

**ENVIRONMENTAL AGREEMENT**

This Agreement made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**  
as represented by the  
**Minister of Indian Affairs and Northern Development**  
(hereinafter referred to as "Canada")

**AND**

**THE GOVERNMENT OF THE NORTHWEST TERRITORIES**  
as represented by the  
**Minister of Resources, Wildlife and Economic Development**  
(hereinafter referred to as the "GNWT")

**AND**

**DE BEERS CANADA MINING INC.**  
(hereinafter referred to as "DBCMI")

**AND**

**DOGRIB TREATY 11 COUNCIL**

**AND**

**LUTSEL K'E DENE BAND**

**AND**

**YELLOWKNIVES DENE FIRST NATION**

**AND**

**NORTH SLAVE MÉTIS ALLIANCE**

ARTICLE I STATEMENT OF PURPOSE AND GUIDING PRINCIPLES.....	2
ARTICLE II NO PREJUDICE .....	2
ARTICLE III INTERPRETATION.....	2
ARTICLE IV ENVIRONMENTAL MONITORING AGENCY .....	2
ARTICLE V ENVIRONMENTAL COMPLIANCE .....	2
ARTICLE VI ENVIRONMENTAL MANAGEMENT.....	2
ARTICLE VII ENVIRONMENTAL MONITORING PROGRAMS.....	2
ARTICLE VIII REGIONAL CUMULATIVE EFFECTS ASSESSMENT & MANAGEMENT FRAMEWORK.....	2
ARTICLE IX HERITAGE RESOURCES .....	2
ARTICLE X ANNUAL REPORTS .....	2
ARTICLE XI REGULATORY AUTHORITY .....	2
ARTICLE XII SECURITY AND ENFORCEMENT .....	2
ARTICLE XIII RESOLUTION OF DISPUTES.....	2
ARTICLE XIV GENERAL PROVISIONS .....	2
ARTICLE XV TERM.....	2

## RECITALS

- A. WHEREAS DBCMI proposes to establish the Project to be located near Snap Lake in the Northwest Territories for the production of rough diamonds;
- B. WHEREAS the Parties all wish to ensure that the Project not adversely effect environment, air, land, water, aquatic resources, wildlife, archaeological and cultural resources, and the land-based practices that are essential to the way of life and well-being of the Aboriginal Parties;
- C. WHEREAS the Mackenzie Valley Environmental Impact Review Board ("MVEIRB") conducted an environmental assessment of the Project pursuant to the *Mackenzie Valley Resource Management Act* (the "MVRMA") which resulted in a report and decision issued on July 24, 2003 and titled "Report of Environmental Assessment and Reasons for Decision on the De Beers Canada Mining Inc. Snap Lake Diamond Project" (the "MVEIRB Report");
- D. AND WHEREAS the Minister of Indian and Northern Affairs (the "Minister") on behalf of the Responsible Ministers has adopted the recommendations made in the MVEIRB Report by means of the letter issued by the Minister October 10, 2003, and pursuant to s. 130 of the MVRMA;
- E. AND WHEREAS the MVEIRB Report at recommendation 28 requires that DBCMI and the Government of Canada and the Government of the Northwest Territories negotiate and sign an environmental agreement prior to the issuance of the Water License;
- F. AND WHEREAS recommendations 13, 14, 15, 16, 18, 20, 26, 28, 29, 31 made in the MVEIRB Report require various matters to be addressed in an environmental agreement;
- G. AND WHEREAS DBCMI commits to conduct Adaptive Management to minimize the environmental impact of the Project;
- H. AND WHEREAS DBCMI and the Aboriginal Parties have entered into or are negotiating and settling Impact Benefit Agreements in connection with the Project;

**NOW THEREFORE**, in consideration of the premises and the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, the Parties covenant and agree as follows:

**ARTICLE I**  
**STATEMENT OF PURPOSE AND GUIDING PRINCIPLES**

1.1 PURPOSE

This Agreement is intended to be a legally binding agreement for the achievement of the following purposes:

- (a) To respect and protect the environment, air, land, water, aquatic resources, wildlife, archaeological and cultural resources, and the land-based practices that are essential to the way of life and well-being of the Aboriginal Parties;
- (b) To complement but not duplicate or displace the duties, rights and obligations of regulators and the Parties under and pursuant to federal and territorial legislation and Regulatory Instruments;
- (c) To carry out recommendations of the MVEIRB adopted by the Minister on behalf of the Responsible Ministers, including the Commitments, and to implement agreements on the subject of Environmental Protection Measures among and between any or all of the Parties;
- (d) To ensure that DBCMI carries out the Project in compliance with applicable environmental laws and regulations, Regulatory Instruments, the Commitments and its other obligations under this agreement;
- (e) To provide for additional monitoring which, in conjunction with the monitoring requirements of Regulatory Instruments, will serve to verify the accuracy of the environmental assessment of the Project and the effectiveness of mitigation measures and whether the Commitments are being fulfilled;
- (f) To facilitate the use of holistic and ecosystem-based approaches for the monitoring, management and regulation of the Project;
- (g) To facilitate effective communication about the Project with and effective participation of the Aboriginal Parties and the general public in the achievement of these purposes;
- (h) To maximize the effectiveness and co-ordination of environmental monitoring and regulation of the Project;
- (i) To provide advice and direction to DBCMI in order to assist DBCMI in managing the Project consistent with these purposes;
- (j) To promote capacity-building for the Aboriginal Parties respecting Project-related environmental matters.
- (k) To promote a co-operative approach among the Parties respecting Project-related environmental matters; and

- (l) To facilitate continual improvement in DBCMI's environmental performance with regard to the Project.

## 1.2 GUIDING PRINCIPLES

The Parties agree to carry out their responsibilities under this Agreement and the Regulatory Instruments consistently with the purposes in Section 1.1 and guided by the following principles:

- (a) Adaptive Management;
- (b) Sustainable Development;
- (c) Precautionary Principle;
- (d) Recognition of the particular environmental values of the Snap Lake region;
- (e) Full consideration and use of both traditional knowledge and other scientific information where appropriate; and
- (f) Design and implementation of Environmental Protection Measures to minimize adverse effects on Environmental Impacts to the extent technically and economically feasible.

## **ARTICLE II NO PREJUDICE**

### 2.1 NO PREJUDICE

This Agreement is without prejudice to the positions of the Parties respecting any:

- (a) existing Aboriginal or treaty rights of the Aboriginal Parties;
- (b) on-going or future land claims or self-government negotiations affecting Aboriginal Parties;
- (c) current or future litigation in which any Party is involved; including for greater certainty the current proceedings between the North Slave Métis Alliance and Her Majesty the Queen in right of Canada et al.;
- (d) constitutional changes which may occur in the Northwest Territories;
- (e) changes to legislation or regulations resulting from the settlement of land claims and self-government negotiations, or resulting from constitutional changes or devolution; or
- (f) existing or future Impact Benefit Agreements.

### 2.2 NO RECOGNITION OR DENIAL

For greater certainty, nothing in this agreement is to be interpreted as:

- (a) recognizing or denying the existence of any rights of the Aboriginal Parties; or
- (b) recognizing or denying the status of any of the Aboriginal Parties.

### 2.3 TRANSITIONAL

In the event that jurisdiction or regulatory authority relating to the Project or any aspect of the Project, is transferred or devolved as a result of constitutional change, treaty, self-government or land claim agreement, or otherwise, the Parties shall negotiate, in good faith, to amend this Agreement to reflect such transfer or devolution, while maintaining the purposes and principles of this Agreement.

## ARTICLE III INTERPRETATION

### 3.1 DEFINITIONS

In this Agreement, unless the context otherwise indicates, the following terms shall have the meanings ascribed to them below:

"**Aboriginal Parties**" means the Dogrib Treaty 11 Council, the Lutsel K'e Dene Band, the Yellowknives Dene First Nation and the North Slave Métis Alliance.

"**Adaptive Management**" means a management method that incorporates monitoring results and change resulting from new research that has been developed. It is an iterative and ongoing process towards continual improvement.

"**Annual Report**" has the meaning attributed thereto in Article 10.1.

"**Arbitrator(s)**" means the arbitrator or arbitrators selected pursuant to Article 13.3 in respect of any particular dispute.

"**Closure and Reclamation Plan(s)**" means the plans submitted by DBCMI regarding the closure and reclamation of the Project.

"**Commercial Production**" means production at the rate of 80% of design capacity for the Project processing plant for 30 consecutive days.

"**Commitment**" means mitigation measures described in Schedule "A" to this Agreement; provided that, where the commitment as originally made by DBCMI is departed from in order to comply with the principles of Adaptive Management, and as approved by Regulatory authorities when so required, "Commitment" means the commitment as modified to comply with those requirements.

"**Consult**" or "**Consultation**" means, at a minimum:

- (a) the provision to the party to be consulted of notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter;

- (b) the provision of a reasonable period of time in which the party to be consulted may prepare its views on the matter and provision of an opportunity to present such views to the party obliged to consult;
- (c) full and fair consideration by the party obliged to consult of any views presented and;
- (d) any Party consulted that provides substantive comments shall be informed in a timely fashion of any decision made concerning the subject matters on which they commented.

"**Effective Date**" has the meaning ascribed to it in Article 15.1(a).

"**Environment**" has the meaning ascribed to it in the MVRMA and as of the date hereof means the components of the Earth, and includes:

- (a) land, water, and air, including all layers of the atmosphere,
- (b) all organic and inorganic matter and living organisms, and
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b).

"**Environmental Impact**" means any effect on land, water, air or any other component of the environment, as well as on wildlife harvesting, and includes any effect on the social and cultural environment or on heritage resources.

"**Environmental Management Plans**" means the plans described in Article VI and any other environmental management plans carried out or conducted by DBCMI in connection with the Project.

"**Environmental Management System**" or "**EMS**" means comprehensive adaptive management for the Project which is implemented to improve the actions that DBCMI takes to meet its environmental obligations.

"**Environmental Monitoring Programs**" has the meaning attributed thereto in Article VII and any other environmental monitoring programs carried out or conducted by DBCMI in connection with the Project.

"**Environmental Plans and Programs**" means any Environmental Management Plan or Environmental Monitoring Program.

"**Environmental Protection Measures**" means all measures taken to avoid or mitigate adverse Environmental Impacts.

"**Heritage Resource**" means (a) a site with archaeological, historical or cultural significance and includes a burial site; or (b) an artifact, object or record of historical or cultural significance and includes human remains and associated grave goods found in a burial site.

**"Impact Benefit Agreements"** means those impact benefit agreements or other similar agreements, entered into between DBCMI and the Aboriginal Parties with respect to the Project and as same may be supplemented, revised, restated or replaced from time to time during the term of this Agreement.

**"Land Leases"** means any lease for the Project issued pursuant to the *Territorial Lands Act*; and includes any renewal, amendment or replacement thereof.

**"Land Use Permit"** means the land use permit issued to DBCMI by the Mackenzie Valley Land and Water Board and includes any renewal, amendment or replacement thereof.

**"Minister"** means the Minister of Indian Affairs and Northern Development.

**"Minister's Report"** means a report that may be provided by the Minister to DBCMI in the event that any Annual Report, Environmental Management Plan, or Environmental Monitoring Program provided to the Minister by DBCMI is determined by the Minister to be deficient.

**"Monitoring Agency"** has the meaning ascribed to it in Article IV.

**"MVEIRB"** means the Mackenzie Valley Environmental Impact Review Board as defined in Recital C of this Agreement.

**"MVEIRB Report"** has the meaning ascribed to it in Recital C to this Agreement.

**"MVRMA"** means the *Mackenzie Valley Resource Management Act* as defined in Recital C of this Agreement.

**"Notice of Default"** means a notice which may be issued by the Minister upon the occurrence of any non-compliance by DBCMI with any provisions of this Agreement describing the specific default or defaults including a requirement to rectify such default or defaults.

**"NWT"** means the Northwest Territories.

**"Parties"** means those parties listed on the face page of this Agreement who actually sign this Agreement in accordance with the provisions of Article XV, and **"Party"** shall mean any one of them.

**"Precautionary Principle"** means, where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing reasonable measures to prevent environmental degradation.

**"Project"** means the Snap Lake Diamond Project as outlined in the "Snap Lake Diamond Project Environmental Assessment Report" submitted by DBCMI to the MVEIRB in February 2002, and in the "Consolidated Project Description" submitted to the Mackenzie Valley Land and Water Board in November 2003, comprising underground mine and surface processing facilities, surface waste containment, water collection and treatment facilities, and other infrastructure.

**"Regulatory Instrument(s)"** means any authorization, licence, lease, or permit required under any legislation required for the carrying out of the Project and includes without limitation, the

Water Licence, the Fisheries Authorization(s) issued under s.35 of the Fisheries Act, the Land Use Permits, the Land Leases, and the Explosives Factory Licences.

"**Responsible Ministers**" means those departments identified as such in the MVEIRB Report.

"**Sustainable Development**" means development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

"**Territorial Minister**" means the Minister of the Government of the Northwest Territories designated as Minister responsible for wildlife.

"**Water Licence**" means the Class A Water Licence for which original application was made by DBCMI on February 2, 2001 and which as of the date of this Agreement, has not yet been issued by the Mackenzie Valley Land and Water Board pursuant to the MVRMA and includes any renewal, amendment or replacement under that or any successor or other applicable legislation.

### 3.2 EXTENDED MEANINGS

Words importing the singular number include the plural and vice versa; words importing gender include the masculine, feminine and neuter genders; words importing persons include firms and corporations.

### 3.3 TIME OF ESSENCE

Time shall be of the essence in all respects of this Agreement.

### 3.4 BUSINESS DAY

Whenever a payment to be made or action to be taken under this Agreement is required to be made or taken on a day which is a Saturday, Sunday or statutory holiday in the NWT, then such payment shall be made or action taken on the next succeeding day that is not a Saturday, Sunday or statutory holiday in the NWT.

### 3.5 REFERENCES

References to an article, section, subsection, paragraph or schedule shall be construed as references to an article, section, subsection, paragraph or schedule to this Agreement unless the context otherwise requires and all references to this Agreement mean this Environmental Agreement dated as of \_\_\_\_\_, 2004.

### 3.6 HEADINGS

The division of this Agreement into articles and subsections and the insertion of headings are for convenience of reference only and shall not alter the construction or interpretation of this Agreement.

### 3.7 LEGISLATION

A reference to any statute shall be construed as including any regulations promulgated thereunder, any amendments thereto, and any successor legislation.

### 3.8 SCHEDULES AND APPENDICES

All Schedules and Appendices to this Agreement are incorporated by reference and are deemed to be part hereof.

## **ARTICLE IV ENVIRONMENTAL MONITORING AGENCY**

### 4.1 MONITORING AGENCY

- (a) The Parties agree that the Project shall be monitored by a multi-project environmental monitoring agency (the "MPEMA") to be established in accordance with Schedule "B"
- (b) Pending establishment of the MPEMA, the Project shall be monitored by the Snap Lake Monitoring Agency (the "Monitoring Agency") as provided in this Article.
- (c) The Monitoring Agency shall be established by the Aboriginal Parties as a non-profit organization under the Societies Act, R.S.N.W.T 1988, c. S-11 as soon as practicable, but in any event within ninety (90) days of the Effective Date.
- (d) The term of the Monitoring Agency shall be initially for two years and thereafter automatically renewed on an annual basis until replaced by the MPEMA.
- (e) The Parties agree to cooperate in commissioning within three (3) years an independent assessment of the Monitoring Agency's achievement of its mandate under this Agreement.
- (f) If the MPEMA is established, the Parties shall amend this Agreement as required to have this Project monitored by the MPEMA. The Parties acknowledge, unless agreed otherwise, that DBCMI will not be required to provide, in relation to the Project, any funding in excess of its funding obligations specified in Section 4.11 of this Agreement.
- (g) If the MPEMA is not established within three years of the Effective Date, the Parties agree to review and amend as necessary this Article IV to provide for the on-going environmental monitoring of the Project.

### 4.2 MANDATE OF THE MONITORING AGENCY

The Monitoring Agency shall perform its functions consistently with the purposes and guiding principles in this Agreement. The mandate of the Monitoring Agency shall be, in respect of the Project, to:

- (a) support the Aboriginal Parties' efforts to protect the environmental interests on which they rely;
- (b) support collaborative and information-based liaison amongst all the Parties;

- (c) support DBCMI, Canada, and GNWT in their respective efforts to protect the environment;
- (d) review and monitor the environmental performance of the Project using western science and traditional knowledge;
- (e) work with DBCMI to mitigate environmental impacts of the Project thereby mitigating the potential for socio-economic effects;
- (f) serve as a public watchdog of the regulatory process and the implementation of this Agreement;
- (g) make recommendations to any body having regulatory or management responsibility for a matter, for the achievement of the purposes and guiding principles in this Agreement;
- (h) facilitate programs to provide information to and consult with the members of the Aboriginal Parties;
- (i) report to the Parties and the public on the Monitoring Agency's activities and the achievement of its mandate; and
- (j) provide an accessible and public repository of environmental data, studies and reports relevant to the Monitoring Agency's mandate.

#### 4.3 RECOMMENDATIONS OF THE MONITORING AGENCY

The Minister, DBCMI, or any other Party, shall within sixty (60) days of receipt of any written recommendation of the Monitoring Agency directed to it, give consideration to the written recommendation, and either:

- (a) accept for implementation a written recommendation of the Monitoring Agency that is determined by the recipient to be appropriate and report to the Monitoring Agency to that effect; or
- (b) provide the Monitoring Agency with written reasons where it has been determined by the recipient that the recommendation is not appropriate and will not be implemented.

4.4 The Minister shall encourage, where appropriate, any regulatory authority to which a written recommendation is provided by the Monitoring Agency to act consistently with the spirit of the requirements of Section 4.3 of this Agreement.

#### 4.5 COMPOSITION OF THE MONITORING AGENCY

- (a) The Monitoring Agency shall consist of the following:
  - (i) a core group composed of representatives from each of the Aboriginal Parties (the "Core Group");

- (ii) the Science and Technical Panel (as defined below);
- (iii) two traditional knowledge working groups (the “TK Working Groups”);  
and
- (iv) a Secretariat.

#### 4.6 GOVERNANCE OF THE MONITORING AGENCY

- (a) Each Aboriginal Party shall be entitled to appoint representatives to the Core Group, which shall govern the Monitoring Agency;
- (b) The Core Group shall establish procedural rules and by-laws for the Monitoring Agency that are not inconsistent with the purposes and principles of this Agreement;
- (c) Terms of appointment and selection of officials and similar matters such as remuneration and conflict of interest shall be governed by the Monitoring Agency’s by-laws; and
- (d) The Monitoring Agency shall have an annual audit of its accounts done and shall provide a copy of the audit report to the Parties. The Monitoring Agency shall maintain its financial records in accordance with generally accepted accounting principles.

#### 4.7 MONITORING AGENCY ANNUAL REPORT

The Monitoring Agency shall provide an annual report of its activities and recommendations to the Parties. The annual report shall be made available to the public.

#### 4.8 SCIENTIFIC, TECHNICAL AND TRADITIONAL KNOWLEDGE WORK

- (a) The Core Group shall engage a panel of science and technical experts (the “Science and Technical Panel”) to assist it in fulfilling its mandate pursuant to this Agreement. Any of the Parties may propose individuals for the Science and Technical Panel, which proposals the Core Group shall consider.
- (b) The Core Group shall establish one TK Working Group to provide advice to the Core Group on water and fisheries issues and one TK Working Group to provide advice to the Core Group on wildlife and habitat issues.
- (c) The Science and Technical Panel and the TK Working Groups shall, both separately and jointly, prepare reports and meet with the Core Group from time to time.
- (d) Recommendations and reports by the Science and Technical Panel and the TK Working Groups shall be provided to the Parties and shall be considered public information. In the case of traditional knowledge, the agreement of the applicable Aboriginal Parties providing the traditional knowledge shall be necessary before the information is made public.

- (e) The Core Group will arrange for a planning study to develop community-monitoring protocols and mechanisms to enable the Aboriginal Parties to participate effectively in environmental monitoring work for the Project. The Science and Technical Panel and TK Working Groups will participate in this planning study.
- (f) The Core Group may arrange for other studies or reports from time to time to assist in fulfilling the mandate of the Monitoring Agency under this Agreement.
- (g) In carrying out the work under this provision, the Core Group will avoid duplication of other work.

#### 4.9 SECRETARIAT

The Core Group shall establish a secretariat to support it and the Liaison Committee in their respective activities (the “Secretariat”).

#### 4.10 LIAISON AND COOPERATION

- (a) The Parties shall establish a liaison committee with representatives from each of the Core Group, the Government of Canada, GNWT and DBCMI (the “Liaison Committee”) to collaborate for the achievement of the purposes of this Agreement, by means of activities that the Liaison Committee considers appropriate, including the following:
  - (i) discussion of technical matters related to the environmental performance of the Project;
  - (ii) facilitation of additional technical meetings, where necessary;
  - (iii) review and discussion of the Monitoring Agency’s activities and results;
  - (iv) facilitation of information-sharing and consultation at the community level by DBCMI and the Core Group; and
  - (v) facilitation of the exchange of information respecting research and monitoring activities relevant to the Project.
- (b) The Liaison Committee shall meet at least quarterly.
- (c) The Liaison Committee shall be supported by the Secretariat.
- (d) Each party to the Liaison Committee shall be responsible for their own costs associated therewith.
- (e) The Liaison Committee will establish procedural rules to govern its affairs.

#### 4.11 FUNDING

- (a) DBCMI shall provide funding, in accordance with the Monitoring Agency's budget, to the Monitoring Agency to carry out its mandate.
- (b) DBCMI will pay to the Monitoring Agency the full amount of its contribution to the budget for a 12-month period sixty (60) days prior to the commencement of the period or, in the case of the first budget, within thirty (30) days following the establishment of the Monitoring Agency.
- (c) The Monitoring Agency shall manage and conduct its affairs in a fiscally prudent, reasonable and cost-effective manner and shall to that end endeavour wherever possible to reduce the cost of fulfilling its responsibilities hereunder including by: making full use of information, data and resources that may be available from DBCMI or public sources; and avoiding the duplication of monitoring and other activities being conducted by DBCMI or governmental agencies or departments.
- (d) The Monitoring Agency's annual budget for the first year after its establishment shall be \$550,000. DBCMI, Canada, and the GNWT shall contribute, respectively, \$400,000, \$100,000, and \$50,000 of that amount.
- (e) The Monitoring Agency's annual budget for the second year after its establishment shall be \$650,000. DBCMI, Canada, and the GNWT shall contribute, respectively, \$500,000, \$100,000, and \$50,000 of that amount.
- (f) The first two years' budgets contain start-up costs that are non-recurring and accordingly shall not be considered a base amount for future years. Thereafter, Canada and the GNWT shall have no obligation to provide funding for future years to the Monitoring Agency.
- (g) After the first two years, the Monitoring Agency's budget will be for one year periods, unless the Monitoring Agency and DBCMI agree on a shorter or longer period. The Monitoring Agency's budget for a period shall be determined as follows:
  - (i) At least 180 days before the expiry of the then current budget period, the Monitoring Agency shall prepare a recommended budget for the next budget period, based on a plan of anticipated work for that period and a review of past work and financial experience;
  - (ii) The Monitoring Agency shall make best efforts to ensure that the amount of DBCMI'S contribution to the budget for any one year period shall not, without the agreement of DBCMI, exceed \$450,000 by a percentage which is greater than the percentage change in the Consumer Price Index published by Statistics Canada over that one year period. For this purpose, the budget for the second year shall be considered \$450,000. In calculating its proposed budget for the third and subsequent years, the Monitoring Agency may present anticipated expenditures based on all

prior years' expenditures subject to demonstrating that such expenditures in fact will be incurred.

- (iii) DBCMI and the Monitoring Agency shall jointly review the plan of anticipated work and the recommended budget, and shall attempt to agree on a budget for the period;
  - (iv) In the event that DBCMI and the Monitoring Agency cannot agree on the budget within sixty (60) days following the initiation of the joint review under Section 4.11(g)(iii) of this Agreement, they shall forthwith confer with the Minister and each of them will submit to the Minister a proposed budget; and
  - (v) If DBCMI, the Minister, and the Monitoring Agency cannot within thirty (30) days following the initiation of the process under Section 4.11(g)(iv) of this Agreement, agree on a budget for a period, the Minister shall forthwith select either the budget submitted by DBCMI or, provided the Minister is reasonably satisfied that the Monitoring Agency has complied with Section 4.11(g)(ii) of this Agreement, the budget submitted by the Monitoring Agency, and the budget so selected by the Minister shall be the budget for the next two year period.
- (h) In addition to the budget, DBCMI may provide additional funding to the Monitoring Agency for research and monitoring activities or unforeseen circumstances, based on proposals submitted to DBCMI by the Monitoring Agency for which funding is not available in the budget. DBCMI shall review and consider proposals submitted by the Monitoring Agency for additional funding and shall provide written reasons to the Monitoring Agency and Canada if any request for funding is not accepted by DBCMI. If requested by the Monitoring Agency or DBCMI, the Minister shall review the matter and provide the Monitoring Agency and DBCMI with his/her views on how this matter might be resolved and shall make public those views.
- (i) Any funds provided by DBCMI, Canada, or GNWT in a budget period that are not expended in that period shall be applied to fund the costs of the Monitoring Agency in accordance with the budget for the succeeding budget period, provided that funds that are designated for a program that continues into a new budget period may be used for that program.

#### 4.12 INFORMATION AND CO-OPERATION

Each of the Parties shall co-operate with the Monitoring Agency and provide the Monitoring Agency in a timely fashion with such information and assistance requested by the Monitoring Agency that such Parties are reasonably able to provide and which is required for the Monitoring Agency to carry out its mandate.

**ARTICLE V  
ENVIRONMENTAL COMPLIANCE**

5.1 COMPLIANCE

DBCMI shall carry out the Project in compliance with all environmental laws and regulations and Regulatory Instruments applicable to the Project including, without limitation, the following:

- (a) the Water Licence;
- (b) Authorization(s) issued under Section 35 of the Fisheries Act;
- (c) Explosives Factory Licences issued under the Explosives Act;
- (d) the Land Leases;
- (e) the Land Use Permits; and
- (f) any and all additional Regulatory Instruments applicable to the Project at any time.

5.2 In carrying out the Project, DBCMI shall comply with this Agreement and all Environmental Plans and Programs submitted and reviewed in accordance with this Agreement.

5.3 In carrying out the Project, DBCMI shall carry out its obligations under the Commitments.

5.4 DBCMI shall take prompt and appropriate corrective action to remedy any non-compliance with Sections 5.1, 5.2 and 5.3.

5.5 CONFIRMING COMPLIANCE

- (a) The Minister may direct, on his or her own initiative or at the request of the Monitoring Agency, any qualified person to conduct investigations to confirm compliance with Sections 5.2 and 5.3 of this Agreement.
- (b) DBCMI shall admit the qualified person to the Project and shall provide the qualified person with all reasonable assistance.
- (c) The Minister will take all reasonable efforts to co-ordinate investigations under this Agreement with inspections under the Regulatory Instruments.
- (d) The qualified person shall prepare a report of his or her investigations for the Minister and the Monitoring Agency.

## **ARTICLE VI ENVIRONMENTAL MANAGEMENT**

### **6.1 ENVIRONMENTAL MANAGEMENT SYSTEM**

DBCMI shall undertake environmental management of the Project through the implementation of an Environmental Management System. Integral to the EMS are Environmental Management Plans and Environmental Monitoring Programs.

### **6.2 PROVISION OF ENVIRONMENTAL MANAGEMENT PLANS**

#### Construction

DBCMI shall provide the Parties and the Monitoring Agency (when established), with copies of its Environmental Management Plans for Phase I construction (underground development and detailed engineering) of the Project. The Environmental Management Plans contain specific and comprehensive plans to deal with environmental matters of particular concern during construction of the Project. DBCMI shall provide the Parties and the Monitoring Agency with any and all amendments and revisions to the Environmental Management Plans as and when such amendments or revisions are made.

#### Operations

Not later than six months before the commencement of Commercial Production from the Project, DBCMI shall provide the Parties and the Monitoring Agency with updated copies of its Environmental Management Plans for Phase II of the Project. The Environmental Management Plans shall contain specific and comprehensive plans to deal with environmental matters of particular concern during operation of the Project. Thereafter DBCMI shall provide the Parties and the Monitoring Agency with any and all amendments and revisions to the Environmental Management Plans as and when such amendments or revisions are made. DBCMI shall consider technological advances as factors in the development of Environmental Management Plans during operations. In order to effectively incorporate the traditional knowledge of Aboriginal Parties in its Environmental Plans and Programs, DBCMI shall undertake or fund such traditional knowledge studies as a Party can reasonably demonstrate are necessary and relevant, do not duplicate existing studies, and can be carried out at reasonable cost. Where applicable, traditional knowledge shall be considered fully along with scientific knowledge in developing, reviewing and amending the Environmental Management Plans.

#### Closure Phase

Not later than three years before planned closure activities are scheduled to occur, DBCMI shall provide the Parties and the Monitoring Agency with the then current copies of its Environmental Management Plans for the Closure and Post Closure phase(s) of the Project. Thereafter DBCMI shall provide the Parties and the Monitoring Agency with any and all amendments and revisions to the Environmental Management Plans as and when such amendments or revisions are made.

### **6.3 ENVIRONMENTAL MANAGEMENT PLANS**

- (a) DBCMI shall implement Environmental Management Plans as part of the Environmental Management System. The Environmental Management Plans shall include the following specific and comprehensive plans:

- (i) Closure and Reclamation Plan(s);
  - (ii) Spill Contingency;
  - (iii) Emergency Response;
  - (iv) Water;
  - (v) Domestic and Waste Sewage;
  - (vi) Quarry;
  - (vii) North Pile (referred to in the Water Licence as "Ore Storage, Waste Rock and Processed Kimberlite Management);
  - (viii) Air Quality and Emissions; and
  - (ix) Wildlife.
- (b) The Environmental Management Plans shall include the mitigation measures outlined in the Commitments and in the recommendations listed in the MVEIRB Report. DBCMI shall adapt or revise these mitigation measures in accordance with the principles of Adaptive Management.
- (c) DBCMI shall, in the development and implementation of Environmental Plans and Programs include, where appropriate, the following:
- (i) quality control and assurance programs;
  - (ii) environmental awareness training for employees and contractors, including, but not limited to, an awareness and training program designed to reduce wildlife mortality at the site;
  - (iii) regular briefings on environmental matters to on-site supervisors; and
  - (iv) detailed adaptive environmental mitigation measures.
- (d) The Air Quality and Emissions Management Plan shall:
- (i) be designed in consultation with Environment Canada and the GNWT;
  - (ii) be reviewed every 5 years (or sooner if a major change in infrastructure, equipment, emission quantity, quality or location occurs) with Environment Canada, the GNWT and the Monitoring Agency.
  - (iii) clearly define goals, objectives and methodologies for each of the component programs within the plan.

- (e) DBCMI shall prepare and provide to the Parties and the Monitoring Agency an Air Quality and Emissions Management annual report summarizing and analyzing the emissions and ambient monitoring information, including:
  - (i) Comparisons of annual emission estimates to previous years and the estimates used in the Environmental Assessment Report dispersion modeling;
  - (ii) Comparisons of ambient air quality and deposition monitoring results to previous years, the predictions of the Environmental Assessment Report dispersion modeling and all applicable federal and territorial ambient air quality criteria, standards, objectives and guidelines;
  - (iii) Analysis of emissions and ambient air quality trends and effectiveness of strategies employed to minimized emissions; and
  - (iv) Responses (either initiated and/or planned) to issue (e.g. equipment failure, data loss, increasing trends or exceedences of air quality critical/dispersion modeling predictions).
- (f) The Wildlife Management Plan shall include:
  - (i) On-site Wildlife Management;
  - (ii) A Comprehensive Waste and Odour Management Strategy;
  - (iii) Caribou Protection; and
  - (iv) Wildlife Management related extracts from all other plans produced by DBCMI.
- (g) The Wildlife Management Plan shall be developed in Consultation with the GNWT and the Monitoring Agency.
- (h) The Closure and Reclamation Plan(s) shall be based, as appropriate, on current information and technology as well as regulatory requirements and developed in Consultation with the Monitoring Agency so that the Project will be reclaimed incrementally in a manner consistent with Sustainable Development.

#### 6.4 REVIEW OF ENVIRONMENTAL MANAGEMENT PLANS

- (a) Subject to 6.4(d), in the event that, at any time, the Minister on his/her own initiative, or in response to a request from any Party or the Monitoring Agency and after Consultation with DBCMI, determines that an Environmental Management Plan is inadequate or incomplete, the Minister may provide DBCMI with a Minister's Report and DBCMI shall forthwith, but in any event within sixty (60) days of receipt of the Minister's Report, provide the Minister and each of the Parties hereto with:
- (i) revisions to the Environmental Management Plan which address to the Minister's satisfaction the deficiencies described in the Minister's Report;
  - (ii) a replacement Environmental Management Plan which addresses to the Minister's satisfaction the deficiencies described in the Minister's Report;  
or
  - (iii) specific replies to the deficiencies described in the Minister's Report and DBCMI'S detailed explanation, to the Minister's satisfaction, as to why, in DBCMI'S view, the Environmental Management Plan need not be revised or replaced to deal with the deficiencies outlined in the Minister's Report.
- (b) Notwithstanding 6.4(d) in relation to matters substantially within the jurisdiction of the GNWT, the Minister shall provide DBCMI with a Minister's Report pursuant to Article 6.4(a), but in any event within sixty (60) days from when the Minister receives a request from the GNWT pursuant to that Article and the GNWT's request shall be included in the Minister's Report.
- (c) The Minister may provide DBCMI with an extension of time where DBCMI is bona fide delayed in complying with this Article.
- (d) In the event that, at any time, the Territorial Minister on his/her own initiative, or in response to a request from any Party or the Monitoring Agency, and after Consultation with DBCMI, determines that an Environmental Management Plan pursuant to 6.3(a)(ix), which falls within the jurisdiction of the GNWT, is inadequate or incomplete, the Territorial Minister may provide DBCMI with a report indicating that the plan is inadequate or incomplete ("Territorial Minister's Report") and DBCMI shall forthwith, but in any event within sixty (60) days of receipt of the GNWT Minister's Report, provide the Territorial Minister and each of the Parties hereto with:
- (i) Revisions to the plan which address to the Territorial Minister's satisfaction the deficiencies described in the Territorial Minister's Report;
  - (ii) A replacement plan which addresses to the Territorial Minister's satisfaction the deficiencies described in the Territorial Minister's Report;  
or

- (iii) Specific replies to the deficiencies described in the Territorial Minister's Report and DBCMI'S detailed explanation, to the Territorial Minister's satisfaction, as to why, in DBCMI'S view, the plan need not be revised or replaced to deal with the deficiencies outlined in the Territorial Minister's Report.

## **ARTICLE VII ENVIRONMENTAL MONITORING PROGRAMS**

### **7.1 PROVISION OF ENVIRONMENTAL MONITORING PROGRAMS**

- (a) DBCMI shall undertake compliance and environmental effects monitoring of the Project through the Environmental Monitoring Programs.
- (b) DBCMI shall provide the Parties and the Monitoring Agency (when established) with copies of its Environmental Monitoring Programs. The Environmental Monitoring Programs contemplated by this Article shall be reviewed in accordance with Article 7.5 of this Agreement. The Environmental Monitoring Programs shall be revised on an ongoing basis as necessary and where appropriate in response to changing circumstances and additional information.
- (c) The Environmental Monitoring Programs shall include activities designed to:
  - (i) meet the monitoring requirements of all Regulatory Instruments;
  - (ii) verify the accuracy of the impact predictions from the Environmental Assessment Report of the Project;
  - (iii) determine the effectiveness of measures taken to mitigate any adverse environmental effects of the Project;
  - (iv) consider, and incorporate where possible, traditional knowledge;
  - (v) establish thresholds or early warning signs;
  - (vi) trigger action by adaptive mitigation measures where appropriate;
  - (vii) provide opportunities for the involvement or active participation of members of each of the Aboriginal Parties in the implementation of the monitoring programs;
  - (viii) provide training opportunities for members of each of the Aboriginal Parties;
  - (ix) include hypothesis testing during the analysis of data to facilitate Adaptive Management where appropriate; and
  - (x) Provide for appropriate monitoring during any suspension of operations.

## 7.2 ENVIRONMENTAL MONITORING PROGRAMS

For each Environmental Management Plan there shall be a complementary Environmental Monitoring Program to support the process of Adaptive Management. The Environmental Monitoring Programs shall include, but not necessarily be limited to, the following programs:

- (a) The Air Quality Monitoring Program shall include but not be limited to:
  - (i) Monitoring of total suspended particulate (TSP), PM<sub>10</sub> and PM<sub>2.5</sub>;
  - (ii) Monitoring of fugitive dust to determine the effects of dust deposition on the surrounding environment;
  - (iii) Documentation of quality assurance and quality control (QA/QC) procedures used to ensure valid data collection; and
  - (iv) Contingency plans to respond to increasing trends or exceedences of air quality criteria/dispersion modeling predictions

The Air Emissions Monitoring Program shall include, but not be limited to:

- (i) Annual estimation of emissions from the facility, apportioned by major sources, using the same methodology as that used in the February 2002 Environmental Assessment Report. Emissions include at an minimum:
    - (A) Nitrogen oxides (NO<sub>x</sub>)
    - (B) Sulphur dioxide (SO<sub>2</sub>);
    - (C) Particulate matter (PM) apportioned as TSP, PM<sub>10</sub> and PM<sub>2.5</sub>; and
    - (D) Greenhouse gases (GHG) apportioned as carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and nitrous oxide (N<sub>2</sub>O).
  - (ii) Annual summary of fuel use, apportioned by major sources, and confirmation of use of low sulphur (0.05% or less) diesel fuel.
  - (iii) A fugitive dust abatement program to minimize the generation of non-point source particulate (e.g. from roads, waste rock piles, quarries, etc).
  - (iv) Documentation of mitigation measures and pollution prevention strategies (e.g. best management/environmental plans, energy conservation strategies, best available control technology) used to ensure emissions are minimized.
  - (v) Contingency or response plan to increasing trends or exceedences of emission estimates used in the Environmental Assessment Report.
- (b) Vegetation;

- (c) Wildlife Management Program, such program shall be developed in Consultation with the GNWT and the Monitoring Agency;
- (d) Environmental Health;
- (e) North Pile;
- (f) Hydrogeology and Geochemistry;
- (g) Hydrology;
- (h) Water Quality and Aquatic Effects; and
- (i) Aquatic Surveillance Network.

7.3 The Environmental Monitoring Programs will include the identification of monitoring objectives and the monitoring programs outlined in the Commitments and in the recommendations listed in the MVEIRB Report and adopted by the Responsible Ministers. DBCMI shall adapt or revise the Environmental Monitoring Programs in accordance with the principles of Adaptive Management.

#### 7.4 MONITORING DATA AND RESULTS

- (a) DBCMI shall deliver monitoring data and information to the Parties and the Monitoring Agency in time-frames and in formats developed in Consultation with the Monitoring Agency.
- (b) With respect to data and information pertaining to wildlife matters within the jurisdiction of the GNWT, the timeframes and format for reporting shall be developed in consultation with the GNWT.
- (c) The formats for submission of monitoring program results and analysis shall not be inconsistent with reporting requirements established under legislation, regulations and Regulatory Instruments and the requirements of such legislation, regulations and Regulatory Instruments shall apply to the extent of any inconsistency.
- (d) Reporting dates will be established to conform with the requirements of the appropriate Regulatory Instruments.
- (e) DBCMI shall carry out the monitoring in a manner which will provide data consistent with any cumulative effects monitoring programs undertaken or authorized by GNWT and Canada.

#### 7.5 REVIEW OF ENVIRONMENTAL MONITORING PROGRAMS

- (a) Subject to 7.5(d), in the event that, at any time, the Minister, on his/her own initiative, or in response to a request of any Party or the Monitoring Agency, and after Consultation with DBCMI, determines that an Environmental Monitoring Program is inadequate or incomplete, including with respect to a matter under

Article 7.4, the Minister may provide DBCMI with a Minister's Report and DBCMI shall forthwith, but in any event within sixty (60) days of receipt of the Minister's Report, provide the Minister and each of the Parties hereto with:

- (i) revisions to the Environmental Monitoring Program which address to the Minister's satisfaction the deficiencies described in the Minister's Report;
  - (ii) a replacement Environmental Monitoring Program which addresses to the Minister's satisfaction the deficiencies described in the Minister's Report;  
or
  - (iii) specific replies to the deficiencies described in the Minister's Report and DBCMI'S detailed explanation, to the Minister's satisfaction, as to why, in DBCMI'S view, the Environmental Monitoring Program need not be revised or replaced to deal with the deficiencies outlined in the Minister's Report.
- (b) Notwithstanding 7.5(d), in relation to matters substantially within the jurisdiction of the GNWT, the Minister shall provide DBCMI with a Minister's Report pursuant to Article 7.5(a) but in any event within sixty (60) days from when the Minister receives a request from the GNWT pursuant to that Article and the GNWT's request shall be included in the Minister's Report.
- (c) The Minister may provide DBCMI with an extension of time where DBCMI is bona fide delayed in complying with this section.
- (d) In the event that, at any time, the Territorial Minister on his/her own initiative, or in response to a request from any Party or the Monitoring Agency, and after Consultation with DBCMI, determines that an Environmental Monitoring Program pursuant to 7.2(c), which falls within the jurisdiction of the GNWT, is inadequate or incomplete, the Territorial Minister may provide DBCMI with a report indicating that program or programs are inadequate or incomplete ("Territorial Minister's Report") and DBCMI shall forthwith, but in any event within sixty (60) days of receipt of the GNWT Minister's Report, provide the Territorial Minister with:
- (i) Revisions to the program which address to the Territorial Minister's satisfaction the deficiencies described in the Territorial Minister's Report;
  - (ii) A replacement program which addresses to the Territorial Minister's satisfaction the deficiencies described in the Territorial Minister's Report;  
or
  - (iii) Specific replies to the deficiencies described in the Territorial Minister's Report and DBCMI'S detailed explanation, to the Territorial Minister's satisfaction, as to why, in DBCMI'S view, the program need not be revised or replaced to deal with the deficiencies outlined in the Territorial Minister's Report.

## 7.6 ABORIGINAL COMMUNITY INVOLVEMENT

In addition to the participation of Aboriginal Parties in the review of Environmental Management Plans and Environmental Monitoring Programs through participation on the Monitoring Agency and its activities, and the resulting capacity building, DBCMI shall use its best efforts to:

- (a) provide for the involvement of the Aboriginal Parties in Environmental Monitoring Programs;
- (b) give priority to members of each of the Aboriginal Parties in the provision of training and employment in relation to environmental monitoring; and
- (c) provide technical environmental-monitoring training opportunities for youth of each of the Aboriginal Parties.

## **ARTICLE VIII REGIONAL CUMULATIVE EFFECTS ASSESSMENT & MANAGEMENT FRAMEWORK**

### 8.1 DBCMI will:

- (a) participate in the development of a regional cumulative effects assessment and management program based on the *Blueprint for the Cumulative Effects Assessment and Management Strategy and Framework in the NWT and its Regions* or other such programs undertaken or authorized by Canada;
- (b) carry out the monitoring in a manner that will provide data consistent with any cumulative effects monitoring programs of the GNWT and Canada;
- (c) use its best efforts to collaborate with Diavik Diamond Mines, BHP Diamonds Inc. and such other projects as may be appropriate in designing and implementing monitoring methodologies that are consistent and complementary, where there are shared interests in such programs;
- (d) participate on reasonable terms in implementing a regional cumulative effects program that either GNWT or Canada has initiated.
- (e) DBCMI will make best efforts to consider the results of all cumulative effects monitoring made available to it in the Adaptive Management of the Project.

- 8.2 The GNWT shall review with the Parties and the Monitoring Agency, to the extent applicable to this Project, barren ground caribou, grizzly bear and wolverine monitoring procedures and management programs, including related models and reports, undertaken by the GNWT.

## **ARTICLE IX HERITAGE RESOURCES**

### 9.1 PROTECTION OF KNOWN SITES

DBCMI shall establish, after Consultation with the Aboriginal Parties and the appropriate government agencies, including the Prince of Wales Northern Heritage Centre, appropriate protection of the Heritage Resources in relation to all the Project elements, in accordance with applicable laws and regulations, to minimize the impacts on Heritage Resources.

### 9.2 ARCHAEOLOGICAL SURVEYS

- (a) In the continuing exploration and development of the Project, DBCMI shall conduct archaeological surveys to meet the prevailing standards of the day and respecting places of significance to Aboriginal Parties.
- (b) Archaeological surveys shall to the greatest extent possible, be designed and, where possible, implemented in partnership with the Aboriginal Parties or if not possible, in Consultation with the Aboriginal Parties.
- (c) DBCMI shall Consult with Aboriginal Parties to ensure that traditional knowledge is incorporated into the archaeological surveys and to ensure that archaeological and heritage sites are identified.
- (d) In the event that a Heritage Resource is discovered in carrying out the Project, DBCMI shall immediately notify the Minister, the Prince of Wales Northern Heritage Centre and Aboriginal Parties of the presence of the Heritage Resource and DBCMI shall take all reasonable steps necessary to protect the Heritage Resource.

## **ARTICLE X ANNUAL REPORTS**

### 10.1 ANNUAL REPORT

- (a) DBCMI shall prepare and submit an annual report (the "Annual Report") to the Parties and the Monitoring Agency for each calendar year during the term of this Agreement.
- (b) Each Annual Report shall include the results of Environmental Monitoring Programs, and a rolling summary and analysis of environmental effects data over the life of the Project to illustrate any trends. The actual performance of the Project shall be compared to the results predicted in the environmental assessment

and the MVEIRB Report and an evaluation provided as to how DBCMI'S Adaptive Management has performed to the date of each Annual Report.

- (c) Each Annual Report shall include, but not be limited to, the following:
- (i) a comprehensive summary of all supporting information, data and results from the Environmental Monitoring Programs and all studies and research;
  - (ii) a comprehensive summary of all compliance reports required by the Regulatory Instruments;
  - (iii) a comprehensive summary of operational activities during the preceding year;
  - (iv) actions taken or planned to address effects or compliance problems which are set out in the Annual Report;
  - (v) a comprehensive summary of operational activities for the next year;
  - (vi) lists and abstracts of all Environmental Plans and Programs;
  - (vii) verification of accuracy of environmental assessments;
  - (viii) determination of effectiveness of mitigative measures;
  - (ix) a comprehensive summary of all Adaptive Management measures taken;
  - (x) a comprehensive summary of public concerns and responses to public concerns;
  - (xi) a comprehensive summary of the new technologies investigated;
  - (xii) the Minister's comments, including any Minister's Report, on the previous Annual Report; and
  - (xiii) a plain English executive summary and translations into Dogrib and Chipewyan using appropriate media.
- (d) In order to prepare each Annual Report and with a view to both ensuring that an opportunity is provided for early disclosure and discussion of problems and that each Annual Report meets with the requirements of this Agreement, DBCMI shall Consult with the Minister, the Monitoring Agency, and the GNWT as DBCMI compiles the information and data to be included in such Annual Report.
- (e) Within forty-five (45) days of the receipt of the Annual Report, any Party or the Monitoring Agency may advise the Minister whether such Annual Report is satisfactory or unsatisfactory.

- (f) Within ninety (90) days of the receipt by the Minister of the Annual Report, the Minister shall advise DBCMI whether such Annual Report is satisfactory or whether the Minister has determined that such Annual Report is deficient. In the event that the Minister has determined the Annual Report to be deficient, the Minister shall provide DBCMI and the Monitoring Agency with a Minister's Report.
- (g) In relation to matters substantially within the jurisdiction of the GNWT, the Minister shall provide DBCMI with a Minister's Report pursuant to Article 10.1(f), but in any event no later than sixty (60) days from when the Minister receives advice from the GNWT that the Annual Report is unsatisfactory and the GNWT's advice shall be included in the Minister's Report.
- (h) Within sixty (60) days of the receipt by DBCMI of a Minister's Report, DBCMI shall reply to the Minister's Report and provide the Minister and the Monitoring Agency, and, if the Minister's Report is provided pursuant to Article 10.1(g), the GNWT, with a revised Annual Report or an addendum which addresses satisfactorily the deficiencies described in the Minister's Report.
- (i) The Minister may provide DBCMI with an extension of time where DBCMI is bona fide delayed in completing an Annual Report or providing a reply to a Minister's Report.

## **ARTICLE XI REGULATORY AUTHORITY**

### **11.1 PARAMOUNTCY**

In the event that any provisions of this Agreement are in conflict with or inconsistent with any legislation or Regulatory Instrument with respect to the Project, the terms of such legislation or Regulatory Instrument shall prevail over any of the terms of this Agreement to the extent of the conflict or inconsistency.

### **11.2 NON-DUPLICATION**

The Parties to this Agreement acknowledge that it is not the intention of this Agreement to cause any duplication with the requirements of any Regulatory Instrument. In the event that any provisions of this Agreement duplicate the requirements of any Regulatory Instrument, satisfaction of the requirements of the Regulatory Instrument shall be accepted as compliance with the requirements of this Agreement.

### **11.3 EXERCISE OF STATUTORY DUTIES**

Nothing in this Agreement shall be construed as limiting the Minister or any other regulatory authority in the exercise of statutory powers and duties.

**ARTICLE XII  
SECURITY AND ENFORCEMENT**

12.1 SECURITY

- (a) The Security Deposit and the Additional Security Deposit (each as hereinafter defined and referred to collectively herein as the "Security") shall be held by the Minister as security for the performance by DBCMI of its closure and reclamation obligations under the Water Licence and Land Leases, any other indebtedness or obligations of DBCMI under environmental laws, regulations or other Regulatory Instruments for which the Minister is responsible and any other obligations of DBCMI under this Agreement (collectively the "Obligations").
- (b) A security deposit in the aggregate amount of \$54,000,000 shall be comprised of the following amounts deposited by DBCMI with the Minister on or before the following dates (such amounts as adjusted from time to time referred to herein as the "Security Deposit"):
  - (i) within thirty (30) days of the Effective Date of this Agreement \$15,000,000;
  - (ii) on or before the third anniversary of the Effective Date, \$30,000,000;
  - (iii) on or before the fifth anniversary of the Effective Date, \$2,000,000; and
  - (iv) on or before the fifteenth anniversary of the Effective Date, \$7,000,000.
- (c) In addition to the Security Deposit, DBCMI shall provide to the Minister additional security in the following amounts on the following dates (such amounts as adjusted from time to time referred to herein as the "Additional Security Deposit"):
  - (A) within thirty (30) days of the Effective Date, \$2,000,000;
  - (B) on or before the third anniversary of the Effective Date, \$8,000,000;
  - (C) on or before the fifth anniversary of the Effective Date, \$10,000,000; and
  - (D) on or before the fifteenth anniversary of the Effective Date, \$3,500,000.
- (ii) At the fifth anniversary of the Effective Date and at five-year (5) intervals thereafter, the Minister in his or her sole discretion may adjust the Additional Security Deposit by an amount not to exceed the average change in the Consumer Price Index over the immediately preceding five-year (5) interval.

- (iii)
  - (A) The Minister shall be entitled to review the amount of the Additional Security in the event that there is a material change to the Project requiring environmental assessment or new or amended regulatory approvals which in the Minister's opinion, after consultation with the Parties, requires more security to be posted to ensure that sufficient security is available to secure the costs of performance of the Obligations not otherwise secured by the Security Deposit.
  - (B) DBCMI shall pay over the amount required to increase the amount of the Additional Security within sixty (60) days of receipt of notice from the Minister.
- (iv) In making determinations under this Article 12.1(c), the Minister shall apply the principle that there be no duplication between the Security Deposit and the Additional Security Deposit.
- (d) Subject to Articles 12.1(b) and (c) the Security Deposit and the Additional Security Deposit shall be maintained throughout the term of this Agreement. In the event that all or any portion of the Security Deposit or the Additional Security Deposit is drawn down by the Minister pursuant to the terms of this Agreement, DBCMI shall, unless otherwise directed by the Minister, within thirty (30) days of demand by the Minister showing particulars of use, reimburse to the Minister the amount so used so that the amounts of the Security Deposit and the Additional Security Deposit are at all times equal to the amounts required to be maintained pursuant to Article 12.1(b) and (c), subject to adjustment as provided in Article 12.1(g).
- (e) The amount of security which DBCMI deposits with the Minister pursuant to the Land Leases or the Water Licence shall be credited against the Security Deposit. For greater certainty, a credit will not reduce the quantum of the Security Deposit required by Article 12.1(b), but that amount of the Security Deposit will be deemed to have been provided as required. Also for greater certainty, if the security posted under the Water Licence or the Land Leases is reduced, then the credit given under this Article 12.1(e) shall decrease by an amount which corresponds to the reduction and DBCMI shall provide without delay an addition to the Security Deposit to fully offset the decrease in the credit.
- (f) The amount of any security deposit which DBCMI posts with the Minister pursuant to a land use permit shall be credited against the Security Deposit in the manner and subject to the terms described in Article 12.1(e) only to the extent that the land use security is for the purposes of final closure and reclamation.
- (g)
  - (i) At any time after the first anniversary following the commencement of Commercial Production, either:

- (A) DBCMI may deliver to the Minister and the Monitoring Agency, or
- (B) the Minister may notify DBCMI and the Monitoring Agency that he/she intends to seek,

a report detailing a revised estimate of the cost of government undertaking the remaining closure and reclamation of the Project, taking into account changes to the Project, prepared by an independent professional engineer with recognized expertise in this area (each such report referred to as the "IE Report").

- (ii) Within one hundred twenty (120) days of receipt of the IE Report, the Minister will review the IE Report and determine the extent to which the revised estimate contained in the IE Report accurately reflects the costs of government undertaking the remaining closure and reclamation of the Project.
- (iii) To the extent the Minister is satisfied that the estimate contained in the IE Report accurately reflects the costs of government undertaking the remaining closure and reclamation of the Project, the Minister shall make a determination to that effect and will provide a copy of the IE Report together with the Minister's determination to DBCMI and the Monitoring Agency. The amount of the Security Deposit which DBCMI is required to provide to the Minister shall be reduced so that it is equal to the revised estimated costs of government undertaking the remaining closure and reclamation, as accepted by the Minister. Where the amount of the Security Deposit which DBCMI has provided to the Minister exceeds the estimated cost of government undertaking the remaining closure and reclamation, as accepted by the Minister, the Minister shall refund to DBCMI any such excess.
- (iv) To the extent that the Minister determines that he/she does accept the updated estimates of the costs of the remaining closure and reclamation stated in the IE Report, and should such estimated costs of closure and reclamation to the extent accepted by the Minister be greater than the amount of the Security Deposit required at that time pursuant to Article 12.1(b), DBCMI shall provide the Minister with an additional amount of security so that the amount of the Security Deposit posted is equal to the estimated costs of remaining closure and reclamation as at that time, such additional security to be provided to the Minister within sixty (60) days of a demand by the Minister.
- (h) The reviews of the Security Deposit contemplated in Section 12.1(g) shall, to the extent practicable, be co-ordinated with the reviews of security posted pursuant to the Land Leases and/or the Water Licence. In addition, where there has been a reduction in the amount of the security under either the Water Licence or the Land Leases, the Minister shall, at the request of DBCMI, review the amount of the Security Deposit to determine if the Security Deposit should be adjusted, giving

consideration to the rationale for any such reduction in the amount of security posted under the Water Licence and Land Leases.

- (i) The Security Deposit and at least fifty percent (50%) of the Additional Security Deposit shall be provided in the form of cash, an irrevocable unconditional letter of credit, an amount held in a Qualifying Environmental Trust established through an indenture that has been approved by the Minister, any other form of security proposed by DBCMI and satisfactory to the Minister, or any combination of the foregoing. Up to fifty percent (50%) of the Additional Security Deposit need not be provided in the form of cash, an irrevocable unconditional letter of credit, an amount held in a Qualifying Environmental Trust established through an indenture that has been approved by the Minister, or any combination of the foregoing, but may be provided in the form of an irrevocable guarantee, insurance, or any other form of security proposed by DBCMI, or any combination of the foregoing, provided that the Additional Security Deposit is in a form(s) satisfactory to the Minister.
- (j) If the Security Deposit or the Additional Security Deposit is composed in whole or in part of cash, how it is invested and how interest which may be earned thereon will be allocated, shall be determined by the Minister and DBCMI in the terms of the applicable security instrument(s). The terms on which the Security Deposit or the Additional Security Deposit will be delivered to and held by the Minister, if the Security Deposit or the Additional Security Deposit is not wholly in the form of cash, shall be consistent with the terms of this Agreement and be determined by the Minister and DBCMI in the applicable security instrument(s).

Once DBCMI has completed the closure and reclamation of the Project to the satisfaction of the Minister, the Minister shall return to DBCMI any unused portion of the Security Deposit and of the Additional Security Deposit less amounts related to ongoing Obligations. The Minister shall take appropriate steps to terminate, cancel or release guarantees, insurance or like assurances comprised in the Additional Security Deposit.

## 12.2 GNWT JURISDICTION

- (a) The Minister shall provide DBCMI with a Notice of Default, in accordance and compliance with the process in Article 12.3, within sixty (60) days of the date the Minister is notified in writing by the Territorial Minister that, in the opinion of the GNWT, DBCMI has not performed an obligation under this Agreement with respect to a matter substantially within the jurisdiction of the GNWT.
- (b) In relation to matters substantially within the jurisdiction of the GNWT, the Minister shall within thirty (30) days after the date the Minister has drawn funds on the Security Deposit or the Additional Security Deposit in accordance with Article 12.3(a)(i), pay to the GNWT from the funds so drawn reimbursement of all reasonable costs expended by the GNWT in rectifying non-compliance by DBCMI.

### 12.3 EVENTS OF DEFAULT AND REMEDIES

- (a) The occurrence of any one or more of the following events shall constitute a default under this Agreement entitling the Minister to draw upon the Security:
- (i) if DBCMI, in the opinion of the Minister, neglects to observe or perform any covenant or obligation contained in this Agreement or the Regulatory Instruments to be observed or performed by it and, after notice has been given by the Minister to DBCMI specifying such default and requiring DBCMI to remedy same, DBCMI fails to remedy such default within a period of thirty (30) days after the giving of such notice by the Minister, unless such default, in the opinion of the Minister is of a nature which cannot be remedied or cured within a thirty (30) day period and DBCMI is actively, diligently and in good faith attempting to cure such default, to the satisfaction of the Minister;
  - (ii) if a decree or order of a court of competent jurisdiction is entered adjudging DBCMI bankrupt or insolvent or approving as properly filed a petition seeking the winding-up of DBCMI under any bankruptcy, insolvency or analogous laws or issuing sequestration or process of execution against DBCMI, or against any substantial part of the Project or any substantial portion of the assets of DBCMI or ordering the winding up or liquidation of its affairs and any such decree or order continues unstayed and in effect for a period of ten (10) days;
  - (iii) if DBCMI becomes insolvent, makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any comparable law (other than a Permitted Arrangement), seeks relief under any bankruptcy, insolvency or analogous law, is adjudged bankrupt, files a petition or proposal to take advantage of any act of insolvency, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other person with similar powers of itself, the Project or of all or any substantial portion of its assets, or (other than a Permitted Arrangement) files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition;
  - (iv) if proceedings are commenced for the dissolution, liquidation or winding-up of DBCMI, unless such proceedings are being actively and diligently contested by DBCMI in good faith to the satisfaction of the Minister;
  - (v) if the Project or any material part thereof is seized or otherwise attached by any person pursuant to any legal process, including distress, execution or any other step or proceeding with similar effect, and the same is not released, bonded, satisfied, discharged or vacated within the shorter of a

period of fifteen (15) days and ten (10) days less than such period as would permit such property or any part thereof to be sold pursuant thereto.

- (b) In the case of a serious and imminent threat to the environment for which DBCMI is responsible under this Agreement and in respect of which DBCMI has been informed and is not taking measures satisfactory to the Minister, the Minister shall be entitled to immediately draw upon the Security Deposit and the Additional Security Deposit without the requirement for any demand, notice or other formality whatsoever.
- (c) In the event that DBCMI fails to provide the Minister with the Security Deposit or the Additional Security Deposit as required by Article 12.1, fails to increase the Security Deposit or the Additional Security Deposit as required by Article 12.1 or fails to reimburse any amounts drawn on the Security Deposit or the Additional Security Deposit as required by this Agreement, within thirty (30) days of the due date for such payment or any such longer period as the Minister in his/her sole discretion may decide, the Minister shall be entitled to suspend the operations of the Project and/or terminate the Land Leases, in addition to making a draw on the Security.
- (d) The remedies provided for hereunder are not exclusive and are not intended to replace remedial measures which are given effect pursuant to environmental legislation, regulations or under the Regulatory Instruments or other applicable law.
- (e) Any costs which are incurred by Canada in connection with default by DBCMI under the terms of this Agreement form part of the Obligations and are recoverable under the Security and any amounts which exceed the amount of the Security shall be recoverable from DBCMI as a debt due to Her Majesty.
- (f) In drawing on the Security to remedy defaults under this Agreement, the Minister shall not remedy any default to an extent greater than the obligations of DBCMI hereunder.
- (g) To the extent not prohibited by law, DBCMI shall have the right to audit, from time to time on reasonable notice to the Minister and at DBCMI's expense, any expenditure of funds withdrawn by the Minister from the Security Deposit or the Additional Security Deposit.
- (h) Should the Minister draw on the Security Deposit or the Additional Security Deposit, the Minister shall provide a report to the Monitoring Agency describing the relevant default by DBCMI as set out under this section 12.3, the amount drawn and the steps taken to remedy the situation, as well as any replenishment of the Security Deposit or the Additional Security Deposit, as the case may be.

#### 12.4 DISPUTE SETTLEMENT

- (a) Any determination by the Minister under Articles 12.1(g) shall be subject to arbitration by DBCMI and the Minister in accordance with the provisions of

Article XIII in the event that such determination is disputed by DBCMI. Any other dispute or matter arising under or with reference to this Article XII shall not be dealt with pursuant to Article XIII but shall instead be within the jurisdiction of the courts.

- (b) For purposes of this Article XII 'Permitted Arrangement' means an arrangement, amalgamation or winding-up under the Canada Business Corporations Act or any similar legislation which the Minister has consented to, such consent not to be unreasonably withheld, or which (i) would not in any way compromise, adversely affect or adversely modify the rights, ranking and priority of the claims of Her Majesty arising under this Agreement, the Water Licence, the Land Leases or any other applicable Regulatory Instruments or any security provided in connection herewith or therewith against DBCMI or its assets or property it being acknowledged that a substitution, in accordance with the provisions of Article 14.5, of a new or successor corporation for DBCMI that would not itself be deemed to be in default pursuant to Article 12.3(d), will not in and of itself be an adverse modification of Her Majesty's rights, (ii) would not convert or create any entitlement (whether conditional or otherwise) to conversion of any equity into indebtedness, other than indebtedness which by its terms is subordinated to the claims of Her Majesty under this Agreement and (iii) would not result in the holder of any claim which, prior to such arrangement taking effect, ranked subordinate to or pari passu with the claims of Her Majesty arising under this Agreement, the Water Licence, the Land Leases or any other applicable Regulatory Instruments or any security provided in connection herewith or therewith acquiring a priority (or prior right or claim) over such claims of Her Majesty.

### **ARTICLE XIII RESOLUTION OF DISPUTES**

#### **13.1 DISPUTE RESOLUTION**

Subject to Article 12.4, where there is a dispute between any Parties (the "disputing parties") arising out of or in connection with this Agreement, then the disputing parties shall submit the matter to binding arbitration subject to the dispute resolution provisions set out below.

- 13.2 In the event a dispute arises, the disputing parties shall use all reasonable efforts, including mediation if the disputing parties agree, to amicably resolve the dispute within sixty (60) days, or such extended time as the disputing parties may agree, within delivery of notice in writing of a dispute from one disputing party to another.

#### **13.3 SELECTION OF THE ARBITRATOR(S)**

If the dispute is not resolved pursuant to Article 13.2, then the disputing parties shall refer the dispute to binding arbitration and the following provisions shall apply:

- (a) the dispute shall be referred to a single arbitrator if the disputing parties agree; otherwise it shall be referred to three arbitrators, one of whom shall be chosen by

the Party or Parties bringing the dispute, one by the Party or Parties responding to the dispute, and the third by the two so chosen. The third arbitrator shall be the chairperson. Arbitrators shall be independent, disinterested, knowledgeable and experienced in the issue in dispute. A decision may be made by a majority of the arbitrators;

- (b) if, within sixty (60) days of being notified that a dispute has been referred to arbitration, or such extended time as the disputing parties may agree upon, a Party or Parties who have been so notified fail to appoint an arbitrator, then an application may be made to the Supreme Court of the Northwest Territories for the appointment of an arbitrator; and
- (c) if within thirty (30) days, or such extended time as the disputing parties may agree upon, the first two arbitrators appointed under Article 13.3(a) or 13.3(b) above do not agree upon the third arbitrator or if the Parties to the dispute do not agree on the selection of a chairperson, then an application may be made to the Supreme Court of the Northwest Territories for the appointment of the third arbitrator or the chairperson, as the case may be.

13.4 Except as to matters otherwise provided herein, the provisions of the Commercial Arbitration Act (Canada) and Commercial Arbitration Code annexed thereto, shall apply where Canada is a party to the dispute. In the event that Canada is not a party to the dispute, the provisions of the Arbitration Act (Northwest Territories) shall apply.

13.5 The Parties shall be entitled to intervene, as appropriate, in the resolution of disputes under this Agreement.

#### 13.6 COSTS OF DISPUTE RESOLUTION

Unless the parties agree otherwise, the Parties shall bear their own costs of dispute resolution, and the costs of a mediator or an Arbitrator(s) shall be paid in equal shares by the parties to the dispute.

#### 13.7 JURISDICTION OF THE ARBITRATOR(S)

The jurisdiction of the Arbitrator(s) is limited to issuing awards resolving disputes respecting interpretation, application or alleged breach of the terms of this Agreement, awards requiring compliance with this Agreement and awards requiring the performance of work in accordance with this Agreement. An Arbitrator(s) shall not have jurisdiction to issue any monetary awards or damages, penalties, accounting, costs or equitable remedies, except for the issuance of orders requiring the performance of work in accordance with this Agreement.

#### 13.8 INTERLOCUTORY RELIEF

- (a) Nothing in this Article prevents a Party from commencing judicial proceedings at any time:
  - (i) to prevent a loss of a right to commence proceedings due to the expiration of a limitation period; or

- (ii) to obtain an interim order for the protection or preservation of property or other interests that are the subject matter of the dispute;

where, for any reason, it is impossible or impractical for an Arbitrator(s) to promptly resolve the matter in dispute.

- (b) Neither the resolution of such court application nor the participation therein by any Party shall operate as a bar to arbitration, or as a waiver of any of the rights and obligations of any Party with respect to dispute resolution in accordance with the terms of this Agreement.

## **ARTICLE XIV GENERAL PROVISIONS**

### **14.1 REMEDIES NOT EXCLUSIVE**

The rights and remedies of any Party under this Agreement are cumulative and in addition to, and not in substitution for, any rights, powers or remedies provided at law or in equity including, without limitation, pursuant to applicable environmental legislation. Any single or partial exercise by any Party of any right or remedy for a default or breach of any term, covenant, condition or agreement in this Agreement does not affect that Party's rights and does not waive, alter, affect or prejudice any other right or remedy to which that Party may be entitled for the same default or breach. Any waiver by any Party of the strict observance of, performance of, or compliance with, any term, covenant, condition or agreement of this Agreement must be in writing to be effective and any waiver or indulgence by any Party shall not constitute a waiver of any other provisions, a continuing waiver or a waiver of any subsequent default.

### **14.2 GOVERNING LAW**

This Agreement is governed by and is to be construed in accordance with the laws of the Northwest Territories, and the laws of Canada applicable therein.

### **14.3 FURTHER ASSURANCES**

The Parties shall with reasonable diligence do all things and provide such further documents or instruments as may be reasonably necessary or desirable to give effect to this Agreement and to carry out its provisions.

### **14.4 SUCCESSORS AND ASSIGNS/ASSIGNMENT**

- (a) This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- (b) DBCMI shall not assign this Agreement or any part of it, nor be released from its obligations or covenants under this Agreement, unless:
  - (i) it is determined by Canada and the GNWT that the proposed assignee has the financial capacity and qualifications, and such other capacity and

qualifications as may be required, to carry out DBCMI'S obligations to all the Parties under this Agreement;

- (ii) the proposed assignee enters into an agreement in writing with Canada and the GNWT in which the assignee assumes all of DBCMI'S obligations and liabilities to all Parties under this Agreement; and
- (iii) the proposed assignee is also the assignee of DBCMI'S obligations under the Regulatory Instruments and the Impact Benefit Agreements.

Provided, however, that if the requirements of Articles 14.4(b)(i) to (iii) above are satisfied, DBCMI shall be released from all and any obligations under this Agreement and the Parties shall execute and deliver to DBCMI documents of release reasonably requested by DBCMI.

#### 14.5 SEVERABILITY

Any provision of this Agreement which is or becomes prohibited or unenforceable in any jurisdiction shall not invalidate or impair the remaining provisions hereof, which shall be deemed severable from any such prohibited or unenforceable provision, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction;

#### 14.6 MEMBER OF HOUSE OF COMMONS NOT TO BENEFIT

As required by the Parliament of Canada Act, it is an express condition of this Agreement that no member of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

#### 14.7 NOT A PARTNERSHIP OR JOINT VENTURE

Nothing contained in this Agreement shall be deemed to constitute the Parties or any of them partners, joint venturers or principal and agent.

#### 14.8 LIABILITY

This Agreement in no way limits the obligations of DBCMI with respect to any environmental matter relating to the Project including, without limitation, the legal obligation to undertake full mine site reclamation and post closure water treatment in respect of the Project and any other potential development within the bounds of the Project.

#### 14.9 REVIEW OF AGREEMENT

- (a) Once
  - (i) the Land Leases have been executed,
  - (ii) the Water Licence has been issued, and
  - (iii) the Land Use Permit has been issued,

the Parties agree to review this Agreement and amend any part of it, if necessary, to address any conflicts or inconsistencies.

- (b) Subject to the provisions of Article IV, after the Effective Date, the Parties may at any time, but shall in any event no later than one (1) year prior to the expiry of the Water License, and every five (5) years thereafter, review this Agreement in Consultation with the Monitoring Agency.

#### 14.10 FORCE MAJEURE

Except in respect of matters of a serious and imminent threat to the environment in which case this Article 14.10 will not apply, in the event that DBCMI is delayed or hindered in or prevented from the performance of its obligations under this Agreement by reason of an event beyond the reasonable control of DBCMI, including, without limitation, strikes, inability to procure materials or services, civil commotion, sabotage or act of God, then obligations under this Agreement that are not fulfilled by DBCMI as a direct result of such delay or hindrance shall not constitute a default under this Agreement during the period of such delay or hindrance.

#### 14.11 SUSPENSION OF OPERATIONS

DBCMI may curtail, suspend or interrupt operations as it sees fit, and during such period of curtailment, suspension or interruption, DBCMI shall be excused from the performance of its obligations hereunder to the extent considered reasonable by the Minister in Consultation with the Monitoring Agency.

#### 14.12 NOTICES

Any notices or communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered, during normal business hours, to, or sent by prepaid registered or certified mail, or confirmed facsimile addressed as follows:

- (a) In the case of a notice or communication to the Minister:

**Department of Indian Affairs and Northern Development**  
P.O. Box 1500  
Yellowknife, NT X1A 2R3

Attention: Regional Director General  
Telephone: (867) 669-2501  
Facsimile: (867) 669-2703

- (b) In the case of a notice or communication to the GNWT:

**Government of the Northwest Territories**

P.O. Box 1320  
Yellowknife, NT X1A 2L9

Attention: Deputy Minister - Resources, Wildlife and Economic Development  
Telephone: (867) 920-8691  
Facsimile: (867) 873-0563

- (c) In the case of a notice or communication to DBCMI:

**De Beers Canada Mining Inc.**

300 - 5102 50th Avenue  
Yellowknife, NT X1A 3S8

Attention: Senior Environmental Manager  
Telephone: (867) 766-7322  
Facsimile: (867) 766-7347

- (d) In the case of a notice or communication to Dogrib Treaty 11 Council:

**Dogrib Treaty 11 Council**

P.O. Box 412  
Rae-Edzo, NT X0E 0Y0

Attention: Grand Chief  
Telephone: (867) 392-6381  
Facsimile: (867) 392-6389

- (e) In the case of a notice or communication to Lutsel K'e Dene Band:

**Lutsel K'e Dene Band**

P.O. Box 28  
Lutsel K'e, NT X0E 1A0

Attention: Chief  
Telephone: (867) 370-3051  
Facsimile: (867) 370-3010

- (f) In the case of a notice or communication to Yellowknives Dene First Nation:

**Yellowknives Dene First Nation**

P.O. Box 2514  
Yellowknife, NT X1A 2P8

Attention: Chiefs  
Telephone: (867) 873-4307  
Facsimile: (867) 873-5969

- (g) In the case of a notice or communication to North Slave Métis Alliance:

**North Slave Métis Alliance**

P.O. Box 340

Yellowknife, NT X1A 2N3

Attention: President

Telephone: (867) 873-9176

Facsimile: (867) 669-7442

- (h) In the case of a notice or communication with the Monitoring Agency:

The Monitoring Agency shall give notice of its address to the Parties as soon as is practicable.

or at such other address as any Party may from time to time advise the other Parties and the Monitoring Agency by notice in writing. Any notice given by personal delivery shall be deemed to be received on the date of delivery. Any notice sent by fax shall be deemed to have been received on the next day following receipt by the sender of confirmation of completion or transmission that is not a Saturday, Sunday or statutory holiday in the NWT.

#### 14.13 COUNTERPARTS

This Agreement may be executed in counterparts each of which shall be considered an original and all of which taken together shall constitute a single agreement. The Parties may rely upon copies of this Agreement which are delivered by facsimile as if such copies were originals.

### **ARTICLE XV TERM**

#### 15.1 TERM

- (a) Subject to Article 15.1(c), this Agreement shall come into effect upon signing by at least DBCMI, GNWT and Canada (the date upon which such a signing occurs being called the "Effective Date").
- (b) This Agreement shall become binding upon and shall enure to the benefit of each of the other Parties if, as and when they sign this Agreement.
- (c) Subject to Article 15.1(d), this Agreement shall not come into force or have effect until:
- (i) execution of the Land Leases,
  - (ii) issuance of the Water Licence, and
  - (iii) issuance of the Land Use Permit.

- (d) DBCMI may unilaterally waive the condition in Article 15.1(c) as to all or any part of this Agreement.
- 15.2 This Agreement shall terminate upon full and final implementation of the Closure and Reclamation Plan(s), in accordance with the requirements of all Regulatory Instruments and the terms of this Agreement and completion of any and all post-closure monitoring and maintenance required in connection with the Project.
- 15.3 Once DBCMI has ceased Commercial Production at the Project, the Minister may, in his/her discretion, and following Consultation with the Parties and the Monitoring Agency, do either or both of the following:
  - (a) relieve DBCMI of its responsibilities and obligations arising from this Agreement to the extent deemed by the Minister to be reasonable in the circumstances; and
  - (b) set a schedule for winding down and concluding DBCMI's participation in the operation of the Monitoring Agency.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed in their respective names by their duly authorized representatives

DE BEERS CANADA MINING INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Minister of Indian Affairs and Northern  
Development, on behalf of Her Majesty  
The Queen in right of Canada

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Minister of Resources, Wildlife and  
Economic Development on behalf of the  
Government of the Northwest Territories

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Grand Chief  
Dogrib Treaty 11 Council

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Chief  
Lutsel K'e Dene Band

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Chief  
Yellowknives Dene First Nation

\_\_\_\_\_  
Witness

---

President  
North Slave Métis Alliance

---

Witness

## SCHEDULE "A"

### COMMITMENTS

The list below is a compilation of commitments from the MVEIRB Environmental Assessment process and the MVLWB process.

<u>NUMBER</u>	<u>COMMITMENT</u>	<u>REFERENCE</u>
1.	De Beers committed to ensuring our project achieves sustainability in all circles: environmental, social and economic	MVLWB Hearing Transcript, Day 1, January 27/04, p. 10
2.	De Beers is committed to try to have the Environmental Agreement signed before the Minister makes approval.	MVLWB Hearing Transcript, Day 1, January 27/04, p. 38
3.	Any substantial changes in the current project description will be addressed through the appropriate land use permit and water licence applications to the Mackenzie Valley Land and Water Board. De Beers will conduct consultation with all affect parties should this occur	IR 3.11.3d and 3.1.3 Environmental Assessment
4.	De Beers committed not to exceed license limits.	MVLWB Hearing Transcript, Day 1, January 27/04, p. 41
5.	De Beers committed to the North Pile shell construction method represented by Sections A and C of both Figures 7.11 and 7.12 taken from the report entitled, "Snap Lake Diamond Project Surface Engineering Optimization Study North Pile Management". Other shell configurations will be tested, however, they will not be used until proven capable of providing equal or better long term pile stability and appropriate protection to the environment	Technical Sessions, Day 7, 3 December 2003, PowerPoint presentation
6.	Monitoring of the [North Pile] starter cell will continue during full-scale deposition.	Technical Sessions Day 7, 3 December 2002: IR 2.4.30
7.	A ditch will be designed and constructed to minimize, if not eliminate altogether, seepage from the North Pile area to Snap Lake by establishing a reversal of the hydraulic gradient between the North Pile and Snap Lake.	Technical Sessions Day 7, 3 December 2002: IR 2.4.30

<u>NUMBER</u>	<u>COMMITMENT</u>	<u>REFERENCE</u>
8.	Where necessary, modifications will be made to the design and operation of the East Cell and West Cell ditches to improve their effectiveness	North Pile Chemical Stability Technical Memo, 28 February 2003
9.	The water from the sedimentation ponds at the north pile will only be used for dust control	MVLWB Hearing Transcript, Day 1, January 27/04, p. 20: Information Technical Session Transcript, Day 1, December 17/03, p. 13
10.	De Beers will have intensive monitoring around the development of the north pile to be sure that the conditions and development are appropriate	Information Technical Session Transcript, Day 2, December 18/03, p. 100
11.	De Beers is committed to monitoring the land farm to ensure effective performance and would consider alternatives to land farming should management techniques prove to be ineffective in treating the soils	Public Hearing Transcripts, Day 2, 29 April, 2003
12.	De Beers committed to making the results of the third-party EMS audits available to the public	Technical Sessions, 25 November – 06 December 2002, MVLWB Hearing Transcript, Day 1, January 27/04, p. 17
13.	De Beers committed to meeting all regulatory limits. Discharge limits contained in a water license will be adopted as internal standards within De Beers' EMS.	MVLWB Hearing Transcript, Day 1, January 27/04, p. 17
14.	De Beers committed to pH adjustment to the treated effluent prior to discharge to Snap Lake to prevent acute toxicity of ammonia at the end of the pipe.	MVLWB Hearing Transcript, Day 1, January 27/04, p. 19, 22, 52; Information Technical Session Transcript, Day 1, December 17/03, p. 29
15.	The commitment is to meet total metal criteria for treating metals at the water treatment plant.	Information Technical Session Transcript, Day 1, December 17/03, p. 63.
16.	De Beers is developing an explosives control procedure for implementation under its environmental management system	Information Technical Session Transcript, Day 1, December 17/03, p. 16

<u>NUMBER</u>	<u>COMMITMENT</u>	<u>REFERENCE</u>
17.	De Beers will provide a list of components in the specialty explosives.	Information Technical Session Transcript, Day 1, December 17/03, p. 24
18.	De Beers will monitor the ammonia concentrations in the final mine water collective sump underground.	Information Technical Session Transcript, Day 1, December 17/03, p. 21.
19.	De Beers to look at the possibility of using non-toxic, chemical dust suppressants on site roads.	Information Technical Session Transcript, Day 1, December 17/03, p. 15)
20.	De Beers to provide a visual representation (3-D) of how the Snap Lake site will look after operations.	Information Technical Session Transcript, Day 2, December 18/03, p. 125
21.	De Beers will produce a Landfarm Operations Procedure for intervener review.	Information Technical Session Transcript, Day 2, December 18/03, p. 128.
22.	De Beers will send the Waste Management Plan to GNWT for review.	Information Technical Session Transcript, Day 2, December 18/03, p. 130
23.	De Beers will send the Wildlife Safety Plan to GNWT for review in January 2004	Information Technical Session Transcript, Day 2, December 18/03, p. 130
24.	De Beers will provide summary notes and will provide the suggestions of interveners back to the Mackenzie Valley Land & Water Board	Information Technical Session Transcript, Day 2, December 18/03, p. 99
25.	De Beers will host a joint meeting with all interveners [to the Environmental Assessment process] to discuss the monitoring plans	Information Technical Session Transcript, Day 2, December 18/03, p. 111
26.	De Beers has agreed to use CCME guidelines for metals as internal targets within the environmental management system to ensure protection of Snap Lake.	MVLWB Hearing Transcript, Day 1, January 27/04, p. 19, 69
27.	De Beers is committed to further action if monitoring shows that metal concentrations in Snap Lake are approaching the CCME guidelines.	MVLWB Hearing Transcript, Day 1, January 27/04, p. 19
28.	De Beers proposes to use the BC water quality objective of 150 mg/L for chloride as an integral	MVLWB Hearing Transcript, Day 1, January

<u>NUMBER</u>	<u>COMMITMENT</u>	<u>REFERENCE</u>
	target in Snap Lake after initial mixing.	27/04, p.89
29	De Beers will provide a memo that summarizes the method of confirming the whole lake TDS measures in Snap Lake. It will indicate the monitoring locations and how we are going to use the monitoring information to calculate a whole lake average TDS.	MVLWB Hearing Transcript, Day 1, January 27/04, p. 51-52, 64-65
30.	De Beers is committed to monitoring farther downstream, just upstream of MacKay Lake.	MVLWB Hearing Transcript, Day 1, January 27/04, p. 77, 88
31.	De Beers will monitor ammonia concentrations.	Information Technical Session Transcript, Day 1, December 17/03, p. 18, 21.
32.	De Beers will be looking into mitigation uncontrolled run off sites.	Information Technical Session Transcript, Day 2, December 18/03, p. 95
33.	De Beers will monitor the lake levels in Snap Lake and in the north and northeast lakes as identified in the environmental assessment.	MVLWB Hearing Transcript, Day 1, January 27/04, p. 55
34.	De Beers has committed to a special study to better understand the phytoplankton and intends to include phytoplankton, including the blue/green algae, in the special study of plankton.	MVLWB Hearing Transcript, Day 1, January 27/04, p. 19, 124
35.	De Beers will seek input to develop the zoo/phytoplankton special study and will circulate a draft for review.	Information Technical Session Transcript, Day 2, December 18/03, p. 109
36.	De Beers will confirm timing of the zoo/phytoplankton special study	MVLWB Hearing Transcript, Day 1, January 27/04, p. 109
37.	De Beers committed to a 2004 winter benthic invertebrate survey in deep areas of the lake	MVLWB Hearing Transcript, Day 1, January 27/04, p. 52
38.	The winter benthic invertebrate study will consist of 5 shallow water and 5 deep water sampling stations in the main body of Snap Lake, plus 2 others, one shallow, one deep, in north arm of Snap Lake	MVLWB Hearing Transcript, Day 1, January 27/04, p. 67

<u>NUMBER</u>	<u>COMMITMENT</u>	<u>REFERENCE</u>
39.	De Beers will ensure health and safety systems are in place for benthic sampling in winter	MVLWB Hearing Transcript, Day 1, January 27/04, p. 68
40.	De Beers committed to proceed with a supplemental fish health survey in July 2004	MVLWB Hearing Transcript, Day 1, January 27/04, p. 52
41.	De Beers will look into using the early life stage salmonid test as a chronic toxicity test.	MVLWB Hearing Transcript, Day 1, January 27/04, p. 79
42.	De Beers will have an annual fish and caribou tasting at site with elders	Information Technical Session Transcript, Day 2, December 18/03, p. 91
43.	De Beers will be testing the suite of 27 metals for the tissue analysis as part of the fish health study.	Information Technical Session Transcript, Day 2, December 18/03, p. 92
44.	De Beers is committed, as part of the ongoing monitoring and management, to make sure that water quality and fish health are acceptable within Snap Lake. De Beers is going to implement the necessary actions to reduce those impacts if there are unforeseen effects on fish health in Snap Lake.	Information Technical Session Transcript, Day 2, December 18/03, p. 119
45.	De Beers to consider the possibility of a wildlife habitat compensation program.	Information Technical Session Transcript, Day 2, December 18/03, p. 136
46.	De Beers will monitor harvesting on the winter access road.	Information Technical Session Transcript, Day 2, December 18/03, p. 137
47.	Significant change (increase or decrease) in the mine production rate would be done in consultation with all stakeholders.	Technical Sessions, 25 November – 06 December 2002
48.	De Beers will continue to facilitate the collection of traditional knowledge and will develop environmental monitoring programs that incorporate both traditional knowledge and science for the Snap Lake Diamond Project.	IR 1.42b, 2.2.13b; EAR Table 14.2-1
49.	De Beers will continue to enforce its no hunting and no fishing policy for employees and contractors at	IR 2.2.2

<u>NUMBER</u>	<u>COMMITMENT</u>	<u>REFERENCE</u>
	Snap Lake. Personal snow machines and ATVs will not be permitted.	
50.	A follow-up program to the July, 2001 blast monitoring program will be undertaken to allow for refinement of the equations used to calculate peak particle velocity and overpressure once mine production begins to ensure that predicted blast overpressure and ground vibrations estimates are correct.	IR 3.9.12b
51.	De Beers committed to work through the Northwest Territories and the Nunavut Chamber of Mines for establishing a protected area in the Coppermine River Uplands Ecoregion	IR 2.5.1a cross referencing Table 14.2-2 on p. 14-7 of the EAR
52.	De Beers will avoid locations identified as having archaeological potential. Site personnel will be trained on what to do when a historical artifact is discovered	EAR p. IV.1-12
53.	De Beers committed to carrying out a geophysical program including ground penetrating radar to delineate ice before any future work is done on the esker (s)	Technical Sessions, Day 8, 4 December 2002
54.	De Beers will continue to follow any operating parameters set out by the Tibbitt-Contwoyto Winter Road Joint Venture	IR 2.2.4b
55.	De Beers plans to monitor the winter access road and will set up a review of the monitoring and management plans for the road. De Beers is committed to revising procedures if through the review it is determined that improvement is needed	IR 2.2.4b
56.	During construction and operation, contractors will be expected to follow all procedures and policies incorporated under the Environmental Management System as a condition of their contract. This will include specific policies and procedures about road rules and spills, and De Beers will monitor traffic to ensure that the rules are being observed. De Beers will enforce the winter access road traffic rules as well as on-site road traffic rules	IR 2.2.4d

<u>NUMBER</u>	<u>COMMITMENT</u>	<u>REFERENCE</u>
57.	Copies of the electronic input and output files for CALPUFF air quality monitoring will be forwarded separately to Environment Canada personnel and are available to other interested parties on request	IR 2.3.6
58.	De Beers will provide Environment Canada with copies of an annual report summarizing the ongoing results of the TSP monitoring completed at the Snap Lake Diamond Project. De Beers is open to discussions with Environment Canada and other interested parties on the details of the proposed TSP reporting (timelines, frequency, format)	IR 2.3.4b
59.	De Beers plans to continue to monitor TSP and plans to involve communities and government in the final design of the dust monitoring plan	IR 2.3.2
60.	Both Environment Canada and the Government of the Northwest Territories requested that De Beers make a commitment to specifically include monitoring of fine particles known as PM10 and PM2.5 in air quality monitoring. De Beers has committed to doing this monitoring and will finalize the air quality monitoring program in consultation with these organizations and communities	Public Hearing Transcripts, Day 1, 28 April 2003, p. 55
61.	De Beers intends to refine information on the water quality of paste backfill porewater and to investigate potential amendments to the paste backfill	North Lakes Report, April 2002, p. 65-66
62.	De Beers will undertake a site water quality and flow monitoring program and a water quality and primary productivity (chlorophyll a) monitoring program in Snap Lake	Algal Modeling Technical Memo, 28 February 2003
63.	Apply new data and revise the groundwater flow model as the project moves forward	Technical Sessions, 25 November – 06 December 2002
64.	Consider incorporating localized eutrophication effects of Snap Lake into future monitoring decisions	Technical Sessions, 25 November – 06 December 2002
65.	As part of operational monitoring, De Beers will assess North Pile seepage quality and quantity and update or adjust water quality predictions, treatment,	IR 3.8.12, 3.10.18a

<u>NUMBER</u>	<u>COMMITMENT</u>	<u>REFERENCE</u>
	and mitigation strategies on an on-going basis as required	
66.	Work is currently underway to collect baseline data from the north lakes area to refine the impact predictions of the EA. Once data collection and analysis is complete, information will be made available and monitoring plans based on the revised predictions will be finalized	IR 3.10.18a
67.	Achieve appropriate consultation, in concert with DFO, to ensure the losses and gains of fish habitat, as well as the objectives of “No Net Loss” in relation to this project are communicated.	Fish Habitat Information and Loss Accounting for Waterbodies Situated on the Northwest Peninsula of Snap Lake, 10 February 2003
68.	Complete any regulatory requirements associated with the Snap Lake Diamond Project relating to “No Net Loss” and DFO’s Policy for the Management of Fish Habitat (1986).	Fish Habitat Information and Loss Accounting for Waterbodies Situated on the Northwest Peninsula of Snap Lake, 10 February 2003
69.	De Beers will be installing a water treatment plant capable of treating 35 000 m <sup>3</sup> /day of water.	Letter to Environment Canada re: Overcapacity, 4 February 2003
70.	The water treatment plant will also include the contingency of using ferric sulfate to precipitate phosphorus	Algal Modeling Technical Memo, 28 February 2003
71.	Site drinking water will be treated through chlorination and filtration.	Technical Sessions, 25 November – 06 December 2002
72.	Should storage capacity be exceeded within the water treatment plant and water management pond, will flood the mine before releasing untreated water to Snap Lake	Technical Sessions, 25 November – 06 December 2002
73.	De Beers will incorporate Section 6 of the Migratory Birds Act into construction and production plans.	Technical Sessions, 25 November – 06 December 2002
74.	To show due diligence in relation to the Migratory	CWS Meeting Notes, 12

<u>NUMBER</u>	<u>COMMITMENT</u>	<u>REFERENCE</u>
	<p>Bird Act, De Beers will:</p> <ol style="list-style-type: none"> <li>1) When clearing vegetation where there are nests, time this activity during either the pre- or post-nesting season, or if clearing must be done during nesting season, search the area for nests, mark any active ones and allow a buffer zone around them until the hatchlings have fledged. Return and clear once the nests have been abandoned.</li> <li>2) If migratory birds are found nesting on the mine footprint, mark the nest, alert staff of its location and initiate a buffer zone around it until the hatchlings are fledged. <ul style="list-style-type: none"> <li>• De Beers to look at developing an operating procedure in the Environmental Management System for employees who discover an active bird nest.</li> <li>• De Beers also to develop a standard incident reporting procedure with CWS (annual or incident-specific).</li> <li>• De Beers to develop mitigation measures and possible methods to deter birds from nesting within the mine footprint.</li> </ul> </li> </ol> <p>De Beers to re-examine existing construction schedule to determine consistency with breeding season, as buffer zones for these activities may not be feasible in some circumstances, e.g. quarry development.</p>	February 2003
75.	Throughout the construction and operation phases, De Beers will monitor whether the actual impacts to ELC units exceed or differ (i.e., area or type) from those predicted in the EAR. The losses or alteration of ELC units due to the development of the Snap Lake Diamond Mine will be mapped annually and the aerial extent of change compared to predicted impacts	IR 1.8
76.	A monitoring report summarizing wildlife data from 1999-2001 will be made available in summer 2002. This report will be given to the Canadian Wildlife Service and will be available to the any interested party upon request. The report will contain a map	IR 2.3.19

<u>NUMBER</u>	<u>COMMITMENT</u>	<u>REFERENCE</u>
	showing all plot locations (some of which were mistakenly covered by the project footprint in Figure 10.4-3 of the EAR)	
77.	It is De Beers' intent to monitor raptor breeding activity as part of annual wildlife monitoring. Occupancy and productivity may be measured by visiting raptor nest sites in May and July. Also, any raptor nests located incidentally in the future would be added to the database	IR 3.10.22b
78.	De Beers remains interested in practical alternate survey methods (wolverines) and will continue to follow the development of more sensitive and reliable survey methods with interest	IR 3.5.1
79.	Will use the same techniques employed by other mining companies for monitoring caribou behaviour	Technical Sessions, 25 November – 06 December 2002
80.	Ground Penetrating Radar will be used at the esker quarry sites prior to any future work	Technical Sessions, 25 November – 06 December 2002
81.	De Beers will record incidental wildlife observations, including rare species, until a need for monitoring specifically for that species is identified.	Technical Session Transcripts, Day 5, 29 November 2002, p.47
82.	De Beers will work with GNWT in the development of mitigation measures and thresholds for various species.	Technical Sessions, 25 November-06 Dec. 2002
83.	Food waste is not to go outside - an incinerator will be attached to the kitchen via an enclosed corridor	Technical Sessions, 25 Nov.-06 Dec. 2002
84.	De Beers will systematically assess individual potential attractants and determine mitigation measures for each factor. This information is to be provided to GNWT for review.	Technical Sessions, 25 November-06 Dec. 2002
85.	De Beers will ensure skirting on buildings extends all the way to the ground.	Technical Sessions, 25 November– 06 December 2002
86.	If a concern was noted that caribou were being attracted to the North Pile, then we would implement mitigation to prevent their access.	Public Hearing Transcripts, Day 4, 1 May 2003, p. 44

<u>NUMBER</u>	<u>COMMITMENT</u>	<u>REFERENCE</u>
87.	De Beers stated a commitment that if large numbers of caribou occur on site and management measures such as herding caribou from the air strip are overwhelmed, then flights to or from site will be postponed until such time that aircraft movement can be made with the safety of wildlife and people protected	Public Hearing Transcripts, Day 1, 28 April 2003, p. 50
88.	Roads within the Snap Lake Diamond Project will be designed so they do not interfere with wildlife movements	EAR p. IV.1-35
89.	Compensation for demonstrable loss of harvest will be addressed in the IBAs	Technical Session Transcripts, Day 6, 2 December 2002, p. 38
90.	Drivers will be warned if animals are known to be moving through the area. Temporary restrictions to road use will be considered if large numbers of animals are in the vicinity of the road, and the risk of collision with wildlife is high	IR 2.2.4c
91.	<p>De Beers will put in place policies and regulations concerning employee wildlife interactions. The implementation and training of staff about wildlife policies and regulations, as well as other policies and mitigation measures, will occur and be documented through the Environmental Management System for the Snap Lake Diamond Project. The policies and regulations concerning employee-wildlife interactions will include the following:</p> <ul style="list-style-type: none"> <li>• Education of people on the risk associated with feeding wildlife;</li> <li>• employees, contractors and visitors will be prohibited from feeding and harassing wildlife; and</li> <li>• employees, contractors and visitors will receive appropriate training on procedures on how to handle wildlife encounters. The level of training will be identified through a risk-based matrix that assesses the likelihood that a worker or visitor may encounter wildlife.</li> </ul>	IR 2.2.4c

<u>NUMBER</u>	<u>COMMITMENT</u>	<u>REFERENCE</u>
92.	De Beers will use dust collection systems to control dust. For example, dust collection systems would be used on outdoor crushers at the quarry site. If additional dust control measures are required, the plan will be discussed with the regulators and follow the Government of the Northwest Territories guidelines for dust suppression	IR 4.12.18a&b, 2.4.29, 2.5.32
93.	De Beers restates its commitment that it will participate in regional initiatives to develop cumulative effects monitoring. In the meantime, De Beers will continue to collect data in a form and manner compatible with present monitoring activities in the Slave Geological Province	EAR Section 14.6; IR3.5.3a
94.	De Beers is committed to involvement in cumulative effects programs through implementation of the environmental monitoring plans and management plans in the EAR	IR 3.9.1a,b
95.	De Beers undertakes to report all spills as per Environment Canada's request.	IR 3.3.4
96.	The Snap Lake Diamond Project will implement a decommissioning and reclamation monitoring program that will extend and evolve throughout the construction, operation, and decommissioning phases of the project	EAR, Section 10.3.2.2.5
97.	Emerging technology and techniques will be implemented as they become available and the program will continue to evolve in consultation with government organizations and communities	EAR, Section 10.3.2.2.5
98.	De Beers will develop an adaptive management approach to reclamation that will incorporate the results of the re-vegetation and experimental test plot program. Research and reclamation approaches that have been developed as part of other mine operations in the region (e.g., BHP Billiton's EKATI Diamond Mine™) will also be employed as appropriate.	IR 1.6, 1.8
99.	De Beers is committed to a program of progressive reclamation at Snap Lake. Progressive reclamation has been built in as an integral part of the mine plan	IR1.8; Preliminary Mine Closure & Reclamation Plan, 28 February 2003

<u>NUMBER</u>	<u>COMMITMENT</u>	<u>REFERENCE</u>
100.	De Beers is committed to reducing residual environmental effects at the site upon closure	Preliminary Mine Closure & Reclamation Plan, 28 February 2003
101.	De Beers is committed to providing suitable financial security and assurance to cover the cost of full reclamation of the Snap Lake Diamond Project	Preliminary Mine Closure & Reclamation Plan, 28 February 2003
102.	With respect to contaminant uptake by roots of plants that grow on the North Pile, De Beers committed to monitor to see if there is root penetration to the processed kimberlite [North Pile]. If so, and if the lead shape is showing to be acidic, then De Beers indicated it will monitor plant tissue for any kind of metal uptake	Public Hearing Transcripts, Day 4, 1 May 2003, p. 103
103.	De Beers is committed to maximizing recycling opportunities where suitable facilities exist within reasonable proximity (e.g. Alberta) at the time of closure, and where materials can be recycled at a reasonable cost. This includes some materials such as scrap metal, tires, conveyor belting, glass, etc. and may also include hazardous materials such as glycol, batteries and waste oil.	Buried Materials Technical Memo, 28 February 2003
104.	De Beers is committed to implementing and funding initiatives that monitor project-specific effects, however, unless data collection coincides with that goal, the funding of initiatives to fulfill other parties responsibilities would have to be reviewed on a case by case basis	IR 2.5.8c
105.	De Beers is committed to environmental monitoring and, as noted in the De Beers Environmental Policy De Beers is committed to good management practices that minimize environmental risks.	EAR, Table 14.2-1, Appendix III.8 and IR2.2.4
106.	De Beers is committed to implementing monitoring programs that meet the requirements of the results of the EA and regulatory review processes, and will be designed in collaboration with communities, Elders and governments. The design and details of these programs will be finalized during future consultations with communities and government	EAR, Table 14.2-1; IR2.2.13a, 2.3.18a, 3.5.2a&b, 3.10.27; Technical Sessions, 25 November-06 December 2002
107.	De Beers is committed to continuing these efforts	IR 3.5.2d

<u>NUMBER</u>	<u>COMMITMENT</u>	<u>REFERENCE</u>
	throughout the life of the project as they represent sound business and environmental management practices	
108.	De Beers will meet with regulatory agencies and Land and Environment Committees (or community-designated alternates) from each of the Aboriginal organizations and primary catchment communities identified in the EA for their input on all aspects of the monitoring programs, including the practical incorporation of TK	Overview of Project Milestones and Monitoring and Management Programs for the Snap Lake Diamond Project Technical Memo, 28 February 2003.
109.	All environmental monitoring programs will be incorporated into an Environmental Agreement, as will opportunities for community involvement within these programs	Overview of Project Milestones and Monitoring and Management Programs for the Snap Lake Diamond Project Technical Memo, 28 February 2003
110.	Community-specific information will be incorporated into mitigation and monitoring plans	Technical Sessions, 25 November – 06 December 2002
111.	The effects that De Beers will incorporate into its EMS will include environmental effects for which a monitoring or management plan or program is presented in the EAR or is required by a permit or licence. This will include air, terrestrial, heritage resources, and water-related monitoring and management plans and programs	IR 3.5.15a
112.	De Beers will prepare a separate EMS for construction and operation of the Snap Lake Diamond Project that will be founded on the EMS of the AEP but will be expanded to include all facets of mine construction and production	IR 3.5.15b
113.	De Beers is committed to the use of adaptive management in all aspects of operations. ISO 14001 Environmental Management Systems are based on the use of adaptive management and it is through this that De Beers' commitment to "continual improvement" in environmental performance will be achieved. Adaptive management will be used to refine mitigation measures, including those that relate to wildlife	IR 4.11.18a, 4.9.2

<u>NUMBER</u>	<u>COMMITMENT</u>	<u>REFERENCE</u>
114.	De Beers commits to changing its mitigative measures when the effects are different than those predicted (i.e., beyond the range of results normally expected). This process would be captured by the environmental management system during annual management reviews, regular internal auditing or documented internal communication between environmental staff and management	IR 3.5.15c

## **SCHEDULE "B"**

### **PROCESS TO DEVELOP MULTI-PARTY ENVIRONMENTAL MONITORING AGENCY**

1. The Parties commit to participating in a process for negotiating the Terms of Reference for a Multi-Project Environmental Monitoring Agency for the BHPB, Diavik, and De Beers diamond mine projects in the NWT.
2. The Parties agree to give consideration to the draft MPEMA principles prepared by the Aboriginal Caucus (February 10, 2004), the experience of the monitoring agencies established for the three diamond mines, the work completed to date on regional monitoring agency, and where appropriate and applicable the development of regional cumulative effects monitoring programs and activities.
3. The Parties agree that the development of MPEMA shall not be a substitution for and is not intended to displace the on-going work related to the development and implementation of CEAM and CIMP for the NWT.
4. The Parties agree to use best efforts to complete a draft Terms of Reference for the MPEMA by March 31, 2005 and to complete the final Terms of Reference for the MPEMA by March 31, 2006. The Terms of Reference will establish the purpose, principles, mandate, structure, operational characteristics and transition process from existing mechanisms to the MPEMA.
5. The Parties agree to establish a Steering Committee consisting of one representative from each of the Parties and one representative, at their option, from each of BHP Billiton, Diavik Diamond Mines Inc., the Kitikmeot Inuit Association and the Government of Nunavut to oversee the development of the Terms of Reference.
6. The Steering Committee will endeavour to establish a three member Working Group consisting of one representative from governments (Canada, GNWT, the Government of Nunavut), one from industry (De Beers, Diavik, BHPB), and one from the Aboriginal Parties (Dogrib Treaty 11, Lutsel K'e Dene First Nation, Yellowknives Dene First Nation, NSMA, and the KIA) to develop the draft Terms of Reference.
7. The first meeting of Steering Committee will take place as soon as possible, but not later than June 30, 2004.
8. The Working Group will be established and have developed a work plan for approval by the Steering Committee no later than September 30, 2004.
9. DIAND agrees to lead this process, in partnership with the GNWT. Reasonable funding to support the participation of the Aboriginal Parties will be determined by Canada and GNWT.