



UNITED NATIONS DEVELOPMENT PROGRAMME



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5 December 1975

TO: Participating and Executing Agencies of UNDP,
Field Offices of the UNDP and UNDP Headquarters

FROM: I.G. Patel *Is Patel*
Deputy Administrator (Programme)

SUBJECT: Model Project Agreement - United Nations Revolving Fund for
Natural Resources Exploration

.... The standard form of a Project Agreement (Model Agreement), which is attached, has been drafted pursuant to paragraph 48 of the Operational Procedures and Administrative Arrangements of the Revolving Fund for Natural Resources Exploration (Document DP/142) to serve as a model of the legal instrument to be agreed between the Fund and any Government for which the Fund carries out an exploration project. It should be emphasized that each user Government will negotiate its own agreement with the Fund in line with its own requirements and taking into account the specific circumstances of the project involved, consistent with the Operational Procedures and Administrative Arrangements adopted by the Governing Council of UNDP. Thus the attached Agreement will serve only as a model and will form the basis of negotiations.

At a later date the subject material will be included in the UNDP Policies and Procedures Manual.

PH.701
PH.204.4 (Cross Reference)

ARTICLE I

Definitions

Section 1.01. Wherever used in this Agreement, unless the context otherwise requires, the following terms have the following meanings:

- (1) the term "deposit" means a concentration of a mineral, or of minerals, whether or not economically exploitable;
- (2) the term "determination condition" means the first marketable stage of a Reported Mineral, determined in accordance with the provisions set forth in Annex D to this Agreement;
- (3) the term "Effective Date" means the date on which this Agreement shall come into force and effect as provided in Section 11.02 of this Agreement;
- (4) the term "Excluded Area" means any area within the Exploration Area but excluded therefrom and described as such in the descriptive statement attached hereto as Annex B;
- (5) the term "explore" means to search for minerals by geological, geochemical, geophysical, and other appropriate surveys, either surface or airborne, and by associated surface and sub-surface testing which may include drilling, sinking of shafts, digging of pits and trenches and driving of tunnels;
- (6) the term "Exploration Area" means the area referred to in Section 2.02 of this Agreement;
- (7) the term "Exploration Period" means a period of ___ years from the Effective Date, provided that such Exploration Period shall be extended by any period or periods during which the Fund shall have suspended the carrying out of the Project in accordance with the provisions of Section 10.02(a) of this Agreement;

(18) the term "Specialized Agency" has the meaning assigned to it by paragraph 2 of Article 57 of the Charter of the United Nations;

(19) the term "Target Area" has the meaning assigned to it in Section 2.03 of this Agreement;

(20) the term "UNDP" means the United Nations Development Programme; and

(21) the term "Work Plan" means the Work Plan referred to in Section 3.01 of this Agreement.

area of the Target Area or Areas shall not exceed 70% of the Exploration Area as originally constituted, and (ii) after a period of four years after the Effective Date the total surface area of the Target Area or Areas shall not exceed 20% of the Exploration Area as originally constituted.

(c) Upon selection of the Target Area or Areas as hereinabove provided, the Fund shall relinquish to the Government any such part of the Exploration Area as is not included in the Target Area or Areas.

an additional amount of US\$ _____ equivalent between the termination of the Minimum Work and the time of such selection⁷. The Fund shall periodically inform the Government in writing of any amendment of the Work Plan.

Section 3.03. Whenever in the judgment of the Government and the Fund, any public or private organization is qualified and prepared to take over from the Fund the carrying out of the Project with respect to any part of the Exploration Area or any part of any Target Area not previously relinquished by the Fund in accordance with the provisions of Section 2.03 of this Agreement, the Fund shall, at the request of the Government, relinquish such area, provided that if any Mineral is subsequently produced from a deposit within an area so relinquished, such deposit shall be deemed to be a Reported Mineral Deposit and such Mineral shall be deemed to be a Reported Mineral and the Fund shall be entitled to receive Replenishment Contributions thereon in accordance with the provisions of Article IV of this Agreement as if the Fund had identified such deposit and specified such Mineral in a Final Report.

Section 3.04. In carrying out the Project, the Fund, in consultation with the Government, may use the services of its own officials, the services of any United Nations organ (including the UNDP and its resident mission, if any, in the territories of the Government) and their officials, the services of any Specialized Agency and its officials, the services of the IAEA and its officials, or the services of experts, consultants or contractors (either natural persons or public or private firms or organizations and their staff) who shall all be selected by, and responsible to, the Fund.

- the Final Report, or (B) that any of the Reported Minerals specified in the Final Report can not be deemed to be of potential economic significance; and
- (ii) if the Government shall not have so notified the Fund within such period of time, the Government shall be deemed to have accepted the Final Report.

(b) In the event that the Government notifies the Fund within six months of receipt of the Final Report that it does not accept the Final Report based on either of the arguments set forth in paragraph (a)(i) above, the question as to what measures, if any, the Fund shall be obliged to take shall be decided by agreement between the Government and the Fund, or in the absence of such an agreement, by arbitration as provided in Section 8.03 of this Agreement. The Fund shall take as soon as possible such measures, if any, as shall have been agreed by the parties or determined by the arbitral award and shall thereupon submit to the Government an amended version of the Final Report, which shall again be subject to the provisions of this Section 3.06.

Section 3.07. The Fund shall take all reasonable measures necessary to ensure that the information acquired by or on behalf of the Fund in carrying out the Project is not divulged to anyone except (i) the Government, (ii) the Fund and anyone acting on its behalf in carrying out the Project, and (iii) any such third party as the Government may agree.

Section 3.08. In carrying out the Project, the Fund shall maintain a separate project account which shall be audited annually by the United Nations Board of Auditors, and shall make available to the Government, at its request, the auditing report containing information with respect to such account.

ARTICLE IV

Replenishment Contribution

Section 4.01. The Government shall pay to the Fund a Replenishment Contribution in respect of any Reported Mineral produced from a Reported Mineral Deposit and shipped from, or otherwise disposed of in, the territories of the Government.

Section 4.02. The amount of the Replenishment Contribution shall be equal to 2% of the value of such Reported Mineral, such value to be determined in accordance with the provisions of Annex D to this Agreement.

Section 4.03. The Replenishment Contribution with respect to any such Reported Mineral shall be payable during a period of 15 years after the date on which commercial production of the Reported Mineral shall have begun, provided: (i) that commercial production shall be deemed to have begun on the first day of the month following six consecutive months during which production of the Reported Mineral shall have been maintained at not less than 60% of the rated plant capacity of the facilities erected for such production, and (ii) that such 15-year period shall be extended by any period during which production of the Reported Mineral was interrupted for any cause whatsoever.

Section 4.04. The Replenishment Contribution with respect to any Reported Mineral shall be paid in a currency acceptable to the Fund within 90 days after the end of each calendar quarter into such an account as the Fund shall indicate to the Government. Each such payment shall be accompanied by a detailed accounting indicating the quantity of the Reported Mineral shipped from, or otherwise disposed

Section 4.07. If the aggregate total of the Replenishment Contribution paid by the Government to the Fund in accordance with the provisions of this Agreement approaches the level referred to in the decision adopted by the Governing Council of UNDP at its 490th meeting (paragraph I(a) of paragraph 536 of the Report of the twentieth session of the Governing Council of the UNDP to the Fifty-ninth session of the United Nations Economic and Social Council, the Government, after consultation with the Fund, may propose to the Fund's governing body to agree with the Government to amend this Agreement by introducing a limitation of the aggregate total of the Replenishment Contribution payable hereunder. In considering such a proposal the Fund's governing body shall give consideration inter alia to the economic situation of _____ /country's name/, to the Fund's overall financial position as well as to the need for the Fund to become and to remain financially self-supporting. Nothing in this Agreement contained shall be deemed to include a direct or implied assurance on the part of the Fund's governing body to agree to such a proposal.

covered by Sections 5.01 and 5.02 of this Agreement, the same privileges and immunities as officials of the United Nations, the Specialized Agency concerned or the IAEA under Sections 18, 19 or 18, respectively, of the Conventions on the Privileges and Immunities of the United Nations or of the Specialized Agencies, or of the Agreement on the Privileges and Immunities of the IAEA. Nothing in this Agreement shall be construed to limit the privileges, immunities or facilities conferred upon such persons, firms or organizations and their staff in any other instrument.

(b) For the purposes of the instruments on privileges and immunities referred to in paragraph (a) of this Section 5.04:

(i) all papers and documents in the possession or under the control of any person, firm or organization and their staff referred to in such paragraph (a) relating to the Project or any part thereof shall be deemed to be documents belonging to the United Nations, the Specialized Agency concerned, or the IAEA, as the case may be; and

(ii) any equipment, materials and supplies as well as personal and household effects brought into, or purchased, or leased within the territories of the Government by any such person, firm or organization and their staff shall be deemed to be the property of the United Nations, the Specialized Agency concerned, or the IAEA, as the case may be.

(c) The Government shall exempt any person, firm or organization and their staff referred to in paragraph (a) of this Section 5.04 from, or bear the cost of, any taxes, duties, fees or levies imposed under

ARTICLE VI

Government's Assistance to the Project

Section 6.01. Subject to any security provisions in force, the Government shall make available to the Fund, or to the United Nations organs, Specialized Agencies, IAEA, persons, firms or organizations referred to in Article V of this Agreement, as the case may be, and to their officials or staff without any charge any published and unpublished reports, maps, air photographs, records and other information and data which may be available to the Government and which may be necessary or useful for the carrying out of the Project, and shall enable their authorized representatives to visit any part of its territories for the purpose of the Project and to examine any records and documents relevant thereto.

Section 6.02. (a) The Government shall take any measures which may be necessary to exempt the Fund, or the United Nations organs, Specialized Agencies, IAEA, persons, firms or organizations referred to in Article V of this Agreement, as the case may be, and their officials or staff, from any laws and regulations in effect in its territories which may interfere with the carrying out of the Project or with the payment to the Fund of any Replenishment Contribution due the Fund hereunder, and shall grant them such other facilities as may be necessary for the speedy and efficient carrying out of the Project.

(b) The Government shall in particular grant to the Fund, or to the United Nations organs, Specialized Agencies, IAEA, persons, firms or organizations referred to in Article V of this Agreement as the case may be, and their officials or staff, the following rights and facilities:

Section 6.03. The Project being carried out for the benefit of the Government and its people, the Government shall bear all risks arising therefrom. The Government shall be responsible for dealing with any claims which may be brought by third parties against the Fund, or against United Nations organs, Specialized Agencies, IAEA, persons, firms or organizations referred to in Article V of this Agreement, as the case may be, and against their officials or staff, and shall indemnify them for any liabilities arising from the carrying out of the Project or any part thereof, provided that the provisions of this Section 6.03 shall not apply if the Government and the Fund agree that a liability arises from the wilful misconduct or gross negligence of any such official or staff member. Such indemnification shall include attorneys' fees, court costs and other expenses in connexion with the defense against, or settlement of, claims on account of such liability.

Section 6.04. If upon completion of the Project the Government and the Fund agree that it shall be more economical to sell in the Government's territory rather than to export therefrom any equipment or material imported into such territory by or on behalf of the Fund for the purpose of carrying out the Project, the Government shall use its best efforts to facilitate such sale and shall permit the free transfer of the proceeds thereof outside the Government's territory.

Section 7.04. Without limitation upon the Fund's obligations set forth in Section 7.01 of this Agreement, the Fund shall submit to the Government progress reports describing in reasonable detail the work performed and the results obtained in carrying out the Project during the periods under consideration as follows:

- (i) no later than 30 days after the close of each of the first three calendar quarters a quarterly progress report covering such calendar quarter;
and
- (ii) no later than 30 days after the close of each calendar year an annual progress report covering such calendar year.

unable to act, a successor arbitrator shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of such original arbitrator.

(c) An arbitration proceeding may be instituted under this Section upon notice by the party instituting such proceeding to the other party. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration and the nature of the relief sought and the name of the arbitrator appointed by the party instituting such proceeding. Within 30 days after such notice, the other party shall notify the party instituting the proceeding, the name of the arbitrator appointed by such other party.

(d) If within 60 days after the notice instituting the arbitration proceeding the parties shall not have agreed upon an Umpire, any party may request the appointment of an Umpire as provided in paragraph (b) of this Section.

(e) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Umpire. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

(f) The Arbitral Tribunal shall decide all questions relating to its competence and shall, subject to the provisions of this Section and except as the parties shall otherwise agree, determine its procedure. All decisions of the Arbitral Tribunal shall be by majority vote.

(g) The Arbitral Tribunal shall afford both parties a fair hearing and shall render its award in writing. Such award may be rendered even in the event of default of appearance by either party. An award signed by a majority of the Arbitral Tribunal shall constitute the

(k) Notwithstanding any termination of this Agreement pursuant to Article X hereof, the provisions of this Section 8.03 shall continue in full force and effect in respect of any dispute arising either before or after such termination, provided such dispute shall be submitted to arbitration within six months after the date of such termination.

Section 9.02. The Government shall furnish to the Fund sufficient evidence of the authority of the person or persons who will, on behalf of the Government, take any action or execute any documents required or permitted to be taken or executed by the Government under this Agreement and the authenticated specimen signature of each such person.

Section 9.03. Any action required or permitted to be taken, and any documents required or permitted to be executed, pursuant to this Agreement, on behalf of the Government, may be taken or executed by /Minister of Mines, Finance, etc.? or any person thereunto authorized in writing by him. Any modification or amplification of the provisions of this Agreement may be agreed to on behalf of the Government by written instrument executed on behalf of the Government by the representative so designated or any person thereunto authorized in writing by him; provided that, in the opinion of such representative, such modification or amplification is reasonable in the circumstances and will not substantially increase the obligations of the Government under this Agreement. The Fund may accept the execution by such representative or other person of any such instrument as conclusive evidence that in the opinion of such representative any modification or amplification of the provisions of this Agreement effected by such instrument is reasonable in the circumstances and will not substantially increase the obligations of the Government thereunder.

Section 9.04. If future decisions of the governing body of the Fund should establish procedures or conditions for governments requesting the Fund's assistance which are more favorable to such governments than the procedures and conditions herein provided, then and in that event, the Government and the Fund, at the request of the Government, shall agree

ARTICLE X

Suspension or Termination

Section 10.01. (a) In the event that the Fund shall fail to perform any of its obligations under this Agreement, the Government shall be entitled to give notice in writing of such failure to the Fund, provided, (i) that such notice shall specifically describe such alleged failure and that it shall refer to this Section 10.01(a) and to the possibility of this Agreement being thereafter terminated in accordance with the provisions of Section 10.01(b) hereinafter, and (ii) that after receipt by the Government of the Final Report, any claim by the Government that the Fund has failed to perform any of its obligations hereunder shall be made in accordance with the provisions of Section 3.06 of this Agreement and not those of this Section 10.01.

(b) If the event referred to in paragraph (a) hereinabove shall continue for a period of 90 days after notice thereof has been given by the Government to the Fund in accordance with the provisions of such paragraph (a), then at any time thereafter during the continuance of such event, the Government may request that this Agreement be terminated by arbitration in accordance with the provisions of Section 8.03 of this Agreement.

Section 10.02. (a) The Fund shall be entitled by notice to the Government to suspend the carrying out of the Project if any event (including, but not limited to, the failure of the Government to perform any of its obligations under this Agreement) occurs which in the judgement of the Fund interferes with or threatens to interfere with the successful completion of the Project or the accomplishment of the purposes thereof; the Fund shall consult the Government before any such suspension.

- (v) on _____* (or such later date as the Fund, by notice to the Government, shall have determined for the purpose of making this Agreement effective), unless the Fund shall have dispatched to the Government on or prior to _____* (or such later date, as the case may be) the notice referred to in Section 11.02 of this Agreement.

* Note: In the blanks in this paragraph, a date will be inserted by which the Government can reasonably be expected to submit to the Fund the certificate referred to in Section 11.01 of this Agreement. During negotiations it was agreed that this date should be approximately ____ days after the date of this Agreement.

IN WITNESS WHEREOF, the parties hereto, acting through their
representatives thereunto duly authorized, have caused this Agreement
to be signed in their respective names in _____
_____, as of the day and year first above written.

/Name of the Government/

By _____
Authorized Representative

UNITED NATIONS REVOLVING FUND FOR
NATURAL RESOURCES EXPLORATION

By _____

ANNEX B

Description of Exploration Area
/and Excluded Area or Areas/

/To be provided/

Note: The description should cover the Exploration Area
and any Excluded Area within the Exploration Area.

ANNEX D

Determination of Value of Reported Minerals
for the Purposes of Article IV

1. For the purposes of Article IV of this Agreement, the value of any Reported Mineral shall be the fair market price of such Reported Mineral in its first marketable stage at the place where it first reaches such stage.
2. For the purposes of paragraph 1 hereinabove:
 - (a) unless the Government and the Fund shall otherwise agree, any Reported Mineral shall be deemed to have reached its first marketable stage when it has reached the determination condition marked (X) for such Reported Mineral in the table set forth in paragraph 3 hereinafter;
 - (b) if both the determination condition "Ex-Mine" and "Ex-Concentrator" are marked (X) in such table, the determination condition "Ex-Concentrator" shall be used unless the Reported Mineral is not processed through a concentrator in the Government's territory, in which case the determination condition "Ex-Mine" shall be used;
 - (c) if both the determination condition "By-Product Credit of Net Smelter Returns" and any other determination condition are marked (X) in such table, such other determination condition shall be used unless the Reported Mineral is being produced merely as a by-product of another Reported Mineral, in which case the determination condition "By-Product Credit of Net Smelter Returns" shall be used; and

(d) the fair market price shall be determined from time to time by agreement between the Government and the Fund, or in the absence of such an agreement, by arbitration as provided in Section 8.03 of this agreement, provided that such fair market price shall in no event be lower than the price at which the Government itself sells the respective Reported Mineral to a third party not under its control, or if the Reported Mineral is produced by an operator, the price which the Government uses for the determination of dividends or taxes, royalties or other charges payable by the operator to the Government or any of its agencies with respect to the production of the Reported Mineral.

3. The determination condition for any Mineral shall be as set forth in the table below:

The following table is given as a general indication of the determination conditions applicable in most cases. In any specific agreement, the contents of the table will be among the subjects to be negotiated between the Government and the Fund.

Determination Conditions

<u>Reported Mineral</u>	<u>Ex-Mine</u>	<u>Ex-Concentrator</u>	<u>Ex-Refinery</u>	<u>By-Product Credit of Net Smelter Returns</u>
Scandium				X
Selenium				X
Silicon	X			
Silver			X	X
Sodium		X		
Stone	X			
Strontium		X		
Sulphur			X	
Talc, Soap-stone and Pyrophyllite	X	X		
Tantalum		X		X
Tellurium				X
Thallium				X
Thorium		X		
Tin		X		
Titanium	X	X		
Tungsten		X		
Uranium		X		
Vanadium		X		
Vermiculite		X		
Zinc		X		
Zirconium		X		