

ENGINEERING, PROCUREMENT, CONSTRUCTION  
GENERAL CONTRACT  
OF  
DAIRI LEAD-ZINC MINE, INDONESIA  
WITH  
1,000,000T/Y THROUGHPUT

CONTRACT NUMBER NFC-DPM-001  
DATED 17 APR 2014

BETWEEN

PT DAIRI PRIMA MINERAL

AND

CHINA NONFERROUS METAL INDUSTRY'S FOREIGN  
ENGINEERING AND CONSTRUCTION CO., LTD.

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This Engineering, Procurement, Construction General Contract Of Dairi Lead-Zinc Mine, Indonesia With 1,000,000t/y Throughput (NFC-DPM-001) is made and entered into in Jakarta on the day of 17 Apr 2014

by and between:

ON THE ONE PART

PT DAIRI PRIMA MINERAL (DPM), a company organized and existing under the laws of The Republic of Indonesia, with its principal place of business at Menara Bidakara 2, 8th floor, Jl, Gatot Subroto Kav. 71-73 Tebet, Jakarta Selatan 12870 Indonesia, hereinafter referred to as the "Owner",

AND ON THE OTHER PART

China Nonferrous Metal Industry's Foreign Engineering and Construction Co., Ltd. (NFC), a company Organized existing under the laws of The People's Republic of China, with its principal place of business at 10 Anding Road, Beijing 100029, P. R. China, hereinafter referred to as the "Contractor" or "NFC".

## **FOREWORD**

- A. Dairi deposits were discovered in the late of 1990's. Since that time, The Owner has done a lot in deposit exploration; The Feasibility Study (FS) of the Dairi Lead-Zinc Mine was completed in 2005 and updated in 2006. In the FS, the scale of Dairi Lead-Zinc Mine and the mining method as well as the beneficiation process technology have preliminarily been determined. The Owner has bought the Process Equipment according to the foregoing mining method and beneficiation process.
- B. The Owner intends to construct DARI Lead-Zinc Mine with a throughput of 1 million tons ore per year and its facilities in North Sumatra, Indonesia on the contract basis of final actual quantities and the item rate determined as further described in the Contract and Annexes to the Contract.
- C. The Contractor(s) is willing to undertake the construction of DAIRI lead-zinc Mine and its relevant facilities, by completing Engineering, remaining equipment and material supply, mining development, civil construction and equipment erection, Commissioning as well as relevant technical services through EPC, so as to put the Plant into operation as detailed and specified in the Contract.
- D. The Owner will pay to the Contractor(s) per Contract under the condition that the Contractor(s) performs its duties and obligations in Contract.

Now therefore in consideration of the above premises and covenants and conditions of undertakings hereinafter set forth, the Parties agree as follows:

## 1 DEFINITIONS

1.1 Unless the context clearly indicates to the contrary, the following capitalized terms as used in the Contract shall have the following meanings:

**“Advance Payment Guarantee”** means a letter of guarantee issued by bank/insurance company to be provided by the Contractor(s) under the respective Definitive Contracts pursuant to Clause 8.1 and Annex 1-4 (Forms of Guarantees).

**“Advising Bank”** means any bank appointed by the Contractor(s) to act as correspondent bank that receives a letter of credit (L/C) from the Issuing Bank.

**“Battery Limits”** means the overall limits of working area within which the Contractor(s) shall perform the Work, as defined under Annex 1-2 (Battery Limits).

**“Business Day”** means a day other than Saturday, Sunday and/or public holiday on which commercial banks are open for general business in Indonesia and China.

**“Bulk Material”** referring to erection materials supplied by the Contractor, or any part of them, with their category, specification, unit price listed in Annex 3-3 to Equipment & Material Supply Contract.

**“Certificate of Final Acceptance”** means, with regard to the respective Definitive Contracts, the document, in the form of Annex 1-5 (Forms of Acceptance Certificates), requested by the Contractor(s) and approved and issued by the Owner certifying that

in respect of the Plant or a Section, if the Owner acknowledges handing over of the respective Section, the Defect Liability Period has expired and all of the Contractor(s)' obligations under the Contract have been satisfactorily met or discharged.

**“China”** or **“P.R. China”** means The People's Republic of China.

**“Commencement Date”** means the date in which Notice to Proceed being issued by the Owner to commence the Works after the conditions under Clause 9.3 and 9.4 have been fulfilled.

**“Commercial Invoice”** means invoice issued by the Contractor(s) upon verification or assessment by the Owner.

**“Commissioning”** means systematic checks of load test, excluding pre-commissioning and the no-load test, as set forth in Clause 12.2.

**“Confidential Information”** means the subject matter and terms of this Contract and any other information which is proprietary and confidential to the Party including but not limited to Technical Information and information concerning or relating in any way whatsoever to any of the trade secrets or confidential operations, process relating to the Works.

**“Construction and Installation”** means the scope of works in Construction and Installation Contract.

**“Construction and Installation Contract”** means the construction and installation contract No. NFC-DPM-005 dated on/or about the date of the contract made between the Owner, the Contractor, and

Local Contractor providing the construction and installation of the Dairi Lead-Zinc Mine.

**“Construction Equipment”** means appliances and things used on or in the vicinity of the Site in the execution of the Work under the Contract but not forming part of the Works.

**“Contract”** means the agreement between the Owner and the Contractor(s) evidenced in the Contract Documents.

**“Contract Documents”** means the General Contract and each of the Definitive Contracts.

**“Contract Equipment”** referring to all machinery, apparatuses, appliances, fixtures, or devices, materials and all physical objects (except Free-Issued Items) under the Contract to be installed in the Plant as included in Annex 3-2 to Equipment & Material Supply Contract.

**“Contract of Work”** means the contract of work dated 19 February 1998 granted by the government of Indonesia to the Owner in developing mineral resources in the area of North Sumatera, Indonesia.

**“Contract Price”** means the price agreed between the Parties as specified in Clause 6 for the Work performed under the respective Definitive Contracts, but excluding any additions or deductions, which may be required to be made under the respective Definitive Contract.



**“Contractor(s)”** means service providers, suppliers, and contractors as defined in this Contract and the Definitive Contracts and their successor and permitted assignee, who shall be responsible towards the Owner in the execution of this Contract and the Definitive Contracts.

**“Contractor’s Representative”** means the person named by the Contractor in the Contract or appointed from time to time by the Contractor, who acts on behalf of the Contractor.

**“Contractor’s Personnel”** means the Contractor’s officers, employees and all other persons whom the Contractor utilizes for the execution of the Work.

**“Dairi Lead-Zinc Mine”** means the lead and zinc mine owned by the Owner to be developed in accordance with Contract of Work.

**“Deed of Transfer”** means the deed of transfer to be entered into by and between the Contractor and the New PT Company in accordance with Clause 2.2.1 (a) (iii) of this Contract.

**“Defect Liability Period”** means the period during which the Contractor(s) is responsible for defects with respect to the Plant (or relevant part thereof) as provided in Clause 14.

**“Design Input”** means the documents listed in Annex 2-2 (LIST OF DESIGN INPUT REQUIRED FOR PLANT ENGINEERING) of Engineering Contract.

**“Definitive Contracts”** means Engineering Contract, Equipment &

Material Supply Contract, Mining Development Contract, and Construction and Installation Contract.

**“Direct Agreement”** means the agreement made among the Owner, the Contractor(s) and the lenders in connection with the financing of the Project to provide, among other, an acknowledgement that the Contractor(s) consents to the Owner granting security in respect of its assets in favor of the lenders.

**“Effective Date”** means the date as of which the Contract becomes effective as set forth in Clause 2.2.1.

**“Engineering Contract”** means the engineering contract No. NFC-DPM-002 of dated on/or about the date of the contract made between the Owner and the Contractor providing for the design and engineering to perform the Works.

**“Equipment & Material Supply Contract”** means equipment and material supply contract No. NFC-DPM-003 of dated on/or about the date of the contract made between the Owner and the Contractor providing for the procurement of equipment and materials, except the Free-Issued Items, required for the Works.

**“Facility”** means part or the whole of the Plant.

**“Field Work”** means Construction & Installation work and/or Mining Development work.

**“Final Acceptance”** means the time when the Defect Liability Period under the respective Definitive Contracts has expired and all

of the Contractor(s)' obligations under the respective Definitive Contracts have been satisfactorily performed.

**“Finance Document”** means each and any document from time to time entered by the Owner pursuant to which any funding (or refinancing or rescheduling of any funding), or any commercial arrangement is provided to the Owner to finance the Works.

**“Free-Issued Items”** means the main process equipment that the Owner has already procured as listed in Annex 1-6.

**“General Contract”** means this contract of engineering, procurement, construction contract of the DAIRI Lead-Zinc Mine.

**“HSE”** means health, safety, and environment.

**“HSE Guidance and Procedures”** means health, safety and environment guidance and procedures issued by the Owner.

**“Indonesia”** means the Republic of Indonesia.

**“Issuing Bank”** means any bank appointed by the Owner to act as correspondent bank that issue a letter of credit (L/C).

**“Kick-Off Meeting”** means the meeting to be held by the Parties to confirm the engineering basis of the Plant and to establish project coordination and any other required procedures to duly execute the Work. Such design basis, project coordination and other procedures shall be mutually confirmed in writing by the Parties at the end of such meeting. Such meeting shall be held in one of the Owner's

offices or other place mutually acceptable to the Parties.

**“Local Contractor”** means the local Indonesian contractor, who shall implement the work including Mining Development, Construction and Installation under the supervision of the Contractor.

**“Master Project Schedule”** means the schedule showing the dates of each major phase of the Works and dates of milestone events as per Annex 1-3 (Master Project Schedule).

**“Mechanical Completion”** means that a Section or a group of Sections have been completed mechanically and structurally and put in a tight and clean condition, and the Section or a group of the Sections are ready for the Commissioning.

**“MEMR”** means Ministry of Energy and Mineral Resources of Indonesia.

**“Mining Development”** means the scope of works under Mining Development Contract.

**“Mining Development Contract”** means mining development contract No. NFC-DPM-004 dated on/or about the date of the contract made between the Owner, the Contractor, and Local Contractor providing the development of the Dairi Lead-Zinc Mine.

**“New PT Company”** means a limited liability company established in Indonesia by NFC, to be appointed as assignee of NFC’s rights and obligation under this Contract in accordance with Clause 2.2.1.

**“Notice to Proceed”** means a notice issued by the Owner in accordance with Clause 9 instructing the Contractor(s) to commence the Works.

**“Operation and Maintenance Manual”** means the documentation attached to the Contract Equipment which should be compiled by the Contractor.

**“Owner”** means PT Dairi Prima Mineral (DPM) Indonesia and shall include its successor and permitted assignee, who shall be responsible towards the Contractor(s) in the execution of the Contract.

**“Owner’s Representative”** means the person appointed by the Owner or appointed from time to time by the Owner and notified in writing as such to the Contractor(s), who acts on behalf of the Owner for the purposes to conduct the Contract.

**“Owner’s Personnel”** means the Owner’s officer, employee, and other persons to act on behalf of or for the Owner or provided to the Contractor(s) by the Owner under the Contract, including the personnel of the other contractors of the Owner.

**“Party” and “Parties”** means the Owner and the Contractor(s) individually and collectively, as the context may require.

**“Part of Works”** means part of engineering works, procurement works, construction and installation works, mining development works and technical services as regulated further under Definitive

Contracts.

**“Performance Guarantee”** means a letter of guarantee issued by bank/insurance company to be provided by the Contractor(s) under the respective Definitive Contracts pursuant to Clause 8.2 and Annex 1-4 (Forms of Guarantees).

**“Performance Test”** means the operational tests to be performed by the Owner for the Plant/Section, and assisted by the Contractor.

**“Plant”** means all facilities for Dairi Lead-Zinc Mine with throughput of 1,000,000 tons ore per year at the Site as further described under the Contract including the Mine of both underground part and surface facilities, process plant and associated facilities.

**“Plant Engineering”** means the integrate engineering of the Plant under the Engineering Contract.

**“Process Technology”** means the technologies that are specified in the FS, 2006 edition and as per which the Owner procured Process Equipment.

**“Product”** means the final product of Dairi lead-zinc mine, i.e. lead or zinc concentrate.

**“Progress Report”** means report shall be prepared by the Contractor(s) and submitted to the Owner informing monthly progress of the Works pursuant to Clause 4.11.

**“Project”** means the Plant and all the work in connection therewith

under the Contract.

**“Project Execution Schedule”** means the schedule showing the effective and completion dates for each phase and each activity of the Work. This schedule is to be prepared by the Contractor(s) in conformity with the Master Project Schedule of Annex 1-3 (Master Project Schedule).

**“Provisional Acceptance”** means the acceptance of the Plant/Section pursuant to Clause 12.4.

**“Provisional Acceptance Certificate”** means, with regard to the respective Definitive Contracts, the document in the form of Annex 1-5 (Forms of Acceptance Certificates) requested by the Contractor(s) and approved and issued by the Owner certifying that all the Plant or a Section has reached good and stable operation state during Reliability Run and the Owner accepted the Plant, together with the responsibility for care and custody thereof.

**“Provisional Sum”** means the price listed in the Annexes of this contract, and certain lump-sum amount with unit item rates in sub-item. This amount is to be agreed by Parties once the actual quantity of works is determined based on the Detail Design. Prior to commencement of works, the Local Contractor shall recalculate such price to be approved by the Owner. The Local Contractor in doing so shall give its best effort not to exceed the Provisional sums. In case of the actual Provisional Sum price exceeding the allocated Provisional Sums, Parties shall enter into negotiation.

**“Reliability Run”** referring to the operation of Contract Equipment

without significant defects.

“**Section**” means such parts of the Plant as described and listed in Annex 1-2 (Battery Limits).

“**Scope of Work**” means the scope of work described in Clause 3.

“**Site**” means the Owner’s site and any other lands and places made available to the Contractor(s) by the Owner for the purpose of the Contract.

“**Steel Structures**” referring to steel structures supplied by the Contractor(s), or any part of them including steel structures used for buildings, including columns, tie-beams, roof beam and truss members, wall purlins, support bracings, staircase, handrail and platforms for general access, and steel structures aiming to support the load of the equipment, and etc. with their category, quantity and unit prices in Annex 3-4 to Equipment & Material Supply Contract.

“**Supplied Items**” referring to the sum of Contract Equipment, Bulk Material, and Steel Structure under Equipment & Material Supply Contract.

“**Start-Up**” means the start of the operation of facilities with raw materials during the Commissioning.

“**Statement of Works**” means a statement prepared and submitted by the Contractor(s) with monthly completed work quantity, and price as part of the application for payment.



**“Subcontractor”** means any subcontractor to be appointed by each of the Contractors for execution of specific works subject to the prior written consent of the Owner.

**“Target Date”** means the date(s) set forth for the respective event(s) adjusted only by those extensions or reductions in the time for the event as expressly stated in Variation or as otherwise permitted under the Contract.

**“Tax and Government Charge”** means any taxes, duties, levies, mandatory social security contributions or other charges (including any penalties imposed in connection with any of the foregoing) that may now or hereafter be imposed by Indonesian Government which is imposed upon the Contractor(s) or their personnel or upon any portion of the Work which may be or become due or payable by reason of the Work performed or items to be furnished or procured under the Contract.

**“Technical Information”** means any information, documents or data relating to technologies useful in the operation and maintenance of the Plant or performance of the Work under Contract, including any written or oral information of a technical nature, which is not available to the public and which the Owner or the Contractor(s) considers as confidential and proprietary.

**“Technical Service”** means the on-site service provided by personnel from designer and vendors during Plant Engineering, Construction and Installation according to Mining Development Contract and Construction and Installation Contract.

**“Temporary Works”** means works used in the execution of the Work under the Contract, but which do not form part of the Works.

**“Time for Performance”** means the time for completing the Works or a Section (as the case may be) under Clause 9 (with any extension under Clause 13, calculated from the Commencement Date.

**“Total Amount of Contract Price”** means the price agreed between the Parties as specified in Clause 6.1 for the entire Work, but excluding any additions or deductions, which may be required to be made under the Contract.

**“UCP 600”** means the sixth revision of the Uniform Customs and Practice for Documentary Credits (UCP) published by International Chamber of Commerce.

**“USD”** or **“US\$”** means the lawful currency for the time being of the United State of America.

**“Work”** means and includes the whole requirements of Clause 3 and those duties, responsibilities and obligations required by the Contract to be performed by the Contractor(s).

**“Variation”** means any addition, deletion or modification to the Work which has been approved by the Owner in accordance with Clause 20.

## 1.2 Interpretation in this Contract:

- 1.2.1 References in the singular shall include references in the plural and vice versa.
- 1.2.2 References to a particular Clause, sub-Clause or Schedule shall, except where the context otherwise requires, be a reference to that Clause, or sub-Clause or Schedule.
- 1.2.3 The headings are inserted for convenience and are to be ignored for the purposes of construction.
- 1.2.4 The words “include” and “including” are to be construed without limitation.
- 1.2.5 Whenever provision is made for the giving of notice, approval or consent by any Party, unless otherwise specified such notice, approval or consent shall be in writing and the words “notify” and “approve” shall be construed accordingly.
- 1.2.6 “**day**” means calendar day of 24 consecutive hours.
- 1.2.7 “**month**” means a continuing period commencing from a particular date in the Gregorian calendar month and ending on the day immediately prior to the corresponding date in the subsequent months and in the event that there is not a corresponding date in the relevant subsequent month, then period ends with the last official.
- 1.2.8 “**year**” means 12 months or any 365 consecutive days as per Gregorian calendar.

## **2 COMPOSITION OF THE CONTRACT**

2.1 The present contract is engineering, procurement, construction contract of the DAIRI Lead-Zinc Mine. For convenience of specific implementation, the Owner and the Contractor(s) will, on the basis of such General Contract, sign the following individual Definitive Contracts:

- Engineering Contract

- Equipment & Material Supply Contract
- Mining Development Contract
- Construction and Installation Contract

The above Definitive Contracts, once signed, shall be construed as integral and inseparable parts of this Contract. This Contract and the Definitive Contracts shall be effective concurrently.

## 2.2 Condition Precedent

2.2.1 The Contract shall come into full force and effect on the Effective Date when the following conditions are satisfied:

(a) Constitutional Documents:

- (i) NFC has established an Indonesian company ("**New PT Company**") and has obtained a complete set of the Article of Association of the New PT Company.
- (ii) The New PT Company has obtained its general corporate licenses in Indonesia to carry out the Works under this Contract;
- (iii) NFC and the New PT Company have entered into Deed of Transfer to assign all NFC's rights, title, and obligations under the Mining Development Contract, and Construction and Installation Contract to New PT Company, so that with effect from the date of transfer, the Parties to those contracts will be the New PT Company and the Owner; and
- (iv) NFC and the New PT Company have entered into a cooperation agreement to perform the Engineering work, with effect from the date of such cooperation agreement, the Parties to the Engineering Contract will be NFC, the New PT Company and the Owner.

(b) Finance Documents:

The Owner has entered into Finance Document with the Bank for the purpose of financing of the Project.

2.2.2 The Owner shall promptly confirm to the Contractor(s) the date on which all these conditions have been satisfied. If any of these

conditions has not been satisfied within nine (9) months of the above-mentioned date on which this Contract is made, this Contract shall be void and ineffective and any securities issued in relation to this Contract shall be returned.

2.2.3 If any Party suffers (or will suffer) delay in fulfillment of the conditions as mentioned above, such Party, as the case may be, shall give notice and request in writing to the other Party an extension of time for any such delay.

### **3 CONTRACTOR(S)' SCOPE OF WORK**

The scope of work of the Contractor(s) under the Contract shall include Plant Engineering, procurement of Supplied Items, Construction and Installation, and commissioning supervision of the following items:

- (a) Mining Area (including both underground and surface facilities);
- (b) Tailing reservoir and tailing transmission pipeline and its relevant facilities;
- (c) Paste Backfill plant and its relevant facilities;
- (d) Ore stockpile and Waste rock yard;
- (e) Complete Process plant and its Utilities and Auxiliary facilities;
- (f) Concentrate storage and loading facilities;
- (g) Diesel power generation plant and its Power transmission system to the Plant;
- (h) Plant permanent water source and water supply system;
- (i) Road within the Plant;
- (j) Other necessary facilities within Battery Limit;
- (k) Concentrate port.

The Scope of Work will be detailed in the respective Definitive Contracts.

### **4 CONTRACTOR(S)' GENERAL OBLIGATIONS**

4.1 The Contractor(s) shall comply with the Indonesian laws and

regulations and shall respect the local religion and custom.

- 4.2 The Contractor(s) shall use local content and give preference to the Local Contractor and local work force to the maximum extent practicable consistent with efficient operation, subject to the provision of the existing laws and regulations which may from time to time be in force in Indonesia.
- 4.3 Prior to Commencement Date, the Contractor shall appoint, and notify the Owner of such appointment, the Contractor's Representative and shall give him or her all authority necessary to act on the Contractor(s)' behalf under the Contract, including but not limited to coordinate with the Owner's Representative. The Contractor(s) shall not, without the prior consent of the Owner, revoke the appointment of the Contractor(s)' Representative or appoint a replacement.
- 4.4 The Contractor shall supervise the execution of the Works by the Local Contractors under any relevant Definitive Contracts provided that any such supervising will not lead to interference to the execution of the Works by the Local Contractors. The Contractor shall supervise any execution of the Works by the Local Contractors under any Definitive Contracts as per the agreed Master Project Schedule.
- 4.5 The Contractor(s) shall guarantee the quality and performance of Supplied Items for the Plant construction.
- 4.6 The Contractor(s) shall be responsible for obtaining all permits and other licences required for re-exportation and subsequent importation of any Contract Equipment or other goods or materials for reasons of repair or replacement.
- 4.7 The Contractor(s) shall construct, execute and carry out on Site the activities in compliance with applicable local government legislation and regulations on mining HSE under MEMR decree Number

555.K/26/M.PE/1995.

- 4.8 The Contractor(s) shall be responsible for personal injury insurance and medical insurance for the Contractor(s)' Personnel, and marine insurance related to Contract Equipment.
- 4.9 The Contractor shall bear all tax and duty imposed in China, as well as tax and duty imposed in Indonesia limited to the activities of the New PT Company.
- 4.10 The Contractor(s) shall comply with all relevant labor law applicable to the Contractor(s)' Personnel including laws relating to its employment, health, safety, welfare, immigration, and emigration (including Indonesian working permit and visa for its staff and/or labor) and shall allow them to enjoy all their legal rights.
- 4.11 The Contractor(s) shall perform the functions and obligations as a contractor in respect of project management, to provide monthly Progress Report as specified in the Contract provided that the Contractor(s) and the Owner have checked and countersigned the quality and progress of the Work.
- 4.12 Notwithstanding any provisions herein to the contrary, the Owner acknowledges and agrees that in any case NFC shall not be liable for any Works or part thereof executed by Local Contractors or their Subcontractors. For such Works or any part thereof, Local Contractors shall be liable directly to the Owner pursuant to the Mining Development Contract or the Construction and Installation Contract stated in Clause 6.2.
- 4.13 The Contractor shall provide as-built drawing before Final Acceptance.

## **5 OWNER'S GENERAL OBLIGATIONS**

- 5.1 The Owner shall in time make payments to the Contractor(s) of all amounts due to the Contractor(s) under this Contract in accordance

with the terms and provisions of this Contract.

- 5.2 The Owner shall provide in time effective, true, valid and complete document and data necessary for Contract execution activities, including document of Free-Issued Items and Design Input.
- 5.3 The Owner shall at its own cost complete or entrust to complete the engineering geotechnical survey required for the Plant construction and to provide the survey result.
- 5.4 The Owner shall obtain and provide to the Contractor(s) the governmental mandatory rules and legal documents required for the execution of the Work.
- 5.5 The Owner shall obtain formalities, approvals and licenses including mining right, land use right, deforestation right, road access right, construction water use and waste discharge right, environmental impact assessment and commencement permit required for the Project execution.
- 5.6 The Owner is responsible for proper arrangement (relocation or alteration if necessary) with the relevant third parties (local communities) for water, power, oil and gas, drainage and sewage and communication lines, pipelines and facilities on, under or above the Project area (if any) to avoid impediments to the execution of the Work.
- 5.7 The Owner shall give the Contractor(s) the right of suitable access to, and possession of, all parts of the Site to enable the Contractor(s) to carry out the Works without impediments to such access and possession. Such right and possessions may not be exclusive to the Contractor(s).
- 5.8 The Owner shall assist the Contractor(s) in providing all necessary assistance and relevant supporting documents for the visa and Indonesian working permit of the Contractor(s)'s foreign staff.
- 5.9 The Owner shall at its own cost acquire the import approval, custom



clearance and duty payment of all Supplied Items, and undertake the unloading from vessel, the inland transportation from unloading from the vessel to Site, and unloading on Site of the above mentioned items according to Project Execution Schedule, in Indonesia.

- 5.10 The Owner shall be responsible for obtaining all import permits and other licences required for the importation of Contract Equipment, Steel Structure, and Bulk Materials or other goods or materials required for the purposes of the Works. The Owner shall extend all such cooperation that is reasonably required to facilitate the re-exportation and subsequent importation under the Contract of Work.
- 5.11 The Owner shall be responsible for Insurances except for personal injury insurance for the Contractor(s)' Personnel and medical insurance and marine insurance related to Supplied Items, and other insurance will be provided by Local Contractor.
- 5.12 The Owner shall provide at its own cost of power (temporary), water (including drinking and for construction), fuel, telecommunication and Internet access at the existing points inside Battery Limit during the site construction, installation, pre-commissioning & commissioning and start-up.
- 5.13 The Owner shall perform the functions and obligations as an Owner in respect of project management, by doing inspection, review, countersigned of Progress Report provided by the Contractor(s). Once the Owner has signed the Progress report, it means that the Owner agreed to receive, accept, and will pay for the Work which has been completed as specified in the Progress Report
- 5.14 The Owner shall appoint, and notify the Contractor of such appointment, the Owner's Representative and shall give him all authority necessary to act on the Owner's behalf under the Contract, including but not limited to coordinate with the Contractor's

Representative. The Owner may revoke the appointment of the Owner's Representative or appoint a replacement with notification to the Contractor(s).

- 5.15 The Owner shall take effective measures (including provide safeguard) to ensure the security of Project including the Contractor(s)' Personnel against any risk.
- 5.16 The Owner shall undertake the commissioning of the Plant with the Contractor's technical commissioning guide, and make operations and maintenance personnel available during the commissioning stage, Performance Tests.
- 5.17 During the Contractor(s)' execution of the Work, the Owner shall designate a rubbish area and a dumping area for abandoned soil in reasonable distance away from the Plant. The Owner shall be responsible for the availability and suitability of access routes to such areas.
- 5.18 The Owner shall bear and promptly pay all import taxes and duties imposed on the importation of the Supplied Items by the law of Indonesia.
- 5.19 The Owner shall provide at its own cost centralized accommodation with security and Internet access for NFC's staff in executing the Work on Site.
- 5.20 If the Owner considers himself to be entitled of payment for the purposes of the Work which used (electricity, water, gas and other services as available on Site) by Local Contractor, the Owner shall give notice to the Local Contractor the quantities consumed and the amount due for such use and services, and has the right to charge to Local Contractor.
- 5.21 The Owner shall be responsible at its own cost for warehousing on Site of Free-Issued Items and Supplied Items. Such warehousing shall be suitable for protecting electrical equipment and panels

against rain and moisture.

5.22 The Owner shall be responsible at its own cost for maintenance, and repair as the case may be, of Free-Issued Items including necessary replacement of spare parts so as to ensure the Reliability Run of the Free-Issued Items. The Owner shall provide at its own cost the foundation requirement, installation manual, and operation manual from vendors of Free-Issued Items for installation purpose according to the Master Project Schedule. The Owner shall also be responsible to dispatch technician(s) and engineer(s) from vendor to Site to guide the Installation of the Free-Issued Items according to the Master Project Schedule. If there is delay due to the above mentioned maintenance, repair, or dispatching of technician(s) and engineer(s) from vendors to Site to guide the Installation of the Free-Issued Items, the responsible Party shall be held liable.

5.23 The Owner will collect the VAT and withhold income tax based on Contract of Work each time the Owner makes a payment to the Contractor. Then the Owner will submit the tax payment receipts for the VAT and income tax certificates for withholding income tax to the Contractor within thirty (30) days after payment has been made to the Contractor.

5.24 The Owner shall use their best efforts in assisting the Contractor(s) to implement its tax compliance arrangement(s) and obtain any available tax incentives and preferential tax treatments in Indonesia (including tax treaty benefits).

## **6 TOTAL AMOUNT OF CONTRACT PRICE**

6.1 In consideration of the Contractor(s)' obligations in accordance with the Contract, and further subject to any additional sums or deductions approved by the Parties for the Variation and/or as otherwise permitted under the Contract, the Owner shall pay to

Contractor(s) the Total Amount of Contract Price of:

USD 631,804,019 (Say USD Six Hundred and Thirty-One Million Eight Hundred and Four Thousand Nineteen Only).

6.2 The Total Amount of Contract Price can be allocated to the Contract Price(s) under the respective Definitive Contracts as follows:

6.2.1 Engineering Contract price: USD 62,881,333 (Say USD Sixty-Two Million Eight Hundred and Eighty-One Thousand Three Hundred and Thirty-Three Only);

6.2.2 Equipment & Material Supply Contract price: USD 173,065,791 (Say USD One Hundred and Seventy-Three Million Sixty-Five Thousand Seven Hundred and Ninety-One Only);

6.2.3 Mining Development Contract price: USD 145,261,499 (Say USD One Hundred and Forty-Five Million Two Hundred and Sixty-One Thousand Four Hundred and Ninety-Nine Only);

6.2.4 Construction and Installation Contract price: USD 250,595,396 (Say USD Two Hundred and Fifty Million Five Hundred and Ninety-Five Thousand Three Hundred and Ninety-Six Only).

6.3 The Contract Price has been worked out based on lump-sum, Provisional Sum, and fixed Item rates and the Schedule of Quantities. However, payment shall be made to the Contractor on the actual quantity of Works for item rate items or percentage of lump-sum, and Provisional Sum items executed and duly completed. The Owner shall not be liable to make payment for any rework or re-execution of work that may be required by the Owner, for reasons attributable to the fault of the Contractor(s). The Contract is an Item Rate Contract and does not guarantee any quantity for any Item as set out in the Schedule of Quantities.

6.4 The rates mentioned in the Contract shall remain firm, fix and binding throughout the currency of the Contract except as mentioned otherwise in this Contract.

6.5 Because the design work has not been completed when this contract is signed, the prices in the above price allocation is only an estimate based on the Plant Description and reference of previous similar project experience, and such price is subject to change according to the Detail Design. In case for any supplemental payment because of the above mentioned reasons, the amount of Contract Price and/or allocation in Clause 6.2 can be adjusted.

6.6 Price Basis

The Contract Price is exclusive of Value Added Taxes and duties but inclusive of Income Tax as applicable in Indonesia on works and services covered under this Contract. Provided that any statutory variation in taxes and duties and/or imposition of any new tax/duty/levy in Indonesia after Effective Date of Contract including any incorrect of tax withholding shall be to the Owner's account.

6.7 The determination and actual payment of the final contract price is the Contract price of this Contract plus or minus the additions or deduction part due to change of actual quantities, and Variation as agreed by the Parties.

## 7 TERMS OF PAYMENT

7.1 The Contract Price shall be paid in USD.

7.2 Subject to each of the Definitive Contracts, 15% of the Contract Price, equals to USD94,770,603 (Say USD Ninety-Four Million Seven Hundred and Seventy Thousand Six Hundred and Three Only), shall be paid as Advance Payment against submission of Advance Payment Guarantees with equal amount of 15% of the Contract Price. On the premise that the respective Definitive Contract is countersigned by the Owner and the Contractor(s) with the mount of 15% of the Contract Price, Owner shall, within five (5) Business Days upon receipt of the Advance Payment Guarantees from the

Contractor(s), make Advance Payment to the Contractor(s) through T/T. The amount of Advance Payment shall be 15% of the Contract Price under the respective Definitive Contract. Such advance payment shall be amortized by reducing each of subsequent payments under Clause 6.2 by fifteen (15) percent and the Advance Payment Guarantees shall be reduced accordingly.

7.3 85% of the Contract Price shall be paid as per the Terms of Payment in each Definitive Contracts, by way of:

- (i). Letter of Credit (L/C) for Engineering Contract & Equipment and Material Supply Contract;
- (ii). Telegraphic Transfer (T/T) for Mining Development Contract Construction and Installation Contract, against monthly Commercial Invoice with the following term of payment:
  - (a). Within seven (7) days of the last Business Day of each month, the Contractor shall submit a Statement of Works, which shall describe detail of the Works which has been completed by the Contractor in that month.
  - (b). Within ten (10) days after receipt of the Contractor's Statement of Works, the Owner shall issue a Payment Certificate stating the amount due to the Contractor from the Owner. The Owner, shall within four (4) Business Days approved the Payment Certificate.
  - (c). Within three (3) Business Days of receiving Payment Certificate the Contractor shall give the Owner Commercial Invoice a long with tax invoice for the amount assessed by the Owner that is the subject of the Payment Certificate.
  - (d). The Owner shall pay to the Contractor(s) the amount which is due within ten (10) Business Days after receiving Commercial Invoice & tax invoice from the Contractor(s).

- 7.4 The specimen of the signature(s) of Owner who will sign the documents shall be provided to Owner's bank within fourteen (14) days after issuing of the L/C.
- 7.5 All bank charges collected by L/C issuing bank for the L/C will be paid by the Owner, except that costs for any extensions of the same for reasons attributable to the Contractor(s) shall be borne and paid by the Contractor(s).
- 7.6 All bank charges collected by advising banks for the letter of credit (L/C) shall be borne and paid by the Contractor(s).
- 7.7 All bank charges in connection with issuing and maintaining the Advance Payment Guarantee and the Performance Guarantee under the respective Definitive Contracts shall be borne by the Contractor(s), except that costs for any extensions of the same for reasons attributable to the Owner, including additional cost for untimely deduction of Advanced Payment Guarantee, shall be borne and paid by the Owner.

## **8 GUARANTEES**

### **8.1 Advance Payment Guarantee**

8.1.1 The Contractor(s) shall provide an Advance Payment Guarantee(s) under each of the Definitive Contract, in a total amount equal to the advance payment as prescribed in the respective Definitive Contract, issued by a bank(s) or insurance company acceptable to the Owner substantially in the form as Annex 1-4 (Forms of Guarantees).

8.1.2 The Advance Payment Guarantee shall become effective upon the receipt of the Advance Payment by the Contractor(s) in the same amount and the guarantee amount shall be automatically reduced in proportion to the value of the Work executed by and paid to the Contractor(s) from time to time, and shall

automatically become null and void when the full amount of the Advance Payment has been recovered by the Owner. The Advance Payment Guarantees shall be automatically deducted by the Owner when the Owner-signed commercial invoice is presented to the payment Bank. The Advance Payment Guarantee shall be returned to the Contractor(s) immediately after its expiration.

## 8.2 Performance Guarantee

8.2.1 The Contractor(s) shall provide to the Owner the Performance Guarantee due to performance of each of the Definitive Contracts, in a total amount as prescribed in the respective Definitive Contract, issued by a bank acceptable to the Owner substantially in the form as Annex 1-4 (Forms of Guarantees).

8.2.2 Such Performance Guarantees shall become effective upon the effectiveness of Letter of Credit under Mine Plant Engineering Contract and Equipment & Material Supply Contract. However, under Mining Development Contract, and Construction and Installation Contract, the Performance Guarantees shall become effective prior the Commencement Date of the Works. The balance of Performance Guarantee and shall be automatically reduced to certain amount as prescribed respectively in Definitive Contracts on the issuance of Provisional Acceptance Certificate and become null and void at the end of twelve (12) months after the Provisional Acceptance except as mentioned otherwise in Clause 17. The Performance Guarantees shall be returned to the Contractor(s) immediately after its expiration.

8.3 The Advance Payment Guarantees shall be valid during the period of

- (a) delivery of Engineering, training and Technical Service;
- (b) delivery of Supplied Items;
- (c) Mining Development; or



(d) Construction and Installation.

The Performance Guarantees shall be valid until the Final Acceptance. In case the expiry date of these guarantees cannot cover the required period described above, the Contractor(s) shall extend such guarantees to cover the required period accordingly.

## **9 PERIOD OF CONTRACT AND TIME FOR PERFORMANCE**

9.1 The period of Contract shall be from the Commencement Date and shall be valid up to the Final Acceptance. The Contractor(s) shall complete the whole of the Works within the Time for Performance for the Works or Section under the Master Project Schedule in Annex 1-3 unless otherwise extended, suspended, or terminated earlier in accordance with the Contract.

9.2 The Contractor(s) shall prepare detailed Project Execution Schedule and submit it to the Owner prior to the Commencement Date for Field Work of the Contract.

9.3 The Contractor(s) shall commence the Works as soon as practicable after the issuance Notice to Proceed by the Owner. The Owner may issue such Notice to Proceed nine (9) days after the latest of

(a) Advance Payment Guarantee has been effective

(b) Performance Guarantee has been issued

(c) provide evidence that the insurance for each Party who is responsible under the Contract has been effective

(d) the Direct Agreement duly executed

(e) the Contractor(s) has received the Advance Payment from the Owner and

(f) The New PT Company has obtained its license to conduct mining services in Indonesia to carry out its Works under this Contract.

9.4 The Local Contractor shall commence the Field Work according to the Project Execution Schedule after the issuance of Notice to

Proceed by the Owner. The Owner may issue a Notice to Proceed for Field Work nine (9) days after the following conditions being fulfilled: (a) Advance Payment Guarantee has been effective (b) Performance Guarantee has been effective (c) the Direct Agreement duly executed by the Local Contractor (d) provide evidence that the insurance for each Party who is responsible under the Contract has been effective (e) the Contractor(s) has received the Advance Payment from the Owner and (f) New PT Company has obtained its license to conduct mining services in Indonesia to carry out its Works under this Contract.

- 9.5 If the Contractor(s) fails to commence the Work twenty-one (21) days after the date as stated in the Project Execution Schedule, the Parties shall discuss and agree on an adjustment to commence the Works.

## **10 LIQUIDATED DAMAGES FOR DELAY IN COMPLETION**

- 10.1 In case the schedule for Mechanical Completion is delayed for reason attributed to the Contractor(s), the Contractor(s) shall pay to the Owner, Liquidated Damages and not by way of penalty, equivalent to 0.1% of the value of outstanding Work payable to the Contractor in Delay per day as prescribed in the respective Definitive Contracts multiplied by the days in delay commencing from the scheduled date for Mechanical Completion ("Liquidated Damages for Delay in Completion"). However, if the schedule for Mechanical Completion is delayed for reasons not attributed to the Contractor(s), the Contractor(s) shall not pay to the Owner Liquidated Damages.
- 10.2 The Liquidated Damages for Delay in Completion shall not exceed in the aggregate an amount equal to 15 % of the value of outstanding Work payable to the Contractor in Delay under each of the respective Definitive Contracts.

10.3 The Owner may (a) deduct the amount of Liquidated Damages for Delay in Completion become due, or set them off against any sums due, or will become due to the Contractor(s) or (b) require the Contractor(s) to pay such amount to the Owner forthwith. In the event of claim for deduction of such amount from any sum owe to the Contractor(s), a notice in writing of any such claim, accompanied by reasonable particulars thereof specifying the nature of the claim and the amount of the claim, has been given to the Contractor(s) within thirty (30) days from the date when the Owner became aware of, or reasonably should have become aware of, the circumstance(s) giving rise to the claim. Within five (5) Business Days as of the receipt of such claim, the Contractor(s) shall make a determination on whether to accept such claim, and if the Contractor(s) rejects such claim, it shall give justification for its rejection. If the Contractor(s) fails to response within five (5) Business Days, the claim for deduction shall be deemed accepted.

## **11 MECHANICAL COMPLETION**

11.1 During the Time for Performance, as soon as any Section or a group of Sections have, according to the Contract, been constructed, installed, completed mechanically and structurally, and pre-commissioned (including the no-load test if necessary) in preparation of the Commissioning, excluding minor items not materially affecting the operation or safety of the Section or the Sections, the Contractor(s) shall so notify the Owner in writing the Mechanical Completions.

11.2 As the Contractor(s) achieves the Mechanical Completions, the Owner shall complete its preparations for the Commissioning.

## **12 COMMISSIONING, PERFORMANCE TEST AND PROVISIONAL**

## **ACCEPTANCE**

12.1 The Detail Design drawings shall be used as the basis for acceptance.

12.2 The Commissioning shall be carried out by the Owner with the technical support of the Contractor as soon as practicable after the Mechanical Completion notice as specified in Clause 11.1 being issued by the Contractor. The Parties shall fix a date for Commissioning after Mechanical Completion. Unless otherwise agreed, such fixed date should be within twenty one (21) days after the Mechanical Completion notice. The Commissioning of the Plant shall be conducted by the Sections first and gradually conducted on the whole Plant basis.

12.3 The Contractor shall provide Operation and Maintenance Manual of Contract Equipment for the Commissioning and the Owner shall follow the terms and condition in such Operation and Maintenance Manual in operating the Plant.

12.4 The Owner shall organize and carry out Commissioning under the supervision of the Contractor. If the Facility or the Plant reaches good and stable operation state of Reliability Run, the Owner shall, within fourteen (14) days, issue a Provisional Acceptance Certificate. By issuing such Provisional Acceptance Certificate, the Facility or the Plant and their Construction and Installation are deemed handed over to the Owner.

During Commissioning, if Construction and Installation fails to meet the requirements stipulated by the Contract and/or Construction and Installation Contract, Mining Development Contract, as the case may be, the Parties shall make an investigation. Responsible Parties shall take proper measures to eliminate the defect and/or to ensure the successful implementation of Commissioning.

12.5 If the Owner cannot commence the Commissioning over 30 days

from the fixed date agreed by the Parties as mentioned in Clause 12.2, it shall be deemed that the Owner has implemented the Commissioning. The Contractor shall then notify the Owner in writing for issuing the Provisional Acceptance Certificate within 5 days. If the Owner has not issued the Provisional Acceptance Certificate within 5 days, and/or could not give proper reason for it, the Facility or the Plant will be deemed provisionally accepted by the Owner. Even though, Contractor(s) have the obligation to assist the Owner to Start-Up and running of the Contract Equipment in specified Technical Service scope. However, the Contractor's fulfillment of the above mentioned obligation shall not be longer than 60 days from the Commissioning date fixed by the Parties.

12.6 The Provisional Acceptance does not relieve Contractor(s) from their Defect Liability obligation in the Defect Liability Period.

12.7 Minor items not materially affecting the operation or safety of the Facility or the Plant shall not prevent the issuance of the Provisional Acceptance Certificate. As soon as possible after the Provisional Acceptance Certificate being issued and prior to the Demobilization of the Contractor(s)' Personnel and Construction Equipment, the Contractor(s) shall complete all outstanding minor items so that the Facility or the Plant or the Section is fully in accordance with the requirements of the Contract.

12.8 If the Owner has used a part of the Facility or the Plant for commercial operation before the Provisional Acceptance Certificate being issued, unless otherwise agreed, the Provisional Acceptance Certificate shall be issued or deemed to be issued accordingly for such part of the Facility or the Plant.

12.9 After Provisional Acceptance, if it is deemed necessary by the Owner, the Plant may have the Performance Test. Detail procedures of Performance Test shall be prepared by the Owner with Contractor(s)'

assistance.

### **13 EXTENSION OF COMPLETION TIME**

13.1 The Contractor(s) shall be entitled to an extension to complete the Works during the Time for Performance for the Mechanical Completion is delayed (provided the Contractor(s) was in all respects to carry out / continue the work) by reason of:

- i. Any Variation issued by the Owner (for no fault of the Contractor(s)); or
- ii. Events or circumstances of Force Majeure; or
- iii. Failure of supply including power, fuel, and water by the Owner at existing point within the Battery Limit beyond 30 hours in any calendar month (the extension will be for the period in excess of above mentioned 30 hours); or
- iv. Any delay, impediment or prevention caused by or attributable to the Owner, the Owner's Personnel, or the Owner's other contractors on the Site; or
- v. Any change to laws, regulations, or mandatory rules after the Effective Date, which affect the pace of the Works; or
- vi. Any other unexpected reasons.

13.2 As soon as reasonably practicable following the occurrence of any of the circumstances described in Clause 13.1 hereof, but subject to the provision thereto, the Contractor(s) shall give a claim of extension to the Owner with description about the circumstances and supporting documents thereof. Then within five (5) Business Days as of receipt of such claim, the Owner shall make a determination on whether to accept such claim and if the Owner rejects such claim, it shall give justification for its rejection. If the Owner fails to response within five (5) Business Days, the extension shall be deemed accepted.

## **14 DEFECT LIABILITY PERIOD**

- 14.1 The Defect Liability Period shall be twelve (12) months from the date of the Provisional Acceptance of the Works or part thereof if such part is provisionally accepted.
- 14.2 In the case the Work or part thereof is defective or damaged by reasons attributable to the Contractor(s), the Owner shall promptly give a notice to the Contractor(s). The Contractor(s) shall commence such repair or remedy such defect or damage within twenty-one (21) days (for imported Contract Equipment, within sixty (60) days). If the Contractor(s) refuses to repair or remedy such defect or damage, the Owner is entitled to engage a third party to repair or remedy such defect or damage. Any reasonable costs charged by the third party shall be paid by the Contractor(s) to the third party upon the Contractor(s)' confirmation against presentation of formal invoice and tax receipt. If the Contractor(s) refuses to pay without reasonable cause, the Owner can make a claim on the Performance Guarantee pursuant to the provisions of the Performance Guarantee. The aggregated cost charged by the third party regarding a specific part of Works shall not exceed the replacement cost of such defective or damaged part of Works.
- 14.3 The Defect Liability Period for the Works shall be extended by a period equal to the period during which the Works cannot be used by reason of a defect or damage attributable to the Contractor(s). If only part of the Works is affected, the Defect Liability Period shall be extended only for that part. In neither case shall the Defect Liability Period be extended by more than twelve (12) months.
- 14.4 However, in the event that the defect or damage is not attributable to the Contractor(s), the Defect Liability Period shall not be extended.
- 14.5 The Contractor(s) shall not be liable for defects in the items resulting from modifications or changes or improper operation made by the

Owner or any third party or the other Contractor.

## **15 LIQUIDATED DAMAGE FOR DEFECT**

15.1 In case there is any defect discovered for reason attributed to the Contractor(s) that could not be eliminated, repaired, or remedied, the Contractor(s) shall pay to the Owner the liquidated damages for defect, which shall not exceed in the aggregate an amount as prescribed in the respective Definitive Contracts (“Liquidated Damages for Defect”). No claim for the Liquidated Damages for Defect shall arise if and to the extent that (1) the defect is rectifiable; and (2) such defect does not lead to suspension of operation of the Plant.

15.2 Subject to the provision under Clause 15.1, the Owner may (a) make a claim on the Performance Guarantee, or (b) require the Contractor(s) to pay such amount to the Owner forthwith. In the event of claim on the Performance Guarantee, a no objection letter shall be obtained from the Contractor(s) within thirty (30) days as of the receipt of such claim, the Contractor(s) shall make a determination on whether or not to issue this no objection letter, and if the Contractor(s) rejects such claim, it shall give justification for its rejection. If the Contractor(s) fails to response within thirty (30) days, the no objection letter shall be deemed to be waived.

15.3 In case the Performance Guarantee does not cover the Contractor(s)' liabilities under Clause 14.2 and 15.2, the Owner has the right to claim the remaining balance of amount from the Contractor(s), subject to the provision under Clause 16.

## **16 LIMITATION ON LIABILITIES**

The Contractor(s)' liability in respect of any breach of any of the warranties, covenants or agreements made or to be performed by the Contractor(s)



pursuant to this Contract is subject to the following limitations:

- 16.1 The Maximum aggregated liability of Contractor(s) under the respective Definitive Contracts (including but not limited to the Liquidated Damages for Delay in Completion and Liquidated Damages for Defect), whether in torts or contract or otherwise, shall not exceed in any case fifteen percent (15%) of the Contract Price under the respective Definitive Contracts. Such kind of liability shall be only limited to the direct loss or damage of the Owner or repair cost paid by the Owner himself against supporting documents.
- 16.2 No Party shall be liable for any indirect, consequential, or incidental losses, including anticipated profits, loss of use, or loss of production.
- 16.3 For the purposes of this Contract, a liability, which is contingent, shall not constitute a loss unless and until such contingent liability becomes an actual liability and is due and payable.
- 16.4 No Claim may be made and no liability shall arise if and to the extent that such claim is recoverable under an insurance policy or would have been recoverable if the insurance protection level to be taken by the Owner as requested under this Contract had been continued.
- 16.5 The Liquidated Damages and/or other remedies under this Contract and each of the Definitive Contracts are mutually exclusive. Each of the Parties confirms that, in the event of a breach or threatened breach of any provision of this Contract, the Liquidated Damages and/or other remedies under each of the Definitive Contracts shall not be applicable, and vice versa.

## **17 FINAL ACCEPTANCE**

- 17.1 Within seven (7) day upon expiration of the twelve (12) month as of issuance of the Provisional Acceptance Certificate, the Owner shall issue a clean Certificate of Final Acceptance. In the event that there is any outstanding defect identified during the above mentioned

twelve (12) months, the Owner will issue a Certificate of Final Acceptance with a note, which specifies all outstanding defects. The Owner is entitled to withhold the percentage of the Performance Guarantee in proportion with the value of the defective items within the extended Defect Liability Period, and the remaining amount of the Performance Guarantee shall be released. The Contractor(s) shall repair or remedy such defects within extended Defect Liability Period, upon which the withheld proportion of the Performance Guarantee shall be released.

17.2 Upon the receiving of the Certificate of Final Acceptance, the Contractor(s) shall demobilize the Contractor(s)' Personnel and remove any remaining Contractor(s)' equipment, rubbish, and temporary works from the Site on its own cost. If all these items are not successfully removed within maximum sixty (60) days, the Owner may dispose any remaining items.

## **18 CONFIDENTIALITY**

18.1 Each of the Parties ("Receiving Party") agrees for a period of fifteen (15) years from date of receiving Confidential Information, or from date of this Contract, whichever occurs later, to keep confidential and shall not, without the written consent of the other Party hereto ("Disclosing Party"), divulge to any third party any Confidential Information furnished directly or indirectly by the other Party in connection with the Contract, except that the Receiving Party can show by convincing written evidence that any information:

(a) was in the public domain on the Effective Date, or which after the Effective Date entered the public domain except as a result of a breach of this Contract or any other obligation of confidentiality (but only after, and only to the extent that, it was published or otherwise became part of the public domain);

- (b) was in the possession of the Receiving Party prior to the Effective Date and which the Receiving Party, without breach of any obligation, is free to disclose to others;
- (c) is provided to the Receiving Party on a non-confidential basis by a third party having the unconditional right to do so;
- (d) was independently developed by employees, agents or directors of the Receiving Party who did not have access to or knowledge of Confidential Information; or
- (e) is required to be disclosed by a court of competent jurisdiction or other governmental or regulatory authority, in which case the Receiving Party shall notify the Disclosing Party of such required disclosure, and to use good faith reasonable efforts to cooperate with the Disclosing Party to attempt to reduce the extent of such disclosure.

18.2 Notwithstanding the above, the Receiving Party may furnish such Confidential Information it receives from the Disclosing Party under the Contract to its employees, contractors, agents, vendors, bidders, insurance companies and other third parties to the extent necessary for the operation and maintenance of the Plant or performance of the Work under the Contract, provided that such persons and third parties have bound themselves by obligation of confidentiality identical in substance to those imposed on the Receiving Party. In no case shall the Receiving Party disclose the Technical Information to any other technology provider or other competitor of the Disclosing Party.

18.3 The Receiving Party shall not use such Confidential Information received from the Disclosing Party for any purpose other than the operation and maintenance of the Plant, or performance of the Work under Contract.

18.4 No visit or access by any third party to the Plant shall be allowed

except that it is necessary for operation and maintenance of the Plant, and such third party has bound itself by obligation of confidentiality identical in substance to those contained in this Clause 18.

## **19 PERSONNEL SAFETY AND INSURANCE**

19.1 Parties shall take various kinds of effective measures to prevent various kinds of personal safety accidents from happening to the on-site personnel of Contractor(s) in compliance with MEMR decree Number 555.K/26/M.PE/1995.

19.2 The Owner shall provide necessary public security on Site in order to prevent the on-site personnel of Contractor(s) from personal injuries.

19.3 The Contractor(s) shall go through the personal insurance formalities for their respective personnel working in Indonesia, including the social insurance in Indonesia, at their own expense.

19.4 If the on-site personnel of Contractor(s) are injured or dead due to the Owner's cause within the project Contract Of Work (for example, failure to provide effective site security etc.), the Owner shall be responsible for it and handle it at his own cost. Contractor(s) shall provide necessary assistance.

19.5 If the on-site personnel of the Contractor(s) are injured or dead due to the Contractor(s)' cause, the Contractor(s) shall be responsible for it and handle it at his own cost. The Owner shall assist the Contractor(s) with the aftermath in Indonesia.

19.6 A third party insurance will be further detailed in Mining Development Contract, and Construction and Installation Contract.

## **20 VARIATION**

20.1 The Owner shall have the right to request in writing, deletions or modifications in any part of Work and/or additional work in connection therewith (hereinafter referred to as "Variation").

20.2 If the Owner requests a Variation, it shall send to the Contractor(s) "Request for Variation Proposal," requiring the Contractor(s) to prepare and furnish to the Owner as soon as reasonably practicable a "Variation Proposal," which shall include the following:

- (1) brief description of the Variation;
- (2) effect on the Master Project Schedule;
- (3) estimated cost of the Variation;
- (4) effect on Performance Guarantees;
- (5) effect on any other provisions of the Contract.

20.3 Prior to preparing and submitting the Variation Proposal, the Contractor(s) shall submit to the Owner an "Estimate for Variation Proposal", which shall be an estimate of the cost of preparing and submitting the Variation Proposal. Within fourteen (14) days as of the receipt of the Contractor(s)' Estimate for Variation Proposal, the Owner shall do one of the following:

- (1) accept the contractor's estimate with instructions to the Contractor(s) to proceed with the preparation of the Variation Proposal;
- (2) advise the Contractor(s) of any part of its Estimate of Variation Proposal that is unacceptable and request the Contractor(s) to review its estimate; or
- (3) advise the Contractor(s) that the Owner does not intend to proceed with the Variation.

20.4 Upon receipt of the Owner's instruction to proceed, the Contractor(s) shall proceed with the Variation Proposal with proper expedition.

20.5 Upon receipt of the Variation Proposal, the Owner and the Contractor(s) shall mutually agree upon all matters therein contained in respect of the Variation and jointly sign an amendment to the Contract documenting such agreements. Such Variation shall thereupon be deemed to be a Variation and form part of the Work under the Contract.

If the Owner is unable to reach a decision within twenty-one (21) days, it shall notify the Contractor(s) with details of when the Contractor(s) can expect a decision. If the Owner decides not to proceed with the Variation for whatever reason, it shall, within the said period of twenty-one (21) days, notify the Contractor(s) accordingly.

20.6 The Contractor(s) shall have no obligation to proceed with any Variation without a duly signed Contract amendment for such Variation.

20.7 If, in the course of Work, the Owner requires some extra work (related to the shaft or underground development) to be done beyond the Scope of Work set out herein by the Contractor(s) and the items for such extra work are not covered by the given Schedule of Quantities, the Owner shall give necessary instructions to the Contractor(s) to undertake and complete the same to facilitate the progress of the Works under the Contract.

20.8 The valuation of such extra work shall be done on the basis of the item wise rate specified in the Schedule of Quantities. However, if no such rate is mentioned in the Schedule of Quantities and where the extra work is of similar character and / or executed under similar conditions like any other item of work appearing in Schedule of Quantities, then the rate for such extra work shall be derived from Contract rate of similar / closest item of work. Where the nature of extra work is such that the rate for the same cannot be derived from above then the rate shall be established based on the cost of labor, materials and machinery (valued at prevailing market rates) and taking into account 10% extra to cover cost of supervision, overheads and profits.

20.9 If changes in Indonesian law, regulations, rulings, orders or other Indonesian authorities' requirements after the signing date of the

Contract shall cause the Contractor(s) additional or reduced costs and time, the Contract Price shall be correspondingly increased or decreased, and/or the Target Date shall be reasonably adjusted to the extent that the Contractor(s) has thereby been affected in the performance of any of its obligations under the Contract.

20.10 The adjustment in the Contract Price shall be as far as practicable be calculated in accordance with the rates or prices included in the Contract. If such rates are inequitable or inapplicable, the Parties shall agree on specific rates for the Variation.

20.11 If the Contractor(s) encounters on the Site physical conditions (other than climatic conditions) or artificial obstructions or items of geological or archaeological interest that could not have been reasonably foreseen by an experienced contractor on the basis of reasonable examination of the data relating to the Work provided by the Owner, on the basis of information that it could have obtained from a visual inspection of the Site and/or a reasonable geological survey of the Plant, the Contractor(s) shall promptly, notify the Owner in writing. On receiving any notice from the Contractor(s) under this Clause, the Owner shall promptly consult with the Contractor(s) and decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered or to protect/preserve the items of geological or archaeological interest. the Owner and the Contractor(s) shall however discuss and agree on the impact of such event on the execution of the Work in accordance with Variation procedure herein.

20.12 If the change of geological condition results in change of civil cost, upon receiving any notice from the Contractor(s) under this Clause, the Owner shall promptly consult with the Contractor(s) and decide upon the actions to be taken to overcome the geological conditions and finalize the adjustment of Contract Price due to this matter.

20.13 For the avoidance of any doubt, the circumstances in Clause 6.5 shall not be deemed as a Variation under this Clause 20.

## 21 FORCE MAJEURE

21.1 Any delay or failure in performance by a Party to the Contract shall not constitute a default hereunder if and to the extent such delay or failure is caused by occurrences of Force Majeure, including the following:

- (1) war, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy and civil war;
- (2) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts;
- (3) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or *de jure* or *de facto* authority or ruler or any other act or failure to act of any local state or national government authority;
- (4) nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive;
- (5) strike, sabotage, lockout, embargo, sanction, shipwreck, industrial dispute at a national level, epidemics, quarantine, plague and or serious regional disease for which the World Health Organization has issued the warning against travel;
- (6) Acts of God including earthquake, landslide, volcanic activity, fire, tsunami, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other natural or physical disaster; and any other cause whatsoever beyond the control of the Party affected by such occurrence. Without limiting the foregoing an



event of Force Majeure shall not include (i) any strike of the Contractor(s)' or any Local contractor's employees or agents or those of their respective Subcontractors or (ii) changes in economic market conditions (unless precipitated by the events of Force Majeure).

21.2 More particularly and without limiting the generality of the foregoing, where any Force Majeure occurrence renders impossible or delays the performance of any obligation or the exercise of any rights under the Contract, then the period whereby such performance or such exercise is delayed shall be added to the relevant period fixed by the Contract. Force Majeure shall not apply to obligations of either Party to make payments to the other Party (including those for the Work executed before and after the Force Majeure event) under the Contract.

21.3 In case of Force Majeure, as soon as practicable, detailed notification shall immediately but not later than seven (7) days after the occurrence of Force Majeure is given by the Party claiming the Force Majeure.

21.4 Each Party shall at all times use all reasonable efforts to minimize any delay in the performance of the Contract as a result of Force Majeure. A Party shall give notice to the other Party when it ceases to be affected by Force Majeure.

21.5 If the occurrence of Force Majeure is lasting more than four (4) consecutive months or an aggregate period of six (6) months, the Parties shall discuss the most feasible measures to be taken. If an agreement cannot be reached, either Party may terminate the Contract by giving a notice to the other Party. In the event of such termination, the rights and obligations of the Owner and the Contractor(s) shall be as specified in Clauses 23.5 and 23.6.

## **22 SUSPENSION**

22.1 At any time Owner may by notice require the Contractor(s) to suspend all or any part of Work. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefore. The Contractor(s) shall thereupon suspend performance of such work until ordered in writing to resume such performance by the Owner.

If, by virtue of a suspension order given by the Owner, other than by reason of the Contractor(s)' default or breach of the Contract, the Contractor(s)' performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor(s) may give a notice to the Owner requiring that the Owner shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a Variation in accordance with Clause 20 (Variation), excluding the performance of the suspended obligations from the Contract.

If the Owner fails to do so within such period, the Contractor(s) may, by a further notice to the Owner, elect to treat the suspension, where it affects a part of the Work only, as a deletion of such part in accordance with Clause 20 (Variation) or, where it affects the whole of the Work, as termination of the Contract under Clause 23.4. If the performance of that part of the Work is deleted from the Contract, the Performance Guarantee shall be released pro rata to the Contract Price of such part of the Work.

22.2 If the Owner (a) has failed to pay the Contractor(s) any sum due and payable under the Contract within twenty-one (21) days after receipt of the Contractor(s)' commercial invoice in the case of a telegraphic transfer (T/T) payment, or (b) has failed to approve any the

Contractor(s)' Statement of Work without just cause within twenty-one (21) days after receipt of the Contractor(s)' Statement of Work, or (c) has committed other substantial breach of the Contract and fails to remedy or take steps to remedy the breach with fourteen (14) days after receipt of the Contractor(s)' notice, then the Contractor(s) may by fourteen (14) days' notice to the Owner suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress, unless the Contractor(s) has received during the above-mentioned fourteen (14) days from the Owner reasonable evidence that the breach has been remedied or payment has been made (as the case may be) as described in the notice from the Owner.

If the Contractor(s) is unable to carry out any of its obligations under the Contract for any reason attributable to the Owner, including but not limited to the Owner's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Work, the Contractor(s) may by notice to the Owner suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress until the reason for suspension is removed.

22.3 During the period of suspension, the Contractor(s) shall (a) protect, store, and secure equipment against any deterioration, loss or damage and (b) not remove from the Site any Equipment, any part of the Plant or any Construction Equipment, without the prior written consent of the Owner.

22.4 If the Contractor(s)' performance of its obligations is suspended or the rate of progress is reduced pursuant to this Clause, then the time schedule shall be extended, and any and all additional costs or expenses incurred by the Contractor(s) as a result of such suspension or reduction shall be paid by the Owner to the

Contractor(s) in addition to the Contract Price, except such suspension or reduction in the rate of progress is attributable to the Contractor(s)' default.

## **23 TERMINATION**

### 23.1 If the Contractor(s)

- (a) abandons or repudiates the Contract;
- (b) without reasonable excuse, fails to commence the Work promptly in accordance with the Contract or suspends the Work for more than twenty eight (28) days after receipt of a written instruction from the Owner to proceed;
- (c) substantially fails to execute the Contract in accordance with the terms and conditions of the Contract or substantially neglects to carry out its obligations under the Contract;
- (d) subcontracts or assigns the whole Work under the contract inconsistent with Clause 27.6;
- (e) become bankrupted or insolvent, goes into liquidation, has a receiving or administration order in bankruptcy made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors or if any act is done or event occurs which (under applicable laws) has similar effect to any of these acts or events;

the Owner may give the Contractor(s) written notice stating the nature of the default and requiring the Contractor(s) to remedy the same.

The Contractor(s) shall notify the Owner within twenty-one (21) days that he is taking steps to remedy the same and gives an estimate of time to remedy such default. The Owner may terminate the Contract in five (5) days by giving written notice to the Contractor(s) if the Contractor(s) fails to remedy such default within the estimate of time.

Notwithstanding anything stated herein to the contrary, the Owner can terminate the Contract immediately by notice if the situation stated in Clause 23.1 (e) occurs.

23.2 In the case of termination under Clauses 23.1, the Contractor(s) shall immediately

- (a) discontinue all current work, except for such work which is not to be terminated at the written request of the Owner in order to protect the status of the contractual performance or which is necessary in order to maintain the Site and/or the Work in safe and proper conditions;
- (b) rescind all agreements with respective Subcontractors in consultation with the Owner or, at the Owner's request, assign such Subcontracts to the Owner at the same terms and conditions as with the Contractor(s) to the extent legally possible;
- (c) remove all equipment to which the Owner does not hold title in accordance with Clause 23 from the Site;
- (d) withdraw its personnel and, subject to (b) above, the personnel of its Subcontractors from the Site;
- (e) remove all refuse, waste, scrap and similar material from the Site to deliver the grounds in a clean and proper condition;
- (f) deliver to the Owner the parts of the Work executed by the Contractor(s) up to the date of termination; and
- (g) deliver to the Owner all drawings, specifications and similarly stored computer information on data storage media and other documents prepared by the Contractor(s) in connection with the Work up to the date of termination.

23.3 In the event of a termination set forth in Clause 23.1, the Owner shall pay the Contractor(s) for all Work performed prior to the date of termination in accordance with the Contract.

The Contractor(s) shall bear the cost and charges for (a) terminating the subcontracts with the Subcontractors (b) protecting or securing

the Owner's property until leaving the Site and leaving the Site in a clean and safe condition (c) demobilization cost incurred by it or its Subcontractor (d) other loss or damage sustained by the Owner arising out of, in connection with such termination and (e) the cost which in the circumstances was reasonably incurred by the Owner in the expectation of completing the Work.

Furthermore, the Owner shall release the Advance Payment Guarantee for the portion of the unexecuted Work, and the Performance Guarantee for the executed Work. The Parties shall discuss and agree on the arrangement on the portion of the executed and unexecuted Work.

Termination by the Owner pursuant to Clause 23.1 is without prejudice to any other rights or remedies of the Owner that may be exercised in lieu of or in addition to rights conferred by Clauses 23.2 - 23.3.

23.4 If the Owner

- (a) has failed to pay the Contractor(s) any sum due and payable under the Contract and fails to pay within ninety (90) days after receipt of the Contractor(s)' Commercial Invoice, or
- (b) has failed to approve any Statement of Works without just cause within the specified period in the Contract and fails to approve the same or give its reasons for withholding such approval within ninety (90) days after receipt of Statement of Works, or
- (c) become bankrupted or insolvent, goes into liquidation, has a receiving or administration order in bankruptcy made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors or if any act is done or event occurs which (under applicable laws) has similar effect to any of these acts or events, or
- (d) substantially fails to execute the Contract in accordance with the

terms and conditions of the Contract or substantially neglects to carry out its obligations under the Contract,

the Contractor(s) may give the Owner a written notice stating the nature of the default and requiring the Owner to remedy the same.

The Owner shall notify the Contractor(s) within twenty-one (21) days that he is taking steps to remedy the same and gives an estimate of time to remedy such default. The Contractor(s) may terminate the Contract in five (5) days by giving written notice to the Owner if the Owner fails to remedy such default within the estimate of time.

Notwithstanding anything stated herein to the contrary, the Contractor(s) can terminate the Contract immediately by notice if the situation stated in Clause 23.4 (c) occurs.

23.5 If the Contract is terminated under Clauses 23.4, then the Contractor(s) shall immediately

- (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Work already executed, or any work required to leave the Site in a clean and safe condition;
- (b) terminate all subcontracts, except those to be assigned to the Owner pursuant to paragraph (d) (ii);
- (c) remove all the Contractor(s)' Equipment from the Site and repatriate the Contractor(s)' and its Subcontractor's personnel from the Site;

In addition, the Contractor(s), subject to the payment specified in this Clause 23.5, shall

- (i) deliver to the Owner the parts of the Work executed by the Contractor(s) up to the date of termination;
- (ii) to the extent legally possible, assign to the Owner all right, title and benefit of the Contractor(s) to the Work and to the Equipment as of the date of termination, and, as may be required by the Owner, in any subcontracts concluded between the Contractor(s) and its Subcontractors.

The Owner shall bear the cost and charges for (a) terminating the contracts with Subcontractor (b) protecting or securing the Owner's property until leaving the Site and leaving the Site in a clean and safe condition (c) demobilization cost incurred by it or its Subcontractor (d) other loss or damage sustained by the Contractor(s) arising out of, in connection with such termination and (e) the cost which in the circumstances was reasonably incurred by the Contractor(s) in the expectation of completing the Work.

23.6 If the Contract is terminated under Clause 23.4, the Advance Payment Guarantee and Performance Guarantee provided by the Contractor(s) shall be released upon the termination. In the event that the Advance Payment exceeds the Owner's liability under Clause 23.5, such excess amount shall be refunded to the Owner. Termination by the Contractor(s) pursuant to Clause 23.4 is without prejudice to any other rights or remedies of the Contractor(s) that may be exercised in lieu of or in addition to rights conferred by Clauses 23.5-23.6.

## **24 GOVERNING LAW**

This contract shall be construed and interpreted in accordance with the plain meaning of its terms, and shall be governed and construed in accordance with the laws of Indonesia. The Parties expressly waive Articles 1266&1267 of the Indonesian Civil Code to the extent that the court decision or judicial pronouncement is required to terminate the Contract.

## **25 SETTLEMENT OF DISPUTES**

25.1 In the event of any dispute, difference of contention in the interpretation of meaning of any part of the Contract or to performance under, arising of or in connection with the Contract, the



Parties shall make their best endeavor to resolve the dispute or differences by mutual discussions and use their best efforts to find an amicable solution to such differences or disputes.

25.2 In case that an amicable settlement cannot be reached within a reasonable period of time, however, not longer than six (6) weeks after the dispute was first notified by one Party to the other Party, then either Party may refer any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, to the Singapore International Arbitration Centre ("SIAC") in Singapore in accordance with the Arbitration Rules of SIAC for the time being in force, which rules are deemed to be incorporated by reference in this clause. The arbitration award shall be final and binding on all Parties. The place of arbitration shall be the Singapore.

25.3 The arbitration tribunal shall consist of three members. The language of arbitration shall be English.

25.4 The Parties shall extend to the arbitral tribunal all facilities for obtaining any information required for the proper determination of the dispute. The absence or default of either of the Parties to arbitration shall not be permitted to prevent or hinder arbitration procedure in any or all of its stages.

25.5 The Parties shall continue to execute the Contract except the parts under arbitration while the arbitration is proceeding.

25.6 The cost of arbitration shall be awarded at the discretion of the arbitration tribunal.

## **26 NOTICES**

### **26.1 Notices to the Owner**

Any contractual notice, report, certificate or other communication to be given to the Owner under the Contract shall be in English and

served either (1) by e-mail (with all the documents attached in PDF format); or (2) by sending the same by facsimile transmission (with a confirmation copy by courier or by hand delivery only in case of major issues relating to the Contract, Viz. arbitration, making a claim, termination etc.) to; or (3) by leaving the same at, the respective addresses set out below or such other addresses as may be specified for that purpose in writing to the Contractor(s).

Owner:

Ryno Chandra Mulya

GM Processing Plant, Infrastructure & Utilities

Address: Menara Bidakara 2 Lt. 8, Jl. Gatot Subroto Kav. 71-73,  
Tebet – Jakarta Selatan 12870

E-mail: Ryno.Chandra@ptdpm.co.id

#### 26.2 Notices to the Contractor(s)

All certificates, notices or decisions, instructions and orders to be given by the Owner's Representative or the Owner under the Contract shall be in English and served (1) by e-mail (with all the documents attached in PDF format); or (2) by sending the same by facsimile transmission (with a confirmation copy by courier or by hand delivery only in case of major issues relating to the Contract, Viz. arbitration, claims, termination etc.) to; or (3) by leaving the same at, the address set out below or such other address as the Contractor(s) shall nominate in writing for that purpose:

The Contractor(s):

Wang Xinyu

Vice President

China Non-ferrous Metal Industry's Foreign Engineering &  
Construction Co. Ltd.

NFC Building, 10 Anding Road

Beijing 100029

P.R. China

E-mail: wangxinyu@nfc-china.com

Serving of Notices

Any notice shall be deemed to have been served and received in the following methods set forth below: (1) by e-mail, within 1 day as of the date of delivery; or (2) by facsimile transmission, at the time of receipt, provided that a positive transmission report from the sender's machine will be conclusive evidence of receipt in the absence of evidence to the contrary; or (3) by leaving at the address, on reaching such address and subject to return receipt or other proof of delivery.

### 26.3 Other Communications

All other communications pertaining to the Supplies not referred to in Clauses 26.1 and 26.2 shall be made between the Contractor(s) and the Owner's representative or other representatives nominated by the Contractor(s) or the Owner's representative from time to time in respect of such categories of communication and subject to such limits of authority as may be agreed as part of the project co-ordination procedures or as may be notified from time to time.

### 26.4 Project Co-ordination Procedures

the Contractor(s) shall within 60 (sixty) days of date of signature of the Contract submit to the Owner a project co-ordination procedures document setting out procedures for communications between the Contractor(s), the Owner and the Owner's representative in connection with this Contract, including details relating to correspondence, circulation of notices and documentation, meetings and other interfaces.

The Parties shall comply with the requirements of such project co-ordination procedures as such procedures may be amended from time to time by mutually agreement.

## **27 MISCELLANEOUS**

### **27.1 Order of Precedence**

The documents forming the Contract shall be taken as mutually explanatory of one another. In the event of any conflict among the Contract Documents, the order of precedence is set forth as follows:

- (1) Clauses 1 to 27 of the Contract;
- (2) The individual Definitive Contracts.
- (3) Annexes 1-1 to 1-6 to the Contract.

### **27.2 Contract Language**

(a) English shall be used officially in respect of all matters in connection with this Contract, unless otherwise agreed in writing by the Parties.

(b) The Parties agree to execute the Indonesian version of this Contract at a time agreed between the Parties, as may be required under further implementing regulations of Law No. 24 of 2009 on National Flag, Language, Emblem and Song, and the Indonesia version shall be treated as an integral and inseparable part of the English version.

(c) In case any Indonesian version of this Contract is prepared and any dispute arises over the meaning of any provisions under this Contract, the English version shall prevail and the relevant Indonesian version shall be deemed to be automatically amended to conform with and be consistent with the English version.

(d) All documents provided by either Party to the other Party in connection with the Work under the Contract shall be in English. If the original documents are not in English, the providing Party shall provide a qualified English translation thereof and the English translation shall prevail in case of discrepancy.

### **27.3 No Waiver**

No party shall be deemed to have waived any right, power or privilege

under the Contract or any provision thereof unless such waiver is duly executed in writing and acknowledged by the Party to be charged with such waiver. Waiver of any breach or failure to exercise any right hereunder, or failure to enforce any of the terms and conditions of the Contract shall not in any way affect, limit or waive the right thereafter to require strict compliance with every term and condition hereof.

#### 27.4 Entire Agreement

All negotiations, and agreed terms and conditions between the Owner and the Contractor(s) have been incorporated into the Contract. Accordingly the Contract constitutes the entire understanding of the Parties with respect to rights and obligations of the Parties under the Contract.

#### 27.5 Amendment

No amendment to the Contract shall be effective unless it is in writing and duly signed by the Owner and the Contractor(s).

#### 27.6 Assignment

Except the assignments in Clause 2.2.1 (iii), neither the Owner nor the Contractor(s) shall, without the express prior written consent of the other (which consent shall not be unreasonably withheld), assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder.

With the Owner's written consent (such consent shall not be unreasonably withheld), the Contractor(s) may transfer or assign, in whole or in part, its rights and/or obligations under this Contract to any company directly or indirectly controlling, controlled by or under common control of the Contractor(s).

Any assignment contrary to the above shall be null and void and of no effect.

#### 27.7 Originals

The Contract has been signed in four (4) originals, two (2) for the

Owner and two (2) for the Contractor(s).

#### 27.8 Severability

If any provision or part of the Contract is or would become invalid, illegal or unenforceable in any respect under Governing Law, then such invalidity, illegality or unenforceability shall not impair the validity, legality or enforceability of any other of its provisions.

ENGINEERING, PROCUREMENT, CONSTRUCTION CONTRACT OF  
DAIRI LEAD-ZINC MINE FACILITIES, INDONESIA WITH 1,000,000T/Y THROUGHPUT

**IN WITNESS WHEREOF**, each of the Parties hereto has caused this Contract to be executed by its duly authorized representative on the date first set forth above.

PT Dari Prima Mineral

China Nonferrous Metal Industry's Foreign  
Engineering and Construction Co., Ltd.



Signature of Owner  
Name: Suseno Kramadibrata  
Title: President Director

Signature of Contractor  
Name: Wang Hongqian  
Title: President

Signature of Contractor  
Name: Wang Xinyu  
Title: Vice President

In the presence of  
PT Bakrie Constructions:

Signature of Witness  
Name: Ir. Santoso W. Ramelan  
Title: President Director

In the presence of  
PT Darma Henwa Tbk:

Signature of Witness  
Name: Wachjudi A. Martono  
Title: President Director