

No. 48 of 1995.

***Mining (Ok Tedi Restated Eighth Supplemental Agreement) Act 1995.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 48 of 1995.

***Mining (Ok Tedi Restated Eighth Supplemental Agreement) Act 1995.***

**ARRANGEMENT OF SECTIONS.**

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**SCHEDULE 1**



INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Mining (Ok Tedi Restated Eighth Supplemental Agreement) Act 1995,***

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

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C. (*qualified rights*) of the *Constitution*, namely—

- (a) the right to freedom of conscience, thought and religion and the practice of a person's religion and beliefs, including freedom to manifest and propagate a person's religion and beliefs in such a way as not to interfere with the freedom of others, conferred by Section 45 of the *Constitution*; and
- (b) the right to freedom of expression and publication conferred by Section 46 of the *Constitution*; and
- (c) the right peacefully to assemble and associate and to form or belong to, or not to belong to, political parties, industrial organizations and other associations conferred by Section 47 of the *Constitution*; and
- (d) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48 of the *Constitution*,

is a law that is made (pursuant to Section 38 of the *Constitution*)—

- (e) taking account of the National Goals and Directive Principles (including, in particular, the goals that Papua New Guinea should, among other things, be economically independent and its economy basically self-reliant and that Papua New Guinea's natural resources and environment should, among other things, be conserved and used for

the collective benefit of all Papua New Guineans) and the Basic Social Obligations (including, in particular, the obligation to protect Papua New Guinea and to safeguard the national wealth, resources and environment in the interests not only of the present generation but also of future generations), for the purpose of giving effect to the public interest in public safety, public order, public welfare, the protection of children and persons under disability (whether legal or practical) and the development of underprivileged or less advanced groups or areas; and

- (f) in order to protect the exercise of the rights and freedoms of others; and
- (g) to make provision for cases where the exercise of one such right may conflict with the exercise of another.

(2) Insofar as this Act or any of the Acts referred to in Subsections (4)(a), (b), (c), (d), (e), (f), (g) and (i) involves a compulsory taking of possession of property or a compulsory acquisition of an interest in or right over property within the meaning of Section 53 of the *Constitution*—

- (a) the purposes and reasons for each such taking and acquisition are declared and described to be—
  - (i) to facilitate the efficient and economical development and operation of the Project so that, as recorded in the Preamble to this Act, it might continue its significant contributions to the advancement of the social and economic welfare of the people of Papua New Guinea in general, and the people of Western Province in particular, including, without limitation, the contributions recorded in the Preamble to this Act; and
  - (ii) better to give effect to the other matters set out in, and in the recitals to, the Restated Eighth Supplemental Agreement, and in the recitals to, the agreements set out in the schedules to the other Acts referred to above,
    - and each of those purposes and reasons is hereby also declared to be described as—
  - (iii) a public purpose; and
  - (iv) a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind;
    - for the purposes of Section 53 of the *Constitution* and for the purposes of any other relevant law; and
- (b) the obligations undertaken by the Company under the Principal Agreement, including in particular, but without limitation, those provisions of the Principal Agreement that are inserted by the Restated Eighth Supplemental Agreement, constitute compensation procured

(and accordingly made) by, and made on behalf of, the State in connection with each such taking and acquisition.

(3) This Act, to the extent that it creates or otherwise gives rise to rights, privileges, obligations and duties that are not the same as between citizens, is intended to be a law for the special benefit, welfare, protection and advancement of members of underprivileged and less advanced groups and residents of less advanced areas for the purposes of Section 55 of the *Constitution*.

(4) For the purposes of any Organic Law from time to time and for the time being implementing Part VIA of the *Constitution*, it is hereby declared that each of the following Acts relates, in its entirety, to a matter of national interest:—

- (a) the *Mining (Ok Tedi Agreement) Act 1976*;
- (b) the *Mining (Ok Tedi Supplemental Agreement) Act 1980*;
- (c) the *Mining (Ok Tedi Second Supplemental Agreement) Act* (Chapter 1981);
- (d) the *Mining (Ok Tedi Third Supplemental Agreement) Act 1983*;
- (e) the *Mining (Ok Tedi Fourth Supplemental Agreement) Act 1985*;
- (f) the *Mining (Ok Tedi Fifth Supplemental Agreement) Act 1985*;
- (g) the *Mining (Ok Tedi Sixth Supplemental Agreement) Act 1986*;
- (h) the *Mining (Ok Tedi Agreements) (Amendment) Act 1986*;
- (i) the *Mining (Ok Tedi Seventh Supplemental Agreement) Act 1986*; and
- (j) this Act.

## 2. INTERPRETATION.

(1) Unless otherwise defined in this Act, words and expressions which are given a certain meaning in the Principal Agreement or in the Restated Eighth Supplemental Agreement are used in this Act with the same meanings.

(2) In this Act, unless the contrary intention appears—

**“Compensation Claim”** includes any claim, demand, suit or right of action (and whether alleging negligence or any other wrong or liability whatsoever) in connection with, or purportedly or allegedly in connection with, any one or more of the Project, the Principal Agreement, any agreement that varies or amends or is supplemental to the Principal Agreement and any statute or other law that relates to the Principal Agreement or any such agreement, being a claim, demand, suit or right of action which exists or is made or asserted against any one or more of—

- (a) the Company;
- (b) the State;
- (c) any Corporate Sponsor; and

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(d) any other person involved with or in any way associated with the Project,

in connection with, or purportedly or allegedly in connection with, any one or more of—

(e) any disposal of overburden, tailings or other Waste (as defined in Clause 29 of the Principal Agreement);

(f) any Pollution (as defined in Clause 29 of the Principal Agreement);

(g) (without limitation to Paragraphs (e) and (f)), any effects resulting from the Company's operations upon the physical Environment (as defined in Clause 29 of the Principal Agreement), the streams and rivers, the inhabitants and the biota of the Mining Area or the land, streams and rivers flowing therefrom;

(h) any effect upon, or loss, taking, acquisition, forfeiture, extinction or determination of, or of possession of, any property or any interest or right in or over property;

(i) any non-compliance with or non-observance of the requirements of—

(i) any one or more of Clauses 29, 29A, 29B, 29C, 29D, 29E, 29F and 29G of the Principal Agreement;

(ii) any other provision of the Principal Agreement, any agreement varying, amending or supplementing the Principal Agreement, the Approved Proposals or any other obligation, being a provision that relates to a matter referred to in Paragraph (e), (f) or (g); or

(iii) any combination of the foregoing; and

(j) Part VII of the *Mining Act 1992* or any corresponding or similar provisions of any other law whatsoever (whether previously in force, now in force or hereafter in force),

and whether or not that claim, demand, suit or right of action—

(k) extends to any other matter;

(l) seeks—

(i) the payment of damages, compensation or any other form of monetary relief; or

(ii) any form of non-monetary relief; or

(iii) any combination of the foregoing; and

(m) arose, was commenced, or relates to circumstances existing—



- (i) before or at the time at which this Act came into operation;  
or
- (ii) at anytime after the time at which this Act came into operation.

**“Compensation Proceedings”** means any proceedings whatsoever before any court or other forum, whether commenced or contemplated to be commenced before, at or after the time at which this Act came into operation, and whether in Papua New Guinea or elsewhere, in connection with a Compensation Claim, except to the extent that—

- (a) those proceedings are in respect of any non-compliance with or non-observance of the requirements of any one or more of Clauses 29A, 29B, 29C, 29D, 29E, 29F and 29G of the Principal Agreement; or
- (b) those proceedings seek a determination by an expert under Clause 29C.4 of the Principal Agreement; or
- (c) those proceedings seek a determination in accordance with Clause 29E.2 of the Principal Agreement; or
- (d) those proceedings seek a determination in accordance with Clause 29F.1 of the Principal Agreement; or
- (e) those proceedings are commenced or maintained or otherwise continued by one or more of the following and by no other person (directly or indirectly), namely—
  - (i) the State (in its capacity either as party to the Principal Agreement or as a shareholder in the Company, but not otherwise);
  - (ii) the Broken Hill Proprietary Company Limited;
  - (iii) BHP Minerals Holdings Proprietary Limited;
  - (iv) Inmet Mining Corporation; or
  - (v) the Company; or
- (f) those proceedings are proceedings with respect to a question relating to the interpretation or application of any provision of a Constitutional Law (including any question as to the validity of a law or proposed law),

but does not include the Existing Foreign Proceedings, and for the purposes of this definition a reference to “proceedings” includes, without limitation—

- (g) proceedings at first instance; or
- (h) interlocutory proceedings; or
- (i) proceedings by way of appeal; or

- (j) proceedings seeking review of any judicial or administrative act;  
or
- (k) proceedings seeking any prerogative writ or any order or relief to similar effect;

**“Existing Compensation Claim”** means a Compensation Claim that existed at the time at which this Act came into operation;

**“Existing Foreign Proceedings”** means the proceedings the subject of proceedings No. 5782, No. 5980, No. 6861 and No. 6862 of 1994 in the Supreme Court of Victoria, Australia as those proceedings were respectively constituted on 15 November 1995, there being one plaintiff and 24 represented persons in proceeding No. 5782 of 1994, two plaintiffs in proceeding No. 5980 of 1994, 22 plaintiffs in proceeding No. 6861 of 1994 and 26 plaintiffs in proceeding No. 6862 of 1994;

**“Principal Agreement”** means the agreement a copy of which is set out in the schedule to the *Mining (Ok Tedi Agreement) Act 1976* as varied, amended and supplemented by the agreements respectively set out in the schedules to the Acts referred to in Sections 1(4) (b), (c), (d), (e), (f), (g) and (i) and by the Restated Eighth Supplemental Agreement;

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

### **3. APPROVAL OF AGREEMENT.**

The Restated Eighth Supplemental Agreement is approved and, subject only to Section 5(3), has effect according to its tenor.

### **4. EFFECT IN RELATION TO LAWS OF PAPUA NEW GUINEA.**

The Restated Eighth 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.

### **5. COMPENSATION PROCEEDINGS.**

(1) Subject only to this section and to Clauses 29A, 29B, 29C, 29D, 29E, 29F, 29G, 29H and 29I of the Principal Agreement, the provisions of Clause 29 of the Principal Agreement—

- (a) cover (and have at all times covered) the field in respect of, and express (and have at all times expressed) completely, exhaustively and exclusively the regime applicable to, the regulation of environmental management and protection with respect to the Project and the Company’s operations (including, without limitation with respect to the disposal of overburden, tailings or other Waste (as defined in Clause 29 of the Principal Agreement) and all other effects resulting from the Company’s operations upon the physical Environment (as defined in

Clause 29 of the Principal Agreement), the land, the streams and rivers, the inhabitants and the biota of the State); and

- (b) prevail (and have at all times prevailed) over any inconsistent law in force in the State (other than this Section and Clauses 29A, 29B, 29C, 29D, 29E, 29F, 29G, 29H and 29I of the Principal Agreement), whether in force before or at the time that Clause 5 of the Restated Eighth Supplemental Agreement becomes effective or at any time thereafter and, notwithstanding Clause 9.8 of the Principal Agreement, prevail (and have at all times prevailed) also over the Approved Proposals.

(2) Subsection (1) does not apply in connection with the Existing Foreign Proceedings.

(3) For the purposes of the Existing Foreign Proceedings only, the deletion effected by Clause 5.2 of the Restated Eighth Supplemental Agreement shall be deemed not to have been effected.

(4) The fact that the Company has undertaken the obligations imposed upon it by Clauses 29B, 29C, 29E and 29F of the Restated Eighth Supplemental Agreement—

- (a) constitutes an absolute defence to any Compensation Proceedings to the extent that they relate to an Existing Compensation Claim; and
- (b) constitutes an absolute defence to any Compensation Proceedings to the extent that they do not relate to an Existing Compensation Claim,

whether or not that defence is pleaded, and whether those Compensation Proceedings are commenced before, on or after the date upon which the Company permanently ceases mining and milling operations and that defence may be relied upon not only by the Company but also by any other party to the relevant Compensation Proceedings.

(5) Under the law of Papua New Guinea, no—

- (a) cause of action; or
- (b) other right,

exists—

- (c) in relation to an Existing Compensation Claim; or
- (d) in relation to a Compensation Claim that is not an Existing Compensation Claim,

which may form a basis for Compensation Proceedings.

(6) Under the law of Papua New Guinea, any act or omission that would, notwithstanding this Act, constitute a basis for Compensation Proceedings is—

- (a) to the extent that such Compensation Proceedings would relate to an Existing Compensation Claim; and
- (b) to the extent that such Compensation Proceedings would not relate to an Existing Compensation Claim,

justifiable within the meaning of the rule known as the rule in *Phillips v Eyre* (1870) LR 6 QB 1.

(7) Under the law of Papua New Guinea, there is no civil liability in respect of any act or omission that would, notwithstanding this Act, constitute a basis for Compensation Proceedings—

- (a) to the extent that such Compensation Proceedings would relate to an Existing Compensation Claim; and
- (b) to the extent that such Compensation Proceedings would not relate to an Existing Compensation Claim.

(8) There shall be no presumption that, under the law of Papua New Guinea, the legal position that exists in connection with the Existing Foreign Proceedings is different from the legal position that exists, as a result of this section, in connection with Compensation Proceedings.

(9) This section is intended to be a provision for the limitation of actions for the purposes of Section 53 of the *Constitution*.

## **6. ANCILLARY POWERS OF MINISTER.**

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

## **7. MISCELLANEOUS.**

(1) A Chief Warden appointed under the *Mining Act 1992* shall have (in addition to the functions, powers and duties that are specified in, or allocated or referred under, the *Mining Act 1992* and any other law) the functions, powers and duties that it is contemplated by this Act and the Principal Agreement that a Chief Warden should have.

(2) A Warden appointed under the *Mining Act 1992* shall have (in addition to the functions, powers and duties that are specified in the *Mining Act 1992* and any other law) the functions, powers and duties that it is contemplated by this Act and the Principal Agreement that a Warden should have.

(3) The acts and deeds of a clan leader in respect of any matter referred to in Clauses 29, 29A, 29B, 29C, 29D, 29E, 29F, 29G, 29H and 29I of the Principal Agreement shall bind each person on behalf of whom that clan leader purports to be acting, and where a clan leader purports to be acting on behalf of the whole of that clan leader's clan, the clan leader's acts and deeds bind each existing and future member of that clan leader's clan, including, without limitation, children and persons who are subsequently born into, or who subsequently join, that clan.

(4) The certificate of a Warden appointed under the *Mining Act 1992* shall be conclusive evidence, in the case of a dispute, as to whether or not a person is a clan leader of a particular clan and as to whether or not a particular person is a member of that clan.

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**SCHEDULE 1**

**RESTATED EIGHTH SUPPLEMENTAL AGREEMENT**

THIS RESTATED EIGHTH SUPPLEMENTAL AGREEMENT is made as of the 4th day of August 1995

**BETWEEN:** THE INDEPENDENT STATE OF PAPUA NEW GUINEA (hereinafter called the "State") of the first part,  
THE BROKEN HILL PROPRIETARY COMPANY LIMITED (ACN 004 028 077), a company incorporated in the State of Victoria in the Commonwealth of Australia (hereinafter called "BHP"), of the second part,  
BHP MINERALS HOLDINGS PROPRIETARY LIMITED (ACN 005 744 025), a company incorporated in the State of Victoria in the Commonwealth of Australia (hereinafter called "BHP Minerals"), of the third part,  
INMET MINING CORPORATION (formerly Metall Mining Corporation), a corporation incorporated in the Province of Ontario, Canada (hereinafter called "MMC") of the fourth part  
**AND** OK TEDI MINING LIMITED, a company incorporated in Papua New Guinea (hereinafter called the "Company"), of the fifth part.

**WHEREAS:**

- A. By an Agreement dated the 22nd day of March 1976 between the State of the first part and BHP Minerals Pty Ltd (then named Danpiet Mining Company Limited and subsequently named BHP Minerals Limited) of the second part the State granted to the said BHP Minerals Pty Ltd certain rights, set out in detail in that Agreement, including rights to carry out investigations and studies in relation to, and to undertake a Project involving the exploitation of, the Ok Tedi Deposits in Papua New Guinea.
- B. The Agreement referred to in Recital A has been varied, amended and supplemented by, and assigned as set out in, a Supplemental Agreement (the "First Supplemental Agreement", which term includes the same as varied, amended and supplemented by the Second Supplemental Agreement, the Fourth Supplemental Agreement, the Fifth Supplemental Agreement, the Sixth Supplemental Agreement and the Seventh Supplemental Agreement) dated the 26th day of June 1980, a Second Supplemental Agreement (the "Second Supplemental Agreement") dated the 26th day of February 1981, a Third Supplemental Agreement (the "Third Supplemental Agreement") dated the 4th day of March 1982, a Fourth Supplemental Agreement (the "Fourth Supplemental Agreement") dated the 1st day of March 1984, a Fifth Supplemental Agreement (the "Fifth Supplemental Agreement") dated the 1st day of August 1985, a Sixth Supplemental Agreement (the "Sixth Supplemental Agreement") dated the 28th day of February 1986 and a Seventh Supplemental Agreement (the "Seventh Supplemental Agreement") dated the 10th day of July 1986 and, as so varied, amended and supplemented, is hereinafter referred to as the "Principal Agreement".

- C. Pursuant to and in compliance with the Principal Agreement and leases, licences and authorities issued by the State under or in connection with the Principal Agreement, the Company has conducted its operations since their inception in a manner that has been lawful in all respects and the Company continues so to conduct its operations in a manner that is lawful in all respects. Pursuant to and in compliance with a Management Agreement dated the 10th day of September 1987 (as amended), BHP has provided management services to the Company and has conducted itself in that regard in a manner that has been lawful in all respects and BHP continues so to conduct itself in a manner that is lawful in all respects.
- D. In conformity with Clause 29.12 of the Principal Agreement (as in force prior to the date of this Agreement) the Company has, prior to the date of execution of this Agreement, made compensation payments aggregating approximately K2,900,000 on account of loss suffered as a result of the Company's operations.
- E. Notwithstanding the Company's ongoing programme of compliance with its obligations under Clause 29.12 of the Principal Agreement (as in force prior to the date of this Agreement), a number of writs have been, or were sought to be, issued against the Company and BHP, in Papua New Guinea and elsewhere, seeking damages, exemplary damages, injunctions and declarations in connection with the effect of the Company's operations on the environment. Foreign lawyers have been active in connection with this litigation or attempted litigation and have raised unrealistic expectations among persons affected by the Company's operations as to the compensation which those persons might expect to receive. This litigation or attempted litigation, if allowed to run its course, is likely to take an extremely long time to resolve and to be very expensive for everyone involved in it. Significant social unrest and disharmony would be likely to result. It is contrary to the national interest of Papua New Guinea for this to be allowed to happen.
- F. The State, the Company and the Corporate Sponsors have always recognized that persons who are adversely affected by environmental damage as a result of the Company's operations must be fairly treated and adequately compensated. To be effective, a compensation process should be speedy and competent. The State has therefore proposed a long-term compensation package and has discussed that package with Fly River Provincial Government, Western Province on behalf of the people affected by the Company's operations and with the Company.
- G. Following certain transfers of ordinary shares in the capital of the Company that have taken place or that are proposed to take place the ordinary shares in the capital of the Company are or will be held (subject to the next succeeding sentence) in the following respective percentages:
- |              |   |     |
|--------------|---|-----|
| the State    | — | 30% |
| BHP Minerals | — | 52% |
| MMC          | — | 18% |

It is intended that the benefit of certain of the shares forming part of the holding described above as being the State's holding is to accrue to the people of Western Province.



- H. The Series A Cumulative Redeemable Preference Certificates in the capital of the Company that were held by the Amoco Corporation group have been transferred to BHP, while the Series A Cumulative Redeemable Preference Certificates that were indirectly held by Metallgesellschaft AG and Degussa AG have been indirectly held by MMC, and are, or it is proposed that they will be, directly held by MMC. The Series A Cumulative Redeemable Preference Certificates in the capital of the Company that were directly held by the State have been transferred to BHP, while the Series A Cumulative Redeemable Preference Certificates in the capital of the Company that were indirectly held by the State have been indirectly held by BHP and MMC, and are, or it is proposed that they will be, directly held by BHP and MMC.
- I. Indirect holdings of shares in the capital of the Company have been held through direct holdings of shares in the capital of Star Mountains Holding Company Pty Limited ("SMH"), which has in turn been the direct holder of shares in the capital of the Company. The shareholders in SMH have resolved that SMH be wound up and its assets distributed in specie to its shareholders.
- J. The parties entered into an Agreement on 4 August 1995 in order to make necessary changes to the Principal Agreement and the First Supplemental Agreement as a consequence of the matters referred to in Recitals E to I and to make certain other changes.
- K. The parties wish to restate the Agreement entered into on 4 August 1995 and they enter into this Agreement accordingly.

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 Subject to Clause 1.1, and unless otherwise defined herein, words and expressions which are given a certain meaning in the First Supplemental Agreement (as amended by this Agreement) are used herein with the same meanings.
  - 1.3 The rules of interpretation set out in Clause 2 of the Principal Agreement (as amended by this 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.
  - 1.4 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 shall have the force of law for the full term provided for herein and shall apply notwithstanding anything to the contrary in any other law in force in Papua New Guinea.

3. **Conditions precedent**

- 3.1 The parties declare that this Agreement constitutes a material or substantial alteration of the Principal Agreement and accordingly pursuant to Clause 42.2 of the Principal Agreement the State shall as soon as is practicable introduce and sponsor in the National Parliament a Bill for an Act to approve this Agreement and give force of law to the alteration of the rights under the Principal Agreement.
- 3.2 This Agreement other than this Clause 3 shall not operate unless and until a Bill in the form of a draft dated 15 November 1995 (but with such changes as the parties to this Agreement may agree) is passed as an Act and comes into force. This Agreement shall thereupon become effective.
- 3.3 Without limitation to Clause 3.2, Clauses 8.4, 8.5, 8.6, 8.7, 8.8 and 8.9 shall not operate unless and until all of the following have occurred (if and to the extent that they have not occurred prior to the date of this Agreement):
- (a) the registration of the transfers of all issued shares in the Company held by SMH to the State, MMC, DEG and BHP by way of distribution in specie of the assets of SMH to its shareholders in consequence of the winding-up of SMH;
  - (b) the registration of the transfer of 4,700,000 issued ordinary shares in the Company (or a corresponding number of issued ordinary shares in SMH) from MMC as contemplated by Clause 11.13 of the Principal Agreement (as inserted by Clause 6 of this Agreement); and
  - (c) the registration of the transfer of 18,800,000 issued ordinary shares in the Company from BHP Minerals as contemplated by Clause 11.13 of the Principal Agreement (as inserted by Clause 6 of this Agreement).

4. **Amendments to definitions**

4.1 Clause 1 of the Principal Agreement is amended:—

- (a) by inserting the following after "requires" in line 1:

"words and expressions which are given a certain meaning in the Act referred to in Clause 4.2, or in any Act passed as referred to in Clause 42.2, are used with the same meanings. In addition, the following words have the following meanings unless the context otherwise requires";

- (b) by inserting the following definition after the definition therein of "Acceptable Particulate Level":

"Affected Area" means:

- (a) the area along the Ok Tedi from (and including) the vicinity of the Company's mine to the D'Albretis junction; and
- (b) the area along the Fly River from the D'Albretis Junction to (and including) the delta of the Fly River,

but does not include the area the subject of any lease or licence held by the Company or that has been at any time held by North Fly Highway Development Company Pty Limited, other than the area the subject of Lease for Mining Purposes No 1 in the name of the Company. The precise limits of the Affected Area may be determined from time to time by agreement between the Provincial Government, the State and the Company.;

- (c) by inserting the following definition after the definition therein of "Corporate Sponsors":

"CPI" means the All Areas Consumer Price Index as published by Bank of Papua New Guinea, Port Moresby, in its Quarterly Economic Bulletin (base: 1977=100). If there is any material change in the basis of determining the All Areas Consumer Price Index or any alternative index referred to in this sentence, or if the All Areas Consumer Price Index or any such alternative index ceases so to be published or is not published in a manner readily accessible to the Treasurer, the Treasurer may decide upon an alternative index that, in the opinion of the Treasurer, is approximately equivalent to the All Areas Consumer Price Index and shall promptly inform the Secretary of Mining and Petroleum of the State of that alternative index. References in this Agreement to the CPI shall thenceforth be construed by reference to that alternative index.;

- (d) by inserting the following definitions after the definition therein of "Discrete Port Facilities":

"dividend" includes, without limitation, interim dividend.

"Due Date" means each of the following:

- (a) the date (the "First Due Date") that is 30 days after the date upon which Clause 5 of the Restated Eighth Supplemental Agreement becomes effective;
- (b) 31 March 1996 (the "Second Due Date");
- (c) each 31 March after 31 March 1996 and before the Due Date determined in accordance with paragraph (d); and
- (d) the date that is 30 days after the date certified by the Chairman of the Company to the Secretary of Mining and Petroleum of the State as being the date upon which the Company has permanently ceased mining and milling operations (and the Chairman of the Company must provide that certificate promptly after such cessation).

"Eligible Person" means, subject to Clause 29A.3:

- (a) a person resident in the Affected Area who is not a "Non-Eligible Person"; or
- (b) a person who, by written agreement with the Company, and subject to the terms and conditions of that written agreement, is designated as an "Eligible Person" for the purposes of this Agreement (whether or not that person may have previously been a "Non-Eligible Person").;

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

"General Compensation Obligations" means, at any time:

- (a) the obligations of the Company that have not by that time been performed or discharged under Clause 29B (whether or not they have fallen due for performance or discharge by that time), as reduced, if applicable, under Clauses 29B.3 and 29C.3; or
- (b) subject to Clause 29C.5, the obligations of the Company that have not by that time been performed or discharged under any alternative regime agreed or determined in accordance with Clause 29C.4 (whether or not they have fallen due for performance or discharge by that time),

as the case may be;

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

"Non-Eligible Person" means a person who has elected to become a "Non-Eligible Person" in accordance with Clause 29A.1, not being a person who has been designated as an "Eligible Person" in accordance with paragraph (b) of the definition, in this Clause 1, of "Eligible Person".;

- (g) by inserting the following definition after the definition therein of "Ok Tedi Deposits":

"Ok Tedi/Fly River System" means, collectively, the Ok Tedi, the Fly River (down to, and including, the delta of the Fly River), and each other stream, river or other watercourse or body of water that directly or indirectly feeds into the Fly River.;

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

"Provincial Government" means:

- (a) until all proceedings challenging either or both of Constitutional Amendment No. 16—Provincial Governments and Local-level Governments and the Organic Law on Provincial Governments and Local-level Governments are, in the Company's opinion, finally resolved—the Minister of the State who is responsible for provincial government and local-level government matters acting, where necessary, on behalf of the National Executive Council; and
- (b) thereafter—
  - (i) the lawful provincial government of Western Province; or
  - (ii) if the lawful provincial government of Western Province is suspended or the Company forms the opinion that this Agreement is not operating in the manner contemplated by the Company at the date of the Restated Eighth Supplemental Agreement, the Minister of the State who is responsible for provincial government and local-level government matters acting, where necessary, on behalf of the National Executive Council,

- or, if the Company so elects, such legal entity having a connection with Western Province as is agreed upon between the Company and the Minister for Mining and Petroleum of the State for the purposes of this definition. The advice of the National Executive Council to the Governor-General to execute the Restated Eighth Supplemental Agreement constitutes an authorization by the National Executive Council to the Minister of the State who is responsible for provincial government and local-level government matters so to act on behalf of the National Executive Council. The Provincial Government shall not delegate any power or function under or in respect of this Agreement.';
- (i) by inserting the following definitions after the definition therein of "Recapitalization Closing":
- "related corporation" or "related company" means, with respect to any corporation (the "Specified Corporation"), any corporation other than the Specified Corporation which is or would be deemed to be a related corporation of the Specified Corporation within the meaning of section 1(1) of the Companies Act Chapter 146 of the Revised Laws of the State as in force on 1 June 1986.
- "Relevant Period" means:
- (a) in respect of a Due Date other than the last Due Date, the period from and including 1 January until and including 31 December in the year that last ended prior to that Due Date; and
  - (b) in respect of the last Due Date, the period from and including 1 January next following the last preceding Relevant Period until and including the date that is 30 days prior to that Due Date.
- "Restated Eighth Supplemental Agreement" means the agreement dated as of the 4th day of August 1995 headed "Restated Eighth Supplemental Agreement" between the State, The Broken Hill Proprietary Company Limited, BHP Minerals Holdings Proprietary Limited, Inmet Mining Corporation and the Company, as the same may be modified, amended, supplemented or restated in accordance with the terms applicable thereto.';
- (j) by inserting the following definition after the definition therein of "Seventh Supplemental Agreement":
- "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(a) of the First Supplemental Agreement), of issued and outstanding ordinary shares in the Company on such date but on the basis, in the case of the State, that any shares held by a corporation referred to in Clause 11.13(c), or by a direct or indirect transferee of any shares held by the State or by any such corporation, were shares held by the State.';
- (k) by inserting the following definitions after the definition therein of "Sixth Supplemental Agreement":

"Special Support Grant" means the special support grant payable to the Fly River Provincial Government under Clause 3.1 of the agreement titled "Memorandum of Agreement Relating to the Operation of the Ok Tedi Mining Project" between the State and the Fly River Provincial Government and dated 11 January 1991, and any payment made in place of such special support grant whether under that agreement or any amendment, supplementation or replacement of that agreement.

"Specified Amount" means, in respect of any amount to be determined under Clause 29B.2(b)(ii)(B)(1) in respect of any Due Date from and including the Second Due Date, K0.065164 as adjusted from time to time prior to that Due Date in accordance with the next succeeding sentences. The Specified Amount will be adjusted, as of each 30 June, commencing with 30 June 1995, in accordance with the percentage change in the CPI since the previous such adjustment (or, in the case of the first such adjustment, since 30 June 1994), provided that on no such adjustment will the Specified Amount be increased by more than 5% of the amount that constituted the Specified Amount before that adjustment. Where necessary, the Specified Amount will be rounded upwards or downwards to the nearest 6 decimal places. Each such adjustment must be determined by the Treasurer and promptly notified by the Treasurer to the Secretary of Mining and Petroleum of the State.;

- (l) by inserting the following definition after the definition therein of "State-Acquired Facilities":

"Treasurer" means the Treasurer of the Company or any Assistant Treasurer of the Company or, if at the relevant time there is no Treasurer or Assistant Treasurer, the chief financial officer of the Company.;

- (m) by inserting the following definition after the definition therein of "Waste Rock":

"Western Province" means the province described as such in the Organic Law on Provincial Boundaries as in force on 1 January 1995.;

4.2 Clause 2.1 of the Principal Agreement is amended:

- (a) by deleting "and" at the end of paragraph (e);  
 (b) by substituting "; and" for the full stop at the end of paragraph (f); and  
 (c) by inserting the following at the end:

"(g) reference to a person resident in a place includes a person who is a member of a clan a substantial number of the members of which are resident in that place, regardless of where that person is actually resident. The certificate of a Warden appointed under the *Mining Act 1992* shall be conclusive evidence, in the case of a dispute, as to whether or not a particular person is resident in a place for the purposes of this Agreement."

5. Compensation.

5.1 This Agreement changes the compensation arrangements set out in the Principal Agreement. Appendix 1 contains a very brief outline of the revised compensation arrangements. In the case of any inconsistency between the provisions of Appendix 1 and the provisions of the Principal Agreement as amended by this Agreement, the latter provisions will prevail.

5.2 Clause 29.12 of the Principal Agreement is deleted.

5.3 The Principal Agreement is amended by inserting the following provisions after Clause 29:

**29A Election to become a non-eligible person.**

29A.1 By not later than the date which is 6 months after the date upon which the Mining (Ok Tedi Restated Eighth Supplemental Agreement) Act 1995 comes into operation, a person resident in the Affected Area may, by notice in writing executed by a clan leader on behalf of that person and delivered to the Company, elect to become a "Non-Eligible Person" for the purposes of this Agreement. Any such election shall be irrevocable. A clan leader's notice shall relate to the whole of that clan leader's clan.

29A.2 If members of a clan accept, or a clan leader on behalf of a clan accepts, an amount distributed under Clause 29D, or members of a clan do not elect in accordance with Clause 29A.1 to become "Non-Eligible Persons" for the purposes of this Agreement, the members of that clan will be deemed to have agreed to be "Eligible Persons" for the purposes of this Agreement and, accordingly, not to claim any entitlement to compensation under Clause 29E.

29A.3 If more than 15,000 persons are Non-Eligible Persons on the date 6 months after the date upon which the Mining (Ok Tedi Restated Eighth Supplemental Agreement) Act 1995 comes into operation, the Company may, by notice published (within a further period of 1 month) in at least 1 daily newspaper circulating in Papua New Guinea, elect that Clauses 29B, 29C and 29D shall cease to apply whereupon those Clauses shall cease to apply and all persons resident in the Affected Area shall be treated for all purposes of this Agreement as Non-Eligible Persons.

**29B General compensation on behalf of eligible persons**

29B.1 By not later than the First Due Date the Company must pay to the Provincial Government, on behalf of the Eligible Persons, compensation in an amount equal to the aggregate of:

- (a) K10,000,000, being compensation in respect of the period from and including the commencement of the Company's operations to and including 31 December 1993; and
- (b) K4,000,000, being compensation in respect of the Relevant Period from and including 1 January 1994 to and including 31 December 1994,

such compensation being additional to the compensation referred to in Recital D to the Restated Eighth Supplemental Agreement.

29B.2 By not later than each Due Date after the First Due Date the Company must:

- (a) notify the Secretary for Mining and Petroleum of the State of:
  - (i) the aggregate number of tonnes of mine waste that has been excavated by the Company; and
  - (ii) the aggregate number of tonnes of ore that has been mined by the Company during the Relevant Period that last ended prior to that Due Date in the course of the Company's mining operations; and

- (b) subject to Clauses 29B.3, 29C.3 and 29C.4, pay to the Provincial Government, on behalf of the Eligible Persons, an amount of compensation equal to the amount that is the greater of the amounts determined in accordance with (i) and (ii) below:
- (i) the amount that is:
    - (A) in respect of the Second Due Date—K4,000,000; and
    - (B) in respect of each Due Date after the Second Due Date—the amount that was payable under this Clause 29B.2 in respect of the immediately preceding Due Date; and
  - (ii) the amount that is the lesser of the amounts determined in accordance with (A) and (B) below:
    - (A) the amount that is equal to the product of 1.4% times the sum of:
      - (1) the F.O.B. Revenue (as defined in Clause 24.1) applicable to deliveries by the Company pursuant to sales or other dispositions made by the Company of Mine Products (as defined in Clause 24.1) where such deliveries are directly or indirectly for export; and
      - (2) the Net Smelter Returns (as defined in Clause 24.1) applicable to such Mine Products where they are smelted or smelted and refined in Papua New Guinea, in respect of the Relevant Period to which that Due Date relates; and
    - (B) the amount that is the greater of the amounts determined in accordance with (1) and (2) below:
      - (1) the amount that is equal to the product of the Specified Amount times the aggregate of the numbers of tonnes notified under Clauses 29B.2(a)(i) and (ii) in respect of the Relevant Period to which that Due Date relates; and
      - (2) the amount that is:
        - (aa) in respect of the Second Due Date—K4,000,000 as adjusted, as of 30 June 1995, in accordance with the percentage change in the CPI since 30 June 1994 (or, if that percentage change is an increase of more than 5%, K4,200,000); and



(bb) in respect of each Due Date (the "Relevant Due Date") after the Second Due Date—the amount (the "Relevant Amount") that was payable under this Clause 29B.2 in respect of the immediately preceding Due Date as adjusted, as of 30 June last preceding the Relevant Due Date, in accordance with the percentage change in the CPI over the year ending on that 30 June (provided that on no such adjustment will the Relevant Amount be increased by more than 5% of the amount that constituted the Relevant Amount before that adjustment),

and each adjustment referred to in (aa) and (bb) above must be determined by the Treasurer and promptly notified by the Treasurer to the Secretary of Mining and Petroleum of the State.

Schedule IV contains examples of the calculation of the compensation payable under this Clause 29B.2 on the assumptions there described. Schedule IV is illustrative only and does not specify actual payment obligations. In the case of any inconsistency between the calculations in Schedule IV and the provisions of this Clause 29B the provisions of this Clause 29B will prevail.

29B.3 If any person obtains or is entitled to obtain damages, compensation or any other form of monetary or non-monetary relief, or any award of costs, under or in connection with any of proceedings No 5782, No 6861 and No 6862 of 1994 in the Supreme Court of Victoria, Australia or under Clause 29E, then the General Compensation Obligations shall be reduced in accordance with the next succeeding sentences. The reduced General Compensation Obligations shall be such as the Treasurer determines would have a net present value (as determined by the Treasurer) which, when aggregated with the value (as determined by the Treasurer) of the abovementioned damages, compensation, relief and costs, equals the net present value, at that time, of the General Compensation Obligations (as determined by the Treasurer). The net present value of the General Compensation Obligations will not be reduced by more than K20,000,000 (as adjusted in accordance with the next succeeding sentences) under this Clause 29B.3. The said amount of K20,000,000 shall be adjusted, as of each 30 June, commencing with 30 June 1995, in accordance with the percentage change in the CPI since the previous such adjustment (or, in the case of the first such adjustment, since 30 June 1994), provided that on no such adjustment will the relevant amount be increased by more than 5% of the amount that constituted the relevant amount before that adjustment. Each such adjustment must be determined by the Treasurer and promptly notified by the Treasurer to the Secretary of Mining and Petroleum of the State.

29B.4 Each net present value referred to in this Clause 29B shall be determined by using an annual discount rate of 15% and on the basis of the business and mining plans of the Company that are current at the time of such determination and shall otherwise be determined in such manner and on such basis (including such assumptions) as appear reasonable to the Treasurer. If requested to do so by the State in any individual case, the Treasurer will describe in reasonable detail the manner in which and the basis (including the assumptions) on which the Treasurer so determined each such net present value in that case.

29B.5 Compensation payable under this Clause 29B is additional to compensation payable under Clause 29F.

**29C Limit on General Compensation Obligations**

29C.1 If the Company is obliged:

- (a) in accordance with the procedures set out in Clause 29.14, to take any steps or construct any facilities; or
  - (b) otherwise to undertake any capital spending to mitigate the impact of the Company's operations on the River System,
- (the "Expenditure Obligations") the Treasurer shall determine the net present value, at that time, of:
- (c) the Expenditure Obligations (the "Expenditure Obligation NPV"); and
  - (d) the General Compensation Obligations (the "General Compensation Obligation NPV").

29C.2 If the Expenditure Obligation NPV, as so determined, equals or exceeds the General Compensation Obligation NPV, as so determined, Clause 29B and this Clause 29C (other than this Clause 29C.2) shall cease to be of any further force or effect.

29C.3 If the General Compensation Obligation NPV, as so determined, exceeds the Expenditure Obligation NPV, as so determined, then the General Compensation Obligations shall be reduced in accordance with the next sentence. The reduced General Compensation Obligations shall be such as the Treasurer determines would have a net present value (as determined by the Treasurer) which, when aggregated with the net present value of the Expenditure Obligations (as determined by the Treasurer) equals the General Compensation Obligation NPV as last previously determined by the Treasurer under Clause 29C.1(d).

29C.4 If Clause 29C.1 applies in particular circumstances, this Clause 29C.4 does not apply in those circumstances. If, notwithstanding that it is not obliged to do so as referred to in Clause 29C.1, the Company proposes to undertake any capital spending, or proposes any change in the Company's operations, to mitigate the impact of the Company's operations on the Ok Tedi/Fly River System, the Company may, by notice to the State (the Company's "Initial Notice"), notify the State accordingly. The Company and the State must thereupon endeavour to agree upon (and upon the date for the introduction of) an alternative regime for the payment of compensation in place of the then current General Compensation Obligations. If such an alternative regime has not been agreed in writing between the Company and the State within 60 days after the date of the giving of the Company's Initial Notice, the Company will have the right to elect, by notice to the State, to refer for determination by an expert to be designated by applying, with necessary changes, the provisions of the definition of "Environmental Expert", the questions of:

- (a) what is a fair regime for the payment of compensation in place of the then current General Compensation Obligations, having regard to the mitigation of the impact of the Company's operations on the Ok Tedi/Fly River System that might be expected to result from the relevant capital spending or the relevant change in the Company's operations, should that capital spending be undertaken or that change in the Company's operations be implemented; and

(b) what is the date as of which that alternative regime should commence.

An alternative regime agreed or determined in accordance with this Clause 29C.4 shall be based upon the principle that the amount of compensation payable by the Company should be reduced in direct proportion to the mitigation of the impact of the Company's operations on the Ok Tedi/Fly River System that might be expected to result from the relevant capital spending or the relevant change in the Company's operations, should that capital spending be undertaken or that change in the Company's operations take place. Any determination by an expert pursuant to and in accordance with this Clause 29C.4 shall be final and (subject to Clause 29C.5) binding on the State and the Company, and neither the State nor the Company shall be entitled to refer such determination to arbitration pursuant to this Agreement. The expert shall in all matters act as an expert and not as an arbitrator and the costs of the expert shall be borne by the Company. The Company may give an Initial Notice on more than one occasion.

29C.5 In any circumstances where Clause 29C.4 applies then, notwithstanding that an alternative regime for the payment of compensation in place of the then current General Compensation Obligations may have been agreed or determined in accordance with Clause 29C.4 in that regard, the Company shall not be obliged to undertake the relevant capital spending that it had proposed to undertake, nor shall it be obliged to implement any change in the Company's operations that it had proposed to implement. If the Company decides not to undertake the relevant capital spending or to implement the relevant change in the Company's operations, it must notify the State accordingly and the General Compensation Obligations shall be (subject to any further application of Clause 29C.4) those that applied prior to agreement on or determination of that alternative regime.

29C.6 Clause 29B.4 applies, with necessary changes, in respect of each net present value referred to in this Clause 29C.

29C.7 For avoidance of doubt it is recorded that:

- (a) no amount paid under the General Compensation Obligations;
- (b) no compensation paid under Clause 29E; and
- (c) no compensation paid under Clause 29F

shall be required to be reimbursed by virtue of this Clause 29C.

**29D Distribution of compensation under General Compensation Obligations**

29D.1 The Provincial Government must distribute the amount paid to it by the Company under the General Compensation Obligations in respect of a Due Date to Eligible Persons, or otherwise deal with that amount, on a basis, and in a manner, agreed from time to time between the Provincial Government and the Minister for Mining and Petroleum of the State. It is recognized that Eligible Persons resident in different parts of the Affected Area may receive different amounts, that Eligible Persons in some parts of the Affected Area may receive nothing, that Eligible Persons resident in a particular village or who are members of a particular clan may receive different amounts, and that some Eligible Persons resident in a particular village or who are members of a particular clan may receive an amount while other Eligible Persons in that village or who are members of that clan may receive nothing.

29D.2 Any agreement between the Provincial Government and the Minister for Mining and Petroleum of the State for the purposes of Clause 29D.1 shall be reached in the deliberate judgement of each of them and all acts of the Provincial Government and the Minister for Mining and Petroleum of the State in connection with that agreement shall be non-justiciable to the maximum extent permitted by the Constitution of the State. No dispute, question or difference of opinion concerning any such agreement may be referred to arbitration under Clause 38 of this Agreement.

29D.3 Until the Provincial Government and the Minister for Mining and Petroleum of the State reach agreement on the matters that it is contemplated that they shall agree upon for the purposes of Clause 29D.1 in respect of the distribution of and other dealing with a particular payment by the Company (the "Clause 29D.1 Matters"), the relevant payment by the Company must be paid by the Provincial Government into an interest-bearing account with a trading bank in Papua New Guinea. Within 28 days after agreement is reached by the Provincial Government and the Minister for Mining and Petroleum of the State on all of the Clause 29D.1 Matters, the relevant payment by the Company and any accrued interest thereon must be distributed by the Provincial Government in accordance with that agreement, except to the extent that such agreement requires those moneys to be otherwise dealt with. If agreement has not been reached on all of the Clause 29D.1 Matters by not later than 1 year after the date of a particular payment by the Company under the General Compensation Obligations, the Provincial Government must pay the amount of the relevant payment and any accrued interest thereon to the Lower Ok Tedi/Fly River Development Trust, to be held by that Trust absolutely.

29D.4 No Eligible Person will have or assert any right, title, interest or entitlement in or to any amount paid by the Company under the General Compensation Obligations, or any interest thereon, unless and until moneys have been appropriated for distribution to that Eligible Person in accordance with any agreement between the Provincial Government and the Minister for Mining and Petroleum of the State as contemplated by Clause 29D.1 (and the right, title, interest and entitlement of such Eligible Person shall be limited to a right, title, interest and entitlement in and to those moneys).

**29E Compensation for non-eligible persons**

29E.1 The Company shall pay compensation in accordance with this Clause 29E to Non-Eligible Persons who suffer damage or loss as a result of the Company's operations. No compensation is payable at any time in accordance with this Clause 29E in respect of damage or loss:

- (a) if it would have been impossible at that time, even had this Agreement not been entered into and the Mining (Ok Tedi Restated Eighth Supplemental Agreement) Act 1995 not been passed, successfully to sue for and recover damages in connection with that damage or loss (whether because any relevant limitation period had expired or for any other reason whatsoever);
- (b) if compensation is payable in respect of that damage or loss under Clause 29F; or
- (c) if such damage or loss is suffered after the time at which the Mining (Ok Tedi Restated Eighth Supplemental Agreement) Act 1995 comes into operation.

- 29E.2 A Non-Eligible Person who claims to be entitled to compensation under this Clause 29E for damage or loss suffered as a result of the Company's operations will, acting through a clan leader of that Non-Eligible Person, endeavour to agree with the Company (and the Company will endeavour to agree with that clan leader, on behalf of that Non-Eligible Person) upon the amount of such compensation. If there is a failure by the Company and a clan leader of an affected Non-Eligible Person to agree upon the amount of any compensation payable to that Non-Eligible Person under this Clause 29E the matter shall, upon the request of the Company or that clan leader, be determined in accordance with the procedure provided for in Section 157 of the Mining Act 1992. No such matter may be referred to arbitration under Clause 38 of this Agreement. A request for a determination of the amount of any compensation payable to a Non-Eligible Person under this Clause 29E shall be made by written notice to the Chief Warden, with a copy, in the case of a request by a clan leader, to the Secretary of the Company. Such a notice may relate to more than 1 Non-Eligible Person if each has suffered substantially similar damage or loss. The provisions of Part VII (other than Section 159(c)) of the Mining Act 1992 will (with necessary changes) apply with respect to a determination of the amount of compensation payable to a Non-Eligible Person under this Clause 29E.
- 29E.3 In determining the amount of compensation payable to a Non-Eligible Person under this Clause 29E for damage or loss suffered as a result of the Company's operations, account shall be taken, in addition to all other relevant considerations, of:
- (a) the benefits that the Non-Eligible Person has received and can be expected to continue to receive, both directly and indirectly, as a result of the development and operation of the Project, including, without limitation, matters such as the provision of infrastructure, the generation of income and wealth for the State and Western Province, the creation of job opportunities, the creation of business development opportunities, the provision of better transportation facilities, the provision of better health care and the provision of better educational and training opportunities; and
  - (b) any capital spending incurred or to be incurred, and any change in the Company's operations implemented or to be implemented, to mitigate the impact of the Company's operations on the Ok Tedi/Fly River System.
- 29E.4 A request for determination of the amount of any compensation payable to a Non-Eligible Person under this Clause 29E must be made by notice given in accordance with Clause 29E.2 within 12 months after the time at which the Mining (Ok Tedi Restated Eighth Supplemental Agreement) Act 1995 comes into operation, and (subject to Clause 29E.1) not otherwise.
- 29E.5 No Non-Eligible Person will have or assert any right, title, interest or entitlement in or to any amount of compensation under this Clause 29E unless and until the amount of that compensation has been agreed, in respect of that Non-Eligible Person, between a clan leader of that Non-Eligible Person and the Company or has been determined by a Warden or the National Court (and the right, title, interest and entitlement of such Non-Eligible Person shall be limited to a right, title, interest and entitlement in and to the amount so agreed or determined).

**29F. Specific compensation to eligible persons and non-eligible persons**

29F.1 In addition to the payments required under the General Compensation Obligations and under Clause 29E, the Company will, to the extent that it would not otherwise be required to do so, compensate each person resident in the Affected Area who suffers any of the following kinds of damage or loss as a result of the Company's operations (whether that person is an Eligible Person or a Non-Eligible Person):

- (a) damage to or loss of improvements (including, without limitation, economic trees, vegetable gardens, houses and other structures and goods and chattels);
- (b) damage to or loss of livestock (including poultry but excluding, for avoidance of doubt, wild birds, wild fish, wild turtles, wild crocodiles, and any other wild creatures); and
- (c) damage or loss as a consequence of canoes or other craft being swamped or overturned.

Subject to Clause 29F. 2, the amount of the compensation that is payable will be determined, in any individual case, by agreement between the Company and the person that suffered the damage or loss. If there is a failure by the Company and an affected person to agree upon the amount of any compensation payable to that person under this Clause 29F the matter shall, upon the request of the Company or that person, be determined in accordance with Clause 29F.2 and the procedure provided for in Section 157 of the Mining Act 1992. No such matter may be referred to arbitration under Clause 38 of this Agreement. A request for a determination of the amount of any compensation payable to a person under this Clause 29F shall be made by written notice to the Chief Warden, with a copy, in the case of a request by a person other than the Company, to the Secretary of the Company. The provisions of Part VII (other than Section 159(c)) of the Mining Act 1992 will (with necessary changes) apply with respect to that determination.

29F.2 The amount of compensation that is payable to a person under Clause 29F.1 will be determined, in any individual case, in accordance with the following principles:

- (a) Compensation is payable only in respect of direct physical damage or loss.
- (b) Without limitation to (a), no compensation is payable for indirect damage or loss, or for loss of profits or economic or other consequential damage or loss, or (without limitation to the foregoing) for loss of amenity or other damage to or loss of intangibles.
- (c) The amount of compensation that is payable will be, wherever in the Company's opinion it is practicable to do so, determined on the basis of the same rates as the Valuer-General uses in comparable circumstances.
- (d) No compensation is payable in respect of damage or loss suffered by a person to the extent that:
  - (i) that person could reasonably have foreseen such damage or loss and failed to take whatever steps were open to that person to avoid or mitigate such damage or loss; or

- (ii) without limitation to (i), that person created or contributed to a situation in which such damage or loss was possible and that person could reasonably have foreseen that such damage or loss was possible (whether or not that person created or contributed to that situation with the intention, or otherwise for the purpose, of receiving compensation).

29F.3 No person resident in the Affected Area will have or assert any right, title, interest or entitlement in or to any amount of compensation under this Clause 29F unless and until the amount of that compensation has been agreed between that person and the Company or has been determined by a Warden or the National Court (and the right, title, interest and entitlement of such person shall be limited to a right, title, interest and entitlement in and to the amount so agreed or determined).

**29G REVIEW**

The parties shall meet together during the year 2001 and at intervals of 5 years thereafter with a view to:

- (a) considering in good faith whether the provisions of Clauses 29A, 29B, 29C, 29D, 29E, 29F, 29H and 29I of this Agreement, as amended from time to time, are operating in a satisfactory manner;
- (b) discussing in good faith any problems arising from the practical application of those provisions; and
- (c) agreeing upon any changes to those provisions that may appear necessary in order to ensure that those provisions continue to operate in a satisfactory manner and that any such problems are resolved.

The clan leaders of Eligible Persons and Non-Eligible Persons shall be given an opportunity to make representations to the State and the Company in connection with any such review. No dispute, question or difference of opinion in connection with any such review may be referred to arbitration under Clause 38 of this Agreement.

**29H Paramountcy of Clauses 29A, 29B, 29C, 29D, 29E, 29F AND 29G**

Without limitation to Section 4 of the Mining (Ok Tedi Restated Eighth Supplemental Agreement) Act 1995, the provisions of Clauses 29A, 29B, 29C, 29D, 29E, 29F and 29G prevail over any inconsistent law in force in the State, whether in force before or at the time that Clause 5 of the Restated Eighth Supplemental Agreement becomes effective or at any time thereafter and, notwithstanding Clause 9.8 of this Agreement, prevail also over the Approved Proposals.

**29I Consequences of Invalidity**

- 29L.1 If, or if any provision of, Section 5 of the Mining (Ok Tedi Restated Eighth Supplemental Agreement) Act 1995 is, in whole or in part, not legal, valid and enforceable in accordance with its terms, each of Clauses 29A, 29B, 29C and 29D shall cease to apply unless and except to the extent that, within 60 days after the final judgment of a court to the effect that such illegality, invalidity or unenforceability exists, or within such longer period as the Company may from time to time specify by notice in writing to the Minister for Mining and Petroleum of the State, the Company elects to affirm those Clauses or any of them. If final judgment is given on more than one occasion, the Company has a right of election in connection with each such Judgment. If the Company ceases to be bound to pay compensation under the General Compensation Obligations in consequence of any such illegality, invalidity or unenforceability, then each affected Eligible Person shall be entitled, within 12 months after the final judgment of a court to the effect that such illegality, invalidity or unenforceability exists, to seek compensation in accordance with Clause 29E as if the person were a Non-Eligible Person. For avoidance of doubt it is recorded that no such compensation is payable in respect of damage or loss suffered after the time at which the Mining (Ok Tedi Restated Eighth Supplemental Agreement) Act 1995 comes into operation.
- 29L.2 If, or if any provision of, Section 5 of the Mining (Ok Tedi Restated Eighth Supplemental Agreement) Act 1995 is, in whole or in part, not legal, valid or enforceable in accordance with its terms, the Provincial Government must reimburse to the Company, on demand by the Company, the aggregate of all amounts theretofore paid to the Provincial Government under the General Compensation Obligations (as the General Compensation Obligations existed at the respective times of payment), whether or not the amounts so paid have been distributed or otherwise paid by the Provincial Government. Each person to whom all or part of any such payment has been distributed or otherwise paid must indemnify the Provincial Government with respect to any such reimbursement.
- 29L.3 If, or if any provision of, Section 5 of the Mining (Ok Tedi Restated Eighth Supplemental Agreement) Act 1995 is, in whole or in part, not legal, valid or enforceable in accordance with its terms, the Company and any Sponsor or shareholder in the Company will be entitled to deduct all or any part of the full amount of any payment (the "first-mentioned payment") made by the Company to any person on the mistaken assumption that that Section was, in its entirety, legal, valid and enforceable in accordance with its terms (not being a payment that has been reimbursed under Clause 29L2) from any amount (the "second-mentioned payment") that the Company or that Sponsor or shareholder must otherwise pay, whether by way of compensation (or amounts in the nature of compensation) or otherwise, to persons affected by the operations of the Company (whether or not the person to whom the first-mentioned payment was made is one of the persons to whom the Company or that Sponsor or shareholder must pay the second-mentioned payment and whether or not the person obliged to make payment is the same in each case).
- 5.4 Clause 9.2 of the First Supplemental Agreement is deleted.
- 5.5 The Principal Agreement is amended by inserting the following provision after Clause 23.17:



"23.18 (a) Any payment made by the Company under Clause 29.12, in its form prior to the date upon which Clause 5 of the Restated Eighth Supplemental Agreement becomes effective, is an allowable deduction for the purposes of the Income Tax Act 1959 in respect of the 1994-5 tax year of the Company or in respect of the 1995-6 tax year of the Company (as the Company chooses).

(b) Any payment made by the Company under:

- (i) the General Compensation Obligations;
- (ii) Clause 29E; or
- (iii) Clause 29F

on or after the date upon which Clause 5 of the Restated Eighth Supplemental Agreement becomes effective is an allowable deduction for the purposes of the Income Tax Act 1959 in respect of the tax year of the Company in which it is paid.

(c) A payment received by a person resident in the Affected Area out of any payment made by the Company:

- (i) under Clause 29.12, in its form prior to the date upon which Clause 5 of the Restated Eighth Supplemental Agreement becomes effective; or
- (ii) under:
  - (A) the General Compensation Obligations;
  - (B) Clause 29E; or
  - (C) Clause 29F

is exempt income for the purposes of the Income Tax Act 1959 and is accordingly exempt from income tax. Each payment so made and received is exempt from all other rates, taxes, charges, dues, duties or other levies whether directly or indirectly imposed before, on or after the date upon which Clause 5 of the Restated Eighth Supplemental Agreement becomes effective, and whether directly or indirectly imposed by the State or by Western Province, or by any other entity or authority whatsoever.

(d) Division 2 of Part VI of the Income Tax Act 1959 and any similar provisions of that Act (and, in each case, the corresponding or similar provisions of any other legislation, national, provincial or otherwise) does not apply in respect of any payment:

- (i) under Clause 29.12, in its form prior to the date upon which Clause 5 of the Restated Eighth Supplemental Agreement becomes effective; or
- (ii) under:
  - (A) the General Compensation Obligations;
  - (B) Clause 29E; or
  - (C) Clause 29F.

5.6 The Principal Agreement is amended by inserting, as Schedule IV, the material set out in Appendix 2 to this Agreement.

6. Purchase of additional equity by the State

The Principal Agreement is amended by inserting the following provisions after Clause 11.12:

- 11.13(a) As contemplated by Clauses 3.3(b) and (c) of the Restated Eighth Supplemental Agreement, the State has acquired, or will acquire, from BHP Minerals Holdings Proprietary Limited and Inmet Mining Corporation a further 10% (direct or indirect) of the issued ordinary shares in the capital of the Company. Those shares have been, or will be, acquired as follows:
- (i) from BHP Minerals Holdings Proprietary Limited—8% (being 18,800,000 issued ordinary shares in the capital of the Company); and
  - (ii) from Inmet Mining Corporation—2% (being 4,700,000 issued ordinary shares in the capital of the Company).
- (b) The terms and conditions of those acquisitions were, or will be, as agreed upon between the State and the vendors of the shares. No stamp duty was, or is, payable in respect of any transfer made in connection with those acquisitions.
- (c) The shares have been, or will be, transferred to and held by the State or by a corporation that would, if the State were itself a corporation, be a wholly-owned subsidiary of the State for the purposes of the Companies Act Chapter 146 of the Revised Laws of the State as in force on 1 January 1995. Those shares have been, or will be, transferred to and held by the State or that corporation with the intention that the benefit of those shares will accrue to the people of Western Province. The Minister for Mining and Petroleum of the State will, after consultation with the Provincial Government, determine how best to give effect to the intention referred to in the immediately preceding sentence, consistently nevertheless with the mining policy of the State at the time of such consultation and determination. Unless, and except to the extent that, the Minister for Mining and Petroleum of the State otherwise determines, all voting rights and rights to appoint directors arising out of ownership of, or otherwise in connection with, the shares must at all times be exercisable only by the State and for these purposes the shares will be aggregated with the shares held by the State in its own name. To the extent that the shares are held by a corporation, the State must ensure that that corporation remains, at all times while it holds such shares, a corporation that would, if the State were itself a corporation, be a subsidiary of the State for the purposes of the Companies Act Chapter 146 of the Revised Laws of the State as in force on 1 January 1995. For the purposes of the Income Tax Act 1959 no dividend or other distribution on or in respect of any such shares will form part of the income of any trust estate of which those shares might from time to time form a part. Any determination of the Minister for Mining and Petroleum of the State for the purposes of this Clause 11.13(c) shall be reached in the deliberate judgement of the Minister for Mining and Petroleum of the State and all acts of the Minister for Mining and Petroleum of the State and the Provincial Government in connection with any such determination, or any consultation in that regard, shall be non-justiciable to the maximum extent permitted by the Constitution of the State. No dispute, question or difference of opinion concerning any such determination or consultation may be referred to arbitration under Clause 38 of this Agreement.

- (d) No person resident in Western Province will have or assert any right, title, interest or entitlement in or to any shares referred to in Clause 11.13(c) or any dividend or other distribution on or in respect of any such shares except if and to the extent that, consistently nevertheless with Clause 11.14, any such right, title, interest or entitlement arises as a result of any determination of the Minister for Mining and Petroleum of the State under Clause 11.13(c).
- 11.14 The State and any corporation referred to in Clause 11.13(c) may transfer any of the ordinary shares respectively held by it in the capital of the Company in accordance with the Articles of Association of the Company and any agreement between shareholders, but not otherwise. Any shares so transferred may only be further transferred in accordance with the Articles of Association of the Company and any agreement between shareholders, but not otherwise. No person other than a person to whom shares are transferred in compliance with this Clause 11.14 may have any interest in any such shares.
7. **Special Support Grant—Lower Ok Tedi/Fly River Development Trust.**  
The Principal Agreement, as amended by Clause 5, is amended by inserting the following after Clause 29I:
- "29J Special Support Grant**
- 29J.1 The government of Western Province will from time to time identify projects to be funded out of the Special Support Grant. Projects will be identified on the basis that:
- approximately 20% of the Special Support Grant is to be applied in the vicinity of Tabubil;
  - approximately 40% of the Special Support Grant is to be applied in the area of the North Fly (outside the vicinity of Tabubil); and
  - approximately 40% of the Special Support Grant is to be applied in the area of the South Fly.
- 29J.2 Subject to Clause 29J.3, the Company will have the right and responsibility, during the life of the Project, to implement the projects referred to in Clause 29J.1. Unless the Lower Ok Tedi/Fly River Development Trust has ceased to exist, those projects will be implemented as part of the Trust's programme.
- 29J.3 The Company will involve the Provincial Works Department of Western Province in the implementation of the projects referred to in Clause 29J.1. The Company will assist that Department to put in place an agency or other instrumentality which will assume responsibility for implementing and maintaining such projects.
- 29J.4 Neither the Company nor any of its employees, agents and contractors shall have any liability under any statute or other law of the State for any act or omission by it or them in connection with the implementation of any project by the Lower Ok Tedi/Fly River Development Trust (whether or not that project has been identified by the government of Western Province under Clause 29J.1) unless that act or omission arises from an intentional failure to perform a manifest duty in reckless disregard of the consequences, or arises from wilful misconduct."
8. **Amendments resulting from changes in shareholdings**

- 8.1 With effect from the First Effective Date (as defined in the Amendment Agreement (Second Restated Shareholders Agreement) dated 25 November 1993 in connection with the Shareholders Agreement (the "First Amendment Agreement")):
- (a) Amoco Corporation ceased to have any rights or obligations as a "Sponsor" for the purposes of the Principal Agreement and the First Supplemental Agreement;
  - (b) Amoco Corporation ceased to be bound as a party to the Fourth Supplemental Agreement, the Fifth Supplemental Agreement, the Sixth Supplemental Agreement and the Seventh Supplemental Agreement;
  - (c) Amoco Corporation ceased to be bound by Clause 5 of the First Supplemental Agreement (as amended); and
  - (d) Amoco Corporation was released and discharged from all obligations, liabilities, claims and demands arising under or in respect of the Fourth Supplemental Agreement, the Fifth Supplemental Agreement, the Sixth Supplemental Agreement and the Seventh Supplemental Agreement.
- 8.2 With effect from the Second Effective Date (as defined in the First Amendment Agreement):
- (a) Amoco ceased to have any rights or obligations as a "Sponsor" for the purposes of the Principal Agreement and the First Supplemental Agreement;
  - (b) Amoco ceased to be bound as a party to the Fourth Supplemental Agreement, the Fifth Supplemental Agreement, the Sixth Supplemental Agreement and the Seventh Supplemental Agreement;
  - (c) Amoco ceased to be bound by Clause 5 of the First Supplemental Agreement (as amended); and
  - (d) Amoco was released and discharged from all obligations, liabilities, claims and demands arising under or in respect of the Fourth Supplemental Agreement, the Fifth Supplemental Agreement, the Sixth Supplemental Agreement and the Seventh Supplemental Agreement.
- 8.3 Clause 5.6 of the First Supplemental Agreement is amended:—
- (a) by inserting the following after "transfer" where first appearing in paragraph (c) thereof:  
 "(other than a transfer referred to in Clause 5.6(d))"; and
  - (b) by inserting the following new paragraph after paragraph (c) thereof:  
 "(d) For the purposes of this Agreement the Series A Cumulative Redeemable Preference Certificates initially issued to Amoco Ocean Tanker Company and subsequently transferred to successive other holders shall be deemed to have been initially issued to BHP Minerals and the outstanding such Preference Certificates shall be deemed to constitute the furnishing of Support by BHP Minerals in the amount of the Share Value of such Preference Certificates."
- 8.4 Without limitation to the ensuing provisions of this Clause 8:
- (a) DG, DEG and MG will no longer have any rights or obligations as "Sponsors" for the purposes of the Principal Agreement and the First Supplemental Agreement;

- (b) MMC will have rights and obligations as a "Sponsor" for the purposes of the Principal Agreement and the First Supplemental Agreement;
- (c) DG, DEG and MG will no longer be bound as parties to the Second Supplemental Agreement, the Fourth Supplemental Agreement, the Fifth Supplemental Agreement, the Sixth Supplemental Agreement and the Seventh Supplemental Agreement;
- (d) DG, DEG and MG will no longer be bound by Clause 5 of the First Supplemental Agreement (as amended); and
- (e) DG, DEG and MG are released and discharged from all obligations, liabilities, claims and demands arising under or in respect of the Second Supplemental Agreement, the Fourth Supplemental Agreement, the Fifth Supplemental Agreement, the Sixth Supplemental Agreement and the Seventh Supplemental Agreement.

8.5 The Principal Agreement is amended by substituting the following for Clause 11.9:

"11.9 For so long as it holds not more than 50% of the issued and outstanding ordinary shares in the capital of the Company, the State shall be entitled to appoint one director of the Company for each whole fourteen and two-sevenths per centum of the issued and outstanding ordinary shares of the Company that form part of the shareholding of the State (or that are, under Clause 11.13(c), to be aggregated with the shares held by the State in its own name). In addition, unless as a result the number of directors of the Company would exceed the maximum permitted under its Articles of Association, the State shall be entitled to appoint one director of the Company for each whole seven and one-seventh per centum of the issued and outstanding ordinary shares of the Company that form part of the shareholding of the State (or that are, under Clause 11.13(c), to be aggregated with the shares held by the State in its own name) and that have not been taken into account for the purposes of the immediately preceding sentence."

It is hereby recorded that, as at the date of this Agreement, it is intended that BHP Minerals should be entitled to appoint 4 directors of the Company, the State should be entitled to appoint 2 directors of the Company and MMC should be entitled to appoint 1 director of the Company.

8.6 Clause 5.5(a) of the First Supplemental Agreement is amended:—

- (a) by substituting the following for the definition of "DEG":  
 "DEG" means DEG-Deutsche Investitions-und Entwicklungsgesellschaft mbH (formerly DEG—Deutsche Finanzierungsgesellschaft fuer Beteiligungen in Entwicklungslaendern GmbH).";
- (b) by deleting the following from the definition of "Electing Sponsor":  
 "Amoco has given (or is deemed to have given) such a notice then Amoco Corporation shall also be deemed to be an "Electing Sponsor" for the purposes of this Agreement and if";
- (c) by inserting the following definition after the definition of "MG":  
 "MMC" means Inmet Mining Corporation (formerly Metall Mining Corporation).";

- (d) by deleting the definition of "Related Corporation", and by substituting the following therefor:

"Related Corporation" has the meaning given to "related corporation" in the Principal Agreement.;

- (e) by deleting the definition of "Sponsor", and by substituting the following therefor:

"Sponsor" means any of the State, BHP Minerals, BHP and MMC, and any other person which, after the date upon which Clauses 8.4, 8.5, 8.6, 8.7, 8.8 and 8.9 of the Restated Eighth Supplemental Agreement become effective:

- (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 BHP Minerals 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 and BHP, if discharged or satisfied by either BHP Minerals or BHP severally, or by both BHP Minerals and BHP jointly, and any obligation or liability hereunder of any other party shall be discharged or satisfied, as regards BHP Minerals and BHP, if discharged or satisfied by such party in favour of:

- (i) BHP Minerals severally;
- (ii) BHP severally; or
- (iii) BHP Minerals 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 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 or, if no such notice has been given, if it has discharged or satisfied that obligation or liability in favour of BHP Minerals severally or BHP severally or BHP Minerals and BHP jointly.;

8.7 Clause 5.6 of the First Supplemental Agreement is amended:—

- (a) by inserting ", (e) or (f)" after "Clause 5.6(d)" in paragraph (c) thereof;

and

- (b) by inserting the following new paragraphs after paragraph (d) thereof:

"(e) For the purposes of this Agreement:

- (i) the Series A Cumulative Redeemable Preference Certificates initially indirectly issued to MG and DG and subsequently transferred to other holders shall be deemed to have been initially issued to MMC; and

- (ii) the Series A Cumulative Redeemable Preference Certificates initially indirectly issued to DEG shall be deemed to have been initially issued to MMC

and the outstanding such Preference Certificates shall be deemed to constitute the furnishing of Support by MMC in the amount of the Share Value of such Preference Certificates.

(f) For the purposes of this Agreement:

- (i) the Series A Cumulative Redeemable Preference Certificates initially directly issued to the State and subsequently transferred to BHP shall be deemed to have been initially issued to BHP Minerals; and
- (ii) the Series A Cumulative Redeemable Preference Certificates initially indirectly issued to the State and subsequently transferred:
  - (A) (as to 1,000,000 Series A Cumulative Redeemable Preference Certificates) to BHP, shall be deemed to have been initially issued to BHP Minerals and not to the State; and
  - (B) (as to 4,000,000 Series A Cumulative Redeemable Preference Certificates) to MMC, shall be deemed to have been initially issued to MMC and not to the State

and the outstanding such Preference Certificates shall be deemed to constitute the furnishing of Support by BHP Minerals and MMC in the respective amounts of the Share Values of such Preference Certificates."

8.8 Clause 5.12(a) of the First Supplemental Agreement is amended:

- (a) by deleting "(or, subject to Clause 7.7 of the Shareholders Agreement, SMH to the extent that Series A Cumulative Redeemable Preference Certificates issued to SMH are held indirectly by the State) or (if the Series A Cumulative Redeemable Preference Certificates issued, directly or indirectly, to and held by the State shall have been exhausted) by any transferee (other than a Corporate Sponsor to the extent that such Corporate Sponsor has received the same pursuant to Clause 6 of the Shareholders Agreement or this Clause 5.12) of Series A Cumulative Redeemable Preference Certificates initially issued, directly or indirectly, to the State"; and
- (b) by deleting "(or, in the case of SMH, and subject to Clause 7.7 of the Shareholders Agreement, until exhaustion of the Share Value of such Preference Certificates issued to SMH and held indirectly by the State)".

8.9 Clause 5.13(c) of the First Supplemental Agreement is amended by substituting "MMC" for "MG, DG and DEG" therein.

8.10 It is hereby recorded that:

- (a) as at the date of this Agreement, the Sponsors have no obligations or liabilities under any provision of the Marubeni Completion and Cash Deficiency Agreement;
- (b) the Commitment Period referred to in paragraph (a) of the definition, in Clause 5.5 of the First Supplemental Agreement, of "Revolving Facility" expired prior to the date of this Agreement;

- (c) the Commitment Period referred to in paragraph (b) of the definition, in Clause 5.5 of the First Supplemental Agreement, of "Revolving Facility", expired prior to the date of this Agreement;
- (d) the Facility the subject of the Project Finance Agreement referred to in paragraph (a) of the definition, in Clause 5.5 of the First Supplemental Agreement, of "State Supported Loans" was repaid in full prior to the date of this Agreement; and
- (e) the Facility the subject of the Credit Agreement referred to in paragraph (c) of the definition, in Clause 5.5 of the First Supplemental Agreement, of "State Supported Loans" was repaid in full prior to the date of this Agreement.

**9. Miscellaneous Amendments**

- 9.1 Clause 2.1 of the Principal Agreement, as amended by Clause 4.2, is amended by substituting the following for paragraph (c) thereof:
- "(c) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution for that Act and any regulations for the time being in force thereunder, and reference to any provision of any Act includes that provision as amended from time to time and any provision substituted for or otherwise replacing that provision from time to time;"
- 9.2 The Principal Agreement is amended by inserting the following provisions after Clause 2.2:
- 2.3 Any reference in this Agreement or in any agreement supplemental to this Agreement to a Sponsor (whether or not by name) includes, where the context permits, any related corporation of that Sponsor.
- 2.4 The term of this Agreement and of each agreement supplemental to this Agreement shall expire upon termination of this Agreement. Each agreement supplemental to this Agreement shall be read and construed and take effect for all purposes as if the term provided for by this Clause 2.4 were specifically provided for therein.
- 2.5 This Agreement shall be read and construed subject to the Constitution of the State and any relevant Organic Law of the State to the intent that any provision of this Agreement that is inconsistent with the Constitution of the State or any such Organic Law shall be read down so that it has the greatest effect (if any) possible without there being such an inconsistency."
- 9.3 Clause 12.5 of the Principal Agreement is amended by adding the following sentence:
- "This Clause 12.5 does not apply with respect to compensation payable under, or any other matter referred to in, Clause 29, 29A, 29B, 29C, 29D, 29E, 29F, 29G, 29H or 29L."
- 9.4 Clause 14.10 of the Principal Agreement is amended by substituting the following for "Harbours Act":
- "Harbours Board Act".



- 9.5 Clause 16.2 of the Principal Agreement is amended by substituting the following for "contractors for":  
"contractors. The Company, its employees, agents and contractors shall have the right to use all roads referred to in this Clause 16.2 (including, without limitation, the Kiunga-Tabubil Road) and all roads in the Mining Area for".
- 9.6 The Principal Agreement is amended by inserting the following provision after Clause 16.5:  
"16.6 Without limitation to anything elsewhere contained in this Agreement, the Company and its employees, agents and contractors are not obliged to make any payment in respect of any use of any road referred to in Clause 16.2 (including, without limitation, the Kiunga-Tabubil Road) except as specifically required by the Infrastructure Agreement dated 30 November 1981 between North Fly Highway Development Company Pty Limited and the Company (as amended and restated from time to time).".
- 9.7 Clause 23.1 of the Principal Agreement is amended by substituting the following for the definition of "Tax Year" therein:  
"Tax Year" means:  
(a) each successive period of twelve months that ends on 31 December, the last such period being the period that ended on 31 December 1993;  
(b) the period of five months that ended on 31 May 1994; and  
(c) each successive period of twelve months that ends on 31 May, the first such period being the period that ended on 31 May 1995,  
being, in each such case, a year of income for the Company;".
- 9.8 Clause 23.12 of the Principal Agreement is amended by substituting "read and construed as if" for "read and construed as it".
- 9.9 The Principal Agreement (as amended by Clause 5.5 of this Agreement) is amended by inserting the following provisions at the end of Clause 23:  
"23.19 Any payment made by the Company under the Infrastructure Agreement dated 30 November 1981 between North Fly Highway Development Company Pty Limited and the Company (as amended and restated from time to time) (and whether made before, on or after the date upon which Clause 9 of the Restated Eighth Supplemental Agreement becomes effective) is an allowable deduction for the purposes of the Income Tax Act 1959 in respect of the tax year of the Company in which it is made.  
23.20 Each loss or outgoing incurred by the Company in or in connection with, or that is otherwise incidental to:  
(a) any of the proceedings the subject of proceedings No 5782, No 5980, No 6861 and No 6862 of 1994 in the Supreme Court of Victoria, Australia;  
(b) the proceedings the subject of Writ of Summons No. 709 of 1994 in the National Court of Justice at Waigani;  
(c) any of the proceedings the subject of, or the subject of any of the writs referred to in, Originating Summons No 450 of 1994 in the National Court of Justice at Waigani;

- (d) any of the proceedings the subject of Writ of Summons No 305 of 1995 in the National Court of Justice at Waigani;
- (e) any proceedings challenging the legality, validity or enforceability, in whole or in part, of this Agreement or any agreement that varies or amends or is supplemental to this Agreement or any statute or other law that relates to this Agreement or any such agreement;
- (f) (without limitation to paragraphs (a), (b), (c), (d) and (e)) any Compensation Proceedings;
- (g) any proceedings referred to in any one or more of paragraphs (a), (b), (c), (d), (e) and (f) of the definition, in the Mining (Ok Tedi Restated Eighth Supplemental Agreement Act 1995, of "Compensation Proceedings"; or
- (h) any proceedings associated with or ancillary to any proceedings referred to in Clause 23.20 (a), (b), (c), (d), (e), (f) or (g),

including (without limitation) any damages, compensation or other form of monetary or non-monetary relief, is an allowable deduction for the purposes of the Income Tax Act 1959 in respect of the tax year of the Company in which it is incurred.

23.21 No stamp duties or other taxes, charges or other levies shall be applicable to, or be payable in respect of, any transfer of any shares in the capital of the Company in the course of a distribution of the assets of Star Mountains Holding Company Pty Limited to any of its shareholders upon its winding-up.

9.10 Clause 24 of the Principal Agreement is amended:

- (a) by substituting the following for "The Company shall pay royalty at the rate of one and one quarter per cent (1¼%)":

"Subject to Clause 24.3, the Company shall pay royalty at the rate of two per cent (2%); and

- (b) by inserting the following provision after Clause 24.2:

24.3 The Company shall be entitled to a credit, against the income tax payable in respect of any Tax Year, for an amount (a "Tax Credit") equal to:

- (a) the aggregate amount of royalty paid or estimated in good faith by the Company to be payable during that Tax Year under Clause 24.2;

LESS

- (b) the aggregate amount of royalty that would have been paid or that the Company estimates in good faith would have been payable during that Tax Year had such royalty been payable at the rate of one and one quarter per cent (1¼%) instead of two per cent (2%).

If the Tax Credit in respect of any Tax Year exceeds the income tax payable by the Company in respect of that Tax Year, the excess shall be carried forward and shall be added to, and shall form part of, the Tax Credit in respect of each ensuing Tax Year, until fully utilized.

9.11 The Principal Agreement is amended by inserting the following provision after Clause 25.5:

"25.6 Without limitation to Clause 8 of the First Supplemental Agreement and for avoidance of doubt, it is hereby recorded that, to the maximum extent permissible, this Clause 25 applies to rates, taxes, rents, charges, dues, duties, tariffs, levies and legislation of any province or other entity or authority as well as to those of the State itself."

9.12 Clause 28 of the Principal Agreement is amended:

(a) by substituting the following for "the Company and Danco are hereby deemed to be registered" in Clause 28.1;

"the Company, Danco and The Broken Hill Proprietary Company Limited are each hereby deemed to have been registered at all material times";

(b) by substituting the following for "incidental thereto and contemplated by or required to carry out" in Clause 28.1:

"incidental thereto or connected therewith or contemplated by or intended for the purpose of carrying out"; and

(c) by inserting the following provision after Clause 28.2:

"28.3 Notwithstanding anything expressly or by implication to the contrary contained in the Investment Promotion Act 1992, and without limitation to Clause 2.1(c):

(a) the Company;

(b) Star Mountains Holding Company Pty Limited; and

(c) The Broken Hill Proprietary Company Limited

shall each be deemed at all times to have been granted a certificate under Part IV of that Act permitting them respectively to carry on business in all activities in Papua New Guinea in which, as at the date of the Restated Eighth Supplemental Agreement, they carry on business in connection with the Project. For avoidance of doubt it is hereby recorded that Section 32 of the Investment Promotion Act 1992 does not apply to the Company or Star Mountains Holding Company Pty Limited."

9.13 Clause 38.2(a) (i) of the Principal Agreement is amended by deleting the following:—

"and each other Party hereto that has elected to participate in such arbitration within the period of 30 days after the end of the 15-day period referred to in the preceding sentence".

9.14 Clause 40 of the Principal Agreement is amended by inserting the following provision after Clause 40.4:

- "40.5 Notwithstanding that the Company might not have executed a mortgage or charge in the prescribed form pursuant to Part VII of the Land Registration Act Chapter 191 of the Revised Laws of the State, and notwithstanding that an instrument of mortgage or charge might not have been registered in respect of any land or estate or interest in land of which the Company from time to time is registered as the proprietor under that Act, the General Deed of Charge dated 11 February 1982 between the Company and Citicorp Australia Limited, and each Supplemental Deed within the meaning of that General Deed of Charge, confer a good security in accordance with their respective terms on the persons entitled to the benefit thereof and that land, estate or interest is liable as a security and encumbered accordingly."
- 9.15 Clause 46.2 of the Principal Agreement is amended by substituting the following for "Daunpiet Mining Company Limited, 140 William Street, Melbourne, VICTORIA. 3000 AUSTRALIA.":
- "The Broken Hill Proprietary Company Limited  
600 Bourke Street  
Melbourne, Victoria  
Australia  
Attn: Group General Manager Finance, BHP Minerals."
- 9.16 Clause 5.3(b) of the First Supplemental Agreement is amended:
- (a) by substituting "the end of a financial year" for "31 December in any year" in the definition of "Kina Balance Sheet"; and
- (b) by substituting "Commissioner of Taxation" for "Chief Collector of Taxes" in subparagraph (ii) of the definition of "Shareholders Funds".
- 9.17 Clause 5.5(a) of the First Supplemental Agreement is amended by deleting the definitions of "Shareholding Percentage" and "Treasurer".
- 9.18 Clause 5.5 of the First Supplemental Agreement is amended by inserting the following provision after Clause 5.5(c):
- "(d) Where, in this Clause 5, calculations or determinations are to be made, or other action is to be taken, by reference to a "year" or a "calendar year", those calculations or determinations may instead be made, and that action may instead be taken, if the Company chooses, by reference to a financial year of the Company."
- 9.19 The First Supplemental Agreement is amended by substituting the following for Clause 5.20(a):
- "(a) Any notice required or permitted under this Clause 5 shall be in writing, shall be dated the day upon which it is dispatched and shall be given by:
- (i) letter delivered by personal delivery;
- (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 dispatch); or
- (iii) facsimile
- in any case addressed as follows:
- if to the State:

The Secretary  
Department of Finance and Planning  
PO Box 710  
Waigani, Papua New Guinea  
Telex: NE22218  
(Answerback: FINANCE)  
Facsimile No: (675) 328 8495

if to BHP or BHP Minerals:

The Broken Hill Proprietary Company Limited  
600 Bourke Street  
Melbourne, Victoria  
Australia  
Attn: Group General Manager Finance,  
BHP Minerals  
Telex: AA30408  
(Answerback: BHP)  
Facsimile No: (61)(3) 9609 3256

if to MMC:

Inmet Mining Corporation  
Suite 3400, Aetha Tower  
Toronto Dominion Centre  
79 Wellington Street West  
Toronto  
Ontario M5K 1A1  
Canada  
Attn: President  
Facsimile No: (1) (416) 368 4692

if to the Company:

Dakon Road  
Tabubil  
Western Province  
Papua New Guinea  
(mailing address:  
PO Box 1  
Tabubil  
Western Province  
Papua New Guinea)  
Attn: Managing Director  
Telex: 60103  
(Answerback: OKTABUL)  
Facsimile No: (675) 589 312."

9.20 Clause 5.20(c) of the First Supplemental Agreement is amended by inserting the following sentence at the end:

"Any notice hereunder given by facsimile shall be deemed to have been given when the facsimile has been sent and the sender has received a transmission confirmation report showing the relevant number of pages, the correct destination facsimile number and the result of the transaction as "OK" (or, if the sender's facsimile machine is not equipped to issue such a transmission confirmation report, the recipient acknowledges that the notice has been received)."

- 9.21 Clause 7.2(b) of the First Supplemental Agreement is amended by substituting the following for from the Company to the Minister for Minerals and Energy of the State":

"from the Minister for Minerals and Energy of the State to the General Manager of the Company".

10. Eighth Supplemental Agreement

The Eighth Supplemental Agreement, being the agreement dated as of the 4th day of August 1995 headed "Eighth Supplemental Agreement" between the State, The Broken Hill Proprietary Company Limited, BHP Minerals Holdings Proprietary Limited, Inmet Mining Corporation and the Company, is hereby terminated. This Agreement replaces that Agreement.

11. Enurement

This Agreement, and the Principal Agreement and the First Supplemental Agreement as respectively heretofore amended and as further amended by this Agreement, shall enure for the benefit of the parties hereto and thereto and their respective permitted assignees and this Agreement shall also enure for the benefit of Amoco Corporation, Amoco, MG, DG and DEG. Neither this Agreement, nor the Principal Agreement (as so amended), nor the First Supplemental Agreement (as so amended), is intended to, nor shall it, enure for the benefit of 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, or any transferee (other than a party hereto) of a Series A Cumulative Redeemable Preference Certificate.

12. Consolidation

If:

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

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

13. 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.

Appendix 1

[NOTE: THE FOLLOWING IS ONLY AN OUTLINE OF THE MATTERS REFERRED TO.]

1. The following arrangements replace any current right to make claims in connection with environmental effects of Ok Tedi Mining Limited's operations.
2. Residents of the Affected Area will have 6 months after this Act commences in which to elect that they want compensation determined by agreement with the Company or, failing agreement, by a Warden under the procedures of Part VII of the Mining Act 1992. An appeal can be made from a Warden's determination to the National Court.
3. All residents of the Affected Area who do not elect as referred to in paragraph 2 above will instead be entitled to participate in arrangements under which the Company must pay general compensation each year on the basis of a fixed amount per tonne of ore mined or waste excavated. General compensation will be distributed in accordance with arrangements to be agreed with the Minister for Mining and Petroleum.
4. All residents of the Affected Area, whether they are seeking compensation in accordance with paragraph 2 above, or participate in the general compensation arrangements in accordance with paragraph 3 above, may claim specific compensation for particular types of damage or loss (such as damage to or loss of improvements and livestock).
5. If more than 15,000 people elect as referred to in paragraph 2 above, the Company may require all residents of the Affected Area to proceed in that way.
6. Compensation received under the procedures outlined in paragraph 2 above, or in proceedings Nos 5782, 6861 and 6862 of 1994 in the Supreme Court of Victoria, up to an aggregate of K20,000,000 (adjusted for CPI changes), will be netted off against the Company's obligation to pay general compensation as referred to in paragraph 3 above.
7. People who elect as referred to in paragraph 2 above are not entitled to claim compensation in accordance with paragraph 2 for damage or loss suffered after this Act commences, and must request a Warden's determination within 12 months after this Act commences (or not at all). They may nevertheless claim specific compensation for particular damage or loss of the kind referred to in paragraph 4 above, even if that damage or loss is incurred after this Act commences.
8. These arrangements will be reviewed at 5 yearly intervals. The first review will be in 2001.

Appendix 2

SCHEDULE IV

[NOTE: THIS SCHEDULE IS ILLUSTRATIVE ONLY AND DOES NOT SPECIFY ACTUAL PAYMENT OBLIGATIONS.]

1. Assume that:

- (1) the tonnages of mine waste excavated in each of the Relevant Periods (or calendar years) set out in Column 1 are as set forth in Column 2;
- (2) the tonnages of ore mined in each of those Relevant Periods are as set forth in Column 3;
- (3) the sum of F.O.B. Revenue and Net Smelter Returns in respect of each of those Relevant Periods is as set forth in Column 4; and
- (4) the CPI as at 30 June 1994 is 259.8 and the CPI as at 30 June in each of those Relevant Periods is as set forth in Column 5 (assuming for these purposes only that the CPI increase in each year is a flat 5%).

Relevant Period	Waste (kt)	Ore (kt)	F.O.B. Revenue and NSR (Kina '000)	CPI as at 30 June
1995	36,215	30,019	688,272	272.8
1996	36,392	29,113	566,164	286.4
1997	36,500	29,200	547,113	300.8
1998	36,500	29,200	531,792	315.8
1999	36,500	29,200	501,418	331.6

2. It follows that the Specified Amounts and the tonnages and amounts determined under the various provisions of Clause 29B.2 are as follows in respect of each of the following Due Dates:

31 March 1996:

Specified Amount:	K0.068422
Clause 29B.2(a):	66,234,000 tonnes
Clause 29B.2(b)(i):	K4,000,000
Clause 29B.2(b)(ii)(A):	K9,635,808
Clause 29B.2(b)(ii)(B)(1):	K4,531,845
Clause 29B.2(b)(ii)(B)(2):	K4,200,000

31 March 1997:

Specified Amount:	K0.071843
Clause 29B.2(a):	65,505,000 tonnes
Clause 29B.2(b)(i):	K4,531,845
Clause 29B.2(b)(ii)(A):	K7,926,297
Clause 29B.2(b)(ii)(B)(1):	K4,706,064
Clause 29B.2(b)(ii)(B)(2):	K4,758,438

31 March 1998:

Specified Amount:	K0.075435
Clause 29B.2(a):	65,700,000 tonnes
Clause 29B.2(b)(i):	K4,758,438
Clause 29B.2(b)(ii)(A):	K7,659,577
Clause 29B.2(b)(ii)(B)(1):	K4,956,077
Clause 29B.2(b)(ii)(B)(2):	K4,996,360

31 March 1999:

Specified Amount:	K0.079207
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Clause 29B.2(a):	65,700,000 tonnes
Clause 29B.2(b)(i):	K4,996,360
Clause 29B.2(b)(ii)(A):	K7,445,087
Clause 29B.2(b)(ii)(B)(1):	K5,203,881
Clause 29B.2(b)(ii)(B)(2):	K5,246,178

31 March 2000:	
Specified Amount:	K0.083167
Clause 29B.2(a):	65,700,000 tonnes
Clause 29B.2(b)(i):	K5,246,178
Clause 29B.2(b)(ii)(A):	K7,019,857
Clause 29B.2(b)(ii)(B)(1):	K5,464,075
Clause 29B.2(b)(ii)(B)(2):	K5,508,486

3. It follows that the amounts determined under Clauses 29B.2(b)(i), (b)(ii)(A) and (b)(ii)(B) are as follows in respect of each of the following Due Dates (where Clause 29B.2(b)(ii)(B) is the greater of Clauses 29B.2(b)(ii)(B)(1) and (2)):

31 March 1996:	
Clause 29B.2(b)(i):	K4,000,000
Clause 29B.2(b)(ii)(A):	K9,635,808
Clause 29B.2(b)(ii)(B):	K4,531,845

31 March 1997:	
Clause 29B.2(b)(i):	K4,531,845
Clause 29B.2(b)(ii)(A):	K7,926,297
Clause 29B.2(b)(ii)(B):	K4,758,438

31 March 1998:	
Clause 29B.2(b)(i):	K4,758,438
Clause 29B.2(b)(ii)(A):	K7,659,577
Clause 29B.2(b)(ii)(B):	K4,996,360

31 March 1999:	
Clause 29B.2(b)(i):	K4,996,360
Clause 29B.2(b)(ii)(A):	K7,445,087
Clause 29B.2(b)(ii)(B):	K5,246,178

31 March 2000:	
Clause 29B.2(b)(i):	K5,246,178
Clause 29B.2(b)(ii)(A):	K7,019,857
Clause 29B.2(b)(ii)(B):	K5,508,486

4. It follows that the amount of compensation payable in respect of each such Due Date (being the greater of Clauses 29B.2(b)(i) and (ii) where Clause 29B.2(b)(ii) is the lesser of Clauses 29B.2(b)(ii)(A) and (B)) is as follows:

31 March 1996:	K4,531,845
31 March 1997:	K4,758,438
31 March 1998:	K4,996,360
31 March 1999:	K5,246,178
31 March 2000:	K5,508,486

IN WITNESS WHEREOF the parties hereto have executed this Agreement the ... day of November 1995.

SIGNED for and on behalf of THE )  
INDEPENDENT STATE OF PAPUA NEW )  
GUINEA by SIR WIWA KOROWL, )  
GCMG, K.S.J., Governor-General, )  
acting with and in accordance )  
with the advice of the National )  
Executive Council, in the )  
presence of: )

\_\_\_\_\_  
SIGNED for and on behalf of THE )  
BROKEN HILL PROPRIETARY COMPANY )  
LIMITED by its duly authorized )  
signatory in the presence of: )

\_\_\_\_\_  
SIGNED for and on behalf of BHP )  
MINERALS HOLDINGS PROPRIETARY )  
LIMITED by its duly authorized )  
signatory in the presence of: )

\_\_\_\_\_  
SIGNED for and on behalf of )  
INMET MINING CORPORATION by its )  
duly authorized signatory in the presence of: )

\_\_\_\_\_  
SIGNED for and on behalf of OK )  
TEDI MINING LIMITED by its duly )  
authorized signatory in the presence of: )

\_\_\_\_\_

Office of Legislative Counsel, PNG