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REFERENCE ONLY

## ENVIRONMENTAL AGREEMENT

DATED AS OF JANUARY 6, 1997

AS AMENDED ON APRIL 14, 2003 AND ON APRIL 10, 2013

**NOTE: This Agreement has been assigned by BHP Billiton Canada Inc. to BHP  
Canadian Diamonds Company (since renamed Dominion Diamonds Ekati Corporation).**

THIS BLACKLINED CONSOLIDATION HAS BEEN PREPARED FOR EASE OF  
REFERENCE ONLY.

BETWEEN

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

AND

Comment [MS1]: Note: Canada to be removed by party using release language

THE GOVERNMENT OF THE NORTHWEST TERRITORIES

as represented by the Minister

of ~~Resources,~~

~~Wildlife and Economic Development~~ Environment and Natural Resources

AND

**BHP BILLITON DIAMONDS INC., (formerly known as “BHP Diamonds Inc.,”)  
a body corporate, incorporated pursuant to the laws of**

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**Canada and having its place of business in the City  
of Yellowknife, in the Northwest Territories on behalf  
of itself and its joint venture partners  
(hereinafter referred to as “BHPB”)**

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**INDEX**

**ARTICLE I**

**STATEMENT OF PURPOSE**

1.1 **Purpose**..... 3  
1.2 **Consistency with Purpose**..... 3

**ARTICLE II**

**NO PREJUDICE**

2.1 **No Prejudice**..... 4

**ARTICLE III**

**INTERPRETATION**

3.1 **Definitions**..... 4  
3.2 **Extended Meanings**..... 8  
3.3 **Time of Essence**..... 8  
3.4 **Business Day**..... 8  
3.5 **References**..... 8  
3.6 **Headings**..... 8  
3.7 **Paramountcy**..... 8

**ARTICLE IV**

**INDEPENDENT ENVIRONMENTAL MONITORING AGENCY**

4.1 **Establishment**..... 9  
4.2 **Mandate**..... 9  
4.3 **Term**..... 10  
4.4 **Composition**..... 10  
4.5 **Reporting and Accountability**..... 11  
4.6 **Funding**..... 11  
4.7 **Transitional Provisions**..... 12  
4.8 **Information and Cooperation**..... 12

NOTE: THIS BLACKLINED DRAFT HAS BEEN PREPARED FOR EASE OF REFERENCE ONLY

**ARTICLE V**

**REPORTING REQUIREMENTS**

5.1 Annual Report ..... 13  
5.2 Environmental Impact Report ..... 14  
5.3 Public Meetings ..... 16

**ARTICLE VI**

**ENVIRONMENTAL MANAGEMENT PLANS**

6.1 Contents of Environmental Management Plans ..... 16  
6.2 Construction Phase Environmental Management Plan ..... 17  
6.3 Operating Environmental Management Plan ..... 17  
6.4 Review of Environmental Management Plans ..... 18

**ARTICLE VII**

**ENVIRONMENTAL MONITORING PROGRAMS**

7.1 Environmental Monitoring Programs ..... 18  
7.2 Environmental Components ..... 19  
7.3 Monitoring Data ..... 19  
7.4 Monitoring and Research Activities ..... 19

**ARTICLE VIII**

**CLOSURE AND RECLAMATION PLAN**

8.1 Closure and Reclamation Plan ..... 20  
8.2 Review of Reclamation Plan ..... 21  
8.3 Natural Recovery ..... 21  
8.4 Progressive Reclamation ..... 22  
8.5 Failure to Restore ..... 22  
8.6 Approval of Reclamation Plan ..... 22

**ARTICLE IX**

**ONGOING ENVIRONMENTAL COMPLIANCE**

9.1 Generally ..... 23  
9.2 Waste Disposal ..... 24

NOTE: THIS BLACKLINED DRAFT HAS BEEN PREPARED FOR EASE OF  
REFERENCE ONLY

9.3	<u>Maintenance of Project Site</u> .....	24
9.4	<u>Fuel and Hazardous Chemicals</u> .....	24

**ARTICLE X**

**ARCHAEOLOGICAL SITES**

10.1	<u>Minimize Impacts</u> .....	25
10.2	<u>Archaeological Surveys</u> .....	25

**ARTICLE XI**

**TRADITIONAL KNOWLEDGE**

11.1	<u>Phase II Traditional Knowledge Study</u> .....	26
11.2	<u>Principles</u> .....	26
11.3	<u>Incorporation of Traditional Knowledge</u> .....	26

**ARTICLE XII**

**STUDIES AND RESEARCH**

12.1	<u>Reclamation Plan Studies</u> .....	27
12.2	<u>Toxicity of Kimberlite</u> .....	27
12.3	<u>Water Samples</u> .....	27
12.4	<u>Other Studies</u> .....	27

**ARTICLE XIII**

**SECURITY AND ENFORCEMENT**

13.1	<u>Security</u> .....	27
13.2	<u>Cost Variances and Progress Review</u> .....	29
13.3	<u>GNWT Jurisdiction</u> .....	30
13.4	<u>Events of Default and Remedies</u> .....	30

**ARTICLE XIV**

**RESOLUTION OF DISPUTES**

14.1	<u>Dispute Resolution</u> .....	32
14.2	<u>Arbitration Committee</u> .....	32

NOTE: THIS BLACKLINED DRAFT HAS BEEN PREPARED FOR EASE OF REFERENCE ONLY

14.3	<b><u>Intervention by Monitoring Agency</u></b> .....	32
14.4	<b><u>Costs of Dispute Resolution</u></b> .....	33
14.5	<b><u>Roles and Responsibilities</u></b> .....	33
14.6	<b><u>Interlocutory Relief</u></b> .....	33

**ARTICLE XV**

**GENERAL PROVISIONS**

15.1	<b><u>Remedies Not Exclusive</u></b> .....	34
15.2	<b><u>Review and Amendment of Agreement</u></b> .....	34
15.3	<b><u>Governing Law</u></b> .....	34
15.4	<b><u>Further Assurances</u></b> .....	35
15.5	<b><u>Assignment</u></b> .....	35
15.6	<b><u>Severability</u></b> .....	35
15.7	<b><u>Member of House of Commons Not to Benefit</u></b> .....	35
15.8	<b><u>Not a Partnership or Joint Venture</u></b> .....	35
15.9	<b><u>Liability</u></b> .....	36
15.10	<b><u>Impact Statement</u></b> .....	36
15.11	<b><u>BHPB as Operator</u></b> .....	36
15.12	<b><u>Co-ordination with Other Instruments</u></b> .....	36
15.13	<b><u>Force Majeure</u></b> .....	36
15.14	<b><u>Notices</u></b> .....	36
15.15	<b><u>Counterparts</u></b> .....	38

**ARTICLE XVI**

**TERM**

16.1	<b><u>Term</u></b> .....	38
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## ENVIRONMENTAL AGREEMENT

This Agreement made as of the 6th day of January, 1997.

### 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~~

Comment [MS2]: See previous comment

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

(hereinafter referred to as the "GNWT")

**AND**

**BHP BILLITON DIAMONDS INC.**, a body corporate, incorporated pursuant to the laws of Canada and having its place of business in the City of Yellowknife, in the Northwest Territories on behalf of itself and its joint venture partners

(hereinafter referred to as "BHPB")

### RECITALS

- A. **WHEREAS** BHPB 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 BHPB for the Project and was designed to identify environmental impacts and measures 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** BHPB 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** BHPB 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, the GNWT and BHPB 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, fish habitat authorizations or other environmental agreements or regulatory instruments, are expressly addressed in a legally binding agreement;
- G.** **AND WHEREAS** BHPB 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;
- H.** **AND WHEREAS**, subject to the normal regulatory process and the requirement to obtain regulatory approvals, the Minister has announced the Government of Canada's approval of 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, BHPB, Canada and the 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:

- (b) to respect and protect land, water and wildlife and the land-based economy, essential to the way of life and well-being of the Aboriginal Peoples;
- (c) to facilitate the use of holistic and ecosystem-based approaches for the monitoring, management and regulation of the Project;
- (d) to provide advice to BHPB to assist BHPB in managing the Project consistent with these purposes;
- (e) to maximize the effectiveness and co-ordination of environmental monitoring and regulation of the Project; and
- (f) 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 consistent 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) 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 **No Prejudice** 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 the Inuit as represented by Kitikmeot Inuit Association.
  - (b) "**Advisory Panel**" has the meaning attributed thereto in Section 8.6(b).
  - (c) "**Annual Report**" has the meaning attributed thereto in Section 5.1(a).
  - (d) "**Arbitration Committee**" has the meaning attributed thereto in Section 14.2.
  - (e) "**Archaeological Site**" means a site or work of archaeological, ethnological or historical importance, interest or significance or a place where an archaeological specimen is found and includes explorers' cairns.

- (f) "**BHPB**" has the meaning attributed thereto in the description of the parties to this Agreement and for greater certainty means the operator for the Project as authorized to enter into this Agreement on behalf of the Joint Venture.
- (g) "**Canada**" means Her Majesty the Queen In Right of Canada.
- (h) "**Commercial Production**" means production at the rate of 80% of design capacity for the plant for 30 consecutive days.
- (i) "**Construction Phase Management Plan**" has the meaning attributed thereto in Section 6.2.
- (j) "**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.
- (k) "**Core Budget**" means the budget required to provide the Monitoring Agency with adequate financial resources to carry out its responsibilities for a particular period of time determined in accordance with Section 4.6.
- (l) "\$" means Canadian dollars.
- (m) "**Environmental Impact Report**" has the meaning attributed thereto in Section 5.2(a).
- (n) "**Environmental Management Plans**" means the Construction Phase Management Plan, the Operating Environmental Management Plan and all amendments and revisions to such plans.
- (o) "**Environmental Monitoring Programs**" has the meaning attributed thereto in Section 7.1.

- (p) "**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.
- (q) "**Environmental Protection Measures**" means all measures taken to effect 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, closure, reclamation and abandonment of the Project.
- (r) "**Environmental Quality**" means the state of the environment at any time as compared to natural, unaltered characteristics of the area with respect to biological diversity 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.
- (s) "**Fish Habitat Authorization**" means the authorization which has or may be granted to BHPB for the Project pursuant to Section 35(2) of the *Fisheries Act (Canada)*.
- (t) "**Guarantee**" has the meaning attributed thereto in Section 13.1(b).
- (u) "**Guarantor**" has the meaning attributed thereto in Section 13.1(b).
- (v) "**GNWT**" means the Government of the Northwest Territories.
- (w) "**Impact Statement**" has the meaning attributed thereto in the recitals to this Agreement.
- (x) "**Impact and Benefits Agreements**" means those impact and benefit agreements entered into between BHPB and the Aboriginal Peoples with respect to the Project and as same may be supplemented, revised, restated or replaced from time to time during the term of this Agreement.
- (y) "**Joint Venture**" means the unincorporated joint venture established by the parties to the Joint Venture Agreement.

- (z) "**Joint Venture Agreement**" means the agreement among BHPB and Dia Met Minerals Limited, Charles E. Fipke and Dr. Stewart L. Blusson dated August 31, 1990, as amended and replaced by further agreements dated 17 April, 1997.
- (aa) "**Minister**" means,
- (i) Except for the purposes of Article XIII, in respect of the period before April 1, 2014, the Minister of Indian Affairs and Northern Development of Canada, and in respect of the period starting on April 1, 2014, the Minister of Environment and Natural Resources for the Northwest Territories.
- (ii) For the purposes of Article XIII, in respect of the period before April 1, 2014, the Minister of Indian Affairs and Northern Development of Canada, and in respect of the period starting on April 1, 2014, the responsible Ministers of the GNWT under applicable territorial legislation, or as delegated under s. 4 of the Mackenzie Valley Resource Management Act, or as designated by the Commissioner in Executive Council, as the case may be.
- (ab) "**Minister's Report**" means a report that may be provided by the Minister to BHPB in the event that any Annual Report, Environmental Impact Report, Environmental Management Plan, Environmental Monitoring Program or Reclamation Plan provided to the Minister by BHPB is determined by the Minister to be deficient.
- (ac) "**Monitoring Agency**" means the Independent Environmental Monitoring Agency established pursuant to this Agreement.
- (ad) "**Notice of Default**" means a notice which may be issued by the Minister upon the occurrence of any non-compliance by BHPB with any provisions of this

Agreement describing the specific default or defaults including a requirement to rectify such default or defaults.

- (ae) "**Land Use Permits**" means such Land Use Permits which have been or may be granted to BHPB for the Project pursuant to the regulations to the *Territorial Lands Act* or the *Mackenzie Valley Resource Management Act*.
- (af) "**NWT**" means the Northwest Territories.
- (ag) "**Operating Environmental Management Plan**" has the meaning attributed thereto in Section 6.3.
- (ah) "**Phase II Traditional Knowledge Study**" has the meaning attributed thereto in Section 11.1.
- (ai) "**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.
- (aj) "**Project**" has the meaning attributed thereto in the recitals to this Agreement.
- (ak) "**Protocol Agreement**" means the Agreement among Canada, the GNWT, BHPB and the Aboriginal Peoples dated as of October 8, 1996.
  
- (al) "**Reclamation Plan**" has the meaning attributed thereto in Section 8.1(a).
- (am) "**Regulatory Instruments**" means the Water License, the Surface Leases, the Land Use Permits, the Fish Habitat Authorization and such further or other regulatory instruments as may become applicable to environmental management or monitoring of the Project.
- (an) "**Reporting Year**" means, with respect to an Annual Report, January 1 to December 31.
- (ao) "**Security Deposit**" has the meaning attributed thereto in Section 13.1.
- (ap) "**Surface Leases**" means such surface leases which may be granted BHPB for the Project pursuant either to the *Territorial Lands Act (Canada)* or the *Federal Real Property and Federal Immovables Act*, or the *Northwest Territories Lands Act (NWT)*.

- (aq) "**Water License**" means any water licenses which may be granted to BHPB for the Project pursuant to the *Northwest Territories Waters Act*, the *Waters Act (NWT)*, and/or the *Mackenzie Valley Resource Management 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 British Columbia and 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 British Columbia or in 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 and all references to this Agreement mean this Environmental Agreement dated as of January 6, 1997.

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 **Paramountcy** 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 Fish Habitat Authorization or the Land Use Permits, the terms of such statute, regulation or Regulatory Instrument shall prevail to the extent of the conflict or inconsistency.

#### ARTICLE IV

##### INDEPENDENT ENVIRONMENTAL MONITORING AGENCY

4.1 **Establishment** Canada, the GNWT and BHPB agree that there shall be established, within ninety (90) days of the date of this Agreement and in accordance with Section 4.7 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 *Societies Act*, R.S.N.W.T. 1988, c. S-11, and operate at arms length from, and independent from, BHPB, Canada and the GNWT.

4.2 **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 Article I;
- (b) to serve as a public watchdog of the regulatory process and the implementation of this Agreement;
- (c) to compile and analyze available relevant Environmental Quality data, in order to review, report, or make recommendations concerning:
  - (i) the environmental effects monitoring program respecting short-term, long-term and cumulative impacts, carried out by BHPB pursuant to this Agreement;
  - (ii) government compliance monitoring reports and BHPB 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 the GNWT; and
  - (vi) the integration of 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 BHPB 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.

4.3 **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.

#### 4.4 **Composition**

- (a) The board of the Monitoring Agency shall consist of ~~sixseven (67)~~ 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) BHPB, ~~Canada~~ and the GNWT shall jointly and in Consultation with the Aboriginal Peoples, appoint ~~twothree (23)~~ 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.

#### 4.5 **Reporting and Accountability**

- (a) The Monitoring Agency shall report annually and, as appropriate, shall submit other reports on its findings and recommendations to BHPB ~~and~~ the Minister ~~and the GNWT~~. All reports of the Monitoring Agency shall be available to the Aboriginal Peoples and the general public.
- (b) Each of ~~Canada,~~ the GNWT and/or BHPB, 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.

4.6

**Funding**

- (a) BHPB shall during the term of this Agreement (irrespective of whether the Core Budget shall have been established in accordance with Section 4.6(c)) provide adequate financial resources to the Monitoring Agency to carry out its responsibilities.
- (b) For each of the first two (2) years after establishment of the Monitoring Agency the Core Budget shall be four hundred and fifty thousand (\$450,000) dollars, which shall be funded as follows:
  - (i) for each of the first two years after establishment of the Monitoring Agency, BHPB shall provide three hundred and fifty thousand (\$350,000) dollars to fund the Monitoring Agency;
  - (ii) for the first year after establishment of the Monitoring Agency, Canada shall provide one hundred thousand (\$100,000) dollars to fund the Monitoring Agency and thereafter Canada shall have no further obligation to provide funding to the Monitoring Agency; and
  - (iii) for the second year after establishment of the Monitoring Agency, the GNWT shall provide one hundred thousand (\$100,000) dollars to fund the Monitoring Agency and thereafter the GNWT shall have no further obligation to provide funding to the Monitoring Agency.
- (c) For the third (3rd) year and for each subsequent year the following provisions shall apply to the establishment of the Core Budget:
  - (i) The Monitoring Agency shall prepare a work plan for each year which will include a Core Budget and a review of the prior year's expenditures;
  - (ii) BHPB and the Monitoring Agency shall meet to discuss such work plan and recommended Core Budget and shall establish a Core Budget based on the work plan;
  - (iii) In the event that BHPB and the Monitoring Agency cannot agree on a Core Budget they shall consult with ~~Canada and~~ the GNWT; and

- (iv) In the event that ~~Canada~~, the GNWT, BHPB and the Monitoring Agency cannot agree on the Core Budget, the matter shall be referred to the dispute resolution process provided for in Article XIV of this Agreement.
- (d) Once determined, the Core Budget shall be established for 2 years unless the Monitoring Agency requests and ~~Canada~~, the GNWT and BHPB agree to a shorter or longer term.
- (e) In addition to the Core Budget, BHPB may provide additional funding to the Monitoring Agency for research and monitoring activities based on proposals submitted to BHPB by the Monitoring Agency for which funding is not available in the Core Budget. BHPB 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 the GNWT if any request for funding is not accepted by BHPB.

4.7 **Transitional Provisions** BHPB, Canada and the 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.

The Parties shall at the request of any party upon sixty (60) days notice consider the timing and advisability of the replacement of the Monitoring Agency created under this Article IV and the Advisory Board created pursuant to the Diavik Environmental Agreement, with a Regional Agency with a similar mandate, provided that if BHPB, as a result of the creation of such Regional Agency, is required to provide annual funding for such Regional Agency, the amount of such annual funding shall not be in excess of the Core Budget for the last year prior to the creation of such Regional Agency.

4.8 **Information and Cooperation** Each of ~~Canada~~, the GNWT and BHPB shall co-operate with the Monitoring Agency and provide the Monitoring Agency with such information and assistance that such parties are reasonably able to provide and which is required for the Monitoring Agency to carry out its mandate.

## ARTICLE V

### REPORTING REQUIREMENTS

5.1 **Annual Report**

- (a) BHPB shall prepare and submit a report (the "Annual Report") to the Minister, ~~the 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 BHPB and shall include the results of BHPB's ongoing compliance with this Agreement and applicable legislation, instruments and agreements for the preceding Reporting Year and providing the Minister, ~~the 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 contain, inter alia, 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 both ensuring that an opportunity is provided for early disclosure and discussion of problems and that each Annual Report meets with the requirements of this Agreement, BHPB shall consult with representatives of the Minister, ~~the GNWT~~ and the Monitoring Agency as BHPB compiles the information and data to be included in such Annual Report.
- (c) Within forty-five (45) days of the receipt by ~~the GNWT~~, the Monitoring Agency and the Aboriginal Peoples of the Annual Report, ~~the GNWT~~, the Monitoring

Agency and the Aboriginal Peoples may advise the Minister whether such Annual Report is unsatisfactory; 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 may advise BHPB whether such Annual Report is satisfactory or whether the Minister has determined that (including based on reports from ~~the 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 BHPB with a Minister's Report.
- ~~(e) In relation to matters substantially within the jurisdiction of the GNWT, the Minister shall provide BHPB with a Minister's Report pursuant to Section 5.1(d) when the Minister receives advice from the GNWT pursuant to Section 5.1(e) that the Annual Report is unsatisfactory and the GNWT advice shall be included in such Minister's Report.~~
- (f) Within sixty (60) days of the Receipt by BHPB of a Minister's Report, BHPB 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.
- (g) The Minister may, ~~after consultation with the GNWT,~~ provide BHPB with an extension of time for delivery of an Annual Report where BHPB is bona fide delayed in completing an Annual Report.

## 5.2 Environmental Impact Report

- (a) BHPB shall prepare and submit to the Minister, ~~the GNWT~~, the Monitoring Agency and the Aboriginal Peoples a comprehensive report (the "Environmental Impact Report") on April 30, 2000 and on each third 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 Environmental Impact Report shall be accompanied by a plain English summary prepared by BHPB 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 BHPB'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 problems 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 both ensuring that an opportunity is provided for early disclosure and discussion of problems and that each Environmental Impact Report meets the requirements of this Agreement, BHPB shall consult with representatives of the Minister, ~~the GNWT~~ and the Monitoring Agency as BHPB compiles the information and data to be included in such Environmental Impact Report.
- (c) Within forty-five (45) days of the receipt by ~~the GNWT~~, the Monitoring Agency and the Aboriginal Peoples of the Environmental Impact Report, ~~the GNWT~~, the Monitoring Agency and the Aboriginal Peoples may advise the Minister whether such Environmental Impact Report is unsatisfactory; 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 may advise BHPB whether the report is satisfactory or whether the Minister has determined (including based on reports from ~~the 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 is deficient, the Minister shall provide BHPB with a Minister's Report.
- (e) ~~In relation to matters substantially within the jurisdiction of the GNWT, the Minister shall provide BHPB with a Minister's Report pursuant to Section 5.2(d) when the Minister receives advice from the GNWT pursuant to Section 5.2(e) that the Environmental Impact Report is unsatisfactory and the GNWT advice shall be included in such Minister's Report.~~

- (f) Within sixty (60) days of the receipt by BHPB of the Minister's Report, BHPB 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 the GNWT,~~ provide BHPB with an extension of time for delivery of an Environmental Impact Report where BHPB is bona fide delayed in completing an Environmental Impact Report.
- (h) The Minister may, after Consultation with ~~the GNWT and~~ the Monitoring Agency, increase the time between the Environmental Impact Reports.

5.3 **Public Meetings** BHPB 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 VI

### ENVIRONMENTAL MANAGEMENT PLANS

6.1 **Contents of Environmental Management Plans** The Environmental Management Plans shall, where applicable, contain the following specific and comprehensive plans:

- (a) air quality management plans;
- (b) materials management plans, including a spill contingency plan for on site spills and spills on the winter road;
- (c) wildlife management plans, including but not limited to caribou management, grizzly bear management and the effects of esker disturbance on wildlife;
- (d) traffic management plans;
- (e) aquatic life management plans;
- (f) waste management plan;
- (g) quarry management plans; and
- (h) environmental monitoring programs;

and such plans shall include, without limitation, the following:

- (a) quality control and assurance programs;
- (b) environmental awareness training for employees and contractors;
- (c) regular briefing on environmental matters to on-site supervisors; and
- (d) detailed environmental mitigation measures.

6.2 **Construction Phase Environmental Management Plan** On or before February 1, 1997, BHPB shall provide the Minister, the 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.

6.3 **Operating Environmental Management Plan**

- (a) Six (6) months before the anticipated commencement of Commercial Production, BHPB shall provide the Minister, the 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, BHPB from time to time shall provide the Minister, ~~the 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. The Operating Environmental Management Plan shall contain specific and comprehensive plans to deal with environmental matters of particular concern during the operation of the Project.
- (b) The Operating Environmental Management Plan shall be developed and updated in conjunction and in co-operation with all relevant agencies of Canada and the GNWT and the Monitoring Agency. BHPB 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 other scientific knowledge in developing, reviewing and amending the Operating Environmental Management Plan.

6.4 **Review of Environmental Management Plans**



- (a) In the event that, at any time, the Minister, including at the request of the Monitoring Agency, ~~the GNWT~~ or the Aboriginal Peoples, determines that an Environmental Management Plan is inadequate or incomplete, the Minister may provide BHPB with a Minister's Report and BHPB 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 BHPB's detailed explanation as to why, in BHPB's view, the Environmental Management Plan need not be revised or replaced to deal with the deficiencies outlined in the Minister's Report.

~~In relation to matters substantially within the jurisdiction of the GNWT, the Minister shall provide BHPB with a Minister's Report pursuant to Section 6.4(a) when the Minister receives a request from the GNWT pursuant to that section and the GNWT request shall be included with such Minister's Report.~~

## ARTICLE VII

### ENVIRONMENTAL MONITORING PROGRAMS

7.1 **Environmental Monitoring Programs** BHPB 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 programs intended to achieve this goal shall include activities designed to:

- (a) measure compliance with regulatory requirements;
- (b) determine the environmental effects of the Project;
- (c) test impact predictions; and
- (d) 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 **Monitoring Data** BHPB 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** BHPB 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) BHPB shall concurrently with delivery thereof as required by the Water License, but in any event within 2 years from the date of this Agreement, deliver to the Minister, the GNWT and the Monitoring Agency for their review and the Minister's approval a plan of reclamation of the Project site, including other areas which may be adversely affected in a material way by the Project, (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, the GNWT and the Monitoring Agency and shall include, without limitation:
- (i) specific and comprehensive plans to deal with the reclamation of the Project site as contemplated in Section 8.3;
  - (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;
    - (L) the Project site generally; and

(M) other areas which may be adversely affected by the Project in a material way.

(b) BHPB 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, ~~the GNWT~~, or the Aboriginal Peoples, determines that the Reclamation Plan is inadequate or incomplete, the Minister may provide BHPB with a Minister's Report and BHPB 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 BHPB's detailed explanation as to why, in BHPB'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 the GNWT, the Minister shall provide BHPB with a Minister's Report pursuant to Section 8.2(a) 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.~~

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 Project 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 such man-made structures are removed as required by the approved Reclamation Plan;
- (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 aesthetics, 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** In the event that BHPB fails to restore the Project site as required by the Reclamation Plan and the regulations to the Mackenzie Valley Resource Management Act/Territorial Lands Act (Canada), the Minister shall:

- (a) as appropriate, use the Security Deposit to cause the reclamation of all or any part of the Project site;
- (b) comply with the laws of general application with respect to carrying out such reclamation; and
- (c) apply any money recovered from the realization of the Security Deposit only for the purpose of remedying any default or defaults by BHPB under this Agreement.

8.6 **Approval of Reclamation Plan**

- (a) Each of ~~Canada~~, the GNWT and BHPB expressly agree that approval of the Reclamation Plan, including approval of any amendments or revisions to the

Reclamation Plan, is a matter within the discretion of the Minister. Accordingly, the Dispute Resolution procedure provided for in Article XIV shall not apply to the resolution of disputes with respect to the approval of the Reclamation Plan including the approval of any amendments or revisions to the Reclamation Plan.

- (b) In the event that the Minister in his discretion does not approve the Reclamation Plan and/or any amendments or revisions to the Reclamation Plan, either of the Minister or BHPB may refer the matter to an independent advisory panel of three advisors (the "Advisory Panel") composed of an appointee selected by the Minister, an appointee selected by BHPB and a third appointee selected by the other two appointees. The parties shall select appointees for the Advisory Panel who have expertise with respect to mine site reclamation. Any recommendation made by the Advisory Panel shall not be binding on the Minister.
- (c) The parties shall bear their own costs relating to submissions to any Advisory Panel and the costs of the Advisory Panel shall be paid as to fifty (50%) percent by BHPB and fifty (50%) percent by ~~Canada~~the GNWT, unless the Advisory Panel in its recommendations assesses any costs against any specified party or parties.
- (d) For greater certainty, the parties acknowledge that the Dispute Resolution Procedure provided for in Article XIV shall apply to any disputes with respect to the adequacy of reclamation carried out by BHPB pursuant to an approved Reclamation Plan.

## ARTICLE IX

### ONGOING ENVIRONMENTAL COMPLIANCE

#### 9.1

##### **Generally**

- (a) BHPB 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) In carrying out the Project, BHPB shall comply in all material respects with this Agreement and all Environmental Plans and Programs submitted and approved in accordance with this Agreement.
- (c) BHPB shall take prompt and appropriate corrective action to remedy any non-compliance with Section 9.1(a) and 9.1(b).

#### 9.2

**Waste Disposal** BHPB shall manage all waste in accordance with the approved waste management plan required by Section 6.1(f) of this Agreement.

### 9.3 **Maintenance of Project Site**

- (a) BHPB shall at all times keep the Project site in a neat and clean condition free of debris.
- (b) BHPB shall undertake such corrective measures as may be specified by the Minister ~~and the 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) BHPB 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 BHPB and approved by the Minister ~~and the GNWT~~.
- (b) BHPB 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 the GNWT~~.
- (c) BHPB shall mark with clearly visible flags, posts or similar devices all petroleum fuel storage facilities, including fill and distribution lines.

- (d) BHPB 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 ~~the GNWT~~.

## ARTICLE X

### ARCHAEOLOGICAL SITES

10.1 **Minimize Impacts** BHPB shall carry out the Project to minimize the impacts on Archaeological Sites.

10.2 **Archaeological Surveys**

- (a) In the continuing exploration and development of the Project site BHPB shall conduct Archaeological surveys.
- (b) Archaeological surveys of new Archaeological Sites must be done to the highest standards of the day and must respect places of significance to Aboriginal Peoples.
- (c) Archaeological surveys shall to the greatest extent possible, be designed and carried out and identified in partnership with the affected Aboriginal Peoples and communities or if not possible, in Consultation with the affected Aboriginal Peoples and communities.
- (d) BHPB 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.
- (e) In the event that an Archaeological Site is discovered in carrying out the Project, BHPB shall immediately notify the Minister, ~~the GNWT~~ and affected Aboriginal Peoples of the presence of the Archaeological Site and, subject to Section 10.2(f), BHPB shall take all reasonable precautions necessary to protect the Archaeological Site.
- (f) In conducting archaeological surveys and in the event that it becomes necessary to disturb the Archaeological Site and collect the artifacts, BHPB shall consult

with affected Aboriginal Peoples and 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, BHPB shall complete the study (the "Phase II Traditional Knowledge Study") BHPB 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 BHPB 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 BHPB to parties other than employees of BHPB 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), BHPB 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, BHPB 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** BHPB 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** BHPB 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 BHPB concerning radiological data and shall provide a copy of such report to the Minister. Standard water sampling protocols and analytical methods must be followed by the certified environmental laboratory in preparing such report.

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

## ARTICLE XIII

### SECURITY AND ENFORCEMENT

13.1 **Security** As security for the performance of its obligations under this Agreement, BHPB shall provide to the Minister, and shall at all times maintain with the Minister, including as may be required as a reimbursement after the occurrence of a default under this Agreement:

- (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 to the *Waters Act* (NWT), or any other form of security satisfactory to the Minister, and on terms satisfactory to the Minister, to be held by ~~Canada~~ the GNWT 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
  - (v) such further or other amounts as may be required as the result of the review process contemplated under Section 13.2;
- (b) in addition to the Security Deposit required pursuant to Section 13.1(a) BHPB shall provide on or before the first anniversary date of this Agreement, an irrevocable guarantee in the amount of twenty million (\$20,000,000) dollars in form and substance satisfactory to the Minister (the "Guarantee") of Dominion Diamond Corporation (the "Guarantor") which Guarantee shall provide, inter alia, that:
- (i) it shall terminate upon satisfaction of all of BHPB's obligations pursuant to this Agreement;
  - (ii) ~~Canada~~ the GNWT shall first exercise its rights in respect of the full extent of the Security Deposit, prior to the Guarantor being obligated to perform under the Guarantee;
  - (iii) the Guarantor shall be given Notices of Default concurrently with the giving of such notices to BHPB; and
  - (iv) except in the case of a serious or imminent threat to the environment or a default pursuant to Section 13.4(e) in which case the Minister shall be entitled to immediately exercise ~~Canada's~~ the GNWT's rights under the Guarantee, the Guarantor shall be afforded a cure period of ninety (90) days following the expiry of the cure periods afforded BHPB; and
- (c) the Security Deposit and the Guarantee are in addition to, and not in substitution for, the security which BHPB may be required to provide pursuant to any Water License.

- (a) Within three months following the end of each second calendar year, commencing with the end of the calendar year in which Commercial Production is first attained, BHPB shall submit to the Minister, ~~the GNWT~~ and the Monitoring Agency, a report describing any variances with the Reclamation Plan and updated cost estimates.
- (b) Within four months following the date of receipt of each of the reports and updated cost estimates submitted by BHPB pursuant to Section 13.2(a), the Minister, ~~the GNWT~~, and BHPB in Consultation with the Monitoring Agency, shall review the progress made with regard to ongoing reclamation, the actual costs experienced to date and the terms (including amount) of the Security Deposit and agree on adjustments thereto, as appropriate, with a view to ensuring the adequacy of the Security Deposit for the purposes intended.
- (c) Such review shall be conducted as follows:
  - (i) BHPB shall submit a proposal on terms of the Security Deposit to the Minister, ~~the GNWT~~, and the Monitoring Agency;
  - (ii) BHPB ~~and~~ the Minister ~~and the GNWT~~ may appoint an independent consultant to assist with the review of such proposal;
  - (iii) the Minister, ~~the GNWT~~, and BHPB shall review, in Consultation with the Monitoring Agency, and consider BHPB's proposal for revisions to the terms of the Security Deposit and together with the independent consultant and the parties shall determine the terms of the Security Deposit for the period up to the next review.
- (d)
  - (i) The existence of the Guarantee may be considered in conjunction with the progress review contemplated by Section 13.2(b) and (c); however, except as provided in paragraph (ii) of this Section 13.2(d), the terms of the Guarantee shall not be reviewed or amended unless the Minister, in his discretion, determines that the Guarantee requires review.
  - (ii) Notwithstanding paragraph (i) of this Section 13.2(d), the terms of the Guarantee (including the amount) shall be reviewed after full and final reclamation of the Project site in order to determine whether the Guarantee continues to be required as security for BHPB's remaining obligations pursuant to this Agreement.

13.3 ~~**GNWT Jurisdiction**~~

~~— The Minister shall provide BHPB with a Notice of Default when the Minister receives advice from the GNWT that a default has occurred under the terms of this Agreement with respect to a matter substantially within the jurisdiction of the GNWT.~~

~~— In relation to matters substantially within the jurisdiction of the GNWT, the Minister shall, within 90 days of written notice from the GNWT, pay to the GNWT from funds drawn on the Security Deposit all reasonable costs expended by the GNWT in rectifying non-compliance by BHP under Article IX.~~

13.4 **Events of Default and Remedies**

- (a) Except in the case of a serious or imminent threat to the environment, or the occurrence of a default as described in Section 13.4(e) in which case the Minister shall be immediately entitled to use the Security Deposit with out the requirement for any demand, notice or other formality whatsoever, the Minister shall provide BHPB with a Notice of Default thirty (30) days prior to the Minister using the Security Deposit to cure a default.
- (b) Subject to Section 13.4(a), the following events shall entitle the Minister to use the Security Deposit to carry out the work reasonably required to cure such default ~~(including to reimburse GNWT as required by Section 13.3(b))~~:
  - (i) failure to provide the Minister, ~~the 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;
  - (ii) failure to provide the Minister, ~~the GNWT~~ and the Monitoring Agency with the Construction Phase Management Plan, the Operating Environmental Management Plan or the Reclamation Plan;
  - (iii) failure to provide the Minister, ~~the GNWT~~ and the Monitoring Agency with amendments and revisions to the Environmental Management Plans and Programs on a timely basis;
  - (iv) failure to fund the Monitoring Agency in accordance with Section 4.6(a) including failure to provide funding under its annual agreed upon Core Budget; and

- (v) failure to comply with any other term of this Agreement not specifically referred to in this Section 13.4.
- (c) In the event that BHPB fails to provide the Minister with the Guarantee or the payments required to be made under Section 13.1(a) for the Security Deposit, or fails to reimburse the Security Deposit as required by Section 13.1(a), within thirty (30) days of delivery to BHPB of a Notice of Default, the Minister shall be entitled to suspend the operations of the Project and/or terminate the Surface Leases.
- (d) Subject to Section 13.4(a), the following events shall entitle the Minister, thirty (30) days following the delivery of a Notice of Default to BHPB, (i) to use the Security Deposit, (ii) 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~~ the GNWT in excess of the Security Deposit in carrying out such steps shall immediately be paid by BHPB to the Minister, and (iii) to suspend the operations of the Project and/or terminate the Surface Leases:
  - (i) failure to carry out its obligations pursuant to Article IX; or
  - (ii) failure to comply with Section 8.3 or 8.4 with respect to the reclamation of the Project site.
- (e) In the event that BHPB is adjudged or declared bankrupt or insolvent or makes an assignment for the benefit of its creditors or petitions or applies to any tribunal for the appointment of a receiver or trustee for BHPB or for any substantial part of its property, or commences any proceedings relating to it under any reorganization, arrangement or re-adjustment of debt, dissolution or liquidation law, law enabling corporate reorganizations or statute of any jurisdiction whether now or hereafter in effect relating to or governing debtors, or by any act indicates its consent to approval of, or acquiescence in, any such proceeding for BHPB or any part of its property, or suffers the appointment of any receiver or trustee or administrative receiver, the Minister shall be immediately entitled to declare a default under this Agreement and the Minister shall immediately be entitled to the full amount of the Security Deposit without the requirement for any notice or demand or other formality whatsoever and the Minister shall be immediately entitled to terminate the Surface Leases.
- (f) Notwithstanding Section 13.4(d)(i), the remedies provided for hereunder are not intended to duplicate remedial measures which are given effect pursuant to environmental legislation, regulations or under the Regulatory Instruments.

- (g) Any costs incurred by ~~Canada~~ the GNWT in connection with a default by BHPB under the terms of this Agreement, in addition to the amount of the Security Deposit, shall be recoverable from BHPB as a debt due to ~~Her Majesty~~ the GNWT.

## ARTICLE XIV

### RESOLUTION OF DISPUTES

14.1 **Dispute Resolution** Except as expressly provided otherwise in this Agreement, ~~Canada~~, the GNWT and BHPB hereby agree that all matters of dispute arising out of this Agreement shall be resolved as follows:

- (a) firstly, ~~Canada~~, the GNWT and BHPB shall act in good faith and promptly engage in discussions to resolve any dispute;
- (b) secondly, in the event that any one of ~~Canada~~, the GNWT or BHPB determine that the dispute cannot be resolved through discussions, ~~Canada and~~ the GNWT shall appoint, in Consultation with BHPB, a mediator to assist in further discussions to resolve the dispute; and
- (c) thirdly, in the event that any one of ~~Canada~~, the GNWT or BHPB determine that the dispute cannot be resolved satisfactorily with the assistance of a mediator, the dispute shall be referred to an Arbitration Committee and the arbitration process shall be open to the public. The arbitration of disputes shall be conducted pursuant to the International Commercial Arbitrations Act (~~Canada~~NWT); (provided for greater certainty that the reference in Article ~~34(2)(b)(ii)~~V(2)(b) of the ~~Commercial Arbitration Code~~International Arbitration Law to "public policy" shall be read and construed as "public order"), and any decision of an Arbitration Committee shall be binding on the parties.

14.2 **Arbitration Committee** An arbitration committee (the "Arbitration Committee") shall be constituted when required to conduct the arbitration of disputes under this Agreement and shall be a committee of three arbitrators composed of an appointee selected by ~~Canada and~~ the GNWT, an appointee selected by BHPB and a third appointee selected by the other two appointees. The parties shall select appointees for an Arbitration Committee who have expertise with respect to the matter in dispute as well as expertise with respect to the conduct of arbitration and who are independent and impartial.

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

14.4 **Costs of Dispute Resolution** The parties shall bear their own costs of dispute resolution and the costs of a mediator or an Arbitration Committee shall be paid as to fifty (50%) percent by BHPB and as to the other fifty (50%) ~~equally by Canada or by~~ the GNWT, as applicable, unless the Arbitration Committee in its award assesses any costs against any specified party or parties.

14.5 **Roles and Responsibilities** In the determination of a dispute, the parties or any mediator or Arbitration Committee shall take into consideration this Agreement as a whole, including specifically the purposes set out in Article I, the roles and responsibilities of the parties and that of the Monitoring Agency, which roles are as follows:

- (a) BHPB has the sole right and responsibility, on behalf of the Joint Venture, to manage the Project;
- (b) ~~Canada and the~~ GNWT ~~has~~ve the right and responsibility to enforce this Agreement and monitor and regulate the Project; and
- (c) the Monitoring Agency has the right and responsibility to discharge its mandate as defined in Section 4.2 hereof.

14.6 **Interlocutory Relief**

- (a) Each of ~~Canada,~~ the GNWT and BHPB may apply to a court of competent jurisdiction for an interlocutory order, including by way of injunction, mandatory order or receivership, solely for the preservation and protection of rights and/or property pending arbitration where, for any reason, it is impossible or impractical for an Arbitration Committee to promptly resolve the matter in dispute.
- (b) Neither the resolution of such court application nor the participation therein by any party shall operate as a bar to arbitration nor as a waiver of any of the rights and obligations of any party with respect to dispute resolution in accordance with the terms of this Agreement.



## ARTICLE XV

## GENERAL PROVISIONS

15.1 **Remedies Not Exclusive** BHPB acknowledges and agrees that the rights and remedies of ~~Canada and~~ the 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~~ the 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~~ the GNWT's rights and does not waive, alter, affect or prejudice any other right or remedy to which ~~Canada or~~ the GNWT may be entitled for the same default or breach. Any waiver by ~~Canada or~~ the 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~~ the 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,~~ the GNWT and BHPB 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,~~ the GNWT and BHPB following Consultation with the Monitoring Agency provided that any amendment to the substance of Articles I, II, IV, X, XI or XVI or this 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,~~ the GNWT and BHPB, only be made following the conduct of public meetings and Consultation with the Aboriginal Peoples in which ~~Canada,~~ the GNWT and BHPB 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** BHPB shall not assign this Agreement nor any part of it, nor be released from its obligations or covenants under this Agreement, unless:

- (a) it is determined by ~~Canada and~~ the GNWT that the proposed assignee has the financial capacity and qualifications and such other capacity and qualifications as may be required to carry out BHPB's obligations under this Agreement;
- (b) the proposed assignee enters into an agreement with ~~Canada and~~ the GNWT in which the assignee assumes all of BHPB's obligations and liabilities under this Agreement; and
- (c) the proposed assignee is also the assignee of BHPB's obligations under the Regulatory Instruments and the Impact and Benefits Agreements.

Provided, however, that if the requirements of paragraphs (a) to (c) above are satisfied, BHPB and the Guarantor shall be released by ~~Canada and~~ the GNWT from all and any obligations under this Agreement, the Regulatory Instruments (to the extent such Regulatory Instruments have been assigned to the proposed assignee) and ~~Canada and GNWT, as applicable,~~ shall execute and deliver to BHPB and the Guarantor documents of release reasonably requested by BHPB and the Guarantor.

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,~~ the GNWT or BHPB shall be deemed to constitute any of BHPB ~~or,~~ the GNWT ~~or Canada~~ partners, joint venturers or principal and agent.

15.9 **Liability** This Agreement in no way limits the obligations of BHPB 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 **Impact Statement** Nothing in this agreement shall lessen, or otherwise remove any obligation or commitment undertaken by BHPB in the proposal to operate the Project as fully described in the Impact Statement prepared by BHPB 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 **BHPB as Operator** BHPB represents and warrants that it is the operator of the Project in accordance with the terms of the Joint Venture Agreement and that the terms of the Joint Venture Agreement entitle BHPB to enter into this Agreement and carry out its obligations hereunder.

15.12 **Co-ordination with Other Instruments** 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 manner. The Monitoring Agency shall be invited to participate in such procedures as appropriate.

15.13 **Force Majeure** Except in respect of matters of a serious and imminent threat to the environment in which case this section will not apply, in the event that BHPB 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 BHPB, 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 BHPB 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.

15.14 **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 BHPB:

**BHP Billiton Diamonds Inc.**  
#1102-4920 52<sup>nd</sup> Street  
Yellowknife, NT X1A 3T1  
Canada  
Attention: James D. Excell  
Phone: (867) 669-9292  
Fax: (867) 669-9293

With a copy to:

Fasken Martineau DuMoulin LLP  
Barristers and Solicitors  
Suite 2100, 1075 West Georgia Street  
Vancouver, BC V6E 3G2  
Canada  
Attention: David H. Searle, C.M., Q.C.  
Phone: (604) 631-4861  
Fax: (604) 632-4861

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

~~**Department of Indian Affairs and Northern Development**  
P.O. Box 1500  
Yellowknife, NT  
X1A 2R3  
Attention: Regional Director General  
Phone: 403-669-2501  
Fax: 403-669-2703~~

(c) In the case of the GNWT:

**Government of the Northwest Territories**  
P.O. Box 1320  
Yellowknife, Northwest Territories X1A 2L9  
Attention: Deputy Minister  
~~Resources, Wildlife and Economic Development~~ Environment and Natural

Resources

Telephone: ~~403-920-8691~~ 867-873-7401  
Fax: ~~403-873-0563~~ 867-873-0638

(d) In the case of the Guarantor:

**Dominion Diamond Corporation**  
P.O. Box 4569, Station A  
Toronto ON M5W 4T9

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 receipt by the sender of confirmation of completion or transmission that is not a Saturday, Sunday or statutory holiday in the NWT.

15.15 **Counterparts** This Agreement may be executed in counterparts each of which shall be considered an original and all of which taken together shall constitute a single agreement. The parties may rely upon copies of this Agreement which are delivered by telecopier as if such copies were originals.

## ARTICLE XVI

### TERM

16.1 **Term** 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 BHPB 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: \_\_\_\_\_

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