



**"AN ACT TO RATIFY THE MINERAL DEVELOPMENT  
AGREEMENT BETWEEN THE GOVERNMENT OF THE  
REPUBLIC OF LIBERIA AND HUMMINGBIRD  
RESOURCES (LIBERIA) INC.**

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MINERAL DEVELOPMENT AGREEMENT

Between

THE GOVERNMENT OF  
THE REPUBLIC OF LIBERIA

and

HUMMINGBIRD RESOURCES (LIBERIA) INC

Dated, this 10<sup>th</sup> day of January A.D. 2019

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## MINERAL DEVELOPMENT AGREEMENT

This Mineral Development Agreement (hereinafter referred to as the “Agreement”) is made the 10<sup>th</sup> day of January, A.D. 2019 by and between

### THE GOVERNMENT OF THE REPUBLIC OF LIBERIA

(as hereinafter defined, the “Government”) represented by the Minister of Mines and Energy, the Minister of Finance and Development Planning, and the Chairman of the National Investment Commission, and attested to by the Minister of Justice, and

### HUMMINGBIRD RESOURCES (LIBERIA) INC.,

a corporation organized under the laws of Liberia, TIN Number 500014566 (as hereinafter defined, the “Company”) represented by its Chairman, Daniel Edward Betts.

### WITNESSETH:

- A. Every mineral on the surface of the ground or in the soil or sub-soil, rivers, water courses, territorial waters and continental shelf of Liberia is the property and national wealth of Liberia and all rights related to the exploration for and exploitation of minerals belong exclusively to Liberia.
- B. The Government desires to encourage the further exploration and development of minerals in Liberia, and wishes to promote and facilitate the operation of mining companies in connection therewith.
- C. Through the equitable and optimal exploitation of Liberia’s mineral resources the Government hopes to underpin broad-based sustainable growth and socio-economic development.
- D. The Government also desires, through the operation of mining companies, to benefit regions in which minerals are developed, including facilitating growth centers and education for sustainable regional development, to create more employment opportunities, to encourage and develop local business and ensure that skills, know-how and technology are transferred to citizens of Liberia, to acquire basic data regarding and related to the country’s mineral resources and to preserve and rehabilitate the natural environment for further development of Liberia.
- E. The Company has received and furnished to the Government a written opinion of a Qualified Person that a portion of the Exploration Area contains Inferred Mineral Resources and the Company has requested the Government to enter into this Agreement for the Mining of Gold.

- F. The Company has requested the Government to extend and modify its exploration rights and to enter into this Agreement setting forth the terms on which (i) the Government will issue a Class A Mining License for the Mining of Gold from the Proposed Production Area and (ii) the Company may exercise the rights granted under such license.

NOW, THEREFORE, the Parties hereby agree as follows:

## **SECTION 1 DEFINITIONS, TERMINOLOGY AND INTERPRETATION**

Capitalized terms used in this Agreement without other definition have the respective meanings assigned thereto in this Section 1 of this Agreement.

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

"10% Company Shareholder" means any shareholder of the Company who holds 10% or more of the voting rights of the Company.

"Additional Areas" has the meaning given in Section 4.11.

"Affiliate" of any Person means any other Person that directly or indirectly Controls or is Controlled by or is under common Control with, such Person.

"Agreement" means this Mineral Development Agreement as well as all schedules and exhibits annexed to it, as they may from time to time be amended.

"Arm's Length" means the relationship that exists between two (2) or more entities which are not Affiliates or Controlled by related parties, and where neither of such entities exerts or is in a position to exert significant influence on any of the other entities.

"Business Day" means any day other than a Saturday or Sunday or a holiday declared by the Government on which Banks are open for normal banking business in both Liberia and the UK.

"Change of Control" means any assignment, sale, or transfer of interest of any type that results in a change in possession of the power to Control the Company. A Change of Control of a shareholder, member, partner or joint venturer of the Company will constitute a Change of Control of the Company if such shareholder, member, partner or joint venturer can Control the Company provided that any Change of Control of an Excluded Holding Company or a Person which is a direct or indirect shareholder of such Excluded Holding Company will not constitute a Change of Control of the Company. Additionally, any transfers of interests including the issue of shares where the Parent or its Affiliates (excluding the Company) acquires rights, property, assets, or interests in companies outside of Liberia will not constitute a Change of Control of the Company.

"Class A Mining License" means a license for Mining issued under Section 6.5 of the Minerals and Mining Law 2000, as amended.

"Commercial Production" shall be deemed to have occurred on the date of the first shipment of Mineral Product extracted from a Production Area as part of a regular program of profit seeking activity.

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"Commission" has the meaning given in Section 26.6a.

"Communication" has the meaning given in Section 29.1.

"Community Development Fund" has the meaning given in Section 8.2a.

"Company" means Hummingbird Resources (Liberia) Inc, a corporation organized under the laws of Liberia, TIN Number 500014566 and its successors by operation of law and permitted assigns.

"Company Event of Default" has the meaning given in Section 26.2.

"Consolidated Fund" means the fund that consolidates all the government revenues of the Republic of Liberia, and is used for making disbursements.

"Contract Year" means a period of twelve (12) consecutive months according to the Gregorian calendar starting on the Effective Date or on any anniversary of the Effective Date.

"Control" (including the terms "Controlled by" and "under common Control with" and "Controls") means the ability of a Person to direct the exercise of more than 50% of the Management Rights with respect to a second Person.

"Controlling Person" has the meaning given in Section 24.11.

"County" means one of the fifteen officially recognized political sub-divisions of Liberia exercising administrative, judicial and political functions.

"CRIRSCO" means the Committee for Mineral Reserves International Reporting Standards.

"Declaration Year" has the meaning given in Section 15.4d.

"Dependent" means a person registered as such with the Company and who is the spouse or a child aged twenty-one (21) years or younger of an employee of the Company or a person determined to be a dependent by virtue of a legally binding agreement of the Company such as a collective bargaining agreement, provided however, that in the event any such spouse or minor child becomes an employee of the Company, such person shall be treated as an employee rather than a dependent during such period of employment.

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

"Development Plan" has the meaning given in Section 5.4a.iv).

"Dispute" has the meaning given in Section 28.1a.

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

"Effective Date" has the meaning given in Section 2.1.

"EIA Procedural Guidelines" means the Republic of Liberia Environmental Impact Assessment Procedural Guideline 2006 as from time to time amended, supplemented, or modified.

"EMP" and "Environmental Management Plan" means the document detailing proposed mitigation and monitoring intended to minimize potential adverse environmental impacts identified in the completed Environmental and Social Impact Assessment.

"Environmental Audit" means the systematic, documented, periodic and objective evaluation of how all environmental organization, management and equipment are performing in utilizing and conserving the environment and its resources.

"Environmental and Social Impact Assessment" and "ESIA" means a systematic examination of the potential environmental and social impact a project or activity.

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

"EPML" means the Environmental Protection and Management Law 2002 as from time to time amended, supplemented, or modified.

"Event of Default" means a Government Event of Default or a Company Event of Default.

"Excess Energy" has the meaning given in Section 19.1b.

"Excess Energy Agreement" has the meaning given in Section 19.1c.

"Excluded Holding Company" means any Person (including the immediate Parent company of the Company) who Controls the Company where the fair market value of that Person's assets held outside of Liberia represents more than 50.01% of the fair market value of all assets owned by that Person.

"Exploration" and "Explore" have the respective meanings assigned in the Exploration Regulations.

"Exploration Agreement" means a Mineral Exploration Agreement between the Republic of Liberia and the Company issued prior to the promulgation of Interim Exploration Regulation 002 or the enactment of the Amended Public Procurement and Concession Act, being those listed in Annex 1 of this Agreement.

"Exploration Area" means the area described in Exhibit 1 to this Agreement, as it may be modified by operation of Section 4.1 of this Agreement and Section 5.1 of the Exploration Regulations or by Section 3.2 of the Exploration Regulations.

"Exploration License" means the exploration license(s) listed in Annex 2,, which were issued after the promulgation of Interim Exploration Regulation 002.

"Exploration Period Project Linkages Plan" has the meaning given in Section 11.4a

"Exploration Regulations" the regulations governing exploration under a Mineral Exploration License of the Republic of Liberia, dated March 2010, as from time to time amended, supplemented or modified.

"Feasibility Consultant" has the meaning given in Section 5.1e.i).

- "Feasibility Report" has the meaning given in Section 5.1e.i).
- "Fee Schedule" means the schedule of fees set out in Annex 3 in connection with the grant, renewal, extension, maintenance and transfer of all Exploration Licenses and Mining Licenses, as from time to time amended, supplemented, or modified.
- "Finance" has the meaning given in Section 20.1.
- "Finance Parties" has the meaning given in Section 20.1.
- "Financial Year" means a period of twelve calendar months ending on December 31.
- "Force Majeure" has the meaning given in Section 30.2.
- "GDP Implicit Price Deflator" means the GDP Implicit Price Deflator as published from time to time by the U.S. Department of Commerce, Bureau of Economic Analysis, as the "revised" GDP Implicit Price Deflator for the specified calendar quarter. If such index is no longer published, the Parties shall agree on adjustments that will substantially preserve the economic impact and timing of this periodic adjustment.
- "Gold" means a dense, inert, bright yellow element (atomic number 79) that is a highly malleable and ductile metal, occurring in rocks and alluvial deposits; and may include any associated impurities recovered as a result of the extraction and processing of the gold.
- "Government" means the Government of the Republic of Liberia, including all of the branches, divisions, instrumentalities and agencies of its government.
- "Government Event of Default" has the meaning given in Section 26.1.
- "Group" means two or more Persons who are formally acting together for the purpose of acquiring, holding, voting or disposing of equity and voting rights of a Person.
- "Guarantee" or "Mining Guarantee" refers to the guarantee of certain of the obligations of the Company provided under Section 21.6.
- "Health, Safety, and Environment Plan" or "HSE Plan" has the meaning given in Section 9.1.
- "IFRS" means generally accepted accounting principles as reflected in International Financial Reporting Standards as published from time to time by the International Accounting Standards Board.
- "Immovable" means, when referring to tangible property, all improvements to the Land, such as roads, dams, and canals, and all items of tangible property that are securely affixed and attached to the Land or to buildings or other structures on the Land. All other items of tangible property are "Movable".
- "Indebtedness" has the meaning given in Section 21.4c.
- "Indicated Mineral Resource" has the meaning given in and is to be determined as prescribed in the Selected CRIRSCO Code.
- "Inferred Mineral Resource" has the meaning given in and is to be determined as prescribed in the Selected CRIRSCO Code.

"Infrastructure" includes all facilities and, to the extent provided below, equipment constructed or acquired by purchase, lease or otherwise by the Company (other than Mining Plant) and used by the Company in connection with Operations (other than

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

"LNP" has the meaning given in Section 9.2b.

"London PM Fix" has the meaning given in Section 15.2.

"Management Rights" means, with respect to a Person, the right to participate in the direction of the management and policies of such Person through such means as (i) the power to direct the vote of shares entitled to participate in the election of directors (or any Person holding an equivalent position as a director) of such Person, (ii) any other right to participate in the designation of the directors (or any Person holding an equivalent position as a director) of such Person, or (iii) the power to act as, or to direct the vote of, a voting partner of, any such Person that is a partnership, and for the avoidance of doubt a Person appointed pursuant to a contractual arrangement to act as a manager or operator of a company (including the Company or any subsidiaries of the Company) shall not be considered to have the right to participate in the direction of the management and policies of such company.

"Marginal Deposit" means deposits of Mineral that, when subject to an economic study carried out by a third-party independent Qualified Person to a similar level of accuracy to that of a Preliminary Economic Assessment (as defined by the Canadian Institute of Mining) results in a pre-tax Internal Rate of Return of 22.5% or less based on a nominal two year trailing average gold price.

"Material Sub-contractor" has the meaning given in Section 6.2f.

"Mine"

"Mining License" means a Class A Mining License granted by the Government to the Company under the Mining Law and Section 5.3 of this Agreement to mine and produce Gold in a specified area in Liberia, which shall be substantially in the form of Exhibit 2 hereto or as the parties may otherwise agree.

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

"Mining Term" has the meaning given in Section 5.9a.

"Minister" has the meaning given in the Mining Law.

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

"Ministry of Finance" means the Ministry of Finance and Development Planning; and "Minister of Finance and Development Planning" means the Minister of the Ministry of Finance.

"MoHSW" means the Ministry of Health and Social Welfare.

"Month" means a calendar month.

"Mortgage" has the meaning given in Section 24.6a.

"Mortgaged Property" has the meaning given in Section 24.6a.

"NI 43-101" means the Canadian National Instrument 43-101 and Canadian Institute of Mining Standards.

"Movable" has the meaning given in the definition of "Immovable" above.

"Net Worth" has the meaning given in Section 21.4d.

"Occupant of Land" has the meaning given in the Mining Law.

"Official" has the meaning given in Section 22.1h

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

"Operations Plan" has the meaning given in Section 5.4a.v).

"Parent" means Hummingbird Resources PLC, a corporation organized under the laws of England and Wales, and its successors by operation of law and any permitted assigns or transferees.

"Party" means either the Government or the Company and, in the plural form, "Parties" means both the Government and the Company.

"Permitted Transferee" has the meaning given in Section 24.8.

"Person" means an individual, partnership, joint venture, association, corporation, cooperative, trust, estate, unincorporated entity, government or state and any branch, sub-division, instrumentality, authority or agency of any government or state.

"Prevailing Market Rate of Exchange" means the spot market rate at 12 noon Monrovia, Liberia time, as published by the Central Bank of Liberia expressed in Dollars, at which willing sellers and willing buyers, acting at Arm's-Length and in the ordinary course of business, are, on the day that the transaction takes place (or, if that day is not a Business Day, the preceding Business Day), prepared to purchase or sell (as appropriate for the applicable transaction) any currency issued by authority of the Central Bank of Liberia or any successor governmental agency of Liberia or any relevant currency of another jurisdiction (as the case may be).

"Probable Mineral Reserve" has the meaning given in and is to be determined as prescribed in the Selected CRIRSCO Code.

"Product(s)" means any product or products produced by the Company under the authority of a Mining License, the principle economic value of which is its Gold content, or any other product produced from other minerals.

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

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

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

"Production Period Project Linkages Plan" has the meaning given in 11.4b.

"Profound Changes in Circumstances" means such changes, since the Effective Date or the date of the most recent review of this Agreement, pursuant to Section 32.1, in the economic conditions of the mineral and mining industry worldwide or in Liberia, or such changes in the economic, political or social circumstances existing in Liberia specifically or elsewhere in the world at large as to result in such a material and fundamental alteration of the conditions, assumptions and bases mutually relied upon by the Parties at such base period that the overall balance of equities and

benefits reasonably anticipated by them will no longer as a practical matter be achievable.

"Prohibited Person" means a Person that has been (i) identified as such in regulations issued under the authority of the Ministry of Finance and the Ministry of Justice, (ii) has been identified as being subject to sanctions by any member organization that Government is a member of, or with which Government has entered into treaties or other agreements with, provided such Person has been provided due process under the law, or (iii) has been identified by regulations by Government as a Person that would pose a serious risk to the national security, public health and safety, or the economic or political stability of Government. A "Prohibited Person" also includes any Person that issues bearer shares or other instruments to evidence ownership of such Person that does not permit the identification of the owners of such shares or other instruments.

"Property List" has the meaning given in Section 27.2a.

"Proposed Production Area" means an area or area designated as such by the Company pursuant to and in accordance with the requirements of Section 5.1a.

"Proven Mineral Reserve" has the meaning given in and is to be determined as prescribed in the Selected CRIRSCO Code.

"Qualified Person" shall have the meaning given in the selected CRIRSCO Code, however if the Selected CRIRSCO Code fails to define the term "Qualified Person", the term "Qualified Person" shall have the meaning given to the term "Competent Person" in the Selected CRIRSCO Code.

"RAP" has the meaning specified in Section 5.6a.

"Regulations" means the regulations governing exploration under a mineral exploration license of the Republic of Liberia, which came into force in 2010.

"Restricted Payment" has the meaning given in Section 21.4e.

"Revenue Code" means the Revenue Code of Liberia 2000, as amended by the Consolidated Tax Amendments Act of 2010, and as may be further amended from time to time, supplemented or modified, or any successor revenue code of Liberia.

"Road" has the meaning given in Section 6.4c.

"Royalty" means such payments made to the Government on all the Company's Mineral Product sales and transfers, in accordance with Section 15.1 of this Agreement.

"Royalty Rate" has the meaning given in Section 15.1.

"SAP" has the meaning given in Section 5.5a.

"Selected CRIRSCO Code" means a Committee for Mineral Reserves International Reporting Standards (CRIRSCO) recognized mineral evaluation code such as JORC or SAMREC agreed upon by the Parties, as from time to time in effect. Initially, the Selected CRIRSCO Code is NI 43-101, as from time to time in effect. If the Selected CRIRSCO Code is no longer in effect or no longer defines a term defined herein by reference to it, the Parties will agree on a CRIRSCO-compliant

replacement code or if none exist a functionally and substantively similar replacement code.

"Study" has the meaning given in Section 6.3b.

"Subordinated Debt" has the meaning given in Section 21.4c.

"Subsidiary" a company is a 'subsidiary' of another company, its 'holding company', if that other company: (a) holds a majority of the voting rights in it, or (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or (c) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it; or (d) if it is a subsidiary of a company that is itself a subsidiary of that other company.

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

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

"Termination Notice" has the meaning given in Section 26.5a.

"Transfer" means and includes a sale, assignment, pledge or other transfer of property, by operation of law or otherwise.

"Transfer Pricing Study" has the meaning given in Section 21.8.

"Work" means all activities undertaken by or on behalf of the Company under this Agreement, including continuing Exploration under its Exploration Licenses, if any, the design and construction of the all Mines, Mining Plant and Infrastructure and the acquisition of related equipment, the operation of all Mines, Mining Plant, Infrastructure and related equipment, the shutdown and demobilization of all Mines, Mining Plant and Infrastructure, all environmental protection, restoration and remediation activities required by this Agreement or by the EPA, and any other activities required to be undertaken by the Company pursuant to this Agreement or applicable Law.

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

Unless otherwise stated, a reference to "hereof," "hereunder," "herein," or words of similar meaning, means this Agreement. The words "and" and "or" will include the conjunctive and disjunctive, as the context may require or permit. The word "include" (and any variation of that word), without other qualification, means "including but not limited to." No reference in this Agreement to any Law that contemplates that such Law may be amended, modified, or supplemented from time to time shall be construed so as to derogate from the rights of the Company under Section 14.2.

## SECTION 2 EFFECTIVE DATE

- 2.1 This Agreement, after having first been signed by the authorized representatives of the Parties as provided on the signature pages of this Agreement, shall become effective and be binding on them on the date of the last to occur of the following events: (i) attestation by the Minister of Justice of the Republic of Liberia, (ii) ratification by the National Legislature of the Republic of Liberia (the "Legislature"), (iii) approval into law by the President of the Republic of Liberia, and (iv) publication in handbills (the "Effective Date").

## SECTION 3 TERM OF THE AGREEMENT

The Term of this Agreement commences on the Effective Date. The Term of this Agreement is twenty-five (25) years, subject to earlier termination as provided in this Agreement, and may be extended for a duration to be agreed upon by the Parties based upon the commercial value of the remaining Mineral Resources. Any extension to the term of the Mining License under Section 5.9 may be granted in line with the extension of this Agreement.

## SECTION 4 EXPLORATION RIGHTS

### 4.1 Effect of Agreement on Pre-Existing Exploration Rights.

- a. As at the Effective Date, the Government confirms that the Company has performed, discharged and is not in default of its obligations under the Exploration License and Exploration Agreement with good and valid title to all rights under the Exploration License and the Exploration Agreement. Subject to the provisions of this Agreement, the Exploration Agreements and Exploration Licenses as listed in Annexes 1 and 2, shall terminate on the Effective Date.
- b. As at the Effective Date, the Government confirms that the Company has good and valid rights to the Exploration Area. Following the Effective Date, the Company may continue Exploration within the Exploration Area in accordance with this Agreement and the Exploration Regulations for a further period of three (3) years (the "Initial Exploration Period").
- c. The Company shall conduct Exploration in compliance with the Exploration Regulations, including Sections 7 and 9.3 thereof, and this Agreement. Unless expressly otherwise provided in this Agreement, if there is a conflict between the terms of the Exploration Regulations and the terms of this Agreement, the terms of this Agreement shall be followed. Exploration may continue within a Proposed Production Area for the duration of this

Agreement in accordance with the Exploration Regulations however under the fee structure of this Agreement.

- d. Within five (5) years from the Effective Date, the Company shall designate a Proposed Production Area. In each year following the expiration of the Initial Exploration Period, whilst the Company retains any Exploration Area of more than 235.5 square kilometers under this Agreement, the Company may carry on Exploration in the Exploration Area and shall declare a Proposed Production Area and/or relinquish a contiguous area, of a combined area of not less than ten percent (10%) of the Exploration Area as of the Effective Date. For the avoidance of doubt, the Exploration Area on the Effective Date shall be approximately 2,355 square kilometers, which means that the Company shall relinquish a contiguous area and/or declare a Proposed Production Area of not less than a combined 235.5 square kilometers each year following the expiration of the Initial Exploration Period until there is no Exploration Area remaining to be relinquished or declared as a Proposed Production Area.
- e. Areas relinquished in accordance with Section 4.1d must be accompanied by a report from the Company indicating the exploration completed and the valid, technical reason for relinquishment of that portion of the Exploration Area. A valid, technical reason must be in relation to information and data obtained from Work completed in said area. Any proposed relinquishment must be of an area explored by the Company. The Minister shall approve the areas proposed to be relinquished if the Company submits a report meeting the requirements of this Section 4.1e. If the Company fails to submit a report as required by this Section 4.1e, the Ministry shall have the right to designate from the remaining Exploration Area, an area for relinquishment of up to twenty percent (20%) of the Exploration Area existing as of the Effective Date.
- f. Any payment obligations of the Company that accrue under the terms of the Exploration Licenses shall continue to accrue in accordance therewith in relation to the period prior to the Effective Date. Any payment obligations of the Company that accrue under the terms of this Agreement shall be deemed to accrue only from and after the Effective Date.
- g. The Company shall not conduct any Exploration without obtaining the consent, approval, license or permit from the EPA unless such filing or application has duly occurred and any such consent, approval, license or permit has been duly obtained. A copy of each such consent, approval, license or permit obtained by the Company from the EPA shall be promptly filed with the Minister.
- h. If while carrying out Exploration the Company discovers a mineral or mineral deposit other than Gold, the Company shall immediately report such discovery to the Ministry. Upon application, the Company shall have the priority right to obtain a license for the exploration for or development of such non-Gold mineral or mineral deposit.
- i. In connection with Exploration, the Company may, with the consent of the

Minister (which consent shall not be unreasonably withheld), purchase, in sample quantities for analysis, minerals recovered from the Exploration Area by other Persons and shall have the right to sell such minerals when no longer required for analysis. Upon any such sale by the Company, the Company shall pay a royalty on the value of such samples sold as provided in Section 15, less any royalty or like payment paid to the Government by the vendor in connection with the sale of the samples to the Company.

- j. The Company shall have the further right to conduct pilot mining operations in the Exploration Area. The provisions of Sections 14 and 15 shall apply, as appropriate, to the pilot mining operations and any income derived therefrom.
- k. By this Agreement, and subject to the payment of such fees as may be required by Law, the Company is hereby granted the right but not the obligation to acquire a dealership license to purchase minerals within the Exploration Area and other areas adjacent to that area directly from third party miners for export, sale or other lawful purposes. The dealership license may also entitle the Company to purchase minerals outside the Exploration Area and areas adjacent to those areas pursuant to Law.
- l. Upon approval of the Minister, which approval may not be unreasonably withheld, the Company may add to the Exploration Area as additional areas (the "Additional Areas") any land requested by the Company that has a geological relationship to the adjoining Proposed Production Areas or Production Areas or into which extend geological trends, from the Exploration Area. These Additional Areas shall not exceed twenty per cent (20%) of the Exploration Area at the Effective Date and the provisions of this Section 4.1 shall apply to any Additional Area. On and from the date of such request by the Company pursuant to this Section 4.1l, the Additional Area shall become part of the Exploration Area and the obligations of the Company under Section 15.4 shall be increased pro rata temporis.

#### 4.2 Termination of Exploration Rights and Lapse of Exploration Area.

Except as provided in Sections 4.1a, 4.1b, 4.1c, 4.1d and 5.1d with respect to Exploration conducted in a Proposed Production Area timely designated in compliance with the requirements of Sections 5.1a and 5.1b, upon the relinquishment of any Exploration Area under Section 4.1d or 4.1e, the Company shall have no further rights under this Agreement or any prior agreement with or license or permit from the Government with respect to such portion of the relinquished Exploration Area.

### SECTION 5 MINING LICENSES

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

- a. If the Company identifies potentially exploitable Mineral deposits in the Exploration Area that constitute Indicated and/or Inferred Mineral Resources, it may designate by notice to the Minister that all or one or more portions of the Exploration Area are proposed production areas (each, a "Proposed Production Area"). The Company may give more than one

notice under this Section 5.1a, provided that, except as permitted pursuant to Sections 5.1j and 5.2, no such notice may be given with respect to any portion of the Exploration Area that has at that point in time been relinquished in accordance with section 4.1d. Each such notice must set forth

- i) the proposed boundaries of each Proposed Production Area covered by such notice,
- ii) the nature, location and estimated quality of the Mineral deposit(s) constituting the Indicated and/or Inferred Mineral Resource in such Proposed Production Area and
- iii) the form in which the Mineral Product(s) are expected to be marketed by the Company.

Each notice with respect to a Proposed Production Area must be accompanied by (x) the report of a Qualified Person setting forth his or her conclusion that the deposit(s) constitute Indicated and/or Inferred Mineral Resources, and the basis for such conclusion, in the form required by the Selected CRIRSCO Code for the public reporting of Mineral Resources, and setting forth the scope of any Indicated and/or Inferred Mineral Resources located within the Proposed Production Area, (y) an application for a Class A Mining License, or an amendment to an application for a Class A Mining License or an amendment to a Mining License, as the case may be, to permit the Mining of such deposits in the form required by the Mining Law and such Regulations as are then in effect and (z) evidence of payment of the Class A Mining license application processing fee set out by the Ministry.

- b. Each Proposed Production Area (i) shall consist of such part of the Exploration Area as in the light of International Standards is reasonable, taking into account the extent and nature of the Indicated Mineral Resources or Inferred Mineral Resources, for the mining and recovery of such Mineral Resources, and (ii) shall form a compact block as much as possible, with the borders aligned to the true north-south and east-west. The Company may, subject to compliance with all requirements under Section 5, at any time during the Term expand any Proposed Production Area to include additional areas of the Exploration Area that are contiguous to the original area designated as a Proposed Production Area when it is reasonably necessary for either a valid geological extension or operational requirement. A Proposed Production Area may not include Land the use of which for Mining operations would violate Section 10.1 of the Mining Law. A Proposed Production Area may include surface areas other than the surface above the Indicated and Inferred Mineral Resources. A Proposed Production Area shall not be located within 3km of Sapo National Park. Any additional Land reasonably required by the Feasibility Report for the extraction from the earth of such resources shall be subject to the approval of the Feasibility Report. If other Land is required by the Feasibility Report to facilitate the processing of extracted Mineral, the disposition of waste materials or other activities not constituting actual extraction, the Company may acquire that Land as provided in Section 7.3.

- c. The Company shall submit to the Government within 60 days following the notice given under Section 5.1a detailed maps for each Proposed Production Area covered by such notice, based on actual surveys that, with respect to a Proposed Production Area, set forth the boundaries and coordinates of the area containing the deposits from which Minerals are expected to be mined. The maps shall be of such scale and contain such detail, including geographical and topographical information, as may reasonably be necessary to identify accurately the boundaries of the Indicated and Inferred Mineral Resources within such Proposed Production Area.
- d. If the Company wishes to carry out additional Exploration within a Proposed Production Area it may do so for the Mineral covered by this Agreement (or otherwise pursuant to Section 4.1h) provided that the work is carried out in accordance with the Exploration Regulations. No budget or annual expenditure requirements apply to such work, but all other provisions of the Exploration Regulations as to the manner of carrying out such work and as to reporting the results of such work remain applicable.
- e. Unless the Company has complied with Sections 5.2a and 5.2b (implementing the "Marginal Deposit" provisions of Section 5.3(l) of the Mining Law), the Company must within 24 months of the date of designation of an area as a Proposed Production Area:
- i) file with the Minister a plan for the design, production and operation of efficient and economic Mining, processing, transport, stockpiling, loading, shipping and marketing of Mineral Products from such Proposed Production Area prepared by an internationally recognized mine engineering consulting firm not affiliated with the Company or any of its principal direct or indirect shareholders (the "Feasibility Consultant") complying with Sections 5.4 through 5.6 (such plan, together with any and all amendments thereto, the "Feasibility Report"), and
  - ii) a certificate of the chief executive officer of the Company dated the date of submission to the effect that (x) the Company has complied through the date of such certificate with its obligations under this Agreement (except as to such defaults in the performance by the Company of any of such obligations that have been cured to the reasonable satisfaction of, or waived by, the Minister), and (y) the Company is prepared to develop the Mine, Mining Plant and Infrastructure in the manner set forth in the Feasibility Report (other than as may reasonably be required to respond to facts and circumstances not known to the Company at the time the Feasibility Report was filed).

Except as otherwise provided in Section 5.1i, the Company's rights in any Proposed Production Area timely designated under and in compliance with the requirements of Section 5.1a and 5.1b expire if the Company does not timely file the maps required by Section 5.1c or does not timely file the Feasibility Report and related materials as provided in this Section 5.1e and in Section 5.1f.

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- f. The Feasibility Report required by Section 5.1e must be accompanied by evidence of the payment by the Company of the Feasibility Report processing fee, if applicable.
- g. If the Company proposes to produce Mineral Products, from additional deposits other than the primary project, from two or more separate sites in the area covered under this Agreement using similar extraction techniques and shared processing or beneficiation facilities, a single Feasibility Report shall be required and a single Mining License shall be issued covering all such sites, subject to the written approval of the Minister of Finance and Development Planning, not to be unreasonably withheld or delayed, for the treatment of such operations and facilities as a single "mining project". If the Company proposes to use materially different extraction techniques or substantially independent processing facilities for separate mining sites, separate Mining Licenses and Feasibility Reports shall be required for each site.
- h. If multiple Mining Licenses are required by Section 5.1g, the Ministry will notify the Ministry of Finance of the applications of the Company, and the Minister of Finance and Development Planning is entitled to impose such conditions upon such Mining Licenses as the Minister of Finance and Development Planning reasonably deems necessary to comply with Revenue Code requirements of separating the costs and expenses of separate "mining projects". The Minister of Finance and Development Planning reserves the right to require that a separate company be formed to hold each Mining License and related assets if it determines that to be the most appropriate means of separating the costs and expenses of separate "mining projects". The Company may request that the Minister of Finance and Development Planning permit that a separate company be formed to hold each mining license.
- i. The Company may extend, only once for a period of twelve (12) months the time for filing the Feasibility Report and the related materials required by Sections 5.1e and 5.1f by payment, at least 30 days prior to the expiration of the time period otherwise applicable, of the extension for filing Feasibility Study fee as applicable, provided that the Company may not utilize for any Production Area both the postponement provided for in this Section 5.1i and the postponement provided for in Section 5.2.
- j. If, as contemplated by Section 5.1, the Company has timely designated more than one Proposed Production Area within the Exploration Area, but believes that development of one or more of such areas should be postponed as provided in Section 5.2, it may file a Feasibility Report with respect to the areas initially to be developed and postpone the filing of a Feasibility Report for the other areas by complying as to those areas with the provisions of Section 5.2. In any such case, if the Company elects to develop one or more of the postponed areas, it must timely file a new Feasibility Report encompassing its entire operation and otherwise complying with the requirements of this Agreement governing the filing and approval of Feasibility Reports. This requirement is to ensure that the financial and technical capacity of the Company and the environmental, social and other



- ii) must file the Feasibility Report, and related materials required by Sections 5.1e and 5.1f applicable to such Proposed Production Area prior to the end of the delay period.
- d. Subject to Section 5.2e, all rights of the Company to such Proposed Production Area automatically terminate if a payment due under Section 5.2c.i) is not timely made, or if a Feasibility Report, and related materials complying with Sections 5.1e and 5.1f and applicable to such Proposed Production Area are not timely filed under Section 5.2c.ii).
- e. In the case of a default of payment obligations under Section 5.2d, the Minister will notify the Company and the Company will have a period of sixty (60) days to cure the default. In the case of any other default in the performance of its obligations under Section 5.2d, the Minister will notify the Company and the Company will have a period of one hundred twenty (120) days to cure the default. All rights to the Proposed Production Area under this Section 5.2 will automatically terminate upon failure to cure any such default within the time period specified herein or such longer period as may be allowed by the Minister in a written notice.

### 5.3 Mining License.

The Minister will grant the Company a Class A Mining License for the Mining of the Mineral from each Proposed Production Area subject to the satisfaction of the following requirements:

- a. The Company timely complied with the requirements of Sections 5.1a through 5.1c.
- b. The Company has complied with its material obligations under this Agreement and under the Mining Law and Exploration Regulations except as to such defaults in the performance by the Company of any of such material obligations as have been cured to the reasonable satisfaction of, or waived by, the Government in writing.
- c. The Company has timely submitted a Feasibility Report, in accordance with Sections 5.1e and 5.1f that complies with the requirements of Sections 5.4 through 5.6, and the Feasibility Report has been approved by the Minister pursuant to Section 5.8.
- d. The Company has granted the Government any equity interest in the Company as required by this Agreement and has entered into the Shareholders Agreement with the Government in accordance with Section 21.7.
- e. The Company has furnished the Guarantee required by Section 21.6.

For the avoidance of doubt, if the Company was entitled to one Mining License for multiple Proposed Production Areas in accordance with Sections 5.1g and 5.1h, and then elected to postpone in accordance with Section 5.2 the submission of a Feasibility Report, for one or more but less than all of such Proposed Production Areas as

contemplated by Section 5.1j, on approval of the amended Feasibility Report as contemplated by Section 5.1j, the Minister shall amend the Mining License issued in connection with the original Feasibility Report (if previously issued) if the foregoing clauses (b) through (e) have been complied with as applicable to the expanded project contemplated by the amended Feasibility Report, provided however, that no Mining License will be amended if Production under that Mining License has begun and if the amendment would extend the Term of the Agreement.

Any Mining License issued pursuant to this Agreement shall recite that it is issued subject to the terms and conditions contained in such Mining License and this Agreement, and that it is not assignable or transferable in any way other than as permitted by the terms of this Agreement.

#### 5.4 Feasibility Report.

- a. The Feasibility Report for a Proposed Production Area shall comply with applicable Law and International Standards, shall include the basic technical and financial components described in this Section 5.4a and shall also include the additional components set forth in Sections 5.4b through 5.4e:
  - i) a description of the Mineral to be Mined, the Mining and processing methods proposed to be used, and the quality of the Mineral Product(s) to be marketed;
  - ii) a statement of the expected recovery rate for the Mineral to be Mined over the term of the Mining License and for the output of the expected Mineral Product(s);
  - iii) a report of a Qualified Person setting forth his or her conclusion as to the amount of Gold constituting the Proven Mineral Reserves and Probable Mineral Reserves in the Proposed Production Area, and the basis for such conclusion, in the form required by the Selected CRIRSCO-compliant code for the public reporting of mineral resources;
  - iv) a Development Plan setting forth the basic design and operating specifications for each proposed Mine and related Mining Plant, Infrastructure and equipment (the "Development Plan"), which shall, among other things,
    - 1) implement the requirements of Section 6.2;
    - 2) include maps at the scale required by the Ministry setting forth the proposed location of each proposed Mine and related Mining Plant and Infrastructure, and any other activities or improvements described in Section 6.7(e) or 11.6 of the Mining Law and, in the case of each activity referred to in Section 6.7(e) or Section 11.6(c), (e) or (f) of the Mining Law, setting forth the capacity expected to be available for public utilization, provided that activities described in Section 11.6(a) or 11.6(b) of the Mining Law

must be limited to those reasonably necessary for the implementation of the Development Plan;

- 3) include a capital development plan (in reasonable detail);
  - 4) include the capacity demonstration measures required by clause (viii) of this Section 5.4a; and
  - 5) include a proposed construction (or acquisition), completion and commencement of operations schedule for each proposed Mine and all related Mining Plant, Infrastructure and equipment proposed in the Development Plan;
- v) a plan for Operations (an "Operations Plan") that sets forth the Company's plan for operating each proposed Mine and related Mining Plant, Infrastructure and equipment, including a manpower development plan setting forth expected human resource and staffing requirements and implements the requirements of Section 6.2f;
  - vi) a plan for marketing and selling the Mineral Products (including projected principal customers and projected means of transporting Product(s) to such customers) for the Mining Term;
  - vii) a financing plan, setting forth the manner in which the Company proposes to fund the Development Plan; and
  - viii) a program for capacity verification and testing to demonstrate that the principal components of each proposed Mine and related Mining Plant, Infrastructure and equipment have substantially the operating capacities set forth in the Development Plan, which shall at a minimum include demonstrations that the completed facilities have the capacity:
    - 1) to produce marketable Mineral of the quality specified in the approved Feasibility Report, in an amount equal to at least 85% of Mine design capacity from each proposed Mine as specified in the Feasibility Report over a 30-day period; and
    - 2) to move an amount of Mineral equal to 30 days' production at 85% of Mine design capacity from all proposed Mines to the point of sale within a 30 day period;

it being understood that satisfaction of the foregoing tests does not excuse any failure of the Company to carry out Development in accordance with the Development Plan.

- b. The Feasibility Report shall include copies of the approved ESIA, EMP, SAP, and copies of the ESIA Permit granted by the EPA.
- c. The Feasibility Report shall include a mineral value added study that (i) assesses possible further value addition within Liberia to Minerals Mined

by the Company, and (ii) identifies the critical conditions for realization of such downstream investments.

- d. The Feasibility Report shall include a skills and technology development plan that contains an annual projection of the Company's commitments to the development of local human resources and planned expenditure on research and development within Liberia and the region indicating how the Company proposes to discharge its obligations under Section 11, including detailed plans and programs for the recruitment and training of citizens of Liberia, including timetables and schedules, in connection with the construction and operation of the proposed Mines, Mining Plant and Infrastructure.
- e. The Feasibility Report shall include an opinion of the Feasibility Consultant or the relevant independent expert with internationally recognized qualifications responsible for the completion of each section of the Feasibility Report, substantially to the effect that:
- i) the Company has the design, procurement and construction management capacity necessary to implement the proposed Development Plan, or has identified contractors with which it will contract for the design, procurement and production of each proposed Mine and related Mining Plant, Infrastructure and equipment that have the capacity to carry out such activities;
  - ii) the Company has the management capacity to operate each proposed Mine and related Mining Plant, Infrastructure and equipment in accordance with the proposed Operations Plan;
  - iii) each proposed Mine and related Mining Plant, as designed, will if constructed in accordance with the designs and maintained in accordance with good maintenance practices, support the planned operating levels of such Mine for the period of time planned to mine Mineral;
  - iv) the geotechnical survey work done in connection with locating all proposed Mining Plant and Infrastructure is sufficient to support the conclusion that the sites of such proposed Mining Plant and Infrastructure are suitable for the construction and operation of those facilities;
  - v) the ESIA done in connection with the proposed siting of, and the subsequent operations of, each proposed Mine and related Mining Plant, Infrastructure and equipment was conducted in a manner consistent with the World Bank/IFC "Environmental Health and Safety Standards for Mining", applicable Law, and otherwise complies with the requirements of Section 5.5;
  - vi) the design of each proposed Mine and related Mining Plant, Infrastructure and equipment is in accordance with contemporary best practice for the design of mines and related facilities of similar

size and type and is appropriate for the climate and geography of Liberia (i) to accommodate in an environmentally sound manner in accordance with International Standards and applicable Law all Mining Plant and Infrastructure expected to be necessary for the Mining and all proposed processing of Minerals in accordance with the proposed Development Plan, (ii) reasonably to insulate surrounding areas in accordance with International Standards from possible adverse impacts of Operations, and (iii) to provide for all activities proposed to be undertaken as part of its ongoing Environmental Management Plan;

- vii) the completion verification procedures set forth in Section 5.4a.viii) and the capacity demonstration procedures set forth in the proposed Development Plan are sufficient reasonably to demonstrate that each proposed Mine and all related Mining Plant and Infrastructure have been completed in accordance with the proposed Development Plan and can reasonably be expected to have the operating capacity specified in the proposed Development Plan;
- viii) the EMP, if implemented as proposed, will limit the likely amount of environmental damage to limits established in the World Bank/IFC "Environmental Health and Safety Guidelines for Mining", the Company's mine closing plan meets the standards established by World Bank/IFC "Environmental Health and Safety Guidelines for Mining", the "UN International Guidelines on Mercury Management in Artisanal and Small-Scale Gold Mining" if artisanal or small-scale mining is to continue on the final concession area, and other International Standards and the estimated cost for such plan (valued in current Dollars) is reasonable, and such plan otherwise complies with the requirements of Section 5.5; and
- ix) the mineral value added study referred to in Section 5.4c fairly assesses the costs of possible adding further value in Liberia to the output of each proposed Mine and identifies and reasonably quantifies the critical conditions for the realization of such downstream investments.

- f. Any amendment to a Feasibility Report must result in such Feasibility Report, as so amended, complying with the requirements of Section 5.4.

**5.5 The Environmental and Social Impact Assessment Report and the Environmental Management Plan.**

- a. The Company must submit to EPA for approval an Environmental and Social Impact Assessment ("ESIA"), an Environmental Management Plan ("EMP"), and Social Action Plan ("SAP") satisfying the procedures and requirements set out in the EPML, EIA Procedural Guidelines, and International Standards, considering, inter alia, the individuals, communities and towns that will be affected by Mining and construction activities, and complying with Section 5.6. The Company shall use the

services of Liberian anthropological, historical, and similar consultants and experts in creating the ESIA and SAP.

- b. The environmental component of the ESIA must at a minimum identify pre-existing environmental conditions and set forth detailed plans for the mitigation of environmental harm attributable to and the restoration or remediation of the environment to the extent affected by the implementation of Mining Exploration and Production, as the case may be.
- c. The social impact component of the ESIA must set forth the potential adverse impact of the construction and operation of each proposed Mine, and the related Mining Plant and Infrastructure on the individuals and communities resident in and around (i) each Proposed Production Area and any Mining Plant or Infrastructure not located within a Proposed Production Area, or (ii) areas affected by the proposed processing or transport of Mineral Product whether using Company-provided Infrastructure or equipment or facilities or equipment provided by the Government or third parties.
- d. The EMP shall at minimum set forth detailed plans consistent with the ESIA for the mitigation of environmental harm attributable to and the restoration or remediation of the environment to the extent affected by Exploration and subsequent Operations. The EMP must include a closure management plan and a closure management budget designed to ensure that upon closure (i) each proposed Mining Plant and Infrastructure shall not present any health or safety issues and (ii) each Proposed Production Area and the surroundings of any Mining Plant or Infrastructure not located in such Proposed Production Area shall be restored, reforested, or remediated, as the case may be. The closure management plan must include a list and assessment of risk and any uncertainties associated with the preferred closure option, address the social aspects of closure and rehabilitation, and provide a process for participation by the community and other stakeholders in closure management and monitoring. The closure management budget shall provide a realistic initial estimate of the expected closure cost, broken down by principle activities.
- e. The EMP must also set forth the means by which the Company proposes to ensure the availability of funds to finance its environmental restoration and remediation obligations so that the cost of closure will be borne by the Company and not the public or the Government

#### 5.6 Social Action Plan.

- a. The SAP must set forth reasonable procedures, in light of the costs involved, for the mitigation of any adverse impact upon, as well as making provision for the continuing economic and social viability of centers of population that have formed and which may form as a result of Operations during the term of this Agreement. The SAP must include a Resettlement Action Plan ("RAP") component if communes located in or adjacent to each Proposed Production Area or to Mining Plant or Infrastructure not located in the Proposed Production Area should under International Standards be resettled

for health or safety reasons or due to the taking of subsistence agricultural land. The RAP must provide for (but not be limited to) suitable area(s) of resettlement with key emphasis on shelter and livelihood continuity, full compensation and obtaining informed consent.

**5.7 Public Hearings and Public Consultations.**

- a. Public hearings and public consultations in support of the ESIA, EMP, SAP, and applicable RAP shall be in accordance with the EPML, EIA Procedural Guidelines, and International Standards. The hearings and consultations shall be publicized and conducted in accordance with generally applicable regulations. The Company must have held public hearings on the ESIA, EMP, and the SAP at least in Monrovia and in the County seats of each County in which Operations are planned, and must include as part of the Feasibility Report a statement of the means taken to publicize the hearings, an indication of the numbers of persons who attended such hearings and their affiliates, a summary of the issues raised at such hearings, and a discussion of the actions taken by the Company in response to such hearings.

**5.8 Approval of the Feasibility Report and Grant of Mining License.**

- a. The Minister may (i) reasonably request additional information with respect to any aspect of the Feasibility Report, (ii) recommend changes in any component of the Development Plan to the extent the Minister deems the changes necessary to satisfy applicable requirements of this Agreement and (iii) require that any of the Company reporting requirements set forth in Section 6.6 be modified so that they are appropriately tailored to the specific type of Mine(s) covered by the Development Plan. Should there be any dispute with regards to the changes requested that cannot be settled within a further 14 days, an independent consultant, appointed within a further 14 days by and agreeable to the Parties, will determine the appropriate course of action. Should the Parties be unable to agree on the choice of independent consultant within such period, then the Parties shall jointly request and agree to accept the recommendation of the Chairman of the Canadian Institute of Mining, Metallurgy and Petroleum for a suitable independent consultant, such recommendation to be obtained as soon as practicable, each Party using all reasonable efforts to procure the same.
- b. Unless the design or Operation of each proposed Mine and related Mining Plant, Infrastructure and equipment in accordance with the Development Plan would materially violate any provision of applicable Law, and provided that there is no Company Event of Default that has not been cured to the reasonable satisfaction of the Ministry (or the relevant agency of the Government, in the case of Events of Default that arise from failure to comply with the requirements of agencies of the Government other than the Ministry), the Minister shall (or be deemed to) approve the Feasibility Report, or the Feasibility Report as amended, as the case may be, if:
  - i) the Feasibility Report and its specific components comply with the provisions of the Mining Law and the terms of this Agreement,

- ii) the EPA has previously approved the SAP, EMP and the ESIA as complying with the requirements of this Agreement and issued an environmental permit, and
  - iii) the Company's capital expenditure plan shows that the Company's Indebtedness/Net Worth ratio taking into account initial working capital at the commencement of regular commercial operations complies with the requirements of Section 21.4a.
- c. The Minister shall be deemed to have approved the Feasibility Report, unless the Minister has notified the Company in writing of the reasons for disapproval not later than 90 days after the Ministry receives from the Company the Feasibility Report and all related and required materials complying with clauses (i) through (viii) of Section 5.4a of this Agreement. For the avoidance of doubt, the approval period shall commence from the date the Feasibility Report and all supporting documentation is received by the Ministry.
- d. It is understood that the Ministry and the Company will work together throughout the feasibility process to ensure that the Ministry has the relevant technical data and understanding in advance of the submission of the Feasibility Report to ensure that the approval thereof is carried out in the shortest possible timeframe.
- e. Following any such disapproval and the resubmission by the Company of an amended, modified or supplemented application for a Class A Mining License or Feasibility Report, the Minister shall be deemed to have approved the Feasibility Report unless within 60 days of such amendment, modification or supplement the Minister has notified the Company in writing of the reasons for disapproval. For the avoidance of doubt, the initial response period for a Feasibility Report filed as contemplated by Section 5.1j is ninety (90) days. If the Parties cannot agree on a Feasibility Report, then an independent consultant, appointed by and agreeable to both Parties within 14 days of any further disapproval, will determine the appropriate course of action. Should both Parties be unable to agree the choice of independent consultant, then the Parties agree to accept the recommendation of the Chairman of the Canadian Institute of Mining, Metallurgy and Petroleum for a suitable independent consultant, such recommendation to be obtained as soon as practicable, each Party using all reasonable efforts to procure the same.
- f. If, after any disapproval of a Feasibility Report, the Company fails to submit to the Ministry for approval an amended, modified, or supplemented Feasibility Report within 90 days or a reasonable time period, as may be agreed to in writing by the Parties, all rights of the Company to the Proposed Production Areas covered by the disapproved Feasibility Report may be terminated by the Government upon prior written notice to the Company and all right, title, and interest in the Proposed Production Areas shall automatically vest in the Government. Should there be any dispute with regards to a "reasonable time period" then an independent consultant appointed by and agreeable to both Parties, will determine the appropriate

course of action. Should both Parties be unable to agree the choice of independent consultant, then the Parties agree to accept the recommendation of the Chairman of the Canadian Institute of Mining, Metallurgy and Petroleum for a suitable independent consultant.

- g. If the Company fails to submit the amended, modified, or supplemented Feasibility Report within the period decided by the independent consultant, all rights of the Company to the Proposed Production Areas covered by the disapproved Feasibility Report may be terminated by the Government upon prior written notice to the Company and all right, title, and interest in the Proposed Production Areas shall automatically vest in the Government save that the Company shall be given a further seven (7) day cure period from receipt of the above written notice from the Government to submit the amended, modified, or supplemented Feasibility Report prior to such termination. If the Company submits the amended, modified, or supplemented Feasibility Report within the seven (7) day cure period, then such termination will not occur.
- h. Upon the approval of the Feasibility Report, the Minister must grant the Company a Class A Mining License covering each Proposed Production Area covered by the approved Feasibility Report. In the case of the approval of a Feasibility Report filed as contemplated by Section 5.1e that proposes to add additional Proposed Production Areas to Production Areas for which a Mining License has already been issued, the Minister must amend the Mining License to include the additional Proposed Production Areas. Each Production Area so covered by a Mining License is an "approved Production Area" for the purposes of this Agreement.
- i. For the avoidance of doubt, the Mining License(s) issued under this Agreement shall have the same metes and bounds as the Production Area(s) approved in the Feasibility Report and any subsequent amendments thereto.

#### 5.9 Term of Mining Licenses.

- a. The term of any Mining License granted to the Company under this Agreement (the "Mining Term") shall commence on the date such license is issued, and shall end on the earlier of (i) the date the Mining License is relinquished pursuant to Section 5.9b, or (ii) the date the Mining License is terminated under Section 26. The Company is entitled to renew any Mining License for consecutive additional terms not to exceed the Term of this Agreement if the Company has complied with all of its payment obligations and other material obligations under this Agreement and the Mining Law if:
  - i) the Company submits a report signed by an independent Qualified Person, which demonstrates that there continues to exist in one or more approved Production Areas Mineral Reserve and Mineral Resources of sufficient quantities to support continued mining for at least 50% of the renewal term requested by the Company (assuming no interruptions to production),

- ii) if the continued operations will involve substantial additional investment or significant changes in production processes, the Company has delivered and the Minister has approved in the manner provided in Section 5.8 an updated Feasibility Report setting forth the Company's Development Plan and Operations Plan for the extended term and otherwise complying with the requirements of Section 5.4 through Section 5.6, and
- iii) the Company satisfies such other material conditions as are required by applicable Law.

The Company may apply for renewal of a Mining License not more than three years and not less than one year prior to the date of expiration of the current Mining License.

- b. The Company may relinquish a Mining License (and be relieved of further obligations under this Agreement (which have not yet accrued) on at least 180 days notice to the Government, if
  - i) on the date of such notice and the date set as the effective date of relinquishment there is no payment default and no other material default which has not been waived by the Government in the performance by the Company of its obligations under this Agreement,
  - ii) the Company confirms in such notice its obligation to and willingness to carry out the approved closure management plan applicable to the operations carried out under the relinquished license, and
  - iii) the Minister, the Minister of Finance and Development Planning and the head of the EPA have reasonably determined that (x) the arrangements made by the Company for funding the performance of its approved closure management plan are sufficient to secure such performance, and (y) as of the date of termination the Company has complied with Section 27 in all material respects.

#### 5.10 Additional Capital Investment or Material Changes in Operations.

If the Company proposes additional investment relating to changes in Mine operating technology or procedures, which investment exceeds 15% of the investment amount provided for in the initial Feasibility Report, it may not make such investment until it has delivered and the Minister has approved in the manner provided in Section 5.8 an updated Feasibility Report setting forth the Company's Development Plan and Operations Plan and otherwise complying with the requirements of Section 5.4 through Section 5.6. If the Company proposes to make substantial changes in its methods of operations that would materially affect employment or could materially affect the environment or the social structures of the communities in the area affected by such changes, it may not do so until it has updated its ESIA, EMP, and SAP, in conformity with the EPML, Environmental Procedure Guidelines, and International Standards.

## SECTION 6 CONSTRUCTION AND OPERATIONS

### 6.1 Non-conformance with Approved Feasibility Report.

- a. The Company shall conduct its Operations within each Mining License area in conformity to the approved Feasibility Report. In the event of alleged non-compliance by the Company to conduct its Operations within each Mining License area in conformity to the approved Feasibility Report, the Minister shall provide the Company with written notice setting out the terms of such alleged non-compliance and the Company shall be afforded a period of ninety (90) days to cure the alleged non-compliance from the date of receipt of the written notice from the Minister setting out the terms of such alleged non-compliance. If the Company considers that such ninety (90) day period is not sufficient to cure such alleged non-compliance, the Company shall submit a notice in writing to the Minister requesting such longer period as may be reasonable in the circumstances to cure the alleged non-compliance together with supporting documentation from relevant technical experts and the grant of such longer period will be subject to the Minister's consent, such consent not to be unreasonable withheld or delayed. If at the end of the above cure period, the Company is continuing to fail to conduct its Operations within each Mining License area in conformity to the approved Feasibility Report, then such non-conforming Mining License shall be liable to revocation.
- b. The Company shall commence Mineral Production from each of its Mining License areas within three years from the grant of each Mining License. Failure to commence such Mineral Production, without prior approval by the Minister, of a technical, legal or economic reason, such approval not to be unreasonably withheld, shall render the Mining License liable to revocation. In the event of alleged non-compliance by the Company under this Section 6.1, the Minister shall provide the Company written notice setting out the terms of such alleged non-compliance and the Company shall be afforded a period of ninety days (90) days to cure the alleged non-compliance or such longer period as may be reasonable under the circumstances.

### 6.2 Mining Term Operations.

- a. All Mining, processing or treatment of Minerals by the Company shall be conducted in accordance with International Standards and applicable Law. The Company undertakes to use all reasonable efforts in accordance with such standards and Law to maintain the production of marketable Mineral Products of the quality and in the quantity contemplated by the Feasibility Report, and on a yearly basis, shall submit (i) a report to the Minister evidencing maintenance of production of marketable Mineral Products of the quality and quantity contemplated by the Feasibility Report and (ii) to inspection by the Ministry, with this undertaking.
- b. The Company may not undertake any activity referred to in Section 6.7 or Section 11.6 of the Mining Law except to the extent expressly covered in the Company's ESIA and approved in the context of the Company's EMP and, then only within a Production Area or an area in which the Company is otherwise entitled by Law and by agreement with any relevant Landowner to carry on such activities. The preceding sentence does not authorize the

Company to take any action that would violate Section 10.1 of the Mining Law. The Company may not transfer to any Person timber removed from the Land pursuant to Section 6.7(d)(4) or 11.6(a) of the Mining Law without the consent of the Forest Development Authority, such consent not to be unreasonably withheld or delayed. The Company shall not deprive any Person of a constant and reasonable supply of usable water from or pollute a previously utilized traditional source without providing an alternative source of substantially the same quality and quantity, nor shall the Company, without the Minister's consent, such consent not to be unreasonably withheld or delayed, and at least 30 days prior notice to the affected community, interfere with any water rights enjoyed by any user under any agreement with the Government made prior to the date of execution of this Agreement. With the exception of rainwater harvested by the Company, use of water will be subject to charges, if any, as provided in applicable Law.

- c. The Company must cause all Mines, Mining Plant, Infrastructure and equipment constructed, renovated or acquired by it to be maintained throughout the Term in a safe and sound condition in accordance with International Standards and the requirements of insurers.
- d. The Company shall operate all Mines, Mining Plant, and Infrastructure and equipment in accordance with the Operations Plan set forth in the approved Feasibility Report. The Company may not make material changes in the Operations Plan unless it applies for and received the approval of the Minister to appropriate amendments to such plans, and to the extent applicable, the Feasibility Report and the related plans, reports and studies provided for in Sections 5.4 through 5.6, which approval may not be unreasonably withheld or delayed. Any such application shall be accompanied by the Operations Plan Amendment Processing Fee set out in the Fee Schedule, as applicable.
- e. In the event of any loss or damage to the property of the Company, the Company shall promptly proceed to restore such property to the extent necessary to begin or resume Operations as contemplated by the Feasibility Report.
- f. The Company may (subject to in the case of a Material Sub-contractor as defined below prior approval of the Minister, such approval not to be unreasonably withheld or delayed), contract the operation of all or any portion of a completed Mine, Mining Plant or Infrastructure to any Person, who is not a Prohibited Person, organized under the Law who has the technical expertise and financial ability to conduct such operation and who is not a shareholder of the Company or an Affiliate of a shareholder of the Company. If the Company contracts any operation in accordance with the foregoing sentence, the Company is responsible to the Government for the compliance by any such third party or third party sub-contractor with all requirements of this Agreement applicable to the operations undertaken by such contractor or sub-contractor as though such operations were undertaken by the Company. The percentage requirements of Section 11.1a shall apply to the operations of any such contractor(s). Material operating

contracts must be disclosed in each annual operating report of the Company under Section 6.6e. For purposes of Sections 6.2f and 25.5, a material sub-contractor means a contractor, the gross value of whose contract is more than one million Dollars (the "Material Sub-contractor").

6.3 **Recovery Shortfalls.**

- a. If the Company is failing without good cause to produce, and ship Mineral Products at not less than 75% of the rate indicated in the approved Feasibility Report, the Minister may give notice in writing to the Company. Within thirty-five (35) days of the receipt of this notice the Company must
  - i) commence work to improve its operations to the reasonable satisfaction of the Government, provided that the Company shall in no event be obliged to conduct Mining, processing or treatment activities otherwise than is economically and technically feasible at the time, and
  - ii) submit to the Government evidence that the steps it is taking will lead to compliance with Section 6.2a.
- b. Following receipt of the Company's response, the Government may enter into further discussions with the Company. If after review, the Government remains unsatisfied with the Company's response to such notice, the Government may commission an independent technical study (the "Study") to determine a fair average recovery and/or shipment rate taking into account the nature of the reserves then being mined, the nature of the Mines, Mining Plant, Infrastructure and other equipment (assuming they are of the design and quality set forth in the Feasibility Report and have been prudently maintained and operated), and the economic and technical feasibility of achieving increased recovery and/or shipment of Mineral Product(s) by the Company in accordance with the standards set forth in Section 6.2a. Such Study shall be carried out by an internationally recognized independent mining engineering consultant appointed by the Government from a list of three such consultants named by the Company on the request of the Government, none of whom shall be affiliated with the Company or any of its principle direct or indirect shareholders or the Government. Each of the Government and the Company may submit information to the consultant. The fees and expenses of such consultant shall be borne by the Company, but unless the consultant concludes the performance of the Company's Production is at least 10% less than the fair average recovery rate indicated in the Study, the Company shall be entitled to offset the fees and expenses of such consultant against Royalties subsequently payable by the Company under Section 15.1 of this Agreement.
- c. If following the completion of the Study, the consultant concludes the performance of the Company's Production is at least 10% less than the fair average recovery rate indicated in the Study and the Company fails within a reasonable period, as set out in the Study, to achieve the fair average recovery rate indicated by such study, the Government may charge the

company the Royalty that would have been applicable to such Mineral Products under Section 15.1 – in proportion to the extent that recovery of such Mineral Products by the Company is less than 90% of the fair average market price indicated by such Study. But at no time shall the payment of such increased Royalty free the Company from its obligation to satisfy Section 6.2a.

**6.4 Concerning Road Renovations.**

- a. All roads built by the Company to give access to its Mine sites shall be made available for public uses on the portion of the roads not within the actual Mine site to facilitate access between local communities and between local communities and other regions.
- b. All existing public roads within the Production Area shall be maintained, and where appropriate rebuilt, by the Company, and to the extent such roads would be severed by Mine operations, alternative roads must be provided. To the extent that existing roads within the Exploration Area are severed or damaged by the Company's operations, the Company has the responsibility to rebuild or repair the damaged section of the road.
- c. The Company shall upgrade the existing road between Greenville and Dugbe to a two lane laterite road for general public use with capacity for handling heavy traffic (the "Road"). No later than the Second (2<sup>nd</sup>) anniversary of the Effective Date, the Company will begin preliminary work on the Road, including a feasibility study conducted and financed by the Company and approved by Ministry of Public Works (which shall include route, design and construction specifications, completion milestones and such other provisions reasonably required by the Ministry of Public Works), survey, and completion of the tender process for construction. The Ministry of Public Works will set forth the standards for the design and construction of the Road. The Road must be completed no later than the first (1<sup>st</sup>) anniversary following the date of first Commercial Production.

**6.5 Concerning Corporate Headquarters.**

The Company shall lease land from the legitimate owner(s) in Sinoe County and construct thereon at least a two-storey permanent building; design and construction specifications to be approved by the Ministry of Public Works.

The location of the land shall be mutually agreed between the Company and the Government.

**6.6 Company Reporting Requirements.**

The Company shall submit to the Minister and the Director-General of the National Bureau of Concessions (and the Minister of Finance and Development Planning, in the case of Sections 6.6d and 6.6f) the following Production and financial reports, in addition to the financial statements required by Section 17:

- a. prior to commencement of mineral production for commercial sales, a quarterly report on the progress of construction of the Mining Plant and

Infrastructure provided for in the approved Feasibility Report indicating progress and expenditures to date, and estimated date of commencement of mineral production for commercial sales;

- b. a monthly statistical report (which shall be delivered for every month, including months ending a quarterly or annual reporting period) beginning with the month in which commencement of the Production Operating Period occurred, setting forth (i) the amounts of Minerals mined, the amounts of Minerals processed, the amounts of Mineral Product(s) shipped, the amounts of Mineral Product(s) exported, the amounts of Mineral Product(s) otherwise disposed of and the stocks of mined Minerals and Mineral Product(s) at the end of the period at the Mines and at other stockpile locations, (ii) the number and location of the workings on which Work was performed during the preceding month, (iii) the number of workmen employed thereon at the end of the month, (iv) a list of the equipment at each working at the end of the month, and (v) a brief description of the work in progress at the end of the month and of the work contemplated during the following month;
- c. a quarterly operating report, beginning with the calendar quarter in which the commencement of the Production Operating Period occurred, concerning the progress of its operations in the Production Areas that are the subject of the Mining License issued pursuant to this Agreement, specifying in full:
  - i) those Mines in which Mineral is considered to have been found, regardless of whether the deposits are deemed to be commercial or not (together with all data relative to the estimated volumes of the reserves, the kind or kinds of such Mineral encountered and the analyses thereof), the number and description of Mines which have been placed in Commercial Production and full particulars concerning the disposition of such Production, the number of workmen employed on each of such Mines, the work in progress at the end of the quarter in question, and the work contemplated during the ensuing quarter; and
  - ii) the work accomplished during the quarter in question with respect to all installations and facilities directly or indirectly related to its

- e. an annual operating report, beginning with the Financial Year in which the commencement of the Production Operating Period occurred, which shall include:
- i) the number and description of the Mines which were in progress at the end of the Financial Year preceding the Financial Year in question (with a showing as to which were then in Commercial Production), the number and description of Mines abandoned during the Financial Year in question; the Production of each of the Mines, regardless of whether in Commercial Production or not, with a full description of the kind and quality and analyses - of Mineral produced from each Mine, and the number of workings on which activities are continuing at the end of the Financial Year in question, but which have not gone into Commercial Production;
  - ii) the total volume of ores or other mineral product (including but not limited to Gold), kind-by-kind, broken down into volumes Mined, volumes transported from the Mines and their corresponding destination, volumes stockpiled at the Mines or elsewhere in Liberia, volumes sold or committed for export (whether actually shipped from Liberia or not), volumes actually shipped from Liberia (with full details as to purchaser, destination and terms of sale), and if known to the Company after diligent inquiry volumes refined, processed and or manufactured within Liberia with full specifications as to the intermediate products, by-products, or final products, out turned within Liberia (with full showing as to the disposition of such intermediate products, by-products or final products and of the terms on which they were disposed);
  - iii) Work accomplished and Work in progress at the end of the year in question with respect to all of the installations and facilities related to the production program, together with a full description of all Work programmed for the ensuing Financial Year with respect to such installations and facilities including a detailed report of all investment actually made or committed during the year in question and all investment committed for the ensuing Financial Year or Financial Years;
  - iv) a report on all other Production and activities for that Financial Year;
  - v) as a supplement, a report describing in reasonable detail the actions the Company has taken during the reporting year to comply with the requirements of each of Section 8 through Section 12; and
- f. an annual financial report for each and every Mining License subject to this Agreement, beginning with the Financial Year in which the commencement of the Production Operating Period occurred, setting forth the quantity of Mineral Product(s) produced from within the Mining License area and sold or Transferred to a third party during the Financial Year and the computation of the Royalties or any other Taxes or Duties imposed with respect to the

quantity of Mineral Product(s) so sold or so Transferred, in each case paid or remaining to be paid on such sales or Transfers.

- g. such reports as are required by the ESIA, EMP and SAP.

The Company shall also provide such additional information as is necessary to keep the Government fully informed of all operations and activities, wherever conducted in Liberia, and of its plans in respect thereof. All monthly and quarterly reports required under this Section 6.6 shall be submitted within 45 days of the end of the month or quarter in question, and all annual reports required under this Section 6.6 shall be submitted within 90 days of the end of the Financial Year in question. Each report referred to in Sections 6.6a, 6.6b, 6.6c, 6.6d, 6.6e, and 6.6f shall be certified as true and correct by an authorized officer of the Company.

#### **6.7 Access to Books and Records.**

The Company shall maintain at its principal office in Liberia, or at such other offices as the Minister may approve, copies of all maps, geological, mining or other earth science reports and mineral analyses (together with all field data which support such reports or data), production records, marketing and financial reports and other data obtained or compiled by the Company as a result of Operations. The relevant Government parties shall have full access to all such information, data and material.

restoration or replacement or as the Government otherwise consents), third-party liability insurance (as to which the Government must be an additional named insured), personal injury insurance, and from the commencement of Mine construction, and to the extent commercially available on reasonable terms, business interruption insurance. The Company must provide copies of such insurance policies to Government with evidence as to the continuing existence of such insurance on at least an annual basis.

- b. Where an event occurs which gives rise to an ability to make a claim in excess of fifty thousand United States Dollars (US\$50,000) against the insurance maintained by the Company pursuant to Section 6.9a, unless the Government consents otherwise, the Company shall promptly file a claim with the relevant insurance company. Unless the Government consents otherwise, the Company shall be obligated to re-invest the proceeds of insurance covering loss or damage to any property which constitutes social infrastructure which is constructed by, or on behalf of the Company or title to which is retained by the Government or shall automatically revert to the Government upon termination of this Agreement (whether pursuant to Section 27 or otherwise) for the restoration or replacement of such property. In respect of any other insurance coverage for loss or damage to property, the Company shall be entitled to re-invest or retain the insurance proceeds as it shall determine in its sole discretion, provided, that if the Company does not re-invest the proceeds and as result thereof there is not material Production or processing in a Production Area, then in respect of that Production Area, the Company shall relinquish the Mining License applicable to such Production Area.

## SECTION 7 LAND AND FACILITIES

### 7.1 Surface Rights.

- a. Subject to Section 6.2b, if the Company reasonably determines that the continued presence of Landowners or Occupants of Land within a Production Area poses a serious health and safety risk, it shall, after consultation with the affected community of Occupants, compensate and/or assist in the resettlement of such Landowners or Occupants of Land, in compliance with the approved RAP. The Company shall pay compensation for such displacement and for any loss of use or title to the land, dwelling, crops, economic trees, or other improvements on any such area that are occupied or damaged by the Company in connection with its activities under this Agreement. The aforesaid compensation shall be in no case be less than the equivalent needed to place such inhabitant(s) or users in substantially the same condition as enjoyed prior to the displacement and shall also include the fair market value of any crops destroyed, as well as moving and other such costs resulting from the displacement. If the Company and such Landowners or Occupants of Land agree, in lieu of such cash compensation, either wholly or partly, the Company may resettle those affected to a new location.
- b. The Company shall in any such resettlement seek the advice, assistance and approval of the relevant Government offices. The Company shall further be

liable for the arrangement, including the costs, of alternative rights of way, access rights or any resettlement of local inhabitants whose restriction of access to or resettlement from any land area required for its Operations is necessary. Arrangements shall be made and compensation paid prior to any such closure or displacement taking place.

- c. If an agreement cannot be reached between the Company and such Landowners or Occupants of Land, the Government shall use its best efforts to facilitate, to the extent permitted by Law, the acquisition of the required surface land use rights from relevant Landowners or Occupants of Land.

## **7.2 Limitation on Exploration and Production.**

Except as otherwise set out herein, this Agreement may not be construed to permit the Company to Explore for Minerals outside of the Exploration Area or outside of the Proposed or actual Production Area.

The Company may not produce any Minerals from outside an approved Production Area, except for pilot mining as permitted by this Agreement and the Mining Law, and as approved by the Minister.

## **7.3 Acquisition of Land Use Rights Outside a Production Area.**

- a. To the extent otherwise permitted by applicable law and the consent of relevant landowners or occupants of land, the Company is permitted to acquire surface land use rights in respect of land which is not included in the Production Area sufficient to enable it to construct, install and operate Mining Plant or Infrastructure. If following the approval of a Feasibility Report the Company cannot reasonably obtain sufficient land use rights to enable it to construct, install and operate Mining Plant or Infrastructure provided for in the approved Feasibility Report, the Government, for additional consideration to be mutually agreed upon and only for the purposes of Operations, will make available to the Company for such purposes Land owned by the Government and not subject to a valid leasehold or other third party interest and not otherwise required for the achievement of other Government programs. If the Government cannot make available to the Company sufficient surface rights in such Land, the Company may in accordance with Law, acquire surface land use rights from parties other than the Government. If the Company is unable to acquire sufficient surface land use rights from parties other than the Government, the Government shall assist the Company in acquiring the required surface land use rights from relevant Landowners or Occupants of Land.
- b. Surface rights made available by the Government from its own stock of Land shall be subject to the provisions of Section 15.4.
- c. All costs incurred by the Company or by the Government at the request of the Company in connection with the acquisition by the Company from parties other than the Government of rights in Land for activities provided for in an approved Feasibility Report, shall be borne by the Company. The Company's right to occupy such Land terminates at the end of the Term, or, if earlier, at such time as it is no longer used in the Company's business if

other use can be made of such Land without danger to the Occupants of Land or interference with the Company's business.

## SECTION 8 COMMUNITY RESOURCES

### 8.1 Community Development and Empowerment.

It is the policy of the Government and the obligation of the Company to develop programs for the development and maintenance of the economic and social viability of centers of population that have formed and which may form as a result of Operations during the term of this Agreement. The Company shall work with the Government and the local communities affected by Operations to establish plans and programs for the implementation of this objective within six (6) months of the acceptance of the Feasibility Report by the Minister, and thereafter the Company shall in good faith implement those aspects of the plan allocated to it upon mutual agreement with the Government and the Communities in furtherance of the realization of such plans and programs.

### 8.2 Community Development Fund.

- a. The Company shall make the following contribution into a fund (the "Community Development Fund") established for the development of communities within the Exploration Area affected by Operations as provided for in the Community Development Agreement:

Contract Year 1-4, a contribution to the Community Development Fund of US\$300,000 to be divided between the following Counties containing Exploration Area as follows:

- i. Sinoe: US\$100,000
- ii. Grand Kru: US\$100,000
- iii. River Gee: US\$50,000
- iv. Maryland: US\$50,000.

Contract Year 5-10, a contribution to the Community Development Fund of US\$ 200,000 for each Production Area;

Contract Year 11 through the end of Term, a contribution to the Community Development Fund of US\$250,000 for each Production Area.

- b. All such contributions into the Community Development Fund shall be payable annually on or before each anniversary of the Effective Date. The first payment into the Community Development Fund shall be due immediately following the Effective Date and pending establishment of the bank account in Section 8.2(f), the contributions shall be made to and held on a temporary basis in a commercial bank account in Liberia.
- c. All contributions into the Community Development Fund will be with full credit toward such contribution to be given for expenses for social services performed by Company outside of any Production Area or for benefits conferred on non-employees and their Dependents, subject to approval by the Government of the eligibility of such social services and benefits for such credit. For the avoidance of doubt, expenses incurred by the Company to fulfil its obligations under this Agreement, including expenses related to the provision of housing, education, medical care and other social services, shall not be deducted from the Community

Development Fund or reduce the Company's contributions to the Community Development Fund. Contributions to the Community Development Fund shall be tax deductible and such deductions may be carried forward for an indefinite period during the Term.

- d. Prior to the disbursement of any funds from the Community Development Fund, the Company shall enter into consultation and negotiations with the objective of concluding a community development agreement among the communities within the Exploration Area affected by the activities contemplated under this Agreement and the Government in order to promote sustainable development and enhance the general welfare and quality of life of such communities (the "Community Development Agreement"). At a minimum, the Community Development Agreement shall specify how the funds in the Community Development Fund are to be disbursed, for what purposes they may be disbursed, and any additional reporting requirements beyond those specified in this Agreement.
- e. The Community Development Fund shall be administered by a committee in accordance with procedures established in the Community Development Agreement. Notwithstanding the foregoing, the committee shall be comprised of not more than ten (10) members, four (4) of whom shall be nominated and selected by the surrounding community, three (3) by the Government, and three (3) by the Company. In addition to payments detailed in Section 8.2a, the Company shall pay US\$5,000.00 annually as a committee administration contribution.
- f. Funds held by the Community Development Fund shall be placed in an interest bearing bank account as agreed by the committee in Section 8.2(e). The budget for and the actual disbursements from the Community Development Fund shall be public and shall be subject to the same audit procedures provided for expenditures by Government and as may be further provided by Law.

## SECTION 9 PUBLIC HEALTH AND SAFETY

### 9.1 Safety Procedures and Notifications.

In connection with Operations, the Company shall install, maintain and use such modern health and safety devices, work gears and equipment, and shall practice such modern health and safety procedures and precautions (including regular safety training instruction for its employees) as are in accordance with applicable Law and International Standards. The Company shall establish and implement a Health, Safety and Environment Plan (the "HSE Plan") in a manner consistent with applicable Law and International Standards. The Ministry, EPA, and all relevant Government agencies may from time to time review details of the Company's HSE Plan and the Company's implementation thereof. The Company shall notify the Government promptly of any major incidents, regardless of whether death or serious injury occurs to any employee of the Company or any of its contractors that occurs as a result of Operations.

### 9.2 Security.

- a. Following the grant to the Company of a Mining License, the Company shall, directly or by contract with a responsible provider of security services, establish, manage and maintain its own asset and employee security and protection service for the purpose of protecting assets in the Production Area and in the immediate vicinity of other locations at which Company has or maintains property and assets through its own security force and to do so always in accordance with Law and rules and regulations promulgated by

the Ministry of Justice relating to security forces. Such security force shall at all times operate subject to the powers of the Liberia National Police and the applicable Law and regulations of the Republic of Liberia in relation to the provision of such security services.

- b. The Company's security force shall have the power of arrest and detention in accordance with applicable Law. If any person is detained by the Company's security force, the Liberian National Police ("LNP") must be notified immediately, and the person detained must be handed over to the LNP as soon as practical and in no case later than 24 hours from the time of detention. The Company's security force may not use unreasonable force in detaining persons, and any detention facilities must be adequately ventilated, reasonably clean and with access to sanitary toilet facilities and must be approved by the Minister of Justice prior to commencement of operation of the detention facilities.
- c. The Company must coordinate the activities of the Company security force with the Government's police and law enforcement authorities and report monthly to the Minister of Justice (with a copy to the Minister) on the activities of the Company security force, including numbers of persons detained, the reason for, the place of and the period of any detention, and the disposition of each detained person. Each such report shall be certified by an authorized representative of the Company as being true and correct.
- d. The Company is fully responsible for the compliance of the members of its security force, whether its employees or the employees of a contractor, with all requirements of this Section 9.2 and for all consequences of any breach of those requirements.

### 9.3 Sanitation.

The Company shall provide its employees and contractors with clean and accessible toilet and, where the nature of the work makes it appropriate, shower facilities at its workplaces.

### 9.4 Water Supply; Clean and Safe Drinking Water.

The Company shall ensure a convenient and uninterrupted supply of clean and safe drinking water for its employees and contractors, including by such means as construction of wells and hand pumps or pipe-borne or other sources of water at its workplaces and in its employee housing in the Production Area. All drinking water shall meet or exceed the approved Government standards and International Standards for drinking water quality.

### 9.5 Employee Housing.

The Company shall, either directly or indirectly, ensure access to housing for the employees of the Company, resident spouses, and resident Dependents living within the Production Area. For housing provided directly by the Company, the Company shall ensure that such housing has provisions for bathroom facilities with a flush toilet, sink, and shower located in each house and conforms to minimum

standards to be agreed between the Government and the Company and approved by the Ministry of Public Works, including ensuring those requirements set out in Sections 9.3 to 9.4. Each family house will have separate bedrooms for parents and children, and, in addition separate bedrooms for male children and female children, i.e. a minimum of 2 or 3 bedrooms.

## **SECTION 10 MEDICAL CARE**

### **10.1 Company to Provide Health Facility for Emergency Medical Treatment.**

Upon the commencement of construction of Mining Plant and Infrastructure, the Company shall construct, operate, and maintain or cause to be constructed, operated, and maintained during Operations, health facilities to ensure the availability in each Production Area of 24 hour emergency medical treatment, care and attention in accordance with applicable Law, and such other improved standards as may be agreed between the Parties. All such emergency health facilities shall be staffed with qualified medical personnel and shall be properly equipped and supplied for the level of service required in accordance with international medical standards.

### **10.2 Health Services.**

- a. The Company shall provide to its employees, their spouses and Dependents physically resident in the same household with such employee health services at either its own facilities or through Company provided health insurance or payment arrangements with third party facilities. Such health services shall include "Basic Package of Health Services" for primary healthcare as established by the MoHSW in 2008 as modified and developed over time. Where the Company does not directly provide non-emergency health services at its own facility it shall have in place a transportation plan and the means to transport employees, their spouses and immediate family dependents to health care facilities where such services are provided. Such health services and transportation shall be at the Company's expense with no cost to the Company's employees, their spouses and immediate family dependents. If such services are not provided at a health care facility within a three (3) mile radius, the Company must provide those services.
- b. Government officials, civil servants and representatives assigned to and regularly employed in the Production Area in an official capacity, who are resident in or adjacent to the Production Area, and their resident spouses and resident dependents, shall, during the time of such assignment, employment and residence, also be entitled to receive healthcare, including emergency care on the same basis as Company employees who receive their healthcare from Company-provided facilities.
- c. The Company shall initiate a continuing communicable disease control (including sexually transmitted diseases) program.
- d. The Company shall provide reasonable access to its own health facilities and for emergency ambulatory care to members of local communities. It is

understood that "reasonable access" may include the imposition of fees that are reasonable in light of the economic level of such communities.

## SECTION 11 EMPLOYMENT, TRAINING AND EDUCATION

### 11.1 Employment.

- a. Employment practices of the Company shall conform to applicable labor practices Law and other applicable Law. The Company shall not hire individuals who are not citizens of Liberia for unskilled labor positions. The Company must employ and give preference to the employment of qualified citizens of Liberia for financial, accounting, technical, administrative, supervisory, managerial and executive positions and other skilled positions as and when they become available, it being the objective of the Parties as soon as is practicable that Operations should be conducted and managed primarily by citizens of Liberia. In furtherance of the Company's obligations under the preceding sentence, the Parties shall agree prior to the approval of the Feasibility Report on progressive implementation of an employment schedule with the aim that citizens of Liberia will hold at least 30% of all management positions including 30% of its ten most senior positions within 6 years of the initial grant to the Company of a Mining License, and at least 70% of all management positions including 70% of its ten most senior positions within ten years of such date. Within sixty (60) days of the Effective Date, the Company shall provide a list of the ten (10) most senior management positions and the individuals who are serving in such capacities and the Company shall update such list annually. Appointment of a citizen of Liberia to a particular position does not preclude subsequent employment of a citizen of another country in such position as long as the percentage requirements are otherwise met.
- b. Subject to the above, the Company may at all times choose its employees and shall be free to employ such Persons who are not nationals of Liberia as are required for the efficient conduct of Operations. Where applicable Law stipulates minimum technical qualifications and/ or minimum levels of competence for any technical post, the Government undertakes to recognize equivalent technical qualifications and/ or certificates of competency held by Persons who are not nationals of Liberia, provided that such qualifications and/ or certificates of competency shall have been issued by a recognized institution or statutory authority in any other country having a substantial mining industry.

### 11.2 Training of Liberians.

Following the grant to the Company of a Mining License under this Agreement, the Company must establish a training development program under which it shall provide on a continuing basis undergraduate and graduate studies abroad for the training of its Liberian staff and citizens of Liberia in order to qualify them for financial, accounting, supervisory, managerial, executive positions and other skilled positions, and as required by Operations provide on-the-job training, operate vocational training facilities, and utilize whatever other measures are necessary and reasonable to transfer to other citizen employees the ability to work in skilled trades

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and to supervise other tradesmen and laborers. The Company agrees that it shall continue to hire and train Liberian geologists, including funding their CRIRSCO accreditation for Qualified Person status as and when they qualify, subject to meeting the needs of the Company for geologists. The Company shall furthermore facilitate applications by its own Liberian geologist employees for accreditation and subsequent registration under CRIRSCO guidelines as gold Qualified Persons. Additionally, whenever the Company hires a Qualified Person, a Liberian geologist who is not a Qualified Person will be assigned to work directly with the Qualified Person.

#### 11.3 Secondment.

- a. In order to effect the policy of technology transfer, at all times during Operations, the Ministry shall, in consultation with the Company, second two (2) professionals (geologists/mining engineers) to participate in the technical aspects of Operations.
- b. The Company shall provide said professionals assigned on secondment daily allowances at a rate to be mutually agreed upon between the Parties. Such seconded professionals shall be afforded all the rights of the Company's employees, including but not limited to, housing and medical care

#### 11.4 Project Linkages Plan.

- a. Within one hundred and eighty (180) days of the Effective Date, the Company shall provide the Ministry with a project linkages plan (the "Exploration Period Project Linkages Plan") as contemplated covering the period prior to the commencement of construction of any Mine. The Exploration Period Project Linkages Plan must (i) identify the potential for local suppliers, contractors and service providers to provide goods and services to the project, (ii) identify key interventions to grow the minerals input industrial sector, and (iii) sets out a local project purchase plan with clear milestones identified in terms of an increasing percentage of local purchases of goods and services, and providing for bidding preferences for local suppliers, contractors and service providers.
- b. Concurrently with the submission of the Feasibility Report under Section 5.1e, the Company shall provide the Ministry with a project linkages plan or an updated project linkages plan, as the case may be (the "Production Period Project Linkages Plan") covering the period after the commencement of Mine construction. The Production Period Project Linkages Plan must (i) identify the potentials for local suppliers, contractors and service providers to provide goods and services to the project, (ii) identify key interventions to grow the minerals input industrial sector, and (iii) sets out a local project purchase plan with clear milestones identified in terms of an increasing percentage of local purchases of goods and services, and providing for bidding preferences for local suppliers, contractors and service providers.

#### 11.5 General Education Funding.

- a. From the date of Commercial Production, Dependents of the Company's employees resident in Company provided housing, as well as minor children of Government officials resident in and also assigned to work in the Production Areas for a prolonged period (being not less than 90 consecutive days in an official capacity, who have been registered as such with the Company, shall, during the time of such assignment and residence), be provided with free education by the Company as set out below. The Company agrees to provide primary education through high school education free of charge to each Dependent, subject to verification of eligibility status by the Company or its representative. The Company shall if required to fulfil its obligations above build new schools in Production Areas or invest in existing local schools, such that all schools are: (1) sufficient in number to educate all Dependents in addition to existing students, (ii) not overcrowded and (iii) are within Production Areas or not more than 1 mile of the employee housing units in any Production Area. The Company shall provide free transportation to Dependents who attend any local schools that are more than five (5) mile from the Dependent's home. If there are no existing schools that satisfy the criteria set forth above, the Company shall construct new educational facilities in the Production Areas for primary school grades. Such educational facilities shall be in conformity with Laws, rules, regulations and standards generally applicable to schools in Liberia
- b. The Company, commencing ninety days (90) after the date of Commercial Production, shall provide annually through a Company administered grant, US\$50,000 (adjusted for annual inflation using the GDP Implicit Price Deflator) payable through the Term in high school and university scholarships (for study in Liberia) for students who are Liberian citizens and permanent residents of the County or Counties in which the Production Areas are located.
- c. The Company, commencing ninety days (90) after the date of Commercial Production shall make an annual contribution, for the Environmental Science Department or other related disciplines at Tubman University, of US\$75,000 (adjusted for annual inflation using the GDP Implicit Price Deflator) and payable through the Term.
- d. The amounts referred to in Section 11.5c shall be paid to the Consolidated Fund and earmarked for the Environmental Science Department Fund of Tubman University. Expenditures from the Fund are limited to scholarships, graduate training, research and laboratory programs in Environmental Science at Tubman University. Tubman University shall be required to provide to the Company in advance of receiving the second and subsequent annual contributions an annual report summarizing the use of the previous year contribution and the benefits to the University arising from such contribution.

#### 11.6 Scientific Research Fund.

- a. Ninety (90) days after the date of Commercial Production, the Company shall make a one-time contribution to the Scientific Research Fund of US\$50,000.
- b. The amount referred to in Section 11.6a shall be paid to the Consolidated Fund and earmarked for the Scientific Research Fund of the Ministry for Mines and Energy.
- c. The Government agrees that expenditures from the Scientific Research Fund are limited to geological and scientific studies done by the Ministry of Lands Mines and Energy or its contractors, and shall not include any foreign travel, conference or purchase of any vehicle. The Government shall annually prepare a report detailing the sums deposited into and disbursements and their purpose from the Scientific Research Fund, and such report shall be provided to the Liberia Extractive Industries Transparency Initiative.

## SECTION 12 USE OF LIBERIAN GOODS AND SERVICES

- a. When purchasing goods and services related to Operations, the Company must, and must cause its major contractors to, (i) organize their procurement practices to give meaningful opportunities to bid for contracts to those entitled to preference pursuant to clause (ii) of this sentence, and (ii) give preference to the maximum extent possible to materials and goods produced in Liberia and services provided by citizens resident in Liberia or entities incorporated or formed in Liberia where citizens of Liberia resident in Liberia are entitled to receive 60% or more of all profits from such entities. The Company shall use and cause its major contractors to use materials, goods, and services produced or provided by Liberian citizens resident in Liberia or entities incorporated as described in clause (i) and clause (ii) of this Paragraph in all cases except in those where the Company can demonstrate it is not reasonable and economically practicable to do so.
- b. No later than 60 days before the start of the Financial Year that the Company expects Production to commence on any Class A Mining License area held by the Company, the Company shall submit to the Minister a Plan for Procurement of Local Goods and Services by the Company and its major contractors in the next Financial Year for its Operations, and the Company shall no later than 60 days before the start of every subsequent Financial Year submit a revised Plan for Procurement of Local Goods and Services.
- c. A "Plan for Procurement of Local Goods and Services" for the purposes of this Section 12 shall (i) identify the potential for local suppliers, contractors and service providers to service the project, (ii) identify key interventions to grow the minerals input industrial sector, and (iii) set out a project local purchase plan with clear milestones identified in terms of an increasing percentage of local purchases of goods and services.
- d. Annually after Production commences on any Class A Mining License area held by the Company, the Company shall submit a report, no later than ninety (90) days after its Financial Year has closed, detailing the Company's

and its major contractors' procurement of local goods and services during the prior Financial Year and why or why not its annual plan was succeeding, and if not, why not.

- e. A "major contractor" for the purposes of this Section 12 is a contractor or a subcontractor who received more than US\$250,000 directly or indirectly from the Company in that year and who had significant operations in Liberia in that year.
- f. Operations such as maintaining a representative office, or the presence of supervisory personnel to inspect or direct work performed by other contractors, do not constitute "significant operations" for the purposes of this Section 12.
- g. If the Company does not substantially meet the clear milestones as defined in the Plan for Procurement of Local Goods and Services, the Company shall pay a "Failure to Procure Local Goods and Services" penalty fee set out in the Fee Schedule.

## **SECTION 13 ENVIRONMENTAL PROTECTION AND MANAGEMENT**

### **13.1 The Company's Duty.**

- a. The environmental responsibilities of the Company during Exploration Operations are as set forth in the Mining Law, Exploration Regulations, EPML and EIA Procedural Guidelines. Following the grant of a Mining License to the Company, the Company must conduct its Operations in accordance with the EPML, Sections 8.1 through 8.3 of the Mining Law, other applicable environmental Law, International Standards, the approved EMP and this Agreement. The Company must in any event take appropriate preventive and corrective measures to protect all streams and water bodies within or bordering Liberia, all dry land surfaces, and the atmosphere from pollution, contamination or damage resulting from Operations.
- b. If Operations violate any requirement referred to in Section 13.1a or otherwise damage the environment, the Company must proceed diligently in compliance with applicable Law to restore the environment as much as possible to its original and natural state (or to remediate the damage where restoration is impractical) and in compliance with applicable Law must take appropriate preventive measures to avoid further damage to the environment.
- c. The Company shall require its contractors, subcontractors, and agents to manage health, safety and environmental risks in a manner consistent the requirements of this Agreement.
- d. Nothing in this Section 13 limits the Company's liability for any adverse

### 13.2 **Annual Environmental Audit.**

The Company must deliver to the Minister and the EPA, within 60 days after (a) each anniversary of the date of issue to it of a Mining License and (b) the last day of the Mining Term if it does not end on an anniversary of such date of issue, an Environmental Audit and assessment of the Production Areas under such license plus all areas outside of the Production Areas in which the Company conducts Operations. The audit must be performed or supervised by an environmental consultant who is not a regular employee of the Company or an Affiliate of the Company and who is a certified professional engineer with at least ten years of experience in making environmental compliance assessments and audits in the mining industry. The environmental consultant shall be selected by the Company and approved by the Ministry and the EPA. The audit and assessment are for the purpose of determining whether Operations since the beginning of the current year of the Mining Term are being conducted in conformity with applicable environmental Law and the other requirements of this Agreement and the approved EMP. Such audit and assessment will also include an assessment of the status of the Company's provision for restoration or remediation of the Production Areas and such other areas in which the Company conducts or has conducted Operations and its conformity with the requirements of the approved EMP. The audit and assessment must also include a full accounting for all changes during such year in the balance of any account established pursuant to the approved EMP to fund such restoration and reclamation. If any such audit and assessment for any year identifies any failure to comply with the requirements of Section 13.1 or the EMP, the Company must promptly remedy such situation at its own expense. In the event that any there is any inconsistency between the requirements of this Section 13.2 and environmental auditing requirements in any applicable Law, the requirements of such applicable Law shall be applied. All costs associated with the Environmental Audit shall be borne by the Company.

### 13.3 **Government Environmental Inspections.**

In accordance with Applicable law, the Minister and/or the EPA may conduct, at its own expense, periodic inspections of Exploration Areas, Production Areas and other areas in which the Company conducts Operations.

### 13.4 **Updating the ESIA and the EMP.**

- a. The Company shall periodically (not less frequently than every four years, or as may otherwise be required by applicable Law) update the EMP to reflect the actual status of Operations at the time, taking into account its Environmental Audits, updated risk assessments, any additional requirements of applicable Law generally applicable with respect to mine closure, and updated estimates of the cost of carrying out the closure management plan.
- b. The Company shall also update the ESIA and the EMP as a condition to making any material changes in Operations, or any Mine, Mining Plant or Infrastructure. If there is any question as to whether a change to Operations constitutes a material change, the Executive Director of the EPA shall make the determination on a reasonable and timely basis. The updated ESIA and

EMP (including an updated closure management plan and budget) are to be submitted to and are subject to the review and approval of the EPA in accordance with applicable environmental Law, such approval not to be unreasonably withheld or delayed. As a condition of approval, the Minister or the EPA may require additional financial assurances or security including financial deposit if it determines that such action is required to assure adequate and secure funding of estimated closure costs. The Company shall in any event comply with its undertakings contained in the most recently approved ESIA and EMP.

#### 13.5 Scope of Duty to Cease Operations during Remediation.

Any environmental remediation required by applicable Law or this Agreement to occur during the Mining Term shall not require the Company to cease Operations during the restoration or remediation period (except to the extent necessary to correct a violation of applicable Law or to carry out such restoration or remediation) so long as the Company is proceeding diligently to undertake the required restoration or remediation and has ceased any activities that constituted a violation of applicable Law or a breach of the obligations of the Company under Section 13.1. This Section does not limit the right of the Minister or the EPA to suspend Operations under Section 25 when Operations are causing environmental damage.

### SECTION 14 TAXATION

#### 14.1 Law of General Applicability.

The Company shall pay all Taxes and Duties pursuant to applicable Law except as may otherwise be provided in this Agreement. In the event there is any discrepancy between specific provisions of this Agreement and the Revenue Code as in effect on the Effective Date, this Agreement shall govern.

#### 14.2 Stabilization.

- a. The applicable Taxes and Duties shall be stabilized and remain unchanged and not be increased as of the Effective Date for a period of fifteen (15) years. After the Effective Date, should the Government reduce the applicable Taxes and Duties below those applicable to the Company on the Effective Date then the Company shall immediately become entitled to such reductions.
- b. In addition and except as provided in Section 14.2(c), should any new law amend or modify or supplement the Law or the Agreement in force on the Effective Date and should those amendments or modifications or supplements individually or cumulatively bring about a material change in the respective economic, fiscal and financial situation of the Government and the Company arising from the provisions of this Agreement immediately following the Effective Date, the Government and the Company shall enter into an agreement in order to restore the economic, fiscal and financial balance of the Agreement as existing immediately following the Effective Date, provided that the economic, fiscal and financial benefits to the Parties immediately following the Effective Date

shall not be reduced. If after discussions, the Parties cannot agree, then either the Government or the Contractor may submit the matter for arbitration in accordance with Section 28.

- c. In respect of changes in Law which pertain to health, safety, security, labor and environment, and that are consistent with international standards and best practices and that are applied on a non-discriminatory basis, any additional costs that result from such changes shall not be considered a change to the economic, fiscal and financial balance as provided in Section 14.2(b).

#### 14.3 Rate and Basis.

The Company shall be liable to taxation under the provisions of the Revenue Code on its net taxable income, which shall include capital gain, as follows:

- a. Commencing on the Effective Date, the Company shall be taxed on its net taxable income pursuant to Law; provided however, that during the fifteen (15) year period following the Effective Date such rate shall not exceed twenty-five percent (25%).
- b. Payments made by the Company or any Person acting on behalf of the Company to non-resident and resident, the withholding tax provided for by sections 806 or 905 of the Revenue Code shall apply as follows:
  - i) For interest payments described in Section 806(f)(1) and Section 905(h)(1), tax shall be withheld at the rate of five percent (5%) of such payments for the Term of the Agreement.
  - ii) For dividend payments described in Section 806(f)(2) and 905(h)(2), from the Effective Date to five (5) years after the start of Commercial Production the Company and its shareholders shall not incur in the Republic, any taxation in connection with the distribution of dividends. Thereafter, tax shall be withheld at the rate of two percent (2%) of such payments.
  - iii) For other payments described in Section 806(f)(3) and Section 905(h)(3), tax shall be withheld at the rate of six percent (6%) of such payments for the Term of the Agreement.

For fifteen (15) years following the Effective Date, in the case of a transfer of interest in the Company, the Company or any transferee of such interest shall pay a withholding tax to the Government at a rate of 15% of the acquisition price. Thereafter, the Company or any transferee of such interest shall pay a withholding tax to the Government in accordance with the Revenue Code. Notwithstanding the above, the Parties hereby agree that no withholding tax or other Taxes and Duties are payable on any transactions in the shares of the Parent.

- iv) For the purposes of this Section 14.3, any payment due under the 'Financing Deed' and 'Net Smelter Returns Royalty Deed' entered into on the 17th December 2012 between the Company and APG AUS No5 Pty Ltd (a corporation incorporated under the laws of

Western Australia with its registered address at 6 Price Street, Subiaco, WA6008, Australia), shall be deemed a dividend on the existing class of shares to a shareholder under Sections 806(f)(2) or 905(h)(2) of the Code and taxable as set out in this Section 14.3b.

v) Except as provided in Sections 14.3b and 14.3c, the withholding tax will be governed by the provisions of the Revenue Code.

c. The Company's net taxable income shall be computed in accordance with Law, unless otherwise provided in this Agreement and the net taxable income of the Company shall be determined in Dollars.

#### 14.4 Tax Loss Carry Forward.

For the purposes of determining taxable income, the period for carry forward of net operating losses shall be seven (7) years and shall commence in the first tax period in which Commercial Production begins.

### SECTION 15 ROYALTIES AND SURFACE RENTS

#### 15.1 Royalties.

The Company shall pay to the Government royalties on all its Mineral Product sales and transfers. The Company shall pay the Government, in Dollars, a percentage rate specified below on the value of shipment of Mineral or Mineral Product recovered from a Production Area regardless of whether the shipment is a sale or other disposition (a "Royalty Rate"):

- a. For Gold, the Royalty Rate shall be three percent (3%) ad valorem.
- b. All other minerals the Royalty Rate shall be in accordance with the Revenue Code.

15.2 The Gold price reference for calculating the Royalty Rate as well as the price basis for the Royalty itself shall be the fair market value f.o.b. Liberia. For the purposes of this Agreement, the fair market value f.o.b. Liberia is the London afternoon gold price fixing ("London PM Fix") for the day the gold is shipped from Liberia minus actual smelting and refining costs.

#### 15.3 Payment of Royalty.

The Royalty shall be paid to the Consolidated Fund in Dollars no later than 30 days after the end of the month in which the Mineral was shipped. At the time of making such payment, the Company shall provide the Ministry of Finance with a statement showing in such reasonable detail as the Ministry of Finance may require the manner of computation of the Royalties due.

#### 15.4 Annual Surface Rents.

The Company shall pay to the Government inflation adjusted rent on all its Exploration License and Mining License areas as follows:

- a. The Company shall pay an annual Resource Area Fee of US\$0.50 per hectare for land in the Exploration Area.
- b. The Company shall pay an annual Resource Payment Fee for land in a Production Area of US\$12.50 per hectare beginning on the date the Company is given a Mining License up to the tenth anniversary.
- c. The Company shall pay an annual Resources Area Fee of US\$25.00 per hectare for land in the Production Area from the tenth anniversary of the date such Mining License is granted through to the end of the term of the Mining License, as such term may from time to time be extended as agreed in writing between the Parties.
- d. All such surface rentals due under this Section 15.4 shall be paid annually to the Consolidated Fund in advance on or before January 15 of the year or period (pro rata) for which payment is being made, according to the classification of land as Exploration Area or Production Area as of January 1 of such year. With respect to land which is thereafter declared to be a Production Area, the Company shall pay to the Government on January 1 of the following year, such additional amount (if any) as is necessary to cause the effective rate of surface rental for such land for the year in which it is declared to be a Production Area (the "Declaration Year") to be per hectare, prorated for the number of calendar months in the Declaration Year (beginning with the month in which such land is declared to be a Production Area).
- e. The Company shall be allowed to offset from the first such payment any surface rental already paid in respect of the Exploration Area for the period following the Effective Date.
- f. All Surface Rentals shall be subject to annual inflationary adjustment in accordance with the GDP Implicit Price Deflator.
- g. Except as specified in this Agreement, there shall be no other surface rentals payable in respect of the Exploration Area or Production Area.

## SECTION 16 OTHER PAYMENTS TO THE GOVERNMENT

### 16.1 Signature Fee.

The Company shall pay to the Government a signature fee of

- a. US\$1,500,000 to be paid within fifteen (15) days of the Effective Date, and US\$1,500,000 to be paid on the granting of the Mining License to the Company.
- b. The signature fee shall be paid into the Consolidated Fund and shall not be tax deductible. Payment to the Consolidated Fund must be made to:

Correspondent Bank: FEDERAL RESERVE BANK OF NEW YORK

33 Liberty Street

New York, NY 10045-0001

SWIFT Code: FRNYUS33

Beneficiary: Central Bank of Liberia

Account Number: 021084717 LIBER

SWIFT Code: CBLRLRLM

For Further credit to: GOVERNMENT OF LIBERIA REVENUE ACCOUNT

Account Number: 1602003440

- c. Pursuant to Section 16.1a hereinabove, the Ministry of Finance and Development Planning shall immediately upon receipt of the signature fee, pay to the National Investment Commission US\$100,000 to cover administrative and related costs.

**16.2 Import Duties and Excise Taxes.**

- a. Pursuant to and in accordance with the provisions of the Revenue Code, the Company and its subcontractors shall pay no Taxes and Duties with respect to the import, use or purchase of goods, equipment, vehicles and supplies that are directly used in Operations (including medical and education supplies but not housing and office materials, furniture and supplies), and any other items required for and used in Exploration, Development, and Production. The Company and its subcontractors shall, with respect to imports, use or purchase of goods, equipment, vehicles and supplies not used in Exploration, Development and Production or otherwise exempt pursuant to this Section 16, pay import duties and excise taxes under Law but without prejudice to Section 18.2, at rates no higher than those payable by any other producer of Minerals in Liberia. In order for items to qualify for the exemption of import duty, it must be clearly established that items cannot be procured locally at comparable quality and price.
- b. In respect of Operations and activities the Company and its sub-contractors shall pay to the Government:
- i) Import duty and excise tax, pursuant to the Revenue Code on fuels including gasoline and gas oils at the rate of fifty percent (50%) of the import duty and excise tax provided by Section 1708(b) of the Revenue Code. When power generation is made available in said Contract Area by the Government or an agent of the Government that is (i) at a cheaper rate than is currently available with the use of fuel and (ii) is supplied in a quantity in excess of the Company's peak power requirements on a consistently available basis, then the Parties will discuss and make the necessary adjustments considering that the fuel duty discount will only be applied to the remainder of the fuel consumption necessary for mining operations and which cannot utilize grid power; provided however that for five year beginning at Commercial Production if the price of Gold is US\$1500

or below, the Company shall pay import duty and excise tax, pursuant to the Revenue Code on fuels including gasoline and gas oils at the rate of twenty-five percent (25%) of the import duty and excise tax provided by Section 1708(b) of the Revenue Code.

- ii) From the Effective Date to five years from the start of Commercial Production, be required to pay fifty percent (50%) of the import duty and excise tax under Law, on consumables (other than fuels and oils), and thereafter be required to pay import duty and excise tax under Law in accordance with the Revenue Code;

During the Term of the Agreement, be required to pay fifty percent (50%) of any applicable Goods and Services Tax (GST)

- iii) The Company shall be subject to inspection and reporting on all imports and exports in conformity with the Customs Code of Liberia, the Revenue Code and applicable Law. The Company shall utilize the services of the inspection entities approved by the Minister of Finance and Development Planning at rates to be negotiated between the Company and the designated inspection agency which shall not be greater than that applied to other mining companies in Liberia. Failing agreement on rates between the Company and any inspection entity, the Company may select another inspection company approved by the Minister of Finance and Development Planning. Such inspection company shall maintain all pre-shipment information and the reporting mechanism shall be subject to the prior written approval of the Minister of Finance and Development Planning.

- iv) Commencing on the Effective Date and thereafter for the period of five (5) years following the Effective Date, the Company shall pay an annual lump sum amount of Three Hundred Thousand Dollars (US\$300,000.00) to be paid in two instalments of One Hundred and Fifty Thousand Dollars (US\$150,000.00) each on January 15 and July 15 of each Calendar Year, in lieu of Customs User Fees (CUF) on items imported by the Company and its sub-contractors into the Republic for use in the Operations and thereafter pay Customs User Fees at a rate of 1.5% in accordance with the Revenue Code subject to a maximum of US\$10,000 per item.

- v) Surtax. During the Term of this Agreement, the Company shall pay a Surtax on income as provided for under Section 730 of the Revenue Code. For the purposes of this Agreement, the pre-tax threshold rate of return for application of Surtax on total investment is set at the thirty-five percent (35%).

#### 16.3 Non-Application of Section 16.2.

The provisions of Section 16.2 shall not apply, however, to subcontractors of the Company with respect to the following:

- a. their Taxes and Duties measured by reference to their net income, profit and gain under Law unless any such Person was resident in Liberia for less than one hundred and eighty-three (183) days in the tax year;
- b. subject to Section 16.3(a) above, their Taxes and Duties measured by reference to their net income, profit and gain under Law, and earned by them in Liberia except that no Taxes and Duties shall be payable with respect to any payments made to any of them by the Company as reimbursement for Taxes and Duties; or
- c. The import into (and subsequent re-export from) Liberia of personal and household goods and effects except as to one motor vehicle per family and as to their first move to Liberia to establish residency

#### 16.4 Processing and Other Fees.

All fees in connection with the grant, renewal, extension, continuation, extension and transfer of all Exploration Licenses and Mining Licenses subject to this Agreement shall be in the amount and paid as provided in the Fee Schedule. No action will be taken with respect to any filing or application referred to in any Section of this Agreement requiring the payment of a processing fee with the application until the Minister receives confirmation that the relevant fee has been paid. No approval or consent requiring the payment of a fee upon the granting of such approval or consent will be effective until the Minister receives confirmation that the relevant fee has been paid.

#### 16.5 ECOWAS Trade Levy.

Notwithstanding any general exemption from import duties applicable to the Company under the Revenue Code, the Company shall be subject to the ECOWAS Trade Levy on all goods from non-ECOWAS states which it imports into Liberia at the rate established by applicable Law.

#### 16.6 Regulatory Fees.

The Company shall pay such Taxes and Duties as are generally applicable under Law with respect to driver's licenses, vehicle registrations, corporate registration, residency and work permits and other license, registrations and permits incident to doing business or conducting activities in Liberia.

#### 16.7 Mineral Development Fund.

Within ninety (90) days of the date of Commercial Production and pursuant to Section 18.4 of the Mining Law, the Company shall make a one-time payment of US\$50,000 to the Government of the Mineral Development Fund fee. Such amount shall be paid into the Consolidated Fund for the Mineral Development Fund.

### SECTION 17 FINANCIAL REPORTING AND CURRENCY

#### 17.1 Accounting and Tax Matters.

All of the Company's accounting under this Agreement shall be in Dollars in conformance Revenue Code Section 701, and all amounts paid or received, and obligations incurred or transactions carried out, in currency that is Liberian Currency or in any other currency other than Dollars shall be converted to Dollars in accordance with and pursuant to generally accepted accounting principles based upon the Prevailing Market Rate of Exchange of Dollars and any such currency at the date of the applicable transaction.

**17.2 Exchange Control.**

The Company shall at all times have the right, without restriction, directly or indirectly, to obtain, hold, deal with and disburse funds in such manner, currencies and places as it chooses. Without prejudice to the generality of the foregoing, the Company shall have the unrestricted and unencumbered right to sell and receive payment for Mineral Product(s) in any currency, and all proceeds therefrom may be deposited in bank accounts outside of Liberia and held there or remitted therefrom to anywhere in the world, in any currency. Notwithstanding the foregoing, the Company shall maintain at least one operating account with a bank in Liberia.

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, and certified by the chief financial officer of the Company as having been prepared in accordance with international accounting standards applicable in Liberia consistently applied except as otherwise noted.

- b. Such financial statements shall be accompanied by an opinion thereon of independent public accountants of recognized competence selected in compliance with the requirements of the Liberian Institute of Certified Public Accountants Act, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with IFRS, consistently applied except as otherwise noted, that the examination of such accounts is

travel cost of a reasonable number of auditors selected by the Minister of Finance and Development Planning to travel to the place where such information, books and records may be obtained and their accommodation costs for a reasonable amount of time necessary to complete their review.

- f. Nothing in this Section 17.4 shall relieve the Company from any procedure, obligation or reporting requirement imposed by the Revenue Code.

#### 17.5 Compliance with LEITI.

The Company shall comply with requirements of the Liberian Extractive Industries Transparency Initiative Act with respect to all payments to be made by it to the Government.

### SECTION 18 INCIDENTAL RIGHTS AND OTHER MATTERS

#### 18.1 Imports.

The Company shall have the right to, in accordance with Section 12a and subject to the approval of the appropriate authorities, such approval not to be unreasonably withheld or delayed, import through any port or airstrip in Liberia (including Monrovia, Greenville and Buchanan), any and all machinery, equipment, vehicles, supplies, consumable items, fuels, petroleum products, explosives and any other thing whatsoever reasonably required with respect to Operations in compliance with applicable Law, including Section 16.12 of the Mining Law. The Company must at all times comply with applicable Law regarding the importation, use, sale, disposal and security of fuels, petroleum products, and explosives. The Government shall assist in discussions with the relevant authorities to ensure such right to import and access. The Government shall also use its best efforts to ensure that the Company has the right to import and access through any port or airstrip in Liberia.

#### 18.2 Taxes on Resale of Imported Items.

The Company may sell, in Liberia, all imported items that are no longer needed for Operations, except that the Company may not sell explosives, gasoline or diesel within Liberia to third parties without the consent of the Minister of Finance and Development Planning after consulting the Minister of Mines and Energy and the Minister of Justice. If such imported items were exempted in all or part from Taxes and Duties on import into Liberia, then the Company must upon their sale pay to the Consolidated Fund those Taxes and Duties payable on such items under applicable Law in effect on the date of sale calculated on the basis of the fair market value as determined by the Ministry of Finance of such items on the date of sale and fulfil all formalities required by Law in connection with such sales.

#### 18.3 Right to Export Minerals and Other Rights.

The Company may, directly or through appropriate contractual arrangements, (i) market and sell (at Arm's Length international market and competitive prices) the Mineral Product(s) obtained from Operations during the Term of the relevant Mining License to any Person in any country or state, subject in all cases to applicable Law and the provisions of this Agreement, and (ii) subject to its obligations to pay Royalty, Taxes and Duties and other amounts due the

- a. As of the Effective Date the Company has four (4) Subsidiaries that only engage in activities in support of the Operations of the Company under this Agreement, being those listed in Exhibit 4. At all times during the Term, the Company and its Subsidiaries shall operate in compliance with Section 21.8.
- b. Beginning on the Effective Date, the Company shall not incorporate or acquire new Subsidiaries other than wholly-owned Liberian Subsidiaries that only engage in activities in support of the Operations of the Company under this Agreement; provided that the Government for taxation purposes, may consolidate such Subsidiaries and the Company.
- c. Except as provided in the final sentence of this Section 21.3c, the Company may not make, and shall cause any entity that Controls the Company and is organized under the laws of Liberia not to make other investments. For the purposes of this Section 21.3c, an "investment" includes any investment, made in cash or by delivery of property, by the Company in any Person, whether by acquisition of stock, indebtedness or other obligation or security of any Person, or by loan, guarantee, advance, capital contribution or otherwise in favor of any Person, or in any property other than property acquired in carrying out a Development Plan embedded in an approved Feasibility Report. This Section 21.3c does not limit the ability of the Company to invest excess funds in debt instruments, money market funds, or similar obligations issued (in each case) by entities that are not Affiliates of the Company, or to make reasonable prepayments and progress payments in connection with the construction of any Mine, Mining Plant or Infrastructure.

#### 21.4 Adequate Capital.

- a. After the issuance of a Mining License to the Company under this Agreement and up to the commencement of mineral production for commercial sales, the Company must maintain a ratio of Indebtedness to Net Worth that is equal to or lower than 3:1, and may make no Restricted Payment.
- b. After the commencement of Mineral Production for commercial sales, the Company may make no Restricted Payment unless after giving effect thereto, the ratio of Indebtedness to Net Worth of the Company does not exceed 3:1. For purposes of this Section 21.4, the amount of any Restricted Payment made in property is be the greater of (x) the fair market value of such property (as determined in good faith by the board of directors of the Company) and (y) the net book value thereof on the books of the Company, in each case determined as of the date on which such payment is made.
- c. "Indebtedness" means, at any time, without duplication excluding Subordinated Debt ("Subordinated Debt" means any financial liability that contractually can only be paid if following such payment the ratio of Indebtedness to Net Worth of the Company is equal to or lower than 3:1),
  - i) the liabilities of the Company for borrowed money and the redemption obligations of the Company in respect of mandatorily

redeemable shares or other securities of the Company that are entitled to preference or priority over any other shares of the capital stock of such corporation in respect of payment of dividends or distribution of assets upon liquidation;

- ii) the liabilities of the Company for the deferred purchase price of property acquired by the Company (excluding accounts payable arising in the ordinary course of business but including all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property);
- iii) all liabilities appearing on the Company's balance sheet in accordance with IFRS, as applicable under Section 17.4a in respect of leases with respect to which the Company is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with IFRS, as applicable under Section 17.4;
- iv) all liabilities for borrowed money secured by any Lien upon or with respect to any property or asset of the Company (whether or not it has assumed or otherwise become liable for such liabilities);
- v) all liabilities of the Company in respect of letters of credit or instruments serving a similar function issued or accepted for its account by banks and other financial institutions representing or supporting the payment of obligations referred to in clauses (i) through (iv) hereof; and
- vi) any guarantee or similar undertaking of the Company with respect to liabilities of a type described in any of clauses (i) through (v) hereof.

Indebtedness of the Company shall also include all obligations of the Company of the character described in clauses (i) through (vi) to the extent the Company remains legally liable in respect thereof notwithstanding that any such obligation is deemed to be extinguished under IFRS, as applicable under Section 17.4a.

d. "Net Worth" means:

- i) the total assets of the Company which would be shown as assets on a balance sheet of the Company as of such time prepared in accordance with IFRS, as applicable under Section 17.4a, minus
- ii) the total liabilities of the Company which would be shown as liabilities on a balance sheet of the Company as of such time prepared in accordance with IFRS, as applicable under Section 17.4a, excluding any amounts of Subordinated Debt.

e. "Restricted Payment" means, with the exception of the issuance to the Government of shares pursuant to Section 21.7:

- i) any dividends or other distributions or payments on capital stock or other equity interest of the Company (except distributions in such stock or other equity interest); and the redemption or acquisition of any stock or other equity interests in the Company or of warrants, rights or other options to purchase such stock or other equity interests (except when solely in exchange for such stock or other equity interests) unless made, contemporaneously, from the net proceeds of a sale of such stock or other equity interests, including, without limitation, any such action resulting in the acquisition by the Company of securities that would constitute treasury stock, and
  - ii) any payment, repayment, redemption, retirement, repurchase or other acquisition, direct or indirect, by the Company of, on account of, or in respect of, the principal of any subordinated debt (or any installment thereof) held by the Company, any shareholder of the Company, any Affiliate of the Company, or any Affiliate of any 10% Company Shareholder.
- f. The deductibility or other treatment of any interest payments by the Company for purposes of Taxes and Duties shall be governed by applicable Law and shall be unaffected by this Section 21.4.

#### 21.5 Provision of Funds.

The Company shall ensure that it has a prudent capital structure and is provided with adequate funds as and when needed to ensure timely Development and performance of Operations in accordance with and within the limits defined in the approved Feasibility Report and compliance with the requirements of Section 21.4.

#### 21.6 Guarantee.

- a. Prior to issuance to the Company of a Mining License the Company shall provide the Government an executed guarantee (the "Mining Guarantee") from its Parent, on commercially reasonable terms to be agreed to between the Parties, guaranteeing the obligations of the Company under Sections 6.2, 13 and 21.5. The Mining Guarantee shall remain in effect following termination of this Agreement until all remaining obligations of the Company under Sections 6.2, 13, and 21.5 and are fulfilled.

#### 21.7 Interest of the Government in the Company; Shareholders Agreement.

- a. Government shall receive, free of charge, a carried equity interest in the Company's Operations equal to ten percent (10%) of its authorized, issued and outstanding share capital existing at any time and from time to time, without dilution under any circumstances. The issuance of new shares shall not decrease the ten percent (10%) carried equity interest of the Government. No later than thirty (30) Business Days following the Effective Date, the Parties shall enter into the Shareholders Agreement in the form of Exhibit 3 attached hereto. In addition, if the Company proposes to issue and sell new shares of the Company, the Government shall have the right of first refusal to purchase such shares and to participate in any third

party fund raisings by the Company on the same terms as those offered by third parties to the Company and which are reasonably acceptable to the Company.

#### 21.8 Transactions with Affiliates.

The Company will not enter into directly or indirectly any transaction or group of related transactions (including without limitation the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate of the Company or any Affiliate of a 10% Company Shareholder, except in the ordinary course and pursuant to the reasonable requirements of the Company's business and upon fair and reasonable terms no less favorable to the Company than would be obtainable in a comparable Arm's Length transaction with a Person not an Affiliate. Without limiting the generality of the foregoing, (i) each transaction between the Company and an Affiliate or the Company or an Affiliate of a 10% Company Shareholder involving Mineral Product(s) shall be on the basis of Arm's Length in ordinary course of business and pricing and (ii) each transaction between the Company and one of its Affiliates or an Affiliate of a 10% Company Shareholder involving items or services other than Mineral Product(s) and a price or value in excess of US\$500,000 shall be supported by an external transfer pricing study prepared by one of the international accountancy and professional services firms approved by the Liberian Institute of Certified Public Accountants or by another internationally-recognized, independent transfer pricing expert based in the United States or Europe and approved in advance by the Minister of Finance and Development Planning and Development Planning (a "Transfer Pricing Study"). All Tax returns of the Company shall be prepared by, or reviewed prior to filing by, an accounting firm compliant with the Liberian Institute of Certified Public Accountants Act of 2011 and shall be prepared and timely filed in accordance with such transfer pricing studies. The Ministry of Finance shall be entitled to review any such transfer pricing studies in connection with any audit of any of the Company's tax returns.

#### 21.9 The Company.

At all times during the Term, (i) the Company must be a corporation organized under the Law and in good standing, (ii) none of the Affiliates, directors, officers described in Section 22.1c (whether or not listed on Schedule C) may be a Prohibited Person, (iii) the Company must be an "Eligible Applicant" under the Mining Law and (iv) no officer or director of the Company may be a Person described in Sections 4.2(a), (d), (f) or (g) of the Mining Law. The Company shall notify the Government annually in writing of any changes to the lists and tables required in Section 22.1c below.

### SECTION 22 REPRESENTATIONS AND WARRANTIES

#### 22.1 Representations and Warranties of the Company.

The Company represents and warrants to the Government at the date of this Agreement and on the Effective Date as follows:

- a. The Company is a corporation duly organized, validly existing and in good standing under the Law, and has the corporate power and authority to execute, deliver and perform its obligations under this Agreement.

- b. This Agreement has been duly authorized by all necessary corporate action on the part of the Company, and this Agreement constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or in law).
- c. Schedule C contains (except as otherwise noted) complete and correct lists or tables setting forth:
- i) the Company's shareholders,
  - ii) the Company's Affiliates showing forth, in each case, its relationship to the Company and the jurisdiction in which it is organized,
  - iii) the directors and senior officers of the Company, each shareholder of the Company, and each Person or Group deemed to Control the Company, and
  - iv) each Person or Group that is the owner of 5% or more of (x) the voting rights ordinarily empowered to control the management of the Company or (y) the rights to share in the profits of the Company, and the chain through which such rights are exercised
- d. As far as the Company is aware after reasonable inquiry, none of the Affiliates, directors, officers or other Persons identified in Schedule C is a Prohibited Person. The Company is an "Eligible Applicant" under the Mining Law and no officer or director of the Company is a Person described in Sections 4.2(a), (d), (f) or (g) of the Mining Law.
- e. As far as the Company is aware after reasonable inquiry and except as has previously been disclosed to the Minister and/or the Minister of Justice in writing, the execution, delivery and performance by the Company of this Agreement will not (i) contravene, result in any breach of, or constitute a default under, any agreement or instrument to which the Company is a Party, by which it or any of its properties are bound or affected, (ii) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or governmental authority, made against the Company or (iii) violate any provision of any statute or other rule or regulation of any governmental authority applicable to the Company
- f. As far as the Company is aware after reasonable inquiry and except as has previously been disclosed to the Minister and/or the Minister of Justice in writing there are no actions, suits, investigations or proceedings pending or, to the knowledge of the Company, threatened, against or affecting the Company or any property of the Company in any court, administrative tribunal, or before any arbitrator of any kind or before or by any

governmental authority that call into question the right of the Company to enter into and perform its obligations under this Agreement or that, if resolved against the Company, would materially and adversely affect its ability to perform its obligations under this Agreement.

- g. As far as the Company is aware after reasonable inquiry and except as has previously been disclosed to the Minister and/or the EPA in writing, neither the Company nor any of its Affiliates has been determined under any order, judgment, decree or ruling of any court, arbitrator or governmental authority to be in material violation of (i) any applicable law, ordinance, rule or regulation relating to the protection of the environment of any governmental authority or (ii) any agreement pursuant to which it is entitled to extract Minerals or hydrocarbons under the laws of any jurisdiction.
- h. None of the Company, or so far as the Company is aware after reasonable inquiry, any Affiliate of the Company or any Person acting on behalf of the Company or any Affiliate of the Company has made or promised to make any payment or transfer of anything of value, directly or indirectly, to or for the benefit of an Official or an Official's family member or to an intermediary for payment to or for the benefit of an Official or an Official's family member in connection with this Agreement or the transactions contemplated hereby where such payment or transfer is in breach by the Company of Liberian Law (For the purposes of this paragraph, "Official" means (i) any employee or officer of the Government, including any regional or local department or agency or instrumentality thereof, (ii) any employee or officer of any enterprise owned or controlled by the Government, (iii) any official of a political party in Liberia, (iv) any official or employee of a public international organization, (v) any other person acting in an official capacity for, or on behalf of, any of the entities described in clauses (i) through (iv), or (vi) any candidate for political office in Liberia.
- i. For the avoidance of doubt, the Company has the authority to enter into this Agreement on behalf of the holders of the Exploration Licenses listed in Annex 2.

## 22.2 Representations and Warranties of the Government.

The Government represents and warrants to the Company that on the Effective Date, the execution, delivery and performance of this Agreement will have received all necessary governmental approvals and authorizations and this Agreement will constitute the legal, valid and binding obligation of the Government and will supersede all and any previous acts or laws, agreements or arrangements, relating to the area as defined in Exhibit 1.

## SECTION 23 CONFIDENTIALITY

This Agreement is not confidential, and the Company is not entitled to confidential treatment of information relating to the Agreement except as expressly provided in the Exploration Regulations. The Government or the Company may, and the Government expects to, make public information relating to the timing and amount of Royalties and other payments specifically due or paid under the terms of this Agreement or of Taxes and

Duties payable or paid by the Company or the rates at which Royalties, Taxes and Duties or other payments become due or are assessed, as well as any information that is useful in computing the amount of such Royalties, Taxes and Duties or other payments becoming due.

## **SECTION 24 ASSIGNMENTS, TRANSFERS AND CHANGES OF CONTROL**

The restriction on Transfers contained in Section 24.1 and the restriction on Changes of Control in Section 24.4 are to be independently applied.

### **24.1 General Transfer Rule.**

No Transfer of (1) this Agreement or a Mining License, or (2) any rights of the Company in the Mine or any immovable Infrastructure (other than in the ordinary course of renewal and replacement of its properties and other than Transfers of Mineral Product(s) in the ordinary course of business) is permitted unless the Transfer (i) has received the prior written consent of the Government, which consent may be given or withheld in its sole discretion, or (ii) is otherwise permitted under the terms of Section 24.2, 24.3, 24.5, or 24.6. Unless the Company has received the prior written consent of the Government, which consent may be given or withheld in its sole discretion, the Company may not Transfer any Exploration License relating to the Exploration Area independently of a Transfer of this Agreement. Any Transfer by the Company of this Agreement shall be deemed to include a Transfer of all rights of the Company under any such Exploration License.

### **24.2 Permitted Transfer to an Affiliate.**

- a. A Transfer of (1) this Agreement and each Mining License issued pursuant to this Agreement (if any), and (2) all rights of the Company in the Mine, Mining Plant, Infrastructure (i) to any Affiliate or (ii) as a consequence of a merger or consolidation of the Company with an Affiliate of the Company, or a sale of all such rights to an Affiliate of the Company is permitted if,
  - i) at the time of the consummation of such transaction the Company has not been notified by the Government that is in material default in the performance of its obligations or the discharge of its liabilities under this Agreement (other than any obligations that have been waived by the Government or defaults that have been cured by the Company to the reasonable satisfaction of the Government) and no order suspending Work by the Company issued under Section 25 of this Agreement or Section 16 of the Exploration Regulations is outstanding and unresolved;
  - ii) such transaction is not otherwise in violation of applicable Law,
  - iii) such transaction does not result in a Change of Control,
  - iv) the survivor or transferee, as the case may be, is (x) a corporation organized and validly subsisting under the laws of Liberia and (y) an "Eligible Applicant" under the Mining Law and a Permitted Transferee under Section 24.8, and delivers to the Minister, the Minister of Finance and Development Planning, the Chairman of the

National Investment Commission prior to the consummation of such Transfer:

- A. its agreement, in the form of a deed of adherence to this Agreement or a novation of this Agreement, to assume and perform or discharge all of the obligations and liabilities of the Company under this Agreement and each Mining License;
  - B. its written representations and warranties to the effect set forth in Section 22.1 stated to be true and correct as of a time immediately after giving effect to such Transfer;
  - C. the confirmation of the Company, if it continues to exist following such transaction, that it remains liable for the performance and discharge of its obligations and liabilities under this Agreement and each Mining License unless otherwise agreed to by the Minister; and;
  - D. the confirmation of the guarantor that the Guarantee provided pursuant to Section 21.6, to the extent required, to apply to the survivor or transferee, as the case may be.
  - E. so the Government's equity interest in the Company shall be maintained undiluted in the survivor or transferee; and shall have executed a Shareholders Agreement by and through the Minister, the Minister of Finance and Development Planning, the Chairman of the National Investment Commission, and attested to by the Minister of Justice providing substantially the same rights and duties that the Government had with respect to its equity interest in the Company.
- b. Any failure by the Government to give notice to the Company in accordance with clause (i) of Section 24.2a shall not effect the Government's rights and remedies under this Agreement to the extent the Company was in default in a material respect in the performance of its obligations or the discharge of its liabilities under this Agreement or under the Exploration Regulations (as modified by this Agreement), which have not been cured to the reasonable satisfaction of, or waived by, the Government.

#### 24.3 Permitted Transfer to a Person not an Affiliate.

A Transfer of (1) this Agreement and each Mining License issued pursuant to this Agreement (if any), and (2) all rights of the Company in the Mine, Mining Plant, Infrastructure (i) to a Person not an Affiliate of the Company or (ii) as a consequence of a merger or consolidation of the Company with a Person not an Affiliate of the Company in which the Company is not the survivor is permitted if each of the requirements of Section 24.2a is satisfied other than clause (iii) of Section 24.2a and clause (iv)(D) of Section 24.2a and in addition the survivor or transferee, as the case may be,

...to the satisfaction of the Government, acting reasonably,  
...of financial

- a. has demonstrated to the satisfaction of the Government, acting reasonably, that it has directly or indirectly the technical skills, experience, and financial resources necessary (or could be reasonably expected to obtain the financial resources necessary as evidenced by a viable financing plan, which is supported by an appropriate commitment letter from any provider of finance) to carry out its obligations under this Agreement, each Exploration License and each Mining License; and
- b. has delivered to the Minister, the Guarantee in the form and from an entity required by Section 21.6 guaranteeing the specified obligations of the survivor or the transferee, as the case may be;
- c. So the Government's equity interest in the Company shall be maintained in the transferee, the survivor or transferee, as the case may be, shall have entered into a Shareholders Agreement providing the Government, in the reasonable judgment of the Minister, the Minister of Finance and Development Planning, the Chairman of the National Investment Commission, and the Minister of Justice with substantially the same rights and duties that the Government had with respect to its equity interest in the Company; and

If the Government objects to any proposed survivor or transferee on the basis that such proposed survivor or transferee does not satisfy the requirements specified in Section 24.3a, it shall give notice consistent with the requirements of Section 29 in writing of its objection to the Company, giving reasons therefor, within one month from the date it receives notification from the Company that it proposes to make a permitted Transfer in accordance with this Section 24.3. If the Company has not received such notification from the Government within one month from the date the Government received its notification of a proposed permitted Transfer, the Company shall notify the Government and the Government shall submit its written objections, if any, and if the Government does not submit any written objections within seven (7) days of such notification, the proposed survivor or transferee shall be treated as having satisfied the requirements in Section 24.3a.

#### 24.4 General Change of Control Rule.

No Change of Control of the Company is permitted unless it has received the prior written consent of the Government, such consent not to be unreasonably withheld or delayed, or is otherwise permitted under the terms of Section 24.5 or 24.6. For the avoidance of doubt, the granting of any pledge, mortgage, charge or other encumbrance, which if exercised would result in a Change of Control, will not be treated as a Change of Control until exercised.

#### 24.5 Permitted Changes of Control.

- a. A Change of Control with respect to the Company is permitted if the Change of Control occurs solely by operation of a Transfer otherwise permitted under Section 24.3 or if:
  - i) at the time of the Change of Control the Company has not been notified by the Government that it is in material default in the

performance of its obligations or the discharge of its liabilities under this Agreement (other than any obligations that have been waived by the Government or defaults that have been cured by the Company to the reasonable satisfaction of the Government) and no order suspending Work by the Company issued under Section 25 of this Agreement or Section 16 of the Exploration Regulations is outstanding and unresolved;

- ii) the Company delivers to the to the Government prior to the Change of Control its written representations and warranties to the effect set forth in Section 22.1 stated to be true and correct as of a time immediately after giving effect to such Change of Control;
  - iii) the Company has demonstrated to the reasonable satisfaction of the Government, acting reasonably, prior to the Change of Control that after giving effect to the Change of Control it will have directly or indirectly the technical skills, experience, and financial resources necessary (or could be reasonably expected to obtain the financial resources necessary as evidenced by a viable financing plan, which is supported by an appropriate commitment letter from any provider of finance) to carry out its obligations under this Agreement each Exploration License and each Mining License; and
  - iv) prior to the Change of Control either the guarantor under the Guarantee issued pursuant to Section 21.6 has confirmed to the Minister of Finance and Development Planning in writing the continued effectiveness of such Guarantee notwithstanding the Change of Control or the Company has delivered to the Minister of Finance and Development Planning a new Guarantee in the form and from an entity required by Section 21.6 guaranteeing the specified obligations of the Company under this Agreement.
- b. If the Government objects to any Changes of Control on the basis that following such proposed Change of Control the Company would not satisfy the requirements specified in clause (iii) of Section 24.5a, it shall notify in writing its objection to the Company, giving reasons therefor, within one month from the date it receives notification from the Company that it proposes to make a permitted Change of Control in accordance with this Section 24.5. If the Company has not received such notification from the Government within one month from the date the Government received its notification of a proposed permitted Change of Control, the Company shall be treated as having satisfied the requirements specified in clause (iii) of Section 24.5a following such Change of Control.
- c. Any failure by the Government to give notice to the Company in accordance with clause (i) of Section 24.5a shall not affect the Government's rights and remedies under this Agreement to the extent the Company was in default in a material respect in the performance of its obligations or the discharge of its liabilities under this Agreement or under the Exploration Regulations (as modified by this Agreement), which have not been cured to the reasonable satisfaction of, or waived by, the Government.

- d. If a Person who acquires Control is a wholly-owned subsidiary of a Person who has Control and such acquiring Person continues to have Control after such transaction then such transaction will not be treated as a Change of Control.

**24.6 Right to Encumber, and Related Transfers and Changes of Control.**

- a. The Company may mortgage, charge or otherwise encumber (collectively, a "Mortgage") all or part of the Company's interest under this Agreement and each Mining License as security for an obligation or indebtedness as contemplated by Section 9.18 of the Mining Law (the "Mortgaged Property") and the holder of such Mortgage agrees in writing with the Minister prior to the granting of such Mortgage that it will cause a foreclosure or other exercise of remedies under such Mortgage against the rights of the Company or any Affiliate of the Company in the Mortgaged Property to occur only if:
- i) The Mortgaged Property either (A) comprises the entirety of a Mining License (including the Mine and Mining Plant situated within a Production Area relating to that Mining License) or (B) the entirety of a piece of Infrastructure which is capable of being separately financed being non-process infrastructure (e.g., residential camp, buildings, hospitals, sewage and water treatment facilities, etc), power generation facilities, port facilities (including any related processing facilities) or railroad or rolling stock;
  - ii) the exercise of remedies results in a Transfer of 100% of the interest of the Company or any Affiliate of the Company in the Mortgaged Property to a corporation other than the Company organized and validly subsisting under the laws of Liberia;
  - iii) the transferee delivers to the Government prior to such Transfer
    - A. its agreement to assume and perform or discharge all of the obligations and liabilities of the Company under this Agreement and, where relevant, any Mining License relating to the Mortgaged Property;
    - B. its written representations and warranties to the effect set forth in Section 22.1 stated to be true and correct as of a time immediately after giving effect to such Transfer;
  - iv) the transferee has demonstrated prior to such Transfer to the reasonable satisfaction of the Government, acting reasonably, that it has directly or indirectly the technical skills, experience, and financial resources necessary (or could be reasonably expected to obtain the financial resources necessary as evidenced by a viable financing plan, which is supported by an appropriate commitment letter from any provider of finance) to carry out its obligations under this Agreement and, where relevant each Mining License; and

v) all outstanding failures of the Company to make any payments due to the Government under this Agreement are cured at the time of such Transfer (including a failure to pay royalties due but excluding any failure to pay taxes due on income or profits), and the transferee has undertaken to cure all other material defaults of the Company then existing (to the extent they can be cured by an entity other than the Company) within 270 days of the date of the transfer.

- b. Any exercise of remedies under a Mortgage in compliance by such holder in accordance with the requirements set forth in this Section 24.6 is both a permitted Transfer and a permitted Change of Control.
- c. If requested, the Minister, acting on behalf of the Government, shall enter into an agreement with any such holder embodying the terms of this Section 24.6 at the time any such Mortgage is granted.
- d. Notwithstanding the foregoing provisions of this Section 24.6, the Company may grant purchase money security interests in any Movable property owned by it.

**24.7 Reissuance of Mining License in Name of Transferee; Mining License Invalid unless Reissue Request Timely Received.**

The Minister shall reissue in the name of the transferee any Mining License that is the subject of a Transfer permitted under this Section 24 within 30 days after receipt of a transfer request from the transferor or the transferee. A Mining License becomes invalid 90 days after a Transfer otherwise permitted under this Section 24 unless a request to reissue the Mining License in the name of the transferee is received by the Minister within such 90-day period.

**24.8 Permitted Transferee.**

A "Permitted Transferee" is a Person permitted to hold a Mining License under the Mining Law who (i) is not a Prohibited Person, does not have an officer or director who is a Prohibited Person, and is not controlled by a Prohibited Person, and (ii) as to which no Person or Persons holding in the aggregate (x) in excess of 5 % of the rights to share in the profits of such Person is or are Prohibited Persons.

**24.9 Responsibility of Licensee.**

It is the responsibility of the Company and its Controlling Persons to ensure that Management Rights with respect to the Company are structured and held in such a manner that transfers of such rights are made in compliance with the Change of Control provisions of this Section 24.

**24.10 Disclosure; Consents; Exceptions; Fees.**

- a. A Transfer or a Change of Control does not comply with the requirements of this Section 24 if any representations and warranties required to be delivered in connection with such Transfer or Change of Control were not true and correct in any material respect as of the date as of which they were made.

- v) all outstanding failures of the Company to make any payments due to the Government under this Agreement are cured at the time of such Transfer (including a failure to pay royalties due but excluding any failure to pay taxes due on income or profits), and the transferee has undertaken to cure all other material defaults of the Company then existing (to the extent they can be cured by an entity other than the Company) within 270 days of the date of the transfer.
- b. Any exercise of remedies under a Mortgage in compliance by such holder in accordance with the requirements set forth in this Section 24.6 is both a permitted Transfer and a permitted Change of Control.
- c. If requested, the Minister, acting on behalf of the Government, shall enter into an agreement with any such holder embodying the terms of this Section 24.6 at the time any such Mortgage is granted.
- d. Notwithstanding the foregoing provisions of this Section 24.6, the Company may grant purchase money security interests in any Movable property owned by it.

**24.7 Reissuance of Mining License in Name of Transferee; Mining License Invalid unless Reissue Request Timely Received.**

The Minister shall reissue in the name of the transferee any Mining License that is the subject of a Transfer permitted under this Section 24 within 30 days after receipt of a transfer request from the transferor or the transferee. A Mining License becomes invalid 90 days after a Transfer otherwise permitted under this Section 24 unless a request to reissue the Mining License in the name of the transferee is received by the Minister within such 90-day period.

**24.8 Permitted Transferee.**

A "Permitted Transferee" is a Person permitted to hold a Mining License under the Mining Law who (i) is not a Prohibited Person, does not have an officer or director who is a Prohibited Person, and is not controlled by a Prohibited Person, and (ii) as to which no Person or Persons holding in the aggregate (x) in excess of 5 % of the rights to share in the profits of such Person is or are Prohibited Persons.

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It is the responsibility of the Company and its Controlling Persons to ensure that Management Rights with respect to the Company are structured and held in such a manner that transfers of such rights are made in compliance with the Change of Control provisions of this Section 24.

**24.10 Disclosure; Consents; Exceptions; Fees.**

- a. A Transfer or a Change of Control does not comply with the requirements of this Section 24 if any representations and warranties required to be delivered in connection with such Transfer or Change of Control were not true and correct in any material respect as of the date as of which they were made.

- b. A Mining License the subject of a Transfer in violation of this Section 24 becomes invalid upon such Transfer. A Mining License the subject of a Change of Control in violation of this Section 24 becomes invalid 30 days after the occurrence of such Change of Control unless the transaction(s) constituting such Change of Control are reversed within such 30-day period and the Company within such 30-day period reports to the Minister such occurrence and the steps taken to reverse it within five days of the occurrence.

- c. an Environmental Audit under Section 13 has demonstrated, or the Minister or the EPA, as the case may be, has determined that there exist material failures to comply with the approved EMP and the Company has not remedied such failures to the reasonable satisfaction of the Minister or the EPA, as the case may be, within 60 days from notice to the Company (or as otherwise required by applicable Law or a lesser remediation period is warranted under the circumstances) from either of them as to the nature of such failures; or
- d. the Company is in violation of Section 6.2b (other than an isolated immaterial violation); or
- e. the Company is conducting Mining Operations outside of the Production Area that is the subject of such Mining License; or
- f. the Company is in breach of any its obligations under Section 17.4, 21.3, 21.4, 21.8 and has not cured such breach within 75 days after receiving notice from the Minister of such breach; or
- g. the Company is in default of its obligation to pay Royalties under Section 15.1 in excess of US\$100,000, and such default has not been cured within 30 days after notice from the Minister or the Minister of Finance and Development Planning.

## 25.2 Order Suspending Work.

Except as provided in the following sentence, a suspension order, other than a temporary suspension order as provided in Section 25.5, must be in writing and signed by the Minister and/or the EPA as the case may be, and will be effective the Business Day following its receipt by the Company at its address for notices, or, if delivered to a field office or other location at which the Operations to be suspended are being performed and at which a person with supervisory responsibilities is present, is effective on delivery. An order of suspension based on a violation of Section 9.1 that has resulted in (or is determined by the Minister to create a serious risk of resulting in) death or severe personal injury may be given by telephone confirmed in writing within 24 hours, and is effective immediately. Any suspension order (except a temporary suspension order as provided in Section 25.5, or a telephone order under the preceding sentence) must set forth in a summary manner the facts relied upon for the issuance of the order and the name, location and telephone number of a responsible person at the Ministry (or the Ministry of Finance, as the case may be) who may be contacted for additional information. Neither the Company's payment obligations under nor the term of this Agreement or the term of the relevant Mining License are suspended by an order of suspension under this Section.

## 25.3 Compliance with Suspension Order.

The Company must comply with an order of suspension or temporary suspension order properly given under this Section 25 until such order is withdrawn (or deemed withdrawn) pursuant to Section 25.4, or lapses pursuant to Section 25.5, or is directed to be withdrawn pursuant to a final administrative order in a hearing held

pursuant to the Administrative Procedure Act of Liberia, or a final order in a judicial proceeding, or pursuant to an arbitration under Section 28.

#### 25.4 Resumption of Work.

The Company may at any time submit a request that a suspension order or temporary suspension order be withdrawn, setting forth in reasonable detail the facts and circumstances relied upon to demonstrate the elimination or correction of the event or condition that supported the issuance of the order. The Minister must withdraw the order without delay if the event or condition no longer exists or has been remedied. If within ten (10) Business Days of receiving such submission the Minister neither grants such request nor notifies the Company of the reasons for not granting such request, the order involved will be deemed withdrawn. If within ten (10) Business Days of receiving a resubmitted request for withdrawal of the same order, the Minister does not either grant such request or give notice to the Company setting forth reasons for not granting such request, the order involved will be deemed withdrawn. The initial and each subsequent resubmission (if any) shall be conspicuously marked to show all changes (additions and deletions) from the previous submission. For the avoidance of doubt, a notice is deemed to have been received under this Section 25.4 if signed returned receipt by the Minister or is otherwise marked for the attention of the Minister and served on the Minister in accordance with the provisions of Section 29.

#### 25.5 Temporary Suspension Order.

- a. Any officer or employee of the Ministry responsible for mine safety compliance, acting in an official capacity, may issue a temporary suspension order with regard to all or part of Operations when in that officer's or employee's reasonable opinion the Company's Operations pose an immediate risk or danger to public safety or hygiene, to mine workers, to the preservation of the mine, to neighboring mines or quarries, water sources or public roads. Such order shall be in writing and witnessed in writing by one other authorized officer of the Ministry. A temporary suspension order must set forth in a summary manner the facts relied upon for the issuance of the temporary suspension order and the name, location and telephone number of a responsible person at the Ministry who may be contacted for additional information. A temporary suspension order shall take immediate effect upon its delivery to the Company's general manager or other authorized representative responsible for the Operations the subject of the order (save that when it is delivered to a Material Sub-contractor it shall also be immediately delivered to the Company's general manager or other authorized representative) and shall lapse after 10 days from the date the order is first issued.

### SECTION 26 TERMINATION

#### 26.1 Government Event of Default.

A "Government Event of Default" shall exist:

- a. if (i) the Government shall have failed to comply with its material obligations under this Agreement and such failure has had a material adverse effect on the Company, (ii) such failure is continuing for more than 90 days after notice thereof to the Government from the Company and (iii) within such 90 day period the Government has not cured the adverse impact of such failure; or
- b. any representation or warranty of the Government made in Section 22.2 proves to be false or incorrect in any material respect on the date as of which made.

## 26.2 Company Events of Default.

A "Company Event of Default" shall have occurred if any of the following conditions or events shall occur and be continuing:

- a. the Company shall have failed to make any payment due under Section 15.4 and such failure is not cured within 30 days of notice from the Minister or the Minister of Finance and Development Planning;
- b. the Company shall have failed to make any other payment due under this Agreement, the Exploration Regulations, any Mining License issued pursuant to this Agreement or any undertaking of the Company provided for in this Agreement and such failure is not cured within 30 days of notice from the Minister or the Minister of Finance and Development Planning; or
- c. the Guarantee delivered pursuant to Section 21.6, once issued, shall for any reason no longer be enforceable in accordance with its terms, and the Company shall have failed to provide a replacement Guarantee within 60 days after having notice thereof; or
- d. any representation or warranty of the Company contained in Section 22.1 proves to have been false or incorrect on the date as of which made and has had or would reasonably be expected to have a material adverse influence on the Government's decision to enter into this Agreement and has a material effect on the ability of the Company to perform its obligations under this Agreement; or
- e. the Company shall have materially failed to comply with any of its other material obligations under this Agreement or any Mining License of the Company provided for in this Agreement and shall have failed to cure such default within 90 days after notice thereof from the Minister (from the Minister of Finance and Development Planning, in the case of a failure to pay any Taxes and Duties within the grace period provided by applicable Law); or
- f. the Company shall (i) voluntarily make an assignment of all or substantially all of its assets for the benefit of creditors other than an assignment made to secure indebtedness incurred in the ordinary course of business, (ii) file a petition or application to any tribunal for the appointment of a trustee or receiver for all or any substantial part of its assets, (iii) commence any

proceedings for its bankruptcy, reorganization, arrangement (other than a scheme of arrangement not involving an insolvent company) or insolvency under any laws applicable to it whether now or hereafter in effect, or if any such petition or application is filed, or any such proceedings are commenced against it, indicate its approval thereof, consent thereto or acquiescence therein, or (iv) if any order is entered appointing any such trustee or receiver, or adjudicating it bankrupt or insolvent, or approving the petition in any such proceedings, permit such order to remain in effect for more than 90 days.

**26.3 Nature of Notice of Default.**

Any notice of an alleged Event of Default by either Party shall identify with reasonable clarity the principal provision or provisions with respect to which the default arises and the facts alleged to constitute such default.

**26.4 Opportunity to Cure.**

In the case of an Event of Default, where no cure period is provided for in this Section 26, before taking any further action, the Party alleging an Event of Default shall provide notice to the other Party of the occurrence of such Event of Default and of the Party's views in that regard and shall offer the other Party a fair opportunity to consult with the Party to resolve the matter. If the other Party fails to cure the Event of Default within sixty (60) after notice thereof, where such Event of Default is curable, the Party alleging the Event of Default may then send to the other Party a Termination Notice as defined in and subject to the provisions of Section 26.5 below.

**26.5 Notice of Termination; Termination When a Mortgage Exists; Arbitration of Disputes as to Existence of Event of Default.**

- a. If an Event of Default with respect to a Party has occurred and is continuing, the other Party may give the defaulting Party notice of termination. (a "Termination Notice"). In the case of a Company Event of Default, notice must also be given to the Guarantor. This Agreement and each Mining License shall terminate sixty (60) days after receipt of the Termination Notice by the defaulting Party (or at such later time as may be provided in the Termination Notice), subject to Sections 26.5b and 26.5c, provided that if the defaulting Party cures the Event of Default in respect of which a Termination Notice has been served prior to the termination of this Agreement in accordance with this Section 26.5 the Termination Notice shall be revoked and shall have no effect and neither this Agreement nor any Exploration License or Mining License issued under this Agreement shall terminate.
- b. If a Mortgage permitted under Section 24.6 exists, the Termination Notice will not be effective so long as the Company, the holder of the Mortgage and the responsible officer of any relevant tribunal referred to in Section 26.2f are diligently seeking to transfer the rights and obligations of the Company under this Agreement, any Mining License, the Mine and substantially all of the Mining Plant, Infrastructure and related property of

the Company to a transferee that would be permitted under Section 24.6 so long as (i) such a transfer is completed within 18 months from the commencement of such proceedings, (ii) the operations of the Company continue on a commercial scale throughout such period (subject to force majeure) in substantial compliance with the requirements of this Agreement, the Exploration Regulations, the relevant Mining License and applicable Law, and (iii) the Company becomes compliant, and remains in compliance throughout such period, with its EMP and its payment obligations under this Agreement.

- c. If a Party asserts the existence of an Event of Default under this Agreement and the other Party in good faith refers to arbitration in accordance with this Agreement a dispute as to the existence of such Event of Default, termination of this Agreement may not take effect other than after the finality of, and in accordance with, an arbitration award upholding the existence of such Event of Default. The Company shall reimburse the Government for all expenses incurred by it in connection with arbitration held pursuant to this Section 26.5 if the Government's determination that an Event of Default exists is upheld in the arbitration.

#### 26.6 Winding-up Commission.

- a. Except as provided in Section 26.6c, if a Termination Notice has been given, the Parties hereto shall set up a winding up commission (hereinafter referred to as the "Commission") which shall consist of two directors of the Company, two members appointed by the Government and a member of an internationally recognized accounting or law firm selected by the Government and reasonably acceptable to the Company, who will be the Chairperson of the Commission. The fifth member may not in the last ten years have represented the interests of the Government or the Company and his or her firm may not in the past five years have been regularly retained by the Government or the Company. The Chairperson will be responsible for scheduling meetings, for establishing the agenda of meetings, and for keeping the record of meetings, and chairing the meetings of the Commission.
- b. The Chairperson of the Commission shall issue a notice and agenda for the first meeting of the Commission, which shall be held no later than three weeks after the establishment of the Commission. Thereafter, the Commission shall hold periodic meetings at least once a calendar month.
- c. The Company shall present to the Commission within 30 days of its establishment a summary report, and within 60 days of its establishment a detailed report, on the status of Operations as of the date of termination so that the Commission will be able to make recommendations to the Government as to whether the Commission and the Company should seek to transfer the assets and operations of the Company to a third party, or should establish plans for the full or partial cessation of operations including the disposition of assets and their demolition or removal according to Section 27 and the restoration of the areas environmentally adversely

affected by Operations to such condition as prescribed in the closure management plan provided for in the EMP.

- d. The operation of this Section 26.6 is suspended under the circumstances contemplated by Section 26.5b or during the pendency of an arbitration challenging such termination commenced under Section 28. The Termination Notice is automatically revoked if a transfer contemplated by Section 26.5b is timely completed or if a final decision in an arbitration commenced under Section 28 determines that the notice of termination is invalid.

## SECTION 27 DISPOSITION OF ASSETS

### 27.1 General Provision.

Prior to the termination of this Agreement, the Company shall have the right to control all its Mining Plant, Infrastructure and other assets, whether or not the same may revert to and become the property of the Government upon such termination, and, to the extent no longer required for Operations or for compliance with any specific provision of this Agreement, to dispose of in the ordinary course of its business any such assets (other than Land leased from the Government or its rights under any Exploration License or any Mining License).

### 27.2 Disposition of Assets on Termination by the Government or Expiration of the Term.

Upon a termination of this Agreement for any reason other than termination by the Company upon the occurrence and continuation of a Government Event of Default, the following rules apply:

- a. The Company shall deliver to the Government, not more than 60 days after the termination date a list (the "Property List") describing in reasonable detail and location of
- i) all Mining Plant and Infrastructure constituting structures or installations of any kind, including structures and installations to which the Government has title, and any Movable assets or intellectual property required for the full use or operation of any such Mining Plant and Infrastructure (such as, by way only of example, as computers and computer programs controlling the operation of Mine ventilation systems and elevators), but excluding other Movable assets, identifying which thereof could be used in continued Operations or otherwise and which in the good faith judgment of the Company have no further utility,
  - ii) the Mine, any intellectual property required for the full use or operation of the Mine and all Mining Plant and Infrastructure constituting improvements to the Land (including such things as roads, earthworks, bridges and dams), and

- iii) all Movable assets not referred to in clause (i) of this Section 27.2a (other than ordinary office equipment, furnishings and supplies and consumables reasonably expected to be consumed before the Termination Date) and any intellectual property required for the full use or operation of such Movable assets,
- iv) Any encumbrances or liens on the property, and a statement as to the status or manner of discharge.

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

Movable assets identified in clause (iii) of this Section 27.2a may be grouped for valuation purposes by generic type of asset and physical location, so that, for example, all Movable assets in a particular heavy equipment maintenance shop might be classified for valuation purposes as "mine truck parts and supplies," "dragline and shovel parts and supplies" and "maintenance equipment", but such grouping for valuation purposes does not excuse the Company from the duty to describe such Movable assets in reasonable detail and the Government may request that the price for specified items included on the Property List be broken out from such aggregate valuation. The Property List shall be accompanied by a certificate of the chief executive officer of the Company to the effect that such list is complete and correct in all material respects. "Intellectual property" includes trademarks, patent licenses, copyrights, software, electronically stored data and "know-how".

- b. Failure of the Company timely to deliver the Property List or delivery by the Company of a Property List that is significantly deficient or incomplete shall be deemed an offer by the Company to sell to the Government all assets referred to in clause (iii) of Section 27.2a not included on the list for their fair market value.
- c. The Company shall, as part of its closure responsibilities, remove all structures and installations described in the Property List pursuant to clause (i) of Section 27.2a and to which the Company has title except insofar as the Government, within 90 days of receipt of such list, has directed the Company to transfer to the Government any such structures or installations, related rights to Land (in the case of any such assets not located on Government Land), and any required Movable assets or intellectual property identified in the Property List and to which the Company has title. The Company shall transfer to the Government, without charge, all of its right title and interest in each structure or installation and its related property promptly following its receipt of such authorization or direction as to such property. The Company shall also, as part of its closure responsibilities, remove those structures and installations described in the Property List pursuant to clause (i) of Section 27.2a and to which the Government has title and those required Movable assets or intellectual property identified on the Property List and to which the Government has title, in each case as to which the Government, within 90 days of receipt of such list, has directed the Company to remove.

- d. The Company shall transfer to the Government, without charge, all of its right, title and interest in all property described pursuant to clause (ii) of Section 27.2a within ten days of the delivery of the Property List.
- e. The delivery of the Property List shall constitute an offer by the Company to sell to the Government or its designee any or all Movable assets and related intellectual property described pursuant to clause (iii) of Section 27.2a at a purchase price equal to the lesser of the fair market value or the depreciated book value of each such asset, on an "as is, where is" basis, provided that the Government may offset against such purchase price the amount of any diminution in value of any asset (whether or not on the Property List) resulting from the Company's failure to comply with its obligations under Section 6.2c to the extent that the Government has not previously received compensation with respect thereto. If the Government does not exercise such purchase right as to any Movable asset included in the Property List by notice to the Company within 90 days after delivery of the list, then the Company may sell such asset to any Person for such price as it may be able to obtain therefore or remove such asset from Liberia. If the Government exercises its purchase right with respect to any Movable asset and related intellectual property, it shall pay the purchase price within 90 days of the date upon which such purchase price is established, against transfer by the Company to the Government of all of its right title and interest in such Movable asset.
- f. The Government, by notice to the Company within a reasonable period but not to exceed one year after any termination of this Agreement, may require the Company to dispose of in accordance with applicable Law any Movable assets not sold to the Government that remain on Government Land or in Mining Plant or Infrastructure that has been transferred to the Government. If the Company does not reasonably dispose of or remove such asset or assets within a reasonable period after said notice, the Government may effect such reasonable disposal or removal at the expense of the Company.
- g. No transfer to the Government of any assets pursuant to this Section 27.2 with or without compensation shall release the Company from any of its environmental restoration or remediation obligations under this Agreement or applicable Law, or entitle the Company to release to it of any amounts set aside to fund the performance of such obligations. However, if the Government arranges for a qualified replacement operator to acquire all of the assets on the Property List and to continue the operations of the Mine(s), it will release the Company from such obligations and make such set-aside amounts available to fund the environmental restoration or remediation obligations of the replacement operator. In any such case, the Company must at the request of the Government transfer directly to such replacement operator all assets otherwise to be transferred to the Government under this Section 27.2, in the manner provided for in this Section 27.2, provided that the Company is not obligated to transfer assets for which payment is required under this Section 27.2 except against payment of the purchase price required by this Section 27.2.

### 27.3 Special Provisions for Public Use Infrastructure.

To the extent the Company has built and is operating under its Mining License or this Agreement facilities required by Regulations, this Agreement or other applicable Law to be made available for use by third parties (such facilities could include, by way of example and not limitation, highways, railroads, port facilities, water supplies, electrical supplies, hospitals or schools), the Government may, in lieu of the procedures set forth in Section 27.2, require (by notice to the Company within 90 days after the delivery of the Property List) the Company to transfer all of its right title and interest, in and to any such facility (including all Movable Assets normally used in conjunction therewith and all intellectual property required for the full use or operation of such facility) to a Person designated by the Government without charge or for the purchase price attributable to such Movable assets and related intellectual property determined as provided in Section 27.2e, as applicable, on an "as is, where is" basis. If the Government so designates a facility for purchase by a third party, the third party must pay the relevant purchase price within 120 days of the later of the date upon which such purchase price is established and the date such purchaser is designated.

**27.4 Certain Insurance and Maintenance Obligations of the Company.**

The Company shall continue to insure in accordance with the requirements of this Agreement and maintain (in accordance with applicable Law and the requirements of this Agreement) the Mine, all Mining Plant and Infrastructure and all Movable assets until (i) 30 days after the expiration of the Term, in the case of property to which title is held by the Government, (ii) 30 days after title is transferred to the Government by the Company, where transfer of the property is required under this Section 27 without action by the Government, (iii) 30 days after payment is to be made for such property under this Section 27, where such transfer is required to be made against payment by the Government or a third party following election of transfer by the Government, or (iv) at such time as the right of the Government under this Section 27 to elect to require the transfer of such property to it or a third party has expired, in the case of property the transfer of which is not timely required by the Government. All insurance policies shall provide that losses attributable to events occurring during any such 30-day period are payable to the Company and the Government as their interests may appear.

**27.5 Determination of Movable Asset Fair Market Value.**

Unless the Government notifies the Company that it disagrees with the Company's fair market value estimates for a Movable asset (and related intellectual property) included in the Property List at or prior to the time it notifies the Company of its desire to acquire such asset, the Company's valuation shall be final. If the Government does give notice of disagreement, fair market value shall be determined by an internationally recognized appraisal firm experienced in the valuation of mining moveable assets. The firm will be selected by the Government, but must be from a list of three such firms selected by the Company if the Company provides such list when it provides the Property List. The costs of the appraiser in respect of each appraised item shall be allocated by the appraiser among the appraised assets and shall be borne by the Company unless the valuation placed on the asset by the appraiser is at least 95% of the valuation placed on the asset by the Company, in which case the cost of the appraiser shall be borne by the Government. If the Company is unable or fails to provide for the transfer of any intellectual

property required for the full use or operation of any Movable Asset (or if for any reason the Government or a purchaser designated by the government elects not to acquire and such intellectual property), its fair market value shall be determined based on its value to a Person who must acquire in the marketplace the necessary intellectual property.

**27.6 Disposition of Mining Plant and Infrastructure on Termination by the Company.**

Upon a termination of this Agreement by the Company upon the occurrence and continuation of a Government Event of Default, all Mining Plant and Infrastructure constituting or installations of any kind become, and all other property title to which is held by the Government remains, property of the Government except to the extent the Government elects to transfer any of the same to the Company.

All other Mining Plant and Infrastructure and all Movable assets and intellectual property, to the extent not constituting Mining Plant or Infrastructure or to which title is not held by the Government, shall be and remain the property of the Company. The Company must remove all such property from Land owned or leased by the Government within two years of the date of termination and until removal must maintain third party liability insurance as required by this Agreement.

**27.7 Miscellaneous.**

In connection with any transfer of rights in property pursuant to this Section 27, the Company shall execute such instruments of transfer sufficient to transfer all right, title and interest of the transferor as the transferee may reasonably request.

**27.8 Liens.**

Any transfer of property to the Government or a third party pursuant to this Section 27 shall be free and clear of Liens or other charges and encumbrances of any kind arising out of any action or inaction of the Company or any Person claiming by, through or under the Company.

**SECTION 28 DISPUTE RESOLUTION**

**28.1 Consultation.**

- a. Any dispute controversy, or claim arising out of, relating to, or in connection with this Agreement, including with respect to the formation, applicability, breach, termination, validity or enforceability thereof (a "Dispute"), other than a Dispute that is required to be resolved by expert determination, shall, if not settled by negotiation as provided in this Section 28.1, be finally and exclusively settled by arbitration between the Government and the Company as provided in Section 28.2a through 28.2c, provided that no Party may submit any Dispute to arbitration unless and until it has complied with its obligations under Section 28.1b.
- b. Where either the Government or the Company wish to submit any Dispute to arbitration, it shall first serve notice on the other Party to the arbitration

setting forth a description of the Dispute and requesting that the Government and the Company meet to negotiate an amicable settlement. Following any such notice, the Parties shall use reasonable efforts to reach such a settlement and, without limiting the generality of the foregoing, representatives of the Government and the Company shall meet and attempt in good faith to negotiate a settlement.

- c. If within sixty (60) days from the date of notice of a Dispute requesting negotiations in accordance with Section 28.1b, the Government and the Company have not reached a settlement, either the Government or the Company may by notice to the other, commence arbitration under this Section 28 with respect to the Dispute which is the subject of such notice, whether the meetings provided for in Section 28.1b have occurred or not. Any Dispute concerning the propriety of the commencement of arbitration shall be settled finally by arbitration pursuant to this Section 28.

## 28.2 Submission to Arbitration.

- a. Any arbitration commenced under this Section 28 shall be conducted in accordance with the UNCITRAL Arbitration Rules in effect at the Effective Date except as they may be modified herein or by mutual agreement of the Parties. For a period of twelve (12.5) years, any arbitration initiated shall be held in Washington, D.C. Following the first twelve (12.5) years of the Term, any arbitration initiated shall be held in Accra, Ghana. The proceedings shall be conducted in the English language.
- b. Unless the Parties to the Arbitration agree that a Dispute shall be resolved by a single arbitrator, the number of arbitrators shall be three (3). In the event the Dispute is to be resolved by three (3) arbitrators, each Party shall appoint one arbitrator with the third arbitrator appointed by mutual agreement of the Parties. In the event the Parties to the Arbitration cannot agree on a third arbitrator, or a Party has not appointed its arbitrator, or the Parties cannot agree on a single arbitrator and the Parties continue to desire a single arbitrator to resolve the dispute, the appointing authority for such arbitrator shall be the Secretary General of the Permanent Court of Arbitration in accordance with UNCITRAL Arbitration Rules as in effect on the Effective Date.
- c. Any award of the arbitral tribunal shall be final and binding on the Parties to the Arbitration.

## 28.3 Special Provisions.

- a. The award of the arbitrators may be made public. Any monetary award shall be in Dollars.
- b. A Party's duty to perform any obligation under this Agreement that is the subject matter of a dispute submitted to arbitration under this Section 28 or any obligation under this Agreement which a Party cannot reasonably be expected to perform having regard to the commercial circumstances with such a dispute outstanding shall be suspended during the arbitration

proceedings until a final arbitration award is made by the arbitral tribunal and all time periods applicable to such obligations in the Agreement shall be extended by the period of the arbitration proceedings. However, in the aggregate, the duration of the Agreement shall not be extended by more than four (4) years. Any issue between the Parties as to whether a Party can reasonably be expected to comply with contractual time limits relating to an obligation under this Agreement during the arbitration proceedings shall be referred to the arbitral tribunal formed for the dispute to be dealt with in a final award in respect of the dispute.

- c. If Government holds an equity interest in the Company it shall not participate in the Company's decision to enter into arbitration proceedings under this Section 28 and shall have no part in the guidance of the Company's position in any such arbitration proceedings.

## SECTION 29 NOTICES

### 29.1 Written Communications.

All orders, approvals, declarations and notices of any kind between the Parties (hereinafter each referred to as a "Communication") shall be in writing and delivered by hand, by fax, by electronic mail, by postage prepaid registered mail, by prepaid internationally recognized courier service, or by any other means of communication agreed upon by the Parties. Communication by fax or electronic mail is valid under this Agreement only to fax numbers or electronic email addresses set forth below or identified as acceptable to a Party by notice to the other Party pursuant to this Section 29. A Communication other than an electronic mail shall bear an original or facsimile reproduction of the signature of a representative of the sending Party responsible for such Communication and all Communications shall indicate the identity of such representative and state how he or she may be reached by telephone and, if practical, electronic mail. A Communication under this Agreement is not effective until delivery.

### 29.2 Delivery.

Subject to Section 29.5, delivery of a Communication to a Party shall be deemed to have occurred in any one of the following circumstances:

- a. Fax confirmation of receipt is electronically issued to the sender by the fax receiving device.
- b. Electronic mail confirmation of receipt originated by the recipient is received at the electronic mail address of the sender.
- c. Written confirmation of receipt is received by the postal or courier service delivering the Communication.
- d. The recipient has otherwise directly or indirectly acknowledged receipt of the Communication in writing.

- e. Verification of receipt of the Communication has been obtained in any manner specifically agreed to in writing by the Parties or other confirmation of receipt acceptable to the recipient is obtained by the sending Party.

29.3 Addresses.

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

The Directors  
Hummingbird Resources (Liberia) Inc.  
Hummingbird House,  
Sophie Area,  
Congo Town,  
Monrovia, Liberia

With a copy to the Authorized Representative Hummingbird Resources (Liberia) Inc.

c/o Hummingbird Resources plc  
49-63 Spencer Street  
Hockley  
Birmingham B18 6DE  
United Kingdom

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

The Minister  
Ministry of Mines and Energy  
Capitol Hill  
Monrovia, Liberia

And

The Minister  
Ministry of Finance and Development Planning  
Broad Street  
Monrovia, Liberia

And

The Chairman  
National Investment Commission  
United Nations Drive  
Monrovia, Liberia

With a copy of all communications alleging or relating to any failure of a Party to this Agreement to comply with the terms of this Agreement to

The Minister

Ministry of Justice  
14th Street, Sinkor  
Monrovia, Liberia

For the purposes of fulfilling the Company's reporting requirements in respect of the National Bureau of Concessions, the Company shall deliver copies of all financial statements, reports and other documents specified in Section 6.6 to

Director-General  
National Bureau of Concessions  
20th Street, Sinkor  
Monrovia, Liberia

**29.4 Change of Address.**

Any Party may, upon prior notice to the other Party, at any time change the designation of a Person named to receive Communications under this Agreement, or the address or fax number of the office in Liberia or elsewhere authorized to receive such Communications.

**29.5 Quantities.**

All notices, reports, applications, feasibility reports and related plans and documents, financial statements and similar materials furnished to the Government by the Company under this Agreement shall be delivered to each Government addressee provided for under Section 29.3 or Section 29.4 (but not more than five addressees at any one time) in duplicate paper copies, and, if more than six pages long, shall be accompanied by a reproducible electronic copy in Microsoft Word or Adobe PDF format that is compatible with versions of such program that have been readily available in Monrovia for at least 36 months. The Government may change the required electronic data format for such documents to any other readily available format on at least 60 days prior notice to the Company.

**SECTION 30 FORCE MAJEURE**

**30.1 Application.**

In the event of a Party being rendered unable, in whole or in part, by force majeure to carry out any obligation under this Agreement, other than an obligation of the Company to make payments of money to the Government as provided for in Section 30.3, the Party shall give notice and the particulars of such force majeure in writing to the other Party as soon as practicable after the occurrence of the cause relied on. Thereafter, any obligation of the Party giving such notice that such Party is unable to carry out because of such force majeure shall be suspended during the continuance of any such inability so caused, but for no longer period. The Party giving such notice shall, as far as practicable, remedy such disability with all reasonable dispatch. All time periods specified in this Agreement for the performance of obligations or the enjoyment of rights that are affected by force majeure, other than obligations for the payment of money, shall be extended until the effect of such force majeure is remedied as above provided or otherwise ceases. However, the Term and all Mining Terms shall be extended as a result of an event

of force majeure if and only if such event causes the stoppage of substantially all Operations, and in any such case and in accordance with Section 30.3, the accrual of the Company's payment obligations under Section 15.4 shall be similarly suspended and any payments made under Section 15.4 during the period of suspension will be credited to subsequent accruals under Section 15.4. If the Force Majeure lasts longer than one (1) year, the Parties shall meet to discuss the situation with a view to evolving a consensus on the way forward.

**30.2 Definition.**

The term "Force Majeure" as used in this Agreement shall mean acts of God, accidents, wars, acts of war, invasions, acts of public enemies, hostilities (whether war is declared or not), restrictions on trade or other activities imposed by any sovereign nation or state, embargoes, blockades, revolutions, riots, civil commotions, acts of terrorism, sabotage, nationwide strikes and/or other nationwide industrial, labor or employer-employee disputes (if not cured for a period of more than two months), fires, explosions, earthquakes or any other natural disasters, expropriation of facilities or goods, epidemics, public health emergencies and any similar cause, provided any such cause was not within the reasonable control of the Party claiming the benefit of force majeure and could not have been avoided or overcome by such Party through the exercise of due diligence.

**30.3 Extended Force Majeure.**

Notwithstanding Section 30.1, for so long as an event of Force Majeure prevent the Company from carrying out Operations and provided that such event of Force Majeure has been continuing

- a. for a period of more than ninety (90) consecutive days, the Company shall be excused from further payments of surface rents due under Section 15.4;
- b. for a period of two (2) consecutive years, the Company shall be excused from further payments of contributions due under Section 8.2, 11.5, 11.6 and 16.7.

Any payments of surface rental or such contributions allocated to any period when payments are excused in accordance with this Section 30.3 shall be credited against subsequent accruals of surface rentals and such contributions that may become due and payable once the Force Majeure event has ended.

**SECTION 31 GOVERNING LAW**

**31.1 Applicability of Liberian Law.**

This Agreement, the terms and conditions thereof, and the rights, obligations and duties of the Parties hereunder shall be governed by and construed and interpreted in accordance with the Law.

**SECTION 32 PERIODIC REVIEW**

**32.1 Profound Changes in Circumstances.**

For the purpose of considering Profound Changes in Circumstances from those existing on the Effective Date or on the date of the most recent review of this Agreement pursuant to this Section 32.1, the Government and the Company shall at the request of the other consult together. The Parties shall meet to review the matter raised as soon after such request as is reasonably convenient for them both. If Profound Changes in Circumstances are established to have occurred, then, subject to the requirements of Section 34.4, the Parties shall effect such change in or clarification of this Agreement that they in good faith agree is necessary.

### 32.2 Five Year Review.

This Agreement shall be subject to periodic review once every five years after the date of the start of Production for the purpose of good faith discussions to effect, subject to the requirements of Section 34.4, such modifications to this Agreement as may be necessary or desirable in the light of any substantial changes in circumstances which may have occurred during the previous five years.

### 32.3 Other Consultation.

In addition to the consultation and review provided by Sections 32.1 and 32.2, each Party may at any time request a consultation with the other Party with respect to any matter affecting the rights and obligations of the Parties pursuant to this Agreement or any matter relating to Operations. The Parties shall meet to review in good faith the matter raised as soon after such request as is reasonably convenient for them both. Subsequent to such consultation, the Parties shall take such action, if any, that is mutually agreed to address the matter, subject to the requirements of Section 34.4.

## SECTION 33 WAIVER OF SOVEREIGN IMMUNITY

The Government hereby irrevocably waives, in relation to any Dispute, arising out of, in relation to, or in connection with, this Agreement, whether relating to acts of a sovereign or governmental nature or otherwise, all claims of immunity (sovereign or otherwise) by it or on its behalf from the jurisdiction of, and from the enforcement of any arbitral award rendered by, an arbitral tribunal constituted pursuant to this Agreement as well as all claims of immunity from the service of process or the jurisdiction of any court situated in any state, country or nation in aid of the jurisdiction of such arbitral tribunal or in connection with the enforcement of any such award. Notwithstanding the foregoing, no award may be enforced against assets of the Republic of Liberia used to maintain national security or for military or diplomatic purposes.

## SECTION 34 MISCELLANEOUS

### 34.1 Where Payments to Government are Made; Escrow Provisions.

Unless this Agreement expressly provides otherwise, all amounts payable by the Company to the Government under this Agreement must be paid to the Ministry of Finance for deposit in the Consolidated Fund of the Government against delivery of a receipt or other official document evidencing payment of the amount and the purpose for which paid.

34.2 **Right to Approvals.**

The Company shall have the right to receive all approvals and consents that may be required from the Government pursuant to the terms and conditions of this Agreement or its Operations, and such approvals and consents shall not to be unreasonably withheld or delayed and the Government shall use its best efforts to ensure that the Company is granted such approvals and consents as may be necessary from local municipalities.

34.3 **Entire Agreement.**

Save as expressly set forth in this Agreement, this Agreement, including the Schedules, Annexes and Exhibits attached to it, represents the entire agreement between the Parties and shall with effect from the Effective Date supersede all previous oral and written negotiations and agreements between the Parties.

34.4 **Amendment and Interpretations.**

Any modification or amendment of this Agreement shall be by the mutual written agreement of the Parties and, except as otherwise specifically provided in this Agreement, shall not become effective until ratified by the Legislature, signed by the President of the Republic, and published into handbills.

34.5 **Limitation of Liability.**

Specific performance or similar equitable remedies may not be awarded against any Party. Each of the Parties hereto expressly waives and foregoes any right to punitive, exemplary or similar damages. Save for adverse environmental impact attributable to the Company, its subcontractors or agents for its negligent actions and culpable inactions under Section 13, no Party shall have any liability under this Agreement for any form of consequential loss.

34.6 **Waiver of Rights.**

Either Party may (i) extend the time for the performance of any of the obligations of the other Party, (ii) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto, or (iii) waive any non-compliance by the other Party with, or default by the other Party under, any provision of this Agreement, provided that such extension or waiver must be in writing. In the case of the Government, any such extension or waiver must be executed by the Minister, the Minister of Finance and Development Planning, the Chairperson of the National Investment Commission, and the Ministry of Justice provided that, any such extension or waiver that, if given effect, would modify any provision of applicable statutory Law, shall not become effective until, in addition, it is ratified by the Legislature, signed by the President, and published into handbills. The non-exercise or partial exercise by one or the other of the Parties of any of its rights under the terms of this Agreement shall not in any case constitute a waiver of that right. Without prejudice to the generality of the foregoing sentence, the failure of the Government to make any inspection described in this Agreement or provided for under applicable Law or ascertain in any such inspection the existence of any breach by the Company of any of its obligations under this

Agreement, any plan described in Sections 5.4 through 5.6 or applicable Law shall not affect the ability of the Government to require full compliance by the Company with such obligations.

34.7 **Binding Clause.**

The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto, their successors by operation of law and permitted assignees and legal representatives including without limitation in the case of the Government, all successor Governments and/or institutions exercising sovereign authority over all or part of the present territory of Liberia.

34.8 **Third Party Rights.**

Apart from the Government and the Company, no Person shall have any rights under this Agreement unless specifically stated in this Agreement.

34.9 **Survival.**

Notwithstanding termination of this Agreement by any Party or for any reason, including a termination due to a finding that this Agreement or a portion thereof is void, invalid, or unenforceable, Section 1 (Definitions Terminology and Interpretation), 13 (Environmental Protection and Management), the final sentence of Section 19.3, Section 21.1 (Indemnification), Section 21.6 (Guarantee), Section 23 (Confidentiality), Section 26.6 (Winding Up Commission), Section 27, (Disposition of Assets), Section 28, (Dispute Resolution), Section 29 (Notices), Section 31 (Governing Law), and Sections 34.2 through 34.11 (Miscellaneous) of this Agreement, all liabilities accruing prior to such termination and all closure management and environmental remediation, restoration or reforestation obligations of the Company under this Agreement or the EMP shall survive such termination. Moreover, any such termination shall be without prejudice to rights, duties and obligations that have accrued prior to termination and, notwithstanding such termination, such provisions of this Agreement as are reasonably necessary for the full enjoyment and enforcement of such accrued rights, duties and obligations shall survive such termination for the period necessary.

34.10 **Severability.**

Should any Section of this Agreement, or any provision or term of any Section, be found, pursuant to Section 28, to be void, invalid or unenforceable, in whole or in part, then the remaining Sections, and those unaffected provisions or terms of any other Sections which do not contain some void, invalid or unenforceable provisions or terms, shall nevertheless remain valid and subsisting and shall be construed as if this Agreement had been executed without such void, invalid or unenforceable Sections, provisions or terms. Any otherwise void, invalid or unenforceable Section, term, provision, or condition of this Agreement shall be so construed, reformed, altered, amended or changed to the extent necessary to render it valid, lawful and enforceable, while also giving maximum effect to the Parties' originally intended purpose or result, short of creating any void, invalid or unenforceable Sections, terms, provisions or conditions.

34.11 **Publication.**

The Government shall, and the Company may, make public this Agreement and any amendments or written interpretations thereof.

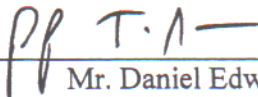
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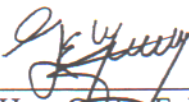
IN WITNESS WHEREOF, the parties have signed this Agreement, through their respective duly authorized representatives, on the day, month and year indicated below.

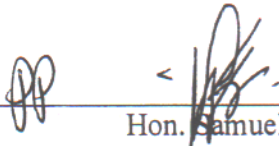
Signed in 4 originals on the 10<sup>th</sup> day of January A.D. 2019.

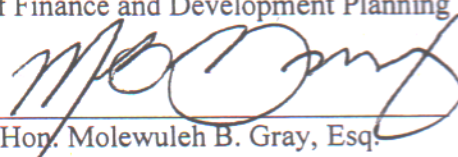
FOR: HUMMINGBIRD RESOURCES (LIBERIA) INC.

  
Mr. Daniel Edwards Betts  
CHAIRMAN


FOR: THE GOVERNMENT OF THE REPUBLIC LIBERIA

  
Hon. Cesler E. Murray  
MINISTER  
Ministry of Mines and Energy

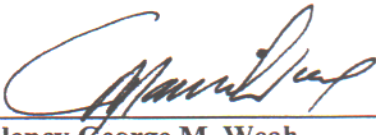
  
Hon. Samuel D. Tweah  
MINISTER  
Ministry of Finance and Development Planning

  
Hon. Molewuleh B. Gray, Esq.  
CHAIRMAN  
National Investment Commission

ATTESTED BY:

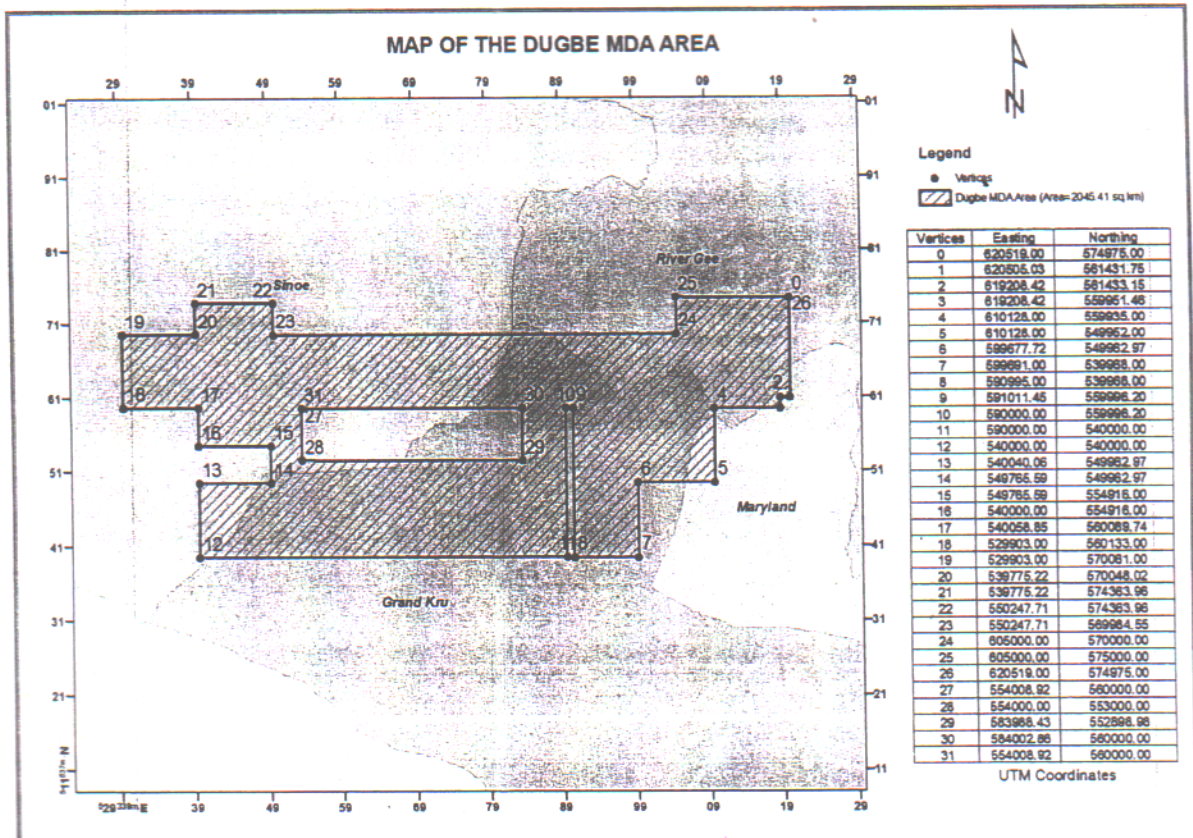
  
Cllr. Frank Musa Dean  
MINISTER  
Ministry of Justice

APPROVED:

  
His Excellency George M. Weah  
PRESIDENT  
Republic of Liberia

### Exploration Area

The Dugbe Exploration Area comprises 2,355 km<sup>2</sup> of ground in Sinoe County, marked by connecting a series of points listed below using the UTM WGS 84 Zone 29N system and as depicted in the following map:



TRM dfr

# VERTICES

Vertices	Easting	Northing
0	620519.00	574975.00
1	620505.03	561431.75
2	619208.42	561433.15
3	619208.42	559951.46
4	610128.00	559935.00
5	610128.00	549952.00
6	599677.72	549962.97
7	599691.00	539968.00
8	590995.00	539968.00
9	591011.45	559996.20
10	590000.00	559996.20
11	590000.00	540000.00
12	540000.00	540000.00
13	540040.06	549962.97
14	549765.59	549962.97
15	549765.59	554916.00
16	540000.00	554916.00
17	540058.85	560089.74
18	529903.00	560133.00
19	529903.00	570061.00
20	539775.22	570048.02
21	539775.22	574363.96
22	550247.71	574363.96
23	550247.71	569984.55
24	605000.00	570000.00
25	605000.00	575000.00
26	620519.00	574975.00
27	554008.92	560000.00
28	554000.00	553000.00
29	583988.43	552898.98
30	584002.86	560000.00
31	554008.92	560000.00

Form of Mining License

**CLASS A MINING LICENSE**

This **CLASS A MINING LICENSE** (this "Mining License") is dated this [ ] day of \_\_\_\_\_ and GRANTED BY the **MINISTRY OF MINES & ENERGY OF THE REPUBLIC OF LIBERIA**, represented by and through its Minister, **Hon. Gesler E. Murray** (hereinafter referred to as the "MINISTER"), and **HUMMINGBIRD RESOURCES (LIBERIA) INC.**, a corporation organized under the laws of Liberia, represented by and through its Chairman, **Daniel Edward Betts** (hereinafter referred to as the "CONCESSIONAIRE").

Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Mineral Development Agreement (the "MDA"), dated this \_\_\_\_\_, of \_\_\_\_\_ between the Government of the Republic of Liberia and **HUMMINGBIRD RESOURCES (LIBERIA) INC.**; or, if not defined therein, in the Minerals and Mining Law 2000 Part I, Title 23 of the Liberian Code of Laws Revised (the "Minerals and Mining Law"), any regulations issued under the Minerals and Mining Law (except to the extent provided in the MDA) or the Exploration Regulations.

WITNESSETH:

**WHEREAS**, the Government and the CONCESSIONAIRE have concluded, and the CONCESSIONAIRE is materially in compliance with, the provisions of the MDA relating to the application for a Mining License;

**WHEREAS**, the CONCESSIONAIRE is an Eligible Applicant for a Mining License and has satisfactorily completed its specified exploration and study program of work and now applies for a license to Mine Gold;

**WHEREAS**, the MINISTER has the power to grant the CONCESSIONAIRE a Mining License as contemplated in the MDA, and to permit the CONCESSIONAIRE to conduct the Operations as contemplated by the MDA;

**NOW, THEREFORE,**

**Grant of Mining License**

1. The MINISTER hereby grants to the CONCESSIONAIRE a Mining License for the Proposed Production Area, together with all related rights and privileges to allow the CONCESSIONAIRE to conduct the Gold Mining and Operations contemplated by the MDA. This grant is subject to the provisions of the MDA, including the completion and approval of the Feasibility Report subject to Section 5.4. To the extent that there is any conflict between the terms of this Mining License or any Regulations and the terms of the MDA, the MDA shall prevail.

### **Term of License**

2. The initial term of the Mining License shall commence on the date first above written and shall be [X] years unless earlier terminated pursuant to any Section of the MDA. The CONCESSIONAIRE shall have the right to renew the Mining License, for consecutive additional terms not to exceed [ X ] years each subject to the provisions of the MDA.

### **Surface Rights**

3. Without prejudice to the generality of the rights provided in the MDA, the grant of the Mining License shall, pursuant to the provisions of Section 6.7(d) of the Minerals and Mining Law, carry the following surface rights:
- (i) Erection of habitations, office buildings, mill buildings, engine houses, storehouses;
  - (ii) Building of dumps, ditches for drainage, roads within the surface boundaries of the Proposed Production Area;
  - (iii) Making trenches and open cuts, constructed for and necessary Mining Operation subject to the approval of the relevant ESIA and EMP;
  - (iv) Cutting of timber only insofar as it is necessary to clear for buildings and such works as are mentioned in (i) to (iii) above and to use in construction of the mining site; and
  - (v) Use of water and other resources necessary for the execution of the work.

### **Rights to Dispose of Minerals**

4. The CONCESSIONAIRE shall have the right to freely dispose of within Liberia all Minerals extracted under the terms of this Mining License, and may export all such Minerals in their original or changed form subject to the specific provisions of the MDA.

### **Reports by the CONCESSIONAIRE**

5. The CONCESSIONAIRE shall submit to the MINISTER reports in accordance with the MDA.

### **Inspection of Mining Premises and Books**

6. The MINISTER shall have the right in accordance with the terms of the MDA to order an inspection at any time of the Proposed Production Area and of the books and records of the CONCESSIONAIRE.

Made in Monrovia, this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

MINISTER OF MINES & ENERGY

\_\_\_\_\_  
Name:

ACKNOWLEDGED AND AGREED:

By: HUMMINGBIRD RESOURCES LIBERIA INC

\_\_\_\_\_  
Name:

Title:

## ANNEX I to the MINING LICENSE

### DEFINITION OF THE PROPOSED PRODUCTION AREA

The Proposed Production Area encloses approximately ... sq km.

The boundary of the Proposed Production Area is shown on drawing [ ].

The area is defined by the UTM coordinates of SPATIAL REFERENCE (Insert reference) set forth below:

Vertices	Northing	Easting
1		
2		
3		
4		
5		
6		
7		
8		

(See map on following page)

Form of Shareholders Agreement

**HUMMINGBIRD RESOURCES PLC**

and

**THE GOVERNMENT OF THE REPUBLIC OF LIBERIA**

and

**HUMMINGBIRD RESOURCES (LIBERIA) INC**

---

**SHAREHOLDERS AGREEMENT**

relating to

**HUMMINGBIRD RESOURCES (LIBERIA) INC**

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NW ASK



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**THIS AGREEMENT** is dated [DATE]

**BETWEEN:**

- (1) **Hummingbird Resources plc**, a company incorporated and registered in England and Wales with registered number 05467327, whose registered office is at 49 – 63 Spencer Street, Hockley, Birmingham, West Midlands B18 6DE United Kingdom, represented by Daniel Edward Betts (“**Hummingbird**”);
- (2) **The Government of the Republic of Liberia**, represented by the Minister of Mines and Energy, the Minister of Finance and Development Planning, the Chairman of the National Investment Commission and attested by the Minister of Justice; and
- (3) **Hummingbird Resources (Liberia) Inc.**, a company incorporated and registered in the Republic of Liberia under TIN number 500014566, whose registered office is at [Hummingbird House, Sophie Area Congo Town, Monrovia, Liberia, represented by Daniel Edward Betts (“**Company**”).

**BACKGROUND:**

- (A) The Government and the Company entered into a Mineral Development Agreement dated [●] (“**MDA**”) pursuant to which the Government agreed, subject to the fulfilment of certain terms and conditions, to grant to the Company certain Class A Mining Licences (as defined in the MDA) for the mining of minerals in the Republic of Liberia.
- (B) The Company is a private company limited by shares incorporated on [●] under the laws of the Republic of Liberia and has at the time of execution of this Agreement an authorised share capital of [●] shares of [●] each of which [●] Shares have been issued to Hummingbird and [●] Shares have been issued to the Government representing 90% and 10% of the issued share capital respectively in accordance with clause 21.7 of the MDA.
- (C) Hummingbird, the Government and the Company have each agreed to enter into this agreement for the purpose of regulating their relationship with each other and certain aspects of the affairs of and their dealings with the Company and to comply with the Company’s obligations under clause 21.7 of the MDA.

**AGREED TERMS**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1. The definitions and rules of interpretation in this Clause apply in this agreement.

**Adequate Procedures:** adequate procedures, as referred to in section 7(2) of the Bribery Act and any guidance issued by the Secretary of State of the United Kingdom under section 9 of the Bribery Act.

**Articles:** the articles of incorporation of the Company from time to time (and any reference to an “**Article**” shall be a reference to that article of the said articles of incorporation).

**Associated Person:** means in relation to a company, a person (including an employee, agent or subsidiary) who performs services for or on that company's behalf.

**Board:** the board of directors of the Company as constituted from time to time.

**Bribery Act:** the Bribery Act 2010 of the United Kingdom.

**Business Act:** the Business Corporation Act 1976 of the Republic of Liberia, as amended.

**Business Day:** any day other than a Saturday or Sunday or a holiday declared by the Government on which Banks are open for normal banking business in both Liberia and the UK.

**Confidential Information:** means any trade or business information in connection with the business of the Company or any Shareholder and which are for the time being confidential.

**Current Shareholders:** Hummingbird and the Government.

**Deed of Adherence:** a deed in the form set out in Schedule 1 or a deed in such other form as the Current Shareholders may agree.

**Director:** a director of the Company.

**Encumbrance:** includes any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, howsoever created or arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect.

**Issue Price:** in relation to any Share, the price at which that Share is issued (being the aggregate of the amount Paid in respect of the nominal value of that Share and any share premium on that Share).

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

**Mining License:** a Class A Mining License granted by the Government to the Company under the Mining Law and Section 5.3 of the MDA to mine and produce Gold in a specified area in Liberia.

**Paid:** paid or credited as paid.

**Shareholders:** the holders of shares in the Company from time to time.

**Shares:** the Shares in issue in the Company from time to time.

- 1.2. Clause, schedule and paragraph headings do not affect the interpretation of this agreement.
- 1.3. A reference to a clause or a schedule is a reference to a clause of, or a schedule to, this agreement. A reference to a paragraph is to a paragraph of the relevant schedule.
- 1.4. A person includes a natural person, a corporate or unincorporated body (whether or not having a separate legal personality).

- 1.5. Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- 1.7. All warranties, representations, agreements and obligations expressed to be given or entered into by more than one person are given or entered into jointly and severally by the persons concerned.
- 1.8. A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it provided that, as between the parties, no such amendment or re-enactment shall apply for the purposes of this agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.
- 1.9. A reference to **writing** or **written** includes faxes but no other electronic form.
- 1.10. A reference in this agreement to a document is a reference to the document whether in paper or electronic form.
- 1.11. Where the words **include(s)**, **including** or **in particular** are used in this agreement, they are deemed to have the words "without limitation" following them.
- 1.12. Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.13. Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.14. References to times of day are, unless the context requires otherwise, to Monrovia time and references to a day are to a period of 24 hours running from midnight on the previous day.
- 1.15. References to any Liberian legal or accounting term for any action, remedy, method of judicial proceeding, insolvency proceeding, event of incapacity, legal or accounting document, legal or accounting status, court, governmental or administrative authority or agency, accounting body, official or any legal or accounting concept practice or principle or thing shall in respect of any jurisdiction other than the Republic of Liberia be deemed to include what most approximates in that jurisdiction to the Liberian legal or accounting term concerned.

## 2. CONSIDERATION

- 2.1. In consideration of the mutual agreements and undertakings set out herein, the Current Shareholders and the Company hereto have granted the rights and accepted the obligations hereinafter appearing.



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### 3. DIVIDENDS

- 3.1. There is no expectation that the Company will be able to pay dividends unless and until the payment of such dividend is declared and approved by the Board, it can be made in accordance with the laws of the Republic of Liberia and at such time the Company is not insolvent nor will it be made insolvent by such declaration, approval and /or payment of dividend.
- 3.2. In the event that commercial revenue is generated by the Company and dividends become payable following declaration and approval by the Board, these shall, subject to clause 3.3, be paid pro-rata to the then interests of Shareholders subsisting in the share capital of the Company at the time of such declaration and approval;
- 3.3. The Government agrees that in the event that any dividend is declared and approved by the Board it shall not, whilst it is a Shareholder, be entitled to receive any payment of dividend until such time as payments of dividends have, whether on a cumulative basis or otherwise, been made to all Shareholders (subject to clause 3.4, excluding the Government) in an amount equal to the aggregate Issue Price for the Shares held by such Shareholder at the time such payments are made.
- 3.4. The provisions of clause 3.3 shall be without prejudice to the ability of the Current Shareholders to subscribe for any Shares in the Company at any time following completion of this Agreement, and in such circumstances, prior to the application of clause 3.3, any amount Paid by the Government for such Shares shall entitle it to receive dividends in proportion to other Shareholders until such time as payments of dividends to the Government have been made in an amount equal to the aggregate Issue Price for such Shares.
- 3.5. If at any time following completion of this agreement and whilst the Government is a Shareholder, Shares are to be issued by the Company in addition to those Shares held by the Current Shareholders at the date of this Agreement (including pursuant to any financing initiatives undertaken by the Company) ("**Additional Shares**"), the Company agrees to offer to the Government such number of the Additional Shares as will ensure that, if subscribed for, the Government will continue to hold the same percentage holding in the issued share capital of the Company as it did prior to the issue of the Additional Shares ("**Maintenance Right Shares**").
- 3.6. If within 2 Business Days the Government declines to subscribe for such Maintenance Right Shares the Company agrees to issue to the Government such Maintenance Right Shares for nominal consideration contemporaneously with the completion of the issue of any Additional Shares, but subject always to the terms of clause 3.3.

### 4. THE COMPANY'S BUSINESS

Except as the Current Shareholders may otherwise agree in writing or save as otherwise provided or contemplated in this Agreement, the Current Shareholders shall exercise their powers in relation to the Company so as to ensure that:

- 4.1. the Company carries on and conducts its business and affairs in a proper and efficient manner and for its own benefit;

- 4.2. the Company transacts all its business on arm's length terms;
- 4.3. the Company shall not enter into any agreement or arrangement restricting its competitive freedom to provide and take goods and services by such means and from and to such persons as it may think fit;
- 4.4. all business of the Company, other than routine day to day business, shall be undertaken and transacted by the Board;
- 4.5. the business of the Company shall be carried on pursuant to policies laid down from time to time by the Board;
- 4.6. the Company shall not acquire, dispose of, hire, lease, license or receive licences of any assets, goods, rights or services otherwise than at the best price reasonably obtainable in the circumstances;
- 4.7. the Company shall keep proper books of account and therein make true and complete entries of all its dealings and transactions of and in relation to its business;
- 4.8. the Company shall prepare its accounts in accordance with International Financial Reporting Standards;
- 4.9. representatives or individuals appointed by Hummingbird shall be signatories on the Company's bank account;
- 4.10. each accounting reference period of the Company shall normally be a period of 12 calendar months; and
- 4.11. Each of the Current Shareholders shall use all reasonable and proper means in their respective power to maintain, improve and extend the business of the Company and its subsidiaries (if any) and to further the reputation and interests of the Company and its subsidiaries (if any) provided always that the provisions of this Clause shall not require and the Current Shareholders to place business with the Company or any of its subsidiaries.

5. **DIRECTORS**

- 5.1. Hummingbird shall at all times be permitted to appoint a majority of the Directors and be the operator of the Mining Licences and the manager of the Company notwithstanding any other party becoming a Shareholder or party to this Agreement.
- 5.2. For the avoidance of doubt, the Government shall not have the right to appoint a Director.

6. **TRANSFER OF SHARES**

- 6.1. The Government shall not transfer, grant any security interest over, nor otherwise dispose of nor give any person any rights in or over any Share or interest in any Share in the Company.

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## 7. LIQUIDATION

Where the Company is to be wound up and its assets distributed, the parties shall agree a suitable basis for dealing with the interests and assets of the Company and shall endeavour to ensure that:

- 7.1. all existing contracts are performed to the extent that there are sufficient resources;
- 7.2. the Company shall not enter into any new contractual obligations;
- 7.3. the Company is dissolved and its assets are distributed as soon as practical;
- 7.4. on a return of capital on a winding-up or otherwise the surplus assets of the Company remaining after payment of its liabilities shall be applied first in repayment to the Shareholders (excluding the Government) in an amount equal to the aggregate Issue Price for each Share held by such Shareholder, and second in repayment to the Government of an amount equal to the aggregate Issue Price for each Share held by it, and the balance of any such assets shall be distributed among the Shareholders pro rata to their respective Shareholdings;
- 7.5. any other proprietary information or intellectual property rights belonging to or originating from a party shall be returned to it by the other party or the Company and all such proprietary information or intellectual property rights shall be erased from the computer systems (to the extent possible) of the Company and the party who is returning it; and
- 7.6. where any party is required by any law, regulation or governmental or regulatory authority to retain any proprietary information (or copies of such information) of the other party or the Company, it shall notify the other party in writing of such retention giving details of the information that it has been required to retain.

## 8. CONFIDENTIALITY

- 8.1. The Current Shareholders covenant that (except with the prior written consent of the other party) they will not, and will use all reasonable endeavours to ensure that none of their respective officers, directors, employees, agents, affiliates or advisers shall do the following:
  - 8.1.1. divulge or communicate to any person any Confidential Information (including any representative of the press or broadcasting or other media);
  - 8.1.2. cause or facilitate any unauthorised disclosure of Confidential Information through any failure by him to exercise all due care and diligence; or
  - 8.1.3. make use of any Confidential Information or any trade secrets in respect of which any party may be bound by an obligation of confidence to any third party.
- 8.2. These restrictions will not apply to information which has become available to the public generally, otherwise than through unauthorised disclosure or any breach of the Current Shareholders' obligations under this Clause 8.

## 9. ANTI-CORRUPTION

- 9.1. Each party undertakes to the other party that:

- 9.1.1. it will not, and will procure that the Company will not, in the course of the operation of the Business, engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act;
- 9.1.2. it has and will maintain in place, and will procure that the Company has and will maintain in place, Adequate Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act; and
- 9.1.3. from time to time, at the reasonable request of the other party, it will confirm in writing that it has complied with its undertakings under this clause 19 and will provide any information reasonably requested by the other party in support of such compliance.

## 10. WARRANTIES

- 10.1. Each party warrants and represents to the other party (as relevant) that:
- 10.2. it is a corporation duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation;
- 10.3. it has full power and authority and has obtained all necessary authorities and consents to enter into and perform its obligations under this agreement and such other agreements and arrangements referred to in this agreement; and
- 10.4. the signing of this agreement and the performance of its obligations under this agreement and the other agreements and arrangements referred to in this agreement will not result in a breach of any other agreement or arrangement to which it is a party, nor give rise to any right of termination of any other agreement or arrangement to which it is a party.

## 11. WHOLE AGREEMENT

- 11.1. This agreement, the MDA and any documents referred to in it constitute the whole agreement between the parties and supersede all previous arrangements, understandings and agreements between them, whether oral or written, relating to their subject matter.
- 11.2. Each party acknowledges that in entering into this agreement, and any documents referred to in it, it does not rely on, and shall have no remedy in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this agreement or those documents.
- 11.3. Nothing in this clause 11 shall limit or exclude any liability for fraud.

## 12. ASSIGNMENTS

- 12.1. Hummingbird may assign, or grant any Encumbrance over or deal in any way with, any of its rights or obligations under this agreement or any document referred to in it.
- 12.2. The Government may not assign, or grant any Encumbrance over or deal in any way with, any of its rights or obligations under this agreement or any document referred to in it.



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12.3. Each person that has rights under this agreement is acting on its own behalf.

**13. VARIATION AND WAIVER**

- 13.1. A variation of this agreement shall be in writing and signed by or on behalf of all parties.
- 13.2. A waiver of any right under this agreement is only effective if it is in writing and it applies only to the person to which the waiver is addressed and the circumstances for which it is given.
- 13.3. A person that waives a right in relation to one person, or takes or fails to take any action against that person, does not affect its rights against any other person.
- 13.4. No failure to exercise or delay in exercising any right or remedy provided under this agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof.
- 13.5. No single or partial exercise of any right or remedy under this agreement shall preclude or restrict the further exercise of any such right or remedy.
- 13.6. Unless specifically provided otherwise, rights and remedies arising under this agreement are cumulative and do not exclude rights and remedies provided by law.

**14. COSTS**

- 14.1. Unless otherwise provided, all costs in connection with the negotiation, preparation, execution and performance of this agreement, shall be borne by the party that incurred the costs.

**15. NO PARTNERSHIP**

- 15.1. The parties to this agreement are not in partnership with each other and there is no relationship of principal and agent between them.

**16. GOOD FAITH**

- 16.1. All transactions entered into between either party and the Company shall be conducted in good faith and on the basis set out or referred to in this agreement or, if not provided for in this agreement, as may be agreed by the parties and, in the absence of such agreement, on an arm's length basis.
- 16.2. Each party shall at all times act in good faith towards the other and shall use all reasonable endeavours to ensure that this agreement is observed.
- 16.3. Each party shall do all things necessary and desirable to give effect to the spirit and intention of this agreement.

**17. GUARANTEES AND INDEMNITIES**

- 17.1. The Current Shareholders agree that the aggregate amount of any actual liability incurred by them pursuant to any joint and several guarantee or indemnity given by them to any third party in respect of any liabilities or obligations of the Company or any of its subsidiaries or pursuant to any guarantee or indemnity (whether several or

joint and several) given in respect of such obligations or liabilities by any of them with the written consent of the other shall be borne by them in proportion to their respective shareholdings from time to time.

## 18. NOTICE

- 18.1. A notice given under this agreement:
- 18.2. shall be in writing in the English language (or be accompanied by a properly prepared translation into English);
- 18.3. shall be sent for the attention of the person, and to the address, or fax number, given in this clause 26 (or such other address, fax number or person as the relevant party may notify to the other party); and
- 18.4. shall be:
- 18.5. delivered personally; or
- 18.6. delivered by commercial courier; or
- 18.7. sent by fax; or
- 18.8. sent by pre-paid Liberian post or recorded delivery; or
  - 18.8.1. (if the notice is to be served or given outside the country from which it is sent) sent by reputable international overnight courier; or
- 18.9. The addresses for service of notice are:

- 18.9.1. Hummingbird Resources plc:

Address:

49-63 Spencer Street, Hockley, Birmingham B18 6DE, England, UK.  
For the attention of: The Company Secretary

- 18.9.2. The Government:

Address:

The Minister of Mines and Energy  
Ministry of Mines and Energy  
Capitol Hill  
Monrovia, Liberia

And

The Minister of Finance and Development Planning  
Ministry of Finance and Development Planning  
Broad Street  
Monrovia, Liberia

And

The Chairman, National Investment Commission  
National Investment Commission

United Nation Drive  
Monrovia, Liberia

With a copy of all communications alleging or relating to any failure of a Party to this Agreement to comply with the terms of this Agreement to

The Minister of Justice  
Ministry of Justice  
14th Street, Sinkor  
Monrovia, Liberia

18.9.3. Hummingbird Resources (Liberia) Inc.

Address:

Hummingbird House, Sophie Area, Congo Town, Monrovia, Liberia  
For the attention of: The Chairman

18.10. If a notice has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:

18.10.1. if delivered personally, at the time of delivery; or

18.10.2. if delivered by commercial courier, at the time of signature of the courier's delivery receipt; or

18.10.3. if sent or supplied by electronic means, [one] hour after the notice was sent or supplied; or

18.10.4. if sent by pre-paid Liberian post to an address in Liberia, 48 hours after it was posted or [five] Business Days after posting either to an address outside Liberia or from outside Liberia to an address within the Liberia, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least [five] Business Days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider; or

18.10.5. if deemed receipt under the previous paragraphs of this sub-clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of deemed receipt and all references to time are to local time in the place of deemed receipt

18.11. To prove delivery, it is sufficient to prove that notice was transmitted by fax to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

19. SEVERENCE

19.1. If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

- 19.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20. **FURTHER ASSURANCE**

- 20.1. Without prejudice to clause each party shall promptly execute and deliver all such documents, and do all such things, as the other party may from time to time reasonably require for the purpose of giving full effect to the provisions of this agreement.

21. **COUNTERPARTS**

- 21.1. This agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

22. **GOVERNING LAW AND JURISDICTION**

- 22.1. The Parties shall be subject to all Law as in effect from time to time, including with respect to mining, labor, environmental, health and safety, customs and tax matters, and shall conduct themselves in a manner consistent with Liberia's obligations under international treaties and agreements.
- 22.2. This Agreement and the rights, obligations and duties of the Parties hereunder shall be construed and interpreted in accordance with Liberian law.

This agreement has been entered into on the date stated at the beginning of it.

**IN WITNESS WHEREOF**, the undersigned have executed and delivered this Agreement as of the date first above written.

Signed in \_\_\_\_\_ originals on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_.

**FOR: HUMMINGBIRD RESOURCES (LIBERIA) INC.**

\_\_\_\_\_  
Mr. Daniel Edwards Betts  
CHAIRMAN

**FOR: THE GOVERNMENT OF THE REPUBLIC LIBERIA**

\_\_\_\_\_  
Hon. Gesler E. Murray  
MINISTER  
Ministry of Mines and Energy

\_\_\_\_\_  
Hon. Samuel D. Tweah  
MINISTER  
Ministry of Finance and Development Planning

\_\_\_\_\_  
Hon. Molewuleh B. Gray  
CHAIRMAN  
National Investment Commission

**ATTESTED BY:**

\_\_\_\_\_  
Cllr. Frank Musa Dean  
MINISTER  
Ministry of Justice

**APPROVED:**

\_\_\_\_\_  
His Excellency George M. Weah  
PRESIDENT  
Republic of Liberia

**SCHEDULE 1: Deed of Adherence**

**THIS DEED OF ADHERENCE** is made this \_\_\_\_ day of \_\_\_\_\_ 201\_, by

(hereinafter called the "**Covenantor**").

**SUPPLEMENTAL** to a shareholders' agreement dated the [●] day of [●] \_\_\_\_\_ [●] and made between (1) Hummingbird Resources plc, (2) The Government of the Republic of Liberia, and (3) Hummingbird Resources (Liberia) Inc. (the "**Company**") ("**Shareholders' Agreement**").

**WITNESSETH** as follows:

The Covenantor hereby confirms that [he] [it] has been supplied with a copy of the Shareholders' Agreement and hereby covenants with each of the other parties to the Shareholders' Agreement from time to time to observe, perform and be bound by all the terms of the Shareholders' Agreement which are capable of applying to the Covenantor and which have not been performed at the date hereof to the intent and effect that the Covenantor shall be deemed with effect from the date on which the Covenantor is registered as a member of the Company to be a party to the Shareholders' Agreement and to be a Shareholder (as defined in the Shareholders' Agreement).

This Deed shall be governed by and construed in accordance with the laws of the Republic of Liberia.

**IN WITNESS** whereof the parties I have signed this document as a deed the day and year first before written.

## HUMMINGBIRD RESOURCES CORPORATE REGISTRY

- i) the Company's shareholders,  
Hummingbird Resources Plc
- ii) the Company's Affiliates showing forth, in each case, its relationship to the Company and the jurisdiction in which it is organized,

Parent Company:

Hummingbird Resources Plc - England and Wales

Subsidiary Companies:

Hummingbird Security Limited - Liberia

Deveton Mining Company - Liberia

Intervest Inc - Liberia

Bentley International Trading Corporation - Liberia

Fellow Subsidiaries:

Golden Grebe Mining Limited - England and Wales

Sinoe Exploration Limited - Liberia

Afro Minerals Inc - Liberia

Trochilidae Resources Limited - Isle of Man

Glencar Mining Plc - Ireland

Centrebind Agency Limited - Cyprus

Glencar Mali SARL - Mali

Glencar International (BVI) Limited - British Virgin Islands

Yanfolila Mining Limited - Isle of Man

Sociétés des Mines de Komana SA - Mali

Yanfolila Holdings Limited - Isle of Man

Yanfolila Finance Limited - Isle of Man

Sunangel Resources Limited - Isle of Man

Sunangel Resources SARL - Burkina Faso

- iii) the directors and senior officers of the Company, each shareholder of the Company, and each Person or Group deemed to Control the Company,

The directors and senior officers of the Company:

Daniel Edward Betts

William Cook

Thomas Hill

The directors and senior officers of Hummingbird Resources Plc (the shareholder and controlling party of the Company):

Daniel Edward Betts  
Thomas Hill  
Russell King  
Stephen Betts  
George Ernest Nutter  
Adriaan Almero Roux  
David Straker-Smith

- iv) each Person or Group that is the owner of 5% or more of (x) the voting rights ordinarily empowered to control the management of the Company or (y) the rights to share in the profits of the Company and the chain through which such rights are exercised,

The Company is 100% owned by Hummingbird Resources Plc.

# ANNEX 1

## EXPLORATION AGREEMENTS

Agreement	Resource	Holder	Location	Country	Effective Date
Dugbe	Diamonds, Gold, Associated Minerals and any other mineral deposit (except Iron Ore)	Hummingbird Resources (Liberia) Inc.	South East Liberia, within the Sinoe and Grand Kru, counties	Liberia	November 2005

# ANNEX 2

## EXPLORATION LICENSES

Licence	Resource	Holder	Location	Country	Effective Date
MEL11047 (Tiehnpo)	Gold & Base Metals	Sinoe Exploration Limited	South East Liberia, within the Grand Kru, Maryland and River Gee counties	Liberia	21 July 2010
MEL11041 (Nemo Creek)	Gold & Base Metals	Sinoe Exploration Limited	South East Liberia, within the Sinoe and Grand Kru, counties	Liberia	1 April 2010
MEL11051 (Joe Village)	Gold & Base Metals	Hummingbird Resources (Liberia) Inc.	South East Liberia, within the Sinoe County	Liberia	7 October 2010

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ANNEX 3  
FEE SCHEDULE

<u>Fee</u>	<u>Amount</u>	<u>Section reference</u>
<u>Class A Mining License application processing fee</u>	<u>\$50,000</u>	<u>5.1a</u>
<u>Feasibility Report processing fee</u>	<u>\$5,000</u>	<u>5.1f</u>
<u>Extension for designation of Proposed Production Area fee</u>	<u>\$5,000</u>	<u>5.1i</u>
<u>Extension for filing Feasibility Report fee</u>	<u>\$5,000</u>	<u>5.1i</u>
<u>Annual Production Area postponement fee</u>	<u>\$10,000</u>	<u>5.2ci</u>
<u>Operations Plan Amendment Processing Fee</u>	<u>\$5,000</u>	<u>6.2d</u>
<u>Failure to Procure Local Goods and Services fee</u>	<u>\$5,000</u>	<u>12g</u>
<u>Annual Resource Area Fee</u>	<u>As set out in 15.4</u>	<u>15.4c</u>
<u>Signature fee</u>	<u>As set out in 16.1</u>	<u>16.1</u>
<u>Mineral Development Fund Fee</u>	<u>As set out in 16.7</u>	<u>16.7</u>
<u>Transfer processing fee</u>	<u>\$5,000</u>	<u>24.10</u>
<u>Change of Control processing fee</u>	<u>\$5,000</u>	<u>24.10</u>

**"AN ACT TO RATIFY THE MINERAL DEVELOPMENT AGREEMENT  
BETWEEN THE GOVERNMENT OF THE REPUBLIC OF LIBERIA AND  
HUMMINGBIRD RESOURCES (LIBERIA) INC"**

*It is enacted by the Senate and House of Representatives of the Republic of  
Liberia in Legislature assembled:*

**SECTION I:**

That from and immediately upon the passage of this "**ACT TO RATIFY THE  
MINERAL DEVELOPMENT AGREEMENT BETWEEN THE  
GOVERNMENT OF THE REPUBLIC OF LIBERIA AND HUMMINGBIRD  
RESOURCES (LIBERIA) INC**" as herein recited below word for word in the  
authentic English version be and the same is hereby ratified to give full force and  
effect to the provisions as contained herein.

**SECTION II: SHORT TITLE:**

This Act shall also be cited as "**HUMMINGBIRD RESOURCES (LIBERIA)  
INC**"

**SECTION III:**

That any and all obligations, covenants, terms and conditions as contained in the  
above mentioned "**ACT TO RATIFY THE MINERAL DEVELOPMENT  
AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF  
LIBERIA AND HUMMINGBIRD RESOURCES (LIBERIA) INC**" shall be  
carried into full completion unless otherwise modified, amended, or repealed.

**SECTION IV:**

This Act, shall take effect immediately upon publication into handbills.

**ANY LAW TO THE CONTRARY NOTWITHSTANDING**

-2019-

SECOND SESSION OF THE FIFTY-FOURTH LEGISLATURE OF  
THE REPUBLIC OF LIBERIA

SENATE'S ENGROSSED BILL NO. 3 ENTITLED:

"AN ACT TO RATIFY THE MINERAL DEVELOPMENT  
AGREEMENT BETWEEN THE GOVERNMENT OF THE  
REPUBLIC OF LIBERIA AND HUMMINGBIRD RESOURCES  
(LIBERIA) INC"

On Motion, Bill read. On motion, the Bill was adopted on its first reading and sent to Committee Room on Tuesday, February 26, 2019 at the hour of 13:30 G.M.T.

On motion, Bill taken from the Committee Room for its Second reading. On Motion, under the suspension of the rule, the second reading of the Bill constituted its third and final reading and the Bill was adopted, passed into the full force of the law and ordered engrossed today, Thursday, February 28, 2019 at 12:23 G.M.T.



SECRETARY, LIBERIAN SENATE, R.L.

-2019-

SECOND SESSION OF THE FIFTY-FOURTH LEGISLATURE OF  
THE REPUBLIC OF LIBERIA

HOUSE'S ENDORSEMENT TO SENATE'S ENGROSSED BILL NO.  
3 ENTITLED:

"AN ACT TO RATIFY THE MINERAL DEVELOPMENT  
AGREEMENT BETWEEN THE GOVERNMENT OF THE  
REPUBLIC OF LIBERIA AND HUMMINGBIRD RESOURCES  
(LIBERIA) INC"

On motion, Bill read. On motion the Bill was adopted on its first reading. On motion, under the suspension of the rule, the first reading of the Bill constituted its Second, third and final reading and the Bill was adopted, passed into the full force of the law and ordered engrossed today, Tuesday, March 5, 2019 at the hour of 13:03 G.M.T.



CHIEF CLERK, HOUSE OF REPRESENTATIVES, R.L.

2019

ATTESTATION

AN ACT TO RATIFY THE MINERAL DEVELOPMENT BETWEEN THE  
GOVERNMENT OF THE REPUBLIC OF LIBERIA AND HUMMINGBIRD  
RESOURCES (LIBERIA) INC.

*for Albert Chue*

VICE PRESIDENT OF THE REPUBLIC OF LIBERIA/PRESIDENT OF  
THE SENATE

*[Signature]*

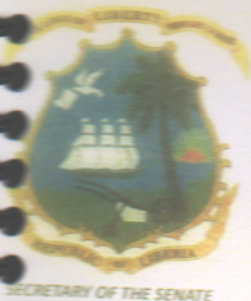
SECRETARY, LIBERIAN SENATE

*[Signature]*

SPEAKER, HOUSE OF REPRESENTATIVES

*Michael N. Sargan*

CHIEF CLERK, HOUSE OF REPRESENTATIVES, R.L.



**The Liberian Senate**  
CAPITOL BUILDING, CAPITOL HILL, MONROVIA, LIBERIA  
WEST AFRICA

**2019**

**SECOND SESSION OF THE FIFTY-FOURTH  
LEGISLATURE OF THE REPUBLIC OF LIBERIA.**

SCHEDULE OF SENATE'S ENROLLED BILL NO. 4 ENTITLED:

AN ACT TO RATIFY THE MINERAL DEVELOPMENT BETWEEN THE  
GOVERNMENT OF THE REPUBLIC OF LIBERIA AND HUMMINGBIRD  
RESOURCES (LIBERIA) INC.

PRESENTED TO THE PRESIDENT OF THE REPUBLIC OF LIBERIA FOR  
EXECUTIVE APPROVAL.

APPROVED THIS 26<sup>th</sup> DAY OF March A.D. 2019  
AT THE HOUR OF 4:10 pm

THE PRESIDENT OF THE REPUBLIC OF LIBERIA