

IMPLEMENTATION PROTOCOL

This Agreement made as of the 8th day of October, 1996

BETWEEN:

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HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the Minister of Indian Affairs and Northern Development (hereinafter referred to as "Canada")

AND

THE GOVERNMENT OF THE NORTHWEST TERRITORIES as represented by the Minister of Resources, Wildlife and Economic Development (hereinafter referred to as "GNWT")

AND

BHP DIAMONDS INC., a corporation under the laws of Canada (hereinafter referred to as "BHP")

AND

DOGRIB TREATY 11 COUNCIL as represented by the Grand Chief of the Dogrib First Nation (hereinafter referred to as "the Dogrib")

AND

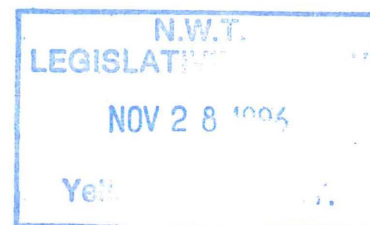
THE AKAITCHO TREATY 8, (specifically the Yellowknives Dene First Nation and Lutsel K'e First Nation, and on behalf of their members) as represented by the Chiefs of the Yellowknives Dene First Nation and by the Chief of the Lutsel K'e First Nation (hereinafter referred to as "Treaty 8")

AND

METIS NATION - NORTHWEST TERRITORIES as represented by the President of the Metis Nation - Northwest Territories (hereinafter referred to as "the Metis")

AND

KITIKMEOT INUIT ASSOCIATION as represented by the President of the Kitikmeot Inuit Association (hereinafter referred to as "the Inuit")



WHEREAS

- A BHP has applied to Canada for permission to develop and mine mineral claims near Lac de Gras, in the Northwest Territories (hereinafter referred to as "the Project").
- B Canada has given conditional approval to the Project, subject to, inter alia, substantial progress on the development of an Environmental Agreement respecting the Project.
- C The Dogrib, Akaitcho Treaty 8, the Metis and the Inuit (hereinafter collectively "the Aboriginal Peoples") have rights and interests which will be affected by the management and regulation of the Project.
- D Canada, GNWT and BHP have agreed to conclude an Environmental Agreement (the "Environmental Agreement") and have conducted negotiations to that end.
- E At the invitation of Canada, GNWT and BHP, the Aboriginal Peoples have participated in the development of the Environmental Agreement.

NOW THEREFORE, in consideration of the premises and covenants herein contained and other good and valuable consideration, Canada, GNWT, BHP, the Dogribs, Treaty 8, the Metis and the Inuit covenant and agree as follows:

1 ENVIRONMENTAL AGREEMENT

1.1 Canada, GNWT and BHP shall, as soon as practicable, conclude an Environmental Agreement consistent with the Draft of that Agreement dated October 8, 1996, which has been initialled by those Parties' negotiators subject to legal and technical review, and which is attached as Schedule A to this Agreement (hereinafter referred to as the "Draft Agreement").

1.2 Canada, GNWT and BHP shall provide an opportunity to the Aboriginal Peoples to be involved in the finalization of the Environmental Agreement.

1.3 In finalizing the Environmental Agreement, Canada, GNWT and BHP shall not change the substance of the Draft Agreement without first consulting in good faith with the Aboriginal Peoples (including meetings, working group sessions, plenary sessions and related discussions) consistent with the consulting approach adopted by Canada, GNWT and BHP between September 30 and October 8, 1996, with a view to achieving consensus among Canada, GNWT, BHP and the Aboriginal Peoples with respect to any

such change. In the event that Canada, GNWT and BHP achieve, following such consultation process, consensus among themselves to change the substance of the Draft Agreement but such consensus does not extend to all the Aboriginal Peoples, Canada, GNWT and BHP shall furnish to the Aboriginal Peoples their written reasons for the change(s) to be made to the Draft Agreement; provided further, that if such change(s) affect the substance of Articles I, II, V, X, XI or XVI or Section 15.2 of the Draft Agreement, Canada, GNWT and BHP shall, at the request of any Aboriginal People and prior to making any such change(s) consult again with the Aboriginal Peoples in a final concerted effort to achieve consensus among all of Canada, GNWT, BHP and the Aboriginal Peoples on whether any such change(s) should be made to the Draft Agreement.

2 INDEPENDENT ENVIRONMENTAL MONITORING AGENCY

2.1 Within two (2) weeks of the execution of this Agreement, the Parties shall establish an Implementation Group (the "Implementation Group") to facilitate the establishment and initial operations of the Monitoring Agency provided for in the Draft Agreement.

2.2 Each Party to this Protocol Agreement shall appoint one representative to the Implementation Group.

2.3 Canada and GNWT shall each make available \$ 25,000 for the work of the Implementation Group.

2.4 The Implementation Group shall, as soon as practicable, develop and carry out a work plan for the establishment and initial operations of the Monitoring Agency, which shall include the following steps:

2.4.1 drafting of by-laws and incorporation of the Monitoring Agency pursuant to the *Societies Act* (of the Northwest Territories);

2.4.2 appointment of the Board of Directors;

2.4.3 provision of the core funds for the initial budget period;

2.4.4 arrangements for administrative services;

2.4.5 such further and other things as are agreed by the Implementation Group.

2.5 The Implementation Group shall facilitate the establishment and initial operations of the Monitoring Agency consistently with the Draft Agreement, in particular Article V.

3 GENERAL

3.1 Without Prejudice Nothing herein provided, including the recitals, may be used in any other matter or proceeding as an admission of fact or of liability.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Indian and Northern Affairs

Per:  _____


THE GOVERNMENT OF THE NORTHWEST TERRITORIES, as represented by the Minister of Resources, Wildlife and Economic Development

Per:  _____


BHP DIAMONDS INC.

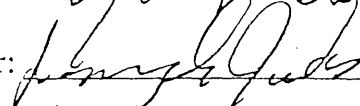
Per:  _____

DOGRIB TREATY 11 COUNCIL

Per:  _____

THE AKAITCHO TREATY 8


Per:  _____

Per:  _____

Per:  _____

Per:  _____

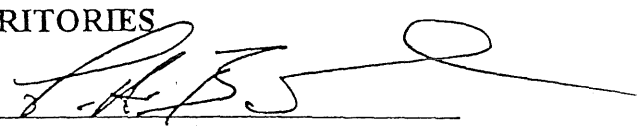
Per:  _____

Per:  _____

KITIKMEOT INUIT ASSOCIATION

Per: _____

METIS NATION - NORTHWEST TERRITORIES

Per:  _____

SCHEDULE A

DRAFT NO. 7: October 8, 1996

ENVIRONMENTAL AGREEMENT

This Agreement made as of the ● day of October, 1996.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as
represented by the Minister of Indian Affairs and Northern
Development

(hereinafter referred to as "Canada")

AND

THE GOVERNMENT OF THE NORTHWEST TERRITORIES as
represented by the Minister of Resources, Wildlife and Economic
Development

(hereinafter referred to as "GNWT")

AND

BHP DIAMONDS INC., a corporation incorporated under
the laws of Canada

(hereinafter referred to as "BHP")

RECITALS

- A. **WHEREAS** BHP desires to explore, develop and mine mineral claims near Lac de Gras and in the Lac de Gras watershed, in the Coppermine River Basin and the Slave Geological province, approximately 300 kilometres northeast of Yellowknife in the Northwest Territories (such exploration, development and mining together with all related and ancillary operations and activities including, without limitation, construction, transportation, studies and maintenance, collectively, the "Project");
- B. **AND WHEREAS** a federal Environmental Assessment Review Panel has reviewed an Environmental Impact Statement (the "Impact Statement") which was prepared by BHP and was designed to identify environmental impacts and to mitigate the

potentially adverse impacts and has held public hearings and has recommended that the federal government approve the Project subject to the panel's recommendations.

- C. AND WHEREAS BHP has conducted research and studies in connection with the Project and intends to continue to conduct research and studies in connection with the Project;
- D. AND WHEREAS BHP proposes to conduct adaptive environmental management to minimize the environmental impact of the Project and in connection therewith it is necessary and appropriate to ensure that research and monitoring with respect to the effects of the Project (including, without limitation, pit groundwater, water quality, lake biology, wildlife, wildlife habitat, stream biology, hydrology, reclamation, vegetation, permafrost, climate, ambient air quality, stationary emission sources and the cumulative effects of the Project with respect to all of these) be carried out throughout the term of the Project;
- E. AND WHEREAS the parties wish to establish an Independent Environmental Monitoring Agency;
- F. AND WHEREAS Canada, GNWT and BHP wish to enter into an environmental agreement in order to ensure that environmental and related matters and requirements in respect of the Project in addition to those matters addressed under specific legislation, regulations, water licences, surface leases, land use permits, fishery authorizations, or other environmental agreements or regulatory instruments as described for reference purposes only on Schedule "A" attached hereto [Drafting Note: This Schedule will include copies of Water Licences, Surface Leases, etc. as and when executed or granted, as amended] are expressly addressed in a legally binding agreement;
- G. AND WHEREAS BHP and the Aboriginal Peoples have entered into or are in the process of negotiating and settling impact and benefit agreements in connection with the Project;

NOW THEREFORE, in consideration of the premises and the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, BHP, Canada and GNWT covenant and agree as follows:

ARTICLE I

STATEMENT OF PURPOSE

1.1 Purpose This Environmental Agreement is intended to be a legally binding agreement which provides for Project-related environmental matters additional to such matters governed by legislation, regulations and Regulatory Instruments and for the establishment of and the identification of roles of the Monitoring Agency in order to achieve the following purposes:

- (a) to respect and protect land, water and wildlife and the land-based economy, way of life and well-being of the Aboriginal Peoples;
- (b) to facilitate the use of holistic and eco-system-based approaches for the monitoring, management and regulation of the Project;
- (c) to provide advice to BHP to enable BHP to manage the Project consistently with the above purposes;
- (d) to maximize the effectiveness and co-ordination of environmental monitoring and regulation of the Project;
- (e) to facilitate effective participation of the Aboriginal Peoples and the general public in the achievement of the above purposes.

1.2 Consistency with Purpose The Parties agree to carry out their responsibilities under this Agreement and the Regulatory Instruments consistently with the purposes in Section 1.1 and in ways which:

- (a) fully consider both traditional knowledge and other scientific information;
- (b) apply adaptive management principles making use of the best available information and technology;
- (c) to promote the development and implementation of Environmental Protection Measures designed to maximize Environmental Quality to the extent reasonably practicable; and
- (d) apply the Precautionary Principle.

ARTICLE II

NO PREJUDICE

- 2.1 This Agreement is without prejudice to any:
- (a) Aboriginal or treaty rights of the Aboriginal Peoples;
 - (b) on-going or future land claims and self-government negotiations affecting Aboriginal Peoples;
 - (c) constitutional changes which may occur in the Western Arctic; or
 - (d) changes to legislation or regulations resulting from the settlement of land claims and self-government negotiations, or resulting from constitutional changes or devolution.

ARTICLE III

INTERPRETATION

3.1 Definitions In this agreement, unless the context otherwise indicates, the following terms shall have the meanings ascribed to them below:

- (a) "Aboriginal Peoples" means Dogrib Treaty 11 Council, The Akaitcho Treaty 8, (specifically the Yellowknives Dene First Nation and Lutsel K'e First Nation, and on behalf of their members), Metis Nation-NWT and Kitimeot Inuit Association.
- (b) "Annual Report" has the meaning ascribed to it in Section 4.1(a).
- (c) "Arbitration Committee" has the meaning attributed thereto in Section 14.1(c).
- (d) "BHP" means BHP Diamonds Inc.
- (e) "Canada" means Her Majesty the Queen In Right of Canada.
- (f) "Construction Phase Management Plan" has the meaning attributed thereto in Section 6.1.

- (g) "Consultation" shall mean, at a minimum:
- (i) the provision, to the party to be consulted, of notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter;
 - (ii) the provision of a reasonable period of time in which the party to be consulted may prepare its views on the matter, and provision of an opportunity to present such views to the party obliged to consult; and
 - (iii) full and fair consideration by the party obliged to consult of any views presented.
- (h) "Commercial Production" means 80% of design capacity for the plant for 30 consecutive days.
- (i) "Core Budget" has the meaning attributed thereto in Section 5.6.
- (j) "\$" means Canadian dollars.
- (k) "Environmental Impact Report" has the meaning described to it in Section 4.2(a).
- (l) "Environmental Management Plans" means the Construction Phase Management Plan, the Operating Environmental Management Plan and all amendments and revisions to such plans.
- (m) "Environmental Monitoring Programs" has the meaning attributed thereto in Section 7.1.
- (n) "Environmental Plans and Programs" means the Environmental Management Plans, Environmental Monitoring Programs and the Reclamation Plan and any other environmental management plans or environmental monitoring programs carried out or conducted in connection with the Project.
- (o) "Environmental Protection Measures" means all measures taken to affect Environmental Quality, including but not limited to, assessment and prediction of impacts, monitoring, measures to avoid or mitigate impacts, setting of limits for environmental degradation, and measures for construction, operations, the closure, reclamation and abandonment of the Project.

- (p) "Environmental Quality" means the state of the environment at any time as compared to natural, unaltered characteristics of the area with respect to biological biodiversity and ecosystem structures and processes. Environmental Quality is maximized when measured indicators show that ecological processes are functioning naturally, ecosystem structure and reproductive capacity of animal and plant populations is unimpaired, and human interference has negligible impacts.
- (q) "Event of Default" has the meaning attributed thereto in Section 13.6.
- (r) "Fisheries Authorizations" means such authorizations as may be granted to BHP for the Project pursuant to Section 35(2) of the *Fisheries Act (Canada)*.
- (s) "Guarantee" has the meaning attributed thereto in Section 13.1(b).
- (t) "Guarantor" has the meaning attributed thereto in Section 13.1(b).
- (u) "GNWT" means the Government of the Northwest Territories.
- (v) "Impact Statement" has the meaning attributed thereto in the recitals to this Agreement.
- (w) "Minister" means the Minister of Indian Affairs and Northern Development.
- (x) "Minister's Report" means a report that may be provided by the Minister to BHP in the event that any Annual Report, Environmental Impact Report, Environmental Management Plan, Environmental Monitoring Program or Reclamation Plan provided to the Minister by BHP is determined by the Minister to be deficient.
- (y) "Monitoring Agency" means the Independent Environmental Monitoring Agency established pursuant to this Agreement.
- (z) "Notice of Default" has the meaning attributed thereto in Section 13.6(d).
- (aa) "Land Use Permits" means such Land Use Permits which have been or may be granted to BHP for the Project pursuant to the regulations to the *Territorial Lands Act (Canada)*.
- (ab) "NWT" means the Northwest Territories.

- (ac) "Operating Environmental Management Plan" has the meaning attributed thereto in Section 6.2(a).
- (ad) "Phase II Traditional Knowledge Study" has the meaning attributed thereto in Section 11.1.
- (ae) "Precautionary Principle" means, where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing reasonable measures to prevent environmental degradation.
- (af) "Project" has the meaning attributed thereto in the recitals to this Agreement.
- (ag) "Protocol Agreement" means the Agreement attached hereto as Schedule "C".
- (ah) "Reclamation Plan" has the meaning attributed thereto in Section 8.1.
- (ai) "Regulatory Instruments" means the Water License, the Surface Leases, the Land Use Permits, the Fisheries Authorizations and such further or other regulatory instruments as may become applicable to environmental management or monitoring of the Project.
- (aj) "Reporting Year" means, with respect to an Annual Report, November 1 - October 31.
- (ak) "Security Deposit" has the meaning attributed thereto in Section 13.1.
- (al) "Surface Leases" means such surface leases which may be granted to BHP for the Project pursuant to the *Territorial Lands Act (Canada)*.
- (am) "Water License" means any water license which may be granted to BHP for the Project pursuant to the *Northwest Territories Waters Act*.

3.2 Extended Meanings Words importing the singular number include the plural and vice versa; words importing gender include the masculine, feminine and neuter genders; words importing persons include firms and corporations.

3.3 Time of Essence Time shall be of the essence in all respects of this Agreement.

3.4 Business Day Whenever a payment to be made or action to be taken under this agreement is required to be made or taken on a day which is a Saturday, Sunday or

statutory holiday in Ontario or the NWT, then such payment shall be made or action taken on the next succeeding day that is not a Saturday, Sunday or statutory holiday in Ontario or the NWT.

3.5 References References to an article, section, subsection, paragraph or schedule shall be construed as references to an article, section, subsection, paragraph or schedule to this Agreement unless the context otherwise requires.

3.6 Headings The division of this Agreement into articles and subsections and the insertion of headings are for convenience of reference only and shall not alter the construction or interpretation of this Agreement.

3.7 Schedules The following is a list of schedules attached hereto for reference purposes:

Schedule "A" -	Description of Legislation, Instruments and Agreements.
[Schedule "B" -	Agency Schedule]
[Schedule "C" -	Protocol Agreement]

3.8 Paramourncy In the event that any provisions of this Agreement are in conflict with or inconsistent with any specific statute, regulation or Regulatory Instrument with respect to the Project, including the Water License, the Surface Leases, the Fisheries Authorizations or the Land Use Permits, the terms of such statute, regulation or Regulatory Instrument shall prevail.

ARTICLE IV

REPORTING REQUIREMENTS

4.1 Annual Report

- (a) BHP shall prepare and submit a report (the "Annual Report") to the Minister, GNWT, the Monitoring Agency and the Aboriginal Peoples commencing on April 30, 1998 and on each April 30 thereafter until full and final reclamation of the Project site has been completed in accordance with the requirements of all Regulatory Instruments and the terms of this Agreement. Each Annual Report shall be accompanied by a plain English summary prepared by BHP and shall include the results of BHP's ongoing compliance with this Agreement and the legislation, instruments and agreements described on Schedule "A" for the preceding Reporting Year and providing the Minister, GNWT, the Monitoring Agency and the Aboriginal Peoples with all supporting information

and data from the environmental monitoring programs and all studies and research conducted in accordance with Articles X, XI and XII of this Agreement. Each Annual Report shall, inter alia, contain the following:

- (i) compliance reports with respect to the Water License, the Surface Leases, the Land Use Permits and other Regulatory Instruments;
 - (ii) results and findings of studies and research conducted in the preceding year;
 - (iii) results and findings of environmental monitoring programs;
 - (iv) summary of operational activities during the Reporting Year;
 - (v) actions taken or planned to address impacts or compliance problems which are set out in the Annual Report;
 - (vi) summary of operational activities for the next Reporting Year; and
 - (vii) lists and abstracts of all Environmental Plans and Programs.
- (b) In order to prepare each Annual Report and with a view to ensuring that each Annual Report meets with the requirements of this Agreement, BHP shall consult with representatives of the Minister, GNWT and the Monitoring Agency as BHP compiles the information and data to be included in such Annual Report.
- (c) Within forty-five (45) days of the receipt by GNWT, the Monitoring Agency and the Aboriginal Peoples of the Annual Report, GNWT, the Monitoring Agency and the Aboriginal Peoples shall advise the Minister whether such Annual Report is satisfactory; including whether the information provided is adequate as well as whether or not remedial actions taken or proposed in respect of impact or compliance problems are satisfactory.
- (d) Within ninety (90) days of the receipt by the Minister of the Annual Report, the Minister shall advise BHP whether such Annual Report is satisfactory or whether the Minister has determined that (including based on reports from GNWT, the Monitoring Agency and/or the Aboriginal Peoples and including whether the information provided is adequate as well as whether or not remedial actions taken or proposed in respect of impact or compliance problems are satisfactory) such Annual Report is deficient. In the event that

the Minister has determined the Annual Report to be deficient, the Minister shall provide BHP with a Minister's Report.

- (e) Within sixty (60) days of the Receipt by BHP of a Ministers Report, BHP shall reply to the Minister's Report and provide the Minister with a revised Annual Report which addresses satisfactorily the deficiencies described in the Minister's Report.

4.2 Environmental Impact Report

- (a) BHP shall prepare and submit to the Minister, GNWT, the Monitoring Agency and the Aboriginal Peoples a comprehensive report (the "Environmental Impact Report") on the third anniversary date of this Agreement and on each subsequent third anniversary date until full and final reclamation of the Project site has been completed in accordance with the requirements of all Regulatory Instruments and the terms of this Agreement. Each Environmental Impact Report shall be accompanied by a plain English summary prepared by BHP and shall report on longer term effects of the Project and the results of environmental monitoring programs and the actual performance of the Project in comparison to the results predicted in the Impact Statement and to evaluate how BHP's adaptive environmental management has performed to the date of such report. Each Environmental Impact Report shall, inter alia, include:
 - (i) a summary of operational activities during the reporting period;
 - (ii) actions taken or planned to address impacts or compliance programs which are set out in the Environmental Impact Report;
 - (iii) a summary of operational activities for the next reporting period; and
 - (iv) list and abstracts of all Environmental Plans and Programs.
- (b) In order to prepare each Environmental Impact Report, and with a view to ensuring that each Environmental Impact Report meets the requirements of this Agreement, BHP shall consult with representatives of the Minister, GNWT and the Monitoring Agency as BHP compiles the information and data to be included in such Environmental Impact Report.
- (c) Within forty-five (45) days of the receipt by GNWT, the Monitoring Agency and the Aboriginal Peoples of the Environmental Impact Report, GNWT, the Monitoring Agency and the Aboriginal Peoples shall advise the Minister whether such Environmental Impact Report is satisfactory; including whether

the information provided is adequate as well as whether or not remedial actions taken or proposed in respect of impact or compliance problems are satisfactory.

- (d) Within ninety (90) days of the receipt of the Environmental Impact Report, the Minister shall advise BHP whether the report is satisfactory or whether the Minister has determined that (including based on reports from GNWT, the Monitoring Agency and/or the Aboriginal Peoples and including whether the information provided is adequate as well as whether or not remedial actions taken or proposed in respect of impact or compliance problems are satisfactory) the Environmental Impact Report to be deficient. In the event that the Minister has determined an Environmental Impact Report to be deficient, the Minister shall provide BHP with a Minister's Report.
- (e) In relation to matters substantially within the jurisdiction of GNWT, the Minister shall provide BHP with a Minister's Report pursuant to Section 4.2(d) when the Minister receives a request from the GNWT pursuant to that section and the GNWT request shall be included in such Minister's Report.
- (f) Within sixty (60) days of the receipt by BHP of the Ministers Report, BHP shall reply to the Minister's Report and provide the Minister with a revised Environmental Impact Report which addresses satisfactorily the deficiencies described in the Minister's Report.
- (g) The Minister, may after Consultation with GNWT and the Monitoring Agency, increase the time between the Environmental Impact Reports.

4.3 Public Meetings BHP shall make each Annual Report and each Environmental Impact Report available to the public and shall arrange for public meetings to review and discuss each Annual Report or Environmental Impact Report, as the case may be.

ARTICLE V

INDEPENDENT ENVIRONMENTAL MONITORING AGENCY

5.1 Establishment Canada, GNWT and BHP agree that there shall be established, within ninety (90) days of the date of this Agreement and in accordance with Section 5.7 of this Agreement, a body to be called the Independent Environmental Monitoring Agency (the "Monitoring Agency"). The Monitoring Agency shall be established as a non-profit organization under the *NWT Societies Act* and operate at arms length from, and independent of, BHP, Canada and GNWT.

5.2 Mandate The mandate of the Monitoring Agency shall be, in respect of the Project:

- (a) to provide an integrated approach to achieve the purposes in s. 1;
- (b) to serve as a public watchdog of the regulatory process and the implementation of this Agreement;
- (c) to compile and analyze existing, relevant Environmental Quality data, in order to review, report, or make recommendations concerning:
 - (i) the environmental effects monitoring program respecting short-, long-term and cumulative impacts, carried out by BHP pursuant to this Agreement;
 - (ii) government compliance monitoring reports and BHP self-assessment reports pursuant to Regulatory Instruments and this Agreement;
 - (iii) Environmental Plans and Programs;
 - (iv) Annual Reports and Environmental Impact Reports;
 - (v) monitoring, regulatory and related management programs and activities of Canada and GNWT; and
 - (vi) the integration of the Traditional Knowledge and experience of the Aboriginal Peoples into Environmental Plans and Programs.
- (d) to participate as an intervenor in regulatory and other legal processes respecting environmental matters;
- (e) to provide an accessible and public repository of environmental data, studies and reports relevant to the Monitoring Agency's responsibilities;
- (f) to provide programs for the effective dissemination of information to the Aboriginal Peoples and the general public, on matters pertaining to the Monitoring Agency's mandate;
- (g) to provide an effective means to bring to BHP and governments the concerns of Aboriginal Peoples and the general public about the Project and the monitoring and regulation of the Project; and

- (h) to participate as an intervenor, as appropriate, in the dispute resolution process under this Agreement.

5.3 Term The Monitoring Agency shall exist until full and final reclamation of the Project site is completed in accordance with the requirements of all Regulatory Instruments and the terms of this Agreement and completion of any and all post-closure monitoring and maintenance required in connection with the Project.

5.4 Composition

- (a) The board of the Agency shall consist of seven (7) members and the members, who shall not act in representative capacity, shall be appointed as follows:
 - (i) the Aboriginal Peoples shall each appoint a member for a total of four (4) members, and
 - (ii) BHP, Canada and GNWT shall jointly and in Consultation with the Aboriginal Peoples, appoint three (3) members who shall not be employees of any of the parties.
- (b) The members shall appoint a chairperson and a vice-chairperson from among the members.
- (c) Terms of appointment and selection of officials and similar matters such as remuneration and conflict of interest shall be governed by the Monitoring Agency's by-laws.

5.5 Reporting and Accountability

- (a) The Monitoring Agency shall report annually and, as appropriate, shall submit other reports on its findings and recommendations to BHP, the Minister and GNWT. All reports of the Monitoring Agency shall be available to the Aboriginal Peoples and the general public.
- (b) Each of Canada, GNWT and/or BHP, as the case may be, shall:
 - (i) give full and serious consideration to the reports and recommendations of the Monitoring Agency;
 - (ii) implement those recommendations of the Monitoring Agency that it or they consider appropriate; and

- (iii) respond to the Monitoring Agency with its or their written reasons for not accepting the recommendations that are not deemed appropriate.

5.6

Funding

- (a) BHP shall provide adequate financial resources in the Monitoring Agency to carry out its responsibilities.
- (b) For the first two (2) years after establishment of the Monitoring Agency, an annual payment of four hundred and three thousand (\$350,000) dollars shall be made by BHP to the Monitoring Agency to provide funding (the "Core Budget").

[Note to Draft: Canada and GNWT to each contribute \$50,000 each year for first two years.]

- (c) For the third (3rd) year and for each subsequent year, the following provisions shall apply to establishing the Core Budget:
 - (i) The Monitoring Agency shall prepare a work plan for each year which will include a Core Budget;
 - (ii) BHP and the Monitoring Agency shall meet to discuss such work plan and recommended Core Budget and shall establish an annual Core Budget based on the work plan;
 - (iii) In the event that BHP and the Monitoring Agency cannot agree on a Core Budget they shall consult with Canada and GNWT; and
 - (iv) In the event that Canada, GNWT, BHP and the Monitoring Agency cannot agree on the Core Budget, the matter shall be referred to the dispute resolution provisions provided for in Article XIV of this Agreement.
- (d) Once determined, the Core Budget shall be established for [3] years unless the Monitoring Agency requests a shorter or longer term.
- (e) In addition to the Core Budget, BHP may provide additional funding to the Monitoring Agency for research and monitoring activities based on proposals submitted to BHP by the Monitoring Agency for which funding is not available in the Core Budget. BHP shall in good faith review and consider proposals submitted by the Monitoring Agency for additional funding and shall provide

written reasons to the Monitoring Agency, Canada and GNWT if any request for funding is not accepted by BHP.

5.7 Transitional Provisions BHP, Canada and GNWT and the Aboriginal Peoples shall establish the constitution and by-laws of the Monitoring Agency in accordance with the terms of the Protocol Agreement attached hereto as Schedule "C".

5.8 Information and Cooperation Each of Canada, GNWT and BHP shall cooperate with the Monitoring Agency and provide the Monitoring Agency with all necessary information and assistance required for the Monitoring Agency to carry out its mandate.

ARTICLE VI

ENVIRONMENTAL MANAGEMENT PLANS

6.1 Construction Phase Environmental Management Plan On or before February 1, 1997, BHP shall provide the Minister, GNWT and the Monitoring Agency with copies of its environmental management plan for the construction phase of the Project (the "Construction Phase Management Plan"). The Construction Phase Management Plan shall contain specific and comprehensive plans to deal with environmental matters of particular concern while construction of the Project is ongoing, including the following:

- (a) quality control and assurance program;
- (b) environmental awareness training for employees and contractors;
- (c) regular briefing on environmental matters to on-site supervisors;
- (d) detailed environmental mitigation measures;
- (e) material management plans, including a spill contingency plan for on site spills and spills on the winter road; and
- (f) environmental monitoring programs.

6.2 Operating Environmental Management Plan

- (a) Six (6) months before the anticipated commencement of Commercial Production, BHP shall provide the Minister, GNWT and the Monitoring Agency with copies of its environmental management plan for the operating phase of the Project (the "Operating Environmental Management Plan").

Thereafter, BHP from time to time shall provide the Minister, GNWT and the Monitoring Agency with any and all amendments or revisions to the Operating Environmental Management Plan as and when such amendments or revisions are made.

- (b) The Operating Environmental Management Plan shall at all times contain specific and comprehensive plans to deal with the following environmental matters:
- (i) air quality management;
 - (ii) material management plans, including a spill contingency plan for on site spills and spills on the winter road;
 - (iii) wildlife management plans, including but not limited to caribou management, grizzly bear management, traffic management plans related to the protection of caribou and grizzly bears and the effects of esker disturbance on wildlife;
 - (iv) aquatic life management plans;
 - (v) waste management plan;
 - (vi) environmental monitoring programs; and
 - (vii) quarry management..
- (c) The Operating Environmental Management Plan shall be developed and updated in conjunction and in co-operation with all relevant agencies of Canada and GNWT and the Monitoring Agency. BHP shall incorporate available results of all traditional knowledge studies, including the Phase II Traditional Knowledge Study, as well as technological advances in environmental management in the Operating Environmental Management Plan. Traditional knowledge shall be considered fully along with scientific knowledge in developing and amending the Operating Environmental Management Plan.

6.3

Review of Environmental Management Plans

- (a) In the event that, at any time, the Minister, including at the request of the Monitoring Agency, GNWT or the Aboriginal Peoples, determines that an Environmental Management Plan is inadequate or incomplete, the Minister

may provide BHP with a Minister's Report and BHP shall forthwith, but in any event within sixty (60) days of receipt of the Minister's Report provide:

- (i) the Minister with revisions to the Environmental Management Plan which address satisfactorily the deficiencies described in the Minister's Report;
 - (ii) a replacement Environmental Management Plan which addresses satisfactorily the deficiencies described in the Minister's Report; or
 - (iii) specific replies to the deficiencies described in the Minister's Report and BHP's detailed explanation as to why, in BHP's view, the Environmental Management Plan need not be revised or replaced to deal with the deficiencies outlined in the Minister's Report.
- (b) In relation to matters substantially within the jurisdiction of GNWT, the Minister shall provide BHP with a Minister's Report pursuant to Section 6.3(a) when the Minister receives a request from GNWT pursuant to that section and the GNWT request shall be included with such Minister's Report.
- (c) To the extent that the Minister is not satisfied with the revisions to the Environmental Management Plan referred to in Section 6.3(a)(i), the replacement Environmental Management Plan referred to in Section 6.3(a)(ii) or the replies and explanation referred to in Section 6.3(a)(iii), the Minister may refer the matter to the dispute resolution process provided for in Article XIV.

ARTICLE VII

ENVIRONMENTAL MONITORING PROGRAMS

7.1 Environmental Monitoring Programs BHP shall undertake compliance and environmental effects monitoring of the Project as part of the Environmental Management Plans to meet the goal of not significantly adversely affecting the receiving and surrounding environment. The Environmental Monitoring Programs contemplated by this Article shall be reviewed and approved in conjunction with the Environmental Management Plans. The monitoring activities intended to achieve this goal include:

- (a) to maintain compliance with regulatory requirements;
- (b) to determine the environmental effects of the Project;

- (c) to test impact predictions; and
- (d) to measure the performance of operations and effectiveness of impact mitigation.

7.2 Environmental Components To meet the goal set out in Section 7.1 and not duplicate regulatory requirements, environmental components, including the following, will be monitored:

- (a) ambient water, including quality, hydrology, lake and stream ecology and ground water;
- (b) wildlife, including caribou and bears;
- (c) reclamation, including revegetation success, soil suitability and the diversity and density of plants;
- (d) esker disturbances;
- (e) vegetation, including the loss of habitat;
- (f) permafrost;
- (g) climate at the permanent camp;
- (h) ambient air quality; and
- (i) stationary emission sources.

7.3 BHP shall deliver monitoring data and information to the Monitoring Agency in time frames and in formats developed in Consultation with the Monitoring Agency.

7.4 Monitoring and Research Activities BHP shall carry out the monitoring and research activities contemplated in Section 7.1 in a manner which will provide data which will be useful in cumulative effects monitoring programs and shall consult and cooperate with the agencies undertaking such programs, as appropriate.

ARTICLE VIII

CLOSURE AND RECLAMATION PLAN

8.1 Closure and Reclamation Plan

- (a) BHP shall, within 2 years from the date of this Agreement, deliver to the Minister, GNWT and the Monitoring Agency for their review and the Minister's approval a plan of reclamation of the Project site (including any amendments, revisions or replacements to such plan, hereinafter referred to as the "Reclamation Plan"). The Reclamation Plan shall be prepared in Consultation and in co-operation with the Minister, GNWT and the Monitoring Agency and shall include, without limitation:
- (i) specific and comprehensive plans to deal with the reclamation of the Project site with the objective of restoring the Project site to its original state to the extent possible including removal of all improvements;
 - (ii) ongoing reclamation during the term of the Surface Leases;
 - (iii) plans to address the following:
 - (A) buildings and structures;
 - (B) roads and airstrips;
 - (C) petroleum and chemical storage areas and facilities;
 - (D) site drainage systems;
 - (E) tailings disposal facilities;
 - (F) pipelines and electrical transmission installations;
 - (G) water supply facilities;
 - (H) waste rock disposal sites;
 - (I) garbage, sewage and waste storage or disposal sites and facilities;

- (J) site drainage systems, granular material deposits and open pit areas;
 - (K) other facilities or sites utilized during the operation of the Project; and
 - (L) the Project site generally.
- (b) BHP shall include in each Annual Report a progress report for the preceding year describing the ongoing reclamation of the Project site.

8.2 Review of Reclamation Plan

- (a) In the event that, at any time, the Minister, including at the request of the Monitoring Agency, GNWT or the Aboriginal Peoples, determines that the Reclamation Plan is inadequate or incomplete, the Minister may provide BHP with a Minister's Report and BHP shall forthwith, but in any event within sixty (60) days of the receipt of the Minister's Report provide:
- (i) the Minister with revisions to the Reclamation Plan which address satisfactorily the deficiencies described in the Minister's Report;
 - (ii) a replacement Reclamation Plan which addresses satisfactorily the deficiencies described in the Minister's Report; or
 - (iii) specific replies to the deficiencies described in the Minister's Report and BHP's detailed explanation as to why, in BHP's view, the Reclamation Plan need not be revised or replaced to deal with the deficiencies described in the Minister's Report.
- (b) In relation to matters substantially within the jurisdiction of GNWT, the Minister shall provide BHP with a Minister's Report pursuant to Section 8.2(a) when the Minister receives a request from GNWT pursuant to that section and the GNWT request shall be included in such Minister's Report.

8.3 Natural Recovery Closure and reclamation shall be undertaken in such a manner as to enhance the natural recovery of the areas affected by the Project by:

- (a) ensuring that mine facilities and infrastructure are abandoned in such a manner that:

- (i) the site is physically stable and any requirement for long-term maintenance and monitoring is minimized;
 - (ii) any threat to public safety is eliminated; and
 - (iii) all buildings and man-made structures are removed;
- (b) preventing continuing impacts from contaminants and wastes on the environment including those associated with acid rock drainage; and
- (c) returning affected areas to a state where negative effects on the use of the surrounding lands compatible with the original undisturbed conditions are minimized to the fullest extent reasonably possible giving due consideration to factors such as economics, future ecosystem productivity and future uses.

8.4 Progressive Reclamation Reclamation of the Project site shall be undertaken progressively during the life of the Project, to the extent feasible, given the mining methods employed.

8.5 Failure to Restore

- (a) In the event that BHP fails to restore the Project site as required by the Reclamation Plan and the regulations to the *Territorial Lands Act*, the Minister shall:
- (i) use the Security Deposit to cause the reclamation of all or any part of the Project site; and
 - (ii) comply with the laws of general application with respect to carrying out such reclamation.
- (b) Any costs incurred by the Minister in addition to the amount of the Security Deposit shall be recoverable from BHP as a debt due to Her Majesty.
- (c) Subject to Section 13.4(d), money recovered from the realization of the Security Deposit shall be used only for the purpose of accomplishing such reclamation.

ARTICLE IX

ONGOING ENVIRONMENTAL COMPLIANCE

9.1 Generally

- (a) BHP shall at all times carry out the Project in compliance with all environmental laws and regulations applicable to it and in compliance with all Regulatory Instruments.
- (b) BHP shall at all times carry out the Project in compliance with this Agreement, including all Environmental Plans and Programs submitted and approved in accordance with this Agreement.
- (c) BHP shall take prompt and appropriate corrective action to remedy any non-compliance with Section 9.1(a).
- (d) With respect to the review or approval of Environmental Plans and Programs having aspects within the authority of two or more government authorities or regulatory agencies, the Minister shall, facilitate procedures for such authorities and agencies to deal with these matters in an integrated or complimentary. The Monitoring Agency would be invited to participate as appropriate.

9.2 Waste Disposal BHP shall manage all waste in accordance with the approved waste management plan required by Section 6.2(b) of this Agreement.

9.3 Maintenance of Project Site

- (a) BHP shall at all times keep the Project site in a neat and clean condition free of debris.
- (b) BHP shall undertake such corrective measures as may be specified by the Minister and GNWT in the event of:
 - (i) waste spills on the Project site; or
 - (ii) water or wind erosion of the Project site resulting from the Project.

9.4 Fuel and Hazardous Chemicals

- (a) BHP shall take all reasonable precautions to prevent the migration of spilled petroleum fuel over any portion of the Project site or through seepage in the ground by:
- (i) constructing a dyke around any stationary petroleum fuel container where the container has a capacity exceeding four thousand (4,000) litres; and
 - (ii) ensuring that the dyke(s) and the area enclosed by the dyke(s) is impermeable to petroleum products at all times; and
 - (iii) ensuring that the volumetric capacity of the dyke area shall, at all times, be equal to the capacity of the largest petroleum fuel container plus ten (10%) percent of the total displacement of all other petroleum fuel containers placed therein; or
 - (iv) such other alternative specifications submitted by BHP and approved by the Minister and GNWT.
- (b) BHP shall ensure that fuel storage containers are not located within thirty-one (31) metres of the ordinary high water mark of any body of water unless specifically authorized by the Minister and GNWT.
- (c) BHP shall mark with clearly visible flags, posts or similar devices all petroleum fuel storage facilities, including fill and distribution lines.
- (d) BHP shall immediately report all spills of petroleum and hazardous chemicals in accordance with the GNWT Spill Report form and any amendments thereto, or in such other manner as is satisfactory to the Minister and GNWT.

ARTICLE X

ARCHAEOLOGICAL, HERITAGE AND HISTORICAL SITES

[Revised Text to be prepared by GNWT.]

10.1 Minimize Impacts BHP shall carry out the Project to minimize the impacts on historical, heritage and archaeological sites.

10.2 Archaeological Surveys

- (a) In the continuing exploration and development of the Project site BHP shall conduct Archaeological Surveys.
- (b) Archaeological Surveys of new sites must be done to the highest standards of the day and must respect places of significance to Aboriginal Peoples.
- (c) BHP shall consult with affected Aboriginal Peoples and communities to ensure that traditional knowledge is incorporated into the Archaeological Surveys and to ensure that burial sites are identified.
- (d) BHP shall incorporate traditional knowledge into Archaeological Surveys and ensure burial sites are identified in partnership with the affected Aboriginal Peoples and communities to the greatest extent possible or if not possible, in Consultation with the affected Aboriginal Peoples and communities.
- (e) In the event that archaeological sites are discovered in carrying out the Project, BHP shall notify GNWT and affected Aboriginal Peoples of the presence of the site and, subject to Section 10.2(e), BHP shall take measures to protect the site.
- (f) In conducting archaeological surveys and in the event that it becomes necessary to disturb the site and collect the artifacts, BHP shall obtain all necessary authorizations and comply with all applicable laws.

ARTICLE XI

TRADITIONAL KNOWLEDGE

11.1 Phase II Traditional Knowledge Study In order to effectively incorporate the traditional knowledge of Aboriginal Peoples in its Environmental Plans and Programs, BHP shall complete the study (the "Phase II Traditional Knowledge Study") BHP has agreed to carry out in order to identify categories of the traditional knowledge of Aboriginal Peoples to be incorporated into the Environmental Plans and Programs.

11.2 Principles The following principles shall be incorporated in the Phase II Traditional Knowledge Study and into any agreement entered into between BHP and Aboriginal Peoples with respect to the Phase II Traditional Knowledge Study:

- (a) it shall, to the greatest extent possible, be designed and carried out in partnership with the Aboriginal Peoples or if not possible be designed in Consultation with the Aboriginal Peoples;
- (b) the traditional knowledge shall remain the property of the Aboriginal Peoples and no proprietary information shall be disclosed by BHP to parties other than employees of BHP directly involved in the Phase II Traditional Knowledge Study without the express prior consent of the affected Aboriginal Peoples; and
- (c) each Aboriginal group shall determine the extent of its own participation in the Phase II Traditional Knowledge Study and the inclusion of its own expertise and knowledge.

11.3 Incorporation of Traditional Knowledge Subject to Section 11.2(b), BHP shall incorporate all available traditional knowledge in the Environmental Plans and Programs and shall give all available traditional knowledge full consideration along with other scientific knowledge as the Environmental Plans and Programs are developed and revised.

ARTICLE XII

STUDIES AND RESEARCH

12.1 Reclamation Plan Studies In connection with the Reclamation Plan, BHP shall:

- (a) conduct revegetation and reclamation studies as portions of the Project site are reclaimed and incorporate the results of such studies in the Reclamation Plan; and
- (b) conduct studies with respect to alternate methods of pit refilling and incorporate the results of such studies in the Reclamation Plan.

12.2 Toxicity of Kimberlite BHP shall develop, in conjunction and co-operation with the Minister of the Environment (Canada), a research program on the toxicity of kimberlite.

12.3 Water Samples BHP shall submit to the Minister of Health (Canada) as soon as practicable, a report from a certified environmental laboratory with respect to water samples taken by BHP and shall provide a copy of such report to the Minister.

12.4 Other Studies BHP shall conduct such further or other studies and research as may necessary to carry out its obligations under this Agreement.

ARTICLE XIII

SECURITY AND ENFORCEMENT

[Note to Draft: This Article to be re-drafted to clarify provisions and requires further consideration.]

13.1 Security As security for the performance of its obligations under this agreement, BHP shall provide to the Minister:

- (a) a security deposit (the "Security Deposit") in a form provided for in Section 12.3 of the regulations to the *Northwest Territories Waters Act* or any other form of security satisfactory to the Minister, to be held by Canada in the following amounts and according to the following schedule:
 - (i) within thirty (30) days of the signing of this Agreement, an amount of \$500,000;
 - (ii) on the first anniversary of this Agreement, an additional amount of \$1,500,000;
 - (iii) on each of the second and third anniversaries of this Agreement, the additional amount of \$2,000,000;
 - (iv) on each of the seven subsequent anniversaries thereafter, an additional amount of \$725,000; and
- (b) in addition to the Security Deposit required pursuant to Section 13.1(a) an irrevocable, guarantee [in the amount of • to be discussed: amount of cap] (the "Guarantee") of The Broken Hill Proprietary Company Limited (the "Guarantor"), in form and substance acceptable to Canada, GNWT and BHP, and the Guarantee shall provide, inter alia, that:
 - (i) it shall terminate upon full and final reclamation as contemplated in Section 16.1;

- (ii) Canada shall exercise its rights in respect of the Security Deposit, as applicable to the particular nature of the Events of Default(s), prior to the Guarantor being obligated to perform under the Guarantee;
 - (iii) the Guarantor shall be given notice of the occurrence of any Event of Default concurrently with the giving of such notice to BHP;
 - (iv) the Guarantor shall be afforded a cure period of ninety (90) days following the later of:
 - (A) expiry of the cure periods afforded BHP; and
 - (B) application by Canada of the Security Deposit to the extent permitted hereunder,
 - (v) disputes in respect of the Guarantee shall be subject to the same dispute resolution provisions as those provided under Article XIV of the Agreement; and
- (c) the Security Deposit and the Guarantee are in addition to, and not in substitution for, the security which BHP may be required to provide pursuant to any Water Licenses.

[Note to Draft: Security to be reviewed in conjunction with the security required by the Water Board to ensure adequate security based on cost estimates and other factors.]

13.2 Cost Variances BHP shall submit to the Minister, GNWT and the Monitoring Agency every two years after the commencement of Commercial Production a report describing any variances with the Reclamation Plan and updated cost estimates.

13.3 Progress Review

- (a) Based upon the reports and updated cost estimates provided by BHP pursuant to Section 13.2, the Minister, GNWT and BHP in Consultation with the Monitoring Agency, shall, every two (2) years after the commencement of Commercial Production, review the terms (including amount) of the Security Deposit and the [cap] on the Guarantee and agree on adjustments thereto, as appropriate, with a view to ensuring the adequacy of same for the purposes intended.

[Note to Draft: Review procedure to be conducted in conjunction with Water License security reviews to ensure adequacy of security.]

- (b) Such review shall be conducted as follows:
- (i) BHP shall submit a proposal on terms of the Security Deposit to the Minister, GNWT and the Monitoring Agency;
 - (ii) BHP, the Minister and GNWT shall appoint an independent consultant to assist with the review of such proposal;
 - (iii) in the event that the Minister, GNWT and BHP cannot agree on an independent consultant, the matter shall be referred to the dispute resolution procedure provided for in Article XIV;
 - (iv) the Minister, GNWT and BHP shall review, in Consultation with the Monitoring Agency, and consider BHP's proposal for revisions to the terms of the Security Deposit together with the independent consultant and the parties shall determine the terms of the Security Deposit for the period up to the next review; and
 - (v) in the event that the parties cannot agree on the terms for the Security Deposit, the matter shall be referred to the dispute resolution procedure provided for in Article XIV.
- (c) Following the tenth (10th) anniversary of this Agreement and every two (2) years thereafter the Minister shall review the progress made with regard to ongoing reclamation and the actual costs experienced to date and may revise the [terms, including the] amount of the Security Deposit.

13.4 Security Deposit Application

- (a) With respect to those matters which represent a [serious threat] to the Environment, the first \$2,000,000 of the Security Deposit shall secure performance of BHP's obligations under this Agreement (including, but not limited to closure and reclamation) and shall be immediately available to the Minister and GNWT to cure any default by BHP under this Agreement without the requirement to refer any dispute with respect to the use of such portion of the deposit to the dispute resolution procedure provided for in Article XIV.
- (b) BHP shall forthwith reimburse the Security Deposit with the amounts required to comply with Section 13.1(a).
- (c) BHP shall be entitled to refer the legitimacy of the use of the Security Deposit requirement to reimburse the Security Deposit for amounts used by the

Minister or GNWT to the dispute resolution procedure provided for in Article XIV.

- (d) The balance of the Security Deposit shall secure BHP's obligations as they relate to closure and reclamation.

13.5 Events of Default and Remedies

- (a) The following events shall entitle the Minister and GNWT to use the Security Deposit to carry out the work required to cure such default including hiring persons to prepare required reports and plans and BHP shall forthwith reimburse the Security Deposit by the amounts required to comply with Section 13.1(a):

- (i) failure to provide the Minister, GNWT, the Monitoring Agency and the Aboriginal Peoples with an Annual Report or Environmental Impact Report, or a revision or replacement of such report as required by a Minister's Report, within thirty (30) days of its due date;

[Note to Draft: BHP to be entitled to request extensions for delivery of reports if it has fair and reasonable grounds for delay.]

- (ii) failure to provide the Minister, GNWT and the Monitoring Agency with the Construction Phase Management Plan or the Operating Environmental Management Plan within thirty (30) days of its due date; and
- (iii) failure to provide the Minister, GNWT and the Monitoring Agency with amendments and revisions to the Environmental Management Plans [on a timely basis].

- (b) In the event that BHP fails to provide the Monitoring Agency with its annual Core Budget within thirty (30) days of [date Core Budget to be disbursed] the Minister and GNWT shall be entitled to use the Security Deposit to provide the Monitoring Agency with the Core Budget and BHP shall forthwith reimburse the Security Deposit by the amounts required to comply with Section 13.1(a).
- (c) In the event that BHP does not reimburse the Security Deposit as required by Section 13.5(a) or (b) within ten (10) days of a demand for such payment made by the Minister, the Minister may suspend the Surface Leases until such time as the required payment is made.

- (d) In the event that BHP fails to provide the Minister with the Guarantee or the payments required to be made under Section 13.1(a) for the Security Deposit, the Minister shall be entitled to suspend or terminate the Surface Leases until such time as the Guarantee is delivered or the required payments to be made under the Security Deposit are made.
- (e) The following events shall entitle the Minister to take any and all steps as are necessary to secure the integrity of the environment affected by the Project and all costs incurred by Canada and/or GNWT in excess of the Security Deposit in carrying out such steps shall immediately be paid by BHP to the Minister or to GNWT, as the case may be and/or suspend or terminate the Surface Leases:
 - (i) failure to properly carry out the approved Environmental Plans and Programs;
 - (ii) failure to comply with any of the provision of Article IX with respect to ongoing environmental compliance within [30 days] of notice to BHP by either of the Minister or GNWT of such non-compliance; or
 - (iii) failure to comply with Section 8.3 or 8.4 with respect to the reclamation of the Project site within [30 days] of notice to BHP by the Minister of such non-compliance.
- (f) Upon the occurrence of any non-compliance by BHP with any provisions of this Agreement not in Sections 13.5(a), (b), (c) (d) or (e) either of the Minister or GNWT shall forthwith provide BHP with a notice of default (a "Notice of Default"). Each Notice of Default shall describe the specific default or defaults as well as the steps required to be taken to rectify such default or defaults.

[Note to Draft: Notice of Default to apply to all defaults.]

- (g) BHP shall forthwith and in any event within ten (10) days rectify the default or defaults described in the Notice of Default or in the alternative the matter shall be referred to dispute resolution as provided for under Article XIV provided that, the Minister and GNWT shall be entitled to use up to the first two million (\$2,000,000) dollars of the Security Deposit to take such steps as may be necessary to rectify or remedy the specific default immediately upon the Minister or GNWT providing BHP with the Notice of Default.

- (h) Notwithstanding Section 13.5(e)(ii), the remedies provided for hereunder are not intended to duplicate remedies available pursuant to environmental legislation, regulations or under the Regulatory Instruments.

ARTICLE XIV

RESOLUTION OF DISPUTES

[Note to Draft:

1. Parties to pay their own costs of dispute resolution unless otherwise ordered by the Arbitration Committee.
2. Dispute Resolution will not apply to approval by the Minister in his discretion of the Reclamation Plan.
3. Separate Non-Binding Review by Panel of Experts for disputes with respect to approval of the Reclamation Plan to be added.]

14.1 Dispute Resolution Canada, GNWT and BHP hereby agree that any matters of dispute arising out of this Agreement shall be resolved as follows:

- (a) firstly, Canada, GNWT and BHP shall act in good faith and engage in discussions to resolve any dispute;
- (b) secondly, in the event that any one of Canada, GNWT or BHP determine that the dispute cannot be resolved through discussions, Canada and GNWT shall appoint, in Consultation with BHP, a mediator to assist in further discussions to resolve the dispute; and
- (c) thirdly, in the event that any one of Canada, GNWT or BHP determine that the dispute cannot be resolved satisfactorily with the assistance of a mediator, the dispute shall be referred to a committee of three arbitrators (the "Arbitration Committee") composed of an appointee selected by Canada and GNWT, an appointee selected by BHP and a third appointee selected by the other two appointees and the arbitration process shall be open to the public. Any decision of an Arbitration Committee shall be binding on the parties.

14.2 Intervention by Monitoring Agency The Monitoring Agency shall be entitled to intervene, as appropriate, in the resolution of disputes under this Agreement.

ARTICLE XV

GENERAL PROVISIONS

15.1 Remedies Not Exclusive BHP acknowledges and agrees that the rights and remedies of Canada and GNWT under this Agreement are cumulative and in addition to, and not in substitution for, any rights, powers or remedies provided at law or in equity including, without limitation, pursuant to applicable environmental legislation. Any single or partial exercise by Canada and GNWT of any right or remedy for a default or breach of any term, covenant, condition or agreement in this Agreement does not affect any of Canada's or GNWT's rights and does not waive, alter, affect or prejudice any other right or remedy to which Canada or GNWT may be entitled for the same default or breach. Any waiver by Canada or GNWT of the strict observance of, performance of, or compliance with, any term, covenant, condition or agreement of this Agreement must be in writing to be effective and any waiver or indulgence by Canada or GNWT shall not constitute a waiver of any other provisions, a continuing waiver or a waiver of any subsequent default.

15.2 Review and Amendment of Agreement

- (a) After each of the first five anniversary dates of this Agreement and thereafter on each fifth anniversary date of this Agreement, Canada, GNWT and BHP shall reconsider and review in Consultation with the Monitoring Agency, the terms of this Agreement with a view to amending provisions of this Agreement, if necessary or appropriate.
- (b) Further, this Agreement may be amended at any time by agreement among Canada, GNWT and BHP following Consultation with the Monitoring Agency provided that any amendment to the substance of Articles I, II, V, X, XI or XVI or Section 15.2 shall, unless the Monitoring Agency shall, by unanimous decision of its members, have concurred with the making of same in its advice to Canada, GNWT and BHP, only be made following the conduct of public meetings and Consultation with the Aboriginal Peoples in which Canada, GNWT and BHP shall give due and proper consideration to the views gathered through such meetings and Consultation and shall in good faith undertake to achieve a consensus among themselves and the Aboriginal Peoples with respect to the amendments to be made to the substance of such provisions.

15.3 Governing Law This agreement is governed by and is to be construed in accordance with the laws of the Northwest Territories and the laws of Canada applicable therein.

15.4 Further Assurances The parties shall with reasonable diligence do all things and provide such further documents or instruments as may be reasonably necessary or desirable to give effect to this Agreement and to carry out its provisions.

15.5 Assignment This agreement may not be assigned by either party hereto without the written consent of the other party, such consent not to be unreasonably withheld, but if so assigned shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and assigns. [Note to Draft: This provision to be amended to allow BHP to assign its obligations if security is adequate and Canada and GNWT are otherwise satisfied that the assignee will act responsibly and also to allow GNWT to assign as appropriate - GNWT to assist in drafting.]

15.6 Severability Any provision of this agreement which is or becomes prohibited or unenforceable in any jurisdiction shall not invalidate or impair the remaining provisions hereof which shall be deemed severable from any such prohibited or unenforceable provision and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

15.7 Member of House of Commons Not to Benefit As required by the *Senate and House of Commons Act*, it is an express condition of this Agreement that no member of the House of Commons shall be admitted to any share or part of this agreement or to any benefit arising therefrom.

15.8 Not a Partnership or Joint Venture Nothing contained in this Agreement nor any acts of Canada, GNWT or BHP shall be deemed to constitute any of BHP, GNWT or Canada partners, joint venturers or principal and agent.

15.9 Liability This Agreement in no way limits the obligations of BHP with respect to all environmental matters relating to the Project including, without limitation, the legal obligation to undertake full mine site reclamation and post closure water treatment in respect of the Project and any other potential development within the bounds of the Project.

15.10 Nothing in this agreement shall lessen, or otherwise remove any obligation or commitment undertaken by BHP in the proposal to operate the diamond mine as fully described in the Impact Statement prepared by BHP dated July 24, 1995 as well as the Additional Information Request dated December 19, 1995, an Update dated December 15, 1995 and the Environmental Baseline Study, all of which were submitted to the Environmental Assessment Review Panel.

15.11 Force Majeure Except in respect of matters of a [serious threat to the environment] in which case this section will not apply, in the event that BHP is delayed or hindered in or prevented from the performance of its obligations under this Agreement by

reason of an event beyond the reasonable control of BHP, including, without limitation, strikes, inability to procure materials or services, civil commotion, sabotage or act of God, then obligations under this Agreement not fulfilled by BHP as a direct result of such delay or hindrance shall not constitute a default under this Agreement during the period of such delay or hindrance.

15.12 Notices Any notice, demand, waiver, election or other communication required or permitted to be given hereunder shall be in writing and shall be deemed to be sufficiently given if personally delivered or telecopied, addressed to the party to whom the same is given, as follows:

(a) In the case of BHP:

BHP Diamonds Inc.
1050 West Pender Street, Suite 1600
Vancouver, BC V6E 3S7
Attention: James Excell
Phone: 604-683-6921
Fax: 604-682-2667

with a copy to:

Davis & Company
Barrister & Solicitors
2800 Park Place
666 Burrard Street
Vancouver, BC V6C 2Z7
Attention: David H. Searle
Phone: 604-643-2966
Fax: 604-687-1612

(b) In the case of Canada or the Minister:

Department of Indian Affairs and Northern Development
Les Terraces de la Chaudiere
10 Wellington Street
Hull, Quebec K1A 0H4

[Consider: other persons to receive notices.]

with a copy to:

DIAND Legal Services
Box 1018
Les Terraces de la Chaudiere
10 Wellington Street
Hull, Quebec K1A 0H4
Attention: Mr. William J.S. Elliot
Telephone: (819) 994-414
Fax: (819) 953-7652

(c) In the case of GNWT:

Government of the Northwest Territories
P.O. Box 1320
[delivery address]
Yellowknife, Northwest Territories X1A 2L9
Attention: Mr. Andrew Gamble, Deputy Minister
Resources, Wildlife and Economic Development
Telephone: (403)
Fax: (403) 873-0563

or at such other address as any party may from time to time advise the other by notice in writing. Any notice given by personal delivery shall be deemed to be received on the date of delivery. Any notice sent by fax shall be deemed to have been received on the next day following its transmission that is not a Saturday, Sunday or statutory holiday in Ontario or in the NWT.

ARTICLE XVI

TERM

16.1 This Agreement shall terminate upon full and final reclamation of the Project site in accordance with the requirements of all Regulatory Instruments and the terms of this Agreement and completion of any and all post-closure monitoring and maintenance required in connection with the Project.

IN WITNESS WHEREOF the Minister of Indian Affairs and Northern Development has hereunto set his hand and seal on behalf of Her Majesty the Queen in right of Canada and the Minister of Resources, Wildlife and Economic Development has hereunto set his hand on behalf of the Government of the Northwest Territories and BHP has hereunto affixed its corporate seal attested to by its proper officers fully authorized on that behalf.

Witness

Minister of Indian Affairs and Northern
Development, on behalf of Her Majesty
The Queen in right of Canada

Witness

Minister of Resources, Wildlife and Economic
Development on behalf of the Government of the
Northwest Territories

BHP DIAMONDS INC.

c/s

Per: _____

Per: _____