

Chapter 363D.

***Mining (Ok Tedi Fourth Supplemental Agreement) Act 1985.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 363D.

*Mining (Ok Tedi Fourth Supplemental Agreement) Act 1985.*

**ARRANGEMENT OF SECTIONS.**

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

**SCHEDULE 1**



INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

*Mining (Ok Tedi Fourth Supplemental Agreement) Act 1985,*

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

**1. INTERPRETATION.**

In this Act—

“**the commencement date**” means 21 June 1985, being the date on which the *Mining (Ok Tedi Fourth Supplemental Agreement) Act 1985* came into force;

“**the Fourth Supplemental Agreement**” means the supplemental agreement a copy of which is set out in Schedule 1.

**2. APPROVAL OF AGREEMENT.**

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

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

<sup>1</sup>The Fourth Supplemental Agreement has the force of law for the full term provided for therein as if contained in this Act and shall apply notwithstanding anything to the contrary in any other law in force in the country.

**4. ANCILLARY POWERS OF MINISTER.**

Notwithstanding anything in any other law in force in the country at any time (whether before or after the commencement date), the Minister has power, on behalf of the State, to make all grants, issues, renewals and extensions required by or under the Fourth Supplemental Agreement to be made by the State, and is not bound in that regard by any provisions of any such

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<sup>1</sup> Section 3 repealed and replaced by the *Mining (OK Tedi Agreements) (Amendment) Act 1986* (No. 26 of 1986), s 5. .

**s. 4.**

*Mining (Ok Tedi Fourth Supplemental Agreement) 9999*

law requiring or permitting any authority, consent, approval, report recommendation, appeal, procedure or formality, or by any similar provision.

**SCHEDULE 1**

**Sch. 1**

*Mining (Ok Tedi Fourth Supplemental Agreement) 9999*

Sec. 1.

**FOURTH SUPPLEMENTAL AGREEMENT**



THIS FOURTH SUPPLEMENTAL AGREEMENT is made as of the 1st day of March 1984

BETWEEN

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

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

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

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

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

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

STANDARD OIL COMPANY, a corporation incorporated in the State of Indiana in the United States of America (hereinafter called "SOL"), of the seventh part;

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

AND

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

WHEREAS

- A. By an Agreement dated the 22nd day of March 1976 between the State of the first part and BHP Minerals Limited (then named Dampier Mining Company Limited) of the second part the State granted to the said BHP Minerals Limited certain rights, set out in detail in that Agreement, including rights to carry out investigations and studies in relation to, and undertake a Project involving the exploitation of, the Ok Tedi Deposits in Papua New Guinea.
- B. The Agreement referred to in Recital A has been varied, amended and supplemented by, and assigned as set out in, a Supplemental Agreement (the "First Supplemental Agreement") dated the 26th day of June 1980, a Second Supplemental Agreement (the "Second Supplemental Agreement") dated the 26th day of February 1981 and a Third Supplemental Agreement dated the 4th day of March 1982, and, as so varied, amended and supplemented, is hereinafter referred to as the "Principal Agreement".
- C. In order to finance the cost of the Project, the Company has raised and expects hereafter to raise moneys pursuant to loan agreements, credit facilities and other financial accommodation.

- D. The State, Amoco, SOL, BHP, MG, DG and DEG have provided and expect hereafter to provide certain Support (as hereinafter defined) in connection with the raising of such moneys by the Company.
- E. The parties have agreed to clarify the basis on which certain of such Support has been and may hereafter be provided by the State from time to time in accordance with the Principal Agreement.

NOW IT IS HEREBY AGREED AND DECLARED as follows:

**1. DEFINITIONS AND INTERPRETATION**

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

**2. EFFECT ON AND OF OTHER LAWS**

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

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

**3. CONDITIONS PRECEDENT**

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

**A. AMENDMENTS TO DEFINITIONS**

- 4.1 Clause 1 of the Principal Agreement is amended:

- (a) by inserting the following definitions after the definition therein of "Company":

"Completion of Stage I" means the Commencement of Commercial Production, as defined in Clause 23.1

"Completion of Stage II" means the last day of the first month during which the Company achieves an average rate of copper concentrate production for shipment from the Project in excess of 70% of the average monthly copper concentrate production for the first year of copper concentrate production under the Approved Proposals, or the last day of the month in which aggregate shipments of copper concentrate exceed one and a half times the average monthly copper concentrate production for the first year of copper concentrate production under the Approved Proposals, whichever be the earlier; and

- (b) by inserting the following definitions after the definition therein of "Rivet Port":

"Stage I", "Stage II" and "Stage III" have the respective meanings given to them in the Approved Proposals, and each of them constitutes a "Stage" for the purposes of this Agreement.

"United States Dollars" and the sign "US\$" mean dollars in the lawful currency of the United States of America.

- 4.2 Clause 1.1 of the Second Supplemental Agreement is amended by deleting therefrom the definitions of "US\$", "Completion of Stage I" and "Completion of Stage II".

#### 5. SUPPORT FOR LOANS

Clause 5 of the First Supplemental Agreement, as amended by Clause 5 of the Second Supplemental Agreement, is amended by deleting all provisions after Clause 5.4 and substituting the following provisions:

- 5.5 In Clause 5.3 and in the ensuing provisions of this Clause 5, unless the context or subject matter otherwise requires:

"Actual Support of the State" with respect to State Supported Loans means, as of any date of determination, and without prejudice to and without affecting the State's Support Obligation, the aggregate of the amounts determined by multiplying (a) the Percentage of the State on that date (calculated in accordance with the Loan Support Agreement dated as of the 1st day of March 1984), in respect of each Support Agreement pursuant to which Support shall have been furnished in respect of State Supported Loans times (b) the Loans Supported under such Support Agreement.

"Amoco" means Amoco Minerals PNG Company.

"BHP" means The Broken Hill Proprietary Company Limited.

"BHP Minerals Holdings" means BHP Minerals Holdings Proprietary Limited.

"Citi-OPIC Completion and Cash Deficiency Agreement" means the Completion and Cash Deficiency Agreement dated as of the 16th day of February 1982 among Amoco, SOL, BHP, the Company and Citibank, N.A., as Trustee.

"Clause 5.16 Certificate" means a certificate (which may consist of more than one instrument in like form) duly signed on behalf of each Sponsor (other than a Limited Sponsor) (or, in relation to a Facility that is Supported under a Support Agreement referred to in paragraph (d)(ii) of the definition of "Total Supported Loans", duly signed on behalf of each Corporate Sponsor (other than a Limited Sponsor)) in accordance with Clause 5.16.

"Corporate Sponsors" means collectively all Sponsors other than the State.

"Deficiency Obligations", in the case of any Sponsor, means:

- (a) the obligations and liabilities of such Sponsor under:
  - (i) Articles III and IV of the Citi-OPIC Completion and Cash Deficiency Agreement; and
  - (ii) any Substitute Instrument issued by such Sponsor pursuant to the Citi-OPIC Completion and Cash Deficiency Agreement;
- (b) the obligations and liabilities of such Sponsor under:
  - (i) Articles III and IV of the Export Agencies' Completion and Cash Deficiency Agreement; and
  - (ii) any Substitute Instrument issued by such Sponsor pursuant to the Export Agencies' Completion and Cash Deficiency Agreement;
- (c) the obligations and liabilities of such Sponsor under:
  - (i) Articles III and IV of the Matubeni Completion and Cash Deficiency Agreement; and
  - (ii) any Substitute Instrument issued by such Sponsor pursuant to the Matubeni Completion and Cash Deficiency Agreement; and
- (d) any obligations and liabilities of such Sponsor under:
  - (i) any other Support Agreement; and
  - (ii) (to the extent that such Sponsor is not simultaneously obligated or liable under a Support Agreement referred to in paragraph (d)(i) above) any Substitute Instrument issued by such Sponsor pursuant to such Support Agreement

that, in each case, have been designated, by a Clause 5.16 Certificate, as "Deficiency Obligations" for the purposes of this Agreement.

"DG" means Degussa AG.

"DEG" means DEG-Deutsche Finanzierungsgesellschaft fuer Beteiligungen in Entwicklungslaendern GmbH.

"Export Agencies' Completion and Cash Deficiency Agreement" means the Completion and Cash Deficiency Agreement dated as of the 16th day of February 1982 among the State, SOL, Amoco, BHP, MG, DG, DEG, the Company and Export Finance and Insurance Corporation as Agent (including such Agreement as it may from time to time be modified, amended, supplemented or restated, to the extent that the Sponsors do not determine, by a certificate (which may consist of more than one instrument in like form) signed by each Sponsor, that such Agreement as so modified, amended, supplemented or restated shall not continue to constitute the "Export Agencies' Completion and Cash Deficiency Agreement" for the purposes of this Agreement).

"Facility" means a contractual arrangement (including, unless the context or subject matter otherwise requires, any modification, amendment, supplementation or restatement thereof) pursuant to which funds shall have been or, where the context or subject matter requires, are to be (as applicable), advanced to or on behalf of, or otherwise made available to, the Company.

"First Supplemental Agreement" means the agreement dated the 26th day of June 1980 headed "The Supplemental Agreement" between the State of the first part, BHP Minerals Limited of the second part, the Company of the third part and Kupferexplorationsgesellschaft mbH of the fourth part.

"Fourth Supplemental Agreement" means the agreement made as of the 1st day of March 1984, headed "Fourth Supplemental Agreement", between the State of the first part, Amoco of the second part, BHP Minerals Holdings of the third part, MG of the fourth part, DG of the fifth part, DEG of the sixth part, SOL of the seventh part, BHP of the eighth part and the Company of the ninth part.

"Limited Sponsor" means a Sponsor that has:

- (a) reached its Maximum Commitment (within the meaning of Clause 7 of the Shareholders Agreement); and
- (b) given notice pursuant to Clause 7.2(a) of the Shareholders Agreement.

If Amoco so reaches its Maximum Commitment and gives such notice then SOL shall also be deemed to be a "Limited Sponsor" for the purposes of this Agreement and if BHP Minerals Holdings so reaches its Maximum Commitment and gives such notice then BHP shall also be deemed to be a "Limited Sponsor" for the purposes of this Agreement.

"Loan" means the principal obligation (including (a) capitalized interest and (b) accrued interest that will be capitalized on the date on which it would become due and payable were it not capitalized) for the time being outstanding or, where the context or subject matter requires, to be outstanding (as applicable), in respect of funds advanced to or on behalf of, or otherwise made available to, the Company, or in respect of the deferred purchase price of property or services, in connection with the Project pursuant to any Facility.

"Matubeni Completion and Cash Deficiency Agreement" means the Completion and Cash Deficiency Agreement dated as of the 28th day of September 1983 among the State, SOL, Amoco, BHP, MG, DG, DEG, the Company and Matubeni Hong Kong Limited (including such Agreement as it may from time to time be modified, amended, supplemented or restated, to the extent that the Sponsors do not determine, by a certificate (which may consist of more than one instrument in like form) signed by each Sponsor, that such Agreement as so modified, amended, supplemented or restated shall not continue to constitute the "Matubeni Completion and Cash Deficiency Agreement" for the purposes of this Agreement).

"MG" means Metallgesellschaft AG.

"Non-Diluting Ratio Percentage" means, as of any date of determination, the percentage which results when the State's Shareholding Percentage on such date of determination, expressed as a decimal, is divided by the aggregate of the Shareholding Percentages on such date of determination, expressed as decimals, of all Sponsors other than a Limited Sponsor, and the quotient is multiplied by 100.

"Second Supplemental Agreement" means the agreement dated the 26th day of February 1981, headed "Second Supplemental Agreement", between the State of the first part, BHP Minerals Holdings of the second part, MG of the third part, DG of the fourth part, DEG of the fifth part and the Company of the sixth part.

"Shareholders Agreement" means the Agreement made the 26th day of February 1981, headed "Shareholders Agreement", between the State, Amoco Minerals Company, BHP Minerals Holdings, BHP, SOL, MG, DG and DEG, to which SMH agreed, by an Agreement made the 21st day of December 1982 between the State, Amoco, BHP Minerals Holdings and SMH, to become and be a party.

"Shareholding Percentage", in the case of any Sponsor, means, as of any date of determination, such Sponsor's percentage shareholding, direct and indirect (determined in accordance with Clause 5.6) in the Company on such date.

"Shareholding Percentage Increase" in the case of the State, means, as of any date of determination, the difference in percentage between (a) the Non-Diluting Ratio Percentage on such date and (b) the State's Shareholding Percentage on such date determined without regard to any transfer of shares by a limited Sponsor pursuant to Clause 7.4 of the Shareholders Agreement.

"SMH" means Stat Mountains Holding Company Pty. Limited.

"SOL" means Standard Oil Company.

"Sponsors" means the State, Amoco, SOL, BHP Minerals Holdings, BHP, MG, DG and DEG, and any other person (except SMH) which hereafter:

- (a) in accordance with the Shareholders Agreement, acquires ordinary shares in the capital of the Company held directly or indirectly by any person that at the time of such acquisition constitutes a "Sponsor" for the purposes of this Agreement; and
- (b) enters into obligations to be bound by the terms of the Shareholders Agreement.

While both Amoco and SOL shall constitute "Sponsors" for the purposes of this Agreement, any obligation or liability hereunder of a "Sponsor" shall be discharged or satisfied, as regards Amoco and SOL, if discharged or satisfied by either Amoco or SOL severally, or by both Amoco and SOL jointly, and any obligation or liability hereunder of any other party (including, without limitation, the obligation of the Company under Clause 5.15) shall be discharged or satisfied as regards Amoco and SOL, if discharged or satisfied by such party in favour of:

- (i) Amoco severally;
- (ii) SOL severally; or
- (iii) Amoco and SOL jointly,

as SOL may designate from time to time by notice given to the other Sponsors. A party (including, without limitation, the Company) shall for these purposes be deemed to have discharged or satisfied an obligation or liability, as regards Amoco and SOL, if it has discharged or satisfied that obligation or liability in accordance with the most recent such notice of designation heretofore so given to it by SOL. While both BHP Minerals Holdings and BHP shall constitute "Sponsors" for the purposes of this Agreement, any obligation or liability hereunder of a "Sponsor" shall be discharged or satisfied, as regards BHP Minerals Holdings and BHP, if discharged or satisfied by either BHP Minerals Holdings or BHP severally, or by both BHP Minerals Holdings and BHP jointly, and any obligation or liability hereunder of any other party (including, without limitation, the obligation of the Company under Clause 5.15) shall be discharged or satisfied, as regards BHP Minerals Holdings and BHP, if discharged or satisfied by such party in favour of:

- (A) BHP Minerals Holdings severally;
- (B) BHP severally; or
- (C) BHP Minerals Holdings and BHP jointly,

as BHP may designate from time to time by notice given to the other Sponsors. A party (including, without limitation, the Company) shall for these purposes be deemed to have discharged or satisfied an obligation or liability, as regards BHP Minerals Holdings and BHP, if it has discharged or satisfied that obligation or liability in accordance with the most recent such notice of designation theretofore so given to it by BHP.

"Stage I Loans" means Loans advanced or otherwise made available prior to the Completion of Stage I, except to the extent that such Loans have been expended on or in respect of Stage II or Stage III.

"Stage II Loans" means:

- (a) Loans advanced or otherwise made available prior to the Completion of Stage I, to the extent that such Loans have been expended on or in respect of Stage II; and
- (b) Loans advanced or otherwise made available on or after the Completion of Stage I, and prior to the Completion of Stage II, except to the extent that such Loans have been expended on or in respect of Stage III.

"Stage III Loans" means all Loans other than Stage I Loans and Stage II Loans.

"Stage Supported Loans" means Loans advanced or otherwise made available under:

- (a) the Credit Agreement made the 16th day of February 1982 between Export Finance and Insurance Corporation and the Company (including such Credit Agreement as it may from time to time be modified, amended, supplemented or restated, to the extent that the Export Agencies' Completion and Cash Deficiency Agreement, or any Substitute Instrument issued thereunder, continues to apply in relation to such Credit Agreement as so modified, amended, supplemented or restated);
- (b) the Loan Agreement made the 16th day of February 1982 between Lloyds Bank International Limited, The Secretary of State of Her Britannic Majesty's Government acting by the Export Credits Guarantee Department and the Company, as supplemented by an Agreement made the 9th day of February 1983 between the parties to such Loan Agreement (including such Loan Agreement as it may from time to time be further modified, amended, supplemented or restated, to the extent that the Export Agencies' Completion and Cash Deficiency Agreement, or any Substitute Instrument issued thereunder, continues to apply in relation to such Loan Agreement, as so supplemented, and as so further modified, amended, supplemented or restated);



- (c) the Loan Agreement made the 16th day of February 1982 between the Company and Export Development Corporation (including such Loan Agreement as it may from time to time be modified, amended, supplemented or restated, to the extent that the Export Agencies' Completion and Cash Deficiency Agreement, or any Substitute Instrument issued thereunder, continues to apply in relation to such Loan Agreement, as so modified, amended, supplemented or restated);
- (d) the Agreement made the 16th day of February 1982 between Bank of America National Trust and Savings Association and Internationale Bank fuer Aussehhandel AG, Bank of America National Trust and Savings Association, as Agent, and the Company (including such Agreement as it may from time to time be modified, amended, supplemented or restated, to the extent that the Export Agencies' Completion and Cash Deficiency Agreement, or any Substitute Instrument issued thereunder, continues to apply in relation to such Agreement, as so modified, amended, supplemented or restated);
- (e) the Project Finance Agreement made as of the 28th day of September 1983 by and between the Company and Matubeni Hong Kong Limited (including such Project Finance Agreement as it may from time to time be modified, amended, supplemented or restated, to the extent that the Matubeni Completion and Cash Deficiency Agreement, or any Substitute Instrument issued thereunder, continues to apply in relation to such Project Finance Agreement, as so modified, amended, supplemented or restated); and
- (f) any Facility entered into from time to time after the 1st day of March 1984:
  - (i) that has been designated, by a Clause 5.16 Certificate, as a Facility in respect of State Supported Loans; and
  - (ii) that is Supported by each Sponsor (other than a Limited Sponsor) under a Support Agreement duly executed by such Sponsor
 (including such Facility as it may from time to time be modified, amended, supplemented or restated, to the extent that any related Support Agreement continues to apply in relation to such Facility, as so modified, amended, supplemented or restated).

"Substitute Instrument" means, as the context or subject matter requires, a "Substitute Instrument" issued pursuant to:

- (a) the Citi-OPIC Completion and Cash Deficiency Agreement; or
- (b) the Export Agencies' Completion and Cash Deficiency Agreement; or

(c) the Matubeni Completion and Cash Deficiency Agreement, or any other instrument that has been designated, by a Clause 5.16 Certificate, as a "Substitute Instrument" for the purposes of this Agreement.

"Support" means support in respect of a Loan, whether by way of a guarantee or any obligation (whether or not legally enforceable) that is the economic equivalent of a guarantee (including, without limitation, a completion undertaking, a cash deficiency undertaking and any obligation to supply funds to, or otherwise to invest in, the Company or any other person where, in any case, any third party making or guaranteeing a Loan to or on behalf of the Company relies on the same in so making or guaranteeing such Loan), and cognate words and expressions (including verbs) shall each have a corresponding meaning.

"Support Agreement" means:

- (a) the Citi-OPIC Completion and Cash Deficiency Agreement;
- (b) the Export Agencies' Completion and Cash Deficiency Agreement; or
- (c) the Matubeni Completion and Cash Deficiency Agreement; and
- (d) any other agreement, instrument or undertaking under which Support is furnished and that has been designated, by a Clause 5.16 Certificate, as a "Support Agreement" for the purposes of this Agreement (including such agreement, instrument or undertaking as it may from time to time be modified, amended, supplemented or restated, to the extent that the Sponsors that signed such Clause 5.16 Certificate do not subsequently determine, by a certificate (which may consist of more than one instrument in like form) signed by each such Sponsor (other than a Limited Sponsor), that such agreement, instrument or undertaking, as so modified, amended, supplemented or restated shall not continue to constitute a "Support Agreement" for the purposes of this Agreement),

and includes each Substitute Instrument, if any, issued pursuant to such agreement, instrument or undertaking after (or at the same time as) the obligations under such agreement, instrument or undertaking of the Sponsor delivering such Substitute Instrument shall have terminated.

"Support Obligation", in the case of any Sponsor, means such Sponsor's obligation contained or referred to in Clause 5.7(a), subject to Clause 5.18, to furnish Support.

"Supported Stage I Loan" means a Stage I Loan that is a Total Supported Loan.

"Supported Stage II Loan" means a Stage II Loan that is a Total Supported Loan.

"Supported Stage III Loan" means Stage III Loan that is a Total Supported Loan.

"Total Supported Loans" means:

- (a) Loans advanced, made available or procured pursuant to Clause 5.7(d), or that are advanced or otherwise made available or procured in accordance with the Shareholders Agreement in satisfaction of a Sponsor's Support Obligation (which Loans have been made on a basis that does not require any other Sponsor to furnish Support in respect of such Loans);
- (b) State Supported Loans;
- (c) Loans advanced or otherwise made available under:
  - (i) the Credit Agreement made as of the 11th day of February 1982 by and among the Company, the banks and financial institutions referred to therein, the managers named therein and Asia Pacific Capital Corporation Limited, as Agent, as amended and supplemented by an Amendment Agreement made as of the 31st day of May 1983, and as such Credit Agreement, as so amended and supplemented, may from time to time be further modified, amended, supplemented or restated, to the extent that such modification, amendment, supplementation or restatement does not provide for an increase in the principal obligation in respect of the Loans that may be advanced or otherwise made available thereunder and the Sponsors (other than a Limited Sponsor) have not determined by a certificate (which may consist of more than one instrument in like form) signed by each Sponsor (other than a Limited Sponsor), that such modification, amendment, supplementation or restatement should be treated as a separate Facility for the purposes of this Agreement;
  - (ii) the Restated Loan Agreement dated as of the 28th day of July 1983 among the Company, Bank of America National Trust and Savings Association, as paying agent for the Long-Term Noteholders therein referred to, and Overseas Private Investment Corporation, as the same may from time to time be further modified, amended, supplemented or restated, to the extent that such modification, amendment, supplementation or restatement does not provide for an increase in the principal obligation in respect of the Loans that may be advanced or otherwise made available thereunder and the Sponsors (other than a Limited Sponsor) have not determined, by a certificate (which may consist of more than one instrument in like form) signed by each Sponsor (other than a Limited Sponsor), that such modification, amendment, supplementation or restatement should be treated as a separate Facility for the purposes of this Agreement;

- (iii) the Credit Agreement dated the 19th day of February 1982 between the Company and Kreditanstalt fuer Wiederaufbau, as the same may from time to time be modified, amended, supplemented or restated, to the extent that such modification, amendment, supplementation or restatement does not provide for an increase in the principal obligation in respect of the Loans that may be advanced or otherwise made available thereunder and the Sponsors (other than a Limited Sponsor) have not determined, by a certificate (which may consist of more than one instrument in like form) signed by each Sponsor (other than a Limited Sponsor), that such modification, amendment, supplementation or restatement should be treated as a separate Facility for the purposes of this Agreement; and
- (d) any Loans advanced or otherwise made available under any Facility entered into after the 1st day of March 1984 which Loans do not constitute State Supported Loans or Loans referred to in paragraph (a) of this definition and which Facility:
  - (i) has been designated, by a Clause 5.16 Certificate, as Facility in respect of Total Supported Loans; and
  - (ii) is Supported by any Corporate Sponsor (other than a Limited Sponsor) under a Support Agreement duly executed by such Corporate Sponsor,

as such Facility may from time to time be modified, amended, supplemented or restated to the extent that such modification, amendment, supplementation or restatement does not provide for an increase in the principal obligation in respect of the Loans that may be advanced or otherwise made available thereunder and the Corporate Sponsors (other than a Limited Sponsor) have not determined, by a certificate (which may consist of more than one instrument in like form) signed by each Corporate Sponsor (other than a Limited Sponsor), that such modification, amendment, supplementation or restatement should be treated as a separate Facility for the purposes of this Agreement.

"Treasurer" means the Treasurer of the Company or any Assistant Treasurer of the Company.

Unless the context or subject matter otherwise requires, whenever any agreement or other instrument is referred to in Clause 5.3 or any ensuing provision of this Clause 5, such reference shall be deemed to include such agreement or other instrument as it may heretofore have been, or may simultaneously herewith or from time to time hereafter be, modified, amended, supplemented or restated in accordance with the terms applicable thereto.

- 5.6 If there are interposed between any Sponsor and the Company one or more other corporations, such Sponsor shall be deemed, for the purposes of this Agreement (in addition to any direct shareholding of such Sponsor):

- (a) to hold a percentage of the issued and outstanding shares in the capital of the Company that is equal to the product of the respective percentages of the issued and outstanding shares in the capital of each corporation in the corporate chain of ownership between (and including) such Sponsor and the Company held by the immediately preceding corporation (including for these purposes the State) in such corporate chain of ownership; and
  - (b) to be the indirect holder of a number of shares in the capital of the Company which is equal to the percentage determined in accordance with paragraph (a) above multiplied by the number of issued and outstanding shares in the capital of the Company.
- 5.7 (a) The Sponsors will furnish Support in respect of Loans in accordance with, and subject to, the provisions of Clauses 5.8, 5.9, 5.10, 5.11, 5.12 and 5.13.
- (b) The State's Support Obligation as of any date of determination, expressed in monetary terms in United States Dollars (converted, if necessary, into United States Dollars as of such date in accordance with Clause 5.20), will be calculated, in accordance with this Clause 5, by reference to the amount of Total Supported Loans which are Stage I Loans, Stage II Loans or Stage III Loans, as applicable. The State's total Support Obligation, as of any date of determination, shall be equal to the sum of its Support Obligation on such date in respect of:
    - (i) Supported Stage I Loans;
    - (ii) Supported Stage II Loans; and
    - (iii) Supported Stage III Loans.
  - (c) The form of Support to be furnished by the State, in respect of any State Supported Loans referred to in paragraph (f) of the definition in Clause 5.5 of "State Supported Loans", shall be negotiated and agreed between the Company, the Corporate Sponsors and the department of the State responsible from time to time for financial matters. Unless in any particular case the State otherwise agrees (such agreement being sufficiently evidenced, for the purposes of this Clause 5.7(c), by the execution by the State of the Support Agreement under which such Support is to be furnished), such Support shall not contain terms which are more onerous than, and shall be of the same nature and quality as, that furnished (or to be furnished) by the Corporate Sponsors in respect of such State Supported Loans.
  - (d) Without limiting any other manner in which the State may satisfy its Support Obligation, the State may, in lieu of furnishing Support in respect of Loans, satisfy its Support Obligation in whole or in part by advancing or otherwise making available (or procuring that others advance or otherwise make available) Loans to or on behalf of the Company:
    - (i) on terms and conditions no less favourable to the Company than terms and conditions on which it is reasonable to expect that a commercial lender would advance or otherwise make available Loans to or on behalf of the Company; or

- (ii) under arrangements specifically approved for the purposes of this Clause 5.7(d) by all the Corporate Sponsors, and, in either case, on a basis that does not require any Corporate Sponsor to furnish Support in respect of such Loans.
- (e) To the extent that a person advancing or otherwise making available Loans to or on behalf of the Company is willing, under the proposed Support Agreement in respect of such Loans, to permit the State to join in furnishing Support in respect of such Loans, the State will, unless unanimously precluded by the Corporate Sponsors from so doing:
  - (i) join in designating the Facility in respect of such Loans as a Facility in respect of State Supported Loans in accordance with paragraph (f)(i) of the definition of "State Supported Loans" in Clause 5.5; and
  - (ii) join in executing a Support Agreement in respect thereof in accordance with Clause 5.7(c).

If the State does not so join the State shall from time to time advance or otherwise make available, or procure that others advance or otherwise make available, Loans to or on behalf of the Company in accordance with Clause 5.7(d), to the extent that it is necessary to do so in order that as of any date of determination the aggregate of:

- (A) the Actual Support of the State in respect of all State Supported Loans;
- (B) any Loans advanced or otherwise made or procured in accordance with Clause 5.7(d); and
- (C) a notional sum equal to the aggregate of:
  - (I) the amounts that result when the applicable percentage is multiplied by the amount of Total Supported Loans (other than a Loan advanced or otherwise made available pursuant to any of the agreements referred to in paragraph (c) of the definition of "Total Supported Loans") advanced or otherwise made available to or on behalf of the Company under each Facility in respect of which, and to the extent that, the persons advancing or otherwise making available such Loan were unwilling to permit the State to join in furnishing Support in respect of such Loan; and
  - (II) the amounts that result when the applicable percentage is multiplied by the amount of Total Supported Loans (other than a Loan advanced or otherwise made available pursuant to any of the agreements referred to in paragraph (c) of the definition of "Total Supported Loans") advanced or otherwise made available to or on behalf of the Company under each Facility in respect of which, and to the extent that, the Corporate Sponsors have unanimously precluded the State from joining in furnishing such Support

(for which purposes the applicable percentage shall be the State's Shareholding Percentage or, where applicable, such lesser percentage as equals the difference between the State's Shareholding Percentage and the maximum percentage, if any, of Support that (x) the person advancing or otherwise making available the relevant Loan is willing, under the Support Agreement in respect of such Loan, to permit the State to furnish or (y) the Corporate Sponsors have not unambiguously precluded the State from joining in furnishing in respect of such Loan)

(when converted, if necessary, into United States Dollars as of such date in accordance with Clause 5.20) is not less than the State's Support Obligation on such date expressed in monetary terms in United States Dollars (converted, if necessary, into United States Dollars as of such date in accordance with Clause 5.20).

- (f) If on any date the State's Support Obligation expressed in monetary terms in United States Dollars (converted, if necessary, into United States Dollars as of such date in accordance with Clause 5.20) exceeds the aggregate on such date of:
- (i) the Actual Support of the State in respect of all State Supported Loans; and
  - (ii) any Loans advanced or otherwise made available or procured in accordance with Clause 5.7(d)

(when converted, if necessary, into United States Dollars as of such date in accordance with Clause 5.20) (the amount of such excess being referred to in this Clause 5.7(f) as the "Excess Amount"), then, without prejudice to the State's obligation under Clause 5.7(e), the State shall indemnify and hold harmless (and in such circumstances hereby indemnifies and agrees to hold harmless) such of the Corporate Sponsors as are (having regard to amounts of Loans from time to time) actually or contingently liable under all Support Agreements to which they are respectively a party for a greater amount in respect of Support furnished by them than would have been the case had there been no Excess Amount, such indemnification to be to the extent by which such Corporate Sponsors' liability (actual or contingent) in respect of Support furnished by them is increased as a result of the Excess Amount.

- (g) If on any date the aggregate of:
- (i) the Actual Support of the State in respect of all State Supported Loans; and
  - (ii) any Loans advanced or otherwise made available or procured in accordance with Clause 5.7(d)

(when converted, if necessary, into United States Dollars as of such date in accordance with Clause 5.20) exceeds the State's Support Obligation on such date expressed in monetary terms in United States Dollars (converted, if necessary, into United States Dollars as of such date in accordance with Clause 5.20) (the amount of such excess being referred to in this Clause 5.7(g) as the "Surplus Amount"), each Corporate Sponsor as is (having regard to amounts of Loans from time to time) actually or contingently liable under all Support Agreements to which it is a party for a lesser amount in respect of Support furnished by it than would have been the case had there been no Surplus Amount shall indemnify and hold harmless (and in such circumstances hereby indemnifies and agrees to hold harmless) the State to the extent by which such Sponsor's liability (actual or contingent) in respect of Support furnished by it is lessened as a result of the Surplus Amount.

- 5.8 (a) The State's Support Obligation for Stage I in respect of the first US\$650,000,000 of supported Stage I Loans (referred to in Clause 5.5 of the First Supplemental Agreement, as amended by Clause 5 of the Second Supplemental Agreement, and prior to its amendment by Clause 5 of the Fourth Supplemental Agreement, as the "Initially Committed Finance") will be:
- (i) in respect of the first US\$280,000,000 increment of Supported Stage I Loans—Nil;
  - (ii) in respect of the next US\$210,000,000 increment of Supported Stage I Loans—20% multiplied by the amount from time to time of Supported Stage I Loans in such US\$210,000,000 increment; and
  - (iii) in respect of the next US\$160,000,000 increment of Supported Stage I Loans—Nil.
- (b) Three months prior to the date on which the Treasurer expects Supported Stage I Loans to reach US\$650,000,000, he will notify all Sponsors of that fact.
- (c) Within 45 days after the date of such notice, the State shall elect by notice to the Company, with copies to the other Sponsors, whether or not to join in furnishing Support in respect of the next US\$31,000,000 increment of Supported Stage I Loans beyond US\$650,000,000. If the State fails to elect within such period of 45 days to join in furnishing Support in respect of such increment it will be deemed to have elected not to join in furnishing Support in respect of such increment.



- (d) If the State elects in accordance with Clause 5.8(c) to join in furnishing Support in respect of such next US\$31,000,000 increment of Supported Stage I Loans, its Support Obligation for Stage I will consequently be increased, as of the date of such election and thereafter, by an amount equal to its Shareholding Percentage (or, if, prior to the date of such election, one or more of the Corporate Sponsors has become a Limited Sponsor and the State has notified to the Company its wish to participate in accordance with Clause 7.3 of the Shareholders Agreement, the Non-Diluting Ratio Percentage) on the date of such election multiplied by the amount from time to time of Supported Stage I Loans in such US\$31,000,000 increment. If the State elects in accordance with Clause 5.8(c), or is deemed to have elected not to join in furnishing Support in respect of such next US\$31,000,000 increment of Supported Stage I Loans, its Support Obligation in respect of such increment shall be nil unless and until, at any time prior to the latest date upon which the State could have elected in accordance with Clause 5.8(c) to join in furnishing such Support, one or more of the Corporate Sponsors has become a Limited Sponsor and the State has notified to the company its wish to participate in accordance with Clause 7.3 of the Shareholders Agreement, whereupon the State's Support Obligation for Stage I will be increased by an amount equal to its Shareholding Percentage Increase as of the latest date upon which the State could have elected in accordance with Clause 5.8(c) to join in furnishing such Support multiplied by the amount from time to time of the Supported Stage I Loans in such US\$31,000,000 increment.
- (e) Three months prior to the date on which the Treasurer expects Supported Stage I Loans to reach US\$681,000,000, he will notify all Sponsors of that fact.
- (f) Within 45 days after the date of such notice, the State shall elect by notice to the Company, with copies to the other Sponsors, whether or not to join in furnishing Support in respect of the next US\$50,000,000 increment of Supported Stage I Loans beyond US\$681,000,000. If the State fails to elect within such period of 45 days to join in furnishing Support in respect of such increment it will be deemed to have elected not to join in furnishing Support in respect of such increment.

- (g) If the State elects in accordance with Clause 5.8(f) to join in furnishing Support in respect of such next US\$50,000,000 increment of Supported Stage I Loans, its Support Obligation for Stage I will consequently be increased, as of the date of such election and thereafter, by an amount equal to its Shareholding Percentage (or, if, prior to the date of such election, one or more of the Corporate Sponsors has become a Limited Sponsor and the State has notified to the Company its wish to participate in accordance with Clause 7.3 of the Shareholders Agreement, the Non-Diluting Ratio Percentage) on the date of such election multiplied by the amount from time to time of Supported Stage I Loans in such US\$50,000,000 increment. If the State elects in accordance with Clause 5.8(f), or is deemed to have elected, not to join in furnishing Support in respect of such next US\$50,000,000 increment of Supported Stage I Loans, its Support Obligation in respect of such increment shall be nil unless and until, at any time prior to the latest date upon which the State could have elected in accordance with Clause 5.8(f) to join in furnishing such Support, one or more of the Corporate Sponsors has become a Limited Sponsor and the State has notified to the Company its wish to participate in accordance with Clause 7.3 of the Shareholders Agreement, whereupon the State's Support Obligation for Stage I will be increased by an amount equal to its Shareholding Percentage Increase as of the latest date upon which the State could have elected in accordance with Clause 5.8(f) to join in furnishing such Support multiplied by the amount from time to time of Supported Stage I Loans in such US\$50,000,000 increment.
- (h) The procedure in Clauses 5.8(e), (f) and (g) shall be repeated as and when the Treasurer expects Supported Stage I Loans to reach each successive increment of US\$50,000,000 beyond US\$681,000,000 (namely, US\$731,000,000, US\$781,000,000, and so on).
- 5.9 (a) The Corporate Sponsors' Support Obligation for Stage I in respect of the first US\$650,000,000 of Supported Stage I Loans will be:
- (i) in respect of the First US\$280,000,000 increment of Supported Stage I Loans—the amount from time to time of Supported Stage I Loans in such US\$280,000,000 increment;
  - (ii) in respect of the next US\$210,000,000 increment of Supported Stage I Loans—80% multiplied by the amount from time to time of Supported Stage I Loans in such US\$210,000,000 increment; and
  - (iii) in respect of the next US\$160,000,000 increment of Supported Stage I Loans—the amount from time to time of Supported Stage I Loans in such US\$160,000,000 increment.
- (b) Subject to and in accordance with the Shareholders Agreement, the Corporate Sponsors shall furnish all Support necessary in respect of Supported Stage I Loans in excess of US\$650,000,000 other than Support that the State is obliged to furnish, or has elected to furnish, pursuant to Clause 5.8.

- 5.10(a) The State's Support Obligation for Stage II in respect of the first US\$20,000,000 increment of Supported Stage II Loans will be an amount equal to its Shareholding Percentage (or, if, prior to the drawing of the first amount in such increment, one or more of the Corporate Sponsors has become a Limited Sponsor and the State has notified to the Company its wish to participate in accordance with Clause 7.3 of the Shareholders Agreement, the Non-Diluting Ratio Percentage) on the date on which the first Supported Stage II Loan is advanced or otherwise made available to or on behalf of the Company multiplied by the amount from time to time of Supported Stage II Loans in such US\$20,000,000 increment.
- (b) The State's Support Obligation for Stage II in respect of each successive US\$50,000,000 increment of Supported Stage II Loans beyond US\$20,000,000 (namely, up to US\$70,000,000, up to US\$120,000,000 and so on) up to US\$370,000,000 will be an amount equal to its Shareholding Percentage (or, if, prior to the drawing of the first amount in such increment, one or more of the Corporate Sponsors has become a Limited Sponsor and the State has notified to the Company its wish to participate in accordance with Clause 7.3 of the Shareholders Agreement, the Non-Diluting Ratio Percentage) on the date on which the first Supported Stage II Loan in that increment is advanced to or on behalf of, or otherwise made available to, the Company multiplied by the amount from time to time of Supported Stage II Loans in such increment.
- (c) Three months prior to the date on which the Treasurer expects Supported Stage II Loans to reach US\$370,000,000, he will notify all Sponsors of that fact.
- (d) Within 45 days after the date of such notice, the State shall elect by notice to the Company, with copies to the other Sponsors, whether or not to join in furnishing Support in respect of the next US\$50,000,000 increment of Supported Stage II Loans beyond US\$370,000,000. If the State fails to elect within such period of 45 days to join in furnishing Support in respect of such increment it will be deemed to have elected not to join in furnishing Support in respect of such increment.

(e) If the State elects in accordance with Clause 5.10(d) to join in furnishing Support in respect of such next US\$50,000,000 increment of Supported Stage II Loans, its Support Obligation for Stage II will consequently be increased, as of the date of such election and thereafter, by an amount equal to its Shareholding Percentage (or, if, prior to the date of such election, one or more of the Corporate Sponsors has become a Limited Sponsor and the State has notified to the Company its wish to participate in accordance with Clause 7.3 of the Shareholders Agreement, the Non-Diluting Ratio Percentage) on the date of such election multiplied by the amount from time to time of Supported Stage II Loans in such US\$50,000,000 increment. If the State elects in accordance with Clause 5.10(d), or is deemed to have elected, not to join in furnishing Support in respect of such next US\$50,000,000 increment of Supported Stage II Loans, its Support Obligation in respect of such increment shall be nil unless and until, at any time prior to the latest date upon which the State could have elected in accordance with Clause 5.10(d) to join in furnishing such support one or more of the Corporate Sponsors has become a Limited Sponsor and the State has notified to the Company its wish to participate in accordance with Clause 7.3 of the Shareholders Agreement, whereupon the State's Support Obligation for Stage II will be increased by an amount equal to its Shareholding Percentage Increase as of the latest date upon which the State could have elected in accordance with Clause 5.10(d) to join in furnishing such Support multiplied by the amount from time to time of Supported Stage II Loans in such US\$50,000,000 increment.

(f) The procedure in Clauses 5.10(c), (d) and (e) shall be repeated as and when the Treasurer expects Supported Stage II Loans to reach each successive increment of US\$50,000,000 beyond US\$370,000,000 (namely, US\$470,000,000, US\$570,000,000, and so on).

5.11 Subject to and in accordance with the Shareholders Agreement, the Corporate Sponsors shall furnish all Support necessary in respect of Supported Stage II Loans other than Support that the State is obliged to furnish, or has elected to furnish, pursuant to Clause 5.10.

5.12 The State's Support Obligation for Stage III in respect of the first and each successive US\$50,000,000 increment of Supported Stage III Loans will be an amount equal to its Shareholding Percentage (or, if, prior to the drawing of the first amount in such increment, one or more of the Corporate Sponsors has become a Limited Sponsor and the State has notified to the Company its wish to participate in accordance with Clause 7.3 of the Shareholders Agreement, the Non-Diluting Ratio Percentage):

(a) in the case of the first such increment, on the date on which the first Supported Stage III Loan is advanced or otherwise made available to or on behalf of the Company; and

(b) in the case of each successive increment thereafter, on the date on which the first Supported Stage III Loan in that increment is advanced to or on behalf of, or otherwise made available to, the Company

multiplied by the amount from time to time of Supported Stage III Loans in such US\$50,000,000 increment.

- 5.13 Subject to and in accordance with the provisions of the Shareholders Agreement, the Corporate Sponsors shall furnish all Support necessary in respect of Supported Stage III Loans other than Support that the State is obliged to furnish pursuant to Clause 5.12.
- 5.14 (a) For the purposes of this Clause 5, each reduction in or discharge of a principal obligation for the time being outstanding in respect of any Supported Stage I Loans, Supported Stage II Loans or Supported Stage III Loans will be applied to reduce the total amount of Supported Stage I Loans, Supported Stage II Loans or Supported Stage III Loans, respectively, with the consequence (inter alia) that the State's Support Obligation with respect to such Stage will be reduced (subject to Clause 5.14(f)) as the total amount of Total Supported Loans for that Stage is reduced. Each such reduction of the total amount of Supported Stage I Loans, Supported Stage II Loans or Supported Stage III Loans shall be applied against the successive increments hereinbefore in this Clause 5 referred to of Supported Stage I Loans, Supported Stage II Loans or Supported Stage III Loans (as applicable), starting with the increments (as previously so reduced, where applicable) in respect of which Stage I Loans, Stage II Loans or Stage III Loans (as applicable) shall most recently have been advanced to or on behalf of, or otherwise made available to, the Company.
- (b) Each reduction in or discharge of a principal obligation for the time being outstanding in respect of any Total Supported Loans advanced or otherwise made available to or on behalf of the Company under a Facility pursuant to which Loans in respect of two or more Stages shall have been advanced to or on behalf of or otherwise made available to, the Company will, prior to any reduction of Supported Stage I Loans, Supported Stage II Loans and Supported Stage III Loans (as applicable) under Clause 5.14(a), be allocated between Stage I, Stage II and Stage III (as applicable) pro rata in accordance with the allocation of total Loans under that Facility between Stage I, Stage II and Stage III (as applicable) under Clause 5.17(a)(iii).
- (c) If:
- (i) the Support furnished by one or more of the Sponsors in respect of any Total Supported Loans terminates in accordance with the terms of the Support Agreement under which such Support shall have been furnished and is not replaced by other Support; or
  - (ii) the portion of any Total Supported Loans that is Supported by one or more of the Sponsors is reduced (including, without limitation, any reduction in Total Supported Loans in accordance with Clause 5.14(d)),

otherwise than as a result of the total or partial reduction in or discharge of the principal obligation for the time being outstanding in respect of such Total Supported Loans, the amount of such Total Supported Loans which, as a direct result of such termination of or reduction in Support, is no longer Supported shall, subject to Clause 5.14(g), be treated for the purposes of Clauses 5.14(a) and (b) (as applicable) as a reduction in or discharge of the principal obligation for the time being outstanding in respect of the Total Supported Loans in question and the total amount of Supported Stage I Loans, Supported Stage II Loans and Supported Stage III Loans (as applicable) shall be reduced accordingly in accordance with Clauses 5.14(a) and (b) (as applicable). For the purposes of this Clause 5.14(c), MG, DG and DEG shall be deemed to have furnished Support in respect of the entire portion of Total Supported Loans that is comprised of amounts advanced to the Company and remaining outstanding pursuant to the agreement referred to in paragraph (c)(iii) of the definition of "Total Supported Loans".

- (d) If the Support by one or more of the Sponsors in respect of any Total Supported Loans has been varied with the effect that the maximum amount for which such Sponsor or Sponsors, as applicable, is or are or may be actually or contingently liable under the Support Agreements in respect of such Total Supported Loans is reduced, the portion of such Total Supported Loans that shall continue to constitute Total Supported Loans for the purposes of this Agreement shall be determined in accordance with the method specified in, or agreed upon in accordance with, the Clause 5.16 Certificate relative to the Facility in question.
- (e) In determining as of any date the State's Support Obligation for any Stage, as provided in Clauses 5.8, 5.10 and 5.12, that Support Obligation shall be determined as of such date only after making, in accordance with Clauses 5.14(a), (b), (c) and (d) (as applicable), all reductions in the total amount of Supported Stage I Loans, Supported Stage II Loans and Supported Stage III Loans that were required to have been made as of such date in accordance with such Clauses.
- (f) Once Supported Stage I Loans or Supported Stage II Loans shall have been reduced, in accordance with Clauses 5.14(a), (b), (c) and (d), to a level falling within an increment in respect of which the State was not obliged and (where applicable) did not elect, pursuant to Clause 5.8 or 5.10, to join in furnishing Support, the State will have no Support Obligation for Stage I or Stage II (as applicable) with respect to such increment, and the Support Obligation of the State in respect of Supported Stage I Loans or Supported Stage II Loans (as applicable) will not be reduced further until Supported Stage I Loans or Supported Stage II Loans (as applicable) shall be reduced, in accordance with Clauses 5.14(a), (b), (c) and (d), to a level falling within an increment in respect of which the State was obliged or (as applicable) elected, pursuant to Clause 5.8 or 5.10, to join in furnishing Support.
- (g) If the Deficiency Obligations of:
- (i) all Corporate Sponsors that are parties to any Support Agreement; or

- (ii) each Corporate Sponsor that has issued a Substitute Instrument pursuant to any Support Agreement,

terminate under such Support Agreement or Substitute Instrument (as applicable) pursuant to the provisions thereof relating to Sponsor relief in certain events of a political nature, but the Deficiency Obligations of the State under such Support Agreement or (as applicable) under the corresponding Substitute Instrument issued by the State do not likewise terminate, then, notwithstanding Clause 5.14(c), the total amount of Supported Stage I Loans, Supported Stage II Loans and Supported Stage III Loans (as applicable) shall not as a result of such termination be reduced for the purposes of this Clause 5, and the State's Support Obligation shall not be affected thereby.

- 5.15 If the Treasurer gives a notice pursuant to Clause 5.8(b), 5.8(e), 5.8(h), 5.10(c) or 5.10(f) but, in accordance with Clause 5.8(c), 5.8(f), 5.8(h), 5.10(d) or 5.10(f) (as applicable), the State elects not to join in furnishing Support (or is deemed to have elected not to join in furnishing Support) in respect of a particular increment of Supported Stage I Loans or Supported Stage II Loans, the Company will pay to the Corporate Sponsors (other than any Limited Sponsor), pro rata according to their respective Shareholding Percentages as of the date on which the State elected not to join in furnishing support (or, if the State is deemed to have elected not to join in furnishing Support, as of the latest day by which it could have elected so to join in furnishing Support), a fee of:

- (a) in the case of Supported Stage I Loans—5% per annum; and
- (b) in the case of Supported Stage II Loans—2.5% per annum,

calculated on a daily basis on the portion of the relevant increment of Supported Stage I Loans or Supported Stage II Loans (as applicable), after reducing Supported Stage I Loans or Supported Stage II Loans (as applicable) in accordance with Clauses 5.14(a), (b), (c) and (d). Such fee shall be:

- (i) payable from (and including) the date on which such Loans shall have been advanced to or on behalf of the Company;
- (ii) calculated on the basis of the exact number of days elapsed and a year of 365 or 366 days (as applicable); and
- (iii) payable calendar quarterly in arrears,

and shall be an allowable deduction in determining the taxable income of the Company under the *Income Tax Act 1959*.

- 5.16 At or before the time at which a Support Agreement is entered into by any Sponsor in respect of any Loan to be advanced to or on behalf of, or otherwise made available to, the Company (being a Support Agreement entered into after the 1st day of March 1984), the Sponsors entering into such Support Agreement (or, in the case of a Support Agreement referred to in paragraph (d) (ii) of the definition in Clause 5.5 of "Total Supported Loans", the Corporate Sponsors (other than a Limited Sponsor)) shall sign a certificate (which may consist of more than one instrument in like form):

- (a) designating the several matters that are contemplated so to be designated by the definitions in Clause 5.5 of "Deficiency Obligations", "State Supported Loans", "Substitute Instrument", "Support Agreement" and "Total Supported Loans"; and

(b) specifying either:

- (i) the method of determining the portion of Total Supported Loans that shall continue to constitute Total Supported Loans for the purposes of this Agreement in the circumstances set forth in Clause 5.14(d); or
- (ii) a time at which the Sponsors shall (as they hereby agree to do) use their best endeavours to agree upon such a method.

If, in any particular case, it is unnecessary under the definitions referred to in paragraph (a) above to make the designation therein referred to or the Sponsors (or, in the case of a designation relating to a Support Agreement referred to in paragraph (d)(ii), as aforesaid, the Corporate Sponsors (other than a Limited Sponsor)) decide not to designate any such matter as referred to in the said paragraph (a), such certificate shall so specify in reasonable detail. If the Sponsors are unable or fail to agree upon a method or a time for the purposes of paragraph (b) above, the matter may be referred to arbitration in accordance with Clause 38 of the Principal Agreement. If the same or similar issue is the subject of a dispute or difference under any other agreement relating to the Project and has been referred to arbitration thereunder, the parties shall (if possible) respectively nominate, and shall request that there be appointed, the same arbitrator to determine each such dispute or difference.

5.17(a) The Treasurer will maintain progressive records (which shall, in all cases, be dated) of:

- (i) the allocation of State Supported Loans between Stage I, Stage II and Stage III, on a Facility by Facility basis;
- (ii) the aggregate amount from time to time of Supported Stage I Loans, Supported Stage II Loans and Supported Stage III Loans (taking into account any reduction in any such Loans that shall have been made in accordance with Clauses 5.14(a), (b), (c) and (d)) on a Stage by Stage basis; and
- (iii) the aggregate amount from time to time of Supported Stage I Loans, Supported Stage II Loans and Supported Stage III Loans (taking into account any reduction in any such Loans that shall have been made in accordance with Clauses 5.14(a), (b), (c) and (d)) on a Facility by Facility basis.

(b) The Treasurer will allocate Total Supported Loans under each Facility between Supported Stage I Loans, Supported Stage II Loans and Supported Stage III Loans in accordance with the provisions hereof.

(c) The Treasurer will make any necessary adjustments to the records referred to in Clause 5.17(a) as soon as the Treasurer shall have actual knowledge that Completion of Stage I or Completion of Stage II (as applicable) has been achieved.

5.18 If, in respect of any Total Supported Loans, any Sponsor shall make any payment pursuant to any Support Agreement to which it is a party, such Sponsor's Support Obligation shall be reduced to the extent of such payment.



- 5.19 Schedule C contains a mathematical illustration of the operation of Clauses 5.8, 5.10, 5.12 and 5.14 on the assumption that none of the Corporate Sponsors becomes a Limited Sponsor or, if a Corporate Sponsor becomes a Limited Sponsor, that the State does not notify to the Company its wish to participate in accordance with Clause 7.3 of the Shareholders Agreement. Where there is any conflict in effect between such Clauses and Schedule C such Clauses shall prevail.
- 5.20 (a) Whenever it is necessary, for the purposes of the preceding provisions of this Clause 5, to convert into United States Dollars a currency other than United States Dollars, such currency shall, subject to Clause 5.3(c), be converted into United States Dollars at the appropriate rate, as specified in Clause 5.20(b), quoted on the date as of which the conversion is to be made or, if such rate was not quoted on such date, then at the rate last quoted within 30 days prior to such date. If such rate was quoted neither on such date nor within 30 days prior to such date, the rate to be used for such conversion shall be such rate as the Treasurer shall reasonably determine after using his best efforts to consult with each Sponsor.
- (b) For the purposes of Clause 5.20(a):
- (i) Australian dollars shall be converted into United States Dollars, as of any date of determination, at the buying rate of exchange for United States Dollars against Australian dollars as quoted by the principal Sydney branch of Westpac Banking Corporation at approximately 11.00 a.m. Sydney time;
  - (ii) Kina shall be converted into United States Dollars, as of any date of determination, at the telegraphic transfer buying rate of exchange for United States Dollars against Kina as quoted by the Port Moresby branch of Westpac Bank—PNG—Limited as its indicative morning rate; and
  - (iii) each currency other than Australian dollars and Kina shall be converted into United States Dollars, as of any date of determination, at the quoted spot rate at which the principal London branch of Citibank, N.A. offers to exchange United States Dollars for such currency at approximately 11.00 a.m. London time.
- 5.21 (a) Any notice required or permitted under this Clause 5 shall be in writing, shall be dated the day upon which it is despatched and shall be given by:
- (i) letter delivered by personal delivery; or
  - (ii) telex confirmed by letter (but failure so to confirm by letter shall not in any way affect the effectiveness of the notice so given by telex), delivered by personal delivery or by prepaid mail (airmail if the country of address is not the country of despatch),
- in any case addressed as follows:
- if to the State:

The Secretary,  
Department of Finance,  
P.O. Waids Strip,  
Waigani,  
Papua New Guinea  
Telex: NE 22218  
(Answerback: FINANCE)

if to SOL or Amoco:

200 East Randolph Drive,  
Chicago, Illinois 60601,  
United States of America

Attn: Treasurer  
Telex: 253731

(Answerback: AMOCO SO CGO)

if the BHP or BHP Minerals Holdings:

140 William Street,  
Melbourne,  
Victoria, Australia

Attn: General Manager Finance Minerals Division  
Telex: AA30408

(Answerback: BHP)

if to MG:

Rentelweg 14,  
D-6000 Frankfurt am Main,  
Federal Republic of Germany

Attn: Ok Tedi Sekretariat  
Telex: 41225

(Answerback: MGF D)

if to DG:

Weissfrauenstrasse 9,  
D-6000 Frankfurt am Main,  
Federal Republic of Germany

Attn: Head of Primary Production Division  
Telex: 41222-0

(Answerback: DG D)

if to DEG:

Belvederestrasse 40,  
D-5000 Köln 41,  
Federal Republic of Germany

Attn: General Counsel  
Telex: 08881949

(Answerback: DEG D)

if to the Company:

Motea Tobo Road,  
Six Mile,  
Port Moresby,  
Papua New Guinea

(mailing address:  
P.O. Box 5952,  
Botoko,  
Port Moresby,  
Papua New Guinea)

Attn: Treasurer  
Telex: 22132  
(Answerback: OK TEDI).

- (b) The address of any party for any such notice may be changed by giving notice in writing at any time to the other parties.
- (c) Any notice hereunder given by telex shall be deemed to have been given when the telex shall have been sent and the relevant answerback shall have been received and any notice given by personal delivery shall be deemed to have been given on the day on which it shall have been delivered to an apparently responsible person at the office of the party to which it shall have been given.

5.22 The Company shall use its best endeavours to ensure that the Treasurer duly and punctually performs the duties that it is herein contemplated that he will perform, but neither the Company nor the Treasurer will have any liability whatsoever in respect of any act done in the performance or attempted performance of any such duties, or in respect of any failure to perform the same.

#### 8. FINANCIAL RATIO

6.1 The following is substituted for Clause 5.3 of the First Supplemental Agreement, as amended by Clause 5 of the Second Supplemental Agreement:

- (a) The Consortium and the Company may arrange loans and commitments for the financing of the Project provided that, except as the State may otherwise agree:
  - (i) the loans and commitments conform with the general financing strategy which was accepted by the State;
  - (ii) authorities under the Foreign Exchange Regulations are obtained from the Bank of Papua New Guinea in respect of the loans and commitments; and
  - (iii) as at 30 June and 31 December (the "Test Dates") in each year, Equity as disclosed in a Kina Balance Sheet made up as at that date shall be not less than 25% of the aggregate of Equity and Debt as similarly disclosed (it being noted that the definition of Kina Balance Sheet set out hereunder provides for the conversion into Kina of Debt denominated in a currency other than Kina to be made at historical exchange rates); provided that:
    - (A) for the purposes of determining compliance with the test set forth in this Clause 5.3(a)(iii), "Debt" shall not include:
      - (1) any Supported Stage I Loans in excess of US\$650,000,000; and
      - (2) any Supported Stage II Loans in excess of US\$370,000,000; and

- (B) if the State elects in accordance with Clause 5.8(c), 5.8(f), 5.8(h), 5.10(d) or 5.10(f) (as applicable) to join in furnishing Support in respect of any increment of Supported Stage I Loans or Supported Stage II Loans, there shall be no deduction in calculating taxable income in respect of a year of income of the Company under the Income Tax Act 1959 for interest accruing on such increment of Supported Stage I Loans or Supported Stage II Loans (as applicable) during the six month period preceding any Test Date to the extent that the inclusion in Debt as at that Test Date of the Kina equivalent of such increment converted from United States Dollars to Kina in accordance with Clause 5.3(c) as of the respective dates on which the Loans constituting such increment were advanced or otherwise made available would cause such Debt to exceed 75% of the aggregate of Debt and Equity as at such Test Date. For the purpose of determining the amount of non-deductible interest on increments of Supported Stage I Loans or Supported Stage II Loans, interest on Debt exceeding 75% of the aggregate of Debt and Equity shall be deemed to have accrued on that excess at the weighted average rate of interest payable on Total Supported Loans during the six month period preceding the relevant Test Date.

The Company shall deliver to the State within 60 days after each 30 June and within 120 days after each 31 December a certificate evidencing that the test set forth in Clause 5.3(a)(iii) was satisfied as at the relevant 30 June or 31 December.

- (b) In this Clause 5.3, unless the context or subject matter otherwise requires:

"Debt" means indebtedness of the Company and its subsidiaries on a consolidated basis (excluding bank overdraft balances maintained in the normal course of business), as disclosed in a Kina Balance Sheet as at the date at which the relevant calculation is being made, including:

- (i) any indebtedness for borrowed money or arising out of any credit facility or financial accommodation or for the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business and on terms requiring payment in full within no more than 90 days);
- (ii) all guarantees (or other obligations which are the economic equivalent of a guarantee, including any obligation to purchase, to provide funds for payment, to supply funds to or otherwise to invest in any other entity) in respect of the indebtedness of any other entity for borrowed money or arising out of any credit facility or financial accommodation or for the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business and on terms requiring payment in full within no more than 90 days);

- (iii) all indebtedness or other obligations of any other entity for borrowed money or arising out of any credit facility or financial accommodation or for the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business and on terms requiring payment in full within no more than 90 days) secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any lien upon property (including, without limitation, accounts receivable and contract rights) owned by the Company or one of its subsidiaries, whether or not the Company or any of its subsidiaries has assumed or become liable for the payment of such indebtedness or obligations; and
- (iv) all obligations of the Company and its subsidiaries in respect of Finance Leases (being the aggregate of the present value, determined in accordance with generally accepted financial practice, of the rental that will fall due thereunder and the specified residual value, if any);

but excluding liabilities under the Infrastructure Agreement (except to the extent that actual disbursements by North Fly Highway Development Company Pty. Limited in respect of the design and construction costs of the Road (as defined in the Infrastructure Agreement) exceed its obligations arising under the Infrastructure Agreement, and such excess has not, as at the date of which such Debt shall be calculated, been amortized through the payment of user charges thereunder).

"Equity" means the Shareholders Funds as disclosed in a Kinu Balance Sheet as at the date at which the relevant calculation is being made.

"Finance Lease" means:

- (i) an agreement or arrangement under which goods (or property which, if not affixed to realty, would be personalty) are leased or hired, where:
  - (A) the term of the agreement or arrangement is not less than 75% of the estimated economic life of the goods or property; or
  - (B) the aggregate of the present value (determined in accordance with generally accepted financial practice) at the commencement of the term of the agreement or arrangement of the rental that will fall due thereunder and the specified residual value (if any) exceeds 90% of the fair value of the goods or property at the commencement of that term; and
- (ii) any lease of goods (or property which, if not affixed to realty, would be personalty) which would be required to be capitalized for balance sheet purposes in accordance with generally accepted accounting principles in Papua New Guinea.

"Infrastructure Agreement" means the agreement dated the 30th day of November 1981 between North Fly Highway Development Company Pty. Limited and the Company setting out the terms and conditions upon which the access road between Kiunga and Tabubil in the Western Province is to be constructed and used by the Company in connection with the Project.

"Kina Balance Sheet" means a consolidated balance sheet of the Company and its subsidiaries denominated in Kina and prepared in the same manner, mutatis mutandis, as the Company's annual audited accounts except that Loans denominated in a currency other than Kina shall be converted to Kina in accordance with Clause 5.3(c) as of the respective dates on which such Loans were advanced or otherwise made available.

Without limitation to the foregoing, a Kina Balance Sheet made up as at 31 December in any year shall, except as otherwise hereinbefore provided, be based on the audited accounts of the Company, denominated in Kina, for the year then ended.

"Shareholders Funds" means the aggregate of:

- (i) paid up ordinary share capital and Retained Earnings (as defined in Clause 11.3(d) of the Principal Agreement) of the Company, including, without limitation, equity credits of the State acknowledged in Clause 11.5 of the Principal Agreement other than those which have not, by the time as at which the relevant calculation is being made, been capitalized, but excluding any shareholder loans to the Company; and
  - (ii) the amount by which the book value of any tangible asset of the Company or of any of its subsidiaries has been increased by a writing-up made with the consent of the State, such consent to be evidenced by a letter of approval to the Company from the Commissioner General of Internal Revenue.
- (c)
- (i) Whenever it is necessary for the purposes of Clauses 5.3(a) and (b), to convert into Kina a currency other than Kina, such currency shall be converted into Kina at the appropriate rate, as specified in Clause 5.3(c)(ii), quoted on the date as of which the conversion is to be made or, if such rate was not quoted on such date, then at the rate last quoted within 30 days prior to such date. If such rate was quoted neither on such date nor within 30 days prior to such date, the rate to be used for such conversion shall be such rate as the Treasurer shall reasonably determine after using his best efforts to consult with each Sponsor.
  - (ii) For the purposes of Clause 5.3(c)(i) each currency other than Kina shall be converted into Kina, as of any date of determination, at the mid-rate of exchange for Kina against such other currency as quoted by the Port Moresby branch of Papua New Guinea Banking Corporation as its indicative morning opening rate.

- (iii) Whenever it is necessary, for the purpose of calculating the level of any Supported Stage I Loans or Supported Stage II Loans pursuant to the provisions of Clause 5.3(a)(iii)(A):
  - (A) to convert Australian dollars into United States Dollars, such conversion shall be carried out, as of any date of determination, at the buying rate of exchange for United States Dollars against Australian dollars as quoted by the principal Sydney branch of Westpac Banking Corporation at approximately 11.00 a.m. Sydney time; and
  - (B) to convert any currency other than Australian dollars into United States Dollars, such conversion shall be carried out, as of any date of determination, at the quoted spot rate at which the principal London branch of Citibank, N.A. offers to exchange United States Dollars for such currency at approximately 11.00 a.m. London time.

#### 7. CONVERSION OF SHARE CAPITAL TO UNITED STATES DOLLARS

For the purposes of Clause 11.3 of the Principal Agreement (as amended by Clause 4 of the Second Supplemental Agreement), funds furnished to the Company by way of share capital shall, where applicable, be converted into United States Dollars in accordance with the provisions of Clause 5.20 of the First Supplemental Agreement (as inserted by Clause 5 of this Agreement), as of the date upon which the same were due to be paid or credited as paid to the Company, except that, rather than the provision of Clause 5.20(b)(ii), the following shall apply:

Kina shall be converted into United States Dollars

- (i) for funds furnished to the Company by way of share capital which were due to be paid or credited as paid to the Company prior to 1st July 1984, at the average of the teletgraphic transfer buying and selling rates for United States Dollars against Kina as quoted by the Port Moresby branch of the Papua New Guinea Banking Corporation on the last business day of the month preceding the month in which the date upon which the same were due to be paid or credited as paid to the Company falls; and
- (ii) for funds furnished to the Company by way of share capital which were due to be paid or credited as paid to the Company on or after 1st July 1984, at the teletgraphic transfer buying rate of exchange for United States Dollars against Kina as quoted by the Port Moresby branch of the Westpac Bank—PNG—Limited as its indicative morning rate as of the date upon which the same were due to be paid or credited as paid to the Company.

#### 8. SCHEDULE C

The First Supplemental Agreement, as amended by the Second Supplemental Agreement, is amended by inserting immediately after Schedule B thereto the matter appearing in the Annexure to this Agreement.

#### 9. TAXATION

- 9.1 Clause 23 of the Principal Agreement is amended by inserting the following provisions after Clause 23.10:

**23.11**

In its application to the Company, Section 156 of the Income Tax Act shall be read and construed as if the following paragraph (h) were included therein:

"(h) earthworks and other improvements to land and, without limiting the generality of the foregoing, any work relating to disposal of waste material."

**23.12**

In its application to the Company, the definition of "plant" in Section 73(2) of the Income Tax Act shall be read and construed as if the following paragraph (e) were included therein:

"(e) buildings, fixtures and other improvements to or situated on land leased by, licensed to or otherwise held by the taxpayer in Papua New Guinea."

- 9.2 The amendments effected by this Clause 9 shall be deemed to be retrospective to, and at all times to have had effect from, the 22nd day of March 1976.

**10. SCHEDULE A TO APPROVAL OF PROPOSALS**

The parties note that under paragraph 1.1 of Schedule A to the instrument dated as of the 29th day of February 1980 and head "Approval of Proposals" whereby the State approved certain proposals in accordance with Clause 9.1 of the Principal Agreement it was a condition subsequent to such approval that by the 31st day of October 1980 the Consortium (as defined in such instrument) should carry out photogrammetric and associated studies of the Fly River as required by Clause 5.1(c)(ii) of the Principal Agreement. The parties further note that the Company obtained successive extensions, until the 31st day of March 1983, of the date by which such studies should be carried out, that by letter dated the 22nd day of February 1984 the Minister for Minerals and Energy of the State granted a retrospective extension of time for the carrying out of such studies from the 31st day of March 1983 to the 31st day of May 1984, and that by a Deed dated the 26th day of April 1984 a further extension of time for the carrying out of such studies was granted to the 28th day of September 1984. For avoidance of doubt the said paragraph 1.1 shall be read and construed and shall take effect for all purposes (without prejudice nevertheless to any further extension of time that may hereafter be granted to the Company) as if, with effect from the said 29th day of February 1980, "28 September 1984" had been substituted for "31 October 1980" therein.

**11. BINDING EFFECT**

Notwithstanding that it may not have executed the First Supplemental Agreement or the Second Supplemental Agreement, each party to this Agreement shall be bound by Clause 5 of the First Supplemental Agreement, as amended by the Second Supplemental Agreement and by this Agreement, as if it were a party thereto.

**12. ENUREMENT**



This Agreement, and Clause 5 of the First Supplemental Agreement, as amended by Clause 5 of the Second Supplemental Agreement, and as further amended by this Agreement, shall enure for the benefit of the parties hereto and thereto and their respective permitted assignees. Neither this Agreement, nor Clause 5 of the First Supplemental Agreement (as so amended), is intended to, nor shall it, enure for the benefit of any third party, including, without limitation, any party to or beneficiary of any Facility, Support Agreement or Substitute Instrument, or any other agreement, instrument or undertaking for the time being related to any Loan.

**13. CONSOLIDATION**

If:

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

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

**14. COUNTERPARTS**

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

IN WITNESS whereof the parties hereto have executed this Agreement the fifth day of November, 1984.

SIGNED for and on behalf of

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

LEITH ANDERSON

SIGNED for and on behalf of	)	
AMOCO MINERALS PNG COMPANY	)	GORDON FURTH
by its duly constituted	)	
attorney in the presence of:	)	

J.R. DICKENS

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

GERARD JOHN HEATH		
SIGNED for and on behalf of	)	
METALLGESELLSCHAFT AG by its	)	H. SCHIMMELBUSCH
duly constituted attorneys in	)	M.-D. VONMUELLER
the presence of:	)	
E. SCHIERLITZ		
SIGNED for and on behalf of	)	
DEGUSSA AG by its duly	)	M.D. HARTMANN
constituted attorneys	)	DR. A. MENTZ
in the presence of:	)	
DR. M. JUNGBAECK		
SIGNED for and on behalf of	)	
DEG-DEUTSCHE	)	
FINANZIERUNGSGESELLSCHAFT	)	E. PETZE
FUER BETEILIGUNGEN IN	)	
ENTWICKLUNGSLAENDERN	)	F.H. PAETZOLD
GMBH by its duly constituted	)	
attorneys in the presence of:	)	
DR. W. BOTERMANN		
SIGNED for and on behalf of	)	
STANDARD OIL COMPANY by its	)	ROBERT O. BENT II
duly constituted attorney	)	
in the presence of:	)	
J.S. SHANNON		
SIGNED for and on behalf of	)	
THE BROKEN HILL PROPRIETARY	)	DAVID STOW ADAM
COMPANY LIMITED by its duly	)	
constituted attorney in the presence of:	)	
GERARD JOHN HEATH		
SIGNED for and on behalf of	)	
OK TEDI MINING LIMITED by its	)	V.J. LONG JR.
duly constituted attorney in	)	
J.R. DICKENS		

**ANNEXURE  
SCHEDULE C**

**STAGE I**

1. (a) When Supported Stage I Loans aggregate less than or equal to US\$280 million, the State's Support Obligation in relation to Stage I is nil.
- (b) When Supported Stage I Loans aggregate more than US\$280 million but less than or equal to US\$650 million:  
State's Support Obligation in relation to Stage I  
= the lesser of:
  - (i) 0.20 (D—US\$280 million); and

(ii) US\$42 million,

where: D = Supported Stage I Loans.

(c) When Supported Stage I Loans aggregate more than US\$650 million but less than or equal to US\$681 million:

State's Support Obligation in relation to Stage I = US\$42 million +  $[A_1 \times (D - US\$650 \text{ million}) \times a_1]$

where:  $A_1$  = State's Shareholding Percentage expressed as a decimal at time of election in respect of this increment;

$a_1$  = 0 if State elects not to participate in this increment;

$a_1$  = 1 if State elects to participate in this increment; and

D has the meaning given in paragraph 1(b).

(d) When Supported Stage I Loans aggregate more than US\$681 million but less than or equal to US\$731 million:

State's Support Obligation in relation to Stage I =  $S_{681} + [A_2 \times (D - US\$681 \text{ million}) \times a_2]$

where:  $A_2$  = State's Shareholding Percentage expressed as a decimal at time of election in respect of this increment;

$a_2$  = 0 if State elects not to participate in this increment;

$a_2$  = 1 if State elects to participate in this increment;

D has the meaning given in paragraph 1(b); and

$S_{681}$  = State's Support Obligation in relation to Stage I when Supported Stage I Loans aggregate exactly US\$681 million.

(e) When Supported Stage I Loans aggregate more than US\$731 million but less than or equal to US\$781 million:

State's Support Obligation in relation to Stage I =  $S_{731} + [A_3 \times (D - US\$731 \text{ million}) \times a_3]$

where:  $A_3$  = State's Shareholding Percentage expressed as a decimal at time of election in respect of this increment;

$a_3$  = 0 if State elects not to participate in this increment;

$a_3$  = 1 if State elects to participate in this increment;

D has the meaning given in paragraph 1(b); and

$S_{731}$  = State's Support Obligation in relation to Stage I when Supported Stage I Loans aggregate exactly US\$731 million.

(f) The process is repeated in respect of each additional increment of US\$50 million.

#### STAGE II

2. (a) When Supported Stage II Loans aggregate less than or equal to US\$20 million:

State's Support Obligation in relation to Stage II

$$= B_1 \times E$$

where:  $B_1$  = State's Shareholding Percentage expressed as a decimal when Stage II Loans first drawn down; and

$E$  = Supported Stage II Loans.

- (b) When Supported Stage II Loans aggregate more than US\$20 million but less than or equal to US\$70 million:

State's Support Obligation in relation to Stage II

$$= (B_1 \times \text{US\$20 million}) + [B_2 \times (E - \text{US\$20 million})]$$

where:  $B_1$  and  $E$  have the meanings given in paragraph 2(a); and

$B_2$  = State's Shareholding Percentage expressed as a decimal when Stage II Loans first exceed US\$20 million.

- (c) When Supported Stage II Loans aggregate more than US\$70 million but less than or equal to US\$120 million:

State's Support Obligation in relation to Stage II

$$= (B_1 \times \text{US\$20 million}) + (B_2 \times \text{US\$50 million}) + [B_3 \times (E - \text{US\$70 million})]$$

where:  $B_1$  and  $E$  have the meanings given in paragraph 2(a);

$B_2$  has the meaning given in paragraph 2(b); and

$B_3$  = State's Shareholding Percentage expressed as a decimal when Stage II Loans first exceed US\$70 million.

- (d) The process is repeated in respect of each additional increment of US\$50 million up to US\$370 million.

•  
•  
•

- (i) When Supported Stage II Loans aggregate more than US\$370 million but less than or equal to US\$420 million:

State's Support Obligation in relation to Stage II

$$= (B_1 \times \text{US\$20 million}) + (B_2 \times \text{US\$50 million}) + (B_3 \times \text{US\$50 million}) + \dots + (B_g \times \text{US\$50 million}) + [B_g \times (E - \text{US\$370 million}) \times b_g]$$

where:  $B_1, B_2, B_3, \dots, B_g$  have the respective meanings given in paragraphs 2(a), (b), (c), ... (h);

$E$  has the meaning given in paragraph 2(a);

$B_g$  = State's Shareholding Percentage expressed as a decimal at time of election in respect of this increment;

$b_g$  = 0 if State elects not to participate in this increment; and

$b_g$  = 1 if State elects to participate in this increment.

(j) When Supported Stage II Loans aggregate more than US\$420 million but less than or equal to US\$470 million:

State's Support Obligation in relation to Stage II  
 $= (B_1 \times \text{US\$20 million}) + (B_2 \times \text{US\$50 million}) + \dots + (B_g \times \text{US\$50 million}) + (B_g \times \text{US\$50 million} \times b_g) + [B_{j0} \times (E - \text{US\$420 million}) \times b_{j0}]$

where:  $B_1, B_2, \dots, B_g$  and  $B_g$  have the respective meanings given in paragraphs 2(a), (b), ... (h) and (i);

$E$  has the meaning given in paragraph 2(a);

$b_g$  = 0 or 1 determined in accordance with paragraph 2(i);

$B_{j0}$  = State's Shareholding Percentage expressed as a decimal at time of election in respect of this increment;

$b_{j0}$  = 0 if State elects not to participate in this increment; and

$b_{j0}$  = 1 if State elects to participate in this increment.

(k) The process is repeated in respect of each additional increment of US\$50 million.

### STAGE III

3. (a) When Supported Stage III Loans aggregate less than or equal to US\$50 million:

State's Support Obligation in relation to Stage III

$= C_j \times F$

where:  $C_j$  = State's Shareholding Percentage expressed as a decimal when Stage III Loans first drawn down; and

$F$  = Supported Stage III Loans.

(b) When Supported Stage III Loans aggregate more than US\$50 million but less than or equal to US\$100 million:

State's Support Obligation in relation to Stage III

$$= (C_1 \times \text{US\$50 million}) + [C_2 \times (F - \text{US\$50 million})]$$

where:  $C_1$  and  $F$  have the meanings given in paragraph 3(a); and

$C_2$  = State's Shareholding Percentage expressed as a decimal when State III Loans first exceed US\$50 million.

(c) The process is repeated in respect of each additional increment of US\$50 million.

Office of Legislative Counsel, PNG