

THE REPUBLIC OF GUINEA  
SIMFER S.A.  
AND  
RIO TINTO MINING AND EXPLORATION LTD

## Amended and Consolidated Basic Convention

For the Mining of the Simandou Iron Deposits

This document is the English version of the document in French entitled '*Convention de Base Amendée et Consolidée*' which was executed by the Republic of Guinea and Simfer S.A. on 26 May 2014. Clyde & Co, as the legal advisor of the Republic of Guinea, and Allens-Linklaters, as the legal advisor of Simfer S.A., have confirmed that this document is the agreed English version.

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**This Agreement** is made on 26 May 2014

## **Parties**

1 **The Republic of Guinea** represented by:

- His Excellency Monsieur Kerfalla Yansané, acting in his capacity as the Minister of State, Minister of Mines and Geology; and
- His Excellency Monsieur Mohamed Diaré, acting in his capacity as the Minister of State, Minister of Economy and Finance,

duly authorised for the purposes of entering into this Convention (the **State**)

2 **SIMFER S.A.**, a limited company of the Rio Tinto Group incorporated under Guinean law with the RCCM of Conakry, under the number RCCM/GCKRY/0867A/2003. Its head office is located in Immeuble Bellevue, Boulevard Bellevue, D.I. 536, Commune de Dixinn, BP 848, Conakry. It is represented by Mister Alan John Bruce Davies, duly authorised for this purpose (**SIMFER S.A.**)

3 **Rio Tinto Mining and Exploration Ltd**, a limited company of the Rio Tinto Group incorporated under the laws of England and Wales, with registered number with Companies House 1305702. Its registered office is located at 2 Eastbourne Terrace, London, W2 62G, United Kingdom, in its capacity as the promoter of the Project which is the purpose of this Convention and to confirm that it is an Affiliate of SIMFER S.A. at the date of this Convention and that it undertakes, with the assistance of the investors in SIMFER S.A., to assist SIMFER S.A. to comply with its obligations under the terms of this Convention until the Infrastructure Investment Decision. It is represented by Mister Warrick Reginald John Ranson, duly authorised for this purpose (**RTME**)

## **Recitals**

A The State, in its desire to foster exploration, prospecting, mining and development of mineral resources in the Republic of Guinea, has resolved, in accordance with the principles for exploitation of its natural resources, that the said exploration, prospecting, mining and development activities will be undertaken by or with foreign investors.

B Certain objectives of the State regarding the exploitation of mineral resources and iron deposits have been cited and are specified as follows:

- (a) the State seeks both to contribute to the economic development and to promote the well-being of its citizens;
- (b) the State also seeks to protect the environment, to ensure sustainable development and to respect the rights of neighbouring populations to the Project; and
- (c) within the context of its mining policy, the State seeks to valorise the mineral resources covered by this Convention, by mining them.

C Within this context, the State has expressed the wish that a mining enterprise of international standing should be involved in the priority project of prospecting and evaluation with a view to mining of the Simandou iron deposits while guaranteeing it the complete freedom to direct and to optimise the operational environment in accordance with the Legislation in Force, from extraction of the ore, its processing, transformation, transport and marketing – up to delivery to its clients.

D SIMFER S.A., which is a member of the Rio Tinto Group, has declared that, due to the support of RTME, it has all the technical, financial and commercial capacity required, on the basis of the implementation of similar mining projects throughout the world and for which the Rio Tinto Group

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operates the highest international standards of productivity that enable it to achieve regular overall rates of return in the long term.

- E SIMFER S.A. has thus declared its interest in prospecting and evaluating the Simandou iron deposit with a view to future mining and transport operations on the condition that these activities, conducted in accordance with standard industry practice and respect for the environment, can provide for an acceptable return on investment taking into account their magnitude and the extent of the risk involved.
- F The State granted to RTME four exploration permits for the area of Simandou and in accordance with Article 85 of the Mining Code providing that the exploration and mining of iron ore shall be carried out under a mining concession and a mining convention specifying the particular terms aiming at making the exploitation of this ore competitive, the State and SIMFER S.A. entered on 26 November 2002 into the Original Convention, which was ratified by the Guinean National Assembly by a 3 February 2003 statute.
- G The Parties entered into a Settlement Agreement on 22 April 2011 which provided for the settlement of contentious matters and disputes that had arisen between them, the issue of a mining concession for the exploration and exploitation of iron ore within a reduced area of the original mining concession granted on 30 March 2006 and, subject to amendments of the Original Convention and ratification of those amendments by statute, for revised terms and conditions on which the iron ore deposits within the Perimeter of the Modified Concession and the associated rail and port infrastructure were to be developed, including a First Commercial Production Date of 30 June 2015, subject to extension entitlements as set out in the Settlement Agreement.
- H As a consequence of various delays encountered since the signing of the Settlement Agreement, as well as the critical requirement to secure funding for the development of the rail and port infrastructure, and the fact that the State will no longer be a shareholder in the company which was to develop the rail and port infrastructure, the State and SIMFER S.A. subsequently acknowledged on 16 August 2013 the need to make certain variations to the terms and conditions of the Settlement Agreement, including to reflect the fact that there is to be separate ownership, construction and financing of the rail and port infrastructure by a third party pursuant to a ratified BOT Convention and that there is to be a postponement of the date for achieving the First Commercial Production Date on the terms and conditions set out in this Convention. The State and SIMFER S.A. acknowledge that, since 2011, SIMFER S.A. conducted certain works as necessary for the Project.
- I The Parties have resolved to amend and restate the Original Convention to reflect the amendments provided for in the Settlement Agreement as well as the acknowledged need for certain variations to the terms and conditions of the Settlement Agreement and for such amendments and restatement to be duly ratified.

**It is agreed** as follows.

### **1 Definitions and Interpretation**

#### **1.1 Definitions**

The following definitions apply unless the context requires otherwise.

**Actions** has the meaning given to it in Article 40(i)(ii).

**Affiliate(s)** or **Affiliate Company** refers to a company in which a first company holds directly or indirectly more than 50% of the issued equity capital and of the voting rights (and includes any other company which is also controlled in that manner by the first company) or that directly or

indirectly holds more than 50% of the issued equity capital and of the voting rights of the first company. Rio Tinto Plc. (UK), Rio Tinto Ltd (Australia), Chalco (PRC), Chinalco (PRC), SIMFER Jersey Ltd (Jersey), SIMFER Jersey Finance 1 Ltd (Jersey), SIMFER Jersey Finance 2 Ltd (Jersey) and their respective successors and assigns and all companies in which they directly or indirectly control more than 50% of the issued equity capital and of the voting rights, are deemed to be Affiliates of SIMFER S.A. For the application of the Tax and Customs Regime, the Infrastructure Owner and the Infrastructure Operator and their respective Affiliates are deemed to be Affiliates of SIMFER S.A., Rio Tinto plc (UK), Rio Tinto Ltd (Australia), Chalco (PRC), Chinalco (PRC), SIMFER Jersey Ltd (Jersey), SIMFER Jersey Finance 1 Ltd (Jersey) or SIMFER Jersey Finance 2 Ltd (Jersey) and their respective successors and assigns. For the purposes of this definition, any reference to a 'company' shall be to any company, regardless of its place of jurisdiction.

**Annual Nomination** has the meaning given to it in Article 18(d).

**Appendix** refers to documents indicated as such in or attached to this Convention. Each Appendix forms an integral part of this Convention.

**Approved Auditor** refers to any of Deloitte Touche Tohmatsu, EY, KPMG or PricewaterhouseCoopers.

**Article 2.12 Trigger** has the meaning given to it in Article 19.5.

**Asset** or **Project Asset** refers to all assets, rights, titles and interests, present and future, movable or immovable, tangible or intangible, relating to the Project, that belong to SIMFER S.A., to the Project Contractors or to their respective Affiliates or that are leased or let by (or on behalf of) any one of them, as well as the rights under any conventions, concession contract and / or emphyteutic lease (including this Convention and the BOT Convention) entered into by (or on behalf of) any one of them, including all returns and income deriving from the Project that are paid or due.

**Authorisations** refers to all administrative acts (other than mining titles), such as entry, exit and residence visas, temporary entry permits, import licences, State registration and so forth, necessary for SIMFER S.A. to carry out (or procure the carrying out of) the Project Activities pursuant to the Legislation in Force and in accordance with this Convention and **Authorisation** refers to each of them.

**Authority** or **State Authority** refers to the State, including in particular every ministerial department, territorial administration, agency or person acting on behalf of the State, exercising any legislative, executive, administrative, judicial or legal power or having the mandate to exercise such power.

**BOT Convention** refers to the Simandou BOT Convention as contemplated by this Convention entered into by the State, SIMFER S.A. and RTME.

**Centre** has the meaning given to it in Article 46.2(a).

**Chalco** refers to Aluminum Corporation of China Limited, a joint stock company incorporated in The People's Republic of China, of Chinalco Tower, No. 62, North Xizhimen Street, 100082 Beijing, The People's Republic of China.

**Chinalco** refers to Aluminum Corporation of China, an entity incorporated in The People's Republic of China, of Chinalco Tower, No. 62 North Xizhimen Street, 100082 Beijing, The People's Republic of China.

**Concession Decree** has the meaning given to it in Article 6(a).

**Consent Decree** refers to decree No. D/2011/135/PRG/SGG of 22 April 2011 providing approval to the share transfer between Rio Tinto and Chinalco, according to which the State, pursuant to

Article 62 of the Mining Code and Article 2.5 of the Settlement Agreement, has approved the participation of Chalco in the share capital of SIMFER Jersey Ltd.

**Consortium Selection Process** has the meaning given to it in Article 2.2 of the BOT Convention.

**Consortium Selection Target Date** has the meaning given to it in Article 2.1(b)(i) of the BOT Convention.

**Contractual Documents** refers to all contracts, conventions, protocols or written agreements, directly or indirectly related to the Project Activities.

**Contractual Rate of Interest** refers to the London Interbank Offered Rate (**LIBOR**) for deposits of three months in US Dollars published by the Intercontinental Exchange Benchmark Administration Ltd or such replacement entity responsible from time to time for the administration of LIBOR at or about 11.45am (GMT) plus three per cent (3%).

**Convention** refers to the Original Convention, as amended and consolidated as contemplated by the Settlement Agreement, this Convention and its Appendices, and any amendment that might be introduced thereto. The Convention is likewise sometimes referred to with the expression 'this Convention'.

**Corridor** refers to the 'Original Infrastructure Corridor', being the perimeter referred to in Article 2 of the PIN Decree published in the Official Gazette of the Republic of Guinea and defined by the geographical coordinates in the map set out in Appendix 5 and / or such other locations identified by the Infrastructure Owner and approved by SIMFER S.A. and the State pursuant to the BOT Convention.

**Critical Habitat** has the meaning given to it in IFC 'Performance Standards on Social & Environmental Sustainability' Standard 6.

**Day** refers to a calendar day commencing at 00:00am Conakry standard time, unless otherwise specifically provided.

**Deemed Mine Extension Event** has the meaning given to it in Article 7.2(g).

**Direct Sub-Contractor** refers to any validly existing enterprise having the necessary competence for providing the services and/or works for the purposes of the Activities of the Project and which has entered into a contract with SIMFER S.A. or an Affiliate or one of their sub-contractors in the exclusive context of the Project, and whose identity and nature of services or works have been transmitted to the State at the signature of the sub-contracting agreement. A reference to subcontractor in the Tax Annex shall be deemed to be a reference to Direct Sub-Contractor as defined in this definition.

**Dispute** has the meaning given to it in Article 46.1.

**Draft Definitive Engineering Report** has the meaning given to it in Article 7.1(c)(ii).

**Dollar** and **\$** refer to the currency having legal tender in the United States of America.

**Effective Date** refers to the date on which all the conditions specified in Article 59 of this Convention are fulfilled.

**Energy Facilities** refers in general to the fuel distribution systems and power generation facilities that form part of the Mining Infrastructure and will be located on the Project Lands.

**Euro** refers to the currency that is legal tender in the majority of countries of the European Union.

**Expansion** has the meaning given to it in Article 16(b).

**Expropriation Dispute** has the meaning given to it in Article 40(e).

**Extended Force Majeure Event** refers to any Force Majeure Event which continues, and causes

any Party to be unable to perform its obligations for 270 Days after Notification of a Force Majeure Event is given pursuant to Article 44(d).

**Feasibility Report** has the meaning given to it in Article 10.1(b).

**Financing Activities** refers to the raising of finance from the Financing Parties by SIMFER S.A. under the terms of the Financing Documents.

**Financing Documents** refers to each agreement entered into for the purposes of the debt or equity financing or refinancing, or project financing, of the Mining Infrastructure, including without limitation the common terms agreement, loan agreements (including in relation to any shareholder loans), bond documentation, guarantees, completion guarantees, agreements in relation to Security, accounts agreements, subordination agreements, agreements and policies for political risk coverage, agreements relating to hedging of interest rates or currencies and intercreditor arrangements and direct agreements with the Financing Parties and various Project counterparties.

**Financing Parties** refers to each party to a Financing Document, that is providing finance (including by way of guarantee and / or insurance of finance) in relation to the Mining Infrastructure and / or any agent, trustee or attorney or account bank acting on behalf of any of them.

**First Commercial Production Date** refers to the date starting from which the first iron ore production is exported for marketing for a period of more than 30 consecutive Days.

**Force Majeure Event** has the meaning given to it in Article 44(b).

**Good Operating Practice** refers to the exercise of that degree of skill, diligence, prudence and foresight which could reasonably be expected from a skilled, experienced and competent owner or operator of an iron ore mine under the same or similar circumstances in a manner consistent with the technical and operating requirements in accordance with generally recognised international practices, standards and safety procedures for activities necessary for, incidental or useful to the Mining Activities.

**Haulage Services** has the meaning given to it in Article 15.1(a) of the BOT Convention.

**Historical Infrastructure Costs** refers to all costs incurred by SIMFER S.A. and / or any other entity of the Rio Tinto Group in relation to the design, development, financing, construction, ownership, operation, maintenance, modification or expansion of the Project Infrastructure, and any other related activities necessary for the conduct of Infrastructure Activities (including any expropriation of land that is required for these purposes) and any related funding and borrowing costs incurred prior to the Infrastructure Effective Date.

**Historical Mining Cost** has the meaning given to it in Article 22.3(c).

**ICD Deemed Extension** has the meaning given to it in Article 7(d) of the BOT Convention.

**ICD Target Date** has the meaning given to it in Article 2.3(b)(ii) of the BOT Convention.

**ICSID Convention** has the meaning given to it in Article 46.2(a).

**IFC** refers to International Finance Corporation, an international organisation established by Articles of Agreement among its member countries.

**In-country Activities** has the meaning given to it in Article 2.3(a) of the BOT Convention.

**Infrastructure Activities** refers to the activities relating to the planning, design, financing, construction, commissioning, ownership, modification, expansion, maintenance and operation of the Project Infrastructure, including any acquisition and/or occupation of land.

**Infrastructure Anchor Investor** has the meaning given to it in Article 19.2(b).

**Infrastructure BFS** has the meaning given to it in Article 2.3(a) of the BOT Convention.

**Infrastructure Completion Date** has the meaning given to it in the BOT Convention.

**Infrastructure Consortium** has the meaning given to it in Article 19.2(a).

**Infrastructure Construction Criteria** has the meaning given to it in the BOT Convention.

**Infrastructure Effective Date** has the meaning given to it in Article 2.9 of the BOT Convention.

**Infrastructure Investment Decision** has the meaning given to it in Article 2.8 of the BOT Convention.

**Infrastructure Operating Agreement** refers to the agreement to be entered into by Infrastructure Owner, the Infrastructure Operator and SIMFER S.A., setting out the terms and conditions on which the Infrastructure Operator will be appointed by the Infrastructure Owner as an independent contractor to operate, maintain and renew the Project Infrastructure and provide other agreed services, as may be amended from time to time by agreement between the parties thereto.

**Infrastructure Operator** refers to the entity that accedes to the BOT Convention as the Infrastructure Operator pursuant to Article 2.9(c) of the BOT Convention, and any other entity which is duly appointed to replace it pursuant to the terms and conditions of the BOT Convention prior to the Transfer Date, or pursuant to the terms and conditions of the Infrastructure Provisions after the Transfer Date.

**Infrastructure Owner** refers to the entity that accedes to the BOT Convention as the Infrastructure Owner pursuant to Article 2.9(b) of the BOT Convention, and any other entity which is duly appointed to replace it pursuant to the terms and conditions of the BOT Convention on or before the Transfer Date, or pursuant to the terms and conditions of the Infrastructure Provisions on or after the Transfer Date.

**Infrastructure Owner HoldCo** has the meaning given to it in the BOT Convention.

**Infrastructure Project** refers to the design, development, financing, construction, ownership, operation, maintenance, modification or expansion of the Project Infrastructure, and any other related activities necessary for the conduct of Infrastructure Activities (including any expropriation of land that is required for these purposes).

**Infrastructure Provisions** has the meaning given to it in Article 19.8(a).

**Investment Programme** refers to any SIMFER S.A. programme involving:

- (a) the construction or the opening of a mine or of any other mining facilities;
- (b) the possible relocation of mining facilities created by SIMFER S.A.; and
- (c) the construction of concentrating facilities, in addition to the mining facilities created by SIMFER S.A., and any associated infrastructure.

**Iron Ore** refers to raw iron ore after extraction but before any Processing.

**JORC Code** refers to the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves as adopted by the Australasian Joint Ore Reserves Committee.

**Land Rights** refers to such rights *in rem* (including access and occupation rights as well as surface rights (*droits de superficie*)) as are necessary to secure and ensure the ongoing peaceful enjoyment and occupation of the Project Lands as well as to secure and ensure the Project Ownership Rights, subject to any limitation to such rights as may be provided for in this Convention or the BOT Convention.

**Laws and Regulations** refers to any treaty, law, code, ordinance, decree, *arrêté*, directive, case law or other legislative or regulatory measure which, in each case, is in force in the Republic of

Guinea, as may be amended, modified or replaced.

**Legislation in Force** refers to the Guinean regulation (treaties, laws, codes, ordinances, decrees, *arrêtés*, directives, case law and so forth) known and existing on 26 November 2002 and set at this date (excluding OHADA Uniform Acts which shall apply as amended from time to time), taking into account any reasonable interpretation that is made of them at the same date in Guinea and in compliance with international practice for large scale mining projects and includes any subsequent more favourable Laws and Regulations that are extended to the applicable Party in accordance with Article 36.3 or 37.

**Local Content Policy** has the meaning given to it in Article 23.1.

**Long Term Mine Plan** refers to the plan prepared and updated from time to time by SIMFER S.A. for mining operations within the Perimeter of the Modified Concession with a view to maximising the value of the extraction of the ore body over its estimated life.

**LTC Tonnes** has the meaning given to it in Article 18(b).

**Material Adverse Effect** refers to a material adverse effect on the business, assets or financial condition of the non defaulting Party, then or in the future, or on the ability of such Party to perform reasonably and in good faith its obligations under this Convention.

**Material Government Breach** refers to any of the following events which has a Material Adverse Effect on SIMFER S.A. or, where applicable, another Protected Entity, or which has a significant unfavourable and manifest impact on the Project:

- (a) the State or any State Authority takes any action or other measure having effect equivalent to an expropriation or nationalisation, in whole or in part, but to which Article 40(b) would not otherwise apply;
- (b) repudiation or frustration by the State or any State Authority of this Convention;
- (c) a material breach of any other agreement with respect to the Project entered into by the State or any State Authority and to which SIMFER S.A., its Affiliates, Project Contractors or any TPI is a party;
- (d) any change to the Legislation in Force which the State or any State Authority seeks to apply to SIMFER S.A. (alone or with others) and which adversely affects SIMFER S.A. with respect to its rights or obligations in respect of the Project or this Convention or which results in it incurring a loss or an additional or increased cost;
- (e) any termination, breach or frustration of the Rail and Port Services Agreement or breach of SIMFER S.A.'s rights under Articles 14 or 15 of the BOT Convention, which, in each case, occurs at the direction or instigation of the State or any State Authority;
- (f) termination of the BOT Convention by Infrastructure Owner on the basis of Material Government Breach of the BOT Convention (as that term is defined therein) or termination of the BOT Convention following an expropriation or nationalisation by the State or any State Authority pursuant to Article 42(b) and/or Article 47 of the BOT Convention; and
- (g) any material breach by the State or any State Authority under Articles 5, 6, 12, 14, 18, 19.8, 20, 22.4, 27 to 36 or 37 to 40 (other than Article 40(b)),

which is not caused by a Material Simfer Breach or Force Majeure Event.

**Material Simfer Breach** refers to any of the following events which has a Material Adverse Effect on the State, or which has a significant unfavourable and manifest impact on the Project:

- (a) the failure by SIMFER S.A. to achieve the First Commercial Production Date in accordance with Article 7.2; and

- (b) any material breach by SIMFER S.A. of its obligations under Articles 7, 10.2, 11, 15, 16, 22 or 41,

which is not caused by Material Government Breach or a Force Majeure Event.

**Mine BFS** has the meaning given to it in Article 10.2(a)(i).

**Mine Closure Plan** has the meaning given to it in Article 26(a).

**Mining Activities** refers to the activities relating to the planning, design, financing, construction, commissioning, ownership, modification, expansion, operation and maintenance of the Mining Infrastructure, and includes:

- (a) the exploration, mining, production and related activities relating to iron ore location, identification, assessment and production to be carried out by SIMFER S.A.; and
- (b) any acquisition and/or occupation of land.

**Mining Code** refers to the Mining Code of the Republic of Guinea, as established by law L/95/036/CTRN of 30 June 1995.

**Mining Infrastructure** refers to the totality of the infrastructure belonging to SIMFER S.A. wherever located to meet the Project needs in the context of the Mining Activities. For these purposes, Mining Infrastructure denotes all mining, power, communications, transport, underground infrastructure, road and social facilities and installations and includes the following:

- (a) train loading facilities and the railway track from the train loading facilities to the point at which the railway track crosses the Perimeter of the Modified Concession (and associated track structures and tunnels within the Perimeter of the Modified Concession);
- (b) roads located within the Perimeter of the Modified Concession;
- (c) power generation facilities (including hydro facilities) and transmission and distribution lines used primarily in connection with Mining Activities;
- (d) airports and other air transportation facilities;
- (e) light vehicles and buses used primarily in connection with Mining Activities;
- (f) administrative offices, employee accommodation, messing facilities, medical facilities and associated infrastructure used primarily in connection with Mining Activities; and
- (g) other buildings, facilities and equipment required for the implementation and operation of, or otherwise used primarily in connection with, Mining Activities.

**Modified Concession** refers to the mining concession for the exploration and exploitation of the iron ore in the Perimeter of the Modified Concession, granted on 22 April 2011 by Presidential Decree No. D/2011/134/PRG/SGG published in the Official Journal of the Republic of Guinea dated as of 22 April 2011 (which was published in the month of August 2011) as contemplated by the Settlement Agreement.

**Mtpa** refers to million tonnes per annum.

**Natural FME** refers to all Force Majeure Events except Other FME.

**Non-Contributing Shares** refers to shares in SIMFER S.A. carrying rights to dividends but which do not impose an obligation to contribute to SIMFER S.A. Costs.

**Non-State SIMFER S.A. Shareholders** refers to SIMFER S.A.'s shareholders other than the State.

**Notice** refers to a formal notification given in accordance with, and that complies with the requirements of, Article 58 and **Notification** shall have a corresponding meaning.

**Ordinary Contributing Shares** refers to ordinary shares in SIMFER S.A. carrying a right to dividends but also an obligation to contribute to SIMFER S.A. Costs.

**Original Convention** refers to the Simandou Basic Convention signed by the State, SIMFER S.A. and RTME on 26 November 2002 and its Appendices which was ratified by the Guinean National Assembly by Law L/2003/003/AN dated 3 February 2003.

**Other FME** refers to those Force Majeure Events:

- (a) specified in Article 44(b)(ii) which occur within the Republic of Guinea or involve the State; or
- (b) specified in Article 44(b)(vi).

**PARC Framework** refers to the Resettlement and Compensation Action Plan Framework applicable to the Project developed by SIMFER S.A., IFC and the State, as amended from time to time, it being specified that, at the date of signature of this Convention, the PARC Framework refers to the version of this document approved by the State on 25 July 2013.

**Party** or **Parties** refers to the State, SIMFER S.A. and RTME and, for the purposes of the Infrastructure Provisions only, any other party that accedes to this Convention pursuant to Article 19.8.

**Perimeter of the Modified Concession** refers to, subject to any expansion by agreement as referred to in Article 6(b), the perimeter of the Modified Concession at Appendix 1 to this Convention and which corresponds to the southern part of Mount Simandou located in the Beyla, Macenta and Kerouane prefectures, of a length over fifty five kilometers (55 km), and comprising a total of three hundred and sixty nine square kilometers (369 km<sup>2</sup>), and whose coordinates are set out in Appendix 1.

**PIN Decree** refers to Decree D/2012/108/PRG/SGG dated 4 October 2012 declaring as a project of national interest the construction of the mineral railway and deepwater port related to the transport and export of iron ore from Simandou including its attachments (coordinates and map), a copy of which is appended hereto in Appendix 5.

**Preliminary Engineering Assessment** has the meaning given to it in Article 7.1(c)(i).

**Processing** refers to any operation for concentrating the Iron Ore by removing impurities and / or rendering it in pellet form.

**Production** refers to mineral products extracted before any Processing, and that are placed in the storage areas and entered onto SIMFER S.A.'s mining records.

**Project** refers to the activities of exploring and exploiting of iron ore and, as the case may be, of other associated ores or ores extracted from deposits within the Perimeter of the Modified Concession, or from other areas owned in whole or in part by SIMFER S.A. or its Affiliates, including concentration operations, export and marketing, the design, construction, commissioning, ownership, operation, maintenance, modification and expansion of the Mining Infrastructure and Project Infrastructure and any other related activities necessary for the realisation of the Project. These activities may be the object of an Investment Programme in one or several stages.

**Project Activities** refers to any activities necessary for, incidental or useful to the Project, including Mining Activities and Infrastructure Activities.

**Project Affected Person** has the meaning given to it in the PARC Framework.

**Project Contractor** refers to any validly existing enterprise (including any Affiliate or guarantor thereof) which satisfies the following cumulative conditions:

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- (a) having the necessary competence for providing services and / or works for the purposes of the Project, whether as a sub-contractor, supplier or services provider;
- (b) which has entered into a contract with SIMFER S.A. or one of its respective Affiliates or one of their sub-contractors in the dedicated context of the Project; and
- (c) whose identity and nature of services and / or works have been promptly notified to the State following signature of the relevant contract.

For the purposes of this definition, an enterprise shall be taken to have entered into a contract in the dedicated context of the Project even though it has entered into one or more other contracts in the context of the Project.

**Project Infrastructure** refers to the totality of the Rail Infrastructure and the Simandou Port.

**Project Lands** refers, depending on the context, to all the sites, lands and spaces of whatever nature and location which are necessary or useful for the performance of the Project Activities (including any part of the maritime or fluvial public domain or any other lands belonging to the State's public domain or any other public law legal entity's public domain) to be obtained in accordance with the procedure set forth in Appendix 6, it being specified that, although the majority of Project Lands will, in principle, be located within the Corridor, some Project Lands, such as those necessary for the performance of the access roads, the production and transport of power for Project Activities or for the resettlement of Project Affected Persons, may be located, in all or part, outside the limits of the Corridor, where this is necessary.

**Project Ownership Rights** refers to the ownership rights of the Project Assets, including without limitation the Mining Infrastructure, granted to SIMFER S.A. subject however to any such limitations to those ownership rights as may be provided for in this Convention.

**Project Standards** refers to best international practice in corporate governance, business ethics, sustainability and transparency, and all applicable international laws and Legislation in Force in relation to these matters as well as with the principles listed below:

- (a) Rio Tinto's HSEC policies and standards (including 'The Way We Work');
- (b) the 'Equator Principles';
- (c) IFC's 'Performance Standards on Social & Environmental Sustainability';
- (d) 'The Voluntary Principles on Security & Human Rights';
- (e) the World Economic Forum's 'Partnering Against Corruption Principles for Countering Bribery';
- (f) Transparency International's 'Business Principles for Countering Bribery';
- (g) the principles and criteria of the 'Extractive Industries Transparency Initiative; and
- (h) the framework of the International Council on Mining and Minerals.

**Protected Entity** has the meaning given to it in Article 40(a).

**Rail and Port Services Agreement** or **RPSA** refers to the rail and port services agreement to be entered into between SIMFER S.A., the Infrastructure Operator and the Infrastructure Owner for the provision of haulage services to SIMFER S.A., entered into pursuant to, and as may be amended from time to time by agreement between the parties thereto in accordance with, the requirements of the BOT Convention.

**Rail Infrastructure** refers to, as detailed in the BOT Convention, the railway and associated infrastructure to be funded, designed, constructed, commissioned, owned, modified and expanded by the Infrastructure Owner and operated and maintained by the Infrastructure Operator comprising:

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- (a) a standard gauge heavy haul railway between each mine or site serviced by Infrastructure Owner to applicable train unloading facilities, including:
- (i) all railway tracks, including turning loops and sidings but excluding Spur Lines (and assets associated with such Spur Lines of the type described in paragraph (a)(ii) of this definition);
  - (ii) associated track structures, over and under track structures, tunnels, bridges, culverts and supports (including supports for equipment or items associated with the use of railway track) and associated plant, machinery and equipment;
  - (iii) rolling stock, including locomotives, wagons, fuel tankers, supplies wagons, maintenance rolling stock and any other wagons required for the provision of the Passenger Service (**Rolling Stock**);
  - (iv) Rolling Stock maintenance facilities and equipment;
  - (v) communication systems, including fibre-optic links within the rail corridor;
  - (vi) train control and signalling systems (including train control facilities and movement and scheduling systems and software);
  - (vii) terminals, yards, depots and weigh bridges;
  - (viii) maintenance facilities and equipment for rail infrastructure;
  - (ix) fuel distribution systems and fuel storage and distribution facilities used to supply fuel for the rail infrastructure;
  - (x) supplies distribution systems and warehouses and other storage and distribution facilities;
  - (xi) power generation facilities and transmission and distribution lines used to supply power for the Rail Infrastructure;
  - (xii) light vehicles and buses used in connection with the rail service;
  - (xiii) administrative offices, employee accommodation, messing facilities, medical facilities and associated infrastructure used in connection with the rail service; and
  - (xiv) facilities as required along the railway line for sewage treatment, potable water supply, waste management and disposal;
- (b) railway access and maintenance roads; and
- (c) any Rolling Stock to be used solely for the purpose of operating the Passenger Service and any stations and associated infrastructure (including staff accommodation and electricity generation facilities) to be used for the purpose of operating the Passenger Service,

but does not include any tunnels within the Perimeter of the Modified Concession, any freight, fuel, ore loading facility or unloading facility at the mine or any other asset constructed within the perimeter of the relevant concession area of SIMFER S.A. or a producer (as identified pursuant to the BOT Convention) or the Spur Lines.

**Rio Tinto Group** refers to Rio Tinto Plc (UK), Rio Tinto Ltd (Australia) and their respective Affiliates.

**Security** refers to any assignment, pledge, mortgage or conditional assignment of equity or shares in SIMFER S.A. or over the Assets which is granted by SIMFER S.A. or any shareholder therein, to any Financing Party or otherwise pursuant to any Financing Document.

**Selection Terms** has the meaning given to it in Appendix 9.

**Senior Financing Parties** refers to the Financing Parties other than the Financing Parties providing shareholder loans to finance the Mining Infrastructure.

**Settlement Agreement** refers to the agreement entered into by the State, RTME and SIMFER S.A. on 22 April 2011.

**Settlement Sum** has the meaning given to it in Article 40(i)(i).

**Simandou Port** refers to, as detailed in the BOT Convention, the onshore and offshore port and associated harbour facilities (including the multi-purpose offload facility) within the Port Zone (as identified pursuant to the BOT Convention) to be funded, designed, constructed, commissioned, owned, modified and expanded by the Infrastructure Owner and operated and maintained by the Infrastructure Operator, but does not include any asset comprising part of the Mining Infrastructure.

**SIMFER Jersey Finance 1 Ltd** refers to the company of that name incorporated under the laws of Jersey (registration number 112690).

**SIMFER Jersey Finance 2 Ltd** refers to the company of that name incorporated under the laws of Jersey (registration number 112691).

**SIMFER Jersey Ltd** refers to SIMFER Jersey Limited, a company incorporated in Jersey (registration number 105843) with its registered office at La Motte Chambers, St Helier, JE1 1PB, Jersey.

**SIMFER S.A. Costs** refers to all costs incurred relating to the Project Activities.

**SOGUIPAMI** refers to the *Société Guinéenne de Patrimoine Minier*, a company incorporated under the laws of the Republic of Guinea created by Decree No.D/2011/218/PRG/SGG relating to the creation of a company responsible for the mining sector's heritage.

**Spur Lines** refers to Simfer Spur Lines and Producer Spur Lines as each of those terms have the meaning given to them in the BOT Convention.

**State** refers to the Republic of Guinea.

**State Enabling Activities** refers to the activities listed in Appendix 8.

**State Option** has the meaning given to it in Article 18(c).

**Tax and Customs Regime** refers to the tax and customs regime established pursuant to the provisions of Articles 27 to 36 of this Convention and pursuant to the Tax Annex.

**Tax Annex** refers to the document which specifies the conditions for implementation of all the principles and all the tax and customs rules deriving from this Convention and from certain provisions of the Legislation in Force, and which is appended at Appendix 2. This Tax Annex shall form an integral part of this Convention as an implementing measure, and shall always be read in relation with the tax and customs provisions of this Convention.

**Taxes** refers to any tax, duty, levy, royalty, fee and, more generally speaking, any fiscal (including customs duties) or parafiscal levy for the benefit on behalf of the State, any regional or local authority and any public or parapublic body.

**Third Party Investor** or **TPI** refers to any third party which enters into an agreement with SIMFER S.A. in accordance with Article 23.2 to provide one or more Mining Infrastructure assets which relate to the provision of fuel, electricity or other categories of goods and services (as agreed from time to time with the State) for use by SIMFER S.A..

**Transfer Date** refers to the date the shares in the capital of the Infrastructure Owner or, at the option of the State as set out in the BOT Convention, all of the Project Infrastructure Assets (as

that term is defined in the BOT Convention) are transferred to the State or an entity owned by the State pursuant to Article 54.1(a)(i) of the BOT Convention.

**Transform** or **Transformation** refers to any operation for the purpose of obtaining cast iron, iron or steel.

**Unlawful Expropriation** refers to where any State Authority expropriates or nationalises or takes control of, all or any part of the Project Assets, in breach of the provisions of Article 40(b), including a failure by the State to pay compensation in accordance with Article 40(b).

**VAT** refers to value added tax, as defined under Legislation in Force.

## 1.2 Interpretation

The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a section, article or appendix is a reference to a section, article or an appendix to this Convention.
- (d) A reference to an agreement, convention or document (including a reference to this Convention or to the BOT Convention) is to the agreement, convention or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Convention or that other agreement, convention or document.
- (e) A reference to **writing** includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form but excludes a communication by electronic mail.
- (f) A reference to a Party to this Convention or another agreement or document includes the Party's successors, permitted substitutes and permitted assigns.
- (g) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (h) Mentioning anything after words such as **includes, including, for example**, or similar expressions, does not limit what else might be included.

## **Section I: General Provisions**

### **2 Purpose of the Convention**

The purpose of this Convention is to define:

- (a) the legal, administrative, financial, fiscal, customs and social conditions, within the framework of which SIMFER S.A. will implement the exploration and prospecting activities for the iron ore within the Perimeter of the Modified Concession with a view to determining the existence of deposits of iron ore which may be suitable for industrial exploitation, including concentrating and, in order to undertake the actual exploitation of these deposits, to have the ore transported in the manner provided for in this Convention and the BOT Convention; and
- (b) together with the BOT Convention, the general and economic conditions under which the Project shall be executed.

It is clarified that this Convention applies to iron ore covered by the provisions of the Mining Code concerning substances of particular interest.

### **3 Description of the Project**

The activities to be performed pursuant to this Convention will be carried out in successive stages.

- (a) The first stage consisted of SIMFER S.A. having undertaken at its own expense:
  - (i) iron ore exploration and prospecting works which is the purpose of this Convention; and
  - (ii) the preparation of the Feasibility Report which has been provided by SIMFER S.A. to the State and accepted by the State in accordance with Article 10.
- (b) The second stage consists of:
  - (i) the State ratifying this Convention and the BOT Convention and implementing the State Enabling Activities;
  - (ii) SIMFER S.A. carrying out of the Infrastructure BFS, Mine BFS and In-country Activities;
  - (iii) the selection of the Infrastructure Consortium on the basis of the Selection Terms;
  - (iv) the confirmation of a funding plan and agreement of the other relevant matters to allow an Infrastructure Investment Decision to be made; and
  - (v) as applicable, the implementation of any infrastructure alternatives, in each case, in accordance with Article 19 of this Convention and Article 2 of the BOT Convention, as applicable.
- (c) The third stage, following a positive Infrastructure Investment Decision made in accordance with the BOT Convention, consists of:
  - (i) the investment by the Infrastructure Owner in Project Infrastructure in circumstances contemplated in Article 19 of this Convention and the BOT Convention to achieve the Infrastructure Completion Date by the ICD Target Date; and

- (ii) the investment by SIMFER S.A. in Mining Infrastructure in circumstances contemplated in Article 19 of this Convention to achieve the First Commercial Production Date.
- (d) The fourth stage consists of the further carrying out of Mining Activities, including the exploitation of any deposits discovered and, if SIMFER S.A. deems it necessary, all Processing activities and any further exploration.
- (e) In accordance with the Mining Code, SIMFER S.A. will retain at all times the right to carry out exploration and development activities within the Perimeter of the Modified Concession.

#### **4 Settlement Agreement**

- (a) The Parties acknowledge that the purpose of this Convention is, among other things, the implementation of certain provisions of the Settlement Agreement amended as necessary by the Parties to reflect the latest developments of the Project. The Parties agree, in this context, that from the Effective Date, in the event of any conflict between the terms of the stipulated Articles of the Settlement Agreement and those of this Convention and/or the BOT Convention, the terms of this Convention and/or the BOT Convention, as applicable, will prevail. The stipulated Articles of the Settlement Agreement for the purposes of this Article 4 are Articles 1.2 to 1.5 (inclusive), 2.1 (to the extent not expressly incorporated in this Convention or the BOT Convention), 2.2 to 2.4 (inclusive), 3 and 10 (excluding the second paragraph) and Annexure 2.
- (b) Furthermore, the Parties confirm, in the event such confirmation is necessary, that the implementation of certain provisions of the Settlement Agreement by this Convention, amended as necessary, does not, in any circumstances, call into question the reciprocal concessions made under the Settlement Agreement between the Parties, the final settlement of the contentious matters and disputes resolved by the Settlement Agreement and the resulting authority of *res judicata*.

#### **5 Co-Operation of the Administrative Authorities**

By every appropriate means and in accordance with the terms of this Convention and the Legislation in Force, the State will facilitate all exploration and prospecting activities and studies and all other Mining Activities to be carried out by SIMFER S.A. and all Infrastructure Activities and, to this end, the State shall undertake the State Enabling Activities in accordance with the timeframes specified in Appendix 8.

## Section II: Exploration Activities and Feasibility Study

### 6 Granting of the Modified Concession

- (a) The State granted, by Presidential Decree No. D/2011/134/PRG/SGG published in the Official Journal dated as of 22 April 2011 which was printed in the month of August 2011, the Modified Concession to SIMFER S.A. in accordance with the Settlement Agreement and pursuant to Articles 84 and 85 of the Mining Code (the **Concession Decree**). A copy of the Concession Decree is attached as Appendix 3. The Modified Concession grants SIMFER S.A. the exploration and exploitation rights set out in this Convention. That being said, SIMFER S.A. will also benefit from the other more favourable provisions of Laws and Regulations applicable to mining that are not contrary to the provisions of this Convention.
- (b) The State and SIMFER S.A. may agree to include further area within the area originally described in Article 4 of the Original Convention, or an interest therein, within the Modified Concession, or that it otherwise constitute an interest additional to the Modified Concession. In that event this further area or interest will, in the absence of agreement to the contrary, be governed by this Convention on the same basis as the Modified Concession.
- (c) The Modified Concession was granted for a term which will expire twenty-five years from the Effective Date. It will be renewed automatically at the end of this period, for a further 25 years, or for a total of 50 years. Furthermore, at the end of these two periods, it shall be renewed by further 10 year periods in accordance with the provisions of the Mining Code provided that, for each period, SIMFER S.A. has complied with its fundamental commitments under the terms of this Convention.

### 7 Technical Studies, Development and First Commercial Production Date

#### 7.1 Project Documentation

- (a) In satisfaction of its obligations under Article 1.2 of the Settlement Agreement, on 20 May 2011 SIMFER S.A. submitted to the State:
  - (i) additional geological, geophysical and drilling information to allow the State to better comprehend the reserves reported within the Perimeter of the Modified Concession; and
  - (ii) a business plan indicating proposed development within the Perimeter of the Modified Concession, which had a draft implementation timetable / chronology of the different proposed development activities within the Perimeter of the Modified Concession and the development milestones.
- (b) SIMFER S.A. also submitted to the State the following additional information and studies by each of the dates referred to below in compliance with the Settlement Agreement:
  - (i) by 30 November 2011, additional technical information for the mine, indicating progress against the business plan referred to above and updating the information referred to in Article 7.1; and
  - (ii) by 30 September 2012, additional technical information relating to the Project Infrastructure, indicating the progress made against the business plan referred to above and updating information previously provided.
- (c) SIMFER S.A. also submitted to the State for its information each of the following reports on each of the dates referred to below:

- (i) in February 2012, a preliminary engineering assessment report which established the social, environmental, legal, technical, operational, engineering and commercial work required to deliver against the following requirements or expectations at that time:
  - (A) ore to be delivered in accordance with the schedule specified in the Settlement Agreement,
  - (B) nominal system capacity for SIMFER S.A. of 95 Mtpa,
  - (C) system design to consider future Project Infrastructure expansions,
  - (D) anticipated lifespan of the Project of at least 30 years,
  - (E) incorporation of learnings from previous Simandou studies (including the materials constituting the Feasibility Report referred to in Article 10.1), and
  - (F) system design based on continuous flow principles (the **Preliminary Engineering Assessment**); and
- (ii) in December 2012, a definitive engineering report, based on the agreed outcomes of the Preliminary Engineering Assessment, in draft form pending its adoption by SIMFER S.A. and its shareholders and which was not finalised because the Original Convention was not amended at that time as contemplated by the Settlement Agreement (the **Draft Definitive Engineering Report**). The Draft Definitive Engineering Report determined the conditions, as understood in December 2012, under which the Project would be implemented, and included:
  - (A) detailed assessment of the selected project option from the Preliminary Engineering Assessment;
  - (B) mine design, process flow-sheet, mass, energy and water balances;
  - (C) production schedules;
  - (D) operating strategy and project execution plan, with corresponding procedures developed;
  - (E) engineering design;
  - (F) project execution plan;
  - (G) capital and operating cost estimates finalised within an accuracy range consistent with the Draft Definitive Engineering Report; and
  - (H) detailed risk identification, evaluation and management.

## 7.2 First Commercial Production Date

- (a) The State and SIMFER S.A. acknowledge and agree that:
  - (i) the First Commercial Production Date (which is to occur within 90 Days after the Infrastructure Completion Date) has a target date of 31 December 2018, it being clarified that this date of 31 December 2018 will only be capable of being attained if all of the following assumptions prove to be correct:
    - (A) that the Effective Date is achieved by 1 May 2014;
    - (B) that the State Enabling Activities are completed to the reasonable satisfaction of SIMFER S.A. by no later than 11 months after the Effective Date;

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- (C) that a positive Infrastructure Investment Decision is taken by the Infrastructure Consortium and SIMFER S.A. pursuant to Article 2.8 of the BOT Convention;
  - (D) that the period of time to reach the Infrastructure Effective Date is no longer than 32 months from the Effective Date; and
  - (E) that the total construction period which is confirmed pursuant to Article 2.3(a) of the BOT Convention is no longer than 39 months, 18 months of which are performed prior to the Infrastructure Effective Date and that the Infrastructure Completion Date occurs by no later than 30 September 2018;
- (ii) the target date for the First Commercial Production Date (which is to occur within 90 Days after the Infrastructure Completion Date) will be confirmed, or an alternative target date will be established, by the Infrastructure BFS; and
  - (iii) given the future social and economic benefits of the Project for Guinea, the State and SIMFER S.A. shall examine all means of accelerating the delivery of the Project.
- (b) SIMFER S.A. undertakes that it will complete the construction of its mine within the Perimeter of the Modified Concession so as to achieve the First Commercial Production Date within ninety (90) Days after the Infrastructure Completion Date (recognising that the ICD Target Date and hence the date by which the Infrastructure Completion Date is to occur pursuant to the BOT Convention may be extended by an ICD Deemed Extension and that the ninety (90) Day period may be extended by a Deemed Mine Extension Event).
  - (c) Consistent with the provisions of this Article 7 and in view of the reliance on achieving the Infrastructure Effective Date, SIMFER S.A. will not be under any obligation under this Convention to make any final decision to mine, but instead must make such investment decisions within such times as permit it to comply with its obligation to achieve the First Commercial Production Date in accordance with Article 7.2(b).
  - (d) The State and SIMFER S.A. acknowledge that it is contemplated in the BOT Convention that SIMFER S.A. and the Infrastructure Owner will enter into co-completion arrangements which shall take effect from the Infrastructure Effective Date to ensure that each is ready and functionally able to operate in conjunction with the other when required so that:
    - (i) the Infrastructure Owner is able to achieve the Infrastructure Completion Date by the ICD Target Date as contemplated by Article 7 of the BOT Convention (as such date and hence the date by which the Infrastructure Completion Date is to occur pursuant to the BOT Convention may be extended by an ICD Deemed Extension); and
    - (ii) SIMFER S.A. is able to achieve the First Commercial Production Date in accordance with Article 7.2(b).
  - (e) SIMFER S.A. undertakes that, with respect to the co-completion arrangements referred to in Article 7.2(d), it will provide to the State, as soon as practicable after the end of each calendar quarter subsequent to the Infrastructure Effective Date, an update indicating progress made in relation to the construction of the mine during the preceding quarter including a description of the Mining Activities carried out and the progress of these activities relative to the progress of Infrastructure Activities by the Infrastructure Owner (and shall provide more regular informal briefings to the State as SIMFER S.A.

reasonably believes to be appropriate). The Infrastructure Owner will provide an equivalent undertaking to the State under the BOT Convention and will provide an equivalent reports in respect of Infrastructure Activities.

- (f) If SIMFER S.A. becomes aware that an event, or series of events, of delay have occurred that may delay the schedule for the Mining Activities, including a State failure to act or provide support as required pursuant to this Convention, then, for information purpose only, SIMFER S.A. will include, on a timely basis, information on such event or events in the progress updates to be provided under Article 7.2(e) or in other ad hoc briefings that may be provided. The State and SIMFER S.A. acknowledge and agree that:
- (i) non-reporting of those events shall not in any case be interpreted to have, and shall not have, any impact or consequence for, and will not prejudice, SIMFER S.A.'s ability to rely on a Deemed Mine Extension Event as provided for in this Convention, and communication of those events is not a precondition to the Deemed Mine Extension Event arising and applying in the manner set out in this Convention; and
  - (ii) reporting of those events shall not in any case be interpreted to have, and shall not have, any impact or consequence for, and will not prejudice, the State's ability to challenge that a Deemed Mine Extension Event has occurred and a failure by the State to respond to a communication of those events does not preclude the State from challenging that a Deemed Mine Extension Event has occurred.
- (g) There shall be a **Deemed Mine Extension Event** if there is:
- (i) a Force Majeure Event;
  - (ii) a government action or failure to act including:
    - (A) a Material Government Breach;
    - (B) any event of delay to access to sites or to the grant of any Authorisations necessary for the conduct of the Project or any related study;
    - (C) any delay in completion of the State Enabling Activities as required pursuant to Article 5;
    - (D) any event of delay to the acquisition of Project Lands as contemplated by Article 20.1 including delays in the relocation of persons as necessary for the performance of the Project Activities; or
    - (E) any event of delay due to referral of a matter to negotiation or arbitration pursuant to Article 46; or
  - (iii) any ICD Deemed Extension under the BOT Convention that is deemed by that Convention to be a Deemed Mine Extension Event,
- in each case having an evident impact on the total period to complete the construction of the mine within the development schedule contemplated by the Mine BFS or the total period to achieve the First Commercial Production Date.
- (h) If there is a Deemed Mine Extension Event prior to the Infrastructure Completion Date, which occurs at a time or is of a nature which will have an evident impact on the ability of the Infrastructure Owner to achieve the Infrastructure Completion Date pursuant to the BOT Convention or the ability of SIMFER S.A. to achieve the First Commercial Production Date by the date that is 90 Days after the Infrastructure Completion Date, then:

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- (i) the Deemed Mine Extension Event will be deemed to be an ICD Deemed Extension under the BOT Convention; and
  - (ii) the ICD Target Date and hence the date by which the Infrastructure Completion Date is to occur pursuant to the BOT Convention will be automatically extended by the duration of the event, government action or failure to act that gives rise to the Deemed Mine Extension Event (and, therefore, the ICD Deemed Extension for the purposes of the BOT Convention).
- (i) If there is a Deemed Mine Extension Event on or after the Infrastructure Completion Date, then the ninety (90) Day period after the Infrastructure Completion Date to achieve the First Commercial Production Date will be automatically extended by the duration of the Force Majeure Event, government action or failure to act or ICD Deemed Extension that gives rise to the Deemed Mine Extension Event.
- (j) The State and SIMFER S.A. acknowledge and agree that the ICD Target Date and hence the date by which the Infrastructure Completion Date is to occur pursuant to the BOT Convention is subject to any ICD Deemed Extension under the BOT Convention (including in the circumstances contemplated by Article 7.2(h) of this Convention). If the ICD Target Date is extended pursuant to the BOT Convention or this Convention, then SIMFER S.A. may revise its development schedule to take into account the extension or any delay pending agreement on any ICD Deemed Extension. SIMFER S.A. will be kept advised by the State and the Infrastructure Owner of, and be involved in all material discussions regarding, any claims for an ICD Deemed Extension or any known facts or circumstances which may result in any ICD Deemed Extension under the BOT Convention or this Convention.
- (k) The State and SIMFER S.A. acknowledge and agree that inability of SIMFER S.A. to achieve the First Commercial Production Date in accordance with Article 7.2(b) due to:
  - (i) a breach by the Infrastructure Owner of its obligations under the BOT Convention (including, for the avoidance of doubt, non-compliance with the co-completion arrangements, failure to construct infrastructure enabling the construction of the Mining Infrastructure or non-occurrence of the Infrastructure Completion Date); or
  - (ii) without prejudice to the State's rights pursuant to Article 19.5, the non-occurrence of the Infrastructure Effective Date under the BOT Convention for any reason (including in the event that an Infrastructure Consortium to develop the Project Infrastructure is not selected pursuant to Article 2.6 of the BOT Convention or approved by the State),shall not constitute a breach of this Convention by SIMFER S.A.
- (l) The State and SIMFER S.A. acknowledge and agree that the ability of SIMFER S.A. to achieve the First Commercial Production Date in accordance with Article 7.2(b) is contingent upon the provision of continuous Haulage Services to SIMFER S.A. pursuant to Article 15.1 of the BOT Convention and the Rail and Port Services Agreement on and from the Infrastructure Completion Date, and a failure to provide such continuous Haulage Services (otherwise than due to a default of SIMFER S.A.) shall be a Deemed Mine Extension Event for the purposes of this Convention.

### 7.3 Exploration Activities

- (a) During the term of this Convention, SIMFER S.A. has and reserves the right, consistently with Article 12, to perform any exploration and development activity within the Perimeter of the Modified Concession pursuant to, and on the terms of, this Convention and the Mining Code, in so far as it is not contrary to the provisions of this Convention. Any

exploration activities must be carried out by SIMFER S.A. or by one or more Project Contractors having the necessary competence to carry out the work and for which SIMFER S.A. remains solely responsible to the State.

- (b) SIMFER S.A. shall submit to the State in a summary form reports describing the progress of exploration activities, the expenses incurred, the data obtained and difficulties encountered. As the case may be and wherever possible, each of these reports shall be supported by the following documents, without this list being considered restrictive:
  - (i) **(Mapping)** 'mosaic' maps of outcrops and itineraries, partial and consolidated geological maps, maps with points of sampling and findings, also indicating other findings made in the course of the prospecting;
  - (ii) **(Drilling)** any drilling operations carried out and the measuring data from geophysical activities carried out in connection with these drillings;
  - (iii) **(Geophysical and geochemical activities)** isovaleric graphs and positioning maps of any anomalies revealed; and
  - (iv) **(Samples and analyses)** analyses and number of samples taken and tested, and copies of all the results of the analyses carried out.

## 8 Expenses for Exploration and Study Activities

Other than the wages, salaries and sundry expenses relating to the staff actually engaged in exploration and study activities (including exploration and development activities) in Guinea, for which SIMFER S.A. must have first provided an annual budgetary forecast to the State, only the following items will be taken into account for the calculation of the amount of expenses relating to exploration and study activities:

- (a) the depreciation of the equipment actually used in Guinea for exploration and study activities necessary for the Project, for the period corresponding to their use;
- (b) any direct and indirect expenses incurred in Guinea for the conduct of the works, including any costs relating to the preparation of programmes, tests, analyses, independent studies and so forth, and any technical services of co-ordination and management carried out by SIMFER S.A.; and
- (c) any expenses incurred outside Guinea in relation to the activities deployed for the Project.

With a view to the verification of these expenses, the accounts shall be organised in accordance with the provisions of Article 35 and with the headings laid down in the Tax Annex so as to provide in particular a distinction between exploration and study costs and administrative expenses.

## 9 Discovery of other Mineral Resources

- (a) If, within the Perimeter of the Modified Concession, SIMFER S.A. discovers indications of mineral substances other than iron ore, SIMFER S.A. will provide a Notice to the State without delay. In such a case SIMFER S.A. shall be entitled to a right of pre-emption that it can exercise within 6 months from the date of Notification to the State, for the granting of an exploration permit for these substances. Once this period has expired, the State may enter into an agreement with a third party in accordance with the terms of Article 14.
- (b) Should SIMFER S.A. exercise its right of pre-emption, the State and SIMFER S.A. must negotiate in good faith the appropriate terms and conditions enabling SIMFER S.A. to

carry out the exploration activities and, should the case arise, the commercial and industrial exploitation of the substances in question.

- (c) In a case where the feasibility study carried out by SIMFER S.A., in accordance with the provisions of this Convention as contemplated in Article 9(b), would not enable SIMFER S.A. to make a decision to mine, SIMFER S.A. will have the right to carry out additional studies which must be completed within a reasonable term to be decided by mutual agreement between the State and SIMFER S.A.
- (d) In the event that the decision of SIMFER S.A. after these additional studies are undertaken is not to mine, SIMFER S.A. will then have the right to transfer its rights to a third party at market price. In accordance with the terms contemplated by Article 44 of the Mining Code, the State may issue a concession to such third party.
- (e) If after a period of six (6) months with effect from the date of the Notification to the State by SIMFER S.A. that SIMFER S.A. wishes to exercise its right of pre-emption, the State and SIMFER S.A. fail to reach an agreement and it is unlikely at that date that such an agreement between the State and SIMFER S.A. would be forthcoming, the State shall be free to grant an exploration permit for the substances concerned to third parties under terms that shall not be more favourable than those proposed to SIMFER S.A. and with the express condition that this exploration and any subsequent exploitation do not encumber the Project Activities. For this purpose, the State and SIMFER S.A. undertake in such an event to conclude an agreement specifying the particular terms guaranteeing SIMFER S.A. that throughout the term of the Modified Concession any exploration and mining of the other mineral resources by the State or by third parties will not have any significantly adverse impact upon the Project Activities.

## 10 Feasibility Report and Mine BFS

### 10.1 Feasibility Report

- (a) It is expressly acknowledged that SIMFER S.A. provided the State with a set of documents and information between December 2008 and 22 February 2011 providing evidence that SIMFER S.A. has carried out exploration works of sufficient importance to prove:
  - (i) the existence of commercially exploitable deposits in the Perimeter of the Modified Concession under this Convention and Article 43 of the Mining Code; and
  - (ii) that the exploitation of these deposits will require works and investment of very significant importance.

Therefore, on this basis, and in accordance with both the provisions of the Mining Code and this Convention, the State granted, by decree, the Modified Concession.

- (b) As a result, all the documents and other information referred to in Article 10.1(a) shall be deemed to constitute the **Feasibility Report** for the purpose of this Convention.

### 10.2 Mine BFS

- (a) SIMFER S.A. will:
  - (i) as part of the Consortium Selection Process contemplated by Article 2.2 of the BOT Convention, prepare a feasibility study for the mine development to a bankable standard based upon the mine components of the Draft Definitive Engineering Report that contains the information listed in Article 10.2(b) (the **Mine BFS**); and

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- (ii) subject to the State complying with its obligations under Article 5, deliver a copy of the Mine BFS to the State for its information only at the same time as the Infrastructure BFS.
- (b) The Mine BFS will include, without limitation, the following information:
  - (i) an estimate of the capital cost of the Mining Infrastructure;
  - (ii) an estimate of the reserves contained within the Perimeter of the Modified Concession as at the date of the Mine BFS confirmed by a 'Competent Person' for the purposes of the JORC Code; and
  - (iii) a marketing strategy.
- (c) The State acknowledges and agrees that, while SIMFER S.A. will prepare the Mine BFS in good faith, the delivery or any adoption of the Mine BFS by SIMFER S.A. constitutes neither a warranty nor a representation as to any of the matters, estimates, figures or amounts contained, or referred to, in the Mine BFS.

### **10.3 Project Documentation**

The State and SIMFER S.A. acknowledge and agree that the information and materials previously submitted by SIMFER S.A. to the State pursuant to Article 7.1 and Article 10.1 are of a historical nature and will be superseded by the Mine BFS when it is delivered to the State in accordance with Article 10.2.

### **Section III: Exploitation**

#### **11 Mining Methods**

- (a) Having regard to the fact that the exploration activities and the Feasibility Report specified in this Convention have established the existence of deposits of Iron Ore that are commercially mineable and once, in accordance with the provisions of this Convention and the BOT Convention, the Infrastructure Effective Date has occurred, SIMFER S.A. will commercialise the deposit.
- (b) SIMFER S.A. shall carry out all activities under this Convention in accordance with Good Operating Practice, the Project Standards and otherwise in accordance with the requirements of this Convention and the Long Term Mine Plan. The State also affirms its commitment to the Project Standards in the development of the Project and in its dealings with SIMFER S.A..
- (c) SIMFER S.A. shall benefit from the provisions of this Convention, which will prevail over any other provisions of Laws and Regulations (except to the extent that this Convention provides otherwise). However, the Legislation in Force and in particular the Mining Code will apply in so far as they are not contrary to the provisions of this Convention or if this Convention expressly provides for it.

#### **12 Mining Rights**

Subject to SIMFER S.A.'s compliance with the obligations subscribed to by virtue of this Convention, the Modified Concession awarded to SIMFER S.A. shall grant it an exclusive and automatic right to explore, develop and mine any deposits of iron ore within the Perimeter of the Modified Concession.

#### **13 Processing and Transformation of Iron Ore**

- (a) If the exploration activities produce results indicating the existence of sandy ore and if adequate power sources are available in Guinea, SIMFER S.A. will study the technical and economic feasibility of a pelletising unit in Guinea. If these studies provide a positive result, SIMFER S.A. and the State will come to an agreement on the setting up of such a unit.
- (b) As it is the State's objective eventually to Transform its iron ore resources, SIMFER S.A. will also support the State in the setting up of an iron and steel industry in Guinea.

#### **14 Agreement with Third Parties**

In the event of the State receiving a request from a third party regarding the exploration or mining rights of a mineral substance other than iron ore within the Perimeter of the Modified Concession, the State will provide a Notice immediately to SIMFER S.A. and the latter will be given ninety (90) Days to oppose the grant of these rights to a third party. If SIMFER S.A. puts forward a written justified objection, set out in a report submitted to the State demonstrating the significantly negative impact at a technical and financial level that the granting of the exploration and exploitation permit to the said third party would represent for the Project, the State shall not agree to the request of the third party. If SIMFER S.A. does not object or if the grounds for its objection are not justified, the State will grant the rights to a third party, on condition that the activities of the third party concerned do not in any way encumber the activities, present or future, of SIMFER S.A.. For this purpose, the State and SIMFER S.A. undertake to conclude an agreement specifying the particular terms guaranteeing SIMFER S.A. that throughout the term of the Modified Concession any exploration and exploitation activity by the State or by the third parties

of the other mineral resources will not have any significantly adverse impact upon the Project Activities.

## 15 State Right of Access

The State reserves the right of access, visit and inspection of the Modified Concession for the purposes of carrying out at its own cost any inspection or any other investigation as contemplated by the Mining Code.

## 16 Production Targets, Capacity

- (a) Subject to compliance with and implementation of Article 19 and other relevant articles of this Convention in accordance with their terms, SIMFER S.A. has as its target to develop a mining operation of a total capacity of approximately one hundred million (100,000,000) tonnes of Iron Ore per year, with an initial target capacity of approximately fifty million (50,000,000) tonnes per year and, subject to the continuing existence of market conditions that are not materially worse than the market conditions assumed in the Mine BFS and satisfactory ramp-up to the initial target capacity in accordance with the Mine BFS, to then continue developing the project in order to reach the total target capacity, notably on the basis of the Mine BFS.
- (b) The State and SIMFER S.A. acknowledge that SIMFER S.A. may, at any time after reaching a total capacity of approximately one hundred million (100,000,000) tonnes of Iron Ore per year, elect to develop a mine, or increase the capacity of an existing mine, in the Perimeter of the Modified Concession (each, an **Expansion**). The level of production and ramp-up and relevant works programme for each Expansion shall be determined by SIMFER S.A. on the basis of a new feasibility study to be conducted prior to the implementation of the relevant Expansion. The feasibility study required for each Expansion shall be completed by SIMFER S.A. and submitted to the State for information purposes. The conduct of any Expansion shall be governed by the terms and conditions of this Convention and shall not require any amendment to this Convention. SIMFER S.A. will not be under any obligation to conduct any Expansion.
- (c) SIMFER S.A. may decide at any time any adjustment of capacity and will then be required to provide prior notification to the State under Article 128 of the Mining Code before implementing adjustment such of capacity.

## 17 Access to Production

- (a) The State may have access to production for the supply of an iron and steel industry in Guinea, on the basis of a sale contract, the conditions of which will have been negotiated on the basis of an international price and taking into account a number of objective criteria including inter alia commitments already entered into by or on behalf of SIMFER S.A. and the requirements of the Senior Financing Parties (including any off-take requirements to the extent required by the Senior Financing Parties).
- (b) The provisions of this Article 17 will remain in force, even in the event that the State becomes a shareholder of SIMFER S.A. (as provided under Article 22 of this Convention).

## 18 Marketing

- (a) Production being intended by SIMFER S.A. for the international market, itself developed on the basis of long term relationships with customers, SIMFER S.A. will have the right to freely export from Guinea all or part of its production. For this purpose, and allowing for exceptions, SIMFER S.A. will enter into long term contracts with customers outside

Guinea under terms in line with the terms of trade that are standard practice in this regard between third parties. The only charges and Taxes, if any, which may be payable in Guinea in relation to commercialisation are exhaustively listed in this Convention.

- (b) SIMFER S.A. shall, prior to the start of each year, prepare (or procure the preparation of) an annual marketing plan that will, amongst other things, reserve amounts of production for binding long term sales contracts entered into or to be entered into by or on behalf of SIMFER S.A. from time to time (including any offtake requirements to the extent required by Financing Parties) (the **LTC Tonnes**).
- (c) Subject to Articles 18(d) to 18(h), the State (including through SOGUIPAMI) shall be entitled to buy and market a quantity of production up to the percentage corresponding to the cumulative percentage of the interest held by the State (including through SOGUIPAMI) in the share capital of SIMFER S.A. at the time the entitlement is exercised (the **State Option**). The purchase price for the exercise of the State Option shall be at the applicable spot price for the Day on which the relevant delivery is made. Where the applicable spot price is calculated on a non-FOB basis, the purchase price for the exercise of the State Option shall be determined by a mechanism to be agreed by the State and SIMFER S.A. which deducts any component of the applicable spot price that is referable to:
  - (i) ocean freight; and
  - (ii) any other charges or costs relating to the delivery of the production from the loading port to the place of delivery.
- (d) Prior to the finalisation of the annual marketing plan for a year, the State must nominate the quantity of production it intends to buy and market in each quarter in the following year pursuant to the State Option (the **Annual Nomination**). The Annual Nomination must be received by a date nominated by SIMFER S.A. to allow the finalisation of the annual marketing plan. The quantity nominated in any quarter cannot exceed the quantity of production that remains available after meeting commitments to deliver LTC Tonnes.
- (e) The State may exercise the State Option in relation to a quarter by providing Notice to SIMFER S.A. prior to the last day of the second month of the previous quarter. The Notice must:
  - (i) attach a copy of each relevant sales contract with the third party or parties; and
  - (ii) specify a quantity for the quarter that:
    - (A) does not exceed the quantity for that quarter specified in the Annual Nomination;
    - (B) does not exceed the quantity of production that remains available in that quarter after meeting commitments to deliver LTC Tonnes;
    - (C) considers the daily production plan in terms of available production; and
    - (D) does not require material changes to the prevailing schedule at the Simandou Port in that quarter.
- (f) If and to the extent the State does not elect to exercise the State Option with respect to a quarter by the last day of the second month of the previous quarter, the State Option in relation to that quarter and the quantity of production nominated for that quarter in the Annual Nomination will lapse.
- (g) SIMFER S.A. shall have a right of pre-emption over any on-sale to any third party by the State (including SOGUIPAMI) of any production in respect of which the State Option has

been exercised. SIMFER S.A.'s right of pre-emption shall be exercisable by it providing Notice to the State or SOGUIPAMI (as applicable) before the start of the quarter electing to sell the production the subject of that on-sale at least at the same price as would have applied in respect of such on-sale.

- (h) The State's entitlement to quantities of production under this Article 18 will be reduced in any year by the quantities of production to which it receives access pursuant to Article 17.
- (i) The State shall, in all cases, deposit the proceeds of sale resulting from this Article 18 into the offshore foreign currency account referenced in Article 38(a).

## 19 Infrastructure

### 19.1 Infrastructure Requirements

The State and SIMFER S.A. agree that the development of the iron ore deposits within the Perimeter of the Modified Concession is strictly contingent on the development of the Project Infrastructure including, in particular, roads and construction of major railways and port facilities.

### 19.2 Infrastructure Funding

- (a) SIMFER S.A., assisted by RTME, will explore various sources of funding and the State and SIMFER S.A. have entered into the BOT Convention on the date hereof for the purposes of establishing an investment framework to attract and allow for an infrastructure consortium to be selected by SIMFER S.A. and approved by the State (with such approval not to be unreasonably withheld) which shall comprise one or more entities contributing debt and equity to own, finance and construct the Project Infrastructure (***Infrastructure Consortium***).
- (b) The founding members of the Infrastructure Consortium (each, an ***Infrastructure Anchor Investor***) shall be selected on the basis of the Selection Terms and appointed as part of and during the Consortium Selection Process. The Consortium Selection Process will be led and managed by SIMFER S.A. with the participation of Infrastructure Anchor Investors as appropriate and with certain activities to be performed by the State, in each case in accordance with the provisions of Articles 2.2 to 2.6 of the BOT Convention. SIMFER S.A. shall provide updates on progress of the Consortium Selection Process to the State at regular intervals.

### 19.3 Infrastructure Characteristics

The Project Infrastructure shall have the characteristics (as reflected in the BOT Convention as at the date of this Convention) and SIMFER S.A. shall have corresponding rights in relation to the Project Infrastructure in each case, without limitation as set out below:

- (a) the Infrastructure Consortium will establish a company to be the Infrastructure Owner (along with any necessary or desirable holding companies) to own, finance and construct the Project Infrastructure, including the construction of enabling infrastructure, such as a port offload facility and roads as required to facilitate construction of the Mining Infrastructure and will make such enabling infrastructure available to the Infrastructure Operator (including such enabling infrastructure as is transferred to the Infrastructure Owner by SIMFER S.A.) to enable it to facilitate the operation of the SIMFER S.A. mine;
- (b) the Project Infrastructure will be designed and constructed in accordance with the agreed technical and performance specifications for delivering 100 Mtpa, and to transport and load onto cape size vessels initially up to approximately 50 Mtpa or such greater rate as may be decided by SIMFER S.A. and mutually agreed between SIMFER S.A. and the Infrastructure Owner in accordance with the BOT Convention.

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- (c) SIMFER S.A. shall as foundation customer pay, over a thirty (30) year investment repayment period, a tariff reasonably acceptable to SIMFER S.A. comprising a capital charge payable to the Infrastructure Owner (based on an agreed maximum capital amount and a return on that amount) and an operating charge payable to the Infrastructure Operator (comprising both operating and maintenance and renewal costs), reflecting the principle of 'take or pay' and which shall be calculated and based on the terms and conditions of the BOT Convention (including the Rail and Port Services Agreement and the rail and port pricing principles established pursuant to the BOT Convention);
- (d) the Project Infrastructure will comprise a multi user system as provided for in the BOT Convention and will be transferred to the State or to any State owned entity nominated by the State at the end of the thirty (30) year investment repayment period, subject at all times to SIMFER S.A.'s foundation customer priority rights as provided for in the BOT Convention, this Convention and the Rail and Port Services Agreement;
- (e) from the Infrastructure Completion Date, the Infrastructure Operator (which will be SIMFER S.A. or its nominee or nominees within the Rio Tinto Group, unless otherwise required by the Infrastructure Consortium as part of the Consortium Selection Process contemplated by Article 2.3 of the BOT Convention) will operate the Project Infrastructure and provide rail and port services as the Infrastructure Operator for the period prior to transfer of the Project Infrastructure to the State; and
- (f) by virtue of the Project Infrastructure being constructed for the purposes of the Project, Articles 27 to 36 together with the Tax Annex also determine the preferential treatment applicable to the Infrastructure Project and to the Infrastructure Owner, the Infrastructure Operator and their respective Direct Sub-Contractors and Affiliates in connection with the Infrastructure Project.

All of these provisions and the other provisions applying to the infrastructure arrangements are set out in more detail in the BOT Convention which should be interpreted taking into account this Convention, the RPSA and the Infrastructure Operating Agreement with respect to the Project Infrastructure arrangements.

### 19.4 Historical Mining Costs and Historical Infrastructure Costs

- (a) **(Payment of Historical Infrastructure Costs by Infrastructure Consortium)** SIMFER S.A. will:
  - (i) lead and manage the applicable parts of the Consortium Selection Process (including, for the avoidance of doubt, the preparation of the Infrastructure BFS and the In-country Activities), in each case in accordance with the provisions of Articles 2.2 to 2.6 of the BOT Convention; and
  - (ii) in accordance with the provisions of Articles 2.8 and 2.11 of the BOT Convention, provide the Infrastructure BFS to the Infrastructure Consortium, as well as the social and environmental assessment submitted pursuant to Article 41.2 (updated as appropriate pursuant to Article 2.3(d) of the BOT Convention), together with supporting details, to assist the Infrastructure Consortium to undertake the Infrastructure Project in the most efficient manner possible following its appointment,

and the Infrastructure Consortium will pay to SIMFER S.A. an amount equal to the Historical Infrastructure Costs (which shall include the costs of the applicable parts of the Consortium Selection Process), or enter into such other arrangements as are agreed

between SIMFER S.A. and the Infrastructure Consortium to reflect the contribution which has been made by SIMFER S.A. in relation to the Project Infrastructure.

- (b) **(State right to audit Historical Mining Costs and Historical Infrastructure Costs)** If the Historical Mining Costs and the Historical Infrastructure Costs become payable to SIMFER S.A. pursuant to Article 19.5(f)(i)(B) or there is a failure to agree Historical Mining Cost for the purposes of Article 22.3(a)(ii) in accordance with the Articles of Association and / or Shareholders Agreement of SIMFER S.A., then the State may, by Notice to SIMFER S.A., request that its accounts, records and information used for the purposes of calculating the Historical Mining Costs and / or the Historical Infrastructure Costs be made available for an audit by the Approved Auditor appointed by the State for the sole purpose of enabling the Approved Auditor to conduct an audit to determine whether the Historical Mining Costs and / or the Historical Infrastructure Costs the subject of an audit are in fact Historical Mining Costs or Historical Infrastructure Costs (as applicable) and have been correctly calculated and applied, in accordance with the provisions of this Article 19.4(b).
- (i) Subject to the Approved Auditor entering into confidentiality undertakings in favour of SIMFER S.A., SIMFER S.A. shall cause such of its accounts, records and information used for the purposes of calculating the Historical Mining Costs and / or the Historical Infrastructure Costs be made available for audit by the Approved Auditor for the sole purpose of enabling the Approved Auditor to conduct an audit to determine whether the Historical Mining Costs and / or the Historical Infrastructure Costs are in fact Historical Mining Costs or Historical Infrastructure Costs (as applicable) and have been correctly calculated and applied.
- (ii) The Approved Auditor must provide a certificate to the State and SIMFER S.A. following an audit conducted pursuant to this Article 19.4(b) that contains and sets out in reasonable detail the calculations undertaken by the Approved Auditor in determining the Historical Mining Costs and / or the Historical Infrastructure Costs. The certificate provided by the Approved Auditor that certifies the amount of the Historical Mining Costs and / or the Historical Infrastructure Costs shall be binding and conclusive as between SIMFER S.A. and the State in the absence of manifest error.
- (iii) The costs of carrying out an audit pursuant to this Article 19.4(b) shall be to the sole account of the State.

## 19.5 Infrastructure Alternatives

In the event that any of the circumstances set out in Article 2.12(b)(i) to (iii) (inclusive) of the BOT Convention (**Article 2.12 Trigger**) arises, the following provisions of this Article 19.5 shall apply:

- (a) SIMFER S.A. and the State shall review progress and, if necessary, consider alternatives for the financing and construction of the railway and port facilities to enable the development of the Mining Infrastructure while preserving a reasonable return on investment taking into account the magnitude of the required mine and infrastructure investments and the extent of the risk involved. Subject to terms and conditions acceptable to both SIMFER S.A. and the State, such alternatives may include:
- (i) the selection of an alternative infrastructure investor or investors to act as the Infrastructure Owner responsible for the construction and financing of the Project Infrastructure in accordance with the BOT Convention;

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- (ii) the identification of one or more additional foundation customers to support the development of the Project Infrastructure on terms and conditions reasonably acceptable to SIMFER S.A. and the State; and / or
- (iii) SIMFER S.A. performing at its own cost any additional study on, or technical evaluation of, the Project Infrastructure that SIMFER S.A. considers necessary and electing or nominating one or more Affiliates to act as the Infrastructure Owner responsible for the construction and financing of the Project Infrastructure in accordance with the BOT Convention,

in each case with such reasonable modifications to the BOT Convention (together with any reasonable modifications to this Convention) as may be reasonably required by SIMFER S.A (or by investors, Affiliates or any proposed co-foundation customers, as applicable, that are acceptable to SIMFER S.A.).

- (b) Without prejudice to the rights set out in Articles 19.5(d) and 19.5(e), failure to agree on any such alternatives as are set out in Article 19.5(a) shall not constitute a breach of this Convention by any Party and shall not entitle any Party to terminate this Convention, in recognition of the substantial investment made to date by SIMFER S.A. and its direct and indirect shareholders, including payment of the Settlement Sum.
- (c) The Parties shall continue to cooperate with each other in good faith and seek alternative funding solutions to allow the development of the mine and infrastructure in such manner that achieves the objectives described in this Article 19.5 and takes into account the size of the required investments and associated risks.
- (d) However, it is acknowledged and agreed by the Parties that, in the event that, upon expiry of 6 months from the date of the Article 2.12 Trigger in respect of the Consortium Selection Target Date arising:
  - (i) SIMFER S.A. has not completed the Infrastructure BFS and In-country Activities; and
  - (ii) SIMFER S.A. and its shareholders have not proposed potential credible and substantial options for mutually acceptable Infrastructure Anchor Investor(s) who may elect to form the Infrastructure Consortium and with whom it has made progress in the development of a Funding Plan (as defined in and to be finalised and confirmed pursuant to Article 2.7(c) of the BOT Convention); and
  - (iii) no other means of securing substantial, credible and realistic Infrastructure Anchor Investor(s) remain available,

then this will provide grounds for termination of this Convention by either the State or SIMFER S.A..

- (e) It is further acknowledged and agreed by the Parties that in the event that, upon expiry of a period of 6 months from the date of any Article 2.12 Trigger, other than the Article 2.12 Trigger in respect of the Consortium Selection Target Date, arising (such period to be extended by a further 6 months should substantial progress, in relation to securing credible and realistic alternative funding solution(s), be demonstrated by any Party during the initial period of 6 months):
  - (i) the Parties have been unable to establish and agree upon a mutually acceptable solution for the development, funding, construction and operation of the Project Infrastructure; and
  - (ii) SIMFER S.A. and its shareholders are unable to demonstrate that they have identified credible and substantial option(s) for a mutually acceptable solution that

may be able to be implemented if they were permitted to make ongoing and serious efforts to progress these option(s); and

- (iii) all identified means of securing substantial, credible and realistic alternative funding solutions have been exhausted,

then this will provide grounds for termination of this Convention by either the State or SIMFER S.A..

- (f) In the event that the State seeks to terminate this Convention on the basis set out in Article 19.5(d) or Article 19.5(e), it is agreed and understood by the Parties that it shall be a condition of such termination taking effect that:

- (i) the State has, following a process under which SIMFER S.A. will co-operate and provide reasonable assistance (provided that such assistance must only be given if the costs of such assistance are added to the compensation to be paid to it as provided in this Article 19.5(f) and that the process of providing such assistance is reasonably satisfactory to it), identified:

- (A) a viable alternate infrastructure investor or investors who has agreed to act as the Infrastructure Owner responsible for the construction and financing of the Project Infrastructure in accordance with the BOT Convention; and

- (B) a viable investor or investors to undertake all of the obligations of SIMFER S.A. under this Convention who has agreed to pay and has paid compensation to SIMFER S.A. in an amount equal to the total amount of Historical Mining Costs and Historical Infrastructure Costs (such Historical Mining Costs to include, for the avoidance of doubt, the Settlement Sum) and to whom SIMFER S.A. shall be obliged to assign or transfer (as applicable):

- (1) the rights in the Mine BFS, on the date of receipt of compensation by SIMFER S.A.;
- (2) the rights in the Infrastructure BFS (or, in the case of termination on the basis set out in Article 19.5(d), such parts of the Infrastructure BFS that have been completed as at the date of termination), to the extent that they have not already been assigned to the Infrastructure Consortium in accordance with the provisions of Articles 2.8 and 2.11 of the BOT Convention, on the date of receipt of compensation by SIMFER S.A.; and
- (3) any Mining Infrastructure or Project Infrastructure in existence at that time, and any Land Rights connected to that Mining Infrastructure or Project Infrastructure, owned by SIMFER S.A., within 90 Days after receipt of compensation by SIMFER S.A.; and

- (ii) until such time as all the conditions of Article 19.5(f)(i) have been satisfied:

- (A) any termination which the State seeks to implement pursuant to Article 19.5(d) or 19.5(e) shall not take effect and the State cannot otherwise terminate this Convention; and

- (B) SIMFER S.A. shall, subject to the provisions of Article 19.6(c), have an ongoing right to remedy the relevant Article 2.12 Trigger and, if SIMFER S.A. is able to remedy the relevant Article 2.12 Trigger to the satisfaction

of the State, the termination cannot take effect and the Infrastructure Project shall then be implemented in the manner set out in Article 2.1(a) of the BOT Convention, with such modifications as may be required, in particular to the Target Dates then remaining, to reflect the passage of time which has occurred (including with respect to the duration of this Convention and the Modified Concession) and any other surrounding circumstances then existing.

- (g) In the event of termination by SIMFER S.A. on the basis set out in Article 19.5(d) or the basis set out in Article 19.5(e), the State shall have the option (to be exercised within 90 Days after such termination occurring) to have all of the shares in SIMFER S.A. transferred to it in return for payment of a termination amount in accordance with Article 19.5(f)(i)(B).

#### **19.6 Care and maintain obligation**

The Parties further agree that in the period following any termination which may occur in the circumstances set out in Article 19.5 and concluding on the date on which:

- (a) payment is received by SIMFER S.A. pursuant to Article 19.5(f);
- (b) payment is received by SIMFER S.A. pursuant to Article 19.5(g) (in the event that the option set out in Article 19.5(g) has been exercised, failing which until the date on which that option has expired pursuant to Article 19.5(g)); or
- (c) SIMFER S.A. gives Notice to the State that it no longer wishes to retain the right to remedy the relevant Article 2.12 Trigger to the satisfaction of the State in accordance with Article 19.5(f)(ii)(B),

SIMFER S.A. shall take such reasonable steps as are necessary to keep the Mining Infrastructure and Project Infrastructure as may exist on that date on a care and maintain basis in accordance with Good Industry Practice and any costs incurred by SIMFER S.A. in doing so shall be included in the payment to be made to SIMFER S.A. pursuant to Article 19.5(f).

#### **19.7 Damages or other compensation excluded**

The Parties further agree that should the grounds for termination set out in Articles 19.5(d) or 19.5(e) be successfully invoked by either the State or SIMFER S.A. under Articles 19.5 then in no circumstances shall any damages or other compensation or penalty be payable by any Party to any other Party.

#### **19.8 Infrastructure Provisions after the Transfer Date**

- (a) Appendix 10 contains provisions relating to the Project Infrastructure after the Transfer Date, including SIMFER S.A.'s rights in relation to the Project Infrastructure (***Infrastructure Provisions***), which shall apply automatically in full with effect from the Transfer Date.
- (b) Simultaneously with the Transfer Date, the State undertakes to execute, and ensure that the following entities execute, an Accession Agreement in the form attached as Appendix 11 for the purpose of implementing in full the Infrastructure Provisions:
  - (i) the entity that will be the Infrastructure Owner immediately after the Transfer Date; and
  - (ii) the entity that will be the Infrastructure Operator immediately after the Transfer Date.

It is expressly agreed that the Infrastructure Owner's and the Infrastructure Operator's only rights and obligations under this Convention will be the rights and obligations conferred by the Infrastructure Provisions and that their accession to this Convention shall not grant them any other rights or obligations set out in this Convention. In particular, it is expressly agreed that neither the Infrastructure Owner nor the Infrastructure Operator shall have the right to terminate this Convention and the agreement of the Infrastructure Owner and the Infrastructure Operator will not be required in order for the other Parties to be able to amend any provision of this Convention other than the Infrastructure Provisions.

- (c) On and from the Transfer Date, the State, SIMFER S.A., the Infrastructure Owner and the Infrastructure Operator will have the rights and must perform the obligations imposed by the Infrastructure Provisions until the expiry of this Convention.
- (d) For the avoidance of doubt, the ratification of this Convention also constitutes the ratification of the Infrastructure Provisions, with effect from the Effective Date.
- (e) After the Transfer Date, references in this Convention to the BOT Convention shall be read as references to the Infrastructure Provisions (and references to Articles of the BOT Convention will, unless the context otherwise requires, be construed as references to equivalent Articles of the Infrastructure Provisions).
- (f) On and from the Transfer Date, the State shall ensure that the Infrastructure Owner complies with its obligations under the Infrastructure Provisions and the Rail and Port Services Agreement, if and for so long as the State holds a stake of more than 50% of the issued equity capital and/or of the voting rights in the Infrastructure Owner.
- (g) The State agrees to take such further steps as may be necessary, including executing and / or ratifying documents or other instruments, to ensure the Infrastructure Provisions take full effect as intended by this Article 19.8.

## **20 Project Lands and Land Acquisition**

### **20.1 Project Lands**

The Project Lands shall be made available to the Project in accordance with the PIN Decree and pursuant to the procedures set out in Appendix 6.

### **20.2 Rights in respect of the Project Lands**

- (a) The State hereby grants to each of SIMFER S.A., the Infrastructure Owner and the Infrastructure Operator, without the need for any further Authorisations or other formalities (other than those Authorisations or other formalities which are prescribed in Appendix 6 as necessary to ensure that Land Rights are fully effective, for a duration not exceeding the duration of this Convention), such Land Rights as are necessary to carry out the Project Activities for which they are responsible under, and in accordance with the terms and conditions of this Convention, the BOT Convention and the PIN Decree.
- (b) Project Ownership Rights attaching to the Project Assets (which will be fixtures on the Project Lands) are acquired by SIMFER S.A., the Infrastructure Owner or the Infrastructure Operator, as and when such Assets are built and / or installed as fixtures on the Project Lands. These rights include but are not limited to the right to own Assets, and create Security in relation to Assets, on the Project Lands, whatever the legal nature of the Project Lands (including, for the avoidance of doubt, Project Lands belonging to the State's public domain or any other public law legal entity's public domain).

- (c) In order to enable the performance of the Project Activities, the State also hereby grants to each of SIMFER S.A., the Infrastructure Owner and the Infrastructure Operator, the right to assign, transfer and dispose of, without the need for further Authorisations or other formalities other than a Notice to the State as soon as reasonably practicable, to Project Contractors, Third Party Investors and their Affiliates, all or part of the Land Rights granted under this Article 20.2. However, any subsequent assignment, transfer or disposal of all or any part of the Land Rights granted under this Article 20.2 by Project Contractors, Third Party Investors and their Affiliates to a third party for purposes other than Project purposes shall require the consent of the State.
- (d) In view of the payment by SIMFER S.A. in respect of the Mining Infrastructure and by the Infrastructure Owner in respect of the Project Infrastructure of the costs in relation to implementation of the PARC Framework and, in particular, the resettlement and compensation of Project Affected Persons on the conditions specified in Appendix 6, the State and SIMFER S.A. agree that no royalty, rent, Tax or payment of any kind shall be payable in consideration of the State granting the Land Rights in accordance with this Convention by any of SIMFER S.A., the Infrastructure Owner or the Infrastructure Operator, the Project Contractors, Third Party Investors and their Affiliates benefitting from any right in application of this Article 20.2.
- (e) The State guarantees the holders of all Land Rights referred to in Article 20.2(a) against:
  - (i) any form of legal or de facto eviction; and
  - (ii) any legal action which could be initiated by a third party by reason of the existence or performance of these Land Rights.

In order to minimise the instances of the costs relating thereto occurring, the State and SIMFER S.A. will, to the greatest possible extent, in consultation, seek to settle any grievances brought against them in accordance with the grievance mechanism provided by the PARC Framework.

### **20.3 Soil and subsoil contamination**

SIMFER S.A. shall not be liable towards any person for, and shall not assume any damage, loss or expense incurred in relation to soil, subsoil or water contamination and generally for any kind of pollution whatsoever on the Project Lands existing prior to the effective assumption of the Land Rights by SIMFER S.A., the Infrastructure Owner and the Infrastructure Operator in accordance with Article 20.2 and the conditions specified in Appendix 6, or not caused by the activities undertaken by or on behalf of SIMFER S.A., the Infrastructure Owner or the Infrastructure Operator.

### **20.4 Projet d'Intérêt National**

- (a) The State undertakes to implement the provisions of the PIN Decree in a way that is consistent with the provisions hereof and the BOT Convention and in particular with a view to facilitating the carrying out of the Project Activities (including the Infrastructure Activities). The State confirms the priority of the Project over the Kassa B and Maferenya projects and all other projects pursuant to the PIN Decree.
- (b) The State shall:
  - (i) ensure that the declaration of the Project as a *Projet d'Intérêt National* is maintained for a period commencing on the date of publication of the PIN Decree in the Official Journal of the Republic of Guinea and terminating on the later of 31 December 2014 and the date on which the Lands Rights granted to either SIMFER S.A., the Infrastructure Owner and/or the Infrastructure Operator over all

- the Project Lands necessary for the carrying out of the Project Activities will have become fully effective in accordance with the conditions specified in Appendix 6;
- (ii) use and implement all rights conferred on it by the PIN Decree to grant SIMFER S.A., the Infrastructure Owner or the Infrastructure Operator such Land Rights as are necessary for the purpose of carrying out the Project Activities (including the extension of the period of the PIN Decree to accommodate the dates provided for or referred to in Article 7.2 and the extension of its benefit to the Infrastructure Owner and Infrastructure Operator); and
  - (iii) take effective measures for adequate publicity and information to be provided so that the existence of the PIN Decree and its legal consequences are brought directly to the attention of the relevant sections of the public (including local authorities, land registries, notaries and residents) in order to ensure its effective enforcement.

## **20.5 No Interference by the State**

In addition to its commitment to ensure the effective enforcement of the PIN Decree and in order to enable the performance of the Project Activities, the State undertakes, during the term of this Convention, that no Authority will agree any claim or application, grant any right, interest or Authorisation of any kind or generally take any measure enabling the realisation of activities, works, structures or installations of any kind that adversely affects the Project Activities.

## **21 Freight and Ocean Transport**

To the extent that SIMFER S.A. would be responsible for the transport activities, and has not otherwise already committed to shipping contracts as part of long term contract arrangement, and provided eligible Guinean shipping companies are invited to participate in the tender for such arrangement, SIMFER S.A. undertakes to ship the exported ore by vessels flying the Guinean flag or another flag, specified by the State, all with the express condition that these vessels are available, hold a current LLOYDS 100 A1 classification or International Association of Classification Societies (IACS) member equivalent and are approved by RightShip (or such other leading ship vetting information system nominated by SIMFER S.A. from time to time to ensure safe and efficient port operations), and that the prices applied are competitive with those that SIMFER S.A. would obtain on the international transport market under substantially similar terms including technical obligations regarding loading and unloading for the period considered for the freight and the related maritime destination and after taking account of all other parameters involved in analysing the competitiveness of an offer.

## **22 State Participation**

The State and SIMFER S.A. acknowledge that more detailed provisions relating to the participation of the State in SIMFER S.A. (including board representation rights) have been included in its Articles of Association and / or Shareholders' Agreement.

### **22.1 State Interest in Simfer**

The State and SIMFER S.A. agree that the State shall have the right, by exercising the options referred to in this Article 22, to acquire an equity interest of up to thirty-five per cent (35%) in the share capital of SIMFER S.A.

### **22.2 Types of Shares**

The State, in acquiring its equity interest, will be able to acquire the following types of shares in the share capital of SIMFER S.A.:

- (a) Non-Contributing Shares; and
- (b) Ordinary Contributing Shares.

### 22.3 Share Options

- (a) The options open to the State to acquire shares in SIMFER S.A. (either through SOGUIPAMI or through another wholly owned State entity) by way of equity interest as referred to in Article 22.1 are as follows (exercisable by notice addressed to SIMFER S.A.):
  - (i) at any time, the State may acquire a seven point five per cent (7.5%) equity interest in the share capital of SIMFER S.A. by acquiring Non-Contributing Shares from the existing non-State shareholders on a pro rata basis free of charge or, to the extent that this is not permissible or efficient, at nominal value for one Dollar (\$1) (the State and SIMFER S.A. acknowledge that on the date of signing of this Convention the State acquired the Non-Contributing Shares the subject of this Article 22.3(a)(i));
  - (ii) at any time, the State may acquire a further ten per cent (10%) equity interest in the share capital of SIMFER S.A. by acquiring Ordinary Contributing Shares from the existing non-State shareholders on a pro rata basis at Historical Mining Cost as agreed or, failing agreement, as determined by an Approved Auditor in accordance with the procedure set out in Article 19.4(b);
  - (iii) at any time from 22 April 2016, the State may acquire a further seven point five per cent (7.5%) equity interest in the share capital of SIMFER S.A. by acquiring Non-Contributing Shares from the existing non-State shareholders on a pro rata basis free of charge or, to the extent that this is not permissible or efficient, at nominal value for one Dollar (\$1);
  - (iv) at a time agreed between the State and SIMFER S.A. but not before 22 April 2026, the State may acquire a further five per cent (5%) equity interest in the share capital of SIMFER S.A. by acquiring Ordinary Contributing Shares from the existing non-State shareholders on a pro rata basis at market value as agreed or, failing agreement, as determined by an independent expert experienced in valuation of mining assets; and
  - (v) at a time agreed between the State and SIMFER S.A. but not before 22 April 2031, the State may acquire a further five per cent (5%) equity interest in the share capital of SIMFER S.A. by acquiring Ordinary Contributing Shares from the existing non-State shareholders on a pro rata basis at market value as agreed or, failing agreement, as determined by an independent expert experienced in valuation of mining assets,

in each case, in accordance with the Articles of Association and / or Shareholders' Agreement of SIMFER S.A..

- (b) All Ordinary Contributing Shares in SIMFER S.A. acquired by the State under the separate entitlements of the State under this Article 22.3 shall, unless otherwise agreed by the State and non-State SIMFER S.A. shareholders, in all respects carry the same rights and obligations as the Ordinary Contributing Shares of SIMFER S.A.. For the purposes of calculating the number of shares to be acquired by the State, all shares of SIMFER S.A. shall be treated as if they are of the same class so that any percentage equity interest of the State referred to in this Article 22 shall equate to that number of shares as gives the State a like percentage of all the issued shares of SIMFER S.A.

- (c) The acquisition of shares at **Historical Mining Cost** means the acquisition of shares for a payment equal to the proportionate percentage of all costs (including all funding and borrowing costs, but excluding all funding and borrowing costs recorded as balance sheet liabilities of SIMFER S.A. or any entity in which SIMFER S.A. directly or indirectly owns shares) of and investments made by SIMFER S.A., and / or any other entity of the Rio Tinto Group, to the point of acquisition by the State of relevant shares in SIMFER S.A., relating to any Mining Activities and the mineral resource base within the Perimeter of the Modified Concession. For this purpose:
- (i) 'proportionate percentage' means the percentage the relevant Ordinary Contributing Shares constitute in relation to all of the issued share capital of Simfer other than Non-Contributing Shares;
  - (ii) those costs or portion thereof that relate to SIMFER S.A. or its Mining Activities shall be included within the definition of Historical Mining Costs; and
  - (iii) for the avoidance of doubt, the Settlement Sum is included in the definition of 'Historical Mining Cost'.

#### **22.4 Restrictions on Share Transfers**

The direct or indirect transfer of any State equity interest in SIMFER S.A. shall be subject to the following provisions regarding pre-emptive rights. The Non-State SIMFER S.A. Shareholders will retain a pre-emptive right, in accordance with the following principles:

- (a) the State will be entitled to transfer any shares or interest it holds in SIMFER S.A. to a wholly State owned entity that agrees to be bound (in a way that is enforceable by the Non-State SIMFER S.A. Shareholders) by these pre-emptive provisions;
- (b) if the State as direct or indirect holder of shares in SIMFER S.A. wishes to directly or indirectly transfer them or any interest in them to a third party (other than by way of public float or by trading them on a recognised stock exchange) and the proposed transferee is not wholly owned by the State, the State must first give the Non-State SIMFER S.A. Shareholders the right to acquire those shares on equivalent terms to the terms proposed to apply to the proposed transfer and the State may only transfer those shares or that interest to the proposed transferee in the event that the Non-State SIMFER S.A. Shareholders do not elect to take transfer of those shares or that interest themselves;
- (c) the State as direct or indirect holder of the shares of SIMFER S.A. may transfer the shares or an interest therein directly or indirectly by way of public float but only if it has first offered those shares or that interest to the Non-State SIMFER S.A. Shareholders at market value as determined by an appropriately qualified independent expert experienced in valuation of mining assets and the Non-State SIMFER S.A. Shareholders have elected not to take transfer of those shares or that interest; and
- (d) the State as direct or indirect holder of shares may transfer those shares or an interest therein directly or indirectly by trading them or the shares of a direct or indirect holding company on a recognised stock exchange but only if it has first offered those shares or that interest to the Non-State SIMFER S.A. Shareholders at market value as determined by an appropriately qualified independent expert experienced in valuation of mining assets and the Non-State SIMFER S.A. Shareholders have elected not to take transfer of those shares or that interest.

#### **22.5 Simfer Board**

Any director appointed to the board of SIMFER S.A. at the instance of the State to represent it or at the instance of any assignees or any ultimate holders of an interest that once was the State's

(other than in the case where the shares or interest have been acquired by a Non-State SIMFER S.A. Shareholder), shall be an individual who is serving, and who continues throughout his term of office to serve, as a State official unless otherwise agreed between the Non-State SIMFER S.A. Shareholders.

## **22.6 Contribution and Dilution**

- (a) If an equity interest is held by way of Ordinary Contributing Shares those shares will carry liability for the proportion of SIMFER S.A. Costs incurred or accruing after the acquisition of the stake in proportion to their holding as compared to the total number of shares in SIMFER S.A., excluding Non-Contributing Shares.
- (b) If a SIMFER S.A. shareholder does not contribute its share of SIMFER S.A. Costs within sixty (60) Days after any request by SIMFER S.A., the other SIMFER S.A. shareholders can elect to contribute all or any part of these costs, thus diluting the interest of the shareholder which did not contribute to these SIMFER S.A. Costs in accordance with the Articles of Association and / or the Shareholders' Agreement of SIMFER S.A. To ensure the proper dilution rate, the State and SIMFER S.A. agree that all shares issued at any time in SIMFER S.A. will be ordinary shares of par value and paid up. Any SIMFER S.A. shareholder shall vote in favour of any increase in the capital of SIMFER S.A. contemplated in this Article 22.6(b).
- (c) Where a shareholder has failed to contribute to the SIMFER S.A. Costs and has been notified of dilution on account of that non-contribution by SIMFER S.A. or the other shareholders it shall lose the ability to redeem that equity interest lost as a consequence of dilution.
- (d) For the avoidance of doubt, the State and SIMFER S.A. agree that, although State ownership of Ordinary Contributing Shares will be diluted in case of a failure by the State to contribute to the SIMFER S.A. Costs according to the principles mentioned in Article 22.6(b), the participation of the State under Non-Contributing Shares will in no case be diluted during the Project.

## **22.7 Establishment of Offshore Holding Companies**

- (a) The State and SIMFER S.A. acknowledge and agree that in order for SIMFER S.A. to obtain financing for the Mining Activities it may be necessary or desirable for the shareholders of SIMFER S.A. to establish an offshore holding company or companies in which their equity interests in SIMFER S.A. are held, including where the establishment of such offshore holding company or companies will result in beneficial terms under the Financing Documents or to meet the requirements of the Senior Financing Parties.
- (b) If Article 22.7 applies, then the State shall do, or cause to be done, everything that is within its control, which may be required to facilitate SIMFER S.A. and / or any shareholder in SIMFER S.A. in:
  - (i) establishing such offshore holding company or companies, including the entry into any constituent documents, effecting the relevant appointments, and executing such other agreements, deeds or documents as may be required, it being agreed that such constituent documents must be, to the extent possible under the laws of the place of incorporation of the offshore holding company or companies, consistent with the provisions and principles contained in this Article 22, the Articles of Association and the Shareholders' Agreement of SIMFER S.A.. Where, as a consequence of the laws of the place of incorporation of the offshore holding company or companies, such constituent documents cannot be made consistent with the provisions and principles in this Article 22,

the Articles of Association and the Shareholders' Agreement of SIMFER S.A., the State and SIMFER S.A. shall negotiate in good faith to enter into constituent documents that contain provisions that are as consistent as practicable with this Article 22, the Articles of Association and the Shareholders' Agreement of SIMFER S.A.; and

- (ii) making such amendments or other adjustments to the Articles of Association and / or the Shareholders' Agreement of SIMFER S.A. as are required to reflect the direct participation of the State and SIMFER S.A. in such offshore holding company or companies.

## **22.8 Compliance with State participation obligations**

Compliance with its obligations under this Article 22 will constitute SIMFER S.A. being in full compliance with any current or subsequent requirement in relation to State participation in the Project, whether any such requirement is contained in any new mining code or any amendments to the Mining Code or arises in any other way.

## **22.9 Private company status**

The State and SIMFER S.A. agree that despite the participation of the State in SIMFER S.A., each of SIMFER S.A. and its Affiliates shall be considered as private companies governed by private law. Therefore, the State and SIMFER S.A. agree that neither SIMFER S.A. nor any Affiliate of SIMFER S.A. will at any time be considered as a public company (*entreprise publique*) of any kind governed by Ordinance O/91/025 dated 11 March 1991 and Decree D/92/133 dated 26 May 1992 and their regulations, or as a public service of any kind such as those governed by Law L/2001/029/AN or any amendment or replacement of any such Ordinance, Decree or Law.

## **22.10 Authorisation of Necessary Transactions**

The State and SIMFER S.A. agree that no approvals by any State Authority are required for, or applicable to, issues and transfers of shares and shareholder loans carried out for the purposes of the implementation of any arrangements effected pursuant to this Article 22 and the applicable provisions of the more detailed arrangements set out in SIMFER S.A.'s Articles of Association and/or Shareholders' Agreement, including without limitation, implementation of the arrangements in respect of any permitted transfers of shares (whether for the purposes of the exercise of pre-emptive rights, call options, effecting dilution as a consequence of a failure to contribute any amount in respect of SIMFER S.A. Costs or the establishment of offshore holding companies) and such other arrangements as are contemplated by this Article 22 or such more detailed arrangements.

## **23 Procurement and Supplies**

### **23.1 Local Procurement**

As far as possible, SIMFER S.A. and Project Contractors shall:

- (a) use services and raw materials sourced in Guinea and products manufactured in Guinea in so far as these services and products are available on price terms that are competitive at an international level and on terms of quality, guarantees and delivery that are likewise competitive;
- (b) provide reasonable assistance to regional development, assistance to local regions and seek to create new business and employment opportunities, in particular by seeking opportunities to work with small to medium-sized Guinean suppliers;

- (c) seek opportunities to achieve local content synergies by working collaboratively with multilateral institutions, non-government organisations and industry participants present in Guinea; and
- (d) work collaboratively with the State, multilateral institutions, non-government organisations and industry participants present in Guinea to identify impediments to the strengthening of local content and develop solutions to them,

in accordance with the policy defining the rules, principles and modalities to strengthen local content, based upon the local content principles set out in Appendix 7, to be developed and signed by the State and SIMFER S.A. not later than six months after the Effective Date and which may be amended from time to time by agreement between the State and SIMFER S.A. (the **Local Content Policy**).

### **23.2 TPI Arrangements**

It is agreed by the State and SIMFER S.A. that SIMFER S.A. shall be entitled to contract with independent third parties to provide one or more Mining Infrastructure assets which relate to the provision of fuel, electricity or other categories of goods and services (as agreed from time to time with the State) for use by SIMFER S.A. in which case those asset(s) shall not be procured, operated nor maintained by SIMFER S.A. but shall be provided for the use of SIMFER S.A. pursuant to services agreements between the applicable Third Party Investor and SIMFER S.A., with any fees payable by SIMFER S.A. thereunder to be treated as a SIMFER S.A. operating expense. In compliance with Legislation in Force, the Third Party Investor owner of those asset(s) will benefit from the same legal and tax regime as applicable to the Project in relation to goods and services provided exclusively to the Project.

### **24 Recruitment of Employees**

- (a) For the duration of this Convention, SIMFER S.A., its Affiliates involved in the Project and Project Contractors undertake to:
  - (i) subject to the provisions of this Convention and of the Legislation in Force:
    - (A) employ in priority Guinean nationals and / or residents to fill their unskilled labour requirements, on payment terms in accordance with local practice in Guinea; and
    - (B) give preference to Guinean nationals providing evidence of the qualifications and experience required by SIMFER S.A. for appointments to management / senior management positions (including leadership positions);
  - (ii) implement a training and promotion programme for Guinean national employees in order to permit them to acquire the necessary experience to take management / senior management positions within the company leadership; and
  - (iii) comply with health laws and regulations as provided by Laws and Regulations.
- (b) SIMFER S.A. undertakes to contribute, with effect from the start of production to the provision of:
  - (i) medical and educational facilities, corresponding to the normal needs of the workers and of their families; and
  - (ii) local recreational facilities for its staff.

- (c) The State undertakes to grant to SIMFER S.A., Affiliates and Project Contractors, any necessary Authorisations to enable employees to work over-time and to work at night or on Days that are normally days off or holidays, in accordance with Laws and Regulations.
- (d) The State undertakes not to apply, with respect to SIMFER S.A., Affiliates and Project Contractors, as well as their respective employees, any measures regarding labour or welfare Laws and Regulations that could be regarded as discriminatory by comparison with those applicable to any company carrying on a similar activity in Guinea.
- (e) Subject to the provisions of this Article 24 and of Legislation in Force, SIMFER S.A., Affiliates and Project Contractors will not be subject to any restriction in the selection, hiring, appointment, promotion or dismissal of employees. Nevertheless, with effect from the start of the works SIMFER S.A. undertakes to appoint at least one Guinean national executive of its choice at a management level in SIMFER S.A..

## **25 Recruitment of Expatriate Employees**

For their activities in Guinea, SIMFER S.A., its Affiliates involved in the Project and Project Contractors will be completely free to recruit any expatriate employee who, in the opinion of SIMFER S.A., will be necessary for the efficient operation of the Mining Activities and for their success. The permits and Authorisations required for expatriate employees will be issued by the State (except in exceptional cases where, for objective and obvious reasons relating to public security, SIMFER S.A., its Affiliates involved in the Project and Project Contractors having been heard in relation to the matter, the State has determined it would not be appropriate to deliver such permit) under the following conditions:

- (a) A work permit will be issued on an individual basis to each expatriate employee at the request of SIMFER S.A.. The permit shall be issued within a maximum term of fifteen (15) Days after the date of submission of the complete file with the appropriate administrative department unless when, for reasons of public security, it would not be appropriate to deliver such a permit. The work permits shall be issued for a renewable period of three (3) years if the employment contract is for an unlimited period and for the term of the contract if the latter is for a fixed duration period. The renewal of the work permit shall be made under the same conditions as the one described in this Article 25(a).
- (b) Expatriate employees and members of their family (spouses, dependent children) shall likewise be holders of a resident visa permitting them to stay in Guinea. The visa shall be issued on an individual basis, at the request of the applicant or of the company. The visa shall be issued within a maximum term of fifteen (15) Days after the date of submission of the complete file with the appropriate administrative department unless when, for reasons of public security, it would not be appropriate to deliver such a visa. The renewal of visas shall be made in accordance with the same procedures as those specified in this Article 25(b).
- (c) A permanent entry and exit visa shall be granted to expatriate employees at the request of SIMFER S.A.. The State undertakes, for the duration of this Convention, not to make any pronouncement or issue any order which would entail against SIMFER S.A., Affiliates or Project Contractors any measure involving a restriction of the conditions under which Legislation in Force permits:
  - (i) the entry, stay and exit of any employee of SIMFER S.A., Affiliates and Project Contractors, of the families of such employees, and of their personal belongings; and

- (ii) subject to Article 24, the free recruitment and dismissal by SIMFER S.A., Affiliates and Project Contractors of persons of their choice, whatever their nationality.

## 26 Mine Closure Plan

- (a) Upon permanent cessation of the Mining Activities within the Perimeter of the Modified Concession following expiry of the last renewal of the Modified Concession or termination of this Convention at the election of SIMFER S.A., SIMFER S.A. shall be obliged at its own cost to rehabilitate the Project Lands within the Perimeter of the Modified Concession in accordance with a mine closure plan prepared by SIMFER S.A. and delivered to the State within 3 years after the First Commercial Production Date and updated in accordance with Article 26(b) from time to time (the **Mine Closure Plan**).
- (b) SIMFER S.A. shall:
  - (i) update the Mine Closure Plan on a periodic basis after first delivering it to the State during the term of this Convention; and
  - (ii) deliver to the State the definitive version of the Mine Closure Plan at least 12 months prior to the anticipated permanent cessation of Mining Activities by SIMFER S.A. after consulting with local authorities.
- (c) The definitive version of the Mine Closure Plan shall:
  - (i) be subject to the approval of the State (such approval not to be withheld, delayed or conditioned where the definitive version of the Mine Closure Plan complies with the requirements of this Article 26(c));
  - (ii) incorporate the applicable principles and recommendations contained in the *Planning for Integrated Mine Closure Toolkit* (2008) developed by the International Council on Mining and Metals;
  - (iii) include all important information regarding:
    - (A) the geophysical stabilisation of the Project Lands within the Perimeter of the Modified Concession;
    - (B) the impact of Mining Activities by SIMFER S.A. on:
      - (1) water quality; and
      - (2) the development of fauna,within 10 kilometres surrounding the Perimeter of the Modified Concession;
  - (iv) set out details regarding:
    - (A) ground decontamination;
    - (B) ground fill operations;
    - (C) making good the Project Lands within the Perimeter of the Modified Concession; and
    - (D) any other measures required to reinstate the Project Lands within the Perimeter of the Modified Concession to a fit for purpose state in accordance with the Project Standards.
- (d) At the end of each period of 180 Days after permanent cessation of Mining Activities by SIMFER S.A. until the provision of the Notice contemplated by Article 26(e), SIMFER S.A. shall provide an updated report on implementation of the Mine Closure Plan.

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- (e) As soon as SIMFER S.A. gives Notice to the State that the work contemplated by the Mine Closure Plan has been completed, the State shall have a right, at its own cost, to conduct an audit to ensure full compliance by SIMFER S.A. with its obligations under the Mine Closure Plan. Any dispute arising out of, relating to or in connection with the existence or exercise of the State's audit right under this Article 26(e) shall be subject to the dispute resolution provisions of this Convention notwithstanding any termination of this Convention.

## **Section IV: Tax and Custom Regime**

### **27 General Provisions**

- (a) For the implementation of the Project, the tax and customs Legislation in Force will apply. However, in view of the special nature of the Project that requires investment on an exceptional scale, in particular for heavy basic infrastructure that is of positive value for the national economy and which are normally developed by the State, Articles 27 to 36 hereinafter together with the Tax Annex determine the preferential treatment applicable to the Project. This regime is applicable from the Effective Date of this Convention and until the expiry of the term of the Modified Concession as contemplated in Article 6(c).
- (b) It is acknowledged and agreed that by virtue of the Project Infrastructure being within the scope of the Project, Articles 27 to 36 hereinafter together with the Tax Annex also determine the preferential treatment applicable to the Infrastructure Project and to the Infrastructure Owner, the Infrastructure Operator and their respective Affiliates in connection with the Infrastructure Project. In addition, it is also acknowledged and agreed that the Infrastructure Owner, the Infrastructure Operator and their respective Affiliates shall also benefit from the tax and other concessions conferred by the BOT Law (Law L/97/012/AN dated 1 June 1998) to the extent that they are more favourable than those conferred by Articles 27 to 36 hereinafter and the Tax Annex.
- (c) With the exception of any Tax expressly mentioned in this Convention and that will apply in accordance with the terms and conditions set forth herein and in the Appendices or, failing that, in accordance with the conditions of the Mining Code and then those of the Legislation in Force, those companies participating directly in the implementation of the Project and to the extent of their participation will not be subject to any Tax in Guinea. For the purpose of the Tax and Customs Regime contemplated in Articles 27 to 36, the term SIMFER S.A. includes SIMFER S.A. and Affiliates and, by virtue of the definition of "Affiliates", extends to the Infrastructure Owner, the Infrastructure Operator and their respective Affiliates.
- (d) The Tax Annex has been approved by the State and forms an integral part of this Convention, as if it had been a part of it from the beginning. The purpose of this Annex is to specify the conditions for implementing the provisions of the Tax and Customs Regime.
- (e) As and when SIMFER S.A. or the Guinean tax Authorities identify the need to specify the scope or the calculation for any given Tax, the State and SIMFER S.A. undertake to establish detailed provisions that will accommodate the scope, the sense, the interpretation and the application of the particular provision that needs to be clarified in compliance with the principles deriving from this Convention.

### **28 Tax Regime Applicable During Exploration, Studies and Construction Activities**

As from the Effective Date of this Convention and throughout the period of exploration, studies and construction activities, SIMFER S.A. and its service providers, suppliers and Direct Sub-Contractors participating directly in the implementation of the Project, and to the extent of their participation, may only be subject in Guinea to the following Taxes:

- (a) Fixed fees for the granting and renewal of permits.
- (b) Surface levies whose annual rates of payment are specified in the Tax Annex.
- (c) A lump sum payment at a rate of 6% of salaries paid within Guinea and outside Guinea to resident employees of companies whose head office are in Guinea.

- (d) Unique tax on vehicles with the exception of worksite transport and construction vehicles.
- (e) For companies whose head offices are in Guinea: the employer's share of social security contributions.
- (f) Taxes on insurance contracts: however such a tax does not apply to worksite transport and construction vehicles directly involved with exploration activities.
- (g) **(Withholding tax)**
  - (i) The Guinean employees are subject to the payment of income tax.
  - (ii) A withholding tax due in lieu of any other Tax is made on salary income paid by companies whose head office is in Guinea to their expatriate employees who reside in Guinea for more than 183 Days in any given period of 12 months at a rate of 10% of salaries paid within Guinea and outside Guinea.
  - (iii) The withholding taxes contemplated above are due by the employees or service providers and are paid by the company which benefits from those services.
- (h) **(VAT)** SIMFER S.A. shall be exempt from VAT on all imports necessary for the Project with the exception of equipment and belongings exclusively intended for the personal use of SIMFER S.A. employees. SIMFER S.A. will draw up a list of equipment to be imported and will undertake that the equipment in question will be exclusively used for the purposes of the Project. This list, once transmitted to the Centre for Mining Promotion and Development, shall be approved jointly by the Finance Minister and the Mining Minister, who will make their best efforts to publish this approval within a maximum term of 15 Days. This list may be supplemented when needed as the Project progresses, and additional arrêtés will be issued in accordance with the same procedures. In addition, as the Project progresses, the State and SIMFER S.A. undertake to discuss and agree on any required procedures, which would address the needs of the Project in a more efficient manner.

SIMFER S.A. shall also be exempted from VAT on all purchases and on all services necessary for the Project whatever the nationality and / or place of residence of the supplier or of the provider. The same will apply to all foreign Direct Sub-Contractors involved solely for the Project in Guinea or for any other Guinean Direct Sub-Contractors operating 100% for the Project. The exemption certificates or any other document as agreed between SIMFER S.A. and the State, signed by the tax or customs authorities of Guinea, shall be transmitted by SIMFER S.A. to their respective Affiliates and Direct Sub-Contractors.

For the Direct Sub-Contractors who will not benefit from the above exemption, the VAT invoiced by the Direct Sub-Contractor to SIMFER S.A. will be reimbursed to SIMFER S.A. during the month following the payment of the related VAT due by the Direct Sub-Contractor to the competent administrative authority.

Pursuant to section 2.2.1.3 of the Tax Annex, the provisions of this Article 28(h) shall be fully applicable to the exploitation phase.

## **29 Tax Regime Applicable During the Exploitation Phase**

As from the First Commercial Production Date, SIMFER S.A. and its Direct Sub-Contractors participating directly in the implementation of the Project and to the extent of this participation will be liable for the payment, in respect of the activities contemplated in this Article, of any Tax listed in Article 28, and in accordance with the provisions of this Article, and the exemptions or adaptations provided for in Article 28 will also apply. In addition, these companies shall be liable for the Taxes restrictively listed hereinafter.

## 29.1 Tax on industrial and commercial profits

For any production activities taking place within the Perimeter of the Modified Concession as well as for the operation of the Project Infrastructure that have been mainly created for the needs of the Project, an exemption from the tax on industrial and commercial profits and of the minimum lump sum tax shall apply for a period of 8 years as from the first year of taxable profit.

Upon the expiry of this period, the above companies will pay the industrial and commercial profits tax (BIC) at a rate of 30%, or at any more favourable rate of BIC tax as adopted by Laws and Regulations.

- (a) **(Depreciation regime)** Any tangible and intangible property and rights registered as SIMFER S.A.'s Assets entitles SIMFER S.A. to the tax depreciation regime described provided for in the Tax Annex and in the Guinean General Tax Code applying as part of the Legislation in Force. The amount of tax depreciation will be calculated in accordance with the depreciation provisions provided for in the Tax Annex and by the Legislation in Force and / or in accordance with the caducite depreciation regime as adapted to the requirements of the Project.
- (b) **(Retained losses)** Losses may be carried forward for five financial years after the deficit year. However, any depreciation deemed to be deferred during the deficit period, including any depreciation made during the exemption period, and in particular the depreciation of start up costs, may be added and carried forward without time limit for subsequent financial years up to the amount of the taxable income.
- (c) **(Calculation of taxable income)** Unless otherwise provided for in this Convention and in particular in its Tax Annex, the taxable income is determined in accordance with the provisions of the Guinean General Tax Code.
- (d) **(Deductions from taxable income)** Shall be, inter alia, deductible from taxable income the mining royalty as well as the total amount of interest and other fees and costs payable by SIMFER S.A. in relation with loans and advances subscribed including any interest produced by shareholders' current accounts.
- (e) **(Provision for the regeneration of deposits)** A provision for the regeneration of deposits for a maximum amount of 10% of taxable earnings will be set up by SIMFER S.A. holder of the mining titles at the end of each financial year, free of income tax.  
This provision may be used for the financing of any exploration activity and for any investment in the mining industry relating to a Project in Guinea within 5 years of its creation, failing which it will be added to the fiscal result for the financial year.
- (f) **(Investment Credit)** SIMFER S.A. will be entitled to an investment credit representing 5% of any investment carried out in the course of the financial year. This allocation is allowable as a deduction for the calculation of taxable profit.
- (g) In the event that SIMFER S.A. were to hold an interest in one or several companies having invested in new infrastructure, non existent at the date of signing of this document, necessary to the Project and directly or indirectly financed in whole or in part by the latter, SIMFER S.A. shall have the right in proportion to its shares in the capital of this or these companies to consolidate their positive or negative result before tax with its own positive or negative result and vice versa in accordance with the Tax Annex.

## **29.2 Withholding tax on income of foreign Direct Sub-Contractors not established in Guinea**

A withholding tax due in lieu of any other income tax is payable on the income of foreign Direct Sub-Contractors on the basis of any activity carried out in within Guinea for more than three months in the course of any calendar year.

The rate of this withholding is as follows:

- (a) 10% with regard to Direct Sub-Contractors which are service providers.
- (b) 10% after deduction of all expenses incurred for Direct Sub-Contractors which are works subcontractors.

For the purpose of this Article, a foreign company operating solely for the Project without having incorporated a Guinea subsidiary shall be deemed to be not established in Guinea whatever the term of its activities and the circumstances of its involvement in Guinea.

The above withholding taxes are due by the Direct Sub-Contractors and shall be paid by the company benefiting from those services or works.

## **29.3 Tax on income from securities.**

SIMFER S.A. shall be exempt from Tax and withholding tax on dividends and any other distributions to shareholders.

## **29.4 Withholdings on rental of immovable property, built or not, payable by companies resident in Guinea**

These Taxes shall be payable in accordance with the Legislation in Force.

## **29.5 Royalty**

Throughout the term of this Convention, any Iron Ore mined by SIMFER S.A. will be subject at the time of sale to the payment of a royalty.

- (a) The Iron Ore intended for export by SIMFER S.A. will benefit from a reduced mining Tax rate of 3.5% of its FOB value.
- (b) For Iron Ore sold for Transformation into iron or steel in Guinea, the rate of this tax will be zero.
- (c) The mining Tax shall be payable in accordance with the terms and conditions set out in the Tax Annex.
- (d) The tax is payable monthly to the Treasury who will issue a formal certificate in accordance with the following terms:
  - (i) 30 Days at the latest with effect from the last Day of each previous month, SIMFER S.A. will transmit to the Minister of Mines and Geology, and to the Minister of Economy and Finance, a statement enclosing any valid written supporting data for the quantities of Production exported in the course of the previous month.
  - (ii) 30 Days at the latest with effect from the last Day of each previous month, the tax will be paid in accordance with the provisions of the Mining Code and the Legislation in Force by applying the above defined rates.
  - (iii) 90 Days at the latest with effect from the close of each financial period, steps will be taken for the annual regularisation of the payment of Taxes made by SIMFER S.A. in order to take into account the exact quantities of products exported annually.

- (iv) In the event that any Tax paid in the course of a given financial period were to be greater or less than the Tax due, the excess or the deficit thus determined will be credited or debited against to the first payments of the next financial period, as the case may be. Any such Taxes constitute operating costs and are deductible for the calculation of taxable profits.

## **29.6 Economic Development contributions**

SIMFER S.A. will contribute to the economic development of the populations residing within the Perimeter of the Modified Concession or in its immediate vicinity, through participation in local initiatives selected in co-ordination with the competent Authorities.

SIMFER S.A. will contribute to these actions in money or in kind up to a limit of 0.25% of its annual turnover after deducting an amount corresponding to all amounts paid or payable by SIMFER S.A. to the Infrastructure Owner for services received in relation to the Rail Infrastructure and Port Infrastructure for the corresponding year in accordance with the provisions of the Rail and Port Services Agreement. This contribution is deductible for the calculation of the taxable profits.

## **29.7 Tax concessions**

Subject to contrary provisions of this Convention, SIMFER S.A. enjoys the following exemptions:

- (a) IMF exemption;
- (b) exemption from trade tax;
- (c) exemption from registration fees and stamp duty on instruments relating to the constitution of the company or any transformation and the capital increases required for the realisation of the Project;
- (d) exemption from registration fees for the contracts required for the realisation of the Project;
- (e) exemption from the one-off land tax;
- (f) exemption from the lump-sum payment on salaries for a period of ten years;
- (g) exemption from the professional training tax at the rate of 1.5% of the total amount of wage provided that the training expenses directly incurred and accounted for by SIMFER S.A. exceed the amount sum of this tax or if SIMFER S.A. has its own training centre;
- (h) exemption from fixed taxes and royalties; and
- (i) exemption from surface owner's royalty.

## **30 Customs Regime Applicable to the Exploration and Study Activities Stage**

For any of their activities relating to the Project, with effect from the Effective Date of this Convention and throughout the period of exploration and study activities, SIMFER S.A. and its Direct Sub-Contractors shall benefit from the following customs benefits:

### **30.1 Temporary Admission**

Any equipment, materials, machines, appliances, commercial and passenger vehicles, hoists and power plants imported by the persons contemplated in this Article and intended for exploration and study activities shall benefit from the temporary admission pro rata temporis gratis basis for the duration of the works.

On expiry of the exploration and study activities, any items thus admitted on a temporary basis may be re-exported, sold on Guinean territory, donated for free in Guinea, damaged, written-off or salvaged for spare parts.

Those persons contemplated by this Article are required to transmit to Centre for Mining Promotion and Development and the Department of Customs, within the first quarter of each year, a statement regarding any item admitted on a temporary basis.

In the event of resale within Guinea of any asset thus imported on a temporary admission basis by any of the persons contemplated in this Article, the latter become liable for all the fees and royalties payable in accordance with the provisions of Article 154 of the Mining Code.

### **30.2 Customs Relief**

Any supplies and spare parts necessary for the operation of the professional plant and equipment shall benefit of full exemption from any customs fees, duty and dues.

Any fuel required for the operation of the exploration plant and equipment will be entitled to the price structure that applies to the mining sector. Nevertheless, import VAT and local VAT exemption should be available in accordance with the provisions of Article 28(h). The exemption shall be applied in accordance with the Tax Annex.

### **30.3 Personal Belongings**

Personal belongings imported by the persons contemplated in this Article within 6 months of their arrival are exempt in accordance with the Legislation in Force. In the event of the resale of such belongings in Guinea, duty shall be paid in accordance with the Legislation in Force.

## **31 Customs Regime Applicable at the Stage of the Construction and Extension Activities**

### **31.1 Customs Relief**

As from the date immediately prior to commencement of preliminary works and the purchase and transportation of long lead items for the construction of the mine, SIMFER S.A. and its Direct Sub-Contractors will be entitled, for their activities relating to the Project, to exemption from any customs fees, duty and dues on the equipment, materials, heavy machinery, hoists and vehicles with the exception of private vehicles and of foodstuffs. Any spare parts, fuel and lubricants required by such capital goods are likewise exempt. The exemption on fuel and lubricants shall be applied in accordance with the Tax Annex.

However, the goods specified above will be subject to payment to customs of a registration duty, at a rate of 0.5% of the CIF value of the imported goods limited to a volume of imports of \$20 million.

Expansion activities will be entitled to the same advantages within the strict limit of the proportion carried out by means of expansion investment.

### **31.2 Temporary Admission**

Any equipment, materials, machines, appliances, commercial and passenger vehicles, hoists and floating equipment intended for temporary use in Guinea for the implementation of all construction or Extension Works required by the Project will be placed on a temporary admission basis in accordance with the same terms as those contemplated in Article 32(a).

### **32 Customs Regime Applicable at the Mining Activity Stage**

With effect from the First Commercial Production Date, SIMFER S.A. and its Direct Sub-Contractors will be liable, for their activity relating to the Project, to pay any fees and customs Legislation in Force with the exception of what follows.

- (a) Any equipment, plant, heavy machinery, hoists, vehicles used both for mining purposes (with the exception of private vehicles) as well as any fuel and lubricants and other petroleum products and raw materials and inputs involved directly in the extraction and valuation of the ore (not including foodstuffs) are subject to import duty at a uniform rate of 5.6% of the FOB value of the imports. The import duty of 5.6% on fuel, lubricants and other petroleum products shall be applied in accordance with the Tax Annex.
- (b) By exception to the provisions of Article 32(a), no import tax and customs duty will be payable for equipment, gear, heavy machinery, fuel, lubricants, other petroleum products, plant and vehicles involved directly in the work of operating the Project Infrastructure and Mining Infrastructure.
- (c) Registration tax relief of 0.5% will apply subject under the same terms as for the construction and Extension Work stage as contemplated in Article 31.1.
- (d) Fuel, lubricants and other petroleum products not directly involved in the operations of transport, mining or valorisation of the ore are exempt in accordance with the pricing structure applicable to the mining sector.
- (e) Any fuel, lubricants and other products used for the removal of the iron ore will be exempt in accordance with the Tax Annex.

### **33 Ore Processing Operations**

- (a) For activities involving the Processing of Iron Ore, SIMFER S.A. and its Direct Sub-Contractors involved directly in such operations shall benefit from an exemption from all Tax (including import duty) required for the said Processing activities whether this involves the import of materials and consumables or petroleum products that serve to produce the power for this purpose.
- (b) Any equipment, materials, heavy machinery, hoists, vehicles (with the exception of private vehicles) set forth on the list of SIMFER S.A. tangible assets are taxed on import at a rate of 5.6% of the FOB value of the said imports.
- (c) Import registration duty shall be restricted subject to the same terms as those contemplated for the two previous Articles.
- (d) All fuel, lubricants and other petroleum products are exempt from any import Tax.
- (e) The schedule of goods concerned will be drawn up in accordance with terms identical to those contemplated in Article 28(h).

### **34 Stabilisation of Tax and Customs Regime**

- (a) Subject to the provisions of this Convention, SIMFER S.A. and its Direct Sub-Contractors will not be liable by virtue of activities relating to the Project to any Taxes including export fees and duties and VAT that are not expressly contemplated in this document.
- (b) By virtue of this Convention, SIMFER S.A. and its Direct Sub-Contractors will be entitled for activities relating to the Project to the stabilisation of the Tax and Customs Regime in force on the day of the signing of the Original Convention and this throughout the period of validity of this Convention.

- (c) The provisions of Article 34 herein will only apply to SIMFER S.A. and its Direct Sub-Contractors in so far as they agree to abide by and in the Project Activities actually abide by the provisions of this Convention and for the time periods set out in Article 6(c).

### **35 Calculation of Taxes and Charges**

The calculation of Taxes is carried out on the basis of an accounting system and an accounting currency always expressed in US Dollars which are then converted to Guinean Francs as follows:

- (a) For Taxes based on a reference period of 12 months (such as BIC), the applicable rate of exchange shall be the average rate of the Guinean Central Bank applicable to this reference period.
- (b) For any other duty and charge, the applicable rate of exchange shall be that of the Guinean Central Bank in force on the date of payment of the tax.

The exchange rates specified above shall also apply for the calculation of any subsequent adjustments, interest and penalties, and for any reimbursement of any excess Tax payment.

### **36 Sundry Provisions**

#### **36.1 Accounting Principles**

In view of the particulars of the Project, SIMFER S.A. is authorised to keep its accounts in US Dollars (\$), but in compliance with the accounting and tax principles contained in the Tax Annex and with the provisions of the Guinean Accounting Plan not contrary to it.

The accounting documentation shall be sincere, true and detailed and accompanied with supporting documents permitting to control their accuracy. The accounting documentation may be inspected by the State representatives expressly commissioned for this purpose.

SIMFER S.A. undertakes in addition to allow the inspection, by the duly authorised State representative, of all the accounts or instruments located abroad and relating to its operations in Guinea.

- (a) **(Annual statement of accounts)** SIMFER S.A.'s financial statements required by Laws and Regulations (balance sheets, profit and loss accounts, tables of magnitude, management characteristics, input output matrix) are to be converted and presented in Guinean Francs subject to the terms contemplated in this Convention.
- (b) **(Intermediary Reports)** For monitoring purposes, SIMFER S.A. will provide the Guinean Central Bank, as soon as possible at the end of each quarter, with intermediary financial statements to which shall be appended the necessary supporting documents justifying of the operations carried out in the course of the said quarter.
- (c) All information brought by SIMFER S.A. to the knowledge of the State in accordance with this Article shall be regarded as confidential, and the State undertakes not to disclose its content to third parties without first securing written permission from SIMFER S.A. who may not refuse it without good reason.

#### **36.2 Transfer of assets, loans, shares, sell out, merger, de-merger, partial transfer of assets**

No Tax is applicable to transfers of assets, loans, shares, sell-outs, mergers, de-mergers, bringing in assets or similar operations carried out for the purposes of the implementation of the Project between RTME and SIMFER S.A., between SIMFER S.A. and its Affiliates, between SIMFER S.A. and the Infrastructure Owner or the Infrastructure Operator, between the Infrastructure Owner or the Infrastructure Operator and their Affiliates, between SIMFER S.A. and

its shareholders, between the Infrastructure Owner or the Infrastructure Operator and their shareholders and between the direct and indirect shareholders of SIMFER S.A. the Infrastructure Owner and the Infrastructure Operator. For the avoidance of doubt, the term "SIMFER S.A." refers to SIMFER S.A. and includes SIMFER S.A. and its Affiliates.

### **36.3 More favourable provisions**

Subject to the compliance on the part of SIMFER S.A. with this Convention, at any time SIMFER S.A. will be free to elect to be governed by the more favourable fiscal and customs provisions deriving from changes in the Laws and Regulations or that would be granted in the future to any competitor exercising an identical or similar activity.

## Section V: Sundry Guarantees, Environment and Transfers

### 37 General Guarantees

- (a) The State undertakes, subject to compliance by SIMFER S.A. with the obligations that derive from this Convention, to guarantee SIMFER S.A., its Affiliates and Project Contractors in accordance with the principles set out in Article 37(b), the continuation of any economic or financial advantages and fiscal and customs provisions contemplated in this Convention. Any modifications that are made to the Legislation in Force, in particular to the Mining Code, including the introduction of any Laws and Regulations, purporting to regulate the operation and use of the Project in a manner which is inconsistent with the provisions of this Convention, and except as specifically referred to in Article 37(c), will not apply to each of SIMFER S.A., the Project Contractors or any of their respective Affiliates (as applicable), without prior agreement. Any such modifications that are adopted subsequent to the signature of the Original Convention within the context of general legislation and that are regarded as favourable for each of SIMFER S.A., the Project Contractors or any of their respective Affiliates (as applicable) may, at their request, be extended by the State to each of SIMFER S.A., the Project Contractors or any of their respective Affiliates (as applicable).
- (b) SIMFER S.A. and the State acknowledge that the State has adopted a new mining code, and agree that, in accordance with the Settlement Agreement, the provisions of this Convention, in particular Articles 11, 34, 37, 38, 39 and 49 thereof, establish the priority of this Convention (taking these Articles as a whole) over the Mining Code (including any amendments made thereto), any new mining code and any other Laws and Regulations.
- (c) SIMFER S.A. and the State acknowledge that, further to the provisions of Article 3 of the Settlement Agreement, they have explored the insertion into this Convention of some of the provisions of the new mining code (established by the act No 1/2011/006/CNT of September 9, 2011) regarding human rights and environment and to the extent that such provisions have been agreed they have been included in this Convention. Accordingly, the Parties agree that the provisions of this Convention are fixed (including for clarity as those relate to State participation and fiscal matters) absent further agreement between the Parties, and absent that agreement will remain unaffected by:
- (i) amendments to the Mining Code;
  - (ii) replacement mining provisions; or
  - (iii) other current or future Laws and Regulations,
- that are inconsistent with the terms of this Convention.
- (d) Similarly, the State guarantees SIMFER S.A., its Affiliates and Project Contractors and those who are regularly employed by them that they will never and in any way be subjected to any unfavourable legal or administrative discrimination either in law or in fact, and that they will receive fair and equitable treatment.
- (e) The State, during the period of validity of this Convention, will not instigate or promulgate (other than as required by extreme emergency cases arising out of obvious and objective reasons relating to public order or national security in the case of Article 37(e)(iv)) any measure that involves a restriction to the terms by which the Legislation in Force accords to SIMFER S.A., its Affiliates or Project Contractors any of the following freedoms:
- (i) the free choice of manufacturers and Project Contractors (subject to the provisions of Article 23),

- (ii) the free access to raw materials,
  - (iii) the free import of fuel, goods, materials, equipment, machines, facilities, spare parts, inputs and services, directly or indirectly necessary to the Project, and
  - (iv) the free circulation throughout Guinea of staff and equipment and assets contemplated in Article 37(e)(iii), as well as of any substance and any product deriving from the exploration and exploration activities.
- (f) The State undertakes to provide, and renew (on terms at least as favourable), all the permits and all the Authorisations needed for the exercise of the rights and guarantees contemplated in this Convention. In addition, when the Project so requires, the State guarantees SIMFER S.A. the swift implementation of any expropriation proceeding.

### **38 Guaranteed Maintenance of Foreign Currency Account and Transfer**

- (a) For income deriving from the sale of the products and for other holdings in foreign currency, SIMFER S.A. and its Affiliates incorporated in Guinea are authorised to open offshore foreign currency accounts with foreign commercial banks of international standing. They will not be obliged to repatriate to Guinea the sums credited on those foreign currency accounts, with the exception of the sums required for expenditures of every kind that they incur in Guinea in Guinean Francs within the context of the Project, it being specified however that all payments required to be made by SIMFER S.A. under the Rail and Port Services Agreement shall not be in Guinean Francs and shall therefore not be required to be repatriated to Guinea and it being further specified that all financial transactions and movements relating to its activities shall be reflected in their accounts and records kept in Guinea.
- (b) A tripartite agreement between SIMFER S.A., the foreign bank and a licensed first-class Guinean intermediary bank, concluded at the latest on completion of the Mine BFS, duly certified by the financial authorities of Guinea, and also taking into account the laws of Guinea, shall specify the terms and conditions for the repatriation of the foreign currency needed to settle any expenditure incurred in Guinea. SIMFER S.A. undertakes to use in priority the foreign currency accounts for the settlement of all current expenditure of SIMFER S.A. including in particular any Taxes payable.
- (c) It is specified that SIMFER S.A. and its Affiliates incorporated in Guinea are authorised to keep its account in Euros or in Dollars.
- (d) SIMFER S.A. and its Affiliates incorporated in Guinea are guaranteed the free transfer abroad of any dividend and return on capital invested and of any interest payment as well as of any proceeds from liquidation or from the realisation of its assets.
- (e) Guarantees are given to foreign staff resident in the Republic of Guinea employed by SIMFER S.A., its Affiliates and Project Contractors participating in the Project for the free conversion and the free transfer to their country of origin of all or part of the wages or other items of remuneration that are owing to them, so long as their Taxes have been settled in accordance with the provisions of this Convention.

### **39 Administrative, Mining and Land Guarantees**

- (a) The State guarantees to SIMFER S.A., the Infrastructure Owner and the Infrastructure Operator (as applicable), in accordance with the PIN Decree and this Convention, the free occupation and use of all the lands necessary for the exploration and mining activities of the deposit(s) included in the Perimeter of the Modified Concession as well as the unfettered occupation and use of rights of way on land necessary for the construction and operation of Mining Infrastructure and / or Project Infrastructure (it being specified

that, although the majority of Project Lands will, in principle, be located within the Corridor, some Project Lands, such as those necessary for the performance of the access roads, the production and transport of power for Project Activities or for the resettlement of Project Affected Persons, may be located, in all or part, outside the limits of the Corridor where this is necessary).

- (b) The occupation and use of the said lands will not give rise for SIMFER S.A., the Infrastructure Owner and / or the Infrastructure Operator to any payment of Tax other than those specified in this Convention.
- (c) At the request of SIMFER S.A., the Infrastructure Owner and / or the Infrastructure Operator, the State will undertake the resettlement and / or compensation (subject to payment in a timely manner by SIMFER S.A. or the Infrastructure Owner as required by this Article 39(c)) of any Project Affected Person whose presence and / or right on the said lands would impede the Project Activities. Such resettlement shall take place in compliance with the standards set out in the PARC Framework. SIMFER S.A. in respect of Mining Infrastructure and the Infrastructure Owner in respect of Project Infrastructure will be required to pay, in accordance with the PARC Framework and under the conditions specified in Appendix 6, a just indemnity to the said Project Affected Persons, including for any prevention of possession or any loss that their activities may occasion to the holders of land titles, certificate of occupation or customary rights.
- (d) SIMFER S.A. shall have the right in particular to carry out the following activities so long as they are necessary for the Project and in compliance with the PIN Decree, the PARC Framework and Legislation in Force:
  - (i) clearing of the land of all trees, bushes and other obstacles and felling of timber outside the lands of which SIMFER S.A. is holder;
  - (ii) the development of waterfalls that are not used nor reserved and the harnessing of such heads of water for the requirements of the activities in question;
  - (iii) the setting up of power plant and electricity stations;
  - (iv) the construction of plant for the preparation, dressing or Processing of ore;
  - (v) the creation or improvement of roads, canals, pipelines, channels, conveyor belts or other surface structures serving for the transport of output beyond the lands of which SIMFER S.A. is holder; and
  - (vi) the creation or improvement of railways and sea ports.
- (e) Any communication routes set up or improved by SIMFER S.A. within or beyond the Perimeter of the Modified Concession may, subject to fair compensation, be used by the State or by third parties who so request provided that:
  - (i) no use shall be permitted that would present any obstacle or any hindrance to the activities of SIMFER S.A.; and
  - (ii) the State may use communication routes free of charge to the extent required in:
    - (A) exceptional cases, arising out of obvious and objective circumstances, that amount to national emergencies; and
    - (B) exercising inspection rights expressly conferred by this Convention.
- (f) SIMFER S.A., the Infrastructure Owner and / or the Infrastructure Operator shall have the right, throughout the term of this Convention, to directly import the types of fuel and lubricants needed for the purpose of carrying out the Project Activities and the State will issue any Authorisations without delay required for the purpose hereof.

#### 40 Guarantees of Protection of Property, Rights, Title and Interests

- (a) Subject to the provisions of this Convention, SIMFER S.A., Project Contractors and their respective Affiliates and shareholders (other than the State or SOGUIPAMI) (individually referred to as a **Protected Entity**) have the right and the unlimited freedom to hold, administer, maintain, use, enjoy and dispose of all their property, rights, titles and interests, and to organise their business in their best interest.
- (b) The State undertakes not to expropriate nor to nationalise all or part of the property, rights, titles and interests of a Protected Entity unless such an expropriation or nationalisation measure complies with the rules of international law and:
  - (i) is taken for reasons of national interest, and in compliance with Legislation in Force, in particular the Constitution of Guinea;
  - (ii) is not discriminatory; and
  - (iii) gives the Protected Entity the right to compensation in an amount equal to the fair market value of the interest concerned.

The fair market value will be the amount at which those interests concerned could be exchanged in an arm's length transaction between informed and willing parties, assuming the expropriation did not occur and other than in a forced or liquidation sale. Such fair market value shall be determined at the request of the State or the Protected Entity by an independent expert experienced in the valuation of mining assets appointed by the International Centre for Expertise in accordance with the provisions for the appointment of experts under the Rules for Expertise of the International Chamber of Commerce. The compensation referred to in Article 40(b)(iii) as determined by this independent expert will be payable on demand by the Protected Entity in Dollars or in any other freely convertible currency acceptable to it, with no other compensation nor deduction other than any sum that may be owing by it to the State by virtue of this Convention. The compensation will bear interest with effect from the date of the expropriation or of the nationalisation, at the Contractual Interest Rate.

In the event that the Protected Entity concerned in the application of this Article 40 is SIMFER S.A. or a Project Contractor, SIMFER S.A. can elect at its discretion to demand compensation equal to the fair market value of the entire Project Assets, irrespective of whether the expropriation or nationalisation relates to all or part of the property rights, titles and interests of SIMFER S.A. and / or the Project Contractor. In the event that SIMFER S.A. so elects to receive such compensation, then following payment of this compensation, this Convention shall be deemed to be terminated and all the remaining Project Assets transferred to the State in accordance with Article 45.2(i). If SIMFER S.A. does not elect to demand compensation for the entire Project Assets it shall be entitled to compensation for the interests concerned, and this Convention will continue.

The State and SIMFER S.A. acknowledge that these provisions shall benefit the Protected Entity until the end of the Term of this Convention and expressly waive their rights to revoke such benefit.

- (c) The State undertakes not to interfere with the full enjoyment by a Protected Entity of the lawful rights that it holds in relation to its property, rights, titles and interests.
- (d) If the State were to restrict this enjoyment, in particular, through any requisition measures or through any measure or series of measures that had the direct or indirect effect of depriving any Protected Entity of the control or financial benefit of its property, rights, titles and interests, then, without prejudice to the rights of SIMFER S.A. in relation to Material Government Breaches as provided in this Convention, the provisions of

Article 43 shall apply and if required thereunder, the affected Protected Entity will be entitled to an indemnity which is calculated and paid in accordance with this Convention.

- (e) **(Dispute Resolution)** The State agrees that any dispute between itself and one or more Protected Entities arising out of, relating to, or in connection with the provisions of this Convention (but excluding Appendix 10) concerning acts of expropriation, nationalisation, or other measures having effect equivalent to expropriation or nationalisation, in whole or in part, including but not limited to this Article 40 (**Expropriation Dispute**), shall be resolved pursuant to Article 46. For the sole purposes of the resolution of Expropriation Disputes pursuant to Article 46:
- (i) 'Parties' and 'parties' shall mean the State and the Protected Entity or Entities concerned;
  - (ii) the term 'Dispute' shall mean 'Expropriation Dispute';
  - (iii) the negotiations referred to in Article 46.1(b) will be held between a senior executive of each Protected Entity concerned, on the one hand, and the Minister of Mines and Geology, or a senior representative of the Minister of Mines and Geology, on behalf of the State, on the other hand; and
  - (iv) the State confirms that its consent to ICSID arbitration and ICC arbitration under Article 46 applies to the Expropriation Dispute.
- (f) In the event of an unforeseen modification of the essential economics underpinning the feasibility and viability of the Project prevalent at the time of completion of the Mine BFS that makes the long-term continuation of the Project impossible for SIMFER S.A. (with reasonably satisfactory rates of return, account being taken of the risk inherent in any project of this magnitude) and that:
- (i) does not involve the value of Iron Ore on the international market; and
  - (ii) is not a result of a breach of this Convention by SIMFER S.A. or a Force Majeure Event,
- the State undertakes to take the appropriate measures in order to re-establish the economic balance that has been lost. Those measures shall be discussed and finalised by SIMFER S.A. and the State and the State shall take any appropriate measures agreed with SIMFER S.A..
- (g) **(Financing)** The State acknowledges and agrees that SIMFER S.A. may undertake the Financing Activities, including, without limitation, by way of contribution of equity or loans by its shareholders or their Affiliates and loans from the Financing Parties or their Affiliates. Where SIMFER S.A. undertakes the Financing Activities, the State shall do, or cause to be done, everything that is within its control, which may be reasonably required to assist SIMFER S.A. to complete the Financing Activities as soon as practicable, including, with respect to the Senior Financing Parties, assisting SIMFER S.A. to meet all requirements of the Senior Financing Parties in relation thereto, including the entry into one or more direct agreements with the Senior Financing Parties which may be required to provide certain clarifications and assurances in relation to the Project and address any other specific requirements thereof provided always that the State shall at no time be required to provide any financial assistance or assume any financial liability with respect to the Financing Activities, other than in its capacity as holder of Ordinary Contributing Shares.
- (h) **(Security)**

- (i) Further to the provisions of Article 40(g), the State acknowledges and agrees that all Project Assets (including all Land Rights attached to the Mining Infrastructure) and all shares (other than the Non-Contributing Shares) and any other rights as applicable can, and if required by the Financing Parties will, be provided as Security as required for the Financing Activities or as required to secure the Infrastructure Owner's rights of step in as set out in Article 45.3, it being agreed that no Taxes (including any registration fees or other duties) shall be payable, and no Authorisations or approval shall be required, in relation to the creation or enforcement of such Security, including the transfer of any Assets to any third party following such enforcement.
- (ii) Notwithstanding the generality of Article 40(h)(i), the State agrees and undertakes, in relation to the matters the subject of this Article 40(h), to facilitate and grant any Authorisation or proceed with all formalities of any perfection requirements as prescribed by the OHADA Uniform Act on Securities or any other applicable Legislation in Force.

It is agreed by the State and SIMFER S.A. that SIMFER S.A. may assign, including by way of Security, its rights under this Convention to the Financing Parties, and no Authorisations or approval shall be required, in relation to the creation or enforcement of such assignment, including the assignment of these rights to any third party following such enforcement.

(i) **Settlement Agreement – Payment of a Settlement Sum**

- (i) As agreed pursuant to Article 1.5 of the Settlement Agreement, SIMFER S.A. has paid to the State a final settlement sum in an amount of seven hundred million US Dollars (US\$700,000,000) (inclusive of all Taxes of any kind applicable in Republic of Guinea to payment of that sum) (the **Settlement Sum**).
- (ii) If any of the following actions (**Actions**) occur, then the Settlement Sum shall become immediately repayable in full (without prejudice to any other rights of SIMFER S.A.):
  - (A) in the case of expropriation in whole or part, or government action having the substantive effect of an expropriation in whole or in part;
  - (B) in the case of annulment or effective annulment of the Concession Decree or the Consent Decree, or this Convention or failure of the State to give full effect to, or to continue to give full effect to, any material term of any of the Concession Decree or the Consent Decree or this Convention; and
  - (C) in the case of any State action that substantially alters the economic balance of the Project established by this Convention and the Settlement Agreement (subject to Article 4 of this Convention) to the prejudice of SIMFER S.A. or the Infrastructure Owner, or fails to recognise provisions of either (subject to Article 4 of this Convention) and doing so results in material detriment to SIMFER S.A. or the Infrastructure Owner.
- (iii) However, the Settlement Sum shall not be repayable where:
  - (A) the Actions are pursuant to and in full conformity with the provisions of this Convention relating to a breach of this Convention by SIMFER S.A. and the rights and entitlements of the State hereunder in the circumstances of such breach of this Convention by SIMFER S.A.; or

- (B) the Settlement Sum has already been included in the amount of any Historical Mining Costs paid to SIMFER S.A. pursuant to Article 19.5(f)(i)(B) or used as the basis for calculating compensation paid to SIMFER S.A. pursuant to Article 45.2.
- (iv) Any payment of the Settlement Sum pursuant to this Article 40 shall otherwise not affect, or otherwise be deducted from, the amount of any compensation required to be paid by the State to SIMFER S.A. pursuant to this Convention, in particular Article 40(b), Article 43 and Article 45.2.
- (v) Except where it is expressly entitled under this Convention to do so as a consequence of a breach of this Convention by SIMFER S.A., the State undertakes not to take any of the Actions, nor to permit them to occur.

## **41 Guarantees for the Protection of the Environment and the Cultural Heritage**

### **41.1 General Introduction**

- (a) SIMFER S.A. undertakes to conduct its different activities while respecting the environment, health, safety and well-being of its employees and of the community.
- (b) SIMFER S.A. will comply with environmental Laws and Regulations and will similarly abide by the national and / or international standards and practices of the mining industry as reflected in the Project Standards on the subject of its activity and the environment, in particular with regard to the limitation of negative impacts. In this regard, it will incorporate appropriate measures into the planning and administration of its activities, including measures that will enable to be preserved the natural features of the area within the Perimeter of the Modified Concession and the other lands that it occupies or affects including the rehabilitation of lands affected by the works.
- (c) During the exploitation phase, SIMFER S.A. undertakes to comply with any recommendations adopted pursuant to applicable Laws and Regulations on the subject of the environment and to facilitate any inspection carried out by the specialist departments of State.

### **41.2 Environmental impact assessment: surveys and authorisations**

- (a) For any Investment Programme, SIMFER S.A. shall conduct environmental impact surveys for the natural and human habitat and the environment in general. The surveys will form the basis of reports to include recommendations with regard to the measures required to diminish the negative impact of the Project or, as from the Infrastructure Effective Date, the Mining Activities on the environment affected, including a programme for the rehabilitation of the mining exploration area lands or compensatory measures and an environmental monitoring plan.
- (b) The terms of reference of the environmental impact studies will be prepared as soon as practicable in accordance with current international standards as reflected in the Project Standards, through close co-operation between SIMFER S.A. and the State, within a period of six (6) months.
- (c) After SIMFER S.A. has submitted a report on an environmental impact study, the State will issue all necessary approvals for the report within a period of three months, if the conclusions and proposals from this report are in conformity with Laws and Regulations and international standards as reflected in the Project Standards.

- (d) The State and SIMFER S.A. acknowledge that SIMFER S.A. has submitted to the State, and the State has approved, the report on the environmental impact study with respect to the scope of the Project envisaged in the Draft Definitive Engineering Report.

#### **41.3 Specific environmental undertakings**

SIMFER S.A. undertakes in particular:

- (a) for the full term of the Convention to preserve the environment and the public infrastructure assigned to the Project but, as from the Infrastructure Effective Date, solely to the Mining Activities;
- (b) to repair any damage caused to the environment and to the infrastructure;
- (c) to comply in all respects with Laws and Regulations and the Project Standards regarding hazardous waste, natural resources and environmental protection; and
- (d) to rehabilitate the excavated areas in such a way as to render them fit for use within the terms specified by applicable Laws and Regulations in this regard.

#### **41.4 Cultural Heritage**

- (a) In the event of the discovery of an archaeological site within the Perimeter of the Modified Concession, the mining activities must be preceded, at SIMFER S.A.'s expense, and with the agreement of the State, by suitable surveys conducted by qualified agencies.
- (b) If any items of national cultural heritage, moveable or immovable, are found in the course of the exploration activities, SIMFER S.A. undertakes not to move the objects in question, and to give Notice to the State without delay. SIMFER S.A. undertakes to share in the reasonable costs of salvage.

## Section VI: Sundry Provisions

### 42 Insurance

- (a) SIMFER S.A. will be liable for the direct consequences of any civil liability that it might incur by reason of any loss or damage of any kind whatsoever, caused to third parties or to their staff as a result of the conduct of the Mining Activities, by its staff or the equipment, the equipment goods of which it is the owner or that are deposited under its custody.
- (b) For this purpose, SIMFER S.A. shall subscribe any necessary insurance against such risk with companies of its choice offering such cover and damages payment guarantees in hard currency as SIMFER S.A. deems most suitable.
- (c) With equivalent levels of guarantee, price and commitment to pay in hard currency with regard at least to those losses that correspond to assets payable in hard currency, SIMFER S.A. must give preference to subscription of insurance cover with Guinean insurance companies, so long as the policies underwritten are reinsured with international companies operating in the field of reinsurance and are acceptable to SIMFER S.A.

### 43 Indemnity

- (a) In the event of breach of this Convention, the Party in breach shall compensate the other Party for the loss incurred by it.

The compensation must cover the full amount of the damage. The term **damage** comprises any direct, actual and positive loss and includes in particular any cost, expense, interest and fee for lawyers, legal advisors and experts and other expenses that the Party suffering the loss may have to incur but excludes any loss that is recoverable by, and paid to, the Party suffering the loss under the applicable insurance policies taken out by the Party in breach.
- (b) The amount of any compensation calculated pursuant to Article 43(a) shall be paid within ninety (90) Days after the occurrence of the damage deriving from the breach of this Convention. Each relevant Party to be compensated shall endeavour to agree, with the Party in breach, the amount of compensation to be paid to it within sixty (60) Days after such damage occurring. In the event that the Parties concerned cannot agree on the amount of compensation, the provisions of Article 46 shall apply.

In every case, the payment of compensation shall be subject to interest with effect from the date of the occurrence of the damage, until the actual payment of the compensation. Such interest shall be calculated at the Contractual Rate of Interest.
- (c) Unless there is a prior agreement to the contrary between the Parties, any compensation will be paid in Dollars only.

### 44 Force Majeure Event

- (a) None of the Parties nor their respective Affiliates and Project Contractors shall be liable for the failure to carry out their obligations under this Convention due to the occurrence of a Force Majeure Event. Throughout the term of the Force Majeure Event, and subject to the provisions of this Convention, the obligations affected by the Force Majeure Event shall be suspended.
- (b) For the purposes of this Convention, and subject to Article 40, **Force Majeure Event** means any unforeseeable, insurmountable act or event beyond the control of the Party

relying on such act or event that prevents this Party from fulfilling one or more of its obligations under this Convention including the following events and circumstances or their consequences to the extent they satisfy the requirements contained in this Article 44(b):

- (i) epidemic, plague or quarantine;
  - (ii) act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion or act of terrorism or sabotage or kidnapping;
  - (iii) explosion, accident, chemical contamination or fire;
  - (iv) lightning, typhoons, floods, earthquake, sandstorm, tornado, cyclone or other unusually severe weather conditions or other natural disaster;
  - (v) the discovery of an archaeological site or Critical Habitat within the Perimeter of the Modified Concession, or the Project Lands;
  - (vi) any strikes and / or other work stoppage or labour dispute that is not limited to SIMFER S.A. or the Mining Activities, or any strikes and / or other work stoppage or labour dispute that is not due to a breach of Legislation in Force or of this Convention by SIMFER S.A.;
  - (vii) any Force Majeure Event described in this Article 44(b) affecting the performance of the Rail and Port Services Agreement; and
  - (viii) any event or circumstance of a nature analogous to the foregoing.
- (c) A Force Majeure Event in the sense of this Convention is not constituted by any act or event whose occurrence could have been foreseen and precautionary measures might have been taken against its effects in the exercise of reasonable care. Similarly, a Force Majeure Event is not constituted by any act or event that would only make the performance of an obligation more difficult or more burdensome for the affected Party.
- (d) The Party who invokes a Force Majeure Event shall immediately after the occurrence or the discovery of a Force Majeure Event, and within a maximum term of ten (10) Days, submit to the other Parties a Notice specifying the factors that constitute the Force Majeure Event and their possible consequences for the implementation of this Convention.
- (e) In any event, the Party concerned shall take every useful step to minimise the impact of the Force Majeure Event on the performance of its obligations and ensure, within the shortest possible time, the normal resumption of the execution of the obligations affected by the case of Force Majeure Event.
- (f) If, following a Force Majeure Event, the suspension of obligations were to exceed one (1) month, the Parties shall convene at the earliest possible opportunity in order to examine the implications of the said events on the execution of this Convention and, in particular, on the financial obligations of every kind involving the State, SIMFER S.A. and its Affiliates and Project Contractors. In the latter case, the Parties shall search for any solution that will enable the original Mining Activities to be adapted to the changed circumstances, adopting in particular any measure that would enable SIMFER S.A. and its Affiliates, the State and Project Contractors to return to the economic equilibrium and enabling them to proceed with the Project.
- (g) In the event of any dispute arising out of, relating to or in connection with the measures to be adopted three (3) months after the occurrence of the Force Majeure Event, the

negotiation process may be brought into action immediately at the request of the first Party to take action and the provisions of Article 46 shall apply as a whole.

- (h) In the event that a Force Majeure Event becomes an Extended Force Majeure Event, it is acknowledged and agreed by the Parties that this Convention may be terminated pursuant to Article 45.1(e).

## 45 Early Termination

### 45.1 Cases of Early Termination

The early termination of this Convention may only take place in the following cases:

- (a) **(Mutual agreement)** By any Party if the Parties mutually agree to terminate it.
- (b) **(Unlawful Expropriation)** By SIMFER S.A. or RTME in the case of Unlawful Expropriation, upon Notice by SIMFER S.A. or RTME that this Convention is terminated.
- (c) **(Material Simfer Breach)** By the State in the case of Material Simfer Breach upon Notice by the State that this Convention is terminated. The Parties acknowledge and agree that, for the purposes of this Convention, a breach by SIMFER S.A. of the BOT Convention does not amount to a breach by SIMFER S.A. of this Convention.
- (d) **(Material Government Breach)** By SIMFER S.A. or RTME in the case of Material Government Breach upon Notice by SIMFER S.A. or RTME that this Convention is terminated.
- (e) **(Extended Force Majeure Event)** If an Extended Force Majeure Event has occurred, this Convention may be terminated by SIMFER S.A. upon Notice by SIMFER S.A. that this Convention is terminated.
- (f) **(Expropriation or Nationalisation)** Following payment in full of compensation by, and transfer of all remaining Project Assets to, the State as a consequence of any nationalisation or expropriation which occurs, in each case as provided in Article 40(b), this Convention shall be deemed to be terminated.

In the cases of Articles 45.1(c) (Material Simfer Breach) and 45.1(d) (Material Government Breach), Notice of termination may not be issued unless the non-defaulting Party has issued a Notice of its intention to terminate to the defaulting Party and, at the end of a period of 180 Days, calculated with effect from the date of receipt by the defaulting Party of the Notice of intention to terminate, the default which is the subject of such Notice has not been remedied to the reasonable satisfaction of the non-defaulting Party. However, in the event that the State were to have the right to terminate within the context of Articles 45.1(c) (Material Simfer Breach), it may decide not to declare the termination but the simple suspension of certain benefits granted to SIMFER S.A. or to its Affiliates under this Convention in particular regarding fiscal and customs matters, that are appropriate and reasonable to compensate the State for such breach.

### 45.2 Consequences

- (a) In the event of the early termination of this Convention under Article 45.1, the provisions of this Article 45.2 shall apply, it being understood and agreed by the Parties that in all cases, subject to and in accordance with the provisions of Article 45.2(i), the Project Assets shall be transferred to the State.
- (b) **(Termination declared under Article 45.1(a) (Mutual agreement))** SIMFER S.A. and its Affiliates will be entitled to compensation as agreed with the State.
- (c) **(Termination declared under Article 45.1(b) (Unlawful Expropriation))** SIMFER S.A., its Affiliates and shareholders (excluding the State and SOGUIPAMI) shall be entitled to

compensation no less than an amount equal to the fair market value of the entire Project Assets calculated in the manner provided in Article 40(b) without prejudice to their rights under this Convention and the rules of international law.

- (d) **(Termination declared under Article 45.1(c) (Material Simfer Breach))**
- (i) SIMFER S.A. and its Affiliates shall be entitled to compensation equal to the greater of:
- (A) all liabilities of SIMFER S.A. under all Financing Documents concluded with Senior Financing Parties which shall be reimbursed in order for SIMFER S.A. to obtain full discharge of liability from the Senior Financing Parties; and
- (B) an amount which is the lesser of:
- (1) 50% of the total of the capital cost of each mine development and each subsequent expansion of a mine development (and in each case associated Project Assets) as at the date of Notice of termination, divided by the total number of months from the First Commercial Production Date to the end of the estimated duration of the mine life multiplied by the number of remaining months between the date of Notice of termination and the end of the estimated duration of the mine life (as this estimated duration of the mine life is set out in the Long Term Mine Plan applicable at the date of this Notice); and
- (2) the fair market value of the Project Assets as at the date of termination occurring (and assuming it will occur), taking into account the effect of the relevant Material Simfer Breach, and which shall be the amount at which the Project Assets could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale. Such fair market value shall be determined on the basis set out in this Article 45.2(d) by an independent expert experienced in the valuation of mining assets appointed by the International Centre for Expertise in accordance with the provisions for the appointment of experts under the Rules for Expertise of the International Chamber of Commerce.
- (ii) The State shall be entitled to compensation payable by SIMFER S.A. in an amount equal to the definite, actual, direct damages or loss sustained by the State as a direct result of the Material Simfer Breach.
- (e) **(Termination declared under Article 45.1(d) (Material Government Breach))** SIMFER S.A. and its Affiliates shall be entitled to compensation at least equal to the fair market value of Project Assets at the time immediately prior to the Material Government Breach occurring (and assuming it does not occur) and which shall be the amount at which the Project Assets could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale. Such fair market value shall:
- (i) be determined on the basis set out in this Article 45.2(e) by an independent expert experienced in the valuation of mining assets appointed by the International Centre for Expertise in accordance with the provisions for the appointment of experts under the Rules for Expertise of the International Chamber of Commerce; and

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- (ii) in all cases be no less than the total of the capital cost of the Project Assets as at the date of Notice of termination, divided by the total number of months from the First Commercial Production Date to the end of the estimated duration of the mine life multiplied by the number of remaining months between the date of Notice of termination and the end of the estimated duration of the mine life (as this estimated duration of the mine life is set out in the Long Term Mine Plan applicable at the date of this Notice).
- (f) **(Termination declared under Article 45.1(e) (Extended Force Majeure Event))** In the case of termination on the basis of Other FME, SIMFER S.A. and its Affiliates shall be entitled to compensation equal to:
  - (i) the greater of:
    - (A) all liabilities of SIMFER S.A. under all Financing Documents concluded with Senior Financing Parties which shall be reimbursed in order for SIMFER S.A. to obtain full discharge of liability from the Senior Financing Parties; and
    - (B) an amount which is equal to 50% of the total of the capital cost of each mine development and each subsequent expansion of a mine development (and in each case associated Project Assets) as at the date of Notice of termination, divided by the total number of months from the First Commercial Production Date to the end of the estimated duration of the mine life multiplied by the number of remaining months between the date of Notice of termination and the end of the estimated duration of the mine life (as this estimated duration of the mine life is set out in the Long Term Mine Plan applicable at the date of this Notice); less
  - (ii) the total amount of any expenses incurred by the State in repairing any damage directly caused to the Project Assets by the Force Majeure Event (full documentary evidence of such expenses to be provided upon request by SIMFER S.A.) and which amount cannot be greater than the amount referred to in Article 45.2(f)(i).

It being agreed and understood by the Parties that, in the event of termination on the basis of Natural FME, neither the State nor SIMFER S.A. and its Affiliates shall be entitled to compensation under this Convention. However, SIMFER S.A. will be entitled to receive the proceeds of insurance in respect of such event to compensate it for any loss it may suffer or incur.

- (g) Should the Parties disagree on the calculation of the compensation specified in Articles 45.2(b) to 45.2(f), then the provisions of Article 46 will apply.
- (h) All payments required to be made by the State to SIMFER S.A. and its Affiliates pursuant to this Article 45.2 shall, to the maximum extent possible, be set-off against other payments required to be made by SIMFER S.A. to the State pursuant to this Article 45.2 and, with respect to the balance remaining after such set-off, shall be payable as follows:
  - (i) all payments made by the State to SIMFER S.A. and its Affiliates pursuant to this Article 45.2 and any compensation that is paid pursuant to Article 40 shall be denominated in Dollars and paid to an offshore account nominated by SIMFER S.A. or its Affiliates, as the case may be, free of all Taxes and other taxes, duties and withholdings imposed in Guinea; and
  - (ii) all payments made by SIMFER S.A. to the State pursuant to this Article 45.2 shall be paid by SIMFER S.A. to the State denominated in Dollars and paid to the

account of the public treasury free of all taxes, duties and withholdings imposed outside Guinea.

On receipt by SIMFER S.A. and its Affiliates and the State, as the case may be, of such payments in full, the Parties shall jointly and severally waive any other rights or remedies which they may have against each other under this Article 45 of this Convention and the Project Assets shall be transferred by SIMFER S.A. to the State or its nominee. The State shall be free to procure that a third party make payment of any amounts required to be paid by it to SIMFER S.A. pursuant to this Article 45 on its behalf.

- (i) The payment of all compensation pursuant to this Article 45 and the completion of the transfer of the Project Assets shall in each case take place at a location and date agreed by the State and SIMFER S.A. which shall, other than in the case of termination pursuant to Article 45.1(c) (Material Simfer Breach) or Article 45.1(e) (Extended Force Majeure Event) on the basis of Other FME, be no later than 90 Days after the date of Notice of termination being given pursuant to Article 45.1, following which any compensation which has not been paid shall become a debt due and immediately payable. In the case of termination pursuant to Article 45.1(c) (Material Simfer Breach) or Article 45.1(e) (Extended Force Majeure Event) on the basis of Other FME, the payment of all compensation pursuant to this Article 45.2 and the completion of the transfer of the Project Assets shall take place at a location and date agreed by the State and SIMFER S.A. which shall be no later than 360 Days after the date of Notice of termination being given pursuant to Article 45.1, following which any compensation which has not been paid shall become a debt due and immediately payable, unless it is agreed by SIMFER S.A. and the State that the Notice of termination is withdrawn.
- (j) All amounts so payable shall accrue interest at the Contractual Rate of Interest as from 90 Days after the date of Notice of termination until such time as they are paid in full. It shall be a condition of any termination that occurs pursuant to Article 45.1 taking effect that payment in full occurs of all compensation required to be paid pursuant to this Article 45.2. Only upon payment in full being made pursuant to this Article 45.2 will SIMFER S.A. be obliged to transfer the Project Assets to the ownership of the State, after which this Convention shall terminate with immediate effect subject to the provisions of Article 57. It is specifically agreed, for the purposes of this Article 45.2 and Article 40(b), that to the extent that any Project Assets are subject to third party rights, encumbered or otherwise unable to be transferred to the State as required, they shall only be transferred to the State when it is legally possible for such transfer to occur.
- (k) As from the date on which Notice of termination is given pursuant to Article 45.1(c) (Material Simfer Breach) or Article 45.1(e) (Extended Force Majeure Event) on the basis of Other FME and until such time as payment in full has been made of all amounts required to be paid pursuant to this Article 45, or expiry of the period for payment as referred to in Article 45.2(i), whichever happens earlier, SIMFER S.A. shall:
  - (i) if requested to do so by Notice from the State, be obliged to take such steps as are necessary to keep the Mining Infrastructure on a care and maintain basis in accordance with Good Operating Practice; and
  - (ii) if Notice is issued by the State pursuant to Article 45.2(k)(i), have the right, but not the obligation (subject to its obligations under the Rail and Port Services Agreement), to continue to operate the Mining Infrastructure for its own commercial benefit;

subject in all cases to the requirements that:

- (iii) any reasonable costs incurred by SIMFER S.A. in performing the obligations referred to in Article 45.2(k)(i) shall be added to the amounts required to be paid to it by the State pursuant to this Article 45 and paid in the same manner;
  - (iv) in the case of Notice of termination being given pursuant to Article 45.1(e) (Extended Force Majeure Event) on the basis of Other FME, SIMFER S.A. shall not be required to perform the obligations referred to in Article 45.2(k)(i) if, in view of the Other FME which has occurred, it would in the opinion of SIMFER S.A., be unsafe or unreasonable for it to do so; and
  - (v) in the event that the State intends to make payment of all amounts required to be paid to SIMFER S.A. pursuant to this Article 45, prior to expiry of the period referred to in 45.2(i), then it shall give Notice of its intention to do so to SIMFER S.A., no less than 30 Days before, in order that SIMFER S.A. is able to take such steps as are required to wind down in an orderly manner the performance of its rights and obligations as set out in Articles 45.2(k)(i) and 45.2(k)(ii).
- (l) Any termination of this Convention which may occur pursuant to Article 19 shall not be subject to, nor trigger the application of, this Article 45.

### **45.3 Infrastructure Owner and Senior Financing Parties' Step In Rights**

- (a) The State shall not, in the circumstances to which Article 45.1(c) (Material Simfer Breach) applies, give Notice of termination of this Convention without first giving a Notice of its intention to terminate, as required by Article 45.1, to SIMFER S.A. and copied to the Infrastructure Owner and the Senior Financing Parties, requiring the default to be remedied.
- (b) Unless otherwise agreed in the Financing Documents concluded with Senior Financing Parties, at any time within 90 Days after the copy Notice being provided to SIMFER S.A. pursuant to Article 45.3(a), the Infrastructure Owner may, but shall have no obligation to:
  - (i) remedy or procure the remedy of such default; or
  - (ii) temporarily or permanently assume, or arrange for a substitute company or companies to assume, all of the interests, rights and obligations of SIMFER S.A. under this Convention, the Infrastructure Operator Agreement and the Rail and Port Services Agreement,including as may be more specifically provided in the Rail and Port Services Agreement and without prejudice to the State's right of indemnity under Article 43.
- (c) In the event that the Infrastructure Owner exercises its rights pursuant to Article 45.3(b) and permanently assumes or has arranged for a substitute company or companies to permanently assume, all of the interests, rights and obligations of SIMFER S.A. under this Convention, the Parties acknowledge and agree that the Infrastructure Owner or such substitute company or companies (as the case may be) shall (subject to the approval of the State, not to be unreasonably withheld) assume the rights and obligations of SIMFER S.A. for the purposes of this Convention and shall pay compensation to SIMFER S.A. in a sum calculated in accordance with the principles set out in Article 45.2(d).
- (d) If the default remains unremedied for 90 Days after the date of the copy Notice being given pursuant to Article 45.3(a), then the Senior Financing Parties may, but shall have no obligation to:
  - (i) remedy or procure the remedy of such default; or

- (ii) assume, or arrange for a substitute company or companies to assume, all of the interests, rights and obligations of SIMFER S.A. under this Convention, the Infrastructure Operator Agreement and the Rail and Port Services Agreement, at any time within 90 Days after the rights under this Article 45.3(d) have arisen, all pursuant to the terms of a direct agreement entered into by the State and any other person on behalf of the Senior Financing Parties.
- (e) If the Infrastructure Owner or substitute company or companies nominated by it, or the Senior Financing Parties or their nominees, as the case may be, remedies (or procures the remedy of) the default of SIMFER S.A. which was the subject of Notice of intention to terminate given by the State or have assumed all of the interests, rights and obligations of SIMFER S.A. under this Convention, the Infrastructure Operator Agreement and the Rail and Port Services Agreement pursuant to this Article 45.3, the State shall not be entitled to terminate this Convention and the Notice of intention to terminate previously issued by it in respect of such default shall be deemed to have been withdrawn and be of no further effect.

## **46 Settlement of Disputes**

### **46.1 Prior Negotiations**

Any dispute arising out of, relating to or in connection with this Convention (but excluding Appendix 10) (the **Dispute**) shall be, as far as possible, settled amicably by negotiation. If the Dispute has not been settled through negotiations within 45 Days after the notification by one of the parties of the existence of the Dispute to the other parties to the Dispute, or within such other period as may be agreed in writing, the following procedure will apply:

- (a) Any party to the Dispute may give notice to the other parties of the Dispute, including a brief outline of the claims being made and the nature of and reasons for the Dispute.
- (b) Within thirty (30) Days after the date of receipt of the notification of the Dispute referred to in Article 46.1(a), the Dispute will be referred to a senior executive of SIMFER S.A. or senior executive of RTME, on the one hand, and the Minister of Mines and Geology or a senior representative of the Minister of Mines and Geology, on behalf of the State, on the other hand, for amicable resolution through negotiation within a further period of sixty (60) Days. The parties will use reasonable endeavours to organise at least one meeting at a mutually convenient place between the aforementioned designated representatives during this period.
- (c) If the parties fail to reach an amicable resolution of the dispute within ninety (90) Days after the date of notification of the dispute referred to in Article 46.1(a), then the provisions of Article 46.2 shall apply.

### **46.2 Arbitration**

- (a) The Parties hereby consent to submit to the International Centre for the Settlement of Investment Disputes (the **Centre**) any Dispute for settlement by arbitration pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the **ICSID Convention**).
- (b) It is hereby agreed that, although SIMFER S.A. is a national of the State, it is controlled by nationals of other contracting States of the ICSID Convention and shall be treated as a national of another contracting State for the purposes of the ICSID Convention.
- (c) It is hereby stipulated that the transaction to which this Convention relates is an investment.

- (d) Hearings in an arbitration conducted pursuant to this Article 46.2 shall be in Paris.
- (e) The language of any arbitration pursuant to this Article 46.2 shall be French.
- (f) Without prejudice to the power of the arbitral tribunal constituted under the above provisions to recommend provisional measures, any party may request any judicial or other authority to order any provisional or conservatory measure, including attachment, prior to the institution of the arbitration proceeding, or during the proceeding, for the preservation of its rights and interests.
- (g) If for any reason a Dispute referred to the Centre pursuant to this Article 46.2 cannot be decided, in whole or in part, on the merits (in particular, but not exclusively, should the Centre refuse to register the request for arbitration or should the Centre or the arbitral tribunal find that it does not have jurisdiction to decide the Dispute, in whole or in part), then the Dispute (or that part of the Dispute which cannot be decided on the merits) shall be finally resolved under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The seat of arbitration shall be Paris (France) and the language of arbitration shall be French.
- (h) The State hereby waives any right of sovereign immunity as to it and its property in respect of the enforcement and execution of any provisional or conservatory measure ordered by any judicial or other authority and of any partial, interim or final award rendered by an arbitral tribunal constituted pursuant to this Convention.

#### **46.3 Governing Law**

This Convention shall be governed by the law of Guinea, excluding its conflict of law rules, and by the rules of international law. With regard specifically to the Laws and Regulations, where they are silent, the arbitral tribunal shall apply in priority Guinean case law or in the absence of such case law, shall apply French case law that generally govern the matter, in particular with reference to administrative law, or in its absence to the general principles of law as applied in France.

#### **46.4 Payment**

Any arbitration award issued in accordance with the provisions of this Convention is final and binding and must be executed immediately, the Parties waiving any recourse to the courts. The sums that are to be paid in accordance with the award are payable in US Dollars to an account belonging to the beneficiary located at a bank and in a place of its choice and are exempt from any Tax or other deductions or withholding of a fiscal or parafiscal nature in Guinea.

#### **46.5 Interest**

Those sums awarded by the arbitration award include interest calculated with effect from the date of the event that gave rise to the Dispute and up to the date of full payment. Interest is calculated at the Contractual Rate of Interest.

#### **47 Capacity of RTME**

Without diminishing the rights of SIMFER S.A. or the Protected Entities to enforce the provisions of this Convention, the Parties agree that RTME will be additionally entitled to enforce this Convention (including pursuant to Article 46) for and on behalf of SIMFER S.A. in order to protect the interests of SIMFER S.A. and / or for and on behalf of any Protected Entity in relation to any Expropriation Dispute, in particular, but not only, where any shares in SIMFER S.A. are expropriated (the State hereby agreeing that it will not expropriate any of the shares in SIMFER S.A., nor take any action that has like effect to expropriation of shares in SIMFER S.A.).

## **Section VII: Final Provisions**

### **48 Authorisation of Investment and of Transfer**

- (a) Ratification of this Convention amounts to the authorisation for direct foreign investment in Guinea.
- (b) All transfers to foreign destinations to be carried out within the context of the Project by SIMFER S.A. and its Affiliates are generally authorised both with regard to current operations and relating to capital transactions that might be otherwise restricted by exchange control regulations.

### **49 Precedence**

- (a) In the event of any conflict between the provisions of this Convention and the Laws and Regulations, the provisions of this Convention shall prevail.
- (b) Subject to Article 4, in the event of any conflict between this Convention and any other Contractual Documents (other than the BOT Convention) relating to the Project, the terms of this Convention will prevail.

### **50 Good Faith Behaviour**

Each Party undertakes to transmit to the other Party the legal instruments necessary to implement this Convention. In addition, each Party undertakes to conduct themselves in a manner that will fully implement the provisions of this Convention, in the best interest of the Project.

### **51 Amendments**

- (a) Any provision that is not provided for in this Convention may be proposed by either one or other of the Parties and will be examined carefully. Each Party will endeavour to reach a mutually acceptable solution with a view to inserting the new provisions in an amendment signed by the Parties and which will then be ratified by the State by using the same procedure as the one applied to this Convention and shall be appended to it. It is specified that, during the period where the Guinean National Assembly is not sitting, such amendment may be validly ratified by the relevant Guinean institutions pursuant to the Guinean Constitution.
- (b) Further to Article 51(a), the Parties undertake to negotiate in good faith any amendment to the Convention that may be necessary, in particular to enable the implementation in a timely manner of the required financings for the development of the Project and of the Infrastructure Project. The State furthermore undertakes to place before the Guinean National Assembly for ratification in a timely manner any such amendments to the Convention as may be agreed by the Parties, in particular as is contemplated pursuant to Article 19.5 of this Convention and Article 2 of the BOT Convention.

### **52 Assignment, Successors and Beneficiaries**

- (a) This Convention binds the Parties, their successors and respective beneficiaries.
- (b) The Parties acknowledge that the State has granted by the Consent Decree attached as Appendix 4 its approval of all the terms and conditions of the agreements signed by Rio Tinto plc and Chalco as at the date of the Settlement Agreement (and, as a result, the assignment for the benefit of SIMFER Jersey Ltd of shares in SIMFER S.A. held by entities of the Rio Tinto Group, as well as any participation by Chalco in the capital of

SIMFER Jersey Ltd) in accordance with Settlement Agreement and Article 62 of the Mining Code.

- (c) The State confirms that transfer to SIMFER Jersey Ltd of shares in the capital of SIMFER S.A. held by the entities of the Rio Tinto Group, and transfer of historic funding of SIMFER S.A. to SIMFER Jersey Ltd, as well as all future participation by Chalco in the capital of SIMFER Jersey Ltd will be fully free of any Taxes.
- (d) The State confirms that SIMFER S.A. is hereby authorised to designate one or more Affiliates (including the Infrastructure Operator) and, insofar as Energy Facilities are concerned, the TPI, as its nominee or assignee under any contracts and to grant them any such rights and / or obligations as are necessary to carry out the Infrastructure Activities and / or Mining Activities. To the extent necessary, the State further confirms that any agreement which would result in the transfer of rights and obligations deriving from the Modified Concession to an Affiliate for the purpose of carrying out all or part of the Mining Activities is hereby approved for the purposes of and pursuant to Article 62 of the Mining Code.
- (e) The Rail and Port Services Agreement shall continue to apply to any holder of a title that relates to an area wholly or partly within the Perimeter of the Modified Concession and the Parties agree that any transfer of the Mining Activities and / or Mining Infrastructure to any such title holder (including as the result of any expropriation or nationalisation by the State as referred to in Article 40(b)) at any time shall be conditional on such title holder executing an assignment and assumption agreement substantially in the form attached to the Rail and Port Services Agreement, pursuant to which all rights and obligations of SIMFER S.A. (or a subset of them acceptable to SIMFER S.A.) are assigned to and assumed by such title holder and such title holder replaces SIMFER S.A. as a party to the Rail and Port Services Agreement and any subsequent transfer shall be subject to the same condition. This Article 52(e) shall survive any early termination of this Convention.

### **53 Partial Waiver**

Implicit or other waiver of the rights deriving from any provision of this Convention cannot be construed as a waiver of the rights deriving from other provisions (similar or not) of this Convention and any repudiation of this kind may only be temporary, unless the waiving Party has submitted a declaration in writing and duly signed to this effect.

### **54 Confidentiality**

- (a) The State undertakes not to disclose to third parties or to use for the benefit of third parties any industrial, financial, commercial, scientific, technical or personal information supplied by SIMFER S.A. and its Affiliates and Project Contractors or obtained by the State other than those naturally available in the public domain and regularly treated by SIMFER S.A. and its Affiliates in a non-confidential manner, without the express prior consent of SIMFER S.A. or of its Affiliates.
- (b) SIMFER S.A. undertakes from its side to treat as confidential any information of a similar nature that the State communicates to it.

### **55 Language of the Agreement and Measuring System**

- (a) This Convention is written in the French language. All reports or other documents drawn up or to be drawn up pursuant to this Convention must be written in French. However, the documents and appended papers may be presented in English, it being specified that in

the event of understanding difficulties, SIMFER S.A. undertakes to have any important document or paper translated without delay.

- (b) The translation of this Convention into any other language will be carried out for the exclusive purpose of facilitating its understanding. In the event of any contradiction between the French text and the text translated into a foreign language, the French text shall prevail.
- (c) The measuring system used will be the metric system.

## **56 Term**

This Convention will expire at the end of a period, which will be determined in accordance with the provisions of Article 6(c) of this Convention.

## **57 Continuation**

When the general context so requires, the rights and obligations of SIMFER S.A. and its Affiliates, of RTME and of the State will survive the early termination of this Convention or the expiry of the term of this Convention. This particularly will apply to this Article 57 and to Articles 1, 26, 43, 44, 46 to 49, 52 to 55 and 58.

## **58 Notifications**

### **58.1 Form of Notification**

Any Notice under or in connection with this Convention must be in writing and be delivered to its addressee by registered letter with acknowledgement of receipt or by a special courier, preceded or not by a fax to the addresses below:

- (a) (for the Republic of Guinea): Immeuble OFAB, Boulevard du Commerce, Almamy, Commune de Kaloum, BP 295, Conakry, Republic of Guinea, marked for the attention of the Minister of Mines and Geology;
- (b) (for SIMFER S.A.): c/o Rio Tinto, 17 Place des Reflets, 92097 Paris La Défense, Cedex, France, marked for the attention of the Secretary of the Board of SIMFER S.A., fax +33 (0)1 57 00 27 27; and
- (c) (for RTME): Rio Tinto Mining and Exploration Ltd, 2 Eastbourne Terrace, London, W2 62G, United Kingdom, marked for the attention of the Company Secretary, fax +44 (0)20 7781 1827.

### **58.2 Constructive Delivery**

A Notice is deemed to have been validly given:

- (a) on the Day of its delivery to its addressee either by hand, with acknowledgment of receipt, or by special courier; or
- (b) on the eighth working Day after its deposit in the post for correspondence sent by postal means, it being specified that any correspondence sent by postal means shall be confirmed by fax within 48 hours of its posting.

### **58.3 Other means of Notification**

In the event of failure of the means of transmission contemplated herein, the Parties will make use of any other means of transmission that enables them to ensure that the Notice has reached its addressee within the shortest possible time.

**58.4 Change of Address**

Any change of address of one Party must be Notified to the other Party within the shortest possible time.

**58.5 Documents**

Any documents addressed to a Party must be sent to the address specified in this Convention.

**59 Entry into Force**

- (a) This Convention, having been duly approved by the authorised bodies of, and signed by the duly authorised representatives of, the Parties, shall enter into force on the Day of the publication of the Decree in the Official Journal by the President of the Republic of Guinea promulgating the law adopted by the National Assembly of Guinea adopting this Convention.
- (b) The State and SIMFER S.A. undertake to make every effort so that the Effective Date of this Convention will occur as soon as practicable.

Amended and Consolidated Basic Convention

**Executed** in Conakry.

**For the Republic of Guinea**

**The Minister of State, Minister of Mines  
and Geology**

-----  
His Excellency Monsieur Kerfalla Yansané

**The Minister of State, Minister of  
Economy and Finance**

-----  
His Excellency Monsieur Mohamed Diaré

**For SIMFER S.A.**

-----  
Alan John Bruce Davies

**For Rio Tinto Mining and Exploration  
Limited**

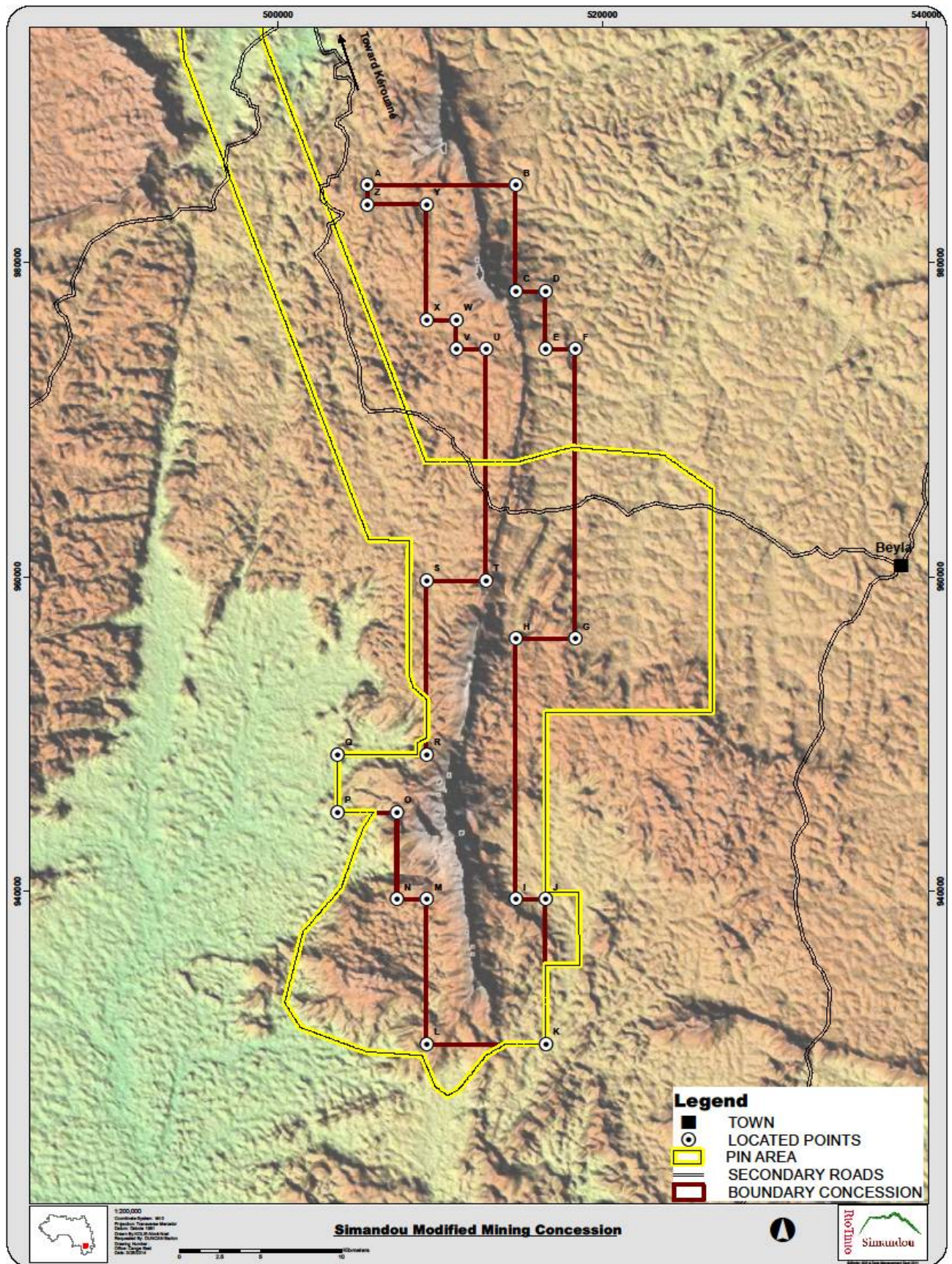
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Warrick Reginald John Ranson

### Appendix 1: Perimeter of the Modified Concession

The Perimeter of the Modified Concession is identified in the map set out in this Appendix 1 such that its new geographical coordinates are as follows.

POINTS	NORTH LATITUDE	WEST LONGITUDE
A	8° 54'40"	8° 57'00"
B	8° 54'40"	8° 52'00"
C	8° 51'00"	8° 52'00"
D	8° 51'00"	8° 51'00"
E	8° 49'00"	8° 51'00"
F	8° 49'00"	8° 50'00"
G	8° 39'00"	8° 50'00"
H	8° 39'00"	8° 52'00"
I	8° 30'00"	8° 52'00"
J	8° 30'00"	8° 51'00"
K	8° 25'00"	8° 51'00"
L	8° 25'00"	8° 55'00"
M	8° 30'00"	8° 55'00"
N	8° 30'00"	8° 56'00"
O	8° 33'00"	8° 56'00"
P	8° 33'00"	8° 58'00"
Q	8° 35'00"	8° 58'00"
R	8° 35'00"	8° 55'00"
S	8° 41'00"	8° 55'00"
T	8° 41'00"	8° 53'00"
U	8° 49'00"	8° 53'00"
V	8° 49'00"	8° 54'00"
W	8° 50'00"	8° 54'00"
X	8° 50'00"	8° 55'00"
Y	8° 54'00"	8° 55'00"
Z	8° 54'00"	8° 57'00"

Amended and Consolidated Basic Convention



## Appendix 2: Tax Annex

La présente Annexe 2 contient l'Annexe Fiscale. L'Annexe Fiscale comprend deux parties. La première partie correspond à l'Annexe Fiscale de 2011 Annexée à l'Accord Transactionnel Approuvé par l'Etat le 22 Avril 2011, qui a été mise à jour de sorte qu'elle se réfère aux dispositions fiscales et douanières de la Convention d'Origine, de la Convention de Base et de la Convention BOT (le cas échéant) et qu'une méthode cohérente de références internes aux articles correspondants soit appliquée. La deuxième partie correspond aux Amendements et Adjonctions de l'Annexe Fiscale de 2011 Annexée à l'Accord Transactionnel Approuvé par l'Etat le 22 Avril 2011 (les « **Amendements et Adjonctions** »). Pour les besoins de l'Annexe Fiscale :

- (a) la Convention d'Origine désigne la Convention de Base Simandou signée entre l'Etat, SIMFER S.A. et RTME le 26 novembre 2002 et ses Annexes, qui a été ratifiée par la loi L/2003/003/AN en date du 3 février 2003 par l'Assemblée Nationale guinéenne ;
- (b) la Convention de Base désigne la Convention d'Origine telle qu'amendée et consolidée conformément à l'Accord Transactionnel, la Convention de Base Amendée et Consolidée signée entre l'Etat, SIMFER S.A. et RTME et ses Annexes ainsi que toute modification qui pourrait y être apporté ; et
- (c) la Convention BOT désigne la Convention BOT Simandou tel que visé par la Convention de Base conclu entre l'Etat, SIMFER S.A. et RTME.

This Appendix 2 contains the Tax Annex. The Tax Annex comprises two parts. The first part is the 2011 Tax Annex Appended to the Settlement Agreement Approved by the State on 22 April 2011, which has been updated so that it refers to the tax and customs provisions of the Original Convention, the Basic Convention and the BOT Convention (as applicable) and so that a consistent method of internal cross-referencing is applied. The second part is the Amendments and Additions to the 2011 Tax Annex Appended to the Settlement Agreement Approved by the State on 22 April 2011 (the **Amendments and Additions**). For the purposes of the Tax Annex:

- (a) **Original Convention** refers to the Simandou Basic Convention signed by the State, SIMFER S.A. and RTME on 26 November 2002 and its Appendices which was ratified by the Guinean National Assembly by law L/2003/003/AN dated 3 February 2003;
- (b) **Basic Convention** refers to the Original Convention, as amended and consolidated as contemplated by the Settlement Agreement, the Amended and Consolidated Basic Convention signed by the State, SIMFER S.A. and RTME and its Appendices, and any amendment that might be introduced thereto; and
- (c) **BOT Convention** refers to the Simandou BOT Convention as contemplated by the Basic Convention entered into by the State, SIMFER S.A. and RTME.

**ANNEXE FISCALE DE 2011 TELLE QUE JOINTE A L'ACCORD  
TRANSACTIONNEL APPROUVE PAR L'ETAT LE 22 AVRIL 2011**

**2011 TAX ANNEX APPENDED TO THE SETTLEMENT AGREEMENT  
APPROVED BY THE STATE ON 22 APRIL 2011**

**Avertissement:** La présente Annexe Fiscale et Comptable rédigée conformément aux dispositions de la Convention d'Origine (désignée ci-après comme « la présente Annexe Fiscale ») doit toujours être lue en relation avec les dispositions fiscales, comptables et douanières de la Convention d'Origine, la Convention de Base et la Convention BOT (c'est-à-dire les Articles 23 à 32 de la Convention d'Origine, les Articles 27 à 36 de la Convention de Base et les Articles 29 à 37 de la Convention BOT) dont elle fait partie intégrante en tant que mesure d'application.

Il est convenu que la présente Annexe Fiscale pourra être mise à jour, si nécessaire, d'un commun accord. Des modifications et adjonctions pourront être requises en raison de changements importants intervenant dans la structure du Projet, dans le droit fiscal et comptable guinéen ainsi que dans les accords portant sur les infrastructures du Projet.

Pour l'application de la présente Annexe Fiscale le terme SIMFER S.A. inclut SIMFER S.A. et ses "Affiliées" telles que ce terme est défini dans la Convention de Base.

Il est précisé que les parties ne sont liées que par la version française de l'Annexe Fiscale. La version en langue anglaise n'a qu'une utilité interprétative.

A moins qu'il n'en soit autrement disposé, les termes utilisés dans la présente Annexe Fiscale et comportant une majuscule ont le sens qui leur est donné dans la Convention de Base.

Une référence à un genre comprend tous les genres

**1. CHAMP D'APPLICATION DU REGIME**

**1.1 Principes généraux et définitions**

**1.1.1 Objet de l'Annexe**

L'objet de la présente Annexe Fiscale est de préciser les modalités d'application des dispositions du régime fiscal et douanier prévu dans la Convention d'Origine (Loi L/2003/AN du 3 février 2003 ratifiant la Convention de Base de Simandou signée le 26 novembre 2002), la Convention de Base et la Convention BOT.

**Foreword:** this Tax and Accounting Annex drafted in accordance with the provisions of the Original Convention (referred to hereinafter as "this Tax Annex") shall always be read in relation to the tax, accounting and customs provisions of the Original Convention, Basic Convention and BOT Convention (ie, Articles 23 to 32 of the Original Convention, Articles 27 to 36 of the Basic Convention and Articles 29 to 37 of the BOT Convention) for which it is considered an integral part and as an implementing provision.

The intention is for this Tax Annex to be updated over time, by mutual agreement, if deemed necessary. Amendments and additions may be required for reasons such as major changes in project structure, changes in Guinean tax and accounting law and finalisation of the project's infrastructure arrangements

For the purposes of this Tax Annex the term SIMFER S.A. includes SIMFER S.A. and its "Affiliates" as defined in the Basic Convention.

It is acknowledged that the parties are only bound by the French version of this Tax Annex. In this regard, the English version is for interpretative purposes only

Unless otherwise provided, words used in this Tax Annex and starting with a capital letter have the same meaning as defined in the Basic Convention.

A reference to a gender includes all genders.

**1 SCOPE OF THE REGIME**

**1.1 General Principles and Definitions**

**1.1.1 Purpose of the Annex**

The purpose of this Tax Annex is to develop and facilitate the implementation of the tax and customs regime provided by the Original Convention. (Act L/2003/AN of 3<sup>rd</sup> February 2003 ratifying the Simandou Basic Convention signed on November 26<sup>th</sup> 2002), the Basic Convention and the BOT Convention.

### 1.1.2 Principes Généraux

Le régime fiscal, douanier et comptable applicable aux entreprises participant directement au Projet Simandou est limitativement défini par les Articles 23 à 32 de la Convention d'Origine, les Articles 27 à 36 de la Convention de Base et les Articles 29 à 37 de la Convention BOT..

L'Article 23.2 de la Convention d'Origine précise que :

*« A l'exception des impôts, droits, taxes, redevances et prélèvements expressément mentionnés dans la présente Convention et qui seront applicables selon les conditions et modalités figurant dans cette dernière et dans ses annexes ou, à défaut, selon les conditions du Code minier puis celles de droit commun guinéen stabilisées à la date de signature de la présente Convention, les entreprises participant directement à la réalisation du Projet et dans la limite de cette participation ne seront soumises à aucun impôt, droit, taxe, redevance et prélèvement en Guinée. Pour l'application du Régime fiscal et douanier visé aux Articles 23 à 32, le terme SIMFER S.A. englobe SIMFER S.A. et Affiliés ».*

Voir également l'Article 27(c) de la Convention de Base et les Articles 29(b) et (c) de la Convention BOT.

L'Article 23.3 de la Convention d'Origine précise quant à lui :

*« Une annexe comptable et fiscale dont la version sommaire est annexée aux présentes devra être finalisée avant la décision d'investissement et fera partie intégrante de la présente Convention, comme si elle y avait figuré dès l'origine. L'objectif de cette annexe sera de préciser les modalités d'application des dispositions du Régime fiscal. La finalisation de son contenu se fera dans le respect des principes de la présente Convention ».*

Voir également l'Article 27(d) de la Convention de Base et l'Article 29(a) de la Convention BOT.

### 1.1.3 Définitions et clarifications

**Impôt sur les Revenus Salariaux des Expatriés (Article 24.7 de la Convention d'Origine, Article 28(g) de Convention de Base et Article 30(g) de la Convention BOT) :** désigne la retenue à la source de 10 % opérée sur le salaire versé en Guinée ou hors Guinée aux Salariés Expatriés en lieu et place de tout autre impôt sur le revenu en Guinée. Lorsqu'un salarié non guinéen n'est pas un Salarié Expatrié au motif qu'il n'est pas Résident Fiscal Guinéen aucun impôt ou taxe sur salaire guinéen n'est exigible.

### 1.1.2 General Principles

The applicable tax, customs and accounting regime for the companies participating directly in the implementation of the Simandou project is expressly defined in a limitative manner under Articles 23 to 32 of the Original Convention, Articles 27 to 36 of the Basic Convention and Articles 29 to 37 of the BOT Convention.

Article 23.2 of the Original Convention provides:

*"With the exception of any tax, fees, charges, dues and levies expressly referred to this Convention and that will apply in accordance with the terms and conditions set forth therein and in its appendices or, failing that, in accordance with the conditions of the Mining Code then those of ordinary Guinean law stabilised at the date of the signing of this Convention, those companies participating directly in the implementation of the Project and to the extent of their participation will not be subject to any tax, fee, duty, dues and levy in Guinea. For the application of the Tax and Customs regime contemplated in Articles 23 to 32, the term SIMFER S.A. includes SIMFER S.A. and Affiliates."*

See also Article 27(c) of the Basic Convention and Articles 29(b) and (c) of the BOT Convention.

Article 23.3 of the Original Convention provides as follows:

*"Before the investment decision, the Tax and Accounting Annex --a summary of which is appended to this document-- shall be finalised and will form an integral part of this Convention, as if it has been a part of it from the beginning. The purpose of this annex shall be to specify the conditions for implementing the provisions of the Tax regime. The completion of its content will be carried out in accordance with the principles laid down in this Convention."*

See also Article 27(d) of the Basic Convention and Article 29(a) of the BOT Convention.

### 1.1.3 Definitions and Clarifications

**Withholding Tax on Expatriate Salary (Original Convention Article 24.7, Basic Convention 28(g) and BOT Convention 30(g)):** means a withholding tax of 10% on the salary paid in Guinea or outside Guinea to the Expatriate Employees in lieu of any other income tax in Guinea. Where a non-Guinean national is not an Expatriate Employee by virtue of not being a Tax Resident of Guinea then, no tax on salary paid in respect of Guinean duties shall be payable.

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**Salarié Expatrié (Article 24.7 de la Convention d'Origine, Article 28(g) de Convention de Base et Article 30(g) de la Convention BOT) :** désigne un salarié de SIMFER S.A. ou d'une entreprise intervenant exclusivement pour le Projet qui ne possède pas la nationalité Guinéenne qui est Résident Fiscal Guinéen et qui n'était pas résident en Guinée au cours des douze mois derniers mois précédents son affectation en Guinée pour les besoins du Projet.

**Résident Fiscal Guinéen (Article 24.7 de la Convention d'Origine, Article 28(g) de Convention de Base et Article 30(g) de la Convention BOT) :** Un Salarié Expatrié est réputé Résident Fiscal Guinéen s'il est présent en Guinée pendant plus de 183 jours sur une période de 12 mois. Lorsqu'un Salarié Expatrié se rend en Guinée sans y demeurer plus de 183 jours sur une période de 12 mois, il ne peut être considéré comme un Résident Fiscal Guinéen.

**Siège Social (Articles 24.3 et 24.5 de la Convention d'Origine, Articles 28(c) et 28(e) de la Convention de Base et Articles 30(c) et 30(e) de la Convention BOT) :** une société n'est réputée posséder un siège social en Guinée que si elle possède le statut de société de droit guinéen.

**Salaire :** Pour le calcul du versement forfaitaire de 6% sur les salaires, de la contribution employeur de sécurité sociale et de l'Impôt sur les Revenus Salariaux des Expatriés, le terme « Salaire », quelque soit son lieu de paiement, est défini au chapitre 2 section 2.1.3.4. de la présente Annexe Fiscale. Le « Salaire » constitue une charge déductible pour le calcul du bénéfice imposable.

**Exonération du versement forfaitaire de 6% sur les salaires (Article 25.7 de la Convention d'Origine, Article 29.7 de la Convention de Base et Article 31.6 de la Convention BOT) :** L'exonération de dix ans du versement forfaitaire de 6 % sur les salaires débutera à la Date de Première Production Commerciale.

**Intervenant exclusivement pour le Projet :** Un sous-traitant, à savoir un fournisseur de biens et services, en Guinée est considéré comme intervenant exclusivement pour le Projet s'il n'a pas, à un moment donné, d'autres contrats en cours en Guinée.

**Intervenant à 100 % pour le Projet :** Cette expression a la même signification qu' « Intervenant exclusivement pour le Projet ».

**Manuel de Procédure:** désigne tout document décrivant les procédures administratives et pratiques de mise en œuvre des principes comptables et fiscaux et de la réglementation douanière dérivant de la Convention de Base ou de la Convention BOT, de la présente Annexe Fiscale et Comptable et de certaines dispositions du droit commun en Guinée. Tout Manuel de Procédure préparé

**Expatriate Employee (Original Convention Article 24.7, Basic Convention 28(g) and BOT Convention 30(g)):** means an employee of SIMFER S.A. or a company exclusively involved in the Project who is not a Guinean national who is a Tax Resident of Guinea and who was not resident in Guinea in the last twelve months prior to their assignment to the Project in Guinea.

**Tax Resident of Guinea (Original Convention Article 24.7, Basic Convention 28(g) and BOT Convention 30(g)):** An Expatriate Employee is deemed to be a Tax Resident of Guinea if he is present in Guinea for more than 183 days in any 12 month period. If any Expatriate Employee arrives in Guinea without being present for more than 183 days in any 12 month period, he shall not be deemed to be a Tax Resident of Guinea.

**Head Office (Original Convention Articles 24.3 and 24.5, Basic Convention Articles 28(c) and 28(e) and BOT Convention Articles 30(c) and 30(e)):** A company is only deemed to have a head office in Guinea if it has the status of a company under Guinean Law.

**Salary:** For the purpose of calculating the 6% lump sum tax on salaries, the employer's social security contributions and the Withholding Tax on Expatriate Salary, the word "Salary", irrespective of its place of payment, is defined in Chapter 2 Section 2.1.3.4 of this Tax Annex. The "Salary" is a deductible expense for calculating the taxable income.

**Exemption from 6% lump sum tax on salaries (Original Convention Article 25.7, Basic Convention Article 29.7 and BOT Convention Article 31.6):** The ten year exemption from the 6% tax on salaries ("lump sum tax on salaries") shall commence at the Date of First Commercial Production.

**Involved Solely For The Project:** A subcontractor, i.e. a goods and services provider, in Guinea shall be treated as being involved solely for the Project if at that point in time it does not have other contracts in progress in Guinea.

**Involved 100% For The Project:** Shall have the same meaning as "Involved Solely For The Project".

**Procedural Manual:** means any document which specifies the administrative and practical procedures for implementing the accounting principles, tax and the customs regulation deriving from the Basic Convention or the BOT Convention, from this Tax and Accounting Annex, and from certain provisions of the common law of Guinea. Any Procedural Manual, prepared jointly by

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conjointement entre les Parties et finalisé préalablement à la Décision d'Investissement sera opposable aux différentes parties.

**Activités liées au Projet :** Les activités telles que les travaux de réhabilitation du site et des infrastructures du Projet réalisées avant, pendant ou après la phase d'exploitation sont réputées faire partie intégrante du Projet.

**Investissement :** L'assiette du Crédit d'Investissement de 5 % comprend tous les investissements amortissables et déductibles du résultat de l'exercice au cours duquel il est constaté.

**Carburant :** Conformément aux dispositions de la Convention de Base, SIMFER S.A. pourra être autorisée à importer le carburant destiné aux besoins de ses activités et sera soumis au même régime fiscal et douanier auquel les autres sociétés minières qui importent leur carburant sont assujetties.

**Principalement créé pour les besoins du Projet :** Dans le cadre de l'Article 25.1 de la Convention d'Origine et de l'Article 29.1 de la Convention de Base les infrastructures de transport et portuaires seront réputées comme principalement créées pour les besoins du Projet si, au début de n'importe quel Programme d'Investissement pour une quelconque infrastructure, SIMFER S.A. peut raisonnablement démontrer que plus de 50 % de l'infrastructure sera utilisée pour les opérations minières de SIMFER S.A.

**Taxes :** Sans que cette énumération ne soit limitative, les impôts, droits et taxes de toutes natures (y compris les redevances) sans limitation payables soit à l'Etat soit aux organismes publics locaux (exemples : régions, préfectures, collectivités locales et/ou organismes publics ou para-publics) ont le statut de taxe pour l'application du régime fiscal et douanier applicable à SIMFER S.A. conformément aux dispositions de la Convention d'Origine, de la Convention de Base et de la Convention BOT.

Par exception à ce principe, les redevances de toute nature, quelle que soit leurs appellations, payables aux collectivités publiques, centrales ou locales ou aux organismes publics ou parapublics en contrepartie d'un service ou de la délivrance d'un permis ne seront dues que si TOUS les critères suivants sont remplis cumulativement :

1. le montant de la redevance due est calculé exclusivement sur la base des coûts réels générés par l'entité ayant rendu le service, sauf si un tarif plus favorable est offert à d'autres bénéficiaires du même service (personne physique ou morale). Les coûts réels du service doivent être calculés exclusivement sur la base du temps passé par le(s)

the parties and finalised before the Investment Decision, shall be applicable to the various parties.

**Activities related to the Project:** Activities such as rehabilitation works of the site and of the infrastructure of the Project occurring before, during or post the exploitation phase, are deemed to be part of the Project.

**Investment:** The base of the 5 % Investment Credit includes any investments depreciable and deductible from the result of the fiscal year during which it is established.

**Fuel:** In accordance with the provisions of the Basic Convention, SIMFER S.A. may be authorised to import fuel necessary for its activities and shall be subject to the same customs and tax regime that is applicable to other mining companies when importing their fuel.

**Mainly Created For The Needs of The Project:** For the purposes of Original Convention Article 25.1 and Basic Convention Article 29.1 transport and port infrastructure shall be deemed to be "Mainly Created For The Needs of the Project" if, at the commencement of any Investment Programme in relation to any infrastructure, SIMFER S.A. can reasonably demonstrate that more than 50% of the infrastructure will be used for the mining operations of SIMFER S.A.

**Taxes:** All kinds of taxes, duties, levies, and fees (including royalties) without limitation payable either to the State or to local public entities (e.g. regions, prefectures, local public entities and/or public or para-public organisation) have the status of "tax" for the purposes of implementing the particular fiscal and Customs regime applicable to SIMFER S.A. under the Original Convention, the Basic Convention and the BOT Convention.

By exception to this principle, fees of any kind, whatever their names, to be paid to any central or local public authority for the rendering of a particular service or the deliverance of a public permit will only be payable if ALL of the following criteria cumulatively apply:

1. the amount of the fee to be paid is calculated exclusively on the basis of the actual costs incurred by the entity rendering the service, unless a more favourable tariff is offered to other individual or corporate recipients of the same service. Actual costs of the service rendered should be calculated exclusively on the basis of the time spent by the public

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agent(s) public(s), y compris le cas échéant tout autre coût direct [traçable] supporté dans le cadre de la prestation de service; et

- la redevance pour services rendus doit être payée par tous les usagers personnes physiques ou morales bénéficiant du même service ; et
- la redevance pour services rendus doit figurer dans les comptes de la collectivité ou de l'organisme qui rend le service et donner lieu à l'émission d'un document justificatif confirmant leur base de calcul et leur règlement.

Dans le cas où l'organisme public délègue à une société privée le droit de percevoir une redevance pour services rendus, les principes ci-dessus s'appliqueront également à cette société.

### 1.2 Société éligible

Les sociétés éligibles aux avantages octroyés par la Convention de Base comprennent notamment toutes les sociétés détenant ou gérant des Infrastructures, tel que ce terme est défini dans la Convention d'Origine.

## 2. REGIME FISCAL

### 2.1 Régime fiscal applicable aux phases de travaux, de recherche, d'étude et de construction

#### 2.1.1 Article 24.1 de la Convention d'Origine et Article 28(a) de la Convention de Base Droits fixes d'octroi et de renouvellement des permis

Ces droits fixes sont ceux visés à l'article 137 du Code minier de 1995.

Le barème des droits applicables pendant toute la durée du Projet Simandou est fixé comme suit conformément aux dispositions de l'article 2 de l'arrêté conjoint du Ministre des Mines et du Ministre des Finances n° A/95/n°3479/MF-MMG/SGG établissant le taux des droits fixes, taxes et redevances minières en vigueur à la date de promulgation de la Convention d'Origine :

#### Pour les titres miniers :

- Permis de recherche minière**

Octroi	2.000.000 FG
Premier renouvellement	2.000.000 FG
Deuxième renouvellement	3.000.000 FG
Transfert	3.000.000 FG

agent(s) and other traceable direct costs incurred in the rendering of the particular service; and

- 2. the fee for services rendered should be payable by all individuals or corporate users receiving the same service; and
- 3. the fee or royalty must be traceable in the accounts of the public service provider and give rise to evidence confirming the basis of the charge and the fact that payment has been made.

- In the event that a public entity delegates to a private entity the right to levy a fee for services rendered, the above principles will also apply to this private entity in relation to this fee.

### 1.2 Eligible Company

Companies eligible for the Basic Convention benefits shall include, in particular, any company owning or operating the Infrastructure as this term is defined in the Original Convention.

## 2 TAX REGIME

### 2.1 Tax regime applicable during the exploration, study and construction phases

#### 2.1.1 Original Convention Article 24.1 and Basic Convention Article 28(a) Fixed fees for the granting and renewal of permits

The fixed fees are those referred to under article 137 of the Mining Code of 1995.

The schedule of applicable fees to be used throughout the life of the Simandou Project is fixed as follows in accordance with the provisions of article 2 of the joint Arrêté of the Minister of Finance and the Minister of Mines n°A/95/n°3479/MF-MMG/SGG relating to the rate of fixed fees, surface levies and mining taxes valid from the date of promulgation of the Original Convention which specifies:

- Mining exploration permit**

Granting	2.000.000 FG
First renewal	2.000.000 FG
Second renewal	3.000.000 FG
Assignment	3.000.000 FG

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### • **Concession Minière**

Octroi	15.000.000 FG
Renouvellement	20.000.000 FG
Transfert	20.000.000 FG

### Pour les titres de carrières

#### ▪ **Autorisation de recherche**

Octroi	100.000 FG
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#### ▪ **Autorisation d'ouverture**

Octroi	2.000.000 FG
Renouvellement	1.000.000 FG
Transfert	1.000.000 FG

Ces montants qui constituent des charges d'exploitation seront payables en dollars américains en application d'un taux de change fixe arrêté au 1<sup>er</sup> février 2003, soit 1 \$US = 1976 FG

### **2.1.2 Article 24.2 de la Convention d'Origine et Article 28(b) de la Convention de Base Redevances superficielles**

Les redevances superficielles sont celles visées à l'article 138 du Code minier de 1995.

Le barème des redevances superficielles applicables pendant toute la durée du Projet Simandou aux permis de recherche, à la concession minière et aux autorisations d'ouverture de carrières est fixé comme suit conformément aux dispositions de l'article 3 de l'arrêté conjoint du Ministre des Mines et du Ministre des Finances n°A/95/n°3479/MF-MMG/SGG établissant le taux des redevances superficielles en vigueur à la date de promulgation de la Convention d'Origine :

Taux : FG/Km2/Année

#### • **Permis de recherche**

Octroi	500 FG
Premier renouvellement	1.000 FG
Deuxième renouvellement	2.000 FG
Prolongation	2.500 FG

#### • **Permis d'exploitation**

Octroi	15.000 FG
Premier renouvellement	30.000 FG
Deuxième renouvellement	40.000 FG
Prolongation	50.000 FG

#### • **Concession**

### • **Mining concession**

Granting	15.000.000 FG
Renewal	20.000.000 FG
Assignment	20.000.000 FG

### Concerning quarry titles:

#### ▪ **Exploration authorisation**

Granting	100.000 FG
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#### ▪ **Opening authorisation**

Grant	2.000.000 FG
Renewal	1.000.000 FG
Transfer	1.000.000 FG

These sums, which are operating expenses, are payable in US Dollars in accordance with the fixed exchange rate settled on February 1<sup>st</sup>, 2003: 1976 FG = 1 \$.

### **2.1.2 Original Convention Article 24.2 and Basic Convention Article 28(b) Surface levies**

The surface levies are the ones referred to under article 138 of the Mining Code of 1995.

The schedule of applicable surface levies to be used throughout the life of the Simandou Project to exploration permits, the mining concession and quarry opening authorisations is fixed as follows in accordance with the provisions of article 3 of the joint Arrêté of the Minister of Finance and the Minister of Mines n° A/95/n°3479/MF-MMG/SGG establishing the rate of surface levies valid from the date of promulgation of the Original Convention:

Rate: FG / km<sup>2</sup> / year

#### • **Exploration permit**

Granting	500 FG
First renewal	1.000 FG
Second renewal	2.000 FG
Extension	2.500 FG

#### • **Exploitation permit**

Granting	15.000 FG
First renewal	30.000 FG
Second renewal	40.000 FG
Extension	50.000 FG

#### • **Concession**

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Octroi	200.000 FG	Granting	200.000 FG
Renouvellement	200.000 FG	Renewal	200.000 FG
Prolongation	300.000 FG	Extension	300.000 FG

Ces montants qui constituent des charges d'exploitation seront payables en dollars américains en application d'un taux de change fixe arrêté au 1<sup>er</sup> février 2003 soit 1 \$US = 1976 FG.

These sums, which are operating expenses, are payable in US Dollars in accordance with the fixed exchange rate settled on February 1<sup>st</sup>, 2003 :1976 FG = 1 \$.

### **2.1.3 Article 24.2 de la Convention d'Origine, Article 28(b) de la Convention de Base et Article 30(b) de la Convention BOT Taxes sur les substances de carrières**

Pour les matériaux nécessaires au Projet dans l'une quelconque de ses composantes, SIMFER S.A. est exonérée du paiement de toute taxe ou redevance basée sur la valeur ou quantité des substances et/ou produits de carrières.

### **2.1.3 Original Convention Article 24.2, Basic Convention Article 28(b) and BOT Convention Article 30(b) Tax on quarry substances**

With regard to materials necessary for any of the Project's component whatsoever, SIMFER S.A. is exempt from the payment of any tax or royalty based on the value or quantity of quarry substances and/or products.

### **2.1.4 Article 24.3 et 24.7 de la Convention d'Origine, Article 28(c) et 28(g) de la Convention de Base et Article 30(c) et 30(g) de la Convention BOT Impôts et taxes sur les salaires**

### **2.1.4 Original Convention Articles 24.3 and 24.7, Basic Convention Articles 28(c) and 28(g) and BOT Convention Articles 30(c) and 30(g) Employment and Employment related taxes**

#### **2.1.4.1 Assujettissement aux impôts et taxes sur les salaires**

Les impôts et taxes sur les salaires sont exigibles de SIMFER S.A. et par les sociétés participant directement au Projet. Les impôts et taxes exigibles applicables aux salariés travaillant pour le Projet sont constitués de l'impôt sur les salaires et du versement forfaitaire sur les salaires.

#### **2.1.4.1. Liability to employment taxes**

Employment taxes are payable by SIMFER S.A. and companies participating directly in the Project. The taxes due by the employees working on the Project are constituted by the individual income tax on salary and the employer's lump sum tax (versement forfaitaire).

Les employés de nationalité guinéenne sont imposés dans les conditions de droit commun

The employees of Guinean nationality are taxed under general Guinean law

Les Salariés Expatriés sont assujettis à une retenue à la source libératoire de tout autre impôt, sur les revenus salariaux qui leurs sont versés par leur employeur dont le siège social est en Guinée et lorsque les coûts demeurent en Guinée ou sont refacturés à l'entité en Guinée, à condition que le Salarié Expatrié réside plus de 183 jours en Guinée sur une quelconque période de plus de 12 mois. Dans les autres cas, aucun impôt et taxe sur salaire ne sont exigibles sur les revenus salariaux des Salariés Expatriés.

Expatriate Employees are subject to a withholding tax, in lieu of any other taxes, for salary income paid by employers having their head office in Guinea and where the costs remain in or are recharged to Guinea, when the Expatriate Employee stays more than 183 days in Guinea in any 12 months period. In any other case, no tax on salary is due for Expatriate Employee's salary income.

En outre, quelle que soit la durée de résidence d'un Salarié Expatrié en Guinée, ce dernier ne pourra être assujetti aux impôts guinéens que pour ses revenus de source guinéenne.

An Expatriate Employee shall only be liable to Guinean taxes for Guinean source income, irrespective of his period of stay in Guinea.

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***2.1.4.2 Taux des impôts et taxes sur les salaires***

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Versement forfaitaire : 6 % des salaires versés en Guinée et le cas échéant hors de Guinée aux employés résidents des sociétés dont le siège social est en Guinée.

***2.1.4.3 Impôt sur les salaires :***

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Salariés nationaux :

L'impôt, calculé sur la base du revenu mensuel imposable est exigible selon le droit commun.

Salariés Expatriés :

L'impôt, calculé sur la base du revenu mensuel imposable, est exigible au taux de 10%.

Les impôts et taxes sur les salaires sont payés par l'employeur conformément aux dispositions de droit commun.

***2.1.4.2. Rate of employment taxes***

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Employer lump sum tax: 6 % of the salary paid within Guinea and, as the case may be, outside of Guinea to resident employees of companies whose head office is in Guinea.

***2.1.4.3 Tax on salary income***

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National employees:

The tax, calculated on the basis of the monthly taxable salary income, shall be paid in accordance with common law.

Expatriates Employees:

The tax, calculated based on the monthly taxable salary income, is payable at the rate of 10 %.

Salary income taxes are payable by the employer in accordance with the general law.

**2.1.4.4 Détermination de la base imposable aux impôts et taxes sur les salaires**

La base imposable est constituée de la somme des revenus en espèce et en nature versé en Guinée et le cas échéant hors Guinée. Cette base comprend rémunérations, indemnités, primes et gratifications en espèce

Toute prime versée à un individu sera imposable en Guinée au prorata de la durée de résidence fiscale en Guinée dudit individu, et en lien avec les coûts correspondants supportés en Guinée.

La base imposable est calculée en deux étapes :

i) Cumul du montant net de tout paiement en espèces réglés aux salariés tel que déterminé par les articles 50, 51, 57 et 58 du Code général des Impôts (incluant toutes indemnités, primes et gratifications versés dans le cadre de ces articles) en vigueur à la date de promulgation de la Convention d'Origine

ii) Déduction de ce montant net :

- les paiements fiscalement exonérés en application des dispositions de l'article 55 du Code Général des Impôts (incluant notamment le remboursement des frais professionnels pour leur valeur réelle),
- les cotisations, retenues et frais professionnels dans les conditions prévues à l'article 58 du Code général des impôts applicable au 26 novembre 2002 ainsi que tout paiement ou cotisation réglés par l'employeur pour le compte du salarié à un quelconque organisme de retraite ou de prévoyance complémentaire ou toute cotisations additionnelles à un quelconque organisme de retraite ou de prévoyance complémentaire

Avantages en nature

i) Définition des avantages en nature :

Pour les besoins de l'application de la présente Annexe Fiscale, on entend par avantages en nature, tout service, bien ou avantage fournis ou mise à la disposition du salarié, autre que les services, biens ou avantages dont bénéficie le salarié à raison des contraintes particulières imposées par l'employeur (telles qu'une obligation logement sur le lieu de travail ou à proximité et/ou une impossibilité pratique de mener une vie personnelle normale notamment pour des raisons d'éloignement entre le lieu de travail et le domicile).

**2.1.4.4 Salary taxable income**

Salary taxable income is comprised of the aggregate of the salary income, received in cash or in kind, paid in Guinea and, as the case may be, outside of Guinea. The salary taxable income includes compensation, indemnities and bonuses paid in cash

Any bonuses paid to an individual will be taxable in Guinea on a pro-rata basis in line with the time that an individual has been tax resident in Guinea and in line with any corresponding costs that are borne by Guinea

The taxable income is calculated in two steps:

i) Aggregate the net amount of any payment made in cash to the employee as determined by articles 50, 51, 57 and 58 of the Tax Code (including any indemnities and bonuses paid in the framework of these articles) as it was in force at the time of the enactment of the Original Convention ;

ii) Deduct from this net amount:

- the tax exempt payments as provided for by article 55 of the Tax Code (including in particular the reimbursement of professional expenses for their actual value),
- the contributions, withholdings and professional expenses referred to in article 58 of the Tax Code as applicable on November 26<sup>th</sup> 2002 as well as any payment or contribution made by the employer on behalf of the employee for any optional pension plan or for any increase in benefit in any optional pension or welfare plan.

Benefits in kind

i) Definition of benefits in kind:

For the purpose of this Tax Annex benefits in kind are services, goods and facilities put at the disposal of the employee, other than the services, goods and facilities which benefit the employee as a result of a living constraint imposed by the employer (such as an obligation of presence in the vicinity of the work site outside of working hours and/or an impossibility, in fact, to have a normal private life, in particular because of the distance between the worksite and the employee domicile).

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Dans le cas où l'employeur met à la disposition du salarié un logement sur le lieu de travail ou à proximité et lorsque l'employeur fournit à cette occasion des repas aux salariés, ces prestations ne constituent pas des avantages en nature taxable.

De même l'assistance médicale fournie par l'employeur à l'employé ou sa famille ne constitue pas un avantage en nature taxable.

La mise à disposition de réseaux satellitaires, de moyens de télécommunications et de transport (par exemple téléphone, et internet ainsi que les moyens de transport mis à la disposition des employés afin de leur permettre de se rendre sur leur lieu de travail) ne constituent pas un avantage en nature taxable.

Dans le cadre des Articles 24.8 et 25 de la Convention d'Origine, des Articles 28(h) et 29 de la Convention de Base et des Articles 30(h), 30(i) et 31 de la Convention BOT, l'ensemble des charges ci-dessus ont le statut de dépenses directement nécessaires pour le Projet.

### ii) Evaluation des avantages en nature

Les avantages en nature imposables sont calculés pour leur valeur réelle.

Toutefois, lorsque la valeur réelle ne peut être déterminée avec précision ou lorsque cette valeur compte tenu de circonstances particulières, n'est pas en rapport avec l'avantage perçu par le salarié, l'avantage en cause est forfaitisé dans les conditions suivantes :

- Logement mis gratuitement à disposition : le montant de l'avantage en nature est réputé égal à la valeur locative foncière servant de base à l'établissement de la CFU portant sur cet immeuble.
- Les avantages annexes (eau, gaz, électricité) consentis gratuitement par l'employeur pour ces mêmes logements sont toujours retenus pour une valeur réelle.
- Véhicule: l'usage gratuit à des fins personnelles d'une voiture appartenant à l'employeur constitue un avantage en nature dont la valeur est égale au montant des dépenses exposées par l'entreprise pour l'entretien, l'assurance et l'amortissement du véhicule. En cas d'usage mixte (professionnel et privé) du véhicule par le bénéficiaire de l'avantage, seule la quote-part de dépense correspondant à l'usage privé doit être retenue pour l'assiette de l'impôt.

As a result, when the employer puts worksite living accommodations at the disposal of the employee in the vicinity of the worksite and when the employer feeds the employees such facilities and services are not deemed to be taxable benefit in kind.

Likewise, medical assistance provided by the employer to an employee or his family does not constitute a taxable benefit in kind.

Satellite and other telecommunications and transport facilities (e.g. telephone and internet services as well as transport facilities put at the disposal of the employees for the purpose of going to the work site) do not constitute a taxable benefit in kind.

For the purposes of Original Convention Articles 24.8 and 25, Basic Convention Articles 28(h) and 29 and BOT Convention Articles 30(h), 30(i) and 31, all of these aforementioned expenses constitute purchases which are directly necessary for the Project.

### ii) Evaluation of the taxable benefits in kind

Taxable benefits in kind are evaluated at their actual value.

When the actual value cannot be precisely determined or when the value, due to particular circumstances is not in accordance with the benefit received by the employee, the benefit is calculated as follows:

- Housing put at free disposal of the employee: the amount of the benefit in kind is considered equal to the renting value which is used for the establishment of the CFU on this housing
- Related benefits (water, gas, electricity) granted free of charge by the employer for housing are always calculated at their actual value.
- Company Cars: the free personal use of a company car belonging to the employer is a benefit in kind. Its value is equal to the amount of expenses paid by the company for the maintenance, insurance and amortisation of the vehicle. In the event of mixed use (professional and personal) of the vehicle by the beneficiary of the benefit only the part of the expenses corresponding to the personal use shall be included in the tax base.

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- Plan d'attribution d'actions : les plus-values sur titres de toute nature réalisées par un individu au titre d'un plan d'attribution d'actions de l'entreprise sont imposables en Guinée, au moment de l'exercice/attribution des actions au prorata de la durée de résidence fiscale en Guinée dudit individu

### **2.1.5 Article 24.4 de la Convention d'Origine, Article 28(d) de la Convention de Base et Article 30(d) de la Convention BOT Taxe unique sur les véhicules**

La taxe unique sur les véhicules n'est pas exigible pour les véhicules de chantiers et les véhicules de transports utilisés pour la réalisation du Projet.

Les véhicules de chantiers et les véhicules de transports exonérés comprennent les véhicules de toutes natures appartenant, ou financés en crédit-bail par les entreprises participant au Projet Simandou.

Cependant, la taxe unique sur les véhicules est exigible pour les véhicules individuels mis à la disposition des employés et pour les véhicules de transport ayant moins de 9 sièges.

### **2.1.6 Article 24.5 de la Convention d'Origine, Article 28(e) de la Convention de Base et Article 30(e) de la Convention BOT Part patronale des cotisations de sécurité sociale**

La part patronale des cotisations de sécurité sociale n'est pas exigible pour les sociétés ayant leur siège social hors de Guinée.

Pour les sociétés participant au Projet et ayant leur siège social en Guinée, les taux applicables pendant toute la durée du Projet Simandou sont exigibles selon le barème en vigueur à la date de promulgation de la Convention d'Origine soit 18%.

Les expatriés ne paieront pas les cotisations de sécurité sociale en Guinée à condition qu'ils demeurent affiliés au régime de sécurité sociale de leur pays d'origine

### **2.1.7 Article 24.6 de la Convention d'Origine, Article 28(f) de la Convention de Base et Article 30(f) de la Convention BOT Taxe sur les contrats d'assurance**

Cette taxe n'est pas applicable pour les véhicules de chantier utilisés pour les activités d'exploration

Pour les sociétés participant au Projet et pour les risques encourus à raison de cette participation, la taxe est uniquement applicable aux contrats d'assurances visés à l'article 425 du Code Général des Impôts en vigueur à la date de promulgation de la Convention d'Origine qui précise :

- Navigation maritime, fluviale ou aérienne : 20 % pour les risques de toute nature de navigation

- Share schemes: any gain on shares to an individual arising from company share schemes will be taxable in Guinea at the time of exercise/allotment of shares on a pro-rata basis in line with the time that an individual has been tax resident in Guinea

### **2.1.5 Original Convention Article 24.4, Basic Convention Article 28(d) and BOT Convention Article 30(d) Unique tax on vehicles**

The unique tax on vehicles is not applicable to work site and transport vehicles used for purpose of the Project.

Worksite and transport vehicles include vehicles of all kinds belonging to the companies participating in the Simandou project or financed by leasing by any such company for the purposes of the project

However, the unique tax on vehicles will remain due for the individual vehicles put at the disposal of employees and for transport vehicles having less than 9 seats.

### **2.1.6 Original Convention Article 24.5, Basic Convention Article 28(e) and BOT Convention Article 30(e) Employer share of social security contributions**

The employer share of the social security contribution is only due by a company incorporated in Guinea.

For those companies participating in the Project and having their head office in Guinea, the applicable rates throughout the life of the Simandou Project are payable according to the schedule valid from the date of promulgation of the Original Convention, being 18%.

Expatriates will not participate in Guinean social security provided they remain in their home country plan

### **2.1.7 Original Convention Article 24.6, Basic Convention Article 28(f) and BOT Convention Article 30(f) taxes on insurance contracts**

This tax is not applicable to worksite vehicles used for exploration activities.

For the companies participating in the Project and for the risks incurred due to this participation the tax is only applicable to the insurance contracts referred to in article 425 of the Income Tax Code valid at the date of promulgation of the Original Convention which specifies:

- Maritime, inland or aerial navigation: 20 % for the risks of any kind of maritime or inland navigation for

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maritime ou fluviale des bateaux de sport ou de plaisance et 8 % pour les autres risques      sport boats or yachts and 8 % for other risks

- Assurances sur la vie et rentes viagères : 5 %      - Life insurance and life annuity: 5%
- Autres assurances : 12 % pour les assurances contre les risques de toute nature non visés ci-dessus.      - Other insurance: 12 % for insurance against risks of any kind not provided above.

**2.1.8 Article 24.7 de la Convention d'Origine, Article 28(g) de la Convention de Base et Article 30(g) de la Convention BOT Retenues à la source**

Les retenues à la source applicables (de quelque nature que ce soit) sont limitativement énumérées aux Articles 24.3, 24.5 et 24.7 de la Convention d'Origine, aux Articles 28(c), 28(e) et 28(g) de la Convention de Base et aux Articles 30(c), 30(e) et 30(g) de la Convention BOT.

**2.1.9 Article 24.8 de la Convention d'Origine, Article 28(h) de la Convention de Base et Articles 30(h) et 30(i) de la Convention BOT TVA**

**2.1.9.1 Exonération de TVA sur les achats et prestations nécessaires au Projet**

L'exonération de TVA porte sur tous les achats et prestations nécessaires au Projet incluant les contrats d'entreprise quelle que soit la nationalité et/ou la résidence du fournisseur, prestataire ou entrepreneur (importation ou achat réalisé sur le territoire guinéen). L'exonération est notamment applicable aux activités de construction et d'exploitation du chemin de fer et du port nécessités par l'exportation du minerai de fer.

L'exonération s'applique également à tout sous-traitant étranger intervenant uniquement pour le Projet en Guinée ou pour toute entreprise sous-traitante de droit guinéen qui travaille à 100 % pour le Projet.

Si un entrepreneur, fournisseur ou prestataire ayant conclu un contrat avec SIMFER S.A., ne peut bénéficier de l'exonération de TVA sur les factures correspondant à des activités intégralement liées au Projet et qui ont été émises par un entrepreneur, fournisseur, prestataire guinéen ou étranger, l'entrepreneur, le fournisseur ou le prestataire ayant conclu le contrat avec SIMFER S.A. pourra dans tous les cas déduire l'intégralité de la TVA figurant sur la facture des sous-traitants du montant de la TVA qu'il doit lui-même acquitter pour l'ensemble de ses activités en Guinée.

S'agissant des sous-traitants qui ne bénéficieront pas d'exonération ci-dessus, la TVA facturée par le sous-traitant sera remboursée à SIMFER S.A dans le mois qui suit le paiement de la TVA correspondante par le sous-traitant à l'administration compétente.

Le bénéfice de toute exonération est subordonné à l'émission par SIMFER S.A. comportant un engagement irrévocable de SIMFER S.A. et le cas échéant de ses sous-traitants d'utiliser les biens ou prestations en cause exclusivement pour le Projet (incluant les infrastructures de transport et d'évacuation). Ces attestations détachées d'un carnet à souches et émises en quatre exemplaires seront contresignées par l'administration fiscale. Elles comporteront toutes dispositions garantissant leur

**2.1.8 Original Convention Article 24.7, Basic Convention Article 28(g) and BOT Convention Article 30(g) Withholding taxes**

The applicable withholding taxes (of any nature) are limited to those listed in Original Convention Articles 24.3, 24.5 and 24.7, Basic Convention Articles 28(c), 28(e) and 28(g) and BOT Convention Articles 30(c), 30(e) and 30(g).

**2.1.9 Original Convention Article 24.8, Basic Convention Article 28(h) and BOT Convention Articles 30(h) and 30(i) VAT**

**2.1.9.1 VAT Exemption on purchases and services necessary for the Project**

The VAT exemption applies to all purchases and services, including contractor's services, necessary for the Project irrespective of the nationality and/or the residency of the supplier or service provider (import or domestic Guinean purchase). The exemption applies inter alia to the construction and use of the railways and port necessary for the export of the iron ore.

The exemption also applies to any foreign sub-contractor involved solely for the Project in Guinea or any Guinean sub-contracting company operating 100 % for the Project.

If a contractor, supplier or service provider of SIMFER S.A. cannot benefit from VAT exemption on the invoices corresponding to activities wholly linked to the Project which have been issued by a Guinean or foreign contractor, supplier or service provider the contractor, supplier or service provider having contracted with SIMFER S.A. shall in all cases have the right to offset the full VAT included on the invoice of the subcontractor against the VAT due by it for all its activities in Guinea.

For sub-contractors which will not benefit from the above exemption, the VAT invoiced by the sub-contractors will be reimbursed to SIMFER SA during the month following the payment of the related VAT due by the sub-contractor to the competent administrative authority.

The right to claim exemption is subject to the issue of exemption certificates by SIMFER S.A., which comprise an irrevocable undertaking by SIMFER S.A. and, as the case may be, of its sub-contractors, to use the goods or services exclusively for the Project. These certificates detached from a studbook and issued as four copies will be countersigned by the Tax Administration. They will contain everything necessary to secure their authenticity and permit the tax administration to recover

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authenticité et permettant à l'administration fiscale de recouvrer les impôts et pénalités dans le cas où la totalité ou une partie des dépenses d'achats ou de services n'ont pas été utilisés pour le Projet.

Si la TVA est facturée par erreur alors que l'exonération de TVA est applicable, le vendeur ayant facturée la TVA par erreur doit annuler sa facture et émettre une nouvelle facture hors TVA.

Lorsqu'une société étrangère non établie en Guinée fournit des services ou réalise des travaux qui sont exonérés de TVA à raison de ses facturations à SIMFER S.A., cette société n'est pas tenue de désigner un représentant fiscal au titre de la TVA en Guinée à raison de la fourniture de services ou de la réalisation de travaux pour SIMFER S.A.. SIMFER S.A. sera responsable de la transmission des attestations d'exonération dûment remplies et signées aux sociétés non résidentes concernées et transmettra une copie de cette attestation à l'administration fiscale sur demande. A l'exception de la signature et l'émission des attestations d'exonération, SIMFER S.A. n'aura aucune autre obligation de reporting et ne sera pas responsable des paiements de TVA pour le compte de sociétés non résidentes

### ***2.1.9.2 Exonération de TVA pour les importations définitives***

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L'exonération de TVA à l'importation s'applique à toutes les importations nécessaires au Projet à l'exception du matériel et des effets exclusivement réservés à l'usage des personnels et employés de SIMFER S.A. Ces exonérations s'appliquent tant aux importations réalisées directement par SIMFER S.A. et par ses Affiliés qu'aux importations réalisées par SIMFER S.A. et ses fournisseurs et prestataires de services (incluant les entrepreneurs) aussi longtemps que ces importations seront nécessaires au Projet.

Par importations nécessaires au Projet on entend toutes importations d'équipements et de matériels de toute nature incluant les matériaux, et importés tant dans le cadre de l'activité minière que pour la construction ou l'exploitation du chemin de fer ou des infrastructures portuaires créés ou exploitées par SIMFER S.A. ou pour son compte.

Afin de contrôler l'usage exclusif de ces biens pour le Projet (incluant les travaux de recherche et d'étude proprement miniers et ceux liés aux infrastructures de transport et d'évacuation), SIMFER S.A. pourra établir des attestations comportant notamment un engagement de SIMFER S.A. d'affecter exclusivement ces biens au Projet.

taxes and penalties in case all or part of the purchase or services expenditure is not used for the Project.

If VAT is charged in error when the VAT exemption applies, the supplier which has charged the VAT in error shall retrospectively cancel and re-issue its invoice without VAT.

Where an offshore company makes a supply of services and other contract works which benefit from the VAT exemption for its invoice to SIMFER S.A., there is no requirement for the non-resident company to appoint a representative for VAT purposes in Guinea in relation to the supply of services and contract works to SIMFER S.A.. SIMFER S.A. will be responsible for signing and issuing the exemption certificates to the non-resident company and will make these available to the Tax Administration, on request. Apart from signing and issuing the exemption certificates, SIMFER S.A. will have no other reporting obligations and will not be liable for any VAT payments on the non-resident company's behalf.

### ***2.1.9.2 VAT Exemption on final import***

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The VAT exemption on final import applies to all imports necessary for the Project with the exception of items exclusively reserved for the personal use of staff and employees of SIMFER S.A. These exemptions apply to imports made by SIMFER S.A. and its Affiliates, as well as to imports made by SIMFER S.A. and its suppliers and services providers (including contractor's services) as long as such imports are necessary for the Project.

"Project imports" mean imports of equipment and materials of all kind including materials necessary for the mining activity and for the building and operating of the railway or port infrastructure created or operated by SIMFER S.A. or for its own needs.

In order to control the exclusive use of those goods for the Project (including the mining research works and studies and those related to the transport and draining infrastructures), SIMFER S.A. will draw up certificates including, in particular, an undertaking of SIMFER S.A. to use those goods exclusively for the Project.

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L'administration des douanes mettra en place toute procédure appropriée permettant à SIMFER S.A. d'émettre les attestations suffisamment en avance et de façon telle que le dédouanement effectif puisse s'opérer dans un délai maximum d'une semaine à compter de l'arrivée des marchandises au port ou à l'aéroport de destination en Guinée.

En outre, afin de faciliter les contrôles et recoupements, SIMFER S.A. établira annuellement et au moins un mois avant le début de chaque période de 12 mois une liste indicative des équipements et matériels à importer pour le Projet accompagnée d'une estimation des quantités et de leurs valeurs. Cette liste précisera également la nature et les quantités estimées des matériels et pièces de rechanges nécessaires au fonctionnement des matériels et équipements professionnels. Cette liste sera transmise au CPDM pour approbation avec copie au Ministre des Mines. Un arrêté ministériel conjoint du Ministre des Finances et du Ministre des Mines interviendra dans le délai maximum de 15 jours à compter de la présentation de la liste au CPDM conformément aux dispositions de la Convention de Base.

Les mêmes procédures et les mêmes délais seront applicables pour toute modification éventuelle de la liste indicative annuelle.

### ***2.1.9.3 Exonération de TVA pour les importations temporaires***

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Pendant toute la durée des travaux de recherche, d'étude et de construction, SIMFER S.A. ainsi que ses prestataires, fournisseurs et sous-traitants bénéficieront pour leurs activités liées au Projet du régime douanier de l'admission temporaire en exonération totale de TVA pour tous les équipements, matériels, machines, appareils, véhicules utilitaires et de transport, engins, groupes électrogènes, etc. Les véhicules de type 4 x 4 bénéficieront du même régime peu important qu'il figurent dans la nomenclature douanière en tant que véhicules de tourisme, à condition qu'ils soient effectivement affectés à des opérations de transport de personnel nécessaires au Projet et à condition de porter en permanence soit le nom, soit le logo de SIMFER S.A. ou des autres sociétés participant au Projet.

Afin de contrôler l'usage exclusif de ces biens pour le Projet (y compris travaux de recherche et d'étude proprement miniers et ceux liés aux infrastructures de transport et d'évacuation), SIMFER S.A. établira, si l'administration des douanes le demande, des attestations comportant notamment un engagement de SIMFER S.A. d'utiliser exclusivement ces biens pour le Projet.

Afin de permettre à l'administration douanière de contrôler l'application correcte du régime d'importation temporaire des biens en cause, SIMFER S.A. et le cas

The Customs Administration shall organise all necessary procedures allowing SIMFER S.A. to issue the exemption certificates sufficiently in advance and in such a way that effective customs clearance can be obtained at most a week after the arrival of the related equipment and goods at the port or the airport of destination in Guinea.

In order to facilitate controls and reconciliation, SIMFER S.A. shall establish on a twelve month basis and at least one month before the start of any agreed 12 month period an indicative list of the equipment and materials to be imported for the Project together with an estimate of the quantities and values. This list will also indicate the nature and the estimated quantities of materials and spare parts necessary for the operation of business materials and equipment. The list will be transmitted to the CPDM for its approval with a copy to the Minister of Mines. A ministerial joint arrêté of the Minister of Finances and Minister of Mines will be issued within a maximum of 15 days after the presentation of the list by SIMFER S.A. to the CPDM in accordance with the provisions of the Basic Convention.

The same procedures and deadlines shall apply for any possible amendment to the annual indicative list.

### ***2.1.9.3 VAT Exemption on the temporary imports***

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During the entire period of the research, study and construction works, SIMFER S.A. and its providers, suppliers and sub-contractors will benefit on a pro rata basis in respect of Project related activities from free temporary admission for equipment, materials, machines, machinery, transportation and commercial vehicles, engines, and generating units etc. The 4WD vehicles will benefit from the same regime, regardless of whether they are included in the customs nomenclature as a tourism vehicle, provided that they are effectively used to transport employees necessary to the Project and provided that they permanently display either the name or company logo of SIMFER S.A. or other companies participating in the Project.

In order to control the exclusive use of these goods for the Project (including the mining research and study works and those related to the transport and draining infrastructures), SIMFER S.A. will establish, if the customs administration so requests, certificates including, in particular, an undertaking of SIMFER S.A. to use those goods exclusively for the Project.

In order to allow the Customs Administration to monitor the correct application of the temporary importation regime, SIMFER S.A. and, if necessary, its suppliers,

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échéant ses fournisseurs, prestataires et sous-traitants, transmettront au CPDM au cours du premier trimestre de chaque année, un état récapitulatif du matériel admis temporairement et de son usage au cours de l'année civile écoulée.

Conformément aux dispositions de la Convention de Base, une importation de biens continuera de bénéficier du régime de l'exonération de TVA et autres droits de douane dans le cadre de l'admission temporaire aussi longtemps que ces biens appartiennent à SIMFER S.A., ses fournisseurs, prestataires ou sous-traitants et qu'il sont utilisés exclusivement pour le Projet. Ainsi, l'exonération accordée en application du régime d'admission temporaire s'applique sans limitation de durée. Il est précisé qu'une importation de biens réalisée au cours d'une des phases de la vie du Projet, par exemple au cours de la phase d'Etude de Faisabilité, pourra continuer de bénéficier de l'exonération pour les importations temporaires après que la phase d'Etude de Faisabilité soit achevée et remplacée par une autre phase, par exemple la phase de Construction.

### **2.1.9.4 Exonération des droits de douane et de la TVA sur les carburants importés**

SIMFER S.A. est libre d'acheter du carburant hors du territoire Guinéen ou à travers un entrepôt fictif en Guinée. SIMFER S.A. est également libre d'acheter du carburant en Guinée le tout au mieux de ses intérêts.

Pour les besoins du Projet, SIMFER SA est autorisé à titre général à importer le carburant et ne pourra être soumis à un régime fiscal et douanier moins favorable que celui applicable aux autres entreprises minières placées dans la même situation.

Les dispositions applicables plus précises seront revues ultérieurement.

### **2.1.10 Exonération de l'impôt sur les BIC au bénéfice des contractants**

- Tout prestataire de service, fournisseur ou sous-traitant (personne morale de droit guinéen), pourra bénéficier de l'exonération de BIC, en application de l'Article 24 de la Convention d'Origine, de l'Article 28 de la Convention de Base et de l'Article 30 de la Convention BOT, dès lors que les conditions suivantes sont cumulativement remplies :

- 1. L'entreprise est ultimement détenue et contrôlée à 100% par des non résidents guinéens.
  2. L'entreprise n'est établie en Guinée que pour les seuls besoins du Projet

providers and sub-contractors will transmit to the CPDM, during the first quarter of each year, a recapitulative statement of the materials temporarily imported, together with their use, during the previous calendar year.

In accordance with the provisions of the Basic Convention, an import of goods will continue to qualify for VAT and other customs exemptions under the temporary import regime as long as it is owned by SIMFER S.A., its providers, suppliers or sub-contractors and it is used exclusively for the purposes of the project. No time limit thus applies to exemption under the temporary import regime. This means that an import of goods made in one life of mine period (e.g. the Feasibility Study period) may continue to benefit from the temporary import exemptions after that period has expired and been replaced by another period (e.g. the Construction works life of mine period).

### **2.1.9.4 Custom rights and VAT exemption on imported fuel**

SIMFER S.A. is free to purchase fuel outside the Guinean territory or through a bonded warehouse in Guinea. SIMFER S.A. is also free to purchase fuel in Guinea in the best of its interests.

For the needs of the Project, SIMFER SA is generally authorised to import fuel and shall not be subject to a tax and customs regime less favourable than that applicable to other mining companies in the same situation.

More precise applicable provisions will be reviewed later on.

### **2.1.10 Contractor BIC Exemption**

- For a service provider, supplier or sub-contractor's Guinean legal entity to benefit from a B.I.C exemption under Original Convention Article 24, Basic Convention Article 28 or BOT Convention Article 30, the following criteria must be cumulatively satisfied:

1. The legal entity must be ultimately 100% non-Guinean owned and controlled.
2. The legal entity was established in Guinea solely for the purposes of the Project

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3. L'ensemble des activités de l'entreprise en Guinée de la personne morale concernée sont exclusivement liées au Projet

3. All the activities of the relevant legal entity within Guinea are solely related to the Project

### ***2.1.11 Article 17.1 de la Convention d'Origine Infrastructures construites sur le domaine public***

La redevance visée à l'Article 17.1 de la Convention d'Origine sera abordée de manière spécifique dans les Conventions de Concession Portuaire et Ferroviaire qui doivent être conclues par SIMFER S.A..

### ***2.1.11 Original Convention Article 17.1 Infrastructure to be built on the public domain***

The fixed fees contemplated in Original Convention Article 17.1 will be specifically addressed in the Port and Rail Concession agreements to be entered into by SIMFER S.A..

### ***2.1.12 Article 17.2 de la Convention d'Origine Infrastructures construites sur le domaine privé national***

La redevance visée à l'Article 17.2 de la Convention d'Origine sera abordée de manière spécifique dans les Conventions de Concession Portuaire et Ferroviaire qui doivent être conclues par SIMFER S.A..

### ***2.1.12 Original Convention Article 17.2 Infrastructure to be built on National private domain***

The fixed annual fees contemplated in Original Convention Article 17.2 will be specifically addressed in the Port and Rail Concession agreements to be entered into by SIMFER S.A..

### ***2.1.13 Article 17.3 de la Convention d'Origine Infrastructures construites sur le domaine privé***

Les principes visés à l'Article 17.3 de de la Convention d'Origine relatifs aux coûts et aux indemnités liés aux expropriations seront abordés de manière spécifique dans les Conventions de Concession Portuaire et Ferroviaire qui doivent être conclues par SIMFER S.A..

### ***2.1.13 Original Convention Article 17.3 Infrastructure to be built on Private Land***

The principles contemplated in Original Convention Article 17.3 in regards costs and compensation for expropriation will be specifically addressed in the Port and Rail Concession agreements to be entered into by SIMFER S.A..

## **2.2 Régime fiscal applicable en phase d'exploitation**

## **2.2 Tax regime during the exploitation phase**

### **2.2.1 Principes généraux**

### **2.2.1 General Principles**

Conformément à la définition figurant dans la Convention de Base la phase d'exploitation débute à la Date de Première Production Commerciale.

The exploitation phase shall commence on the Date of First Commercial Production, as defined in the Basic Convention

### **2.2.2 Impôt sur le Bénéfice Industriel et Commercial et Impôt Minimum Forfaitaire (Article 25.1 de la Convention d'Origine et Article 29.1 de la Convention de Base)**

### **2.2.2 Tax on industrial and commercial profits and minimum lump sum tax (Original Convention Article 25.1 and Basic Convention Article 29.1)**

Afin de déterminer la « première année de bénéfice imposable » après les 8 années d'exonération du BIC il est précisé que le « bénéfice imposable » est constitué par tout bénéfice constaté après déduction des montants autorisés par le Code Général des Impôts, la Convention de Base ou la Convention BOT et la présente Annexe Fiscale incluant spécifiquement la déduction des déficits antérieurs non prescrits et les amortissements réputés différés (incluant les déficits proportionnellement à sa participation dans d'autres sociétés conformément à

For the purposes of determining the "first year of taxable profit" after the 8 year exemption from BIC it is acknowledged that "taxable profit" consists of any profit remaining after deduction of amounts allowed under the General Tax Code, the Basic Convention or BOT Convention and this Tax Annex and, more specifically, deduction of deferred depreciation and tax losses (including the pro-rata share of losses available due to participation in other companies as provided in Original Convention Article 25.1.7 and Basic Convention

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l'Article 25.1.7 de la Convention d'Origine et à l'Article 29.1(g) de la Convention de Base). Par conséquent la « première année de bénéfice imposable » n'interviendra qu'après imputation complète de toutes les charges de l'exercice ainsi que les déficits antérieurs non prescrits et les amortissements réputés différés propres à SIMFER S.A. et proportionnels à sa participation conformément à l'Article 25.1.7 de la Convention d'Origine et à l'Article 29.1(g) de la Convention de Base.

"La première année de bénéfice imposable" ne pourra pas survenir avant la Date de la Première Production Commerciale.

La détermination de la durée de la période d'exonération n'est pas libre et ne peut être modifiée ni par les autorités fiscales ni par le bénéficiaire. A cet effet, une référence à « une période maximum de 8 ans » ne saurait être interprétée comme permettant une période d'exonération d'une durée plus courte.

La période d'exonération de 8 ans s'applique à chaque société visées à l'Article 25.1 de la Convention d'Origine et à l'Article 29.1 de la Convention de Base. A cet égard le début de la période d'exonération d'une société bénéficiaire est sans influence sur le début de la période d'exonération d'une quelconque autre société bénéficiaire.

Il est précisé que toutes les sociétés participant au Projet, y compris celles qui exploitent ou possèdent une infrastructure nécessaire au Projet, bénéficieront du régime d'exonération des BIC d'une durée de 8 ans.

Les recettes ne donnent pas lieu en elles-mêmes à un bénéfice imposable. A cet égard, le bénéfice imposable ne pourra être constaté que lorsque le chiffre d'affaire et les autres produits imposables excéderont l'ensemble des charges déductibles autorisées (incluant l'imputation des reports déficitaires).

Il est précisé qu'en dépit de la référence à l'IMF faite dans les Articles 25.1 de la Convention d'Origine (conformément à l'Article 25.7 de la Convention d'Origine) et 29.1 de la Convention de Base (conformément à l'Article 29.7 de la Convention de Base), l'exonération d'IMF sera applicable à toute la durée de la phase d'exploitation.

*[Remarque: l'exonération de l'impôt applicable au Propriétaire des Infrastructures et à l'Exploitant des Infrastructures est prévue à l'Article 31.1 de la Convention BOT.]*

### **2.2.3 Régime de l'amortissement (Article 25.1.1 de la Convention d'Origine, Article 29.1(a) de la Convention de Base et Article 31.1(a) de la Convention BOT)**

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Article 29.1(g)). As such, the "first year of taxable profit" will only arise after full offset of all the expenses of the year as well as the prior year tax losses not forfeited and the deemed deferred depreciation of SIMFER S.A. as well as its share of losses claimable as a consequence of Original Convention Article 25.1.7 and Basic Convention Article 29.1(g).

The "first year of taxable profit" will explicitly not arise until after the Date of First Commercial Production.

The determination of the length of the exemption period is not discretionary, either on the part of the tax authorities or the eligible entity. In this regard, a reference to a "maximum period of 8 years" is not a reference to a reduced exemption period being possible, negotiable or agreed.

The 8 year exemption period applies to each company referred to in Original Convention Article 25.1 and Basic Convention Article 29.1. In this regard, one eligible entity entering a taxable profit position does not mean the 8 year exemption period commences for other eligible entities who have not at that time entered a taxable profit position.

It is recognised that all project entities, including those who operate or have ownership of any related infrastructure, are eligible for the 8 year exemption from BIC.

The derivation of income / revenue in itself does not give rise to taxable profits. In this regard, taxable profits will only arise when the turnover and other taxable proceeds exceeds allowable deductions (including the offset of carry forward losses).

It is recognised that, despite the reference to IMF in Original Convention Article 25.1 (pursuant to Original Convention Article 25.7) and Basic Convention Article 29.1 (pursuant to Basic Convention Article 29.7), an IMF exemption exists for the entirety of the exploitation phase.

*[Note: The income tax exemption applicable to the Infrastructure Owner and the Infrastructure Operator is set out in BOT Convention Article 31.1.]*

### **2.2.3 Depreciation Regime (Original Convention Article 25.1.1, Basic Convention Article 29.1(a) and BOT Convention Article 31.1(a))**

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Les coûts de développement engagés avant la Décision d'Investissement sont capitalisés et amortis à compter de la Date de Première Production Commerciale et enregistrés dans le bilan d'ouverture. Ces montants sont amortis de façon linéaire sur une période de cinq ans à compter de la Date de Première Production Commerciale. Ils peuvent être traités comme des amortissements réputés différés en période déficitaire.

Il est précisé, que conformément à l'article 144 du Code Minier, les frais d'établissement (y compris les frais engagés pour l'exploration et les études de faisabilité, capitalisés pendant la phase de recherche, d'études ou de construction) sont capitalisés, enregistrés dans le bilan d'ouverture et amortis fiscalement de manière linéaire sur 5 ans à partir de la Date de la Première Production Commerciale. Ces amortissements pourront être traités comme amortissements réputés différés en période déficitaire.

Les actifs immobilisés font l'objet d'amortissement linéaire ou d'amortissement dégressif / amortissement accéléré.

En vertu de l'article 144 du Code Minier, les coefficients multiplicateurs suivant peuvent être appliqués aux périodes de l'amortissement linéaire aux fins de calcul de l'amortissement dégressif.

- Durée de l'amortissement de 3 ans au moins : 2.0
- Durée de l'amortissement de 4 ans ou plus : 2.5

Le tableau ci-dessous présente les périodes d'amortissement linéaire acceptable pour différentes classes d'actifs conformément aux périodes indiquées à l'article 101 du Code Général des Impôts. Tout amortissement fiscal calculé conformément au tableau ci-dessous sera réputé fiscalement acceptable.

Development expenses arising prior to the Investment Decision are capitalised and depreciated from the Date of First Commercial Production and registered in the opening statement. Such amounts are depreciated for tax purposes straight-line over a 5 year period from the Date of First Commercial Production. This depreciation can be deemed to be deferred depreciation during a loss making period.

It is recognised, pursuant to article 144 of the Mining Code, that establishment costs (including any exploration and feasibility study costs capitalised during the research, studies and construction phase) are capitalised, registered in the opening statement and depreciated for tax purposes straight-line over a 5 year period from the Date of First Commercial Production. This depreciation can have the status of deemed deferred depreciation during a loss making period.

Fixed assets shall be subject to straight line depreciation or to declining balance / accelerated depreciation.

Pursuant to article 144 of the Mining Code the following multipliers can be applied to the allowable straight-line depreciation periods for the purposes of declining balance depreciation calculations:

- Depreciation duration of 3 years or less: 2.0
- Depreciation duration of 4 years and greater: 2.5

The table below includes acceptable straight-line depreciation periods for various classes of assets in accordance with the periods indicated in article 101 of the General Tax Code. Tax depreciation rates calculated in accordance with the table below will be deemed allowable for tax purposes,

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Catégories de biens	Périodes d'amortissement
Frais d'établissement	3 ans
Constructions	20 ans
Véhicules utilisés seulement à des fins privées	3 ans
Equipements de transport incluant des véhicules utilisés à des fins non privées Camions et véhicules tout terrain	5 ans
Equipements autres que de bureau et outillages	5 ans
Fournitures et équipements de bureau	10 ans
Installations et équipements	10 ans
Equipements informatiques	3 ans

Class of Asset	Depreciable Period
Start-up costs	3 years
Constructions	20 years
Vehicles used wholly for private use	3 years
Transport equipment including non-private use vehicles, lorries and off-road vehicles	5 years
Non-office equipment and tooling	5 years
Furniture and office equipment	10 years
Installations and fittings	10 years
Computer equipment	3 years

Il est précisé que les durées ci-dessus envisagées sont considérées comme conformes aux usages mais ne sont pas intangibles. À cet égard, s'il peut être raisonnablement démontré qu'un actif a une durée d'utilisation réelle inférieure à la période figurant au tableau, cette durée réelle sera utilisée pour déterminer la période d'amortissement.

It's acknowledged that the rates above are intended as a guide and are not prescriptive. In this regard, if it can be reasonably demonstrated that an asset has an effective life less than the period listed then it is possible to use the actual effective life to determine the depreciable period.

Les "Frais d'établissement" détaillés dans le tableau ci-dessus incluront les frais d'extraction préliminaires / retrait des [morts-terrains] [terrains de couvertures] dans la mesure où une telle dépense est supportée avant le commencement de la commercialisation. Par ailleurs, les dépenses liées à l'extraction initiale de minerai pour le stockage entreront dans cette catégorie si elles sont considérées comme ayant été supportées avant le commencement de la commercialisation.

"Start-up costs" detailed in the above table will include the cost of pre-stripping the ore-body / removal of overburden if such expenditure is incurred prior to the commencement of trading. In addition, the costs related to initial mining of ore for stockpiling will fall into this category if they are costs that are considered to be incurred prior to the commencement of trading.

### 2.2.4 Report déficitaire (Article 25.1.2 de la Convention d'Origine, Article 29.1(b) de la Convention de Base et Article 31.1(c) de la Convention BOT)

L'expression « jusqu'à concurrence du revenu imposable » dans le contexte de l'Article 25.1.2 de la Convention d'Origine, de l'Article 29.1(b) de la Convention de Base et de l'Article 31.1(c) de la Convention BOT, ne signifie pas qu'il a été renoncé à l'imputer l'excédent des pertes non encore imputées au

### 2.2.4 Retained Losses (Original Convention Article 25.1.2, Basic Convention Article 29.1(b) and BOT Convention Article 31.1(c))

The term "up to the amount of the taxable income" in the context of Original Convention Article 25.1.2, Basic Convention Article 29.1(b) and BOT Convention Article 31.1(c) does not mean that carry forward losses and deferred depreciation in excess of a particular year's taxable profits are foregone or incapable of utilisation

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titre d'une année donnée. Cet excédent demeure dans tous les cas imputable sur les bénéfices imposables des années suivantes.

### **2.2.5 Déduction du revenu imposable (Article 25.1.4 de la Convention d'Origine, Article 29.1(d) de la Convention de Base et Article 31.1(e) de la Convention BOT)**

Les charges et dépenses de toute nature engagées en Guinée ou en dehors de Guinée et nécessaires au développement du Projet ont le caractère de charges déductibles.

Les charges de toute nature liées au Projet comprenant notamment les études réalisées en Guinée ou en dehors de Guinée afin de mettre en œuvre les différentes obligations émanant de la Convention de Base et de la Convention BOT, des lois et règlements guinéens et de la concession minière ont le caractère de charges déductibles quel que soit le lieu où ces charges ont été engagées ou payées.

S'agissant des charges et dépenses afférentes aux règlements des fournisseurs ou prestataires non guinéens et dans la mesure où le contrat ou la commande qui est à l'origine de la charge ou de la dépense est un document original ou une copie certifiée en français figurant parmi les pièces comptables en Guinée, les autres documents justificatifs additionnels tels que les factures et états bancaires peuvent figurer parmi les pièces comptables dans leur forme d'origine à condition qu'un auditeur externe acceptable par l'administration guinéenne certifie que la pièce libellée dans une langue autre que le français et rapprochée du contrat ou de la commande est une pièce justifiant la réalité de la dépense.

La déductibilité des rémunérations de toute nature payées ou bénéficiant aux employés de SIMFER S.A. et/ou de toutes sociétés travaillant pour le Projet ne peut être limitée que dans le cas où il est démontré que ces rémunérations ne correspondent pas à un travail effectif justifié par un contrat.

Lorsque SIMFER S.A. décide de ne pas souscrire d'assurance dans le cas où les assurances ne sont pas obligatoires et que les risques en cours sont néanmoins susceptibles d'être couverts par une assurance, SIMFER S.A. aura le droit de constater une provision déductible dans la limite du montant de la prime d'assurance que SIMFER S.A. aurait payée si SIMFER S.A. avait décidé d'assurer ce risque.

Les frais financiers sont déductibles même en cas d'exonération ou de limitation de la retenue à la source sur les intérêts.

Les intérêts relatifs à des prêts ou comptes courant d'associés sont déductibles sans limitation, et en particulier au regard du montant du capital libéré. Par

against subsequent years taxable profits. Such amounts remain in all cases creditable against taxable profits of subsequent years.

### **2.2.5 Deductions from taxable income (Original Convention Article 25.1.4, Basic Convention Article 29.1(d) and BOT Convention Article 31.1(e))**

Costs and expenses of any kind incurred in Guinea or outside Guinea and necessary for the development of the Project shall be considered as deductible expenses.

All expenses and costs of all kinds relating to the Project and including inter alia all studies carried out inside or outside of Guinea in order to give effect to the provisions of the Basic Convention and the BOT Convention, the Guinean laws and regulation and the mining concession shall have the status of deductible costs and expenses wherever they are incurred and paid.

For expenses and costs relating to non Guinean suppliers or service providers, if the contract or the order which is at the origin of the expense or cost is an authentic or certified copy in French language kept in the accounting documents in Guinea, the additional supporting documentation such as invoices and bank statements could be kept among the accounting documents in their original format providing that an outside auditor acceptable to the Guinean tax administration certifies that the documents written in a language other than French read in conjunction with the contract or the order is a document justifying the expense

The deductibility of compensation of all kinds paid or benefiting the employees of SIMFER S.A. and of any company working for the project is not limited, unless it is demonstrated that such compensation does not correspond to an amount of work effectively justified by a contract.

When SIMFER S.A. decides not to subscribe for insurance coverage in the case where insurance is not mandatory, even if insurance coverage is available, SIMFER S.A. will have the right to set aside a deductible provision up to a maximum of the premium that SIMFER S.A. would have paid if it had decided to insure the risk.

Financial expenses are deductible even in the event of exemption or limitation of withholding tax on interest.

Interest expenses related to shareholder loans or current accounts are deductible without limitation, in particular in relation to the amount of paid up capital. Further,

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ailleurs, les intérêts seront toujours déductibles dès lors que le montant des intérêts est égal au LIBOR majoré de quelques points de pourcentage applicable à des transactions commerciales semblables réalisées dans des conditions équilibrées. À cet égard, il est précisé que les limitations à la déductibilité à concurrence du taux de refinancement normal de la Banque Centrale Guinéenne selon l'article 97 du Code Général des Impôts ne sont pas applicables.

Les montants et aides à caractère philanthropique octroyés par SIMFER S.A. en Guinée au bénéfice en particulier des communautés locales au titre de la santé, de l'environnement, de l'éducation ont le caractère de charges déductibles sans limitation de montant.

Les montants versés pour l'utilisation de brevets, licences, marques de fabrique, dessins, formules, procédés de fabrication et droits analogues ou en rémunération de prestations de service incluant les frais généraux de siège en Guinée, frais d'études, d'assistance technique, financière ou comptable et les frais de gestion sont admis tant que charges déductibles même dans le cas où ces montants n'ont pas fait l'objet d'une retenue à la source conformément aux dispositions des Articles 24 et 25 de la Convention d'Origine, des Articles 28 et 29 de la Convention de Base et des Articles 30 et 31 de la Convention BOT.

Il est précisé que toute dépense de réinstallation visée par l'Article 35.2.1 de la Convention d'Origine, les Articles 39(b) et 39(c) de la Convention de Base et les Articles 41(b) et 41(c) de la Convention BOT est déductible du revenu imposable.

Au cas où les reliquats de TVA sont supportés par SIMFER S.A. et si ces reliquats de TVA ne sont pas remboursés (en raison de contraintes juridiques ou financières) ou ne peuvent bénéficier d'une compensation effective avec un autre impôt du par SIMFER S.A., ce reliquat est déductible pour le calcul de l'impôt sur les BIC de SIMFER S.A..

### **2.2.6 Provisions pour la reconstitution des gisements (Article 25.1.5 de la Convention d'Origine, Article 29.1(e) de la Convention de Base)**

Une provision pour la réhabilitation environnementale à la fermeture de toute installation du Projet constituée conformément au plan comptable Guinéen pourra être déduite fiscalement. Toute provision non utilisée sera réintégrée au résultat imposable de l'année de reprise.

### **2.2.7 Crédit d'Investissement (Article 25.1.6 de la Convention d'Origine, Article 29.1(f) de la Convention de Base et Article 31.1(f) de la Convention BOT)**

interest will always be deductible as long as the amount of the interest is calculated using the LIBOR rate of interest increased by a percentage premium applicable to a similar arm's-length transaction. In this regard, it is acknowledged the limit of deductibility to the Guinean Central Bank's normal refinancing rate as per article 97 of the General Tax Code does not apply.

The amounts having a philanthropic characteristic paid by SIMFER S.A. and, in particular, the amounts paid to the benefit of local communities in relation to health, environment and education are deductible expenses without limitation.

Any amount paid for the use of patents, trade marks, licenses, drawings, formulas, know how or any other similar rights or in compensation of services such as head-office expenses relating to Guinea, studies, technical, financial or accounting assistance and management fees are deductible irrespective of the withholding of any taxes in accordance with provisions of Original Convention Articles 24 and 25, Basic Convention Articles 28 and 29 and BOT Convention Articles 30 and 31.

It is clarified that all costs arising out of the resettlements referred to in Original Convention Article 35.2.1, Basic Convention Articles 39(b) and 39(c) and BOT Convention Articles 41(b) and 41(c) are deductible for the computation of the taxable income.

In the event that VAT is borne by SIMFER S.A. and is neither reimbursable (due to legislative or financial constraints) or capable of effective offset against any other tax due by SIMFER S.A. SA, the amount not reimbursed or credited shall be deductible for BIC purposes.

### **2.2.6 Provisions for regeneration of deposits (Original Convention Article 25.1.5 and Basic Convention Article 29.1(e))**

A provision for environmental rehabilitation on the closure of any Project facility shall be deductible provided it is calculated in accordance with the Guinean accounting plan. Any excess provision shall be included in the taxable income of the year in which it is credited to profits.

### **2.2.7 Investment Credit (Original Convention Article 25.1.6, Basic Convention Article 29.1(f) and BOT Convention Article 31.1(f))**

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Le Crédit d'Investissement afférant aux investissements réalisés en Guinée sera toujours fiscalement déductible (en vertu de l'article 146 du Code Minier) additionnellement à toute autre déduction prévue par le Code Général des Impôts, de la Convention de Base et de la Convention BOT et de la présente Annexe Fiscale.

Le Crédit d'Investissement sera calculé en référence à la somme de tous les montants nouvellement capitalisés en vertu des principes comptables acceptés durant l'année fiscale et constitué par des actifs immobilisés qu'ils soient par nature corporels ou incorporels.

La déductibilité du Crédit d'Investissement n'est subordonnée à aucune obligation de réinvestissement.

### **2.2.8 Consolidation des résultats / Régime de groupe fiscal (Article 25.1.7 de la Convention d'Origine, Article 29.1(g) de la Convention de Base et Article 31.1(g) de la Convention BOT)**

La consolidation des résultats (« régime de groupe fiscal ») évoquée à l'Article 25.1.7 de la Convention d'Origine, à l'Article 29.1(g) de la Convention de Base et à l'Article 31.1(g) de la Convention BOT a pour objet de permettre l'option pour la mise en place d'un groupe fiscal au sein duquel SIMFER SA pourra transférer ses déficits fiscaux à une ou plusieurs sociétés guinéennes membres de ce groupe fiscal, et bénéficier du transfert des déficits fiscaux réalisés par les autres sociétés guinéennes membres de ce groupe fiscal. L'objectif de ce régime de « groupe fiscal » est de permettre une compensation entre les bénéfices et les déficits fiscaux réalisés par les membres de ce groupe fiscal. Les déficits fiscaux transférables comprennent également les pertes en capital.

SIMFER S.A. et/ou la société Guinéenne représentant le groupe fiscal et l'Administration Fiscale Guinéenne s'accorderont, avant le premier transfert de pertes fiscales, sur un document-type qui formalisera les demandes et transferts de déficits fiscaux entre les sociétés membres du groupe fiscal. Une demande et un transfert seront réputés valables pour une année donnée dès que le document aura été signé par un représentant de l'entité sollicitant le transfert et par un représentant de celle procédant au dit transfert.

Pour la mise en œuvre du régime de groupe fiscal en Guinée, une entité membre du groupe fiscal est définie comme une société guinéenne ayant son capital social détenu directement ou indirectement soit par SIMFER S.A., soit par une société du groupe RIO TINTO guinéenne ou non-guinéenne détenant elle-même une participation directe ou indirecte dans SIMFER SA (« actionnaire commun »), quel que soit le pourcentage de cette participation.

The Investment Credit for investments in Guinea shall always be deductible for tax purposes (pursuant to article 146 of the Mining Code) in addition to any other deductions provided by the General Tax Code, the Basic Convention and BOT Convention and this Tax Annex.

The Investment Credit will be calculated in reference to the sum of any amounts newly capitalised in accordance with accepted accounting principles during a fiscal year and characterized as fixed assets, be they tangible or intangible in nature.

Deductibility of the Investment Credit is not subject to a reinvestment requirement.

### **2.2.8 Consolidation of results / Tax Group regime (Original Convention Article 25.1.7, Basic Convention Article 29.1(g) and BOT Convention Article 31.1(g))**

The consolidation of results ("tax group regime") as contemplated under Original Convention Article 25.1.7, Basic Convention Article 29.1(g) and BOT Convention Article 31.1(g) is intended to allow an election for a tax group regime which enables SIMFER S.A. to surrender tax losses to and receive tax losses from one or several Guinean entities part of this tax group. The purpose of this "tax group regime" is to allow offsetting tax losses against taxable profits between tax group members. Losses which can be transferred between the tax group members also include capital losses.

SIMFER S.A. and/or the Guinean entity acting on behalf of the tax group and the Guinean Tax Authorities will, prior to the first loss transfer, agree a standard document that formalises the claim and surrender of tax losses between the tax group members. A valid claim and surrender for a particular year is deemed to have been made once the document has been signed by an officer of both the claiming and surrendering entities.

For the implementation of the tax group regime in Guinea, an entity eligible to the tax group regime (tax group member) is a Guinean entity which has its share capital held directly or indirectly either by SIMFER S.A. or by a Guinean or non-Guinean RIO TINTO group company which itself holds directly or indirectly equity interest in SIMFER S.A. ("common shareholder"), regardless of the percentage of the equity ownership.

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Le montant des pertes transférables est limité au pourcentage direct de participation ou au pourcentage indirect effectif de participation détenu par l'« actionnaire commun » dans les sociétés membres du groupe fiscal. Une participation au capital se réfère au capital constitué par des actions ordinaires.

Un transfert de déficits fiscaux les sociétés membres du groupe fiscal peut se faire quelque soit l'exercice au cours duquel le déficit fiscal a été généré. Les déficits fiscaux peuvent ainsi être transférés et utilisés dans la limite de cinq ans à compter de l'exercice où le déficit fiscal a été généré (Article 25.1.2 de la Convention d'Origine, Article 29.1(b) de la Convention de Base et Article 31.1(c) de la Convention BOT).

Les amortissements réputés différés peuvent être transférés et utilisés entre les sociétés membres du groupe fiscal sans limitation de durée, et ne sont pas assujettis à cette limitation de 5 ans.

Un paiement reçu pour le transfert des déficits fiscaux n'est pas taxable au niveau de la société qui transfère ni déductible pour la société qui en fait la demande.

Il est reconnu que dans le cas d'une modification de la base imposable de quelque nature que ce soit ou suite au dépôt d'une déclaration rectificative, toute prise en compte de déficits fiscaux peut être modifiée en conséquence à la fois par le demandeur et par le bénéficiaire.

Il est expressément reconnu que toute demande de transfert de déficits fiscaux est discrétionnaire et son acceptation laissée à la libre appréciation des sociétés membres du groupe fiscal concernées.

Si une filiale guinéenne a été constituée et que son premier exercice imposable est plus court que celui du demandeur ou de l'entreprise accordant la remise, il n'y a aucune obligation d'appliquer la règle du prorata temporis au montant de la perte transférée.

Dans les situations autres que celles évoquées ci-dessus, lorsque les sociétés membres du groupe fiscal n'ont pas le même exercice de clôture comptable, mais que ces exercices se chevauchent, le montant maximum des déficits fiscaux qui peut être transféré à l'entité demanderesse sera basé sur le montant du déficit fiscal résultant d'une quelconque période comptable de l'entité accordant la remise chevauchant celle de la société demanderesse.

Dans l'hypothèse où la participation directe ou indirecte effective dans une société membre du groupe fiscal est modifiée au cours d'un exercice fiscal, le montant du déficit fiscal pouvant être transféré sera calculé sur la base de la moyenne de la participation directe ou indirecte effective dans cette société membre au titre de

The amount of transferable losses is restricted to the direct percentage of equity interest or the effective indirect percentage of equity interest that the "common shareholder" owns in the tax group members. An equity interest is a reference to ordinary share capital.

A claim or surrender of tax losses between tax group members is permitted regardless of the year the tax loss was incurred. In this regard, tax losses can be claimed and surrendered in years subsequent to the year they were incurred, subject to the 5-year carry forward limitation (Original Convention Article 25.1.2, Basic Convention Article 29.1(b) and BOT Convention Article 31.1(c)).

Deferred depreciation can be surrendered and claimed between tax group members without time limit and is specifically not subject to the 5-year carry forward limitation.

A payment received for surrender of tax losses is neither taxable for the surrendering company nor deductible for the claimant company.

It is acknowledged that in the event of an amended assessment of any form or an amended return being filed that any consolidation claim can be amended accordingly by both the claimant and surrendering companies.

It is expressly acknowledged that any claim or surrender of losses is entirely discretionary and neither the claimant company nor the surrendering company part of the same tax group is obliged to participate in or agree to the loss transfer.

If a Guinean affiliate entity is established at a point in time such that the length of its first tax year is shorter than that of either a claimant or surrendering entity, there is no requirement to time apportion the loss to be claimed by it or surrendered to it.

Other than as stated above, where the tax group members do not have matching accounting periods, but those accounting periods overlap, the maximum amount of transferable losses to the claimant entity will be calculated by taking the loss arising in any period of account of the surrendering entity which overlaps that of the claimant company and time apportioning the loss between the overlapping and non overlapping period.

- In the event that the effective direct or indirect effective percentage of equity interest of a tax group member changes during a tax year, the proportion of transferable loss will be calculated with reference to the average direct or indirect effective percentage equity

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cet exercice.

### **2.2.9 Retenue à la source sur le revenu des prestataires et sous-traitants étrangers non établis en Guinée (Article 25.2 de la Convention d'Origine, Article 29.2 de la Convention de Base et Article 31.2 de la Convention BOT)**

Les dispositions de l'Article 25.2 de la Convention d'Origine, de l'Article 29.2 de la Convention de Base et de l'Article 31.2 de la Convention BOT ne s'appliquent que sous réserve de dispositions plus favorable de toute convention de non double imposition applicable.

Il est précisé que toutes retenues et paiements réalisés dans le cadre de cet article sont libératoires tant pour le débiteur que le créancier de toutes autres obligations fiscales, et impôts directs en Guinée.

### **2.2.10 Impôt sur les Revenus de Valeurs mobilières (Article 25.3 de la Convention d'Origine, Article 29.3 de la Convention de Base et Article 31.3 de la Convention BOT)**

Il est entendu que le retour sur capital investi correspond à un montant au titre duquel ni SIMFER S.A. ni ses actionnaires ne seront assujettis ni à l'Impôt sur les revenus de valeurs mobilières de 10%, ni à aucun autre impôt, ni à aucune retenue à la source en Guinée sur les dividendes et sur les autres produits distribués aux actionnaires. Les autres produits distribués aux actionnaires comprennent les sommes se rapportant aux financements et au retour sur le capital investi.

Il est également précisé que les intérêts versés par SIMFER SA sont intégralement déductibles fiscalement et ne seront assujettis à aucune retenue à la source en Guinée.

SIMFER S.A. et ses actionnaires et prêteurs sont dispensés du prélèvement de l'Impôt sur les revenus de valeurs mobilières de 10%, dispensés du prélèvement de l'Impôt sur les revenus de capitaux mobiliers et dispensés du prélèvement de tout autre impôt ou retenue à la source de quelle que nature que ce soit en Guinée.

En vertu de l'article 173 (3) du Code Général des Impôts, un amortissement du capital qui aboutit à une réduction du capital sur le plan comptable n'est pas considéré comme une distribution et ne sera assujetti à aucun impôt ou retenue à la source en Guinée.

En outre, en vertu de l'article 176 (1) du Code Général des Impôts, le remboursement du capital libéré ou des contributions en capital des actionnaires, si toutes les réserves autres que les réserves légales ont été distribuées au moment des remboursements, ne sera pas considéré

interest in this tax group member for that year.

### **2.2.9 Withholding Tax on the revenue of foreign providers and sub contractors (Original Convention Article 25.2, Basic Convention Article 29.2 and BOT Convention Article 31.2)**

The provisions of Original Convention Article 25.2, Basic Convention Article 29.2 and BOT Convention Article 31.2 shall be subordinate to the provisions of any International Treaties entered into by Guinea for the avoidance of double taxation.

It is acknowledged that withholding and remittance under this provision is accepted as exempting the payer and payee from any further tax obligations and liability to direct taxes in Guinea.

### **2.2.10 Tax on income from movable securities (withholding tax on dividends and on other profits distributed to shareholders (Original Convention Article 25.3, Basic Convention Article 29.3 and BOT Convention Article 31.3)**

The return on invested capital is agreed to be an amount which means that neither SIMFER S.A. nor its shareholders will be subject to the 10% tax on income from movable securities nor to any other withholding tax in Guinea on dividends and other profits distributed to its shareholders. The other profits distributed to shareholders include payments in relation to financing and which represent return of invested capital.

For the avoidance of doubt, payments of interests shall be fully deductible for income tax purposes and shall not be subject to any withholding tax in Guinea

SIMFER S.A. and its shareholders and lenders are not required to withhold the 10% tax on income from movable securities nor to withhold any other tax in Guinea.

As per article 173(3) of the General Tax Code, a redemption of capital that leads to the reduction of capital on the balance sheet is not considered as a distribution and is not subject to the any tax or withholding tax in Guinea.

Further, as per article 176(1) of the General Tax Code, repayment of paid-in capital or capital contributions to shareholders, to the extent all income reserves other than statutory reserves have been allocated at the time of repayment, will not be considered as a distribution and

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comme une distribution de dividendes et ne sera assujéti à aucun impôt ou retenue à la source en Guinée

En application de l'article 225 du Code Général des Impôts, les dividendes reçus par SIMFER S.A. sont imposables sur la base du montant net des dividendes reçus. Par ailleurs, 95% du dividende net reçu est déductible du revenu imposable. Toute taxe prélevée à la source sur le dividende reçu par SIMFER S.A. ouvre droit, pour le bénéficiaire, à un crédit d'impôt imputable sur l'impôt dû sur les dividendes reçus et sur les impositions résultant de toute autre source de revenus.

### **2.2.11 Taxe minière (Article 25.5 de la Convention d'Origine et Article 29.5 de la Convention de Base)**

Pendant toute la durée de la présente Convention, le minerai extrait par Simfer S.A. est soumis au moment de sa vente au paiement de la Taxe Minière.

L'intégralité du minerai « destiné à l'exportation » par SIMFER S.A. bénéficiera du taux réduit de Taxe Minière de 3,5% de sa valeur FOB.

L'intégralité du minerai, qu'il soit exporté directement par SIMFER S.A. ou qu'il devienne la propriété d'une autre société au moment où il quitte la Guinée, est considérée comme "destinée à l'exportation" si le contrat de vente prévoit que le minerai sera exporté.

La Taxe Minière ne pourra pas être exigible avant la mise à FOB. Par exemple, le minerai entreposé en attente de sa vente par SIMFER S.A. au client ne donnera pas lieu au paiement de la Taxe Minière

Evaluation :

Pour le calcul de la Taxe Minière de 3,5% exigible sur le minerai exporté, il est précisé que l'assiette de ces redevances est la valeur FOB (Franco à Bord). Par valeur FOB il faut entendre la valeur marchande du produit à son point d'exportation en Guinée, ou en cas de vente interne à la Guinée, au point de livraison en Guinée.

La valeur marchande du produit s'entend du prix de vente conclu avec les tiers et les sociétés affiliées. La preuve de ce prix sera apportée par les factures des dites ventes (et toute autre documentation afférent à la vente) émises par SIMFER S.A. à ses clients directs. Le prix de vente pourra être ajusté afin d'exclure les coûts figurant au paragraphe "Evaluation: charges déductibles".

will not be subject to any tax or withholding tax in Guinea.

Pursuant to article 225 of the General Tax Code dividends received by SIMFER S.A. are taxable based on the net amount of the dividend received. Furthermore, 95% of the net dividend received is tax exempt and thus deducted for calculation of taxable profit. Any tax withheld on the dividend received by SIMFER S.A. gives rise to a tax credit offsetable by the recipient against both the tax liability on the dividend income and tax arising on other sources of income.

### **2.2.11 Royalty / Mining Tax (Original Convention Article 25.5 and Basic Convention Article 29.5)**

Throughout the term of this Convention, any ore mined by Simfer S.A. will be subject at the time of sale to the payment of a Royalty / Mining Tax.

All the ore "intended for export" by SIMFER S.A. will benefit from the reduced 3.5% Royalty / Mining Tax on FOB price.

All ore, regardless of whether it is exported directly by SIMFER S.A. or whether it is owned by another company at the point in time it is removed from Guinea, shall be regarded as 'intended for export' if at the point in time that SIMFER S.A. makes a sale, it is intended that either SIMFER S.A. or someone else who later acquires the ore, intends to remove the ore from Guinea. Royalty / Mining Tax shall not be assessable in any interim period prior to the sale of the ore by SIMFER S.A. to a customer. For example, ore that is stored prior to its sale by SIMFER S.A. to a customer, shall not be assessable to Royalty / Mining Tax until such time as it has been sold to a customer. Refer to section 'Payment of Mining Tax to the Government of Guinea' below for a definition of time of sale.

Valuation:

For the calculation of the Royalty / Mining Tax of 3.5% due on exported ore, the Royalty / Mining Tax is calculated on the FOB value. FOB value means market value of the product at the point of export from Guinea, or in the case of sale within Guinea, at the point of delivery within Guinea.

The market value of the product shall be the sale price agreed with both third party and related party customers. This sale price shall be evidenced by the underlying sales invoices (and other sales documentation including without limitation credit notes,) issued by SIMFER S.A. to its immediate customer. The sale price will be adjusted to exclude the costs outlined below under the paragraph entitled 'Valuation: allowable deductions'.

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La prime payée au titre d'une option sur le minerai de fer ne sera comprise dans la valeur FOB soumise à la Taxe Minière qu'au moment où l'option sera effectivement exercée. Les paiements effectués en vertu d'un contrat d'instrument financier dérivé ne seront pas soumis à la Taxe Minière. Un contrat d'instrument financier dérivé désigne un contrat de vente qui ne donne pas lieu à la livraison physique du minerai.

Dans le cas où un prix provisoire aurait été fixé au moment de la vente, SIMFER SA règlera la taxe minière sur la base de ce prix. En cas de prix final supérieur au prix provisoire, SIMFER S.A. versera le supplément de taxe minière comme si la vente était intervenue le jour où l'augmentation de prix a été connue. Dans le cas où le prix définitif est inférieur au prix provisoire, SIMFER S.A. bénéficiera d'un crédit imputable sur la taxe minière exigible au titre de la prochaine déclaration de taxe minière.

Evaluation: charges déductibles :

En cas de vente CIF ou pour toute autre vente postérieure à la mise à FOB (définition INCOTERMS CCI de 2000), SIMFER S.A. pourra déduire du prix de vente la quote-part du prix ainsi que l'ensemble des coûts, frais et charges réglés par le vendeur à raison de toute opération ou augmentation de valeur postérieure à la mise à FOB.

Sera notamment déductible en cas de vente CIF, le coût du fret et de l'assurance.

Déclaration et Paiement de la Taxe Minière à l'Etat guinéen

Le fait générateur de la taxe minière est constitué par l'opération de chargement du minerai sur le navire (mise à FOB). Les exportations réalisées au titre d'un mois donné et assujetties à la taxe minière feront l'objet d'une déclaration avant le dernier jour du mois qui suit. La date limite d'exigibilité de la taxe minière est fixée au quinze du mois qui suit la déclaration.

La Taxe Minière sera payée à l'Etat guinéen en Dollars US ou toute autre devise acceptable par la Banque Centrale Guinéenne et conformément au contrat de vente.

Dispositions diverses :

En cas de vente du minerai de fer à une société affiliée ou à un tiers avant le départ de la marchandise de Guinée à l'export, le minerai ne sera imposable qu'une seule fois au niveau de SIMFER S.A. Aucune redevance ou taxe minière supplémentaire ne pourra être réclamée à

Premiums paid in respect of an option on the iron ore should only be included in the FOB value assessable to mining tax, where the option is in fact exercised. No payments made under financial derivative contracts shall be subject to Royalty / Mining Tax. A financial derivative contract shall be defined as a sale contract which does not result in physical ore delivery.

Where provisional prices only are agreed at the time of sale or for whatever reason, adjustments are subsequently made to invoiced prices, any retrospective adjustments to these prices that are either invoiced or credit noted after Royalty / Mining Tax has been paid in relation to the original sale, should be included in the Royalty / Mining Tax return corresponding to the date any retrospective adjustment is invoiced or credit noted to SIMFER S.A.'s customer. On this basis, where an increasing price adjustment is retrospectively made, no penalties or assessments may be made in respect of the original Royalty / Mining Tax payments made.

Valuation: Allowable Deductions:

In the event of a CIF sale, or for any sale subsequent to the FOB setting up (ICC INCOTERMS 2000 definitions), SIMFER S.A. shall deduct from the sale price the percentage of the price as well as all costs, expenses and charges paid by the buyer with regard to any operation or value increase subsequent to the FOB setting up.

Shall notably be deductible in case of CIF sale, freight and insurance costs.

Payment of Royalty / Mining Tax to the Government of Guinea

The Royalty / Mining Tax obligating event is constituted by the loading of ore onto the carrier (FOB setting up). Exports carried out during a given month and subject to Royalty / Mining Tax shall be the subject of a declaration before the last day of the following month. The deadline for the Royalty / Mining tax to be payable is fixed on the fifteenth day of the month following this declaration.

Royalty / Mining Tax payments due to the Guinean government may be made in USD or alternative foreign currency of sale (per the sale contract).

Other Royalty / Mining Tax Provisions:

Where iron ore is sold to either a company related to SIMFER S.A., or a third party customer prior to the removal of the ore for export from Guinea, the ore shall be taxed once only. On the basis that SIMFER S.A. duly accounts for the Royalty / Mining Tax payable to the

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quiconque à raison d'une quelconque transactions ultérieures.

Les minéraux extraits utilisés comme spécimens et échantillons ne sont pas assujettis à la Taxe Minière à condition que ces minéraux ne soient pas vendus. Leur régime est défini par les procédures administratives en vigueur.

La Taxe Minière est déductible pour le calcul du bénéfice imposable (en vertu de l'article 139 du Code Minier).

### **2.2.12 Participation de l'Etat (Article 19 de la Convention d'Origine et Article 22 de la Convention de Base)**

En application des dispositions de l'Article 32.2 de la Convention d'Origine et de l'Article 36.2 de la Convention de Base, il est précisé que l'achat d'actions ordinaires de SIMFER S.A. ou des filiales par l'Etat comme prévu à l'Article 19 de la Convention d'Origine et à l'Article 22 de la Convention de Base (que l'acquisition soit faite par achat d'actions existantes, souscription d'actions nouvelles ou par tout autre mécanisme) ne donnera pas lieu à une imposition de quelque nature que ce soit, que ce soit au niveau de SIMFER S.A., de ses filiales ou de ses actionnaires.

### **2.2.13 Taxe sur la Valeur Ajoutée**

Les dispositions de l'Article 24.8 de la Convention d'Origine, de l'Article 28(h) de la Convention de Base et des Articles 30(h) et 30(i) de la Convention BOT seront pleinement applicables à la phase d'exploitation conformément à la section 2.1.8 de la présente Annexe Fiscale.

### **2.2.14 Retenue à la source sur les intérêts**

Il est rappelé que la Convention d'Origine, la Convention de Base et la Convention BOT ne requièrent pas que SIMFER S.A. opère une retenue à la source sur les paiements d'intérêts. Le paiement par SIMFER S.A. d'intérêts à une entité non établie en Guinée sera exonéré de tout impôt de quelle que nature que ce soit en Guinée, tant au niveau du débiteur qu'à celui du créancier.

Government of Guinea in relation to its first sale, no further Royalty / Mining Tax payments will become due by either SIMFER S.A., a related company or third party company, which later acquires the ore.

Minerals extracted for use as specimens and samples are not subject to Royalty / Mining Taxes if the extracted minerals are not for sale. Their status is governed by the applicable administrative procedure applicable.

Royalty / Mining Tax may be deducted for calculation of taxable profits (per article 139 of the Mining Code)

### **2.2.12 State Participation (Original Convention Article 19 and Basic Convention Article 22)**

In accordance with the intention of Original Convention Article 32.2 and Basic Convention Article 36.2 it is recognised that the acquisition of equity in SIMFER S.A. by the State as detailed in Original Convention Article 19 and Basic Convention Article 22 (whether the acquisition be through a purchase of existing equity, subscription of new equity or any other mechanism) shall not give rise to tax liabilities of any nature, be they direct or indirect taxes, to either SIMFER S.A, its affiliates or shareholders.

### **2.2.13 Value Added Tax**

Original Convention Article 24.8, Basic Convention Article 28(h) and BOT Convention Articles 30(h) and 30(i) shall apply to the exploitation phase as per section 2.1.8 of this Tax Annex.

### **2.2.14 Withholding Tax on interest**

It is acknowledged that the Original Convention, Basic Convention and BOT Convention do not require SIMFER S.A. to withhold tax on interest payments. A payment of interest to an entity not registered in Guinea shall be exempted from tax of any kind in Guinea, both at the level of the debtor and of the creditor.

## **3. REGIME DOUANIER**

### **3.1 Droits de douane et prélèvements similaires**

## **3 CUSTOMS REGIME**

### **3.1 Customs Duties and Similar Levies**

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### **3.1.1 Droits de douane et droits d'entrée**

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Afin de bénéficier des exonérations douanières applicables au Projet et prévues aux Articles 26, 27 et 28 de la Convention d'Origine, aux Articles 30, 31 et 32 de la Convention de Base et aux Articles 32, 33 et 34 de la Convention BOT, SIMFER S.A. doit transmettre à la fois au CPDM et au Bureau des Douanes, une liste indicative des éléments à importer. Ces listes sont révisables périodiquement par SIMFER S.A., ses filiales et contractants, pour refléter les changements dans les besoins du Projet.

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### **3.1.2 Admission temporaire durant la phase d'exploration et de prospection et la phase de construction et d'extension**

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Les biens importés soit durant la phase d'exploration et de prospection soit durant la phase de construction et d'extension sous le régime de l'admission temporaire, seront exonérés des droits de douane pendant la durée de vie du Projet. A la fin de cette durée, ces biens admis temporairement devront être réexportés.

En cas de vente d'un bien, importé en République de Guinée sous le régime de l'admission temporaire, le propriétaire de ce bien est redevable de tous les droits et taxes établis par le service des douanes. L'assiette de ces droits et taxes sera diminuée de la valeur résiduelle (valeur nette comptable) du bien à la date de vente du bien. Cette disposition est également applicable aux biens importés dans le cadre des sections 3.1.3 à 3.1.7 de la présente Annexe Fiscale.

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### **3.1.3 Effets personnels**

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Conformément à l'Article 155 du Code Minier de 1995, les effets personnels importés par les employés de SIMFER S.A. et ses contractants directs sont exonérés des droits de douane durant la vie du Projet. En cas de revente en République de Guinée, des droits seront dus conformément à la législation en vigueur et comme indiqué à la section 3.1.2 de la présente Annexe Fiscale.

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### **3.1.4 Franchise douanière : Phase d'Exploration et de prospection**

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En vertu de l'Article 26.2 de la Convention d'Origine, l'Article 30.2 de la Convention de Base, et l'Article 32.2 de la Convention BOT, les biens comprenant des fournitures destinées à être utilisées dans le Projet et les pièces détachées nécessaires pour le fonctionnement de

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### **3.1.1 Duties and entry taxes**

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In order to benefit from the Customs exemptions applicable to the project as provided for by Original Convention Articles 26, 27 and 28, Basic Convention Articles 30, 31 and 32 and BOT Convention Articles 32, 33 and 34, SIMFER S.A. must transmit to both the CPDM and Department of Customs an indicative list of items to be imported. These lists shall be revised periodically by SIMFER S.A., its affiliates and contractors to reflect changes in Project needs.

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### **3.1.2 Temporary Admission during the exploration and study activities stage and construction and extension activities stage**

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Items imported during either the Exploration and Study Activities Stage or Construction and Extension Activities Stage using the temporary admission procedures shall be exempt from Customs duties throughout the life of the Project. At the end of the life of the Project, these articles admitted temporarily must be re-exported.

In the event of the sale of an item imported into the Republic of Guinea using the temporary admission procedure, the owner of the imported items is liable for all duties and taxes assessed by the Customs Service. The valuation base for calculating duties and taxes will be reduced to the residual value (accounting value) of the asset at the date of the resale. This provision also applies to items imported in accordance with sections 3.1.3 to 3.1.7 of this Tax Annex.

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### **3.1.3 Individual belongings**

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In accordance with article 155 of the Mining Code of 1995, personal effects imported by employees of SIMFER S.A. and direct contractors are exempt from customs duty for the life of the Project. In the event of resale in Republic of Guinea, duty will be paid in accordance with prevailing legislation and as indicated in section 3.1.2 of this Tax Annex.

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### **3.1.4 Customs Relief: Exploration and Prospecting phase**

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Per Original Convention Article 26.2, Basic Convention Article 30.2 and BOT Convention Article 32.2, items including supplies to be used in the project and spare parts necessary for the operation of the professional plant and equipment, will not be subject to any import

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l'installation et des équipements professionnels, ne seront assujettis à aucun frais, droits ou taxes d'importation. Il n'est pas nécessaire d'importer ces biens sous le régime de l'admission temporaire pour bénéficier de cette franchise pendant la période d'exploration et de prospection.

fees, duties or taxes. It is not necessary to import these items under the temporary admission regime to benefit from this Customs relief during the period of exploration and study activities.

### **3.1.5 Phases de construction et d'expansion (extension et renouvellement)**

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*Conformément à l'Article 27.1 de la Convention d'Origine, l'Article 31.1 de la Convention de Base et l'Article 33.1 de la Convention BOT, la taxe d'enregistrement en douane de 0.5% de la valeur CAF des biens importés est plafonnée à 20 millions de dollars. Ce plafond de 20 millions de dollars s'applique à tous les biens importés pendant la phase de construction et d'expansion. Dès que la valeur totale de toutes les importations effectuées durant la phase de construction et d'expansion excèdera 20 millions de dollars, les importations additionnelles ne seront plus soumises au droit d'enregistrement.*

A l'Article 27.2 de la Convention d'Origine, la référence aux termes « admission temporaire » est une référence à l'Article 26.1 et non pas à l'Article 28.1

### **3.1.5 Construction and Expansion (Extension and Renewal) phases**

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*In accordance with Original Convention Article 27.1, Basic Convention Article 31.1 and BOT Convention Article 33.1, registration tax of 0.5% of the CIF value of the imported goods is capped at 20 million dollars. This cap of 20 million dollars applies to all goods imported during the Construction and Expansion phase. Once the total value of all imports made during the Construction and Expansion phase exceeds 20 million dollars, additional imports will not be subject to registration duty.*

At Article 27.2 of the Original Convention, the reference to the temporary admission terms should read Article 26.1 and NOT Article 28.1.

### **3.1.6 Phase de réhabilitation des sites**

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La section 3.1.5 de la présente Annexe Fiscale s'appliquent également aux opérations de fermeture de mines et de remise en état des sites.

### **3.1.7 Opérations de transformation du minerai (Article 29 de la Convention d'Origine et Article 33 de la Convention de Base)**

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Le régime de ces opérations est régi par l'Article 29 de la Convention d'Origine et l'Article 33 de la Convention de Base.

### **3.1.8 Application durant toute la durée de vie de la mine**

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SIMFER S.A. bénéficie de l'exonération de TVA au titre de l'ensemble des acquisitions utilisées directement dans le cadre du Projet au cours de toutes les phases de la vie de la mine. Cette exonération de TVA n'expire qu'à la fin du Projet et s'applique indépendamment de l'émission par SIMFER S.A. des attestations d'exonération de TVA.

Le Gouvernement guinéen pourra, par courrier, autoriser SIMFER S.A. à appliquer l'exonération de TVA aux acquisitions utilisées pour le Projet. Un tel courrier devra être interprété comme permettant à SIMFER S.A.

### **3.1.6 Rehabilitation sites phase**

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Section 3.1.5 of this Tax Annex also applies to mine enclosure and site rehabilitation

### **3.1.7 Ore transformation operations (Original Convention Article 29, Basic Convention Article 33)**

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The regime of those operations is provided by Original Convention Article 29 and Basic Convention Article 33.

### **3.1.8 All Life of Mine Phases**

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SIMFER S.A. is entitled to VAT exemption on all purchases directly used in the Project during all life of mine phases. This right to VAT exemption expires as and when the Project terminates and applies regardless of whether VAT exemption certificates are issued by SIMFER S.A..

The Government of Guinea may issue a letter authorising SIMFER S.A. to apply the VAT exemption to purchases that it uses for the Project. Any such letter must be interpreted as allowing SIMFER S.A. to apply

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d'appliquer l'exonération de TVA sans qu'il soit nécessaire d'émettre les attestations d'exonération de TVA. Si le courrier du Gouvernement guinéen spécifie une période limitée dans le temps d'application du régime d'exonération, SIMFER S.A. continuera de bénéficier de l'exonération de TVA sur ses acquisitions au cours d'une période transitoire après l'expiration de la période spécifiée, mais avant la lettre de renouvellement de cette période spécifique d'exonération. Au cours de la période transitoire, aucune attestation d'exonération de TVA ne devra être émise par SIMFER S.A., à moins que le Gouvernement guinéen ne produise une notification écrite avant l'expiration de la période d'exonération décrite dans le courrier selon laquelle, à compter de l'expiration de la période, l'exonération de TVA sera soumise au régime des attestations d'exonération.

the VAT exemption without the need for VAT exemption certificates to be issued. If the letter from the Government of Guinea specifies a time period over which this VAT exemption regime applies, SIMFER S.A. shall continue to be entitled to VAT exemption on its purchases in any interim period after the expiry of this time period, but prior to the issue of a letter renewing this special VAT exemption period. During the interim period, no VAT exemption certificates need to be issued by SIMFER S.A., unless the Government of Guinea provides written notice to SIMFER S.A. prior to the expiry of the VAT exemption period stated in the letter, that upon expiry of this period, the VAT exemption will be administered using the VAT exemption certificate regime.

### 4. STABILISATION DU REGIME FISCALE ET DOUANIER

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#### 4.1 Stabilisation du régime fiscal et douanier (Article 30 de la Convention d'Origine, Article 34 de la Convention de Base et Article 35 de la Convention de Base)

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La stabilisation prévue à l'Article 30 de la Convention d'Origine, l'Article 34 de la Convention de Base et l'Article 35 de la Convention BOT s'applique également à toutes les sociétés affiliées à SIMFER S.A. incluant toute société créée pour les infrastructures et opérations de transport et portuaires.

La stabilisation du régime en vigueur au jour de la signature comprend toutes les dispositions législatives et fiscales pertinentes (incluant mais n'étant pas limitées au Code Général des Impôts et aux dispositions pertinentes du Code Minier applicable au jour de la signature, etc.). En outre, la stabilisation a aussi pour but de limiter le taux des impôts applicable au titre de la Convention de Base aux taux en vigueur au jour de sa signature. Sans préjudice de ce droit à stabilisation, SIMFER S.A. pourra bénéficier de tout avantage ou réduction de taux conformément aux dispositions de l'Article 32.5 de la Convention d'Origine, l'Article 36.3 de la Convention de Base et l'Article 37.3 de la Convention BOT.

L'Article 30 de la Convention d'Origine se réfère à une période de stabilisation prévue par l'Article 4.2". Il est précisé que l'article 4.2 dispose que la Concession sera octroyée pour une période de 25 ans à l'issue de laquelle elle sera renouvelée pour une nouvelle période de 25 ans « soit un total de 50 ans ». L'Article 4.2 prévoit également qu'à l'issue de ces deux périodes, la concession pourra être renouvelée pour de nouvelles périodes conformément au Code minier, sous réserve que, pour chaque période, SIMFER S.A. ait respecté les engagements fondamentaux qu'elle a souscrits dans le cadre de la Convention de Base. Voir également les Articles 6(c) et 34 de la Convention de Base.

### 4 STABILISATION OF THE TAX AND CUSTOMS REGIME

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#### 4.1. Stabilisation of Tax and Customs Regime (Original Convention Article 30, Basic Convention Article 34 and BOT Convention Article 35)

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The stabilisation provided under Original Convention Article 30, Basic Convention Article 34 and BOT Convention Article 35 applies to all SIMFER S.A. affiliates, including any entities created for the purposes of the transport and port infrastructure and operation.

Stabilisation of the regime in force on the day of signing includes all relevant fiscal law (including but not limited to the Tax Code and relevant sections of the Mining Code applicable as at the day of signing). Further, stabilisation is also intended to restrict the rates of taxes allowed under the Basic Convention to the rates in force on the day of signing. Such stabilisation does not, however, prevent any benefit being received from a reduction in rates as contemplated under Original Convention Article 32.5, Basic Convention Article 36.3 and BOT Convention Article 37.3.

Article 30 of the Original Convention makes reference to stabilisation existing for "the time periods set out in Article 4.2". It is noted that Article 4.2 states that the Concession will granted for a period of 25 years after which it will be renewed for a further 25 years "giving a total of 50 years". Article 4.2 also makes reference to subsequent renewals being in accordance with the applicable provisions of the Mining Code. See also Articles 6(c) and 34 of the Basic Convention.

**4.2. Dispositions plus favorables (Article 32.3 de la Convention d'Origine, Article 36.3 de la Convention de Base et Article 37.3 de la Convention BOT)**

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Aux fins de l'Article 32.3 de la Convention de Base, « activité similaire » signifie d'une nature similaire à l'activité minière, de transport, ou encore d'activité portuaire ou liée aux infrastructures.

**4.2. More favourable provisions (Original Convention Article 32.3, Basic Convention Article 36.3 and BOT Convention Article 37.3)**

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For the purposes of article 32.3 of the Basic Convention “similar activity” means of a nature similar to mining, transport, port or infrastructure related activities.

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**AMENDEMENTS ET ADJONCTIONS A L'ANNEXE FISCALE DE 2011****AMENDMENTS AND ADDITIONS TO THE 2011 TAX ANNEX****ÉTANT PRÉALABLEMENT RAPPELÉ QUE :**

Simfer S.A. a conclu avec l'Etat Guinéen le 26 novembre 2002 une Convention d'Origine pour la recherche et l'exploitation de minerai de fer dans le massif de Simandou (le «Projet Simandou»), cette convention a été ratifiée par une loi en date du 3 février 2003 (la «Convention de Base») en conformité avec l'article 11 du Code Minier; ainsi que le 22 avril 2011, un Accord Transactionnel et son Annexe Fiscale (Partie I),

Des ateliers fiscaux et douaniers, dont les conclusions sont reflétées dans les Amendements et Adjonctions, ont été tenues à Conakry les 17 Novembre 2011, 15 et 16 Février 2012, 21 et 22 mars 2012, ainsi que les 30 et 31 mai 2012,

L'Etat, Rio Tinto, Chalco, International Finance Corporation, Simfer S.A. et Rio Tinto Mining and Exploration Ltd ont signé le 16 août 2013 une lettre d'intention qui confirme que les régimes juridique et fiscal et des clauses de stabilisation figurant dans la Convention d'Origine et l'Accord Transactionnel de 2011 constituent ensemble la base pour le développement du Projet Simandou,

Des réunions du Groupe de Travail Fiscalité se sont tenues à Conakry les 28 et 29 Octobre 2013 et du 13 au 15 Janvier 2014 dans le cadre des ateliers de coordination pour le Projet Simandou, ainsi que les 31 janvier, 4 février et 12 mars 2014 dans le cadre de l'Equipe travaux préliminaires à la ratification du Cadre d'Investissement Simandou (ADT),

La version révisée des dispositions fiscales et douanières contenues dans la Convention de Base (Convention de Base) et dans la Convention BOT ainsi que la version révisée de l'Annexe Fiscale font partie du Cadre d'Investissement Simandou.

**LES PARTIES ONT CONVENU CE QUI SUIT :**

Pour les besoins des Amendements et Adjonctions, toute référence à Simfer S.A. doit être interprétée comme une référence à Simfer S.A., au Propriétaire des Infrastructures, à l'Exploitant des Infrastructures et à leurs Affiliées respectives.

Les termes et expressions utilisés dans la présente version révisée de l'Annexe Fiscale ont les significations contenues dans la Convention de Base et dans la Convention BOT à moins que le contexte ne requière qu'il leur soit donné un autre sens.

**1. TRANSPARENCE EN MATIERE FISCALE ET GOUVERNANCE :**

Simfer S.A. poursuit une stratégie fiscale qui est par principe transparente et durable. Simfer S.A. a mis en place des principes de gouvernance de sa stratégie fiscale qui ont été revus et approuvés par le conseil d'Administration de Rio Tinto.

**PRELIMINARY STATEMENT :**

Whereas Simfer S.A. has entered on the 26 November 2002 into the Original Convention with the State for the research and exploitation of iron ore in the Simandou mountain range (the "Simandou Project") which was ratified by a Law dated 3 February 2003 pursuant to article 11 of the Guinean Mining Code and on April 22, 2012 the Settlement Agreement and its Tax Annex (Part I),

Considering the working sessions of the Customs and Tax sub-committee of which conclusions are reflected in the Amendments and Additions that met in Conakry on November 17, 2011, the 15 and 16 February 2012, the 21 and 22 March 2012, and the 30 and 31 March 2012,

The State, Rio Tinto, Chalco, International Finance Corporation, Simfer S.A. and Rio Tinto Mining and Exploration Ltd have signed on August 16, 2013 a letter of intent which confirms that the legal and tax regime as well as the stabilisation clauses provided for in the Original Convention and the 2011 Settlement Agreement constitute the basis for the development of the Simandou Project,

Considering the meetings of the Tax Workgroup that met in Conakry on 28 and 29 of October 2013, and 13 to 15 January 2014 in the context of the coordination workshops for the Simandou Project, as well as the January 31<sup>st</sup>, February 4<sup>th</sup> and March 12<sup>th</sup> in the context of the works of the Simandou Investment Framework (Agreement Delivery Team, ADT),

The revised versions of the tax and customs provisions contained in the Basic Convention and BOT Convention as well as the revised version of the Tax Annex form part of the Simandou Investment Framework.

**THE PARTIES HAVE AGREED WHAT FOLLOWS:**

For the purposes of the Amendments and Additions, any reference to Simfer S.A. and its Affiliates shall be construed as a reference to Simfer S.A., the Infrastructure Owner, the Infrastructure Operator and their respective Affiliates.

The terms and expressions used in this revised version of the Tax Annex have the meaning contained in the Basic Convention and BOT Convention unless the context provides otherwise.

**1. TAX TRANSPARENCY AND GOVERNANCE :**

Simfer S.A. pursues a tax strategy that is principled, transparent and sustainable in the long term. Simfer S.A. has established principles governing its tax strategy which have been reviewed and approved by Rio Tinto board of directors. These include the following key points:

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Ces principes incluent les principes suivants :

- a) Une stratégie fiscale qui est alignée sur les impératifs de gestion de Simfer S.A. et de Rio Tinto et en conformité avec le code de conduite mondial : « Notre approche ».
  - b) L'engagement de se conformer aux obligations statutaires et déclaratives et la transparence avec les autorités fiscales.
  - c) La maintenance de procédures documentées en matière de gestion des risques, et la réalisation d'analyse détaillé de risques avant la mise en place d'une planification fiscale.
  - d) Des relations courtoises avec les administrations fiscales, et de considérer avec discernement les conséquences négatives d'une planification fiscale pour la réputation de Simfer S.A. et de Rio Tinto.
  - e) La gestion des affaires fiscales d'une manière proactive qui vise à maximiser la valeur aux actionnaires dans le respect des lois applicables
- a) A tax strategy that is aligned with Simfer S.A. and Rio Tinto business strategy and conforms with Rio Tinto global code of business conduct, "The Way We Work".
  - b) Commitment to ensure full compliance with all statutory obligations, and full disclosure to the applicable fiscal authority.
  - c) Maintenance of documented policies and procedures in relation to tax risk management and completion of thorough risk assessments before entering into any tax planning strategy.
  - d) Sustaining good relations with the applicable fiscal authority, and actively considering the implications of tax planning for the wider corporate reputation of Simfer S.A. and Rio Tinto.
  - e) Management of tax affairs in a pro-active manner that seeks to maximise shareholder value, while operating in accordance with applicable law.

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### 2. TAXE SUR LA VALEUR AJOUTÉE (« TVA ») :

#### 2.1. PROCEDURE D'EXONERATION DE TVA :

Cette section clarifie le principe de l'exonération de TVA de l'Article 28(h) de la Convention de Base et des Articles 30(h) et 30(i) de la Convention BOT portant sur l'Achat de biens et de services en Guinée par Simfer S.A., ses Affiliés, Contractants Exclusifs et Sous-Contractants Exclusifs,

Les Sous-traitants Exclusifs et Sous-sous-traitants Exclusifs seront considérés comme « Exclusifs » au sens de l'Article 28(h) de la Convention de Base et des Articles 30(h) et 30(i) de la Convention BOT lorsque ;

- a) Une entité légale aura été établie en Guinée, et
- b) L'activité de cette entité sera entièrement dédiée à Simfer S.A. ou affiliées pour le Projet Simandou, et
- c) Les revenus de l'entité légale seront obtenus en contrepartie de prestations rendues pour le Projet Simandou.

Un document à buts statistiques mentionnant le montant de la TVA qui a été exonéré sera systématiquement joint à la facture Commerciale remise à Simfer S.A. ou Affilié par le Sous-Traitant Direct. La TVA ne sera pas facturée selon le principe de l'Article 28(h) de la Convention de Base et des Articles 30(h) et 30(i) de la Convention BOT.

La facture commerciale adressée à Simfer S.A. ou Affiliés portera la mention:

*« Dispensé de TVA selon l'Article 28(h) de la Convention de Base conclue entre l'Etat Guinéen et Simfer S.A. et promulguée en droit guinéen par la loi du [•] et les Articles 30(h) et 30(i) de la Convention BOT conclue entre l'Etat guinéen et Simfer S.A. et promulguée en droit guinéen par la loi du [•]. »*

Le document pour l'information statistique en matière de TVA sera utilisé par l'Etat à buts statistiques pour déterminer les montants de l'exonération de TVA dont aura bénéficié le Projet Simandou.

La même procédure que celle prévue ci-dessus s'appliquera en tous points aux transactions entre les Sous-traitants Exclusifs et leurs propres Sous-Traitants Exclusifs.

Les Sous-traitants Exclusifs devront remettre trimestriellement à Simfer S.A. une copie des factures de leurs propres Sous-traitants Exclusifs ainsi que du document statistique TVA.

Simfer S.A. devra soumettre:

- Soumettre trimestriellement à l'Administration Fiscale un rapport détaillant les exonérations de TVA obtenues par ses Affiliés, ses Sous-traitants Exclusifs, et leurs Sous-sous-traitants Exclusifs, et
- la copie des factures commerciales et des documents statistiques TVA y afférents à l'Administration Fiscale avec les informations suivantes: nom, forme légale, résidence fiscale, nature et description des services facturés, date de signature du contrat, période de réalisation des travaux, valeur ainsi que la référence du contrat.

L'Administration fiscale créera un programme de conformité

### 2. VALUE ADDED TAX (« VAT ») :

#### 2.1. VAT EXEMPTION PROCESS :

This section deals with the VAT Exemption provided under Article 28(h) of the Basic Convention and Articles 30(h) and 30(i) of the BOT Convention covering the purchase of tangible goods and services in Guinea by Simfer S.A. or its Affiliates, Exclusive-Contractor or their Exclusive-Sub-Contractor.

Exclusive-Contractor and Exclusive-Sub-Contractor are respectively considered "Exclusive" within the meaning of Article 28(h) of the Basic Convention and Articles 30(h) and 30(i) of the BOT Convention provided that:

- a) A dedicated legal entity is setup in Guinea; and
- b) Such a legal entity operates one-hundred (100) per cent solely for Simfer S.A. or its Affiliates in fulfilment of the Simandou Project; and
- c) Associated revenue streams for the legal entity are derived for the purposes of the Simandou Project.

A VAT Statistical document must accompany the commercial invoice issued to Simfer S.A. or its Affiliates by the Exclusive-Contractor. The commercial invoice is used by Simfer S.A. or its Affiliates to remit payment for the goods and services to the Exclusive-Contractor purchased in Guinea, but VAT is not chargeable by the Exclusive-Contractor in accordance with the application of Article 28(h) of the Basic Convention and Articles 30(h) and 30(i) of the BOT Convention.

The commercial invoice issued to Simfer S.A. or its Affiliates must include the following statement :

*"Guinea VAT is exempt in accordance with Article 28(h) of the Basic Convention entered into between the Republic of Guinea and Simfer S.A. and promulgated into Guinea Law by law dated [•] and Articles 30(h) and 30(i) of the BOT Convention entered into between the Republic of Guinea and Simfer S.A. and promulgated into Guinea Law by law dated [•]"*

The VAT Statistical document is used by the State to determine the amount of VAT Exemption contributed to the Simandou Project.

The same VAT Exemption and process as above mentioned will apply equally for transactions between Exclusive-Contractor and Exclusive-Sub-Contractor.

Exclusive-Contractor shall submit a copy of the Exclusive-Sub-Contractor commercial invoice and VAT Statistical document to Simfer S.A. on a quarterly basis.

Simfer S.A. shall submit:

- A report to the Tax Authorities on a quarterly basis detailing application of the VAT Exemption (including Affiliates, Exclusive-Contractor and Exclusive-Sub-Contractor); and
- Provide the Tax Authority with a list of the Exclusive-Contractor including the following information: name, legal form and fiscal residence; nature and description of the services supplied; date of contract signature; execution period of the work; and value of the contract and contract reference.

The Tax Authorities will create a dedicated governance

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dédié pour s'assurer de la bonne gouvernance dans l'administration et la comptabilité de l'exonération de TVA.

Avec le support des administrations inter-gouvernementales ou multilatérales, l'Etat et Simfer S.A. développeront un programme d'audit indépendant de la chaîne logistique pour identifier les fraudes éventuelles sur une périodicité à déterminer (semestrielle). Cette revue s'assurera que les parties prenantes au Projet Simandou, y compris les autorités fiscales et Simfer S.A. seront en conformité avec les procédures agréées par le moyen des Amendements et Adjonctions et garanties par les Accords Simandou.

*[Note : Ce point est soulevé pour adresser le risque d'abus de l'exonération de TVA]*

### 2.2. PROCEDURE DE REMBOURSEMENT DE TVA :

Les Sous-traitants et les Sous-sous-traitants non exclusifs devront facturer la TVA à Simfer S.A., Affiliés, Sous-traitants Exclusifs, et Sous-sous-traitants Exclusifs aux taux applicable en Guinée.

En conformité avec l'Article 28(h) de la Convention de Base, Simfer S.A., les Affiliés, les Sous-traitants Exclusifs et Sous-sous-traitants Exclusifs sont autorisés à demander le remboursement des crédits de TVA versés aux Sous-traitants non exclusifs à l'exception de la TVA payée au titre des services, équipements et possessions destinés à l'usage exclusif des employés.

Simfer S.A., Affiliés, Sous-traitants Exclusifs, Sous-sous-traitants Exclusifs doivent se soumettre aux obligations déclaratives mensuelles prévues par les procédures de l'Administration Fiscale.

L'Etat s'engage à :

- a. Remettre le remboursement des crédits de TVA à Simfer S.A., Affiliés, Sous-traitants Exclusifs, et ses Sous-sous-traitants Exclusifs dans les 60 (soixante) jours qui suivent la soumission de la déclaration de TVA,
- b. Les crédits de TVA remboursables devront être remis dans les comptes bancaires respectifs de Simfer S.A., Affiliés, Sous-traitants Exclusifs et Sous-sous-traitants Exclusifs ; et
- c. Mettre en place une procédure automatisée de validation des crédits de TVA dans le contexte de la mise en place de la procédure de remboursement à 60 (soixante) jours.

assurance programme for the VAT Exemption accounting and administration process.

With the assistance of intergovernmental/multilateral institutions, the State and Simfer S.A. to develop a programme for an independent third party to audit the (VAT Exemption) supply chain to identify any potential for fraud on a periodic basis (bi-annual). This review will also ensure all applicable Simandou Project stakeholders including the Tax Authority and Simfer S.A are aligned with the agreed processes included by the Amendments and Additions and covered by the Simandou Agreements.

*[Note: This point is raised to address risks of potential abuse of the VAT exemption]*

### 2.2. VAT REFUND PROCEDURE :

Non-Exclusive-Contractor and Non-Exclusive-Sub-Contractor must charge VAT to Simfer S.A., Affiliates, Exclusive Contractor and Exclusive-Sub-Contractor at the applicable rate in Guinea.

In accordance with Article 28(h) of the Basic Convention, Simfer S.A., Affiliates, Exclusive-Contractor and Exclusive-Sub-Contractor are permitted to claim VAT charged by the Non-Exclusive-Contractor and Non-Exclusive-Sub-Contractor, but with the exception of VAT charged on equipment and belongings intended exclusively for personal use by employees.

Simfer S.A., Affiliates, Exclusive-Contractor and Exclusive-Sub-Contractor are to submit a monthly VAT refund application to the Tax Authority.

The State commits to :

- a. Remit VAT refund to Simfer S.A., Affiliates, Exclusive-Contractor and Exclusive-Sub-Contractor within sixty (60) calendar days from the month the VAT refund application was submitted;
- b. Any applicable VAT refund will be paid by the State directly into the bank account of Simfer S.A., Affiliates, Exclusive-Contractor and Exclusive-Sub-Contractor; and
- c. Undertakes automated (not manual) validation steps as part of the (sixty) 60 days VAT refund process.

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### **3. CREDIT D'INVESTISSEMENT DE 5% :**

Sans préjudice des dispositions de l'Article 29.1(f) de la Convention de Base et de l'Article 31.1(f) de la Convention BOT, les investissements réalisés en Guinée donnent lieu à crédit d'impôt qui s'impute à concurrence d'un montant qui ne peut être supérieur ou inférieur à cinq (5) pourcents du montant de l'investissement réalisé selon la règle établie à la section 2.2.7. de l'Annexe Fiscale de 2011 seulement dans l'entreprise ayant réalisé l'investissement.

L'entreprise ayant réalisé cet investissement bénéficiera définitivement de ce crédit d'impôt si elle conserve l'actif ayant été généré par cet investissement pendant un délai d'au moins cinq ans après son acquisition ou pendant la durée d'utilisation normale du bien. Si cette durée n'est pas respectée, le crédit d'impôt préalablement octroyé devra être reversé au titre de l'exercice au cours duquel la condition de durée n'est pas respectée.

### **4. REGIME DES INSPECTIONS AVANT EMBARQUEMENT APPLICABLE AU PROJET :**

Un programme de vérification des importations et d'inspections avant embarquement a été mis en place pour une durée de cinq (5) ans par un contrat avec le Bureau Veritas - BIVAC en date du 31 Mars 2008. Ce programme prévoit des exemptions en les annexes trois (3) et paragraphe seize (16) de l'annexe six (6) lorsque les biens importés sont exonérés de TVA et de droits de douane.

Alors que l'Etat consent à Simfer S.A. une exonération de TVA et de droits à l'importation, les importations font l'objet d'une Inspection Avant Embarquement dont les critères sont les suivants :

- a. Pour les importations dont la valeur FOB est inférieure à US\$ 1,100 : exonération d'inspection physique,
- b. Pour les importations dont la valeur FOB est supérieure à US\$ 1,100 USD et inférieure à US\$3,300: inspection physique aléatoire par et au choix de BV,
- c. Pour les importations dont la valeur FOB est supérieure à US\$3,000: inspection physique systématique de l'ensemble des importations,

Les frais d'inspection s'élèvent à 0.65% de la valeur FOB de la marchandise.

Simfer S.A. et l'Etat reconnaissent que :

- a. Au moment de la mise en place du programme, il n'était pas possible pour l'Etat d'évaluer la dimension et complexité du Projet Simandou et le volume et la complexité des importations prévues en Guinée,
- b. En moyenne, un minimum de cent vingt (120) heures ou cinq (5) jours ouvrables sont nécessaires à la réalisation d'une inspection avant embarquement, et
- c. L'incapacité à optimiser et réduire les inspections physiques avant embarquement vont probablement se traduire par des ralentissements et retards significatifs dans l'exécution des travaux nécessaires à la construction de la mine et des infrastructures

### **3. INVESTMENT CREDIT OF 5% :**

Notwithstanding the Article 29.1(f) of the Basic Convention and Article 31.1(f) of the BOT Convention, the investments in Guinea shall result in a tax credit that amount to a maximum and a minimum of five (5) percent of the investments undertaken according to the principle of section 2.2.7. of the 2011 Tax Annex by the company that has made this investment.

The company that has made the investment will benefit the corresponding tax credit if it retain the corresponding asset for a length of time which is not less than five (5) years or corresponding to the minimum useful life of the asset. If the minimum holding period is not met, the tax credit formerly deducted shall be added back to the fiscal exercise of the year when the minimum holding condition is not met anymore.

### **4. PRE-SHIPMENT PHYSICAL INSPECTIONS REGIME APPLICABLE TO THE PROJECT**

On 31 March 2008 the State awarded BV the Pre Shipment Inspection (PSI) Contract, namely an exclusive five (5) year contract to perform PSI. The Contract provides a specific exemption of PSI in appendix three (3) and paragraph sixteen (16) of appendix six (6) where goods are exonerated from Customs Duty and import taxes including VAT by the State.

Despite the State providing Simfer S.A. with the VAT Exemption and Customs Duty Exemption on goods imported into Guinea – all shipments are subject to PSI criteria as determined by the Contract, namely:

- a. For imports where FOB value is below Dollar \$1,100: full exemption from PSI;
- b. For imports where FOB value is over Dollar \$1,100 and below Dollar \$3,300: random PSI as selected by BV;
- c. For imports where FOB value is over Dollar \$3,000: systematic inspection, i.e. all (Simfer S.A.) shipments are subject to PSI;

BV fee per inspection is 0.65% of the FOB shipment value.

Simfer S.A. and the State consider:

- a. At the time the programme was established, it was not possible for the State to evaluate the size and complexity of the Simandou Project and quantum and complexity of contemplated shipments into Guinea;
- b. On average a minimum of one hundred and twenty (120) hours / five (5) business days are required to perform a single PSI; and
- c. Failure to reduce and streamline the current PSI imposed on Simfer S.A. will lead to significant shipping and customs clearance delays which will severely impact the schedule to implement the Simandou Project.

The State and Simfer S.A. agree to the removal and exoneration of the PSI programme (BV or other service

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associées au Projet.

L'Etat et Simfer S.A. conviennent d'exonérer les importations pour et pour sa durée le Projet Simandou d'inspections avant embarquement de manière à permettre à Simfer S.A. la réalisation du Projet Simandou dans le respect du calendrier du Projet Simandou et la préservation des intérêts économiques aux investisseurs.

Simfer S.A. accepte :

- a. De fournir à l'Administration Douanière la liste des Contractants Exclusifs et les informations suivantes : nom, forme légale, résidence fiscale, nature et description des services facturés, date de signature du contrat, période de réalisation des travaux, valeur ainsi que la référence du contrat ;
- b. De mettre en place un Programme de Sécurité de la Chaîne logistique et Douanière reprenant les besoins de sécurité spécifiques pour la Projet Simandou en conformité avec les autres programmes de sécurité douanière et les principes de l'Organisation Mondiale des Douanes – Le Cadre de Normes SAFE ;
- c. Que le programme relatif à la sécurité de la chaîne d'approvisionnement soit partie des conditions contractuelles des appels d'offres et de sélection des soumissionnaires ;
- d. De mettre en place un processus selon lequel la Direction Générale de Douanes recevra les détails des manifestes des cargos destinés à être expédiés vers la Guinée (« détails des expéditions ») pour les besoins du Projet Simandou :
  - i. le détail des expéditions sera utilisé par Simfer S.A. pour réconcilier le Cahier des Charges dans un document électronique, Liste Minière Electronique détaillé dans la section 6.2 des Amendements et Adjonctions, et
  - ii. Simfer S.A. devra fournir à l'Administration Douanière ce détail des expéditions périodiquement avec la réconciliation du Cahier de Charges Electronique tel que décrit dans la section 6.2 des Amendements et Adjonctions.

### **5. REGIME DES ADMISSIONS TEMPORAIRES :**

L'Etat confirme que:

- a. L'ensemble des biens importés en Guinée (y compris les véhicules utilisés pour le Projet Simandou) pour les besoins du Projet par Simfer S.A. bénéficient du régime des admissions temporaires pour la durée des travaux en conformité avec l'Article 30.1 de la Convention de Base et avec l'Article 32.1 de la Convention BOT,
- b. Le régime des Admissions Temporaires couvre la période d'exploration et des études du Projet Simandou et n'est pas limitée à (5) cinq ans en conformité avec l'Article 30.1 de la Convention de Base et à l'Article 32.1 de la Convention BOT, et
- c. À l'expiration des activités d'étude, tous les articles ainsi admis à titre temporaire peuvent être réexportés, vendus sur le territoire guinéen, donnés à titre

provider) during the life of the Simandou Project to enable the timely delivery of the Simandou Project and ensure economic returns to all shareholders, including the State, are preserved.

Simfer S.A. agrees :

- a. To provide the Customs Authority with a list of the Exclusive-Contractor and the following information: name, legal form and fiscal residence of the Exclusive-Contractor; nature and description of the services supplied; date of contract signature; execution period of the work; and value of the contract and contract reference;
- b. To formalise a dedicated Customs Supply Chain Security Programme reflecting the specific security needs and requirements of the Simandou Project in accordance with other globally recognised customs security programmes and the principles of the World Customs Organisation - SAFE Framework of Standards;
- c. That Customs Supply Chain Security Programme shall form part of the Simandou Project Contractor Tender and Approval document process;
- d. To create a process whereby the Customs Authority is provided with shipping details of consignments destined for Guinea (a "Shipping Schedule") in fulfilment of the Simandou Project:
  - i. A shipping Schedule shall be used by Simfer S.A. to reconcile imports forecast on the Electronic Cahier des Charges, as contemplated in section 6.2 of the Amendments and Additions; and;
  - ii. Simfer S.A. shall provide the Customs Authority with its Shipping Schedule on a periodic basis together with reconciliation of the Electronic Cahier des Charges, as contemplated under section 6.2 of the Amendments and Additions.

### **5. TEMPORARY ADMISSION REGIME :**

The State agrees that:

- a. All goods (including vehicles used for the Simandou Project) imported into Guinea by Simfer S.A. for the exploration and study phase of the Simandou Project shall benefit from the temporary import admission in accordance with the application of Article 30.1 of the Basic Convention and of Article 32.1 of the BOT Convention;
- b. Temporary Import Admission of goods covers the period of the exploration and study phase of the Simandou Project and is not restricted to five (5) years in accordance with Article 30.1 of the Basic Convention and of Article 32.1 of the BOT Convention; and
- c. On expiry of the exploration and study activities, any goods admitted on a temporary import admission basis may be re-exported or transferred to the internal market or other applicable category as

## Amended and Consolidated Basic Convention

gracieux en Guinée, endommagés ou transformés en pièces de rechange.

Category	Customs Duty (remittance position)
Endommagés / Détruits	Pas de droits résiduels dus à l'Autorité Douanière si la prévue de l'affectation à la nouvelle destination ou mise au rebus est fournie et acceptée par l'Administration Douanière.
Transformé en pièces détachées	Similaire à ci-dessus
Donation en Guinée	Similaire à ci-dessus
Vendu localement en Guinée	Taxation sur la valeur résiduelle
Exporté hors de Guinée	Pas de droits résiduels dus à l'Autorité Douanière si la prévue de l'affectation à la nouvelle destination ou mise au rebus est fournie et acceptée par l'Administration Douanière.

### 6. FORMALITES DE DEDOUANEMENT :

#### 6.1. MISE EN PLACE D'UN BUREAU DES DOUANES DÉDIÉ :

L'Etat accepte de :

- Mettre en place un bureau de dédouanement dédié aux importations du Projet Simandou (Equipe Douanière),
- Cette Equipe Douanière sera composée de Douaniers expérimentés habilités à réaliser les formalités douanières couvrant l'ensemble des éléments de la procédure de dédouanement, notamment nomenclature douanière, évaluation, régime d'admission temporaire ou définitif, ainsi que la coordination des inspections postérieures au dédouanement,
- L'Equipe Douanière sera basée dans les mêmes locaux que les employés de Simfer S.A. en charge du dédouanement, y compris le fournisseur de services logistique et transitaires.

Simfer S.A. sera responsable des couts financiers raisonnables associés a la fourniture des locaux ainsi que les équipements de bureaux et la logistique requise par l'équipe douanière pour réaliser les formalités de dédouanement. Un budget sera établi et approuvé par Simfer S.A. et l'Administration Douanière.

L'Etat et Simfer S.A, confirment que cet accord :

- Simplifie et optimise la procédure actuelle de dédouanement qui autrement se traduirait en des

follows.

Category	Customs Duty (remittance position)
Damaged / written off	No (residual) customs duty to remit to the Customs Authority provided proof of category use is documented, made available and validated by the Customs Authority
Salvaged for spare parts	As above
Donated for free in Guinea	As above
Sold locally in Guinea	Residual customs value remitted to the Customs Authority
Sold / exported from Guinea	No (residual) customs duty to remit to the Customs Authority provided proof of category use is documented, made available and validated by the Customs Authority

### 6. CUSTOMS CLEARANCE FORMALITIES :

#### 6.1. CREATION OF A DEDICATED CUSTOMS OFFICE:

The State agrees to:

- Make available duly qualified persons to undertake Customs Clearance dedicated to the Simandou Project (referred to as "Customs Team" hereafter);
- The Customs Team will consist of experienced Customs Officers employed by the Customs Authority authorised to approve Customs Clearance covering the various Customs Clearance disciplines including Tariff Classification, Valuation, Origin, Temporary Import Application and Permanent Import Application as well as the coordination of Post Clearance Verification and Inspections; and
- Customs Team will be located at the same designed business premises with Simfer S.A. employees responsible for Customs Clearance including the Logistics Partner and Customs Broker.

Simfer S.A. shall be responsible for any reasonable financial costs associated with the business premises including office rental and associated utility costs as well as relevant office equipment and logistics reasonably required by the Customs Team to undertake Customs Clearance. A budget for such costs shall be established and approved between the Customs authority and Simfer S.A.

The State and Simfer S.A. agree that this arrangement:

- Simplifies and streamlines the current Customs Clearance process which would delay supply chain

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délais dans l'importation qui pourrait aller jusqu'à remettre en cause la viabilité économique du Projet Simandou, et

- b. Sera revu périodiquement.

### 6.2. CAHIER DES CHARGES ÉLECTRONIQUE :

L'Etat et Simfer S.A. ont conclu un accord à l'effet d'établir un registre électronique des équipements importés permettant l'échange de données avec la Douane en temps réel.

Le registre électronique des équipements importés comprendra les informations suivantes:

- a. Identification de Simfer S.A., Affiliés, Contractants et Sous-Contractants. utilisant l'exonération de TVA à l'importation et de droits de douanes dans le cadre du projet Simandou ;
- b. Description des biens ;
- c. Nomenclature douanière ;
- d. Valeur estimées et réelles de :
  - i. Quantités de biens
  - ii. Valeur unitaire et
  - iii. Valeur importée
- e. Réconciliation des quantités estimées et réelles importées sur la période de référence, soit l'année calendaire,
- f. Identification des équipements admis sous le régime des admissions temporaires y compris les mouvements, lieu de stockage et destination en Guinée,
- g. Identification des biens admis sous le régime des admissions temporaires mais par la suite :
  - i. Endommagés,
  - ii. Détruits,
  - iii. Transformés en pièces de rechange,
  - iv. Donnés à titre gracieux en Guinée,
  - v. Vendus en Guinée,
  - vi. Réexporté.
- h. Liste des biens restant en Guinée mais utilisés pour des activités autres que celles du Projet Simandou,
- i. Biens admis en Guinée sous le régime des admissions définitives.

L'Etat confirme son accord pour :

- a. L'utilisation du registre électronique des importations et sa gestion par l'Administration Douanière ;
- b. Les modifications en temps réel au Cahier des Charges Electronique pour les éléments repris dans cette section ;
- c. Information du cahier de charges électroniques devra remplacer le processus manuel ou Simfer S.A. produit

lead times and ultimately severely impact the implementation schedule and economic viability of the Simandou Project; and

- b. Will be reviewed from time to time.

### 6.2. ELECTRONIC "CAHIER DES CHARGES":

State and Simfer S.A. agree to create an Electronic Cahier des Charges allowing for real-time information exchange between Simfer S.A. and the Customs Authority.

The Electronic Cahier des Charges is to include, but not limited to these data fields:

- a. Identification of Simfer S.A., Affiliates, Direct-Contractor or Direct-Sub-Contractor using the Customs Duty Exemption and VAT Exemption (import VAT) to import goods into Guinea for the purposes of the Simandou Project;
- b. Description of goods;
- c. Tariff Classification of the goods;
- d. Estimated and actual:
  - i. Quantity of goods;
  - ii. Value per item; and
  - iii. Value of goods.
- e. Reconciliation and balance between estimate imports and actual imports undertaken during the relevant accounting period;
- f. Goods imported under the Temporary Import Application including a record of their movement, storage and destination in the State;
- g. Identification of goods imported into the State under the Temporary Import Application, but subsequently:
  - i. Damaged;
  - ii. Written off;
  - iii. Salvaged for spare parts;
  - iv. Donated for free in Guinea;
  - v. Sold locally in Guinea; and
  - vi. Exported from Guinea.
- h. Goods remaining in Guinea and used for non-Simfer S.A. commercial activities; and
- i. Goods imported into Guinea under the Permanent Import Application.

The State agrees to:

- a. Accept the Electronic Cahier des Charges and for this to be managed by the Customs Team ;
- b. Accept real-time amendments to the Electronic Cahier des Charges for items captured in this section; and
- c. Information on the Electronic Cahier des Charges to replace the manual process of Simfer S.A. requesting Customs Duty and VAT (import) Exoneration Letters from the State for each shipment Simfer S.A. undertakes in connection with the Simandou Project.

## Amended and Consolidated Basic Convention

une demande d'exonération de droit de douane et de TVA à l'importation pour chaque importations que Simfer S,A. réalise en lien avec le Projet Simandou.

### 7. EXERCICE FISCAL :

Nonobstant les dispositions de l'Article 36 de la Convention de Base et de l'Article 37 de la Convention BOT, la durée d'un exercice comptable de Simfer S.A. et de ses Affiliées sera de douze mois du premier janvier au 31 décembre de chaque année, excepté le premier exercice qui peut avoir une durée plus courte ou plus longue, dans la limite de deux ans.

La clôture de l'exercice fiscal de Simfer S.A. et de ses Affiliés coïncidera avec la clôture de l'exercice comptable et l'année civile.

\*\*\*

### 7. FISCAL YEAR :

Notwithstanding the provisions of Article 36 of the Basic Convention and of Article 37 of the BOT Convention, the duration of an accounting year of Simfer S.A. and Affiliates will be of 12 month from the 1<sup>st</sup> of January to the 31th of December each year, to the exception of the first exercise which may have a longer or shorter duration than a year, in a maximum of two years.

The end of the fiscal year of Simfer S.A. and Affiliates will coincide with the accounting closing date as well as with the calendar year.

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## Appendix 3: Concession Decree

J.O Avril 2011

JOURNAL OFFICIEL DE LA REPUBLIQUE DE GUINEE

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**DECRET D/2011/132/PRG/SGG DU 20 AVRIL 2011,  
PORTANT NOMINATION D'UN COMMANDEUR  
DE L'ORDRE NATIONAL DU MERITE**

**LE PRESIDENT DE LA REPUBLIQUE,**

**Vu** la Constitution ;  
**Vu** l'Ordonnance n° 116/PRG/SGG du 22 Septembre 1986, portant création de l'Ordre National du Mérite ;  
**Vu** la Loi n° L/94/002/CTRN du 26 Janvier 1994, modifiant et complétant l'Ordonnance N°116/PRG/SGG du 22 Septembre 1986 ;  
**Vu** le Décret n°D/94/003 du 26 Janvier 1994, nommant le Grand Chancelier de l'Ordre National du Mérite.

**DECRETE :**

**Article 1<sup>er</sup>** : Le grade de **COMMANDEUR DE L'ORDRE NATIONAL DU MERITE DE LA REPUBLIQUE DE GUINEE** est **décerné à son Excellence Monsieur DIMITRY MALEV**, Ambassadeur Extraordinaire et Plénipotentiaire de la Fédération de Russie en République de Guinée pour sa contribution de qualité au renforcement de la coopération et de l'Amitié entre les deux (2) pays.

**Article 2** : Le présent Décret qui prend effet à compter de sa date de signature sera enregistré et publié au Journal Officiel de la République.

Conakry, le 20 Avril 2011

**Professeur Alpha CONDE**

**DECRET D/2011/133/PRG/SGG DU 21 AVRIL 2011,  
PORTANT NOMINATION DE CADRES AU CABINET DU  
MINISTRE DELEGUE DES TRANSPORTS**

**LE PRESIDENT DE LA REPUBLIQUE,**

**Vu** la Constitution ;  
**Vu** le Décret D/2010/007/PRG/SGG du 24 Décembre 2010, portant nomination du Premier Ministre, Chef du Gouvernement ;  
**Vu** les Décrets D/2010/009/PRG/SGG du 27 Décembre 2010, D/2010/016/PRG/SGG du 30 Décembre 2010 et D/2011/002/PRG/SGG du 04 Janvier 2011, portant nomination de Ministres ;

**DECRETE :**

**Article 1<sup>er</sup>** : Les cadres dont les noms suivent, sont nommés dans les fonctions ci-après :

- SECRETAIRE GENERAL : **Mr Cheick TOURE**, Ingénieur des Travaux Publics ;
- CHEF DE CABINET : **Mr Cheick Fantamady CONDE**, Professeur ;
- CONSEILLER TECHNIQUE : **Mme Oumou DIALLO**, Administrateur civil, précédemment en service à la Direction Nationale de l'Aviation civile ;
- CONSEILLER JURIDIQUE : **Mr Ahmed HALABI**, Juriste, confirmé ;
- CONSEILLER ECONOMIQUE : **Mr Ibrahima Sory KABA**, Administrateur civil, confirmé ;
- CONSEILLER CHARGE DE MISSION : **Mr Mohamed SOUMAH**, Ingénieur en Télécommunication aéronautique, confirmé.

**Article 2** : Le présent Décret qui prend effet à compter de sa date de signature sera enregistré et publié au Journal Officiel de la République.

Conakry, le 21 Avril 2011

**Professeur Alpha CONDE**

**DECRET D/2011/134/PRG/SGG DU 22 AVRIL 2011,  
PORTANT OCTROI D'UNE CONCESSION MINIERE A LA  
SOCIETE SIMFER SA SUR LE MONT SIMANDOU.**

**LE PRESIDENT DE LA REPUBLIQUE,**

**Vu** La Constitution ;

**Vu** La Loi L/95/036/CTRN portant Code Minier de la République de Guinée ;

**Vu** La Loi L/2003/003/AN du 03 février 2003 portant ratification de la Convention de base entre la République de Guinée et SIMFER S.A pour l'exploitation des gisements de fer de Simandou ;

**Vu** Le Décret D/2010/007/PRG/SGG du 24 décembre 2010, portant nomination du Premier Ministre, Chef du Gouvernement ;

**Vu** Les Décrets D/2010/009/PRG/SGG du 27 décembre 2010, D/2010/016/PRG/SGG du 30 décembre 2010 et D/2011/002/PRG/SGG du 04 janvier 2011, portant nomination de Ministres ;

**Vu** La lettre N°11/072/B1V1/Simfer du 22 février 2011 de la Société SIMFER relative à une demande de Concession minière sur les blocs 3 et 4 de la chaîne du Simandou ;

Sur recommandation du Ministre des Mines et de la Géologie

**DECRETE :**

**Article 1<sup>er</sup>** : Il est accordé à la Société **SIMFER SA**, filiale du Groupe RIO TINTO, dont le siège social est établi à Conakry, République de Guinée, une Concession minière pour la prospection et l'exploitation du minerai de fer dans la partie Sud du mont Simandou dans les Préfectures de Beyla, Macenta et Kérouané, sur une longueur de cinquante cinq (55 km) et une superficie totale de trois cents soixante neuf Kilomètres carrés (369 Km<sup>2</sup>).

**Article 2** : La durée de validité de la présente Concession est fixée à Vingt cinq (25) ans, renouvelable conformément aux dispositions de l'Article 4 de la Convention de Base entre la **République de Guinée et SIMFER SA**.

La présente Concession est inscrite dans le Registre des Titres Miniers ouvert à cet effet à la Division Informations Géologiques et Minières (DIGM) du Centre de Promotion et de Développement Miniers / Ministère des Mines, de l'Energie et de l'Hydraulique, sous le Numéro

**A2011/011/DIGM/CPDM. Article 3** : Conformément au plan 1/200.000ème de la feuille Beyla, le périmètre de la Concession ainsi accordée est défini par les coordonnées géographiques ci-dessous :

POINTS	LATITUDE NORD	LONGITUDE OUEST
A	8°54'40"	8°57'00"
B	8°54'40"	8°52'00"
C	8°51'00"	8°52'00"
D	8°51'00"	8°51'00"
E	8°49'00"	8°51'00"
F	8°49'00"	8°50'00"
G	8°39'00"	8°50'00"
H	8°39'00"	8°52'00"
I	8°30'00"	8°52'00"
J	8°30'00"	8°51'00"
K	8°25'00"	8°51'00"
L	8°25'00"	8°55'00"
M	8°30'00"	8°55'00"
N	8°30'00"	8°56'00"
O	8°33'00"	8°56'00"
P	8°33'00"	8°58'00"
Q	8°35'00"	8°58'00"
R	8°35'00"	8°55'00"
S	8°41'00"	8°55'00"
T	8°41'00"	8°53'00"
U	8°49'00"	8°53'00"
V	8°49'00"	8°54'00"
W	8°50'00"	8°54'00"
X	8°50'00"	8°55'00"
Y	8°54'00"	8°55'00"
Z	8°54'00"	8°57'00"

Cf. Carte annexe

**Article 4 :** L'état de connaissance du potentiel en minéral de fer commercialement exploitable dans les principales cibles de la concession nécessitant une amélioration continue, **SIMFER S.A** devra poursuivre les travaux de recherches et de prospection permettant de réaliser une évaluation aussi complète que possible de ce potentiel.

**Article 5 :** La valorisation optimale des ressources de la concession exige la prise en compte de l'ensemble des minerais (rocheux et poudreux), y compris ceux sensés pouvoir être traités et/ou transformés sur place. Dans ces conditions, au cas où **SIMFER SA** souhaite participer également à la valorisation des ressources et réserves classées non exportables par elle ou qui le seront ultérieurement, elle devra présenter à l'Etat, au plus tard dans les deux (2) prochaines années suivant la signature du présent Décret, son propre plan de valorisation de telles ressources et réserves.

Dans le cas contraire, l'Etat se réserve le droit de les attribuer à d'autres partenaires capables d'assurer cette valorisation à travers un créneau prévoyant notamment la transformation sur place des ressources et réserves concernées.

**Article 6 :** Pour le suivi de l'exécution des dispositions énoncées aux articles 3 et 4 ci-dessus, **SINIFER SA** est tenue de déposer régulièrement au CPDM (Centre de Promotion et de Développement Miniers), en cinq (5) exemplaires, ses rapports d'activités.

**Article 7 :** Pendant la période de validité du présent Titre, l'Etat guinéen pourra entreprendre ou faire entreprendre à l'intérieur de la concession définie ci-dessus des opérations de recherches et/ou d'exploitation de substances minérales autres que le fer, sous réserve que ces opérations ne causent pas de préjudice à la conduite normale des activités de **SIMFER S.A.**

**Article 8:** Au titre de la présente concession minière, les obligations de son titulaire, la Société **SIMFER S.A.**, relatives au respect de la réglementation de l'hygiène et de la sécurité des travailleurs, à la préservation de l'environnement et à la remise en état des zones affectées par les travaux sont régies conformément aux dispositions visées aux articles 16, 132, 133, 134 et 135 du Code Minier, aux articles 20, 60, 69 du Code de l'Environnement et celles visées à l'article 37 de la convention de Base signée le 26 novembre 2002.

**Article 9:** Outre les dispositions mentionnées ci-dessus, le titulaire (**SIMFER S.A.**) est soumis au paiement :

«Des frais d'instruction des dossiers, fixés forfaitaires suivant l'Arrêté Conjoint N°A2008/3765./MEF-MIV1G/SGG. du 10 Octobre 2008 à Trois mille (3000) Dollars US par permis, soit au total Trois mille (3000) Dollars US, payables en Francs Guinéens au taux du jour au Compte du CPDM.

«D'une redevance superficière annuelle fixée suivant l'Arrêté Conjoint N°A2008/ 3765./MEF-MMG/SGG. du 10 Octobre 2008 à Cent cinquante Dollars US par Km<sup>2</sup> (150 SUS/Km<sup>2</sup>/an), soit au total Cinquante cinq mille trois cents cinquante (55.350) Dollars US, payables en Francs Guinéens au taux du jour, au lieu d'implantation de la Concession susvisée.

«D'un montant d'un million huit cents quarante cinq mille Dollars US (1 845 000 USD) correspondant aux droits fixes suivant l'Arrêté Conjoint N°A2008/3765./MEF- MMG/SGG. du 10 Octobre 2008 soit cinq mille par Km<sup>2</sup> (5 000 USD/Km<sup>2</sup>) payables en francs guinéens.

Cinq copies certifiées du reçu de versement de la redevance superficières et des droits fixes doivent être déposées obligatoirement au CPDM, pour vérification et enregistrement.

**Article 10:** Avant même l'expiration de la période pour laquelle le présent titre est accordé, il pourrait y être mis fin et faire l'objet de retrait par l'Etat guinéen au cas où le titulaire, à savoir la société SIMFER SA, manquerait à ses obligations lui incombant en vertu des articles 3, 4 et 6 ci-dessus ;

**Article 11:** Le Ministère des Mines et de la Géologie est chargé de l'application du présent Décret.

**Article 12 :** Le présent Décret qui abroge toutes dispositions contraires prend effet à compter de sa date de signature sera enregistré et publié au Journal Officiel de la République.

Conakry le 22 AVRIL 2010

**Professeur Alpha CONDE**

Président de la République\_Chef de l'Etat

**DECRET D/2011/135/PRG/SGG DU 22 AVRIL 2011,  
PORTANT APPROBATION DE LA CESSION  
D' ACTIONS ENTRE RIO TINTO ET CHINALCO.**

LE PRESIDENT DE LA REPUBLIQUE,

Vu La Constitution ;

Vu La Loi L195/036/CTRN du 30 juin 1995 portant Code Minier de la République de Guinée ;

Vu La Loi L/2003/003/AN du 03 février 2003 portant ratification de la Convention de base entre la République de Guinée et SIMFER S.A pour l'exploitation des gisements de fer de Simandou ;

Vu Le Décret D/2010/007/PRG/SGG du 24 décembre 2010, portant nomination du Premier Ministre, Chef du Gouvernement ;

Vu Les Décrets D/2010/009PRG/SGG du 27 décembre 2010, D/2010/016/PRG/SGG du 30 décembre 2010 et D/2011/002/PRG/SGG du 04 janvier 2011, portant nomination de Ministres ;

Sur recommandation du Ministre des Mines et de la Géologie

**DECRETE :**

**Article 1° :** En application des dispositions de l'article 62 du Code minier, est approuvé, l'Accord entre le Groupe Rio Tinto PLC et la société **CHINALCO** rendu public le 19 mars 2010, portant sur une prise de participation de cette dernière dans le capital de **SIMFER JERSEY Limited** devenue actionnaire majoritaire de **SIMFER S.A**, société de droit guinéen.

**Article 2 :** Le présent Décret qui prend effet à compter de sa date de signature sera enregistré et publié au Journal Officiel de la République.

Conakry le 22 AVRIL 2010

**Professeur Alpha CONDE**

Président de la République\_Chef de l'Etat

## Appendix 4: Consent Decree

**Article 8:** Au titre de la présente concession minière, les obligations de son titulaire, la Société **SIMFER S.A.**, relatives au respect de la réglementation de l'hygiène et de la sécurité des travailleurs, à la préservation de l'environnement et à la remise en état des zones affectées par les travaux sont régies conformément aux dispositions visées aux articles 16, 132, 133, 134 et 135 du Code Minier, aux articles 20, 60, 69 du Code de l'Environnement et celles visées à l'article 37 de la convention de Base signée le 26 novembre 2002.

**Article 9:** Outre les dispositions mentionnées ci-dessus, le titulaire (**SIMFER S.A.**) est soumis au paiement :

« Des frais d'instruction des dossiers, fixés forfaitaires suivant l'Arrêté Conjoint N°A2008/3765./MEF-MIV1G/SGG. du 10 Octobre 2008 à Trois mille (3000) Dollars US par permis, soit au total Trois mille (3000) Dollars US, payables en Francs Guinéens au taux du jour au Compte du CPDM.

« D'une redevance superficière annuelle fixée suivant l'Arrêté Conjoint N°A2008/ 3765./MEF-MMG/SGG. du 10 Octobre 2008 à Cent cinquante Dollars US par Km<sup>2</sup> (150 SUS/Km<sup>2</sup>/an), soit au total Cinquante cinq mille trois cents cinquante (55.350) Dollars US, payables en Francs Guinéens au taux du jour, au lieu d'implantation de la Concession susvisée.

« D'un montant d'un million huit cents quarante cinq mille Dollars US (1 845 000 USD) correspondant aux droits fixes suivant l'Arrêté Conjoint N°A2008/3765./MEF- MMG/SGG. du 10 Octobre 2008 soit cinq mille par Km<sup>2</sup> (5 000 USD/Km<sup>2</sup>) payables en francs guinéens.

Cinq copies certifiées du reçu de versement de la redevance superficières et des droits fixes doivent être déposées obligatoirement au CPDM, pour vérification et enregistrement.

**Article 10:** Avant même l'expiration de la période pour laquelle le présent titre est accordé, il pourrait y être mis fin et faire l'objet de retrait par l'Etat guinéen au cas où le titulaire, à savoir la société **SIMFER SA**, manquerait à ses obligations lui incombant en vertu des articles 3, 4 et 6 ci-dessus ;

**Article 11:** Le Ministère des Mines et de la Géologie est chargé de l'application du présent Décret.

**Article 12 :** Le présent Décret qui abroge toutes dispositions contraires prend effet à compter de sa date de signature sera enregistré et publié au Journal Officiel de la République.

Conakry le 22 AVRIL 2010

**Professeur Alpha CONDE**

Président de la République Chef de l'Etat

**DECRET D/2011/135/PRG/SGG DU 22 AVRIL 2011,  
PORTANT APPROBATION DE LA CESSION  
D'ACTIONS ENTRE RIO TINTO ET CHINALCO.**

LE PRESIDENT DE LA REPUBLIQUE,

Vu La Constitution ;

Vu La Loi L195/036/CTRN du 30 juin 1995 portant Code Minier de la République de Guinée ;

Vu La Loi L/2003/003/AN du 03 février 2003 portant ratification de la Convention de base entre la République de Guinée et **SIMFER S.A** pour l'exploitation des gisements de fer de Simandou ;

Vu Le Décret D/2010/007/PRG/SGG du 24 décembre 2010, portant nomination du Premier Ministre, Chef du Gouvernement ;

Vu Les Décrets D/2010/009PRG/SGG du 27 décembre 2010, D/2010/016/PRG/SGG du 30 décembre 2010 et D/2011/002/PRG/SGG du 04 janvier 2011, portant nomination de Ministres ;

Sur recommandation du Ministre des Mines et de la Géologie

**DECRETE :**

**Article 1\*** : En application des dispositions de l'article 62 du Code minier, est approuvé, l'Accord entre le Groupe Rio Tinto PLC et la société **CHINALCO** rendu public le 19 mars 2010, portant sur une prise de participation de cette dernière dans le capital de **SIMFER JERSEY Limited** devenue actionnaire majoritaire de **SIMFER S.A**, société de droit guinéen.

**Article 2 :** Le présent Décret qui prend effet à compter de sa date de signature sera enregistré et publié au Journal Officiel de la République.

Conakry le 22 AVRIL 2010

**Professeur Alpha CONDE**

Président de la République Chef de l'Etat

**Appendix 5: PIN Decree**

Cinquante quatrième année    REPUBLIQUE DE GUINEE    SPECIAL OCTOBRE 2012  
TRAVAIL    SOLIDARITE

# 3ème REPUBLIQUE



## JOURNAL OFFICIEL

### DE LA REPUBLIQUE DE GUINEE

## SPECIAL OCTOBRE 2012

### PRIX : 50.000 GNF

SECRETARIAT GENERAL DU GOUVERNEMENT  
RUE KA 022 QUARTIER BOULBINET COMMUNE DE KALCUM  
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### PRESIDENCE DE LA REPUBLIQUE SECRETARIAT GENERAL DU GOUVERNEMENT

#### DECRETS

DECRET D/2012/108/PRG/SGG DU 04 OCTOBRE 2012, PORTANT DECLARATION DE PROJET D'INTERET NATIONAL POUR LA CONSTRUCTION DU CHEMIN DE FER MINIER ET DU PORT EN EAUX PROFONDES LIES AU TRANSPORT ET A L'EVACUATION DES MINERAIS DE FER DE SIMANDOU SUD.

#### LE PRESIDENT DE LA REPUBLIQUE,

Vu la Constitution ;  
Vu le Code foncier et domanial, notamment en son article 90 ;  
Vu la Loi L/98/017/AN du 13 Juillet 1998, portant Code de l'Urbanisme de la République de Guinée et notamment ses articles L 121-11 et suivants et L 328-1 et suivants ;  
Vu la Loi L/2003/003/AN du 03 Février 2003, ratifiant et promulguant la Convention de base conclue le 26 Novembre 2002 entre la République de Guinée et la Société SIMFER S.A pour l'exploitation des gisements de fer de Simandou « la Convention de Base » ;  
Vu le Décret D/2010/007/PRG/SGG du 24 Décembre 2010, portant nomination du Premier Ministre, Chef du Gouvernement ;  
Vu les Décrets D/2010/009/PRG/SGG du 27 Décembre 2010, D/2010/016/PRG/SGG du 30 Décembre 2010 et D/2011/002/PRG/SGG du 04 Janvier 2011, portant nomination de ministres ;  
Vu le Décret D/2011/134/PRG/SGG du 22 Avril 2011, portant octroi d'une Concession minière à la société SIMFER SA pour l'exploitation des gisements de fer de Simandou ;  
Vu le Décret D/2011/218/PRG/SGG du 11 Août 2011, portant Création de la SOGUIPAMI (Société Guinéenne du Patrimoine Minier) ;  
Vu l'Accord Transactionnel conclu le 22 Avril 2011 entre la République de Guinée, SIMFER S.A. et Rio Tinto Mining and Exploitation Limited « Accord Transactionnel » ;  
Sur proposition du Ministre de l'Habitat, de l'Urbanisme et de la Construction et du Ministre des Mines et de la Géologie, le Conseil des Ministres ayant délibéré.

#### DECRETE :

**Article 1<sup>er</sup> :** Sont déclarés Projet d'Intérêt National, le projet de construction d'infrastructures ferroviaires et portuaires ainsi que toutes les installations connexes nécessaires ou utiles aux activités d'extension, de transport de minerais de fer et d'autres minerais « les Infrastructures » provenant en particulier du périmètre visé dans le décret D/2011/134/PRG/SGG du 22 avril 2011 et des gisements de minéraux utiles situés le long du tracé et qui seront réalisées par la Société dédiée aux Infrastructures (SPV) devant être créées conformément à l'Accord Transactionnel conclu entre l'Etat et Rio Tinto le 22 Avril 2011, ayant pour actionnaires (I) SOGUIPAMI (Société Guinéenne du Patrimoine Minier) et (II) SIMFER. SA. ou leurs sociétés affiliées ou, en cas de défaillance de la SPV, par toute autre entité qui pourrait ultérieurement être désignée pour la remplacer à l'effet de réaliser les dites infrastructures (la SPV et l'autre entité sont ci-après désignées individuellement « la Société de Réalisation des Infrastructures »).

**Article 2:** Le périmètre au sein duquel seront délimitées les emprises nécessaires à la réalisation des infrastructures « le Périmètre de l'Opération » est délimité en couleur orange et tel qu'indiquée par des coordonnées géographiques sur la carte annexée au présent Décret qui en fait partie intégrante et précise ses coordonnées. Il est caractérisé :

- Pour le chemin de fer, par un corridor d'une largeur d'environ 5 kilomètres, sauf pour la région montagneuse de Mamou où le corridor sera plus large ; et
- Pour le port en eaux profondes, par un périmètre situé dans la zone des îles Kabak et Kakossa, préfecture de Forécariah.

**Article 3:** Le Périmètre d'Opération constitue un périmètre d'intervention foncière créé au profit de l'Etat. Il est expressément prévu que la SOGUIPAMI agissant au nom et pour le compte de l'Etat « l'Entité Disposant d'un Droit de Prémption » dispose, à l'intérieur de ce périmètre, d'un droit de préemption sur tout immeuble bâti ou non bâti faisant l'objet d'une aliénation volontaire à titre onéreux sous quelque forme que ce soit.

Ce droit sera mis en œuvre conformément aux articles L.312-1 et suivant du Code de l'urbanisme, étant précisé que tout projet d'opération visée à l'article L.312-1 du Code de l'Urbanisme envisagé au sein du Périmètre d'Opération devra, avant toute réalisation, être notifié au Préfet de la localité concernée. Obligation est faite au service des Domaines, aux notaires ainsi qu'à tout officier public intervenant dans le Périmètre de l'opération, à quelque titre que ce soit, d'informer les parties concernées du droit de préemption de l'entité disposant d'un droit de Prémption.

Toute opération conclue sans respecter cette procédure est nulle de plein droit.

Les immeubles nécessaires à la réalisation des Infrastructures ou acquis par l'Etat en application du présent article ou de toute autre manière, pourront faire l'objet de réserves foncières et ne pourront être cédés, sauf en vue de la réalisation des infrastructures.

**Article 4 :** Sauf s'ils sont nécessaires à la réalisation des Infrastructures:

- les nouvelles exploitations de mines, de carrières, ainsi que tous types de travaux pouvant porter atteinte à l'intégrité des terrains compris dans les Périmètres de l'Opération sont interdits et ne pourront faire l'objet d'une quelconque autorisation de la part des autorités administratives;

- les autorisations relatives à tous autres travaux, ouvrages et installations seront soumises à l'avis préalable du Ministre de l'Habitat, de l'Urbanisme et de la Construction. L'autorisation sera refusée si le Ministre de l'Habitat, de l'Urbanisme et de la Construction considère que ces travaux, ouvrages et installations ne respectent pas les dispositions nécessaires à la réalisation des Infrastructures, et, notamment, si, au regard des rapports des services spécialisés, ils font obstacle à la conduite des études et travaux visés à l'article 6 du présent Décret.

Les constructions autres que celles nécessaires à la réalisation des Infrastructures sont régies par les dispositions des articles R.121-15 et R.221-5 du Code de l'Urbanisme.

Les contraventions aux dispositions du présent article sont passibles de sanctions prévues à l'article L.121-17 du code de l'urbanisme.

**Article 5 :** Le Projet d'intérêt National restera en vigueur jusqu'au 31 décembre 2014. Dans l'hypothèse où, à cette date, l'ensemble des immeubles nécessaires à la réalisation des Infrastructures n'auraient pas été affectés à la Société de réalisation des Infrastructures, le projet d'intérêt National demeure en vigueur jusqu'à ce que cela soit le cas.

En vue de leur mise à la disposition exclusive de la Société de Réalisation des Infrastructures et de ses contractants pour les besoins du Projet d'Intérêt National, les immeubles et droits immobiliers situés ou détenus à l'intérieur du Périmètre d'Opération feront l'objet, en tant que de besoin, d'une procédure conforme au Code foncier et domanial après Déclaration d'Utilité Publique (DUP).

Suite à l'approbation des études techniques, environnementales et sociales requises, le tracé définitif ayant fait l'objet d'accord entre la Société de Réalisation des Infrastructures et l'Etat, sera défini par un Décret pris dans le cadre de la procédure visée à l'alinéa précédent (Décret de Déclaration d'Utilité Publique).

**Article 6 :** La Société de Réalisation des Infrastructures et ses contractants sont autorisés à accéder à tous terrains compris dans le Périmètre d'Opération et à les occuper afin de réaliser les études et travaux nécessaires ou utiles à la réalisation des Infrastructures. Dans tous les cas, la Société de Réalisation des Infrastructures aura priorité absolue sur toute autre Société de Réalisation des infrastructures pour ce qui concerne l'accès de l'occupation des terrains situés à l'intérieur du périmètre de l'opération, conformément à la Convention de Base et à l'Accord Transactionnel.

Les autorités compétentes, y compris leurs services déconcentrés, sont chargées de faciliter et coordonner cet accès. A cet effet, elles veilleront à ce que les propriétaires de terrains et exploitants d'activités réalisées conformément aux lois et règlements, au jour de la publication du présent Décret prennent les dispositions nécessaires pour permettre à la Société de Réalisation des Infrastructures et ses contractants de réaliser les études et travaux visés à l'alinéa 1<sup>er</sup> du présent Décret.

**Article 7:** Les Ministres d'Etat en Charge des Travaux Publics et des Transports, de l'Energie et de l'Environnement et les Ministres en charge de l'Habitat, de l'Urbanisme et de la Construction, des Mines et de la Géologie, de l'Administration du Territoire et de la Décentralisation, de la Sécurité et de la Protection Civile, de l'Agriculture, de l'Elevage, de la Pêche et de l'Aquaculture, ainsi que les Gouverneurs, les Préfets, et les sous-Préfets et tous autres représentants de l'Administration déconcentrée sont chargés, chacun pour ce qui le concerne, de l'application du présent Décret.

**Article 8:** Le présent Décret qui abroge toutes dispositions antérieures contraires, prend effet à compter de sa date de signature, sera enregistré et publié au Journal Officiel de la République.

Conakry, le 04 Octobre 2012

Prof. Alpha CONDE

Système de Coordonnées Géographiques : GCS\_WGS\_1984  
Coordonnées originales en Degré décimal transformées en Degré minutes secondes

Point	Longitude	Latitude	Point	Longitude	Latitude
1	9°1'20,812"W	9°9'5,170"N	81	12°26'11,545"W	9°54'23,912"N
2	9°0'28,803"W	8°59'39,422"N	82	12°33'41,881"W	9°49'19,891"N
3	8°55'2,365"W	8°45'6,462"N	83	12°36'30,093"W	9°49'15,449"N
4	8°51'58,074"W	8°45'5,256"N	84	12°37'30,284"W	9°48'35,752"N
5	8°50'7,366"W	8°45'36,027"N	85	12°38'18,671"W	9°46'20,990"N
6	8°47'1,360"W	8°45'20,239"N	86	12°37'9,531"W	9°42'6,085"N
7	8°45'23,961"W	8°44'9,678"N	87	12°40'12,192"W	9°41'36,034"N
8	8°45'23,799"W	8°43'29,370"N	88	12°43'0,542"W	9°36'22,051"N
9	8°45'24,180"W	8°36'27,198"N	89	12°47'56,897"W	9°28'46,885"N
10	8°50'59,633"W	8°36'27,179"N	90	13°0'36,442"W	9°28'46,192"N
11	8°50'59,555"W	8°34'59,426"N	91	13°6'23,754"W	9°28'17,810"N
12	8°50'59,734"W	8°30'13,506"N	92	13°12'39,172"W	9°27'44,961"N
13	8°49'52,724"W	8°30'13,479"N	93	13°15'53,668"W	9°24'28,137"N
14	8°49'52,243"W	8°27'43,378"N	94	13°19'19,743"W	9°13'33,861"N
15	8°51'0,331"W	8°27'43,406"N	95	13°24'0,605"W	9°10'52,178"N
16	8°51'0,001"W	8°25'0,000"N	96	13°29'55,207"W	9°8'24,528"N
17	8°52'19,481"W	8°25'0,094"N	97	13°32'38,505"W	9°8'25,188"N
18	8°52'59,217"W	8°24'36,954"N	98	13°35'23,225"W	9°8'2,156"N
19	8°53'54,801"W	8°23'26,326"N	99	13°38'7,093"W	9°13'27,392"N
20	8°54'18,057"W	8°23'12,991"N	100	13°38'5,836"W	9°18'53,260"N
21	8°54'42,880"W	8°23'31,832"N	101	13°38'5,191"W	9°21'39,126"N
22	8°55'9,274"W	8°24'36,199"N	102	13°30'59,346"W	9°28'33,920"N
23	8°57'2,070"W	8°24'43,944"N	103	13°20'24,069"W	9°31'32,155"N
24	8°58'14,887"W	8°25'34,193"N	104	13°17'23,208"W	9°32'36,883"N
25	8°59'46,418"W	8°26'26,609"N	105	13°13'9,865"W	9°31'8,362"N
26	8°59'9,758"W	8°28'51,438"N	106	13°7'11,478"W	9°30'56,901"N
27	8°57'53,355"W	8°30'21,938"N	107	13°0'36,647"W	9°31'28,609"N
28	8°57'10,591"W	8°32'22,486"N	108	12°49'26,031"W	9°31'29,280"N
29	8°56'47,069"W	8°33'0,004"N	109	12°45'21,812"W	9°37'44,441"N
30	8°58'0,000"W	8°33'0,004"N	110	12°41'58,789"W	9°44'3,181"N
31	8°57'59,988"W	8°35'0,002"N	111	12°40'34,657"W	9°44'17,035"N
32	8°55'17,983"W	8°34'59,964"N	112	12°41'10,124"W	9°46'27,730"N
33	8°55'18,015"W	8°35'24,172"N	113	12°39'46,366"W	9°50'21,133"N
34	8°55'0,005"W	8°35'33,717"N	114	12°37'21,580"W	9°51'56,629"N
35	8°54'59,963"W	8°36'53,299"N	115	12°35'906"W	9°54'54,445"N
36	8°55'27,161"W	8°37'18,128"N	116	12°33'19,117"W	9°57'41,209"N
37	8°55'35,360"W	8°37'45,813"N	117	12°31'49,903"W	9°59'26,795"N
38	8°55'35,092"W	8°42'23,842"N	118	12°30'13,465"W	10°0'22,097"N
39	8°56'56,378"W	8°42'24,365"N	119	12°28'51,772"W	10°1'12,720"N
40	9°3'9,895"W	8°59'2,984"N	120	12°24'14,543"W	10°2'11,497"N
41	9°4'4,458"W	9°8'55,706"N	121	12°21'23,965"W	10°3'7,699"N
42	9°4'16,276"W	9°16'42,922"N	122	12°20'6,951"W	10°5'47,827"N
43	9°5'45,915"W	9°18'53,378"N	123	12°10'7,002"W	10°5'29,489"N
44	9°11'22,934"W	9°21'46,472"N	124	12°6'42,037"W	10°5'37,507"N
45	9°12'51,480"W	9°24'41,685"N	125	11°53'31,580"W	10°9'50,404"N
46	9°27'36,666"W	9°30'21,313"N	126	11°50'11,302"W	10°7'18,543"N
47	9°31'20,991"W	9°34'20,532"N	127	11°42'29,327"W	10°9'12,296"N
48	9°34'35,227"W	9°34'44,075"N	128	11°41'39,687"W	10°10'41,050"N
49	9°45'17,356"W	9°38'51,068"N	129	11°36'44,382"W	10°11'17,489"N
50	9°59'46,829"W	9°39'24,045"N	130	11°26'37,803"W	10°9'44,635"N
51	10°2'8,190"W	9°40'12,325"N	131	11°23'52,792"W	10°8'13,604"N
52	10°10'11,435"W	9°38'28,898"N	132	11°19'25,127"W	10°10'13,038"N

53	10°21'57,633"W	9°43'30,158"N	133	11°15' 48,653"W	10°8'20,175"W
54	10°24'23,618"W	9°42'57,290"N	134	11°14'5,503"W	10°7'0,830"W
55	10°37'11,624"W	9°48'37,557"N	135	11°11'57,755"W	10°7'26,948"W
56	10°49'35,659"W	9°52'47,401"N	136	11°8'22,858"W	10°8'14,492"W
57	10°48'22,488"W	9°52'52,799"N	137	11°8'14,226"W	10°8'15,321"W
58	10°51'16,760"W	9°53'22,570"N	138	11°5'9,284"W	10°4'35,577"W
59	10°52'20,433"W	9°54'23,648"N	139	11°4'52,902"W	10°1'51,786"W
60	10°55'27,899"W	9°55'6,080"N	140	11°2'55,097"W	9°58'1,848"W
61	10°58'9,953"W	9°54'34,955"N	141	11°1' 24,515"W	9°57'28,921"W
62	11°2'18,021"W	9°54'48,973"N	142	10°58'21,040"W	9°57'18,556"W
63	11°8'20,688"W	9°57'27,815"N	143	10°55'24,887"W	9°57'52,348"W
64	11°8'42,934"W	9°57'34,974"N	144	10°50' 59,225"W	9°56'52,155"W
65	11°10'18,830"W	9°58'17,471"N	145	10°48' 59,024"W	9°56'54,412"W
66	11°12'3,826"W	10°0'40,857"N	146	10°48'5,802"W	9°55'35,069"W
67	11°14'40,274"W	10°0'39,810"N	147	10°44' 54,425"W	9°55'28,881"W
68	11°15'52,825"W	10°0'39,318"N	148	10°36'1,454"W	9°51'4,711"W
69	11°27'31,964"W	10°7'9,349"N	149	10°24' 6,595"W	9°45'48,021"W
70	11°36'46,811"W	10°8'33,282"N	150	10°21'41,900"W	9°46'20,596"W
71	11°39'58,576"W	10°8'9,880"N	151	10°9'54,778"W	9°41'18,989"W
72	11°40'40,413"W	10°6'51,524"N	152	10°1'58,046"W	9°43'1,008"W
73	11°48'36,312"W	10°4'54,388"N	153	9°59'16,370"W	9°42'5,799"W
74	11°51'48,107"W	10°0'35,880"N	154	9°44'43,653"W	9°41'32,890"W
75	11°53'39,352"W	10°0'34,690"N	155	9°33' 55,011"W	9°37'23,210"W
76	12°0'14,298"W	9°59'44,636"N	156	9°30'1,699"W	9°38'54,925"W
77	12°1'59,058"W	9°56'34,521"N	157	9°26'2,348"W	9°32'38,681"W
78	12°8'15,018"W	9°54'24,014"N	158	9°10'53,314"W	9°26'50,856"W
79	12°13'12,857"W	9°56'18,124"N	159	9°9'20,308"W	9°23'46,789"W
80	12°18'16,436"W	9°56'30,341"N	160	9°3'53,851"W	9°20'59,100"W
			161	9°1'33,644"W	9°17'35,018"W

**DECRET D/2012/109/PRG/SGG DU 05 OCTOBRE 2012, PORTANT REMANIEMENT PARTIEL DU GOUVERNEMENT.**

**LE PRESIDENT DE LA REPUBLIQUE,**

Vu la Constitution.

**DECRETE :**

**Article 1<sup>er</sup> :** Le Gouvernement est partiellement remanié comme suit :

- Premier Ministre, Chef du Gouvernement : **Monsieur Mohamed Saïd FOFANA ;**
- Ministre d'Etat chargé de la Justice, Garde des Sceaux : **Maitre Christian SOW ;**
- Ministre d'Etat chargé des Travaux Publics et des Transports : **Monsieur El Hadj Ousmane BAH ;**
- Ministre d'Etat chargé des Affaires Etrangères et des Guinéens de l'Etranger : **Monsieur Louncény FALL ;**
- Ministre d'Etat chargé de l'Economie et des Finances : **Monsieur Kerfalla YANSANE ;**
- Ministre d'Etat chargé de l'Energie : **Monsieur El Hadj Papa Koly KOUROUMA ;**
- Ministre Directeur de Cabinet à la Présidence : **Docteur Mohamed DIANE ;**
- Ministre de la Santé et de l'Hygiène Publique : **Docteur Edouard Gnankoye LAMA ;**
- Ministre des Mines et de la Géologie : **Monsieur Mohamed Lamne FOFANA ;**
- Ministre de l'Urbanisme, de l'Habitat et de la Construction : **Monsieur Ibrahima BANGOURA, précédemment en service à la Direction Nationale du Génie rural ;**
- Ministre des Affaires Sociales de la Promotion Féminine et de l'Enfance : **Madame Hadja Diaka DIAKITE ;**
- Ministre des Télécommunications, des Postes et des Nouvelles Technologies de l'Information : **Monsieur Oyé GUILAVOGUI ;**
- Ministre du Plan : **Monsieur Sékou TRAORE, précédemment Conseiller à la Primature ;**
- Ministre de la Jeunesse, de l'Emploi Jeunes et des Sports : **Monsieur Sanoussy Bantama SOW ;**
- Ministre de l'Agriculture : **Monsieur Emile YOMBOUNO, ingénieur, Gestionnaire des Projets, Spécialiste du Développement et Appui aux Organisations de la Société Civile ;**

- Ministre de la Communication : **Monsieur Togba Césaire KPOGHOMOU ;**
  - Ministre de l'Administration du Territoire et de la Décentralisation : **Monsieur Alhassane CONDE ;**
  - Ministre de la Sécurité, de la Protection Civile et de la Réforme des Services de Sécurité : **Monsieur Mouramani CISSE ;**
  - Ministre de l'Enseignement Supérieur et la Recherche Scientifique : **Monsieur Téliwal Baïlo DIALLO, Consultant National ;**
  - Ministre de l'Emploi, de l'Enseignement Technique et de la Formation Professionnelle : **Monsieur Damantang Albért CAMARA ;**
  - Ministre de l'Enseignement Pré- universitaire : **Docteur Ibrahima KOUROUMA ;**
  - Ministre des Droits de l'Homme et des Libertés Publiques : **Monsieur Kalifa Gassama DIABY ;**
  - Ministre de l'Hôtellerie, du Tourisme et de l'Artisanat : **Madame Hadja Mariama BALDE ;**
  - Ministre de l'Industrie des Petites et Moyennes Entreprises : **Madame Hadja Ramatoulaye BAH ;**
  - Ministre du Commerce : **Monsieur Mohamed Dorval DOUMBOUYA ;**
  - Ministre de la Culture, des Arts et du Patrimoine Historique : **Monsieur Ahmed Tidiane CISSE ;**
  - Ministre de la Pêche et de l'Aquaculture : **Monsieur Moussa CONDE ;**
  - Ministre de la Coopération Internationale : **Docteur Moustapha Koutoubou SANO ;**
  - Ministre de l'Environnement, des Eaux et Forêts : **Monsieur Saramady TOURE ;**
  - Ministre Délégué aux Budgets : **Monsieur Mohamed DIARE ;**
  - Ministre Délégué à la Défense Nationale : **Maitre Abdoul Kabèlè CAMARA ;**
  - Ministre Délégué aux Affaires Sociales : **Madame Mimi COUMBASSA ;**
  - Ministre Délégué aux Guinéens de l'Etranger : **Madame Hadja Rougui BARRY ;**
  - Ministre Délégué aux Transports : **Monsieur El Hadj Tidiane TRAORE ;**
  - Ministre Délégué à la Santé : **Docteur Naman KEITA.**
- Article 2 : le présent Décret qui abroge toutes dispositions antérieures contraires, prend effet à compter de sa date de signature, sera enregistré et publié au Journal Officiel de la République.

Conakry, le 05 Octobre 2012  
Prof. Alpha CONDE

**DECRET D/2012/110/PRG/SGG DU 06 OCTOBRE 2012, PORTANT NOMINATION AU CABINET DE LA PRESIDENCE DE LA REPUBLIQUE.**

**LE PRESIDENT DE LA REPUBLIQUE,**

Vu la Constitution ;

Vu le Décret D/2011/050/PRG/SGG du 28 Février 2011, portant Réorganisation de la Présidence de la République.

**DECRETE :**

**Article 1<sup>er</sup> :** Sont nommés au Cabinet de la Présidence de la République dans les fonctions ci-après :

- Ministre d'Etat à la Présidence de la République, **Mme Hadja Nantenin Chérif Konaté, précédemment Ministre d'Etat chargé des Affaires Sociales, de la Promotion Féminine et de l'Enfance ;**
- Conseiller chargé de la Planification et de l'Aménagement de Bassin Fluvial **Monsieur Nassirou DIALLO, Ancien Secrétaire Exécutif de l'Organisation pour la Mise en Valeur du fleuve Gambie (OMVG) ;**
- Conseiller Spécial à la Présidence de la République, **Monsieur Almamy SOUMAH, Ancien Professeur au Gabon.**

**Article 2 :** le présent Décret qui prend effet à compter de sa date de signature, sera enregistré et publié au Journal Officiel de la République.

Conakry, le 06 octobre 2012  
Prof. ALPHA CONDE

Amended and Consolidated Basic Convention

Geographic Coordinates System : GCS\_WGS\_1984  
Original coordinates in Decimal Degrees transformed in Degrees Minutes Seconds

Point	Longitude	Latitude	Point	Longitude	Latitude
1	9° 1' 20,812" W	9° 9' 5,170" N	81	12° 26' 11,545" W	9° 54' 23,912" N
2	9° 0' 28,803" W	8° 59' 39,422" N	82	12° 33' 41,881" W	9° 49' 19,891" N
3	8° 55' 2,365" W	8° 45' 6,462" N	83	12° 36' 30,093" W	9° 49' 15,449" N
4	8° 51' 58,074" W	8° 45' 5,256" N	84	12° 37' 30,284" W	9° 48' 35,752" N
5	8° 50' 7,366" W	8° 45' 36,027" N	85	12° 38' 18,671" W	9° 46' 20,990" N
6	8° 47' 1,360" W	8° 45' 20,239" N	86	12° 37' 9,531" W	9° 42' 6,086" N
7	8° 45' 23,961" W	8° 44' 9,678" N	87	12° 40' 12,192" W	9° 41' 36,034" N
8	8° 45' 23,799" W	8° 43' 29,370" N	88	12° 43' 0,542" W	9° 36' 22,051" N
9	8° 45' 24,180" W	8° 36' 27,198" N	89	12° 47' 56,897" W	9° 28' 46,885" N
10	8° 50' 59,633" W	8° 36' 27,179" N	90	13° 0' 36,442" W	9° 28' 46,192" N
11	8° 50' 59,555" W	8° 34' 59,426" N	91	13° 6' 23,754" W	9° 28' 17,810" N
12	8° 50' 59,734" W	8° 30' 13,506" N	92	13° 12' 39,172" W	9° 27' 44,961" N
13	8° 49' 52,724" W	8° 30' 13,479" N	93	13° 15' 53,668" W	9° 24' 28,137" N
14	8° 49' 52,243" W	8° 27' 43,378" N	94	13° 19' 19,743" W	9° 13' 33,861" N
15	8° 51' 0,331" W	8° 27' 43,406" N	95	13° 24' 0,605" W	9° 10' 52,178" N
16	8° 51' 0,001" W	8° 25' 0,000" N	96	13° 29' 55,207" W	9° 6' 24,528" N
17	8° 52' 19,481" W	8° 25' 0,094" N	97	13° 32' 38,505" W	9° 6' 25,188" N
18	8° 52' 59,217" W	8° 24' 36,054" N	98	13° 35' 23,225" W	9° 8' 2,156" N
19	8° 53' 54,801" W	8° 23' 26,326" N	99	13° 38' 7,093" W	9° 13' 27,392" N
20	8° 54' 18,057" W	8° 23' 12,991" N	100	13° 38' 5,836" W	9° 18' 53,260" N
21	8° 54' 42,880" W	8° 23' 31,832" N	101	13° 38' 5,191" W	9° 21' 39,126" N
22	8° 55' 9,274" W	8° 24' 36,199" N	102	13° 30' 59,346" W	9° 28' 33,920" N
23	8° 57' 2,070" W	8° 24' 43,944" N	103	13° 20' 24,069" W	9° 31' 32,155" N
24	0° 59' 14,987" W	8° 26' 34,193" N	104	13° 17' 23,208" W	0° 32' 38,893" N
25	8° 59' 46,418" W	8° 26' 25,609" N	105	13° 13' 9,865" W	9° 31' 8,362" N
26	8° 59' 9,758" W	8° 28' 51,438" N	106	13° 7' 11,478" W	9° 30' 56,901" N
27	8° 57' 53,355" W	8° 30' 21,938" N	107	13° 0' 36,647" W	9° 31' 28,609" N
28	8° 57' 10,591" W	8° 32' 22,486" N	108	12° 49' 26,031" W	9° 31' 29,280" N
29	8° 56' 47,059" W	8° 33' 0,004" N	109	12° 45' 21,812" W	9° 37' 44,441" N
30	8° 58' 0,000" W	8° 33' 0,004" N	110	12° 41' 58,789" W	9° 44' 3,181" N
31	8° 57' 59,988" W	8° 35' 0,002" N	111	12° 40' 34,657" W	9° 44' 17,035" N
32	8° 55' 17,983" W	8° 34' 59,964" N	112	12° 41' 10,124" W	9° 46' 27,730" N
33	8° 55' 18,015" W	8° 35' 24,172" N	113	12° 39' 46,356" W	9° 50' 21,133" N
34	8° 55' 0,005" W	8° 35' 33,717" N	114	12° 37' 21,580" W	9° 51' 56,629" N
35	8° 54' 59,963" W	8° 36' 53,299" N	115	12° 35' 9,067" W	9° 54' 54,445" N
36	8° 55' 27,161" W	8° 37' 18,128" N	116	12° 33' 19,117" W	9° 57' 41,209" N
37	8° 55' 35,360" W	8° 37' 45,813" N	117	12° 31' 49,903" W	9° 59' 26,795" N
38	8° 55' 35,092" W	8° 42' 23,842" N	118	12° 30' 13,465" W	10° 0' 22,097" N
39	8° 56' 56,378" W	8° 42' 24,365" N	119	12° 26' 51,772" W	10° 1' 12,720" N
40	9° 3' 9,895" W	8° 59' 2,984" N	120	12° 24' 14,543" W	10° 2' 11,497" N
41	9° 4' 4,458" W	9° 8' 55,706" N	121	12° 21' 23,965" W	10° 3' 7,699" N
42	9° 4' 16,276" W	9° 16' 42,922" N	122	12° 20' 6,951" W	10° 5' 47,827" N
43	9° 5' 45,915" W	9° 18' 53,378" N	123	12° 10' 7,002" W	10° 5' 29,489" N
44	9° 11' 22,934" W	9° 21' 46,472" N	124	12° 6' 42,037" W	10° 5' 37,507" N
45	9° 12' 51,480" W	9° 24' 41,685" N	125	11° 53' 31,580" W	10° 9' 50,404" N
46	9° 27' 36,865" W	9° 30' 21,313" N	126	11° 50' 11,302" W	10° 7' 18,543" N
47	9° 31' 20,991" W	9° 34' 20,532" N	127	11° 42' 29,327" W	10° 9' 12,298" N
48	9° 34' 35,227" W	9° 34' 44,075" N	128	11° 41' 39,687" W	10° 10' 41,050" N
49	9° 45' 17,358" W	9° 39' 51,068" N	129	11° 36' 44,382" W	10° 11' 17,469" N
50	9° 59' 46,829" W	9° 39' 24,045" N	130	11° 26' 37,803" W	10° 9' 44,635" N
51	10° 2' 8,190" W	9° 40' 12,325" N	131	11° 23' 52,792" W	10° 8' 13,604" N
52	10° 10' 11,435" W	9° 38' 28,896" N	132	11° 19' 25,127" W	10° 10' 13,038" N
53	10° 21' 57,633" W	9° 43' 30,158" N	133	11° 15' 48,853" W	10° 8' 20,175" N
54	10° 24' 23,616" W	9° 42' 57,290" N	134	11° 14' 5,503" W	10° 7' 0,830" N
55	10° 37' 11,624" W	9° 48' 37,557" N	135	11° 11' 57,755" W	10° 7' 28,948" N
56	10° 45' 35,659" W	9° 52' 47,401" N	136	11° 8' 22,858" W	10° 6' 14,492" N
57	10° 48' 22,486" W	9° 52' 52,796" N	137	11° 6' 14,226" W	10° 6' 15,321" N
58	10° 51' 16,760" W	9° 53' 22,570" N	138	11° 5' 9,264" W	10° 4' 35,577" N
59	10° 52' 20,433" W	9° 54' 23,646" N	139	11° 4' 52,902" W	10° 1' 51,786" N
60	10° 55' 27,699" W	9° 55' 6,080" N	140	11° 2' 55,097" W	9° 58' 1,848" N
61	10° 58' 9,953" W	9° 54' 34,955" N	141	11° 1' 24,515" W	9° 57' 28,921" N
62	11° 2' 18,021" W	9° 54' 48,973" N	142	10° 58' 21,040" W	9° 57' 18,556" N
63	11° 6' 20,688" W	9° 57' 27,815" N	143	10° 55' 24,887" W	9° 57' 52,348" N
64	11° 8' 42,934" W	9° 57' 34,974" N	144	10° 50' 59,225" W	9° 56' 52,155" N
65	11° 10' 18,830" W	9° 59' 17,471" N	145	10° 49' 59,024" W	9° 55' 54,412" N
66	11° 12' 3,828" W	10° 0' 40,857" N	146	10° 48' 5,802" W	9° 55' 35,069" N
67	11° 14' 40,274" W	10° 0' 39,810" N	147	10° 44' 54,425" W	9° 55' 28,881" N
68	11° 15' 52,825" W	10° 0' 39,318" N	148	10° 36' 1,454" W	9° 51' 4,711" N
69	11° 27' 31,964" W	10° 7' 8,348" N	149	10° 24' 6,595" W	9° 45' 48,021" N
70	11° 36' 46,811" W	10° 8' 33,282" N	150	10° 21' 41,900" W	9° 46' 20,596" N
71	11° 39' 56,576" W	10° 8' 9,890" N	151	10° 9' 54,778" W	9° 41' 18,989" N
72	11° 40' 40,413" W	10° 6' 51,524" N	152	10° 1' 58,046" W	9° 43' 1,009" N
73	11° 48' 36,312" W	10° 4' 54,388" N	153	9° 59' 16,370" W	9° 42' 5,799" N
74	11° 51' 48,107" W	10° 0' 35,860" N	154	9° 44' 43,653" W	9° 41' 32,890" N
75	11° 53' 39,352" W	10° 0' 34,690" N	155	9° 33' 55,011" W	9° 37' 23,210" N
76	12° 0' 14,298" W	9° 59' 44,636" N	156	9° 30' 1,699" W	9° 36' 54,925" N
77	12° 1' 59,058" W	9° 56' 34,521" N	157	9° 26' 2,348" W	9° 32' 39,681" N
78	12° 8' 15,018" W	9° 54' 24,014" N	158	9° 10' 53,314" W	9° 28' 50,856" N
79	12° 13' 12,657" W	9° 56' 10,124" N	159	9° 8' 20,300" W	9° 23' 40,789" N
80	12° 18' 16,436" W	9° 56' 30,341" N	160	9° 3' 53,851" W	9° 20' 59,100" N
			161	9° 1' 33,644" W	9° 17' 35,018" N





## Appendix 6: Procedure for securing Project Lands

### 1 Identification of the Project Lands, rights existing over Project Lands and the Project Affected Persons

- (a) At any time following the Effective Date, SIMFER S.A., the Infrastructure Owner or the Infrastructure Operator, as the context so requires, will give notice to the State of the location and geographic coordinates of the Project Lands in order to:
  - (i) identify the Project Lands over which Land Rights are granted pursuant to Article 20.2; and
  - (ii) organise the activities necessary for the implementation of the PARC Framework.
- (b) Following such notification, the State shall proceed, without delay and at its cost, to mark the boundaries of the Project Lands thus identified.
- (c) As soon as the boundary marking of any Project Land referred to in section 1(b) of this Appendix 6 is complete and in due time so as to enable the effective occupation of the Project Lands to meet the schedule of works, the State shall carry out, in compliance with the PARC Framework, the following processes under the conditions set forth below:
  - (i) **(Surveys)** Survey activities required to identify the Project Affected Persons requiring resettlement and / or compensation pursuant to the PARC Framework and any land rights together with any other rights (including customary rights of use acknowledged by the Laws and Regulations such as, for example, forestry, pastoral or water rights (the **Rights of Use**)) existing over the Project Lands;
  - (ii) **(Resettlement and / or compensation of Project Affected Persons)** Activities for the resettlement and / or compensation of Project Affected Persons in accordance with the PARC Framework and this Appendix; and
  - (iii) **(Extinguishment / suppression and / or acquisition of existing rights and effectiveness of Land Rights granted)** Activities for the extinguishment / suppression and / or acquisition, as appropriate, of all rights held by third parties over the Project Lands (including, as applicable, the Rights of Use) and to ensure that the Land Rights granted in accordance with Article 20.2 are fully effective.

### 2 Surveys

- (a) The surveys referred to under section 1(c)(i) of this Appendix 6 shall include:
  - (i) the survey activities required for the implementation of the PARC Framework, which will be conducted and supervised by the State represented by land commissions set up within the Prefectures affected by the Project Activities (the "**Land Commissions**"), acting with all due authority in the name and on behalf of the State and of which the principal duties for the purposes of the Convention and the implementation of the PARC Framework are specified in section 7 of this Appendix 6;

As part of the performance of these surveys, the State must in particular identify:

    - (A) in accordance with the PARC Framework, all Project Affected Persons residing within or holding rights over the Project Lands who are eligible to benefit from resettlement measures and / or compensation together with their rights, assets and livelihoods affected by the Project Activities, it being specified that, for the implementation of the PARC Framework, public legal entities that own, occupy or use the Project Lands, as

applicable, will not be considered as Project Affected Persons and will therefore not benefit from any resettlement and / or compensation measure; and

- (B) any and all rights, authorisations and titles in force of any kind whatsoever over the Project Lands including, as applicable, but not limited to mining rights, forestry management conventions, water concessions and other Rights of Use of any kind whatsoever; and
- (ii) land title surveys designed to identify potential Project Lands that are subject to:
  - (A) rights *in rem* held by third parties; and
  - (B) land titles granted to third parties published in the Land Book and considered by the State as being valid.

The land title surveys shall be conducted by the State, at its cost as soon as the boundary marking of the Project Lands referred to in section 1(b) of this Appendix 6 is complete and, as appropriate, with the Land Conservation Department.

- (b) At the end of the land title surveys carried out under section (a)(ii) of this Appendix 6, the State will be able to identify the Project Lands belonging to the State's domain and that which would, as applicable, be subject to rights *in rem* held by third parties that are enforceable and guaranteed under the Laws and Regulations (in particular under Article 10 of the Land Code) and would need to be acquired by the State in the context of the implementation of the PARC Framework.
- (c) Project Lands identified as belonging to the State's domain will be notified jointly by the President of the Land Commission or his / her representative and SIMFER S.A., the Infrastructure Owner or the Infrastructure Operator, as the context so requires, to the *Direction Nationale des Domaines et du Cadastre* and to the Land Conservation Department for their registration in the name of the State in the Land Book, under the conditions set forth in section 4(e) of this Appendix 6. Such notification is to be made as soon as reasonably practicable following the identification of such lands.

### 3 Resettlement and / or compensation of Project Affected Persons

- (a) For the implementation of the resettlement activities planned by the PARC Framework, the State shall identify, for the Project Affected Persons, replacement lands for habitation purposes that are necessary for the resettlement of physically displaced Project Affected Persons (the **Replacement Housing Lands**) and replacement lands for agricultural and / or economic purposes (the **Replacement Farming Lands**) in accordance with the requirements of the PARC Framework.
- (b) The State shall secure, in a timely manner to enable the effective occupation of the Project Lands within the necessary timeframes to meet the schedule of works, the Replacement Housing Lands and shall provide SIMFER S.A., the Infrastructure Owner and / or the Infrastructure Operator and / or their co-contracting parties and subcontractors, as the context so requires and under the conditions set forth below, the right to access these Replacement Housing Lands and to occupy them in order to enable their development and the construction and / or, as applicable, the renovation of the necessary replacement housing by SIMFER S.A., the Infrastructure Owner and / or the Infrastructure Operator and / or their co-contracting parties and subcontractors, as the context so requires, for the duration required for these activities and until the effective delivery of the Replacement Housing Lands to the Project Affected Persons in accordance with the Land Agreements. The State shall confirm, as appropriate, the rights

*in rem* of any customary owners of the Replacement Housing Lands that would be transferred to the Project Affected Persons to be resettled. No acquisition of Replacement Housing Land will be financed by SIMFER S.A. or by the Infrastructure Owner.

- (c) The State shall grant to SIMFER S.A., the Infrastructure Owner and / or the Infrastructure Operator, as the context so requires, in a timely manner and at the State's cost, all Authorisations required for the occupation and development of Replacement Housing Lands and for the construction and / or renovation, as applicable, of the necessary replacement housing, fixtures and / or infrastructure, which shall, where necessary, also apply to their co-contracting parties and subcontractors, as the context so requires.
- (d) The State shall secure (or in respect of Project Affected Persons with customary usage rights to agricultural land affected by the Project Activities, shall ensure such Project Affected Persons secure) all Replacement Farming Lands in accordance with the PARC Framework in a timely manner to enable the effective occupation of the Project Lands within the necessary timeframes to meet the schedule of works. To this end, the State shall confirm, as appropriate, the rights of the customary owners of Replacement Farming Lands that would be made available to Project Affected Persons. No acquisition of Replacement Farming Land will be financed by SIMFER S.A. or by the Infrastructure Owner.
- (e) The State shall ensure, in due time so as to enable the effective occupation of the Project Lands within the necessary timeframes to meet the schedule of works, that the Replacement Housing Lands and, as applicable, the Replacement Farming Lands of which the ownership would be transferred to the Project Affected Persons in accordance with the PARC Framework and / or the measures decided for the implementation thereof, are not burdened by any prior rights and easements of any kind.
- (f) When all compensation in kind for Project Affected Persons (including Replacement Housing Lands and Replacement Farming Lands) have been secured, the State, the relevant Project Affected Persons and SIMFER S.A., the Infrastructure Owner or the Infrastructure Operator, as the context so requires, shall enter into, in due time so as to enable the effective occupation of the Project Lands within the necessary timeframes to meet the schedule of works, resettlement and / or compensation agreements required for the implementation of the PARC Framework (the **Land Agreements**) after consultation and negotiation with the Project Affected Persons. The Land Agreements shall include:
  - (i) confirmation by the Project Affected Persons that they deem the conditions of their resettlement and / or compensation to be sufficient, satisfactory and suitable to compensate them fully for their physical or economic displacement, as applicable, and for the consequences thereof on their living conditions and livelihoods, including any damages and losses they may incur due to such displacement;
  - (ii) the waiver by the Project Affected Persons, in consideration for the compensation in kind secured or to be secured for their benefit and subject to the actual securing thereof for their benefit and for a commitment from the State and the Infrastructure Owner in respect of the Project Infrastructure and SIMFER S.A. in respect of the Mining Infrastructure to meet their financial obligations in accordance with the Land Agreement and to implement measures to restore livelihoods in accordance with the PARC Framework, of:
    - (A) all rights of any nature whatsoever over the Project Lands and any existing buildings, structures, fixtures and assets of any kind constructed

- or located thereupon (including but not limited to any rights of ownership, usufruct, rights in rem of use, occupancy rights or Rights of Use); and
  - (B) the right to challenge in any way the State's exclusive ownership of the Project Lands and any existing buildings, structures, fixtures and assets of any kind constructed or located thereupon;
  - (iii) a description of all compensation in kind (including any Replacement Housing Lands or Replacement Farming Lands) secured or to be secured for Project Affected Persons for the implementation of the PARC Framework; and
  - (iv) as applicable, a reference to the acquisition by the State, for the purposes of the Project Activities, of all Project Lands that did not belong to the State's domain.
- (g) After the resettlement and / or compensation of Project Affected Persons in accordance with the PARC Framework, the State will ensure, in a timely manner so as to enable the effective occupation of the Project Lands within the necessary timeframes to meet the schedule of works, that:
- (i) all Project Lands concerned are immediately delimited and protected such that none of the Project Affected Persons having benefited from a resettlement measure or any other third party not authorised by SIMFER S.A., the Infrastructure Owner or the Infrastructure Operator, as the context so requires, may enter the Project Lands and thus enable the performance of the Project Activities; and that
  - (ii) all Project Lands concerned that remain occupied by any Project Affected Persons and / or third party are vacated by such persons, in accordance with the applicable Laws and Regulations and the Project Standards. Accordingly, the State will not carry out any forced evacuations from the Project Lands until it has made all reasonable approaches and efforts to secure the agreement of the relevant persons to voluntarily vacate the Project Lands.

#### **4 Extinguishment / suppression and / or acquisition of existing rights and effectiveness of the Land Rights granted**

- (a) The State will terminate, in due time so as to enable the effective occupation of the Project Lands within the necessary timeframes to meet the schedule of works, in accordance with the PARC Framework and the Laws and Regulations, all rights over the Project Lands as may be held by third parties (including all occupancy rights and Rights of Use) in order to make available to SIMFER S.A., the Infrastructure Owner, the Infrastructure Operator or Project Affected Persons, as the context so requires, the Project Lands free of all prior rights and no longer burdened by any prior easements of any kind with a view to the performance of the Project Activities (including for the resettlement of Project Affected Persons in compliance with the agreements entered into with those latter).
- (b) The Land Rights granted over the Project Lands belonging to the State's domain upon which no Project Affected Person has been identified through the surveys mentioned in section 2 of this Appendix 6 as requiring resettlement and / or compensation will be fully effective as at the date of notification to the *Direction Nationale des Domaines et du Cadastre* in accordance with section 2(c) of this Appendix 6.

The right of occupation of such Project Lands for the purposes of the Project Activities will be effective, without the need for further Authorisations or formalities, as soon as the

absence of Project Affected Persons has been noticed as part of the surveys carried out under section 2(a)(i) of this Appendix 6.

- (c) The Land Rights granted over the Project Lands belonging to the State's domain and upon which one or more Project Affected Person(s) to be resettled and / or compensated under the PARC Framework has / have been identified will be fully effective and will permit the effective occupation of the Project Lands for the purposes of the Project Activities once all of agreed compensation in kind has been delivered to the Project Affected Persons, namely, as applicable:
- (i) where all of the compensation in kind provided for in the Land Agreement has been made available to the Project Affected Persons (or, as applicable, secured by the Project Affected Persons), on the date of entry into force of the Land Agreement concluded in accordance with section 3(f) of this Appendix 6; or
  - (ii) where all of the compensation in kind provided for in the Land Agreement has not yet been made available to the Project Affected Persons, on the date on which all such compensation in kind has been made available to the Project Affected Persons (or, as applicable, secured thereby). In the latter case, the occurrence of this event will be recorded in a Resettlement Certificate to be entered into by the parties to the Land Agreement or their representatives.
- For the avoidance of doubt, the Land Rights will become fully effective, without delay, on the applicable date as provided above even where:
- (iii) in addition to the compensation in kind, a component of financial compensation is payable to the Project Affected Persons (whether outlined in the Land Agreement or elsewhere), and that financial compensation must still be paid to Project Affected Persons (other than affected communities); or
  - (iv) compensation in kind and / or financial compensation is to be delivered to affected communities, and such compensation (such as community development projects) must still be delivered to the affected communities. In such circumstances, the Land Rights will be fully effective on the date of entry into force of the applicable Land Agreement (community compensation agreement).
- (d) With the exception of the excluded charges and costs (in particular, all costs for acquiring any Resettlement Housing Lands or Resettlement Farming Lands in accordance with sections 3(b) and 3(d) of this Appendix 6), SIMFER S.A. in respect of the Mining Infrastructure and the Infrastructure Owner in respect of the Project Infrastructure will bear the costs relating to the implementation of the PARC Framework and in particular all costs relating to the resettlement and compensation of Project Affected Persons.
- (e) The State shall publish in the Land Book at no cost to the Project Affected Persons, SIMFER S.A., the Infrastructure Owner or the Infrastructure Operator:
- (i) the ownership rights of Project Affected Persons over any Replacement Housing Land and any buildings, structures or fixtures built on such land including, but not limited to, replacement housing and, as applicable, over any Replacement Farming Land where legal ownership is transferred in favour of Project Affected Persons (under the conditions set forth in section 3(e) of this Appendix 6); and
  - (ii) the rights of the State and the Land Rights granted pursuant to Article 20.2 over all concerned Project Lands.

This publication must be carried out as soon as reasonably practicable at the same time as or subsequent to the entry into force of the rights in question.

- (f) Following the publication referred to in section 4(e) of this Appendix 6, the State shall immediately provide certificates issued in accordance with the Laws and Regulations recording the published rights to their holders, at no cost to the Project Affected Persons, SIMFER S.A., the Infrastructure Owner or the Infrastructure Operator.
- (g) The State will regularise, as applicable and within two (2) months as from the notification of a request from SIMFER S.A., the Infrastructure Owner or the Infrastructure Operator, as the context so requires, to the *Direction Nationale des Domaines et du Cadastre*, at no cost to the Project Affected Persons, SIMFER S.A., the Infrastructure Owner or the Infrastructure Operator, the status of the Project Lands occupied for the purposes of the Project Activities prior to the Effective Date especially within but not limited to the Prefectures of Forécariah, Faranah and Beyla.

## **5 Temporary occupation of Project Lands**

- (a) The procedure described in sections 1 to 4 of this Appendix 6 shall be adapted *mutatis mutandis* in the event that temporary access to Project Lands within the meaning of the PARC Framework is required for the Project Activities, including in particular for the exploitation of quarries and borrow pits for construction materials, for example.
- (b) SIMFER S.A. in respect of the Mining Infrastructure or the Infrastructure Owner in respect of the Project Infrastructure shall pay, where this is the case, to any Project Affected Persons legitimately occupying the Project Lands in question, an indemnity in accordance with the PARC Framework that is designed to cover the disruption to their enjoyment of the Project Lands in question.

## **6 Other commitments and measures for the implementation of the PARC Framework**

- (a) The State and SIMFER S.A. shall comply with the requirements of the PARC Framework for the performance of their activities governed by the PARC Framework and this Appendix, including but not limited to the performance of the surveys referred to in section 2 of this Appendix 6, the activities for the resettlement and compensation of the Project Affected Persons and the restoration of their livelihoods.
- (b) For the duration of the implementation of the PARC Framework, the State, SIMFER S.A., the Infrastructure Owner and / or the Infrastructure Operator, as the context so requires, shall meet regularly with a view to ensuring the proper implementation of the PARC Framework and to agreeing, as necessary, on any arrangements as may be necessary or practical for such implementation.
- (c) The State shall approve, in due time so as to enable the effective occupation of the Project Lands within the necessary timeframes to meet the schedule of works, the modalities of resettlement and compensation of the Project Affected Persons (including the compensation rates to be applied) and all draft model form Land Agreements and, more generally, all other documents prepared in association with the State's departments to be submitted to it by SIMFER S.A., the Infrastructure Owner and / or the Infrastructure Operator, as the context so requires, for the implementation of the PARC Framework.  
  
To avoid delaying these activities and save as provided otherwise by the Legislation in Force, any approval by the State shall be given by the Minister responsible for the Domain or his / her representative no later than eight (8) Days after the reception of the request therefor, as applicable, after consulting the other competent or affected authorities, if deemed necessary or practical by the Minister responsible for the Domain.
- (d) The State shall ensure that the rights of Project Affected Persons are protected in particular by procuring that the prior information, consultation and negotiations and the

free and informed consent of Project Affected Persons and any signatory witnesses with respect to the terms and conditions of the Land Agreements can be verified and documented.

For this purpose, an independent court bailiff shall be present for and shall observe, as applicable, the process of implementation of the PARC Framework and shall issue reports certifying in particular and without limitation the procedure followed, the free and informed consent of Project Affected Persons and the understanding by the signing witnesses of the Land Agreements entered into.

The State shall ensure that all information as may be collected is documented in the appropriate manner and that all documents prepared with respect to the implementation of the PARC Framework are kept in the database of Project Activities in accordance with the PARC Framework and the Laws and Regulations.

- (e) The State shall ensure that all rehousing, resettlement and / or compensation procedures for all local communities and persons residing within the Corridor are implemented in accordance with Project Standards even where said procedures are carried out in the scope of the implementation of activities other than the Project Activities in order to avoid any discrepancies in that regard that could result in delays in the completion of the Project Activities.
- (f) The State shall facilitate to the extent possible the compensation operations, in particular and without limitation by issuing, as necessary and in due time to meet the schedule of works, all identification documents for the Project Affected Persons with a view to opening bank accounts to receive their financial compensation and by instigating, in association with SIMFER S.A., the Infrastructure Owner and / or the Infrastructure Operator, as the context so requires, all appropriate security measures to ensure the satisfactory implementation of the PARC Framework.

## **7 Principal duties of the Land Commissions for the purposes of the Convention and the implementation of the PARC Framework**

The Land Commissions shall ensure, at the level of the Prefectures affected by the Project Activities within which they are set up, the proper performance of the survey, resettlement and compensation activities for the Project Affected Persons and the restoration of their livelihoods in accordance with the Convention, the PARC Framework and the Project Standards.

The Land Commissions will participate in securing and, as applicable, acquiring the Project Lands on an amicable basis and in any forced acquisitions of the Project Lands (as part of expropriation procedures for public interest reasons) resulting in the physical or economic displacement of Project Affected Persons governed by the PARC Framework.

Notwithstanding their general duties as cited in the Laws and Regulations and, in particular, in the Land Code and Order A/2011/8360/MUHC/CAB of 30 December 2011 establishing Land Commissions in the Prefectures of Beyla, Macenta, Kérouané, Kankan, Kissidougou, Kouroussa, Faranah, Mamou, Kindia and Forécariah, the Land Commissions shall have due authority to represent the State with respect to the performance of this Convention and the implementation of the PARC Framework and shall carry out, through their representatives, in the name and on behalf of the State and in association with the representatives of SIMFER S.A., the Infrastructure Owner or the Infrastructure Operator, as the context so requires, the duties detailed below in particular and without limitation, with a view to enabling the State to make the Project Lands required to carry out the Project Activities available in accordance with this Convention:

- (a) Surveys referred to in section 2 of this Appendix 6:

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- (i) visit the Project Lands with a view to informing the people affected by the Project Activities and participating in the consultations carried out prior to the surveys. For this purpose, the representative(s) of the Land Commission will meet with local and customary authorities and will participate in the first meeting held at village level during which explanations concerning the implementation of the PARC Framework, the estimated duration of the surveys and the concept, objective and consequences of the cut-off date contemplated by the PARC Framework will be given;
  - (ii) conduct and supervise the survey activities (including, as applicable, the public enquiries and landholding surveys carried out as part of any necessary expropriation procedures) under the conditions set forth in section 2 of this Appendix 6 and sign, in the name and on behalf of the State, the survey forms alongside SIMFER S.A., the Infrastructure Owner or the Infrastructure Operator, as the context so requires, the surveyed persons and, to the extent possible, the local and / or customary authorities and / or witnesses;
  - (iii) attend the closing meeting for the survey activities confirming the cut-off date and ensure that the information is passed down to the local communities with respect to, in particular, the consequences of the procedure for the resettlement and compensation of Project Affected Persons and the restoration of their livelihoods;
  - (iv) participate in the validation process for the results of the surveys and retain the corresponding documentation under the conditions set forth in section 6(d) of this Appendix 6; and
  - (v) identify the Project Lands belonging to the State's domain under the conditions set forth in section 2(c) of this Appendix 6.
- (b) Resettlement and / or compensation of Project Affected Persons and restoration of their livelihoods:
- (i) identify and secure the Replacement Housing Lands and the Replacement Farming Lands under the conditions and within the timeframes set forth in section 3 of this Appendix 6;
  - (ii) take part in the consultations and negotiations with Project Affected Persons and conclude, in the name and on behalf of the State, the Land Agreements under the conditions and within the timeframes set forth in section 3 of this Appendix 6, after verifying that the agreed conditions of resettlement, compensation and livelihood restoration comply with the applicable modalities;
  - (iii) oversee the implementation of the resettlement and compensation process for Project Affected Persons and the restoration of their livelihoods in accordance with the PARC Framework, in particular by attending regular meetings on the management of this process at Prefecture level; and
  - (iv) retain all documentation relating to the resettlement, compensation and livelihood restoration activities in accordance with section 6(d) of this Appendix 6; and
- (c) Participation, as applicable, in the grievance mechanism process provided for in the PARC Framework and retention of all documentation relating to this grievance mechanism process in accordance with section 6(d) of this Appendix 6.

## 8 Procedure applicable in the event of expropriation

The procedure described in this section 8 of this Appendix 6 shall be adapted *mutatis mutandis* in the event the implementation of an expropriation procedure is required for the acquisition by the

State in order to make them available to SIMFER S.A., the Infrastructure Owner and / or the Infrastructure Operator, as the context so requires, of all or part of the Project Lands that do not belong to the State's domain. In doing so, the State shall:

- (a) take all necessary steps to make the Project Lands available in due time to enable them to be effectively occupied within the necessary timeframes to meet the schedule of works;
- (b) first use its best endeavours to ensure, to the extent possible, that the acquisition by the State of these Project Lands can be achieved through an amicable agreement with the owners thereof, it being understood that the expropriation procedure should only be used by the State in the event that, despite the proposals made and negotiations conducted, it is not possible to conclude a Land Agreement amicably within the necessary timeframes to meet the schedule of works; and
- (c) implement, as appropriate, the expropriation procedure organised by Laws and Regulations in accordance with the Project Standards and the PARC Framework and in permanent consultation with SIMFER S.A., the Infrastructure Owner and / or the Infrastructure Operator, as the context so requires.

**9 Expiry of the memorandum of understanding relating to the compensation of the persons affected by the urgent works entered into on 14 May 2012 between the State and SIMFER S.A.**

The State and SIMFER S.A. agree that the memorandum of understanding relating to the compensation of the persons affected by the urgent works entered into on 14 May 2012 will expire automatically as from the Effective Date without requiring any formality.

## **Appendix 7: Local Content Principles for Investment Framework**

### **1 Overview**

One of the objectives of the Project is to promote the fostering of long term sustainable business relationships in Guinea, ensuring that local businesses increasingly participate and benefit from the Project over time. The optimisation of Local Content (as defined below) within the Project is dependent upon a tangible co-commitment from the State, multilateral institutions, donors, the Project, its investors and lenders, and other private institutions to work responsibly and productively with local suppliers and the communities in which they operate. These Local Content principles will apply equally to both the Simandou mine and infrastructure system. The State is committed to supporting local content outcomes within Guinea and intends to play a leading role in providing an enabling environment for local content. This includes, but is not limited to, development of a future national local content policy with the assistance of multilateral institutions, donors and the private sector.

### **2 The definition of Local Content**

The Project participants define "Local Content" as the utilisation of labour, goods and services originating from within Guinea, and includes skills and / or technology transfer from international partners to local suppliers in order to enhance their ability to provide goods and services to the Project. The main objective is to create sustainable benefits for the Guinea economy through the purchase of locally sourced goods and services. Local Content and the benefits it creates in Guinea can originate from a Guinea owned or foreign owned organisation. The primary goal is to increase the domestic linkages and hence the overall benefit to the Guinean economy regardless of the level of Guinean ownership. Local content development should be considered a gradual process with outcomes expanding over time as processes, tools and experience further develops.

### **3 Local Content and the Project**

Local Content with respect to the Project could take the following forms:

- (a) local spend and employment in direct impact areas of the mine, rail and port systems;
- (b) training and mentoring of local labour to create skills transfer;
- (c) skills development and capacity building of local suppliers and communities;
- (d) improving the ease of access to finance for local suppliers;
- (e) development of new business reforms and initiatives for the Project that will also benefit others within the Guinea economy;
- (f) investments in physical and institutional infrastructure (eg, training / maintenance facilities);
- (g) development of long term sustainable partnerships and joint ventures that ensure the Project's key requirements are met, and
- (h) intellectual property and technology transfer from international to local companies.

### **4 Key requirements of the Project**

The consideration of Local Content will be subject to the achievement of the Project's following key requirements:

- (a) Sustainable development and Project Standards – an uncompromising commitment to Health, Safety, the Environment and Communities ("HSEC"), transparent and ethical business practices, and Human Rights.

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- (b) Project funding pre-commitments – project funding arrangements (eg, export finance, leasing arrangements, tied construction contracts) must be prioritised to ensure funding is available for the commencement of construction activities.
- (c) Construction schedule – achieving the agreed construction schedule underpins the economic viability of the Project and the timely delivery of associated benefits to the Guinean population.
- (d) Capital budget – minimising the capital cost will enhance the relative attractiveness of the Project for equity and debt investors and increase economic returns to the State and other participants.
- (e) Mine and infrastructure reliability – confidence in the availability and operational efficiency of the mine and infrastructure system that delivers iron ore to its international customers, providing confidence at the level of project investors and lenders, and stability in economic returns to the State and other participants.

### **5 Local Content Policy acknowledgement**

The State and SIMFER S.A. will develop and, not later than six months after the Effective Date, sign a Local Content Policy based upon the principles contained in this Appendix 7. In developing the Local Content Policy, the State and SIMFER S.A. acknowledge (and will procure that all other Project Participants and other stakeholders acknowledge):

- (a) The need to accommodate the specific requirements of a developing supply community and economy in Guinea.
- (b) Simandou will develop the supplier selection criteria in advance of contracts being awarded. This includes factors such as HSEC, price competitiveness, ability to meet quality and quantity of work, warranty terms and conditions, and service and support. In addition, Local Content offerings and the domestic linkages associated with each supplier and contractor will also be assessed.
- (c) Imposing specific targets for Local Content would adversely affect the Project's development and will not be considered as part of this policy.
- (d) The requirements for a transparent, ethical and internationally accepted procurement process, consistent with the Project Standards. This will include ensuring equal access opportunities to all local supplies and communities.
- (e) Final Local Content outcomes will be directly linked to State led and funded improvements in the enabling environment, in partnership with multilateral agencies.
- (f) The requirements for a stable business environment which includes, but is not limited to, implementation of a regime for VAT refunds and VAT exemption for the Project to ensure a level playing field between local and international suppliers.
- (g) The timely and safe delivery of the Project can only be achieved through unimpeded award of contracts by the mine and infrastructure management teams, who will be solely accountable for contract award decisions.
- (h) To maintain project schedule and technological conformance the Project will, from time to time, utilise sole sourcing for goods and services.
- (i) To ensure effective governance and provide assurance, the Simandou procurement process and a sample of associated contract and sole source award decisions will be made available for external audit on a bi-annual, retrospective basis.

- (j) Following mobilisation of the engineering contractors for the Mining Project and the Infrastructure Project, dedicated resources will be allocated for local supplier development activities within both the owner's team and any EPC / EPCM contractors.
- (k) Subject to the key requirements of the Project, prequalification of suitable local suppliers will be conducted to enable inclusion on upcoming bid lists. Prequalification status does not, however, guarantee contract award.
- (l) Simandou will work closely with the State, multilateral development partners, NGO's, other mining companies and extractive industries operating within Guinea to pursue synergies with respect to local content (eg, supplier identification and development).
- (m) The Project's Local Content Policy is expected to be reviewed and revised, where appropriate, as project and national circumstances evolve over time.

## **6 The State's commitment to providing an enabling environment for Local Content**

Local Content opportunities are contingent on physical and institutional infrastructure as critical enablers. This would include but not be limited to: technical and supplier training; an efficient customs and taxation system; a stable legal and regulatory environment; a fast track permitting and approval process; electricity, roads and other public utilities; and credit availability. Local Content opportunities would be expected to increase over time as the State led enabling environment develops and Guinean suppliers obtain new skills, gain crucial experience, and increased benefits. The State will help facilitate JVs between International and Local firms. The State will also assist international companies seeking to establish themselves in Guinea independently.

## **7 Simandou Construction and Operations development phases**

There are two distinct phases of development for the Project: (a) construction phase; and (b) operations phase. Each phase has different Local Content opportunities, challenges and constraints.

- (a) Construction phase – As a consequence of the highly specialised nature of the goods and services required and the Project participants' desire for an accelerated schedule to achieve Infrastructure Completion Date and First Commercial Production Date, the construction phase will need to utilise a high proportion of imported goods and services. A clear objective in the construction phase will be to pursue quick wins and optimise local content, where appropriate, through subcontracting, alliances and joint ventures.
- (b) Operations phase – In contrast, during the operations phase the consumption requirements change from large one off specialised capital purchases to recurring purchases of operational goods and services. The operations phase presents greater Local Content opportunities on the basis of the longer time horizon available to facilitate the development of local suppliers and employees in conjunction with provision of the State supported enabling environment.

## **8 Expectations of Suppliers and Contractors**

The Project participants affirm their commitment to the objectives and desired principles contained in this Appendix 7 and their intention that:

- (a) the Project be developed in accordance with international best practice in commercial governance, ethical conduct in business, and transparency; and
- (b) the Project Standards represent the minimum expectation of all suppliers and contractors (Guinean and international) and over time a culture that exceeds compliance develops.

## Appendix 8: State Enabling Activities

The State undertakes to:

- (i) establish a derogatory framework for facilitating the granting of all necessary Authorisations for the Project and associated activities including, without limitation, as a matter of priority:
  - (A) the grant of all necessary Authorisations within 11 months of the Effective Date associated with:
    - (1) the MOF and construction dredging (including defining spoil locations);
    - (2) obtaining fuel from outside Guinea and in Guinean territorial waters from non-Guinean suppliers (including, without limitation, for the purposes of construction dredging); and
  - (B) a commitment to ensure that:
    - (1) any required SEIA-related renewals are provided within 1 month of the application for the relevant renewal being lodged; and
    - (2) Authorisations needed for the construction schedules for the Mining Infrastructure and the Project Infrastructure will be granted;
- (ii) establish:
  - (A) the necessary delegation of all signing authorities and any other administrative actions necessary or desirable for the schedule of the Project;
  - (B) a project coordination office and a *guichet unique* or other appropriate structure to facilitate the development of the Project, and
  - (C) the necessary dedicated administrative services to accommodate the volume of the Project Activities;
- (iii) establish, in accordance with a schedule to be agreed with SIMFER S.A. within 3 months of the Effective Date which sets out milestone dates for implementation, rules, regulations, protocols, user guides or any other required documents in respect of all relevant tax and customs matters contemplated by this Convention, the Tax Annex and the Legislation in Force and achieve implementation within the period prescribed in the agreed schedule;
- (iv) establish all necessary administrative authorities, systems and capabilities:
  - (A) for the purposes of land acquisition, resettlement and compensation in accordance with the PARC Framework and Appendix 6; and
  - (B) so as to align the timing for the implementation of land acquisition, resettlement and compensation matters referred to in section (iv)(A) of this Appendix 8 with the construction schedules for the Mining Infrastructure and for the Project Infrastructure (on the basis of such scheduling information advised by the Infrastructure Owner and SIMFER S.A. to the State a reasonable time in advance);
- (v) ensure security measures and establish administrative measures and documentation, to be agreed with SIMFER S.A. within 3 months of the Effective Date, for the importation of dangerous goods necessary for the construction and operation of the Project (including, without limitation, explosives, hydrocarbons and specialty chemicals);

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- (vi) establish new business registration offices and national employment offices in each of Beyla, Forecariah and Faranah;
- (vii) issue all necessary visas in accordance with Article 25 for the purposes of the Consortium Selection Process and the In-country Activities, as well as initial construction, expansion and operation of the Project (including, for the avoidance of doubt, an undertaking to issue upon request visas for the purposes of replacing workers from time to time and not to introduce or invoke quotas or other restrictions upon the numbers of visas that may be issued from time to time);
- (viii) confirm, in a form acceptable to SIMFER S.A., within 3 months of the Effective Date, that each of SIMFER S.A., the Infrastructure Consortium, the Infrastructure Owner and Infrastructure Operator:
  - (A) are permitted to apply their own training, HSE and technical standards; and
  - (B) do not need to apply any other training, HSE or technical standards, in recruiting and training employees, provided that, and for so long as, SIMFER S.A., the Infrastructure Consortium and Infrastructure Owner's training, HSE and technical standards (as applicable) are consistent with the Project Standards and notwithstanding the desire of SIMFER S.A. to work collaboratively with the State and third parties to develop training, HSE and technical standards; and
- (ix) implement any other enabling activities that are reasonably necessary in connection with the construction of the Mining Infrastructure,

(collectively, the **State Enabling Activities**) within the period prescribed in each section in this Appendix 8 and, where no period is prescribed, 11 months of the Effective Date.

## Appendix 9: Infrastructure Consortium Selection Terms

### 1 Eligibility

A candidate will be eligible for selection as the Infrastructure Consortium if, in SIMFER S.A.'s reasonable opinion, the candidate:

- (a) has the necessary financial resources;
- (b) has a proven ability to deliver, within the required timeframe, a fit for purpose, on budget and safe Project Infrastructure at the planned capacity; and
- (c) is committed to complying with the requirements and standards prescribed by SIMFER S.A..

### 2 Selection Terms

SIMFER S.A. will select the Infrastructure Consortium from among the eligible candidates on the basis of, amongst other things:

- (a) total capital cost, which must:
  - (i) be for a 100 Mtpa Iron Ore project to be constructed in two stages;
  - (ii) assume that the Infrastructure Construction Criteria apply at all times; and
  - (iii) set out the nominated capital cost of each of the design, development and construction phases of each of the Rail Infrastructure and the Simandou Port comprising the Project Infrastructure to be constructed to achieve the capacity nominated by SIMFER S.A. under section 2(a)(i) of this Appendix 9;
- (b) the proposed tariff to be paid by SIMFER S.A. (on a fixed basis and in real terms);
- (c) confirmation of the identity of the proposed Infrastructure Operator and, where the Infrastructure Operator is not proposed to be SIMFER S.A or an Affiliate of SIMFER S.A., the fee payable and other proposed terms and conditions which would apply to the Infrastructure Operator;
- (d) terms and conditions that will apply to the Infrastructure Project, which must:
  - (i) include the full extent of any modifications to this Convention, the BOT Convention or the RPSA that may be sought;
  - (ii) include any terms which will or are likely to fundamentally affect the risk allocation from the perspective of SIMFER S.A.; and
  - (iii) not include any terms or conditions that are not contemplated by any existing heads of agreement or transaction terms sheet to which SIMFER S.A. and Infrastructure Consortium (or any representative of it) are both parties;
- (e) the total construction period, which must be nominated on the basis that the construction period:
  - (i) represents the period of time between the commencement of work and the achievement of practical completion of the Project Infrastructure to a capacity of approximately 100 Mtpa of Iron Ore to be constructed in two stages;
  - (ii) assumes that the Infrastructure Construction Criteria apply at all times; and
  - (iii) makes reference to the ICD Target Date;
- (f) treatment of Historical Infrastructure Costs; and

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- (g) any regulatory approvals required for the infrastructure investment either in Guinea or in the home jurisdictions of the Infrastructure Consortium members,  
(together, the ***Selection Terms***).

## Appendix 10: Infrastructure Provisions

This Appendix 10 sets out the Infrastructure Provisions as referred to in Article 19.8 of this Convention. These Infrastructure Provisions shall apply in full effect from the Transfer Date, and will remain effective until the expiry of this Convention.

### Definitions

The terms and expressions used in these Infrastructure Provisions and not defined below have the same meaning as in this Convention, and otherwise have the following meaning, unless the context provides otherwise.

**"Additional Capacity"** has the meaning given to it in Article 19(a) of these Infrastructure Provisions.

**"Asset"** or **"Project Infrastructure Asset"** means all assets, rights, titles and interests present and future, movable or immovable, tangible or intangible, relating to the Infrastructure Project, that belong to Infrastructure Owner, to the Project Contractors or to their respective Affiliates or that are leased or let by (or on behalf of) any one of them, as well as the rights under any conventions, concession contract and / or emphyteutic lease (including the BOT Convention, this Convention and these Infrastructure Provisions) entered into by (or on behalf of) any one of them, including all returns and income deriving from the Infrastructure Project that are paid or due.

**"Authorisations"** means the authorisations, consents, approvals, certificates, resolutions, licences, permits, exemptions, filings, registrations, visas and all other administrative acts necessary in connection with the Infrastructure Project and / or the Infrastructure Activities pursuant to the Legislation in Force, and **"Authorisation"** means each of them.

**"Availability Charge"** has the meaning given to it in the Rail Pricing Principles or Port Pricing Principles or as applicable.

**"Basic Availability Charge"** has the meaning given to it in the Rail Pricing Principles or Port Pricing Principles or as applicable.

**"BOT Convention"** means the BOT Convention and its Appendices, signed and entered into on the date this Convention was amended and consolidated, which will expire on the Transfer Date.

**"Convention"** refers to the Original Convention (as defined in this Convention), as amended and consolidated as contemplated by the Settlement Agreement (as defined in this Convention), this Convention and its Appendices, and any amendment that might be introduced thereto. The Convention is likewise sometimes referred to with the expression 'this Convention'.

**"Expansion BFS"** means a bankable feasibility study in relation to an expansion that was the subject of, or was substantially the subject of, an Expansion PFS initiated by the Foundation Customer under Article 15.3(c) of these Infrastructure Provisions;

**"Expansion Capacity"** has the meaning given to it in Article 14.5 of these Infrastructure Provisions.

**"Expansion Completion Date"** means the date on which practical completion of the construction of the infrastructure required to expand the Project Infrastructure for the purposes of a Foundation Customer Expansion has been achieved by Infrastructure Owner.

**"Expansion Funding Principles"** means the Foundation Customer Expansion Funding Principles and Producer Expansion Funding Principles (as applicable).

**"Expansion OoM Study"** means a preliminary study of options for the expansion of the Project Infrastructure initiated by the Foundation Customer under Article 15.3(b) of these Infrastructure Provisions in respect of the Rail Infrastructure, Shared Port Facilities and Simfer Port Facilities;

**"Expansion PFS"** means a pre-feasibility study in relation to an expansion that was the subject of, or was substantially the subject of, an Expansion OoM Study and initiated by the Foundation Customer under Article 15.3(c) of these Infrastructure Provisions;

**"FC Capacity Allocation"** means:

- (a) the FC Capacity Allocation as determined under the BOT Convention as at the Transfer Date; plus
- (b) any Expansion Capacity attributable to an expansion carried out by or on behalf of the Foundation Customer under Article 15 of these Infrastructure Provisions, as determined in accordance with Article 14.5 of these Infrastructure Provisions.

**"FC Nomination"** has the meaning given to it in Article 14.6(b) of these Infrastructure Provisions.

**"Fibre Optic Cable"** means the backbone fibre optic cable that connects the Mining Infrastructure to the Simandou Port.

**"Force Majeure Event"** has the meaning given to it in Article 59 of these Infrastructure Provisions.

**"Forecast Operating Plan and Budget"** has the meaning given to it in Article 14.6(a) of these Infrastructure Provisions.

**"Foundation Customer"** means SIMFER S.A. or its successor or assignee in accordance with this Convention.

**"Foundation Customer Expansion"** means any increase in the capacity of the Project Infrastructure which is achieved following an expansion which is funded or underwritten by Foundation Customer pursuant to these Infrastructure Provisions.

**"Foundation Customer Expansion Funding Principles"** means the expansion funding principles to govern the funding (by Foundation Customer or Infrastructure Owner) of an expansion initiated by Foundation Customer, as set out in the Pricing Principles Agreement.

**"Foundation Customer Expansion Infrastructure"** has the meaning given to it in Article 15.3(i) of these Infrastructure Provisions.

**"Foundation Customer Spare Capacity"** has the meaning given to it in Article 15.4(a) of these Infrastructure Provisions.

**"General Cargo Services"** has the meaning given to it in Article 17 of these Infrastructure Provisions.

**"General Cargo Services Principles"** means the principles governing the General Cargo Service as set out in Appendix 12 of the BOT Convention which are applicable at the Transfer Date.

**"Haulage Services"** has the meaning given to it in Article 15.1(a) of these Infrastructure Provisions.

**"ICSID Convention"** has the meaning given to it in Article 48.3(a)(v) of these Infrastructure Provisions.

**"Independent Regulator"** means the autonomous and independent regulator established by legislation pursuant to the terms of the BOT Convention.

**"Infrastructure Construction Criteria"** means:

- (b) in relation to any expansion, the design, scope and technical requirements agreed between Infrastructure Owner and Foundation Customer or a Producer (as applicable), provided that, in each case, such requirements are consistent with the specifications of the Project Infrastructure and would not reduce or adversely affect the operational safety, efficiency or performance of the Project Infrastructure;
- (d) Project Standards;
- (e) the Protocols; and

(f) Prudent Infrastructure Practices.

**"Infrastructure Operating Agreement"** means the agreement entered into by Infrastructure Owner, the Infrastructure Operator and Foundation Customer, setting out the terms and conditions on which the Infrastructure Operator is appointed by Infrastructure Owner as an independent contractor to operate, maintain and renew the Project Infrastructure and provide other agreed services, as may be amended from time to time by agreement between the parties thereto.

**"Infrastructure Operator"** means the entity that accedes to the BOT Convention as the Infrastructure Operator pursuant to Article 2.9(c) of the BOT Convention, and any other entity which is duly appointed to replace it pursuant to the terms and conditions of the BOT Convention prior to the Transfer Date, or pursuant to the terms and conditions of these Infrastructure Provisions after the Transfer Date.

**"Infrastructure Owner"** means the entity that accedes to the BOT Convention as the Infrastructure Owner pursuant to Article 2.9(b) of the BOT Convention, and any other entity which is duly appointed to replace it pursuant to the terms and conditions of the BOT Convention on or before the Transfer Date, or pursuant to the terms and conditions of these Infrastructure Provisions on or after the Transfer Date.

**"Infrastructure Project"** means the design, development, financing, construction, ownership, operation, maintenance, modification or expansion of the Project Infrastructure, and any other related activities necessary for the conduct of Infrastructure Activities (including any expropriation of land that is required for these purposes).

**"Mining Infrastructure"** means the totality of the infrastructure belonging to Foundation Customer wherever located to meet the Project needs in the context of the Mining Activities. For these purposes, Mining Infrastructure denotes all mining, power, communications, transport, underground infrastructure, road and social facilities and installations and includes the following:

- (a) train loading facilities and the railway track from the train loading facilities to the point at which the railway track crosses the Perimeter of the Modified Concession (and associated track structures and tunnels within the Perimeter of the Modified Concession) ("**Simfer Spur Lines**");
- (b) roads located within the Perimeter of the Modified Concession;
- (c) power generation facilities (including hydro facilities) and transmission and distribution lines used primarily in connection with Mining Activities;
- (d) airports and other air transportation facilities;
- (e) light vehicles and buses used primarily in connection with Mining Activities;
- (f) administrative offices, employee accommodation, messing facilities, medical facilities and associated infrastructure used primarily in connection with Mining Activities; and
- (g) other buildings, facilities and equipment required for the implementation and operation of, or otherwise used primarily in connection with, Mining Activities.

**"MOF"** means the multi-purpose offload facility, including provision for warehousing and laydown requirements for incoming supplies and equipment, located within the area of the Simfer Port Facilities.

**"Notification"** has the meaning given to it in Article 59 of these Infrastructure Provisions.

**"Operating Charge"** has the meaning given to it in the Rail Pricing Principles or Port Pricing Principles or as applicable.

**"Operating Fee"** has the meaning given to it in the Rail Pricing Principles or Port Pricing Principles or as applicable.

**"Party"** means in relation to and when used in these Infrastructure Provisions, the State, Foundation Customer, Infrastructure Owner and Infrastructure Operator and any permitted successors or assigns.

**"Passenger Service"** has the meaning given to it in Article 16(a) of these Infrastructure Provisions.

**"Passenger Service Principles"** means the principles governing the Passenger Service as set out in Appendix 11 of the BOT Convention which are applicable at the Transfer Date.

**"Port Availability Charge"** means an Availability Charge payable by Foundation Customer determined in accordance with the Port Pricing Principles.

**"Port Limit"** means the area of land and waters located within the Port Zone, the boundary of which has been determined under the BOT Convention.

**"Port Pricing Principles"** means the port pricing principles to govern the payment of Tariffs in relation to the Simandou Port, as set out in the Pricing Principles Agreement.

**"Port Services"** means services provided using the Shared Port Facilities and either Simfer Port Facilities or Producer Port Facilities, including:

- (a) in the case of Simfer Port Facilities or Producer Port Facilities:
  - (i) loading of product onto vessels, including receipt of product and either direct ship loading or stockpiling;
  - (ii) unloading of incoming equipment and supplies from vessels;
  - (iii) maintaining and renewing the Simfer Port Facilities or Producer Port Facilities for the purposes of providing the services referred to above; and
  - (iv) other ancillary services connected to the services referred to above; and
- (b) in the case of Shared Port Facilities:
  - (i) the management and maintenance of the Port Limit area including security and surveillance;
  - (ii) the monitoring of water depths and the performance of dredging operations within the Port Zone;
  - (iii) towing including all towing operations relating to the entry, exit and movement of ships and buoyant apparatuses within the Port Zone;
  - (iv) piloting of vessels to bring the vessel into and out of the Port Limit and within the Port Zone and maritime waters;
  - (v) boatage covering all operations carried out for the mooring of vessels or the movement of vessels;
  - (vi) monitoring, surveillance and rescue within the Port Limit and the shipping channel; and
  - (vii) other ancillary services connected to the services referred to above.

**"Port Zone"** means the area within which the Simandou Port is located, the boundary of which has been determined under the BOT Convention.

**"Pricing Principles"** means the Rail Pricing Principles and the Port Pricing Principles.

**"Pricing Principles Agreement"** has the meaning given in Article 14.8(a) of the BOT Convention in force at the Transfer Date as the same may be amended from time to time in accordance with these Infrastructure Provisions.

**"Producer"** means a third party producer of minerals or agricultural products on a commercial scale.

**"Producer Expansion Funding Principles"** means the expansion funding principles to govern the funding (by a Producer or Infrastructure Owner) of an expansion initiated by a Producer, as set out in the Pricing Principles Agreement.

**"Producer Port Facilities"** means that part of the Simandou Port that comprises separate ship terminal facilities built for a Producer as part of an expansion, which shall include:

- (a) train unloading facilities (including car dumpers), conveyors, stockyards, stackers, reclaimers, ore blending and screening facilities and ship-loading facilities and maintenance and facilities equipment in relation thereto;
- (b) wharves, jetties, berths and swinging basins and maintenance and facilities equipment in relation thereto;
- (c) an analytical facility to be operated by, or on behalf of, the Producer for the purposes of providing verification of shipped product chemical and physical characteristics to allow a certificate of analysis to be prepared and issued for each shipment in alignment with product quality requirements under applicable sales contracts;
- (d) a multi-purpose offload facility (including provision for warehousing and laydown requirements);
- (e) the facilities necessary for the provision of electricity, water and public health and hygiene services, including as required for sewage treatment, potable water supply, waste management and disposal to the extent such services are not provided by Infrastructure Operator using the Shared Port Facilities; and
- (f) any other buildings, facilities or equipment as are required by the Producer,

and which Producer Port Facilities shall be located within the Port Zone and be designed and constructed by Infrastructure Owner and operated and maintained by Infrastructure Operator.

**"Project Contractor"** means any validly existing enterprise (including any Affiliate or guarantor thereof) that satisfies the following cumulative conditions:

- (a) having the necessary competence for providing services and/or works for the purposes of the Project Infrastructure, whether as a sub-contractor, supplier or services provider;
- (b) which has entered into a contract with Foundation Customer, Infrastructure Owner, Infrastructure Operator or their respective Affiliates or one of their sub-contractors in the dedicated context of the Project Infrastructure; and
- (c) whose identity and nature of services and / or works have been promptly notified to the State following signature of the relevant contract.

For the purposes of this definition, an enterprise shall be taken to have entered into a contract in the dedicated context of the Project Infrastructure even though it has entered into one or more other contracts in the context of the Mining Infrastructure or a contract referred to in paragraph (b) of this definition applies to both the Project Infrastructure and the Mining Infrastructure.

**"Protocols"** means collectively, the Scheduling and Operating Protocol, Vessels Standards Protocol, Rolling Stock Standards Protocol, Rolling Stock Maintenance Protocol, Track Maintenance Protocol, Port Maintenance Protocol, Port Regulations, Account Keeping Rules, Security and Public Safety Protocol and Social and Environment Protocols as well as any other protocols in force under the BOT Convention on the Transfer Date.

**"Prudent Infrastructure Practices"** means the exercise of that degree of skill, diligence, prudence and foresight which could reasonably be expected from a skilled, experienced and competent owner or operator which is engaged in the same type of task under the same or similar circumstances in a manner consistent with the technical and operating requirements in accordance with generally recognised international practices, standards and safety procedures for long haul iron ore railways and bulk iron ore port facilities, and where applicable, in accordance with the Rail and Port Services Agreement.

**"Rail and Port Services Agreement" or "RPSA"** means the rail and port services agreement between Infrastructure Owner, Infrastructure Operator and Foundation Customer for the provision of Haulage Services to Foundation Customer, reflecting the matters set out in Article 15.1 of the BOT Convention or these Infrastructure Provisions (as applicable) and subject to the requirements of Article 15.1(a)(x) of the

BOT Convention or of the Infrastructure Provisions (as applicable), as may be amended from time to time by agreement between the parties thereto.

**"Rail Availability Charge"** means an Availability Charge payable by Foundation Customer determined in accordance with the Rail Pricing Principles.

**"Rail Infrastructure"** means the railway and associated infrastructure to be funded, designed, constructed, commissioned, owned, modified and expanded by Infrastructure Owner and operated and maintained by Infrastructure Operator comprising:

- (a) a standard gauge heavy haul railway between each mine or site serviced by Infrastructure Owner to applicable train unloading facilities, including:
  - (i) all railway tracks including turning loops and sidings but excluding Simfer Spur Lines and Producer Spur Lines (and assets associated with such spur lines as described in paragraph (a)(ii) of this definition);
  - (ii) associated track structures, over and under track structures, tunnels, bridges, culverts and supports (including supports for equipment or items associated with the use of railway track) and associated plant, machinery and equipment;
  - (iii) rolling stock, including locomotives, wagons, fuel tankers, supplies wagons, maintenance rolling stock and any other wagons required for the provision of the Passenger Service ("**Rolling Stock**");
  - (iv) Rolling Stock maintenance facilities and equipment;
  - (v) communication systems, including fibre-optic links within the rail corridor;
  - (vi) train control and signalling systems (including train control facilities and movement and scheduling systems and software);
  - (vii) terminals, yards, depots and weigh bridges;
  - (viii) maintenance facilities and equipment for rail infrastructure;
  - (ix) fuel distribution systems and fuel storage and distribution facilities used to supply fuel for the rail infrastructure;
  - (x) supplies distribution systems and warehouses and other storage and distribution facilities;
  - (xi) power generation facilities and transmission and distribution lines used to supply power for the Rail Infrastructure;
  - (xii) light vehicles and buses used in connection with the rail service;
  - (xiii) administrative offices, employee accommodation, messing facilities, medical facilities and associated infrastructure used in connection with the rail service; and
  - (xiv) facilities as required along the railway line for sewage treatment, potable water supply, waste management and disposal;
- (b) rail access road; and
- (c) any Rolling Stock to be used solely for the purpose of operating the Passenger Service and any stations and associated infrastructure (including staff accommodation and electricity generation facilities) to be used for the purpose of operating the Passenger Service,

but does not include any freight, fuel, ore loading facility or unloading facility at the mine or any other asset constructed within the perimeter of such relevant concession area or the Simfer Spur Lines or Producer Spur Lines.

**"Rail Pricing Principles"** means the rail pricing principles to govern the payment of Tariffs in relation to the Rail Infrastructure, as set out in the Pricing Principles Agreement.

**"Rail Services"** means services provided using the Rail Infrastructure, including:

- (a) the transportation of product from a mine or other loading facility to a port;
- (b) transporting equipment and supplies from a port to a mine or other unloading facility;
- (c) providing provisioning, maintaining and renewing Rolling Stock to provide the services referred to above;
- (d) maintaining and renewing other Rail Infrastructure for the purposes of providing the services referred to above; and
- (e) other ancillary services connected to the services referred to above.

**"Rolling Stock"** has the meaning given to it in the definition of Rail Infrastructure.

**"Schedule"** means documents indicated as such in or attached to these Infrastructure Provisions. Each Schedule forms an integral part of these Infrastructure Provisions.

**"Shared Port Facilities"** means the following parts of the Simandou Port excluding the Simfer Port Facilities and any Producer Port Facilities:

- (a) rights in relation to the shipping channels at the Simandou Port and dredging of channels; and
- (b) facilities as are necessary for the construction, operation and maintenance of ship terminals including:
  - (i) anchorage areas, harbour installation facilities and equipment, including navigational aids such as buoys to mark navigation channels, leading lights, turning basin and helipad and facilities and equipment to be used for the purpose of towing, piloting and boatage and monitoring, surveillance and rescuing;
  - (ii) Simandou Port maintenance facilities and equipment (other than in relation to Simfer Port Facilities or Producer Port Facilities) including facilities for vehicle cleaning, wheel washing and inspection;
  - (iii) power generation and lighting facilities and transmission and distribution lines used to supply power for the Simandou Port or for sites in the vicinity of the Simandou Port for purposes connected to the Simandou Port or the Project (as required to provide Port Services to Foundation Customer and, at the option of Infrastructure Owner and Infrastructure Operator, to Producers);
  - (iv) light vehicles and buses used primarily in connection with the Simandou Port;
  - (v) administrative offices, port offices, customs, warehousing, employee accommodation, messing facilities, medical and emergency response facilities and associated infrastructure used primarily in connection with the Simandou Port; and
  - (vi) the facilities necessary for the provision of water and public health and hygiene services, including as required for sewage treatment, potable water supply, waste management and disposal (as required to provide Port Services to Foundation Customer and, at the option of Infrastructure Owner and Infrastructure Operator, to Producers).

**"Simandou Port"** means the onshore and offshore port and associated harbour facilities within the Port Zone to be constructed, commissioned, owned, modified and expanded by Infrastructure Owner and operated and maintained by Infrastructure Operator comprising:

- (a) the MOF;
- (b) the Simfer Port Facilities;

- (c) any Producer Port Facilities; and
- (d) the Shared Port Facilities,

but does not include any asset comprising part of the Mining Infrastructure.

**"Simfer Port Facilities"** means that part of the Simandou Port that comprises separate ship terminal facilities built for Foundation Customer as part of the FC Capacity Allocation, which shall be used exclusively by Foundation Customer and include:

- (a) train unloading facilities (including car dumpers), conveyors, stockyards, stackers, reclaimers, ore blending and screening facilities and ship-loading facilities and maintenance and facilities equipment in relation thereto;
- (b) wharves, jetties, berths and swinging basins and maintenance and facilities equipment in relation thereto;
- (c) an analytical facility to be operated by, or on behalf of, Foundation Customer for the purposes of providing verification of shipped product chemical and physical characteristics to allow a certificate of analysis to be prepared and issued for each shipment in alignment with product quality requirements under applicable sales contracts;
- (d) the MOF; and
- (e) any other buildings, facilities or equipment as are required by Foundation Customer.

**"Simfer Project Infrastructure"** means all Project Infrastructure other than any Producer Port Facilities and any expansions which are not built, funded or underwritten by Foundation Customer.

**"Simfer Spur Lines"** has the meaning given to it in paragraph (a) of the definition of Mining Infrastructure.

**"Tariff"** means an amount payable by Foundation Customer, a Producer or any third party users of Additional Capacity to Infrastructure Owner or Infrastructure Operator or both for Rail Services and Port Services, determined in accordance with the Rail Pricing Principles or Port Pricing Principles.

**"Transfer Date"** means the date the shares in the capital of Infrastructure Owner or Project Infrastructure Assets are transferred to the State pursuant to Article 54.1(a)(i) of the BOT Convention.

## Interpretation

The rules of interpretation as set out in the "Interpretation" section of this Convention apply to these Infrastructure Provisions. The numbering of these Infrastructure Provisions is not consecutive because it reflects the equivalent provisions from the BOT Convention.

### 1 Purpose of the Infrastructure Provisions

The purpose of the Infrastructure Provisions is to define the terms and conditions on which the Foundation Customer will continue to use the Project Infrastructure after the Transfer Date.

### 2 Status of the Infrastructure Provisions

The Infrastructure Provisions constitute legally binding obligations on the State, the Infrastructure Owner, the Infrastructure Operator and the Foundation Customer which are valid, binding and enforceable in accordance with their terms independently of the provisions of this Convention.

### 4 Term

These Infrastructure Provisions will come into effect on the Transfer Date and continue until termination or expiry of this Convention.

## 8 Expansion Construction Activities

- (a) Infrastructure Owner hereby agrees and undertakes that it shall undertake all construction works for the Project Infrastructure, do all things and perform all of its obligations under these Infrastructure Provisions strictly in accordance with the Infrastructure Construction Criteria.
- (b) Infrastructure Owner is responsible for the management of all planning, design, construction and commissioning activities in relation to the Infrastructure Project including in relation to Foundation Customer Expansions (except those expansions which Foundation Customer elects to construct pursuant the Foundation Customer Expansion Funding Principles and Article 15.3(h) of these Infrastructure Provisions). Such activities include the entry into and administration of construction contracts and the day to day administration of such construction contracts.
- (c) Further to Article 8.1(a) of these Infrastructure Provisions, Infrastructure Owner shall perform its obligations under these Infrastructure Provisions and in doing so take all reasonable steps to prevent and minimise delay in such performance and to mitigate any losses of Foundation Customer which arise as the result of any such delay.
- (d) In the event that Foundation Customer elects to construct an expansion pursuant to the Foundation Customer Expansion Funding Principles and Article 15.3(h) of these Infrastructure Provisions:
  - (i) it shall undertake all construction works for the expansion and do all things and perform its obligations with respect to such expansion in accordance with the Infrastructure Construction Criteria;
  - (ii) the State and Infrastructure Owner may at any time, upon the provision of reasonable notice to Foundation Customer, inspect and audit any works being undertaken by Foundation Customer for the purpose of determining whether those works comply with the Infrastructure Construction Criteria. Any non-compliance detected shall be communicated in writing to Foundation Customer and remedied within a reasonable period failing which Infrastructure Owner may exercise a right of step in to remedy the non-compliance.
  - (iii) Infrastructure Owner and Infrastructure Operator shall grant, on and from the date of the election by Foundation Customer and until the Expansion Completion Date, an irrevocable licence and other rights of use and access to Foundation Customer, its Project Contractors and their Affiliates to enter and remain on Project Lands as may be necessary in order to commence and undertake the works; and
  - (iv) the State shall grant all Authorisations necessary for such expansion.
- (f) It is acknowledged and agreed by the State, the Infrastructure Owner and the Infrastructure Operator that these provisions are without prejudice to any step-in rights the Foundation Customer may have under the Rail and Port Services Agreement.

## 12 Rights and Obligations of Infrastructure Owner

Infrastructure Owner shall:

- (a) own, modify and expand the Project Infrastructure in accordance with the Infrastructure Construction Criteria;
- (b) in conjunction with Infrastructure Operator, provide the Haulage Services to Foundation Customer in accordance with the Rail and Port Services Agreement;

- (c) undertake studies of, and as required implement, expansions of the Project Infrastructure for Foundation Customer (under Article 15 of these Infrastructure Provisions), Producers (under Article 18 of these Infrastructure Provisions) and the State and itself (under Article 19 of these Infrastructure Provisions);
- (d) appoint Infrastructure Operator to manage, as an independent contractor on behalf of Infrastructure Owner, the operation and maintenance of the Project Infrastructure;
- (e) provide all infrastructure and equipment required to provide the Passenger Service, including transportation vehicles and stations;
- (f) provide Foundation Customer with priority access to the Fibre Optic Cable, scheduling software which forms part of the Rail Infrastructure and any laboratory at the Simandou Port as required to ensure their efficient operations, in accordance with the Rail & Port Services Agreement; and
- (g) provide upon request all information in its possession or control that Foundation Customer may reasonably require to satisfy any obligations owed to the State, in particular those set out in Article 7 of this Convention.

### **13 Rights and Obligations of Infrastructure Operator**

Infrastructure Operator, as an independent contractor on behalf of Infrastructure Owner, will operate and maintain the Project Infrastructure in accordance with Prudent Infrastructure Practices, the Protocols and the Project Standards. The operation and maintenance activities will include the following:

- (a) obtaining and holding all Authorisations issued by the State as necessary to operate and maintain the Project Infrastructure;
- (b) subject to the terms of these Infrastructure Provisions and the Rail and Port Services Agreement provide, as an independent contractor on behalf of Infrastructure Owner:
  - (i) Haulage Services to Foundation Customer in accordance with the Rail and Port Services Agreement;
  - (ii) the Passenger Service;
  - (iii) the General Cargo Services;
  - (iv) Haulage Services to a Producer and third parties (in relation to Expansion Capacity and Additional Capacity) on terms agreed with that Producer or third party in accordance with these Infrastructure Provisions;
  - (vi) Foundation Customer with priority access, and any Producers with access to the Fibre Optic Cable, scheduling software which forms part of the Rail Infrastructure and any laboratory at the Simandou Port as required to facilitate the obligations of Infrastructure Owner pursuant to Article 12(f) of these Infrastructure Provisions, in accordance with the Rail & Port Services Agreement;
- (c) undertake as independent contractor for the Infrastructure Owner studies and implement expansions of the Project Infrastructure for Foundation Customer (under Article 15 of these Infrastructure Provisions), Producers (under Article 18 of these Infrastructure Provisions) or the State (under Article 19 of these Infrastructure Provisions) as required; and
- (d) acting, within the Port Limit, as the Port Authority (pursuant to the Merchant Marine Code of Guinea and the Port Regulations), and in doing so be responsible for controlling vessel movements in and out of the Port Limit and along the shipping channels in accordance

with the Port Regulations, it being understood and agreed that in the event of any inconsistency arising between the Merchant Marine Code of Guinea and the Port Regulations, the Port Regulations shall prevail.

The Infrastructure Operator shall be entitled to subcontract the performance of one or more of the Infrastructure Activities, but will not as a result be relieved of any of those obligations or duties.

## **14 Nature of Services and Multi User Project Infrastructure**

### **14.1 Multi User Rail Infrastructure and Port Services**

The Parties acknowledge that the Rail Infrastructure and Simandou Port shall be multi user in that:

- (a) the Project Infrastructure shall be made available for the provision of Haulage Services to Foundation Customer, as contemplated under Article 15 of these Infrastructure Provisions;
- (b) the Rail Infrastructure and Shared Port Facilities may be made available to Producers, as contemplated under Article 18 of these Infrastructure Provisions;
- (c) the Rail Infrastructure and Shared Port Facilities may be expanded by the State or Infrastructure Owner to create Additional Capacity to be made available to third parties in the circumstances, and only to the extent, provided in Article 19 of these Infrastructure Provisions;
- (d) the Rail Infrastructure shall be made available for the Passenger Service, as contemplated under Article 16 of these Infrastructure Provisions; and
- (e) the MOF shall be made available for the General Cargo Services, as contemplated under Article 17 of these Infrastructure Provisions.

### **14.3 Exclusive use of Simfer Port Facilities**

The Parties acknowledge that the Simfer Port Facilities are to be used exclusively for Foundation Customer and the Parties shall not permit third parties to use the Simfer Port Facilities or provide services to third parties utilising the Simfer Port Facilities (except that the MOF shall be available for General Cargo Services in accordance with Article 17 of these Infrastructure Provisions).

### **14.4 Nature of Services**

The provision of services by Infrastructure Owner and Infrastructure Operator, as an independent contractor on behalf of Infrastructure Owner, pursuant to these Infrastructure Provisions, including the Passenger Service and the General Cargo Services and the provision of services to Producers, is not a public service.

### **14.5 Determining Expansion Capacity**

The increase in capacity of the Rail Infrastructure and Shared Port Facilities attributable to any expansion carried out by or on behalf of Foundation Customer under Article 15 of these Infrastructure Provisions upon the Expansion Completion Date ("**Expansion Capacity**") will be determined in accordance with a process to be set out in the Rail and Port Services Agreement;

### **14.6 Determining Forecast Operating Plan and Budgets**

- (a) Prior to the start of each Year, Infrastructure Operator, Infrastructure Owner and Foundation Customer will seek to agree a forecast operating plan and budget in relation to the Rail Infrastructure, Simfer Port Facilities and Shared Port Facilities ("**Forecast Operating Plan and Budget**"). The Forecast Operating Plan and Budget must contain

the information, and be prepared and agreed in accordance with the process, agreed between the Infrastructure Owner, Infrastructure Operator and Foundation Customer and set out in the Rail and Port Services Agreement.

- (b) For the purposes of preparing the Forecast Operating Plan and Budget, the Foundation Customer must, by a date specified in the Rail and Port Services Agreement, provide Infrastructure Operator with a bona fide estimate of the capacity it intends to use for each month in the following Year and for each Year in the following five years ("**FC Nomination**"). The FC Nomination for a Year cannot exceed the FC Capacity Allocation for that Year (unless otherwise agreed between the Infrastructure Owner, Infrastructure Operator and Foundation Customer).
- (c) If the Infrastructure Owner, Infrastructure Operator and Foundation Customer are unable to agree the Forecast Operating Plan and Budget the dispute shall become the subject of conciliation proceedings conducted by the Independent Regulator in accordance with the Rail and Port Services Agreement.
- (d) If a Forecast Operating Plan and Budget has not been agreed or determined by the start of a Year, the Forecast Operating Plan and Budget for the previous Year will be applied until such time as the new Forecast Operating Plan and Budget is agreed or determined.

#### **14.8 Pricing Principles and Expansion Funding Principles**

- (a) It is acknowledged by the Parties that the Pricing Principles, the Expansion Funding Principles and the Pricing Principles Agreement may be amended by agreement between the State, Infrastructure Owner, Infrastructure Operator and Foundation Customer when required.
- (b) Infrastructure Owner and Infrastructure Operator may only charge Foundation Customer, Producers and any third party using Additional Capacity, Tariffs that have been determined in accordance with the Pricing Principles.
- (c) Expansions initiated by a Foundation Customer or a Producer may only be funded in accordance with the Expansion Funding Principles.
- (d) The State, or the Independent Regulator, once established, must publish and make publicly available a copy of the Pricing Principles as amended from time to time.
- (e) The State, the Foundation Customer, the Infrastructure Operator and the Infrastructure Owner undertake that any breach of the Pricing Principles, Expansion Funding Principles and/or the Pricing Principles Agreement, as amended, shall constitute a breach of these Infrastructure Provisions, and any dispute arising out of, relating to or in connection with the Pricing Principles, Expansion Funding Principles and/or Pricing Principles Agreement will be resolved in accordance with Article 48 of these Infrastructure Provisions.

### **15 Rights and Obligations of Foundation Customer**

#### **15.1 Provision of Haulage Services to Foundation Customer**

- (a) The Infrastructure Owner and the Infrastructure Operator (as an independent contractor acting for Infrastructure Owner) shall provide Rail Services and Port Services ("**Haulage Services**") to Foundation Customer using the Simfer Project Infrastructure. Infrastructure Owner, Infrastructure Operator and Foundation Customer shall enter into a Rail and Port Services Agreement setting out the terms and conditions on which the Infrastructure Owner and the Infrastructure Operator (as independent contractor for Infrastructure Owner) will provide the Haulage Services to Foundation Customer. The Rail and Port Services Agreement will:

- (i) reflect the rights conferred on Foundation Customer pursuant to Article 15.2 of these Infrastructure Provisions;
- (ii) reflect the rights in relation to expansions conferred on Foundation Customer pursuant to Article 15.3 of these Infrastructure Provisions;
- (iii) clearly identify in more detail the scope and nature of the Haulage Services in respect of both the Rail Infrastructure and the Simandou Port;
- (iv) provide for Foundation Customer to pay:
  - (A) a rail infrastructure availability charge, operating charge and operating fee determined in accordance with the Rail Pricing Principles; and
  - (B) a port infrastructure availability charge, operating charge and operating fee determined in accordance with the Port Pricing Principles;
- (v) include a process for determining capacity;
- (vi) include a statement of the information to be included in, and a process for preparing and agreeing, the Forecast Operating Plan and Budget in accordance with Article 14.6 of these Infrastructure Provisions;
- (vii) require the Infrastructure Owner, Infrastructure Operator to comply with and implement the Forecast Operating Plan and Budget prepared in accordance with Article 14.6 of these Infrastructure Provisions;
- (viii) require the Infrastructure Owner, Infrastructure Operator (and where relevant the Foundation Customer) to comply with the Protocols referred to in Article 20 of these Infrastructure Provisions, and other protocols as may be agreed;
- (ix) be for a term equal to the term of the Modified Concession as renewed from time to time pursuant to this Convention; and
- (x) be in the form of the draft which is initialled by the State and Foundation Customer under Article 2 of the BOT Convention and then upon its execution, having the State intervening for the purpose of Article 54.2 of the BOT Convention and of these Infrastructure Provisions, with such amendments as may be:
  - (A) negotiated and agreed between Infrastructure Owner, the Infrastructure Operator and Foundation Customer prior to the Infrastructure Effective Date; and
  - (B) amended from time to time by agreement between the parties thereto.

Any such amendments which have not been agreed to by the State will not apply after the Transfer Date.

## **15.2 Priority rights for Simfer Project Infrastructure**

Foundation Customer has the following priority rights in relation to Simfer Project Infrastructure:

- (a) the right to exclusive use of Simfer Port Facilities (except that the MOF shall be available for General Cargo Services as provided in Article 17 of these Infrastructure Provisions);
- (b) a right to exclusive use of the FC Capacity Allocation, provided by the Rail Infrastructure and the Shared Port Facilities, subject to:
  - (i) capacity of Rail Infrastructure needed to provide the Passenger Service; and
  - (ii) capacity of the Shared Port Facilities necessary to provide the General Cargo Services;

- (c) the right to agree the Forecast Operating Plan and Budget with the Infrastructure Operator and Infrastructure Owner and to refer any dispute about the draft Forecast Operating Plan and Budget to conciliation proceedings conducted by the Independent Regulator and thereafter to administered expertise proceedings, in accordance with Article 14.6 of these Infrastructure Provisions;
- (d) the right to pay Tariffs calculated in accordance with the Rail Pricing Principles and Port Pricing Principles, including the right to pay a Rail Availability Charge and a Port Availability Charge that is at all times no higher than the lowest relevant Producer Availability Charge;
- (e) the right to implement, fund and carry out expansions in accordance with Article 15.3 of these Infrastructure Provisions;
- (h) the right to make, in its sole discretion, any part of Foundation Customer Spare Capacity available to Producers in accordance with Article 15.4 of these Infrastructure Provisions;
- (i) the right to have the Infrastructure Operator, in carrying out scheduling activities, give priority to the requirements of Foundation Customer, in accordance with the Scheduling and Operating Protocol, subject to any rights conferred on the Passenger Service (other than any increase in the Passenger Service after the Transfer Date pursuant to Article 16(b)(ii) of these Infrastructure Provisions save as agreed by the Foundation Customer). This right will include the right to use all of the Project Infrastructure capacity that is available in circumstances where there is reduced access to the FC Capacity Allocation due to a Force Majeure Event or other operational event, until such time as the FC Capacity Allocation entitlement is fully recovered;
- (j) the right to have the Infrastructure Operator, in exercising operational control over the Project Infrastructure, give priority to the requirements of Foundation Customer, in accordance with the Scheduling and Operating Protocol;
- (k) the right to approve any changes to the Protocols in accordance with Article 20 of these Infrastructure Provisions;
- (l) the right to approve any changes to the Pricing Principles in accordance with Article 14.8(b) of these Infrastructure Provisions; and
- (m) a right to exercise temporary step-in rights pursuant to the Rail and Port Services Agreement.

### 15.3 Foundation Customer Expansions

- (a) **(Foundation Customer's general right to initiate expansion)** Foundation Customer may, at any time, determine that an expansion of the Project Infrastructure should be studied and undertaken in accordance with the provisions of this Article 15.3. The Rail and Port Services Agreement will apply to and regulate expansions conducted by or on behalf of Foundation Customer.
- (b) **(Foundation Customer Expansion OoM Study)** Foundation Customer may, at any time, require Infrastructure Owner to carry out an Expansion OoM Study. Such Expansion OoM Study is:
  - (i) to be completed by Infrastructure Owner within 12 months of Foundation Customer request being made;
  - (ii) to be paid for entirely by Foundation Customer in advance in monthly instalments (such costs having been agreed in advance with Infrastructure Owner);
  - (iii) to be the sole property of Foundation Customer; and

(iv) to set out the estimated date for practical completion of the expansion.

A copy of the Expansion OoM Study must be provided to the State at the same time as it is provided to the Foundation Customer.

- (c) **(Foundation Customer Expansion PFS and Foundation Customer Expansion BFS)** Foundation Customer may, at any time following delivery of an Expansion OoM Study, require Infrastructure Owner to carry out an Expansion PFS. If, following delivery of the Expansion PFS, Foundation Customer wishes to explore the option for the expansion of the Project Infrastructure further, it may require Infrastructure Owner to carry out an Expansion BFS. Such Expansion PFS and Expansion BFS is, in each case:
- (i) to be completed by Infrastructure Owner within 18 months of Foundation Customer request being made;
  - (ii) to be paid for entirely by Foundation Customer in advance in monthly instalments (such costs having been agreed in advance with Infrastructure Owner);
  - (iii) to be the sole property of Foundation Customer; and
  - (iv) to set out the estimated date for practical completion of the expansion,
- and an Expansion BFS is to contain a budget for the capital cost of the expansion (including a 10% cost overrun contingency). Infrastructure Owner shall undertake each Expansion OoM Study, Expansion PFS and Expansion BFS strictly in accordance with Project Standards and Prudent Infrastructure Practices.
- (d) **(Consultation)** The Infrastructure Owner must keep the Foundation Customer informed of the progress of studies, and consult regularly with the Foundation Customer about the studies, and consider in good faith any comments or recommendations made by the Foundation Customer.
- (e) **(Dispute resolution)** Any dispute relating to an Expansion OoM Study, an Expansion PFS or Expansion BFS under this Article 15, including as to the costs of the study, the technical or economic assumptions applied in it or the capital budget contained in it, shall be submitted to administered expertise proceedings in accordance with the Rules for Expertise of the International Chamber of Commerce. The determination by the expert will be binding upon the Parties in the absence of manifest error.
- (f) **(Foundation Customer's specific right to require expansion)** Foundation Customer may at any time after an Expansion BFS is agreed or determined pursuant to administered expertise proceedings under Article 15.3(e) of these Infrastructure Provisions, require the Infrastructure Owner to implement the expansion in accordance with the Expansion BFS, with such expansion to be funded in accordance with the Foundation Customer Expansion Funding Principles.
- (g) **(Implementation of expansion)** The Infrastructure Owner must construct and deliver the expansion in accordance with the Expansion BFS and:
- (i) the Project Standards;
  - (ii) the Protocols;
  - (iii) Prudent Infrastructure Practices;
  - (iv) the Infrastructure Construction Criteria, and
- in a manner so as to ensure that Foundation Customer's operations are not interrupted or adversely affected, unless otherwise agreed by Foundation Customer, and so that disruptions to the Passenger Service and General Cargo Services are minimised.

- (h) **(Foundation Customer's right to construct expansion)** If, after requiring an expansion to be undertaken under Article 15.3(f) of these Infrastructure Provisions, Foundation Customer elects to fund that expansion in accordance with Foundation Customer Expansion Funding Principles and:
- (i) Infrastructure Owner is not prepared to undertake the construction of the expansion for the "Agreed Foundation Customer Expansion Capital Cost" (as determined pursuant to the Foundation Customer Expansion Pricing Principles); or
  - (ii) Foundation Customer considers that it can undertake the construction of the expansion in accordance with the Expansion BFS and the Project Standards but at an overall cost that is less than that "Agreed Foundation Customer Expansion Capital Cost",

then Foundation Customer may elect to undertake the construction of that expansion itself, subject to the following requirements:

- (iii) The Infrastructure Owner and Infrastructure Operator must permit the Foundation Customer's employees and contractors to have access to any part of the Project Lands for the purpose of constructing that expansion, subject to those employees and contractors complying with the Infrastructure Owner's and Infrastructure Operator's safety and other requirements in relation to site access.
  - (iv) The Foundation Customer must construct and deliver the expansion in accordance with the Expansion BFS and:
    - (A) the Project Standards;
    - (B) the Protocols;
    - (C) Prudent Infrastructure Practices;
    - (D) the Infrastructure Construction Criteria, anduse reasonable endeavours to minimise any disruptions to Infrastructure Operator in carrying out the Project Activities, to any Producer receiving Rail Services or Port Services or to the Passenger Service and General Cargo Services.
  - (v) The works shall be undertaken, and Foundation Customer must pay the actual costs of constructing the expansion, in each case on behalf of Infrastructure Owner.
  - (vi) Infrastructure Owner will own the Foundation Customer Expansion Infrastructure.
  - (vii) All costs incurred by Foundation Customer as set out in Article 15.3(h)(v) of these Infrastructure Provisions shall be deemed to be a Foundation Customer "Expansion Loan" or Foundation Customer "Prepayment", as determined and treated in accordance with the Foundation Customer Expansion Funding Principles.
- (i) **(Ownership of Foundation Customer Expansion Infrastructure)** All infrastructure constructed as a result of an expansion under this Article 15.3 ("**Foundation Customer Expansion Infrastructure**") will be owned by Infrastructure Owner.
- (j) **(Expansion Capacity)** The Expansion Capacity of such Foundation Customer Expansion Infrastructure will be determined in accordance with Article 14.5 of these Infrastructure Provisions and the Rail and Port Services Agreement.

- (k) **(State's obligation to assist expansion)** The State must provide such assistance as is reasonably required by Infrastructure Owner to enable it to study and construct an expansion including granting Authorisations and must not frustrate or prevent any such expansion being studied or constructed. For the avoidance of doubt, the State will not be required to fund an expansion.
- (l) **(Tariff consequences)** Following an expansion the Foundation Customer Availability Charge, Operating Charge and Operating Fee will be adjusted with effect from the Expansion Completion Date in accordance with the applicable provisions of the Rail Pricing Principles and Port Pricing Principles.
- (m) **(Foundation Customer's rights in relation to an expansion)** Foundation Customer's rights set out in Article 15.2 of these Infrastructure Provisions and the Rail and Port Services Agreement will apply in relation to Foundation Customer Expansion Infrastructure and Expansion Capacity.
- (n) **(Updates and audit rights)** The Infrastructure Owner must provide to the Foundation Customer as soon as practicable after the end of each month that commences before the relevant Expansion Completion Date, an update indicating progress made in relation to the construction of the expansion during that month including a description of the relevant Infrastructure Activities carried out and the progress of these activities relative to any schedule contained in the relevant Expansion BFS. The update shall be prepared in accordance with the Account Keeping Rules and shall include all capital expenditure incurred in relation to the expansion during such month, together with such supporting documentation evidencing such expenditures as is reasonably required by Foundation Customer. Foundation Customer may, at its cost and expense, require that any update become the subject of an audit, by an independent accounting firm that is one of the "Big Four" accounting firms (KPMG, Deloitte Touche Tohmatsu, Ernst & Young or PricewaterhouseCoopers), within six months of the provision of the update. The Infrastructure Owner must copy any report provided to the Foundation Customer to the State.
- (o) **(Role of Infrastructure Operator)** Infrastructure Owner shall, unless Foundation Customer otherwise agrees, sub contract to the Infrastructure Operator the performance of its obligations to carrying out expansion studies and implementing an expansion pursuant to this Article 15.3.

#### **15.4 Foundation Customer right to sell Spare Capacity**

- (a) Subject to the approval of Infrastructure Owner and Infrastructure Operator, Foundation Customer may make any part of the FC Capacity Allocation or access to the Simfer Spur Lines which it decides it does not need ("**Foundation Customer Spare Capacity**") available to Producers for a specified period of time on terms and conditions to be agreed directly between Foundation Customer and the Producer.
- (b) If Foundation Customer elects to make Foundation Customer Spare Capacity available to Producers, then it shall notify Infrastructure Owner and Infrastructure Operator of the terms of such access, including the identity of the Producer, the amount of Foundation Customer Spare Capacity to be made available to the Producer, the duration of such access and the period of notice to be given by Foundation Customer prior to requiring the Producer to surrender Foundation Customer Spare Capacity. Foundation Customer shall enter into an agreement with the Producer which reflects those terms as advised by Foundation Customer and which is in the form of a sub-contract under the Rail and Port Services Agreement.

## 16 Passenger Service

- (a) Infrastructure Owner and Infrastructure Operator (as an independent contractor on behalf of Infrastructure Owner) shall, as a service ancillary to providing Rail Services to Foundation Customer, operate a passenger transport service and associated freight service in accordance with the provisions of this Article 16 and the Passenger Service Principles (the "**Passenger Service**").
- (b) Infrastructure Owner and Infrastructure Operator may provide additional Passenger Services if:
  - (i) agreed by the Foundation Customer; or
  - (ii) the cost of providing the additional Passenger Services, including any capital expenditure required, do not result in an increase in the Availability Charge or Operating Charge payable by the Foundation Customer (save in accordance with paragraph (f) below), and the additional Passenger Services will not adversely affect operational efficiencies or the performance of the Project Infrastructure or the provision of Haulage Services to the Foundation Customer and will not result in the Foundation Customer not being able to receive the FC Capacity Allocation to which it is entitled under the Rail & Port Services Agreement.
- (c) Infrastructure Owner shall provide all infrastructure and equipment required to provide the Passenger Service, including transportation vehicles and stations.
- (d) Infrastructure Operator (as an independent contractor on behalf of Infrastructure Owner) shall operate the Passenger Service in accordance with the Passenger Service Principles and rules and procedures established thereto in relation to safety of passengers, staff and other people, the efficient operation of the Passenger Service, the setting and payment of fares and which must be consistent with the Foundation Customer's rights under Article 15.2 of these Infrastructure Provisions.
- (e) Infrastructure Operator may retain all fares paid by users of the Passenger Service (other than any additional Passenger Service under paragraph (b) above) which shall then be applied to reduce the Operating Charge otherwise payable by Foundation Customer as set out in the Rail Pricing Principles.
- (f) Any expansion of the Rail Infrastructure initiated by Foundation Customer or a Producer must enable a corresponding increase in the Passenger Service (in terms of any additional infrastructure which may be required to facilitate the increase) and the costs of the corresponding increase which has not been carried out by the Foundation Customer shall not result in an increase in the Availability Charge or the Operating Charge payable by the Foundation Customer.

## 17 General Cargo Services

- (a) Infrastructure Owner and Infrastructure Operator (as an independent contractor on behalf of Infrastructure Owner) shall, as a service ancillary to providing Port Services to Foundation Customer, provide certain general cargo services using the MOF (or another multi-purpose offload facility as contemplated by Article 17(d) of these Infrastructure Provisions) in accordance with the General Cargo Services Principles and this Article 17 (the "**General Cargo Services**").
- (b) Infrastructure Operator (as an independent contractor on behalf of Infrastructure Owner) shall provide the General Cargo Services in accordance with the General Cargo Services

Principles and rules and procedures established thereto in relation to safety of staff and other people, efficient operations within the Port Zone, the setting and payment of tariffs and which must be consistent with the Foundation Customer's rights under Article 15 of these Infrastructure Provisions.

- (c) The use of the MOF for the provision of General Cargo Services will only be permitted at any time to the extent, and in a manner which ensures, that such use does not adversely affect the priority and other rights of Foundation Customer.
- (d) Any expansion of the Simandou Port initiated by Foundation Customer, a Producer or the State or Infrastructure Owner must enable a corresponding increase in the General Cargo Services (in terms of any additional infrastructure which may be required to facilitate the increase) and the costs of the corresponding increase which has not been carried out by the Foundation Customer shall not result in an increase in the Availability Charge or the Operating Charge payable by the Foundation Customer.

## **18 Rights and Obligations of Producers**

- (a) The Parties acknowledge and agree that a Producer may only gain access to the Rail Infrastructure by:
  - (i) being provided a right to use Foundation Customer Spare Capacity on terms and conditions to be agreed directly between Foundation Customer and the Producer in accordance with the provisions of Article 15.4 of these Infrastructure Provisions;
  - (ii) undertaking an expansion of the Rail Infrastructure on terms to be agreed with the Infrastructure Owner; or
  - (iii) being provided a right to use Additional Capacity created by the State or Infrastructure Owner.
- (b) The Parties acknowledge and agree that a Producer may only gain access to the Simandou Port by:
  - (i) being provided a right to use Foundation Customer Spare Capacity on terms and conditions to be agreed directly between Foundation Customer and the Producer in accordance with the provisions of Article 15.4 of these Infrastructure Provisions;
  - (ii) undertaking an expansion of the Shared Port Facilities, and procuring the construction of Producer Port Facilities, on terms to be agreed with the Infrastructure Owner; or
  - (iii) being provided a right to use Additional Capacity created by the State or Infrastructure Owner.
- (c) Infrastructure Owner shall only carry out expansion studies and undertake an expansion and shall only provide Rail Services or Port Services (as applicable) if:
  - (i) the carrying out of the expansion studies or the implementation of the expansion or the provision of Rail Services and Port Services the Producer is seeking will not prejudice:
    - (A) Infrastructure Operator's ability to maintain operational efficiencies and performance of the Project Infrastructure, in priority for Foundation Customer's purposes; or

- (B) Infrastructure Owner's ability to undertake future expansions of the Project Infrastructure for Foundation Customer's purposes (including for any increases in production) in accordance with Article 15.3 of these Infrastructure Provisions without reducing or adversely affecting the operational efficiencies and performance of the Project Infrastructure; and
- (ii) Infrastructure Owner is satisfied, acting reasonably, that the Producer has the financial and technical capability required to meet its obligations under any agreement to be provided Rail Services or Port Services.
- (d) The Infrastructure Owner shall notify the Foundation Customer prior to carrying out an expansion study, implementing an expansion or providing Rail Services or Port Services to a Producer and the Foundation Customer may refer to arbitration (in accordance with Article 48.3 of these Infrastructure Provisions) any dispute about whether the preconditions set out in paragraph (c) have been satisfied. Infrastructure Owner shall also provide Foundation Customer with an implementation plan, and shall implement the expansion in accordance with such plan, as provided for in the Rail & Port Services Agreement.
- (e) Any agreement to provide Rail Services or Port Services shall be on terms that do not conflict with, or adversely affect, the Foundation Customer's rights under these Infrastructure Provisions and the Rail & Port Services Agreement; and give effect to the Pricing Principles Agreement (as relevant).

## 19 State and Infrastructure Owner Expansions of the Project Infrastructure

- (a) The Parties acknowledge that the State or Infrastructure Owner may at any time cause an expansion of the Rail Infrastructure and Shared Port Facilities, and the construction of Producer Port Facilities, to be studied and undertaken so as to create additional capacity ("**Additional Capacity**").
- (b) Infrastructure Owner shall only carry out expansion studies and implement an expansion if the carrying out of the expansion studies or the implementation of the expansion or the provision of Rail Services and Port Services using the Additional Capacity will not prejudice:
  - (i) Infrastructure Operator's ability to maintain operational efficiencies and performance of the Project Infrastructure, in priority for Foundation Customer's purposes and then for the purposes of any other existing Producer; or
  - (ii) Infrastructure Owner's ability to undertake future expansions of the Project Infrastructure for Foundation Customer's purposes (including for any increases in production) in accordance with Article 15.3 of these Infrastructure Provisions without reducing or adversely affecting the operational efficiencies and performance of the Project Infrastructure.
- (c) Additional Capacity may only be made available to a third party where the use of the Additional Capacity would not prejudice Infrastructure Operator's ability to maintain operational efficiencies and performance of the Project Infrastructure for Foundation Customer's purposes.
- (d) The Infrastructure Owner shall notify the Foundation Customer prior to carrying out an expansion study, implementing an expansion or providing Rail Services or Port Services using Additional Capacity and the Foundation Customer may refer to arbitration (in accordance with Article 48.3 of these Infrastructure Provisions) any dispute about

whether the preconditions set out in paragraphs (b) and (c) have been satisfied. Infrastructure Owner shall also provide Foundation Customer with an implementation plan, and shall implement the expansion in accordance with such plan, as provided for in the Rail & Port Services Agreement.

- (e) Any agreement with a third party to provide Rail Services or Port Services shall be on terms that do not conflict with, or adversely affect, the Foundation Customer's rights under these Infrastructure Provisions and the Rail & Port Services Agreement and give effect to the Pricing Principles Agreement (as relevant).

## **20 Protocols**

- (a) Infrastructure Owner and the Infrastructure Operator (and where relevant, Foundation Customer and any Producer) shall comply strictly with the Protocols.
- (b) The Protocols and Project Standards may be only be amended with the agreement of Infrastructure Owner, Infrastructure Operator, Foundation Customer and the State.

## **25 Independent Regulator**

### **25.1 Establishment of Independent Regulator**

- (a) The State shall ensure that the Independent Regulator remains in place for such time that these Infrastructure Provisions remain in place.
- (b) The Independent Regulator must:
  - (i) be independent of the State, Infrastructure Owner, Infrastructure Operator, Foundation Customer and all other users of the Project Infrastructure and satisfy the independence requirements set out in section 1.1 of Schedule 15 to these Infrastructure Provisions;
  - (ii) have the expertise outlined in section 1.2 of Schedule 15 to these Infrastructure Provisions;
  - (iii) have the powers in relation to the collection of information as set out in section 1.3 of Schedule 15 to these Infrastructure Provisions; and
  - (iv) have the functions and powers in relation to the Project Infrastructure conferred on it by Article 25.2 of these Infrastructure Provisions and section 2 of Schedule 15 to these Infrastructure Provisions, and subject to Article 25.4 of these Infrastructure Provisions, shall have no other functions and powers in relation to the Project Infrastructure.
- (c) The legislation establishing the Independent Regulator must reflect and give effect to the above requirements. Furthermore, the legislation shall provide that the Independent Regulator shall, without delay, respect and comply with any settlement agreement, interim relief or arbitral award arising out of, relating to or in connection with these Infrastructure Provisions.
- (e) The Independent Regulator shall act on behalf of the State, including in issuing opinions as provided in section 2 of Schedule 15 to these Infrastructure Provisions. The Independent Regulator's acts and omissions shall be attributable to the State. However, provided that Independent Regulator has been duly established, and continues to exist in accordance with these Infrastructure Provisions, in particular Article 25 of these Infrastructure Provisions and Schedule 15 to these Infrastructure Provisions, the State

shall not be liable in damages to any Party for an act or omission of the Independent Regulator.

## **25.2 Functions and powers of the Independent Regulator in relation to the Project Infrastructure**

Provided the requirements of Article 25.1 of these Infrastructure Provisions are met, upon establishment, the Independent Regulator:

- (a) will have the objectives in relation to the Project Infrastructure set out in section 2.1 of Schedule 15 to these Infrastructure Provisions;
- (b) will have the functions in relation to the Project Infrastructure set out in section 2.2 of Schedule 15 to these Infrastructure Provisions;
- (c) will have the powers in relation to the collection of information related to the Project Infrastructure set out in section 2.3 of Schedule 15 to these Infrastructure Provisions;
- (d) may issue opinions in relation to the Project Infrastructure in accordance with the process set out in section 2.4 of Schedule 15 to these Infrastructure Provisions. Any such opinions will have the effect set out in section 2.4 of Schedule 15 to these Infrastructure Provisions and be subject to the dispute resolution Schedule set out in section 2.5 of Schedule 15 to these Infrastructure Provisions.

## **25.3 Application of Independent Regulator provisions**

- (a) If the requirements of Article 25.1 of these Infrastructure Provisions are not met, or if opinions are for any reason not subject to the dispute resolution processes set out in section 2.5 of Schedule 15 to these Infrastructure Provisions then the Independent Regulator will have no functions or powers in connection with the Project Infrastructure or the Parties to these Infrastructure Provisions.
- (b) Any Laws and Regulations with respect to the regulation of the Project Infrastructure or the Independent Regulator that are not consistent with the requirements of this Article 25, the provisions of Schedule 15 of these Infrastructure Provisions or the Protocols shall not apply to the Project Infrastructure or to any of Foundation Customer, Infrastructure Owner, Infrastructure Operator, Project Contractors and their respective Affiliates to the extent of the inconsistency unless agreed in advance by each of Foundation Customer, Infrastructure Owner, and Infrastructure Operator to apply to the Project Infrastructure.
- (c) If the Parties agree at any time to alter the functions of the Independent Regulator, then the Independent Regulator shall promptly notify each Producer that is a party to an agreement that provides for access to Project Infrastructure.
- (d) The Parties acknowledge and agree that until the Independent Regulator is established, the obligations:
  - (i) to make matters the subject of conciliation proceedings facilitated by the Independent Regulator pursuant to Articles 15, 18 and 19 of these Infrastructure Provisions; and
  - (ii) to provide notice, information and copies of agreements to the Independent Regulator pursuant to Articles 15, 18 and 19 of these Infrastructure Provisions,shall not apply and a failure to comply with any such obligation shall not amount to a breach of these Infrastructure Provisions.

## **46 Force Majeure Event**

- (a) None of the Parties nor their respective Affiliates and Project Contractors shall be liable for the failure to carry out their obligations under these Infrastructure Provisions due to the occurrence of a Force Majeure Event. Throughout the term of the Force Majeure Event, and subject to the provisions of these Infrastructure Provisions, the obligations affected by the Force Majeure Event shall be suspended.
- (b) For the purposes of these Infrastructure Provisions, "**Force Majeure Event**" means any unforeseeable, insurmountable act or event beyond the control of the Party relying on such act or event that prevents this Party from fulfilling one or more of its obligations under these Infrastructure Provisions including the following events and circumstances or their consequences to the extent they satisfy the requirements contained in this Article 46(b) of these Infrastructure Provisions:
- (i) epidemic, plague or quarantine;
  - (ii) act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion or act of terrorism or sabotage or kidnapping;
  - (iii) explosion, accident, chemical contamination or fire;
  - (iv) lightning, typhoons, floods, earthquake, sandstorm, tornado, cyclone or other unusually severe weather conditions or other natural disaster;
  - (v) the discovery of an archaeological site or Critical Habitat within the Corridor or the Project Lands;
  - (vi) any strikes and/or other work stoppage or labour dispute that is not limited to Infrastructure Owner, Infrastructure Operator or the Infrastructure Activities or any strikes and/or other work stoppage or labour dispute that is not due to a breach of Legislation in Force or of these Infrastructure Provisions by the Infrastructure Owner or Infrastructure Operator;
  - (vii) any Force Majeure Event described in this Article 46(b) affecting the performance of the Rail and Port Services Agreement; and
  - (viii) any event or circumstance of a nature analogous to the foregoing.
- (c) A Force Majeure Event in the sense of these Infrastructure Provisions is not constituted by any act or event whose occurrence could have been foreseen and precautionary measures might have been taken against its effects in the exercise of reasonable care. Similarly, a Force Majeure Event is not constituted by any act or event that would only make the performance of an obligation more difficult or more burdensome for the affected Party.
- (d) The Party who invokes a Force Majeure Event shall immediately after the occurrence or the discovery of a Force Majeure Event, and within a maximum term of ten (10) Days, submit to the other Parties a Notice specifying the factors that constitute the Force Majeure Event and their possible consequences for the implementation of these Infrastructure Provisions.
- (e) In any event, the Party concerned shall take every useful step to minimise the impact of the Force Majeure Event on the performance of its obligations and ensure, within the shortest possible time, the normal resumption of the execution of the obligations affected by the case of Force Majeure Event.
- (f) If, following a Force Majeure Event, the suspension of obligations were to exceed one (1) month, the Parties shall convene at the earliest possible opportunity in order to examine

the implications of the said events on the execution of these Infrastructure Provisions and, in particular, on the financial obligations of every kind involving Infrastructure Owner, Infrastructure Operator, Foundation Customer or their respective Affiliates, the State and Project Contractors. In the latter case, the Parties shall search for any solution that will enable the obligations which have been suspended to be adapted to the changed circumstances in a manner which gives effect to the Parties' intentions.

## **48 Settlement of Disputes**

### **48.1 Prior Negotiation**

Without prejudice to Article 48.2 of these Infrastructure Provisions, the Parties agree to attempt to settle any dispute arising out of, relating to or in connection with these Infrastructure Provisions through negotiations. If the dispute has not been settled by negotiation within 90 Days following the notification in writing by one of the Parties of the existence of the dispute or within such other period as the parties may agree in writing, the dispute shall be finally settled by way of arbitration in accordance with Article 48.3 of these Infrastructure Provisions.

### **48.2 Conciliation by the Independent Regulator**

Any dispute that is required by these Infrastructure Provisions to become the subject of conciliation by the Independent Regulator shall be, as far as possible, settled amicably by negotiation between the parties concerned. In the event of persistent disagreement for more than two months, this dispute shall be subject, before any other recourse, to a conciliation procedure that will be conducted under the following terms.

- (a) The conciliation procedure will be initiated by the first party to take action who will notify the Independent Regulator and the other party(ies) of the request for conciliation by registered letter with acknowledgement of receipt. This request will include the reasons for the dispute, a memorandum containing the basis of the request and specifying the claims of the petitioner and any supporting documents.
- (b) The conciliation proceedings will take place at Conakry or at any other place that the Independent Regulator deems most suitable taking into account the circumstances of the case. The Independent Regulator shall ensure that the conciliation procedure commences within 30 Days of its initiation.
- (c) The Independent Regulator may carry out or commission any preparatory inquiries and require the parties to produce relevant and material documents, including witness statements.
- (d) Save as otherwise agreed between the parties concerned, the conciliation recommendation must be issued within a period of 120 Days with effect from the date of initiation of the conciliation procedure.
- (e) The recommendation shall be notified by the Independent Regulator to each of the parties concerned who shall have a period of 30 Days within which to notify the other party(ies) of their agreement or disagreement with the recommendation. In the latter event, the points of continuing disagreement must be specified. A copy of the notification shall be sent to the Independent Regulator.
- (f) In the event of conciliation, the Independent Regulator will prepare the minutes within a further period of 7 Days which, subject to any agreed amendments, shall be signed by the parties concerned. The content of the signed minutes shall be enforceable and shall finally settle the dispute.

- (g) In the event of non-conciliation, the Independent Regulator will also prepare the minutes which may be used as a basis for the first party to initiate any arbitration proceedings.
- (h) The conciliation shall be deemed to have failed if, 30 Days after the notification of the recommendation to the parties, any party concerned has failed to notify the other party(ies) of its acceptance of the recommendation or, having notified acceptance, has failed to sign the minutes within a further period of 15 Days.
- (i) Any costs and fees of the conciliation proceedings fixed by the Independent Regulator will be settled and paid in equal shares by the parties.

### 48.3 Arbitration

- (a) Any dispute arising out of, relating to or in connection with these Infrastructure Provisions that:
  - (i) is not required by these Infrastructure Provisions to become the subject of administered expertise proceedings or conciliation by the Independent Regulator; or
  - (ii) is required by these Infrastructure Provisions to become the subject of conciliation by the Independent Regulator and:
    - (A) has resulted in non-conciliation or a conciliation that is deemed to have failed, in each case in accordance with Article 48.2 of these Infrastructure Provisions; or
    - (B) is not able to become or remain the subject of conciliation by the Independent Regulator as contemplated by Article 25.3(d) these Infrastructure Provisions; or
  - (iii) is required by these Infrastructure Provisions to become the subject of administered expertise proceedings and:
    - (A) those proceedings have not resulted in, or will not be able to result in, a determination by the expert within 90 Days of the initiation of the expert determination procedure; or
    - (B) there is manifest error in the determination by the expert,

shall be finally settled, at the choice of the claimant(s):

- (iv) under the Rules of Arbitration of the International Chamber of Commerce ("**ICC**") by three arbitrators appointed in accordance with the said Rules. The seat of arbitration shall be Paris (France) and the language of arbitration shall be French; or
  - (v) by the International Centre for the Settlement of Investment Disputes (the "**Centre**") pursuant to the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "**ICSID Convention**").
- (b) It is hereby agreed that:
    - (i) Although Infrastructure Operator is a national of the Republic of the Guinea, it is controlled by nationals of other Contracting States of the ICSID Convention and shall be treated as a national of other Contracting States for the purposes of the ICSID Convention.
    - (ii) Although Infrastructure Owner is a national of the Republic of Guinea, it is controlled by nationals of other Contracting States of the ICSID Convention and

shall be treated as a national of other Contracting States for the purposes of the ICSID Convention.

- (iii) Although Foundation Customer is a national of the Republic of Guinea, it is controlled by nationals of other Contracting States of the ICSID Convention and shall be treated as a national of other Contracting States for the purposes of the ICSID Convention.
  - (iv) It is hereby stipulated that the transaction to which these Infrastructure Provisions relates is an investment.
  - (v) The arbitration proceedings shall be held in Paris (France) and the language of arbitration shall be French.
  - (vi) Without prejudice to the power of the arbitral tribunal to recommend provisional measures, any party may request any judicial or other authority to order any provisional or conservatory measure, including attachment, prior to the institution of the arbitration proceeding, or during the proceeding, for the preservation of its rights and interests.
- (c) If for any reason a dispute referred to the Centre pursuant to Article 48.3(a)(v) of these Infrastructure Provisions cannot be decided, in whole or in part, on the merits (in particular, but not exclusively, should the Centre refuse to register the request for arbitration or should the Centre or the arbitral tribunal find that it does not have jurisdiction to decide the dispute, in whole or in part), then the dispute (or that part of the dispute which cannot be decided on the merits) shall be finally resolved under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The seat of arbitration shall be Paris (France) and the language of arbitration shall be French.
- (d) The Republic of Guinea hereby waives irrevocably with respect to itself and its property any sovereign immunity from jurisdiction and execution from which it may benefit.

#### **48.5 Applicable Law**

The law applicable to these Infrastructure Provisions is the law of Guinea and the rules of international law. With regard specifically to Guinean law, where it is silent, the arbitral tribunal shall refer in the first instance to Guinean case law, or failing that, to French case law relevant to the matter, in particular administrative law, or failing that, to general principles of law as applicable in France.

#### **50 Precedence**

- (a) In the event of any conflict between the provisions of these Infrastructure Provisions and the Laws and Regulations, the provisions of these Infrastructure Provisions shall prevail.
- (b) In the event of any conflict between these Infrastructure Provisions and any other Contractual Documents (other than this Convention) relating to the Project, the terms of these Infrastructure Provisions will prevail.

#### **51 Good Faith Behaviour**

Each Party undertakes to transmit to the other Parties the legal instruments necessary to implement these Infrastructure Provisions. In addition, each Party undertakes to conduct itself in a manner that will fully implement the provisions of these Infrastructure Provisions, in the best interest of the Project.

## **54 Ownership of Project Infrastructure Assets and Infrastructure Operator Change**

### **54.1 Transfer of the Project Infrastructure**

- (a) On and from the Transfer Date, the State shall ensure Infrastructure Owner (including for the avoidance of doubt any entity to whom the Project Infrastructure Assets are transferred) complies with its obligations under these Infrastructure Provisions, this Convention, the Pricing Principles Agreement, the Rail and Port Services Agreement and the Infrastructure Operating Agreement if and for so long as the State holds a stake of more than 50% of the issued equity capital and/or of the voting rights in the Infrastructure Owner (including any subsequent owner of the Project Infrastructure Assets).
- (b) The Infrastructure Owner must maintain, or procure that the Infrastructure Operator maintains, the Project Infrastructure in accordance with Project Standards and Prudent Infrastructure Practices so as to enable the Infrastructure Owner to meet its obligations under this Convention, the Infrastructure Operating Agreement, the Pricing Principles Agreement and the RPSA at all times following the Transfer Date.

### **54.2 Continued application of Agreements following any transfer**

- (a) Subject to Article 15.1(a)(x) of these Infrastructure Provisions, the Infrastructure Owner, the Infrastructure Operator and the Foundation Customer and the other Parties shall continue to be bound by these Infrastructure Provisions, the Pricing Principles Agreement and the Rail and Port Services Agreement following any transfer of the shares in the Infrastructure Owner or Project Infrastructure Assets.
- (b) If there is a transfer of the Project Infrastructure Assets to the State, another State-owned entity or a third party, then such transfer is conditional on, and will only be effective if, the new owner of the Project Infrastructure and the Infrastructure Owner execute an assignment and assumption agreement substantially in the form attached to this Convention, pursuant to which all rights and obligations of Infrastructure Owner under these Infrastructure Provisions, the Pricing Principles Agreement and the Rail and Port Services Agreement are assigned to and assumed by the new owner of the Project Infrastructure Assets, and the new owner replaces the Infrastructure Owner as a party to these Infrastructure Provisions, the Pricing Principles Agreement and the Rail and Port Services Agreement as the "Infrastructure Owner". Any later transfer of the Project Infrastructure Assets by the then Infrastructure Owner is also subject to this condition.

### **54.5 Conditions applying to Infrastructure Operator and step in rights of Foundation Customer**

- (a) The Infrastructure Owner or the State may remove and appoint an Infrastructure Operator, provided that:
  - (i) there shall always be an Infrastructure Operator;
  - (ii) the person appointed is appointed through an international tender process and is a company of reputable international standing for the operation of like infrastructure; and
  - (iii) the person appointed and the Infrastructure Operator execute assignment and assumption agreements substantially in the form attached to each relevant agreement, pursuant to which all rights and obligations of Infrastructure Operator under these Infrastructure Provisions, this Convention, the Pricing Principles Agreement and the Rail and Port Services Agreement are assigned to and assumed by the new Infrastructure Operator, and the new Infrastructure Operator replaces the Infrastructure Operator as a party to those agreements.

- (b) Foundation Customer may step in and assume all or some of the service delivery obligations of Infrastructure Owner or Infrastructure Operator (as the case may be) on the occurrence of any one or more of the events specified in the Infrastructure Operating Agreement and Rail and Port Services Agreement in each case on the terms and conditions set out therein.

## **55 Partial Waiver**

The "Partial Waiver" provision in Article 53 of this Convention applies to these Infrastructure Provisions as if set out in full in these Infrastructure Provisions, provided that references to "this Convention" shall be read as references to "these Infrastructure Provisions".

## **56 Confidentiality**

- (a) The State undertakes not to disclose to third parties or to use for the benefit of third parties any industrial, financial, commercial, scientific, technical or personal information supplied by Infrastructure Owner, Infrastructure Operator, the Project Contractors and their respective Affiliates or obtained by the State other than those naturally found in the public domain and regularly treated by Infrastructure Owner, Infrastructure Operator and their respective Affiliates in a non-confidential manner, without the express prior consent of Infrastructure Owner, Infrastructure Operator and their respective Affiliates.
- (b) Infrastructure Owner and Infrastructure Operator undertake to treat as confidential any information of a similar nature that the State communicates to either of them.

## **57 Language and Measuring System**

The "Language and Measuring System" provision in Article 55 of this Convention applies to these Infrastructure Provisions as if set out in full in these Infrastructure Provisions, provided that references to "this Convention" shall be read as references to "these Infrastructure Provisions".

## **59 Notifications**

The "Notifications" provision in Article 58 of this Convention applies to these Infrastructure Provisions for the purposes of giving Notice under these Infrastructure Provisions as if set out in full in these Infrastructure Provisions, and provided that references to "this Convention" or a "Party" shall be read as references to "these Infrastructure Provisions" and a "Party" to these Infrastructure Provisions, with the following details to apply:

For the Infrastructure Owner: [#], marked for the attention of [#], fax [#]; and

For the Infrastructure Operator: [#], marked for the attention of [#], fax [#].

The details for SIMFER S.A., the State and RTME are as outlined in Article 58.1 of this Convention.

## Schedule 15

### Independent Regulator

#### 1 Establishment of Independent Regulator

The legislation establishing the Independent Regulator must implement the following principles.

##### 1.1 Independence

- (a) The Independent Regulator must be independent of the State, Infrastructure Owner, Infrastructure Operator, Foundation Customer and all other users of the Project Infrastructure.
- (b) The Independent Regulator must not be subject to the direction or control of the State, Ministers of the State, any other State Authority or any other person in performing any of its functions.
- (c) All decisions of the Independent Regulator regarding employment of staff, and engagement of advisers, must be made having regard to the need to maintain the Independent Regulator's independence (both actual and perceived).
- (d) The Independent Regulator will be funded by the State from royalties paid by the Foundation Customer pursuant to this Convention.

##### 1.2 Expertise

- (a) The board and staff of the Independent Regulator must include persons who:
  - (i) are considered to have the highest standards of independence and integrity; and
  - (ii) have expertise and experience relevant to the Regulator's role as an infrastructure regulator.

##### 1.3 Information gathering powers

- (a) Where the Independent Regulator has commenced an investigation in relation to a matter, it will have the power to require by 30 Days written notice to a person:
  - (i) production by the person of specified documents to the extent they are relevant and material to the subject matter of the investigation and in the person's knowledge, possession or control; and
  - (ii) the appearance by the person before the Independent Regulator and interview for the purposes of giving evidence to the extent it is relevant and material to the subject matter of the investigation,(with such a notice being referred to as an "**Information Notice**").
- (b) Where a person is compelled to appear before Independent Regulator and they are not located in Guinea, they may do so by other available instantaneous modes of communication (such as telephone or videoconference).
- (c) A person is excused from complying with an Information Notice to the extent compliance would involve disclosure of a document that is subject to legal professional privilege.
- (d) While confidentiality of information is not an excuse for non-compliance with an Information Notice, where information is provided to Independent Regulator on the basis that it is confidential or commercially sensitive, Independent Regulator shall maintain the

confidentiality of that information (including by redacting parts of any published opinion), except to the extent reasonably required in any arbitration proceedings.

#### **1.4 Role of Independent Regulator in relation to Project Infrastructure conferred by legislation**

The Independent Regulator shall have the functions and powers in relation to the Project Infrastructure conferred on it by Article 25.2 of these Infrastructure Provisions and section 2 of this Schedule 15. Subject to Article 25.3 of these Infrastructure Provisions, the Independent Regulator shall have no other functions and powers in relation to the Project Infrastructure.

### **2 Functions and powers of the Independent Regulator in relation to the Project Infrastructure**

The Independent Regulator's functions and powers in relation to the Project Infrastructure will be as set out in this section 2.

#### **2.1 Objectives**

The Independent Regulator's objectives in relation to the Project Infrastructure will be to ensure Infrastructure Owner and Infrastructure Operator comply with the provisions of these Infrastructure Provisions dealing with multi-use and expansion as identified in section 2.2 of this Schedule 15 and by doing so:

- (a) ensure that the rights of the Foundation Customer set out in Article 15.2 of these Infrastructure Provisions are protected; and
- (b) subject to section 2.1(a) of this Schedule 15, facilitate the expansion and development of the Project Infrastructure and the operation of the Rail Infrastructure and Simandou Port as multi-user infrastructure.

#### **2.2 Functions**

- (a) The Independent Regulator's functions in relation to the Project Infrastructure will be:
  - (i) to monitor and investigate compliance by Infrastructure Owner and Infrastructure Operator with the multi-user provisions of these Infrastructure Provisions as set out in section 2.2(b) of this Schedule 15 (the "**Multi-User Provisions**"), including investigating any complaints from Producers;
  - (ii) to report on the findings of its monitoring and investigations regarding compliance by Infrastructure Owner and Infrastructure Operator with the Multi-User Provisions;
  - (iii) to conciliate disputes that are required by these Infrastructure Provisions to be conciliated by the Independent Regulator, in accordance with the requirements of these Infrastructure Provisions, and in particular Article 48.2 of these Infrastructure Provisions;
  - (iv) to issue opinions in relation to whether a breach of the Multi-User Provisions has occurred, in accordance with section 2.5 of this Schedule 15; and
  - (v) to receive reports on and monitor the Infrastructure Owner and Infrastructure Operator's compliance with the Infrastructure Operating Agreement and their performance as measured by the KPI regime established under the Infrastructure Operating Agreement (together the "**Functions**").
- (b) The Multi-User Provisions in relation to which the Independent Regulator will have the Functions will be:

- (i) **(Technical Conditions)** the obligations of Infrastructure Owner and Infrastructure Operator to undertake construction and implement operations under technical conditions compliant with Prudent Infrastructure Practices, as and to the extent required by Articles 8 and 20 of these Infrastructure Provisions (in the case of Infrastructure Owner) and Articles 13 and 20 of these Infrastructure Provisions (in the case of Infrastructure Operator);
- (ii) **(Environmental and Safety Standards)** the obligation of Infrastructure Owner and Infrastructure Operator to comply with environmental and safety standards, as and to the extent required by Articles 8 and 20 of these Infrastructure Provisions (in the case of Infrastructure Owner) and Articles 13 and 20 of these Infrastructure Provisions (in the case of Infrastructure Operator);
- (iii) **(Tariffs)** the obligation of Infrastructure Owner and Infrastructure Operator to levy charges that are determined in accordance with the Pricing Principles;
- (iv) **(Fair access and effective multi-use)** the obligation of Infrastructure Owner and Infrastructure Operator to provide fair access to third parties to infrastructure and ensure the effectiveness of the principle of multi-user facilities, by complying with the requirements of Articles 14 to 19 of these Infrastructure Provisions, including, without limitation, complying with:
  - (A) the requirements of Article 16 of these Infrastructure Provisions in relation to the Passenger Service and the rules and procedures in relation to the operation of the Passenger Service established by the Infrastructure Operator pursuant to Article 16(d) of these Infrastructure Provisions;
  - (B) with the requirements of Article 17 of these Infrastructure Provisions in relation to General Cargo Services and the rules and procedures established by the Infrastructure Operator pursuant to Article 17(b) of these Infrastructure Provisions; and
- (v) **(Expansions)** the obligations of Infrastructure Owner and Infrastructure Operator in relation to the expansion of Project Infrastructure set out in Articles 15, 18 and 19 of these Infrastructure Provisions.

## 2.3 Information

### ***Provision of information by Infrastructure Owner and Infrastructure Operator***

- (a) Infrastructure Owner and Infrastructure Operator must keep the Independent Regulator informed of the progress of any proposal by Foundation Customer under Article 15 of these Infrastructure Provisions, a Producer under Article 18 of these Infrastructure Provisions, or the State or the Infrastructure Owner under Article 19 of these Infrastructure Provisions in relation to use or expansion of the Project Infrastructure, including by providing to the Independent Regulator a copy of:
  - (i) any application and supporting information provided in relation to an expansion initiated by the Foundation Customer, a Producer or Infrastructure Owner or the State;
  - (ii) any studies undertaken in relation to an expansion of the Project Infrastructure for the Foundation Customer, a Producer or Infrastructure Owner or the State; and
  - (iii) any agreement signed with Foundation Customer, a Producer or Infrastructure Owner or the State and a third party in relation to the use or expansion of Project Infrastructure.

- (b) Infrastructure Owner and Infrastructure Operator must each provide the Independent Regulator with an annual report reporting on their compliance with the Multi-User Provisions and their compliance with the Infrastructure Operating Agreement and their performance under the KPI regime established by the Infrastructure Operating Agreement.

## 2.4 Opinions

### *Process*

- (a) If the Independent Regulator considers that Infrastructure Owner or Infrastructure Operator may have contravened the Multi-User Provisions it may start an investigation. Where the Independent Regulator does so, it will have the powers in relation to the collection of information set out in section 3 of this Schedule 15, to be reflected in the legislation establishing the Independent Regulator.
- (b) Notice of commencement of the investigation must be provided to Infrastructure Owner and Infrastructure Operator and other interested stakeholders (including in all cases the Foundation Customer) who must be given at least 60 Days to make submissions to Independent Regulator regarding the matters raised in the notice.
- (c) Independent Regulator must consider fairly all submissions received by it in response to the notice within the period for such submissions.

### *Issue of Opinions*

- (d) Following consideration of all submissions and evidence received by it, Independent Regulator shall issue an opinion ("**Opinion**") which must contain:
  - (i) details of the alleged contraventions;
  - (ii) evidence of the contraventions;
  - (iii) the Independent Regulator's finding of whether or not a breach of the Multi-User Provisions has occurred;
  - (iv) if the Independent Regulator finds that there has been a breach of the Multi-User Provisions, the Independent Regulator's finding as to what the Infrastructure Owner or the Infrastructure Operator or both must do or cease to do in order to comply with the Multi-User Provisions.
- (e) The Independent Regulator shall notify and send copies of its Opinion to the Parties.

## 2.5 Dispute resolution

### *Disputes*

- (a) If a Party disagrees, wholly or in part, with the Opinion released by the Independent Regulator pursuant to section 2.4 of this Schedule 15, the Party may notify the State, the other Parties in writing of its position within 30 Days of receipt of the Opinion. This notice shall be deemed to give rise to a dispute arising out of the Multi-User Provisions of the Convention (the "**Schedule 15 Dispute**") between the State and the notifying Party. The other Parties may become parties to the Schedule 15 Dispute by notifying their intention to do so within 14 Days of receipt of the notification sent by the notifying Party.

### *Mediation*

- (b) The parties shall first refer any Schedule 15 Dispute to mediation proceedings under the ICC Mediation Rules. The mediation must be conducted by an independent mediator to

be appointed in accordance with the said Rules. The mediation shall take place in Paris, France, and shall be conducted in French.

**Arbitration**

- (c) If the Schedule 15 Dispute has not been settled pursuant to the said Rules within 60 Days following the filing of a request for mediation or within such other period as the parties may agree in writing, such dispute shall be referred to arbitration pursuant to Article 48.3(a)(iv) of these Infrastructure Provisions.

**Opinion status pending dispute resolution**

- (d) The Parties must comply with any Opinion issued by the Independent Regulator unless and until a settlement agreement is reached, interim relief is granted (including any Emergency Measures), or a partial or final award by the Arbitral Tribunal is made that the parties are not obliged to comply with the Opinion of the Independent Regulator.
- (e) The requirement to wait 60 Days, or any other agreed period, following the filing of a request for mediation, before referring a Schedule 15 Dispute to arbitration shall not prevent the parties from making an application, prior to expiry of those 60 Days or other agreed period, for Emergency Measures under the Emergency Arbitrator Provisions in the Rules of Arbitration of the International Chamber of Commerce. For the avoidance of doubt, the Parties agree that the Arbitral Tribunal or Emergency Arbitrator (as the case may be) may, in their discretion, order that the parties are not obliged to comply with the Opinion of the Independent Regulator pending final resolution of the dispute by mediation or arbitration.

**Appendix 11:  
Accession Agreement**

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**ACCESSION AGREEMENT  
TO THE BASIC CONVENTION – INFRASTRUCTURE PROVISIONS**

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**THE REPUBLIC OF GUINEA  
SIMFER S.A.  
RIO TINTO MINING AND EXPLORATION LIMITED  
INFRASTRUCTURE OWNER  
INFRASTRUCTURE OPERATOR**

## BETWEEN

**THE REPUBLIC OF GUINEA**, represented by:

- His Excellency Monsieur [#], acting in his capacity as Minister of State, Minister of Mines and Geology;  
and

- His Excellency Monsieur [#], acting in his capacity as Minister of State, Minister of Economy and  
Finance,

duly authorised for the purposes of entering into this Agreement,

(hereafter, the "**State**")

of the first part

**SIMFER S.A.**, which is a limited company being part of the Rio Tinto Group with its registered office located at Immeuble Bellevue, Boulevard Bellevue, D.I. 536 Commune de Dixinn, BP 848, Conakry, incorporated under Guinean Law with the RCCM of Conakry, under the number RCCM/GCKRY/0867A/2003, represented by [#], duly authorised for the purposes of entering into this Agreement (hereafter, "**SIMFER S.A.**")

of the second part

**RIO TINTO MINING AND EXPLORATION LIMITED**, which is a limited company of the Rio Tinto Group with its registered office at 2 Eastbourne Terrace, London, W2 6LG, United Kingdom, registration number with Companies' House: 1305702, incorporated under the Laws of England and Wales, represented by [#], duly authorised for the purposes of entering into this Agreement (hereafter, "**RTME**")

of the third part

[], a company duly established and existing in accordance with the Law of [#], with its registered office at [#], under the number [#], represented by [#], duly authorised for the purposes of entering into this Agreement and acceding to the Basic Convention (hereafter, the "**Infrastructure Owner**")

of the fourth part

[], a company duly established and existing in accordance with the Law of [#], with its registered office at [#], under the number [#], represented by [#], duly authorised for the purposes of entering into this Agreement and acceding to the Basic Convention (hereafter, the "**Infrastructure Operator**")

of the fifth part

## 1 Recitals

- (a) The State and SIMFER S.A. are currently parties to the Basic Convention, which defines the framework and conditions for the development and operation of the Simandou mine.
- (b) The State, Foundation Customer, Infrastructure Owner HoldCo, Infrastructure Owner and Infrastructure Operator are currently parties to the BOT Convention, which defines the framework and conditions for the development and operation of the Project Infrastructure.
- (c) On the Transfer Date, the BOT Convention will expire and, pursuant to Article 19.8(a) of the Basic Convention, the Infrastructure Provisions (as set out in Appendix 10 of the Basic Convention) shall apply in full effect.
- (d) Pursuant to Article 19.8(b) of the Basic Convention, the State is required to ensure that, simultaneously with the Transfer Date, Infrastructure Owner and Infrastructure Operator execute this Agreement for the purpose of implementing in full the Infrastructure Provisions.
- (e) All the Parties have agreed to enter into this Agreement.

## Agreed as follows

### 2 Definitions and Interpretation

#### 2.1 Definitions

"**Agreement**" means this Accession Agreement.

"**Basic Convention**" means the Amended and Consolidated Basic Convention signed between the State, SIMFER S.A. and RTME on [● 2014] and ratified by the Parliament of Guinea on [● 2014].

"**BOT Convention**" means the BOT Convention signed between the State, SIMFER S.A. and RTME pursuant to the BOT Law (Law L/97/012/AN dated 1 June 1998) on [● 2014] and ratified by the Parliament of Guinea on [● 2014].

"**Infrastructure Provisions**" means the provisions relating to the Project Infrastructure after the Transfer Date, including Foundation Customer's rights in relation to the Project Infrastructure, set out in Appendix 10 of the Basic Convention.

"**Party**" means a party to this Agreement and **Parties** means all of the parties to this Agreement and any permitted successors or assignees.

#### 2.2 Terms defined in the Basic Convention

Words that are defined in the Basic Convention and not in clause 2.1 and that are used in this Agreement have the same meaning in this Agreement as in the Basic Convention, unless the context requires otherwise.

#### 2.3 Interpretation

The 'Interpretation' provision of the Basic Convention forms part of this Agreement as if set out in full in this Agreement, with necessary changes.

### 3 Assumption of liability on accession to the Basic Convention

#### 3.1 Infrastructure Owner

With effect on and from the Transfer Date, the Infrastructure Owner shall:

- (a) become a party to the Basic Convention;
- (b) enjoy all the rights and benefits of the Infrastructure Owner under the Infrastructure Provisions of the Basic Convention; and
- (c) assume the obligations and liabilities of the Infrastructure Owner under the Infrastructure Provisions of the Basic Convention.

#### 3.2 Infrastructure Operator

With effect on and from the Transfer Date, the Infrastructure Operator shall:

- (a) become a party to the Basic Convention;
- (b) enjoy all the rights and benefits of the Infrastructure Operator under the Infrastructure Provisions of the Basic Convention; and
- (c) assume the obligations and liabilities of the Infrastructure Operator under the Infrastructure Provisions of the Basic Convention.

**3.3 Limited rights and obligations of Infrastructure Owner and Infrastructure Operator**

The Infrastructure Owner’s and the Infrastructure Operator’s only rights and obligations under the Basic Convention will be the rights and obligations conferred by the Infrastructure Provisions of the Basic Convention. Accession to the Basic Convention shall not grant the Infrastructure Owner or the Infrastructure Operator any other rights or obligations that are set out in the Basic Convention.

In particular, neither the Infrastructure Owner nor the Infrastructure Operator shall have the right to terminate the Basic Convention in any circumstances, and neither the agreement of the Infrastructure Owner nor the Infrastructure Operator will be required in order for the other parties to be able to amend any provision of the Basic Convention, other than the Infrastructure Provisions.

**4 Consent of the State, SIMFER S.A. and RTME**

With effect on and from the Transfer Date, each of the State, SIMFER S.A. and RTME:

- (a) consents to each of the Infrastructure Owner and the Infrastructure Operator becoming a party to the Basic Convention and assuming each of their respective obligations under the Infrastructure Provisions of the Basic Convention;
- (b) acknowledges and agrees that the Infrastructure Owner and the Infrastructure Operator will be entitled to exercise all of their respective rights and benefits under the Infrastructure Provisions of the Basic Convention;
- (c) acknowledges and agrees that this Agreement satisfies the requirements of Article 19.8 of the Basic Convention; and
- (d) agrees to be bound by the terms of the Infrastructure Provisions of the Basic Convention, as if the Infrastructure Owner and the Infrastructure Operator were named in it as a party.

**5 General undertaking**

The Infrastructure Owner and the Infrastructure Operator each hereby undertakes to each of the State, SIMFER S.A. and RTME to comply with this Agreement and with its respective rights and obligations under the Infrastructure Provisions of the Basic Convention.

The State, SIMFER S.A. and RTME each hereby undertakes to each of the Infrastructure Owner and the Infrastructure Operator to comply with this Agreement and with its respective rights and obligations under the Infrastructure Provisions of the Basic Convention.

Each of the Parties to this Agreement represents and warrants to the other that it has full power and authority to enter into and perform its rights and obligations under this Agreement and under the Infrastructure Provisions of the Basic Convention.

**6 Addresses of the acceding parties**

For the purposes of Article 59 of the Infrastructure Provisions of the Basic Convention, the addresses of the acceding Parties to which all notices must be delivered or transmitted are as follows:

- |                                 |                |
|---------------------------------|----------------|
| to the Infrastructure Owner:    | Attention: [#] |
|                                 | Address: [#]   |
|                                 | Fax No: [#]    |
| to the Infrastructure Operator: | Attention: [#] |
|                                 | Address: [#]   |

Fax No: [#]

## 7 Governing law

This Agreement shall be governed by the law of Guinea, excluding its conflict of law rules, and by the rules of international law. With regard specifically to the Laws and Regulations, where they are silent, the arbitral tribunal shall apply in priority Guinean case law or in the absence of such case law, shall apply French case law that generally govern the matter, in particular with reference to administrative law, or in its absence to the general principles of law as applied in France.

## 8 Dispute resolution

Any dispute arising out of, relating to or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The seat of arbitration shall be Paris (France) and the language of arbitration shall be French.

This Agreement has been executed on [#].

### THE REPUBLIC OF GUINEA

Name:

Title:

Signature:

### SIMFER S.A.

Name:

Title:

Signature:

### RTME

Name:

Title:

Signature:

### INFRASTRUCTURE OWNER

Name:

Title:

Signature:

### INFRASTRUCTURE OPERATOR

Name:

Title:

Signature: