

THE REPUBLIC OF GUINEA
INFRASTRUCTURE OWNER
INFRASTRUCTURE OWNER HOLDCO
INFRASTRUCTURE OPERATOR
SIMFER S.A.
RIO TINTO MINING AND EXPLORATION LIMITED

Simandou BOT Convention

This document is the English version of the document in French entitled '*Convention BOT*' 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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BOT CONVENTION

BETWEEN

THE REPUBLIC OF GUINEA, represented by:

- His Excellency Monsieur Kerfalla Yansané, acting in his capacity as Minister of State, Minister of Mines and Geology; and

- His Excellency Monsieur Mohamed Diaré, acting in his capacity as Minister of State, Minister of Economy and Finance,

duly authorised for the purposes of entering into this Convention,

(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 Mister Alan John Bruce Davies, duly authorised for the purposes of entering into this Convention (hereafter, the "**Foundation Customer**")

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 Mister Warrick Reginald John Ranson, duly authorised for the purposes of entering into this Convention (hereafter, "**RTME**")

of the third part

AND, UPON THEIR ACCESSION TO THIS CONVENTION IN ACCORDANCE WITH ITS PROVISIONS,

[#], 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 acceding to this 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 acceding to this Convention (hereafter, the "**Infrastructure Owner HoldCo**")

of the fifth part

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[#], 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 acceding to this Convention (hereafter, the "**Infrastructure Operator**")

of the sixth part

Preliminary Statement

Whereas:

- (a) The State, in its desire to foster exploration, prospecting, mining and development of mineral resources in the Republic of Guinea:
 - (i) entered into the Original Convention with Foundation Customer which was ratified by a law dated 3 February 2003 pursuant to Article 11 of the Guinean Mining Code which has then, further to the Settlement Agreement dated 22 April 2011 (as well as certain other acknowledged variations to the terms and conditions of the Settlement Agreement), been amended and consolidated by the Basic Convention which is signed contemporaneously with this Convention and which Basic Convention will then be submitted to the National Assembly for ratification; and
 - (ii) granted to Foundation Customer on 22 April 2011 by Presidential Decree No.D/2011/134/PRG/SGG registered in the Official Journal dated as of 22nd April 2011 which was published and made available to the public in August 2011 the mining concession for the exploration and exploitation of the iron ore in the Perimeter of the Modified Concession.
- (b) This Convention is entered into:
 - (i) in connection with the Basic Convention; and
 - (ii) pursuant to the BOT Law, independently of the Basic Convention. Any provisions of the BOT Law which conflict with the provisions of this Convention shall not be applicable hereto.
- (c) It is recognised that, in view of the special nature of the Infrastructure Project that requires investment on an exceptional scale and given that the Project Infrastructure is a major investment of strategic importance for the development of Guinea:
 - (i) Infrastructure Owner, Infrastructure Owner HoldCo and its shareholders, Infrastructure Operator, the Project Contractors and their respective Affiliates shall benefit from all commitments from the State as provided in the BOT Law, in particular Article 7 of the BOT Law;
 - (ii) this Convention must include all terms and conditions which may be required by the Financing Parties, including such terms and conditions which are not provided for in the BOT Law or any other law or which conflict with the BOT Law or any other law; and
 - (iii) this Convention will be ratified by a specific law.
- (d) This Convention provides for the construction of the Project Infrastructure comprising certain works as required for, and the construction of, a standard gauge heavy haul railway from the Simandou mine junction point to train unloading facilities at the Simandou Port and the construction of facilities at the Simandou Port, so that the Project Infrastructure is capable of operating at a rate of approximately 100 Mtpa (with the construction to be in two stages of approximately 50 Mtpa each) or such greater rate as may be nominated by Foundation Customer and mutually agreed between Foundation Customer and Infrastructure Owner and may thereafter be expanded further in accordance with this Convention.
- (e) The State recognises that:

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- (i) the Project Infrastructure is being built pursuant to this Convention to allow Foundation Customer to transport iron ore mined from within the Perimeter of the Modified Concession to the global iron ore market;
 - (ii) the construction and financing of the Project Infrastructure is being made possible by Foundation Customer undertaking to use and make payments in respect of the Project Infrastructure under the terms of the Rail and Port Services Agreement;
 - (iii) the Mining Activities are ultimately dependent on the Infrastructure Activities which in turn are ultimately dependent on the ability of Infrastructure Owner and Infrastructure Operator, throughout the term of the Infrastructure Project, to have access to all land that could be used or is necessary for the purposes of the Infrastructure Activities, and the State shall cause all land that could be used or is necessary for the purposes of the Infrastructure Activities to be made available as and when required for use by Infrastructure Owner and Infrastructure Operator.
- (f) Infrastructure Owner is undertaking to finance, construct and own the Project Infrastructure and transfer it to the State under the terms of this Convention.
 - (g) Infrastructure Operator is undertaking to operate and maintain the Project Infrastructure under the terms of this Convention as from the Infrastructure Completion Date.
 - (h) The State has agreed to guarantee to each of Infrastructure Owner, Infrastructure Owner HoldCo and its shareholders, Infrastructure Operator and Foundation Customer, for the entire Term of this Convention and any extension thereof, the free, whole and full enjoyment of the rights granted to each of them under the terms of this Convention.

Definitions

The terms and expressions used in this Convention have the following meaning, unless the context provides otherwise.

"Account Keeping Rules" has the meaning given to it in Article 20(a)(viii).

"Additional Capacity" has the meaning given to it in Article 19.1(a).

"Additional Capacity Expansion Infrastructure" has the meaning given to it in Article 19.3(c).

"Additional Capacity Services Agreement" means an agreement for the provision of Rail Services and Port Services to a third party using Additional Capacity.

"Additional Facilities and Resources" has the meaning given to it in Article 21.2(a).

"Additional Project Documentation" has the meaning given to it in Article 6(b).

"Affiliate(s)" or **"Affiliate Company"** means 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 Foundation Customer. 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 Foundation Customer, 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.

"Agreed IS Capital Budget" has the meaning given to it in Article 2.3(c).

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

"Approved Implementation Plan" has the meaning given to it in Article 18.6(e)(i) or 19.5(e)(i) (as the case may be).

"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 this Convention and the Basic Convention) 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.

"Authority" or **"State Authority"** means the State, including in particular the government, local government and every ministerial, governmental, quasi governmental or other regulatory department, body, instrumentality, agency, territorial administration or official court or tribunal having jurisdiction over the Infrastructure Project and / or the Infrastructure Activities or person acting on behalf of the State,

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exercising any legislative, executive, administrative, legal or other delegated power or having the mandate to exercise such power, excluding the Independent Regulator.

"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.

"Basic Convention" means the Basic Convention and its Appendices, signed on 26 November 2002 which was ratified by a Law L/2003/003/AN dated 3 February 2003 pursuant to Article 11 of the Guinean Mining Code as amended and consolidated by the parties thereto on the date of signing this Convention which amendments and restatement will be ratified by the Guinean National Assembly and which defines the conditions under which the iron ore contained in the Simandou deposit and other areas that may be incorporated within the Perimeter of the Modified Concession can be explored, exploited and exported and any future amendment thereof which may be agreed by the parties thereto.

"BOT Law" means the Act L/97/012/AN dated 1 June 1998 of the National Assembly of the State.

"Centre" has the meaning given to it in Article 48.3(a)(v).

"Chalco" means 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" means 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.

"Co-Foundation Customer" means a person who becomes a party to this Convention as a co-foundation customer pursuant to the process set out in Appendix 18.

"Completion Test and Handover Procedure" has the meaning given in Article 8.2(a).

"Consortium Selection Process" has the meaning given to it in Article 2.2.

"Consortium Selection Target Date" has the meaning given to it in Article 2.1(b)(i).

"Contractual Documents" means all contracts, conventions, protocols or written agreements, directly or indirectly related to the Infrastructure Activities including the Infrastructure Operating Agreement, the Rail and Port Services Agreement and the articles of association of Infrastructure Owner.

"Contractual Rate of Interest" means the London Interbank Offered Rate (LIBOR) for deposits of three months in 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 percent (3%).

"Convention" means this BOT Convention and its Appendices. It is also referred as "this Convention".

"Corridor" means the Original Corridor and / or such other locations identified by Infrastructure Owner and approved by Foundation Customer and the State pursuant to Article 5.

"CPDM" has the meaning given to it in Article 30(h).

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

"Dark Fibre Access" has the meaning given to it in Article 12.4(e).

"Day" means a calendar day commencing at 00:00am Conakry standard time, unless otherwise specifically provided.

"Dedicated Dark Fibre" has the meaning given to it in Article 12.4(e).

"Direct Sub-Contractor" means any validly existing enterprise having the necessary competence for providing the services and/or works for the purposes of the Project Infrastructure and which has entered into a contract with Foundation Customer, Infrastructure Owner, Infrastructure Operator, 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.

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

"Effective Date" means the date on which all the conditions specified in Article 61 are fulfilled.

"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 and, as applicable, initiated by:

- (a) the Foundation Customer under Article 15.3(c);
- (b) a Producer under Article 18.3(d); or
- (c) the State or Infrastructure Owner under Article 19.2(d).

"Expansion Capacity" has the meaning given to it in Article 14.5(b).

"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 or Producer Expansion (as the case may be) has been achieved by Infrastructure Owner.

"Expansion Funding Principles" has the meaning given in Article 14.8(a).

"Expansion OoM Study" means a preliminary study of options for the expansion of the Project Infrastructure and, as applicable, initiated by:

- (a) the Foundation Customer under Article 15.3(b) in respect of the Rail Infrastructure, Shared Port Facilities and Simfer Port Facilities;
- (b) a Producer under Article 18.3(b) in respect of the Rail Infrastructure, Shared Port Facilities and the construction of Producer Port Facilities; or
- (c) the State or Infrastructure Owner under Article 19 in respect of the Rail Infrastructure, Shared Port Facilities and the construction of Producer 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, as applicable, initiated by:

- (a) the Foundation Customer under Article 15.3(c);
- (b) a Producer under Article 18.3(c); or
- (c) the State or Infrastructure Owner under Article 19.2(c).

"Extended Force Majeure Event" means 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 46(d).

"FC Capacity Allocation" means:

- (a) from the Infrastructure Completion Date, the FC Initial Capacity, and from the Stage 2 Infrastructure Completion Date, the Stage 2 FC Initial Capacity, as determined in accordance with Article 14.5(a); plus
- (b) any Expansion Capacity attributable to an expansion carried out by or on behalf of the Foundation Customer under Article 15, as determined in accordance with Article 14.5(b).

"FC Initial Capacity" means the capacity of the Project Infrastructure upon the Infrastructure Completion Date being achieved, as determined in accordance with Article 14.5(a).

"FC Nomination" has the meaning given to it in Article 14.6(b)(i).

"Fibre Optic Cable" means the backbone fibre optic cable to be constructed by Infrastructure Owner in the Corridor that connects the Mining Infrastructure to the Simandou Port.

"Financing Activities" means the raising of finance from the Financing Parties by Infrastructure Owner under the terms of the Financing Documents.

"Financing Documents" means each agreement entered into for the purposes of the debt or equity financing or refinancing, or project financing, of the Project 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" means each party to a Financing Document, that is providing finance (including by way of guarantee and / or insurance of finance) in relation to the Project Infrastructure and / or any agent, trustee or attorney or account bank acting on behalf of any of them.

"First Commercial Production Date" means 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 46(b).

"Forecast Operating Plan and Budget" has the meaning given to it in Article 14.6(a).

"Forecast Producer Operating Plan and Budget" has the meaning given to it in Article 14.7(a).

"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 this Convention.

"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 established pursuant to Article 14.8(a), as amended from time to time in accordance with Article 14.8(b).

"Foundation Customer Expansion Infrastructure" has the meaning given to it in Article 15.3(i).

"Foundation Customer Spare Capacity" has the meaning given to it in Article 15.4(a).

"Funding Plan" has the meaning given to it in Article 2.7(c).

"General Cargo Services" has the meaning given to it in Article 17.

"Guinea" means the Republic of Guinea.

"Handback Certificate" means a certificate issued in accordance with Article 53.6(d)(iii)(A).

"Handback Certifier" means an independent, reputable firm of experts to be agreed between the State, the Infrastructure Owner and the Foundation Customer, or failing such agreement, appointed by the International Federation of Consulting Engineers.

"Handback Inspection" has the meaning given to it in Article 54.6(d)(i).

"Handback Process" has the meaning given to it in Article 54.7(a).

"Handback Report" means a report that includes the following information:

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- (a) the refusal of the Handback Certifier to issue the Infrastructure Owner and the Infrastructure Operator with a Handback Certificate;
- (b) the Renewal Works required to be carried out; and
- (c) the quantum of the estimated cost of completing the Renewal Works.

"Handback Requirements" means the requirement that the Project Infrastructure is fit for purpose in accordance with the Protocols listed in Article 20(a)(iii) to Article 20(a)(vi) (inclusive), and specifically capable of delivering:

- (a) services to the Foundation Customer on the terms and conditions set out in the Rail and Port Services Agreement;
- (b) services to the Producer in accordance with Producer Rail Haulage Agreements and Producer Port Services Agreements;
- (c) services to third parties in accordance with Additional Capacity Services Agreements; and
- (d) the Passenger Service and General Cargo Services in accordance with this Convention.

"Haulage Services" has the meaning given to it in Article 15.1(a).

"Historical Infrastructure Costs" means all costs incurred by Foundation Customer 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.

"IAI Selection Process" has the meaning given to it in Article 2.6.

"ICD Deemed Extension" has the meaning given to it in Article 7(d).

"ICD Target Date" has the meaning given to it in Article 2.3(b)(ii).

"ICSID Convention" has the meaning given to it in Article 48.3(a)(v).

"IED Deemed Extension" has the meaning given to it in Article 2.14(b).

"IED Target Date" has the meaning given to it in Article 2.1(b)(iii).

"IFC" means the International Finance Corporation, an international organisation established by Articles of Agreement among its member countries.

"IID Target Date" has the meaning given to it in Article 2.1(b)(ii).

"IS Capital Budget" has the meaning given to it in Article 2.3(b)(i).

"IS Budget Contingency" has the meaning given to it in Article 2.3(b)(i).

"In-country Activities" has the meaning given to it in Article 2.3(a).

"Independent Certifier" has the meaning given in Article 8.2(b).

"Independent Regulator" has the meaning given to it in Article 25.

"Infrastructure Activities" means 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 Investors" has the meaning given to it in Article 2.6.

"Infrastructure BFS" has the meaning given to it in Article 2.3(a).

"Infrastructure Completion Certificate" has the meaning given in Article 8.2(c).

"Infrastructure Completion Date" means the date on which practical completion of the construction of the Project Infrastructure by Infrastructure Owner has been achieved so that the Project Infrastructure has been constructed and is capable of providing Haulage Services at a rate of approximately 50 Mtpa (including the capacity required for the Passenger Service and General Cargo Services) or such greater rate as may be nominated by Foundation Customer and mutually agreed between Foundation Customer and Infrastructure Owner, as determined in accordance with the Completion Test and Handover Procedure pursuant to the terms of the co-completion arrangements referred to in Article 7(f).

"Infrastructure Consortium" has the meaning given to it in Article 2.6.

"Infrastructure Construction Criteria" means:

- (a) in relation to the development of the Project Infrastructure, the design, scope and technical requirements set out in Appendices 7 and 8;
- (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;
- (c) the Additional Project Documentation;
- (d) Project Standards;
- (e) the Protocols; and
- (f) Prudent Infrastructure Practices.

"Infrastructure Corridor Proposal" has the meaning given to it in Article 5.

"Infrastructure Effective Date" has the meaning given to it in Article 2.9.

"Infrastructure Entities" has the meaning given to it in Article 24(b).

"Infrastructure Investment Decision" means a decision by Infrastructure Owner to commit to undertaking the Infrastructure Project made in accordance with Article 2.8.

"Infrastructure Operating Agreement" means the agreement to be entered into by Infrastructure Owner, the Infrastructure Operator and Foundation Customer, setting out the terms and conditions on which the Infrastructure Operator will be 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 the Basic Convention 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 the Basic Convention 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).

"Infrastructure Provisions" means the infrastructure provisions set out in Appendix 10 to the Basic Convention.

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"Initial Inspection" has the meaning given to it in Article 54.6(b)(i).

"Interested Producers" has the meaning given to it in Article 48.4.

"Interface Equipment" has the meaning given to it in Article 12.4(f)(iii).

"Investment Code" means the Guinean Investment Code (Order no. 001/PRG/87 of 3 January 1987, as amended by Law/L95/029/CTRN).

"Investment Repayment Period" means the period commencing on the Infrastructure Completion Date and ending on the 30th anniversary of that date.

"Land Rights" means 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 Infrastructure Ownership Rights, subject to any limitation to such rights as may be provided for in the Basic Convention or this Convention.

"Laws and Regulations" means 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" means 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 37.3 or 39.

"Local Content Policy" has the meaning given to it in Article 26.

"Marginal Profit" means the revenue from the sale of a unit of product produced, less the marginal cost of producing that unit of product, for each relevant unit of product.

"Material Adverse Effect" means 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" means any of the following events which has a Material Adverse Effect on any Party (other than the State) or any other Protected Entity:

- (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 42(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 Infrastructure Project entered into by the State or any State Authority and to which any Party (other than the State), its Affiliates, Project Contractors or any third party investor (as referred to in Article 12.5) is a party;
- (d) any change to the Legislation in Force which the State or a State Authority seeks to apply to any Non State Party alone or with others and which adversely affects that person, with respect to their rights or obligations in respect of the Infrastructure Project or this Convention or which results in that person incurring a loss or an additional or increased cost;
- (e) any breach of Foundation Customer's rights under Articles 14 and 15 or any termination, breach or frustration of the Rail and Port Services Agreement which occurs at the direction or instigation of the State or any State Authority;

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- (f) termination of the Basic Convention by the Foundation Customer on the basis of Material Government Breach of the Basic Convention (as that term is defined therein) or termination of the Basic Convention following an expropriation or nationalisation by the State or any State Authority pursuant to Article 40(b) and/or Article 45 of the Basic Convention; and
- (g) any material breach by the State or any State Authority under Articles 3, 5, 9, 10, 11, 14, 15, 19, 21, 24, 25, 29 to 42 (other than 42(a)),

which is not caused by a Material Infrastructure Owner Breach or Force Majeure Event (or act or omission of the Independent Regulator).

"Material Infrastructure Owner Breach" means any of the following events which has a Material Adverse Effect on the State:

- (a) the failure by the Infrastructure Owner to achieve the Infrastructure Completion Date in accordance with Article 7(b), provided that such failure is not due to the failure to achieve Non-Essential Engineering Punch List Items; and
- (b) any material breach by Infrastructure Owner of its obligations under Articles 7(b), 8, 12.1, 12.4, 16, 17, 18, 19, 22, 23, 26, 43, 44 or 54,

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

"Mining Activities" means 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 Foundation Customer; and
- (b) any acquisition and/or occupation of land.

"Mining Code" means the Mining Code of the Republic of Guinea, as established by Law L/95/036/CTRN of 30 June 1995.

"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.

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

"Modified Concession" means 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.

"MOF" means the multi-purpose offload facility, including provision for warehousing and laydown requirements for incoming Mining Project supplies and equipment, to be constructed as part of the Stage 1 Development and located within the area of the Simfer Port Facilities.

"Mtpa" means million tonnes per annum.

"Natural FME" means all Force Majeure Events except Other FME.

"New Infrastructure Operator" means the entity referred to in Article 54.4(c)(i).

"Non-Essential Engineering Punch List Items" means items that are required for completion but that are not essential for the safe and successful commissioning of the Project Infrastructure, as identified pursuant to the co-completion arrangements referred to in Article 7(f).

"Non State Party" means any Party to this Convention other than the State.

"Notice" means a formal notification given in accordance with, and that complies with the requirements of, Article 59 and **"Notification"** shall have a corresponding meaning.

"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.

"Original Convention" means the Simandou Basic Convention signed by the State, Foundation Customer 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.

"Original Corridor" means the perimeter referred to in Article 2 of the PIN Decree and defined by the geographical coordinates on the map appended to the PIN Decree published in the Official Gazette of the Republic of Guinea.

"Other FME" means those Force Majeure Events:

- (a) specified in Article 46(b)(ii) which occur within the Republic of Guinea or involve the State; or
- (b) specified in Article 46(b)(vi).

"PARC Framework" means the Resettlement and Compensation Action Plan Framework applicable to the Project developed by Foundation Customer, 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" means a party to this Convention and **"Parties"** means all of the parties to this Convention and any permitted successors or assigns.

"Passenger Service" has the meaning given to it in Article 16(a).

"Perimeter of the Modified Concession" means, subject to any expansion by agreement as referred to in Article 6(b) of the Basic Convention, the perimeter of the Modified Concession at Appendix 1 to the Basic 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 km²), and whose coordinates are set out in Appendix 1 to the Basic Convention.

"PIN Decree" means 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

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export of iron ore from Simandou including its attachments (coordinates and map), a copy of which is appended hereto in Appendix 4.

"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 is to be determined by Infrastructure Owner and Infrastructure Operator and approved by the Foundation Customer and the State in the course of preparation of the Infrastructure BFS.

"Port Maintenance Protocol" has the meaning given to it in Article 20(a)(vi).

"Port Pricing Principles" means the port pricing principles established pursuant to Article 14.8(a), as amended from time to time in accordance with Article 14.8(b).

"Port Regulations" has the meaning given to it in Article 20(a)(vii).

"Port Roads" has the meaning given to it in Article 22.4(a).

"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, or substantially within, the perimeter of the area identified in the PIN Decree and within which the Simandou Port shall be located, the boundary of which is to be determined by Infrastructure Owner and Infrastructure Operator and approved by the Foundation Customer and the State in the course of preparation of the Infrastructure BFS.

"Pricing Principles" means the Rail Pricing Principles and the Port Pricing Principles.

"Pricing Principles Agreement" has the meaning given in Article 14.8(a).

"Producer" has the meaning given to it in Article 14.1(b).

"Producer Availability Charge" has the meaning given to it in the Rail Pricing Principles or Port Pricing Principles or as applicable.

"Producer Basic Availability Charge" has the meaning given to it in the Rail Pricing Principles or Port Pricing Principles or as applicable.

"Producer Capacity Allocation" means any increase in the capacity of the Project Infrastructure which is achieved following a Producer Expansion.

"Producer Expansion" means any expansion of the Project Infrastructure which is funded or underwritten by a Producer pursuant to this Convention.

"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 established pursuant to Article 14.8(a), as amended from time to time in accordance with Article 14.8(b).

"Producer Expansion Infrastructure" has the meaning given to it in Article 18.4(c).

"Producer Nomination" has the meaning given to it in Article 14.6(b)(ii).

"Producer Operating Charge" has the meaning given to it in the Rail Pricing Principles or Port Pricing Principles or as applicable.

"Producer Operating Fee" has the meaning given to it in the Rail Pricing Principles or Port Pricing Principles or as applicable.

"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.

"Producer Port Services Agreement" has the meaning given to it in Article 18.1(c)(iii).

"Producer Pro Forma Agreements" has the meaning given to it in Article 18.5(b).

"Producer Rail Haulage Agreement" has the meaning given to it in Article 18.1(c)(ii).

"Producer Spare Capacity" has the meaning given to it in Article 18.4(i).

"Producer Spur Lines" means the train loading facilities and the railway track from the Producer's train loading facilities to the point at which the railway track crosses the trunk line of the Rail Infrastructure.

"Project" means 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 Foundation Customer 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.

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

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

"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.

"Project Infrastructure" means the totality of the Rail Infrastructure and the Simandou Port.

"Project Infrastructure Ownership Rights" means the ownership rights of the Project Infrastructure Assets, including, without limitation, Project Infrastructure granted to Infrastructure Owner or Infrastructure Operator, as the context so requires, subject however to any such limitations to those ownership rights as may be provided for in the Basic Convention or this Convention.

"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 5, 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 Standards" means 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';

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- (g) the principles and criteria of the 'Extractive Industries Transparency Initiative'; and
- (h) the framework of the International Council on Mining and Minerals.

"Proposed Haulage Services" has the meaning given to it in Article 18.1(f)(i) or Article 19.1(c) (as the case may be).

"Protected Entity" has the meaning given to it in Article 42(a).

"Protocols" means collectively, the protocols referred to in Article 20(a).

"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.

"Public Crossings" has the meaning given to it in Article 22.1(a)(ii).

"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 and subject to the requirements of Article 15.1(a)(x) as may be amended from time to time by agreement between the parties thereto.

"Rail Access Roads" has the meaning given to it in Article 22.1(a)(i).

"Rail Availability Charge" means an Availability Charge payable by Foundation Customer determined in accordance with the Rail Pricing Principles.

"Rail Infrastructure" means, as detailed in Appendix 7 to this Convention, 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;

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- (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 established pursuant to Article 14.8(a), as amended from time to time in accordance with Article 14.8(b).

"Rail Safety Licensing Regime" has the meaning given to it in Article 25.4.

"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.

"Renewal Account" has the meaning given to it in Article 54.6(e)(ii).

"Renewal Works" means the rectification, refurbishment, maintenance and remediation works (if any) to be carried out to ensure that the Project Infrastructure complies with the Handback Requirements on the Transfer Date.

"Renewal Works Report" means a report that includes the following information:

- (a) whether the Project Infrastructure meets the Handback Requirements at the time of the Initial Inspection or the Second Inspection (as applicable);
- (b) the Renewal Works required to be carried out by the Infrastructure Owner and/or Infrastructure Operator (as applicable); and
- (c) a reasonable period within which the Infrastructure Owner and/or the Infrastructure Operator (as applicable) need to carry out the Renewal Works.

"Rio Tinto Group" means Rio Tinto Plc (UK), Rio Tinto Ltd (Australia) and their respective Affiliates.

"Rolling Stock" has the meaning given to it in the definition of Rail Infrastructure.

"Rolling Stock Maintenance Protocol" has the meaning given to it in Article 20(a)(iv).

"Rolling Stock Standards Protocol" has the meaning given to it in Article 20(a)(iii).

"Scheduling and Operating Protocol" has the meaning given to it in Article 20(a)(i).

"Second Inspection" has the meaning given to it in Article 54.6(c)(i).

"Security" means any assignment, pledge, mortgage or conditional assignment of equity or shares in Infrastructure Owner or Infrastructure Owner HoldCo or over the Project Infrastructure Assets which is granted by Infrastructure Owner or Infrastructure Owner HoldCo or any shareholder therein, to any Financing Party or otherwise pursuant to any Financing Document.

"Security and Public Safety Protocol" has the meaning given to it in Article 20(a)(ix).

"SEIA" has the meaning given to it in Article 2.3(d).

"SEIA Management Plans" has the meaning given to it in Article 43.2(a).

"Selection Terms" has the meaning given to it in Appendix 14.

"Senior Financing Parties" means the Financing Parties other than the Financing Parties providing shareholder loans to finance the Project Infrastructure.

"Settlement Agreement" means the agreement between the Republic of Guinea, Foundation Customer and Rio Tinto Mining and Exploration Limited dated 22 April 2011.

"Share" means a share in the capital of Infrastructure Owner.

"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).

"Shareholder" means each person or entity which holds Shares from time to time.

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"Simandou Port" means, as detailed in Appendix 8, 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 Jersey Finance 1 Ltd" means the company of that name incorporated under the laws of Jersey (registration number 112690).

"SIMFER Jersey Finance 2 Ltd" means the company of that name incorporated under the laws of Jersey (registration number 112691).

"SIMFER Jersey Ltd" means 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 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.

"Social and Environment Protocols" has the meaning given to it in Article 20(a)(x).

"Stage 1 Development" means the initial construction of Project Infrastructure capable of providing Haulage Services to Foundation Customer at a rate of approximately 50 Mtpa, as provided for and described in the Infrastructure BFS.

"Stage 2 Development" means the continued development of Project Infrastructure expanded so that it is capable of providing Haulage Services to Foundation Customer at a rate of approximately 100 Mtpa, as provided for and described in the Infrastructure BFS.

"Stage 2 FC Initial Capacity" means the capacity of the Project Infrastructure upon the Stage 2 Infrastructure Completion Date being achieved, as determined in accordance with Article 14.5(a).

"Stage 2 Infrastructure Completion Date" means the date on which practical completion of the Stage 2 Development of the Project Infrastructure has been achieved, as determined in accordance with the

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Completion Test and Handover Procedure pursuant to the terms of the co-completion arrangements referred to in Article 7(f).

"State Enabling Activities" has the meaning given to it in Article 2.4.

"Target Dates" has the meaning given to it in Article 2.1(b).

"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.

"Tax and Customs Regime" means the tax and customs regime established pursuant to the provisions of Articles 29 to 37 and to the Tax Annex.

"Tax Annex" means the document attached at Appendix 9 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. 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. For the purposes of this Convention, any reference to SIMFER S.A. and its Affiliates in the Tax Annex shall be construed as a reference to the Infrastructure Owner, the Infrastructure Operator and their respective Affiliates.

"Taxes" means any tax, duty, levy, royalty, fee and, more generally speaking, any fiscal (including customs duties) or parafiscal levy payable to the State or to any State Authority.

"Telecommunications Provider" means the State or third party (or parties) that seek in good faith to provide telecommunications services to Guinean citizens.

"Temporary Admission" means the import of any goods, including vehicles, under the temporary import regime ("**TIR**") for the purpose of the Infrastructure Project, such import not being subject to any time limits under the TIR.

"Term" has the meaning given to it in Article 4.1.

"Track Maintenance Protocol" has the meaning given to it in Article 20(a)(v).

"Transfer Date" means the date the Shares or, at the option of the State, all of the Project Infrastructure Assets are transferred to the State or an entity owned by the State pursuant to Article 54.1(a)(i).

"Unlawful Expropriation" means where any State Authority expropriates or nationalises or, prior to the end of the Investment Repayment Period takes control of, all or any part of the Project Infrastructure Assets in breach of the provisions of Article 42(b), including a failure by the State to pay compensation in accordance with Article 42(b).

"VAT" means the value added tax, as defined under Legislation in Force.

"Vessels Standards Protocol" has the meaning given to it in Article 20(a)(ii).

"Year" means a period of 365 Days according to the Gregorian Calendar.

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 Basic 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 1.: General Provisions

1 Purpose of the Convention

The purpose of this Convention is to:

- (a) define the legal, tax, administrative, financial, fiscal, customs and social conditions within which:
 - (i) Infrastructure Owner will procure the design, financing, construction and commissioning of the Project Infrastructure;
 - (ii) Infrastructure Owner will own, modify and expand and, following the Investment Repayment Period, transfer the Project Infrastructure to the State;
 - (iii) Infrastructure Operator will operate and maintain the Project Infrastructure as from the Infrastructure Completion Date;
 - (iv) Foundation Customer will have absolute priority of use of all Project Infrastructure and Simfer Spur Lines (other than Producer Port Facilities and Producer Spur Lines) for the transportation and export of Foundation Customer's products; and
 - (v) the State will grant the guarantees required by Infrastructure Owner and its shareholders, the Senior Financing Parties, Infrastructure Operator and Foundation Customer for the implementation of the Infrastructure Project;
- (b) create the necessary framework so that Infrastructure Owner is able to secure the required financing for the Project Infrastructure;
- (c) define the general and economic conditions under which the Infrastructure Project will be carried out; and
- (d) provide for State facilitation of the construction of the Project Infrastructure, its financing and the conduct of Infrastructure Activities, including the grant of guarantees required by the Parties for the implementation of the Infrastructure Project,

in each case in the manner provided in this Convention.

2 Implementation of the Infrastructure Project

2.1 Overview

- (a) **(Implementation)** The Infrastructure Project will be implemented in the following stages:
 - (i) Consortium Selection Process;
 - (ii) Funding Plan and Negotiation of Terms;
 - (iii) Infrastructure Investment Decision;
 - (iv) Processes required to achieve Infrastructure Effective Date; and
 - (v) Implementation stage.
- (b) **(Timing)** Target dates for the conclusion of certain of the stages set out in Article 2.1(a) as separately agreed and initialled by the Parties as follows:
 - (i) a target date an agreed period after the Effective Date and by which the Consortium Selection Process is scheduled to be completed ("**Consortium Selection Target Date**");
 - (ii) a target date an agreed period after the conclusion of the Consortium Selection Process and by which each of Infrastructure Consortium and Foundation

Customer may make an Infrastructure Investment Decision (in the event that the Consortium Selection Process is successfully concluded) ("**IID Target Date**"); and

- (iii) a target date an agreed period after the Infrastructure Investment Decision and by which the Infrastructure Effective Date is scheduled to be achieved (in the event that Infrastructure Consortium and Foundation Customer confirm that they have made a positive Infrastructure Investment Decision) ("**IED Target Date**"),

(the Consortium Selection Target Date, IID Target Date and the IED Target Date are collectively referred to as the "**Target Dates**").

2.2 Consortium Selection Process

Commencing on the Effective Date, the Foundation Customer shall conduct the activities set out in Articles 2.3 and 2.6 and the State shall conduct the activities set out in Articles 2.4 and 2.5, and the State and Foundation Customer shall agree and initial the Rail and Port Services Agreement ("**Consortium Selection Process**").

2.3 Infrastructure BFS & In-country Activities

- (a) As part of the Consortium Selection Process, Foundation Customer shall perform the in-country activities as set out in Section 1 of Appendix 13 ("**In-country Activities**") and prepare and fund (on behalf of the Infrastructure Consortium to be selected and confirmed pursuant to Article 2.6) a feasibility study of the Infrastructure Project to a bankable standard that complies with the Infrastructure Construction Criteria for the purpose of confirming the scope (including the Infrastructure Corridor Proposal), the total construction period, the construction strategy and capital cost of the Infrastructure Project ("**Infrastructure BFS**"). For the purposes of this Article 2.3(a), "**bankable standard**" means such standard as is required to attract investment by the Infrastructure Anchor Investors and, subject to such confirmatory studies as may be required as a condition precedent, project financing by the Senior Financing Parties.
- (b) The Infrastructure BFS shall include:
 - (i) a budget for the Infrastructure Project development capital cost (which includes separate components for each of the Stage 1 Development and Stage 2 Development) including the Historical Infrastructure Costs ("**IS Capital Budget**") and a 10% cost overrun contingency ("**IS Budget Contingency**"); and
 - (ii) the ICD Target Date by which the Infrastructure Completion Date must occur, as that date may be extended by an ICD Deemed Extension pursuant to Article 7 ("**ICD Target Date**").
- (c) The Infrastructure BFS, IS Capital Budget and IS Budget Contingency shall be agreed with, and approved by, the Infrastructure Consortium (with any subsequent amendments made by the Infrastructure Consortium to be agreed with Foundation Customer). The final agreed IS Capital Budget (including the IS Budget Contingency) is referred to as the "**Agreed IS Capital Budget**" and shall form the basis for the availability charges to be paid by the Foundation Customer pursuant to the RPSA.
- (d) As part of the Consortium Selection Process, Foundation Customer together with the Infrastructure Consortium shall update the Social and Environmental Impact Assessment ("**SEIA**"), submitted by Foundation Customer pursuant to Article 41.2 of the Basic Convention and to the 2013 Draft Definitive Engineering Assessment in respect of the Infrastructure Project in a manner that complies in all respects with the Project Standards.

- (e) To the extent that the In-country Activities involve the construction of Project Infrastructure, Foundation Customer shall, in undertaking the relevant construction works, comply with the Project Standards and Prudent Infrastructure Practices.

2.4 State Enabling Activities

Concurrently with the Infrastructure BFS and In-country Activities, the State will ensure that certain activities as set out in Section 2 of Appendix 13 ("**State Enabling Activities**") are implemented within the periods prescribed for each of them in each case as set out in Section 2 of Appendix 13 or such agreed periods as are required to enable the In-country Activities and Infrastructure BFS to proceed and so as to facilitate the future implementation of the Infrastructure Project and as key enablers so as to secure additional Infrastructure Consortium members and in each case as required to meet the Target Dates. The carrying out of the State Enabling Activities on an on-going basis to the satisfaction of the Foundation Customer (not to be unreasonably withheld) shall be a condition precedent to progressing and completing the Infrastructure BFS and In-country Activities. Any delay in completion of the State Enabling Activities will constitute an IED Deemed Extension (as provided in Article 2.14(b)).

2.5 Access

The State undertakes to ensure that Foundation Customer, the Infrastructure Consortium and potential Senior Financing Parties have been granted a right of access to the Corridor in order to undertake and complete the Consortium Selection Process in the required timeframe, by requiring the competent Authorities, including their decentralised departments, to facilitate and coordinate access to the Corridor and to lands of property owners and operators of activities that are regularly carried out in the Corridor, to allow them to implement the processes referred to in Articles 2.3 and 2.4.

2.6 Infrastructure Anchor Investor Identification and Selection

The Foundation Customer, with the support of the State, will seek to attract investment in the Infrastructure Project in the form of identifying and selecting investors ("**Infrastructure Anchor Investors**") according to a selection process ("**IAI Selection Process**") which will be undertaken as follows:

- (a) the Foundation Customer will determine the selection criteria and process which will apply to the IAI Selection Process consistent with the Selection Terms;
- (b) the State shall be provided with the selection criteria and process proposed by the Foundation Customer for the IAI Selection Process and shall provide its input in relation to same via the joint funding team established by the State and Foundation Customer. The Foundation Customer shall, in finalising the IAI Selection Process, take into account all such input as received and make such amendments as are necessary in particular to reflect the Selection Terms. The final IAI Selection Process shall be subject to the approval of the State which shall not be unreasonably withheld and be deemed to be granted should no response be received by the State within 7 Days of the final IAI Selection Process being provided to the State.

Each Infrastructure Anchor Investor candidate shall be assessed by the Foundation Customer according to the IAI Selection Process during which the Foundation Customer and the State shall make such information available to candidates as is required to enable the necessary due diligence to be undertaken and Foundation Customer shall provide updates on progress of the IAI Selection Process to the State at regular intervals. The Foundation Customer shall, following such assessment, select those candidates who will act as the Infrastructure Anchor Investors and who shall then form a consortium (the "**Infrastructure Consortium**") that shall be approved by

the State (with such approval not to be unreasonably withheld) as contemplated by Article 19.2 of the Basic Convention.

The State and Foundation Customer (and, if it has been formed, the Infrastructure Consortium) shall, as and when required, negotiate in good faith and seek to agree any amendments to this Convention, the Pricing Principles Agreement or the Basic Convention as may be necessary or desirable to facilitate the Consortium Selection Process, the Funding Plan, the Infrastructure Investment Decision or the achievement of the Infrastructure Effective Date, including potential provisions for the separate ownership of the Rail Infrastructure and Simandou Port.

2.7 Funding Plan and Negotiation of Terms

To the extent that the following matters are not finalised or executed during the Consortium Selection Process, they shall be finalised as soon as possible thereafter as follows:

- (a) **(Operatorship and Documentation)** The Infrastructure Operator will be Foundation Customer or its nominee or nominees within the Rio Tinto Group collectively, unless otherwise required by the Infrastructure Consortium as part of the Consortium Selection Process. Foundation Customer and Infrastructure Consortium shall confirm the identity of the Infrastructure Operator, to the extent that it is not the Foundation Customer, following which Foundation Customer, Infrastructure Consortium and the Infrastructure Operator shall negotiate in good faith and seek to agree the terms and conditions of:
- (i) the Infrastructure Operating Agreement;
 - (ii) the Rail and Port Services Agreement (based on that version which is agreed and initialled by the State and the Foundation Customer as referred to in Article 2.2); and
 - (iii) the co-completion arrangements referred to in Article 7(f),
- as well as any amendments which may be required to this Convention, the Pricing Principles Agreement or the Basic Convention, each in a manner consistent with the Selection Terms unless, as a result of the findings in the Infrastructure BFS or arising from the Consortium Selection Process, Infrastructure Consortium and Foundation Customer agree otherwise. Any amendments which may be required to the Rail and Port Services Agreement, this Convention, the Pricing Principles Agreement or the Basic Convention shall be negotiated in good faith and agreed with the State.
- (b) **(Conditions Precedent)** Foundation Customer, Infrastructure Consortium and the State shall confirm the conditions precedent to the Infrastructure Effective Date, which shall be limited to:
- (i) any regulatory or other approvals required for the infrastructure investment in Guinea, in the home jurisdictions of the Infrastructure Consortium members or any shareholders or Affiliates of Foundation Customer;
 - (ii) any Authorisation reasonably stipulated by Infrastructure Consortium or the State;
 - (iii) the provision of any Project Lands reasonably stipulated by Infrastructure Consortium;
 - (iv) the ratification of any agreed amendments to the Basic Convention and this Convention; and
 - (v) any condition precedent required by the Funding Plan or the Senior Financing Parties as contemplated by Article 2.9(e),

in a manner consistent with the Selection Terms unless, as a result of the findings in the Infrastructure BFS or arising from the confirmatory due diligence, Infrastructure Consortium, Foundation Customer and the State agree otherwise.

- (c) (**Funding Plan**) Infrastructure Consortium shall confirm a funding plan ("**Funding Plan**") for the Infrastructure Project pursuant to which the Infrastructure Consortium commits, or identifies sources of funding, to fund:
- (i) the Historical Infrastructure Costs;
 - (ii) the Agreed IS Capital Budget;
 - (iii) any additional amounts required to fund cost overruns in order to achieve the Infrastructure Completion Date; and
 - (iv) any amounts required to service Infrastructure Owner debt owed to the Senior Financing Parties under the Financing Documents until such time as the Infrastructure Completion Date occurs,

and Foundation Customer and Infrastructure Consortium will negotiate in good faith to seek agreement on the matters referred to in this Article 2.7.

2.8 Infrastructure Investment Decision

Each of the Infrastructure Consortium and the Foundation Customer shall, on the basis of and subject to the position reached in relation to the matters set out in Article 2.7, separately decide and advise the other in writing as to whether it wishes to proceed with the Project Infrastructure subject to successful conclusion of the processes set out in Article 2.9 ("**Infrastructure Investment Decision**"). Following its approval by the Infrastructure Consortium pursuant to Article 2.3(c) and a positive Infrastructure Investment Decision, the rights in the Infrastructure BFS shall be assigned to the Infrastructure Consortium (subject to its cost being paid to the Foundation Customer as part of Historical Infrastructure Costs referred to in Article 2.11). The Infrastructure Consortium shall from then be fully responsible for the Infrastructure BFS and any amendment thereof, it being agreed and understood that the Foundation Customer shall in no way be liable for any of the contents or findings of the Infrastructure BFS (including for the period prior to the assignment of the Infrastructure BFS to the Infrastructure Consortium).

2.9 Infrastructure Effective Date

In the event that both the Infrastructure Consortium and the Foundation Customer confirm pursuant to Article 2.8 that they have made a positive Infrastructure Investment Decision and wish to proceed with the Project on the basis of and subject to the position reached in relation to the matters set out in Article 2.7, then the State shall be informed and all the following actions and conditions shall thereafter be concurrently undertaken, completed and satisfied:

- (a) The Infrastructure Consortium shall establish Infrastructure Owner HoldCo in a jurisdiction that is acceptable to Foundation Customer (the Foundation Customer's approval of a jurisdiction not to be unreasonably withheld) and Infrastructure Owner HoldCo shall establish Infrastructure Owner as a wholly owned subsidiary company incorporated in Guinea. Infrastructure Owner HoldCo and Infrastructure Owner may not carry out any other activities or be involved in any other business other than as contemplated in this Convention. The State shall be entitled to one seat on the board of Infrastructure Owner which shall be non-voting except with respect to a limited number of strategic issues to be agreed with the Infrastructure Consortium. The rights of the State pursuant to this Article 2.9(a) shall be enshrined in the articles of association of Infrastructure Owner.

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- (b) Following the incorporation of Infrastructure Owner HoldCo and Infrastructure Owner, both Infrastructure Owner and Infrastructure Owner HoldCo shall accede to this Convention and the Pricing Principles Agreement by execution of an Accession Agreement substantially in the form attached as Appendix 1.
- (c) The entry by all named parties into the Infrastructure Operating Agreement, Rail and Port Services Agreement and co-completion arrangements referred to in Article 7(f), in each case as agreed pursuant to Article 2.7, and accession by the Infrastructure Operator as the Infrastructure Operator to this Convention and the Pricing Principles Agreement by execution of an Accession Agreement substantially in the form attached as Appendix 1.
- (d) Foundation Customer, Infrastructure Consortium, the Financing Parties and the State shall negotiate in good faith and agree the terms and conditions of the Financing Documents to which they are required to be parties provided always that the State shall not bear any financial liability or responsibility in relation to such Financing Documents. The shareholders in the Infrastructure Owner HoldCo shall however endeavour to take such steps and provide such support, financial or otherwise, as is reasonably required to agree the Financing Documents with the Senior Financing Parties. A list of the set of matters constituting conditions precedent to the Infrastructure Effective Date and which is contemplated in Article 2.7(b)(v) shall be included among the Financing Documents and satisfied in the manner set out in Article 2.9(e) below.
- (e) The satisfaction of the conditions precedent established pursuant to the list referred to in Article 2.9(d). It is agreed that the parties and their Affiliates are bound to take, and shall take, such steps as are necessary to achieve the satisfaction of the said conditions precedent. For the avoidance of doubt, the State will provide any Authorisation or other regulatory approval and procure Project Lands required to satisfy any condition precedent established pursuant to the list referred to in Article 2.9(d).

The date on which all the actions and conditions listed above in Article 2.9(a) to 2.9(e) (inclusive) have been completed and satisfied shall be the "**Infrastructure Effective Date**" for the purposes of this Convention.

2.10 FCPD

- (a) The Parties acknowledge and agree that:
 - (i) the First Commercial Production Date (which is to occur within 90 Days of 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 the Foundation Customer by no later than 11 months after the Effective Date;
 - (C) that a positive Infrastructure Investment Decision is taken by the Infrastructure Consortium and Foundation Customer pursuant to Article 2.8;
 - (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) 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 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;
 - (iii) the dates and periods referred to in this Article 2.10 are subject to all requirements of this Convention and the Basic Convention and to the extensions provided for herein and therein; and
 - (iv) given the future social and economic benefits of the Project for Guinea, the Parties shall examine all means of accelerating the delivery of the Project.
- (b) The Parties acknowledge and agree that the ICD Target Date, and hence the date by which the Infrastructure Completion Date is to occur pursuant to this Convention, is subject to any ICD Deemed Extension under this Convention. If the ICD Target Date is extended pursuant to this Convention, then the Foundation Customer may revise its development schedule to take into account the extension or any delay pending agreement on any ICD Deemed Extension. The Foundation Customer 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 this Convention.

2.11 Historical Infrastructure Costs

The payment by the Infrastructure Owner (or if the Infrastructure Owner is yet to be incorporated and to have acceded to this Convention under Article 2.9, the Infrastructure Consortium) of the Historical Infrastructure Costs to Foundation Customer, or the entry into such other arrangements as are agreed between Foundation Customer and the Infrastructure Owner or Infrastructure Consortium (as applicable) in a manner consistent with the Selection Terms, shall take place within 90 Days of the Infrastructure Investment Decision. Upon payment of the Historical Infrastructure Costs, Foundation Customer shall transfer to the Infrastructure Owner (once having acceded to this Convention) any Project Infrastructure in existence at that time, and any Land Rights connected to that Project Infrastructure, owned by the Foundation Customer as well as any manuals, diagrams, drawings, documentation, tools and equipment (including keys) which it has in its possession or control that relate to the Project Infrastructure.

2.12 Review and Achievement of Target Dates

- (a) The Parties agree that they shall meet and review progress of the Consortium Selection Process, Infrastructure Investment Decision and progress towards the Infrastructure Effective Date against the applicable Target Date on a regular basis as from the Effective Date and in any case no later than two months prior to each Target Date. At each meeting, the Parties shall work together collaboratively to identify any impediments to the applicable Target Date being achieved and to explore and agree appropriate solutions so that any such impediments may be minimised or overcome.
- (b) The Parties further agree that if:
 - (i) following such review as contemplated in Article 2.12(a), such progress is regarded as being unsatisfactory, in the reasonable opinion of each of the Foundation Customer and the State, such that in the opinion of each of them, it is not possible that the Target Date will be achieved; or
 - (ii) if the Target Date is not achieved; or

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- (iii) in the case of the IID Target Date, a positive Infrastructure Investment Decision is not made by both the Infrastructure Consortium and the Foundation Customer by such date,

then unless otherwise agreed, and provided the Parties have each cooperated in good faith to achieve such solutions (as are referred to in the Article 2.12(a)), the following shall apply:

- (iv) in the cases of the Consortium Selection Target Date and the IID Target Date, negotiations with the Infrastructure Consortium will cease; and
- (v) in the case of the IED Target Date, Infrastructure Owner, Infrastructure Owner HoldCo and Infrastructure Operator shall be released from, and have no further rights or obligations, under this Convention, unless otherwise agreed by Foundation Customer and the State,

and the provisions of Article 19.5 of the Basic Convention shall apply.

- (c) If Infrastructure Owner or, prior to the Infrastructure Owner acceding to this Convention, Foundation Customer becomes aware that an event, or series of events, of delay have occurred that may delay the Infrastructure Effective Date, including a State failure to act or provide support as required pursuant to this Convention, then, for information purpose only, Infrastructure Owner or Foundation Customer (as applicable) will include, on a timely basis, information on such event or events in progress updates or other ad hoc reports that may be provided. The Parties 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, a Party's ability to rely on an IED Deemed Extension as provided for in this Convention, and communication of those events is not a precondition to the IED Deemed Extension 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 an IED Deemed Extension has occurred and a failure by the State to respond to a communication of those events does not preclude the State from challenging that an IED Deemed Extension has occurred.

2.13 Continued Operation of this Convention

In the circumstances contemplated by Article 2.12(b), unless otherwise agreed, this Convention shall continue to operate pursuant to Article 19.5 of the Basic Convention, unless and until the Basic Convention is terminated pursuant to Article 19.5 of the Basic Convention in which case this Convention will terminate at the same time. The Parties further agree in the event of such termination that in no circumstances shall any damages or other compensation or penalty be payable by any Party to any other Party.

2.14 IED Deemed Extension

- (a) The Target Dates are each subject to any IED Deemed Extension. If there is an IED Deemed Extension, then the affected Target Date (and all Target Date(s) which follow it) will be automatically extended by the duration of the event, government action or failure to act that gives rise to the IED Deemed Extension.
- (b) There shall be an **"IED Deemed Extension"** 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 Infrastructure Project or any related study;
 - (C) any delay in completion of the State Enabling Activities as required pursuant to Articles 2.4 and 3;
 - (D) any event of delay to the acquisition of Project Lands as contemplated by Article 10 including delays in the relocation of persons, as necessary, for the performance of the Project Activities; and
 - (E) any event of delay due to referral of a matter to an independent expert in the circumstances provided for in this Convention or more generally due to a referral of a matter to arbitration pursuant to Article 48; or
- (iii) any delay by the State in initialling the RPSA as required by Article 2.2 by the Consortium Selection Target Date or any delay by the State in agreeing any amendments to the Rail and Port Services Agreement or to the Pricing Principles Agreement, or in agreeing or ratifying any amendments to the Basic Convention or this Convention as agreed under Article 2.7(a),

in each case having an evident impact on the ability to achieve the Infrastructure Effective Date or any individual activity or stage referred to in Article 2.1.

2.15 Co Foundation Customer Proposals

The process for adding a Co-Foundation Customer is set out in Appendix 18 and each Party agrees to comply with the obligations imposed on it under Appendix 18.

3 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 Infrastructure Activities and all other activities to be carried out by the Parties (including the Financing Activities) and the Project Contractors under this Convention and, to this end, the State shall undertake the State Enabling Activities within the timeframes specified in Appendix 13.

4 Term

4.1 Entry into Effect of this Convention

This Convention will come into effect on the Effective Date and continue until the Transfer Date, unless terminated earlier in accordance with Article 2 or Article 47 (the "**Term**").

4.2 Entry into Effect of Infrastructure Owner Obligations

Notwithstanding the coming into effect of this Convention pursuant to Article 4.1, the Parties agree that the rights and obligations of Infrastructure Owner and Infrastructure Owner HoldCo hereunder (other than under Articles 1, 2 and 4.1, this Article 4.2 and Articles 29 to 37 (inclusive), 48, 50 to 53 (inclusive) and 55 to 61 (inclusive) which will all come into effect on the date of their accession to this Convention pursuant to Article 2.9(b)) will only become effective on the Infrastructure Effective Date.

5 Corridor

- (a) The State agrees that the Project Lands intended for the railway and port shall be situated within the Original Corridor as identified by Foundation Customer or such other locations within the territory of Guinea identified by Foundation Customer in the course of

preparation of the Infrastructure BFS, or otherwise identified by Infrastructure Owner, (the **"Infrastructure Corridor Proposal"**) and approved in writing by Foundation Customer and the State within 60 Days of the date of the submission of the proposal and the Land Rights therein shall be granted to Infrastructure Owner and Infrastructure Operator as appropriate, for realisation and the exploitation of the Project Infrastructure.

- (b) For the avoidance of doubt, the Parties hereby acknowledge and agree that:
- (i) the State will approve the Infrastructure Corridor Proposal but may require amendments be made to it that do not substantially affect the Corridor and that are capable of being promptly accommodated at reasonable cost; and
 - (ii) all costs incurred by Foundation Customer in connection with the Original Corridor and Infrastructure Corridor Proposal are Historical Infrastructure Costs, even if the Infrastructure Corridor Proposal ultimately approved by the State pursuant to this Article 5 relates to locations other than those situated within the Original Corridor.

Section 2.: Technical Studies, First Commercial Production Date and Construction Activities

6 Project Documentation

- (a) The Parties acknowledge and agree that Infrastructure Owner will be deemed to satisfy the requirements of Article 8.2 of the BOT Law upon the submission to the State of the Infrastructure BFS.
- (b) Infrastructure Owner undertakes to complete and submit to the State the documents listed below (together, the "**Additional Project Documentation**") as soon as practicable after the Infrastructure Effective Date which, upon their approval by the State, will then govern the performance of operations by Infrastructure Owner and Infrastructure Operator in connection with this Convention:
 - (i) the SEIA, as updated pursuant to Article 2.3(d);
 - (ii) the SEIA Management Plans; and
 - (iii) the IFC Synthesis of the Social and Environmental Review.

7 Infrastructure Completion Date and First Commercial Production Date

- (a) The Parties further acknowledge that Foundation Customer has, pursuant to Article 7.2 of the Basic Convention, given certain undertakings, subject to the terms and conditions of the Basic Convention, with respect to the achievement of the First Commercial Production Date that are contingent upon the conduct of the Parties.
- (b) Infrastructure Owner undertakes to construct and complete the Project Infrastructure so that the Project Infrastructure is capable of providing Haulage Services to Foundation Customer at a rate of approximately 100 Mtpa. The Project Infrastructure will be constructed in two stages as follows:
 - (i) **Stage 1 Development:** Infrastructure Owner shall construct and complete the Stage 1 Development in accordance with the Infrastructure BFS so as to achieve the Infrastructure Completion Date by the date specified in the Infrastructure BFS as the ICD Target Date, as that date may be extended by any ICD Deemed Extension. Given the future social and economic benefits of the Project for Guinea, the Parties shall examine all means of accelerating the delivery of the Infrastructure Project so that it occurs as soon as possible and, if possible, prior to the ICD Target Date.
 - (ii) **Stage 2 Development:** Unless Foundation Customer gives Infrastructure Owner a Notice to delay the Stage 2 Development and such Notice is given on or before a date to be agreed by Foundation Customer and Infrastructure Owner, as part of the co-completion arrangements referred to in Article 7(f), Infrastructure Owner must construct and complete the Stage 2 Development in accordance with the Infrastructure BFS. For the avoidance of doubt, Foundation Customer must not issue a Notice to delay the Stage 2 Development except as a result of adjustments, including to capacity and schedule, made pursuant to and in accordance with Article 16(a) of the Basic Convention. If the Foundation Customer issues a Notice to delay on or before the agreed date, the Infrastructure Owner must suspend construction of the Stage 2 Development. The Foundation Customer may subsequently:

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- (A) require Infrastructure Owner to recommence construction and completion of the Stage 2 Development in accordance with the Infrastructure BFS, if and to the extent that is permitted in the co-completion arrangements referred to in Article 7(f); or
 - (B) if Article 7(b)(ii)(A) does not apply, require a subsequent expansion of the Project Infrastructure in accordance with the provisions of Articles 15.3 and 15.4.
- (c) The State shall comply with all of its obligations under this Convention, in particular those set out in Articles 2, 3, 9, 10, 11 and 29, so as to enable Infrastructure Owner to achieve the Infrastructure Completion Date by the ICD Target Date and Foundation Customer to achieve the First Commercial Production Date in accordance with Article 7.2 of the Basic Convention.
- (d) For the purposes of this Article 7, there shall be an **"ICD Deemed Extension"**:
 - (i) if there is:
 - (A) a Force Majeure Event;
 - (B) a government action or failure to act including:
 - (1) a Material Government Breach;
 - (2) any event of delay to access to sites or to the grant of any Authorisations necessary for the conduct of the Infrastructure Project or any related study;
 - (3) any delay in completion of the State Enabling Activities as required pursuant to Articles 2 and 3;
 - (4) any event of delay to the acquisition of Project Lands as contemplated by Article 10 including delays in the relocation of persons for the performance of the Project Activities; and
 - (5) any event of delay due to referral of a matter to the Independent Regulator or an independent expert in the circumstances provided for in this Convention or more generally due to a referral of a matter to arbitration pursuant to Article 48;
 - (C) a breach or delay by the State in complying with its obligations as set out in Article 7(c);in each case having an evident impact on the ability of Infrastructure Owner to achieve the Infrastructure Completion Date;
 - (ii) if there is an IED Deemed Extension that occurs after the ICD Target Date is specified in the Infrastructure BFS; or
 - (iii) if there is any event deemed by another provision of this Convention or the Basic Convention to be an ICD Deemed Extension.

The period of time to achieve the Infrastructure Completion Date (and, therefore, the ICD Target Date) will be automatically extended by the duration of the event, government action or failure to act or extension that gives rise to the ICD Deemed Extension (or by the period of the IED Deemed Extension or the deemed ICD Deemed Extension, as relevant).

- (e) If the ICD Target Date is extended pursuant to this Convention, then Foundation Customer pursuant to the Basic Convention may revise its development schedule for the

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Mining Infrastructure to take into account the extension or any delay pending agreement on any extension entitlement. Foundation Customer will be kept advised by Infrastructure Owner of, and be involved in all material discussions regarding, any claims for an ICD Deemed Extension or any other extension under this Convention, any known facts or circumstances which may result in any extension.

- (f) Foundation Customer and Infrastructure Owner shall enter into co-completion arrangements which shall take effect from the Infrastructure Effective Date to ensure that:
- (i) in relation to the Stage 1 Development, the Mining Infrastructure and the Project Infrastructure are ready and functionally able to operate in conjunction with each other when required so that:
 - (A) Infrastructure Owner is able to achieve the Infrastructure Completion Date by the ICD Target Date; and
 - (B) Foundation Customer is able to achieve the First Commercial Production Date in accordance with Article 7.2(b) of the Basic Convention;
 - (ii) in relation to the Stage 2 Development, the expanded Mining Infrastructure and the expanded Project Infrastructure are ready and functionally able to operate in conjunction with each other when required.
- (g) Infrastructure Owner undertakes that it will comply with its obligations under these co-completion arrangements and will provide to the State and Foundation Customer, as soon as practicable after the end of each calendar quarter, an update indicating progress made in relation to the Project Infrastructure during that quarter including a description of the Infrastructure Activities carried out and the progress of these activities relative to the progress of Mining Activities as advised to it by Foundation Customer. The quarterly update contemplated in this Article 7(g) shall also include all capital expenditure incurred in relation to the Project Infrastructure during such quarter relative to the Agreed IS Capital Budget together with such supporting documentation evidencing such expenditures as is reasonably required by Foundation Customer.
- (h) If Infrastructure Owner becomes aware that an event, or series of events, of delay have occurred that may delay the Infrastructure Project schedule, including a State failure to act or provide support as required pursuant to this Convention, then, for information purpose only, Infrastructure Owner will, on a timely basis, include information on such event or events in the progress updates to be provided under Article 7(g) or in other ad hoc reports that may be provided. The Parties 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, a Party's ability to rely on an ICD Deemed Extension as provided for in this Convention, and communication of those events is not a precondition to the ICD Deemed Extension 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 an ICD Deemed Extension has occurred and a failure by the State to respond to a communication of those events does not preclude the State from challenging that an ICD Deemed Extension has occurred.
- (i) The Parties acknowledge and agree the ability of Foundation Customer to achieve the First Commercial Production Date in accordance with Article 7.2(b) of the Basic Convention is contingent upon the provision of continuous Haulage Services to Foundation Customer pursuant to Article 15.1 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 Foundation Customer) shall be a Deemed Mine Extension Event (as that term is defined in the Basic Convention) for the purposes of the Basic Convention.

8 Construction Activities

8.1 Infrastructure construction obligations

- (a) Further to the provisions of Article 7(b), 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 this Convention strictly in accordance with the Infrastructure Construction Criteria including, without limitation, the rights and obligations set out in Article 12.1 in each case in such manner and time as may be necessary to ensure that construction and commissioning of the Infrastructure Project occur in accordance with all requirements of this Convention.
- (b) Subject to Article 2, 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)). Such activities include the entry into construction contracts and the day to day administration of such construction contracts.
- (c) Further to Article 8.1(a), Infrastructure Owner shall perform its obligations under this Convention 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. Infrastructure Owner further acknowledges and agrees that the timely and proper performance of its obligations under this Convention is critical for the performance by Foundation Customer of its obligations under the Basic Convention and to the implementation of the Project as a whole and that any default thereof by Infrastructure Owner may cause significant loss and damage to Foundation Customer.
- (d) It is agreed by the Parties that the State and Foundation Customer may at any time, upon the provision of reasonable notice to Infrastructure Owner, inspect and audit any works being undertaken by Infrastructure Owner for the purpose of determining whether those works comply with the Infrastructure Construction Criteria. Any non-compliance detected shall be communicated in writing to Infrastructure Owner and remedied within a reasonable period failing which Foundation Customer may exercise the step in rights referred to in Article 8.1(f). Any disputes arising in relation to the exercise of these rights and obligations pursuant to this Article 8.1(d) 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.
- (e) In the event that Foundation Customer elects to construct an expansion pursuant to the Foundation Customer Expansion Funding Principles and Article 15.3(h):
 - (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. Any disputes arising in relation to the exercise of these rights and obligations pursuant to this Article 8.1(e)(ii) 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.

- (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 pursuant to Article 11.
- (f) It is acknowledged and agreed by the Parties that in certain circumstances Foundation Customer shall have the right to step in and assume the rights of Infrastructure Owner under this Convention, which shall be referred to in the Rail and Port Services Agreement and are provided for in Article 54 of this Convention.

8.2 Infrastructure completion tests

- (a) **(Development of Completion Test and Handover Procedure)** The Infrastructure Owner and Foundation Customer shall prepare a set of commissioning and completion procedures in relation to the infrastructure (the "**Completion Test and Handover Procedure**") under the co-completion arrangements referred to in Article 7(f) for the purposes of determining that, as the case may be, the Infrastructure Completion Date or the Stage 2 Infrastructure Completion Date has been achieved. Each of the State, Foundation Customer and Infrastructure Operator shall be provided a copy of the Completion Test and Handover Procedure for the Infrastructure Completion Date and Stage 2 Infrastructure Completion Date by the Infrastructure Owner.
- (b) **(Appointment of Independent Certifier)** Infrastructure Owner and Foundation Customer shall identify and appoint, with the approval of the State (acting reasonably), a suitably qualified and experienced consultant pursuant to the co-completion arrangements referred to in Article 7(f) ("**Independent Certifier**") for the purposes of inspecting the Project Infrastructure pursuant to, and carrying out the Independent Certifier functions specified in, the Completion Test and Handover Procedure.
- (c) **(Infrastructure Completion Certificate)** The Infrastructure Owner shall notify the Independent Certifier, Foundation Customer, State and Infrastructure Operator of the date the Infrastructure Owner considers that practical completion of the Project Infrastructure will occur for each of the Stage 1 Development and Stage 2 Development in accordance with the Infrastructure Construction Criteria, with such notice to be given at least 30 Days prior to that expected date of practical completion. Following such notification, the Independent Certifier shall, in accordance with the co-completion arrangements referred to in Article 7(f), carry out its certification of the Project Infrastructure pursuant to the applicable Completion Test and Handover Procedure.

At the point at which the commissioning tests have been passed in accordance with the Completion Test and Handover Procedure, the Independent Certifier will certify in writing

that the Infrastructure Completion Date or Stage 2 Infrastructure Completion Date, as applicable, has been achieved by issuing a single certificate simultaneously under this Article 8.2(c) and the co-completion arrangements referred to in Article 7(f) ("**Infrastructure Completion Certificate**") to each of Infrastructure Owner, Infrastructure Operator, Foundation Customer and the State. If the commissioning tests have not been passed they shall be continued until such time that they have been passed.

- (d) (**Effect of Infrastructure Completion Certificate**) The issuance of the Infrastructure Completion Certificate does not limit or affect the obligation of the Infrastructure Owner to design and construct, and Infrastructure Operator (as an independent contractor acting for Infrastructure Owner) to operate and maintain, the Project Infrastructure in accordance with this Convention or any obligations of the Infrastructure Owner or Infrastructure Operator under this Convention.

Section 3.: Land Access and Authorisations

9 Access to Sites

- (a) The State undertakes to ensure that Foundation Customer, Infrastructure Owner and the Project Contractors are granted a right of access in Guinea to the Corridor in order to complete the studies and works necessary to identify the Project Lands, by requiring the competent authorities, including their decentralised departments, to facilitate and coordinate access to the Corridor and to lands of property owners and operators of activities that are regularly carried out in the Corridor, to allow them to implement the above-mentioned studies and works.
- (b) Such right of access is maintained and confirmed by this Convention and will remain in force until the provisions of Article 10 regarding the grant of the Land Rights and right to occupy the Project Lands take effect.

10 Project Lands and Land Acquisition

10.1 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 5. The Parties acknowledge that the Project Lands may include part of the river and maritime public domain.

The State shall undertake all actions as required in accordance with this Convention, the PARC Framework and the PIN Decree in order that the Project Lands are allocated for the exclusive use and occupation of Infrastructure Owner and Infrastructure Operator and that all parcels of land required for the resettlement of Project Affected Persons are made available to resettled Project Affected Persons as required for the timely realisation and exploitation of the Project Infrastructure.

10.2 Rights in respect of the Project Lands

- (a) The State hereby grants to each of Infrastructure Owner and Infrastructure Operator, without the need for any further Authorisations or other formalities other than those Authorisations or other formalities which are prescribed in Appendix 5 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 Infrastructure Activities for which they are responsible under, and in accordance with the terms and conditions of this Convention and the PIN Decree.
- (b) Project Infrastructure Ownership Rights attaching to the Project Infrastructure Assets (which will be fixtures on the Project Lands) are acquired by Infrastructure Owner or Infrastructure Operator, as and when such Project Infrastructure 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 Infrastructure Activities, the State also hereby grants to each of Infrastructure Owner and 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, their Affiliates and to third party investors as contemplated in Article 12.5, all or part of the Land Rights granted under this Article 10.2. However, any subsequent

assignment, transfer or disposal of all or any part of the Land Rights granted under this Article 10.2 by Project Contractors 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 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 5, the Parties 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 Foundation Customer, Infrastructure Owner, Infrastructure Operator, Project Contractors and their Affiliates benefiting from any right in application of this Article 10.2.
- (e) The State guarantees the holders of all Land Rights referred to in Article 10.2(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 these costs occurring, the Parties will, to the greatest possible extent, in consultation, seek to settle any grievances brought against the Parties in accordance with the grievance mechanism provided by the PARC Framework.

10.3 Soil and subsoil contamination

The Foundation Customer, the Infrastructure Owner and the Infrastructure Operator 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 the Foundation Customer, the Infrastructure Owner and the Infrastructure Operator in accordance with Article 10.2 and the conditions specified in Appendix 5, or not caused by the activities undertaken by or on behalf of Foundation Customer, Infrastructure Owner or Infrastructure Operator.

10.4 Project D'Intérêt National

- (a) The State undertakes to implement the provisions of the PIN Decree in a way that is consistent with the provisions of this Convention and in particular with a view to facilitating the carrying out of the Infrastructure Activities. The State confirms:
 - (i) the priority of the Project over the Kassa B and Maferenya projects and all other projects pursuant to the PIN Decree; and
 - (ii) that the benefit of the PIN Decree extends to Infrastructure Owner, Infrastructure Owner HoldCo, Infrastructure Operator and their respective Affiliates, and that Infrastructure Owner, Infrastructure Owner HoldCo, Infrastructure Operator and their respective Affiliates amount to acceptable replacements for the purposes of Article 1 of 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 the Infrastructure Owner and/or the Infrastructure Operator over all the Project Lands

- necessary for the carrying out of the Infrastructure Activities will have become fully effective in accordance with the conditions specified in Appendix 5;
- (ii) use and implement all rights conferred on it by the PIN Decree to grant the Infrastructure Owner or the Infrastructure Operator such Land Rights as are necessary for the purpose of carrying out the Infrastructure Activities (including the extension of the period of the PIN Decree to accommodate the Stage 1 Development and Stage 2 Development 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.

11 Authorisations

- (a) In addition to its obligations set out in Articles 9 and 10, and without limiting Article 41, the State:
 - (i) hereby grants, without the need for additional formalities, all Authorisations required for the carrying out of all construction works and operation of the Rail Infrastructure in accordance with the Infrastructure Construction Criteria;
 - (ii) hereby grants, without the need for additional formalities, all Authorisations required for the carrying out of all construction works and operation of the Simandou Port in accordance with the Infrastructure Construction Criteria;
 - (iii) shall, if the Infrastructure Owner, Infrastructure Operator or a Project Contractor applies for any other Authorisation (other than an Authorisation referred to in Article 43.2 which shall be issued in accordance with the provisions thereof) ensure the prompt issue of that Authorisation within 30 Days of the application. If an Authorisation is not issued within 30 Days of the application, it will be deemed to have been granted;
 - (iv) shall facilitate all administrative steps and procedures by all appropriate measures and provide all reasonable assistance, in each case as may be necessary for the planning, design, construction, commissioning, ownership, operation, maintenance, modification and expansion of the Project Infrastructure (including, for the avoidance of doubt, the rights of Infrastructure Owner and Infrastructure Operator to import fuel as contemplated by Articles 12.3 and 13.5);
 - (v) shall, in discharging its obligations pursuant to Article 7(c) promptly instruct and direct, as required, all State Authorities in each relevant area to facilitate all the administrative measures required for the issue of such Authorisations which shall be on terms that are acceptable to Infrastructure Owner and Infrastructure Operator;
 - (vi) shall ensure that such Authorities provide Infrastructure Operator and Infrastructure Owner with all necessary assistance in relation to Authorisations for the Infrastructure Project and that all other formalities and procedures are carried out; and
 - (vii) shall maintain, or cause to be maintained, the validity and the effectiveness of all Authorisations granted or to be granted by the Authorities and / or any person, entity or Authority in connection with the Infrastructure Project.

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- (b) Any person applying for, or who has been granted, an Authorisation under Article 11(a)(iii), shall comply with the matters required by such Authorisation.

Section 4.: Rights and Obligations of Owner and Operator

12 Rights and Obligations of Infrastructure Owner

12.1 The rights and obligations of Infrastructure Owner

Infrastructure Owner shall, consistently with its obligations under Article 8:

- (a) be responsible for procuring the planning, design, construction and commissioning of the Project Infrastructure in accordance with the Infrastructure Construction Criteria and without any further input or approvals (including any Authorisations) being required to be obtained from the other Parties, including the State, and in doing so shall be entitled to:
 - (i) subject to Article 5, access lands for the finalisation of studies required for the planning and development of Project Infrastructure;
 - (ii) exercise all rights and take all actions to secure lands required for the construction and commissioning of the Project Infrastructure including pursuant to the PIN and in accordance with the PARC Framework; and
 - (iii) undertake the planning, design, construction, commissioning, modification and expansion of the Project Infrastructure;
- (b) own, modify and expand the Project Infrastructure in accordance with the Infrastructure Construction Criteria and transfer it to the State in accordance with Article 54;
- (c) enter into, in conjunction with Infrastructure Operator, the Rail and Port Services Agreement with the Foundation Customer 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 (in accordance with Article 15.1);
- (d) undertake studies of, and as required implement, expansions of the Project Infrastructure for Foundation Customer (under Article 15), Producers (under Article 18) and the State and itself (under Article 19);
- (e) negotiate and enter into, in conjunction with the Infrastructure Operator, Producer Rail Haulage Agreements and Producer Port Services Agreements with Producers (in accordance with Article 18.5) and Additional Capacity Services Agreements with third parties (in accordance with Article 19.4);
- (f) undertake all tasks, actions and requirements, including the obtaining and holding of all necessary lands and Authorisations (the grant or issue of which is in each case the responsibility of the State pursuant to Articles 10 and 11) as necessary to plan, design, finance, construct, commission, modify, expand and own the Project Infrastructure;
- (g) appoint Infrastructure Operator to manage, as an independent contractor on behalf of Infrastructure Owner, the operation and maintenance of the Project Infrastructure;
- (h) undertake the Financing Activities for the construction of the Project Infrastructure and, where project financing is sought in connection with the Mining Infrastructure by Foundation Customer or its Affiliates, cooperate in a timely manner to enable Foundation Customer to secure such project financing;
- (i) provide all infrastructure and equipment required to provide the Passenger Service, including transportation vehicles and stations;

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- (j) for the purposes of construction of the Project Infrastructure, obtain or quarry stone, sand, clay and gravel from the Corridor and from such other areas in the vicinity of the Corridor as of right;
- (k) provide Foundation Customer with priority access, and any Producers with access, to scheduling software which forms part of the Rail Infrastructure and any laboratory at the Simandou Port as required to ensure their efficient operations; and
- (l) 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 the Basic Convention.

12.2 Guinean public procurement

Pursuant to Article 9.1 of the BOT Law, the Guinean public procurement code (*code des marchés publics*) and its implementing regulations will not be applicable to this Convention and any activities undertaken pursuant to it. Agreements to be entered into by Infrastructure Owner, Infrastructure Owner HoldCo, Infrastructure Operator and Project Contractors and any of their respective Affiliates will be exclusively governed by private law, with the exception of the benefits granted by the BOT Law, the Investment Code, the Mining Code and this Convention.

12.3 Right to import fuel

Infrastructure Owner 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 Infrastructure Activities and the State will issue any Authorisations without delay required for the purpose hereof.

12.4 Fibre Optic Cable

- (a) The Parties acknowledge that the Fibre Optic Cable comprises part of the Rail Infrastructure and accordingly:
 - (i) under Article 12.1(a), the Infrastructure Owner will be responsible for procuring the planning, design, construction and commissioning of the Fibre Optic Cable in accordance with the Infrastructure Construction Criteria;
 - (ii) under Article 13.2, the Infrastructure Operator will operate and maintain the Fibre Optic Cable as an independent contractor on behalf of the Infrastructure Owner; and
 - (iii) any part of the Fibre Optic Cable (other than communications systems used exclusively for Mining Activities) located within the Perimeter of the Modified Concession will be Rail Infrastructure owned by the Infrastructure Owner (notwithstanding that it is located within the Perimeter of the Modified Concession).
- (b) The Parties also acknowledge and agree that the Fibre Optic Cable is being constructed for the primary purpose of providing rail signalling and train control systems for the Rail Infrastructure and communications systems for the Simandou Mine, and these purposes are safety and operations critical and take absolute priority in respect of the use, maintenance and operation of the Fibre Optic Cable.
- (c) The Infrastructure Owner and Infrastructure Operator shall make available dark fibre strands with a minimum data capacity to be agreed between Infrastructure Owner and Foundation Customer, for the exclusive use of the Foundation Customer, on terms and conditions to be set out in the Rail and Port Services Agreement.

- (d) The Infrastructure Owner shall make available dark fibre strands with a minimum data capacity agreed between Infrastructure Owner and a Producer, for the use of the Producer on terms and conditions to be set out in the relevant Producer Rail Haulage Agreement.
- (e) The Infrastructure Owner and Infrastructure Operator shall make available ("**Dark Fibre Access**") 5 dark fibre strands (the "**Dedicated Dark Fibre**") for the exclusive use of Telecommunications Providers for the purposes of providing telecommunication services to Guinean residents on terms and conditions to be agreed on an arm's length basis between the Infrastructure Owner and any such Telecommunications Provider. For the avoidance of doubt, the Infrastructure Owner's sole obligation is to make the Dedicated Dark Fibre available for use by a Telecommunications Provider, and not to provide any telecommunications services, including to Guinean residents.
- (f) Any agreement reached between the Infrastructure Owner and the Infrastructure Operator and a Telecommunications Provider must reflect the following principles:
 - (i) Telecommunications Provider must report any faults in the Dark Fibre Access to the Infrastructure Owner as soon as reasonably possible.
 - (ii) The Infrastructure Owner's and the Infrastructure Operator's sole responsibility with respect to any faults in the Dark Fibre Access is to attempt to rectify the fault with the same diligence as it would seek to rectify faults in other parts of the Fibre Optic Cable so that the Fibre Optic Cable is fit for purpose. The Infrastructure Owner and Infrastructure Operator will not warrant that the Dark Fibre Access will be uninterrupted or error free and, together with Foundation Customer, are not liable in respect of the functionality of or for any interruptions or faults in the Dark Fibre Access.
 - (iii) The Infrastructure Owner and the Infrastructure Operator must advise the Telecommunications Provider of the equipment (the "**Interface Equipment**") that the Telecommunications Provider must use to connect to the Dedicated Dark Fibre. Telecommunications Provider must, at its own expense, install the Interface Equipment and connect it to the Dedicated Dark Fibre at such place as the Infrastructure Owner and Infrastructure Operator specify for that purpose (which place must be wholly independent from the Infrastructure Owner's or Foundation Customer's facilities and equipment – such that each user has separate secure facilities for housing their Interface Equipment). Telecommunications Provider must maintain the Interface Equipment in a safe condition and must ensure that such equipment does not physically conflict or electrically interfere with the Infrastructure Owner's facilities or the facilities of any other authorised occupants of that place.
- (g) The Infrastructure Owner and Infrastructure Operator remain free to deal with other dark fibre strands on the Fibre Optic Cable as they see fit (including by providing Dark Fibre Access to other parties in respect of those other strands).

12.5 Third Party Investor

It is agreed by the Parties that Infrastructure Owner shall be entitled with the prior consent of Foundation Customer to contract with independent third parties to provide one or more Project 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 Infrastructure Owner. Those Asset(s) shall not be procured, operated nor maintained by Infrastructure Owner but shall be provided for the use of Infrastructure Owner pursuant to services agreements between the applicable third party and Infrastructure Owner, with any fees payable by Infrastructure Owner

thereunder incurred in accordance with a Forecast Operating Plan and Budget to be treated as an Infrastructure Owner 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.

12.6 General Obligation

Infrastructure Owner shall enjoy all of the other rights conferred, and comply with all of the other obligations imposed, on it under this Convention.

13 Rights and Obligations of Infrastructure Operator

13.1 Management Activities

Infrastructure Operator shall manage, as an independent contractor on behalf of Infrastructure Owner, all of the incidental activities of Infrastructure Owner as owner of the Project Infrastructure, and shall operate and maintain the Infrastructure Project, in accordance with Article 13.2 and with the terms of the Infrastructure Operating Agreement and any replacement agreement in the event of early termination of the Infrastructure Operating Agreement. Infrastructure Operator will be entitled to charge the Foundation Customer and any Producer an arm's length management service fee determined in accordance with the Pricing Principles in connection with the provision of the management activities referred to in this Article 13.

13.2 The right of Infrastructure Operator to operate and maintain the Project Infrastructure

Infrastructure Operator, as an independent contractor on behalf of Infrastructure Owner, will operate and maintain the Project Infrastructure as from the Infrastructure Completion Date. The operation and maintenance activities will include the following:

- (a) obtaining and holding all Authorisations issued by the State in accordance with Article 11 as necessary to operate and maintain the Project Infrastructure;
- (b) the entry into, in conjunction with Infrastructure Owner, the Rail and Port Services Agreement with the Foundation Customer 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; and
- (c) subject to the terms of this Convention and the Rail and Port Services Agreement:
 - (i) the entry into, in conjunction with the Infrastructure Owner, Producer Rail Haulage Agreements and Producer Port Services Agreements with Producers in accordance with Article 18.5;
 - (ii) the entry into, in conjunction with the Infrastructure Owner, Additional Capacity Services Agreements with third parties in accordance with Article 19.4;
 - (iii) the setting and levying of user charges to third parties in connection with the Passenger Service and the General Cargo Services;
 - (iv) providing, as an independent contractor on behalf of Infrastructure Owner:
 - (A) Haulage Services to Foundation Customer in accordance with the Rail and Port Services Agreement;
 - (B) the Passenger Service;
 - (C) the General Cargo Services;
 - (D) Haulage Services to a Producer in accordance with the terms of any Producer Rail Haulage Agreement and Producer Port Services Agreement agreed with that Producer;

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- (E) Haulage Services to a third party in accordance with the terms of any Additional Capacity Services Agreement agreed with that third party in accordance with Article 19.4; and
- (F) Foundation Customer with priority access, and any Producers with access to 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 12.1(k);
- (v) following the Transfer Date, undertake as independent contractor for the Infrastructure Owner studies and implement expansions of the Project Infrastructure for Foundation Customer (under Article 15), Producers (under Article 18) or the State (under Article 19) as required; and
- (vi) act, 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.

13.3 Standard of conduct

Infrastructure Operator shall conduct all of its activities and operate and maintain the Project Infrastructure in accordance with the Infrastructure Operating Agreement, Prudent Infrastructure Practices and Protocols and the Project Standards.

13.4 Right to quarry

Infrastructure Operator and any Affiliate or Project Contractor shall, for the purposes of operation and maintenance of the Project Infrastructure, obtain or quarry stone, sand, clay and gravel from or within the vicinity of the Corridor as of right.

13.5 Right to import fuel

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 Infrastructure Activities and the State will issue any Authorisations without delay required for the purpose hereof.

13.6 Authority of Infrastructure Operator

Each of the State and the Infrastructure Owner acknowledges and agrees that it will ensure that Infrastructure Operator has the requisite authority to enable it to make all of the decisions and perform all of the tasks conferred on it, as provided in this Convention, the Rail and Port Services Agreement and the Infrastructure Operating Agreement.

13.7 General Obligation

Infrastructure Operator shall enjoy all of the other rights conferred, and comply with all of the other obligations imposed, on it under this Convention. The Infrastructure Operator shall be entitled to sub-contract to Project Contractors to provide one or more of the Infrastructure Activities, but will not as a result be relieved of any of those obligations or duties.

Section 5.: Foundation Customer and Multi-User Provisions

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 is being developed and shall be made available for the provision of Haulage Services to Foundation Customer, as contemplated under Article 15;
- (b) the Rail Infrastructure and Shared Port Facilities may be made available to third party producers of minerals or agricultural products on a commercial scale (each a "**Producer**") in the circumstances, and only to the extent, provided in Article 18;
- (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;
- (d) the Rail Infrastructure shall be made available for the Passenger Service, as contemplated under Article 16; and
- (e) the MOF shall be made available for the General Cargo Services, as contemplated under Article 17.

14.2 Support of Multi-user System

- (a) The Parties acknowledge the Rail Infrastructure and Shared Port Facilities as a critical component for the development of national infrastructure within Guinea with significant economic and socioeconomic benefits for Guinea and the region through the advancement of a new southern growth corridor encompassing the whole geographic area within Guinea to the south and south-east of the historical (and partially existing) Conakry to Kankan railway line ("**Southern Growth Corridor**"). If fully supported, the advancement of the Southern Growth Corridor has the opportunity to sustainably transform the region into one of the most prosperous and productive parts of the country, and the concept offers an opportunity to realign the activities of relevant regional players under a common development framework and a path to transformation.
- (b) Against this objective, the Parties have agreed on and included in Section 5 of this Convention a multi-user regime to facilitate the provision of services to third party mineral and agricultural producers, as well as provide for a passenger service and general cargo service. The Parties agree to implement and perform their obligations under the multi-user regime in Section 5 of this Convention in a manner that supports their common interest in promoting the use of the Rail Infrastructure and Shared Port Facilities by third party mineral and agricultural producers (but without prejudice to the rights and obligations of the Parties hereunder).
- (c) In accordance with the legitimate expectations of the State, the Infrastructure Owner and Foundation Customer, including the legitimate expectation that no other mine is treated more favourably than the Foundation Customer, the State, Infrastructure Owner and Infrastructure Operator shall encourage and support the use of the Rail Infrastructure and Shared Port Facilities by entities with a mine in the Southern Growth Corridor, as either Co Foundation Customer pursuant to Article 2.15 or a Producer pursuant to Article 18 in accordance with and in the manner provided for in the terms of this Convention and the process set out in Article 14.2(d).

- (d) In respect of any entity with a bauxite or iron ore mining project with a project annual forecast production greater than 5Mtpa that is located within the Southern Growth Corridor, and which project requires the export of mine production (whether by way of initial development, expansion, acquisition or unitisation):
 - (i) In assessing a proposal to export material from Guinea, the State shall require such entity to determine, through an engagement with Infrastructure Owner, Infrastructure Operator and/or Foundation Customer, the likely Tariffs applicable to such entity if it was to use the Rail Infrastructure and include this analysis in its proposal; and
 - (ii) the State undertakes that no agreement will be made or given effect to by the State, and no Authorisation will be granted, that would permit such entity to have mine production transported using rail infrastructure not located wholly within Guinea, unless:
 - (A) due to the location, size, or other aspects of the mining project, such mining project would only, on an objective basis, be economically viable and therefore be developed using alternative rail infrastructure through another country; or
 - (B) the mining project is unable to obtain Rail Services from Infrastructure Owner pursuant to and in reliance on Article 18 of this Convention, despite complying with, or using reasonable endeavours to comply with, the requirements of Article 18 (including by using reasonable endeavours to satisfy the preconditions in Article 18.1, complying with information and application requirements under Article 18.2 and seeking in good faith to negotiate agreements and arrangements required under Article 18.5).

For the purposes of Article 14.2(d)(ii)(A), a mining project will be economically viable without needing to be developed using alternative rail infrastructure through another country if it will provide a reasonable return comparable to other mining projects in Guinea, and which is sufficient to attract investors, without the need for additional fiscal concessions being applied by the State beyond those generally available for the development of such mining projects.

- (e) For the avoidance of doubt, any dispute about the application of Article 14.2(d)(ii), including any dispute about whether the exceptions in Article 14.2(d)(ii)(A) or 14.2(d)(ii)(B) apply, shall be a dispute to which Articles 48.1 [Negotiation] and 48.3 [Arbitration] apply.
- (f) If Infrastructure Owner has not acceded to this Convention at the time an entity referred to in Article 14.2(d) wishes to engage with Infrastructure Owner, the references in Article 14.2(d) to Infrastructure Owner shall be read as references to Foundation Customer, until such time as Infrastructure Owner accedes to this Convention.

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).

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 this Convention, including the

Passenger Service and the General Cargo Services and the provision of services to Producers, is not a public service.

14.5 Shared Port Facilities and Rail Infrastructure Capacity

(a) **(Determining Initial Capacity)** The capacity of the Rail Infrastructure and Shared Port Facilities:

- (i) on the Infrastructure Completion Date (the "**FC Initial Capacity**"), will be determined; and
- (ii) on the Stage 2 Infrastructure Completion Date (the "**Stage 2 FC Initial Capacity**") will be re-determined,

in accordance with a process to be agreed between Infrastructure Owner and Foundation Customer and to be set out in the Rail and Port Services Agreement. Any dispute about the FC Initial Capacity or the Stage 2 FC Initial Capacity shall become the subject of conciliation proceedings conducted by the Independent Regulator in accordance with Article 48.2 and, should those proceedings fail to resolve the dispute, the dispute shall be submitted to administered expertise proceedings in accordance with the Rules for Expertise of the International Chamber of Commerce.

(b) **(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), a Producer (under Article 18) or the State or the Infrastructure Owner (under Article 19) upon the Expansion Completion Date ("**Expansion Capacity**") will be determined in accordance with a process to be agreed (as applicable):

- (i) in respect of a Foundation Customer Expansion under Article 15, between Infrastructure Owner and Foundation Customer and to be set out in the Rail and Port Services Agreement;
- (ii) in respect of a Producer Expansion under Article 18, between Infrastructure Owner and Producer and to be set out in the relevant Producer Rail Haulage Agreement or Producer Port Services Agreement, which process must be consistent with, and no more favourable to the Producer, than the process set out in the Rail and Port Services Agreement; or
- (iii) in respect of a State expansion under Article 19, between the State, Infrastructure Owner and Foundation Customer, and in respect of an Infrastructure Owner expansion under Article 19, between the Infrastructure Owner and Foundation Customer, which process must be consistent with and no more favourable, to the Infrastructure Owner or the State (as applicable) as the party initiating the expansion, than the process set out in the Rail and Port Services Agreement.

Any dispute about the Expansion Capacity shall become the subject of conciliation proceedings conducted by the Independent Regulator in accordance with Article 48.2 and, should those proceedings fail to resolve the dispute, shall be submitted to administered expertise proceedings in accordance with the Rules for Expertise of the International Chamber of Commerce. For the avoidance of doubt, the Foundation Customer, or a Producer who is receiving Haulage Services from Infrastructure Owner, may dispute a determination of the Expansion Capacity created for itself or for Foundation Customer, a Producer, Infrastructure Owner or the State.

14.6 Determining Forecast Operating Plan and Budgets

- (a) Prior to the Infrastructure Completion Date and prior to the start of each Year thereafter, 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:
 - (i) 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);
 - (ii) any Producer must, by a date specified in the relevant Producer Rail Haulage Agreement or Producer 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 5 Years ("**Producer Nomination**"). The Producer Nomination for a Year cannot exceed the Producer Capacity Allocation for that Year (unless otherwise agreed between the Infrastructure Owner, Infrastructure Operator, Producer and Foundation Customer); and
 - (iii) the Infrastructure Operator must provide any Producer with a draft Forecast Operating Plan and Budget and must, on request, meet to discuss the draft Forecast Operating Plan and Budget with the Producer and consider in good faith any comments the Producer has on the draft Forecast Operating Plan and Budget.
- (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 Article 48.2 and, should those proceedings fail to resolve the dispute, 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.
- (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.

14.7 Determining Forecast Producer Operating Plans and Budgets

- (a) Prior to the start of each Year, Infrastructure Operator, Infrastructure Owner and any Producer will seek to agree a forecast operating plan and budget in relation to the relevant Producer Port Facilities and Producer Spur Lines ("**Forecast Producer Operating Plan and Budget**"). The Forecast Producer Operating Plan and Budget must contain the information, and be prepared and agreed in accordance with the process,

agreed between Infrastructure Owner, Infrastructure Operator and Producer and set out in the relevant Producer Rail Haulage Agreement or Producer Port Services Agreement.

- (b) For the purposes of preparing the Forecast Producer Operating Plan and Budget the relevant Producer must, by a date specified in the relevant Producer Rail Haulage Agreement or Producer Port Services Agreement, provide Infrastructure Operator with a Producer Nomination. The Producer Nomination for a Year cannot exceed the Producer Capacity Allocation for that Year (unless otherwise agreed between the Infrastructure Owner, Infrastructure Operator, Producer and Foundation Customer).
- (c) If the Infrastructure Owner, Infrastructure Operator and a Producer are unable to agree the Forecast Producer Operating Plan and Budget, the dispute shall become the subject of conciliation proceedings conducted by the Independent Regulator in accordance with Article 48.2 and, should those proceedings fail to resolve the dispute, 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.
- (d) If a Forecast Producer Operating Plan and Budget has not been agreed or determined by the start of a Year, the Forecast Producer Operating Plan and Budget for the previous Year will be applied until such time as the new Forecast Producer Operating Plan and Budget is agreed or determined.

14.8 Pricing Principles and Expansion Funding Principles

- (a) On the date of execution of this Convention, the State and the Foundation Customer have agreed and signed a separate agreement setting out:
 - (i) the Rail Pricing Principles and Port Pricing Principles (together the "**Pricing Principles**") which shall be applied in determining the Tariffs payable by Foundation Customer and the Producers for Rail Services and Port Services to Infrastructure Owner and Infrastructure Operator; and
 - (ii) the Foundation Customer Expansion Funding Principles and Producer Expansion Funding Principles (together the "**Expansion Funding Principles**") which shall be applied in determining the funding of Expansions initiated by the Foundation Customer under Article 15 or by a Producer under Article 18,(the "**Pricing Principles Agreement**"). Infrastructure Owner and Infrastructure Operator will become parties to the Pricing Principles Agreement at the same time they accede to this Convention.
- (b) It is acknowledged by the Parties to this Convention 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.
- (c) 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, as provided in more detail in Articles 15, 18 and 19 below.
- (d) Expansions initiated by a Foundation Customer or a Producer may only be funded in accordance with the Expansion Funding Principles, as provided in more detail in Articles 15 and 18 below.
- (e) 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.

- (f) 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 this Convention, 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.

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 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;
 - (ii) reflect the rights in relation to expansions conferred on Foundation Customer pursuant to Article 15.3;
 - (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 in accordance with Article 14.5;
 - (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;
 - (vii) require the Infrastructure Owner and Infrastructure Operator to comply with and implement the Forecast Operating Plan and Budget prepared in accordance with Article 14.6;
 - (viii) require the Infrastructure Owner, Infrastructure Operator (and where relevant the Foundation Customer) to comply with the Protocols referred to in Article 20, 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 the Basic Convention; and
 - (x) be in the form of the draft which is initialled by the State and Foundation Customer under Article 2 and then upon its execution, having the State intervening to this agreement for the purpose of Article 54.2, 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) thereafter amended from time to time by agreement between the parties thereto.

Infrastructure Owner and Foundation Customer must notify the State of any amendments to the Rail and Port Services Agreement. Any such amendments will be valid only until the Transfer Date unless the State expressly approves those amendments prior to the Transfer Date.

- (b) To the extent Foundation Customer requires the receipt of equipment and supplies at the Simandou Port and their transportation to the mine before the Infrastructure Completion Date:
 - (i) Infrastructure Owner shall provide such services to Foundation Customer to the extent that the Infrastructure Project, in particular the MOF, is sufficiently complete (as at the time of the requirement for such services arising), such that Infrastructure Owner is able to do so; and
 - (ii) Foundation Customer shall pay for such services,
in each case as more particularly described in the co-completion arrangements referred to in Article 7(f).

15.2 Priority rights for Simfer Project Infrastructure

The Parties acknowledge that the Project Infrastructure is being constructed to serve the Foundation Customer and the financing of its construction is made possible by the Foundation Customer agreeing to pay the Tariffs. As a consequence, 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);
- (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;
- (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;
- (f) the right to acquire Producer, State or Infrastructure Owner initiated expansion studies (in accordance with Article 18.6 or 19.5, as applicable) and have such expansions carried out as a Foundation Customer expansion in accordance with Article 15.3;
- (g) the right to have its expansions undertaken ahead of any Producer, State or Infrastructure Owner expansions and the right to combine or "twin" expansions with Producers, the State or Infrastructure Owner with the cost of the cheaper expansion

component being to the account of Foundation Customer in accordance with Article 18.6 or 19.5, as applicable;

- (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;
- (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. 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;
- (l) the right to approve any changes to the Rail Pricing Principles and Port Pricing Principles in accordance with Article 14.8(b); and
- (m) a priority right in relation to the exercise of step-in rights pursuant to Article 47.4.

Each of these priority rights will continue to apply after the Transfer Date, other than the rights described in Articles 15.2(f) and 15.2(g). The Foundation Customer's rights to step in on a permanent basis pursuant to Article 47.4 will cease on the Transfer Date, but the right to step in on a temporary basis will continue.

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:

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- (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), 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 (whether implemented prior to or after the Transfer Date).
- (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) (whether prior to or after the Transfer Date), 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) 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 (or any successor of Infrastructure Owner appointed pursuant to Article 54.1(a)(iii)).
- (j) **(Expansion Capacity)** The Expansion Capacity of such Foundation Customer Expansion Infrastructure will be determined in accordance with Article 14.5 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 them to study and construct an expansion including granting Authorisations as contemplated by Article 11 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 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. After the Transfer Date the Infrastructure Owner must copy any report provided to the Foundation Customer to the State.

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 principles set out in Appendix 10 (the "**Passenger Service**"). Any proposed change to the Passenger Service shall require the consent of the State, Infrastructure Owner, Infrastructure Operator and Foundation Customer.
- (b) Infrastructure Owner shall provide all infrastructure and equipment required to provide the Passenger Service, including transportation vehicles and stations.
- (c) Infrastructure Operator (as an independent contractor on behalf of Infrastructure Owner) shall operate the Passenger Service in accordance with the principles set out in Appendix 10, and shall, subject to those principles, establish rules and procedures in relation to the operation of the Passenger Service designed to ensure the 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.

- (d) Infrastructure Operator may retain all fares paid by users of the Passenger Service which shall then be applied to reduce the Operating Charge otherwise payable by Foundation Customer and any Producer (if applicable) as set out in the Rail Pricing Principles.
- (e) The Passenger Service is entitled to such capacity of the Rail Infrastructure as is required to provide services in accordance with, and only to the extent provided in, the provisions of this Article 16 and the principles set out in Appendix 10.
- (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 shall be to the account of the user that initiated the expansion. The Infrastructure Owner must, in implementing any expansion, use reasonable endeavours to minimise any disruptions to the Passenger Service.

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)) in accordance with the principles set out in Appendix 11 and this Article 17 (the "**General Cargo Services**"). Any proposed change to the General Cargo Services shall require the consent of the State, Infrastructure Owner, Infrastructure Operator and Foundation Customer.
- (b) Infrastructure Operator (as an independent contractor on behalf of Infrastructure Owner) shall provide the General Cargo Services in accordance with the principles set out in Appendix 11, and may, subject to the principles set out in Appendix 11, establish rules and procedures in relation to the provision of the General Cargo Services designed to ensure the 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.
- (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 shall be to the account of the user that initiated the expansion. For the avoidance of doubt, the additional infrastructure may entail the construction or expansion of a multi-purpose offload facility located within Producer Port Facilities (in respect of an expansion of the Simandou Port initiated by a Producer or the State or Infrastructure Owner), or an expansion of the MOF (in respect of an expansion of the Simandou Port initiated by Foundation Customer).

18 Rights and Obligations of Producers

18.1 Principles

- (a) **(Producer Access to Rail Infrastructure)** The Parties acknowledge and agree that a Producer may only gain access to the Rail Infrastructure, as is contemplated in Article 14.1, 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;
 - (ii) undertaking an expansion of the Rail Infrastructure in accordance with the provisions of this Article 18; or
 - (iii) being provided a right to use Additional Capacity created by the State or Infrastructure Owner in accordance with the provisions of Article 19 on terms and conditions to be agreed in accordance with the provisions of Article 19.4.
- (b) **(Producer Access to Simandou Port)** The Parties acknowledge and agree that a Producer may only gain access to the Simandou Port, as is contemplated in Article 14.1, 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;
 - (ii) undertaking an expansion of the Shared Port Facilities, and procuring the construction of Producer Port Facilities, in accordance with the provisions of this Article 18; or
 - (iii) being provided a right to use Additional Capacity created by the State or Infrastructure Owner in accordance with the provisions of Article 19 on terms and conditions to be agreed in accordance with the provisions of Article 19.4.
- (c) **(Purpose)** This Article 18 sets out a process whereby Producers may:
- (i) request that an expansion of the Rail Infrastructure and Shared Port Facilities, and the construction of Producer Port Facilities, be studied and, potentially undertaken;
 - (ii) negotiate and enter into an agreement with Infrastructure Owner and Infrastructure Operator to obtain Rail Services by using capacity created by an expansion of the Rail Infrastructure ("**Producer Rail Haulage Agreement**"), carried out in accordance with this Article 18; and
 - (iii) negotiate and enter into an agreement with Infrastructure Owner and Infrastructure Operator to obtain Port Services by using capacity created by the construction of Producer Port Facilities and capacity created by an expansion of the Shared Port Facilities ("**Producer Port Services Agreement**"), which shall in each case be created by an expansion carried out in accordance with this Article 18.
- (d) **(Limited Application)** This Article 18 does not apply to:
- (i) agreements under which Foundation Customer may, in its sole discretion, agree with a Producer to make Foundation Customer Spare Capacity available to that Producer; or

- (ii) agreements under which the Infrastructure Owner or State agree with a Producer to make Additional Capacity available for that Producer in accordance with Article 19.
- (e) **(Prohibition on expansion prior to Infrastructure Completion Date)** A Producer shall have no rights in relation to the Project Infrastructure, and no Producer expansion studies or agreement negotiations may be initiated or undertaken, until the Infrastructure Completion Date has occurred.
- (f) **(Preconditions)** Infrastructure Owner shall only carry out expansion studies and shall only enter into negotiations with a Producer in relation to a Producer Rail Haulage Agreement or Producer Port Services Agreement (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 ("**Proposed Haulage Services**") 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 and then for the purposes of any other existing Producer; 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 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 Producer Rail Haulage Agreement or Producer Port Services Agreement.
- (g) **(Foundation Customer and Preconditions)** Infrastructure Owner shall consult with Foundation Customer in relation to Article 18.1(f) and Infrastructure Owner shall not commence an expansion study and shall not enter into negotiations with a Producer unless Foundation Customer is satisfied, acting reasonably, that the preconditions set out above are satisfied. The Independent Regulator shall be promptly informed whenever the preconditions set out above are satisfied in respect of any Producer.
- (h) **(Application to Producers)** This Article 18 shall apply to a Producer of agricultural products on a commercial scale whose services requirements are not met by, or cannot be met in the opinion of Infrastructure Operator by, the General Cargo Services or the freight services provided as an incidental part of the Passenger Service (as applicable). An agricultural Producer may also use the General Cargo Services in an informal and occasional manner to the extent that its needs can be met in the opinion of Infrastructure Operator having regard to Foundation Customer's needs and the need to reserve the General Cargo Services for general users.
- (i) **(Control or operating rights)** Unless otherwise agreed by the Parties, Infrastructure Owner shall not allow nor grant to third parties control or operating rights in relation to the Project Infrastructure, other than to Infrastructure Operator or Foundation Customer pursuant to any step in right or as required for the purposes of the granting and / or enforcement of Security pursuant to Articles 42(f) and 42(g).
- (j) **(Producer Information)** The Foundation Customer expressly acknowledges that the Infrastructure Owner shall be under no obligation to disclose any information provided by a Producer which is of a commercially sensitive nature (although this does not alter the

need for the Foundation Customer to be satisfied, acting reasonably, that the preconditions set out in Article 18.1(f) have been satisfied and the need for Foundation Customer approval as provided for in Article 18.5(c)).

18.2 Initial request for expansion studies and information to be provided

- (a) **(Producer Request and Information)** A Producer who wishes to have an expansion study carried out by Infrastructure Owner, and potentially obtain Rail Services or Port Services, may submit an application to Infrastructure Owner. The application shall:
- (i) set out all information Infrastructure Owner reasonably requires to assess whether or not the Producer satisfies the requirements of Article 18.1 and to carry out the proposed expansion studies, including the information set out in Appendix 12;
 - (ii) attach a binding written agreement signed by the Producer, substantially in the form set out in Appendix 16 (the "**Appendix 16 Agreement**").

Once the Appendix 16 Agreement is signed by the Producer and the Infrastructure Owner on behalf of the Parties, the Producer will benefit from the rights granted to the Producer by the provisions of this Convention (to the extent and when applicable) and, in particular, by this Article 18, including the right to request expansion studies, subject to the terms of this Convention, and in particular with the pre-conditions required under Article 18.1 and 18.2. It is hereby agreed by the Parties that the Infrastructure Owner will sign the Appendix 16 Agreement on their behalf.

- (b) **(Infrastructure Owner Information)** If Infrastructure Owner receives an application under Article 18.2(a) that complies with the requirements of that Article 18.2(a) and where the preconditions in Article 18.1 are met, then Infrastructure Owner must, within a reasonable period, provide to the Producer, a copy of this Convention and (with a copy to the Independent Regulator and Foundation Customer), a preliminary estimate of the type of expansion works that will be required in order to meet the Producer's request and an estimate of the costs of conducting an Expansion OoM Study, in accordance with Article 18.3(b).

18.3 Expansion studies

- (a) **(Producer's general right to initiate expansion)** Subject to the requirements of Articles 18.1 and 18.2, a Producer may, at any time after the Infrastructure Completion Date has occurred, request that an expansion of the Rail Infrastructure and the Shared Port Facilities and the construction of Producer Port Facilities be studied in accordance with the provisions of this Article 18.3.
- (b) **(Producer Expansion OoM Study)** A Producer may, at any time within the parameters provided by Article 18.3(a) but subject to the provisions of Article 18.3(e), 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 the Producer request being made;
 - (ii) to be paid for entirely by the Producer in advance in monthly instalments (such costs having been agreed in advance with the Infrastructure Owner or Infrastructure Operator (as applicable)); and
 - (iii) subject to the rights of Foundation Customer under Article 18.6(a), to be the sole property of the Producer.

A copy of the Expansion OoM Study must be provided to the State at the same time as it is provided to the Producer.

- (c) **(Producer Expansion PFS)** A Producer may (provided it continues to satisfy the requirements of Article 18.1), at any time following delivery of an Expansion OoM Study but subject to the provisions of Article 18.3(e), require Infrastructure Owner to carry out an Expansion PFS. Such Expansion PFS is:
- (i) to be completed by Infrastructure Owner within 18 months of the Producer request being made;
 - (ii) to be paid for entirely by the Producer in advance in monthly instalments (such costs having been agreed in advance with the Infrastructure Owner); and
 - (iii) subject to the rights of Foundation Customer under Article 18.6(a), to be the sole property of the Producer.
- (d) **(Producer Expansion BFS)** If Foundation Customer does not make an election under Article 18.6(a), then the Producer may (provided it continues to meet the requirements in Article 18.1), but subject to the provisions of Article 18.3(e), require Infrastructure Owner to carry out an Expansion BFS. Such Expansion BFS is:
- (i) to be completed by Infrastructure Owner within 18 months of the Producer request being made;
 - (ii) to be paid for entirely by the Producer in advance in monthly instalments (such costs having been agreed in advance with the Infrastructure Owner);
 - (iii) to be the sole property of the Producer; and
 - (iv) to contain a budget for the capital cost of the expansion (including a 10% cost overrun contingency).
- (e) **(Study rules)** Infrastructure Owner:
- (i) shall devote all necessary resources and capacity to undertake an Expansion OoM Study, Expansion PFS or Expansion BFS for Foundation Customer in priority to (and, if necessary, to the exclusion of) undertaking, or considering any request to undertake, an Expansion OoM Study, Expansion PFS or Expansion BFS for a Producer, the State or itself;
 - (ii) shall only undertake an Expansion OoM Study if it believes, acting reasonably, that it has the necessary resources and capacity to undertake the Expansion OoM Study, having regard to, amongst other considerations, the rights of Foundation Customer referred to in Article 18.3(e)(i) and the number of studies it is undertaking or expects to be requested to undertake by Foundation Customer or Producers;
 - (iii) shall undertake no more than two (2) Expansion PFS, and no more than one (1) Expansion BFS for Producers at any given time;
 - (iv) shall not include within the scope of any Expansion OoM Study, Expansion PFS or Expansion BFS any works that would, if constructed:
 - (A) involve construction within the perimeter of a concession; or
 - (B) breach the general rules provided by Article 18.3(e)(i);
 - (v) shall set out the estimated date for practical completion of the expansion in any Expansion OoM Study, Expansion PFS or Expansion BFS;

- (vi) shall keep the Producer informed of the progress of studies, and consult regularly with the Producer about the studies, and consider in good faith any comments or recommendations made by the Producer; and
 - (vii) shall undertake each Expansion OoM Study, Expansion PFS and Expansion BFS strictly in accordance with Project Standards and Prudent Infrastructure Practices.
- (f) **(Dispute Resolution)** Any dispute relating to a Expansion OoM, Expansion PFS or Expansion BFS under this Article 18, including as to the costs of the study, the technical or economic assumptions applied in it or the capital budget contained in it, will be resolved in accordance with Article 18.7.

18.4 Producer expansions

- (a) **(Producer's specific right to require expansion)** Subject to Article 18.1, a Producer may at any time after an Expansion BFS is agreed or determined pursuant to administered expertise proceedings under Article 18.7, require the Infrastructure Owner to implement the expansion in accordance with the Expansion BFS, with such expansion to be funded in accordance with the Producer Expansion Funding Principles (whether implemented prior to or after the Transfer Date).
- (b) **(Implementation of expansion)** The Infrastructure Owner must construct and deliver the expansion in accordance with the relevant Expansion BFS and:
- (i) the Project Standards;
 - (ii) the Protocols;
 - (iii) Prudent Infrastructure Practices;
 - (iv) the Infrastructure Construction Criteria, and
- in a manner that ensures Foundation Customer's operations are not interrupted or adversely affected, unless otherwise agreed by Foundation Customer, and that disruptions to the Passenger Service and General Cargo Services are minimised. Foundation Customer, Infrastructure Owner and Infrastructure Operator shall endeavour, where possible, to accommodate the Producer Expansion in a way that does not cause such interruption or adverse effect.
- (c) **(Ownership of Producer Expansion Infrastructure)** All infrastructure constructed as a result of the expansion ("**Producer Expansion Infrastructure**") will be owned by Infrastructure Owner (or any successor of Infrastructure Owner appointed pursuant to Article 54.1(a)(iii)).
- (d) **(Expansion Capacity)** The Expansion Capacity of such Producer Expansion Infrastructure will be determined in accordance with Article 14.5 and any Producer Rail Haulage Agreement or Producer Port Services Agreement.
- (e) **(State 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 as contemplated by Article 11 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.
- (f) **(Negotiation of agreements)** The process and rules relating to the negotiation and content of any Producer Rail Haulage Agreement or Producer Port Services Agreement for the purposes of a Producer expansion are set out in Article 18.5.

- (g) **(Tariff Consequences)** The Producer Availability Charge, Producer Operating Charge and Producer Operating Fee payable by the Producer in any month will be determined in accordance with the applicable provisions of the Rail Pricing Principles and Port Pricing Principles.
- (h) **(Producer's right to use and deal with expansion and corresponding obligations)** The Producer will be entitled to use capacity created by the expansion on the terms of the relevant Producer Rail Haulage Agreement or Producer Port Services Agreement. The Producer shall assume obligations with respect to the Passenger Service, the General Cargo Services and the Project Infrastructure generally in the proportion that the Producer Expansion Infrastructure bears to the Project Infrastructure measured in Mtpa.
- (i) **(Producer right to sell Spare Capacity)** Subject to the approval of Infrastructure Owner and Infrastructure Operator, a Producer may make any part of its Producer Capacity Allocation or Producer Spur Lines or Producer Port Facilities which it decides it does not need ("**Producer Spare Capacity**") available to Foundation Customer or other Producers for a specified period of time on terms and conditions to be agreed directly between that Producer and Foundation Customer or the other Producer (as applicable). The approval of Infrastructure Owner and Infrastructure Operator may only be provided where the proposed sale of Producer Spare Capacity would not prejudice Infrastructure Operator's ability to maintain operational efficiencies and performance of the Project Infrastructure for Foundation Customer's purposes.
- (j) **(General rules)** The following general rules shall apply to any expansion undertaken by a Producer.
 - (i) The Producer Port Facilities proposed to comprise part or all of Producer Expansion Infrastructure shall:
 - (A) be separate from the Simfer Port Facilities and be located within the Port Zone;
 - (B) be designed, constructed, operated and maintained (as the case may be) at all times and as required so as not to prejudice Infrastructure Operator's ability to maintain operational efficiencies and performance of the Project Infrastructure for Foundation Customer's purposes;
 - (C) be constructed, delivered, operated and maintained at all times in accordance with:
 - (1) the Project Standards;
 - (2) the Protocols;
 - (3) Prudent Infrastructure Practices;
 - (4) the Infrastructure Construction Criteria, andin a manner that ensures Foundation Customer's operations are not interrupted or adversely affected, unless otherwise agreed by Foundation Customer, and that disruptions to the General Cargo Services are minimised; and
 - (D) be designed and constructed by Infrastructure Owner or Infrastructure Operator (as the case may be) and operated and maintained by Infrastructure Operator in accordance with Articles 13 and 18.
 - (ii) To the extent that additional dredging is required to be undertaken within the Port Zone to enable the Producer to access and use the Producer Port Facilities, such

dredging requirements will be included in the relevant Expansion PFS and Expansion BFS and undertaken as part of the expansion. Any ongoing dredging which is then required to enable the Producer to access and use the Producer Port Facilities shall be determined based:

- (A) where the dredging relates to an area used only by the Producer, on the fees payable by Infrastructure Operator to its dredging contractor in respect of that area; and
- (B) where the dredging relates to an area that is used by the Producer and Foundation Customer and / or other Producers, on the proportion that the capacity which the additional dredging is meant to accommodate bears to the capacity which the area was able to accommodate immediately prior to the dredging carried out to accommodate the Producer,

and be included as an operating cost referable to that expansion and payable by the Producer in accordance with the Port Pricing Principles.

- (iii) Producer Spur Lines shall be designed, constructed and owned by the Producer, and operated and maintained by Infrastructure Operator, in accordance with:

- (A) the Project Standards;
- (B) the Protocols;
- (C) Prudent Infrastructure Practices;
- (D) the Infrastructure Construction Criteria, and

in a manner that ensures Foundation Customer's operations are not interrupted or adversely affected and that disruptions to the Passenger Service are minimised, unless otherwise agreed by Foundation Customer.

- (k) **(Updates and audit rights where Producer funds expansion)** The Infrastructure Owner must provide to the Producer, 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 the Producer. The Producer 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 Producer to the State.

18.5 Negotiation of Producer agreements

- (a) If a Producer requires an expansion to be undertaken in accordance with Article 18.4, then Infrastructure Owner and Infrastructure Operator shall, if requested, enter into negotiations with that Producer in relation to a Producer Rail Haulage Agreement and Producer Port Services Agreement, provided that:
 - (i) **(Compliance with preconditions)** the Producer continues to satisfy the requirements of Article 18.1;

- (ii) **(Provision of information)** the Producer provides such information, as set out in Appendix 12, that may reasonably be required by Infrastructure Owner; and
 - (iii) **(Producer agreement as to funding)** funding arrangements necessary to meet the Producer's expansion requirements have been agreed pursuant to the Producer Expansion Funding Principles.
- (b) As soon as practicable after the date of this Convention the State, the Infrastructure Owner and the Foundation Customer will negotiate and seek to agree a standard form Producer Rail Haulage Agreement and a standard form Producer Port Services Agreement ("**Producer Pro Forma Agreements**"). The Producer Pro Forma Agreements must be consistent with the provisions of this BOT Convention and will be based on the Rail and Port Services Agreement (other than provisions of the Rail and Port Services Agreement giving effect to the Foundation Customer's priority rights under Article 15.2). Any dispute in relation to the terms of a Producer Pro Forma Agreement shall be resolved in accordance with Article 18.7.
- (c) Any Producer Rail Haulage Agreement or Producer Port Services Agreement shall be on arm's length commercial terms and, unless otherwise agreed by Infrastructure Owner, be in the same form as the relevant Producer Pro Forma Agreement. To the extent the terms of a Producer Rail Haulage Agreement or Producer Port Services Agreement are different to those of the relevant Producer Pro Forma Agreement, and such differences are inconsistent with the requirements of Articles 18.1 and 18.5, then Foundation Customer must approve those differences. A copy of each Producer Rail Haulage Agreement or Producer Port Services Agreement shall be provided to the Independent Regulator.
- (d) The Tariffs payable under any Producer Rail Haulage Agreement and Producer Port Services Agreement must be determined in accordance with the Rail Pricing Principles and Port Pricing Principles.
- (e) Both the Infrastructure Owner and the Infrastructure Operator will need to be the parties to, and must agree, any Producer Rail Haulage Agreement and Producer Port Services Agreement. The intention is, however, that the Infrastructure Owner would have primary carriage of the negotiation of such agreements, with the Infrastructure Operator's involvement limited to agreeing the provisions that directly affect it as the Infrastructure Operator, including in relation to any fee paid to the Infrastructure Operator and any KPI regime applying to the Infrastructure Operator.
- (f) Infrastructure Owner and Infrastructure Operator are not required to enter into Producer Rail Haulage Agreements or Producer Port Services Agreements with different Producers on the same terms and conditions.
- (g) Upon expiry of a Producer Rail Haulage Agreement or Producer Port Services Agreement the Producer Capacity Allocation that was the subject of the Producer Rail Haulage Agreement or Producer Port Services Agreement will become Additional Capacity to which the Infrastructure Owner is entitled, and the provisions of Article 19 will apply to that Additional Capacity.

18.6 Foundation Customer rights

- (a) **(Pre-emptive right)** In respect of expansion studies undertaken in accordance with Article 18.3, Infrastructure Owner shall deliver one (1) copy of each Expansion PFS carried out to the Producer and Foundation Customer. Foundation Customer may, by Notice within 3 months of delivery of the Expansion PFS, elect to:

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- (i) require the Producer to sell its right, title and interest in the Expansion OoM Study and Expansion PFS; and
 - (ii) instruct Infrastructure Owner to undertake an Expansion BFS in relation to the option that was the subject of the Expansion PFS.
- (b) If Foundation Customer makes an election under Article 18.6(a), then Foundation Customer:
 - (i) must promptly reimburse the Producer for the costs it paid in advance to Infrastructure Owner for the Expansion OoM Study and Expansion PFS together with interest calculated at the Contractual Rate of Interest from the date of expenditure to the date of reimbursement;
 - (ii) will be the sole owner of the Expansion OoM Study and Expansion PFS; and
 - (iii) will enjoy the rights, and assume the obligations, provided under Article 15.3 in relation to Expansion BFS initiated by Foundation Customer.
- (c) If the Foundation Customer has not proceeded to instruct the Infrastructure Owner to undertake an Expansion BFS within 6 months of acquiring the Expansion PFS or has not proceeded with an expansion within 3 years of acquiring the Expansion PFS, the Producer may reacquire the Expansion OoM Study and Expansion PFS by reimbursing Foundation Customer the amount previously paid to the Producer. The Producer's rights under this Article 18 to proceed to an Expansion BFS will then apply, and the Foundation Customer will have no further pre-emptive rights in relation to the Expansion OoM Study or Expansion PFS concerned.
- (d) **(Rights to combine and twin expansions)** Foundation Customer will have the priority right to have its expansions undertaken ahead of any expansions proposed by a Producer and to have the right to combine or "twin" expansions with Producers in accordance with the following principles:
 - (i) The costs of the cheaper expansion component will be to the account of Foundation Customer (funded in accordance with the applicable provisions of Article 15.3) and the costs of the more expensive expansion component will be to the account of the Producer (funded in accordance with the applicable provisions of Article 18.4(a)).
 - (ii) Further to Article 18.6(d)(i), the cheaper expansion component will be calculated as the difference between the cost of the "twinned" expansion less the cost of the Producer expansion the subject of the original Producer expansion study.
 - (iii) In carrying out studies for the purposes of the Producer expansion and proposed "twin" expansion, Infrastructure Owner shall take all steps, and carry out such studies, as is required to enable the costing calculation under Article 18.6(d)(ii).
- (e) **(Preconditions to agreement)** Infrastructure Owner and Infrastructure Operator shall not enter into a Producer Rail Haulage Agreement or Producer Port Services Agreement with a Producer unless:
 - (i) Infrastructure Owner has as part of the Expansion BFS prepared and provided to Foundation Customer an implementation plan and either:
 - (A) the implementation plan provides for the Producer Expansion to be implemented in a manner that will ensure the Foundation Customer's operations are not interrupted or adversely affected; or
 - (B) the Foundation Customer otherwise agrees to the implementation plan,

in either case an "**Approved Implementation Plan**"; and

- (ii) Foundation Customer has been informed and provided with a copy of the proposed agreement and any other relevant information, which demonstrates that all of the requirements of Articles 18.1 and 18.5, have been met.
- (f) (**Indemnity**) The Infrastructure Owner shall indemnify Foundation Customer against any loss of Marginal Profit incurred as a result of an interruption and other adverse effects on Foundation Customer's operations during the implementation of an expansion other than interruptions and adverse effects provided for and confirmed in an Approved Implementation Plan or otherwise agreed to by Foundation Customer. Foundation Customer and the Infrastructure Owner shall act in good faith to agree the amount of Marginal Profit lost within 60 Days after practical completion of the expansion and the Infrastructure Owner shall pay the agreed amount within 30 Days after agreement is reached. If Foundation Customer and the Infrastructure Owner cannot agree the amount of Marginal Profit lost within 60 Days after practical completion of the expansion, then the following principles will apply:
- (i) within 30 Days, each of Foundation Customer, the Infrastructure Owner and the chief executive of an international insurance industry body to be selected by agreement between Foundation Customer and the Infrastructure Owner shall appoint a duly qualified loss adjuster experienced in the assessment of business interruption insurance claims in the resources industry;
 - (ii) each loss adjuster shall accept oral and written submissions from Foundation Customer and the Infrastructure Owner and shall keep all information received in connection with their appointment confidential;
 - (iii) within 60 Days of their appointment, each of the loss adjusters will provide an estimate of the value of any loss of Marginal Profit incurred by Foundation Customer during the construction;
 - (iv) in arriving at their estimate, each loss adjuster will have regard to the methodology for calculating claims and any terms and conditions generally applicable under business interruption insurance policies in the resources industry which may affect the quantum of such claims;
 - (v) the loss adjusters will also provide an estimate of any additional Operating Charges borne by Foundation Customer during the period of construction of the expansion that were attributable to the expansion; and
 - (vi) the Infrastructure Owner will, within 10 Days of the estimates provided by the loss adjusters, pay to Foundation Customer the arithmetic mean of the estimates.

For the avoidance of doubt the Infrastructure Owner may include in the budget in relevant Expansion BFS costs relating to it bearing the risks provided for by this Article 18.6(f) including any relevant business interruption insurance premium.

18.7 Dispute Resolution

- (a) Any dispute in relation to the matters listed in Articles 18.7(b) and 18.7(c) below shall become the subject of conciliation proceedings conducted by the Independent Regulator in accordance with Article 48.2. Should those proceedings fail to resolve the dispute, then the following provisions of this Article 18.7 shall apply.
- (b) Subject to the requirements of Article 18.7(a), any dispute which may arise in relation to:
 - (i) (**Expansion studies**) an Expansion OoM Study, Expansion PFS or Expansion BFS initiated under this Article 18, including as to the costs of the study, technical

- or economic assumptions applied in it or the capital budget contained in it – shall be referred 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.
- (ii) **(Pro Forma Producer Agreements)** the terms and conditions of the Producer Pro Forma Agreements - shall be referred 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.
 - (iii) **(Agreements)** the terms and conditions of a Producer Rail Haulage Agreement or Producer Port Services Agreement – shall be referred to arbitration in accordance with Article 48.3.
- (c) For the avoidance of doubt, without prejudice to the provisions of Article 18.7(a), Foundation Customer may refer to arbitration in accordance with Article 48.3 any dispute which may arise in respect of whether the requirements of this Article 18 have been met or whether any Producer Rail Haulage Agreement or Producer Port Services Agreement is consistent with this Article 18 and Foundation Customer's priority rights referred to in Article 15.2.
 - (d) If Foundation Customer is not the Party that referred the dispute to arbitration or expert administered proceedings (as applicable), then:
 - (i) Foundation Customer shall promptly be given Notice of the dispute in writing by the referring Party and each other Party that is a party to the dispute; and
 - (ii) to the extent that, in Foundation Customer's view, its interests are or may be affected by the dispute, Foundation Customer shall be entitled (but is not obliged) to join any proceedings and require the referring Party and each other Party that is a party to the dispute to cause Foundation Customer to be joined to any proceedings.
 - (e) Any arbitral tribunal appointed pursuant to this Article 18.7 must, as part of its mandate, ensure that the relevant Producer Rail Haulage Agreement or Producer Port Services Agreement is consistent with Foundation Customer's rights under, and is otherwise consistent with the requirements of, this Convention.

19 State and Infrastructure Owner Expansions of the Project Infrastructure

19.1 Principles

- (a) **(Purpose)** This Article 19 sets out a process whereby the State or the Infrastructure Owner may 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**") for the purpose of then making that Additional Capacity available to third parties on terms to be agreed in accordance with this Article 19.

If the State or the Infrastructure Owner wish to undertake an expansion for the purpose of utilising the Project Infrastructure for their own commercial agricultural, mining or other operations, then they must do so under Article 18 as a Producer and this Article 19 shall not apply.

- (b) **(Prohibition on expansion prior to Infrastructure Completion Date)** The State or Infrastructure Owner shall have no rights to initiate or undertake an expansion under this Article 19 until the Infrastructure Completion Date has occurred.

- (c) **(Preconditions)** Infrastructure Owner shall only carry out expansion studies and implement an expansion under this Article 19 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 ("**Proposed Haulage Services**") 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 without reducing or adversely affecting the operational efficiencies and performance of the Project Infrastructure.
- (d) **(Foundation Customer and Preconditions)** Infrastructure Owner shall consult with Foundation Customer in relation to the above and Infrastructure Owner shall not commence an expansion study and shall not provide the Proposed Haulage Services unless Foundation Customer is satisfied, acting reasonably, that the preconditions set out in Article 19.1(c) are satisfied. The Independent Regulator shall be promptly informed whenever the preconditions set out above are satisfied in respect of any proposed expansion.
- (e) **(Information)** Where an expansion study is initiated by:
 - (i) the State, it must provide all information reasonably required by the Infrastructure Owner to carry out the proposed expansion studies, and the Infrastructure Owner must, where the preconditions in Article 19.1(c) are met and within a reasonable period of receiving a request from the State, provide to the State, with a copy to the Independent Regulator and Foundation Customer, a preliminary estimate of the type of expansion works that will be required in order to meet the State's request and an estimate of the costs of conducting the relevant Expansion OoM Study in accordance with Article 19.2(b).
 - (ii) the Infrastructure Owner, it must, where the preconditions in Article 19.1(c) are met, notify the Independent Regulator and Foundation Customer of its intention and provide to the Independent Regulator and to Foundation Customer a preliminary estimate of the type of expansion works that will be required.
- (f) **(Operation of Article 19 after the Transfer Date)** After the Transfer Date, Infrastructure Owner shall, unless Foundation Customer otherwise agrees, sub-contract to the Infrastructure Operator the performance of its obligations to carry out expansion studies and implement expansions pursuant to this Article 19.

19.2 Expansion studies

- (a) **(General right to initiate expansion)** Subject to the requirements of Article 19.1, the State may require the Infrastructure Owner carry out or the Infrastructure Owner may initiate, a study of an expansion of the Rail Infrastructure and the Shared Port Facilities and the construction of Producer Port Facilities in accordance with the provisions of this Article 19.2.
- (b) **(Expansion OoM Study)** The State may require the Infrastructure Owner carry out or the Infrastructure Owner may initiate, at any time within the parameters provided by Article 19.2(a), an Expansion OoM Study. The Expansion OoM Study shall be subject to the provisions of Article 19.2(e) and in respect of a study requested by the State subject

to the rules provided by Article 18.3(b)(i)-(iii) as if a reference to the Producer was a reference to the State.

- (c) **(Expansion PFS)** The State may require the Infrastructure Owner carry out or the Infrastructure Owner may initiate, at any time following delivery of an Expansion OoM Study, an Expansion PFS. Such Expansion PFS shall be subject to the provisions of Article 19.2(e) and in respect of a study requested by the State subject to the rules provided by Article 18.3(c)(i)-(iii) as if a reference to the Producer was a reference to the State.
- (d) **(Expansion BFS)** If Foundation Customer does not make an election under Article 19.5(a), then the State may require the Infrastructure Owner carry out or the Infrastructure Owner may initiate an Expansion BFS. Such Expansion BFS shall be subject to the provisions of Article 19.2(e), and in respect of a study requested by the State subject to the rules provided by Article 18.3(d)(i)-(iv) as if a reference to the Producer was a reference to the State.
- (e) **(Study rules)** Any Expansion OoM Study, Expansion PFS or Expansion BFS carried out in accordance with this Article 19 shall be subject to the study rules set out in Article 18.3(e) as if reference to the Producer in that provision was a reference to the State or Infrastructure Owner (as applicable) as the party initiating the study.
- (f) **(Dispute Resolution)** Any dispute relating to an Expansion OoM Study, Expansion PFS or Expansion BFS under this Article 19, including as to the costs of the study, the technical or economic assumptions applied in it or the capital budget contained in it, will be resolved in accordance with Article 19.6.

19.3 Expansions

- (a) **(Right to undertake expansion)** At any time after an Expansion BFS is agreed or determined pursuant to administered expertise proceedings under Article 19.6, the State may require the Infrastructure Owner undertake, or the Infrastructure Owner may initiate, the expansion in accordance with the Additional Capacity Expansion BFS, with such expansion to be funded in accordance with Article 19.4(a) and implemented by Infrastructure Owner.
- (b) **(Implementation of expansion)** The Infrastructure Owner must construct and deliver the expansion in accordance with the Additional Capacity Expansion BFS and:
 - (i) the Project Standards;
 - (ii) the Protocols;
 - (iii) Prudent Infrastructure Practices;
 - (iv) the Infrastructure Construction Criteria;and in a manner that ensures 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. A copy of any Expansion OoM Study for an expansion initiated by Infrastructure Owner must be provided to the State when it is completed. Foundation Customer, Infrastructure Owner and Infrastructure Operator shall endeavour, where possible, to accommodate the expansion undertaken by the State or Infrastructure Owner in a way that does not cause such interruption or adverse effect.
- (c) **(Ownership of Expansion Infrastructure)** All infrastructure constructed as a result of an expansion under this Article 19 ("**Additional Capacity Expansion Infrastructure**")

will be owned by Infrastructure Owner (or any successor of Infrastructure Owner appointed pursuant to Article 54.1(a)(iii)).

- (d) **(Expansion Capacity)** The Expansion Capacity of such Additional Capacity Expansion Infrastructure will be determined in accordance with Article 14.5.
- (e) **(State 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 as contemplated by Article 11 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 such an expansion (except to the extent it is the party initiating the expansion under this Article 19).
- (f) **(Use of Additional Capacity created by expansion)** The State or the Infrastructure Owner (as applicable) as the party initiating the expansion will be entitled to make the Additional Capacity created by the expansion available to third parties on terms to be agreed under Article 19.4.
- (g) **(Operating costs)** Consistent with the obligations of the Foundation Customer and Producers in respect of their Expansion Infrastructure, the State or the Infrastructure Owner (as applicable) as the party initiating the expansion shall cover all operating, maintenance and other costs incurred by Infrastructure Operator in respect of the Additional Capacity Expansion Infrastructure (except to the extent that such costs are borne by a third party pursuant to an Additional Capacity Services Agreement). To give effect to this, from the Expansion Completion Date the State or the Infrastructure Owner (as applicable) must pay an Operating Charge and Operating Fee to be determined in accordance with the applicable provisions of the Rail Pricing Principles and Port Pricing Principles.
- (h) **(General rules)** The general rules applying in respect of any Producer expansion under Article 18.4(j) shall apply to any expansion undertaken by the State or Infrastructure Owner, as if reference to the Producer in that Article was a reference to the State or Infrastructure Owner (as applicable) as the party initiating the expansion.
- (i) **(State update and audit rights)** Where the State initiates the expansion, the Infrastructure Owner must provide the State, 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 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 the State. The State 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.

19.4 Expansion Funding, Sale of Additional Capacity and Negotiation of haulage and service agreements

- (a) **(Expansion funding)** An expansion initiated under this Article 19 by:
 - (i) the Infrastructure Owner, shall be funded by the Infrastructure Owner and implemented in accordance with the relevant provisions of the relevant Expansion BFS and the requirements of Article 19.3; or

- (ii) the State, shall be funded by State in a manner to be agreed between the State and the Infrastructure Owner and implemented in accordance with the relevant provisions of the relevant Expansion BFS and the requirements of Article 19.3, provided that:
 - (iii) if Infrastructure Owner borrows any money for the purposes of implementing the expansion that debt must be subordinated to all amounts owed to the Senior Financing Parties; and
 - (iv) if funding is to be provided by the State, the agreement reached between the State and the Infrastructure Owner about funding must specify how any Tariffs paid by third parties to use the Additional Capacity will be shared between the Infrastructure Owner and the State.
- (b) **(Rights in relation to Additional Capacity)** The State or Infrastructure Owner (as applicable) as the party initiating the expansion may make any part of the Additional Capacity created by the expansion available to third parties (including the Foundation Customer or Producers) for a specified period of time on terms and conditions to be agreed directly with that third party, the Infrastructure Operator, the Infrastructure Owner and (where the State is initiating the expansion) the State in accordance with Article 19.4(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.
- (c) **(Additional Capacity agreement)** Any Additional Capacity Services Agreement shall only be negotiated and entered into by Infrastructure Owner in satisfaction with the following requirements:
 - (i) **(Negotiation of agreement)** Any Additional Capacity Services Agreement would include as parties the relevant third party, Infrastructure Owner, Infrastructure Operator and, where the State initiated the expansion that created the Additional Capacity, the State. While both the Infrastructure Owner and the Infrastructure Operator will need to be the parties to, and must agree, any Additional Capacity Services Agreement, the intention is, however, that the Infrastructure Owner would have primary carriage of the negotiation of such agreements. In this respect, the Infrastructure Operator's involvement shall be limited to agreeing the provisions that directly affect it as the Infrastructure Operator, including in relation to any fee paid to the Infrastructure Operator and any KPI regime applying to the Infrastructure Operator.
 - (ii) **(Pro forma agreements to form base)** The Producer Pro Forma Agreements will form the base of any agreement to be entered into under this Article 19.4, with necessary changes made to reflect the tripartite arrangements between the third party (as user of the Additional Capacity), the State or Infrastructure Owner (as provider of the Additional Capacity) and the Infrastructure Owner and Infrastructure Operator (as providers of the services to the third party).
 - (iii) **(Tariffs)** The Tariffs payable under any agreement must be determined in accordance with the Rail Pricing Principles and Port Pricing Principles. Where the State is the party that initiated the expansion, the agreement would specify how Tariffs payable to the Infrastructure Owner would be shared between the Infrastructure Owner and the State in accordance with the funding arrangements originally agreed between the State and the Infrastructure Owner.

- (iv) **(Provision of information)** The third party receiving the Rail Services or Port Services shall provide such information as may reasonably be required by Infrastructure Operator.
- (v) **(Foundation Customer rights)** To the extent the terms of any agreement are inconsistent with the requirements of Article 19.1 or 19.5, then Foundation Customer must approve those differences. A copy of each Additional Capacity Services Agreement shall be provided to the Independent Regulator.
- (vi) **(Other arrangements)** Infrastructure Operator and the State or Infrastructure Owner (as applicable) as the party initiating the expansion are not required to enter into arrangements with different third party users of the Additional Capacity on the same terms and conditions.

19.5 Foundation Customer rights

- (a) **(Pre-emptive right)** In respect of expansion studies undertaken in accordance with Article 19.2, Infrastructure Owner shall deliver one (1) copy of each Expansion PFS carried out to the Foundation Customer and, where the State is initiating the study, the State. Foundation Customer may, by Notice within 3 months of delivery of the Expansion PFS, elect to:
 - (i) require the State or Infrastructure Owner (as applicable) as the party initiating the expansion study to sell its right, title and interest in the Expansion OoM Study and Expansion PFS; and
 - (ii) instruct Infrastructure Owner to undertake an Expansion BFS in relation to the option that was the subject of the Expansion PFS.
- (b) If Foundation Customer makes an election under Article 19.5(a), then Foundation Customer:
 - (i) must promptly reimburse, as applicable, the State (for the costs it paid in advance to Infrastructure Owner) or the Infrastructure Owner (for the costs it incurred) for the Expansion OoM Study and Expansion PFS together with interest calculated at the Contractual Rate of Interest from the date of expenditure to the date of reimbursement;
 - (ii) will be the sole owner of the Expansion OoM Study and Expansion PFS; and
 - (iii) will enjoy the rights, and assume the obligations, provided under Article 15.3 in relation to an Expansion BFS initiated by Foundation Customer.
- (c) If the Foundation Customer has not proceeded to instruct the Infrastructure Owner to undertake an Expansion BFS within 6 months of acquiring the Expansion PFS or has not proceeded with an expansion within 3 years of acquiring the Expansion PFS, the State or Infrastructure Owner (as applicable) may reacquire the Expansion OoM Study and Expansion PFS by reimbursing Foundation Customer the amount previously paid to the State or Infrastructure Owner (as applicable). The State's or Infrastructure Owner's (as applicable) rights under this Article 19 to proceed to an Expansion BFS will then apply, and the Foundation Customer will have no further pre-emptive rights in relation to the Expansion OoM Study or Expansion PFS concerned.
- (d) **(Rights to combine and twin expansions)** Foundation Customer will have the priority right to have its expansions undertaken ahead of any expansions initiated by the State or Infrastructure Owner and to have the right to combine or "twin" expansions with the State or Infrastructure Owner in accordance with the principles set out in Article 18.6(d)(i)-(iii)

as if a reference to the Producer is a reference to the State or Infrastructure Owner (as applicable) as the party initiating the expansion study.

- (e) **(Preconditions to expansion)** Infrastructure Owner and Infrastructure Operator shall only implement an expansion of the Rail Infrastructure and Shared Port Facilities under this Article 19 if:
 - (i) the State or Infrastructure Owner (as applicable) have as part of the Expansion BFS prepared and provided to Foundation Customer an implementation plan and either:
 - (A) the implementation plan provides for the expansion to be implemented in a manner that will ensure the Foundation Customer's operations are not interrupted or adversely affected; or
 - (B) the Foundation Customer otherwise agrees to the implementation plan, in either case an **"Approved Implementation Plan"**; and
 - (ii) Foundation Customer has been informed and provided with a copy of the proposed agreement and any other relevant information which demonstrates that all of the requirements of Article 19 have been met.
- (f) **(Indemnity)** The Infrastructure Owner (in its capacity as the party implementing the expansion) shall indemnify Foundation Customer against any loss of Marginal Profit incurred as a result of an interruption and other adverse effects on Foundation Customer's operations during the implementation of an expansion, other than interruptions or adverse effects provided for and confirmed in the Approved Implementation Plan or otherwise agreed to by Foundation Customer, in accordance with the principles set out in Article 18.6(f).

19.6 Dispute Resolution

- (a) Any dispute in relation to the matters listed in Articles 19.6(b) and 19.6(c) shall become the subject of conciliation proceedings conducted by the Independent Regulator in accordance with Article 48.2. Should those proceedings fail to resolve the dispute, then the following provisions of this Article 19.6 shall apply.
- (b) Subject to the requirements of Article 19.6(a), any dispute which may arise in relation to:
 - (i) **(Expansion studies)** an Expansion OoM Study, Expansion PFS or Expansion BFS, including as to the costs of the study, technical or economic assumptions applied in it or the capital budget contained in it – shall be referred 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.
 - (ii) **(Agreements)** the terms and conditions of an Additional Capacity Services Agreement negotiated and agreed under Article 19.4 – shall be referred to arbitration in accordance with Article 48.3.
- (c) For the avoidance of doubt, Foundation Customer may refer to arbitration in accordance with Article 48.3 any dispute which may arise in respect of whether the requirements of this Article 19 have been met or whether any agreement to provide haulage services under Article 19.4 is consistent with this Article 19 and Foundation Customer's priority rights referred to in Article 15.2.
- (d) If Foundation Customer is not the Party that referred the dispute to arbitration or expert administered proceedings (as applicable), then:

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- (i) Foundation Customer shall promptly be given Notice of the dispute in writing by the referring Party and each other Party that is a party to the dispute; and
- (ii) to the extent that, in Foundation Customer's view, its interests are or may be affected by the dispute, Foundation Customer shall be entitled (but is not obliged) to join any proceedings and require the referring Party and each other Party that is a party to the dispute to cause Foundation Customer to be joined to any proceedings.
- (e) Any arbitral tribunal appointed pursuant to this Article 19.6 must, as part of its mandate, ensure that the relevant agreement to provide haulage services under Article 19.4 is consistent with Foundation Customer's rights under, and is otherwise consistent with the requirements of, this Convention.

20 Protocols

- (a) Infrastructure Operator shall develop and agree with Infrastructure Owner, Foundation Customer and the State as part of the process contemplated by Article 2.7, the following protocols which are to be attached to the Rail and Port Services Agreement:
 - (i) a protocol setting out:
 - (A) the process to be followed in the scheduling of Rail Services and Port Services and the scheduling of associated maintenance services; and
 - (B) the rules relating to Infrastructure Operator's exercise of operational control over all activities involving the Rail Infrastructure and Simandou Port (the "**Scheduling and Operating Protocol**");
 - (ii) specifications and standards applying to vessels using the Simandou Port (the "**Vessels Standards Protocol**");
 - (iii) specifications and standards applying to the Rolling Stock operating on the Project Infrastructure (the "**Rolling Stock Standards Protocol**");
 - (iv) specifications and standards applying to the operation and maintenance of Rolling Stock operating on the Rail Infrastructure ("**Rolling Stock Maintenance Protocol**");
 - (v) specifications and standards applying to the operation and maintenance of the Rail Infrastructure, including with respect to the Rail Infrastructure's availability and reliability (the "**Track Maintenance Protocol**");
 - (vi) specifications and standards applying to the operation and maintenance of the Simandou Port, including with respect to the minimum depth of the channel (the "**Port Maintenance Protocol**");
 - (vii) a set of regulations and responsibilities to govern the Simandou Port within the Port Limits and the regulatory responsibility of each of Infrastructure Operator, the State and Port Authority, reflecting the principles of port regulation set out in Appendix 17 (the "**Port Regulations**");
 - (viii) rules relating to the accounts and records that Infrastructure owner, Infrastructure Operator, Foundation Customer and each Producer must keep so as to facilitate the calculation, verification and audit of all charges payable in relation to the use and expansion of Project Infrastructure as contemplated under this Convention (the "**Account Keeping Rules**");
 - (ix) rules relating to security and public safety in respect of the Project Infrastructure (the "**Security and Public Safety Protocol**"); and

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- (x) the SEIA and all management plans pertaining thereto as referred to in Article 6(b) (the "**Social and Environment Protocols**").
- (b) Infrastructure Owner and the Infrastructure Operator (and where relevant, Foundation Customer and any Producer) shall comply strictly with the Protocols.
- (c) The Protocols and Project Standards may be only be amended with the agreement of Infrastructure Owner, Infrastructure Operator, Foundation Customer and the State.

Section 6.: Coordination with the State

21 Coordination of Operations

21.1 Activities in Corridor vicinity

- (a) The State shall:
- (i) monitor, and wherever possible, control the creation of transient camps and other settlements in, or in the vicinity of, the Project Lands (other than transient camps or settlements set up by Infrastructure Owner, Infrastructure Operator or their respective Affiliates and Project Contractors);
 - (ii) ensure that traffic, market and other activities in the vicinity of the Project Lands do not impinge on, or interfere with, the Infrastructure Project and the State shall provide support to Infrastructure Owner and Infrastructure Operator with respect to the Infrastructure Project in addressing such activities, including by the passing of appropriate Laws and Regulations (that, for the avoidance of doubt, shall apply to the Non State Parties to the extent they convey benefits on them over and above the Legislation in Force) and, where necessary, the provision of police and other security forces;
 - (iii) ensure that no toll or access fees for use of the Rail Access Roads, Public Crossings or Port Roads or for access by Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors to Project Lands are charged or demanded by third parties from Infrastructure Owner, Infrastructure Operator and / or their respective Affiliates and Project Contractors or members of the public; and
 - (iv) ensure that the assistance of the law enforcement agencies is provided to Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors at the cost of the State, if necessary or required by Infrastructure Owner or Infrastructure Operator to exercise their rights in relation to the Project Lands as provided under this Convention, it being agreed and understood that:
 - (A) Infrastructure Owner shall arrange, manage and pay for, the provision of security (in and within the direct vicinity of the Project Lands) for personnel engaged in the construction, expansion and modification of the Project Infrastructure and for the assets comprising the Project Infrastructure;
 - (B) Infrastructure Operator shall arrange, manage and pay for, the provision of security (in and within the direct vicinity of the Project Lands) for personnel engaged in the maintenance and operation of the Project Infrastructure and for the assets comprising the Project Infrastructure;
 - (C) the State shall, in the regional areas surrounding the Project Lands, arrange, pay for and manage the provision of security as required to promote the general safety and security of personnel engaged in the construction, maintenance and operation of the Project Infrastructure and for the assets comprising the Project Infrastructure, including the provision of traffic police for security purposes and enforcement of Laws and Regulations; and

- (D) if the Infrastructure Owner or Infrastructure Operator requires the specific assistance of law enforcement agencies mentioned above or different to that provided during the normal course of the State performing these duties, then the obligation to provide such assistance is contingent upon the Infrastructure Owner or Infrastructure Operator requesting such assistance from the State on a timely basis (and providing such information as is reasonably required to facilitate the provision of such assistance).
- (b) Without limiting the economic development contribution to be made by the Infrastructure Owner under Article 31.5 of this Convention and by Foundation Customer under Article 29.6 of the Basic Convention, the State shall be responsible for the supply of services and amenities to inhabitants in the vicinity of the Project Lands.

21.2 Provision of additional facilities and resources

- (a) In the event that additional land, buildings, timber, quarries or other sources of material, roads, watercourses or other facilities ("**Additional Facilities and Resources**") are or become necessary for the planning, design, construction, commissioning, ownership, operation, maintenance, modification or expansion of the Project Infrastructure, then at Infrastructure Owner's or Infrastructure Operator's request the State shall ensure that such Additional Facilities and Resources are made available to Infrastructure Owner or Infrastructure Operator as the case may be. Infrastructure Owner or Infrastructure Operator (as applicable) are responsible for the reasonable cost of any such Additional Facilities and Resources which are made available to it pursuant to this Article 21.2(a), in conformity with Legislation in Force.
- (b) The State shall use its best endeavours to ensure that any costs which are required to be paid by Infrastructure Owner or Infrastructure Operator pursuant to Article 21.2(a) are consistent with the market value of the Additional Facilities and Resources so provided.
- (c) Similarly, at Infrastructure Owner's or Infrastructure Operator's request, the State shall use its best endeavours to make available to Infrastructure Owner or Infrastructure Operator facilities not owned by or otherwise available to Infrastructure Owner or Infrastructure Operator which may be necessary to Infrastructure Owner or Infrastructure Operator for the construction, operation, maintenance, modification or expansion of the Project Infrastructure, including but not limited to the supply of water or electricity available to it, it being understood that Infrastructure Owner or Infrastructure Operator shall bear the costs of the services provided.

22 Roads

22.1 Rail Access Roads and Public Crossings

- (a) Infrastructure Owner shall design and construct and Infrastructure Operator shall operate and maintain:
 - (i) railway access and maintenance roads connecting from the public road network to the railway at appropriately designated locations (the "**Rail Access Roads**"); and
 - (ii) such crossings to be situated at appropriately designated locations as are necessary to enable the public to cross the Rail Infrastructure which shall be specifically allocated for such use (the "**Public Crossings**"),to the standard required for the purposes of their operations (which may not necessarily be the same as those of a public road or highway), together with all warning devices,

bridges and other infrastructure as may be necessary for the use of the Rail Access Roads and Public Crossings.

- (b) Infrastructure Owner is responsible for the costs of design and construction, and Infrastructure Operator is responsible for the costs of operation and maintenance of:
 - (i) the Rail Access Roads; and
 - (ii) the Public Crossings,

to the standard required for the purposes of their operations which may not necessarily be the same as those required for a public road or highway.

22.2 Use of the Rail Access Roads and Public Crossings by the State and the public

- (a) Infrastructure Owner and Infrastructure Operator shall allow the public to have reasonable access and use of the Rail Access Roads and Public Crossings having regard to the needs of communities within the vicinity of the Rail Infrastructure. Any such access and use is:
 - (i) free of charge; and
 - (ii) subject to such restrictions and regulations as are reasonably determined by Infrastructure Owner or Infrastructure Operator (as applicable) to be necessary or desirable for safety reasons and to ensure that such access does not delay the construction of the Project Infrastructure or prejudice the ability of Infrastructure Operator to maintain operational efficiencies and performance of the Project Infrastructure.
- (b) Infrastructure Owner and Infrastructure Operator are entitled to regulate and control the use of the Rail Access Roads and the Public Crossings, including by appropriate security activities in accordance with the Security and Public Safety Protocol.
- (c) Infrastructure Owner and Infrastructure Operator have the right to access and use the Rail Access Roads and the Public Crossings in absolute priority to all other users, subject to the requirements of the Security and Public Safety Protocol. If the use of a Rail Access Road by the public is such that it effectively becomes a public highway, the State shall pay to Infrastructure Operator an equitable proportion of the cost of maintaining the Rail Access Road having regard to the public use of that road.

22.3 Use of public roads by Infrastructure Owner, Infrastructure Operator and Project Contractors

- (a) Infrastructure Owner, Infrastructure Operator, Project Contractors and their respective Affiliates have the right to use any public roads in the vicinity of the Corridor, subject to no toll or access fees for use of the roads being imposed and in compliance with the Legislation in Force.
- (b) The Parties acknowledge that upgrades will be required to be made to the public road network (including to bridges and other associated infrastructure) in accordance with the design requirements for the Project to facilitate the construction of the Project Infrastructure and Mining Infrastructure and to achieve the Infrastructure Completion Date and First Commercial Production Date. The Infrastructure Owner has the right to undertake such upgrades, and will be responsible for the costs of their design and construction, with the scope of upgrade works to be agreed under the Infrastructure BFS and co-completion arrangements referred to in Article 7(f).
- (c) For the avoidance of doubt, the Infrastructure Owner and Infrastructure Operator will not be responsible for the operation and maintenance of any public roads upgraded or used

as part of the Infrastructure Project, or for any costs of operation and maintenance (unless expressly agreed with the State on a case by case basis).

22.4 Port Roads

- (a) Infrastructure Owner shall design and construct and Infrastructure Operator shall operate and maintain service and access roads within the boundaries of the Simandou Port and as part of the rail maintenance facilities located in the vicinity of the Simandou Port ("**Port Roads**") to the standard required for the purposes of their operations (which may not necessarily be the same as those of a public road or highway), together with all warning devices, bridges and other infrastructure as may be necessary for the use of the Port Roads.
- (b) Infrastructure Owner is responsible for the costs of design and construction, and Infrastructure Operator is responsible for the costs of operation and maintenance of all Port Roads, to the standard required for the purposes of their operations which may not necessarily be the same as those required for a public road or highway.
- (c) Infrastructure Owner and Infrastructure Operator are entitled to regulate and control the use of the Port Roads, including by appropriate security activities in accordance with the Security and Public Safety Protocol.
- (d) Infrastructure Owner and Infrastructure Operator have the right to access and use the Port Roads in absolute priority to any other users, and are not required to allow the public to have access and use of the Port Roads for reasons of security and public safety concerns.

23 State Access to the Project Infrastructure

- (a) The State is entitled to request that its representatives be granted access to, and rights to inspect, the Project Infrastructure during normal business hours, and such request shall be granted by Infrastructure Owner and Infrastructure Operator subject to:
 - (i) the State providing not less than 7 Days prior written notice to each of Infrastructure Owner and Infrastructure Operator;
 - (ii) compliance with safety and other requirements in relation to site access as directed by Infrastructure Owner or Infrastructure Operator (as applicable); and
 - (iii) Infrastructure Owner and Infrastructure Operator each being satisfied (acting reasonably) that such access and rights to inspect will not interrupt, interfere with nor in any way impede the smooth running of its activities,other than in the event of an emergency, in which case the State shall provide such notice as the exigencies of the emergency permit and shall use its best endeavours to avoid any interruption, interference with, or impediment to such activities.
- (b) The State and its representatives may not communicate information gathered during the course of these visits to third parties without the prior written approval of Infrastructure Owner and Infrastructure Operator, except for information that is in the public domain.

24 No Interference by the State

- (a) In addition to its commitment to ensure the effective enforcement of the PIN Decree and in order to enable the performance of the Infrastructure 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 Infrastructure Activities.

- (b) The State shall ensure that the Corridor and the Project Lands remain zoned for exclusive occupation and use by Foundation Customer, Infrastructure Owner, Infrastructure Operator, the Project Contractors and their respective Affiliates (the **"Infrastructure Entities"**) and that such zoning is maintained throughout the duration of the design, construction, commissioning, operation, expansion and modification and maintenance of the Project Infrastructure so that the activities of the Infrastructure Entities may be undertaken and carried out within the Corridor or the Project Lands without any restriction or interruption by the State or any State Authority, including on the grounds that such activities have become contrary to any land use, town planning or zoning by-law, similar Laws and Regulations or reservation of the Corridor or the Project Lands.

25 Independent Regulator

25.1 Establishment of Independent Regulator

- (a) The State shall, as soon as practicable after the date of this Convention, establish by legislation an autonomous and independent infrastructure regulator (the **"Independent Regulator"**).
- (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 Appendix 15;
 - (ii) have the expertise outlined in section 1.2 of Appendix 15;
 - (iii) have the powers in relation to the collection of information as set out in section 1.3 of Appendix 15; and
 - (iv) have the functions and powers in relation to the Project Infrastructure conferred on it by Article 25.2 and section 2 of Appendix 15, and subject to Article 25.4, 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 this Convention.
- (d) Further to Article 25.1(c):
 - (i) The State shall provide a draft of the establishing legislation prior to its enactment to Foundation Customer and, if they have acceded to this Convention, to Infrastructure Owner and Infrastructure Operator.
 - (ii) Foundation Customer, Infrastructure Owner and Infrastructure Operator (if applicable) must, within 60 Days of receipt of the draft legislation, each advise the State of whether or not they agree that the legislation complies with the requirements of Article 25.1.
 - (iii) If the Foundation Customer, Infrastructure Owner and Infrastructure Operator all advise that they agree that the draft legislation complies with the requirements of Article 25.1, none of the Foundation Customer, Infrastructure Owner or Infrastructure Operator may later dispute that the legislation in that form complies with the requirements of Article 25.1. This does not, however, limit their ability to

dispute whether the requirements of Article 25.1 have been met in relation to matters other than the legislation.

- (iv) If any of the Foundation Customer, Infrastructure Owner or Infrastructure Operator advise that they do not agree that the legislation complies with the requirements of Article 25.1, that Party must also specify how the legislation needs to be amended in order to comply. The State, Foundation Customer, Infrastructure Owner and Infrastructure Operator must then discuss and seek to agree revised draft legislation that complies with Article 25.1. If agreement is reached then Foundation Customer, Infrastructure Owner and Infrastructure Operator may not later dispute that the legislation in the agreed revised form complies with Article 25.1. This does not, however, limit their ability to dispute whether the requirements of Article 25.1 have been met in relation to matters other than the legislation. If agreement is not reached within 30 Days of commencing discussions, then a dispute will have arisen to which Articles 48.1 and 48.3 will apply.
- (e) The Independent Regulator shall act on behalf of the State, including in issuing opinions as provided in section 2 of Appendix 15. The Independent Regulator's acts and omissions shall be attributable to the State. However, provided that the Independent Regulator has been duly established, and continues to exist in accordance with the provisions of this Convention in particular Article 25 and Appendix 15:
 - (i) the State shall not be liable in damages to any Party for an act or omission of the Independent Regulator; and
 - (ii) an act or omission of the Independent Regulator will not be a Material Government Breach.

25.2 Functions and powers of the Independent Regulator in relation to the Project Infrastructure

Provided the requirements of Article 25.1 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 Appendix 15;
- (b) will have the functions in relation to the Project Infrastructure set out in section 2.2 of Appendix 15;
- (c) will have the powers in relation to the collection of information related to the Project Infrastructure set out in section 2.3 of Appendix 15;
- (d) may issue opinions in relation to the Project Infrastructure in accordance with the process set out in section 2.4 of Appendix 15. Any such opinions will have the effect set out in section 2.4 of Appendix 15 and be subject to the dispute resolution processes set out in section 2.5 of Appendix 15.

25.3 Application of Independent Regulator provisions

- (a) If the requirements of Article 25.1 are not met, or if opinions are for any reason not subject to the dispute resolution processes set out in section 2.5 of Appendix 15 then the Independent Regulator will have no functions or powers in connection with the Project Infrastructure or the Parties to this Convention.
- (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 Appendix 15 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; and
 - (ii) to provide notice, information and copies of agreements to the Independent Regulator pursuant to Articles 15, 18 and 19,

shall not apply and a failure to comply with any such obligation shall not amount to a breach of this Convention.

25.4 Rail safety licensing regime

The State is considering developing a new rail safety licensing regime (the "**Rail Safety Licensing Regime**"). The Parties will discuss in good faith any Rail Safety Licensing Regime that may be developed, but agree that it will only apply to the Infrastructure Project and to the Infrastructure Owner, Infrastructure Operator, Foundation Customer, Project Contractors and their respective Affiliates if the regime (including the legislation establishing the regime) is agreed in advance by the Infrastructure Owner, Infrastructure Operator and Foundation Customer (with such approval not to be unreasonably withheld). The Parties agree that any Rail Safety Licensing Regime that may be developed:

- (a) will relate only to matters of rail safety;
- (b) will apply in a uniform way to all railways within Guinea;
- (c) will not impose higher standards in relation to the Infrastructure Project than the standards required under this Convention;
- (d) will not result in the Infrastructure Owner, Infrastructure Operator or Foundation Customer being unable to enjoy the rights or carry out the obligations respectively conferred on them under this Convention, or otherwise amount to material interference with such rights or obligations; and
- (e) will operate in a manner broadly similar to rail safety licensing regimes operating internationally.

Section 7.: Procurement and Employees

26 Local Procurement

As far as possible, Infrastructure Owner, Infrastructure Operator 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 local content principles set out in Appendix 6, to be developed and signed by the Parties not later than six months after the Effective Date and which may be amended from time to time by agreement between the Parties (the "**Local Content Policy**").

27 Recruitment of Employees

- (a) Subject to Article 28, for the duration of this Convention, Infrastructure Owner and Infrastructure Operator and their Affiliates involved in the Project and Project Contractors undertake to:
 - (i) 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
 - (ii) give preference to Guinean nationals providing evidence of the qualifications and experience required by Infrastructure Owner and Infrastructure Operator for appointments to management / senior management positions (including leadership positions) in accordance with Legislation in Force;
 - (iii) implement a training and promotion programme for the Guinean national employees in order to permit them to acquire the necessary experience to take management/senior management positions within the company leadership, maximise the development of their technical and managerial skills and ensure the effective transfer of knowledge relating to systems and procedures applicable to the Infrastructure Project; and
 - (iv) comply with Laws and Regulations relating to health.

Subject to Legislation in Force, Infrastructure Owner, Infrastructure Operator and their Affiliates and Project Contractors shall not be subject to any restriction as regards methods for the selection, recruitment, appointment, promotion or dismissal of their employees.

- (b) Infrastructure Operator undertakes to contribute, with effect from the Infrastructure Completion Date, to the provision:

- (i) of medical and educational facilities, corresponding to the normal needs of the workers and of their families; and
- (ii) at a local level, of leisure facilities for its staff.
- (c) The State undertakes to grant to Infrastructure Owner, Infrastructure Operator and their 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, against Infrastructure Owner, Infrastructure Operator and their Affiliates and Project Contractors, or / and against their 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 27 and of Legislation in Force, Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors shall not be subject to any restriction in the selection, hiring, appointment, promotion or dismissal of employees. Nevertheless, with effect from the start of the construction works for the Infrastructure Project, Infrastructure Owner and Infrastructure Operator undertake to appoint at least one Guinean national executive of their choice at a management level in Infrastructure Owner or Infrastructure Operator (as applicable).

28 Recruitment of Expatriate Employees

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

- (a) A work permit shall be issued on an individual basis to each expatriate employee at the request of Infrastructure Owner, Infrastructure Operator or their respective Affiliates and Project Contractors (as applicable). 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 the previous paragraph of this Article 28(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 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 the previous paragraphs of this Article 28(b).

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- (c) A permanent entry and exit visa shall be granted to expatriate employees at the request of Infrastructure Owner, Infrastructure Operator or their respective Affiliates and Project Contractors (as applicable).

In addition to the guarantees provided pursuant to Article 39, the State in particular undertakes, for the duration of this Convention, not to make any pronouncement or issue any order which would entail against Infrastructure Owner, Infrastructure Operator and their respective 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 Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors, of the families of such employees, and of their personal belongings; or
- (ii) subject to Article 27, the recruitment and dismissal by Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors of persons of their choice being free, whatever their nationality.

Section 8.: Tax and Custom Regime

29 General Provisions

- (a) In view of the special nature of the Infrastructure 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 is normally developed by the State, Articles 29 to 37 together with the Tax Annex determine the preferential treatment applicable to the Infrastructure Project. This regime is applicable from the Effective Date of this Convention and until the expiry of the Term as contemplated in Article 4.1. The Tax Annex applies to the Infrastructure Activities except where inconsistent with the provisions of this Convention.
- (b) With the exception of the Taxes 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 BOT Law and other Legislation in Force, those companies participating directly in the implementation of the Project and to the extent of their participation shall not be subject to any other Taxes in Guinea.
- (c) In the case of providers of project finance for the Project it is specifically agreed that those providers shall be exempt from any fees, duties or other taxes payable in connection with the financing of the Project, including without limitation, any amounts which may otherwise be payable in connection with the registration or perfection of any security which may be provided in respect of any such financing.
- (d) As and when Foundation Customer or the Guinean tax Authorities identify the need to specify the scope or the calculation of any given Tax or to create or amend tax and customs exemption processes, the Parties undertake to establish detailed provisions that shall accommodate the scope, the sense, the interpretation and the application of the particular provision that needs to be clarified, created or amended in compliance with the principles deriving from this Convention.

30 Tax Regime Applicable to Development and Construction of the Infrastructure Project

As from the Effective Date, and throughout the Term of this Convention, Infrastructure Owner, Infrastructure Operator, Direct Sub-Contractors and their respective Affiliates and Financing Parties participating directly in development and construction of the Infrastructure 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 offices 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;
- (g) Withholding tax:
 - (i) 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: Infrastructure Owner, Infrastructure Operator and their respective Affiliates shall be exempt from VAT on all imports necessary for the Project with the exception of equipment and belongings intended exclusively for the personal use of employees of Infrastructure Owner, Infrastructure Operator and their respective Affiliates. Infrastructure Owner and Infrastructure Operator (as applicable) shall draw up an indicative list of equipment to be imported and which of its Affiliates will be responsible for the importing and shall undertake that the equipment in question will be exclusively used for the purposes of the Infrastructure Project. This list, once transmitted to the Centre for Mining Promotion and Development ("**CPDM**"), shall be approved jointly by the Finance Minister and the Mining Minister, which will make their best efforts to publish this approval within a maximum term of 15 Days. As the import list will only be an indicative list, it may be supplemented or updated with additional items as and when required for the purposes of the Infrastructure Project. Additional arrêtés will be issued in accordance with the same procedures. In addition, as the Project progresses, the Parties undertake to discuss and agree on any required procedures, which would address the needs of the Project in a more efficient manner.
- (i) Infrastructure Owner, Infrastructure Operator and their respective Affiliates will also be exempted from VAT on all purchases (including fuel) and on all services necessary for the Infrastructure Project whatever the nationality and / or place of residence of the supplier or of the provider. The exemption in this Article 30(i) will apply to all Direct Sub-Contractors, both local and foreign working exclusively on the Infrastructure Project.

Fuel imported or purchased locally for the purposes of the Infrastructure Project will also be exempt from VAT on the same basis.

For the Direct Sub-Contractors who will not benefit from the above exemption, the VAT invoiced by the Direct Sub-Contractors to Infrastructure Owner, Infrastructure Operator and their respective Affiliates will be reimbursed to Infrastructure Owner, Infrastructure Operator and their respective Affiliates during the month following the month in which payment of the related VAT is made by the Direct Sub-Contractor to the competent administrative authority.

The exemption certificates or any other document as agreed between Infrastructure Owner, Infrastructure Operator and the State, signed by the tax or customs authorities of Guinea, shall be transmitted by Infrastructure Owner and Infrastructure Operator (as applicable) to their respective Affiliates and Direct Sub-Contractors.

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

31 Tax Regime Applicable During the Operations Phase

As from the Infrastructure Completion Date, Infrastructure Owner, Infrastructure Operator, the Direct Sub-Contractors and their respective Affiliates participating directly in the implementation of the Infrastructure Project and to the extent of this participation shall be liable for the payment, in respect of the activities contemplated in this Article, of any Tax listed in Article 30, and in accordance with the provisions of this Article, and the exemptions or adaptations provided for in

Article 30 will also apply. In addition, these companies shall be liable for the Taxes restrictively listed hereinafter.

31.1 Corporate income Taxes

- (a) An exemption from all corporate income Taxes (including the minimum lump sum Tax) and direct Taxes shall apply to Infrastructure Owner, Infrastructure Operator, Direct Sub-Contractors and their respective Affiliates until full repayment of the Infrastructure investment, including any expansions, aligned with the Investment Repayment Period.
- (b) Upon the expiry of this period, Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Direct Sub-Contractors shall pay corporate income Tax at a rate of 30%, or at any more favourable rate of corporate income Tax as adopted by any Laws and Regulations.
- (c) **(Retained losses)** Losses may be carried forward for up to 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.
- (d) **(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 applying as part of the Legislation in Force.
- (e) **(Deductions from taxable income)** The total amount of interest and any other fees and costs payable by Infrastructure Owner or Infrastructure Operator in connection with any Financing Document, including any interest produced by shareholders' current accounts or with any other agreement entered into by Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Direct Sub-Contractors, will be fully deductible from taxable income.
- (f) **(Investment Credit)** Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Direct Sub-Contractors are 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) **(Tax deficits)** Each of Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Direct Sub-Contractors shall have the right to transfer their tax deficits to Foundation Customer and / or any of its Affiliates and benefit from the transfer of tax deficits of its Affiliates in accordance with the Tax Annex.

31.2 Withholding tax on services fees paid to foreign Direct Sub-Contractors not established in Guinea

- (a) A withholding Tax due in lieu of any other income tax is imposed on service fees paid to non-Guinean resident Direct Sub-Contractors on the basis of any activity physically carried out within Guinea for more than three consecutive months in the course of any calendar year.
- (b) The rate of this withholding tax is (i) 10% in respect of the Direct Sub-Contractors who are service providers or (ii) 10% after deducting all expenses incurred by Direct Sub-Contractor who are subcontractors.
- (c) For the purpose of this Article, a foreign company operating solely for the Infrastructure 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.

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

31.3 Withholding tax on dividends

Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Direct Sub-Contractors shall be fully exempt from Tax and withholding tax on dividends and any other distributions to shareholders.

31.4 Withholding tax on interest

Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Direct Sub-Contractors shall be fully exempt from Tax and withholding tax on interest paid to shareholders and / or to any Financing Party.

31.5 Economic development contributions

- (a) Infrastructure Owner will contribute to the economic development of the populations residing in the immediate vicinity of the Project Lands, through participation in local initiatives selected in co-ordination with the competent Authorities.
- (b) Infrastructure Owner will contribute to local community development in cash or in kind up to a limit of 0.25% of its annual gross revenue. This contribution is deductible from taxable income.

31.6 Tax concessions

Unless otherwise agreed in this Convention, each of Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Direct Sub-Contractors and Financing Parties enjoy 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 Infrastructure Project;
- (d) exemption from registration fees for the contracts required for the realisation of the Infrastructure Project;
- (e) exemption from registration fees on any financing transaction or Financing Document involving Infrastructure Owner, Infrastructure Operator or their respective Affiliates;
- (f) exemption from the one-off land tax;
- (g) exemption from the lump-sum payment on salaries for a period of 10 years;
- (h) 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 the Infrastructure Owner, the Infrastructure Operator and their respective affiliates and Direct Sub-Contractors exceed the amount of this tax or that they have their own training centres;
- (i) exemption from apprenticeship tax until full depreciation of all their assets;
- (j) exemption from business licence fees until full depreciation of all their assets;
- (k) exemption from property taxes until full depreciation of all their assets;
- (l) exemption from any fixed fees and royalties; and
- (m) exemption from surface owner's royalty.

32 Customs Regime Applicable to the Study Activities Stage

For any of their activities relating to the Infrastructure Project, with effect from the Effective Date and throughout the period of study activities, Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Direct Sub-Contractors shall benefit from the customs benefits set out in Articles 32.1 to 32.3.

32.1 Temporary Admission

- (a) Any equipment, materials, machines, appliances, commercial and passenger vehicles, hoists and power plants imported by the persons contemplated in this Article and intended for study activities shall benefit from the Temporary Admission pro rata temporis gratis basis for the duration of the works. Where the items imported under Temporary Admission continue to be used after the study activity for the purpose of the Infrastructure Project, such items will be treated as exempt from VAT and the temporary admission regime will be extended.
- (b) On expiry of the study activities, any items thus admitted on a temporary basis may be re-exported, sold on the Guinean territory, donated for free in Guinea, damaged, written-off or salvaged for spare parts.
- (c) Those persons contemplated by this Article 32.1 are required to transmit to CPDM and the Department of Customs, within the first quarter of each year, a statement regarding any item admitted on a Temporary Admission basis.
- (d) 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 Legislation in Force (including Article 154 of the Mining Code).

32.2 Customs Relief

- (a) Any supplies and spare parts necessary for the operation of the professional plant and equipment shall benefit of full exemption from any custom fees, duty and dues.
- (b) 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.

32.3 Personal Belongings

Personal belongings imported by the persons contemplated in this Article 32.3 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.

33 Customs Regime Applicable to Construction and Expansion Activities

33.1 Customs Relief

- (a) As from the purchase and transportation of long lead items for the Project Infrastructure, Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Direct Sub-Contractors are entitled, for their activities relating to the Infrastructure Project, to exemption from any custom 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.
- (b) However, the goods specified above are subject to payment to customs of a registration duty, at a rate of 0.5% of the CIF value of the imported goods up to a volume of imports of 20 million Dollars.

33.2 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 expansion works required for the Infrastructure Project will be placed on a Temporary Admission basis in accordance with the same terms as those contemplated in Article 32.1.

34 Customs Regime Applicable to Operations and Maintenance Activities

With effect from the Infrastructure Completion Date Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Direct Sub-Contractors will be liable, for their activity relating to the Infrastructure Project, to pay any fees and customs duty as provided under Legislation in Force with the exception of the following.

- (a) No import VAT and customs duty shall be payable for equipment, gear, heavy machinery, fuel, lubricants, other petroleum products, plant and vehicles (including, but not limited to, locomotives, maintenance vehicles and transport vehicles) involved directly in the work of operating the Project Infrastructure.

Registration tax relief of 0.5% shall apply subject under the same terms as for the construction and extension work stage as contemplated in Article 33.1.

- (b) Any fuel, lubricants and other products used for Infrastructure Activities will be exempt in accordance with the Tax Annex.

35 Stabilisation of Tax and Customs Regime

- (a) Subject to the provisions of this Convention, Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Direct Sub-Contractors shall not be liable by virtue of Infrastructure Activities to any Taxes including export fees and duties and value added tax that are not expressly contemplated in this Convention.
- (b) By virtue of this Convention, Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Direct Sub-Contractors shall be entitled for Infrastructure Activities to the stabilisation of Tax and Customs Regime in force on the day of signing of the original Convention de Base in 2002 throughout the Term.
- (c) The provisions of this Article 35 shall only apply to Infrastructure Owner and Infrastructure Operator and their respective Affiliates and Direct Sub-Contractors in so far as they agree to abide by, and in the conduct of Infrastructure Activities actually abide by, the provisions of this Convention.

36 Calculation of Taxes and Charges

- (a) The calculation of Taxes is carried out on the basis of an accounting system and an accounting currency always expressed in Dollars which are then converted to Guinean Francs as follows:
 - (i) for Taxes based on a reference period of 12 months (such as corporate income Tax), the applicable rate of exchange will be the average rate of the Guinean Central Bank applicable to this reference period; and
 - (ii) for any other duty and charge, the applicable rate of exchange will be that of the Guinean Central Bank in force on the date of payment of the Tax.
- (b) 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.

37 Sundry Provisions

37.1 Accounting Principles

- (a) In relation to the Infrastructure Project, each of Infrastructure Owner and Infrastructure Operator is authorised to keep its accounts in US Dollars (\$), but in compliance with the applicable accounting standards and tax principles contained in the Tax Annex and with the provisions of the Guinean Accounting Plan not contrary to it.
- (b) The accounting documentation shall be true and complete and accompanied with relevant supporting documents to confirm their accuracy. The accounting documentation may be inspected by the State representatives expressly commissioned for this purpose.
- (c) Each of Infrastructure Owner and Infrastructure Operator 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.
- (d) **(Annual statement of accounts)** Financial statements required for each of Infrastructure Owner, Infrastructure Operator and their respective Affiliates incorporated in Guinea as required by Laws and Regulations (balance sheets, profit and loss accounts, tables of magnitude, management characteristics, input output matrix) should be converted and presented in Guinean Francs subject to the terms contemplated in this Convention.
- (e) **(Interim Reports)** For monitoring purposes, each of Infrastructure Owner, Infrastructure Operator and their respective Affiliates incorporated in Guinea shall provide the Guinean Central Bank, as soon as possible at the end of each quarter, with interim financial statements to which shall be appended the necessary supporting documents describing the operations carried out in the course of the said quarter.
- (f) **(Confidentiality)** All information provided by each of Infrastructure Owner, Infrastructure Operator and their respective Affiliates to the State in accordance with this Article 37.1 shall be regarded as confidential, and the State undertakes not to disclose its content to third parties without the prior written consent of Infrastructure Owner, Infrastructure Operator or the Affiliate incorporated in Guinea (as applicable), which consent may not be unreasonably withheld.

37.2 Transfer of assets, loans, shares, sell out, merger, de-merger, partial transfer of assets

No Taxes are applicable to transfers of assets, loans, shares, sell-outs, mergers, de-mergers, bringing in assets or similar operations carried out for the purposes of, or in connection with, the Infrastructure Project between any of the Parties and their Affiliates or between Infrastructure Owner and its shareholders or between Infrastructure Owner and any member of the Rio Tinto Group.

37.3 More favourable provisions

Each of Infrastructure Owner, Infrastructure Operator and their respective Affiliates incorporated in Guinea are free at any time to elect to be governed by the more favourable fiscal and customs provisions deriving from Changes in Law or that are granted in the future to any competitor of Infrastructure Owner, Infrastructure Operator or their respective Affiliates incorporated in Guinea exercising an identical or similar activity.

37.4 No discrimination

Without limiting the operation of this Section 8, the State shall not:

- (a) impose, nor shall it permit or authorise any State Authority to impose, discriminatory taxes, rates or charges of any nature whatsoever on or in respect of the land, property or

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other assets, products, materials or services used or produced by or through the activities of Infrastructure Owner, Infrastructure Operator and their respective Affiliates or Direct Sub-Contractors in connection with Infrastructure Activities or Project Infrastructure; or

- (b) take or permit to be taken by the State or any State Authority any other discriminatory action which would deprive Infrastructure Owner, Infrastructure Operator and their respective Affiliates or Direct Sub-Contractors of the full enjoyment of the rights granted or intended to be granted under this Convention.

Section 9.: State Guarantees and Environment Provisions

38 Guarantees under the BOT Law and Investment Code

- (a) For the purposes of this Article 38, each of Infrastructure Owner, Infrastructure Owner HoldCo, Infrastructure Operator and Foundation Customer and their respective Affiliates and the shareholders in these Affiliates shall be treated as an Investor under the BOT Law (and who, for the purposes of this Article 38 are collectively referred to as the **"Investors"**).
- (b) The Investors and the Project Contractors shall, as a minimum threshold, benefit from the protections and guarantees conferred by the BOT Law. The tax exemptions and benefits conferred by the BOT Law are intended to be a minimum threshold and are not intended to limit the operation of the Tax and Customs Regime pursuant to this Convention. In addition, it is also acknowledged and agreed that Infrastructure Owner, Infrastructure Operator and their respective Affiliates shall also benefit from the tax and other concessions conferred by the BOT Law to the extent that they are more favourable than those conferred by Articles 38 to 43 and the Tax Annex.
- (c) As investments made in rail and port infrastructure projects are deemed to be a priority for the national economy, the Infrastructure Project shall, at a minimum, benefit from the preferential fiscal regime conferred by Article 9.6 of the BOT Law.
- (d) Each Investor and each Project Contractor shall benefit from the automatic protections conferred by the general regime of the Investment Code and may apply to benefit from one or more special regimes recognised by the Investment Code.

39 General Guarantees

- (a) The State undertakes to guarantee to each of Infrastructure Owner, Foundation Customer, Infrastructure Operator, Project Contractors and their respective Affiliates as applicable the continuation of any economic or financial advantages and fiscal and customs provisions contemplated in this Convention. Any modifications that have been or 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 Infrastructure or the function and powers of the Independent Regulator in a manner which is inconsistent with the provisions of this Convention (including without limitation those protocols referred to in Article 20), will not apply to each of Infrastructure Owner, Foundation Customer, Infrastructure Operator, Project Contractors and their respective Affiliates without prior agreement. Any such modifications that are adopted subsequent to the signature of this Convention within the context of general legislation and that are regarded as favourable for to each of Infrastructure Owner, Foundation Customer, Infrastructure Operator, Project Contractors and their respective Affiliates may, at their request, be extended by the State to those of them who request such extension provided any such extension is not inconsistent with Foundation Customer's priority rights under this Convention.
- (b) Without limiting Article 39(a), the Parties acknowledge, in accordance with the State's recognition in Article 3 of the Settlement Agreement, that the State has adopted a new mining code, and agree that the provisions of this Convention establish the priority of this Convention over the Mining Code (including any amendments made thereto), any new mining code and any other Laws and Regulations to the extent that they are applicable to the Infrastructure Activities.

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- (c) It is acknowledged and agreed by the Parties 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) The State guarantees Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors and those who are regularly employed by them that they will never and in no 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 Term of this Convention, shall not instigate or promulgate (other than as required by extreme emergency cases arising out of objective and obvious reasons relating to public order or national security in the case of Article 39(e)(iv) below) any measure that involves a restriction to the terms by which the Laws and Regulations accords to Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors any of the following freedoms:
 - (i) the free choice of manufacturers, sub-contractors, suppliers and services providers (subject to the provisions of Article 26);
 - (ii) the free access to raw materials;
 - (iii) the free import of goods, materials, equipment, machines, facilities, spare parts, inputs and services, directly or indirectly necessary to the Infrastructure Project; or
 - (iv) the free circulation throughout Guinea of staff and equipment and assets contemplated in the previous paragraph, as well as any service provided in connection with the Project Infrastructure.
- (f) The State undertakes to comply, and to procure that all State Authorities comply, with all of its obligations in each Contractual Document and this Convention, in particular as and when required to ensure that the Infrastructure Completion Date occurs by the ICD Target Date.
- (g) The State further represents and warrants that this Convention, the Basic Convention and any other Contractual Documents are in conformity with the Guinean Constitution and any international treaties in force on the Effective Date.

40 Guaranteed Maintenance of Foreign Currency Account and Transfer

- (a) For income deriving from the Rail and Port Services Agreement and for other holdings in foreign currency, Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors are each authorised to open offshore foreign currency accounts with foreign commercial banks of international standing. Each of Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors shall 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 each of Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors incurred in Guinea in Guinean Francs within the context of the

Infrastructure Project, it being specified that all financial transactions and movements relating to the activities of Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors shall be reflected in their accounts and records kept in Guinea.

- (b) A tripartite agreement between the Infrastructure Owner, the foreign bank and an intermediary main licensed Guinean bank, entered into no later than on the date of completion of Infrastructure BFS, duly endorsed by the Guinean financial authorities taking also into account the Guinean regulations, will provide for the terms and conditions for the repatriation of foreign currency necessary to pay the expenses incurred in Guinea. Within the context of this Convention, each of Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors undertake to use in priority the foreign currency accounts for the settlement of all their current expenditure in Guinea including in particular any Taxes payable.
- (c) Each of Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors are guaranteed the free transfer abroad of any dividend and return on capital invested and of any interest payment as well as the free transfer of any proceeds from liquidation or from the realisation of its assets.
- (d) Guarantees are hereby given to foreign staff resident in Guinea who are employed by each of Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors or any Guinean company participating in the Infrastructure 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 paid or otherwise owing to them, so long as their Taxes have been settled in accordance with the provisions of this Convention.

41 Administrative and Land Guarantees

- (a) In addition to the other provisions of this Convention, in particular Articles 10 and 11, the State guarantees each of Infrastructure Owner, Infrastructure Operator and any of their respective Affiliates incorporated in Guinea, in accordance with the PIN Decree and this Convention all rights of way and easements on the Project Lands which are necessary for the transport and freightage infrastructure required by the Infrastructure Project (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 Rail 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 shall not give rise to a requirement for Infrastructure Owner, Infrastructure Operator or any of their respective Affiliates incorporated in Guinea to make any payment of Tax other than those specified in this Convention.
- (c) At the request of Infrastructure Owner and / or Infrastructure Operator, the State shall undertake the resettlement and/or compensation (subject to payment in a timely manner by Infrastructure Owner as required by this Article 41(c)) of any Project Affected Person whose presence and/or right on the said lands would impede the Infrastructure Activities. Such resettlement shall take place in compliance with the standards set out in the PARC Framework. Infrastructure Owner shall be required to pay, in accordance with the PARC Framework and under the conditions specified in Appendix 5, a just indemnity to the said Project Affected Persons, including for any prevention of possession or any loss that the

Infrastructure Activities may occasion to the holders of land titles, certificates of occupation or customary rights.

- (d) The State represents and warrants that all Authorisations granted for the carrying out of the Infrastructure Activities as at the Effective Date, including, for the avoidance of doubt, those referred to in Article 11, have been granted in strict compliance with the Legislation in Force, and that any additional Authorisations and renewals of Authorisations (on terms at least as favourable) which may be required after the Effective Date will also be granted in strict compliance with the Legislation in Force.

42 Guarantees of Protection of Property, Rights, Title and Interests

- (a) Subject to the provisions of this Convention, Infrastructure Owner, Infrastructure Operator and their respective Project Contractors, Affiliates and shareholders (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 infrastructure 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 42(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 42 is Infrastructure Owner, Infrastructure Operator or a Project Contractor, Infrastructure Owner or Infrastructure Owner HoldCo can elect at its discretion to demand compensation equal to the fair market value of the entire Project Infrastructure Assets, irrespective of whether the expropriation or nationalisation relates to all or part of the property rights, titles and interests of Infrastructure Owner, Infrastructure Operator or a Project Contractor. In the event that Infrastructure Owner or Infrastructure Owner HoldCo so elects to receive such compensation, then following payment of this compensation, this Convention shall be deemed to be terminated and all the Shares or, at the option of the State, all of the remaining Project Infrastructure Assets transferred to the State in accordance with 47.3(a). If Infrastructure Owner or Infrastructure Owner HoldCo does

not elect to demand compensation for the entire Project Infrastructure Assets, it shall be entitled to compensation for the interests concerned, and this Convention will continue.

The State and Infrastructure Owner 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 to its property, rights, titles and interests.

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 Infrastructure Owner in relation to Material Government Breaches as provided in this Convention the provisions of Article 45 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.

- (d) If there is an unforeseen modification of the essential economics underpinning the feasibility and viability of the Infrastructure Project prevalent at the time of completion of the Infrastructure BFS that makes the long term continuation of the Infrastructure Project impossible for Infrastructure Owner and / or Infrastructure Operator (with reasonably satisfactory rates of return, account being taken of the risk inherent in any project of this magnitude) and that is not a result of a breach of this Convention by the Infrastructure Owner or the Infrastructure Operator 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 the Infrastructure Owner and/or Infrastructure Operator (as appropriate) and the State, and the State shall take any appropriate measures agreed with Infrastructure Owner and/or Infrastructure Operator (as appropriate).

- (e) **(Financing of the Infrastructure Project)** The State acknowledges and agrees that Infrastructure Owner 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 Senior Financing Parties or their Affiliates. Where Infrastructure Owner undertakes the Financing Activities, the State shall do, or cause to be done, everything that is within its control, which may reasonably be required to assist Infrastructure Owner to complete the Financing Activities as soon as practicable with respect to Senior Financing Parties, including assisting Infrastructure Owner 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 to the extent it becomes the holder of any Shares.

- (f) **(Security)** Further to the provisions of Article 42(e), the State acknowledges and agrees that all Project Infrastructure Assets (including all Land Rights attached to the Project Infrastructure) and all Shares and any other rights as applicable can, and if required by the Senior Financing Parties, will, be provided as Security as required for the financing of the Infrastructure Project or as required to secure the rights of step-in as set out in Articles 8.1(d), 8.1(e), 8.1(f), 47.4 and 47.5, 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 Project Infrastructure Assets to any third party following such enforcement.

Notwithstanding the generality of the above, the State agrees and undertakes, in relation to the matters the subject of this Article 42(f), to facilitate and grant (at the cost of the Infrastructure Owner) any Authorisation or provide for the completion of any perfection requirements as prescribed by the OHADA Uniform Act on Securities or any other applicable Legislation in Force.

- (g) It is agreed by the Parties that Infrastructure Owner and Foundation Customer may each assign, including by way of Security, its rights under this Convention to the Senior 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.

43 Guarantees for the Protection of the Environment and the Cultural Heritage

43.1 General Introduction

- (a) Infrastructure Owner and Infrastructure Operator undertake to conduct their different activities while respecting the environment, health, safety and well being of their employees and of the community.
- (b) Infrastructure Owner and Infrastructure Operator shall comply with the environmental Laws and Regulations and the Project Standards and Protocols and shall similarly abide by Prudent Infrastructure Practices on the subject of the environment, in particular with regard to the limitation of negative impacts. In this regard, they shall incorporate appropriate measures into the planning and administration of their activities, including measures that will enable to be preserved the natural features of the Corridor and of the Project Lands including the rehabilitation of lands affected by the use of such lands on a temporary basis to the extent impacted by Infrastructure Activities.
- (c) During the operations and maintenance phase, Infrastructure Operator 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.

43.2 Environmental impact assessment: surveys and authorisations

- (a) The SEIA includes environmental impact surveys for the natural and human habitat and the environment in general. In updating the SEIA in accordance with Article 6(b), Infrastructure Owner shall:
 - (i) ensure that the surveys will form the basis of reports to include recommendations with respect to the measures required to diminish the negative impact of the Infrastructure Activities on the environment affected, including a programme for the rehabilitation of the Corridor and Project Lands to be used for Infrastructure Activities on a temporary basis or compensatory measures in lieu of rehabilitation and an environmental monitoring plan; and
 - (ii) complete all management plans which are required, consistent with the Project Standards, to manage the impacts identified in the SEIA (and which are collectively referred to as the "**SEIA Management Plans**").
- (b) After Infrastructure Owner has submitted the SEIA Management Plans, the State shall issue all related necessary Authorisations within a period of two (2) months, if the conclusions and proposals in the SEIA are in conformity with the Project Standards.

43.3 Specific environmental undertakings

- (a) Infrastructure Owner and Infrastructure Operator undertake, insofar as their respective Infrastructure Activities are concerned, in particular:
 - (i) to manage and preserve the environment and the Project Infrastructure within the Corridor and the Project Lands for the Term in accordance with the SEIA Management Plans;
 - (ii) to repair any damage caused to the environment and to the Project Infrastructure in accordance with the SEIA Management Plans; and
 - (iii) to comply in all respects with the Protocols and Project Standards and Laws and Regulations regarding hazardous waste, natural resources and environmental protection.
- (b) Infrastructure Owner shall be responsible for the rehabilitation of areas within the Corridor and the Project Lands prior to the Transfer Date. The rehabilitation shall be carried in accordance with applicable Laws and Regulations based on ongoing use of the Corridor and the Project Lands for the Project Infrastructure. The State shall be responsible for the rehabilitation of areas within the Corridor and the Project Lands from the Transfer Date.

43.4 Cultural Heritage

- (a) In the event of the discovery of an archaeological site within the Corridor and the Project Lands, the Infrastructure Activities shall be suspended at Infrastructure Owner's expense and with the agreement of the State, so that suitable surveys may be conducted by qualified agencies approved by the State and the discovery is managed in accordance with the SEIA Management Plans.
- (b) In the event of discovery of items of national cultural heritage, moveable or immovable, in the course of the Infrastructure Activities, Infrastructure Owner undertakes not to move the objects in question, and to give Notice to the State without delay. The Infrastructure Owner undertakes to share in the reasonable costs of the salvaging of these items in accordance with the SEIA Management Plans.

Section 10.: Sundry Provisions

44 Insurance

- (a) **(Assumption of liability)** Each of Infrastructure Owner and Infrastructure Operator shall assume the direct consequences of the civil liability that it may incur by reason of any loss or damage, of any kind whatsoever, caused to its staff or to a third party in the course of conducting the Infrastructure Activities for which it is responsible, or caused by its staff or the equipment or goods that it owns or that are placed under its custody.
- (b) **(General obligation with respect to insurance)** Each of Infrastructure Owner (until the Infrastructure Completion Date) and Infrastructure Operator on behalf of itself and Infrastructure Owner (as from the Infrastructure Completion Date) shall subscribe for, and ensure that all of their Project Contractors also subscribe for, the insurance policies contemplated by this Article 44 from international insurance companies that have a minimum security rating obtained from AM Best's (or equivalent agency) of "A-" (unless otherwise agreed with the State and Foundation Customer). For the avoidance of doubt, each of Infrastructure Owner and Infrastructure Operator shall be exempt from any Laws and Regulations or other requirement to place any insurance with insurance companies locally approved in Guinea, provided the selected international insurers meet the ratings requirements set out in this Article 44(b). The Parties agree, however, that subject to 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, the Infrastructure Owner will give preference to subscription of insurance cover with Guinean insurance companies, so long as the policies underwritten are reinsured with insurers meeting the requirement of this Article 44 and there is no additional cost to the Infrastructure Owner or Infrastructure Operator, as the case may be.
- (c) Further to Article 44(b), the insurance policies which shall be obtained by Infrastructure Owner or Infrastructure Operator (as the case may be) shall include policies of insurance as are commonly maintained for projects similar to the Infrastructure Project and any other insurance required by Laws and Regulations in relation to risks or occurrences arising, or which may arise, out of the performance of this Convention and the RPSA. The policies shall be obtained as from the Infrastructure Effective Date and maintained during the Term and include, without limitation, the following.
- (i) General and Product Liability Insurance;
 - (ii) Workers' Compensation / Employers' Liability Insurance;
 - (iii) Motor vehicle / Automobile Third Party Liability Insurance;
 - (iv) Construction Risks Insurance;
 - (v) Marine Insurance;
 - (vi) Professional Indemnity Insurance for the planning, design, construction, commissioning and expansion related Infrastructure Activities; and
 - (vii) Property Damage & Business Interruption Insurance for the modification, maintenance, expansion and operation related Infrastructure Activities.

Each of the above policies shall be on terms and conditions as specified in the Rail and Port Services Agreement and the Infrastructure Operating Agreement.

- (d) **(Insurance Terms)**
- (i) All insurances must be on terms and conditions consistent with prudent risk management practice. Following the Transfer Date, Infrastructure Owner insurances must continue to be maintained by the owner of the Project Infrastructure in full compliance with the requirements of this Article 44.
 - (ii) In the event that Infrastructure Owner or Infrastructure Operator (as the case may be) fails to effect or keep in force any of the insurances required pursuant to this Article 44, the State or Foundation Customer may, subject to the provisions set out in Article 44(d)(iii), treat the failure to insure as a breach of this Convention.
 - (iii) The Parties acknowledge and agree that the obligations of Infrastructure Owner or Infrastructure Operator (as the case may be) with respect to the insurances are subject to customary market availability provisions whereby Infrastructure Owner or Infrastructure Operator (as the case may be) will not be in breach of any obligation to obtain or maintain the insurance where such insurance (including the limits, deductibles or any other terms thereunder) is not available to them or with respect to the Infrastructure Project on reasonable commercial terms (including cost).
 - (iv) To the extent practicable, the interest of the State and of the Foundation Customer in relation to the Project Infrastructure shall be noted on the relevant insurance policies.
- (e) **(Notification under Infrastructure Owner's policy)** If Infrastructure Owner or Infrastructure Operator (as the case may be) becomes aware of an event which may give rise to a claim under any policy of insurance effected by them pursuant to this Article 44, then Infrastructure Owner or Infrastructure Operator (as the case may be) must Notify the State and Foundation Customer and must ensure that the State and Foundation Customer are kept fully informed of subsequent action or developments concerning the claim.
- (f) **(Survival of Article)** This Article 44 shall survive the expiry or earlier termination of the Convention.

45 Indemnity

45.1 General Provisions

- (a) In the event of breach of this Convention, the Party in breach shall compensate each other Party for the loss incurred by that Party with such compensation covering the full amount of the damage.
- (b) 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.

45.2 Calculation of Compensation Payments

- (a) The amount of any compensation calculated pursuant to Article 45.1 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 of such damage occurring. In the event that the Parties concerned cannot agree on the amount of compensation, the provisions of Article 48 shall apply.

- (b) 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.

45.3 Currency of Compensation Payments

Unless there is a prior agreement to the contrary between the Party in breach and the Parties to be compensated, any compensation shall be paid in Dollars only.

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 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 42, "**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 46(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 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 this Convention 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 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.

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- (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 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 original Infrastructure Project to be adapted to the changed circumstances, adopting in particular any measure that would enable Infrastructure Owner, Infrastructure Operator, Foundation Customer and their respective Affiliates, the State and Project Contractors to return to the economic equilibrium and enabling them to proceed with the Infrastructure 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 48 shall apply as a whole.
- (h) In the event that the 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 47.1(d).

47 Early Termination

47.1 Cases of Early Termination

The early termination of this Convention may only take place in cases set out in Article 47.1(a) to 47.1(f).

- (a) **(Mutual Agreement)** By any Party if Foundation Customer, Infrastructure Owner and the State mutually agree to terminate it.
- (b) **(Material Infrastructure Owner Breach)** By the State, in the case of Material Infrastructure Owner Breach upon Notice by the State to the other Parties that this Convention is terminated.
- (c) **(Material Government Breach)** By the Infrastructure Owner (or Infrastructure Owner HoldCo), in the case of Material Government Breach upon Notice by Infrastructure Owner (or Infrastructure Owner HoldCo) to the other Parties that this Convention is terminated.
- (d) **(Extended Force Majeure Event)** If an Extended Force Majeure Event has occurred then this Convention may be terminated by Infrastructure Owner upon Notice by Infrastructure Owner to the other Parties that this Convention is terminated.
- (e) **(Unlawful Expropriation)** By the Infrastructure Owner (or Infrastructure Owner HoldCo), in the case of Unlawful Expropriation, upon Notice by the Infrastructure Owner (or Infrastructure Owner HoldCo) to the other Parties that this Convention is terminated.
- (f) **(Expropriation or Nationalisation)** Following payment in full of compensation by, and transfer of all Shares or remaining Project Infrastructure Assets (as the case may be) to the State as a consequence of any nationalisation or expropriation which occurs, in each case as provided in Article 42(b), this Convention shall be deemed to be terminated.

In all cases of early termination other than pursuant to Article 47.1(d) (Extended Force Majeure Event), Foundation Customer shall have the option, to be exercised in writing no later than 30 Days after the date of Notice of termination being received by it pursuant to Article 47.1(b) or 47.1(e) or after termination has occurred pursuant to Articles 47.1(a) or 47.1(f), to require that the State (including any nominated State Authority or any new owner to whom the State sells or otherwise transfers the Shares or the Project Infrastructure Assets following transfer of the Shares or Project Infrastructure Assets to the State pursuant to Article 47.3) on and from the date of transfer continue to provide (or procures from the new infrastructure operator the continued provision) to it the Haulage Services pursuant to the Rail and Port Services Agreement and to the terms and conditions of this Convention. In the event that this option is exercised by Foundation Customer, then the Rail and Port Services Agreement shall be binding on the State upon transfer of the Shares or Project Infrastructure Assets pursuant to Article 47.3 or 42(b), and the State shall provide all necessary assistance, including any Authorisations which may be required in order for this to occur and thereafter undertakes to ensure that all obligations of Infrastructure Owner under the Rail and Port Services Agreement are performed in full until such time as it expires in accordance with its terms.

In the cases of Articles 47.1(b) (Material Infrastructure Owner Breach) and 47.1(c) (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 the Notice has not been remedied to the reasonable satisfaction of such non-defaulting Party. However, in the event that the State were to have the right to terminate within the context of Article 47.1(b) (Material Infrastructure Owner Breach), it may decide not to declare the termination but the simple suspension of certain benefits granted to Infrastructure Owner under this Convention, in particular regarding fiscal and customs matters that are appropriate and reasonable to compensate the State for such breach.

In the case of default by Infrastructure Operator, the provisions of Article 47.5 shall apply.

47.2 Consequences

- (a) In the event of the early termination of this Convention under Article 47.1, the provisions of this Article 47.2 shall apply, it being understood and agreed by the Parties that in all cases, subject to and in accordance with the provisions of Article 47.3, all Shares or, at the option of the State, all of the Project Infrastructure Assets will be transferred to the State.
- (b) **(Mutual Agreement)** If this Convention is terminated under Article 47.1(a) (Mutual Agreement), then Infrastructure Owner will be entitled to compensation as agreed between the State and the Infrastructure Owner.
- (c) **(Material Infrastructure Owner Breach)** If this Convention is terminated under Article 47.1(b) (Material Infrastructure Owner Breach), then the compensation payable by the State to Infrastructure Owner shall be the greater of:
 - (i) all liabilities of Infrastructure Owner under all Financing Documents concluded with Senior Financing Parties which shall be reimbursed in order for Infrastructure Owner to obtain full discharge of liabilities from the Senior Financing Parties; and
 - (ii) an amount which is equal to 50% of the Agreed IS Capital Budget as at the date of Notice of termination, divided by 360 and multiplied by the number of months remaining from the date of Notice of termination until the end of the Investment Repayment Period.

The State shall be entitled to compensation payable by the Infrastructure Owner in an amount equal to the definite actual direct damages or loss sustained by the State as a direct result of Material Infrastructure Owner Breach.

- (d) **(Material Government Breach)** If this Convention is terminated under Articles 47.1(c) (Material Government Breach), then Infrastructure Owner shall be entitled to compensation equal to the fair market value of the Project Infrastructure Assets immediately prior to the Material Government Breach occurring (and assuming it does not occur) and which shall be the amount at which the Project Infrastructure 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 47.2(d) by an independent expert experienced in the valuation of infrastructure 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 which in all cases shall be no less than:
- (i) all liabilities of Infrastructure Owner under all Financing Documents concluded with Senior Financing Parties which shall be reimbursed in order for Infrastructure Owner to obtain full discharge of liabilities from the Senior Financing Parties; and
 - (ii) the total amount of equity contributed by Infrastructure Owner HoldCo to Infrastructure Owner as at the date of Notice of termination divided by 360 and multiplied by the number of months remaining from the date of Notice of termination until the end of the Investment Repayment Period.
- (e) **(Extended Force Majeure Event)** If this Convention is terminated under Article 47.1(d) (Extended Force Majeure Event) on the basis of Other FME, then Infrastructure Owner shall be entitled to compensation equal to:
- (i) the greater of:
 - (A) all liabilities of Infrastructure Owner under all Financing Documents concluded with Senior Financing Parties which shall be reimbursed in order for Infrastructure Owner to obtain full discharge of liabilities from the Senior Financing Parties; and
 - (B) an amount which is equal to 50% of the Agreed IS Capital Budget as at the date of Notice of termination, divided by 360 and multiplied by the number of months remaining from the date of Notice of termination until the end of the Investment Repayment Period; less
 - (ii) the total amount of any expenses incurred by the State in repairing any damage directly caused to the Project Infrastructure by the Force Majeure Event (full documentary evidence of such expenses to be provided upon request by Infrastructure Owner), and which amount cannot be greater than the amount referred to in Article 47.2(e)(i) above.
- It being agreed and understood by the Parties that in the event of termination on the basis of Natural FME, neither the State nor the Infrastructure Owner nor any other Party shall be entitled to compensation but the Infrastructure Owner shall instead rely on the proceeds of insurance received in respect of such event to compensate it for any loss it may suffer or incur.
- (f) **(Unlawful Expropriation)** If this Convention is terminated under Article 47.1(e) (Unlawful Expropriation) Infrastructure Owner, its Affiliates and Shareholders shall be entitled to compensation no less than an amount equal to the fair market value of the entire Project

Infrastructure Assets calculated in the manner provided in Article 42(b), without prejudice to their rights under this Convention and the rules of international law.

- (g) **(Foundation Customer right to repayment of expansion loan or prepayment)** In the event that Foundation Customer has, pursuant to the Foundation Customer Expansion Funding Principles elected to fund an expansion, by way of Pre-transfer Foundation Customer Expansion Loan or Post-transfer Foundation Customer Expansion Loan as agreed by the State in the circumstances contemplated in the Expansion Funding Principles and such expansion loan has, at the time of termination, not been repaid in full, then the amount of such expansion loan which is then outstanding shall be paid in full by the State upon early termination of this Convention except where Foundation Customer has elected, pursuant to Article 47.1, to require that the State (or any new owner to which the Shares or Project Infrastructure Assets may be transferred) continue to provide to it the Haulage Services pursuant to the Rail and Port Services Agreement and the terms and conditions of this Convention in which case Article 54.2 shall apply. In the event that the Foundation Customer has funded an expansion by way of Pre-Transfer Foundation Customer Prepayment or Post-Transfer Foundation Customer Prepayment and has not received the full benefit of such prepayment as at the time of termination, then the State will refund to the Foundation Customer the total amount of credit remaining in respect of such prepayment, unless the Foundation Customer has made a positive election pursuant to Article 47.1 in which case the State will itself (or will procure that any new owner to which the Shares or Project Infrastructure Assets may be transferred) continue to provide to the Foundation Customer the Haulage Services pursuant to the Rail and Port Services Agreement and the terms and conditions of this Convention.
- (h) **(Producer right to repayment of expansion loan or prepayment)** In the event that a Producer has, pursuant to the Producer Expansion Funding Principles, elected to fund an expansion, by way of Pre-transfer Producer Expansion Loan or Post-transfer Producer Expansion Loan as agreed by the State in the circumstances contemplated in the Expansion Funding Principles, and such expansion loan has, at the time of termination, not been repaid in full, then the amount of such expansion loan which is then outstanding shall be paid in full by the State upon early termination of this Convention except where the State has undertaken that the State (or any new owner to which the Shares or Project Infrastructure Assets may be transferred) will continue to provide to it the services being provided to it by Infrastructure Operator as at the date of termination in accordance with the Producer Rail Haulage Agreement and / or Port Shared Services Agreement previously entered into by that Producer. In the event that the Producer has funded an expansion by way of a Pre-Transfer Producer Prepayment or a Post-Transfer Producer Prepayment and has not received the full benefit of such prepayment as at the time of termination, then the State will either refund to the Producer the total amount of credit remaining in respect of such prepayment or will itself (or shall procure that any new owner to which the Shares or Project Infrastructure Assets may be transferred) will continue to provide to the Producer the services being provided to it by Infrastructure Operator as at the date of termination in accordance with the Producer Rail Haulage Agreement and / or Port Shared Services Agreement previously entered into by that Producer.
- (i) Should the Parties disagree on the calculation of the compensation specified in Articles 47.2(b) to 47.2(h) (inclusive), then the provisions of Article 48 will apply.
- (j) All payments required to be made by the State to Infrastructure Owner, its Affiliates and Shareholders pursuant to this Article 47.2 shall, to the maximum extent possible, be set-off against other payments required to be made by the Infrastructure Owner to the State

pursuant to this Article 47.2 and, with respect to the balance remaining after such set-off, shall be payable as follows:

- (i) all payments made by the State to Infrastructure Owner pursuant to this Article 47.2 and any compensation that is paid pursuant to Article 42 shall be denominated in Dollars and paid to an offshore account nominated by Infrastructure Owner, its Affiliates or Shareholders (as the case may be) free of all Taxes and other taxes, duties and withholdings imposed in Guinea; and
- (ii) all payments made by Infrastructure Owner to the State pursuant to this Article 47.2 shall be paid by Infrastructure Owner 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 Infrastructure Owner, its Affiliates and Shareholders, and the State, as the case may be, of such payments in full (and, in the case of payments made to Infrastructure Owner, upon transfer of those payments to Infrastructure Owner HoldCo prior to any transfer of Shares which may be required), the Parties shall jointly and severally waive any other rights or remedies which they may have against each other under this Article 47 and the Shares or, at the option of the State, all of the Project Infrastructure Assets shall be transferred by the Infrastructure Owner HoldCo or Infrastructure Owner (as applicable) 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 the Infrastructure Owner, its Affiliates and Shareholders pursuant to Article 47.2 on its behalf.

47.3 Transfer of Shares or Project Infrastructure Assets upon Early Termination

- (a) The completion of the transfer of the Shares or, at the option of the State, all of the Project Infrastructure Assets to the State and the payment of all compensation pursuant to this Article 47 shall, in each case, take place at a location and date agreed by the State and Infrastructure Owner (and failing agreement at the registered office of the Infrastructure Owner) which shall, other than in the case of termination pursuant to Article 47.1(b) (on the basis of Material Infrastructure Owner Breach) or 47.1(d) (on the basis of Other FME), be no later than 90 Days from the date of Notice of termination being given pursuant to Article 47.1, 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 47.1(b) (on the basis of Material Infrastructure Owner Breach) or (d) (on the basis of Other FME), the payment of all compensation pursuant to this Article 47.2 and the completion of the transfer of the Shares or, at the option of the State, all of the Project Infrastructure Assets to the State shall take place at a location and date agreed by the State and Infrastructure Owner (and failing agreement at the registered office of the Infrastructure Owner) which shall be no later than 360 Days from the date of Notice of termination being given pursuant to Article 47.1 following which any compensation which has not been paid shall become a debt due and immediately payable unless it is agreed by the Infrastructure Owner and the State that the Notice of termination is withdrawn.
- (b) All amounts payable under this Article 47 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.
- (c) It shall be a condition of any termination which occurs pursuant to Article 42(b) taking effect, that payment in full occurs to the Infrastructure Owner, or at the option of the Infrastructure Owner HoldCo, to Infrastructure Owner HoldCo, of all amounts required to be paid pursuant to Article 42(b) and satisfaction of all applicable requirements with respect to the Rail and Port Services Agreement pursuant to Article 54. Only upon

satisfaction of each of these conditions will the Infrastructure Owner HoldCo or Infrastructure Owner (as applicable) be obliged to transfer all of the Shares or, at the option of the State, all of the Project Infrastructure Assets to the State (including all rights and liabilities attaching to such Shares and/or Project Infrastructure Assets as appropriate) following which, this Convention shall terminate with immediate effect subject to the provisions of Article 58. It is specifically agreed that for the purposes of this Article 47.3(c) and Article 42(b) that to the extent that any Project Infrastructure 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.

(d) As from the date on which Notice of termination is given pursuant to Articles 47.1(b) (on the basis of Material Infrastructure Owner Breach) or 47.1(d) (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 47, or expiry of the period for payment as referred to in Article 47.3(a), whichever happens earlier, the Infrastructure Owner shall:

- (i) if requested to do so by Notice from the State, be obliged to take such steps as are necessary to keep the Project Infrastructure on a care and maintain basis; and
- (ii) if requested to do so by Notice from the State, have the right, but not the obligation (subject to its obligations under the Rail and Port Services Agreement), to continue to operate the Project Infrastructure for its own commercial benefit;

subject in all cases to the requirements that:

- (iii) any reasonable costs incurred by Infrastructure Owner in performing the obligations referred to in Article 47.3(d)(i) shall be added to the amounts required to be paid to it by the State pursuant to this Article 47.2 and paid in the same manner;
 - (iv) in the case of Notice of termination being given on the basis of Other FME pursuant to Article 47.1(d), Infrastructure Owner shall not be required to perform the obligations referred to in Article 47.3(d)(i) if, in view of the Other FME which has occurred, it would in the opinion of Infrastructure Owner, 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 the Infrastructure Owner pursuant to this Article 47, prior to the expiry of the period referred to in Article 47.3(a), then it shall give Notice of its intention to do so, no less than 30 Days' before, to Infrastructure Owner in order that Infrastructure Owner 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 47.3(d)(i) or 47.3(d)(ii).
- (e) Any termination of this Convention which may occur pursuant to Article 2 shall not be subject to, nor trigger the application of, this Article 47.

47.4 Foundation Customer and Financing Parties' Step In Rights

- (a) The State shall not, in the circumstances to which Article 47.1(b) (Material Infrastructure Owner Breach) applies, give Notice of termination of this Convention without first giving a Notice of its intention to terminate as required by Article 47.1 to Infrastructure Owner, and copied to each other Non State Party and the Senior Financing Parties, requiring the default to be remedied.

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- (b) Unless otherwise agreed in the Financing Documents with Senior Financing Parties, at any time within 90 Days after the copy Notice being provided to Foundation Customer pursuant to Article 47.4(a), Foundation Customer shall have the right, 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 the defaulting Infrastructure Owner under this Convention, 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 45.
- (c) In the event that Foundation Customer exercises its rights pursuant to Article 47.4(b) and permanently assumes, or has arranged for a substitute company or companies to permanently assume, all of the interests, rights and obligations of the defaulting Infrastructure Owner under this Convention, the Parties acknowledge and agree that Foundation Customer or such substitute company or companies (as the case may be) (subject to the approval of the State, to not be unreasonably withheld) shall become Infrastructure Owner for the purposes of this Convention for such part of the Investment Repayment Period then remaining and shall pay compensation to Infrastructure Owner in a sum calculated in accordance with the principles set out in Article 47.2(c). This compensation may, at the option of the Foundation Customer, be paid in monthly instalments equal to the Availability Charge which would have been payable by the Foundation Customer to the Infrastructure Owner had such exercise of rights pursuant to Article 47.4(b) not occurred, until such time as an amount equal to the sum calculated in accordance with the principles set out in Article 47.2(c) has been paid in full.
- (d) If the default remains unremedied for 90 Days after the date of the copy Notice being given pursuant to Article 47.4(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 the defaulting Infrastructure Owner under this Convention, Infrastructure Operator Agreement and the Rail and Port Services Agreement,
- at any time within 90 Days after the rights under this Article 47.4(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 Foundation Customer or substitute company or companies nominated by it, or the Financing Parties or their nominees, as the case may be, remedies or procures the remedy of, the default by the Infrastructure Owner 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 the defaulting Infrastructure Owner under this Convention, Infrastructure Operator Agreement and the Rail and Port Services Agreement pursuant to this Article 47.4, 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, without prejudice to the State's rights under Article 45.

47.5 Infrastructure Operator Breach

- (a) In the case of serious breach by Infrastructure Operator of its obligations under this Convention which is not caused by a Force Majeure Event or Material Government Breach, the State may give a Notice of default to Infrastructure Operator, and copied to each other Non State Party and the Senior Financing Parties, requiring the default to be remedied.
- (b) At any time within 90 Days of the copy Notice being provided to Foundation Customer pursuant to Article 47.5(a), Foundation Customer shall have the right, 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 (subject to the approval of the State, to not be unreasonably withheld) to assume, all of the interests, rights and obligations of the defaulting Infrastructure Operator under this Convention, Infrastructure Operator Agreement and the Rail and Port Services Agreement,

including as may be more specifically provided in the Rail and Port Services Agreement.
- (c) In the event that Foundation Customer or substitute company or companies nominated by it remedies, or procures the remedy of, the default by the Infrastructure Operator which was the subject of the Notice of default issued by the State pursuant to Article 47.5(a) then that Notice shall be deemed to have been withdrawn.
- (d) In the event that Foundation Customer exercises its rights pursuant to Article 47.5(b) and permanently assumes or has arranged for a substitute company or companies to assume, all of the interests, rights and obligations of the defaulting Infrastructure Operator under this Convention, the Parties acknowledge and agree that Foundation Customer or such substitute company or companies as the case may be shall become Infrastructure Operator for the purposes of this Convention for such part of the Investment Repayment Period then remaining and the Notice of default issued by the State pursuant to Article 47.5(a) shall be deemed to have been withdrawn.
- (e) If the default remains unremedied for 90 Days following the date of the Notice of the default being given pursuant to Article 47.5(a), then Infrastructure Owner may, but is not obliged to, within 90 Days of such Notice having been given, step in and permanently assume, or in accordance with Article 54.3 appoint a replacement Infrastructure Operator (subject to the approval of the State, to not be unreasonably withheld) to permanently assume, all rights and obligations of Infrastructure Operator under the Rail and Port Services Agreement.
- (f) If Infrastructure Owner fails to exercise this right within the time period specified in Article 47.5(e), and the breach remains unremedied, then the State shall have the right to replace Infrastructure Operator with an operator of reputable international standing for the operation of like infrastructure which has a demonstrated ability to comply with Prudent Infrastructure Practices and the financial and technical means to do so as operator of the Project Infrastructure for an interim period of no more than 180 Days following which a permanent replacement Infrastructure Operator shall be appointed, following its selection in accordance with Article 54.4, and which shall, without prejudice to the State's rights under Article 45, in each case be subject to the prior written approval of the Financing Parties pursuant to the terms and conditions of a direct agreement to be entered into by the Parties and the Financing Parties.

48 Settlement of Disputes

48.1 Prior Negotiation

Without prejudice to Article 48.2, the Parties agree to attempt to settle any dispute arising out of, relating to or in connection with this Convention 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.

48.2 Conciliation by the Independent Regulator

Any dispute that is required by this Convention 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 this Convention that:
- (i) is not required by this Convention to become the subject of administered expertise proceedings or conciliation by the Independent Regulator; or
 - (ii) is required by this Convention 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; or
 - (B) is not able to become or remain the subject of conciliation by the Independent Regulator as contemplated by Article 25.3(d); or
 - (iii) is required by this Convention 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 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 this Convention 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) 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.

48.4 Participation of Producers

The Parties agree that any Producer that has signed the undertaking referred to in Article 18.2(a) and set out in Appendix 16 (the "**Interested Producers**"), shall be considered a "Party" or a "party" for the purposes of the dispute resolution provisions set out in this Convention (including Appendix 15) including any administered expertise, conciliation, mediation, or arbitration. The Parties agree that any dispute arising out of, relating to or in connection with the Appendix 16 Agreement shall constitute a dispute relating to this Convention in accordance with the meaning of the dispute resolution provisions in this Convention.

48.5 Applicable Law

The law applicable to this Convention 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.

Section 11.: Final Provisions

49 Authorisation of Investment and of Transfer

- (a) Ratification of this Convention amounts to the authorisation for direct foreign investment in Guinea.
- (b) All transfers of funds to foreign destinations are hereby authorised to be carried out within the context of the Infrastructure Project by Infrastructure Owner, Infrastructure Operator and their respective Affiliates and Project Contractors, both with regard to current operations and relating to capital transactions that might be otherwise restricted by Laws and Regulations relating to exchange control.

50 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) In the event of any conflict between this Convention and any other Contractual Documents (other than the Basic Convention) relating to the Project, the terms of this Convention will prevail.

51 Good Faith Behaviour

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

52 Amendments

- (a) Any provision that is not provided for in this Convention may be proposed by any of the Parties and shall be examined carefully. All Parties shall endeavour to reach a mutually acceptable solution with a view to inserting the new provisions in an amendment signed by the Parties and which shall 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 Parliament is not sitting, such amendment shall be validly ratified by the relevant Guinean Authorities pursuant to the Guinean Constitution.
- (b) Further to the above provisions of this Article 52, 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 Parliament 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 2 of this Convention and Article 19.5 of the Basic Convention.

53 Assignment, Successors and Beneficiaries

- (a) This Convention binds the Parties, their successors and respective beneficiaries.
- (b) Any shareholder in Infrastructure Owner or Infrastructure Owner HoldCo may at any time assign (or procure the assignment) of part or all of its shares in Infrastructure Owner or Infrastructure Owner HoldCo (or any direct or indirect interest in those shares) to any person as permitted by and in accordance with the applicable Shareholders Agreement (if any) and Articles of Association or by way of Security to those Financing Parties jointly

providing finance directly to Infrastructure Owner, without the need for any approval Authorisation and free of any Taxes (payable by any Party or the transferring shareholder or new transferee shareholder) other than the approval of Foundation Customer (such approval not to be unreasonably withheld provided the transferee is demonstrated to have the necessary technical and financial resources at a level which is at least equivalent to that of the transferring shareholder and a demonstrated commitment to perform any of the obligations of the transferring shareholder under this Convention and the RPSA).

54 Ownership of Project Infrastructure Assets and Infrastructure Operator Change

54.1 Transfer of the Project Infrastructure upon expiry of Investment Repayment Period

- (a) On the last Day of the Investment Repayment Period:
- (i) Infrastructure Owner HoldCo or Infrastructure Owner (as applicable) shall transfer all Shares or, at the option of the State, all of the Project Infrastructure Assets to the State or entity owned by the State (as directed by the State) free of charge;
 - (ii) each Pre-Transfer Foundation Customer Expansion Loan and Pre-Transfer Producer Expansion Loan (as defined in the Expansion Funding Principles) shall, to the extent it has not been repaid in full as at the date of transfer pursuant to Article 54.1(a)(i) and provided the State had given its prior agreement to the loan continuing beyond the Transfer Date pursuant to the Pricing Principles, be transferred to the State, with the result that the State will be bound by the terms and conditions of its repayment as provided for in this Convention;
 - (iii) to the extent that the State opts to have all Project Infrastructure Assets transferred to it or an entity owned by it pursuant to Article 54.1(a)(i), such transfer shall only occur on condition that the State or such entity, as the case may be, executes an assignment and assumption agreement substantially in the form attached to this Convention and the Rail and Port Services Agreement (as applicable), pursuant to which all rights and obligations of Infrastructure Owner under this Convention, the Pricing Principles Agreement and the Rail and Port Services Agreement are assigned to and assumed by that entity, and that entity replaces the Infrastructure Owner as a party to those agreements as the "Infrastructure Owner";
 - (iv) Infrastructure Owner (or the State or any entity to which the Project Infrastructure Assets are transferred pursuant to Article 54.1(a)(i)) will accede to the Basic Convention for the purposes of having the rights and obligations set out in the Infrastructure Provisions by executing an Accession Agreement substantially in the form attached as Appendix 11 to the Basic Convention.

Each of the above steps shall occur with simultaneous effect.

- (b) Infrastructure Owner and Infrastructure Owner HoldCo will do any act required to be done by Laws and Regulations in order to render the transfers provided for in Article 54.1(a) legally valid and binding, including obtaining all necessary Authorisations and taking all steps to transfer the Shares or the Project Infrastructure Assets (as applicable), and shall execute any document and take such other actions as may be necessary in order to effect a prompt and valid transfer.
- (c) On and from the Transfer Date, the State shall ensure Infrastructure Owner (including for the avoidance of doubt the State or any entity to which the Project Infrastructure Assets are transferred pursuant to Article 54.1(a)(i)) complies with its obligations under this

Convention, the Basic Convention, the Rail and Port Services Agreement, the Pricing Principles 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).

- (d) 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 the Basic Convention, the Infrastructure Operating 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), the Infrastructure Owner, the Infrastructure Operator and the Foundation Customer and the other parties shall continue to be bound by this Convention, the Pricing Principles Agreement and the Rail and Port Services Agreement following the transfer of the Shares or Project Infrastructure Assets in any of the circumstances contemplated in Article 54.2(b) below.

- (b) If there is a transfer of the Project Infrastructure Assets:

- (i) where the State requires the transfer of the Project Infrastructure Assets to it or an entity owned by the State pursuant to Article 54.1(a)(i);
- (ii) pursuant to Article 47.2(a), where the Foundation Customer exercises the option provided in Article 47.1;
- (iii) as a result of the exercise of any Security as provided in Article 42(f); or
- (iv) with the consent of the State, the Foundation Customer and Infrastructure Owner,

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 and the Rail and Port Services Agreement (as applicable), pursuant to which all rights and obligations of Infrastructure Owner under this Convention, 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 this Convention (except in the case of Article 54.2(b)(ii)), 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.

54.3 Early termination of the Infrastructure Operating Agreement

In the event of breach by Infrastructure Operator which remains unremedied pursuant to Article 47.5(e), Infrastructure Owner shall, for the remainder of the Investment Repayment Period, be free to terminate the Infrastructure Operating Agreement and, subject to the prior written approval of the Senior Financing Parties, appoint one or more replacement entities to perform the Infrastructure Activities subject to the following requirements:

- (a) such replacement entity or entities are of reputable international standing for the operation of like infrastructure with a demonstrated ability to comply with Prudent Infrastructure Practices and the financial and technical means to do so as operator of the Project Infrastructure;
- (b) the replacement entity or entities 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 this Convention, the Basic 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;

- (c) the terms and conditions relating to the conduct of the Infrastructure Activities, including the requirements to comply with the Protocols and Project Standards, must not be any less stringent than those provided for in the Infrastructure Operating Agreement and the Rail and Port Services Agreement; and
- (d) the Infrastructure Operator shall provide to the replacement entity or entities all manuals, diagrams, drawings, documentation, tools and equipment (including keys) which it has in its possession or control that relate to Project Infrastructure.

54.4 Appointment of a new Infrastructure Operator by the State

- (a) The State will be entitled to proceed to an international call for tenders for the conduct of the Infrastructure Activities with a view to appointing a party to conduct those activities in place of Infrastructure Operator with effect from the Transfer Date.
- (b) The State will conduct the invitation for tenders and the appointment of a tenderer, according to the following conditions:
 - (i) the State will only invite companies of reputable international standing for the operation of like infrastructure, such companies to include Foundation Customer or its nominee or nominees with the Rio Tinto Group, to submit a tender;
 - (ii) the conditions of tendering will be the same for each tenderer;
 - (iii) evaluation of tenders must be impartial and based on conditions of tendering and selection criteria defined in the tender documents;
 - (iv) the confidentiality of all information provided in the course of tendering must be preserved;
 - (v) the State must not award the tender to any tenderer that engages in any practice which gives one party an improper advantage over another, form of collusive practice, anti-competitive behaviour or bribery or the provision of hidden commissions;
 - (vi) the terms and conditions relating to the conduct of the Infrastructure Activities, including operating standards, must not be any less than those provided for in the Infrastructure Operating Agreement and the Rail and Port Services Agreement; and
 - (vii) if Foundation Customer or its nominee or nominees within the Rio Tinto Group is the most suitable tenderer, the State will appoint Foundation Customer or its nominee or nominees within the Rio Tinto Group to conduct the Infrastructure Activities.
- (c) If the State, acting in accordance with the conditions referred to in Article 54.4(b), does not appoint the previous Infrastructure Operator to conduct the Infrastructure Activities, then the person appointed and the Infrastructure Operator must execute an assignment and assumption agreement substantially in the form attached to the relevant agreements, pursuant to which all rights and obligations of Infrastructure Operator under this Convention, the Basic 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, and:

- (i) the party appointed to conduct the Infrastructure Activities will provide the Infrastructure Activities and will become the new Infrastructure Operator ("**New Infrastructure Operator**");
- (ii) the previous Infrastructure Operator will cease to provide the Infrastructure Activities; and
- (iii) the previous Infrastructure Operator shall provide to the New Infrastructure Operator all manuals, diagrams, drawings, documentation, tools and equipment (including keys) which it has in its possession or control that relate to Project Infrastructure.

54.5 Conditions applying to Infrastructure Operator and step in rights of Foundation Customer

- (a) Any appointment of a new Infrastructure Operator pursuant to Article 47.5, or at any subsequent time thereafter, shall be conditional on the person appointed and the Infrastructure Operator executing assignment and assumption agreements substantially in the form attached to each relevant agreement, pursuant to which all rights and obligations of Infrastructure Operator under this Convention, the Basic 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) In addition to its rights pursuant to Article 47.4 and Article 47.5, 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. The rights of Foundation Customer, as conferred by this Article 54.5(b) and the Rail and Port Services Agreement and Infrastructure Operating Agreement:
 - (i) may be exercised at any time during the 180 Day period after Notice of the relevant event is provided to Foundation Customer in accordance with the relevant provisions of the Infrastructure Operating Agreement and Rail and Port Services Agreement;
 - (ii) may be exercised in satisfaction of, and to the exclusion of, the right of Infrastructure Owner or Infrastructure Operator (as the case may be) to remedy the event in accordance with the relevant provisions of the Infrastructure Operating Agreement and Rail and Port Services Agreement; and
 - (iii) are subject to the step in rights of Infrastructure Owner and the State under this Convention as referred to in Article 47.4.
- (c) In the event that the above rights are exercised by Foundation Customer:
 - (i) with respect to Infrastructure Owner, then the provisions of Article 47.4 shall apply; and
 - (ii) with respect to Infrastructure Operator, then the provisions of Article 47.5 shall apply.

54.6 Handback

- (a) **(Handback Requirements)** The Infrastructure Owner and the Infrastructure Operator shall procure that, upon the Transfer Date, the Project Infrastructure shall comply with the Handback Requirements.
- (b) **(Initial Inspection prior to transfer to the State)**
- (i) Not less than fifty seven (57) months, nor more than sixty three (63) months, prior to the expiry of the Investment Repayment Period, the State shall have the right to procure an inspection (the "**Initial Inspection**") of the Project Infrastructure.
 - (ii) The Initial Inspection shall be carried out by an Handback Certifier, who shall inspect and assess the Project Infrastructure and provide a Renewal Works Report based upon that inspection and assessment to the State, the Infrastructure Owner, the Infrastructure Operator and the Foundation Customer within 28 Days of the Initial Inspection.
 - (iii) The cost of the Initial Inspection shall be borne by the Infrastructure Owner, and any such costs may be operating costs that may be charged to Foundation Customer, Producers and any third party user of Additional Capacity as part of the operating charges determined in accordance with the Pricing Principles.
 - (iv) The Infrastructure Owner or the Infrastructure Operator (as applicable) must carry out any Renewal Works outlined in the Renewal Works Report in accordance with:
 - (A) the Project Standards;
 - (B) the Protocols;
 - (C) Prudent Infrastructure Practices;
 - (D) the Infrastructure Construction Criteria, andin a manner so as to ensure that Foundation Customer's operations are not interrupted or adversely affected, and so that disruptions to the Passenger Service and General Cargo Services are minimised. Any costs of so doing will be operating costs that may be charged to Foundation Customer, Producers and any third party user of Additional Capacity as part of the operating charges determined in accordance with the Pricing Principles.
 - (v) Any dispute arising out of, relating to or in connection with the findings contained in the Renewal Works Report 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.
- (c) **(Second Inspection prior to transfer to the State)**
- (i) Not less than fifteen (15) months, nor more than eighteen (18) months, prior to the expiry of the Investment Repayment Period, the State shall have the right to procure an inspection (the "**Second Inspection**") of the Project Infrastructure.
 - (ii) The Second Inspection shall be carried out by an Handback Certifier, who shall inspect and assess the Project Infrastructure and provide a Renewal Works Report based upon that inspection and assessment to the State, the Infrastructure Owner, the Infrastructure Operator and the Foundation Customer within 28 Days of the Second Inspection.

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- (iii) The cost of the Second Inspection shall be borne by the Infrastructure Owner, and any such costs may be operating costs that may be charged to Foundation Customer, Producers and any third party user of Additional Capacity as part of the operating charges determined in accordance with the Pricing Principles.
 - (iv) The Infrastructure Owner or the Infrastructure Operator (as applicable) must carry out any Renewal Works outlined in the Renewal Works Report in accordance with:
 - (A) the Project Standards;
 - (B) the Protocols;
 - (C) Prudent Infrastructure Practices;
 - (D) the Infrastructure Construction Criteria, andin a manner so as to ensure that Foundation Customer's operations are not interrupted or adversely affected, and so that disruptions to the Passenger Service and General Cargo Services are minimised. Any costs of so doing will be operating costs that may be charged to Foundation Customer, Producers and any third party user of Additional Capacity as part of the operating charges determined in accordance with the Pricing Principles.
 - (v) Any dispute arising out of, relating to or in connection with the findings contained in the Renewal Works Report 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.
- (d) **(Handback Inspection after transfer to the State)**
- (i) Not later than sixty (60) Days after the Transfer Date, the Infrastructure Owner, the Infrastructure Operator, Foundation Customer, the State and the Handback Certifier shall conduct a joint inspection of the Project Infrastructure (the **"Handback Inspection"**).
 - (ii) Within 28 Days after completion of the Handback Inspection, the Handback Certifier shall either:
 - (A) issue to the Infrastructure Owner, the Infrastructure Operator and the Foundation Customer a Handback Certificate stating that the Project Infrastructure complies with the Handback Requirements; or
 - (B) issue to the Infrastructure Owner, the Infrastructure Operator and the Foundation Customer a Handback Report.
 - (iii) The Handback Certifier may only issue a Handback Report if the Project Infrastructure does not comply with the Handback Requirements as at the Transfer Date.
 - (iv) Any dispute about the Handback Report 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.
- (e) **(Failure to meet Handback Requirements)**
- (i) If, at the time of the Handback Inspection, the Project Infrastructure does not comply with the Handback Requirements and the Handback Certifier has issued

a Handback Report, then the Infrastructure Owner HoldCo shall pay to the State an amount equal to:

- (A) the estimated cost of completing the Renewal Works required to procure that the Project Infrastructure complies with the Handback Requirements specified in the Handback Report; or
- (B) the amount (if any) determined by the expert pursuant to Article 54.6(d)(iv).

Such payment shall be made not later than sixty (60) Days after the later of the issue of the Handback Report and any determination by the expert pursuant to Article 54.6(d)(iv).

- (ii) The payment referred to in Article 54.6(e)(i) must be paid into a bank account of the State with the bank approved in advance by the Foundation Customer (the **"Renewal Account"**). The Infrastructure Operator may operate the Renewal Account but may only apply money in the Renewal Account (including any interest earned on the Renewal Account) for the purposes of implementing the Renewal Works concerned. The Infrastructure Operator must establish and agree with the State and Foundation Customer procedures and delegations for the operation of the Renewal Account.
 - (iii) Any amount of money that is, or is required to be, paid into the Renewal Account for the purposes of making the payment referred to in Article 54.6(e)(i) will be paid by the Infrastructure Owner and will not be passed through to the Foundation Customer or any Producer through the Operating Charge or any other fee payable.
 - (iv) For the avoidance of doubt, once the Infrastructure Owner HoldCo pays the State an amount as agreed or determined pursuant to Article 54.6(e)(i), the State shall have no other remedy, action, claim or appeal as against the Infrastructure Owner HoldCo or Infrastructure Operator in relation to the failure to complete the Renewal Works or failure to procure that the Project Infrastructure complies with the Handback Requirements.
- (f) **(Dispute Resolution)**
- (i) Subject to Articles 54.6(b)(v), 54.6(c)(v) and 54.6(d)(iv), any dispute in relation to the matters listed in this Article 54.6 shall become the subject of conciliation proceedings facilitated by the Independent Regulator in accordance with Article 48.2.
 - (ii) For the avoidance of doubt, the Foundation Customer is able to initiate administered expertise proceedings pursuant to Articles 54.6(b)(v), 54.6(c)(v) and 54.6(d)(iv).

54.7 Handback Process

- (a) Not later than four (4) Years before the Transfer Date, the Infrastructure Owner and the Infrastructure Operator must submit to the State a plan for a handback process that will start at least three (3) Years prior to the Transfer Date (the **"Handback Process"**). The Handback Process will include:
 - (i) the opportunity for the State to start a selection process of an alternate infrastructure operator if so desired before the Transfer Date;
 - (ii) a skills transfer and senior executive / middle managers training course;

- (iii) the availability of spare parts and supplies guarantees in accordance with terms as agreed between the Infrastructure Owner, Infrastructure Operator and the State; and
 - (iv) the establishment of a link between the maintenance programme used during the Investment Repayment Period and the maintenance programme to be used following handback of the Project Infrastructure.
- (b) On the Transfer Date the Infrastructure Owner and the Infrastructure Operator shall provide to the State (or to the New Infrastructure Operator appointed pursuant to Article 54.4) in the case of Article 54.1(a)(iii) or the Infrastructure Owner shall provide to the Infrastructure Operator in the case of Article 54.1(a)(i) all manuals, diagrams, drawings, documentation, tools and equipment (including keys) which it has in its possession or control that relate to Project Infrastructure.

55 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.

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 of the Agreement and Measuring System

- (a) This Convention is written in 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, Infrastructure Owner 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.

58 Continuation

When the general context so requires, the rights and obligations of Infrastructure Owner, Infrastructure Operator, Foundation Customer and their respective Affiliates, of Infrastructure Owner HoldCo, of RTME and of the State shall survive beyond the Term of this Convention. This particularly will apply to this Article 58 and the Definitions and Articles 45, 46, 48, 49, 50, 53, 55,

56, 57, 59, as well as rights in relation to the multi user regime and Rail and Port Services Agreement as set out in Articles 14 to 20, 25, 47, 54 and Appendix 15.

59 Notifications

59.1 Form of Notification

Any Notice under or in connection with this Convention shall 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 the Foundation Customer: 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;
- (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;
- (d) For Infrastructure Owner: [#], marked for the attention of [#], fax [#];
- (e) For Infrastructure Operator: [#] marked for the attention of [#], fax [#]
- (f) For Infrastructure Owner HoldCo: [#], marked for the attention of [#], fax [#]; and
- (g) For any Interested Producer, to the address provided by said Interested Producer in the Appendix 16 Agreement referred to in Article 18.2(a).

59.2 Constructive Delivery

A Notice is deemed to have taken place:

- (a) on the Day of its delivery to its addressee either by hand, with the acknowledgement of receipt or by special courier; or
- (b) 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.

59.3 Other means of Notification

In the event of failure of the means of transmission contemplated herein, the Parties shall 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.

59.4 Change of Address

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

59.5 Documents

Any documents addressed to any Party shall be sent to the address specified in this Convention.

60 Capacity of RTME

Without diminishing the rights of Foundation Customer (and, to the extent it is an Affiliate of Foundation Customer, Infrastructure Operator) to enforce the provisions of this Convention, the Parties agree that RTME will be additionally entitled to enforce this Convention (including pursuant to Article 48) for and on behalf of Foundation Customer (and, to the extent it is an

Affiliate of Foundation Customer, Infrastructure Operator) in order to protect the interests of Foundation Customer (and, to the extent Infrastructure Operator is an Affiliate of Foundation Customer, Infrastructure Operator) and/or on behalf of Foundation Customer's direct or indirect shareholders (and, to the extent Infrastructure Operator is an Affiliate of Foundation Customer, the Infrastructure Operator's direct or indirect shareholders) in particular, but not only, where any shares in Foundation Customer (or, to the extent it is an Affiliate of Foundation Customer, in Infrastructure Operator) are expropriated (the State hereby agreeing that it will not expropriate any of the shares in Foundation Customer (or, to the extent it is an Affiliate of Foundation Customer, in Infrastructure Operator), nor take any action that has like effect to expropriation of shares in Foundation Customer (or, to the extent it is an Affiliate of Foundation Customer, in Infrastructure Operator)).

61 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 Parties undertake to make every effort so that the Effective Date of this Convention shall occur with the least delay.

Simandou BOT Convention

Executed in Conakry

On 26 May 2014

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**

Warrick Reginald John Ranson

Appendix 1

Accession Agreement

..... 20

**ACCESSION AGREEMENT
TO THE BOT CONVENTION AND PRICING PRINCIPLES AGREEMENT**

**THE REPUBLIC OF GUINEA
SIMFER S.A.
RIO TINTO MINING AND EXPLORATION LIMITED
INFRASTRUCTURE OWNER HOLDCO
INFRASTRUCTURE OWNER
INFRASTRUCTURE OPERATOR**

BETWEEN

THE REPUBLIC OF GUINEA, represented by:

- His Excellency Monsieur Kerfalla Yansane, acting in his capacity as Minister of State, Minister of Mines and Geology; and
- His Excellency Monsieur Mohamed Dairé, 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, the "**Foundation Customer**")

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 BOT Convention (hereafter, the "**Infrastructure Owner HoldCo**")

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 BOT Convention and the Pricing Principles Agreement (hereafter, the "**Infrastructure Owner**")

of the fifth 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 BOT Convention and the Pricing Principles Agreement (hereafter, the "**Infrastructure Operator**")

of the sixth part

1 Recitals

- (a) The State and the Foundation Customer are currently parties to the BOT Convention, which defines the framework and conditions for the development of the Project Infrastructure, and to the Pricing Principles Agreement, which is referred to in and given effect by the BOT Convention.
- (b) Pursuant to Article 2.6 of the BOT Convention, the Foundation Customer has selected the Infrastructure Consortium to develop the Project Infrastructure and such selection has been duly approved by the State.
- (c) In accordance with Article 19.3(a) of the Basic Convention and Article 2.9(a) of the BOT Convention, the Infrastructure Consortium has established the Infrastructure Owner HoldCo, which has established the Infrastructure Owner.
- (d) Articles 2.9(b) and 2.9(c) of the BOT Convention respectively provide that the Infrastructure Owner HoldCo and the Infrastructure Owner, and the Infrastructure Operator, shall accede to the BOT Convention by execution of an accession agreement substantially in the form of this Accession Agreement by the Infrastructure Effective Date.
- (e) Article 14.8(a) of the BOT Convention provides that the Infrastructure Owner and the Infrastructure Operator will become parties to the Pricing Principles Agreement at the time that each accedes to the BOT Convention.
- (f) All the Parties agreed to enter into this Agreement.

Agreed as follows

2 Definitions and Interpretation

2.1 Definitions

"Accession Effective Date" means the date on which each of the requirements set out in Article 2.9 of the BOT Convention have been satisfied in respect of the accession to the BOT Convention by the Infrastructure Owner HoldCo, Infrastructure Owner and Infrastructure Operator, and, in relation to the Pricing Principles Agreement, the accession by the Infrastructure Owner and Infrastructure Operator.

"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 Operator" means that party which is identified pursuant to Article 2.7(a) of the BOT Convention.

"Infrastructure Owner" means the entity that is to accede to the BOT Convention as the Infrastructure Owner pursuant to Article 2.9(b) of the BOT Convention.

"Infrastructure Owner HoldCo" means the entity that is to accede to the BOT Convention as the Infrastructure Owner HoldCo pursuant to Article 2.9(b) of the BOT Convention.

"Party" means a party to this Agreement and Parties means all of the parties to this Agreement and any permitted successors or assignees.

“**Pricing Principles Agreement**” means the agreement referred to in Article 14.8 of the BOT Convention, as may be amended in accordance with Article 14.8(b).

2.2 Terms defined in the BOT Convention

Words that are defined in the BOT Convention and not in clause 2.1 of this Agreement, and that are used in this Agreement have the same meaning in this Agreement as in the BOT Convention, unless the context requires otherwise.

2.3 Interpretation

The 'Interpretation' provision of the BOT Convention forms part of this Agreement as if set out in full in this Agreement, with necessary changes.

3 Assumption of liability

3.1 Infrastructure Owner HoldCo

With effect on and from the Accession Effective Date, the Infrastructure Owner HoldCo shall:

- (a) become a party to the BOT Convention;
- (b) enjoy all the rights and benefits of the Infrastructure Owner HoldCo under the BOT Convention; and
- (c) assume the obligations and liabilities of the Infrastructure Owner HoldCo under the BOT Convention.

3.2 Infrastructure Owner

With effect on and from the Accession Effective Date, the Infrastructure Owner shall:

- (a) become a party to the BOT Convention and the Pricing Principles Agreement;
- (b) enjoy all the rights and benefits of the Infrastructure Owner under the BOT Convention and the Pricing Principles Agreement; and
- (c) assume the obligations and liabilities of the Infrastructure Owner under the BOT Convention and the Pricing Principles Agreement.

3.3 Infrastructure Operator

With effect on and from the Accession Effective Date, the Infrastructure Operator shall:

- (a) become a party to the BOT Convention and the Pricing Principles Agreement;
- (b) enjoy all the rights and benefits of the Infrastructure Operator under the BOT Convention and the Pricing Principles Agreement; and
- (c) assume the obligations and liabilities of the Infrastructure Operator under the BOT Convention and the Pricing Principles Agreement.

4 Consent of the State, SIMFER S.A. and RTME

With effect on and from the Accession Effective Date, each of the State, SIMFER S.A. and RTME:

- (a) consents to each of the Infrastructure Owner HoldCo, the Infrastructure Owner and the Infrastructure Operator becoming a party to the BOT Convention, and to the Pricing Principles Agreement (where applicable), on and from the Accession Effective Date and assuming each of their respective obligations under the BOT Convention, and the Pricing Principles Agreement (where applicable);

8 Applicable law

The law applicable to this Agreement 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.

This Agreement has been executed on [#].

For THE REPUBLIC OF GUINEA

Name: _____
Title: _____
Signature: _____

For SIMFER S.A.

Name: _____
Title: _____
Signature: _____

For INFRASTRUCTURE OWNER HOLDCO

Name: _____
Title: _____
Signature: _____

For INFRASTRUCTURE OWNER

Name: _____
Title: _____
Signature: _____

For RTME

Name: _____
Title: _____
Signature: _____

For INFRASTRUCTURE OPERATOR

Name: _____
Title: _____
Signature: _____

Appendix 2

Assignment and Assumption Agreement

..... 20

**ASSIGNMENT AND ASSUMPTION AGREEMENT
TO THE BOT CONVENTION AND PRICING PRINCIPLES AGREEMENT**

**THE REPUBLIC OF GUINEA
SIMFER S.A.
RIO TINTO MINING AND EXPLORATION LIMITED
INFRASTRUCTURE OWNER HOLDCO
INFRASTRUCTURE OWNER
INFRASTRUCTURE OPERATOR
AND
NEW INFRASTRUCTURE [OPERATOR OR OWNER]**

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, the "**Foundation Customer**")

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 (hereafter, the "**Infrastructure Owner HoldCo**")

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 (hereafter, the "**Infrastructure Owner**")

of the fifth 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 (hereafter, the "**Infrastructure Operator**")

of the sixth 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 (hereafter, the "**New Infrastructure [Operator or Owner]**")

of the seventh part

1 Recitals

- (a) The State, the 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 of the Project Infrastructure and to the Pricing Principles Agreement, which is referred to in and given effect by the BOT Convention.
- (b) [The Infrastructure Owner has agreed to assign, and the New Infrastructure Owner has agreed to assume, the Infrastructure Owner's rights and obligations under the BOT Convention and the Pricing Principles Agreement].
- or**
- [The Infrastructure Operator has agreed to assign, and the New Infrastructure Operator has agreed to assume, the Infrastructure Operator's rights and obligations under the BOT Convention and the Pricing Principles Agreement.]
- (c) All the Parties agreed to enter into this Agreement.

Agreed as follows

2 Definitions and Interpretation

2.1 Definitions

"Agreement" means this Assignment and Assumption Agreement.

"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].

"Continuing Parties" means those parties to the BOT Convention and the Pricing Principles Agreement who will remain parties to the BOT Convention and the Pricing Principles Agreement after the Execution Date.

"Execution Date" means the date on which this Agreement is executed by all the Parties.

"Party" means a party to this Agreement and **Parties** means all of the parties to this Agreement and any permitted successors or assignees.

"Pricing Principles Agreement" means the agreement referred to in Article 14.8 of the BOT Convention, as may be amended in accordance with Article 14.8(b).

2.2 Terms defined in the BOT Convention

Words that are defined in the BOT Convention and not in clause 2.1 of this Agreement, and that are used in this Agreement have the same meaning in this Agreement as in the BOT Convention, unless the context requires otherwise.

2.3 Interpretation

The 'Interpretation' provision of the BOT Convention forms part of this Agreement as if set out in full in this Agreement, with necessary changes.

3 Assignment of the New Infrastructure [Owner or Operator] to the BOT Convention and the Pricing Principles Agreement

3.1 Assignment and Consent

The Infrastructure [Owner or Operator] assigns all of its rights and obligations under the BOT Convention and the Pricing Principles Agreement to the New Infrastructure [Owner or Operator] on the Execution Date.

All the Continuing Parties consent to the Infrastructure [Owner or Operator] assigning all its rights and obligations under the BOT Convention and the Pricing Principles Agreement to the New Infrastructure [Owner or Operator] on the Execution Date.

3.2 New Infrastructure [Owner or Operator]

Pursuant to this Agreement and with effect on and from the Execution Date, the New Infrastructure [Owner or Operator] shall:

- (a) become a party to the BOT Convention and the Pricing Principles Agreement;
- (b) enjoy all the rights and benefits of the Infrastructure [Owner or Operator] under the BOT Convention and the Pricing Principles Agreement; and
- (c) assume the obligations and liabilities of the Infrastructure [Owner or Operator] under the BOT Convention and the Pricing Principles Agreement.

It is further agreed that the New Infrastructure [Owner or Operator] will not be liable in relation to matters arising or accruing after the Execution Date but related to the period prior to the Execution Date and that with regards to such matters the Infrastructure [Owner or Operator] remains solely liable.

3.3 Indemnities

- (a) **(Indemnity by Infrastructure [Owner or Operator])** The Infrastructure [Owner or Operator] indemnifies the New Infrastructure [Owner or Operator] against any claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against the New Infrastructure [Owner or Operator], arising out of or in connection with any act or omission of the Infrastructure [Owner or Operator] with respect to the BOT Convention occurring prior to the Execution Date.
- (b) **(Indemnity by New Infrastructure [Owner or Operator])** The New Infrastructure [Owner or Operator] indemnifies the Infrastructure [Owner or Operator] against any claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against the Infrastructure [Owner or Operator], arising out of or in connection with any act or omission of the New Infrastructure [Owner or Operator] with respect to the BOT Convention occurring after to the Execution Date.

4 General undertaking

The New Infrastructure [Owner or Operator], hereby undertakes to each of the Continuing Parties to comply with this Agreement and with its respective rights and obligations under the BOT Convention and the Pricing Principles Agreement as from the Execution Date.

The Continuing Parties each hereby undertakes to the New Infrastructure [Owner or Operator] to comply with this Agreement and with its respective rights and obligations under the BOT Convention and the Pricing Principles Agreement as from the Execution Date.

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 BOT Convention and the Pricing Principles Agreement.

5 Address of the New Infrastructure [Owner or Operator]

For the purposes of Article 59 of the BOT Convention, the addresses of the New Infrastructure [Owner or Operator] to which all notices must be delivered or transmitted are as follows:

to the New Infrastructure [Owner or Operator]: Attention: [#]
Address: [#]
Fax No: [#]

6 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.

7 Applicable law

The law applicable to this Agreement 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.

This Agreement has been executed on [#].

For THE REPUBLIC OF GUINEA

Name: _____
Title: _____
Signature: _____

For SIMFER S.A.

Name: _____
Title: _____
Signature: _____

For INFRASTRUCTURE OWNER HOLDCO

Name: _____
Title: _____
Signature: _____

For INFRASTRUCTURE OWNER

Name: _____
Title: _____
Signature: _____

For RTME

Name: _____
Title: _____
Signature: _____

For INFRASTRUCTURE OPERATOR

Name: _____
Title: _____
Signature: _____

For NEW INFRASTRUCTURE [OWNER OR OPERATOR]

Name: _____
Title: _____
Signature: _____

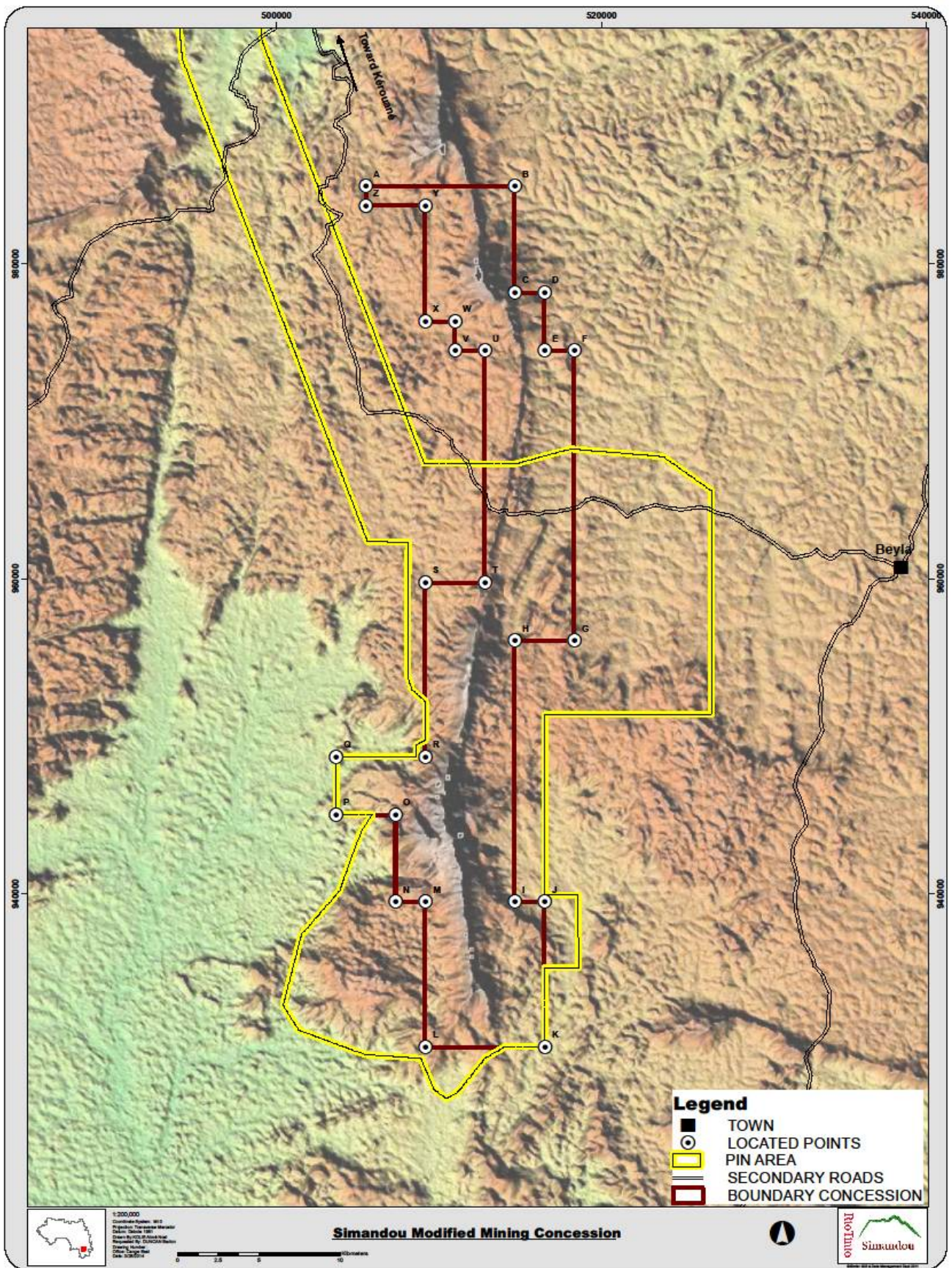
Appendix 3

Perimeter of the Modified Concession

The Perimeter of the Modified Concession is identified in the map set out in this Appendix 3 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"

Simandou BOT Convention



Appendix 4

PIN Decree

CINQUANTE QUATRIEME ANNEE REPUBLIQUE DE GUINEE SPECIAL OCTOBRE 2012
TRAVAIL JUSTICE 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 KALOUM
BP.: 268 CONAKRY - TEL: (224) 30 41 11 47 / 30 41 11 27
E-MAIL: sgg@guinee.gov.gn

Simandou BOT Convention

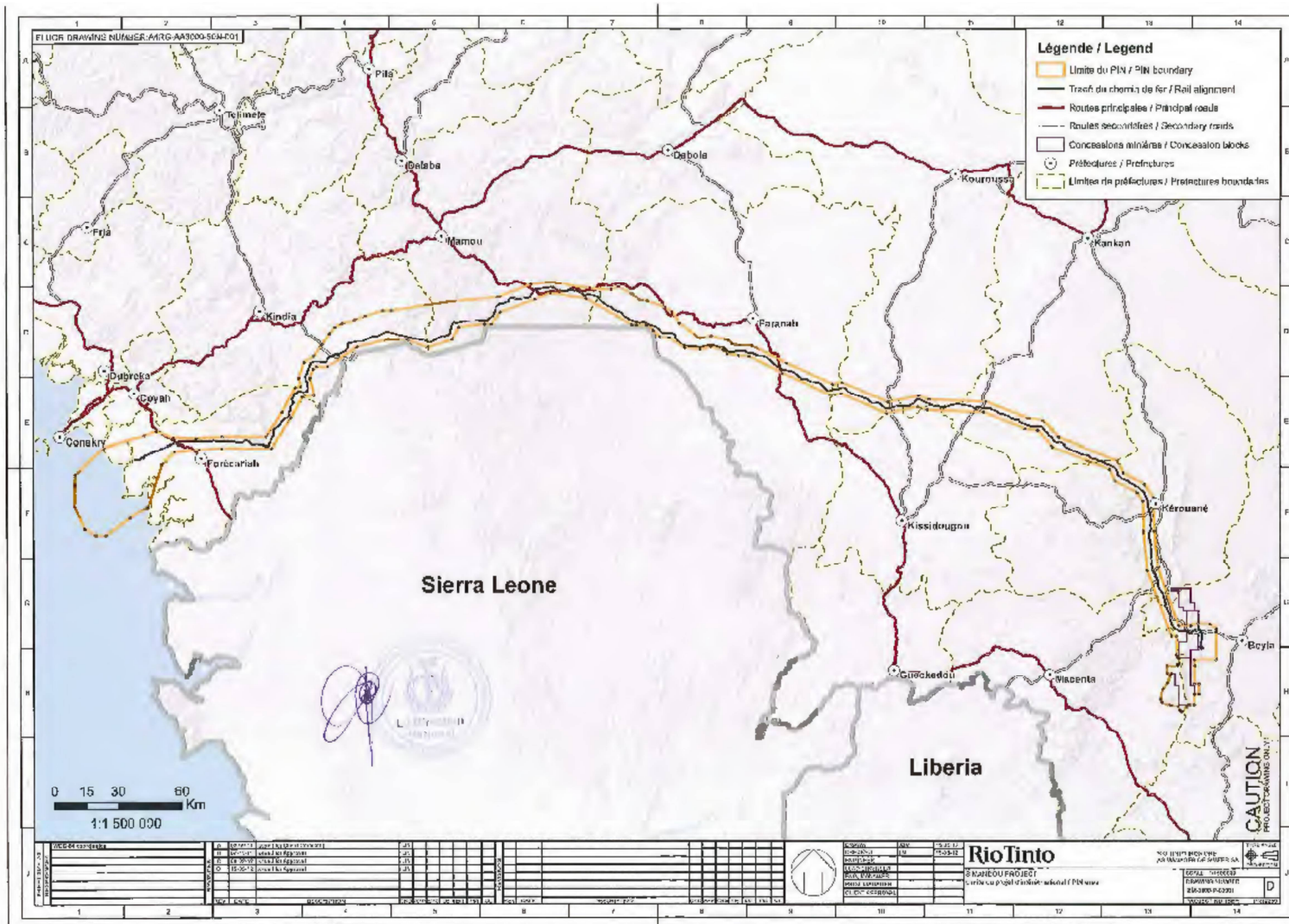
Geographic Coordinates System : GCS_WGS_1984
Original coordinates in Decimal Degrees transformed in Degrees Minutes Seconds

Point	Longitude	Latitude	Point	Longitude	Latitude
1	9° 1' 20,812" W	9° 5' 5,170" N	81	12° 26' 11,545" W	9° 54' 23,912" N
2	9° 0' 26,803" 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' 5,258" 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' 36,954" 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° 59' 14,987" W	8° 25' 34,193" N	104	13° 17' 23,206" W	9° 32' 36,883" N
25	8° 59' 46,418" W	8° 26' 25,809" 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° 48' 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' 35,002" 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' 53,376" 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' 36,665" 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' 39,887" 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' 28,868" N	132	11° 19' 25,127" W	10° 10' 13,038" N
53	10° 21' 57,633" W	9° 43' 30,156" N	133	11° 15' 48,653" 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' 22,488" 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' 23,046" 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' 20,888" 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' 3,820" 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' 35,880" N	154	9° 44' 43,653" W	9° 41' 32,690" 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° 38' 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° 26' 50,856" N
79	12° 13' 12,857" W	9° 50' 10,124" N	159	8° 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



Simandou BOT Convention



Appendix 5

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 the Infrastructure Owner or the Infrastructure Operator, as the context so requires, will notify 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 10.2; 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 5 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 5; 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 10.2 are fully effective.

2 Surveys

- (a) The surveys referred to under section 1(c)(i) of this Appendix 5 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 5;

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 5 is complete and, as appropriate, with the Land Conservation Department.

- (b) At the end of the land title surveys carried out under section 1(a)(ii) of this Appendix 5, 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 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 5. 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 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 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 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 Foundation Customer, the Infrastructure Owner or by the Infrastructure Operator.

- (c) The State shall grant to 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 Foundation Customer, the Infrastructure Owner or by the Infrastructure Operator.
- (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 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 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:

- 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
 - 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 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
 - (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 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 5 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 5.

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 5.

- (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 5; 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 5), 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 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 5); and
 - (ii) the rights of the State and the Land Rights granted pursuant to Article 10.2 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 5, 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 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 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 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 5 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) 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 Parties shall comply with the requirements of the PARC Framework for the performance of their activities governed by the PARC Framework and this Appendix 5, including but not limited to the performance of the surveys referred to in section 2 of this Appendix 5, 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, Foundation Customer, 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 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 from 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 the Foundation Customer, 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 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:

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- (a) Surveys referred to in section 2 of this Appendix 5:
 - (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 5 and sign, in the name and on behalf of the State, the survey forms alongside 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 5; and
 - (v) identify the Project Lands belonging to the State's domain under the conditions set forth in section 2(c) of this Appendix 5.
- (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 5;
 - (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 5, 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 5; 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 5.

8 Procedure applicable in the event of expropriation

The procedure described in this section 8 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 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 the Foundation Customer, Infrastructure Owner and/or the Infrastructure Operator, as the context so requires.

Appendix 6

Local Content Principles

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.

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.

Local Content and the Project

Local Content with respect to the Project could take the following forms:

- 1 local spend and employment in direct impact areas of the mine, rail and port systems;
- 2 training and mentoring of local labour to create skills transfer;
- 3 skills development and capacity building of local suppliers and communities;
- 4 improving the ease of access to finance for local suppliers;
- 5 development of new business reforms and initiatives for the Project that will also benefit others within the Guinea economy;
- 6 investments in physical and institutional infrastructure (eg training/maintenance facilities);
- 7 development of long term sustainable partnerships and joint ventures that ensure the Simandou Project's key requirements are met, and
- 8 intellectual property and technology transfer from international to local companies.

Key requirements of the Project

The consideration of Local Content will be subject to the achievement of the Project's following key requirements:

- 1 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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- 2 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.
- 3 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.
- 4 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.
- 5 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.

Local Content Policy acknowledgement

The Parties will develop and, not later than six months after the Effective Date, sign a Local Content Policy based upon the non-binding, aspirational principles contained in this Appendix 6. In developing the Local Content Policy, the Parties acknowledge (and will procure that all other Project Participants and other stakeholders acknowledge):

- 1 The need to accommodate the specific requirements of a developing supply community and economy in Guinea.
- 2 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.
- 3 Imposing specific targets for Local Content would adversely affect the Project's development and will not be considered as part of this policy.
- 4 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.
- 5 Final Local Content outcomes will be directly linked to State led and funded improvements in the enabling environment, in partnership with multilateral agencies.
- 6 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.
- 7 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.
- 8 To maintain project schedule and technological conformance the Simandou project will, from time to time, utilise sole sourcing for goods and services.
- 9 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.
- 10 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.

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- 11 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.
- 12 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).
- 13 The Project's Local Content Policy is expected to be reviewed and revised, where appropriate, as project and national circumstances evolve over time.

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.

Simandou Construction and Operations development phases

There are two distinct phases of development for the Project: (1) construction phase and; (2) operations phase. Each phase has different Local Content opportunities, challenges and constraints.

- 1 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.
- 2 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.

Expectations of Suppliers and Contractors

The Project participants affirm their commitment to the objectives and desired principles contained in this Appendix 6 and their ambition that:

- 1 the Project be developed in accordance with international best practice in commercial governance, ethical conduct in business, and transparency;
- 2 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 7

Rail Infrastructure Scope and Technical Requirements

This Appendix sets out the scope and technical requirements for the Rail Infrastructure, as shall be confirmed or amended and updated as required as part of the Consortium Selection Process, pursuant to which the Rail Infrastructure will be designed and constructed.

1 Scope of the Rail Infrastructure

The railway is to be a 1435 mm standard gauge, heavy haul mineral railway that can safely and efficiently:

- (a) transport iron ore or other product from each mine or site serviced by the Infrastructure Owner to applicable train unloading facilities at the Simandou Port;
- (b) transport equipment and supplies at the Simandou Port to each mine or site serviced by the Infrastructure Owner; and
- (c) operate the Passenger Service.

The Rail Infrastructure must be designed and constructed in a manner that:

- (d) meets recognised international design and safe working standards (eg, AREMA and European standards) for passenger and heavy rail systems and for crew and maintenance facilities;
- (e) ensures all designs are safe, robust, economical, durable, and reduce operational and maintenance costs to a practical minimum;
- (f) minimises the impact on the community, terrain, existing use of navigable waterways, environment and recognised sites of significant cultural importance;
- (g) is able to operate 24 hours a day, for a minimum of 355 Days per year (excluding a number of smaller possession periods for planned and unplanned maintenance); and
- (h) is be able to be maintained and expanded (to allow for the carrying of minerals from other producers and commercial quantities of general freight (as applicable) and for potential future dual tracking), without impacting the already installed capacity.

2 Track Design and Technical Requirements

The railway track, structures and associated equipment must be designed and constructed in a manner which reflects the following requirements:

- (a) have a minimum design life of 41 years;
- (b) be designed to have a 40 tonne axle load;
- (c) all structures must be able to withstand a 1 in 100 year average recurrence interval event;
- (d) include "grade separations" at all crossings of the national highway, "at grade crossings" for secondary road crossings and tracks, taking into consideration the design for vehicular, pedestrian and livestock movements on the maintenance and operations of the railway;
- (e) incorporate wayside asset protection at the required intervals to be able to detect dragging or derailed equipment, hot box / hot wheels and excessive stream flow;
- (f) the design and alignment must:

- (i) allow for a minimum speed of 25km/h, and a maximum speed of 80km/h for the loaded mineral trains and for the passenger/mixed freight services, and 100km/h for the empty mineral trains;
- (ii) result in permanent works that are safe, robust, economical, durable, and which reduce operational and maintenance costs to a practical minimum;
- (iii) utilise standard designs where possible to allow for commonality across the system; and
- (iv) balance cut and fill where possible and minimise mass haul requirements.

3 Tunnel Design and Technical Requirements

All tunnels must be designed and constructed in a manner which reflects the following requirements:

- (a) Tunnels must have a minimum design life of 75 years;
- (b) The design must:
 - (i) result in permanent works that are safe, robust, economical, durable, and which reduce operational and maintenance costs to a practical minimum;
 - (ii) accommodate freight consisting of iron ore from a mine to the Simandou Port and the transporting of equipment and supplies from the Simandou Port to the mine or other unloading facility;
 - (iii) incorporate tunnel cross sections that ensure no part of the permanent structure will encroach on clearance envelopes, and that meet the operational performance requirements of the consists;
 - (iv) allow for excavation rate, opening stability, ground settlement, and vibration concerns (with the optimum excavation sequence based on the results of numerical analyses).
- (c) The tunnel and cavern support system loads must consider relevant rock and ground conditions, with all support systems designed to address construction constraints, water ingress and long term stability of the tunnel structure as required to meet the minimum design life. To this end
 - (i) appropriate groundwater infiltration limits must be determined to ensure safety and operational effectiveness; and
 - (ii) the tunnels and caverns may be designed and constructed using a rock support system without a final lining; and
 - (iii) the tunnel design must stabilise all rock blocks that are unstable.

4 Rolling Stock Requirements

The rolling stock, including locomotives, wagons, fuel tankers, supplies wagons and any other wagons required for the provision of the Passenger Service, must reflect the following requirements:

- (a) All rolling stock must:
 - (i) match the track configuration and clearance envelope;
 - (ii) be selected to allow for operations that are safe, robust, economical, durable, and which reduce operational and maintenance costs to a practical minimum;
 - (iii) be compatible with in respect of:

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- (A) coupler height, type and rating;
 - (B) braking systems (including electronically controlled pneumatic, where appropriate);
 - (C) control systems; and
 - (D) provision of compatible automatic car identification tags on all vehicles (to support operational alarms and maintenance processes),
and in this way allow for any unplanned or emergency movements that may be required.
- (b) Locomotives must meet a minimum of the United States EPA Tier II air emissions standards and operate with 500 ppm sulphur fuel; with the same locomotives to be used for the provision of Haulage Services and the Passenger Service.
 - (c) Ore wagons must be compatible with the mine loading system and the port unloading system, and be designed to adequately address moisture issues in respect of the transport and shipping of iron ore.
 - (d) Supply wagons must be capable of transporting standard ISO 40' shipping containers, fuel and tyres to the mine or site.
 - (e) Ancillary rolling stock must include:
 - (i) sufficient track maintenance rolling stock to carry out all required track maintenance, including inspection, grinding, tamping and rail replacement;
 - (ii) an emergency response train, that is a self-contained and incorporates heavy equipment designed to deal with derailment or major track failure (including a Kirow crane capable of removing locomotives and wagons, even from within tunnels); and
 - (iii) ballast and rail trains for construction, operation and maintenance activities.

5 Signalling, Communications and Train Control Design and Technical Requirements

All signalling, communications and train control systems must be designed and installed in a manner which reflects the following requirements:

- (a) The signalling and communications systems must:
 - (i) allow for system-wide voice and data radio coverage (including in the tunnels) using a single system;
 - (ii) provide a fail-safe system with 99.99% availability;
 - (iii) provide in-cab signalling, minimise wayside equipment and be internationally recognised;
 - (iv) allow for the safe and efficient movement of trains, and protect the safety of on track maintenance crews and equipment, and meet SIL4 safety criteria where appropriate (equivalent to ETCS/ERTMS Level 2); and
 - (v) ensure that only a single train (or other track mounted equipment) may be within a block at any one time (unless specifically required for shunting or emergency situations).
- (b) The Fibre Optic Cable must connect all rail sites with a redundant backup system (such as digital microwave system for critical infrastructure services and circuits), and

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separately allocate dark for vital signalling communications, the mine and potential third party users.

- (c) Shared but separated equipment rooms, radio towers and off-grid power supply packages with project wide communications systems and services will be established.
- (d) An operational control centre, to be established at or in the vicinity of the Simandou Port, shall:
 - (i) manage scheduling and planning of operational movements of trains and vessels, coordination of planned maintenance (shipping channel to train load out) and failure/disaster management activities;
 - (ii) establish a system wide optimisation system (providing decision support to coordinate efficient movement of trains and vessels, proactive maintenance activities and crew planning and scheduling);
 - (iii) establish a train control system (which minimises variability within the system) to allow trains to present at the mine and port at a regular interval wherever possible;
 - (iv) incorporate a dedicated network management system for data radio system;
 - (v) incorporate a dedicated network management system for rail fibre transmission; and
 - (vi) provide the Simandou Mine with read access to vessel and train data with a defined process to ensure alignment and optimisation of operations and maintenance along the entire system.

6 Maintenance and operations requirements

Maintenance and operations systems will reflect the following requirements:

- (a) A rail head yard and primary maintenance facilities will be established at or in the vicinity of the Simandou Port, with smaller track maintenance depots near Faranah and the Simandou Mine.
- (b) Rolling stock maintenance facilities at the rail head yard will carry out all maintenance and servicing of the locomotives, wagons and track maintenance equipment are planned to be located in the rail head yard near the port (with sufficient spare locomotives and wagons to be available to allow planned maintenance to occur on the fleet without disrupting normal operations).
- (c) The track maintenance depot at the Rail Head Yard will incorporate a flash-butt welding facility for producing rail strings for both construction and maintenance (of up to 500m long) as well as wagons for hauling such rail strings.
- (d) Maintenance and renewal activities shall:
 - (i) be carried out on-track (without an access track next to the mainline) using mobile, on-track gangs;
 - (ii) not impact on the installed capacity wherever possible;
 - (iii) be aligned with significant maintenance activities at the Simandou mine and the Simandou Port, with major maintenance activities to be coordinated between the Simandou mine, the Rail Infrastructure and the Simandou Port so as to minimise the impact on the total system capacity;

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- (iv) utilise condition based maintenance and regular inspections to allow proactive maintenance prior to failures; with all other maintenance to be carried out on a scheduled basis to safely and efficiently minimise the risk of failures balanced against control of operational and sustaining capital budgets.
- (e) Specialist rail maintenance equipment (such as grinders, tampers and rail test cars) will move along the rail network performing maintenance in a planned manner to minimise the impact on throughput while still meeting the safe operation requirements for the railway.

Appendix 8

Simandou Port Scope and Technical Requirements

This Appendix sets out the scope and technical requirements for the Simandou Port, as shall be confirmed or amended and updated as required as part of the Consortium Selection Process, pursuant to which the Simandou Port will be designed and constructed.

1 Scope of the Simandou Port

- (a) The Simandou Port is to be a bulk commodities export port capable of handling vessels up to 250,000 DWT, that can safely and efficiently:
 - (i) receive iron ore delivered via the Rail Infrastructure and load that iron ore onto vessels for delivery to the export market;
 - (ii) receive equipment and supplies for delivery to (or return from) each mine or site serviced by the Infrastructure Owner; and
 - (iii) operate the General Cargo Service.
- (b) The Simandou Port must be designed and constructed in a manner that:
 - (i) meets recognised international design and safe working standards for an operating international export port;
 - (ii) enables the Shared Port Facilities, Simfer Port Facilities (including the MOF) and any Producer Port Facilities to be separately identifiable from one another, so as to allow the exercise of rights in relation to each of these components of the Simandou Port as contemplated by this Convention;
 - (iii) ensures all designs are safe, robust, economical, durable, and reduce operational and maintenance costs to a practical minimum;
 - (iv) minimises the impact on the community, environment and recognised sites of significant cultural importance;
 - (v) is able to operate 24 hours a day, for a minimum of 355 Days per year (excluding a number of smaller periods for planned and unplanned maintenance); and
 - (vi) is be able to be maintained and expanded without impacting the already installed capacity.

2 Dry-side scope and technical requirements

The dry-side of the Simandou Port is formed by components of the Shared Port Facilities, Simfer Port Facilities and Producer Port Facilities (if any) as appropriately apportioned, and must be designed and constructed in a manner which reflects the following requirements:

- (a) Dry-side facilities must be designed to meet the specifications of the iron ore received from the Simandou Mine at the rail unloading facilities so that such iron ore can be:
 - (i) unloaded with a car dumper (which will include metal detectors, moisture analysers and weightometers); and
 - (ii) transferred from the dumpers to the shiploaders, and to and from the stockyard stackers and reclaimers, by overland conveyors that will have:
 - (A) weightometers placed at appropriate locations along the conveying system to manage the flow of ore;

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- (B) a sample station placed before the conveyors onto the wharf that will have the ability to discharge non-conforming ore onto a return conveyor; and
 - (C) surge bins placed before the conveyors onto the wharf, but after the sample station, to smooth the flow of ore onto the ship.
- (b) Simfer Port Facilities shall include a stockyard with rail mounted balanced machines (stackers and reclaimers) that will provide a buffer between the rail and shiploader.
- (c) The analysis laboratory must be certified to the relevant international standards (eg, ISO 9001:2008, ISO 3082:2009) to test samples from the sample stations so as to allow vessels to safely sail without delay and to allow for correct invoicing of the customer.
- (d) Fuel storage facilities must be capable of storing a minimum of 4 weeks minimum operating volume and up to 4 weeks of operational fuel requirements for Simfer Project Infrastructure and Mining Infrastructure, and include a distribution system from the MOF in-load facility to the fuel tanks and then to the power station, rail locomotive refuelling bays, fuel train loading facility, truck loading facility and a light vehicle filling station.
- (e) The Simandou Port must include a power station capable of supplying electricity to the Simandou Port (including the camp and all administration buildings and warehousing) and the rail head yard and maintenance facilities (which form part of the Rail Infrastructure);
- (f) Support facilities shall include:
 - (i) customs facilities, bonded stores, explosive storage facilities, warehousing and laydown areas;
 - (ii) offices and administration buildings;
 - (iii) emergency response facilities;
 - (iv) workshops;
 - (v) sewerage and water treatment plants; and
 - (vi) a helipad to allow pilot transfers to vessels.

3 Marine-side scope and technical requirements

The marine-side of the Simandou Port is formed by components of the Shared Port Facilities, Simfer Port Facilities and Producer Port Facilities (if any) as appropriately apportioned, and must be designed and constructed in a manner which reflects the following requirements:

- (a) the export marine facilities within the Simfer Port Facilities will include a jetty and export wharf with three berths capable of handling vessels up to 250,000 DWT, along with ship loaders capable of loading 250,000 DWT within 24 hours under ideal conditions;
- (b) the design of marine-side facilities within the Simfer Port Facilities shall ensure that iron ore is loaded within transport moisture limit (TML) requirements to allow vessels to safely sail;
- (c) a tug harbour shall be established to support the operations and maintenance of the tugs and various other support craft, along with sufficient tugs to safely escort ore carriers (and other vessels) within the channel to and from the berths;
- (d) the shipping channel must be capable of accommodating 250,000 DWT vessels from deep water (>20 m depth) to the berth, and may be tidally assisted for the passage of laden ore carriers but otherwise capable of use by other vessels 24 hours per day;

- (e) turning basins and berthing pockets at both the export wharves and MOF shall meet the same requirements as the channel; and
- (f) there must be sufficient navigational aids (buoys and leading lights) so as to ensure the safe movement of all vessels.

4 Marine Off-loading facilities and general freight

The Simandou Port will include marine off-loading and general freight facilities, forming part of Simfer Port Facilities and Producer Port Facilities (if any) as applicable, as designed and constructed in a manner which reflects the following requirements:

- (a) Simfer Port Facilities will initially include a Pioneering Marine Offloading Facility which will become the permanent MOF for the exclusive use of Simfer and the provision of its General Cargo Services in accordance with Article 17, and which will comprise:
 - (i) a quay comprising two berths for heavy lift vessels (using ships cranes) and load-off/load on capability for up to 13,000 DWT vessels;
 - (ii) a fuel unloading berth with a pipeline directly to the fuel storage facility; and
 - (iii) customs facilities, bonded stores, explosive storage facilities, warehousing and secure laydown areas.
- (b) Producer Port Facilities will also include marine off-loading facilities as required to meet those Producer's requirements for off-load and general cargo requirements, as well as the necessary provision of General Cargo Services by those Producers.

5 Communications and Vessel Management

All communications and vessel management systems must be designed and installed in a manner which reflects the following requirements:

- (a) The Simandou Port digital voice mobile radio (DVMR) system and protocols (voice and data) will be common and integrate with the Rail and Mine DVMR system and protocols.
- (b) Nautical navigation and nautical radio communications (marine VHF) will meet the recognised international standards.
- (c) The control systems will be designed to provide safe and efficient control and monitoring of all the Simandou Port facilities;
- (d) A centralised supervisory control room (combined Simandou Port and rail) within the Operational Control Centre (OCC) located at the Simandou Port will manage scheduling and planning of operational movements of trains and vessels, coordination of planned maintenance (shipping channel to train load out) and failure/disaster management activities with a dedicated Network Management System for data radio system.
- (e) A system wide optimisation system should provide decision support to coordinate efficient movement of trains and vessels, proactive maintenance activities and crew planning and scheduling.
- (f) The vessel management system should link directly (read only) into Foundation Customer's and Producer's marine systems to minimise the number of human interactions.
- (g) The Simandou Mine shall have read access to vessel and train data with a defined process to ensure alignment and optimisation of operations and maintenance along the entire system.

6 Maintenance

Maintenance and operations systems at the Simandou Port will reflect the following requirements:

- (a) The basic designs prepared for marine structures must achieve a high level of reliability and provide for ease of maintenance. All facilities are to be built to achieve a low operating cost over the life of the facility.
- (b) Major maintenance activities should be coordinated between the Simandou Mine, rail and Simandou Port to minimise the impact on the total system capacity and, where practical, the plant at the Simandou Port will be designed for major maintenance on major equipment to be carried out on a rotatable spares basis.
- (c) Where possible, condition based maintenance and regular inspections should be used to allow proactive maintenance prior to failures. All other maintenance should be carried out on a scheduled basis to safely and efficiently minimise the risk of failures balanced against control of operational and sustaining capital budgets.
- (d) Ongoing maintenance dredging for the channel, turning basins and berthing pockets will be required, and such maintenance activities must not impact the movement of vessels within such areas to the extent possible.

Appendix 9

Tax Annex

La présente Annexe 9 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 9 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.

1.1.2 Principes Généraux

Le régime fiscal, douanier et comptable applicable aux

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 3rd February 2003 ratifying the Simandou Basic Convention signed on November 26th 2002), the Basic Convention and the BOT Convention.

1.1.2 General Principles

The applicable tax, customs and accounting regime for

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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..

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.

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 ».

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."

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 ».

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."

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

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

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.

1.1.3 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.

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

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

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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 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

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 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

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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) agent(s) public(s), y compris le cas échéant tout autre coût direct [traçable] supporté dans le cadre de la prestation de service; et
2. la redevance pour services rendus doit être payée par tous les usagers personnes physiques ou morales bénéficiant du même service ; et

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 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

3. 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

- **Concession Minière**

Octroi	15.000.000 FG
Renouvellement	20.000.000 FG
Transfert	20.000.000 FG

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

- **Mining concession**

Granting	15.000.000 FG
Renewal	20.000.000 FG
Assignment	20.000.000 FG

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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^{er} 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*

Octroi	200.000 FG
Renouvellement	200.000 FG
Prolongation	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^{er} février 2003 soit 1 \$US = 1976 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 1st, 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 / km² / 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*

Granting	200.000 FG
Renewal	200.000 FG
Extension	300.000 FG

These sums, which are operating expenses, are payable in US Dollars in accordance with the fixed exchange rate settled on February 1st, 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.

2.1.4.2 Taux des impôts et taxes sur les salaires

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.

2.1.4.2. Rate of employment taxes

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 Impôt sur les salaires :

Salariés nationaux :

2.1.4.3 Tax on salary income

National employees:

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L'impôt, calculé sur la base du revenu mensuel imposable est exigible selon le droit commun.	The tax, calculated on the basis of the monthly taxable salary income, shall be paid in accordance with common law.
Salariés Expatriés :	Expatriates Employees:
L'impôt, calculé sur la base du revenu mensuel imposable, est exigible au taux de 10%.	The tax, calculated based on the monthly taxable salary income, is payable at the rate of 10 %.
Les impôts et taxes sur les salaires sont payés par l'employeur conformément aux dispositions de droit commun.	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).

Dans le cas où l'employeur met à la disposition du salarié un logement sur le lieu de travail ou à proximité et

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 26th 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).

As a result, when the employer puts worksite living accommodations at the disposal of the employee in the

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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 privatif) du véhicule par le bénéficiaire de l'avantage, seule la quote-part de dépense correspondant à l'usage privatif doit être retenue pour l'assiette de l'impôt.
- 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

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.
- 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 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 maritime ou fluviale des bateaux de sport ou de plaisance et 8 % pour les autres risques
- Assurances sur la vie et rentes viagères : 5 %
- Autres assurances : 12 % pour les assurances contre les risques de toute nature non visés ci-dessus.

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 sport boats or yachts and 8 % for other risks
- Life insurance and life annuity: 5%
- 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 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

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

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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

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.

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

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

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.

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

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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

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 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.

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

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, 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.

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

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

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

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

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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..

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 indemnisations 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

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

2.2.1 General Principles

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)

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 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.

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)

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 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).

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"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)

Les coûts de développement engagés avant la Décision d'Investissement sont capitalisés et amortis à compter de la Date de Première Production Commerciale et enregistrées 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

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))

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

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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.

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

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

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,

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

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

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d'utilisation réelle inférieure à la période figurant au tableau, cette durée réelle sera utilisée pour déterminer la période d'amortissement.

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.

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 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.

the actual effective life to determine the depreciable period.

"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 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 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

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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 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

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, 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

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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 réintégré 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)

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 bénéficiant 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

(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))

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

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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.

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.

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.

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.

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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 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)

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 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)

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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 au financement 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 comme une distribution de dividendes et ne sera assujetti 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.

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 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.

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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".

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 :

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'. 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:

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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 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

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 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.

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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 applicable 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.

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 CUSTOMS REGIME

3.1 Droits de douane et prélèvements similaires

3.1 Customs Duties and Similar Levies

3.1.1 Droits de douane et droits d'entrée

3.1.1 Duties and entry taxes

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.

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.

3.1.2 Admission temporaire durant la phase d'exploration et de prospection et la phase de construction et d'extension

3.1.2 Temporary Admission during the exploration and study activities stage and construction and extension activities stage

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.

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.

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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.

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.

3.1.3 Effets personnels

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.

3.1.3 Individual belongings

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.

3.1.4 Franchise douanière : Phase d'Exploration et de prospection

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 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.

3.1.4 Customs Relief: Exploration and Prospecting phase

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 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)

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.

3.1.5 Construction and Expansion (Extension and Renewal) phases

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.

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

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

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)

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

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. 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.

4. STABILISATION DU REGIME FISCALE ET DOUANIER

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)

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

3.1.6 Rehabilitation sites phase

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)

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

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 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 OF THE TAX AND CUSTOMS REGIME

4.1. Stabilisation of Tax and Customs Regime (Original Convention Article 30, Basic Convention Article 34 and BOT Convention Article 35)

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.

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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.

4.2. 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)

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.

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 be 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. More favourable provisions (Original Convention Article 32.3, Basic Convention Article 36.3 and BOT Convention Article 37.3)

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

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 31th, February 4th and March 12th 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

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revus et approuvés par le conseil d'Administration de Rio Tinto.

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

been reviewed and approved by Rio Tinto board of directors. These include the following key points:

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 dédié pour s'assurer de la bonne gouvernance dans

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 assurance programme for the VAT Exemption accounting and administration process.

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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.

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 follows.

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gracieux en Guinée, endommagés ou transformés en pièces de rechange.

Category	Customs Duty (remittance position)	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.	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
Transformé en pièces détachées	Similaire à ci-dessus	Salvaged for spare parts	As above
Donation en Guinée	Similaire à ci-dessus	Donated for free in Guinea	As above
Vendu localement en Guinée	Taxation sur la valeur résiduelle	Sold locally in Guinea	Residual customs value remitted to the Customs Authority
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.	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. 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

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 lead times and ultimately severely impact the

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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

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.

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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 1st 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.

Appendix 10

Passenger Service Principles

1 Objectives of the Passenger Service Principles

- (a) The Infrastructure Project is intended to give rise to a multi-user system.
- (b) The principles set out in this Appendix 10 shall be applied in determining the scope of the Passenger Service to be provided in accordance with this Convention.

2 Scope of Passenger Service

- (a) The Passenger Service may be used by members of the public and by employees and contractors of Infrastructure Operator, Infrastructure Owner, Foundation Customer and the Project Contractors.
- (b) The Passenger Service shall comprise:
 - (i) a rail service to be operated using 5 passenger carriages on the Rail Infrastructure between new passenger stations near Kerouane (to the west of Simandou Range) and Oure Kaba (to the east of the Mamou Range); and
 - (ii) five railway stations, to be built as part of the rail service component of the Passenger Service near to the towns of Oure Kaba, Faranah, Douako, Mamouroudou and Kerouane and in accordance with the infrastructure principles set out in section 5 of this Appendix 10.
- (c) The proposed capacity of the Passenger Service is approximately 40,000 passengers per annum, plus associated freight services to be provided in accordance with the principles set out in section 4 of this Appendix 10.

3 Timetable

- (a) The Passenger Service shall operate one return service per week (pending any expansion of the Rail Infrastructure which results in an increase in the Passenger Service).
- (b) The timetable for the Passenger Service:
 - (i) will be determined by Infrastructure Operator taking into account:
 - (A) the requirements of the Rail Services to be provided to Foundation Customer;
 - (B) times of operation likely to maximise utilisation of the Passenger Service; and
 - (C) other factors Infrastructure Operator considers appropriate;
 - (ii) prior to the commencement of the Passenger Service, must be approved by Infrastructure Owner, Foundation Customer and the State; and
 - (iii) may then be amended only with the agreement of Infrastructure Owner, Foundation Customer and the State.

4 Provision of Associated Freight Services

- (a) The Passenger Service will also carry such passengers' incidental agricultural produce and / or other non-industrial freight, provided that Infrastructure Operator is satisfied that doing so would not jeopardise the safety of passengers.

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- (b) The associated freight service will be provided exclusively by Infrastructure Operator as part of the Passenger Service by way of adding no more than two dry freight wagons to each passenger train.
- (c) The associated freight service is limited to being used by passengers using the passenger transport service for the transport of incidental agricultural produce and / or other non-industrial freight, and cannot be used for transporting:
 - (i) minerals;
 - (ii) hazardous materials, dangerous goods or explosives;
 - (iii) industrial products and chemicals; and
 - (iv) any other freight that Infrastructure Operator considers would jeopardise the safety of passengers or personnel operating the Passenger Service.
- (d) Infrastructure Operator may, in its sole discretion, and to the extent there exists spare capacity in the freight wagons added to the passenger train, allow spare capacity to be utilised by non-passengers to transport freight in accordance with the principles set out in this section 4, and on such terms as it may determine from time to time.
- (e) The associated freight service and its potential application to agricultural products is limited to being an incidental service to the passenger transport service and shall not be available to large scale enterprises, including those holding concessions granted by the State. Any proposed transport of such freight that is beyond the capacity contemplated under this section 4 will constitute a 'commercial' use by an agricultural producer to which Article 18 shall apply.

5 Provision of Infrastructure

- (a) Infrastructure Owner shall provide the infrastructure required to provide the Passenger Service. The Parties shall procure that the Infrastructure BFS, the IS Capital Budget and the Agreed IS Capital Budget make provision for the infrastructure required to provide the Passenger Service.
- (b) The railway stations will be located:
 - (i) on the outskirts of the towns of, or near to road access to, Oure Kaba, Faranah, Douako, Mamouroudou and Kerouane (to facilitate population access but limit social disruption caused by using green-field sites);
 - (ii) approximately 2 Km from the main Rail Infrastructure to limit interaction with, and impacts on, the Rail Services to be provided to Foundation Customer and minimise the risk of harm to users of the Passenger Service; and
 - (iii) on a single line branching off from the main Rail Infrastructure (with each branch line to be a dead end) as constructed by Infrastructure Owner.

The design, scope and location of the stations will be determined by Infrastructure Owner and agreed with the State following consultation with Foundation Customer and the State.

- (c) The nature and scope of the Rolling Stock for the Passenger Service will be determined by Infrastructure Owner following consultation with Infrastructure Operator, Foundation Customer and the State, and:
 - (i) is proposed to consist of one locomotive, five passenger carriages and no more than two dry freight wagons to each passenger train; and

- (ii) must otherwise ensure the Passenger Service as a whole does not jeopardise the operation of the Rail Services to be provided to Foundation Customer or the safety of passengers and personnel operating the Passenger Service.

6 Operation of the Passenger Service

- (a) Infrastructure Operator shall, as independent contractor on behalf of the Infrastructure Owner, operate the Passenger Service and provide all personnel, including drivers, conductors, station staff and security staff.
- (b) Infrastructure Operator may elect to sub-contract:
 - (i) all or part of operational activities for the Passenger Service, including ticketing, cleaning, security and station operation services; and
 - (ii) the provision of all personnel, including drivers, conductors, station staff and security staff as referred to in section 6(a) of this Appendix 10.
- (c) Infrastructure Operator will not be required to operate on any rail line other than the Rail Infrastructure or to connect to any other rail line. No passenger trains may operate on the Rail Infrastructure that are not operated by Infrastructure Operator.
- (d) The operation of the Passenger Service shall be consistent with the Project Standards and the Scheduling and Operating Protocol, Rolling Stock Standards Protocol and Rolling Stock Maintenance Protocol. In addition, and provided there is no inconsistency with the Project Standards and the Scheduling and Operating Protocol, Rolling Stock Standards Protocol and Rolling Stock Maintenance Protocol, Infrastructure Operator may establish rules and procedures in relation to the Passenger Service, including:
 - (i) to ensure the safety of passengers, staff and other people;
 - (ii) to ensure the efficient operation of the Passenger Service; and
 - (iii) in relation to the payment of fares for the passenger transport service and tariffs for the associated freight service.
- (e) The initial rules and procedures shall be approved by Foundation Customer and Infrastructure Owner after prior consultation with the State and may then be amended only with the agreement of Foundation Customer and Infrastructure Owner.

7 Fare and Freight Tariff Pricing Principles

- (a) Infrastructure Operator may retain all fares paid by users of the passenger transport service and all tariffs charged for carrying freight as part of the associated freight services provided for under section 4 of this Appendix 10.
- (b) All fares and tariffs retained by Infrastructure Operator must be off-set against, and thereby reduce, the Operating Charge otherwise payable to Infrastructure Operator by Foundation Customer, as adjusted in accordance with section 8 of this Appendix 10.
- (c) The fares and tariffs, will be set by Infrastructure Operator from time to time taking into account economic conditions in the communities serviced by the Passenger Service and the need to ensure that the operating expenses associated with the carrying of freight are, to the maximum extent possible, reimbursed via the tariffs charged to users of the associated freight services.

8 Changes to the Passenger Service

- (a) Subject to section 8(b) of this Appendix 10, any proposed change to, or expansion of, the Passenger Service must first be agreed to by Infrastructure Owner and also requires the

consent of the State, Infrastructure Operator and Foundation Customer prior to implementing that expansion of, or proposed change to, the Passenger Service or associated freight service.

- (b) The cost of implementing any change to the passenger transport service or associated freight service, including any capital expenditure required in relation to the Rail Infrastructure, shall be funded by the State, unless agreed otherwise between the Parties or the change comprises part of an expansion initiated by Foundation Customer pursuant to Article 15.3 or a Producer pursuant to Article 18.4.
- (i) **(State-initiated expansion)** If the State initiates an expansion of the Passenger Service, then:
- (A) to the extent that it is agreed that additional dry freight wagons may be added to each train, in excess of those specified in section 4(b) of this Appendix 10, there shall be no obligation on the part of Infrastructure Owner, Infrastructure Operator or Foundation Customer to fund such additional wagons, which shall in any case not exceed 18 wagons in total; and
- (B) the proportion of the fares and tariffs retained by Infrastructure Operator that are attributable to the sum of any previous expansions of the Passenger Service initiated by the State and the current expansion of the Passenger Service initiated by the State shall be applied to first cover the costs associated with the provision of the Passenger Service and, to the extent that there is any surplus remaining, the State may direct that it be applied to reduce the fares and tariffs chargeable in respect of the Passenger Service.
- (ii) **(Foundation Customer-initiated expansion)** If Foundation Customer initiates an expansion pursuant to Article 15.3, then:
- (A) Infrastructure Operator, Infrastructure Owner and the State shall be deemed to have consented (to the extent applicable) to the corresponding expansion of the Passenger Service detailed in the Expansion BFS; and
- (B) the proportion of the fares and tariffs retained by Infrastructure Operator that are attributable to the sum of the initial scope of the Passenger Service, any previous expansions of the Passenger Service initiated by Foundation Customer and the current expansion of the Passenger Service initiated by Foundation Customer must be off-set against, and thereby reduce, the Operating Charge otherwise payable to Infrastructure Operator by Foundation Customer.
- (iii) **(Producer-initiated expansion)** If the Producer initiates an expansion pursuant to Article 18.4, then:
- (A) Infrastructure Operator, Infrastructure Owner and the State shall be deemed to have consented (to the extent applicable) to the corresponding expansion of the Passenger Service detailed in the Expansion BFS; and
- (B) the proportion of the fares and tariffs retained by Infrastructure Operator that are attributable to the sum of the any previous expansions of the Passenger Service initiated by the Producer and the current expansion of the Passenger Service initiated by the Producer must be off-set against,

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and thereby reduce, the operating charge otherwise payable to Infrastructure Operator by the Producer.

Appendix 11

General Cargo Services Principles

1 Objectives of the General Cargo Services Principles

- (a) The Infrastructure Project is intended to give rise to a multi-user system.
- (b) The principles set out in this Appendix 11 shall be applied to the provision of the General Cargo Services using the MOF in accordance with this Convention.

2 Funding, Construction and Ownership of MOF

- (a) The Parties shall procure that provision shall be made for the MOF in the Infrastructure BFS, the IS Capital Budget and the Agreed IS Capital Budget.
- (b) Infrastructure Owner shall construct and own the MOF as part of the Simfer Port Facilities.
- (c) The MOF shall be made available for the provision of General Cargo Services by Infrastructure Operator to third party users who are not Producers (other than those agricultural Producers contemplated by Article 18.1(h)) (each, a "**General Cargo Services Recipient**") following Infrastructure Completion Date.

3 Scope of the General Cargo Services

- (a) The scope of the General Cargo Services is:
 - (i) vessel scheduling and port management;
 - (ii) marine services including towage, marine pilotage and lines handling;
 - (iii) stevedoring of cargo including loading and / or unloading of cargo to / from ships, cargo storage and loading of cargo onto / off trucks;
 - (iv) handling and warehousing services inside the Port Zone, ie, loading and unloading operations on the wharves, the cartage of goods and containers, the stuffing and stripping of containers, the hiring of handling equipment and the placing of goods and containers on wharf platforms and in warehouses, including provision of surveillance in warehouses and on wharf platforms;
 - (v) management of regulatory processes (customs, immigration, defence, quarantine); and
 - (vi) port security.
- (b) Infrastructure Operator, as independent contractor on behalf of Infrastructure Owner, shall provide the General Cargo Services in relation to a maximum annual amount of cargo of 300 Kt.
- (c) The General Cargo Services will be provided in respect of eligible raw materials, agricultural and other products prescribed by Infrastructure Operator from time to time having regard, among other things, to the capacity and safety of the MOF and the efficient operation of the Simandou Port. The General Cargo Services will not be provided in respect of:
 - (i) minerals, as there is a separate regime for the provision of Shared Port Services to Producers; or

- (ii) other prohibited goods, a list of which will be developed and agreed between Infrastructure Operator and Foundation Customer prior to Infrastructure Completion Date.

Any disputes which may arise in relation to the development and agreement of the list of prohibited goods shall be resolved by Foundation Customer and Infrastructure Operator in accordance with Prudent Infrastructure Practices.

4 Role of Infrastructure Operator

- (a) Infrastructure Operator shall have the rights of access to, egress from and use of the Shared Port Facilities in order to provide the General Cargo Services.
- (b) Infrastructure Operator will be responsible for the provision of the General Cargo Services. No General Cargo Services Recipient will have any direct access to the MOF. Infrastructure Operator will prescribe from time to time the requirements with which General Cargo Services Recipients must comply in order to receive General Cargo Services. The requirements will include:
 - (i) insurances and security bonds;
 - (ii) audit of cargoes;
 - (iii) operational requirements including the delivery and collection of cargo only from areas designated by Infrastructure Operator so as to ensure minimum disruption to Foundation Customer's activities in the Port Zone;
 - (iv) regulatory provisions (customs, immigration, defence, quarantine); and
 - (v) international ships and port security code.
- (c) The tariffs for the General Cargo Services will be set by Infrastructure Operator, in consultation with Foundation Customer, from time to time on an arm's length, non-subsidised basis (except to the extent that the State is prepared to provide a subsidy). The operating expenses associated with the provision of the General Cargo Services are to borne by General Cargo Services Recipients (including their shippers with respect to, amongst other things, port dues for marine services) via the tariffs charged to General Cargo Services Recipients (and their shippers). The tariffs paid by General Cargo Services Recipients (and their shippers) will be applied to cover the costs associated with providing the General Cargo Services and any surplus shall be applied to reduce the charges payable by Foundation Customer (where the MOF is used in the provision of the General Cargo Services) and any Producers (where the Producer Port Facilities are used in the provision of the General Cargo Services) (as applicable) in accordance with section 6 of this Appendix 11.

5 Rights of Foundation Customer

- (a) 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 interfere with the priority and other rights of Foundation Customer as Foundation Customer.
- (b) The MOF will be designed and built to satisfy Foundation Customer's requirements. Neither Foundation Customer, Infrastructure Owner nor Infrastructure Operator shall be under any obligation to fund any capital required to construct additional facilities on or in the vicinity of the MOF (whether loading / unloading, warehousing or otherwise) to enable the provision of the General Cargo Services, with such funding to be provided by General Cargo Services Recipients, unless in connection with an expansion as contemplated in

section 6 of this Appendix 11 or agreed otherwise between the Parties. Any such additional facilities will only be constructed:

- (i) on areas in the Port Zone that have not been reserved for, or allocated to, Foundation Customer; and
 - (ii) with the prior written approval of Foundation Customer, Infrastructure Owner and Infrastructure Operator as to their scope and location.
- (c) Infrastructure Operator may subcontract the provision of the General Cargo Services to third parties with the prior written consent of Foundation Customer.

6 Changes to the General Cargo Services

- (a) Subject to section 6(b) of this Appendix 11, any proposed change to, or expansion of, the General Cargo Services must first be agreed to by Infrastructure Owner and also requires the consent of the State, Infrastructure Operator and Foundation Customer prior to implementing that expansion of, or proposed change to, the General Cargo Services.
- (b) The cost of implementing any change to the General Cargo Services shall be funded by the State, unless agreed otherwise between the Parties or the change comprises part of an expansion initiated by Foundation Customer pursuant to Article 15.3 or a Producer pursuant to Article 18.4.
 - (i) **(State-initiated expansion)** If the State initiates an expansion of the Passenger Service, then:
 - (A) to the extent that it is agreed that additional facilities at the MOF, or an additional multi-purpose offload facility, are required, there shall be no obligation on the part of Infrastructure Owner, Infrastructure Operator or Foundation Customer to fund such facilities; and
 - (B) the proportion of the tariffs retained by Infrastructure Operator that are attributable to the sum of any previous expansions of the General Cargo Services initiated by the State and the current expansion of the General Cargo Services initiated by the State shall be applied to first cover the costs associated with the provision of the General Cargo Services and the State may direct that any surplus shall be applied to reduce the tariffs payable by General Cargo Services Recipients in accordance with this section 6.
 - (ii) **(Foundation Customer-initiated expansion)** If Foundation Customer initiates an expansion pursuant to Article 15.3, then:
 - (A) Infrastructure Operator, Infrastructure Owner and the State shall be deemed to have consented (to the extent applicable) to the corresponding expansion of the General Cargo Services detailed in the Expansion BFS; and
 - (B) the proportion of the tariffs retained by Infrastructure Operator that are attributable to the sum of the initial scope of the General Cargo Services, any previous expansions of the General Cargo Services initiated by Foundation Customer and the current expansion of the General Cargo Services initiated by Foundation Customer must be off-set against, and thereby reduce, the Operating Charge otherwise payable to Infrastructure Operator by Foundation Customer.

- (iii) **(Producer-initiated expansion)** If the Producer initiates an expansion pursuant to Article 18.4, then:
 - (A) Infrastructure Operator, Infrastructure Owner and the State shall be deemed to have consented (to the extent applicable) to the corresponding expansion of the General Cargo Services detailed in the Expansion BFS; and
 - (B) the proportion of the tariffs retained by Infrastructure Operator that are attributable to the sum of the any previous expansions of the General Cargo Services initiated by the Producer and the current expansion of the General Cargo Services initiated by the Producer must be off-set against, and thereby reduce, the operating charge otherwise payable to Infrastructure Operator by the Producer.

Appendix 12

Producer expansion studies - Information to be provided

As part of making an application to Infrastructure Operator to have an expansion study carried out in accordance with Article 18.2, a Producer must provide the following information:

- (a) information about Rail Services and Port Services the Producer is seeking (the Proposed Haulage Services), including:
 - (i) in the case of Rail Services:
 - (A) the route of the Proposed Haulage Services;
 - (B) the product to be hauled; and
 - (C) the quantity of product to be hauled per annum during each year of the proposed arrangement; and
 - (ii) in the case of Port Services:
 - (A) the specific types of Port Services sought;
 - (B) in relation to each specific type of the Port Services sought, the quantity sought per annum during each year of the proposed period;
 - (C) the product the subject of the Port Services sought;
 - (iii) the proposed arrangements for interconnection with the Producer's mine or other site and the Producer's Port Facilities; and
 - (iv) the period of the Proposed Haulage Services, including the proposed date from which the Producer would like to receive the Proposed Haulage Services;
- (b) information demonstrating a good faith intention to develop or expand a mine or an agricultural enterprise on a large commercial scale that requires the Proposed Haulage Services, including:
 - (i) a pre-feasibility study or feasibility study conducted to a standard reasonably required by Infrastructure Operator;
 - (ii) in the case of an agricultural enterprise, details of the proposed enterprise and development and marketing plans, including evidence which supports the long term technical, commercial and financial viability of the enterprise; or
 - (iii) in the case of a mine, details of the proposed mine and development plans, including evidence that the mine has reserves and resources (proved to a standard consistent with the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves as adopted by the Australasian Joint Ore Reserves Committee (JORC)) at least equal to the quantity of Haulage Services sought over the proposed period of any Producer Rail Haulage Agreement or commensurate with the quantity of Port Services sought over the proposed period of any Producer Port Services Agreement; and
 - (iv) the extent to which the mine or agricultural enterprise is an "induced development" in accordance with the IFC Performance Standards and must therefore be the object of a social and environmental impact assessment prepared to the equivalent level of definition as the pre-feasibility study or feasibility study in accordance with Prudent Infrastructure Practices and the Project Standards and which needs to comply with the social and environmental

requirements which apply to the Infrastructure Project, in particular those referred to in Article 6(b).

- (c) details of either:
 - (i) the Producer's rights to use an existing port or its rights to use a proposed port (in which case details of the proposed port development, including development plans, should be provided); or
 - (ii) where the Producer is to use the Shared Port Facilities, the Producer's requirement for Producer Port Facilities, including ship terminal facilities, train unloading facilities, car dumpers, conveyors, stockyards, stackers, reclaimers, blending and screening facilities and ship loading facilities and maintenance and facilities equipment in relation thereto as well as any wharves, jetties, berths, and swinging basins and maintenance and facilities equipment in relation thereto, and any other buildings, facilities or equipment as required, which shall in each case be within the Port Zone; it being understood and agreed that all costs associated with the acquisition and use of such land, including with respect to any social, environmental and rehabilitation requirements as well as any other costs arising in relation to, or as a result of, the Producer's use thereof, shall be met by the Producer; and
- (d) details of any proposed rail spurs to be built that would be linked to the Rail Infrastructure;
- (e) evidence that it has the financial and technical capability required to meet its obligations under any Producer Rail Haulage Agreement or Producer Port Services Agreement; and
- (f) such other information and evidence as Infrastructure Operator may reasonably require.

Appendix 13

In-country Activities and State Enabling Activities

1 In-country Activities

- (a) Continuation of PMOF earthworks and construction
- (b) Continuation of Beyla - N'zerekoré road upgrade
- (c) Completion and implementation of Beyla Training Centre and the ongoing development of the Canga camp
- (d) Additional camp construction locations to be identified
- (e) SEIA activities to support field activities
- (f) Associated PARC activities in the areas of impact
- (g) Drilling activities:
 - (i) Geotechnical Drilling - Mine (conveyor, plant, stockyard civil works)
 - (ii) Consolidation of Rail Geotechnical data
 - (iii) Geotechnical Drilling – Tunnels
 - (iv) Geotechnical Drilling – Port (dumper excavations, infrastructure)
 - (v) Marine Studies at the port site
 - (A) Siltation
 - (B) Marine Biodiversity
 - (C) Fishing Livelihoods
- (h) Housing review and update
- (i) Operational readiness review
- (j) Build up of project management and oversight team, engaging supplementary EPC and associated resources within country
- (k) Review and update of mine plans, including HME strategy
- (l) Extensive government permitting and approvals activities
- (m) Enablers such as explosives and other consumables strategy, project fuel strategy, and logistics and freight strategy
- (n) Scoping of PMOF Stage 2 development and associated dredging programme
- (o) Tender and submission of bankable estimate study components for large vertical turnkey packages, indicatively:
 - (i) Four rail packages to two tenderers each
 - (A) Tunnels
 - (B) East to Mine
 - (C) West to Port
 - (D) Signals & Communications
 - (ii) One port package with two separable portions, to three tenderers

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- (p) Packages to be tendered on the basis of in-country activities and representative offices by selected contractors
- (q) In association with the State, ensure systems in place for construction
- (r) Validate & Consolidate Total Project BFS Information
 - (i) Project Capital & Operating Estimates
 - (ii) Planning & Scheduling (build total project schedule)
 - (iii) Project Implementation Strategy
 - (iv) Commercial decision on composition of Consortium
- (s) BFS Report
 - (i) Report
 - (ii) Integrated Estimate
 - (iii) Integrated Schedule

2 State Enabling Activities

The State undertakes to:

- (a) 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:
 - (i) the grant of all necessary Authorisations within 11 months of the Effective Date associated with:
 - (A) the MOF and construction dredging (including defining spoil locations);
 - (B) obtaining fuel from outside Guinea and in Guinean territorial waters from non-Guinean suppliers (including, without limitation, for the purposes of construction dredging); and
 - (ii) a commitment to ensure that:
 - (A) any required SEIA-related renewals are provided within 1 month of the application for the relevant renewal being lodged; and
 - (B) Authorisations needed for the construction schedules for the Mining Infrastructure and the Project Infrastructure will be granted;
- (b) establish:
 - (i) the necessary delegation of all signing authorities and any other administrative actions necessary or desirable for the schedule of the Project;
 - (ii) a project coordination office and a *guichet unique* or other appropriate structure to facilitate the development of the Project, and
 - (iii) the necessary dedicated administrative services to accommodate the volume of the Project Activities;
- (c) establish, in accordance with a schedule to be agreed with Foundation Customer 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

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the Legislation in Force and achieve implementation within the period prescribed in the agreed schedule;

- (d) establish all necessary administrative authorities, systems and capabilities:
 - (i) for the purposes of land acquisition, resettlement and compensation in accordance with the PARC Framework and Appendix 5; and
 - (ii) so as to align the timing for the implementation of land acquisition, resettlement and compensation matters referred to in section 2(d)(i) of this Appendix 13 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 Foundation Customer to the State);
- (e) ensure security measures and establish administrative measures and documentation, to be agreed with Foundation Customer 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);
- (f) establish new business registration offices and national employment offices in each of Beyla, Forecariah and Faranah;
- (g) issue all necessary visas in accordance with Article 27 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);
- (h) confirm, in a form acceptable to Foundation Customer, within 3 months of the Effective Date, that each of Foundation Customer, the Infrastructure Consortium, the Infrastructure Owner and Infrastructure Operator:
 - (i) are permitted to apply their own training, HSE and technical standards; and
 - (ii) do not need to apply any other training, HSE or technical standards, in recruiting and training employees, provided that, and for so long as, Foundation Customer, 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 Foundation Customer to work collaboratively with the State and third parties to develop training, HSE and technical standards; and
- (i) implement any other enabling activities that are reasonably necessary in connection with the construction of the Project Infrastructure,

(collectively, the "**State Enabling Activities**") within the period prescribed in each section in this Appendix 13 and, where no period is prescribed, within 11 months of the Effective Date.

Appendix 14

Infrastructure Consortium Selection Terms

1 Eligibility

A candidate will be eligible for selection as the Infrastructure Consortium if, in Foundation Customer'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 Foundation Customer.

2 Selection Terms

Foundation Customer 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 Foundation Customer under section 2(a)(i) of this Appendix 14;
- (b) the proposed tariff to be paid by Foundation Customer (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 Foundation Customer or an Affiliate of Foundation Customer, 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 Foundation Customer; and
 - (iii) not include any terms or conditions that are not contemplated by any existing heads of agreement or transaction terms sheet to which Foundation Customer and Infrastructure Consortium (or any representative of it) are both parties;
- (e) the total construction period, including the cost, local content and other implications of attempting to achieve a First Commercial Production Date of 31 December 2018, 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; and
 - (ii) assumes that the Infrastructure Construction Criteria apply at all times;

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- (f) treatment of Historical Infrastructure Costs; and
- (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 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 the Basic 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.
- (b) The Independent Regulator must have at least one international regulatory expert available to assist it, at least until such time as the Infrastructure Owner, Infrastructure Operator and Foundation Customer agree that Independent Regulator's own expertise and experience mean that such international regulatory expertise is no longer required.

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 and section 2 of this Appendix 15 of the BOT Convention. Subject to Article 25.3, 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 this Convention dealing with multi-use and expansion as identified in section 2.2 of this Appendix 15 and by doing so:

- (a) ensure that the rights of the Foundation Customer set out in Article 15.2 are protected; and
- (b) subject to section 2.1(a) of this Appendix 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 this Convention as set out in section 2.2(b) of this Appendix 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 the Convention to be conciliated by the Independent Regulator, in accordance with the requirements of this Convention, and in particular Article 48.2;
 - (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 Appendix 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 12.1(a) and 20 (in the case of Infrastructure Owner) and Articles 13.3 and 20 (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 12.1(a) and 20 (in the case of Infrastructure Owner) and Articles 13.3 and 20 (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, including, without limitation, complying with:
 - (A) the requirements of Article 16 and Appendix 10 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(c);
 - (B) with the requirements of Article 17 and Appendix 11 in relation to General Cargo Services and the rules and procedures established by the Infrastructure Operator pursuant to Article 17(b);
 - (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; and
 - (vi) **(Local Content)** the obligation of Infrastructure Owner and Infrastructure Operator to comply with the Local Content Policy, as and to the extent required by Article 26.

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, a Producer under Article 18, or the State or the Infrastructure Owner under Article 19 of this Convention 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 required to be provided in relation to an expansion initiated by the Foundation Customer (under Article 15), a Producer (under Article 18.1 and 18.2) or Infrastructure Owner or the State (under Article 19.1);
 - (ii) any studies undertaken in relation to an expansion of the Project Infrastructure for the Foundation Customer (under Article 15.3), a Producer (under Article 18.3) or Infrastructure Owner or the State (under Article 19.2); and

- (iii) any agreement signed with Foundation Customer (under Article 15), a Producer (under Article 18.4) or Infrastructure Owner or the State and a third party (under Article 19.4) 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 1.3 of this Appendix 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 and Interested Producers.

2.5 Dispute resolution

Disputes

- (a) If a Party (including an Interested Producer) disagrees, wholly or in part, with the Opinion released by the Independent Regulator pursuant to section 2.4 of this Appendix 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 "**Appendix 15 Dispute**") between the State and the notifying Party. If the Opinion relates to a matter concerning an Interested Producer, then that Interested Producer shall, if it is not the notifying Party, also be a party to the Appendix 15 Dispute. The other Parties may become parties to the Appendix

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 Appendix 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 Appendix 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 the BOT Convention.

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 an Appendix 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 16

Appendix 16 Agreement

Between: [Producer] ("**Producer**")

And:

The Republic of Guinea (the "**State**");

Simfer SA (the "**Foundation Customer**");

Rio Tinto Mining and Exploration Limited ("**RTME**");

[*] (the "**Infrastructure Owner**");

[*] (the "**Infrastructure Owner HoldCo**");

[*] (the "**Infrastructure Operator**");

Together, the "**Parties to the Convention**". For the purposes of this Convention, the Parties to the Convention are represented by the Infrastructure Owner.

[Date]

1 Introduction

The Producer has reviewed the terms of the Simandou BOT Convention (the "**Convention**") concluded between [*] and [*] on [date]. Capitalised terms used in the present agreement have the meaning given in the Convention.

The Producer wishes to have an expansion study carried out by Infrastructure Owner and potentially to obtain Rail Services or Port Services pursuant to Article 18 of the Convention.

2 Purpose

The present agreement is made pursuant to Article 18.2(b) of the Convention.

3 Commitments

The Producer:

- (a) agrees to respect the procedures set out in the Convention concerning the conduct of expansion studies, all obligations relating to expansions and to the negotiation and entry into of Producer Rail Haulage Agreements and Producer Port Services Agreements as set forth in Articles 18.1 to 18.6 of the Convention;
- (b) agrees to respect the rights of the Parties to the Convention as set forth in the Convention and, in particular, in Articles 12, 13, 14, 15 and 18 and Appendix 15 of the Convention;
- (c) agrees to comply with and carry out the Producers' obligations (to the extent and when applicable) as defined in the Convention and, in particular, in Article 18 of the Convention; and

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- (d) agrees, and the Parties to the Convention agree, to resolve any dispute arising out of, relating to or in connection with the present agreement and/or the Convention in accordance with the dispute settlement provisions set out in Articles 18.7 and 48 and Appendix 15 of the Convention, for any administered expertise proceedings, conciliation, mediation or arbitration.

In consideration of which, the Producer will benefit from the rights granted to the Producer by the provisions of the Convention (to the extent and when applicable) and, in particular, by Article 18 of the Convention, including the right to request expansion studies, subject to the conditions of the Convention, including the precondition requirements set out in Articles 18.1 and 18.2.

Parties to the Convention and the Producer will remain bound by the present agreement after the entry into force of any Producer Rail Haulage Agreements and Producer Port Services Agreements the Producer may sign.

Any notice to be given to or by the Producer under or in connection with the Convention shall be given in accordance with the requirements of Article 59 of the Convention. In this regard, the address of the Producer to which all notices must be delivered or transmitted are as follows:

Attention: [#]
Address: [#]
Fax No: [#]

[The Producer]

The Infrastructure Owner

(for and on behalf of the Parties to the Convention)

Appendix 17

Principles of Port Regulations

This Appendix sets out principles of port regulation pursuant to which the Port Regulations will be developed and agreed under Article 20 (which Port Regulations will then govern the Infrastructure Operator in acting as Port Authority as contemplated by Article 13.2(c)(vi)).

1 Role of Infrastructure Operator as Port Authority

The Infrastructure Operator, in acting as Port Authority for the Simandou Port, shall have the rights and responsibilities reflected in the following principles, and as shall be finalised and set out in the Port Regulations. The Infrastructure Operator shall:

- (a) be responsible for the management of vessels to transit to and from the Simandou Port (including scheduling of marine services (pilotage, towage and lines handling services));
- (b) exercise regulatory responsibility in relation to onshore port operations at the Simfer Port Facilities (including activities conducted at the MOF) and Producer Port Facilities including receipt of iron ore delivered using the Rail Infrastructure, direct loading or loading into stockpiles and then conveyance of ore to the berth as well as the loading of iron ore onto vessels;
- (c) confirm vessel suitability and safety - International Safety Management (**ISM**) Certificate/RightShip (without excluding the State's sovereign rights in respect of regulating the entry of foreign vessels into its waters);
- (d) subject to the role of the Harbourmaster as set out under section 2 of this Appendix 17 below manage the safety of marine operations, the security of the Simandou Port in compliance with international standards (ISPS compliance) and the protection of the environment – and co-ordinate and participate in emergency and environmental response operations (without excluding the State's overarching regulatory role in respect of safety, security and environment matters);
- (e) maintain and manage vessel communications systems on a day to day basis, in compliance with telecommunications systems and requirements regulated by the State in accordance with section 3 of this Appendix 17;
- (f) subject to the role of the Harbourmaster as set out under section 2 of this Appendix 17, be responsible for vessel traffic control including, as required, the closing and opening of the Simandou Port due to weather, security risks, environmental incidences and/or Force Majeure Events;
- (g) be responsible for publishing declared depths of the shipping channels, turning basins and berth pockets;
- (h) authorise the provision of the following services:
 - (i) marine services such as towage, pilotage, lines handling;
 - (ii) vessel bunkering and stores services; and
 - (iii) helicopter services to transfer marine pilots to and from vessels;
- (i) liaise with State regulatory bodies (including customs, quarantine, immigration etc.) in respect of the regulatory responsibilities set out in section 3 of this Appendix 17, as required to perform its responsibilities and functions as Port Authority.

2 Role of Harbourmaster

The Infrastructure Operator, acting as Port Authority for the Simandou Port, shall appoint the Harbourmaster with the approval of the State, Infrastructure Owner and Foundation Customer (each acting reasonably). The Harbourmaster shall be embedded within the Port Authority function and shall exercise rights and responsibilities reflecting the following principles, as shall be finalised and set out in the Port Regulations. An authority shall be conferred on the Harbourmaster pursuant to this Convention and by the State pursuant to Laws and Regulations.

The Harbourmaster shall be responsible for enforcing port regulations in the water bounded by the Port Limits, the shipping channels and the anchorage areas. The Harbourmaster's duties will encompass a legal and operational responsibility for the movement of shipping and these duties shall include involvement in ensuring that shipping movements within the Harbourmaster's jurisdiction are carried out safely, ensuring the environment is protected and coordinating emergency and environmental response. The Harbourmaster shall:

- (a) have the right to order ships to depart the Simandou Port (without excluding the State's sovereign rights in respect of regulating the entry and exit of foreign vessels into and from its waters);
- (b) be responsible for the provision of instructions to ship Masters (ie, notice to mariners);
- (c) co-ordinate responses to emergencies and environmental incidents occurring within the Port Limits (without excluding the State's overarching regulatory role in respect of safety, security and environment matters);
- (d) be responsible for the acceptance of, and issuing of licences for:
 - (i) a pilotage company to operate in the Simandou Port (including the right to reject particular pilots); and
 - (ii) a towage company to operate in the Simandou Port; and
- (e) liaise with the State regulatory bodies (including customs, quarantine, immigration etc.) in respect of the regulatory responsibilities set out in section 3 of this Appendix 17, as required to perform its responsibilities and functions as Harbourmaster.

3 Role of State

The State shall exercise a regulatory role in the operation of the Simandou Port based on rights and responsibilities reflecting the following principles, as shall be finalised and set out in the Port Regulations. The following State Authorities, or such other appropriate State Authority as notified from time to time, will exercise this regulatory control on behalf of the State:

- (a) **Merchant Marine:** the State shall be responsible for Port State Control; ensuring vessels have up to date registration and trading certificates, and general regulation of territorial waters.
- (b) **Customs:** the State shall be responsible for customs related issues such as reviewing, declaration and release of import and export goods and having input in relation to general and bulk cargo, including:
 - (i) inspecting iron ore vessels to ensure goods are appropriately declared, taxes are paid and there is no import/export of illegal substances; and
 - (ii) in relation to the delivery and unloading fuel of fuel.
- (c) **Police / Gendarmerie:** the State shall be responsible for immigration and crew matters.

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- (d) **Department of the Environment:** the State shall be responsible for environmental and garbage matters (and in conjunction with relevant State environmental departments will manage dredging and environmental related issues).
- (e) **Coastguard:** the State shall be responsible for national border and security matters.
- (f) **Quarantine:** the State shall regulate vessel medical chest, health vaccine books, issues relating to the import of any plant or biological pests and checks that ballast water changeover procedures have been complied with.
- (g) **Merchant Marine:** the State shall, in conjunction with the Infrastructure Operator in its role as Port Authority, be responsible for International Ship and Port Facility Security (**ISPS**) requirements.
- (h) **Telecommunications:** the State (including as delegated to Merchant Marine as required) shall be responsible for issuance of licences and frequencies in respect to Radio, Global Maritime Distress and Safety System (**GMDSS**) Equipment.

Appendix 18

Co-Foundation Customer Regime

1 Co-Foundation Customer proposal

If during the period of 6 months from the Effective Date, the State refers to Infrastructure Owner and Foundation Customer a third party producer of minerals (a "**Proposed Co Foundation Customer**") and:

- (a) the Proposed Co-Foundation Customer:
 - (i) meets the eligibility criteria set out in section 2 of this Appendix 18; and
 - (ii) is prepared to participate in the Project Infrastructure by accepting take or pay commitments for capacity in addition to the FC Initial Capacity ("**Co-Foundation Capacity**") to be constructed as part of the initial construction of the Project Infrastructure on terms and conditions to be established pursuant to section 4 of this Appendix 18; and
 - (iii) pays to Foundation Customer a share of Historical Infrastructure Costs that have been incurred up until that date equal to the Co-Foundation Capacity divided by the total capacity to be the subject of the revised Infrastructure BFS (Stage 2 FC Initial Capacity plus Co-Foundation Capacity); and
 - (iv) has executed a binding written undertaking in favour of the Parties substantially in the form set out in Appendix 16 [Dispute Resolution Undertaking];
- (b) the Foundation Customer, acting reasonably, advises the State of the additional time it will require to complete the Consortium Selection Process as a result of including the Proposed Co-Foundation Customer, and the State agrees to that additional time (in which case that period of additional time will be an IED Deemed Extension);
- (c) the Foundation Customer, acting reasonably, confirms that it is willing to accept the delay to the Project caused by the additional time referred to in section 1(b) of this Appendix 18;
- (d) the Foundation Customer and the Infrastructure Owner, acting reasonably, confirm that including the Proposed Co-Foundation Customer will not adversely impact the ability to raise finance for the Infrastructure Project,

then

- (e) the Foundation Customer shall ensure the Infrastructure BFS includes a study of the feasibility of participation by the Proposed Co Foundation Customer in the initial construction of the Infrastructure Project, to the extent and as provided in section 3 of this Appendix 18; and
- (f) the State, Infrastructure Owner and Foundation Customer shall comply with their obligations under section 4 of this Appendix 18 in relation to the agreements to be entered into with the Proposed Co Foundation Customer.

2 Eligibility criteria

In order to meet the eligibility criteria, Infrastructure Owner must be satisfied, acting reasonably, that the Proposed Co Foundation Customer has the financial and technical capability required to meet its obligations as a co foundation customer and:

- (a) either:

- (i) the Proposed Co-Foundation Customer has prepared, or procured the preparation of, a pre-feasibility study or feasibility study relating to the proposed mine development, conducted to a standard reasonably required by Infrastructure Owner, including evidence that the mine has reserves and resources (proved to a standard consistent with the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves as adopted by the Australasian Joint Ore Reserves Committee (JORC)) at least equal to the Co-Foundation Capacity sought by the Proposed Co-Foundation Customer over the proposed period of any rail and port services agreement; or
- (ii) Infrastructure Owner and Foundation Customer are otherwise satisfied (acting reasonably) that the Proposed Co-Foundation Customer will be able to pay all Tariffs likely to be payable under the Proposed Co-Foundation Customer's rail and port services agreement;
- (b) to the extent the mine is an "induced development" in accordance with the IFC Performance Standards, has prepared, or procured the preparation of, a social and environmental impact assessment prepared to the equivalent level of definition of the pre-feasibility study or feasibility study in accordance with Prudent Infrastructure Practices and the Project Standards and complies with the social and environmental requirements which apply to the Infrastructure Project, in particular those referred to in Article 6(b);
- (c) has provided details of any proposed rail spurs to be built that would be linked to the Rail Infrastructure; and
- (d) has provided such other information and evidence as Infrastructure Owner may reasonably require.

If at the time the State refers a Proposed Co-Foundation Customer under section 1 of this Appendix 18, Infrastructure Owner has not acceded to this Convention, then references in sections 1 and 2 of this Appendix 18 to Infrastructure Owner shall be read as references to Foundation Customer until such time as Infrastructure Owner accedes to this Convention.

3 Bankable Feasibility Study

- (a) If the conditions in section 1 of this Appendix 18 are satisfied, then Foundation Customer: must:
 - (i) ensure the Infrastructure BFS includes, or is amended to include, a study of the feasibility of the Infrastructure Project if expanded to include the Co-Foundation Capacity;
 - (ii) in preparing the Infrastructure BFS, consult with the Co Foundation Customer and take into account and, where reasonably practicable, incorporate the Co Foundation Customer's requests and recommendations in relation to the design of the Project Infrastructure;
 - (iii) conduct the revised Infrastructure BFS to the same standards as required under Article 2.
- (b) The Proposed Co-Foundation Customer shall pay to Foundation Customer a share of all costs the Foundation Customer incurs in conducting the Infrastructure BFS after the State refers a Proposed Co-Foundation Customer under section 1 of this Appendix 18, with the share equal to the Co-Foundation Capacity divided by the total capacity to be the subject of the revised Infrastructure BFS (Stage 2 FC Initial Capacity plus Co-Foundation Capacity). Such costs must be paid monthly in advance based on estimates prepared by the Foundation Customer, with a monthly adjustment to reflect any differences between

the estimated costs and the actual costs incurred by the Foundation Customer in the previous month.

- (c) For the avoidance of doubt, the Infrastructure BFS must, to the extent necessary to accommodate the Co-Foundation Customer, study the construction of:
 - (i) separate ship terminal facilities for the Proposed Co Foundation Customer (equivalent to the Simfer Port Facilities) ("**CFC Port Facilities**"); and
 - (ii) expanded Shared Port Facilities and Rail Infrastructure able to accommodate the capacity requirements of both the Foundation Customer and the Proposed Co Foundation Customer.

4 Co-Foundation Customer Agreements

4.1 Co-Foundation Customer Agreements

In order for a Proposed Co-Foundation Customer to enjoy the rights and assume the obligations of a Co-Foundation Customer, the following agreements or amendments to agreements will be required:

- (a) amendments to this Convention to add the Proposed Co-Foundation Customer as a party and set out its rights and obligations ("**CFC Convention Amendments**");
- (b) amendments to the Protocols to reflect the addition of the Proposed Co-Foundation Customer as a Party to this Convention, including amendments to the Scheduling and Operating Protocol ("**CFC Protocol Amendments**");
- (c) an agreement between Foundation Customer and the Proposed Co Foundation Customer setting out, amongst other things, their respective responsibilities and obligations in relation to the implementation of the Infrastructure Project as provided in Articles 2.1 to 2.14 and the obligations each will have to the other after the Infrastructure Completion Date in relation to the Project Infrastructure, including any arrangements agreed between them to facilitate the efficient operation of the Project Infrastructure and any liability regime agreed between them relating to disruptions one may cause to the other ("**Foundation Customer - CFC Agreement**");
- (d) co-completion arrangements between Infrastructure Owner, Infrastructure Operator, Foundation Customer and the Proposed Co-Foundation Customer to ensure that the Foundation Customer and Co-Foundation Customer's mines, on the one hand, and the Project Infrastructure, on the other hand, are ready and functionally able to operate in conjunction with each other when required, so that Infrastructure Owner is able to achieve the Infrastructure Completion Date by the ICD Target Date, Foundation Customer is able to achieve the First Commercial Production Date in accordance with the Basic Convention, and the Co-Foundation Customer is able to achieve its projected date for first commercial production ("**CFC Co Completion Agreement**");
- (e) a rail and port services agreement between Infrastructure Owner, Infrastructure Operator and the Proposed Co-Foundation Customer ("**CFC RPSA**"),

(together the "**CFC Agreements**").

4.2 Parameters for CFC Agreements

Parameters applying to all CFC Agreements

- (a) Unless otherwise agreed, if the Co-Foundation Customer is developing a mine that is of comparable size and geographic location, the CFC Agreements will give effect to the following principles:

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- (i) the Co Foundation Customer will have equivalent rights to the rights of Foundation Customer under this Convention, except that:
 - (A) the Co-Foundation Customer will have no rights in relation to the Simfer Port Facilities or Simfer Spur Lines, and the Foundation Customer will have no rights in relation to the equivalent CFC Port Facilities or spur lines;
 - (B) where the Foundation Customer has rights in relation to the FC Capacity Allocation, the Co-Foundation Customer will have equivalent rights in relation to the CFC Capacity Allocation;
- (ii) to the extent that the Co-Foundation enjoys the same rights as the Foundation Customer, it is agreed and accepted that the Co Foundation Customer will have the same obligations as the Foundation Customer under this Convention (other than in relation to the matters referred to in sections 4.2(a)(i)(A) and 4.2(a)(i)(B) of this Appendix 18);
- (iii) Tariffs will be determined for both the Foundation Customer and Co Foundation Customer as provided in the Rail Pricing Principles and the Port Pricing Principles, except that:
 - (A) the Co Foundation Customer must pay a separate Availability Charge, Operating Charge and Operating Fee with respect to the CFC Port Facilities calculated in accordance with the Pricing Principles;
 - (B) a single tariff in relation to the Shared Port Facilities and Rail Infrastructure will be determined and then allocated between the Foundation Customer and the Foundation Customer on a pro rata basis based on their respective capacity entitlements (measured in Mtpa); and
 - (C) the Parties will agree a regime to share between Foundation Customer and Co-Foundation Customer any economies of scale arising from an expansion undertaken for either the Foundation Customer or the Co-Foundation Customer;
- (iv) in relation to scheduling and the exercise of operational control, Foundation Customer and Co-Foundation Customer will be given equivalent priority in accordance with the Scheduling and Operating Protocol as amended;
- (v) if an Article of this Convention provides that the agreement, approval or consent of the Foundation Customer is required, then the agreement, approval or consent of the Co-Foundation Customer will also be required, except where the relevant matter affects the Foundation Customer and not the Co Foundation Customer and vice versa;
- (vi) the Foundation Customer and the Co-Foundation Customer will enter into arrangements regarding the respective exercise by them of rights under Article 18.6(a) (pre-emptive rights over expansions) and Article 47.4 (step in rights) on a fair and equitable basis, reflecting the proportion which the Stage 2 FC Initial Capacity bears to Co-Foundation Initial Capacity and their respective financial contributions to the Infrastructure Owner;
- (vii) the rights and obligations of the Foundation Customer and the Co Foundation Customer will be several and not joint.

Parameters applying to Foundation Customer – CFC Agreement

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- (b) Unless otherwise agreed, the Foundation Customer – CFC Agreement will, amongst other things, provide that if Foundation Customer provides any support or contribution of any kind to facilitate the financing of the Project Infrastructure, the Co-Foundation Customer must to the extent it enjoys the same rights as the Foundation Customer provide equivalent support or contribution.

Parameters applying to CFC Co-Completion Agreement

- (c) Unless otherwise agreed, the CFC Co-Completion Agreement will be based on the co-completion arrangements to be entered into under Article 7(f).

Parameters applying to the CFC RPSA

- (d) Unless otherwise agreed, the CFC RPSA will be based on the RPSA to be entered into in accordance with Article 15.1(a).

4.3 Good Faith Negotiations

If the conditions in section 1 of this Appendix 18 are satisfied then:

- (a) the State, Foundation Customer, Infrastructure Owner and Infrastructure Operator will negotiate the CFC Convention Amendment in good faith with the Proposed Co Foundation Customer. If and when agreed, the relevant parties will duly sign the CFC Convention Amendments and the State will place the signed CFC Convention Amendments before the Guinean National Assembly for ratification; and
- (b) Foundation Customer, Infrastructure Owner and Infrastructure Operator will negotiate the other CFC Agreements in good faith with the Proposed Co Foundation Customer. If and when agreed, the relevant parties will duly sign the other agreed CFC Agreements.

Each CFC Agreement must give effect to the parameters set out in section 4.2 of this Appendix 18 and otherwise contain terms and conditions to be agreed between the parties to those agreements. For the avoidance of doubt, nothing in this Convention requires the Infrastructure Owner to fund the Co Foundation Capacity unless if it agrees to do on the basis of the agreed CFC Agreements

5 Timing

The Parties acknowledge and agree that:

- (a) If the CFC Agreements are not duly signed (and, in the case of the CFC Convention Amendments, are not ratified), or the Infrastructure Owner does not agree to fund the Co-Foundation Capacity on the basis of the agreed CFC Agreements, by the date that is 9 months after the Effective Date (or such later date as is agreed under section 5(b) of this Appendix 18) then negotiations with the Co Foundation Customer will cease and the Parties will have no further obligations towards the Co Foundation Customer. The remaining Parties may then proceed with the Project without involving the Co Foundation Customer on the basis of an Infrastructure BFS for the Foundation Customer's Stage 2 FC Initial Capacity only;
- (b) the State, the Infrastructure Owner and the Foundation Customer may agree to extend the end date referred to in section 5(a) of this Appendix 18. If an extension is agreed, then the period of the extension will be an IED Deemed Extension;
- (c) the State reserves the right to withdraw a Proposed Co-Foundation Customer at any time, at which time negotiations with the Co-Foundation will cease and the Parties will have no further obligations towards the Co Foundation Customer. The remaining Parties may then proceed with the Project without involving the Co Foundation Customer on the

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basis of an Infrastructure BFS for the Foundation Customer's Stage 2 FC Initial Capacity only;

- (d) if Infrastructure Owner pays Historical Infrastructure Costs to Foundation Customer pursuant to Article 19.4 of the Basic Convention, Foundation Customer must pay to Co-Foundation Customer as soon as possible that part of the amount received that relates to Historical Infrastructure Costs previously paid by the Co-Foundation Customer under sections 1(a)(iii) or 3(b) of this Appendix 18. The Co-Foundation Customer will not be entitled to a refund of the Historical Infrastructure Costs paid by it to the Foundation Customer under section 1(a)(iii) or 3(b) of this Appendix 18 in any other circumstances;
- (e) if negotiations with the Proposed Co-Foundation Customer cease, the Foundation Customer must advise the State of any variation to the period of the IED Deemed Extension nominated by it under section 1(b) of this Appendix 18, acting reasonably taking into account the delays caused by changing the scope of the Infrastructure BFS to include the Co-Foundation Customer Capacity and then having to change the scope of the Infrastructure BFS again to not include the Co-Foundation Customer Capacity. The revised period nominated will be the period of the relevant IED Deemed Extension.