

**COMMUNITY DEVELOPMENT AGREEMENT
(Draft)**

This Community Development Agreement is dated the day of January 2019

BETWEEN

THE OLE SERENI LOCAL COMMUNITY
as represented by the Ole Sereni Community Forum
(hereinafter the "Community")

and

XYZ LIMITED
as represented by the Managing Director
(hereinafter the "Company")

and

THE COUNTY GOVERNMENT OF KAJIADO
as represented by the Governor
(hereinafter the "County Government"
(each a "Party" and collectively the "Parties")

Whereas the Community has indigenous rights to the land under concession and is recognized as an affected Community under the Mining (Community Development Agreement) Regulations of 2017;

Whereas the Ole Sereni Community Forum is recognized as the entity that represents the interests of the local Community;

Whereas in May 24, 2017 the Cabinet Secretary in charge of mining gazetted the Mining (Community Development Agreement) Regulations to complement the Mining

Act No. 16 of 2016 which reinforces the principle set out under Article 66(2) of the Constitution of Kenya 2010 that investments in property shall benefit local communities and their economies;

Whereas the Fourth Schedule of the Constitution which sets out the roles and responsibilities between County and National governments recognizes the County Government's role in ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level

Whereas the Parties have a shared commitment to strengthen their relationship, on a mutual basis, in a manner which is respectful of the Ole Sereni Community's interests in achieving sustainable development and fulfilling its stewardship responsibilities on the land and the Company's need to manage the mining operation in a manner that honors its responsibility to its shareholders while pursuing sustainability in its operations;

Whereas the Parties, acting on their shared commitments, wish to enter into a strategic engagement agreement that sets out engagement processes which respect the land and resources within Ole Sereni area, including processes for consultation and accommodation and identifying issues related to land and resource use, dispute resolution, principles for sharing information, and the establishment of consultation forums to address land and resource management activities, shared decision-making and benefit-sharing;

Now, therefore, the Parties agree as follows:

DEFINITIONS

1 In this Agreement the

“**Agreement**” means this Community Development Agreement including its attached annexes, Project Appendices and schedules to Project Appendices and any amendments made to it from time to time in accordance with its provisions;

“Fiscal Year” means a period beginning on April 1 of a calendar year and ending on March 31 of the next calendar year;

“Contributing Project” means a Project identified in a Project Appendix in respect of which the Parties agree to fund certain Community projects in accordance with submissions made on an annual basis;

“Dispute” means any disagreement arising out of the interpretation or implementation of this Agreement including any dispute with respect to whether any Party has failed to perform or satisfy any of its obligations under this Agreement;

“Effective Date” means January 29, 2013;

“Community” means any member of the four group ranches that are recognized under the *Group Ranches Act*? including Olkiramatian, Shompole, Oldoinyo-Onyokie and OlKeri.

“Project” means a planned activity in the Community be it infrastructural or non-infrastructural that is submitted for funding under this agreement that benefits or has the potential to benefit the Community at large and not a specific group of individuals or interest groups.

“Strategic Engagement Agreement” means the Strategic Engagement Agreement between the Company and the Community and includes any amendments made to it from time to time in accordance with its provisions, or any replacement agreement;

(This section is incomplete and will be updated)

“Community Member”

“Concession”

“Compelling Circumstances”

“Non-Local/Foreign worker”

“Local Worker”

PURPOSES

- 2 (1) The purposes of this Agreement is to:
- (a) ensure that the benefits of mining are shared between the Company and the Community;
 - (b) set out conditions that ensure mining of soda ash and related minerals in Ole Sereni is consistent with the continued economic, social and cultural viability of the Community;
 - (c) ensure that mining in Ole Sereni area significantly contributes to the improved economic, social, and cultural wellbeing of the Community;
 - (d) Promote transparency and accountability in mining-related Community development initiatives within Ole Sereni.
 - (e) Set out in an agreement the Company's socio-economic and social obligations, procedures for their performance, procedures for monitoring and reporting of their performance, remedies for their non-performance, procedures for related cooperation between the Parties and procedures for the Parties' periodic revision and adaptation of obligations and procedures;
 - (f) Establish a legal and procedural basis for cooperation between the Parties concerning socio-economic and social matters, and activities related to the Company's activities under the concession;
 - (g) Assist the Parties in achieving a greater measure of stability and certainty in respect of resource development under the concession;

- (h) Provide for the establishment of the Ole Sereni Community Development Trust which shall manage funds set aside for Community development (or in the alternative establish a mechanism to accommodate the Community in the management of the Ole Sereni Soda Foundation which shall be the sole vehicle through which funds contemplated under the Mining (CDA) Regulations shall be channelled).

GUIDING PRINCIPLES FOR THE PERFORMANCE OF THE AGREEMENT

3. The Parties shall perform and implement this agreement consistent with its objective as set out in clause 2 (1) and be guided by the following principles:

- (a) Cooperation;
- (b) Fairness;
- (c) Respect for the rights, culture, responsibilities and interests of each Party (including the Company's responsibility for, and interest in, economically viable activities under the concession);
- (d) Support for the objective of sustainability and sustainable development and monitoring of progress towards it;
- (e) A commitment to openness and the sharing of information that will enable each party understand the other's perspective and make an informed decision in furtherance of mutual interests; and
- (f) The maintenance of Trust, sustenance of good working relations and a commitment to resolve

challenges and conflicts through discussions and negotiations based on mutual respect.

NATURE OF THE AGREEMENT

4. (1) This document sets forth the rights and obligations of the parties as well as certain policies that the parties have adopted regarding Community development, human resource and enterprise development, education and social and cultural well-being.

(2) The parties further agree, acknowledge and confirm that this document creates legally enforceable rights to the benefit of each of them and that all disputes and grievances of any kind arising out of or related to this agreement shall be settled through mediation and conciliation making use of the Dispute Resolution Committee provided for in this Agreement before escalating to the remedies available under the Mining (CDA) regulations.

GOVERNANCE

5. The Community Development Agreement Committee

- 1) There shall be established a Community Development Agreement Committee (hereinafter "the Committee") that shall have oversight responsibility for the implementation of this Agreement.
- 2) The composition of the Committee shall be as follows:
 - (a) The Kajiado County Governor or a representative appointed by the Governor;
 - (b) The Kajiado County Commissioner or a representative appointed by the County Commissioner;
 - (c) The County Assembly representative of Ole Sereni Ward where the mining operation is located;
 - (d) One women representative elected by the community for each of the four group ranches that comprise the affected community
 - (e) Four representatives elected from among village elders of the Community in each of the group ranches from the affected

Community;

- (f) Two representatives of the youth of either gender from the Community;
- (g) One representative elected by civil society organizations working in the area of extractives in the County;
- (h) Four representatives of marginalized groups, ethnic and other minorities each from the group ranches that comprise the affected Community (Two of which must be women)
- (i) One representative of persons with disability;
- (j) The Member of Parliament of Kajiado West Constituency or his/her appointed representative; and
- (k) Three representatives of the Company.

3) The committee shall elect a Chairperson and Secretary from among its membership.

FUNCTIONS OF THE COMMITTEE

6. The functions of the committee shall include:

- (a) To oversee the implementation of this Agreement through monitoring and evaluation of compliance with the terms of the agreement;
- (b) Provide a platform for the Community to debate whether the use of revenues provided by the Company to fund programmes under the agreement conform to the development priorities of the Community;
- (c) Facilitate continuous engagement and serve as the link between the MCDT, the larger Community and the Company;
- (d) Settle all disputes that may arise between parties to the agreement in respect of any matter in connection with or under the agreement;

- (e) Settle any other issue, matter, grievance or complaint that is not related to the agreement that may be made by or raised by the Company or the Community;
- (f) For the purpose of achieving the objectives of this Agreement, the committee may establish sub-committees and assign functions to them as it considers appropriate;
- (g) The committee may make rules, regulations and by-laws to ensure the implementation of the provisions of this Agreement.

TERMS OF OFFICE OF MEMBERS OF THE COMMITTEE

7. (1) The committee members under clauses 5 (2) (d)(e)(f)(g)(h) and (i) shall serve for a period of three years and shall be eligible to have their terms renewed for one further term by the Community such that that no member shall serve for a period exceeding six years.
- (2) Every member of the committee whose membership is by virtue of the occupation of a political office as is the case with committee members under clauses 5 (2) (a) (c) and (j) shall continue to be a member of the CDA committee until he or she ceases to occupy such position and the person who subsequently occupies the position shall automatically replace him.
- (3) Every member of the committee whose membership is by virtue of his or her position as County Commissioner or who is nominated to the committee as a representative of the County Commissioner as contemplated by clause 5(2)(b) shall continue to be such a member until he or she ceases to occupy such position and the person who subsequently occupies the position shall automatically replace him or her.
- (4) Every member of the committee whose membership is by virtue of his or her occupation of a designated position in the Company as contemplated by clause 5(2)(k) shall continue to be such a member until he or she ceases to occupy such position and the person who subsequently occupies such a position shall automatically replace him or her.
- (5) Where a member of the committee is temporarily absent from the country or is unavailable due to compelling circumstances, a person designated by the

absentee member may be approved by the committee to act in his place during the said absence.

- (6) A member of the committee may resign by notifying in writing to the committee chairman which resignation shall be effective fifteen (15) working days from the notification while the chairman may resign by notifying the committee in writing which resignation shall be effective fifteen (15) working days from the notification date.
- (7) Where the office of a member becomes vacant by death or resignation or continuous absence from meetings for a period of more than six (6) months or where the appointment is revoked by the relevant appointing body, the committee shall confirm another person seconded by the relevant body for the unexpired term of office of the exiting member.
- (8) Members of the committee shall not be entitled to remuneration for the services rendered to the committee but shall be entitled to such allowances as may be recommended by the committee and approved by the Ole Sereni Community Development Trust. Such allowances and any costs relating to the activities of the committee shall be borne by MCDT

MEETINGS AND DECISIONS OF THE COMMITTEE

8. (1) The committee shall meet at such times and places as the chairperson may determine in consultation with the standing committee for the dispatch of its business but shall in any case meet at least twice a year.
- (2) The chairperson shall preside at each meeting of the committee but in his or her absence an alternate chair shall preside. In the absence of the two, members present at the meeting shall select a chairperson for that meeting.
- (3) The quorum at a meeting of the committee shall be 50% of the total membership.
- (4) Decisions of the committee shall be by consensus or by simple majority of the votes cast at the meeting.
- (5) The committee may invite any person(s) or representatives of any organization or body to attend its meeting save that such person or representative(s) shall not have any voting rights at such a meeting.

- (6) The chairperson or the person presiding at a meeting of the committee shall, in the event of equality of votes, have a casting vote.
- (7) A special meeting of the committee may be convened at the written request of at least one half of the members of the forum submitted to the chairperson with a statement of the matters to be discussed at such special meeting. The chairperson shall, upon the receipt of such request, convene a special meeting of the committee within ten (10) working days of the receipt of the request specifying in the notice to members the agenda, time and place for the meeting.

THE COMPLAINTS AND DISPUTE RESOLUTION COMMITTEE

9. The Complaints and Dispute Resolution Committee

- (1) There shall be established a complaints and dispute resolution sub-committee of the CDA committee (hereinafter the dispute resolution committee) which shall be responsible for resolving any complaints or disputes relating to the implementation of this Agreement.
- (2) The composition of the dispute resolution committee shall be as follows:
 - (a) An independent moderator who shall be a person qualified in conflict resolution through mediation and conciliation who shall also be the chairperson;
 - (b) Four members of the committee appointed on an ad hoc basis by the chairperson in consultation with the standing committee such that two members each shall represent the Company and the Community and the persons so nominated shall have experience relating to the nature of the complaint or dispute in question.

10. Functions of the Complaints and Dispute Resolution Committee

The committee shall:

- (a) consider and resolve any complaint or dispute referred to it as per the provisions of Schedule 3 of this Agreement;

- (b) report to the CDA committee all the complaints referred to it and the outcome thereof; and
- (c) make recommendations to the CDA committee for the review of complaint and dispute resolution policies and procedures in this Agreement.

TERMS OF OFFICE OF MEMBERS OF COMPLAINTS AND DISPUTE RESOLUTION COMMITTEE

- 11.(a) Membership of the Complaints and Dispute Resolution Committee, except that of the moderator, shall be on an ad hoc basis and shall be determined by the Standing Committee members;
- (b) The moderator shall continue to be a member and the chairman of the committee until he or she ceases to be a moderator by a decision of the standing sub-committee and the person replacing him or her shall automatically become a member and chairperson of the Complaints and Dispute Resolution Committee;
- (c) A member of the Complaints Resolution Committee may resign by writing to the moderator to that effect. The moderator may resign by writing to the Standing Committee. The resignations take effect 10 days from the date of notification.

MEETINGS AND DECISIONS OF THE COMPLAINTS AND DISPUTE RESOLUTION COMMITTEE

- 12.(a) The Complaints and Disputes Resolution Committee shall meet at such times and places as the chairperson may determine and shall meet whenever it becomes necessary to resolve a complaint relating to the implementation of this Agreement and referred to it according to the channels established in Schedule 3 of this Agreement.
- (b) The quorum of the meeting shall be three (3) including the chairperson.
- (c) Decisions shall be by consensus or by majority of the votes cast but in the event of equality of votes, the chairperson shall have a casting vote.

THE OLE SERENI COMMUNITY DEVELOPMENT TRUST

13.(1) There shall be established the Ole Sereni Community Development Trust (hereinafter the Trust) which shall be responsible for administering the funds and projects under the scope of this agreement.

(2) The management of the affairs of the Trust shall be entrusted to a Board of Trustees established pursuant to Clause 13(a) above which shall have overall control and shall be responsible for the appointment of all employees and approval of projects and contractors in close cooperation with the CDA Committee.

(3) The Board of Trustees established above shall be composed of nine (9) persons who shall include the following:

A chairperson nominated by the members of the CDA committee;

- a) Four (4) members nominated by the Community; one from each group ranch to represent the interests of the Community in decision-making processes;
- b) One (1) member nominated by the County Government to represent the interests of the Community in decision-making processes;
- c) Three (3) members nominated by the management of The Company to represent its interests in decision-making processes.
- d) An executive Secretary who shall be the Foundation Manager of the Ole Sereni Soda Foundation or the Ole Sereni Community Foundation Trust

14. Functions of the Board of Trustees

The Board shall:

- (a) Manage and control the funds of the Trust.
- (b) Be responsible for the accounts of the Trust and any financial investments made therefrom.
- (c) Receive and approve or otherwise, applications for allocation of funds in respect of projects or activities from the CDA committee;
- (d) Evaluate, approve and monitor the progress of projects funded by the Trust.
- (e) Carryout any assignments relating to the management of the Trust including investment of funds.

TERMS OF OFFICE OF MEMBERS OF THE BOARD OF TRUSTEES

- 15.(a) Subject to clause 13(3) above, every member of the board of Trustees shall hold office for a period of three (3) years and shall be eligible to have their terms renewed for one further term such that that no member shall serve for a period exceeding six years.
- (c) A member of the board of Trustees shall continue to hold that position until he or she ceases to be a member of the CDA committee and the person who replaces him or her as a member of the committee shall become an automatic member of the committee;
- (d) Where a member of the board of Trustees is temporarily absent from the country or is unavailable due to compelling circumstances, his nominee (as approved by the CDA committee) shall represent and act on his/her behalf; provided that if a member of the Board of Trustees is absent from three (3) consecutive meetings without cause, the office of that member shall become vacant.
- (e) A member of the Board of Trustees may resign by notifying in writing to the Board Chairperson, which resignation shall be effective fifteen (15) working days from the notification.
- (f) Where the office of a Board member becomes vacant by death or resignation or continuous absence from meetings for a period of more than six (6) months or where the appointment is revoked by the relevant appointing body, the committee shall confirm another person seconded by the relevant body for the unexpired term of office of the exiting member.

MEETINGS AND DECISIONS OF THE BOARD OF TRUSTEES

- 16.(1) The board shall meet at such times and places as the chairperson may determine in consultation for the dispatch of its business but shall in any case meet at least once every quarter.
- (2) The chairperson shall preside at each meeting of the Board of Trustees but in his or her absence an alternate chair shall preside. In the absence of the two, members present at the meeting shall select a chairperson for that meeting.

- (3) The quorum at a meeting of the Board of Trustees shall be five (5) of the total membership including the chairperson of the meeting.
- (4) Decisions of the Board of Trustees shall be by consensus or by simple majority of the votes cast at the meeting.
- (5) The Board of Trustees may invite any person(s) or representatives of any organization or body to attend its meeting save that such person or representative(s) shall not have any voting rights at such a meeting.
- (6) The chairperson or the person presiding at a meeting of the Board of Trustees shall, in the event of equality of votes, have a casting vote.
- (7) A special meeting of the board may be convened at the written request of at least one half of the members of the Board submitted to the chairperson with a statement of the matters to be discussed at such special meeting. The chairperson shall, upon the receipt of such request, convene a special meeting of the committee within ten (10) working days of the receipt of the request specifying in the notice to members the agenda, time and place for the meeting.
- (8) Notwithstanding the provisions of this Agreement, there shall be a yearly joint meeting of the Board of Trustees and the CDA Committee

THE SECRETARIAT TO THE COMMUNITY DEVELOPMENT TRUST

- 17.(1) The Board of Trustees shall establish a Secretariat and appoint a Trust Manager and support staff to administer the activities of the Board (and the Trust), including the preparation of project proposal forms to be completed by group ranches for proposed projects requiring the approval of the Board of Trustees.
- (2) The Board of Trustees shall appoint a Trust Manager who shall be a staff of the Secretariat of the Community Development Trust and whose functions shall include the following:
 - (a) Act as the Technical Advisor to the Board.
 - (b) Liaise with the group ranches and CDA committee with regard to the execution of projects.

- (c) Monitor and update projects and submit reports thereof to the Board of the Community Development Trust on half yearly basis.
 - (d) Undertake any functions/duties that may be assigned to him by the board
- (3) The Board of Trustees shall establish a finance office and appoint a Financial Officer to manage the Community Development Trust as directed by the Board. The functions of the finance officer shall include the following:
- (a) Assist in budget preparation and management activities.
 - (b) Develop financial policies to ensure operational efficiency.
 - (c) Conduct periodic financial analysis to identify and resolve issues, gaps or variances.
 - (d) Manage cash controls as well as maintain book keeping up-to-date.
 - (e) Ensure maintenance of the general and subsidiary ledgers.
 - (f) Track investments and maintain relevant cash reserves.
 - (g) Ensure all expenses are within assigned project budget.
 - (h) Oversee the preparation of all financial statements, invoices, proposals, etc as required.
 - (i) Ensure account receivables and payables activities are performed accurately and timely.
 - (j) Ensure that financial transactions are properly updated and recorded.
 - (k) Manage the preparation of balance sheets, income statements, expense reports, etc.
 - (l) Ensure data integrity in all financial reporting.
 - (m) Update financial records with recent transactions and changes.
 - (n) Perform finance analysis, reporting and management tasks.
 - (o) Identify and resolve invoicing issues, accounting discrepancies and other financial related issues.
 - (p) Review financial paperwork and procedures and make appropriate changes.

SUBMISSIONS, APPROVAL AND EXECUTION OF PROJECTS

- 18.** (1) Where a group ranch intends to submit a proposal to the Trust for consideration and approval, the Sustainable Development Committee (SDC) of the group ranch shall first conduct a scoping process to assess the needs of the Community in consultation with the elected leaders of that area in accordance with the law.

(2) The sustainable Development Committee shall select and prioritize the project proposals based on the needs of the Community in consultation with the CDA Committee and for each project, complete the project proposal form provided by the secretariat of the Community Development Trust.

19.(1) Submission of non-infrastructure projects

- a) In the case of non-infrastructure projects, the sustainable development committee shall present the completed project proposal form including project cost to the secretariat of the Community Development Trust before the end March each year.
- b) The secretariat of the Community Development Trust shall present all completed project proposal forms and the cost of each project to the Board of Trustees for consideration and approval and notify the Sustainable Development Committee of the approved projects by the end of December of each year.

(2) Submission of Infrastructural Projects

- a) The Secretariat of the Community Development Trust shall present all project proposals for infrastructural projects and their costs to the relevant County Ministry for consideration and approval and notify the CDA Committee and the sustainable development Committee of approved projects before the end of December each year.
- b) It shall be the responsibility of the secretariat of the Community Trust to receive tenders which shall be evaluated in accordance with the provisions of the Public Procurement and Disposal Act.
- c) The relevant County department shall provide technical supervision and also prepare certificates during the execution of infrastructural projects for payment.

OWNERSHIP AND MAINTENANCE OF COMPLETED INFRASTRUCTURAL PROJECTS

20. (1) Completed infrastructural projects in a group ranch shall be handed over to the relevant line ministries in accordance with the existing laws

(2) Where personnel are required for the operation such as a clinic, school, library etc., the CDA committee shall liaise with the appropriate Government Agency to provide such personnel.

REPORTS OF THE BOARD OF TRUSTEES

21.(1) Pursuant to this Agreement, the board shall within two (2) months after the expiration of each year submit to the CDA Committee an annual report covering the activities and operations relating to the management of the Community Development Trust for the year to which the report relates.

(2) The annual report submitted under subsection (1) herein shall include the report of the audited accounts and the state of progress of projects being undertaken by the Community Trust.

(3) The annual joint meeting of the Board of Trustees and the CDA Committee shall appoint the external Auditor of the Community Development Trust for the ensuing year.

22. GENERATION OF RESOURCES

(1) The Company shall pay to the Community Development Trust:

a) A least one percent (1%) of its gross earnings to each respective group ranch. For the purposes of this agreement the gross earnings of the Company shall be calculated each year based on the availed certificate of production and the annual financial statements as approved by its board of directors and shareholders

b) All funds from the Ole Sereni ecotourism sites which shall include entry fees, camping fees, accommodation facilities, and filming and shooting,

(c) Funds arising from mining royalties as envisaged in Section 183 (5)of the Mining Act No. 16 of 2016

23.(1) Every contractor employed by the Company shall be notified of the opportunity to support sustainable development projects through the foundation either in cash or in kind. However, this support would be entirely at the discretion of the contractor.

(2) Where a contractor agrees to make a donation, the Company shall, upon discussion and agreement with the contractor, deduct the amount from the contractor's claims and pay same to the Community Development Trust.

(3) Where a contractor agrees to make a contribution in kind, the secretariat of the Community Development Trust shall assist in determining the best use of the contribution.

(4) Except as otherwise provided by the laws of Kenya, the Community Development Trust may solicit further financial and development support from development partners, international donor agencies, and other Non-Governmental Organizations as well as from the government of Kenya.

- (5) Where a development partner, donor agency or NGO provides money as support, the amount shall be paid to the Community Development Trust except that if the development partner, donor agency or NGO gives specific instruction for the usage of the funds, such instruction shall prevail.
- (6) Where applicable the Community shall provide skilled or unskilled labour, paid or unpaid towards the execution of approved projects.
- (7) The Community Development Trust shall use any interest accruing from any investment it makes to the benefit of the Community by providing additional support for the type of projects described in Section 27 herein.

24. Provisions of updated map of the Mining lease.

(1) The Company shall produce an updated map of its mining lease; whereby the map shall show in particular:

- a) The area belonging to each group ranch.
- b) The area occupied by all mining activities.
- c) The area where the Community can access freely, and
- d) The area where access is restrictive.

(2) The Community shall assist the Company to map out the area of each Community group ranch and its settlements and environs.

DEFINITION OF SUSTAINABLE DEVELOPMENT

25. (1) Sustainable development shall be such development projects as the Company and the Ole Sereni Community Development Trust jointly agree and shall have the following characteristics which are intended to achieve the following results:

- a) Development that lasts from generation to generation;
- b) Development that is based on actual needs of the Community;
- c) Development that serves the majority of the people;
- d) Development that is owned by majority of the people;
- e) Development that can be maintained within available income;
- f) Development that is well planned and can be monitored and evaluated;
- g) Development that has long term benefits; and

26. Subject to subsection 25(1) herein, the categories of sustainable development in order of priority shall be:

- i. Human resource development
- ii. Provisions of infrastructure;
- iii. Provision of social amenities;
- iv. Economic empowerment;
- v. Protection of natural resources; and
- vi. Support for cultural heritage and sports.

ACCEPTABLE SUSTAINABLE DEVELOPMENT PROJECTS

27. Subject to the provisions of this Agreement, sustainable development projects shall be the types of projects accepted by MCF and CDA Committee. For the time being the categorized and prioritized sustainable development projects for each group ranch and its environs shall be as follows:

Human Resource developments:

- i. Scholarships
- ii. Pre-job training

Provisions of Infrastructure

- i. Water
- ii. Electricity
- iii. Roads
- iv. Clinics/health Centers
- v. Schools
- vi. Toilet facilities

Social Amenities

- i. Community Centers
- ii. Police posts
- iii. Community Libraries

Economic empowerment

- i. Employment- skilled & unskilled
- ii. Establishment of factories that are of value addition to the Community
- iii. Credit facilities
- iv. Market stalls

Natural Resources Protection Projects

- i. Protection of water sources
- ii. Protection of rare and/or endangered species
- iii. Protection of vegetation

Support for cultural heritage and Sports

- i. Festivals
- ii. Cross cultural activities
- iii. Sports

Other sustainable Development Projects

Notwithstanding the provisions of this Agreement, the CDA Committee may approve or lobby for any sustainable development projects for a group ranch or for the Community as a whole as it considers appropriate.

GUIDELINES FOR ALLOCATING FUNDS FOR PROJECTS

- 28** (a) The Board of Trustees shall allocate monies for sustainable development projects at the beginning of each fiscal year based upon the Community Trust's approved budget for the said year.
- (b) In allocating funds for projects in the Community the Board shall use its best efforts to apply the criteria set forth below. (The parties have the option to consider and adopt alternative equitable criteria or methods or allocating funds for the projects; this notwithstanding, the parties agree as follows;)
- i. During the first five-year period of the Agreement ninety per centum (90%) of the yearly monies accruing to the Community Trust shall be made available for allocation and the remaining ten per centum (10%) shall be invested;
 - ii. During the second five-year period of the Agreement eighty-five per centum (85%) of the yearly monies accruing to the Community Trust shall be made available for allocation and the remaining fifteen per centum (15%) shall be invested;
 - iii. During the third five-year period of the Agreement eighty per centum (80%) of the yearly monies accruing to the Community Trust shall be made available for allocation and the remaining twenty per centum (20%) shall be invested.

29. Subject to Subsection (28) (3) herein the Board shall allocate the yearly available monies for a group ranch as follows:

- (a) Ten per centum (10%) for human development projects;
- (b) Forty per centum (40%) for infrastructural development projects;
- (c) Ten per centum (10%) for social amenity projects;
- (d) Twenty per centum (20%) for economic empowerment projects;
- (e) Ten centum (10%) for natural resources protection projects; and
- (f) Ten per centum (10%) for cultural heritage and sports projects.

SUSTAINABLE DEVELOPMENT COMMITTEES

30. (1) All group ranches shall establish sustainable development Committees whose membership shall be made up of the existing group ranches comprising of the following

- a) Chairperson
- b) Vice Chairperson
- c) Treasurer
- d) Secretary
- e) One (1) member representing the youth
- f) One (1) member representing Women groups
- g) Three (3) MCF members
- h) Six (6) Community members

MATTERS REQUIRING CONSENT OF THE FORUM

31. The CDA committee shall exercise all rights available to it in relation to the operations of the Trust so as to ensure that the Trust does not without the prior written consent of both parties:

- a) Create any fixed or floating charge, lien other than alien arising by operation of law or other encumbrance over the whole or any part of its undertaking, property or assets, except for the purpose of securing indebtedness's to its banker's for sums

borrowed in the ordinary and proper course of the Business;

- b) Borrow except from the foundations' bankers in the ordinary and proper course of the business;

Company and the Community and the persons so nominated shall have experience relating to the nature of the complaint lodged.

OBLIGATIONS OF THE PARTIES TO THE AGREEMENT

- 32. (1) The Company, shall be liable for the performance of any and all obligations under this agreement, including the obligation to pay for activities that have been identified as being eligible for funding under this Agreement.
- (2) Unless otherwise provided in this Agreement or by applicable law, all rights of the Company under this Agreement are held by the Company and its affiliates jointly and may only be exercised and enforced by the Company or its affiliates.

OBLIGATIONS OF THE COMPANY

- 33. (1) The preparation of Social Impact Assessment (SIA) and submission of the updated Social Impact Assessment Report to the Parties as approved by the National Environmental Management Authority (NEMA) under the EMCA Act;
- (2) Under the SIA process, (which applies correspondingly to the Company's activities under the Special Mining Lease), prepare a draft CDA to be negotiated and signed between the Company, the County Government and the local Community in Ole Sereni;
- (3) Under the SIA process, prepare a Community needs assessment, a benefit and impact plan and a monitoring and evaluation plan. These shall be discussed with the Parties with a view that the plans and their implementation and effects shall be evaluated annually. The plans shall be periodically updated to reflect the most recent issues that affect the Community from time to time;
- (4) The use of local enterprises and workers by the Company shall be promoted to the furthest extent possible by the conclusion and performance of an Enterprise Development and Employment Agreement which shall be included as annexes to this Agreement. If the Company employs non-locals, it has to demonstrate that local workers were not available to execute the job.

- (5) The company shall use local enterprises for contracted works, supplies and services regarding activities under the Special Mining Lease. The tenders shall be evaluated while factoring in the local circumstances. However, the Parties may permit the use of other Enterprises (non-local Enterprises), if the Company or its contractor, supplier or service provider is able to demonstrate that Local Enterprises are not technically or commercially competitive.
- (6) The Company shall use Local Workers for activities under the Special Mining Lease. However, the Parties may permit the use of other workers (non-local workers), unless the Company is able to demonstrate that Local Workers with similar qualifications do not exist or are not available in the area.
- (7) The Company shall act reasonably in a manner that will provide Local Enterprises with a full and fair opportunity to be awarded and/or conclude agreements on a competitive basis. This shall include communicating bid requirements to local enterprises within a reasonable period of time.
- (8) The Company shall not create artificial barriers for the participation of local enterprises in activities under the license by designing and organizing tasks, which do not suit the competences and size of local Enterprises.
- (9) The Company shall appoint a senior manager as decision-maker, who shall be responsible for implementing this Agreement and contact with the Parties.
- (10) The Company shall release the funds that are envisaged under this Agreement within reasonable time taking into account the activities budgeted for in the calendar year.

OBLIGATIONS AND TARGETS UNDER APPENDICES

- 34.(1) The Company shall initiate and implement programs to enhance and ensure that Local Workers are given higher levels of responsibility throughout the license period, subject to skills, qualifications, ability and experience of such Local Workers. These programs shall be in accordance with the programs set out in clause 27
- (2) The Appendices provides terms on the following matters, which shall be construed as obligations for the Company for the first year after concluding this agreement or the first year after amending the Appendices:
- (3) Use of Local Workers, including the number of Local Workers employed by the Company (**See Appendix 3**).
- (4) Education and training and further education and training of Local Workers, including

the number and type of Local Workers educated and trained by, or with financial and other support from the Company. **(See Appendix 4)**

- (5) Use of Local Enterprises for building and construction works, supplies and services, including number, types and extent of agreements for such works, supplies and services concluded between Local Enterprises and the Company. **(See Appendix 6)**
- (6) Awards and conclusion of agreements between Local Enterprises and the Company including a list of agreements. **(See Appendix 6)**
- (7) Building up competences or further development of competences and knowledge of Local Enterprises, including the number and type of Local Enterprises, whose competences and knowledge are build up or further developed by, or with financial and other support from, the Company**(See Appendix 8).**

MONITORING AND EVALUATION OF THE COMMUNITY DEVELOPMENT AGENDA

35. (1) The MCDT shall monitor the performance of this agreement, its implementation and performance of obligations under it. The MCDT shall make bi-annual and annual monitoring reports in accordance with this Agreement and the Monitoring Plan.
- (2) The MCDT shall make a draft annual evaluation report in accordance with this agreement and the Evaluation Plan and send the draft report to the Parties before the end of each year.
- (3) The Parties shall hold at least one annual evaluation meeting to discuss the draft evaluation report and any other matters proposed by any Party regarding this agreement, or its performance, or the Plans, or their implementation or amendment. After consultation with the parties, the MCDT shall make a final evaluation report each year.

AMENDMENT OF AGREEMENT

36. This Agreement may be amended by written agreement of all Parties.

- (1) This agreement shall be amended, when it is necessary due to substantially changed circumstances, amended or new agreements regarding use of Local Workers or Local Enterprises, including conclusion of construction agreements with Local Enterprises, or if it is necessary to meet requirements under the CDA Regulations, the License, or other rules of law, license terms or provisions from time to time in

force in Kenya.

- (2) An amendment of this agreement shall be set out in an addendum to this agreement.

AMENDMENT OF APPENDICES

37. The Appendices may be amended by written agreement of all Parties.

- (1) The Appendices shall be amended, when it is necessary due to changed circumstances, amended or new agreements regarding use of Local Workers or Local Enterprises and conclusion of construction agreements with Local Enterprises, or if it is necessary to meet requirements under the Mining Act, Mining (CDA) Regulations, the License or other rules of law, license terms or provisions from time to time in force in Kenya.
- (2) Before the first of March each year the Parties shall discuss the application and effect of all the Appendices in the previous year and agree the contents of draft appendices for the following year and subsequent years
- (3) The Parties shall submit the draft appendices mentioned in clause 34 for consultation. The consultation procedure shall include the County Government, employers' organizations and workers' organizations as well as local Kajiado County associations and organizations, whose articles of association aim to promote important interests in connection with social sustainability or environmental protection. In connection with the consultation, the consulted parties shall be given information, that can form the basis for comments on aspects in this agreement, that have particular significance for Local Enterprises, Local Workers or in relation to the social or environmental impacts of the activities under the License.
- (4) No later than January each year, the Parties shall agree on and sign all the appendices for the following and subsequent years.

PRINCIPLES FOR AMENDMENTS OF PLANS UNDER THIS AGREEMENT

38. Amendments of Plans under this Agreement

- (1) The Plans to be made under this agreement, which is the Monitoring Plan and the Evaluation Plan, shall be kept updated in relation to changed circumstances and developments. The Company shall amend a Plan under this agreement, when this is required. The Company shall submit an amended Plan as soon as reasonably possible and no later than 28 days after the occurrence of the changed

circumstance or development. An amendment of a Plan under this agreement shall be approved by all Parties.

- (2) The Company shall as far as possible plan and implement changes regarding activities and Plans under this agreement in accordance with the provisions and objectives of this agreement, which would apply to corresponding initial activities and Plans under this agreement.

HUMAN RESOURCE AND ENTERPRISE DEVELOPMENT

39. Recruitment Strategies

- (1) Subject to the availability of Local Workers and the need for workers under the License, the Parties shall cooperate in establishing measures in furtherance of the Parties' intent to maximize the proportion of the Local Workers under the License.
- (2) The Company shall in furtherance of the attainment of the Local Workers composition under the License require its contractors, suppliers and service providers to hire Local Workers, subject to the availability of Local Workers.
- (3) The obligations and targets for short-term Workers will be established, reviewed in light of performance and adjusted on an annual basis under the concession in accordance with clause 34
- (4) Subject to the need for workers under the concession, the short-term obligations and targets for Local Workers for each of the business units for the Company will be established, reviewed in light of performance and adjusted based on relevant parameters, including:
 - (a) The availability of Local Workers under the concession,
 - (b) The current and upcoming phase under the concession, and
 - (c) Other relevant parameters.
- (5) The Company shall in good time post job openings in English and Swahili in relevant local Medias and shall provide posting information on such job openings to relevant job portals and authorities. The Company shall advertise all vacant jobs through job centers in Ole Sereni.
- (6) The Company shall determine entry requirements, including training prerequisites for all employment positions under the concession. The County Government shall review proposed entry requirements, including language skills, and make recommendations to the Company to avoid the creation of or to remove any undue barriers for the employment of Local Workers under the concession.

- (7) Provisions in Appendix 3 on use of Local Workers, including the number of workers hired by the Company, are obligations for the Company in the first year after concluding this agreement.
- (8) Provisions on recruitment strategies are set out in Appendix 3.

EDUCATION PROPOSALS FOR LOCAL WORKERS, TRAINING E.T.C

40. (1) The Parties shall through joint co-operation develop skilled and productive Local Workers and promote the employment, integration, advancement and employee retention of Local Workers in all business units under the License. The programs and measures established by the Parties shall be designed to increase the number of Local Workers to be employed under the License.

(2) The County Government shall promote, support, and develop the following programs and measures, including programs supporting employment related to the mining industry in general, either on their own or in cooperation with the Company, educational and vocational organizations, or with other third parties:

- (a) Educational programs,
- (b) Vocational and technical training programs and
- (c) Pre-employment programs.

(3) The Company shall cooperate with the County Government and the Community in their effort to promote support and develop such programs, particularly programs supporting employment related to the mining industry in general and under the License by.

- (a) Providing information sessions on career opportunities under the License and in the mining industry in general.
- (b) Cooperating with vocational institutions i.e. any mining school in the country on the establishment and operation of mining-related vocational and technical training programs, through technical support, expertise and advice.
- (c) Cooperating with any institution in the country offering mining courses to establish or support educations for mining engineers or other

educations relevant to the extractive sector.

- (d) Adopting measures to provide incentives to local students to pursue studies in programs leading to careers in mining-related fields. Such procedures may include industrial attachments or internships.
- (4) The Company is responsible for internal training programs and measures delivered by the Company or by third parties on behalf of the Company.
- (5) When relevant and where the size of the group requires it, the Company's internal training programs shall be available in English and Kiswahili, unless such delivery is not feasible.
- (6) When the Company establishes professional development programs, the company shall inform the County Government of the programs available in order for the County to identify other existing training programs and measures, if any, offered by third parties, including Local educational organizations. The Parties may, from time to time, establish joint training programs and measures for specific needs or purposes for activities under the License.
- (7) The County Government shall cooperate in seeking access to funding from third parties for training programs and measures and to obtain the assistance of training institutions.
- (8) The Company shall identify adequate workplace measures, including training programs, intended to promote the integration, advancement and retention of Local Workers employed under the License.
- (9) The Parties shall, whenever feasible and relevant, participate in the delivery of the measures developed by the Company, which are designed to promote the integration, advancement and retention of Local Workers.
- (10) Where relevant, the Company shall provide language training to facilitate communication related to the activities under the License.
- (11) The Company shall provide the community with information that identifies advancement opportunities and related job requirements for Local Workers under the License. The Parties shall cooperate with the Company and provide training, when relevant and feasible for the advancement of Local Workers, either on their own, in cooperation with any existing national educational and vocational institutions, or with other third parties.
- (12) The Parties shall cooperate to encourage Local Workers to seek out and apply for

advancement opportunities under the License.

- (13) The Company shall develop individual career plans for each Local Worker permanently employed under the License. The career plans shall include provisions on relevant training of the Local Workers and on advancements opportunities. The Company shall, furthermore, offer training and advancement opportunities.
- (14) The Company shall prepare a recruitment strategy in order to retain local labor.
- (15) The company shall seek to educate Local Workers as foremen in relation to the activities under the License.
- (16) Provisions on education and training of Local Workers are set out in Appendix 4.

PROMOTION OF WOMEN'S PARTICIPATION

- 41. (1) The Parties shall support and encourage the participation of women on an equal basis in all aspects of the work performed under the License.
- (2) The Company shall take measures to ensure:
 - (a) Promotion of women understanding of job opportunities in the mining industry.
 - (b) Offering training programs directed towards development of women's skills and knowledge for specific positions in the mining industry.
 - (c) Skilled female role models for work performed under the License.
 - (d) Advertising campaigns encouraging women to apply for vacant positions under the License.
 - (e) Scholarships for female local students, who are attending college and university programs related to mining.

PUBLIC ACCESS TO DOCUMENTS

- 42. (1) Public access to documents under this agreement shall be decided in accordance with the principles of the Access to Information Act.
- (2) Applications for public access to documents under this agreement shall as far as possible be answered within 28 days.
- (3) Costs, prepayments or otherwise, related to applications for public access to documents under this agreement shall be paid by the applicant.
- (4) Applications for public access to documents under this agreement are processed by the Kenyan Government.

COMPLAINTS MANAGEMENT AND RESOLUTION PROCEDURE

- 43.**(1) The Company and Community agree that where any complaint relating to the implementation of this Agreement arises the complaint shall be resolved through dialogue and negotiation in an atmosphere of patience and tolerance.
- (2) In pursuance of subsection (1) herein therefore, the following procedures shall be used to resolve a complaint relating to the implementation of this Agreement:
- (3) A community having a complaint shall lodge the complaint with the Chairperson of the Complaints and Dispute Resolution Committee through an elected member sitting in the Committee
- (4) Where the Company has a complaint, the Company shall lodge the complaint with the chairman of the Complaint and Dispute Resolution Committee through the representative elected to the Committee.
- (5) Where the County government has a complaint, the County Government shall lodge a complaint with the chairman of the Complaints and Dispute Resolution Committee through the elected representative of the Committee
- (6) Subsequent to subsection 2 herein, the Chairman shall convene a meeting(s) of the committee to which complaint's representative as per subsection (2) shall be invited in writing and resolve the complaint within thirty days upon receipt thereof.
- (7) Where the Complaints Resolution Committee considers that the complaint does not directly relate to the implementation of this Agreement, it shall refer the complaint to CDA Committee and advise the complaint thereof.
- (8) The chairman of the Complaints and Dispute Resolution Committee shall report the complaint and the outcome thereof at the next meeting of the CDA Committee.
- (9) Where the Complaints Resolution Committee is unable to resolve the complaint, it shall refer the complaint to the CDA Committee which shall consider and resolve the complaint at its next meeting or at an emergency meeting convened for that purpose and the decision of CDA Committee on the matter shall be final.

HUMAN RESOURCE AND ENTERPRISE DEVELOPMENT

44. Recruitment strategies

- (1) Subject to the availability of local Workers and the need for workers under the Special Mining License, the Parties shall cooperate in establishing measures in furtherance of the Parties' intent to maximize the proportion of the local Workers under the Special Mining License.
- (2) The Company shall in furtherance of the attainment of the local Workers composition under the Special Mining License require its contractors, suppliers and service providers to hire local Workers, subject to the

availability of local Workers.

- (3) The obligations and targets for short-term local Workers will be established, reviewed in light of performance and adjusted on an annual basis under the Special Mining License in accordance with clause 40.
- (4) Subject to the need for workers under the Special Mining License, the short-term obligations and targets for local Workers for each of the business units for the Company will be established, reviewed in light of performance and adjusted based on relevant parameters, including:
 - (a) The availability of local Workers under the Special Mining License, and
 - (b) Other relevant parameters.
- (5) The Licensee shall in good time post job openings in English and Swahili in relevant Community boards and shall provide posting information on such job openings to relevant job portals and authorities.
- (6) The company shall determine entry requirements, including training prerequisites for all employment positions under the Special Mining License. The Standing Sub-Committee shall review proposed entry requirements, including language skills, and make recommendations to the Company to avoid the creation of or to remove any undue barriers for the employment of local Workers under the Special Mining License.
- (7) The use of local Workers, including the number of local Workers hired by the Company and its contractors, suppliers and service providers, are obligations for the Company.
- (8) The Parties shall through joint co-operation develop skilled and productive local Workers and promote the employment, integration, advancement and employee retention of local Workers in all business units under the Special Mining License. The programs and measures established by the Parties shall be designed to increase the number of local Workers to be employed under the Special Mining License.
- (9) The County Government shall promote, support and develop the following program and measures, including programs supporting employment related to the mining industry in general, either on their own or in cooperation with the Company, educational and vocational organizations, or with other third parties:
 - (a) Educational programs,
 - (b) Vocational and technical training programs and
 - (c) Pre-employment programs.

- (10) The Company shall cooperate with the County Government in their effort to promote, support and develop such programs, particularly programs supporting employment related to the mining industry in general and under the Special Mining License by.
 - (a) Providing information sessions on career opportunities under the Special Mining License and in the mining industry in general.
 - (b) Cooperating with vocational institutions, e.g. a mining school, on the establishment and operation of mining-related vocational and technical training programs, through technical support, expertise and advice.
 - (c) Providing positions for apprentices from the Mining School and other vocational education institutions.
 - (d) Adopting measures to provide incentives to Students to pursue studies in programs leading to careers in mining-related fields. Such procedures may include industrial attachments or internships.
- (11) The Company is responsible for internal training programs and measures delivered by the Company or by third parties on behalf of the Company.
- (12) When relevant and where the size of the group requires it, the Company's internal training programs shall be available in English and Swahili, unless such delivery is not feasible.
- (13) The Company shall identify adequate workplace measures, including training programs, intended to promote the integration, advancement and retention of local Workers employed under the Special Mining License.
- (14) The Parties shall, whenever feasible and relevant, participate in the delivery of the measures developed by the Company, which are designed to promote the integration, advancement and retention of local Workers.
- (15) The Company shall provide the County Government with information that identifies advancement opportunities and related job requirements for local Workers under the Special Mining License. The Parties shall cooperate with the Company and provide training, when relevant and feasible for the advancement of local Workers, either on their own, in cooperation with County Government and vocational institutions, or with other third parties.
- (16) The Parties shall cooperate to encourage local Workers to seek out and

apply for advancement opportunities under the License.

- (17) The Licensee shall prepare a recruitment strategy in order to retain local labour.

PROMOTION OF WOMEN'S PARTICIPATION

45. (1) The Parties shall support and encourage the participation of women on an equal basis in all aspects of the work performed under the Special Mining License.

(2) The Company shall take measures to ensure:

- (a) Promotion of women's understanding of job opportunities in the mining industry.
- (b) Offering training programs directed towards development of women's skills and knowledge for specific positions in the mining industry.
- (c) Skilled female role models for work performed under the Special Mining License.
- (d) Advertising campaigns encouraging women to apply for vacant positions under the Special Mining License.
- (e) Scholarships for female local Students, who are attending college and university programs related to mining.

DURATION AND TERMINATION OF THIS AGREEMENT

46. (1) This agreement shall be valid for the Name period as the Special Mining License accorded to the Company and shall not be terminable within this period.

(2) This Agreement shall continue until the final surrender of the Company Lease

(3) Notwithstanding termination pursuant to clause 45(1), this Agreement shall continue to bind the parties to such extent and for so long as may be necessary to give effect to the rights and obligations embodied in it including specifically the obligation of the Foundation to use the resources provided hereunder by Company, and to use any income earned through the investment of such resources in keeping with the purposes set forth in the Agreement. However, nothing herein shall be construed to require the Company to continue to make contributions after the expiration or termination of this Agreement.

(4) Notwithstanding termination pursuant to clause 45 (1), this agreement shall remain in force to the extent and for the period necessary to affect a final accounting and settlement of any pay

ments and claims under this agreement.

- (5) The Parties shall act in accordance with good faith and fair dealing and the objective and guiding principles of this agreement in connection with the negotiation and making of the succeeding agreement. The succeeding agreement shall be in accordance with the objective and guiding principles of this agreement (as set out in clause 2).
- (6) If the Special Mining License has been terminated, this agreement can be terminated with reasonable notice.

OBLIGATIONS ON TERMINATION OF AGREEMENT

47. (1)

The termination of this agreement shall not release the Company from performing any obligations under applicable laws, rules or provisions or under any other Licenses or any continued obligations under this agreement.

- (2) After the termination of this agreement, the Company shall keep all data, information, materials and reports obtained or prepared by the Company or by others for its use and pertaining to activities or obligations under this agreement. The data etc. shall be kept for a period of at least one year.

ASSIGNMENT

- 48.** Neither of the parties shall assign, transfer nor purport to assign or transfer, any of its rights or obligations under this agreement without the prior written consent of the other party.

WAIVER FORBEARANCE AND VARIATION

- 49. (1)** The rights which each of the parties have under this agreement shall not be prejudiced or restricted by any indulgence or forbearance extended to another party. No waiver by any party in respect of a breach shall operate as a waiver in respect of any subsequent breach.

- (2) This Agreement shall not be varied or cancelled, unless the variation or cancellation is expressly agreed in writing by the Chairman of the CDA Committee following the procedure set down in Clause 38.

GOVERNING LAW

- 50. (1)** The construction, validity and performance of this Agreement shall be governed in all respects by the Kenyan law.
- (2) This agreement shall not restrict the general right of the Kenyan Government and the County Government to levy taxes and fees, amend tax and fee legislation or lay down rules or provisions concerning activities or obligations under this agreement.
 - (3) This agreement does not exempt the Licensee from obtaining Licenses, including

prospecting, exploration and exploitation Licenses, approvals and permits, which are required pursuant to the Mineral Resources Act or other legislation.

- (4) Any dispute arising out of or in connection with this agreement shall be determined in accordance with the process set out in the Mining (CDA) Regulations and by the Kenyan courts in case there is no resolution.

RELATIONSHIP TO ACTS, RULES, EXPLOITATION LICENSE AND OTHER AGREEMENTS

51. (1) In case of any conflict or difference in content or effect between this agreement and Mining Act, the Mining Act shall prevail.
- (2) In case of any conflict or difference in content or effect between this agreement and any agreement between the company and

SEVERABILITY

- 52.(1) If any of the provisions of this Agreement is found by the Cabinet Secretary or the court or other competent authority to be void or unenforceable, it shall be deemed to be deleted from this Agreement and the remaining provisions shall continue to apply. The Parties shall negotiate in good faith in order to agree to the terms of a mutually satisfactory provision to be substituted for the provision found to be void or so unenforceable.

GENERAL MATTERS

- 53.(1) Reference to a statute or statutory provision includes a reference to it as from time to time amended, extended or re-enacted.
- (2) The headings in this Agreement are inserted for convenience only and do not affect its constitution.
- (3) This agreement has been drawn up in the English language. Copies in the Swahili language will be made publically available.

Appendix 1: Basis of the Agreement

1. License Area

XYZ Limited plans to set up a mine with the necessary infrastructure and facilities for processing of soda ash onsite. The soda ash deposit is located on Lake Ole Sereni which is lies 500 metres above sea level and is the lowest point in the area. The concession area covered under XYZ's license is approximately 229,000 km².

a) The installations and facilities in the license area comprise:

- i. An open pit mine, which during the course of 9 years will open to a size of about 200 m x 150 m and a depth of up to 70 m.
- ii. A camp with room for up to 60 people in the construction phase and about 48 in the production phase.
- iii. The camp is equipped with a power generator, water source, wastewater processing. The camp is located near the fjord.

iv. A harbour with a pier outside the Inner Channel.

v. A processing facility close to the mine for crushing, screening, washing and sorting of ore into a raw concentrate ("dirty rough").

vi. A helicopter landing pad, fuel depot, and storage of explosives.

vii. The necessary roads to connect the installations and facilities.

viii. A quarry is needed to provide building materials for the first roads and buildings. Later in the project, the excess material from the mine may be used.

b) Process description in the License Area

The mine is designed for an expected lifetime of XX years, with a possibility for extension (subject to approval by the Government of Kenya). The table below shows the latest estimation for the annual amount of ore expected to be mined for each of the XX years:

Year	Tonnes

c) The facilities in OLE SERENI

Furthermore different facilities will be established in Ole Sereni among others for further processing, cleaning and sorting of the corundum. The facilities in Ole Sereni will comprise:

- i. Offices for XYZ Ltd's headquarters in Ole Sereni.
- ii. A facility for cleaning the soda ash.
- iii. Sorting, packing and shipping of the cleaned soda ash.

d) Possible Further Processing in Ole Sereni

No later than XXX the Company shall forward a study to the Government on the possible feasibility of processing and/or further processing of soda ash in Ole Sereni that can be done by the Company.

If a decision based on the study above is made that further processing will be conducted in Ole Sereni then the contents of the IBA will have to be updated to adequately reflect these activities.

Appendix 2: Monitoring and Evaluation Plans

1. Reporting

- a) During the entire life of the project, the Company must report back to the Authorities concerning the fulfilment of the commitments in this agreement including the appendices.
- b) These reports shall be in the form of
 - i. Monitoring reports
 - ii. Draft for an annual monitoring and evaluation report
 - iii. A final version of the annual monitoring and evaluation report
- c) No later than one month (1) prior to the annual assessment of the agreement's targets, the Company must submit a monitoring and evaluation report to allow an objective assessment of the agreement's annual targets
- d) The report mentioned in 2(c) shall include the following data and information in the project:
 - i. Mineral recourse activities conducted pursuant to license **XXX**.
 - ii. Employment in the project of local Workers including period of employment, employment procedures, information of recruitment of local Workers, data on percentage of women employed, and percentage of education as well as qualification requirements for jobs (**see appendix 3**)
 - iii. Education and training of local Workers (**see appendix 4**)
 - iv. Purchase of services and non-technical services from local community Enterprises, joint partnerships between local Enterprises and Foreign Enterprises, value of contracts awarded to local and Foreign Enterprises and companies respectively. (**See appendix 6**)
 - v. The amount of tax revenues generated to the Authorities.
 - vi. Any other topic regulated by the provisions in the agreement including any provisions stipulated in any of the appendices to the agreement.
- e) At the request of County government and the CDA committee, the Company shall submit and include in the reports 2(b) further information and data regarding conditions relevant to this agreement

2. Duty to submit documentation on request

- a) At request of any of the parties to the agreement the shall submit the following documentation:
 - i. Documentation of contracts signed with XYZ Ltd with information about with whom the contracts have been concluded, including information on joint venture or other types of sub-contracts and any percentage shares in joint ventures for the Company.
 - ii. Documentation of education and qualification requirements for jobs, documentation of educational background and other qualification requirements for employees.
 - iii. Documentation of recruitment process for employment of local Workers.
 - iv. Documentation of the share of local apprentices and trainees in the individual contracts.
 - v. Documentation of training and education programs for local Workers.
 - vi. Education and trainee plans for potential employees at the mine and associated facilities as described in Appendix 4.
 - vii. Documentation of initiated training of potential local Workers as mentioned in Appendix 4
 - viii. Any other documentation for fulfilling any provisions in the agreement including any provisions stipulated in any of the appendices to the agreement.

- b) The Parties to the agreement may ask for further information and documentation, where this is deemed reasonably necessary.

3. **Monitoring and Evaluation**

- a) The Information, Data, Reports and Documentation (**see Section 1 and 2**) received from the Company will be monitored by the Parties to the agreement.
- b) Once a year the Agreement and the Appendices to this cooperation agreement will be evaluated. The Company will prepare the draft for the annual monitoring and evaluation report (**see section 1(b) (ii)**)
- c) The Parties to the agreement will hold evaluation meetings at least every 12 months to discuss developments in the achievement of targets based on the submitted data, documentation and reports.
- d) Based on the annual Draft for the Monitoring and Evaluation Report from the Company, the Parties to the agreement will hold meetings to determine targets in the Appendices for the subsequent year.
- e) After consultation with County Authorities, the Company shall make a final monitoring and evaluation report (**see 1 (b) (iii)**)

Appendix 3: Employment of Local Workers

1. Number of Local Workers

2.

The numbers and proportions of local Workers stated in this Appendix are determined based on working hours per year for one person.

3. Hiring Priorities

- a) In this agreement hiring priority shall be given to the local Workers.
- b) The Company shall regularly arrange meetings regarding job opportunities with residents in Ole Sereni.

4. Overall Targets for Employment of local Workers in the lifetime of the activities under the License

- a) At all times the Company will do its utmost to ensure that employment of local Workers by the Company will be at least xx% of the total workforce in connection with the performance of mining and processing
- b) At all times the Company will do its utmost to ensure that employment of local Workers will be at least xx % of the total employment on an annual basis throughout closure at the mine site and associated facilities.
- c) The Company will work actively for acceptable lengths of rotations for the local Workers.

5. Numbers and types of local Workers set annually to be employed by the Company:

- a) To the extent that there is not sufficient local Workers, the County government may make recommendations to educational institutions, the Company as to how the number of local Workers who can meet the job qualifications can be increased through training, education and upgrading of skills.
- b) The County government may also ask for information that substantiates the background for the requirements for the necessary qualifications for each job category.
- c) The County government may based on the recommendations mentioned above, make recommendations for education and training initiatives etc. to ensure the greatest possible employment for local Labour.
- d) Recruitment Strategy:
 - i. The Company must prepare a local recruitment strategy, which ensures local workers the possibility for employment in the project.
 - ii. The Company must actively promote information on the mining industry and its career

opportunities.

- iii. The Company must actively collaborate with local educational institutions.
 - iv. The Company must actively collaborate with municipalities.
 - v. The Company must actively collaborate with the labor market parties.
- e) The Company must present documentation of recruitment activities, recruitment barriers identified and results of the recruitment activities.
 - f) The Company have an overall obligation to ensure that the obligations mentioned in Section 1(a) (b) (c) (d) and (e) are met, and therefore they should actively assess, how they can contribute to the achievement of the targets.
 - g) At all times the Company will do its utmost to ensure that employment of local Workers including employment by local contractors will be **100%** of the total employment in year 1 of the construction phase.

6. Operating Phase:

- a) The Company shall hold a pre-job seminar and advertise vacant positions on its own behalf
- b) The Company shall cooperate with the county government and local education institutions regarding employment.
- c) The County Authorities can require information that substantiates the background for the requirements for the necessary qualifications for each job or other barriers, which hinder local workforce employed at the mine and associated facilities.
- d) Recruitment Strategy:
 - i. The Company must Prepare a strategy, which ensure workers in the local communities the possibility to be employed at the mine and associated facilities actively, to promote information on the mining industry and its career opportunities.
 - ii. The Company must actively collaborate with local educational institutions.
 - iii. The Company must actively collaborate with municipalities.
 - iv. The Company must actively collaborate with the labor market parties.
- e) The Company must present documentation of recruitment activities, recruitment barriers identified and results of the recruitment activities
- f) In the agreement between the Parties and the Company, in order to retain labour, the County Authorities may recommend conditions such as duration of shifts and flexibility in workdays in relation to national festival days within the closest family (confirmations etc.)
- g) The Company have an overall obligation to ensure that the obligations mentioned in previous sections are met, and therefore they should actively assess how they can contribute to the achievement of the targets
- h) Mine site and associated facilities:
 - i. At all times the Company will do its utmost to ensure that employment of local Workers including employment by local contractors will be **100%** of the total employment on an annual basis in year 1 of the operational phase at the mine site and associated facilities.

7. Closure

- a) At closure the Company shall support the employees in finding a new job. As a minimum a certificate of employment shall be issued within reasonable time upon closure.
- b) Tentative List of jobs to be offered to Ole Sereni Residents (construction and production phase):

- 1. Jobs in year 1

Job category	Job period
Mine:	

SAMPLE

Appendix 4: Education

A.5.1 Overall Obligations and Targets for Education and Training of Ole Sereni Workers in the Construction Phase

- A.5.1.1 The Company and its Mine operator shall recruit and initiate pre-employment training of potential local Workers as XXX.
- A.5.1.2 The Company shall conduct a training needs assessment of potential employees from the Community that will identify the existing education and skills levels among the potential workforce.
- A.5.1.3 The Company and its operator may offer people from the community applying for certain positions the chance to take a prior learning assessment.
- A.5.1.4 The Company and/or the Company's operator, contractors, suppliers and service providers will plan and conduct upgrading of skills and retraining courses for local Workers in cooperation with education institutions as wells with local and national authorities.
- A.5.1.5 Through requirements in the agreed documents, the Company must ensure to what extent apprenticeships and internships are guaranteed and are included in the evaluation of the agreed documents.

A.5.2 Obligations for the Company, the Mine operator and the contractors for employment of apprentices during operation:

- A.5.2.1 On an annual basis the following apprenticeships will be open to neighboring communities' Residents:
 - A.5.2.1.1 At least 1 apprenticeship position for administration
 - A.5.2.1.2 At least 4 apprenticeships such as mechanics, mineworkers, electricians and similar from e.g. vocational training institutions will be open to Residents, and
 - A.5.2.1.3 Furthermore at least 2 internships for Residents from other educational institutions, universities or similar should be made available.
- A.5.2.2 Annually, specified numbers and types of local Workers to be given education, training, and further education with financial and/or other support from the Company and its construction contractors, suppliers and service providers or public authorities and their institutions has to be agreed.

A.5.3 Education and Training of local Workers:

A.5.3.1 The target for such pre-employment training is either:

A.5.3.1.1 No less than two local Workers are trained and to be used as foremen at the mine site, and associated facilities.

A.5.3.1.2 No less than 5 other positions, which need specific requirements at the mine site shall start pre-employment training (*in-service- courses*).

A.5.3.2 The Company and its operator shall in cooperation with the Authorities and labour market parties plan and foresee implementation of training and education programs for new employees at various positions at the mine site, and its facilities.

A.5.3.3 The Company and its operator must train and offer advancement opportunities to local residents employed at the project throughout its lifetime.

A.5.3.4 Notwithstanding any of the foregoing, the Company and its operator shall decide, who will be capable of fulfilling a position, including as foreman.

Appendix 6 Use of Local Enterprises

A.6.1 Obligations for the use of Enterprises by the Company and its Contractors, Suppliers and Service Providers

A.6.1.1 During the operating phase, the Company and its operator will do its utmost to make purchases amounting to at least 70 % of the total annual value of services, goods etc. from Enterprises.

A.6.1.2 The Company and its operator will do its utmost to purchase services, goods etc. from Enterprises for at least 70 % of the annual value of goods and services purchased associated with closure of the mine.

A.6.1.3 The Company shall regularly arrange meetings regarding subcontracting opportunities in the neighbouring communities.

A.6.2 Procurement Principles and Business Opportunity Management

A.6.2.1 The Company, and/or the Company's operator, will host a pre-contractor seminar about general and specific requirements, and potential tendering procedures etc.

A.6.2.2 The Company and its operator shall establish and implement procurement principles to enhance local Enterprises participation through:

A.6.2.2.1 Full and fair opportunity and first consideration to participate on a competitive basis for the supply of goods and services to the project through a competitive bidding process and utilisation of transparent evaluation criterias:

- a. Cost competitiveness.
- b. Quality.
- c. Ability to supply and deliver the goods and services to be provided.
- d. Timely delivery.
- e. Safety and environmental record.
- f. Apprentice positions.

A.6.2.2.2 Ensuring that the size and scope of available contracts matches the capacity of Enterprises where feasible.

A.6.2.2.3 The Company and its operator will take measures to maximize project related business opportunities for Enterprises and prepare an annual business opportunities forecast, which will identify the reasonably foreseeable procurement requirements of the project.

A.6.2.2.4 The Company and its operator will identify possible opportunities for joint venture partnerships when appropriate.

A.6.2.2.5 Ensuring broad communications of business opportunities.

A.6.2.3 The Company and its operator retain the right in its sole discretion to make decisions relating to qualifications for subcontractors against the Company and its contractors' selection criterias.

SAMPLE

Appendix 8 Building development of competences and knowledge at
Local Enterprises

A.8.1 Overall Targets for building and developing Competences and Knowledge of Local Enterprises during the period of activities pursuant to the Special Mining Licence

A.8.1.1 The Company recognizes that the availability of competitive and competent Local Enterprises' capability is a key element in the development and long term success of the project.

A.8.1.2 The Company shall develop and from time to time update lists of potential requirements for supply of services and commercial services for the construction and operation phases of the project.

A.8.1.3 The Company, and Labour market parties shall work together to identify potential local Enterprises' capabilities and workforce gaps and thereby provide recommendations to local Authorities.

A.8.1.4 The Company commits to using best efforts to maximize local Enterprises' participation in contracts.

A.8.1.5 The Company shall encourage the formation of appropriate alliances of Foreign Enterprises and local Enterprises to enhance local Enterprises' ability to compete for the supply of goods and commercial services of the project.

A.8.2 The Operating Phase:

A.8.2.1 The Company will work together with the local Authorities, local employers' organisations and local Enterprises to identify barriers preventing local Enterprises from getting involved in fulfilling contract work, as well as to tailor courses and necessary certification.

A.8.2.2 The Company will work together with a local approved selling agent to facilitate the sale of soda ash to local artisans and individuals, who wish to purchase material produced from the deposit.

Appendix 9 Other socio-economic and sustainability matters

A.9.1 The purpose of this Appendix is to list cultural and social initiatives to be supported and promoted by the Company.

A.9.2 The Company shall address specific conditions such as:

A.9.2.1 Open house arrangements for employees' families and citizens of the Community.

A.9.2.2 Network building among employees' families.

A.9.2.3 Sporting/cultural events in the Municipality.

A.9.2.4 Offering at least 2 workshops or courses in mining and processing soda ash and offer the appropriate facilities and instructors for these workshops or courses in the community on an annual basis during the entire operation phase of the mine. The workshops or courses will be held based on attendance.