



ENGA PROVINCIAL GOVERNMENT

# THE PORGERA AGREEMENTS (ANNOTATED)



National Government - and - Enga Provincial Government  
National Government - and - Poregera Landowners  
Enga Provincial Government - and - Poregera Landowners

*Kim Olander*

## **THE PORGERA AGREEMENTS**

Edited by Harry Derkley

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## FOREWORD

Enga is changing before our eyes. Every day now big convoys of trucks move along the road to Porgera. Soon gold will be pouring out of this province to go across the sea.

Many of the people are afraid, but most of them have their hearts filled with hope for a better life. Bigmen expect business from the goldmine. Young men and women expect jobs. Girls and boys will study harder at school in the hope of a better future. Even the old men and women now have something different to dream about as they work in their gardens.

At Porgera the whole earth moves. The gardens of the people of Porgera, and the big bush, disappear before the blades of dozens of huge bulldozers. Everywhere there is noise and mud, and more "waitman" and "autsait" man than we have ever seen in this province before.

No-one knows what Enga will be like in twenty, thirty or even forty years time when the gold finally runs out. Many of us who are here now will not live to see it. All we know is that there will be very big changes.

I hope that Enga will be a better, happier place with more schools, aid posts, hospitals, churches, roads, trucks, coffee gardens and trade stores, and that people will be so busy that there will be no time left for fighting.

This is why my government has worked hard to ensure that this gold with which God has blessed Enga will bring good things for its people.

The result so far is these three agreements negotiated between the National Government, the Provincial Government and the landowners of Porgera.

I hope that in this time of great trouble for our country and our province, they will be the beginning of a strong and lasting partnership, of working together for the good of our country and its people.

But now is the time to start the task of implementing these agreements so that all the promises inside them become a reality.



Ned Mali Laina, Premier.

September 1989

INDEPENDENT STATE OF PAPUA NEW GUINEA  
- AND -  
ENGA PROVINCIAL GOVERNMENT

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- AND -  
PORGERA LANDOWNERS

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EDITOR'S NOTE

This is an edited version of the three Agreements. The editor was closely involved in their negotiation and drafting at all stages, and believes that in some vital respects the final draft was prepared with undue haste and was executed before a final "vetting" took place. However, where departures from the text have been made these have been noted in the footnotes together with an explanation where necessary. They have been prepared primarily with the point of view of the Provincial Government and the landowners in mind, though the latter may have a few (hopefully small) bones to pick as well.

#### Abbreviations

MDC - Mining Development Contract

MRDC - Mineral Resources Development Company

PJV - Porgera Joint Venture

SML - Special Mining Lease

#### INTRODUCTION

The opening recitals to all three of these Agreements contain the phrase "and both the Parties wish to make the decisions emanating from the Forum to be an enduring arrangement."

The Forum, of course, was the Mining Development Forum. It was here for the first time in this nation's history that the National Government sat down with its junior partner, the Enga Provincial Government, and the landowners of Porgera to determine how a major resource project was going to develop for the benefit of all the parties.

The fact that the last meeting of the Forum took place as the dark clouds of the "militant" insurrection gathered over Bougainville only served to underline its significance. The tripartite framework, and many of the specific measures pioneered in these Agreements, have again been found to be useful in meeting the aspirations of the people of Panguna and the North Solomons.

These Agreements are intended to provide the basis for co-operation between the National Government, the Enga Provincial and the landowners during the lifetime of the Porgera goldmine, and even beyond. It was therefore felt to be appropriate that they be given a suitably "enduring" form to make them accessible to the many people - national and provincial politicians, public servants, business people, the landowners, and the people of Enga generally - who will be working and living with them in the years to come.

It is important to remember that the key agreement made between the National Government and the Porgera Joint Venture - the Mining Development Contract (MDC) - has been left out. This decision was made because many of its complex and detailed provisions are not really relevant to those working at provincial and local level.

However, it is also important to remember that the Porgera Joint Venture is a "silent party" to these Agreements in that it was a condition of the National Executive Council's approval of the grant of a Special Mining Lease to the Porgera Joint Venture that it carry out whatever obligations the National Government had undertaken to impose on it by way of these Agreements.

The key provisions of the MDC have been paraphrased in the footnotes and, where necessary, quoted in full so that so far as

possible the full picture can be obtained.

Other matters of importance - essential background detail, disputes about the correctness of the hastily prepared final version - are also outlined in the footnotes, as are the various other specialised agreements and legislation, both national and provincial, which form part of the total framework in which these Agreements will be implemented.

It will be seen that many of the provisions in the Agreements are the same, or almost the same. This was because many of them were equally relevant to both the landowners and the Provincial Government.

However, there are also important differences in substance and emphasis between apparently similar provisions which have the same heading, and to be on the safe side, and get the full picture, it will usually be a good idea to look at the related provisions of all three Agreements.

The indexes of the three Agreements in their original state have been preserved. They are as good a guide as any to their contents.

Finally, these Agreements were the work of many hands and minds. It is hoped that those who read them and recognise their contributions will be proud of their achievements. But much more vital will be the contributions of the hands and minds of those who work to give them life in the years to come.

Harry Derkley, Provincial Legal Officer

September 1989

## **INDEPENDENT STATE OF PAPUA NEW GUINEA**

**- AND -**

## **ENGA PROVINCIAL GOVERNMENT**

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**THIS AGREEMENT** is made on the 12th day of May 1989 **BETWEEN** the **INDEPENDENT STATE OF PAPUA NEW GUINEA** (the "National Government") and the **ENGA PROVINCIAL GOVERNMENT** (the "Provincial Government").

#### **WHEREAS**

- (A) It is recognised that the Porgera Mine Project should proceed for the benefit of the people of Papua New Guinea, and in particular those living in the Enga Province and the Porgera District, and
- (B) The Parties recognise that they need to cooperate to ensure proper development of the Porgera District and Enga Province to meet the needs a large project will impose both economically and socially, and
- (C) Various matters have been discussed between the Parties at the Mining Development Forum on the Project and both Parties wish to make the decisions emanating from that Forum to be an enduring arrangement.

#### **IT IS AGREED AS FOLLOWS:**

##### **A - GENERAL**

#### **1. DEFINITIONS**

"Approved Proposal for Development" shall have the same meaning as in the Mining Development Contract<sup>1</sup> between the Independent State of Papua New Guinea and the Porgera Joint Venture.

"the Commencement of Production" means the first date on which gold is produced for sale from the Porgera Mine Project.

"the Commencement of Commercial Production" shall have the same meaning as in the Mining Development Contract.<sup>2</sup>

<sup>1</sup>The Approved Proposal for Development consists of the Feasibility Study, the Training and Localisation Programme, the Environmental Plan and the Financing Proposals. The Feasibility Study sets out the plan for the construction of the mine and infrastructure and the costings. The Training and Localisation Programme explains the structure of workforce in both the construction and the operations phase and the PJV's plans for the localisation of positions held by non-citizens. The Environmental Plan explains the likely environmental effects of the projects and where problems are anticipated what is to be done to minimise these. The Financing Proposals explain how the PJV will finance the project.

<sup>2</sup>This is defined in Clause 1 the MDC as meaning "the last day of the first period of 60 consecutive days in which, for not less than 50 days, the pressure oxidation circuit processed concentrator produced from ore from the Mining Area at 75% of the daily rated capacity (as contemplated in the Approved Proposal for Development) for each of the said 50 days." The oxidation circuit is not to be confused with the cyanide flotation processor which is planned to be in production within 15 months of the granting of the SML (See /n 2, p 2). The Approved Proposal envisages that the it will be 3 years before the oxidation circuit begins production and 42 months before



"Community Facilities Grant"<sup>3</sup> means any grant made available by the Porgera Joint Venture from time to time for the provision of community facilities in the Porgera District.

"Landowners" means members of any landowning clan which at any time has its origin in the Porgera District and includes those persons that own land within the Special Mining Lease area.

"the Mining Development Contract" means the Agreement executed between the Independent State of Papua New Guinea and the Porgera Joint Venture for the Porgera Mine Project.

"National Government" means the Independent State of Papua New Guinea.

"Parties" or "Party" means the Parties to this Agreement.

"Porgera Development Authority" means the statutory agency set up under Clause 20 of this Agreement.

"Porgera District" means and includes the Porgera and Palela Council areas.<sup>4</sup>

"Porgera Joint Venture" means the three companies, Placer (PNG) Pty Ltd, Highlands Gold Properties Pty Ltd, and RGC (Papua New Guinea) Pty Ltd, (or their assigns or successors) which have jointly entered into the Mining Development Contract to develop the Porgera gold deposit.

"Porgera Mine Project" means the mining development at Porgera approved by National Executive Council for which the Special Mining Lease has been granted.

"Provincial Government" means the Enga Provincial Government.

"royalty" means the royalty under section 105 of the Mining Act (Chapter 105)<sup>5</sup> or any amendments to, or provisions succeeding or substituted for that provision.

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commercial production begins.

<sup>3</sup> This is in the first instance the K4 million grant that the Porgera Joint Venture has undertaken to make available for "community facilities" in the Porgera District. It may well be that further grants are made by the Porgera Joint Venture for the development of community facilities during the life of the mine. In this case these grants will be part of the Community Facilities Grant

<sup>4</sup> These areas are defined under proclamations made under the provincial Local Government Act 1980.

<sup>5</sup> Section 105 of the Mining Act defines the royalty as 1.25% of the "f.o.b." value of mine products. This is a "turn-over" tax which is payable as soon as production starts from the cyanide flotation processor some 15 months after grant of the SML (See next f/n 3 above).

"Special Mining Lease" is the lease granted pursuant to the Mining Act to the Porgera Joint Venture for the Porgera Mine Project<sup>6</sup>

"Special Mining Lease Landowners" means members of the TIENI, WAIWA, TUANDA, PULUMAINI, ANGALAINI, MAMAI and ANGA clans of the Porgera District owning land within the Special Mining Lease area.

## 2. INTERPRETATION

In this Agreement, unless the context otherwise requires -

- (a) the headings do not affect the interpretation or construction,
- (b) reference to any Act includes the amendments to that Act for the time being in force and also to any Act passed in substitution therefore and any regulations for the time being in force thereunder,
- (c) words importing the singular include the plural and vice versa,
- (d) words importing one gender include the other gender,
- (e) the recitals form a part of this Agreement.

## B. NATIONAL GOVERNMENT UNDERTAKINGS

### 3. SPECIAL SUPPORT GRANT

- 3.1 The National Government will extend to the Provincial Government a grant to be known as the Special Support Grant which will be administered through the national budget in the same way as funding for transferred functions are normally funded under the Minimum Unconditional Grant but subject to satisfaction of requirements for full financial responsibility.<sup>7</sup> Until full financial responsibility is achieved this Grant will be paid to the Provincial Government through Vote 278-01-001-08<sup>8</sup> to be applied by the Provincial Government to provincial

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<sup>6</sup> This Special Mining Lease was granted on the same day as the execution of the Mining Development Contract - that is, 12 May 1989.

<sup>7</sup> The Minimum Unconditional Grant is defined in Schedule 1.1 of the Organic Law on Provincial Government. It is its funding for the carrying out of "activities" which have been transferred from the National Government to the Provincial Government. Where this process has been completed a provincial government is said to have "full financial responsibility". This has not yet occurred in Enga which is why the National Government insisted that Special Support Grant be paid through that part of the national budget which is used to fund "national" activities (ie all activities other than Works and Policy and Planning).

<sup>8</sup> This is in fact a grant under Item 8 of the Secretary, Department of Enga's, vote.

projects and programmes submitted annually and agreed to by the National Government, which shall not unreasonably withhold such agreement, and be subject to quarterly progress reports.

3.2 The Special Support Grant will be equal to one percent of the value of annual f.o.b. revenue from the sale of mine products from the Porgera Mine Project. For purposes of this Clause, "f.o.b. revenue" has the same meaning as in Section 104 of the Mining Act (Chapter 195)<sup>9</sup> or in any future legislation establishing a royalty on mine products.

3.3 The Special Support Grant will be payable on a quarterly basis -

- (a) where commencement of production occurs in 1990 - commencing in January 1990, or
- (b) where commencement of production occurs in any subsequent year - commencing in January of the year preceding the year in which production from the Porgera Mine Project begins.<sup>10</sup>

and as such will be calculated on the estimated annual f.o.b. revenue and adjusted annually against the actual revenue as stipulated in 3.2.

3.4 The Special Support Grant arrangement will be reviewed ten years from the date of the grant of the Special Mining Lease.<sup>11</sup>

#### 4. TOWN DEVELOPMENT

In order to assist in the establishment of a township, the National Government will, within 12 months of the execution of this Agreement, provide funds, as required, for the purchase of at least 106 hectares referred to as the Palam townsite, identified as at 1 February, 1989, and after that for road infrastructure within that townsite area as required.

<sup>9</sup> "F.O.B revenue" is defined in Section 104 of the Mining Act. It is a long complicated definition but means basically the value of the gold (or other mineral) produced less taxes, ocean freight, insurance, port handling charges and other charges incidental to the shipping of the gold (etc).

<sup>10</sup> The effect of this clause is that even if production from the mine is delayed until 1991 the payment of the Special Support Grant will still commence in 1990, though if it is delayed until 1992 it will not begin until 1991 and so on.

<sup>11</sup> But see also Clause 19 which says that if the National Government enters into a more advantageous agreement in relation to the Special Support Grant or an equivalent payment with another provincial government, the Provincial Government has the right to renegotiate a new arrangement.

#### 5. FLY-IN/FLY-OUT OF MINE EMPLOYEES<sup>12</sup>

5.1 In order to promote the development of an integrated, well serviced and economically developing township at Porgera, the National Government will make every effort to ensure that Porgera Joint Venture actively promotes the residence of mine operations personnel in the Porgera area for the duration of the Porgera Mine Project.

5.2 To better promote the general objective of 5.1, the National Government will ensure that the Porgera Joint Venture, on the seventh anniversary of the execution of this Agreement, will reduce to an absolute minimum arrangements for its mine operations personnel to fly in and fly out of Porgera to and from residences outside the Porgera area and, after that date, maintain such arrangements to<sup>13</sup> an absolute minimum for the duration of the Project.

5.3 To ensure that fly-in fly-out operations are minimised in the interim, and that the PJV is eventually able to comply with the requirements of 5.2, the National Government undertakes to ensure that the Porgera Joint Venture will take the following measures -

- (a) include in all advertisements for operations employee positions the following information -
  - (i) that married accommodation will be supplied free of charge to all employees who wish to have their families reside with them at Porgera, subject to the necessary probation period established by the Porgera Joint Venture.
  - (ii) that annual leave airfares or the equivalent will be paid for all family members to the place of recruitment,
  - (iii) that employees who wish to work at Porgera for longer

<sup>12</sup> The final wording of this clause was arrived at after considerable argument between the National Government, Provincial Government and landowner representatives. This revolved around the question whether this was a policy which seeks to minimise "fly-in/fly-out" as an end in itself, or whether it was simply a means to the end of encouraging the development of a viable township at Porgera. The position of the Provincial Government and landowners representatives was that both were desirable ends in themselves and that the only way in which both were going to be achieved was to set the PJV the much more definite goal of reducing the flying in and flying out of mine personnel from places of residence outside Porgera to an absolute minimum in year seven. This is why clauses 5.3 and 5.4 refer to clause 5.2 which sets that goal. Unfortunately this was not reflected in the final version of the Agreement prepared in a last minute rush and executed without a last vetting. In this version clauses 5.3 and 5.4 refer to clause 5.1. The National Government and the Porgera Joint Venture have been formally advised by both the Provincial Government and landowners representatives that they regard this as an error.

<sup>13</sup> Grammatical error - should be "at".

periods without taking their usual leave entitlements shall be able to accrue those entitlements without penalty.

- (iv) that preference will be given to those applicants who wish to reside at Porgera, and
- (b) where financial assistance is offered to Porgera Joint Venture employees to acquire or build their own house, offer such assistance for those wishing to do so at Porgera on significantly more favourable terms,

provided that these measures shall not be to the exclusion of any other measures the Porgera Joint Venture may wish, or be required, to take to assist compliance with the requirements of 5.2.

5.4 The National Government shall ensure that the Porgera Joint Venture submits -

- (a) within 60 days of the third and subsequent anniversaries of the execution of this Agreement, interim reports which will detail the progress made towards achieving compliance with 5.2, particularly in relation to the following matters
  - (i) the increase in employee families of the Porgera Joint Venture residing in town facilities at Porgera, and
  - (ii) the variety, accessibility and quality of town amenities available to all Porgerans, and
  - (iii) any matters which have been found to have been negatively affecting attempts to settle people permanently at Porgera.

and these interim reports will be considered by a joint committee of National Government, Provincial Government and Landowners representatives which shall make such recommendations to such bodies as it considers appropriate to assist the Porgera Joint Venture to comply with the requirements of 5.2, and

- (b) within 90 days of the seventh anniversary of the execution of this Agreement, a final report in which will be fully detailed
  - (i) the Porgera Joint Venture's compliance with the requirements of 5.2, or
  - (ii) the reasons why this has not been achieved,

and this report will be considered by the joint committee which shall make any recommendations it considers necessary.

## 6. EQUITY <sup>14</sup>

6.1 The National Government undertakes that the Provincial Government, will have the option to take up to 50% of the National Government's 10% equity participation in the Porgera Mining Project (that is 5% of the total equity of the Project).

6.2 The method of taking up this equity will be as follows:

- (i) the Mineral Resources Development Company<sup>15</sup> will form a Subsidiary Company ("the Subsidiary") which will take up the National Government's 10% interest in the Porgera Mine Project,
- (ii) the Mineral Resources Development Company will grant options to the Provincial Government to acquire shares in the Subsidiary ("Shares") as follows,
  - (a) within 12 months of the granting of the Special Mining Lease - 2.5% of the shares ("the First Option"),
  - (b) within 6 months of the Commencement of Commercial Production - a further 22% of the Shares ("the Second Option"),
  - (c) within the period of one month following the fifth anniversary of the granting of the Special Mining Lease - a further 25.5% of the Shares ("the Third Option"),
- (iii) the cost of the Shares will be as follows:
  - (a) the First and Second Option Shares will be sold to the Provincial Government at the relevant percentage of the cost incurred by the Mineral Resources Development Company in acquiring the 10% interest in the Project<sup>16</sup> plus the relevant percentage of all the interest and charges incurred by the Mineral Resources Development Company in borrowing moneys to fund the acquisition of its interest in the Project; and
  - (b) the Third Option Shares will be sold to the Provincial Government at their fair market price as determined by

<sup>14</sup> The provisions of this clause are the subject of a detailed "Equity Agreement" negotiated between the Mineral Resources Development Company and the Provincial Government following the signing of the Agreement.

<sup>15</sup> The Mineral Resources Development Corporation is the body set up by the National Government to hold and manage any equity it purchases in mineral resource projects under its policy guidelines to take up to a 30% stake in mining projects and a 22.5% stake in petroleum projects.

<sup>16</sup> That is, the Porgera Mine Project.

an independent expert acceptable to the Parties or if the Parties cannot agree, appointed by the President of the PNG Society of Accountants;

(iv) Payment for the Shares will be made as follows:

- (a) for the First and Second Option Shares the amount payable as set out in (iii) (a) will be deemed to be an interest free loan<sup>17</sup> from the Mineral Resources Development Company to the Provincial Government which the Provincial Government will repay out of its share of the dividends payable by the Subsidiary. The Provincial Government will not be required to repay any of these moneys except out of the dividends payable by the Subsidiary;
- (b) for the Third Option shares the Provincial Government will pay cash within three months of the determination of the fair market value. If payment is not made in this time the Third Option will lapse;
- (c) the Mineral Resources Development Company will lend moneys to the Subsidiary to enable the Subsidiary to meet its share of cash calls made by the Porgera Joint Venture to meet its expenses provided that the Mineral Resources Development Company will not be responsible for lending money to the Subsidiary in respect of cash calls relating to the percentage of shares acquired by the Provincial Government pursuant to the Third Option, which shall be the responsibility of the Provincial Government. These loans, together with interest and charges incurred by the Mineral Resources Development Company in borrowing these moneys<sup>18</sup>, will be repaid by the Subsidiary to the Mineral Resources Development Company in absolute priority to all other obligations of the Subsidiary and will be secured. No dividends will be paid by the Subsidiary until these loans and interest and charges have been fully repaid;
- (d) so long as any of the amounts referred to in (c) remain outstanding the control of the Board and Management of the Subsidiary shall remain with the Mineral Resources Development Company.

(v) assignment of the Shares shall be made as follows -

- (a) in relation to First Option - on exercise of the option.
- (b) in relation to Second Option - on repayment to the MRDC

<sup>17</sup> This appears to contradict the provisions of 6.2(iv)(c) which says that "interest and charges incurred by the Mineral Resources Development Company" are repayable.

<sup>18</sup> See f/n 17.

in accordance with (iv)(a),

(c) in relation to Third Option - on payment for the shares in accordance with (iv)(b).

6.3 The Provincial Government may participate in the appointment of the two State representatives<sup>19</sup> to the operating committee of the Porgera Joint Venture as follows -

- (i) on the assignment of 2.5% of shares in the Subsidiary in accordance with 6.2(ii)(a), the Provincial Government, jointly with the Landowners, shall be entitled to appoint one of the two representatives, provided that if the Provincial Government shall fail to exercise its option to take up a further 22% of the share in the Subsidiary<sup>20</sup> in accordance with 6.2(ii)(b), this right shall lapse.
- (ii) on the purchase of the remaining 25.5% of shares in the Subsidiary in accordance with 6.2(ii)(c), the Provincial Government shall be entitled to appoint one of the two representatives in its own right and its right to appoint a representative jointly with the Landowners shall lapse.

6.4 The Provincial Government agrees that -

- (i) all Shares acquired under the First and Second Options will be held in trust for the people of Enga and will not be sold during the life of the Porgera Mine Project;
- (ii) all Shares acquired under the Third Option which it may want to sell but will be offered firstly to the Mineral Resources Development Company, to purchase at a fair market price, or if the Mineral Resources Development Company does not wish to purchase the said Shares, secondly to the Porgera Joint Venturers at a fair market price. If neither the Mineral Resources Development Company or the Porgera Joint Venturers wish to purchase the Shares, then the Provincial Government can sell the Shares to any other person.

6.5 The Provincial Government acknowledges that it will be bound by all the rights and obligations which apply to the Subsidiary<sup>21</sup>, as a result of its participation as a member of the Porgera Joint Venture and notice will be given prior to the subsidiary entering

<sup>19</sup> The 1979 Equity Agreement negotiated between the National Government and the parent companies of the three Porgera Joint Venturers entitled the State to two representatives on the operating committee of the Porgera Joint Venture.

<sup>20</sup> The executed Agreement refers to "Subsidiary Company" but the reference to "Company" is clearly unnecessary.

<sup>21</sup> This refers mainly to various Joint Venture Agreements which are entered into from time to time between the Porgera Joint Venturers.

into any agreements<sup>22</sup>.

## 7. GOVERNMENT LAND AT PORGERA STATION

7.1 After the date of this Agreement, the National Government undertakes in relation to government land at the Porgera station that -

- (a) all holders of licences to land, who were first granted licences in relation to that land after 1 December 1987, will not be granted any further licences in relation to that land when their existing licences expire.
- (b) no further licences (except to those who were licence holders before 1 December 1987 pending the granting of their applications for leases) are to be granted in relation to any land.
- (c) subject to subclause (d), all land which becomes available due to the operation of subclause (a), will be advertised for applications for leases.
- (d) all land subject to licences granted to licence holders on or before 1 December 1987, and still subject to licences held by those holders, will not be subject to advertisement prior to the grant of leases to those licence holders.
- (e) it will advise the Land Board that it is government policy in accordance with the provisions of the Mining Development Contract that Porgerans be given first preference, and other Engans second, in the development of business opportunities resulting from the Porgera Mine Project and that this policy be given full consideration in the deliberations of the Board on the applications for leases.

7.2 The National Government will direct the Minister for Lands<sup>23</sup> to honour his commitment to the Landowners that :-

- (a) all Land Board hearings in connection with Porgera land are to be held at Porgera, and
- (b) a representative from Porgera be appointed to the Land Board, and all sittings of the Land Board considering land at Porgera include at least one Porgera representative during the term

<sup>22</sup> The previous version of the Agreement contained the words: "and the National Government, on its part, undertakes to consult with the Landowner Company prior to entering any such Agreement." The National Government has been formally requested to reinstate these words.

<sup>23</sup> This commitment was made at the February 1989 meeting of the Mining Development Forum.

of this Agreement, and

- (c) all land at Porgera to be advertised prior to a Land Board hearing, and, in addition to gazettal, will be advertised by display of a notice on the Public Notice Board at the District Office at Porgera.

7.3 Notwithstanding anything to the contrary in 7.1 and 7.2, land occupied by the Porgera Local Government Council under licence at the time of execution of this Agreement shall be granted to the Porgera Local Government Council<sup>24</sup> without the requirement to advertise.

7.4 With respect to any land matter relating to government land at Porgera station pending in the Land Board at the time of execution of this Agreement, the National Government undertakes to -

- (a) request the Minister for Lands to do such things, and
- (b) make such directions to the Secretary of the Department of Land and Physical Planning, and
- (c) make such directions known to the Chairman of the the Land Board,

as will be required to comply with all matters referred to in the memorandum in Annexure A<sup>25</sup> to this Agreement.

## 8. LAND REVALUATION

Within six months of the execution of this Agreement, the National Government undertakes to have the Valuer-General carry out on site revaluation of all land within<sup>26</sup> the Special Mining Lease and any Leases for Mining Purposes for purposes of determining an appropriate occupation fee pursuant to Section 173 of the Mining Act, Chapter 195<sup>27</sup>.

<sup>24</sup> The executed Agreement deletes the word "Council". This appears to be a typing error.

<sup>25</sup> This annexure has not been included because it of historical interest only.

<sup>26</sup> The executed Agreement says "with", but this appears to be a typing error.

<sup>27</sup> Under this section of the Mining Act the annual occupation fee (or rental) is supposed to be 5% of the assessed "unimproved" value of the land, or a minimum of K5.00 per hectare. In practice the "unimproved" value of ordinary garden (or other land) has been "assessed" at a very low level. The purpose of this clause is to get the Valuer-General to make a proper assessment of the value of garden land. There is also an undertaking by the National Government to raise the minimum to K10 per annum and index it for inflation.

### 9. INTERNATIONAL PRIMARY SCHOOL <sup>28</sup>

The National Government will open discussions with the International Education Agency with a view to that Agency establishing an International School at Porgera.

### 10. ROYALTIES

The National Government will pay all royalties from mine products from the Porgera Mine Project to the Provincial Government.

### 11. MANPOWER

The National Government undertakes that -

- (a) within six months of the grant of the Special Mining Lease, it will create, fund and provide housing and office space for twelve additional public service positions, as described in Annexure B to this Agreement, to be based in the Porgera District, at least four of which will be available, if necessary, for expatriate contract officers.
- (b) all public servants stationed in the Porgera District will be paid a special zone allowance which will be comparable to those already in existence in other mining areas and consistent with national wage policy.
- (c) it will provide a consultant to work with the Provincial Government and the Porgera Development Authority for such period as is necessary to properly prepare a Long Term Economic Development Plan for Porgera District.

### 12. AIR SERVICES AND KAIRIK AIRPORT

- 12.1 The National Government will use its best efforts to ensure, in addition to the existing two passenger flights and one cargo flight per week, at least one more passenger airline service per week into Wapenamanda airport to and from Port Moresby, Lae or another major centre.
- 12.2 The National Government agrees that ownership and management of the proposed Kairik Airport may be with the Provincial Government and that the Porgera Porgera Development Authority may at its option maintain the airport, provided that the Provincial Government agrees to abide by the terms of Clauses 6.5 and 6.6 of the Mining Development Contract (Infrastructure Facilities). <sup>29</sup>

<sup>28</sup> See also Clause 20 in the National Government/Landowners Agreement.

<sup>29</sup> These clauses say that the National Government ("the State") where it maintains such assets may ask the PJV to contribute to the costs, or where the PJV maintains

### 13. ENVIRONMENT

From the Commencement of Production <sup>30</sup> of the Porgera Mine Project, the National Government agrees to -

- (a) station environmental control and monitoring officers in Porgera and to provide housing for such officers
- (b) ensure that the Department of Environment provides competent experts to respond promptly to landowner concerns regarding environmental issues.
- (c) provide the Provincial Government with a quarterly report on sediment and relevant chemical levels in the river systems which are being monitored, with particular emphasis on mercury and cyanide, and
- (d) subject to advice from the Department of the Environment and Conservation, consider the establishment of a National Park or Conservation Area for the protection of the flora and fauna and other natural assets in the Porgera District.

### 14. LAW AND ORDER

The National Government undertakes to -

- (a) station an officer of the rank of Inspector at Porgera to be in charge of the Porgera Police Station.
- (b) subject to the availability of suitable candidates, increase reserve police to sufficient numbers to provide an effective support to full-time officers stationed at Porgera.
- (c) ensure, in conjunction with the Provincial Government, and with assistance from the Porgera Joint Venture, that the boom-gate remains in place at Mount Malp to regulate the flow of people and goods into Porgera.
- (d) upgrade the Mulitaka Police Station within two years of the execution of the Agreement.

### 15. PORGERA DISTRICT HOSPITAL

- 15.1 With the assistance of the Porgera Joint Venture, the National Government and Provincial Government will within 3 years of

maintains the assets pay its share of the costs. Where the assets are not maintained at a certain standard then the PJV has a right, after notice, to maintain the assets at the State's expense or in an emergency do so without notice. These provisions would apply to the Provincial Government since it would be the agent of the State at Kairik airport.

<sup>30</sup> Note that this is not at the "Commencement of Commercial Production" (See definition in s/n 1).

the grant of the Special Mining Lease <sup>31</sup>, upgrade the existing Porgera Health Centre to the level of a "Major Health Centre" <sup>32</sup> with the following facilities-

60-80 beds  
X-ray facilities  
operating theatre  
pathology unit  
dental service  
laboratory  
pharmacy

15.2 The National Government, Enga Provincial Government and Porgera Joint Venture, in consultation with the Landowners, shall within 3 months of the execution of this Agreement enter into a memorandum of understanding in relation to the following matters:-

- (a) timetable and cost sharing arrangements between the National Government and the Porgera Joint Venture for the upgrading of the Porgera Health Centre.
- (b) timetable and cost sharing arrangements between the Provincial Government and the Porgera Joint Venture for the responsibility for the recurrent costs of staffing, maintenance, repairs, medical supplies etc.
- (c) timetable and cost sharing arrangement between the Provincial Government and Porgera Joint Venture for the provision of accommodation for Porgera Health Centre staff.
- (d) location of the Porgera Joint Venture medical officer, ambulance, and other facilities over and above emergency first aid facilities required at the mine site.

#### 16. ENGA PUBLIC COMPANY

16.1 The Provincial Government will establish a public company to be registered in Papua New Guinea the purpose of which will be to enable Engans (either directly or through the Provincial Government and Local Government Councils) and Engan businesses, to participate in the business opportunities created by the Porgera Mine Project both during the construction and operations phases.

16.2 The objects of the public company will be -

<sup>31</sup> The Special Mining Lease was granted on 12 May 1989.

<sup>32</sup> This is the official Department of Health description of a medical facility which meets the specifications listed in this sub-clause.

- (a) to form joint ventures with leading engineering, construction and other businesses for the purpose of tendering for, enter into and carrying out activities <sup>33</sup> created as a result of the Porgera Mine Project.
- (b) to ensure that Enga participation by way of subcontracts, jobs and training opportunities in any joint venture is maximised.
- (c) to promote and provide the capital for other major ventures in Enga involving Engan businesses, especially in relation to other resource projects.
- (d) to invest in any other project outside Enga for the purpose of assisting the carrying out of the other objects.

16.3 The public company will be wholly owned by Engans, Engan businesses and Engan Local Government Councils and the Provincial Government, and there will be restrictions on transfer of shares to ensure that the control of the public company remains in the hands of Engans.

16.4 There will be an issue of 250,000 shares of K1 each within 3 months of the granting of a Special Mining Lease to the Porgera Joint Venture which shall be available for purchase for a period of 30 days. Subject to clause 6, minimum and maximum allotments of shares will be as follows -

Shareholder	Minimum	Maximum
Individuals	50	100
Businesses	500	1000

provided that 35% <sup>34</sup> of shares shall be reserved for the Local Government Councils of the Enga Province and 16% for the Provincial Government.

16.5 Ipili Porgera Investments (IPI) may, at its option, take up an allotment of up to 10% of the shares at current market value of the public company within one year of the closing day of the period referred to in 16.4.

16.6 The promoters of the public company, who will also be the interim directors, will be the Enga Premier, the Chairman of the Presidents of the Local Government Councils of the Enga Province, and two Enga Members of Parliament.

16.7 Further directors of the public company shall be appointed at the first Annual General Meeting of the public company to be held within 6 months of the closing day of the period referred

<sup>33</sup> A previous draft of the Agreement uses the word "contracts" instead of "activities".

<sup>34</sup> The executed Agreement says "5%". This is clearly a typing error.

to in 16.4.

16.8 The manager of a public company shall be appointed by the directors, and the Porgera Joint Venture shall assist the public company by providing the services of a professional adviser.

16.9 The National Government shall make available the following-

- (a) a National Government advance to the Provincial Government in the amount of K500,000 by the 31 October 1989 to be repaid by deductions from funds to be made available under the Special Support Grant by the National Government in quarterly instalments of K25,000 at the rate of K100,000 per year for five years, the first deductions commencing in 1990 or in the year in which the Special Support Grant is first paid.
- (b) the National Government shall make available loan guarantees on a case by case basis of up to K1 million per annum to the public company for a period of five years commencing on the 1 June 1989.<sup>35</sup>

#### 17. PREFERENCE IN BUSINESS

The National Government undertakes to include the following clauses in the Mining Development Contract <sup>36</sup> -

- (a) the supply of materials, equipment and services may be tendered internationally provided that where such materials, equipment and services are procurable within Papua New Guinea from businesses pre-qualified pursuant to clause 13.1 of the Mining Development Contract and such prequalified businesses have the opportunity to tender, and if the tender submission from such a business -

- meets the specifications of the invitation to tender,
- is competitive in cost with international sources,
- meets the delivery requirements of the project

then such materials, equipment and services shall be procured within Papua New Guinea with preference first

<sup>35</sup> These loan guarantees will be available under the Credit Guarantee Scheme operated by the Department of Finance, except that the usual limitations of a K100,000 ceiling on loan applications and the approval of one application only will not apply. As many applications for amounts adding up to the annual limit of K100,000 can be made. However, it may be that applications for large sums will have to be approved by the National Executive Council in accordance with the provisions of the national Public Finances Management Act.

<sup>36</sup> This clause is contained in Clauses 13 and 14 of the Mining Development Contract.

being given to businesses operated by Porgerans located within the Porgera District and secondly to businesses operated by Engans located in the Enga Province.

(b) that the Porgera Joint Venture, in consultation with the State (National Government) and the Provincial Government, will

- within 9 months of the issue of a Special Mining Lease, devise a business development programme which will encourage and assist the people of the Enga Province, with preference to Porgerans, to establish businesses to supply materials, equipment and services to the project, provided that the Joint Venturers shall not be obliged to lend money or provide materials to any person or organisation, and
- conduct an annual review of the progress being made in the implementation of the programme, and make such variations to it as may be required by the changing circumstances, and
- employ full time staff experienced in setting up and managing business enterprises -
- (i) to assist Papua New Guineans who wish to or have set up businesses to service the project;
- (ii) to assist in the implementation of the business development programme and the variations thereof;
- (iii) to liaise with appropriate officials from the State and the Provincial Government;
- (iv) to provide advice and assistance in the development and implementation <sup>37</sup> of longterm business enterprises with emphasis on those which can continue after the Porgera Mine Project is terminated.

(c) a committee shall be formed, comprised of one representative each from the Department of Minerals and Energy, Porgera Joint Venture, the Landowners and the Provincial Government, and chaired by a representative of the Department of Trade and Industry, which shall monitor the supply of goods and services to the Porgera Mine Project, and, where necessary, make recommendations for the better implementation of the preference policy.

(d) the committee shall operate during the term of this Agreement and the Joint Venturers shall furnish it with quarterly reports comprising the following information -

<sup>37</sup> A previous draft used the words "establishment and development" instead of "development and implementation".



- (i) a list of all the successful tenderers which shall include the items supplied, residence of the tenderers and the reasons for awarding the tender,
- (ii) a list of Porgeran and other Engan based tenderers who were unsuccessful which shall include the reasons for not awarding the tender.

#### 18. TRAINING AND LOCALISATION<sup>38</sup>

The National Government undertakes to -

- (a) ensure that the Training and Localisation Programme<sup>39</sup> forming part of the Approved Proposal for Development will commence immediately following the grant of the Special Mining Lease.
- (b) (i) form a committee comprised of one representative each from the Department of Minerals and Energy, Porgera Joint Venture, the Landowners and the Provincial Government, and chaired by a representative of the Department of Labour and Employment, which shall monitor the progress of the Programme, and
- (ii) this committee shall operate during the term of this Agreement, and
- (iii) the Joint Venturers shall furnish it with quarterly reports outlining the progress of the Training and Localisation Programme, problems encountered, positions filled, and the number of Porgerans and other Engans employed.
- (c) ensure that preference is given first to Porgerans and secondly to people from other areas of the Enga Province and thirdly to other Papua New Guineans in the employment and training opportunities in both the construction and operations phases of the mine.
- (d) ensure the Porgera Joint Venture does not discriminate against Porgerans and other Engans employed in the project in the allocation of company housing or in the participation of home ownership assistance schemes or any other job related incentives.

<sup>38</sup> This clause is contained in Clause 12 of the Mining Development Contract.

<sup>39</sup> This Programme sets out in detail which positions are to be localised and when and how this is to be done. It is available from the Department of Labour and Employment.

### C. ENGA PROVINCIAL GOVERNMENT UNDERTAKINGS

#### 19. REGARDING NATIONAL GOVERNMENT RESPONSIBILITIES

The Provincial Government accepts the Special Support Grant arrangement, which will be reviewed in ten years from the date of the grant of the Special Mining Lease, as satisfying its requests to increase its financial benefits from the Project through royalty increases and direct sharing of tax revenue. However, the Provincial Government reserves the right to reopen negotiations on this matter should the National Government enter into a more advantageous arrangement for payment of a Special Support Grant, or an equivalent payment, with any other provincial government in relation to a major mineral project.

#### 20. PORGERA DEVELOPMENT AUTHORITY

20.1. The Provincial Government shall establish, in consultation with the Landowners, a statutory authority to be known as the Porgera Development Authority ("the Authority")<sup>40</sup>.

20.2. The Authority shall comprise the following members:

- (a) two persons appointed by the Porgera Local Government Council,
- (b) two persons appointed by the Special Mining Lease Landowners
- (c) the Provincial Minister for Finance,
- (d) the Provincial Member for Porgera,
- (e) the Secretary of the Department of Enga or his nominee,
- (f) the Zone Co-ordinator of the Porgera Zone,
- (g) a person appointed by the Paiela Local Government Council,
- (h) a person appointed by the Secretary of the Department of Finance and Planning,
- (i) a person appointed by the Porgera Joint Venture, and
- (j) two persons from the Porgera District to be appointed by the Authority because of their professional or managerial skills and experience.

20.3. The Provincial Government shall make an annual payment to

<sup>40</sup> The Authority is to be established under the provincial Porgera Development Authority Act.

the Authority in the amount of K0.5 million in the form of an unconditional grant (to be known as the "Porgera Development Grant") in equal quarterly instalments, the first instalment of which is to be paid in the January 1990 or the January of the year preceding the year in which the Project is to commence production whichever is later.

20.4. The money paid annually by way of the Porgera Development Grant shall be in addition to -

- (a) any other funds normally provided through the annual budget of the Provincial Government for the Porgera District, and
- (b) any money which will be received by way of a share of the royalty.

20.5 The financial affairs of the Authority shall be subject to the provincial Treasury Act or any succeeding legislation. <sup>41</sup>

20.6 The Provincial Government agrees that the Authority will have the following duties and responsibilities -

- (a) at its option, maintenance of the airstrip at Kairik,
- (b) receipt of the royalties paid to it by the Provincial Government and payment of those royalties to the Landowners in a manner which will be agreed between the Provincial Government and the Landowners in their Agreement dated the 12th day of May 1989 <sup>42</sup>,
- (c) administration and spending of any funds made available under the Community Facilities Grant,
- (d) advising the Provincial Government on the lifting of the liquor ban in the Porgera District <sup>43</sup>,
- (e) assisting the provincial Town Planning Board in planning the township at Porgera and in controlling and monitoring that planning, and
- (f) any other matters assigned to it by the enacting legislation.

20.7 An interim authority may be established pending the

<sup>41</sup> On consideration this provision was unworkable and instead detailed provision in relation to control of finances is to be included in the Porgera Development Authority Act.

<sup>42</sup> This is the agreement included in this volume.

<sup>43</sup> The executed Agreement says "Porgera/Palela District" which is clearly confusing and unnecessary since the Porgera District is defined as including the Palela Council area in clause 1.

establishment of the Authority.

20.8 There shall be provision in the legislation establishing the Authority that the Authority cannot be abolished except by the wish of the Landowners.

## 21. DISTRIBUTION OF THE MINERAL ROYALTY

The Provincial Government shall ensure that the following amounts are paid out of the royalty -

- (a) 8% <sup>44</sup> directly to the Special Mining Lease Landowners.
- (b) 5% to the Authority for community development
- (c) 10% to an investment fund set up under National Government legislation established for benefit of the children of the Special Mining Lease Landowners and administered by a board appointed for this purpose.

## 22. ROADS

The Provincial Government agrees to :-

- (a) pay annually the sum of at least K50,000 for the construction and maintenance of the Porgera to Palela road, and
- (b) make available funds to enable the construction, upgrading and maintenance of all major feeder roads in the Porgera District through the annual provincial budget.

## 23. ADMINISTRATION

The Provincial Government undertakes to -

- (a) create a third economic zone covering the Porgera/Palela District for the purpose of improving administrative procedures and the efficiency of its staff located at Porgera.
- (b) undertake the planning for a high school in Porgera, which includes identification of land and preparation of site plans with enrolments to commence in 1994.
- (c) allow the Porgera Development Authority to administer the Community Facilities Grant.
- (d) provide funds and a position for the employment of a female social worker at Porgera within three months of the execution date of this Agreement which person shall work as

<sup>44</sup> This includes an additional 3% on top of the 5% landowners are entitled to under Section 105 of the Mining Act.

a counterpart to the social worker hired by the Porgera Joint Venture.

- (f) maintain the Liquor Ban in the Porgera District <sup>45</sup> until such time as advice is received from the Porgera Local Government Council or the Porgera Development Authority that such a ban should be partially or totally lifted.

#### D. FORMAL CLAUSES

##### 24. LAW APPLICABLE

This Agreement shall be governed by and construed in accordance with the law of the Independent State of Papua New Guinea.

##### 25. FORCE MAJEURE <sup>46</sup>

- 25.1 Any failure on the part of a Party to comply with any of the terms, conditions and provisions of this Agreement (except any obligation of a Party to make payment of money to the other Party) shall not be grounds for termination or give the other Party any claim for damages if such failure arises from Force Majeure, if the first-mentioned Party -

- (a) has taken all appropriate precautions, due care and reasonable alternative measures with the objective of avoiding such failure and of carrying out its obligations under this Agreement; and
- (b) has given notice to the other Party of the occurrence of Force Majeure on becoming aware of the occurrence of such event.

- 25.2 The first-mentioned Party shall take all reasonable measures<sup>47</sup> to overcome the Force Majeure and to fulfil the terms and conditions of this Agreement with the minimum of delay (provided that no Party has an obligation to settle a labour dispute or to test the constitutionality of any legislation or laws) and shall give notice to the other Party on the restoration of normal conditions.

- 25.3 For the purposes of this Agreement, Force Majeure shall include war, insurrection, civil disturbances, blockades, riot, embargoes, strikes, lock-outs and other labour conflicts, land disputes, epidemics, volcanic eruptions, earthquakes, cyclones,

<sup>45</sup> See f/n 43.

<sup>46</sup> This is a legal term meaning "events outside one's control".

<sup>47</sup> The executed Agreement says "ensures" which is clearly a typing error.

floods, tidal waves, explosions, fires, lightning, governmental restrictions or unavailability of materials or equipment and any other event which the Party claiming force majeure could not reasonably be expected to prevent or control.

##### 26. TERMINATION

This Agreement shall terminate on the expiration of the Special Mining Lease or its earlier revocation or surrender. <sup>48</sup>

##### 27. RESOLUTION OF DISPUTES

Where a dispute arises between the Parties as to the interpretation or implementation of this Agreement, they shall consult in a genuine attempt to resolve the dispute.

##### 28. ARBITRATION

Where a dispute referred to in Clause 28 is not resolved within 30 days of the day on which the Parties first formally meet for that purpose, the Parties shall submit the dispute to a single arbitrator agreed to by the Parties for resolution in accordance with the provisions of the Arbitration Act (Chapter 46.) <sup>49</sup>

##### 29. WAIVER

The failure of any Party to enforce, at any time, any of the provisions of this Agreement shall in no way be construed to be a waiver of the provision or any part thereof or the right of any Party thereafter to enforce each and every part of the provision in respect of any subsequent default or breach.

##### 30. SEVERABILITY

The provisions of this Agreement shall be separate and severable

<sup>48</sup> Clause 18 in the MDC provides in detail for these events. It allows both the PJV and the National Government to terminate if certain events take place. In the case of the PJV it must give one month's notice before and 12 months notice after beginning production. The National Government can terminate if the PJV, among other things, fails to carry out the terms of the MDC. This is of great importance to the Provincial Government. Clause 5 of the MDC says that the PJV must implement the Project substantially in accordance with the terms of the Approved Proposal for Development. The PJV is obliged to carry out the undertakings made on its behalf by as part of the conditions of approval of the proposal it submitted to the National Government. Thus the Provincial Government can request the National Government to exercise the power of termination if parts of the Agreement which oblige the PJV to do certain things are broken. See also Clause 35 where the Provincial Government has the right to be given copies of any notices served on the National Government under these provisions and be consulted.

<sup>49</sup> There is some doubt as to whether the Arbitration Act can be used to resolve a dispute between the National and Provincial Governments. It appears that the procedures under the national Provincial Governments (Mediation and Arbitration) Act may be the appropriate ones to use where a dispute arises.

each from the other to the extent that if any portion or any one provisions or portion is deemed to be inoperative then the remainder of this Agreement shall remain binding upon and enforceable by the Parties hereto. Nothing herein shall preclude one Party from requesting the other Party to renegotiate any provision herein.

### 31 FURTHER ACTS

The Parties shall execute such documents and do and perform such acts that lie within their power and are necessary to give full effect to this Agreement.

### 32 IMPLEMENTATION

The Parties undertake to use all the legal and administrative powers reasonably at their disposal from time to time to ensure that the provisions of this Agreement are effectively and expediently implemented.

### 33 REPRESENTATIONS AND WARRANTIES

Except as expressly stated in this Agreement, no representation, inducement or warranty was, prior to the execution of this Agreement, given or made by one of the Parties hereto with the intent of including the other Party to enter into this Agreement, and any representations, inducements or warranties that may have been so given are hereby denied and negated.

### 34 COMMUNICATIONS

34.1 Any formal communication by the Parties concerning this Agreement shall be deemed to have been given -

- (a) in the case of the National Government, if signed by the Minister or the Secretary of the Department of Minerals and Energy as their responsibilities require.
- (b) in the case of the Provincial Government, if signed by the Enga Premier or the Secretary of the Department of Enga as their responsibilities require.

34.2 Any formal communication shall be in writing and may be delivered either personally, or transmitted by telex or facsimile to the person, or persons referred to in 34.1.

34.3 Any formal communication shall be deemed to have reached the other Party -

- (a) in the case of personal delivery, when received by the relevant person referred to in 34.1.
- (b) in the case of telex or facsimile, as soon as transmission is

confirmed.

### 35 CONSULTATION

35.1 The National Government shall, on receipt, promptly supply the Provincial Government with copies of the following notices, reports or other documents referred to in the following Clauses of the Mining Development Contract -

- Clause 5 - Project Implementation <sup>50</sup>
- Clause 6 - Infrastructural Facilities <sup>51</sup>
- Clause 11 - Environmental Management and Protection <sup>52</sup>
- Clause 12 - Training and Localisation <sup>53</sup>
- Clause 17 - Suspension of Production <sup>54</sup>
- Clause 18 - Termination <sup>55</sup>
- Clause 19 - Consequences of Termination <sup>56</sup>
- Clause 22 - Arbitration <sup>57</sup>
- Clause 26 - Variation <sup>58</sup>

35.2 Where such reports, notices or documents are confidential,

<sup>50</sup> Under Clause 5.2 of the MDC the PJV must give quarterly progress reports until the commencement of commercial production (see definition in f/n 2)

<sup>51</sup> Under Clause 6.2 of the MDC the National Government can give notice for the transfer of certain mine-related assets to it.

<sup>52</sup> Under Clause 11 of the MDC third parties carrying out monitoring functions must make written reports to the Department of Environment and Conservation. The Provincial Government would be entitled to copies of these reports.

<sup>54</sup> Under Clause 17 of the MDC the PJV must give 30 days notice to the National Government of its intention to suspend production.

<sup>55</sup> Depending on whether production has begun or not, under Clause 17 of the MDC the PJV must give 30 days or 12 months notice to the National Government of its intention to terminate production.

<sup>56</sup> Under Clause 19.1(c) of the MDC, where the Project terminates, the National Government can serve a notice on the PJV that it wishes to purchase the installations and infrastructure of the Project.

<sup>57</sup> Clause 22.3 of the MDC provides for an award to be made where a dispute between the parties is submitted to arbitration. This clause in the agreement would entitle the Provincial Government to be served with a copy of that award.

<sup>58</sup> Clause 26 of the MDC contains very detailed provisions for both minor and major variations to the MDC, the Approved Proposals for Development and the SML. Some of these variations might have important implications for the Provincial Government. Clause 26.1 enables variations to be made by consent in writing (see f/n \* below). Clause 26.2 provides that notice of the variation must be in writing. Where there is no response from the National Government within 5 days that variation is automatically implemented. The National Government may deem the proposed variation to be a "Major Change" and if this is the case, the PJV must submit a proposal entitled "Proposed Major Change to the Approved Proposal for Development". Where there is no National Government response to this within 15 days the variation will be implemented.

such confidentiality shall extend to the Provincial Government.<sup>59</sup>

35.3 The National Government shall consult with the Provincial Government in relation to matters dealt with in the following Clauses of the Mining Development Contract -

Clause 5 - Project Implementation  
 Clause 11 - Environmental Management and Protection  
 Clause 12 - Training and Localisation<sup>60</sup>  
 Clause 18 - Termination  
 Clause 22 - Arbitration  
 Clause 26 - Variation<sup>61</sup>

35.4 Sub-clause (2) shall be in addition to the consultation provisions relating to the implementation of Supply and Procurement and Training and Localisation provisions in the Mining Development Contract.<sup>62</sup>

IN WITNESS WHEREOF this Agreement has been duly executed by the Parties etc

INDEPENDENT STATE OF PAPUA NEW  
 GUINEA

- AND -

PORGERA LANDOWNERS

<sup>59</sup> None of the notices, reports or documents appear to be confidential.

<sup>60</sup> Note that the provisions of Clause 27.2 of the MDC requiring quarterly meetings of a monitoring committee are expressly excluded by Clause 35.4 so, where necessary, this consultation is in addition to consultation required under that clause.

<sup>61</sup> Consultation under this provision would have probably have to take place within the fairly narrow time limits of 5 and 15 days and might have to be by fax and phone. However, note that Clause 21 of the MDC allows for extensions of time and the Provincial Government could ask the National Government to invoke this clause where necessary.

<sup>62</sup> See f/n 60.

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THIS AGREEMENT made the 12th day of May 1989 between the INDEPENDENT STATE OF PAPUA NEW GUINEA (the "National Government") and the LANDOWNERS of the PORGERA DISTRICT in the Enga Province (the "Landowners".)

**WHEREAS**

- (A) The Porgera Joint Venture has applied to the National Government to develop a goldmine at Porgera in the Enga Province, and
- (B) The National Government has involved Landowners in the deliberations on the proposals for the development of the Porgera Joint Venture, and
- (C) The National Government and the Landowners have had negotiations in relation to matters of concern to the Landowners, and
- (D) The National Government has, in recognition of the need for proper administration and development in the Porgera District, agreed to a number of matters which will directly or indirectly assist the Landowners in the District and both parties wish to make the decisions emanating from this an enduring arrangement.

**IT IS THEREFORE AGREED AS FOLLOWS:**

**PART A - GENERAL**

**1. DEFINITIONS**

In this Agreement -

"Approved Proposals for Development"<sup>1</sup> shall have the same meaning as in the Mining Development Contract between the Independent State of Papua New Guinea and the Porgera Joint Venture.

"the Commencement of Production" means the first date on which gold is produced for sale from the Porgera Mine Project.

"the Commencement of Commercial Production" shall have the

<sup>1</sup> The Mining Development Agreement actually refers to "Approved Proposal" (not Proposals). The Approved Proposal for Development consists of the Feasibility Study, the Training and Localisation Programme, the Environmental Plan and the Financing Proposals. The Feasibility Study sets out the plan for the construction of the mine and infrastructure and the costings. The Training and Localisation Programme explains the structure of workforce in both the construction and the operations phase and the PJV's plans for the localisation of positions held by non-citizens. The Environmental Plan explains the likely environmental effects of the projects and where problems are anticipated what is to be done to minimise these. The Financing Proposals explain how the PJV will finance the project.

same meaning as in the Mining Development Contract <sup>2</sup>.

"the Community Facilities Grant" means any funds made available by the Porgera Joint Venture for the provision of community facilities in the Porgera District.

"Landowners" means members of any landowning clan which at any time has its origin and continues to own land in the Porgera District and includes those persons who own land within the Special Mining Lease area.

"Mining Development Contract" means the Agreement executed between the Independent State of Papua New Guinea and the Porgera Joint Venture.

"National Government" means the Independent State of Papua New Guinea.

"Party" or "Parties" means the parties to this Agreement.

"Porgera Development Authority" means the statutory authority set up pursuant to the Agreement between the Enga Provincial Government and the Landowners.

"the Porgera District" means and includes both the Porgera and Palela Council areas<sup>3</sup>.

"the Porgera Joint Venture" means the three companies, Placer (PNG) Pty Ltd., Highlands Gold Properties Pty Ltd. and RGC (Papua New Guinea) Pty Ltd., or their respective assigns or successors, which have jointly entered into the Mining Development Contract to develop the Porgera Mine Project.

"Porgera Mine Project" means the mining development at Porgera approved by the National Executive Council over which the Special Mining Lease is granted.

"Provincial Government" means the Enga Provincial Government.

"royalty" means the royalty under Section 105 of the Mining Act (Chapter 195) or any amendments to, or provisions

<sup>2</sup> This is defined in Clause 1 the MDC as meaning: "the last day of the first period of 60 consecutive days in which, for not less than 50 days, the pressure oxidation circuit processed concentrate produced from ore from the Mining Area at 75% of the daily rated capacity (as contemplated in the Approved Proposal for Development) for each of the said 50 days." The oxidation circuit is not to be confused with the cyanide flotation processor which is planned to be in production within 15 months of the granting of the SML (See I/n 2, p 2). The Approved Proposal envisages that it will be 3 years before the oxidation circuit begins production and 42 months before commercial production begins."

<sup>3</sup> These Council areas were declared under proclamations made under the provincial Local Government Act 1980.

succeeding or substituted for, that provision.

"Special Mining Lease" means the lease granted pursuant to the Mining Act (Chapter 195) to the Porgera Joint Venture for the Porgera Mine Project.

"Special Mining Lease Landowners" means members of the TIENI, WAIWA, TUANDA, PULUMAINI, ANGALAINI, MAMAI and ANGA clans of the Porgera District which own land in the Special Mining Lease area.

## 2. INTERPRETATION

In this Agreement, unless the context otherwise requires -

- (a) headings do not affect the interpretation or the construction,
- (b) reference to any Act includes amendments to that Act for the time being in force and also any Act passed in substitution therefore and any regulations for the time being in force thereunder,
- (c) words in the singular include the plural and vice versa,
- (d) words in one gender include the other gender,
- (e) the recitals form part of the Agreement.

## PART B - NATIONAL GOVERNMENT UNDERTAKINGS

### 3. TOWNSHIP DEVELOPMENT

3.1 The National Government will ensure that -

- (a) 42 months<sup>4</sup> after the execution of this Agreement, the town to be built for the accommodation of the Porgera Joint Venture's employees at Suyan (or elsewhere) will cease to be a fenced compound, and will be open to the Porgera community generally, provided that the safety of their employees is not in jeopardy.

- (b) township development at the Porgera Station, Suyan, Palam and Kairik sites is socially integrated, complies with provincial Town Planning and Building Board requirements<sup>5</sup>, and no township area is subject to discriminatory rules.

3.2 In order to assist in the establishment of a township, the National Government will, within 12 months of the execution of this

<sup>4</sup> The significance of the 42 months is that this is the date on which the commercial production is expected to begin

<sup>5</sup> These two Boards are set up under the national Town Planning and Building Acts.



Agreement, provide funds, as required, for the purchase of at least 106 hectares referred to as the Palam townsite, identified as at 1 February, 1989, and after that for road infrastructure within that townsite area as required.

#### 4. FLY-IN/FLY-OUT OF MINE EMPLOYEES<sup>6</sup>

4.1 In order to promote the development of an integrated, well serviced and economically developing township at Porgera, the National Government will make every effort to ensure that the Porgera Joint Venture actively promotes the residence of mine operations personnel in the Porgera area for the duration of the Porgera Mine Project.

4.2 To better promote the general objective of 4.1, the National Government will ensure that the Porgera Joint Venture, on the seventh anniversary of the execution of this Agreement, will reduce to an absolute minimum arrangements for its mine operations personnel to fly in and fly out of Porgera to and from residences outside the Porgera area and, and after that date maintain such arrangements to an absolute minimum for the duration of the Project.

4.3 To ensure that fly-in fly-out operations are minimised in the interim, and that the Porgera Joint Venture is eventually able to comply with the requirements of 4.2, the National Government undertakes to ensure that the Porgera Joint Venture will take the following measures -

- (a) include in all advertisements for operations employee positions the following information -
  - (i) that married accommodation will be supplied free of charge to all employees who wish to have their families reside with them at Porgera, subject to the necessary probation period established by the Porgera Joint Venture.
  - (ii) that annual leave airfares or the equivalent will be paid for all family members to the place of recruitment.

<sup>6</sup> The final wording of this clause was arrived at after considerable argument between the National Government, Provincial Government and landowner representatives. This revolved around the question whether this was a policy which seeks to minimise "fly-in/fly-out" as an end in itself, or whether it was simply a means to the end of encouraging the development of a viable township at Porgera. The position of the Provincial Government and landowners' representatives was that both were desirable ends in themselves and that the only way in which both were going to be achieved was to set the PJV the much more definite goal of reducing the flying in and flying out of mine personnel from places of residence outside Porgera to an absolute minimum in year seven. This is why clauses 5.3 and 5.4 refer to clause 5.2 which sets that goal. Unfortunately this was not reflected in the final version of the Agreement prepared in a last minute rush and executed without a last vetting. In this version clauses 5.3 and 5.4 refer to clause 5.1. The National Government and the Porgera Joint Venture have been formally advised by both the Provincial Government and landowners' representatives that they regard this as an error.

(iii) that employees who wish to work at Porgera for longer periods without taking their usual leave entitlements shall be able to accrue those entitlements without penalty;

(iv) that preference will be given to those applicants who wish to reside at Porgera, and

(b) where financial assistance is offered to Porgera Joint Venture employees to acquire or build their own house, offer such assistance for those wishing to do so at Porgera on significantly more favourable terms,

provided that these measures shall not be to the exclusion of any other measures the Porgera Joint Venture may wish, or be required, to take, to assist compliance with the requirements of 4.2.

4.4 The National Government shall ensure that the Porgera Joint Venture submits -

(a) within 60 days of the third and subsequent anniversaries of the execution of this Agreement, interim reports which will detail the progress made towards achieving compliance with 4.2, particularly in relation to the following matters -

- (i) the increase in employee families of the Porgera Joint Venture residing in town facilities at Porgera, and
- (ii) the variety, accessibility and quality of town amenities available to all Porgerans, and
- (iii) any matters which have been found to have been negatively affecting attempts to settle people permanently in Porgera.

and these interim reports will be considered by a Joint Committee of National Government, Provincial Government and Landowners representatives which shall make such recommendations to such bodies as it considers appropriate to assist the Porgera Joint Venture to comply with the requirements of 4.2, and

(b) within 90 days of the seventh anniversary of the execution of this Agreement, a final report in which will be fully detailed -

- (i) the Porgera Joint Venture's compliance with the requirements of 4.2, or
- (ii) the reasons why substantial compliance has not been achieved,

and this report will be considered by the Joint Committee

which shall make any recommendations it considers necessary.

#### 5. REVALUATION OF LAND

The Valuer-General is to carry out an on site revaluation of all land within the Special Mining Lease and Leases for Mining Purposes within 6 months of the execution of this Agreement for the purpose of determining an appropriate occupation fee under Section 173 of the Mining Act (Chapter 195) <sup>7</sup>.

#### 6. EQUITY <sup>8</sup>

6.1 The National Government undertakes that the Landowners, through a properly constituted and representative body, called for this purpose a "Landowner Company", will have the option to take up to 50% of the National Government's 10% equity participation in the Porgera Mining Project (that is 5% of the total equity of the Project).

6.2 The method of taking up this equity will be as follows:

- (i) the Mineral Resources Development Corporation will form a Subsidiary Company ("the Subsidiary") which will take up the State's 10% interest in the Project<sup>9</sup>,
- (ii) the Mineral Resources Development Corporation will grant options to the Landowner Company to acquire shares in the Subsidiary ("the Shares") as follows -
  - (a) within 12 months of the granting of the Special Mining Lease - 2.5% of the Shares ("the First Option"),
  - (b) within 6 months of the Commencement of Commercial Production - a further 22% of the Shares ("the Second Option"),
  - (c) during the period of one month following the fifth anniversary of the granting of the Special Mining Lease - a further 25.5% of the Shares ("the Third Option"),
- (iii) the cost of the Shares to the Landowner Company will be as follows-

<sup>7</sup> This provision says that the occupation fee is to be set at 5% of the "unimproved value" of the land or at K5 per hectare per annum whichever is more. The concept of "unimproved value" is difficult to apply to customary land. There are also proposals to amend the Act to double the minimum value to K10 per hectare per annum.

<sup>8</sup> These provisions are the subject of a detailed "Equity Agreement" to be negotiated between the landowners and the National Government.

<sup>9</sup> That is, Porgera Mine Project.

(a) the First and Second Option Shares will be sold at the relevant percentage of the cost incurred by the Mineral Resources Development Corporation in acquiring the 10% interest in the Porgera Mine Project plus the relevant percentage of all the interest and charges incurred by the Mineral Resources Development Corporation in borrowing moneys to fund the acquisition of its interest in the Project,

(b) the Third Option Shares will be sold at their fair market price as determined by an independent expert acceptable to the parties or appointed by the President of the Papua New Guinea Society of Accountants.

(iv) payment for the Shares will be made as follows -

- (a) for the First and Second Option Shares the amount payable as set out above will be deemed to be an interest free loan<sup>10</sup> from the Mineral Resources Development Corporation to the Landowner Company which the company shall repay out of their share of the dividends payable by the Subsidiary. The Landowner Company will not be required to repay any of these moneys except out of dividends payable by the Subsidiary;
- (b) for the Third Option shares the Landowner Company will pay cash within three months of the determination of the fair market value. If payment is not made in this time the Third Option will lapse;
- (c) the Mineral Resources Development Company will lend moneys to the Subsidiary to enable it to meet its share of the cash calls made by the Porgera Joint Venture to meet its expenses provided that the Mineral Resources Development Corporation will not be responsible for lending money to the Subsidiary in respect of cash calls relating to the percentage of Shares acquired by the Landowner Company pursuant to the Third Option, which shall be the responsibility of the Landowner Company. These loans, together with interest and charges, will be repaid by the subsidiary to the Mineral Resources Development Company<sup>11</sup> in absolute priority to all other obligations of the Subsidiary and will be secured. No dividends will be paid until these loans and interest and charges have been fully repaid;
- (d) so long as any of the amounts referred to above remain

<sup>10</sup> This contradicts the provisions of 6.2(iv)(c) which says: "Interest and charges will be repaid to the MRDC".

<sup>11</sup> See f/n 10.

outstanding the control of the Board and Management of the Subsidiary shall remain with the Mineral Resources Development Company.

(v) assignment of the shares shall be made as follows -

- (a) in relation to the First Option - on exercise of the option.
- (b) in relation to the Second Option - on repayment of the Mineral Resources Development Company in accordance with (iv)(a).
- (c) in relation to the Third Option - on payment for the Shares in accordance with (iv)(b).

6.3 The Landowner Company may participate in the appointment of the two National Government representatives to the operating committee of the Porgera Joint Venture<sup>12</sup> as follows:-

- (i) on the assignment of 2.5% of shares in the subsidiary in accordance with 6.2(ii)(a), the Landowner Company, jointly with the Provincial Government, shall be entitled to appoint one of the two representative, but if the Landowner Company shall fail to exercise its option to take up a further 22% of the share in the Subsidiary in accordance with 6.2(ii)(b), this right shall lapse.
- (ii) on the purchase of the remaining 25.5% of shares in the Subsidiary Company in accordance with 6.2(ii)(b), the Landowner Company shall be entitled to appoint one of the two representatives in its own right and its right to appoint a representative jointly with the Provincial Government shall lapse.

6.4 The Landowners agree that -

- (i) all Shares acquired under the First and Second Options shall be held in trust and cannot be sold during the life of the Porgera Mine Project.
- (ii) shares acquired under the Third Option which it wants to sell will be offered, firstly, to the Mineral Resources Development Corporation, to purchase at fair market value, or, if the Mineral Resources Development Corporation, does not wish to purchase the said Shares, secondly, to the participants in the Porgera Joint Venture at fair market value. If neither the Mineral Resources Development Corporation or any of the Porgera Joint Venturers wish to purchase the Shares, then

<sup>12</sup> Under the 1979 Equity Agreement signed between the National Government and the three parent companies of the Porgera Joint Venturers the National Government acquired a right to appoint to representatives to the Operating Committee of the Porgera Joint Venture on taking up its 10% interest.

the Landowners can sell the Shares to any other person.

6.5 The Landowners acknowledge that it will be bound by all the rights and obligations which apply to the Subsidiary Company<sup>13</sup> as a result of its participation as a member of the Porgera Joint Venture and notice will be given to the Landowners Company prior to the Subsidiary entering into any agreements.<sup>14</sup>

## 7. GOVERNMENT LAND AT PORGERA STATION

7.1 After the date of this Agreement, the National Government undertakes in relation to government land at the Porgera station that -

- (a) all holders of licences to land, who were first granted licences in relation to that land after 1 December 1987, will not be granted any further licences in relation to that land when their existing licences expire.
- (b) no further licences (except to those who were licence holders before 1 December 1987 pending the granting of their applications for leases) are to be granted in relation to any land.
- (c) subject to (d), all land which becomes available due to the operation on (a), will be advertised for the granting of leases.
- (d) all land which was subject to licences granted to licence holders on or before 1 December 1987, and still subject to licences held by those holders, will not be subject to advertisement prior to the granting of leases to those licence holders.
- (e) it will advise the Board that it is government policy in accordance with the provisions of the Mining Development Contract that Porgerans be given first preference, and other Engans second, in the development of business opportunities resulting from the Project and that this policy be given full consideration in the deliberations of the Board on the applications for leases.

7.2 The National Government will direct the Minister for Lands honour his commitment to the Landowners that -

- (a) all Land Board hearings in connection with Porgera land are to be held at Porgera, and

<sup>13</sup> The Subsidiary will be bound by the provisions of various Joint Venture Agreements entered into from time to time between members of the Porgera Joint Venture.

<sup>14</sup> The previous version of the Agreement contained the words: "and the National Government, on its part, undertakes to consult with the Landowner Company prior to entering any such Agreement." The National Government has been formally requested to reinstate these words.

(b) a representative from Porgera be appointed to the Land Board, and all sittings of the Land Board considering land at Porgera include at least one Porgera representative during the term of this Agreement, and

(c) all land at Porgera to be advertised prior to a Land Board hearing, and, in addition to gazettal, will be advertised by display of a notice on the Public Notice Board at the District Office at Porgera.

7.3 Notwithstanding anything to the contrary in 7.1, land occupied by the Porgera Local Government Council under licence at the time of execution of this Agreement shall be granted to the Council without the requirement to advertise.

7.4 With respect to any land matter relating to government land at Porgera station pending in the Land Board at the time of execution of this Agreement, the National Government undertakes to -

(a) direct the Minister for Lands to do such things, and

(b) make such directions to the Secretary of the Department of Land and Physical Planning, and

(c) make such directions to Chairman of the the Land Board

as will be required to comply with all matters referred to in the memorandum in annexure A<sup>15</sup> to this Agreement.

#### 8. ROYALTIES

The National Government agrees to pay all the royalty to the Provincial Government and undertakes to ensure that the Provincial Government will distribute 23% of the royalty as follows:

(a) 8%<sup>16</sup> to the Special Mining Lease Landowners,

(b) 5% to the Porgera Development Authority for use for community development,

(c) 10% to an investment fund set up under National Government legislation<sup>17</sup> for the benefit of the children of the Special

<sup>15</sup> This annexure has not been included because it is of historical interest only.

<sup>16</sup> Landowners are entitled to 5% of the royalty which goes to Provincial Governments under Section 67 of the Organic Law on Provincial Government under Section 107 of the Mining Act. In addition they receive the other 3% from the Provincial Government.

Mining Lease Landowners and administered by a board appointed for this purpose which shall include representation from the Special Mining Lease Landowners.

#### 9. ADMINISTRATION

The National Government undertakes that-

(a) within six months of the execution of this Agreement, it will create, fund and provide housing and office space for twelve additional public service positions, as described in the diagram in Annexure B to this Agreement, to be based in the Porgera District, at least four of which shall be available where necessary to expatriate contract officers,

(b) all public servants in the Porgera District will be paid a special zone allowance comparable to those in existence in other mining areas and consistent with national wage policy,

(c) the National Government will ensure that the Enga Provincial Government creates a third economic zone covering the Porgera District for the better administration and development of that District.

#### 10. LONG TERM ECONOMIC DEVELOPMENT PLAN

The National Government will make available a consultant for such period as is required to assist the Porgera Development Authority and the Enga Provincial Government in establishing a long term economic development plan for the Porgera District.

#### 11. LAW AND ORDER

The National Government undertakes that -

(a) station a police officer of the rank of Inspector to be in charge of the Porgera police station.

(b) subject to the availability of suitable candidates, reserve police are to be increased to sufficient numbers to provide an effective support to full-time officers stationed at Porgera.

(c) ensure, together with the Provincial Government, and with the assistance of the Porgera Joint Venture, that the boom-gate remains in place at Mount Maip to regulate the flow of people and goods into Porgera.

(d) the Multitaka Police station will be upgraded within two years of the execution of this Agreement.

<sup>17</sup> At the time of writing one of the options being considered is to set this fund up as a private trust.

## 12. ENVIRONMENTAL ISSUES

From the commencement of production<sup>18</sup> of the Porgera Mine Project, the National Government undertakes to -

- (a) station environmental control and monitoring officers at Porgera and provide those officers with housing,
- (b) ensure that the Department of Environment and Conservation provides competent experts to promptly respond to Landowners' concerns regarding environmental issues,
- (c) provide the Porgera Development Authority with a quarterly report on sediment and relevant chemical levels in the river systems which are being monitored with particular emphasis on mercury and cyanide,
- (d) subject to advice from the Department of Environment and Conservation, consider the establishment of a National Park or Conservation Area to protect the flora and fauna and other natural assets of the Porgera District,
- (e) direct the Porgera Joint Venture to make regular purchases of fish from Lake Murray for consumption by its personnel to reassure the people of Lake Murray that the fish there are not being subjected to harmful pollution as a result of Project's operations.

## 13. PREFERENCE IN BUSINESS<sup>19</sup>

The National Government undertakes to include the following clauses in the Mining Development Contract -

- (a) the supply of materials, equipment and services may be tendered internationally provided that where such materials, equipment and services are procurable within Papua New Guinea from businesses pre-qualified pursuant to clause 13.1 (of the Mining Development Contract) and such prequalified businesses have the opportunity to tender, and if the tender submission from such a business -
  - meets the specifications of the invitation to tender,
  - is competitive in cost with international sources,
  - meets the delivery requirements of the project

<sup>18</sup> Note that this is not the "commencement of commercial production". Therefore monitoring should start as soon as production from the small cyanide flotation plant begins after 15 months of the start of construction.

<sup>19</sup> This clause is contained in Clauses 13 and 14 of the MDC.

then such materials, equipment and services shall be procured within Papua New Guinea with preference first being given to businesses operated by Porgerans located within the Porgera District, and secondly to businesses operated by Engans located in the Enga Province.

- (b) The Joint Venturers (Porgera Joint Venture), in consultation with the State (National Government) and the Provincial Government, will
  - within 9 months of the issue of a Special Mining Lease, devise a business development programme which will encourage and assist the people of the Enga Province, with preference to Porgerans, to establish businesses to supply materials, equipment and services to the project, provided that the Joint Venturers shall not be obliged to lend money or provide materials to any person or organisation, and
  - conduct an annual review of the progress being made in the implementation of the programme, and make such variations to it as may be required by the changing circumstances, and
  - employ full time staff experienced in setting up and managing business enterprises -
    - (i) to assist Papua New Guineans who wish to, or have set up businesses, to service the project;
    - (ii) to assist in the implementation of the business development programme and the variations thereof;
    - (iii) to liaise with appropriate officials from the State and the Provincial Government;
    - (iv) to provide advice and assistance in the establishment and development of longterm business enterprises with emphasis on those which can continue after the project is terminated.
- (c) a committee shall be formed, comprised of one representative each from the Department of Minerals and Energy, Porgera Joint Venture, Landowners and the Provincial Government, and chaired by a representative of the Department of Trade and Industry, which shall monitor the supply of goods and services to the project, and, where necessary, make recommendations for the better implementation of the preference policy.
- (d) the committee shall operate during the term of this Agreement and the Joint Venturers shall furnish it with quarterly reports comprising the following information -

- (i) a list of all the successful tenderers which shall include the items supplied, residence of the tenderers and the reasons for awarding the tender,
- (ii) a list of Porgeran and other Engan based tenderers who were unsuccessful which shall include the reasons for not awarding the tender.

#### 14. TRAINING AND LOCALISATION<sup>20</sup>

The National Government undertakes to -

- (a) ensure that the Training and Localisation Programme forming part of the Approved Proposals for Development will commence immediately following the grant of the Special Mining Lease.
- (b) (i) form a committee comprised of one representative each from the Department of Minerals and Energy, Porgera Joint Venture, the Landowners and the Provincial Government, and chaired by a representative of the Department of Labour and Employment, which shall monitor the supply of goods and services to the project, and, where necessary, make recommendations for the better implementation of the programme., and
- (ii) this committee shall operate during the term of this Agreement, and
- (iii) Joint Venturers shall furnish it with quarterly reports outlining the progress of the Training and Localisation Programme, problems encountered, positions filled, and the number of Porgerans and other Engans employed.
- (c) ensure that preference is given first to Porgerans and secondly to people from other areas of the Enga Province and thirdly to other Papua New Guineans in the employment and training opportunities in both the construction and operations phases of the mine.
- (d) ensure the Porgera Joint Venture does not discriminate against Porgerans and other Engans employed in the project in the allocation of company housing or in the participation of home ownership assistance schemes or any other job related incentives.

#### 15 ALLUVIAL GOLDMINING

The National Government, through the Department of Minerals and Energy, undertakes to -

<sup>20</sup> This clause is contained in Clause 12 of the MDC.

- (a) monitor the effect that the effluent from the Porgera Mine Project's operations has on alluvial gold workings in the Porgera area,
- (b) establish appropriate guidelines for adequately compensating alluvial goldminers for any loss or damage to the workings,
- (c) ensure that compensation for any loss or damage is promptly paid by the Porgera Joint Venture.

#### 16. POSTAL AND TELECOMMUNICATIONS

The Post and Telecommunication Corporations is to be directed to :-

- (a) study and assess the immediate and longterm needs of government, business and residents for improved telecommunications and postal facilities, within 6 months of the execution of this Agreement.
- (b) install public phone facilities within 6 months of the execution of this Agreement.
- (c) make immediate arrangements to open a post office at Porgera.

#### 17. KAIRIK AIRSTRIP

- 17.1 The Porgera Joint Venture is to be directed to construct an airstrip at Kairik which will meet the requirements of a Bandlerante or an aircraft of similar characteristics or performance.
- 17.2. The Department of Civil Aviation, subject to the normal safety considerations, will give preference to licensing airlines which wish to fly aircraft larger than Twin Otters between Port Moresby and Porgera on a daily basis.

#### 18 ELECTRICITY TO RELOCATION AREAS

- 18.1 The Porgera Joint Venture is to be directed to make all necessary arrangements to ensure supply of electricity to individual houses -
  - (a) in existing relocation cluster settlements within 12 months of the execution of this Agreement,
  - (b) in all similar future settlements necessitated by the issue of any mining tenements at the time of the construction of those settlements.

- 18.2 Electricity supplied under this clause may be subject to

charges by the supplier at a rate not exceeding the usual rate charged by ELCOM.

## 19 PORGERA DISTRICT HOSPITAL

- 19.1 With the assistance of the Porgera Joint Venture, the Provincial and National Government, shall within 3 years of the execution of this Agreement, upgrade the Porgera Health Centre to the level of a "Major Health Centre"<sup>21</sup> with the following facilities:-

60-80 beds,  
X-ray facilities,  
operating theatre,  
pathology unit,  
dental service,  
laboratory,  
pharmacy.

- 19.2 Within 3 months of the execution of this Agreement, the National Government, Enga Provincial Government and Porgera Joint Venture, in consultation with the Porgera Development Authority, shall enter into a memorandum of understanding in relation to the following matters:-

- (a) timetable and cost-sharing arrangements between the National Government and the Porgera Joint Venture for the upgrading of the Porgera Health Centre,
- (b) timetable and cost-sharing arrangements between the Provincial Government and the Porgera Joint Venture for the recurrent costs of operating the Porgera Health Centre, more particularly, staffing, maintenance, repairs, medical supplies etc.
- (c) the timetable and cost-sharing arrangements between the Provincial Government and Porgera Joint Venture for the provision of accommodation for Porgera Health Centre staff.
- (d) the location of the Porgera Joint Venture medical officer, ambulance, and other facilities over and above emergency first aid facilities required at the mine site.

## 20. EDUCATION

- 20.1 The Porgera Joint Venture is to be directed to construct classrooms and teachers accommodation in accordance with the requirements of the the International Education Agency in preparation for the establishment of an international primary school at Porgera, within 12 months of the commencement of

<sup>21</sup> This classification by the Department of Health is the name given to a medical facility which meets the specifications contained in this clause.

production of the Project.

- 20.2 The Porgera Joint Venture is to be directed to construct a classroom and teachers house to be used as a College of External Studies within the Porgera District.

## 21 COMMUNITY FACILITIES GRANT<sup>22</sup>

- 21.1 The National Government shall direct the Porgera Joint Venture, subject to the conditions in 21.2, to make annual payments in equal quarterly instalments to the Porgera Development Authority out of funds available under the Community Facilities Grant on the annual submission to it by the Authority in the preceding year of the costs and estimates of appropriate projects to be undertaken by the Authority in any one year.

- 21.2 Guidelines as to what shall be regarded as an appropriate project and any other matter relating to the payment and administration of the Community Facilities Grant shall be agreed to jointly by Porgera Development Authority and the Porgera Joint Venture in consultation with the Enga Provincial Government.

## 22 ALTERNATIVE ROAD ROUTE

The National Government shall investigate an alternative road route through the Southern Highlands from Porgera, and, subject to satisfying normal Department of Transport criteria, include this road project in the National Government road programme.

## 23. IPILI PORGERA INVESTMENTS

- 23.1 The National Government shall make available loan guarantees on a case by case basis of up to K1 million per annum to Ipili Porgera Investments for a period of five years commencing on the 1 January 1990.<sup>23</sup>

- 23.2 The Porgera Joint Venture shall assist Ipili Porgera Investments by providing the services of a professional adviser.

<sup>22</sup> Initially this will be the K4 million to be made available by the PJV for the purpose of community projects during the construction period. However, the definition in Clause 1 would include any further grants which the PJV may make in the future.

<sup>23</sup> The loan guarantees will be approved under the guidelines of the "Credit Guarantee Scheme" operated by the Department of Finance and Planning. However, the loan ceiling of K100,000 will not apply and there will be no limit on the number of applications which IPI may make. These variations have been approved by the Secretary for Finance and Planning, but applications for large loan guarantees may have to be approved by the National Executive Council in accordance with the national Public Finances Management Act.

## PART C - LANDOWNERS UNDERTAKINGS

### 24 LANDOWNERS TO CO-OPERATE

The Landowners agree that they will work with the National Government and the Porgera Joint Venture to ensure the Porgera Mine Project is constructed.

### 25 LANDOWNERS TO CONSULT

25.1 The Landowners agree that they will not disrupt the operations of the Porgera Mine Project at any time during the lifetime of the mine should any problems arise which require resolution.

25.2 The Landowners agree to explore all avenues of consultation with the Porgera Joint Venture, the Provincial Government and the National Government to resolve difficulties.

## D. FORMAL CLAUSES

### 26 LAW APPLICABLE

This Agreement shall be governed by and construed in accordance with the law of the Independent State of Papua New Guinea.

### 27 VARIATION

The parties may from time to time by Agreement in writing vary any of the provisions of this Agreement.

### 28 TERMINATION

This Agreement shall terminate on the expiration of the Special Mining Lease or its earlier revocation or surrender.

### 29 RESOLUTION OF DISPUTES

Where a dispute arises between the parties as to the interpretation or implementation of this Agreement, they shall consult in a genuine attempt to resolve the dispute.

### 30 ARBITRATION

Where a dispute referred to in 29 is not resolved within 30 days of the day on which the parties first formally meet for that purpose, the parties shall submit the dispute to a single arbitrator agreed to by the parties for resolution in accordance with the provisions of the Arbitration Act (Chapter 46.)

### 31 WAIVER

The failure of any party to enforce, at any time, any of the provisions of this Agreement shall in no way be construed to be a waiver of the provision or any part thereof or the right of any party thereafter to enforce each and every part of the provision in respect of any subsequent default or breach.

### 32 SEVERABILITY

The provisions of this Agreement shall be separate and severable each from the other to the extent that if any portion or any one provision or portion is deemed to be inoperative then the remainder of this Agreement shall remain binding upon and enforceable by the parties hereto. Nothing herein shall preclude one party from requesting the other party to renegotiate any provision herein.

### 33 IMPLEMENTATION

The National Government undertakes to use all the legal and administrative powers it reasonably has at its disposal from time to time to ensure that the provisions of this Agreement are effectively and expediently implemented.

### 34 FURTHER ACTS

The parties shall execute such documents and do and perform such acts that lie within their power and are necessary to give full effect to this Agreement.

### 35 REPRESENTATIONS AND WARRANTIES

Except as expressly stated in this Agreement, no representation, inducement or warranty was, prior to the execution of this Agreement, given or made by one of the parties with the intent of inducing the other party to enter into this Agreement, and any representations, inducements or warranties that may have been given are denied and negated.

### 36 COMMUNICATIONS

36.1 Any formal communication by the parties concerning this Agreement shall be deemed to have been given -

(a) in the case of the National Government, if signed by the Minister or the Secretary of the Department of Minerals and Energy as their responsibilities require,

(b) in the case of the Porgera landowners, if signed by the Chairman of the Porgera Local Government Council or the Authority as their responsibilities require.



- 36.2 Any formal communication shall be in writing and may be delivered either personally, or transmitted by telex or facsimile to the person, or persons referred to in 36.1.
- 36.3 Any formal communication shall be deemed to have reached the other party -
- (a) in the case of personal delivery, when received by the relevant person referred to in 36.1.
  - (b) in the case of telex or facsimile, as soon as transmission is confirmed.

### 37 CONSULTATION

- 37.1 The National Government shall, on receipt, promptly supply the Provincial Government with copies of the following notices, reports or other documents referred to in the following Clauses of the Mining Development Contract -

Clause 5 - Project Implementation <sup>24</sup>  
 Clause 6 - Infrastructural Facilities <sup>25</sup>  
 Clause 11 - Environmental Management and Protection <sup>26</sup>  
 Clause 12 - Training and Localisation <sup>27</sup>  
 Clause 17 - Suspension of Production <sup>28</sup>  
 Clause 18 - Termination <sup>29</sup>  
 Clause 19 - Consequences of Termination <sup>30</sup>  
 Clause 22 - Arbitration <sup>31</sup>  
 Clause 26 - Variation <sup>32</sup>

- <sup>24</sup> Under Clause 5.2 of the MDC the PJV must give quarterly progress reports until the commencement of commercial production (see definition in f/n 2)
- <sup>25</sup> Under Clause 6.2 of the MDC the National Government can give notice for the transfer of certain mine-related assets to it.
- <sup>26</sup> Under Clause 11 of the MDC third parties carrying out monitoring functions must make written reports to the Department of Environment and Conservation. The landowners would be entitled to copies of these reports.
- <sup>28</sup> Under Clause 17 of the MDC the PJV must give 30 days notice to the National Government of its intention to suspend production.
- <sup>29</sup> Depending on whether production has begun or not, under Clause 17 of the MDC the PJV must give 30 days or 12 months notice to the National Government of its intention to terminate production.
- <sup>30</sup> Under Clause 19.1(c) of the MDC, where the Project terminates, the National Government can serve a notice on the PJV that it wishes to purchase the installations and infrastructure of the Project.
- <sup>31</sup> Clause 22.3 of the MDC provides for an award to be made where a dispute between the parties is submitted to arbitration. This clause in the agreement would entitle the landowners to be served with a copy of that award.

- 37.2 Where such reports, notices or documents are confidential, such confidentiality shall extend to the Provincial Government. <sup>33</sup>
- 37.3 The National Government shall consult with the Provincial Government in relation to matters dealt with in the following Clauses of the Mining Development Contract -
- Clause 5 - Project Implementation
  - Clause 11 - Environmental Management and Protection
  - Clause 12 - Training and Localisation <sup>34</sup>
  - Clause 18 - Termination
  - Clause 22 - Arbitration
  - Clause 26 - Variation <sup>35</sup>
- 37.4 Sub-clause (2) shall be in addition to the consultation provisions relating to the implementation of Supply and Procurement and Training and Localisation provisions in the Mining Development Contract. <sup>36</sup>

IN WITNESS OF this Agreement the parties have executed it as follows etc.-

- <sup>33</sup> None of the notices, reports or documents appear to be confidential.
- <sup>34</sup> Note that the provisions of Clause 27.2 of the MDC requiring quarterly meetings of a monitoring committee are expressly excluded by Clause 35.4 so, where necessary, this consultation is in addition to consultation required under that clause.
- <sup>35</sup> Consultation under this provision would have probably have to take place within the fairly narrow time limits of 5 and 15 days and might have to be by fax and phone. However, note that Clause 21 of the MDC allows for extensions of time and the landowners could ask the National Government to invoke this clause where necessary.
- <sup>36</sup> See f/n 34.

**THE ENGA PROVINCIAL GOVERNMENT**

**- AND -**

**PORGERA LANDOWNERS**

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THIS AGREEMENT made the 5th day of May 1989 BETWEEN the ENGA PROVINCIAL GOVERNMENT (the "Provincial Government") and the LANDOWNERS of the PORGERA DISTRICT in the Enga Province (the "Landowners".)

**WHEREAS**

- (A) The Porgera Joint Venture has applied to the National Government to develop a goldmine at Porgera in the Enga Province, and
- (B) The National Government has involved the Provincial Government and Landowners in the deliberations on the proposals for the development of the Porgera Joint Venture and has undertaken to make available additional funds and manpower to the Provincial Government, and
- (C) The Provincial Government and the Landowners have had negotiations in relation to matters of concern to the Landowners, and
- (D) The Provincial Government has, in recognition of the need for proper administration and development in the Porgera District, agreed to a number of matters which will directly or indirectly assist the Landowners and others in the District and both parties wish to make the decisions emanating from this an enduring arrangement.

**IT IS THEREFORE AGREED AS FOLLOWS:**

**PART A - GENERAL**

**1. DEFINITIONS**

In this Agreement -

"the Authority" means the Porgera Development Authority referred to in Clause 3 of this Agreement,

"the Community Facilities Grant" means any funds made available by the Porgera Joint Venture from time to time for the provision of community facilities in the Porgera District,

"Landowners" means members of any landowning clan which has its origin in the Porgera District and includes those persons that own land within the Special Mining Lease area.

"Mining Development Contract" means the agreement executed between the Independent State of Papua New Guinea and the Porgera Joint Venture for the development of the Porgera Mine Project

"National Government" means the Independent State of Papua New Guinea

"the Porgera District" means and includes both the Porgera and Palela Council areas.

"party" or "parties" means the parties to this Agreement.

"the Porgera Joint Venture" means the three companies, Placer (PNG) Pty Ltd., Highlands Gold Properties Pty Ltd. and RGC (Papua New Guinea) Pty Ltd. (or their assigns or successors) which have jointly entered into the Mining Development Contract to develop the Porgera gold deposit.

"the Project" means the project to mine the Porgera gold deposit by the Porgera Joint Venture.

"royalty" means the royalty referred to in Section 105 of the Mining Act (Chapter 195) or any amendments to, or provisions succeeding, or substituted for that provision.

"Special Mining Lease" means the lease granted pursuant to the Mining Act (Chapter 195) to the Porgera Joint Venture for the Porgera Mine Project.

"Special Mining Lease Landowners" means members of the Tienl, Walwa, Tuanda, Pulumaini, Angalaini, Mamal and Anga clans of the Porgera District which own land in the Special Mining Lease area.

## 2. INTERPRETATION

In this Agreement, unless the context otherwise requires -

- (a) headings do not affect the interpretation or the construction.
- (b) reference to any Act includes amendments to that Act for the time being in force and also any Act passed in substitution therefore and any regulations for the time being in force thereunder.
- (c) words in the singular include the plural and vice versa.
- (d) words in one gender include the other gender.
- (e) the recitals form part of the Agreement.

## PART B - PROVINCIAL GOVERNMENT UNDERTAKINGS

### 3. PORGERA DEVELOPMENT AUTHORITY

- 3.1. The Provincial Government shall establish a statutory authority<sup>1</sup> to be known as the Porgera Development Authority in consultation with the Landowners.
- 3.2. The Authority shall comprise the following appointees:
  - (a) two persons appointed by the Porgera Local Government Council,
  - (b) two persons appointed by the Special Mining Lease Landowners,
  - (c) the provincial Minister for Finance,
  - (d) the provincial Member for Porgera,
  - (e) the Secretary of the Department of Enga or his nominee,
  - (f) the Zone - Coordinator of the Porgera Zone or his nominee,
  - (g) a person appointed by the Palela Local Government Council,
  - (h) a person appointed by the Secretary of the Department of Finance,
  - (i) a person appointed by the Porgera Joint Venture, and
  - (j) two persons from the Porgera District to be appointed by the Authority because of their professional or managerial skills and experience.<sup>2</sup>
- 3.3. The Provincial Government shall pay to the Authority annually a sum of K0.5 million in the form of an unconditional grant (to be known as the "Porgera Development Grant") in equal quarterly instalments, the first instalment of which is to be paid in January 1990 or in the January of the year preceding the year in which the Project is to commence production whichever is later.<sup>3</sup>
- 3.4. The money paid annually by way of the Porgera Development Grant shall be in addition to -

<sup>1</sup> This authority is to be set up under the provincial Porgera Development Authority Act.

<sup>2</sup> A representative of women's groups in the Porgera District will also be appointed to the Authority.

<sup>3</sup> This means that if production begins in 1991 the first payment will still be made in 1990, but if production begins in 1992 the first payment will be made in 1993.

(a) any other funds normally provided through the annual budget of the Provincial Government for the Porgera District, and

(b) any money which will be received by way of a share of the royalty.

3.5. The financial affairs of the Authority shall be subject to the provincial Treasury Act, or any succeeding Act<sup>4</sup>.

3.6 An Interim Authority may be established pending the establishment of the Authority.

3.7 There shall be provision in the legislation establishing the Authority that the Authority cannot be abolished except by the wish of the Landowners.

#### 4. DISTRIBUTION OF MINERAL ROYALTY

The Provincial Government shall ensure that the following amounts are paid out of the royalty -

(a) 8%<sup>5</sup> directly to the Special Mining Lease Landowners.

(b) 5% to the Authority for community development projects in the Porgera District.

(c) 10% to an investment fund set up under National Government legislation<sup>6</sup> established for benefit of the children of the Special Mining Lease Landowners and administered by a board appointed for this purpose which shall include representation from the Special mining Lease Landowners.

#### 5. COMMUNITY FACILITIES GRANT<sup>7</sup>

5.1. The Community Development Grant is to be spent and administered by the Porgera Development Authority for the provision of community facilities in the Porgera District.

5.2. Guidelines for the expenditure and administration of the Grant,

<sup>4</sup> On consideration this provision was not followed and the Authority's financial affairs are controlled under the Porgera Development Authority Act 1989 and regulations made under the Act.

<sup>5</sup> Landowners are entitled to 5% under Section 107 of the Mining Act. An additional 3% will be paid out of the Provincial Government's entitlement.

<sup>6</sup> This fund may well be established as a private trust fund rather than one under national legislation.

<sup>7</sup> Initially this will be the K4 million which the PJV has made available for the provision of community facilities in the Porgera District during the construction phase. However, any further amounts made available by the PJV during later stages of the Project.

and purposes for which it may be spent, shall be agreed to jointly by the Porgera Development Authority and the Porgera Joint Venture in consultation with the Provincial Government.

#### 6. PROVISION OF PROVINCIAL GOVERNMENT SERVICES

6.1. Within 6 months of the signing of this agreement, a third economic zone based on the Porgera District (in addition to the Western and Eastern Zones) shall be created in the Department of Enga to be known as the Porgera Zone.

6.2. The staffing structure of the Porgera Zone shall be all in accordance with the structure shown in the diagram in Annexure A to this agreement.

6.3. Within 6 months of the signing of this agreement, twelve new positions within the Porgera Zone, four of which shall be positions available to expatriate contract officers, shall be created, and housing and office space provided, by the Department of Enga out of funds made available for this purpose by the National Government.

6.4 Within 2 months of the execution of this agreement, existing Provincial Government staff stationed in the Porgera District shall be assessed, and those found to be inefficient in the performance of their duties replaced.

#### 7. TOWNSHIP DEVELOPMENT

7.1. Subject to the jurisdiction of the Enga Provincial Town Planning and Building Boards, the Authority is to be responsible for the development, administration and management of all township facilities in the Porgera District.

7.2. The Provincial Government will use funds provided for that purpose by the National Government for the development of a town at Palam on land identified as at 1 February 1989.

#### 8. KAIKAIK AIRSTRIP

Should ownership of the proposed Kairik airstrip be transferred to the Provincial Government<sup>8</sup>, the Authority may at its option take responsibility for the maintenance of the airstrip from funds made available to it through the normal operations of the annual budget of the Provincial Government.

#### 9. ROADS

9.1 The Provincial Government is to pay to the Authority the sum of at least K50,000 annually for the completion of the construction

<sup>8</sup> This will be done by gazettal under the national Civil Aviation Act.

and maintenance of the Porgera to Palela road.

- 9.2 The Provincial Government will make available funds to enable the construction, upgrading and maintenance of all major feeder roads in the Porgera District through the annual provincial budget.

#### 10. LAW AND ORDER

- 10.1. The present ban on the importation of liquor into the Porgera district is to remain in force until further advice from the Authority (or, until the Authority is established, the Porgera Local Government Council), and the Minister for Liquor Licensing and Control, the Chief Liquor Licensing Commissioner and the Commission shall exercise their powers under the provincial Liquor Licensing and Control Act 1986 in consultation with the Authority (or until it is established, the Porgera and Palela Local Government Councils).
- 10.2. The Provincial Government, together with the National Government, with the assistance of the Porgera Joint Venture, is to ensure that boom-gate remains in place at Mount Malp to regulate the flow of people and goods into Porgera.

#### 11. LONGTERM ECONOMIC DEVELOPMENT PLAN

The Department of Enga, in co-operation with the Authority, is to establish and implement a long-term economic development plan for the Porgera District with the aim of providing economic alternatives to mining and related activities both during the life time of the Project and beyond, especially in the agricultural, tourist and industrial areas.

#### 12. PORGERA DISTRICT HOSPITAL

- 12.1 With the assistance of the Porgera Joint Venture, the Provincial Government together with the National Government, shall within 3 years of the execution of this agreement, upgrade the existing Porgera Health Centre to the level of a "Major Health Centre"<sup>9</sup> with the following facilities:-

60-80 beds,  
X-ray facilities,  
operating theatre,  
pathology unit,  
dental service,  
laboratory,  
pharmacy.

- 12.2 Within 3 months of the execution of this agreement, the

<sup>9</sup> This is the classification given by the Department of Health to a medical facility which meets these specifications.

National Government, Provincial Government and Porgera Joint Venture, shall enter into a memorandum of understanding in relation to the following matters:-

- (a) timetable and cost-sharing arrangements between the National Government and the Porgera Joint Venture for the upgrading of the Porgera Health Centre,
- (b) timetable and cost-sharing arrangements between the Provincial Government and the Porgera Joint Venture for the recurrent costs of operating the Porgera Health Centre, more particularly, staffing, maintenance, repairs, medical supplies etc.
- (c) the timetable and cost-sharing arrangements between the Provincial Government and Porgera Joint Venture for the provision of accommodation for Porgera Health Centre staff.
- (d) the location of the Porgera Joint Venture medical officer, ambulance, and other facilities over and above emergency first aid facilities required at the mine site.

#### 13. EDUCATION

- 13.1. The Provincial Government is to establish a Provincial High School in the Porgera District with enrolments commencing in the year 1994.
- 13.2. The Provincial Government is to direct the provincial College of External Studies (COES) Coordinator to ensure that a COES centre is constructed at Porgera with funds made available by the Porgera Joint Venture within 12 months of the execution of this agreement, and undertakes to ensure that a qualified high school teacher is made available within 6 months of the execution of this agreement to be the director of the Centre.

### C. FORMAL CLAUSES

#### 14. LAW APPLICABLE

This Agreement shall be governed by and construed in accordance with the law of the Independent State of Papua New Guinea.

#### 15. VARIATION

The parties may from time to time by Agreement in writing vary any of the provisions of this agreement.

#### 16. REVIEW

This Agreement may be reviewed at the option of either of the parties ten years from the date of the execution of the

Agreement.

17. TERMINATION

This Agreement shall terminate on the expiration of the Special Mining Lease or its earlier revocation or surrender<sup>10</sup>.

18. RESOLUTION OF DISPUTES

- 18.1 Where a dispute arises about the interpretation or implementation of this Agreement, the dispute shall be referred to a committee known as the Disputes Committee.
- 18.2 The Disputes Committee shall consist of the following persons -
- (a) the Enga Premier or his nominee,
  - (b) the Secretary of the Department of Enga,
  - (c) the Chairman of the Porgera Development Authority,
  - (d) a person appointed by the Special Mining Lease Landowners, and
  - (e) a person of high standing in whom the parties have confidence.
- 18.3 The resolution of a dispute shall be reached by the consensus of all members of the Disputes Committee.

19. ARBITRATION

Where a dispute cannot be resolved through consultation between the parties within 30 days of the time the Disputes Committee first formally meets for this purpose, they shall submit the dispute to a single arbitrator agreed to by the parties for resolution in accordance with the provisions of the Arbitration Act (Chapter 46.)

20. WAIVER

The failure of any party to enforce, at any time, any of the provisions of this Agreement shall in no way be construed to be a waiver of the provision or any part thereof or the right of any party thereafter to enforce each and every part of the provision in respect of any subsequent default or breach.

<sup>10</sup> There are detailed provisions in relation to surrender and revocation under Clauses 18 and 19 of the MDC.

21. SEVERABILITY

The provisions of this Agreement shall be separate and severable each from the other to the extent that if any portion or any one provision or portion is deemed to be inoperative then the remainder of this agreement shall remain binding upon and enforceable by the parties hereto. Nothing herein shall preclude one party from requesting the other party to renegotiate any provision herein.

22. IMPLEMENTATION

The Provincial Government undertakes to use all the legal and administrative powers it reasonably has its disposal from time to time to ensure that the provisions of this Agreement are effectively and expeditiously implemented.

23. REPRESENTATIONS AND WARRANTIES

Except as expressly stated in this Agreement, no representation, inducement or warranty was, prior to the execution of this agreement, given or made by one of the parties hereto with the intent of inducing the other party to enter into this agreement, and any representations, inducements or warranties that may have been given are hereby denied and negated.

24. COMMUNICATIONS

- 24.1 Any formal communication by the parties concerning this Agreement shall be deemed to have been given -
- (a) in the case of the Provincial Government, if signed by the Premier or the Secretary of the Department of Enga as their responsibilities require,
  - (b) in the case of the Porgera landowners, if signed by the President of the Porgera Local Government Council or the Chairman of the Authority as their responsibilities require.
- 24.2 Any formal communication shall be in writing and may be delivered either personally, or transmitted by telex or facsimile to the person, or persons referred to in 24.1.
- 24.3. Any formal communication shall be deemed to have reached the other party -
- (a) in the case of personal delivery, when received by the relevant person referred to in 24.1.
  - (b) in the case of telex or facsimile, as soon as transmission is confirmed.

The COMMON SEAL of the ENGA PROVINCIAL GOVERNMENT etc.

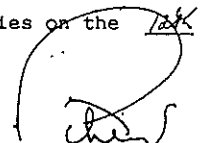



## Appendix

# INDEPENDENT STATE OF PAPUA NEW GUINEA and PORGERA LANDOWNERS

37.2 The provisions of 37.1 shall be in addition to the consultation provisions relating to the implementation of Supply and Procurement and Training and Localisation provisions in the Mining Development Contract.

IN WITNESS WHEREOF this Agreement has been duly executed by the Parties on the 1st day of May 1989.

  
SIGNED for and on behalf of the  
INDEPENDENT STATE OF PAPUA NEW  
GUINEA by the Acting  
Minister for Finance and  
Planning. The Honourable  
JOHN GIBENO in the presence of:

  
The Honourable RABBIE NAMALIU  
PRIME MINISTER

SIGNED for and on behalf of the  
LANDOWNING CLANS and SUBCLANS  
of the PORGERA SPECIAL MINING  
LEASE area

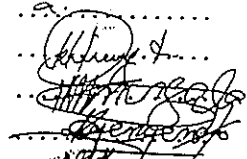
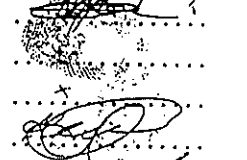
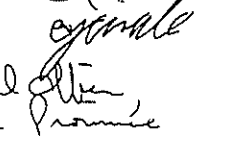
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Ipaia Lara : Tiyani - Kamimalo  
John Kulina : Tiyani - Lakima  
Nixen Magape : Tiyani - Wuape  
Ekale Kangaba : Tiyani - Akira  
Kimalea Ondalane: Tiyani - Yagua  
Pospi Karip : Waiwa - Lunda  
Tapia Karipi : Waiwa - Yaliope  
Aiyope Yawane : Tuanda - Yapala

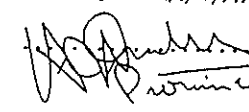

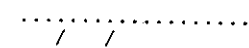
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Ikipa Yukui : Mamai - Andopo  
Kule Layo : Pulumaini/Ambo-Amu  
Peakope Awuakini: Pulumaini/Ambo-Endewe  
Pera Itawi : Pulumaini/Ambo-Gai  
Pala Teya : Pulumaini/Ambo-Paramba  
Andita Keko : Pulumaini/Ambo-Yuga  
Jolson Kutato : Angalaini - Piko  
Sakarias Kiwale: Angalaini - Diwi  
Pawe Menepe : Angalaini - Oyopen  
Marakos Tekaipe: Angalaini - Hulewali  
Unjiali Koakalai: Anga - Auga  
Yanale Love Pulumaini Ambo-Amu

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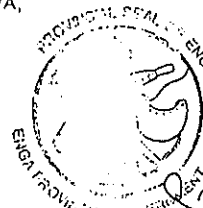
  
  


# ENGA PROVINCIAL GOVERNMENT and PORGERA LANDOWNERS

The COMMON SEAL of the  
ENGA PROVINCIAL GOVERNMENT  
affixed by the Enga Premier,  
the Honourable Ned Mali Laina MPA,  
with the authority of the  
Enga Cabinet in the presence of:

SIGNED for and on behalf of the  
TIENI, WAIWA, TUANDA,  
PULUMAINI, MAMAI, ANGALAINI,  
and ANGA CLANS of the Porgera  
District by their agents and also for  
and on behalf of these clans and  
all the other clans of Porgera and  
Paiela by the President of the  
PORGERA LOCAL GOVERNMENT  
COUNCIL and the President of the  
PAIELA LOCAL GOVERNMENT  
COUNCIL with the authority of  
the respective Councils in the  
presence of:-



*[Signature]*  
Provincial Agent  
Ned Mali Laina

*[Signature]*  
Provincial Agent  
Ned Mali Laina

*[Signature]*

Wasa Aliape  
Ipaia Lala  
John Kulina  
Nixen Magape  
Ekale Kangaba  
Kimalea Ondalane  
Pospi Karipi  
Tapi Karipi  
Aiyope Yalwane  
Ambi Kipu  
Elepe Wuambo  
Ikipa Yukuli  
Kule Layo  
Yanale Lare  
Peakope Awuakini  
Pera Itawi  
Paia Teya  
Andita Keko  
Joison Kutato  
Sakarias Kiwale  
Pawe Menepe  
Marakos Tekaiapa  
Unjiali Koakali

Tiyani - Wiagaio  
Tiyani - Kanimaio  
Tiyani - Lakima  
Tiyane - Wuape  
Tiyane - Akirai  
Tiyani - Yagua  
Waiwa - Lunda  
Waiwa - Yaldope  
Tuanda - Yapala  
Tuanda - Ulupa  
Mamai - Kenje  
Mamai - Andopo  
Pulumaini/Ambo - Wagia  
Pulumaini/Ambo - Amu  
Pulumaini/Ambo - Endewe  
Pulumaini/Ambo - Gai  
Pulumaini/Ambo - Paramba  
Pulumaini/Ambo - Yuga  
Angalaini - Piko  
Angalaini - Diwi  
Angalaini - Oyopen  
Angalaini - Hulewali  
Anga - Auga

*[Signature]*  
RE KAL PE

*[Signature]*  
RE KAL PE

INDEPENDENT STATE OF PAPUA NEW GUINEA and  
ENGA PROVINCIAL GOVERNMENT

35.3 The National Government shall consult with the Provincial Government in relation to matters dealt with in the following clauses of the Mining Development Contract.

- Clause 5 - Project Implementation
- Clause 11 - Environmental Management and Protection
- Clause 12 - Training and Localization
- Clause 18 - Termination
- Clause 22 - Arbitration
- Clause 26 - Variation

35.4 The provisions of 35.3 shall be in addition to the consultation provisions relating to the implementation of Supply and Procurement and Training and Localisation provisions in the Mining Development Contract.

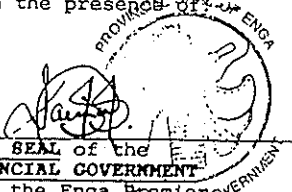
IN WITNESS WHEREOF this Agreement has been duly executed by the Parties on the 12<sup>th</sup> day of May 1989.



SIGNED for and on behalf of the  
INDEPENDENT STATE OF  
PAPUA NEW GUINEA, by the  
Acting Minister for Finance  
and Planning:  
The Honourable JOHN  
GIHENO in the presence of



The Honourable RABBIE NAMALIU  
PRIME MINISTER



The COMMON SEAL of the  
ENGA PROVINCIAL GOVERNMENT  
affixed by the Enga Premier  
the Honourable MED MALI LAINA MPA.  
with the Authority of the  
Enga Cabinet in the presence of: