or liquid and edible nutriment normally consumed by human beings as nourishment.

“**Force Majeure**” shall have the meaning ascribed thereto in clause 4.4.4.

“**Foreign Currency Account**” shall have the meaning ascribed thereto in clause 7.4.

“**Foreign Party**” means Cambior Inc. and any successor thereto who is not a citizen of Guyana or a body corporate incorporated under the laws of Guyana.

“**GGMC Act**” means the Guyana Geology and Mines Commission Act 1979 and includes any Subsidiary Legislation made pursuant thereto.

“**Government**” means the Government of Guyana.

“**Government Authorities**” means any present Government or governmental, quasi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and any other authority delegated by Government under this Agreement.

“**Guyana**” means the Cooperative Republic of Guyana, a sovereign state.

“**Guyana Dollar**” means the dollar as the lawful unit of currency in Guyana as set forth in the Bank of Guyana Act.

“**Household Product**” means any product other than Food typically purchased by consumers for consumption in the household in the short term including soaps, household cleansers, Food wrapping products and the like but for greater certainty does not include furniture, household appliances and other like products which are not normally fully consumed within one year.

“**Interpretation Act**” means the Interpretation and General Clauses Act, Chapter 2:01 of the laws of Guyana.

“**Investment Period**” means a 24-month period following the date of Closing.

“**LIBOR**”, in respect of any day, means the annual rate of interest commonly referred to as the London Interbank Offered Rate and published from time to time in the Financial Times of London (or, failing such publication, in any other publication of general circulation) as the reference rate of interest for U.S. Dollar loans between or among banks which are due in 60 days and, in respect of any month or part thereof, means the LIBOR on the first business day of such month. A “**business day**” means a day upon which licensed banks are open for business in Georgetown, Guyana.

NY  
SAC  
MD  
10



**“Liens”** means any mortgage, deed of trust, pledge, security interest, encumbrance, lien, charge of any kind or any other preferential arrangement in the nature of an encumbrance or security interest, including, without limitation, any agreement to give any of the foregoing, any conditional sale or title retention agreement and any lease in the nature thereof.

**“Material Adverse Event”** means any change, event, or effect that is materially adverse to the general affairs, business, operations, assets, liabilities, condition (financial or otherwise) or results of operations or prospects of any corporate entity or group of assets taken as a whole. The following shall not be taken into account in determining a Material Adverse Event that shall have occurred after the execution hereof: any adverse change, event, or effect that is directly attributable to (i) conditions affecting the Guyana economy generally, or (ii) conditions affecting the bauxite industry generally.

**“Mine”** means any deposit of bauxite or clay minerals including kaolin or refractory clays and silica located within the Mining Area, including those deposits described in the Bankable Feasibility Study, and all facilities constructed or established with a view to exploiting such bauxite or bauxite minerals from such deposit and includes without limitation, all moveable and immovable property, tangible and intangible, owned, possessed, used or controlled by the Company in or in respect of the Mining Area, including the Mining Licenses and the Environmental Permit.

**“Mining”** includes the mining, extracting, processing, milling, smelting, beneficiation, storing, handling, delivering and disposition of bauxite or bauxite minerals including kaolin or refractory clays and silica sand, and any other activity incidental thereto that may reasonably be required in connection therewith including, without limitation, the procurement of machinery, equipment, materials and supplies.

**“Mining Act”** means the Mining Act 1989 and includes any Subsidiary Legislation made pursuant thereto.

**“Mining Area”** means, collectively, the parcels of land covered by the Mining Licenses and, when such term is used in any context subsequent to the Effective Date, also means any further parcels of land granted to or acquired by the Company to be covered by the aforementioned Mining Licenses or an additional one.

**“Mining Licenses”** means the Mining Licenses to be granted pursuant to this Agreement and the Mining Act, as referred to in clause 4.1, and copy of which is attached hereto as Schedule “A”, and, as applicable, also means any additional Mining License to be granted to the Company during the term hereof.

**“Minister”**, when used in conjunction with the short title of any Act or Subsidiary Legislation or in conjunction with any other subject matter, means the Minister under the Constitution and to whom responsibility for the subject matter of such Act or Subsidiary Legislation or for such subject matter generally has been assigned by the President or otherwise under the Laws of Guyana the whole as certified by the Prime Minister in writing.

“**National Assembly**” shall have the meaning ascribed thereto in the Constitution.

“**Negative Effect**” shall have the meaning ascribed thereto in clause 15.6.

“**NICIL**” means National Industrial and Commercial Investments Limited, a company wholly-owned by Guyana.

“**Official Books**” shall have the meaning ascribed thereto in clause 9.9.

“**Operations**” means all or any of Exploration, Development and Mining and any other act, including acts of administration and management, performed by or on behalf of the Company pursuant to this Agreement and for the Project’s purposes; for greater certainty, Operations may be performed directly by the Company or through any Affiliate thereof or through any contractor or sub-contractor.

“**Order**” means any Subsidiary Legislation made under or by virtue of any Act and described therein as an order.

“**Party**” means a party to this Agreement and “**Parties**” means the parties to this Agreement collectively.

“**Person**” shall be interpreted broadly and shall include any individual, body corporate, sovereign state, government agency, body or commission, partnership, trust and unincorporated association.

“**President**” means the President of Guyana as such office is described in the Constitution and “**Prime Minister**” means the Prime Minister of Guyana as such office is described in the Constitution.

“**Prior Land and Asset Condition**” means the environmental and physical condition of the Mining Area, the Prospecting Area and of the Vested Assets at any time prior to the Effective Date, and their compliance or non-compliance status in respect of all Applicable Law relating to the protection of environment in Guyana. Without limiting the generality of the foregoing, the Parties hereby acknowledge that the following are adverse conditions having affected the Mining Area and the Vested Assets prior and up to the Effective Date:

- (a) drainage of acidic water into and from old and current mine workings, and from the tailings facility;
- (b) water management issues around adjacent mines and from the tailings facility such as, without limitation, flooding and sedimentation;
- (c) scrap, garbage and derelict facilities across the mines, tailings ponds and at the process plant, which represent unsightliness and physical hazards;
- (d) contaminated soil at the processing plant;

Handwritten initials and signatures at the bottom right of the page.

- (e) dust which may be resuspended and distributed into the surrounding community of Linden;
- (f) oil contamination in the Demerara River; and
- (g) hazardous materials which were taken out of the Mining Area and brought into the surrounding community.

**"Prior Liabilities"** means, collectively and without limitation or restriction to the generality of the following wording, any loss, cost, expense (including, without limitation, reasonable and documented attorneys' fees and other expenses incurred in defending against litigation, either threatened or pending), damage, liability, obligation, undertaking or commitment arising out of, ensuing from or based upon:

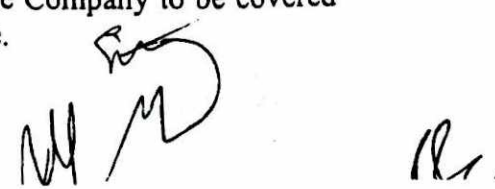
- (a) any adverse or non-regulatory compliant (with Applicable Law of Guyana and/or relevant international standards) Prior Land and Asset Condition;
- (b) any claim, obligation, liability or indebtedness owed by Guyana, its Government, the Commission or any Government Authority, to Linmine or any of its directors, officers or employees, and incurred at any time prior to the Effective Date; and
- (c) any losses, costs, obligations, liabilities or undertakings of Linmine of any nature whatsoever, and incurred at any time prior to the Effective Date, including, for greater certainty and without limiting the generality of the foregoing, any claims, losses, costs, obligations, liabilities or undertakings relating to or arising from the Power Contracts and the termination thereof at or prior to Closing. For the purposes of this paragraph (c), **"Power Contracts"** means, collectively, (i) the agreement for the purchase and sale of electric power between Linmine and Linden Power Co. ("LPC") dated January 16, 1998, (ii) the agreement relating to the sale of electric power by LPC to the Linden Community, dated January 16, 1998, and (iii) related agreements, including but not restricted to the Lease/Purchase agreement between Linmine and LPC dated January 16, 1998, and amendments or modifications to the agreements in (i), (ii) and (iii).

**"Private Parties"** means the Company and the Foreign Party and any successor in interest thereto.

**"Products"** means any and all minerals or mineral products extracted from the Mining Area, processed through the Assets and sold by the Company on a commercial basis.

**"Project"** means Operations to be undertaken and carried pursuant to the Bankable Feasibility Study, the Mining Licenses, the Prospecting Licenses, the Environmental Permit and this Agreement and any Schedule thereof.

**"Prospecting Area"** means, collectively, the parcels of land covered by the Prospecting License and, when such term is used in any context subsequent to the Effective Date, also means any further parcels of land granted to or acquired by the Company to be covered by the aforementioned Prospecting License or an additional one.



**"Prospecting License"** means the Prospecting License to be granted pursuant to this Agreement and the Mining Act, as referred to in clause 4.1, and copy of which is attached hereto as Schedule "A", and, as applicable, also means any additional Prospecting License to be granted to the Company during the term hereof.

**"Schedule"** means a schedule annexed to this Agreement.

**"Subsidiary Legislation"** shall have the meaning ascribed thereto in Section 5(1) of the Interpretation Act.

**"Unilateral Action"** shall have the meaning ascribed thereto in clause 15.6.

**"U.S. Dollar"** means the dollar which is the lawful unit of currency under the laws of the United States of America.

**"U.S. Dollar Books"** shall have the meaning ascribed thereto in clause 9.9.

**"WMP"** means the Waste Management Plan outlined in the EIA, prepared by and on behalf of the Foreign Party and filed with the Commission in March 2003.

- 1.2 Terms not defined in clause 1.1 hereof but which are defined elsewhere in this Agreement shall, unless otherwise specified or required by the context, have such defined meaning wherever used in the Agreement.
- 1.3 Capitalized letters are used in defined terms in this Agreement for convenience of reference only, and the inadvertent or other failure to use capital letters in a defined term shall not affect the interpretation thereof.
- 1.4 Unless otherwise specified or required by the context, the use of the singular form in this Agreement shall include a corresponding reference to the plural form and use of the masculine gender shall include a corresponding reference to the feminine and neuter genders. Other grammatical variations and cognate expressions of any defined terms shall likewise be deemed to have a corresponding meaning.
- 1.5 A reference to a specified article and clause shall, unless otherwise specified or required by the context, be construed as a reference to the relevant article and clause of this Agreement.
- 1.6 A reference or apparent reference by name to any legislation in the Agreement shall, unless otherwise specified, be interpreted as a reference to the written law of Guyana having the correspondence short title or name.
- 1.7 A reference to an Act in this Agreement includes, unless otherwise specified or required by the context, a reference to any Subsidiary Legislation made thereunder.
- 1.8 In this Agreement, a covenant or an undertaking to perform a specified act or to perform an act for the attainment of a specified objective shall be deemed to include a covenant or an undertaking, as applicable, not to perform or to omit to perform such act as would be



11

inconsistent with the performance of such first mentioned act or the attainment of such first mentioned objective.

- 1.9 The Parties hereby agree that the recital of events leading up to the execution of this Agreement as set forth in the above preamble is true, correct and accurate in all material respects.
- 1.10 Unless defined herein or unless otherwise indicated by the context, definitions of terms set forth in such laws of Guyana as are relevant to the subject matter hereof shall apply in the interpretation of corresponding terms used in this Agreement.
- 1.11 The following Schedules are annexed hereto and form part hereof:

|              |   |   |
|--------------|---|---|
| Schedule "A" | - | Mining and Prospecting Licenses                     |
| Schedule "B" | - | Company Articles of Incorporation and By-Laws       |
| Schedule "C" | - | Lands Covered by Right of First Refusal             |
| Schedule "D" | - | List of Equipment Transferred to the Company        |
| Schedule "E" | - | Waiver letter for Withholding taxes                 |
| Schedule "F" | - | Waiver letter for Duties and Taxes on supplies etc. |
| Schedule "G" | - | Waiver letter for Property Taxes                    |
| Schedule "H" | - | Royalties letters.                                  |

## 2. NATURE OF AGREEMENT

- 2.1 This Agreement was negotiated and is entered into by and between Guyana, the Commission and the Private Parties to determine and specify the provisions, terms and conditions pursuant to which the Foreign Party and the Government shall cause the Company to carry out the Project and conduct its business. The Parties hereby acknowledge that this Agreement has been negotiated and executed on the advice and with the consent of the most senior representatives of each of the Parties.
- 2.2 This Agreement shall be construed, to the fullest extent required, so as to ensure the validity of each provision hereof and the due and punctual exercise of rights and performance of obligations in accordance with its terms.
- 2.3 To the extent that this Agreement relates to such matters as are described in Section 19 of the Mining Act, this Agreement is a "Mineral Agreement" within the meaning of such term in the Mining Act. To the extent necessary or desirable to give full force and effect hereto in accordance with its terms, this Agreement is an agreement between Guyana as a sovereign state, the Commission as a Government entity, and the Private Parties.
- 2.4 The Parties hereby affirm their intention that substantive effect be given to this Agreement to the fullest extent possible in accordance with its terms and in accordance with the foregoing rules and that defects in form, procedure or process shall be waived to the fullest extent required in favour of giving substantive effect to the terms hereof.



**3. THE COMPANY, REPORTING OBLIGATIONS AND CONFIDENTIALITY**

- 3.1 The Parties hereby acknowledge that the Company has been duly incorporated under the Companies Act 1991 of Guyana, a true copy of its Articles being annexed hereto as Schedule "B".
- 3.2 The Company shall give access to the Commission to all data, maps and other information and submit to the Commission such data, maps and other information as shall be requested by the Commission with respect to the Project in a timely manner. In particular, the Company shall comply with the following undertakings of this clause 3.2.
- 3.2.1 During the term of this Agreement, the Company shall, within 90 days after the expiry of each calendar year, file an annual report on a confidential basis with the Commission and with the Government (c/o the Minister under the Mining Act) which shall contain such information as is generally required to be set forth in annual reports relating to projects similar in nature to the Project in the North America mining industry. In particular the report shall contain information on the following matters:
- (a) complete and accurate production statistics, including information on the grade and quality of bauxite mined, and copies of maps, profiles, diagrams and geological reports;
  - (b) marketing information, including copies of short and long term contracts, and information on customers, marketing conditions, developments in world market prices and refining conditions;
  - (c) complete and systematic records showing fully and fairly all costs and revenues including income statements, tax payments, duty payments, foreign exchange transactions and budget plans;
  - (d) importing information, including the quantity, source and price paid for items imported with reference to used and new items;
  - (e) information regarding the disposal of equipment including re-exports;
  - (f) employment information, including a breakdown of the Guyanization of the Project labor force according to the various categories of employees;
  - (g) information on construction activities if any;
  - (h) information on the purchase of supplies and services from local and foreign sources, including historical information from the Effective Date together with the information described in clause 6.2;
  - (i) information regarding environmental management;
  - (j) information and statistics regarding occupational health and safety and work-related accidents and injuries; and
  - (k) such other information with respect to the Project as the Government or the Commission may reasonably require.



- 3.2.2 The Private Parties shall submit an annual report on the transactions between them and their respective Affiliates relating directly or indirectly to the Project. This report shall include information on sales, purchasing, subcontracting, transfer of technology and marketing and all other relevant transactions. This report shall contain information on cash and in-kind remunerations received by the Foreign Party and its Affiliates. The report shall also set forth all remuneration paid by the Company to employees, directors and their families or shareholders of the Company and shareholders of the Foreign Party and to the Company and its Affiliates. The report shall cover all remuneration of a direct or indirect nature including loans or payments in cash or in kind and any other like transaction.
- 3.2.3 The Company shall maintain its books of accounts in accordance with Canadian generally accepted accounting principles and shall use such principles for reporting (to Government Authorities) purposes. The Company shall also be entitled to use Canadian or US generally accepted accounting principles for its own internal purposes.
- 3.2.4 The Company shall maintain reasonably detailed records relating to the Project, including production reports, field data, drilling reports, assay reports and other related reports.
- 3.2.5 The Commission may, at any time upon 48 hours written notice, at its own expense and with or without the assistance of experts, carry out an inspection of the books of account, records and reports of the Company and to verify information received, provided that such inspections shall be conducted during normal business hours and shall not unduly interfere with the performance of Operations.
- 3.2.6 On or before June 30 in each calendar year, the Company shall file with the Commission audited statements of account relating to its Operations during the previous calendar year. The audit shall be performed by a firm of independent chartered accountants selected by the Company. If, at any time, the Commission has reasonable grounds to question the information supplied by the Company, it shall be entitled to organize a special audit by an accounting firm of international standing at its own expense. Should this special audit indicate that the information submitted by the Company is substantially incorrect in one or more material particulars, then the Company shall bear the expenses of such audit.
- 3.2.7 The Company shall, within 45 days of the end of each calendar quarter, file with the Commission reports of all reasonably available information relating to Mining including raw and processed analytical data, assay data, drill data and other field data and statistical data as well as quarterly returns of production, sales and shipments of minerals from the Mining Area and a statement of minerals in stockpiles held by the Company.
- 3.2.8 Should, at any time, the Company, as a result of its own willful misconduct or gross negligence, submit information in any report mentioned in the various

provisions of this clause 3.2 which is substantially incorrect in respect of one or more material items and if, as a result of the submitting of such false information, the Commission or the Government has foregone revenue which can be quantified in monetary terms, the Company shall be liable to pay the Government an amount equal to two (2) times the amount of such foregone revenue. Where the Commission or the Government has foregone revenues for reasons attributable to incorrect information supplied by the Company other than as a result of gross negligence or willful misconduct on the part of the Company, the Commission or the Government, as applicable, shall be entitled to recover the amount foregone plus interest of two percent (2%) above LIBOR on such amount from the date due until payment thereof. The Company shall otherwise be liable to pay damages to the Commission or the Government resulting directly from a breach by the Company of its obligations under the various provisions of this clause 3.2. Subject to compliance by the Company with the foregoing sanctions, the failure by the Company to comply with its obligations under the various provisions of this clause 3.2 shall not constitute grounds for terminating the Mining Licenses, the Prospecting Licenses, the Environmental Permit, any other permit or authorization granted by a Government Authority, if applicable, or this Agreement.

- 3.3 ~~The Parties~~ shall be deemed to be joint owners of all information described in clause 3.2 ~~hereof~~. The Parties shall treat all such information as confidential and shall not disclose ~~any~~ information to third parties during the term of this Agreement and for a period of ~~two~~ years thereafter without the prior written consent of the other Parties, such consent ~~not to be~~ unreasonably withheld. Notwithstanding the foregoing, the provisions of this ~~clause~~ 3.3 shall not apply in the following circumstances:
- (a) ~~in~~ the case of a disclosure (i) by a Private Party to banks or other financial institutions in connection with the financing of the Project or Operations, or (ii) by the Government to multilateral financial and aid organizations such as the World Bank, the International Monetary Fund, the Inter-American Development Bank and the Canadian International Development Agency; or
  - (b) ~~in~~ the case of a disclosure by any Party to Affiliates, consultants, professional advisors and sub-contractors to the extent required for the purpose of executing ~~the~~ Project or in connection therewith; or
  - (c) ~~to~~ the extent required by any applicable law or the regulations of any securities commission or other like regulatory body having jurisdiction or of any stock exchange upon which the securities of the Foreign Party are listed; or
  - (d) ~~as~~ part of statistical and annual reports of a general nature published by the Government or the Commission, provided that no information so disclosed shall relate to the Project specifically or directly; or
  - (e) ~~in~~ the case of information relating to any portion of the Mining Area or, as applicable, the Prospecting Area which may be relinquished by the Company during the term of this Agreement; or

*[Handwritten signatures and initials]*



- (f) in the case of information which enters the public domain otherwise than by the breach of an obligation of confidentiality hereunder.

Information disclosed to third parties as permitted in clauses 3.3(a) and (b) above shall be disclosed on such terms as shall require the recipient to undertake to be bound by the obligations of confidentiality described herein. Each Party shall promptly give notice to the other Parties of any disclosure made as permitted hereunder.

- 3.4 Notwithstanding clauses 3.2 and 3.3, the Parties shall not be required to disclose the details of any patented or other proprietary method or process by which any results, information or conclusions have been obtained by the Company.

4. **MINING AND PROSPECTING LICENSES, ENVIRONMENTAL AUTHORIZATION, RIGHT OF FIRST REFUSAL AND FORCE MAJEURE**

- 4.1 Guyana and the Commission hereby make available the Mining Area and the Prospecting Area to the Company for the conduct of Operations and hereby grant and issue such Mining Licenses and Prospecting Licenses in respect thereof to the Company, a copy of each of which is annexed hereto as Schedule "A", the whole in accordance with the Mining Act and Subsidiary Legislation thereunder.

- 4.2 In accordance with clauses 3.2(c) and 3.15 of the Heads of Agreement, Guyana hereby acknowledges having granted to the Company a right of first refusal to acquire the lands described in Schedule "C" hereof, pursuant to that certain Permission for Geological and Geophysical Surveys from the Commission and the letter of the Prime Minister delivered to the Company concurrently with the execution hereof.

Upon each and every time the Company exercises its right of first refusal pursuant to the aforementioned agreement and in respect of any of the lands described in Schedule "C", Guyana and the Commission hereby agree and undertake to see that one or several Mining Licenses or, as applicable, one or several Prospecting Licenses be issued and delivered to the Company in respect of any such lands; Guyana and the Commission shall furthermore see that any such lands be made subject to this Agreement and that the Private Parties enjoy the same rights and benefits regarding said lands as they are enjoying regarding the Mining Area and/or, as applicable, the Prospecting Area.

- 4.3 Guyana and the Commission hereby acknowledge having reviewed the Bankable Feasibility Study (and the EIA) and having approved and accepted same as the basis for the due carrying out of the Project by the Company. Guyana (represented herein by the Government) and the Commission hereby undertake to perform all such acts as may be within the purview of their respective powers and authorities to authorize the due implementation of all Operations and other activities as contemplated in the Bankable Feasibility Study (and the EIA) and in this Agreement. Subject to the foregoing, and subject to the provisions of this Agreement and any Schedule, neither the Commission nor the Government shall incur any liability to the Private Parties by reason only of the approval of the Bankable Feasibility Study, including the EIA. Likewise, nothing in this clause 4.3 shall be interpreted as requiring the Government or the Commission to invest

Government or Commission funds in the Project or to give indirect financial support to the Project by way of tax reductions, exemptions from laws or otherwise except for the and other concessions and exemptions herein agreed to be granted.

The Commission and Guyana hereby undertake, in the exercise of powers conferred by Sections 19 and 134 of the Mining Act, to exercise discretionary powers under the Mining Act and Subsidiary Legislation thereunder in accordance with the following provisions of this clause 4.4.

Subject to Section 50(2) of the Mining Act, Guyana shall approve and the Commission shall grant a renewal of any Mining License and Prospecting License granted to the Company under Section 50 of the Mining Act upon receipt of application therefor by the Company pursuant to Section 49 of said Act on such terms and subject to such conditions as shall be set forth in the Mining and Prospecting Licenses, or with such revised terms and conditions as may be necessary due to changes in circumstances.

The Commission may grant, with the approval of the Minister, good faith application by the Company under Section 48(3) of the Mining Act for the extension of the scope of any Mining or Prospecting Licenses granted to cover exclusive rights to kaolin and other associated clays and minerals as are specified in the application on such terms and subject to such conditions as are set forth in the Mining and Prospecting Licenses.

The Commission, in accordance with Section 26(2) of the Mining Act, may grant to any third party an application for a Prospecting or Mining Licence, in respect of any lands located within the Mining Area or the Prospecting Area, for kaolin and other associated clays and minerals, provided that (i) the Company shall have been consulted prior to such grant and (ii) such grant shall not interfere in any manner whatsoever with Operations and with the Project's goals and implementation.

Upon application by the Company, the Minister shall, pursuant to Sections 36(4) and 45 of the Mining Act, suspend the Company's obligations with respect to prospecting and mining operations for kaolin and other associated clays and minerals, by written instrument to that effect. The Company may resume operations for these minerals at a time that shall be convenient for the Parties, with the Company complying at such time with the requirements of the Mining Act with respect to the relevant minerals.

The obligations of the Company to carry on operations under the Mining and Prospecting Licenses and this Agreement or to perform any other obligations hereunder (except any obligations set forth hereunder relating to the disposal of assets by the Company) or pursuant to any Schedule shall be suspended to the extent that such performance is prevented or constrained by the occurrence of an event of Force Majeure (as described below in clause 4.4.4) and shall remain suspended so long as the effects of such event of Force Majeure shall continue, provided that such occurrence shall not be deemed to suspend any obligations to

SAH MD AP

pay a sum of money that is otherwise due and payable, and provided further that the Company shall, during any such period, take all reasonable measures within a reasonable time with a view to overcoming or terminating such Force Majeure event and performing its obligations hereunder.

- 4.4.4 For the purpose of this Agreement and as permitted by Section 53(1) of the Mining Act, the Parties hereby agree that “Force Majeure” shall include, in addition to any event described in such Section, acts of God (fortuitous events), strikes, lockouts or other industrial and social disturbances (including sabotage) beyond the reasonable control of the Party affected and resulting in work stoppage or interruption, acts of the public enemy, international disputes affecting the Mining Area and/or, as applicable, the Prospecting Area or the area subject to the right of first refusal set forth in clause 4.2, wars (declared or undeclared), invasions, blockades, insurrections, riots, epidemics, malaria outbreaks or epidemic proportions, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of Government and people, civil disturbances and explosions, quotas and other controls affecting the Parties and their suppliers and any other cause beyond reasonable control of the Party affected, but shall not include any event caused by a failure to observe good mining industry practice or by the negligence of the Company or any of its agents, employees or contractors.
- 4.4.5 In addition to the Company’s right to suspend Operations hereunder and under the Mining and Prospecting Licenses by reason of Force Majeure, the Company may, at its own election, acting reasonably, suspend all or part of the Operations at any time during the currency of the Mining and Prospecting Licenses, under circumstances which materially adversely affect the world bauxite markets such that pursuing Operations is demonstrated to be uneconomic for the Company.
- 4.4.6 The suspension of operations by the Company under clauses 4.4.3, 4.4.4, or 4.4.5 hereof shall not have the effect of suspending the Company’s obligation to pay such fees and land rentals as shall be specified in the Mining and Prospecting Licenses.
- 4.4.7 The term of this Agreement and of the Mining and Prospecting Licenses shall, provided that the Company shall have complied with the provisions of clauses 4.4.3 and 18.2, be extended by such period as is equal to the period during which Operations shall have been suspended for any of the reasons set forth in clauses 4.4.4 or 4.4.5, and the consent of the Commission as well as the approval of the Minister are hereby granted in respect of such extension. However, in the event of a suspension of Operations by the Company other than for any of the foregoing reasons, the Commission may, but shall not be required to, extend the term of the Mining and Prospecting Licenses accordingly.
- 4.4.8 The Commission shall not cancel the Mining Licenses and/or the Prospecting License pursuant to the Mining Act or in connection with the existence of any ground for such cancellation as is described therein. The Commission and the Government hereby agree that issues regarding the cancellation of the said

Licenses and this Agreement shall be governed exclusively by this Agreement and, in particular, by the provisions of article 16.

4.4.9 Guyana hereby agrees to cause the Minister under the Mining Act to issue an Order under Section 133 of such Act exempting the Private Parties from the application of such Act to the extent required to give effect to the provisions of this Agreement, the Mining Licenses and the Prospecting License.

## **5. USE AND ACQUISITION OF LANDS WITHIN THE MINING AREA**

5.1 The Company shall have the right to make use of, construct, improve, maintain and acquire, as applicable, the following public and private parcels of land and properties in Guyana for Project purposes on the following terms and conditions:

- (a) the use of public roads and waterways between Georgetown and Linden;
- (b) the acquisition of property, by lease, purchase or otherwise (but only to the extent that such property rights are not included in the Mining Licenses and are not conflicting or overlapping with rights of other Persons), on either bank of the Demerara River with a view to (i) constructing wharves and related facilities on both banks of said River and (ii) locating storage yards on both banks of said River (including a suitable buffer zone to ensure the security of the wharves, the yards and their contents), the whole for private use (for Project purposes) only;
- (c) the construction of such roads on state lands (within the Mining Area) to be used primarily for Project purposes subject to Company-controlled access for other public users;
- (d) the drawing of water for Project purposes from local rivers and streams; and
- (e) the discharge of mining and process waters to local waterbeds, streams and rivers without assuming or incurring, or otherwise being adversely affected by, any Prior Liabilities and subject to the EIA.

5.2 Guyana hereby agrees and undertakes to cause the relevant Government Authorities having jurisdiction over the matters described in clause 5.1 hereof to issue a letter or other instrument under the Public Lands (Private Roads) Act (Laws of Guyana, Chapter 62:03) or any other relevant Applicable Law granting such authorizations and permissions as may be necessary for such purposes, including the authorization to collect such toll as may be fixed under such permission for the purposes described in clause 5.1(c). Nothing set forth in this clause 5.2 shall be interpreted as diminishing the scope of the undertakings given by Guyana and the Commission in article 4 or elsewhere in this Agreement.



**6. CONDUCT OF PROJECT OPERATIONS AND ASSUMPTION OF PRIOR LIABILITIES RELATING TO ENVIRONMENTAL CONDITION**

- 6.1 The Company shall conduct Operations in a good workmanlike and responsible manner in accordance with good mining practices using standards applicable in the international bauxite mining industry, provided it is not precluded to do so, at any time during the term of this Agreement, as a consequence of the Prior Land and Asset Condition.
- 6.2 In Guyana, the Company shall give preference, to the maximum extent compatible with efficient Operations, to products and services produced and offered in Guyana, provided these are offered at competitive terms and conditions. Without prejudice to the rights granted to the Private Parties under articles 8, 9 and 10, the Company shall give preference to Guyanese construction enterprises and to the use of buildings which can be constructed by using materials and skills available in Guyana, to the employment of Guyanese subcontractors for road construction and transportation and to the purchase of Household Products and furniture in Guyana. The Company shall also require its contractors and their subcontractors to follow these policies. Within 90 days after the end of each calendar year of Operations, the Company shall, in accordance with clause 3.2.1(h), submit a report to the Government setting forth the relative percentages of foreign-sourced and Guyanese-sourced goods and services used by the Company, on measures taken to enhance the role of Guyanese-sourced goods and services in the Project and on measures to be implemented so as to improve such performance. The report will show the performance of the Company in connection with the contribution to the economic development of Guyana over the years. The Company shall constantly use all reasonable efforts to improve such performance.
- 6.3 The Company shall, to the extent feasible and acceptable in view of the rates and conditions available, maximize the use of vessels chartered in Guyana and other means of transportation available in Guyana. If necessary, the Company shall make joint arrangements with Guyanese firms for the transportation of its material needs.
- 6.4 The Company shall be allowed to use existing roads, but shall only be obligated to repair (or pay the cost of repair for) damages to roads, bridges and other transportation facilities caused by the abnormal use of such roads, bridges and other facilities by the Company.
- 6.5 The Company shall, subject to clauses 6.8 and 6.9 and provided it is not precluded to do so as a consequence of the Prior Land and Asset Condition, conduct all Operations in compliance with the Environmental Permit and with Applicable Law relating to the protection of the natural environmental conditions of the Mining and Prospecting Areas.
- 6.6 Notwithstanding any other provision of this Agreement, the Government reserves the right without liability to grant to qualified applicants rights-of-way for pipelines, power, telephone, telegraph and waterlines within the Mining and Prospecting Areas; provided, however, that the Company be duly and timely notified of such intentions and that each such qualified applicant be required to make appropriate arrangements, including the payment of satisfactory compensation to the Company, to ensure that its installations shall not unduly interfere with, or result in any additional cost to Operations and other

*Handwritten signature and initials*

activities of the Company. In furtherance of the foregoing, the Government irrevocably agrees and undertakes to delay such grant of any such rights to any such qualified applicants until the aforesaid appropriate arrangements and, if applicable, compensation are agreed upon to the Company's full satisfaction, acting reasonably and having due regard and consideration for the Government's objectives to foster the economic development of the Linden environs.

- 6.7 During Operations and after the permanent shutdown of Operations, the Company shall undertake the reclamation of the Mining Area to prevent soil erosion in accordance with the terms of the EIA and the Environmental Permit, provided that Guyana shall retain, and shall cause Linmine to retain, all responsibility, and shall assume, and shall cause Linmine to assume, all Prior Liabilities that are relating to, or ensuing from the Prior Land and Asset Condition. The Company shall also ensure the safety of the area in accordance with standard international mining practice and the terms of the EIA and the Environmental Permit.
- 6.8 Guyana and the Commission hereby acknowledge having reviewed and having accepted and approved the EIA, together with all provisions set forth in the Bankable Feasibility Study relating to environmental matters. Subject to clause 6.9 and to the extent it is not precluded to do so as a consequence of the Prior Land and Asset Condition, the Company shall conduct Operations substantially in accordance with the terms of the EIA, and shall comply with Applicable Law and agreements, where so made, of the Government relating to environmental matters. Guyana and the Commission hereby confirm that substantial compliance with the aforementioned EIA and Bankable Feasibility Study shall constitute compliance with Applicable Law relating to environmental matters which are presently in effect. Guyana and the Commission hereby agree to take such Corrective Action (as defined in clause 15.6) as may be necessary to ensure that:
- (a) the Private Parties shall not incur any cost, liability or obligation to the other Parties and to any Person as a result of any failure to comply with this clause 6.8 caused by the Prior Land and Asset Condition; and
  - (b) any Unilateral Action (as defined in clause 15.6) shall not result in the imposition of more stringent environmental obligations on the Project, or on the Private Parties in connection with the Project, than those in effect from time to time in the Province of Québec, Canada.
- 6.9 The Parties hereby acknowledge and declare that the Prior Land and Asset Condition precludes the Company from fully complying with Applicable Law relating to the environment as well as any guideline or provision of the Bankable Feasibility Study and the EIA (a "Guideline"). Therefore, Guyana and the Commission hereby irrevocably agree and covenant as set forth in the following provisions of this clause 6.9.
- 6.9.1 During the Investment Period, the Private Parties shall be allowed to perform a review and investigation of the Prior Land and Asset Condition with a view to determining actions, measures, methods, procedures, processes and plans to correct and remediate, in all material respects, substantially all adverse and non-compliant (with Applicable Law and any relevant Guideline) aspects of the

*Handwritten signatures and initials:*  
AAI M 11.

environmental condition of the Mining Area, the Prospecting Area and the Assets which are resulting from the Prior Land and Asset Condition (collectively, the “Remedial Actions”).

- 6.9.2 The Private Parties shall complete and deliver to the Government (c/o the Prime Minister), prior to the expiry of the Investment Period, a written report setting forth in sufficient details all Remedial Actions to be implemented and carried out by the Company (the “Remedial Report”).

The Company shall fund and assume costs ensuing from the implantation and performance of Remedial Actions set forth in the Remedial Report with available Net Cash Flow, provided that it shall only be required to use up to a maximum of fifteen percent (15%) of Net Cash Flow during any given year on a cumulative basis. Accordingly, the Company shall include in the Remedial Report a timetable (the “Remedial Timetable”) and a budget for the funding, implementation and performance of the Remedial Actions.

For the purposes of this clause 6.9.2, “Net Cash Flow” means, for any given period of time, the amount, if any, by which (i) the proceeds to the Company from the sale of Products exceeds (ii) the total amount of all costs of Operations, including any financing repayments to third parties (including, without limitation, CLICO Investment Bank Ltd.), interest charges, financing charges, duties and taxes, if any, ongoing capital costs, and all costs and expenses incurred by the Company; which result is adjusted to take into account (iii) net changes in the Company working capital during the given period of time.

- 6.9.3 The Government, acting through the Commission and the EPA for the purposes of the relevant provisions of this clause 6.9, shall, promptly after receipt thereof, review the Remedial Report and formally approve same and authorize its implementation in writing. The Government may provide the Private Parties with comments or recommendations on the Remedial Report during a 30-day period following receipt thereof.
- 6.9.4 Throughout the Investment Period and, thereafter, for a period of time corresponding to the Remedial Timetable, Guyana and the Commission shall not hold the Private Parties in any manner whatsoever responsible or liable in respect of any circumstances where the Mining Area, the Prospecting Area and the Assets or the Company’s activities and Operations thereat are not complying with Applicable Law or any Guideline.



- 6.9.5 Guyana acknowledges and agrees that, in addition to the Remedial Actions, the Company may need to perform actions to correct or remediate an adverse environmental occurrence or situation within the Mining Area or, as applicable, the Prospecting Area, or affecting the Assets at any time during the Investment Period and, for greater certainty, prior to the completion of all Remedial Actions set forth in the Remedial Report. The Company hereby agrees and undertakes to fund and assume all costs ensuing from the performance of such actions in the manner set forth in clause 6.9.2.
- 6.10 The Company shall be entitled to install, maintain and operate, for its own account and without third party intervention, telecommunications facilities and equipment in Guyana in the manner and to the extent described in the Bankable Feasibility Study or otherwise, for Project purposes, and, if required, Guyana shall issue a license to the Company under the Telecommunications Act 1990 for such purposes and shall cause the relevant Government Authorities to grant such permissions as may be necessary for such purposes.
- 6.11 The Company shall be entitled to employ, train and maintain armed security personnel in order to ensure the security of Persons and property within the Mining and Prospecting Areas. Guyana shall assist the Company in:
- (a) the implementation of its security program and, in particular, shall facilitate the obtaining of all necessary permits for such purposes under the Firearms Act; and
  - (b) ensuring that the Mining Area, the Prospecting Area and the Assets shall not be accessible to the public (*e.g.* measures should be in place to see that no more garbage be allowed to be disposed of in the tailings area).
- 6.12 For greater certainty, Guyana and the Commission hereby agree and covenant that the Private Parties shall not be responsible or liable, in any manner whatsoever, for expenses and obligations incurred by, or for the account of the town of Linden other than the payment of reasonable municipal taxes.

## **7. INITIAL FUNDING AND INVESTMENT INTO GUYANA**

- 7.1 In accordance with clause 3.2(a) of the Heads of Agreement, the Foreign Party contributes at Closing a cash investment together with some equipment, having, in the aggregate, a value of not less than US \$10 million, as follows:
- (a) the equipment, material and parts so contributed are described in Schedule "D" hereof and have together a value of not less than US \$5 million; and
  - (b) the cash investment so contributed amounts to not less than US \$5 million.

All Parties other than the Foreign Party hereby acknowledge receipt of the above-described contribution of the Foreign Party and declare it is made in accordance with clause 3.2(a) of the Heads of Agreement.





In addition to the above-described contribution, the Foreign Party hereby confirms and the other Parties hereby acknowledge that financing arrangements are made available by CLICO Investment Bank Limited for an aggregate amount of US \$10 million at an interest rate of 10.5% *per annum* and for a period of ten (10) years as from the Effective Date, such arrangements being hereby declared to be satisfactory by all Parties.

- 7.2 The Private Parties shall enjoy maximum flexibility in securing and structuring financing, from whatever source and subject the granting of whatever security interest in the shares in or assets of the Company, for the purposes of investing in, or causing an investment to be made in, the Project. An outline of the projected financing terms for the Project has been disclosed to the Government and the Commission in the Bankable Feasibility Study, and Guyana and the Commission hereby acknowledge having accepted and approved such outline and having agreed to comply with any reasonable request to indicate specific acceptance of and consent to any financing structure elaborated in accordance with the Bankable Feasibility Study.
- 7.3 The Private Parties hereby agree that the debt to equity ratio of the Company as and from the Effective Date shall be negotiated in good faith and agreed upon between the Commission and the Private Parties from time to time, having regard for the Project's financing needs and the availability of such financing. For purposes of calculating such debt to equity ratio, (i) debt shall be defined as interest-bearing debt, and (ii) all shares of the Company shall be taken into account in calculating equity.
- 7.4 The Private Parties shall be entitled to open and operate in their respective names, with any financial institution outside Guyana, bank accounts and other like credit, deposit or banking arrangements in any unit of currency (including the U.S. Dollar and the Canadian Dollar) ("**Foreign Currency Accounts**") and to make deposits to and payments from these accounts, in accordance with the provisions hereinafter set forth.
- 7.5 The following may be deposited into Foreign Currency Accounts:
- (a) funds invested or to be invested in the Company in connection with the conduct of Operations within and outside Guyana;
  - (b) proceeds from the sale of bauxite and bauxite products by the Company;
  - (c) proceeds from any sales of equipment, spare parts, machinery and other moveable assets outside of Guyana;
  - (d) any other gains or revenue; and
  - (e) any transfer of funds held in Guyana from time to time and not immediately required by the Company in Guyana for the conduct of Operations.
- 7.6 Withdrawals and payments which may be made from Foreign Currency Accounts shall include:

Handwritten signature and initials in the bottom right corner of the page.

- (a) transfers of funds to meet expenses incurred by or on behalf of the Company in the conduct of its Operations, including any funds required to be converted into Guyana Dollars to meet expenses incurred in Guyana;
- (b) the payment of fees and taxes payable under the Applicable Law of Guyana;
- (c) the payment of interest on any funds borrowed by or on behalf of the Company;
- (d) the distribution of dividends and after-tax profits to investors; and
- (e) the repatriation of capital, asset replacement costs, loan payments and prepayments, and any other obligation reasonably incurred by or on behalf of the Company outside Guyana.

7.7 The Company shall be entitled to purchase Guyana Dollars from any authorized dealer at any time and from time to time in amounts sufficient to meet all expenses incurred by or on behalf of the Company in Guyana, including local operating expenses and fees payable to the Government (including corporate income taxes and withholding taxes on dividends, if any, which taxes shall be paid as and when owing in Guyana Dollars) or to the Commission and local working capital requirements. Guyana Dollars shall be purchased using U.S. Dollars, and the conversion rate applicable for such transactions shall be the market rate then available for the conversion of U.S. Dollars into Guyana Dollars. Guyana hereby agrees to take such Corrective Action (as defined in clause 15.6) as may be necessary to ensure that any Unilateral Action (as defined in clause 15.6) shall not have the effect of preventing the Private Parties from converting U.S. Dollars into Guyana Dollars at a rate of exchange that accurately reflects the relative international market values of such currencies.

## 8. IMPORTING PROPERTY INTO GUYANA

- 8.1 All equipment, supplies and materials required for the Project and Operations shall be imported free of customs duties, consumption tax and any other tax.
- 8.2 Notwithstanding the foregoing, to the extent that Food or Household Products are not available in Guyana, the Private Parties and their contractors shall be allowed to import into Guyana such reasonable quantities of Food or Household Products as shall be necessary for their activities, provided, however, that such items shall be subject to regular customs duties.
- 8.3 The Company, acting for the account of Expatriates, shall be entitled to import, free of customs duties, consumption tax and any other tax, all usual and necessary personal items and household effects not available in Guyana. However, no goods brought into Guyana duty free shall be transferred or sold for use in Guyana without the written approval of the Comptroller of Customs and Excise, who shall only authorize a transfer or sale to the Government or, with the Government's approval, to another Person.
- 8.4 Guyana shall cause the proper public officers having jurisdiction to provide customs clearance facilities and personnel for the exclusive benefit of the Private Parties in

*[Handwritten signature]*

11

connection with the Project at a location designated by the Company within the Mining Area ("Customs Personnel"). The Company shall defray all reasonable expenses incurred by the Government in connection with the providing of such Customs Personnel.

8.5 Customs clearance procedures and the corresponding responsibilities of Customs Personnel shall be as follows:

- (a) inspecting the imported items and verifying same against an inventory listing thereof;
- (b) verifying that the imported items are to be used exclusively for Project purposes;
- (c) satisfying compliance with the import provisions of this Agreement and, subject to clause 15.5, with any applicable provisions of the Customs Act;
- (d) determining whether any imported items constitute Food and Household Products;
- (e) assessing and collecting customs duties on imported Food and Household Products, if any;
- (f) conducting customs clearance procedures for Expatriates;
- (g) verifying and inspecting, subject to clause 12.2, exports of bauxite and re-exports of imported items; and
- (h) such other responsibility set out in Applicable Law.

8.6 In the event of a sale of any imported goods within Guyana by the Company to a Person other than the Government hereunder, the Company shall be liable to pay customs and import duties and taxes on any equipment and supplies brought into Guyana under an exemption provided by this Agreement. The customs and import duties payable shall be calculated on the appraised value of such equipment and supplies at the time of sale.

8.7 The Company shall be entitled to re-export any property imported into Guyana pursuant to this article 8 on the same terms and with the same privileges and exemptions as are set forth in clause 12.1 but subject, in the case of a sale upon termination of this Agreement, to the provisions of article 18.

9. **DUTIES, TAXATION, FEES, RENTS:**

9.1 With respect to the construction, development, use, operation and maintenance of the Company's assets, the Company shall not be liable to pay any taxes on fuel imports (including, without limitation, diesel, oil and lubricants) acquired for the Project's purposes.

9.2 The Company shall not be liable to pay any royalty on any production for the first five years following the Effective Date. Thereafter, the Company shall pay a royalty at the rate of 1.5% on the FOB value of any shipment of bauxite from Linden, provided that in



the event the Company pays any amount of corporate tax in any given year of Operations following the Effective Date, the Company shall be exonerated and relieved, effective immediately after having paid any such amount of corporate tax, from paying the aforesaid royalty to Guyana up to an aggregate amount of royalty payments being equivalent to the amount of corporate tax paid. For greater certainty, any amount of corporate tax paid by the Company for any given year, shall reduce correspondingly the overall amount of royalty to be paid thereafter by the Company. Guyana hereby agrees and irrevocably undertakes to make all necessary arrangements to give full force and effect to the provisions of this clause 9.2.

- 9.3 Should the Government enact any Act (including any Subsidiary Legislation) of general application prescribing a lower rate of royalty than that set forth in clause 9.2 and in the Mining Licenses, the obligation to pay royalty herein and under the Mining Licenses shall be reduced to such lower rate as is so prescribed.
- 9.4 The Company shall, in the manner and on the terms set forth in the Mining and Prospecting Licenses, pay rent annually and in advance to the Commission. Should Guyana enact a written law (including Subsidiary Legislation) of general application prescribing a lower rent than that set forth herein and in the Mining and Prospecting Licenses, the obligation to pay rent shall be reduced to such lower rent as is so prescribed. Notwithstanding the foregoing provisions of this clause 9.4 and in accordance with the second paragraph of clause 3.14 of the Heads of Agreement, Guyana and the Commission hereby irrevocably agree that no rent shall be payable by the Company in respect of the Mining and Prospecting Licenses for the period of twelve (12) months following the Effective Date.
- 9.5 Expatriate Employees, including employees of the Company and its foreign contractors, shall be liable to pay personal income tax in Guyana on income earned in Guyana if they are not liable to pay personal income tax in their home country on income earned in Guyana. However, if an Expatriate Employee is liable to pay income tax in his home country on income earned in Guyana, he shall only be liable to pay income tax in Guyana on income earned in Guyana if the amount of income tax paid in Guyana is credited by the home country against home country income tax. Guyana shall cause the proper Government Authorities to issue appropriate certificate of assessment to Expatriates when required.

For greater certainty, nothing shall excuse an Expatriate Employee from paying income tax on income earned in Guyana.

If an Expatriate Employee is liable to pay income tax in Guyana on income earned in Guyana pursuant to the foregoing rule, he shall pay such income tax at a rate equal to the lesser of (i) the rate of tax currently prevailing for individuals under the Income Tax Act, being a maximum effective rate of 33%, and (ii) the rate of tax prevailing at the relevant time. Likewise, the amount of tax payable shall be calculated in accordance with the rules set forth in the Income Tax Act as they apply as of the Effective Date, to the exclusion of such rules less favorable to the taxpayer as may be enacted in the future. However, should any subsequent amendment to the Income Tax Act result in the enactment of any rule or rules regarding the calculation of taxes payable which are more favorable to the

*S/O M D R*

taxpayer than that which is or those which are in effect on the Effective Date, the taxpayer shall be entitled to invoke such amended rule or rules for the purpose of calculating his income tax liability hereunder.

- 9.6 The Company shall pay income and corporate tax pursuant to the Income Tax Act and the Corporation Tax Act (collectively referred to herein as "Applied Tax Laws") in accordance with the rules set forth in such Applied Tax Laws generally, but subject to the specific qualifications set forth hereinafter in the following clauses of this article 9 and provided that the corporate tax rate payable shall be the lesser of (i) 35% and (ii) the prevailing rate from time to time during this Agreement's term.
- 9.7 The amount of income tax payable under the Applied Tax Laws as qualified by clause 9.6 hereof shall be calculated in accordance with the rules set forth in the Applied Tax Laws as they apply as of the Effective Date, to the exclusion of such rules less favorable to the taxpayer as may be enacted in the future. However, should any subsequent amendment to the Applied Tax Laws result in the enactment of any rule or rules regarding the calculation of taxes payable which are more favorable to the taxpayer than that which is or those which are in effect as of the Effective Date, the taxpayer shall be entitled to invoke such amended rule or rules for the purposes of calculating its tax liability hereunder.
- 9.8 Notwithstanding clause 9.6 hereof, the Company shall be entitled to apply the following rules in calculating its taxable income to the extent, if any, that such rules are inconsistent with the rules set forth in the Applied Tax Laws.
- 9.8.1 In respect of capital expenditures, the rates of capital allowances shall be as set out in the tax laws as of the Effective Date, provided that no subsequent changes to such rates shall be applied which would, as a result, increase the Company's tax burden or, more generally, be detrimental to the Company.
- 9.8.2 In respect of Mine Development expenditures, the Company shall have the right to deduct the full amount of expenditures incurred on stripping and other pre-production work, as incurred.
- 9.8.3 Losses for any period may be carried forward and set off against chargeable income in the year or years following the year in which such losses were incurred until they are completely recovered, subject to the limitations of 50% as set out in the Income Tax Act. For the purposes of this Agreement, "losses" in any year means the excess of all deductions permitted under this Agreement and the Applied Tax Laws over revenues in any year of assessment.
- 9.8.4 Interests on and financial costs associated with loans or advances contracted by the Company for its business needs from credit institutions shall be deductible for income tax purposes without limitations. Interest on shareholder loans shall be deductible provided the loans reflect international financial market rates.
- 9.8.5 Subject to any other agreement between the Parties, corporate head office expenses, within the meaning of Section 2 and of the last paragraph of Section 18

SA M JY 11.

of the Income Tax Act, shall be deductible for income tax purposes in an amount not exceeding 1% of the total sales or gross income generated in any year from Mining.

- 9.9 The Company shall be entitled to use U.S. Dollars as its functional currency as defined by International Accounting Standard 21 (The Effects of Change in Foreign Exchange Rates) and to maintain its books of account in this currency (the "U.S. Dollar Books"). The Company shall be entitled to revalue each Financial Statement Line Item (as defined below) into Guyana Dollars (the "Official Books") on a continual basis so that the value of such Financial Statement Line Items in the Official Books remains equal to the value of such Financial Statement Line Items in the U.S. Dollar Books. "Financial Statement Line Item" shall, for these purposes, include any line item which may be presented in a balance sheet, an income statement, a statement of changes in equity or a statement of changes in cash resources prepared in accordance with Canadian generally accepted accounting principles.

The Company shall prepare and submit its tax returns and financial statements in Guyana Dollars using the Official Books.

- 9.10 For the purpose of calculating taxes of the Company and consistent with the provisions of Section 49 of the Income Tax Act or any other provision of such Act or of any other law of Guyana, Guyana hereby confirms that the Commissioner General of the Guyana Revenue Authority shall declare, pursuant to Section 49(10) of such Act, that gains or profits of any Person other than the Company, including (i) income, gains or profits of the Foreign Party, (ii) income, gains or profits of any Affiliate of the Company (other than a subsidiary of the Company), and (iii) income, gains or profits of any Person other than the Company earned or derived outside Guyana, shall not be taken into account in calculating the tax liability of the Company under Applicable Law of Guyana.

Guyana hereby represents and warrants that no Applicable Law of Guyana presently in force would, by its terms, have the effect of imposing a direct tax on the Foreign Party or any of its non-Guyanese Affiliates (i) by reason of its being a Party to the Agreement or a shareholder of the Company, or (ii) the beneficiary of an exemption under any Schedule, or (iii) in connection with any matter contemplated in the Agreement, if applicable.

To the extent that any such Applicable Law would, by its terms, apply to the Foreign Party or any of its non-Guyanese Affiliates, Guyana agrees to take such Corrective Action (as defined in clause 15.4) as may be necessary to offset any Negative Effect (as defined in clause 15.4) resulting from such application.

- 9.11 Notwithstanding any provisions to the contrary in the Applied Tax Laws or any other Applicable Law of Guyana, no withholding or other like taxes shall be payable by the Company on any interest on any loans made to the Company from any Person, and on dividends payments whatsoever. Likewise, no withholding tax shall be payable on payments made by or on behalf of the Company to business concerns outside Guyana for work performed in connection with the Project outside Guyana, without prejudice to the tax liability of such business concerns in Guyana for work performed in Guyana.



- 9.12 The Company shall be liable to pay capital gains tax in accordance with the provisions of the Capital Gains Tax Act.
- 9.13 Guyana hereby exempts the Company from the application of the Property Tax Act (including Subsidiary Legislation) for a period of five (5) years following the Effective Date.
- Guyana hereby covenants and undertakes that, in the event of the imposition of any new or additional tax or other like charge, through the enactment of any new Applicable Law or the enactment of any amendment to an Applied Tax Law or otherwise, which imposition or change in rules for calculating same would result in an increase in the amount of taxes payable by a Private Party, the Government shall relieve such Private Party from the obligation to make such increased payment, and such relief shall be in an amount equal to the amount of the increased payment that would otherwise be required to be paid pursuant to such new or additional tax or other like charge.
- 9.14 Guyana hereby undertakes to cause the Company to receive all such specific authorizations and exemptions from competent Government Authorities having jurisdiction over the matters described in this article 9 as are necessary or desirable to give effect to the matters described in this article 9 including the following:
- (a) a letter issued by the Minister of Finance pursuant to Section 39(10) of the Income Tax Act exempting the Company from the application of withholding taxes to the fullest extent required to give effect to the provisions of this article 9, in form and substance similar to Schedule "E";
  - (b) a letter issued by the Commissioner General of the Guyana Revenue Authority pursuant to the Customs Act, Cap. 82:01, the Consumption Tax Act, Cap. 80:02, the Motor Vehicles and Road Traffic Act, Cap. 51:02 and the Fiscal (Amendment) (Enactment) Act, no.15 of 2003 exempting the Company from the payment of taxes and duties payable in respect of equipment, supplies and motor vehicles purchased by the Company for Operations, in form and substance similar to Schedule "F";
  - (c) a letter issued pursuant to the Act for the waiver of Property Taxes for the first five years of the Company's operation in form and substance similar to Schedule "G"; and
  - (d) a letter issued by the Prime Minister and the Commissioner of GGMC pursuant to Section 134 of the Mining Act exempting the Company from the application of royalties to the extent required to give effect to the provisions of this article 9.2, in form and substance similar to Schedule "H".
- 9.15 Should a dispute arise in connection with any matter referred to in this article 9 or in connection with the application of any provision of any Applied Tax Law to the Company or any taxpayer referred to in this article 9, the Company shall be subject to the rules and procedures set out in the Income Tax Act as enforced by the Guyana Revenue Authority. Guyana shall ensure that no compulsory measures are taken against such taxpayer. The tax Government Authority in Guyana normally having jurisdiction over the



subject matter of the dispute shall issue a written ruling setting forth detailed reasons in support thereof, and the taxpayer or taxpayers affected thereby shall be entitled to appeal such ruling in the manner provided in article 17, which appeal shall suspend execution of such ruling for all purposes until a final determination of the matter has been made in accordance with article 17. Additionally, the taxpayer shall be entitled, but not required, to exhaust any statutory or administrative rights of appeal from such ruling under Applicable Law.

## **10. IMMIGRATION AND EXPATRIATE PERSONNEL**

- 10.1 On the terms and subject to the conditions hereinafter set forth in this article 10 and in the next following article 11, the Private Parties and their foreign contractors shall be entitled to employ such Persons who are not citizens of Guyana, to work in Guyana for the Project and related purposes ("Expatriate Personnel" or "Expatriate Employees") and permit such Expatriate Personnel and their dependents, as defined in the Immigration Act (collectively "Expatriates") to immigrate to Guyana for such periods as the Private Parties and such contractors shall determine.
- 10.2 The Company shall comply with the terms of the Immigration Act with respect to the employment of Expatriate Employees and the immigration of Expatriates. The Commission and Guyana shall perform all such acts within their powers and shall cause all such other acts to be performed which may be necessary or desirable to facilitate the employment and immigration of Expatriates as contemplated in this article 10 and the processing of applications for visas and work permits.
- 10.3 The Private Parties will as far as practicable ensure that Expatriates comply with all Applicable Law of Guyana, that they respect the national heritage and customs and that they not engage in any activities contravening Applicable Law of Guyana. It is also understood that contractual provisions allowing for the dismissal of contractors or employees for violation of Applicable Law of Guyana will be deemed sufficient to meet the Private Parties' obligations pursuant to this clause 10.3, without prejudice to the criminal and civil liability of such employees or consultants and without prejudice to the provisions of clauses 15.4(a) and 15.4(b). The Company undertakes to provide a copy of its standard employment contract to the Commission.
- 10.4 Expatriate Employees shall be subject to such rules regarding personal income taxation as are set forth in article 9. Expatriates shall be subject to such rules regarding the importing of property into Guyana as are set forth in article 8.

## **11. LABOUR MATTERS**

- 11.1 The Private Parties shall, in accordance with the provisions of this article 11, give preference to the employment of citizens of Guyana, with priority to the former employees of Linmine, at all levels of Operations to the extent and provided only that such Persons are available, qualified and equally suitable for such employment. For greater certainty, Guyana hereby confirms that it had caused Linmine, with effect as of July 31, 2003 and as set forth in clause H of the Preamble, to terminate the employment

CS

MAI



of all its employees and, in that respect, Guyana hereby reiterates its irrevocable and unconditional undertaking and covenant to assume all Prior Liabilities in connection with such termination.

- 11.2 The selection and hiring of personnel for Project purposes shall be within the absolute and exclusive purview of the Company. Where established, the Company shall consult with the local employment agency or such other organizations with a view to determining the availability of qualified and suitable residents of the town of Linden and environs, and other citizens of Guyana for employment in the Project but shall not be bound by any recommendations of any such agency or organization.
- 11.3 As soon as practicable following the Effective Date, the Company shall prepare a detailed training programme for the Project's purposes with a view to ensuring the development of suitable and qualified Guyanese personnel at all levels of its operations. The training programme may include training in such skills as production, maintenance, finance, personnel management and international marketing, and may be effected through training courses, on-the-job training, scholarships and, if necessary, training at premises and operations maintained by the Foreign Party outside Guyana, provided that the Private Parties shall collaborate with the Commission and the Government as far as practicable to see that all citizens of Guyana trained overseas pursuant to the training programme return to work in Guyana. The Company shall enlist the participation and cooperation of the Commission, the University of Guyana, and the Government and the Linden Technical Institutes in preparing and implementing the training programme.
- 11.4 Notwithstanding any other provision of this Agreement, the Company shall be entitled to employ a minimum of eight (8) Expatriate Employees at all times for the Project's Purposes and shall generally be entitled to have recourse to such mix of Expatriate Personnel and Guyanese personnel as is contemplated in the Bankable Feasibility Study.
- 11.5 The Company shall, within 90 days after the expiry of each calendar year, file with the Commission a report, in the manner described in clause 3.2.1(f), indicating progress achieved in the employment of citizens of Guyana for the Project's purposes, including, if the objectives referred to in clause 11.3 are not met, a description of positions not filled by citizens of Guyana, a description of the procedures employed for seeking out available, suitable and qualified citizens of Guyana to fill such positions and an assessment of the success or progress achieved by the training programme with a view to filling such positions.
- 11.6 Personnel relations between the Company and its employees in Guyana shall be subject to existing written Applicable Law of Guyana relating to labour relations.

## 12. EXPORTING BAUXITE AND OTHER PROPERTY FROM GUYANA

- 12.1 The Company shall be entitled to export from Guyana and deposit, lease, sell, assign or otherwise transfer outside Guyana, bauxite and any bauxite minerals or products produced from the Mining Area without restriction of any kind and shall be exempted from the obligation to pay any fees, imposts, duties, taxes, administrative and other

charges and any other like assessments of any nature whatsoever in connection therewith, save and except as expressly provided elsewhere in the Agreement.

- 12.2 Customs Personnel shall be entitled to inspect any exports made pursuant to clause 12.1 and any re-exports made pursuant to clause 8.7 and the terms of any such sale, assignment or other transfer outside Guyana, provided that such inspection shall be conducted with the utmost dispatch and shall, in no event, delay the shipment of such property to destinations outside Guyana when such property is otherwise ready for shipment. The Company shall give reasonable notice of any such impending shipment to Customs Personnel having responsibility for the conduct of such inspection. Customs Personnel assigned to the Mining Area shall be vested with all requisite power and authority to conduct such inspection in the case of a shipment originating from such locations.

**13. REPATRIATION OF CAPITAL AND PROFITS FROM GUYANA**

- 13.1 The Company shall be entitled to remit all capital invested and profits earned in Guyana to Persons outside Guyana without restriction of any kind (subject to Guyana's entitlement to receive, in its capacity as a shareholder of the Company, its share of any dividends on common shares as and when declared by the board of directors of the Company) and shall be exempted from the effects of any such restriction as may be in effect from time to time under the Applicable Law of Guyana and from the obligation to pay any fees, imposts, duties, taxes, administrative and other charges and any other like assessments of any nature whatsoever in connection therewith. For greater certainty, the Company shall be entitled to remit such capital and profits from Foreign Currency Accounts.

**14. INSURANCE MATTERS**

- 14.1 The Private Parties hereby disclose their intention to cause the Company to subscribe for and maintain at all times during Operations, insurance coverage of the Operations, provided such coverage is available at competitive and reasonable rates from insurers of recognized standing. The Private Parties shall not incur any cost, obligation or liability to Guyana and the Commission as a result of such insurance being unavailable or too costly to obtain.
- 14.2 Payments from insurance policies, if applicable, for loss or damage to the Assets shall be applied entirely to repair or rebuild the damaged Assets for which such insurance payments will have been made.
- 14.3 All insurance policies, if any, shall be kept at the Company's registered office in Guyana.

**15. REPRESENTATIONS, WARRANTIES, COVENANTS AND UNDERTAKINGS**

- 15.1 The Foreign Party hereby represents and warrants to the Government and the Commission that:



- (a) it is duly organized, validly existing, and in good standing pursuant to the laws of its jurisdiction of incorporation and is qualified to do business in those jurisdictions where necessary in order to carry out its purposes;
- (b) it has the requisite corporate power and authority to own, lease, and operate its assets and to carry on its business as now conducted; and it has the capacity to enter into this Agreement;
- (c) it shall not breach any other agreement or arrangement to which it is a party or be in violation of any Applicable Law to which it is subject, by entering into or performing this Agreement;
- (d) this Agreement, when executed, shall be duly executed and delivered by it and be valid and binding upon it in accordance with the terms thereof; and
- (e) there is no judgment, decree, injunction, ruling or order of any court, governmental department, commission, agency, instrumentality or arbitrator and no claim, suit, action, litigation, arbitration or governmental proceeding in progress, pending or threatened, which prevents or which seeks to prevent it from entering into this Agreement.

15.2 Guyana and the Commission hereby represent and warrant to the Private Parties that:

- (a) the Commission is duly organized and validly existing as a body corporate under the GGMC Act and is qualified to do business in those jurisdictions where necessary in order to carry out its purposes;
- (b) the Commission has the requisite corporate power and authority to own, lease, and operate its assets and to carry on its business as now conducted;
- (c) the Government and the Commission have the capacity to enter into this Agreement;
- (d) the Government and the Commission shall not breach any other agreement or arrangement to which either of them is a party or be in violation of any Applicable Law to which either of them is subject, by entering into or performing this Agreement;
- (e) this Agreement, when executed, shall be duly executed and delivered by Guyana and the Commission and be valid and binding upon Guyana and the Commission in accordance with the terms thereof; and
- (f) there is no judgment, decree, injunction, ruling or order of any court, governmental department, commission, agency, instrumentality or arbitrator and no claim, suit, action, litigation, arbitration or governmental proceeding in progress, pending or threatened, which prevents or which seeks to prevent the Government and the Commission from entering into this Agreement.

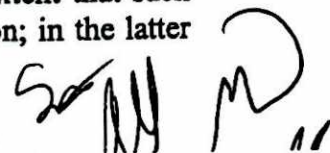
15.3 Guyana hereby represents and warrants that:



- (a) Linmine has full authority to reconvey such mineral rights and interests covering such lands that comprise the Mining Licenses and the Prospecting License, copy of which is attached hereto in Schedule "A", to the Government as envisaged in the Heads of Agreement and as set forth herein, free and clear of all Liens; these mineral rights and interests are valid and in good standing and, at all times prior to such reconveyance, Linmine had a good and valid exclusive ownership title thereto;
- (b) the Commission has full authority, with the Minister's approval, to issue, grant and convey unto the Company, the Mining Licenses and the Prospecting License as set forth herein, free and clear of all Liens, and the Company shall acquire good, exclusive, legal and beneficial rights and interests thereto, in accordance with the specific terms of such Licenses;
- (c) neither the Government nor Linmine has entered into any agreement or arrangement, or has made any material commitment, which may entail a Material Adverse Event as regards such mineral rights that shall become subject to or covered by the Mining and Prospecting Licenses during the period of time between the date of execution of the Heads of Agreement and the Effective Date;
- (d) Linmine is not in default under any agreement, arrangement or commitment regarding such mineral rights that shall become subject to or covered by the Mining and Prospecting Licenses;
- (e) the business and operations relating to such mineral rights that shall become subject to or covered by the Mining and Prospecting Licenses have been and are being carried in substantial compliance with Applicable Law of Guyana, save and except as communicated to the Private Parties in writing; and
- (f) save and except as communicated to the Private Parties in writing prior to Closing, there is no judgment, decree, injunction, ruling or order of any court, governmental department, commission, agency, instrumentality or arbitrator and no claim, suit, action, litigation, arbitration or governmental proceeding in progress, pending or threatened against or relating to, and affecting such mineral rights that shall become subject to or covered by the Mining and Prospecting Licenses.

15.4 The Company hereby covenants and undertakes to:

- (a) subject to article 19, assume liability for any damages caused by its servants and agents in violating its obligations under this Agreement, save and except to the extent that such damages are also ensuing from the Prior Land and Asset Condition; in the latter case, Guyana hereby assume its proportionate share of such liability and responsibility therefor; and
- (b) hold the Government and the Commission harmless from all suits for injury or claims for damages to Persons or property resulting from or in connection with the conduct of its Operations hereunder, save and except to the extent that such damages are also ensuing from the Prior Land and Asset Condition; in the latter



case, Guyana hereby assumes its proportionate share of such liability and responsibility therefor.

- 15.5 Guyana hereby undertakes to take all such steps which are necessary for the implementation of this Agreement, including passing the necessary or appropriate Acts (including Subsidiary Legislation) and issuing the necessary or appropriate authorizations to provide for the adaptation and modification of the Applicable Law of Guyana which may affect the implementation of this Agreement, and to allow the Private Parties to continue to carry out their obligations and to receive the benefits accorded to them under this Agreement.
- 15.6 Without limiting the application of clauses 15.7 and 15.8 and without prejudice to any other undertaking of Guyana set forth in this Agreement, if, at any time during the term of this Agreement, Guyana enacts or adopts any new Applicable Law or amends or repeals any existing Applicable Law (collectively, "Unilateral Action"), and if such Unilateral Action has the effect (the proof whereof shall lie with the Party asserting such effect) of preventing or constraining the exercise of any right or of materially increasing the burden of performance of any obligation (including any increase in an obligation to pay a sum of money) of the Private Parties hereunder (a "Negative Effect"), Guyana agrees to take such measures as may be required to restore the Private Parties to the position they would have retained had such Unilateral Action not been taken ("Corrective Action"). Such Corrective Action may take any or all of the following forms: (i) an exemption from the application of the Applicable Law that is the direct or indirect subject of the Unilateral Action or the direct or indirect cause of the Negative Effect, (ii) an undertaking to remit additional sums of money to the Private Parties as a result of such Unilateral Action, (iii) the enactment of specific legislation (including Subsidiary Legislation) eliminating the Negative Effect or, (iv) any other form acceptable to the Private Parties and Guyana. For greater certainty, Guyana agrees to take Corrective Action:
- (a) to eliminate the Negative Effect of any Unilateral Action on or in respect of the Articles, the Mining and Prospecting Licenses, the Environmental Permit, the Mining Area or the Assets; and
  - (b) to eliminate the Negative Effect of any Unilateral Action taken on or in respect of any of the matters described in articles 6 to 13 inclusively.

Notwithstanding the foregoing, nothing set forth in this Agreement shall be interpreted as preventing Guyana from taking Unilateral Action regarding matters of employee health and safety and of reasonably applying such Unilateral Action to the Private Parties hereunder.

- 15.7 Notwithstanding any provision hereof, Guyana shall not, whether by Unilateral Action or otherwise, unilaterally amend or terminate this Agreement or any Schedule, the Mining Licenses or the Prospecting License, or the Environmental Permit otherwise than in accordance with the express terms hereof or thereof.



- 15.8 With respect to the property, rights and interests of the Private Parties arising out of this Agreement or any Schedule or in any way connected with the Project, Guyana agrees (i) to ensure within Guyana the fair and equitable treatment of such property, rights and interests, (ii) in no way to impair or interfere with the management, maintenance, use, enjoyment or disposal (except as expressly provided herein) of such property, rights and interests, and (iii) to take no action to expropriate or nationalize any property, rights or interests, whether characterized as expropriation or nationalization or otherwise, or to directly or indirectly deprive the Private Parties of such property, rights or interests.
- 15.9 For the entire duration of this Agreement, Guyana hereby agrees and irrevocably undertakes (i) not to sell, assign, transfer or otherwise dispose of any of the shares of Linmine to any Person other than a Party or any Affiliate thereof, (ii) to maintain Linmine's existence, (iii) to cause Linmine to fulfill all its obligations, liabilities and undertakings to all Persons, to the Private Parties' full exoneration, and (iv) in particular, to cause Linmine to assume all of its obligations, liabilities and undertakings pursuant to the Heads of Agreement.
- 15.10 The representations, warranties, covenants and undertakings set forth in this article 15 shall remain in effect throughout the term of this Agreement and shall be in addition to, and not in substitution for, any other representations, warranties, covenants and undertaking set forth in this Agreement.

## 16. DEFAULTS AND REMEDIES

- 16.1 Should Guyana or the Commission default in the performance of any of its obligations or undertakings (including, without limitation, its assumption of all Prior Liabilities) hereunder, the Private Party or Parties aggrieved by such default shall give reasonable notice to the defaulting Party specifying the nature of the default and indicating any remedial measure to take to cure such default. If such remedial measure is not substantially completed within the notice period (where, unless otherwise specified in the notice, shall be a period of 30 days), the aggrieved Private Party or Parties shall be entitled, without any further delay, to institute proceedings in accordance with article 17.
- 16.2 The Company shall be deemed to be in default hereunder if:
- 16.2.1 it takes advantage of any bankruptcy or other Applicable Law for the protection of debtors from their creditors or voluntarily goes into liquidation; or
- 16.2.2 proceedings in bankruptcy or under any Applicable Law having similar effect are taken against it in good faith and such proceedings are not dismissed or contested in good faith within 60 days thereof; or
- 16.2.3 the Company fails to complete a payment due to the Commission or the Government hereunder and (i) such payment is not completed within 60 days from the date of receipt by the Company of a notice of such failure to pay from the Commission or the Government, as applicable or (ii) the Party having failed to

*as*  
*111* *M*

pay has not contested in good faith the allegations set forth in connection with proceedings under article 17 within the aforesaid delay; or

16.2.4 the Company or the Foreign Party fails to perform any other material obligation assumed by such Party hereunder and (i) fails to complete such performance within 90 days of the date of receipt by the Company or, as applicable, the Foreign Party of a notice of such failure to perform from the Commission or the Government, as applicable (provided that performance hereunder with the aforesaid 90-day period of an obligation required to be performed within a specific delay in this Agreement shall be deemed to constitute a valid completion of performance relieving the Company or, as applicable, the Foreign Party of its default hereunder), or (ii) the Party having failed to perform has not contested in good faith the allegations set forth in such notice in the manner set forth in article 17 within the aforesaid delay; or

16.2.5 the Company is convicted of an offence under the Mining Act which constitutes a willful departure from one or more of the substantive undertakings set forth in the Bankable Feasibility Study and the EIA after having been convicted of two previous like offenses under the Mining Act; "convictions" for the purposes of this clause 16.2.5 shall include any out-of-court settlement pursuant to Section 131 of the Mining Act.

16.3 The Commission or the Government, as applicable, may, subject to clause 16.4, terminate this Agreement or any Schedule hereof, the Mining and Prospecting Licenses and the Environmental Permit in the event of a default under any provision of clause 16.2 by written notice to the Company.

16.4 If a Private Party has instituted proceedings in accordance with article 17, neither the Commission nor the Government shall terminate or purport to terminate this Agreement or any Schedule hereof, the Mining and Prospecting Licenses or the Environmental Permit, and the Private Parties shall be entitled to continue Operations hereunder until the proceedings described in article 17 shall have been completed.

16.5 For the purposes of this article 16, a Party shall be deemed as to have "instituted proceedings" or "contested" hereunder if it serves notice to the other Party or Parties to the dispute under clause 17.3 and continues to avail itself of the dispute resolution mechanisms set forth in article 17 with reasonable diligence thereafter. If a Private Party has instituted proceedings under clause 17.3 in connection with an allegation by the Government or the Commission of a default by the Company hereunder and continues to deny such alleged default after proceedings under article 17 have been completed, the Government may, if it wishes to sustain its allegations, institute arbitration proceedings under clause 17.5.

If the Commission or the Government succeeds in proving a default by the Company hereunder to the satisfaction of an arbitration tribunal constituted under clause 17.5, it shall be entitled to such compensation in the form of damages as such tribunal shall think fit to award in accordance with the evidence presented and the provisions of Applicable

Law and the Rules (as defined in clause 17.2). However, neither the Commission nor the Government shall be entitled to seek a termination of the Mining and Prospecting Licenses, the Environmental Permit or of this Agreement or any Schedule hereof, unless the Company expressly consents to such termination or is adjudged by the arbitration tribunal (formed as per clause 17.5) to have committed a fundamental breach of this Agreement, of the Mining and Prospecting Licenses, or of the Environmental Permit.

**17. GOVERNING LAW, DISPUTE RESOLUTION AND JURISDICTION**

- 17.1 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Republic of Guyana.
- 17.2 If any dispute or conflict, contractual or not in nature, arises in connection with this Agreement or any Schedule, or the breach, termination, validity, performance or interpretation thereof (any of such occurrence being hereinafter referred to as a "Dispute") the Parties shall resolve the Dispute in the manner hereinafter set forth in this article 17.
- 17.3 A Party may commence proceedings under this article 17 by convening (in writing) a meeting between authorized representatives of the Parties. Such representatives shall meet within 30 days from the date of the notice convening the meeting and shall use their best efforts to settle the Dispute in good faith for a period not exceeding 60 days from the date of the aforesaid notice.
- 17.4 Any Dispute which is not resolved pursuant to clause 17.3 or otherwise, shall be referred to the Court (as defined in clause 17.5) for purposes of attempting a conciliation or mediation thereof, in which event the rules and practices of the Court relating to conciliation or mediation shall apply. The Parties shall meet within 30 days from the expiry of the 60-day period set forth in clause 17.3 and shall use their best efforts to settle the Dispute in good faith for a period not exceeding 60 days from the expiry of the 60-day period set forth in clause 17.3. The failure to attempt or complete conciliation or mediation proceedings shall in no event prevent a Party from instituting arbitration proceedings in accordance with clause 17.5.
- 17.5 Any Dispute which is not resolved pursuant to clauses 17.3 or 17.4 or otherwise, shall be referred for determination to final and binding arbitration, to the exclusion of all courts of Guyana or any other country and of other like forums, under the International Arbitration Rules (the "Rules") of the American Arbitration Association (the "Court"), valid on the date of the filing of a demand for arbitration with the Court; provided that the Rules may be supplemented, if required and applicable, by international law, including general principles of law recognized by civilized nations and principles applicable to contracts between States and foreign private parties, to the extent necessary to give full effect to the true intentions of the Parties as set forth in this Agreement and its Schedules. In particular, the arbitration shall be conducted in accordance with the following provisions:
- (a) an arbitral tribunal constituted pursuant to this clause 17.5 (the "Tribunal") shall consist of three arbitrators, one appointed by each Party and one appointed to be

SAT M.D.



chairman of the Tribunal by agreement of the Parties, or failing such agreement, in accordance with the Rules; in the event the Dispute involves more than two Parties, each Party shall appoint one arbitrator, and jointly appoint an additional arbitrator who shall be chairman of the Tribunal; failing such joint appointment, the chairman shall be appointed in accordance with the Rules;

- (b) a decision of a majority of the members of the Tribunal is required to settle or resolve any Dispute; in the event the Tribunal is composed of an even number of arbitrators and is deadlocked, the chairman of the Tribunal shall appoint an additional arbitrator who, after a consideration of the Dispute and the evidence and submissions of the Parties, shall cast the deciding vote to settle or resolve the Dispute;
- (c) arbitration proceedings shall be in Port of Spain, Trinidad & Tobago, or at any other location mutually agreed by the Parties in writing; and
- (d) each Party shall participate in any arbitration proceedings at its own expense, and expenses of arbitration shall be borne equally by the Parties. In the case of an award of monetary damages, the Court or, as applicable, the Tribunal shall be entitled to award interest thereon at LIBOR from the earlier of (i) the date on which proceedings are instituted and (ii) the date on which the relevant obligations became exigible.

17.6 Without prejudice to the authority and power of the Court or, as applicable, the Tribunal to order provisional and conservatory measures, any Party may request any judicial authority of competent jurisdiction to order any provisional or conservatory measure, including attachment, prior to the institution of arbitration proceedings, or during the proceedings, for the preservation of its rights or interests.

17.7 The Parties agree that any Dispute may be consolidated by the Tribunal, under the Rules, and heard together with any arbitration that may arise under any other agreement between the Parties, if the Tribunal is of the opinion that such consolidation would be appropriate and in the best interests of the Parties.

17.8 Guyana hereby expressly represents and warrants that it has signed and ratified all treaties, conventions and other documents necessary to give full effect to the provisions of this article 17 and that such provisions are binding and enforceable against it.

17.9 Guyana and NICIL hereby expressly and irrevocably waive the right to any claim for sovereign immunity against jurisdiction, enforcement and execution of any arbitral award rendered as provided for in this article 17 or any judgment thereon in any court of competent jurisdiction.

17.10 The failure by a Party to participate in arbitral proceedings shall not constitute valid grounds for rejecting the jurisdiction of the Court or of the Tribunal appointed under clause 17.5(a), or the validity and enforceability of any of its awards. Each Party undertakes to execute any arbitral awards rendered against it in accordance with its terms,



in full, voluntarily and without delay. Judgment on the award may be entered and enforced in any court of competent jurisdiction.

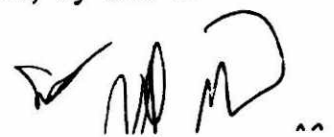
- 17.11 For greater certainty, but not so as to restrict the generality of the foregoing, it is hereby expressly agreed that the Arbitration Act, Cap. 7:03 of the laws of Guyana shall not apply to a submission to arbitration under this article 17.

**18. TERM AND TERMINATION**

- 18.1 This Agreement shall be deemed to have come into force as of the date on which it shall have been executed by all Parties (the "Effective Date") which shall correspond to the date of Closing, provided that all acts performed and all expenses incurred by the Private Parties as of and from the date of execution of the Heads of Agreement in anticipation of the finalization of this Agreement and on the assumption that this Agreement would be executed, shall be deemed for all purposes to have been validly performed and incurred pursuant to this Agreement. This Agreement shall remain in effect until the Mining and Prospecting Licenses as well as the Environmental Permit and renewal thereof (or any like license or similar evidence of rights granted in replacement thereof) definitively expire, unless earlier terminated pursuant to this article 18.
- 18.2 The Company or the Foreign Party may terminate this Agreement by giving six (6) months written notice to the Government, provided that the Company or, as applicable, the Foreign Party shall have the right to retract in writing its notice at any time prior to the expiry of such notice period.
- 18.3 Guyana shall be entitled to terminate this Agreement only under the circumstances described and in the manner set forth in article 16.
- 18.4 In the case of a termination of this Agreement pursuant to clauses 18.1, 18.2 or 18.3 and subject to the full assumption of all Prior Liabilities by Guyana and/or Linmine, to the Private Parties' complete exoneration in respect thereof, the Company shall:
- (a) subject to clause 18.5, deal with its property in Guyana as provided in clause 18.6;
  - (b) restore the areas used and damaged as provided in clause 6.4, the EIA and the Environmental Permit to the extent it is not precluded to do so as a consequence of the Prior Land and Asset Condition;
  - (c) pay any fees due hereunder up to the time the termination becomes effective; and
  - (d) submit complete reports and evaluations, maps, assays, samples, drilling tests and related articles to the Commission.
- 18.5 Before the Company is entitled to remove its assets and property from Guyana and before any payments due to it are returned, the Company shall obtain from the Commission a Certificate of Compliance with its obligations under clause 18.4; provided that the Commission shall not refrain to deliver the aforesaid Certificate by reason of non-compliance that is solely attributable to the Prior Land and Asset Condition.

 11

- 18.6 In the event of the termination of this Agreement in accordance with clauses 18.1, 18.2 or 18.3, the following provisions shall apply:
- (a) all fixed plant, equipment and other immovable assets of the Company and all materials, supplies, vehicles and other moveable assets of the Company which are fully depreciated for tax purposes shall become the property of Guyana without charge on the effective date of termination;
  - (b) all such property not fully depreciated for tax purposes shall be offered for sale at its depreciated value to the Government within 30 days from the effective date of termination; if the Government does not accept such offer within 30 days from the date thereof, the Company shall sell, remove or otherwise dispose of all such property prior to the expiry of 365 days after the effective date of such termination; all such property not so sold, removed or otherwise disposed of shall become the property of Guyana without charge;
  - (c) notwithstanding the foregoing, upon termination of this Agreement, the Government may by notice to the Company require the removal or destruction of any assets of the Company located in the Mining Area, and if the Company does not remove or destroy such assets within a period of 120 days from the date of the Government's notice to that effect, the Government may effect such removal or destruction and the Company shall assume the reasonable costs, which must have been incurred by the Government at competitive rates, of such removal or destruction, except for any and all costs that are resulting from the Prior Land and Asset Condition;
  - (d) upon the termination of this Agreement, the Company shall leave the Mining Area and everything thereon in safe condition, subject to the full assumption by Guyana of all Prior Liabilities. In this connection, unless the Government otherwise directs, the Company shall, in accordance with good mining industry practice, make safe all holes and excavations to the reasonable satisfaction of the Government. In the event that the Company fails to do so, the Government may perform such acts as may be necessary to make the Mining Area safe and the Company shall assume the reasonable costs, which must have been incurred by the Government at competitive rates, of said acts, except for any and all costs resulting from the Prior Land and Asset Condition. To the extent that the Company complies with the terms of the Bankable Feasibility Study and the EIA in respect of the matters described in this clause 18.6(d), the Private Parties shall be deemed to have fulfilled their obligations hereunder; and
  - (e) the Company shall have the right to enter upon the Mining Area for the aforesaid purposes, subject to the rights of surface owners or others, for a period of one (1) year from the effective date of termination or such longer period as the Private Parties may reasonably request.
- 18.7 In the event that the Company decides to suspend Operations under the relevant provisions of clause 4.4, the Company shall not be entitled to dispose, by sale or



otherwise, of its Assets (whether fully depreciated for tax purposes or not) referred to in clauses 18.6(a) and (b).

19. **INDEMNIFICATION**

19.1 Guyana and the Commission hereby agree and covenant to jointly and severally indemnify and save each of the Private Parties harmless from and against any and all Prior Liabilities as well as any loss, cost, expense, damage, or liability (including, without limitation, reasonable and documented attorneys' fees, and other expenses incurred in defending against litigation, either threatened or pending) arising out of or based upon:

- (a) any breach by Guyana and the Commission of any representation, warranty, covenant or agreement made by either of them in this Agreement; and
- (b) any failure by Guyana or the Commission to satisfy any commitment or obligation made under this Agreement or under any document executed or delivered in connection with the transactions set forth in this Agreement.

19.2 Each of the Private Parties hereby agrees and covenants to indemnify and save Guyana and the Commission harmless from and against any loss, cost, expense, damage, or liability (including, without limitation, reasonable and documented attorneys' fees and other expenses reasonably incurred in defending against litigation, either threatened or pending) arising out of or based upon:

- (a) any breach of any representation, warranty, covenant or agreement made by either of them in this Agreement;
- (b) any failure by either of them to satisfy any commitment or obligation made under this Agreement or under any document executed or delivered in connection with the transactions set forth in this Agreement; and
- (c) save and except for any and all Prior Liabilities, any environmental liability or adverse environmental condition of any nature whatsoever which may arise from or exist in connection with the Mining Area, the Prospecting Area and the Assets caused by its performance of Operations and, otherwise at any time after the end of the Investment Period and, thereafter, the period of time corresponding to the Remedial Timetable.

19.3 For the purposes of determining the Indemnifying Party and the Indemnified Party, Guyana and the Commission shall be deemed to be one and the same Party and the Foreign Party and the Company shall be deemed to be one and the same Party. If any claim or demand (a "Claim") is asserted by any Person against a Party in respect of which such Party may be entitled to indemnification under the provisions of this article 19 (the "Indemnified Party"), written notice of such Claim, specifying the basis for the Claim and the amount thereof (to the extent feasible) shall promptly be given to the other Party (the "Indemnifying Party") from whom indemnification may be sought. The Indemnifying Party shall have the right (and if the Claim is based on a claim made by a third Person, shall notify the Indemnified Party whether it exercises such right),

within thirty (30) days of its receipt of the notice of the Claim, to assume (subject to the right of the Indemnified Party to participate, at its own expense and with counsel of its choice) the entire control of the defense, compromise or settlement of the Claim, including, at the Indemnifying Party's expense, retaining counsel of its choice. No Claim shall be settled or otherwise compromised without the consent of the Indemnifying Party, which consent shall not be unreasonably withheld. Any damages to the assets, business or operations of the Indemnified Party caused by a failure of the Indemnifying Party to defend, compromise or settle a Claim in a reasonable and expeditious manner, after the Indemnifying Party has given notice that it will assume control of the defense, compromise or settlement of the matter, shall be included in the damages for which the Indemnifying Party shall be obliged to indemnify the Indemnified Party.

- 19.4 In no event will consequential, exemplary or punitive damages be recoverable with respect to this Agreement by any Party, except to the extent sought and recovered by a third Person from the Indemnified Party.
- 19.5 The Indemnifying Party shall not be liable to the Indemnified Party for compensation hereunder unless the cumulative amount of compensation owing under all or any such Claims exceeds US \$50,000 in the aggregate. In such event, however, the full amount of any compensation owing shall be payable without deduction.

20. ASSIGNMENT

- 20.1 The Company may, at any time, assign all or part of its rights and obligations under this Agreement to a third party with the prior written approval of the Government or the Commission. The Government or, as applicable, the Commission shall not withhold its approval without good reasons. It is agreed that such reasons shall include but not be limited to the technical and financial capability of the proposed third party. Neither Guyana nor the Foreign Party may assign its interest in this Agreement in whole or in part except in connection with the transfer of its participation in the share capital of the Company.
- 20.2 In all cases of assignment and transfer, the assignee or transferee shall be subject to this Agreement and shall be bound to comply with the provisions of the Agreement. In the event of a partial assignment, the assignor and assignee shall each be severally (and not jointly and severally) liable for their own respective defaults hereunder.
- 20.3 Notwithstanding the foregoing, the Company shall have the right to pledge or otherwise create security interests over its assets, both moveable and immovable, to secure financing.
- 20.4 The Government or, as applicable, the Commission shall provide each mortgagee or chargee under a mortgage or charge given as authorized hereunder, and each lender pursuant to a loan of which the Government has been given notice, whether made to the Company or indirectly (hereinafter collectively referred to as "Lenders" and, individually, a "Lender"), with a copy of any notice given to the Company under article 16. Any notice or copy of any notice to be given at the same time to any Lender

SAM M

shall be given in the manner described in clause 22.8 to the address for service of notice given by such lender to the Government or, as applicable, the Commission.

- 20.5 Should the Government or, as applicable, the Commission give a notice to the Company pursuant to article 16, the Government shall give reasonable consideration to any proposal that any Lender may subsequently make to the Government or, as applicable, the Commission taking into consideration the positions of those Lenders in regard to any outstanding obligations that the Company may have to them, directly or indirectly, at that time.

21. **FURTHER ACTIONS**

- 21.1 Guyana and the Commission hereby agree and undertake to sign all such documents, do all such things and make all such arrangements such that the Private Parties will receive, from the relevant Government Authorities, all such specific authorizations, permissions and/or exemptions in respect of the subject matters described in the relevant provisions of articles 7, 8, 9, 12 and 13, as are necessary or desirable to give full force and effect to such matters described in articles 7, 8, 9, 12 and 13 hereof.

22. **MISCELLANEOUS AND FINAL PROVISIONS**

- 22.1 The Parties shall treat all information relating to the Project including, without limitation, any report required to be filed by the Company hereunder, as confidential and shall only disclose such information to other Persons in accordance with the provisions of clauses 3.3 and 3.4.
- 22.2 As provided in clauses 4.4.3 and 4.4.4, the obligations of a Private Party hereunder shall be suspended during such periods as when an event of Force Majeure shall have occurred and be continuing, provided that such Party shall, during any such period, take all appropriate precautions, exercise due care and consider any reasonable alternative measures with a view to carrying out its obligations hereunder, notwithstanding that such Force Majeure event has occurred and is continuing. Such Party shall take all reasonable measures within a reasonable time with a view to overcoming or terminating such Force Majeure event and performing its obligations hereunder, including the making of reasonable attempts to settle industrial disputes, provided that the Company shall not be compelled to settle any such dispute in order to meet the requirements of this clause 22.2. Such Private Party shall notify the Government (c/o Prime Minister) and the Commission promptly of the occurrence of a Force Majeure event giving the particulars thereof and of its effect on its ability to perform its obligations hereunder or of any event which results in the death or injury of any person in the Mining Area or any event which may endanger natural resources within the Mining Area. Such Party shall likewise promptly notify the Government (c/o Prime Minister) and the Commission when such Force Majeure event shall have ceased or shall no longer prevent such Party from carrying out its obligations hereunder. The Parties shall meet as appropriate to discuss in good faith the consequences of any Force Majeure event and the course of action to be adopted in the circumstances.

*SMT* *MJ*

- 22.3 The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach hereof shall not constitute a waiver of any provisions of this Agreement or limit such Party's right thereafter to enforce any provision or exercise any right unless such waiver is unambiguous, in writing and signed by the Person waiving such right, power or remedy. Any waiver of such right, power or remedy shall not be construed as a waiver of any succeeding or other right, power or remedy unless the contrary is expressly stated in writing and signed by the Party making such waiver. The failure by a Party to perform an obligation hereunder shall not excuse the performance by any other Party of its obligations hereunder unless the first mentioned obligation is a material obligation.
- 22.4 No amendment to this Agreement shall be valid unless made in writing and duly executed by each of the Parties.
- 22.5 Except as otherwise provided herein, this Agreement, together with the Schedules, contains the entire understanding of the Parties and supersedes all prior agreements and understandings between the Parties relating to the subject matter hereof, including, without limitation, the Heads of Agreement, save and except as regards the obligations, liabilities and undertakings of Linmine thereunder in favour of the Private Parties.
- 22.6 There are no implied covenants in this Agreement other than those of good faith and fair dealing.
- 22.7 This Agreement shall be binding upon and enure to the benefit of the respective successors and permitted assigns of each of the Parties.
- 22.8 All notices and other required communications made pursuant to this Agreement to any Party shall be in writing and shall be addressed as follows:

**TO THE FOREIGN PARTY:**

**Cambior Inc.**  
1111 St. Charles Street West  
East Tower, Suite 750  
Longueuil, Québec  
J4K 5G4  
Telecopier: (450) 677-2648  
Attention: President and Chief Executive Officer

**TO THE COMPANY:**

**Omai Bauxite Mining Inc.**  
176-D Middle Street, Cummingsburg  
Georgetown, Guyana  
Facsimile: (59-2) 226-6468  
Attention: President

(with a copy to the Foreign Party at its address as set forth above)

**TO THE COMMISSION:**

**The Guyana Geology and Mines Commission**  
7 Brickdam Road  
Georgetown, Guyana  
Telecopier: 592-02-53047  
Attention: The Commissioner

**TO GUYANA:**  
(including notices  
required or permitted  
to be given to the  
Government):

**Office of the Prime Minister**  
Oranapai Towers  
Wight's Lane  
Kingston  
Georgetown, Guyana  
Telecopier: 592-2-67573

All notices shall be given (i) by personal delivery to the Party or (ii) by electronic communication (including telexes and telecopies or telefaxes), or (iii) by registered or certified mail, return receipt requested. All notices shall be effective and shall be deemed to have been delivered (i) if by personal delivery, on the date of delivery if delivered during normal business hours and, if not, then on the next business day following delivery; (ii) if by electronic communication, on the next business day following receipt of the electronic communication; and (iii) if solely by mail, on the next business day after actual receipt. A Party may change its address for notice by providing notice of such new address to the other Parties.

- 22.9 The Parties hereby agree to cooperate at all times and to contribute to the extent of their respective capacities in order to ensure efficiency in the performance of Operations hereunder and to ensure the success of the Project. To this end, the Parties agree to meet on a regular basis to discuss matters of mutual concern.
- 22.10 In the event that the Court, the Tribunal or any judicial court of competent jurisdiction determines that any term, part or provision of this Agreement is unenforceable, illegal, or in conflict with any laws to which this Agreement is subject, the Parties intend that such court or, as applicable, the Tribunal reform that term, part or provision within the limits permissible under applicable law in such manner as to approximate most closely the intent of the Parties; provided that, if the Court, the Tribunal or, as applicable, any judicial court of competent jurisdiction cannot make such a reformation, then that term, part or provision shall be considered severed from this Agreement. The remaining portions of this Agreement shall not be affected, and this Agreement shall be construed and enforced as if it did not contain that term, part or provision.





IN WITNESS WHEREOF, the Parties hereunto caused their authorized representatives to set their respective hands hereto at the City of Georgetown, Guyana, in the presence of one another the day and year first above written.

THE COOPERATIVE REPUBLIC OF  
GUYANA )

By: \_\_\_\_\_ )

Name: SAWUEL A HUDS )  
Title: PRIME MINISTER )

Winston Brants  
Witness

CAMBIOR INC. )

By: \_\_\_\_\_ )

Name: MARC DAGENAIS )  
Title: VICE PRESIDENT, LEGAL )

[Signature]  
Witness

GUYANA GEOLOGY AND MINES  
COMMISSION )

By: \_\_\_\_\_ )

Name: Colleen King )  
Title: Commissioner )

[Signature]  
Witness

OMAI BAUXITE MINING INC. )

By: \_\_\_\_\_ )

Name: Rejean Goude )  
Title: CHAIRMAN )

[Signature]  
Witness