

**THE GOVERNMENT OF THE REPUBLIC OF THE UNION OF MYANMAR  
MINISTRY OF MINES**

**AGREEMENT**

for

**PROSPECTING, EXPLORATION AND FEASIBILITY STUDY OF  
----- AND ASSOCIATED MINERALS  
AT ----- AREA,  
----- TOWNSHIP, ----- REGION**

BETWEEN

**THE DEPARTMENT OF GEOLOGICAL SURVEY AND MINERAL  
EXPLORATION**

and

**COMPANY (A)**

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----- **AND ASSOCIATED MINERALS PROSPECTING, EXPLORATION  
AND FEASIBILITY STUDY AGREEMENT**

**THIS AGREEMENT** is made in Nay Pyi Taw, the Republic of the Union of Myanmar on the -----day of -----

**BETWEEN**

**THE DEPARTMENT OF GEOLOGICAL SURVEY AND MINERAL EXPLORATION**, a department under the jurisdiction of the Ministry of Mines wholly owned by the State and constituted under the laws of Republic of the Union of Myanmar, (hereinafter referred to as **DGSE** which expression shall, unless repugnant to the context or the meaning thereof, includes its successors and permitted assigns), whose legal address is at Myanmar Gems Museum, Yaza Thingaha Road, Thapyaygone, Ministry of Mines, Nay Pyi Taw, the Republic of the Union of Myanmar represented for the purpose of this Agreement by its Director General, -----,

**AND**

**COMPANY (A)**, a company incorporated under the laws of ----- having its principal office ----- (hereinafter referred to as **COMPANY (A)** which expression shall, unless repugnant to the context or the meaning thereof, includes its legal representatives, successors, and permitted assigns), represented for the purpose of this Agreement by its Managing Director, -----, on the OTHER PART.

Each of the parties hereto is hereinafter respectively referred to as a "**Party**" and collectively to as the "**Parties**".

**RECITALS**

**WHEREAS**

- (A) The Ministry of Mines wishes to develop of the mineral sector of the Republic of the Union of Myanmar, and has authority over projects involving this Agreement.
- (B) The Ministry of Mines has the right under the laws of the Republic of the Union of Myanmar to grant to **COMPANY (A)** the rights to conduct, ----- mineral and associated mineral Prospecting, Exploration and Feasibility Study in the Agreement Area located in -----Township, ----- Region, the Republic of the Union of Myanmar.
- (C) The Ministry of Mines has granted to **DGSE** the authority to enter into this Agreement on its behalf and to grant to **COMPANY (A)** all of the rights and interests hereunder.
- (D) **COMPANY (A)** has substantial experience in mineral Prospecting, Exploration and Feasibility Study and has access to the information, knowledge, experience and proven technical and financial capability and other resources to undertake a programme for mineral Prospecting, Exploration and Feasibility Study in the Agreement Area.

(E) **COMPANY (A)** wishes to undertake ----- mineral and associated minerals Prospecting, Exploration and Feasibility Study efforts in the Agreement Area on the terms and conditions set out in this Agreement.

**NOW, THEREFORE**, in consideration of the covenants and agreements contained herein, DGSE and **COMPANY (A)** hereby enter into this Agreement for the purposes heretofore and hereinafter mentioned:

## **ARTICLE I DEFINITIONS**

The following definitions shall apply unless the context requires otherwise.

- 1.1** *Accounting Procedure* means the procedures in accordance with the Myanmar Accounting Standard and the International Accounting Standard.
- 1.2** *Agreement Area* is that land area shown and described on the map attached to this Agreement in Annexure I and shall, where the Agreement Area has been reduced in accordance with Article 3.2, mean the Agreement Area so reduced.
- 1.3** *Article* means an article of this Agreement.
- 1.4** *Associated Minerals* means all minerals which geologically occur together with and must necessarily be mined and processed with ----- minerals discovered in the Agreement Area.
- 1.5** *Auditor General's Office* means the office of Auditor General of the Union Government.
- 1.6** *Budget* means a detailed estimate of all costs to be incurred by **COMPANY (A)** for the purposes contemplated in Article 5.4.
- 1.7** *Deposit* means one or more bodies of ----- mineral and other associated minerals mineralization which may exist or be discovered in the Agreement Area.
- 1.8** *Effective Date* means the date upon mineral Prospecting, Exploration and Feasibility Study permit has been issued by the Ministry of Mines to **COMPANY (A)**.
- 1.9** *Environment* means physical factors of the surroundings of human beings, including land, water, atmosphere, climate, sound, odours, tastes and biological factors of animals and plants and the social factors of aesthetics.
- 1.10** *Euro* means lawful currency of the European Union.
- 1.11** *Feasibility Study* means a work performed to evaluate and develop the deposit or deposits discovered in the Agreement Area, prepared by or on behalf of **COMPANY (A)** that meets international industry standards for an independent feasibility report. Such report shall include the following:
  - (a) alternative of mining, processing and beneficiation of ----- mineral and Associated minerals:

- (b) analysis of estimated recoverable proven and probable reserve in terms of technical and economic constraints including the effect of grade, losses and impurities;
  - (c) analysis of the environmental and social impact of the project and the cost of the environmental compliance;
  - (d) analysis of metallurgical tests to determine the efficiency of alternative extraction, recovery and processing techniques;
  - (e) reasonable estimates of capital costs of various alternatives, including estimates of capitalized pre-stripping expenditures, equipment expenditures, reasonable estimates of working capital requirements, and estimates of all other direct and indirect costs including general and administrative costs.
- 1.12 *Feasibility Study Operations*** mean all activities carried out by COMPANY (A) during the Feasibility Study period.
- 1.13 *Feasibility Study Period*** means the period of 1(one) year under Article 8.2 (b).
- 1.14 *Financial Year*** means a period of 12 (twelve) months commencing 1<sup>st</sup> April and ending on the following 31<sup>st</sup> March according to the Gregorian calendar.
- 1.15 *Government*** means the Government of the Republic of the Union of Myanmar, including its various governmental entities.
- 1.16 *Joint Coordination Committee*** means the committee established in accordance with Article XVI.
- 1.17 *Kyat*** means the lawful currency of the Republic of the Union of Myanmar.
- 1.18 *Local Authorities*** means authorities of any Region and State Government, District and Township Administration Department or other local authority that have administrative authority to assert jurisdiction over the Agreement Area of COMPANY (A).
- 1.19 *Local Currency*** means kyat, lawful currency adopted by the Republic of the Union of Myanmar.
- 1.20 *MFTB*** means the Myanmar Foreign Trade Bank (hereinafter referred to as MFTB).
- 1.21 *Minerals*** means ----- mineral whether fully or partially refined or processed or in its natural unprocessed state, as the context requires. A deposit shall be considered a ----- mineral deposit regardless of the comparative quantities of ----- mineral and Associated Minerals that would be produced in mining such a Deposit.
- 1.22 *Mineral Prospecting*** means searching for minerals and mineral deposits and also includes the process of testing mineral bearing qualities of the land.
- 1.23 *Mineral Prospecting Operations*** mean all activities carried out under Article VI.
- 1.24 *Mineral Prospecting Period*** means the period of 1 (one) year under Article 6.1 (b).
- 1.25 *Mineral Exploration*** means defining and gaining knowledge of size, shape, location, quality and quantity of a Deposit, referred to the Probable Ore Reserve (P-2) classification under DGSE.

- 1.26 *Mineral Exploration Operations*** means all activities carried out by COMPANY (A) during the Mineral Exploration Period.
- 1.27 *Mineral Exploration Period*** means the period of 3 (three) year under Article 7.1(b).
- 1.28 *Minimum Expenditure Requirements*** means the minimum amount of Project Expenditure to be spent by COMPANY (A) during the Mineral Prospecting Period as set out in Article 6.2, the Mineral Exploration Period as set out in Article 7.2 and Feasibility Study Period as set out in Article 8.3.
- 1.29 *Mining Law*** means the Myanmar Mines Law (The State Law and Order Restoration Council Law No. 8/94) enacted on 6th September 1994.
- 1.30 *Mining Rules*** means the Myanmar Mines Rules (Notification No. 125/96 dated 30<sup>th</sup> December 1996) issued by the Ministry of Mines.
- 1.31 *Minister*** means the Union Minister for the Ministry of Mines of the Republic of the Union of Myanmar.
- 1.32 *Ministry*** means the Union Ministry of Mines of the Republic of the Union of Myanmar.
- 1.33 *Ministry of Mines Permit*** means the permit issued by the Ministry of Mines under Section 2 (g) of Chapter I of the Myanmar Mines Law, 1994, issued and delivered to COMPANY (A) on the Effective Date.
- 1.34 *Operations*** means the Prospecting, Exploration and Feasibility Study activities carried out under the Agreement.
- 1.35 *Person*** shall mean a legal person and includes a body corporate, an unincorporated body or other entity and conversely.
- 1.36 *Probable Ore Reserve (P-2)*** means ore deposit that has been measured in three dimensions and sampling. Tonnage and grade computed from specific measurements and samples with closely spaced interval has been supplemented by some geological deduction (Annexure V)
- 1.37 *Respective Ministry*** means any Union Ministry under the Government which is to be referred to in connection with the operation.
- 1.38 *Security Deposit*** means the irrevocable bank guarantee to be provided by COMPANY (A) under Article XI.
- 1.39 *Term*** means the period of this Agreement commencing on the Effective Date and ending on the date determined in accordance with Article XIX.
- 1.40 *U.S. Dollars or US\$*** means the lawful currency of the United States of America.
- 1.41 *UNCITRAL*** means the United Nations Commission on International Trade Law (hereinafter referred to as UNCITRAL).
- 1.42 *Work Programme*** means the work programme to be drawn up by COMPANY (A) for the Operations under Article VI, VII, and VIII.

**ARTICLE II**  
**REPRESENTATIONS AND WARRANTIES**

**2.1 Representations and warranties by both Parties**

Each Party represents and warrants to the other that:

- (a) it is a legal person duly authorised under the relevant laws;
- (b) it has the right, power, and authority to enter into this Agreement; and
- (c) this Agreement is valid and binding.

**2.2 Representations and Warranties by DGSE**

DGSE represents and warrants to COMPANY (A) that:

- (a) it has the rights under the laws of the Republic of the Union of Myanmar to conduct the Operations within the Agreement Area in accordance with the Myanmar Mines Law and Myanmar Mines Rules.
- (b) no lease, license or permit, including any permit relating to Mineral Prospecting, Exploration and Feasibility Study in all or any part of Agreement Area has been granted to any third party.

**ARTICLE III**  
**AGREEMENT AREA AND RELINQUISHMENT**

**3.1 Agreement Area**

- (a) The Agreement Area means that area as defined in Annexure I attached to this Agreement. The original Agreement Area shall be deemed to contain ---- square kilometres (----- acres), excluding existing mining areas permitted by Department of Mines and relevant Mining Enterprises under the Ministry, prior to the Effective Date.
- (b) COMPANY (A) shall not be permitted to execute Prospecting, Exploration and Feasibility Study activities according to this Agreement in the area of archaeological heritage, village, tract, road, cultivated areas, industrial complex, religious compounds and all other areas restricted by relevant Ministries under the Government of the Republic of the Union of Myanmar.

**3.2 Relinquishment generally**

- (a) COMPANY (A) may by written notice to the DGSE relinquish all or any part of the Agreement Area at any time and from time to time during the Term.
- (b) any such notice shall be submitted with a relinquishment report stating all technical and geological findings of the relinquished areas and the reasons for



the relinquishment supported by field data of activities undertaken in those areas.

- (c) all basic data (basic geological exploration, and other related data) of the relinquished areas shall be submitted to DGSE and shall become the property of DGSE.
- (d) the remaining area, after relinquishment shall be contiguous.

## **ARTICLE IV**

### **GRANT OF PERMIT AND EFFECTIVE DATE**

#### **4.1 COMPANY (A) establishment in Myanmar**

Before signing of the Agreement COMPANY (A) shall register in the Republic of the Union of Myanmar and form a company which must be incorporated in Myanmar under the Myanmar Companies Act.

#### **4.2 Grant of Permit**

The Ministry shall on the Effective Date issue COMPANY (A) the Mineral Prospecting, Mineral Exploration and Feasibility Study Permit. The permit shall be valid for the period as prescribed in Article 6.1 (b), 7.1 (b) and 8.2 (b).

#### **4.3 Effective date**

The effective will be (-----,----, 2015) the date upon which Mineral Prospecting, Exploration and Feasibility Study permit has been issued by the Ministry of Mines to COMPANY (A).

## **ARTICLE V**

### **WORK PROGRAMMES**

#### **5.1 Preparation of Work Programme**

COMPANY (A) shall draw up a Work Programme for the Mineral Prospecting, Exploration and Feasibility Study Operations.

#### **5.2 Presentation to DGSE**

- (a) The Work Programme shall be presented to DGSE at least 1(one) month prior to the commencement of the work contemplated in the Programme.
- (b) DGSE may give its comments regarding the Work Programme. COMPANY (A) shall revise the work programme taking into account the comments of DGSE.

### **5.3 Standard of Care for Operations**

COMPANY (A) shall conduct all Operations in accordance with internationally acceptable mining industry standards and practices, and in accordance with the terms and provisions of the Agreement, the Ministry of Mines Permit, and Governmental Approvals pertaining to the Operations.

### **5.4 Budgets**

The Work Programme shall include a Budget for the expenditure contemplated for the Operations in the Agreement Area which COMPANY (A) proposes to carry out during the Term of the Agreement.

## **ARTICLE VI**

### **MINERAL PROSPECTING**

#### **6.1 Commencement and term**

- (a) COMPANY (A) shall prepare and submit to the DGSE a Work Programme for its proposed Mineral Prospecting operations including the Initial Environmental Management Plan (EMP) within 1 (one) month prior to the commencement of the Prospecting programme and shall commence the Mineral Prospecting Operations in accordance with the work programme as soon as possible within the most promising parts of the Agreement Area. The programme of Mineral Prospecting Operations shall as appropriate include geological mapping, geophysical and geochemical survey and sampling.
- (b) The Mineral Prospecting Period shall be for a period of 1 (one) year.
- (c) Company (A) may submit the application for the extension of prospecting period not later than 3 months prior to expiry of the initial period of one year. An application for the extension of the tenure of a mineral prospecting period may normally be made on one occasion only for one year.
- (d) The Ministry may approve the extension of the Mineral Prospecting Period, if in the Ministry's opinion the Mineral Prospecting Operations undertaken by CCompany (A) during the permitted one year period is satisfactory.
- (e) The extension of the prospecting period will be approved by the Ministry only after the approval of the Union Government Office.

#### **6.2 Minimum Expenditure Requirement for Mineral Prospecting Period**

- (a) COMPANY (A) shall spend not less than the amount per square kilometre set out in Annexure IV on Project Expenditure in the Agreement Area during the Mineral Prospecting Period.

- (b) Notwithstanding anything contained herein this agreement, the expenditure to be incurred in the Republic of the Union of Myanmar in respect of Prospecting Operations shall not be less than 30 % (thirty percent) of the total Minimum Expenditure Requirement.
- (c) The Minimum Expenditure Requirement for the Prospecting Period shall be determined by reference to the size of the Agreement Area (in each case, as reduced by any relinquishment made in accordance with Articles 3.2).
- (d) All expenditure incurred in accordance with the Accounting Procedure and all Dead Rent paid during the relevant period in accordance with Article XV shall be included in determining whether COMPANY (A) has met the Minimum Expenditure Requirement for the Mineral Prospecting Period.

### **6.3 Overhead Charges**

COMPANY (A) shall be entitled to include as part of Project Expenditure for the purpose determining whether it has satisfied its Minimum Expenditure Requirement under Article 6.2 and Annexure IV an amount equal to 15% (Fifteen Percent) of all Operating Costs incurred by COMPANY (A) during the Prospecting Period as an allowance for COMPANY (A)'s home office, overhead and administrative costs in connection with the Project.

### **6.4 Submission of report**

After the completion of Prospecting period, COMPANY (A) shall submit Prospecting report to DGSE which shall contain calculation and reasons, both technical and economic, supported by data, drawings, maps and relevant information upon which the decision whether or not to proceed with the Exploration activities is based. The Propsecting report shall also contain all information as herein above mentioned in the definition for Prospecting and information concerning other matters which, in the opinion of COMPANY (A), may be of interest to the Government.

### **6.5 Proceed to Mineral Exploration**

To proceed on the Mineral Exploration stage and for the relinquishment COMPANY (A) may submit the application for the commencement of the Exploration Period not later than 3 (three) months prior to expiry of the period of Mineral Prospecting.

## **ARTICLE VII MINERAL EXPLORATION**

### **7.1 Commencement and Term**

- (a) COMPANY (A) shall prepare and submit to the DGSE a Work Programme for its proposed Mineral Exploration Operations within 1 (one) month prior to commencement of the exploration program and shall commence the Mineral Exploration Operations in accordance with the Work Programme as soon as possible within the most promising parts of the Agreement Area. The programme of Mineral Exploration Operations shall as appropriate include detailed geological, geophysical, geochemical survey, drilling programme, sampling and analysis.
- (b) The Mineral Exploration Period shall be for a period of 3 (three) years. COMPANY (A) may submit the application for the extension of the Exploration Period not later than 3 (three) months prior to expiry of the period of 3 (three) years to make an application for the extension of the tenure of a mineral exploration. Application for the extension may normally be made on two occasions only, 1 (one) year at a time according to Chapter III, Section (21) and (22) of the Myanmar Mines Rules and shall amend the permit accordingly.
- (c) The Ministry may approve the extension of exploration period, if in the Ministry's opinion the exploration works undertaken by COMPANY (A) during the permitted 3 (three) year period is satisfactory.
- (d) The extension will be approved by the Ministry, only after approval of the Union Government Office.

## **7.2 Minimum Expenditure Requirement for Mineral Exploration Period**

- (a) COMPANY (A) shall spend not less than the amount per square kilometre set out in Annexure IV on Project Expenditure in the Agreement Area during the Mineral Exploration Period.
- (b) notwithstanding anything contained herein this agreement, the expenditure to be incurred in the Republic of Union of Myanmar in respect of Exploration Operations shall not be less than 30 % (thirty percent) of the total Minimum Expenditure Requirement.
- (c) the Minimum Expenditure Requirement for the Exploration Period shall be determined by reference to the size of the Agreement Area (in each case, as reduced by any relinquishment made in accordance with Articles 3.2).
- (d) all expenditure incurred in accordance with the Accounting Procedure and all Dead Rent paid during the relevant period in accordance with Article XV shall be included in determining whether COMPANY (A) has met the Minimum Expenditure Requirement for the Mineral Exploration Period.

### **7.3 Overhead Charges**

COMPANY (A) shall be entitled to include as part of project expenditure for the purpose determining whether it has satisfied its Minimum Expenditure Requirement under article 7.2 and Annexure IV an amount equal to 15% (Fifteen Percent) of all operating costs incurred by COMPANY (A) during the Mineral Exploration Period as an allowance for COMPANY (A)'s home office, other charges and administrative costs in connection with the Project.

### **7.4 Submission of report**

After the completion of Exploration period, COMPANY (A) shall submit an Exploration report to DGSE which shall contain calculation and reasons, both technical and economic, supported by data, drawings, maps and relevant information upon which the decision whether or not to proceed with the Feasibility Study is based. The Exploration report shall also contain all information as herein above mentioned in the definition for Exploration and information concerning other matters which, in the opinion of COMPANY (A), may be of interest to the Government.

## **ARTICLE VIII FEASIBILITY STUDY**

### **8.1 Approval**

The Feasibility Study period for any part of the Agreement Area shall commence on the date COMPANY (A) submits a written notice to the DGSE in relation to its decision to proceed with the evaluation.

### **8.2 Commencement**

- (a) COMPANY (A) shall prepare and submit to the DGSE a Work Programme for its proposed Feasibility Study Operations not later than three (3) months prior to expiry of Mineral Exploration period and shall commence the Feasibility Study Operations in accordance with the Work Programme as soon as possible. The programme of Feasibility Study Operations shall as appropriate include detail geological, geophysical, geochemical survey, drilling, the metallurgical test and sampling.
- (b) The Feasibility Study period shall be a period of 1 (one) year.
- (c) Company (A) may submit the application for the extension of Feasibility Study period not later than 3 months prior to expiry of the Feasibility Study period of one year.

- (d) The Ministry may approve the extension of Feasibility Study Period, if in the Ministry's reasonable opinion the progress of Feasibility Study works undertaken by Company (A) during the permitted one year period is satisfactory.
- (e) The extension of the feasibility study period will be approved by the Ministry only after the approval of the Union Government Office.

### **8.3 Minimum Expenditure Requirement for Feasibility Study period**

- (a) COMPANY (A) shall spend not less than the amount per square kilometer set out in Annexure IV on Project Expenditure in the Agreement Area during the Feasibility Study period.
- (b) notwithstanding anything contained herein this Agreement, the expenditure to be incurred in the Republic of the Union of Myanmar in respect of Feasibility Study Operations shall not be less than 30% (thirty percent) of the total Minimum Expenditure Requirement in Myanmar.
- (c) the Minimum Expenditure for the Feasibility Study period shall be determined by reference to the size of the Agreement Area.
- (d) all expenditure incurred in accordance with the Accounting Procedure and all Dead Rent paid during the relevant period in accordance with Article XV shall be included in determining whether COMPANY (A) has met the Minimum Expenditure Requirement for the Feasibility Study period.

### **8.4 Overhead Charges**

COMPANY (A) shall be entitled to include as part of Project Expenditure for the purpose determining whether it has satisfied its Minimum Expenditure Requirement under Article 8.3 and Annexure IV an amount equal to 15% (Fifteen Percent) of all Operating Costs incurred by COMPANY (A) during the Feasibility Study period as an allowance for COMPANY (A) 's home office, overhead and administrative costs in connection with the Project.

### **8.5 Standard of care**

COMPANY (A) shall pursue the completion of the Feasibility Study with reasonable diligence and the Feasibility Study shall be conducted in accordance with methods and standards generally accepted in the mining industry for that type of study and shall be in a form and level of detail generally acceptable to international financing organizations.

## **8.6 Submission of report**

- (a) after the completion of any Feasibility Study, COMPANY (A) shall submit a Feasibility Study report to the DGSE which shall contain calculations and reasons, both technical and economic, supported by data, drawings, maps and relevant information upon which the decision whether or not to proceed with the development of Deposits is based. The Feasibility Study report shall also contain all information as herein above mentioned in the definition for Feasibility Study and information concerning other matters which, in the opinion of COMPANY (A) , may be of interest to the Government.
- (b) COMPANY (A) shall be entitled to retain copies of all materials submitted to DGSE under Article 8.6 (a), and may continue to use the information for the benefit of any lands remaining in the Agreement Area during the Term.

## **8.7 Application for Production Permit**

At any time during the Feasibility study period, if it is in the opinion of the COMPANY (A) that it is feasible to proceed with the development and processing of Minerals from the deposit, or, if the feasibility study sets a positive recommendation for development and processing of minerals from the deposit, COMPANY (A) may apply to the Ministry to obtain a Production Permit as per the Myanmar Mines Rule .

# **ARTICLE IX GENERAL RIGHTS AND OBLIGATIONS**

## **9.1 COMPANY (A)'s obligations**

COMPANY (A) shall:

- (a) carry out Mineral Prospecting, Exploration and Feasibility Study activities at its own cost and expense.
- (b) be responsible for all activities necessary for Mineral Prospecting, Exploration and Feasibility Study.
- (c) appoint an auditor recognized and certified by the Office of Auditor General of the Union and the audited expenditure relating to Prospecting, Exploration and Feasibility Study activities be approved by the Office of Auditor General of the Union.
- (d) ensure that COMPANY (A)'s personnel and their families shall respect and abide by the laws of the Republic of the Union of Myanmar and they shall not

interfere with the political and internal affairs of the Republic of Union of Myanmar during their stay in Myanmar.

- (e) abide the terms and conditions prescribed under the Myanmar Mines Law and Myanmar Mines Rules.
- (f) abide by the terms and conditions of the Environmental Law of the Ministry of the Environmental Conservation and Forestry relating to mining during the Prospecting, Exploration and Feasibility Study period.
- (g) abide by the Forestry Law and Rules of the Ministry of the Environmental Conservation and Forestry relating to mining during the Prospecting, Exploration and Feasibility Study period.
- (h) be responsible for the Preservation of the Environment at and around the Agreement Area. COMPANY (A) shall be able to control pollution of air, water, land and other environmental degradation and it shall make necessary measure in order to fulfil environment protection of the waste water treatment procedures to keep the project site environmentally friendly.
- (i) conduct all operations in accordance with standard exploration techniques approved by the Joint Coordination Committee.
- (j) COMPANY (A) may employ or engage any number of Myanmar personnel for the purposes of the Operations, provided that at all times during the feasibility Study period, no less than 25% (twenty five percent) of the total number of those employed by COMPANY (A) are Myanmar personnel.
- (k) employ Myanmar personnel so that not less than 25% (twenty five percent) of the total number of technical personnel be nominated by DGSE.
- (l) employ Myanmar personnel so that not less than 25% (twenty five percent) of the total number of expert be nominated by DGSE.
- (m) employ Myanmar personnel in accordance with Labour Law, Rules of the Republic of the Union of Myanmar.
- (n) submit a complete comprehensive Exploration report and Feasibility Study report to the DGSE in time.
- (p) shall hand over back to the DGSE, Ministry of Mines permit without hesitation after expiry or termination of the Agreement. If COMPANY (A) fails to hand over back the Ministry's Permit, it shall be conducted in accordance with the provision of Chapter IX section 28 of the Myanmar Mines Law.



- (q) terminate either on the date of expiry of the period or end of Feasibility Study, COMPANY (A) shall re-export all the drawback items within 6 months; if not re-exported by COMPANY (A) , shall become the properties of DGSE without any compensation.
- (r) shall be responsible for stamp duties charged on this Agreement according to Myanmar Stamp Act.
- (s) shall pay tax and duty according to Myanmar Revenue Law.
- (t) not be permitted to mineral production within the agreement area under Annexure(I), while the exploration and feasibility study activities.

## 9.2 Assistance of DGSE

DGSE shall:

- (a) assist according to specific rules and regulations to obtain the permit for importation of the equipment and machineries which are to be used for exploration operation, when submitted by COMPANY (A) for such importation.
- (b) assist for the access of COMPANY (A) 's staff and experts into the Agreement Area as contemplated in Article III and domestic travel in accordance with prevailing laws, rules and procedures.
- (c) assist COMPANY (A) to obtain the existing geological, geophysical, topographical and scientific samples, data and information with respect to agreement area in DGSE's possession except those data restricted by the Government of the Republic of the Union of Myanmar and the Ministry.
- (d) assist to obtain the necessary permits and licenses from the Ministry of Communication and Information Technology so that MCRAE CLOUGH be able to utilize the necessary telecommunication equipments for the purpose of implementing the Work Programme in accordance with the Laws of the Republic of the Union of Myanmar.
- (e) assist COMPANY (A) necessary matters with respect to the terms and conditions of the contract in accordance with relevant Laws, Rules and Procedures.

## **ARTICLE X BANKING AND CURRENCY RIGHTS**

- 10.1** COMPANY (A) shall be solely responsible to supply all funds necessary for the Operations in Myanmar. The funds shall be remitted in the currency acceptable to the Myanmar Foreign Trade Bank (MFTB).

- 10.2** COMPANY (A) shall have full foreign currency and local currency use and retention rights, for all purposes to comply under the Laws, Rules, Regulations, Orders and Directives of the Ministry of Finance and Revenue.

## **ARTICLE XI SECURITY DEPOSIT**

### **11. Terms and conditions**

COMPANY (A) shall within 30 (thirty) days after the date of signing, provide the Security Deposit to DGSE.

- (a) The Security Deposit shall be placed at Myanmar Foreign Trade Bank (MFTB). The form of Security Deposit shall be in a form approved by MFTB.
- (b) The Security Deposit shall be in the foreign currency which is acceptable to MFTB, being equivalent to the amount of USD ----- (United States ----- Only).
- (c) The Security Deposit shall be valid for the Term.
- (d) if COMPANY (A) fails to meet its Minimum Expenditure Requirement under Article 6.2, Article 7.2, Article 8.3 and Annexure IV and such failure is on-going at the end of the year of the Mineral Prospecting, Exploration and Feasibility Study Period, DGSE may call upon MFTB to make payment under the Security Deposit of the amount for which COMPANY (A) is in default.
- (e) if COMPANY (A) is in breach of the terms and conditions of this Agreement, DGSE may call upon MFTB to make payment.

## **ARTICLE XII APPLICATION FEES**

**12.1** COMPANY (A) shall pay to DGSE a sum equivalent to USD ----- (United States ----- only) in a currency acceptable to MFTB as a Application Fees within 30 (thirty) days from the date of signing.

**12.2** If it is failed to remit the Application Fees in time (10%) interest per month of Application Fees will be paid for penalty and that payment should be paid not later than three months.

**ARTICLE XIII  
INSURANCE**

13. COMPANY (A) shall affect insurance as required by the Foreign Investment Law of the Republic of the Union of Myanmar and the Myanmar Insurance Law.

**ARTICLE XIV  
TAXES AND DUTIES**

**14.1 Payment of Myanmar tax**

COMPANY (A) shall subject to this Article XIV, pay taxes and duties which are payable in Myanmar in accordance with the laws, rules and regulations of the Ministry of Finance.

**ARTICLE XV  
DEAD RENT**

**15.1 Dead Rent**

COMPANY (A) shall pay Dead Rent at the rates set out in Annexure IV.

**15.2 Manner of payment**

COMPANY (A) shall pay Dead Rent in Kyats upon the invoice to the Department of Mines within 30 (thirty) days after the date of signing. And COMPANY (A) shall pay Dead Rent to the Department of Mines annually for each financial year two equal installment each payable within 30 (thirty) days after 1<sup>st</sup> April and 1<sup>st</sup> October in each year during the term.

**ARTICLE XVI  
JOINT CO-ORDINATION COMMITTEE**

**16.1 Establishment**

DGSE and COMPANY (A) shall establish a Joint Co-ordination Committee, at which the Parties will discuss, amongst other things, the Work Programme, finance, administration and the reports of Mineral Prospecting, Exploration and Feasibility Study, and provide an effective liaison between DGSE and COMPANY (A) .

**16.2 Composition**

- (a) The Committee shall consist of 5 (five) members, 3 (three) to be appointed by the DGSE and 2 (two) to be appointed by MCRAE CLOUGH.

- (b) The Director General of DGSE shall act as the chairman of the Joint Co-ordination Committee, until the end of the Term of this Agreement.

### **16.3 Procedures**

The procedure of Joint Co-ordination Committee shall be followed in accordance with Annexure II.

### **16.4 Expatriates**

- (a) COMPANY (A) shall be entitled to bring into the Republic of the Union of Myanmar such non-Myanmar Expatriate personnel as COMPANY (A) deems necessary to assist and carry out the Operations efficiently.
- (b) Salaries of the Expatriate employees of COMPANY (A) shall be determined solely by COMPANY (A) and shall be paid in US Dollars.

### **16.5 DGSE site representatives**

- (a) Subject to prior notice to COMPANY (A), DGSE may station 2 (two) representatives in the Agreement Area during the Term.
- (b) The representatives shall be provided with reasonable transport facilities for the purposes of their duties and accommodation. COMPANY (A) shall pay the monthly allowance in US Dollars for the representatives through the MFTB.
- (c) DGSE's representatives may observe, but not participate in, Operations within the Agreement Area, and shall act as liaison between COMPANY (A) and DGSE and, where expressly requested by COMPANY (A) (but not otherwise) between Governmental entities and COMPANY (A).

## **ARTICLE XVII RECORDS, ACCOUNTS AND AUDIT**

- 17.1** COMPANY (A) shall be responsible for keeping complete records and accounts, showing a true and fair view of all of its Operations under this Agreement in accordance with Myanmar Accounting Standards and the International Accounting Standards. The accounts and other records shall be maintained in English and all financial records shall be recorded in Kyats and in United States Dollars. A copy of such records and accounts shall be kept in the Republic of Union of Myanmar.

- 17.2** COMPANY (A) shall submit a budget for operation during the Term to DGSE within 1 (one) month after the date of signing. COMPANY (A) shall also submit to DGSE the audited statement of accounts together with a review of Operations within 1 (one) month after the expiry of the term.
- 17.3** The statement of accounts of COMPANY (A)'s Operations under this Agreement shall be prepared quarterly and all accounts shall be subject to yearly audit and shall have obtained the approval of the office of the Auditor General of the Union. In preparing statements of accounts, Kyat expenditures shall be converted to US Dollars and the currency exchange rate shall be the official US Dollar to Kyat exchange rate issued by the Central Bank of Myanmar on the date of transaction.
- 17.4** The account and records of the operations of COMPANY (A) shall be approved by the office of the Auditor General of the Union and COMPANY (A) shall submit annual account and auditor's report to DGSE within 1 (one) month after the end of reporting period.

## **ARTICLE XVIII CONFIDENTIALITY**

- 18.** It is agreed that all information pertaining to the Operations under this Agreement shall be confidential and shall not be released to any third party except as to that information which is required by law to be disclosed to financial institutions for the purpose of funding Operations or as may be required by any applicable regulatory authority or laws and regulations.

## **ARTICLE XIX DURATION AND TERMINATION**

### **19.1 Duration**

Unless sooner terminated as herein provided in Article 19.2 (b) and (c) subject to Article VI, Article VII and Article VIII, the duration of this Agreement shall be a minimum of 5(five) years. This Agreement may be extended for a period of a further period of 4 (four) years. Duration will be effected from effective date. In any case the duration of this agreement shall not be more than 9 (nine) years.

### **19.2 Termination**

- (a) This Agreement shall be deemed expired on the date of expiry of the Ministry of Mines Permit, in which case the Agreement shall become null and void.

- (b) Either Party may by notice in writing terminate this Agreement if:
  - (i) the other party shall have committed a material breach of any of the conditions thereof and the breach shall remain unremedied for 90 (ninety) days after written notice shall have given by the first Party specifying the details of the breach;
  - (ii) in the opinion of DGSE, works undertaken by COMPANY (A) is not satisfactory and do not comply to standards of care as contemplated in Article 5.3.
- (c) COMPANY (A) may terminate this Agreement by notice in writing to DGSE if during the Mineral Exploration period COMPANY (A) does not think the Exploration Operations are worthy of Feasibility Study.
- (d) This Agreement shall be terminated, if COMPANY (A) fails to comply Myanmar Mines Law and Myanmar Mines Rules.
- (e) If COMPANY (A) has not performed according to the work programme approved by Joint Co-ordination Committee, the Agreement may be terminated.
- (f) Notwithstanding anything contained herein, this Agreement may be terminated by mutual consent of the Parties.
- (g) This Agreement shall be terminated if COMPANY (A) fails to pay Application Fees within 30 (thirty) days after DGSE shall have given written warnings three times.
- (h) Upon termination of this Agreement the Parties hereto shall be deemed to be released and discharged from all further rights, obligations and liabilities under this Agreement save and except in respect of any obligations or liabilities which accrued prior to the date of termination.

### **19.3 Rights and obligations on termination**

If this Agreement is terminated under Article 19.2,

- (a) Unless otherwise agreed by DGSE, COMPANY (A) shall have the right to re-export all property owned by them within the Republic of the Union of Myanmar, for the full period and under the terms provided in the Ministry of Mines Permit and shall have the full benefit of all other provision in the Ministry of Mines Permit for the full period necessary to wind up the Operations.

- (b) Within the same period, COMPANY (A) shall remove all camps, temporary buildings or machinery erected or installed by COMPANY (A) in the Agreement area, and repairs or otherwise makes good any damage to the surface of the ground occasioned by such removal to the reasonable satisfaction of DGSE.
- (c) Any property not re-exported by COMPANY (A) in accordance with this Article 19.3 shall become the property of DGSE without any compensation to COMPANY (A), and COMPANY (A) shall relinquish all such property.

## **ARTICLE XX**

### **THE ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT AND ENVIRONMENTAL MANAGEMENT PLAN**

- 20.1** COMPANY (A) shall be responsible for preservation of the environment at and around the area of the project. The COMPANY (A) shall control the associated environmental impacts due to land use socio-economic, ecology, pollution of air, water & noise, vibrations, aesthetics & amenities, caused by Mineral prospecting, Mineral Exploration and Feasibility Study operation which cannot be ignored. COMPANY (A) shall submit the Environmental Management Plan (EMP) with regard to the Environmental and Social Impact Assessment (ESIA) which must be acceptable with the standard of the Ministry of the Environmental Conservation and Forestry before the approval of this agreement by the Ministry. The EMP shall present a tool for an effective design for a successful project on full life and relativity risk free basic. To consider the overall impact, strategic environment assessment shall be applied to a cluster of the project and an overall effective advanced environment management plan shall be formulated. Monitoring and post audit shall review the project for which EMP is already approved, which are required for effective environmental management.
- 20.2** The management plans shall be include a description of the program that the project shall put in place to monitor the implementation and efficacy of mitigation measures and the impact of the project. The management plans that are expected to be required in development of EMP are:
- (a) Dust Management Plan;
  - (b) Noise Management Plan;
  - (c) Water and waste Water Management Plan;
  - (d) Erosion and Sediment Control Plan;
  - (e) Waste Rock Management Plan;

- (f) Flora & Fauna Management Plan;
- (g) Harzardous Materials Management Plan;
- (h) General Waste Management Plan.

**ARTICLE XXI**  
**MISCELLANEOUS PROVISIONS**

**21.1 Annexure**

This Agreement consists of 5 (five) Annexures. All the Annexure attached hereto shall form an integral part of this Agreement.

**21.2 Notices and Communications**

Notices and other communications shall be given in writing in the English language pursuant to the provisions of this Agreement and unless otherwise specifically provided be given by fax followed by registered airmail or message with postage or transmission charges fully prepaid and addressed to:

- (a) If to DGSE:

Myanma Gems Museum, Yaza Thingaha Road, Thapyaygone,  
Ministry of Mines,  
Nay Pyi Taw  
Union of Myanmar  
Attention: Director General  
Telephone No. 95-067-414019 Fax No. 95-067-414043

- (b) If to COMPANY (A):

-----  
Attention: Managing Director  
Tel. No. -----  
Fax No. -----  
Email: -----

- (c) Notices given by telex shall be deemed to be given or made on the next business day following electronic confirmation of receipt of the telecopy. The address or telex or fax number of a Party may be changed by giving notice in writing to the other Party.

**21.3 Assignment**



No assignment by either Party shall be permitted during the term of this Agreement except with a written approval of the Ministry. However, this agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties.

## **ARTICLE XXII GOVERNING LAW**

- 22.1** This Agreement in all respects shall be interpreted and governed in accordance with the laws, rules, regulations and directives of the Republic of the Union of Myanmar.
- 22.2** Both Parties hereby agree that all obligations, Operations and performance of this Agreement shall be carried out in accordance with existing laws of the Republic of the Union of Myanmar.
- 22.3** No term or terms or no provision or provisions of this Agreement including the Agreement of the Parties to submit to arbitration hereunder shall prevent or limit the Government of the Republic of the Union of Myanmar from exercising its inalienable rights.
- 22.4** Both parties hereby agree to comply to the directives and instructions issued at any time and from time to time during the Term of this Agreement by the respective Government departments.

## **ARTICLE XXIII FORCE MAJEURE**

- 23.1** The term "Force Majeure" as employed herein shall mean act of God, Restraint of a Government including but not limited to complying the decision of Government of the Republic of the Union of Myanmar, higher authorities and Ministry of Mines, Strikes, Lockouts, Industrial Disturbances, Explosions, Fires, Floods, Earthquakes, Storms, Lightnings, Riots, Civil wars, Epidemics and every any other causes similar to the kind herein enumerated which are beyond the control of either party and which by exercise of due care and diligence either party is unable to overcome.
- 23.2** If either party is temporarily rendered unable, wholly or in part, by Force Majeure to perform its duties or accept performance by the other party under this Agreement, it is agreed that the effected party gives notice to the other party within 14 (fourteen) days after the occurrence of the cause relied upon giving full particulars in writing of such Force Majeure. The duties of such party as are effected by such Force Majeure shall with the approval of the other party, be suspended during the continuance of the

inability so caused, but for no longer period, and such cause shall as far as possible be removed with all reasonable despatch. Neither party shall be responsible for delay, damage or loss caused by Force Majeure.

#### **ARTICLE XXIV**

##### **ARBITRATION**

- 24.1** If any dispute arises out of this Agreement or any other agreement or document executed in connection with this Agreement, the Parties here to shall consult with each other in good faith in order to settle such dispute amicably within the period of 90 (ninety) days from the date the disputes, differences or claims being notified to the other Party failing which, either Party may refer the matter for arbitration.
- 24.2** Any dispute controversy or claim arising out of or relating to the contract, to the breach, termination of invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. The arbitration expenses shall be borne by the losing party.
- 24.3** The language to be used in the arbitral proceeding shall be in English and the place will be in Yangon, Myanmar.

#### **ARTICLE XXV**

##### **CONDITIONS PRECEDENT**

- 25.** This Agreement shall become effective and the Parties shall be bound by their obligations hereunder on the date when the conditions set out below have been fully satisfied:
- (a) the approval of this Agreement by all relevant Government authorities;
  - (b) the issue of the Ministry of Mines Permit on terms and conditions consistent with this Agreement;

#### **ARTICLE XXVI**

##### **AUTHENTICITY**

- 26.** This Agreement is made out in two original copies in English both of which shall be treated as equally authentic. One original copy each shall be held by each Party.

**ARTICLE XXVII**  
**RENEGOTIATION AND MODIFICATION**

**27.** In the event that any situation as condition arises owing to circumstances not envisaged in this Agreement, and warrants amendments to this Agreement, the parties hereto shall negotiate and made such amendments by the mutual consent in writing of the parties.

**IN WITNESS WHEREOF** the Parties hereto have caused this Agreement to be executed in accordance with the terms set forth herein on the date first above written

Signed, sealed and delivered by:

Signed, sealed and delivered by:

For and on behalf of

For and on behalf of

**Department of Geological Survey  
and Mineral Exploration**

COMPANY (A)

In the presence of

In the presence of

**ANNEXURE I**

**Location Map of Agreement Area**

## ANNEXURE II

### JOINT CO-ORDINATION COMMITTEE PROCEDURE

This Joint Co-ordination Committee procedure is as follows:

- 1** To obtain the benefits of mutual co-operation and to coordinate their efforts under the Agreement DGSE and COMPANY (A) shall establish a “JOINT CO-ORDINATION COMMITTEE” (herein called the *Committee*) composed of 3 (three) representatives appointed by DGSE and 2 (two) representatives appointed by COMPANY (A) . The Director General of DGSE shall act as the chairman of the Committee and Committee shall appoint a suitable person nominated by the chairman to act as Secretary of the Committee.
- 2** The initial appointment of representatives to the Committee shall be made by DGSE and by COMPANY (A), by notice given to the other within 30 (thirty) days after the Effective Date of the Agreement, advising the names of their respective representatives and such appointments may be changed thereafter from time to time by either Party, giving similar notice.
- 3** Decisions made by the Committee shall be recorded in minutes of meeting signed on behalf of both DGSE and COMPANY (A) and shall be binding on the Parties hereto.
- 4** The Committee shall meet quarterly and such meeting shall be held in Nay Pyi Taw or suitable place. The Chairman shall have the right to call the meeting before every 3 months of period.
- 5** The Committee shall have the following functions and responsibilities under this Agreement:
  - (a) to provide the opportunity for and to encourage the exchange of information, views, ideas comments and suggestions regarding plans, performances and results obtained under the Agreement;
  - (b) to review and discuss Work Programmes proposed by COMPANY (A);
  - (c) to coordinate on all technical, financial, administrative, appointment and training of Myanmar personnel and policy matter of interest to both Parties;

### **ANNEXURE III**

#### **PLANT, MACHINERY, EQUIPMENT AND SPARES TO BE IMPORTED BY COMPANY (A)**

all terrain vehicles, laboratory equipment, advance chemical equipments and support accessories.

- field equipment, including global positioning systems, compasses, hammer, hand lenses.
- camping equipment, geophysical equipment.
- office equipment, computers, drafting materials, geological software, plotters.
- drill rigs, including materials to support a drilling operation.
- 

Remarks:

- (1) Details will be provided at a later date.
- (2) All items are capital in kind or drawback.
- (3) Materials to be re-exported not to be sold or transferred to other companies.

**ANNEXURE IV**  
**DEAD RENT AND MINIMUM EXPENDITURE**

		<b>DEAD RENT</b>	<b>MINIMUM EXPENDITURE</b>
<b>PERIOD</b>	<b>YEAR</b>	<b>Rate (Kyats per sq km)</b>	<b>Rate (US\$ per sq km)</b>
Prospecting	1	K -----	US\$ -----
Prospecting (if extended)	2	K -----	US\$ -----
Exploration	1	K -----	US\$ -----
Exploration	2	K -----	US\$ -----
Exploration	3	K -----	US\$ -----
Exploration (if extended)	4	K -----	US\$ -----
Exploration (if extended)	5	K -----	US\$ -----
Feasibility Study	1	K -----	US\$ -----
Feasibility Study (if extended)	2	K -----	US\$ -----

## ANNEXURE V

### DGSE NORMS AND PRACTICE OF ORE RESERVE CATEGORIES

Depending on the amount of Exploration Works completed and degree of accuracy in ore reserve estimation, the ore reserve could be classified as Probable Ore Reserve (P-2) as the following norms:-

#### **Probable Ore Reserve (P-2)**

1. Determination of mode of mineralization inferred by application of all possible exploration methods.
2. Determination of length, width and depth of deposit corresponding to mode of mineralization and relevant cut-off grade.
3. Ore reserve calculation of the ore body which length, width and depth must be systematically measured and all the representative samples should be taken within fairly close interval, so that reserve and grade will be more reasonable and reliable to the required accuracy of the following different type deposits.

#### **(a) For Primary Deposit of Metal**

The spacing of drill holes, test pits and trenches should be not more than 50, 100 meter interval in grid pattern depending on the type of mineralization such as veins, patches, disseminated.

#### **(b) For Raw Materials such as Coal, Limestone, Gypsum and others**

The spacing of drill holes, test pits and trenches should be not more than 100, 200 meter interval in grid pattern depending on the size and shape of the deposit.

#### **(c) For Alluvial and Secondary Deposits of Gold, Platinum and Tin-Tungsten**

The spacing of drill holes, bore holes, test pits and trenches should be not more than 50, 100 meter for Gold and Platinum and 100 meter interval for Tin-Tungsten in grid pattern and together with some required amount of bulk sampling results.