

M.I.M. HOLDINGS LIMITED

CERTIFIED EXTRACT OF MINUTES OF BOARD MEETING

HELD ON 24 AUGUST 2001

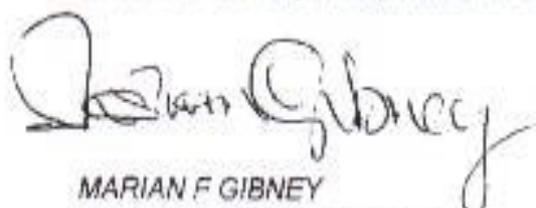
RESTEC LEAD SLAG RE-TREATMENT

Mr Gooding explained the background to a proposed agreement with ResTec Pty Ltd, a company which specialises in environmental remediation technology, and which intends to investigate the application of an experimental microwave technology on the lead slag stockpile located on the Mount Isa mining lease. Issues relating to the proposed agreement, including safety and environmental considerations, were discussed by the Board.

It was resolved that the Executive General Manager – Mount Isa Business Unit be and is hereby authorised to execute a Heads of Agreement with ResTec Pty Ltd.

*I hereby certify that this is a true and correct copy of a resolution from the minutes of an M.I.M. Holdings Limited Board meeting held on 24 August 2001.*

*Dated this 12<sup>th</sup> day of September 2001.*



MARIAN F GIBNEY  
Secretary and General Counsel

# Heads of Agreement

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M.I.M. Holdings Limited (ACN 009 814 019)

and

ResTec Pty Limited (ACN 094 216 841)

M.I.M. Holdings Limited  
Level 3  
410 Ann Street  
Brisbane Qld 4000  
Telephone: 3833 3000  
Fax 3839 3036

<b>Date</b>	18 September 2001
<b>Parties</b>	
1.	M.I.M. Holdings Limited (ACN 009 814 019) of Level 3, 410 Ann Street, Brisbane, Qld ( <i>MIM</i> ); and
2.	ResTec Pty Limited (ACN 094 216 841) of Level 2, 1 Rosebery Ave, Rosebery, NSW ( <i>ResTec</i> ).
<b>Recitals</b>	
A	MIM, through its subsidiary, Mount Isa Mines Limited, carries out lead and zinc mining and smelting operations at Mount Isa, Queensland.
B	MIM produces, as part of the lead smelting process, a waste product known as smelter slag that retains a percentage level of lead and zinc which cannot currently be removed economically from the slag.
C	MIM has a stockpile of approximately three and a half (3½) million tonnes of slag (" <i>Stockpile</i> ") at its Mount Isa operations.
D	ResTec holds the rights to commercially exploit certain processes utilising experimental microwave technology to enable the removal of residual metals from waste residues such as slag.
E	In consideration of the provision of the supply to ResTec of slag from the Stockpile for testing and research purposes and of the benefits to MIM from the further beneficiation of its waste products, the Parties have agreed to enter into this Agreement to state the terms and conditions of ResTec's access to slag from the Stockpile for testing purposes and to grant ResTec an option to construct and operate a commercial plant at MIM's Mount Isa operations for the commercial treatment of slag to remove residual metals, principally zinc, from the slag.

**Operative Part**

1. **DEFINITIONS AND INTERPRETATION**

Definitions

- 1.1 "Commercial Agreement" means the detailed commercial agreement or agreements to be negotiated and entered into between the Parties in accordance with clause 3.3;
- "Confidential Information" means:
- i) information made available by MIM to ResTec regarding MIM's operations, commercial arrangements and technologies; and
  - ii) information made available by ResTec to MIM in connection with the ResTec

Technology;

on or after the date of this deed, including but not limited to:

- (a) information disclosed in any negotiation or other discussion, or in any document, written material, or electronic form;
- (b) particulars relating to any present or former contractor, consultant or other third party, who has transacted or dealt or proposes to transact or deal with MIM or ResTec;
- (c) contracts or arrangements including proposed contracts or arrangements whether or not written or legally binding with or concerning MIM, ResTec or the ResTec Technology;
- (d) financial information and data, budgets, estimates, projections, and business and marketing plans of MIM or ResTec;
- (e) computerised information including computer programs, systems software, data stored on hard disc, floppy disc, CD, DVD, DAT tapes or other media, hardcopy printouts of data, system design and layouts, data model, copies of executable source and object code, samples of reports and other output, screen printouts, user documentation and training and operational manuals; opinions, advices or reports obtained from legal, accounting or other professionals or consultants;
- (f) information, agreements and arrangements between MIM or ResTec and sub-contractors or other third parties having dealings or contemplating dealings with MIM or ResTec;
- (g) opinions, advices or reports obtained from legal, accounting or other professionals or consultants;
- (h) technology developed or in the course of development or acquired by MIM or ResTec;
- (i) intellectual property rights, know-how, techniques, licences held and licences granted, trade secrets, ideas, concepts, technology, plans, drawings, and information which is capable of being legally protected as confidential information relating to any aspect of MIM, the ResTec Technology or ResTec or a related entity or the business of any of them;
- (j) agreements or dealings of MIM or ResTec or the business of either of them;
- (k) statistical data of any kind in relation to MIM or ResTec; and
- (l) operating practices, procedures and strategic methods of MIM or ResTec.

“**Conventional Processing**” means the furning of lead slags in conventional smelting vessels using hydrocarbon fuels (eg. pulverised coal, fuel oil) as the heat source;

“**GST Law**” has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999, or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act;

“**GST**” means the goods and services tax as imposed by the GST Law;

“**GST Amount**” means any Payment (or the relevant part of that Payment) multiplied

by the appropriate rate of GST (currently 10%);

“Input Tax Credit” has the meaning given to that term under the GST Law.

“MIM” means M.I.M. Holdings Limited (ACN 009 814 019) and its related corporation, Mount Isa Mines Limited;

“Mount Isa Operations” means MIM’s copper and silver/lead/zinc mining, mineral processing and smelting operations in Mount Isa, Queensland;

“Option” means the option granted by clause 3.1 upon the exercise of which ResTec is entitled (subject to clause 3.2) to require MIM to enter into negotiations for a Commercial Agreement in accordance with clause 3.3;

“Option Period” means the period of time commencing on the date of this Agreement and ending on the date that is **eighteen months from the date of this Agreement**;

“Payment” means any amount payable under or in connection with this Agreement or the Commercial Agreement (as the case may be) including any amount payable by way of indemnity, reimbursement or otherwise and includes the provision of any non-monetary consideration.

“ResTec” means ResTec Pty Limited (ACN 094 216 841);

“ResTec Technology” means certain microwave technology, the licence rights, patented processes and technological applications of which ResTec is entitled to utilise to treat mineral ores, primary concentrates, slag and other waste substances in order to remove primary and residual metals therefrom;

“slag” means waste lead smelter product from the Mount Isa Operations which the parties agree, for the purposes of this Agreement, contains an average percentage content of zinc of approximately 13% but no warranty is given in relation to the zinc concentration of the slag;

“Slag Treatment Plant” means a commercial plant to be constructed and operated by ResTec at the Mount Isa Operations at which the ResTec Technology will be used for the treatment of slag from the Stockpile in accordance with the terms of this Agreement;

“Stockpile” has the meaning given in Recital C;

“Taxable Supply” has the meaning given to that term by the GST Law.

### **Interpretation**

**1.2** Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) The *singular* includes the plural and conversely.
- (b) A *gender* includes all genders.
- (c) If a *word or phrase* is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a *person*, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a *clause* or *schedule* is a reference to a clause of or a schedule

to this Agreement.

- (f) A reference to any *agreement* or *document* (including, without limitation, a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (g) A reference to any *Party* to this Agreement or another agreement or document includes the Party's successors, permitted substitutes and assigns.
- (h) A reference to *legislation* or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to *good faith* means:
  - (i) being reasonable, diligent and honest;
  - (ii) doing all things required by this Agreement promptly;
  - (iii) not doing anything to impede or restrict the other Party's performance of the Agreement;
- (j) A reference to *conduct* includes, without limitation, an omission, statement and undertaking, whether or not in writing.
- (k) A reference to *approval* includes, without limitation, any authority, consent, approval, permit, licence, agreement to perform an act or to not perform an act (as the case requires) or the giving of any administrative approval by whatever name or description that approval may be known.
- (l) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement whether or not in writing and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (m) A reference to *writing* includes a facsimile or electronic transmission and any means of reproducing words in a tangible and permanently visible form.
- (n) A reference to any professional body includes the successors of that body.
- (o) Words and expressions having a particular meaning in the Corporations Law have that meaning in this Agreement.
- (p) A reference to *dollars* and *\$* is to Australian currency.
- (q) Accounting and financial terms have the meanings commonly given to them in accordance with accounting principles generally accepted in Australia.
- (r) *Dispose* in relation to a person and any property means to sell, transfer, assign, create a security interest over, declare oneself a trustee of or part with the benefit of or otherwise dispose of that property (or any interest in it or any part of it) whether done before, on or after the person obtains any interest in the property. However it does not include a Disposal which arises as part of a charge over all the assets of a company or which is created for financing purposes from a bank or licensed financial institution.

**Incorporation of recitals and schedules**

- 1.3 Each recital and schedule to this Agreement is incorporated by reference in this Agreement but if there is any inconsistency between any recital or schedule and any

provision of this Agreement, the provision of this Agreement prevails to the extent of the inconsistency.

**Consents or approvals**

- 1.4 If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a Party or is within the discretion of a Party, the consent or approval may (unless otherwise provided) be given or the discretion may be exercised conditionally or unconditionally or withheld by the Party in its absolute discretion.

**2. RESTEC'S ACCESS TO MIM'S STOCKPILE**

**Availability of Slag for Testing Purposes**

- 2.1 MIM will during the Option Period make available to ResTec from the Stockpile at its Mount Isa Operations a reasonable amount of slag for the purpose of enabling ResTec to conduct a test program in respect of the slag in a pilot plant in Wollongong, New South Wales to determine the potential of the use of the ResTec Technology for commercial use in the treatment of slag at the Mount Isa Operations. ResTec believes that the initial amount required for testing purposes will be between 250 and 500 tonnes. Additional quantities of slag will be provided by MIM upon request by ResTec, if required.
- 2.2 The collection of slag from the Stockpile will be done by ResTec's representative in conjunction with an MIM representative. ResTec will provide MIM with at least 10 business days prior written notice of its intention to come onto the site of the Mount Isa Operations to collect slag.
- 2.3 ResTec shall at its sole risk and expense collect the quantity of slag it requires from the Stockpile and shall be responsible for transportation of the slag to its pilot plant in Wollongong. Title to the slag shall pass to ResTec upon the removal of it from site of Mount Isa Operations.

**ResTec to be Responsible for Approvals, Permits etc**

- 2.4 ResTec shall be solely responsible for obtaining at its expense all government or local authority (whether in Queensland or New South Wales or elsewhere) approvals that may be necessary to enable the legal transportation and treatment of the slag and its remediation and disposal after treatment in the pilot plant.
- 2.5 If ResTec is not able to obtain the necessary approvals to dispose of the slag residue after treatment in the pilot plant, then ResTec will at its sole risk and expense return the slag residue to and MIM will accept same at the Mount Isa Operations for disposal on site. In the event the disposal of the slag residue occurs at the Mount Isa Operations, then that disposal shall be done in accordance with MIM's environmental licences and approvals. Regardless of whether any slag residue is returned to MIM pursuant to this clause, ResTec will provide MIM with a reasonable quantity of treated slag resulting from ResTec's pilot plant in Wollongong for examination along with any data on residue stability testwork carried out by ResTec.

3. OPTION TO CONSTRUCT PLANT IN MOUNT ISA

Exercise of Option by ResTec

3.1 MIM hereby exclusively grants ResTec the Option. The Option may be exercised by ResTec at any time during the Option Period by giving MIM notice of exercise of the Option.

3.2 ~~The exercise of the Option shall be subject to MIM's approval for the ResTec Technology to be utilised at the Mount Isa Operations.~~ Such approval, which will not be unreasonably withheld, will be based on, the process proving to be technically, commercially and environmentally viable, namely:

- (a) the results of the tests conducted on the slag provided by MIM under clause 2.1 demonstrating that the slag after processing by ResTec is no less suitable for its current usage as underground fill and there being not less than:
  - (i) 75% recovery of zinc from the lead slag; and
  - (ii) 95% purity of zinc metal or zinc oxide recovered;
 and,
- (b) based on the zinc content of the slag being not less than 13%, demonstrate the power consumption per tonne of recovered zinc at a cost lower than that of Conventional Processing.

The results of the tests set out in clauses 3.2(a) and (b) must be certified by the CSIRO or other independent body or person with requisite credentials, and if necessary these certifications may be in more than one certificate and from more than one source. This certification will be equally acceptable if it certifies lesser percentages than in clauses 3.2(a) (i) and (ii) if it states the above percentages can be achieved without significant modification to the plant or process.

- (c) the process and operation will meet the requirements of the Mount Isa Mines Limited Agreement Act 1985, all other relevant environmental regulations and best practice environmental management.;
- (d) the process and operation will not unreasonably interfere with MIM's mining and processing operations and day to day activities.

3.3 Subject to the approvals required by clause 3.2, upon the exercise of the Option, the Parties' respective representatives will meet to discuss in good faith and to resolve and to enter into an agreement or agreements covering all commercial, technical, legal and logistical issues concerning or relating in any way to the construction and operation at the Mount Isa Operations of the Slag Treatment Plant including:

- (a) The term of the Commercial Agreement shall be for a minimum of five years from the exercise date of the Option. ~~ResTec shall have the right to extend the term for a further two periods of three years provided it has met the performance standards set out in clause 3.3(q), the requirements of clauses 3.2 (c) and (d) and is not otherwise in breach of the agreement.~~
- (b) The identification of at least 1.2 hectares of MIM's Mining Lease 8058 land at

- Mount Isa in proximity to the Stockpile that is acceptable to both parties.
- (c) The area will be subleased to ResTec for \$5,000.00 per annum for the construction of the Slag Treatment Plant. The sublease of the site will be subject to the consent of the Minister for the time being charged with the administration of the Mineral Resources Act 1989 and the Mount Isa Mines Limited Agreement Act 1985. Prior to the commencement of the construction of the Slag Treatment Plant on the site agreed by the Parties, an audit of the site shall be conducted by MIM to determine the contamination levels and rehabilitation obligations then existing for the site. ResTec will assume the obligation to obtain any necessary environmental licences from any governmental authority to operate the Slag Treatment Plant and to rehabilitate the site from any of its works or doings. MIM shall assist ResTec where possible with its applications for environmental approvals;
  - (d) ResTec will independently negotiate power supply and transmission arrangements with the respective commercial providers. Where possible MIM will provide ResTec reasonable assistance in securing these agreements;
  - (e) MIM will use its reasonable endeavours to make available to ResTec from currently existing infrastructure and equipment the necessary infrastructure and services requirements, excluding power supply (but including power transmission), that ResTec will require for the construction and operation of the Slag Treatment Plant including, without limitation, water, waste disposal, weighing of slag from the Stockpile and access routes to the Slag Treatment Plant. Such services shall be supplied by MIM to a point of connection at commercial rates and on commercial terms. The cost of obtaining or constructing the connection to the services will be solely ResTec's. The supply of power transmission infrastructure by MIM for ResTec under this clause is limited to a power requirement of no more than 6 megawatts;
  - (f) It is agreed that for the purpose of power load shedding, when necessary, the Slag Treatment Plant will be subject to power consumption restrictions before the Mount Isa Operations;
  - (g) ResTec will pay rental as from the date of the granting of the sub-lease or other title for the Slag Treatment Plant and royalties or other payments in respect of the slag taken and treated from the Stockpile monthly in arrears;
  - (h) Arrangements for the sampling and assaying of the slag from the Stockpile to determine its metal content will generally be provided by MIM to ResTec at cost provided it does not interfere with MIM's operations and day to day activities;
  - (i) The obligations of ResTec to remove the Slag Treatment Plant from the site at the termination of the Commercial Agreement and to rehabilitate the site to no more than the level of contamination existing prior to the construction of the Slag Treatment Plant;
  - (j) ~~The lodgment of an unconditional bank guarantee or equivalent financial security instrument by ResTec with MIM (to a value of up to \$250,000) for the term of the Commercial Agreement to secure the obligations of ResTec under the Commercial Agreement including, without limitation, to remove the Slag Treatment Plant and to rehabilitate the site after the termination of the Commercial Agreement~~

**Construction and Operation of Slag Treatment Plant**

- (k) If ResTec exercises the Option, it shall be responsible for all costs and expenses relating to the construction and later operation of the Slag Treatment Plant.
- (l) ResTec shall also at its sole expense be responsible for obtaining all governmental, semi-governmental and local authority approvals that may be necessary for the construction and on-going operation of the Slag Treatment Plant. MIM shall wherever required provide its support and give its consent as landowner or leaseholder to any approval sought by ResTec. Should there be a necessity for significant involvement of MIM personnel to assist ResTec, MIM shall be reimbursed for the time spent by its personnel at the rates agreed by the Parties. Upon request by MIM, ResTec shall forthwith provide copies of all such approvals to MIM. ResTec will apply for the necessary construction approvals as soon as reasonably possible, and in any event within 6 months, after exercise of the Option (or later if the site has not been identified). Thereafter ResTec will construct the Slag Treatment Plant to an operational stage within a further 18 months.
- (m) The risk, costs and expenses associated with the operation of the Slag Treatment Plant will in all respects be to ResTec's account. The Parties must agree on the costs and expenses that ResTec must pay MIM for the provision or supply of any infrastructure or services and the means and timing of those payments which will be at commercial rates and on commercial terms.
- (n) After the site for the Slag Treatment Plant has been agreed between the Parties, ResTec shall construct a security fence around the site. It and its personnel, contractors, consultants and agents shall then be entitled to unrestricted access to the site via agreed access routes for all purposes connected with the construction of the Slag Treatment Plant.

**Operation of Slag Treatment Plant**

- (o) ResTec shall have exclusive access to and use of the Stockpile for the purposes of treatment of slag for recovery of zinc from the date of this Heads of Agreement until terminated and, if entered into, during the term of the Commercial Agreement. MIM will have access to and use of the Stockpile for purposes other than treatment of slag for recovery of zinc.
- (p) MIM shall give no warranty as to the amount of slag in the Stockpile or in respect of the characteristics, specifications or suitability of the slag for use in the Slag Treatment Plant.
- (q) ResTec will process through the Slag Treatment Plant a minimum of:
  - 75,000 tonnes of slag in the first year;
  - 100,000 tonnes of slag in the second year;
  - 300,000 tonnes of slag in the third and successive years

for the duration of the Commercial Agreement. For purposes of this agreement the first year will commence on the date which is 6 months after the commissioning of the Slag Treatment Plant which will be the date of handover to ResTec under the contract for construction of the Slag Treatment Plant.

*4 = 24 x 305 = 801  
= 35,000  
min 20 modules*

- (r) After treatment of the slag in the Slag Treatment Plant, ResTec shall return the waste product then remaining ("*Treated Slag*") to MIM for disposal according to MIM's environmental licences. ResTec shall warrant that the Treated Slag shall have similar properties to the slag so that it will be capable of being used for underground bulk fill and that it will have no worse environmental stability than the slag (according to the Toxicity Characteristic Leach Procedure as outlined in the US Federal Register Vol 51, No 114 or AS 4439.3). ResTec will provide MIM with a reasonable quantity of treated slag resulting from ResTec's pilot plant in Wollongong for examination along with any data on residue stability testwork carried out by ResTec.
- (s) ResTec will research the possibility of fully treating the slag by the ResTec Technology so that the waste product then remaining will be inert and without any significant quantities of metal content and so that it may be suitable to be used for some productive purpose such as, without limitation, road base material, cement substitute, or for paste fill used in the mining operations at the Mount Isa Operations. ResTec will make no warranty as to the eventual outcome of this research but undertakes to continue to carry out this research in order to make every reasonable endeavour to achieve the results indicated in this clause.

**Default and Termination of Commercial Agreement**

- (t) In the event of a breach of or default under the Commercial Agreement that is capable of being remedied the party not in breach or default will give to the defaulting party a notice to remedy the breach and set out a period within which such breach must be remedied. That period must be reasonable having regard to the nature of the breach.

If the default is of a fundamental nature (which it is agreed it will be if the notice of remedy is not substantially complied with within the period set out in the notice requiring remedy of the breach) the party not in default may give to the defaulting party a notice terminating the contract.

If the default involves a payment of money it will attract an interest at a rate of 2% above the 90 day bank bill rate.

**Safety at Slag Treatment Plant**

- (u) ResTec shall be appointed as operator (as that term is defined under the Mining and Quarrying Safety and Health Act 1999 (Qld)) by MIM in respect of the Slag Treatment Plant and shall be responsible for compliance with the obligations arising under the Mining and Quarrying Safety and Health Act 1999.

**4. COMMERCIAL ARRANGEMENTS IN COMMERCIAL AGREEMENT**

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**Payment to MIM and Ownership of Minerals**

- 4.1 It is agreed that the Commercial Agreement to be negotiated pursuant to clause 3.3 will also provide that:

- (a) ResTec will take ownership of the minerals extracted by the ResTec Technology;
- (b) ~~ResTec will be liable for the lodgement of royalty returns with the State of Queensland~~ in respect of the minerals extracted from the slag and for the payment of all royalties to the State of Queensland in accordance with the Mineral Resources Act 1989 (Qld). ResTec will indemnify and keep indemnified MIM in respect of all liabilities for the payment of royalties to the State of Queensland;
- (c) MIM shall retain ownership of the treated slag which, subject to the provisions of this Agreement, shall be returned to MIM by ResTec at ResTec's cost to a stockpile area for treated slag designated for that purpose by MIM;
- (d) Whilst the slag is in ResTec's possession for treatment in the Slag Treatment Plant and until the treated slag is delivered to MIM in accordance with the requirements of this clause, the risk of injury, damage and loss shall be solely ResTec's and ResTec shall at all times indemnify MIM for any claims, damage, injury or loss arising out of or in connection with the slag and its treatment in the Slag Treatment Plant;
- (e) The consideration payable by ResTec to MIM under the Commercial Agreement shall be in the form of a Royalty of ~~25% of the Net Profit earned by ResTec~~ from the operation of the Slag Treatment Plant where:

Net Profit = Revenue less Operating Costs where:

- (i) **Revenue** means the gross revenue received for sale of zinc (or other metals or materials extracted from the slag) excluding any commissions and/or marketing costs; and
- (ii) **Operating Costs** are reasonable costs that ResTec can demonstrate are incurred and are directly attributable to the operation of the Slag Treatment Plant limited to ~~on-site labour, power, fuel, consumables, services, mobile equipment leasing costs, technology royalties, mining royalty, equipment maintenance, transport and freight charges, property insurance, assay costs, safety equipment, off-site administration costs and on-site administration and office costs. Specifically excluded from Operating Costs are lease costs for non-mobile equipment, capital expenditure, financing costs, depreciation and off-site overheads.~~

The Royalty shall be payable by ResTec to MIM quarterly in arrears;

- (f) MIM shall have the right to conduct periodic audits of the technical and financial results of the operation of the Slag Treatment Plant upon 30 days notice to ResTec subject to a maximum of two (2) audits per annum. ResTec shall produce all technical and financial documents and information to MIM's auditors and shall provide the auditors with all reasonable assistance and explanation in respect of the relevant documents and information. MIM shall be entitled to engage independent third party auditors to conduct or review the audits or audit results if it so chooses.
- (g) MIM shall provide ResTec with any information it may have in its records on characteristics of the Stockpile including assay results and prior treatment of slag to assist ResTec with the operation of the Slag Treatment Plant.

- (h) Should ResTec develop the ResTec Technology so that it is able to remove any other residual metals in the slag such as, without limitation, lead or silver, the Parties will discuss in good faith including in the Commercial Agreement provision for making payment to MIM for these additional metals.

**Option to Market Zinc and Other Metals for ResTec**

- (i) ~~ResTec shall grant MIM the option to market zinc and any other metals derived by ResTec from the ResTec Technology in Australia subject to reaching reasonable commercial arrangements for same.~~

**Further Applications of the ResTec Technology**

- (j) The Parties will consider other opportunities to work together on other applications of the ResTec Technology. If MIM and/or ResTec should find another application to which the ResTec Technology could reasonably be put or in relation to which some further testing or experimentation could be undertaken, then the Parties will discuss in good faith pursuing such other application or testing or experimentation. ~~ResTec acknowledges that MIM wishes to have the option on preferential terms, if the ResTec Technology proves to be commercially viable, to utilise the ResTec Technology for treatment of primary ores or concentrates and to take up an interest in large projects which could result in the production of more than 50,000 tonnes per annum of zinc in-products. ResTec and MIM will further discuss opportunities for utilising the ResTec Technology in these types of projects. ResTec acknowledges that it will preferentially deal with MIM in these applications and projects in return for MIM's participation in this Agreement.~~

**Payment of GST under Commercial Agreement**

- (k) The parties will agree that if the whole or any part of any Payment is the consideration for a Taxable Supply, the payer must pay to the payee an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing.

The parties will agree that a reference to a cost or expense in the Commercial Agreement excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an Input Tax Credit.

The payee shall provide promptly all information and materials required to allow the payer to claim an Input Tax Credit for the Taxable Supply made to the payer, including providing a tax invoice or adjustment note, if an adjustment has been made. Any tax invoice or adjustment note provided by the payee must comply with the GST Law. Additionally, the tax invoice or adjustment note must show the GST exclusive price for the Taxable Supply, the total amount of GST payable and the GST inclusive price for the Taxable Supply.

**5. COMMERCIAL AGREEMENT TO BE ENTERED INTO**

- 5.1 This Heads of Agreement is intended by the Parties to be preliminary only and (only if

the Option is exercised) expanded into the Commercial Agreement governing the issues covered herein and any other issues that arise during the course of this Agreement or during negotiations between the Parties for the Commercial Agreement. The Parties agree that it is likely that there will be other important issues to be covered in the Commercial Agreement that are not specifically covered in this Agreement and that issues touched on generally in this Agreement may be significantly expanded to provide the necessary commercial detail to govern the operation of the Slag Treatment Plant at the Mount Isa Operations.

- 5.2 Regardless of this Agreement being preliminary only, it is nevertheless binding on and enforceable by the Parties.
- 5.3 The Parties shall meet within seven (7) days (or such other time as may be agreed) of the exercise of the Option by ResTec to commence negotiating the Commercial Agreement. The Parties shall meet as frequently as may be necessary to reach agreement on all issues to be included in the Commercial Agreement.
- 5.4 If the Parties are not able to reach final agreement in relation to the terms and conditions of the Commercial Agreement, then the Parties will submit the issues in respect of which the Parties are unable to reach agreement, after reasonable negotiation, to a mediator agreed by the Parties or, failing agreement, as appointed by the President of the Queensland Law Society for mediation of the issues. The decisions of the mediator will not be binding on either party.
- 5.5 This Heads of Agreement and the agreements and arrangements contemplated by this Heads of Agreement are subject to the approval of the MIM Board of Directors. Such approval shall be sought at the August 2001 meeting of the MIM Board.

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## 6. CONFIDENTIALITY

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- 6.1 Except as otherwise set out in this Agreement or as otherwise required by applicable law or Stock Exchange Listing Rules, each Party shall for a period of fifteen (15) years from the date of this Agreement, treat the Confidential Information as private and confidential and shall use its reasonable endeavours to ensure that the Confidential Information is made available only to:-
- (a) the Parties;
  - (b) directors or employees of or legal, financial or technical advisers to that Party or to a related body corporate of that Party where the duties and functions of the person concerned require that the person have a knowledge of or access to that Confidential Information and in each case only on the basis of a legally enforceable written undertaking being executed by that person to keep that Confidential Information confidential in accordance with the terms of this Clause 6;
  - (c) any other person to whom the Parties have agreed in writing that the Confidential Information may be disclosed by a Party,

and in the case of a disclosure under paragraph (c), subject to prior execution by the agreed recipient of the Confidential Information of a Confidentiality Agreement acceptable to the Parties.

- 6.2 The provisions of Clause 6 shall not extend to such of the Confidential Information which a Party is able to demonstrate:-
- (a) is in, or acquired in good faith from, the public domain or, without breach of its obligations of confidentiality, becomes part of the public domain;
  - (b) was known to it without fault on its part as at the date of this Agreement;
  - (c) was acquired by it after the date of this Agreement from a person whom the Party reasonably believes not to have been under an obligation of confidentiality in relation thereto; or
  - (d) was developed and applied by the Party independently, using its own knowledge and resources or using the knowledge and resources of a third party not connected with ResTec and such third party is not under an obligation of confidentiality in relation to such knowledge or resources to any other Party.
- 6.3 For the purposes of Clause 6.2, Confidential Information shall not be deemed to be in the public domain, known to the relevant Party, acquired by it or developed by it if merely individual elements of the Confidential Information or certain combinations of it are in the public domain or so known, acquired or developed and applied, and similarly a specific element of Confidential Information shall not be deemed to be in the public domain or known to the relevant Party, acquired by it or developed and acquired by it merely because that element of the Confidential Information is embraced by more general information that is in the public domain or so known, acquired or developed and applied.
- 6.4 Each Party shall use efforts, procedures and security precautions to protect the Confidential Information fully commensurate with and equivalent to the highest standard normally employed by a person for the protection of proprietary, commercially sensitive and confidential information.

**7. RIGHTS TO RESTEC TECHNOLOGY**

- 7.1 MIM acknowledges that, as between the Parties, all rights and interests in the ResTec Technology are, and will remain, owned absolutely by ResTec and MIM will not do anything, directly or indirectly, that would or might invalidate or put in dispute ResTec's title to the ResTec Technology.

**8. GOODS AND SERVICES TAX**

- 8.1 The Parties agree that if the whole or any part of any Payment is the consideration for a Taxable Supply, the payer must pay to the payee an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing.
- 8.2 The parties agree that a reference to a cost or expense in this Agreement excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an Input Tax Credit.
- 8.3 The payee shall provide promptly all information and materials required to allow the payer to claim an Input Tax Credit for the Taxable Supply made to the payer, including providing a tax invoice or adjustment note, if an adjustment has been made. Any tax

invoice or adjustment note provided by the payee must comply with the GST Law. Additionally, the tax invoice or adjustment note must show the GST exclusive price for the Taxable Supply, the total amount of GST payable and the GST inclusive price for the Taxable Supply.

**9. FORCE MAJEURE**

**9.1** Neither party shall be liable for any failure by it fulfil any obligation or for any delay by it in fulfilling any obligation hereunder, if and to the extent that such failure or delay is due to any circumstance which is beyond the reasonable control of such party, such as but not limited to, Acts of God; bad weather; wars (declared or undeclared); blockades; riots; insurrections; acts of a public enemy; strikes; lockouts; shortage of labour, or other industrial disturbances; hazards of navigation; fires; shortages of or inability to obtain fuel, water, steam, electric power, transportation, raw materials, or manufactured products; embargo, restriction of transportation facilities; action of any competent governmental authority; compliance with the law; orders, directions or regulations of any competent governmental authority; compliance with the decision of any competent judicial or administrative authority; civil disturbances, explosions, damage to or destruction of machinery; and any other causes beyond the reasonable control of the Party in question, whether of the kind stated herein or otherwise.

**9.2** The Party affected by such event of force majeure shall immediately give written notice to the other Party of such event and shall also give written notice to the other Party when the event of force majeure ceases to have effect.

The Party affected shall use its best endeavours to remove or rectify such event of force majeure as quickly as possible.

**9.3** The settlement of labour disputes affecting the relevant Party's performance hereunder shall be within the discretion of that Party.

**10. ASSIGNMENT**

**10.1** A Party may not Dispose of any of its rights or obligations under this Agreement without the other Party's written consent which must not be unreasonably withheld.

**11. NOTICES**

**11.1** Any notice given under this Agreement:

- (a) must be in writing addressed to the intended recipient at the address shown below, or the address last notified by the intended recipient to the sender:

**MIM:**

M.I.M. Holdings Limited  
C/- Central Office  
Mount Isa Mines Limited  
Mount Isa Qld 4825  
Facsimile: 07 4744 3890

Attention: Mr Stephen Best

**ResTec:**

ResTec Pty Ltd  
Level 2  
1 Rosebery Avenue  
Rosebery NSW 2018  
Facsimile: 07 3279 2508  
Attention: Mr Phil Norton

- (b) must be signed by a person duly authorised by the sender,
- (c) will be taken to have been given when delivered, received or left at the above address. If delivery or receipt occurs on a day when business is not generally carried on in the place to which the notice is sent, or is later than 4pm (local time), it will be taken to have been duly given at the commencement of business on the next day when business is generally carried on in that place.

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**12. FURTHER ASSURANCES**

- 12.1 Each Party must take all steps, execute all documents and do everything reasonably required by any other Party to give effect to any of the transactions contemplated by this Agreement.

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**13. ENTIRE AGREEMENT**

- 13.1 This Agreement contains the entire agreement of the Parties with respect to the subject matter. It sets out the only conduct relied on by the Parties and supersedes all earlier conduct by the Parties with respect to their subject matter.

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**14. AMENDMENT OF THIS AGREEMENT**

- 14.1 This Agreement may be amended only by another agreement executed by both Parties.

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**15 NO WAIVER**

- 15.1 No failure to exercise and no delay in exercising any right, power or remedy under this Agreement will operate as a waiver, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

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**16. REMEDIES CUMULATIVE**

16.1 The rights, powers and remedies provided to a Party in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or any other agreement.

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**17. NO MERGER**

17.1 The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any such transaction.

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**18. SEVERANCE**

18.1 Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction, will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

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**19. COSTS AND STAMP DUTY**

19.1 Each Party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement and each Party will bear one half of any stamp duty payable on or in respect of this Agreement. ResTec will bear any stamp duty on any transaction that the Parties must necessarily enter into in order to construct and operate the Slag Treatment Plant.

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**20. GOVERNING LAW AND JURISDICTION**

20.1 This Agreement is governed by the laws of Queensland. With respect to any legal action or proceedings which may be brought with respect to this Agreement or any transaction contemplated by this Agreement (each, a *Relevant Action*), each Party irrevocably:

- (a) submits to and accepts, for itself and in respect of its assets, generally and unconditionally the non-exclusive jurisdiction of courts exercising jurisdiction in Brisbane in connection with matters concerning this Agreement; and
- (b) waives any objection it may have now or in the future to the venue and any claim it may have now or in the future that the Relevant Action has been brought in an inconvenient forum.

21. COUNTERPARTS

21.1 This Agreement may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement.

EXECUTED as an agreement.

*Exec GM - MIBW*

SIGNED by JOHN EDWIN GOODING as the duly appointed representative of M.I.M. HOLDINGS LIMITED (ACN 009 814 019) in the presence of:

*[Handwritten Signature]*  
\_\_\_\_\_  
J.E. Gooding - Signature

*[Handwritten Signature]*  
\_\_\_\_\_  
Witness Signature

*Stephen Best*  
\_\_\_\_\_  
Print name  
*GM Finance / Commercial MIBW*

SIGNED on behalf of RESTEC PTY LIMITED (ACN 094 216 841) in the presence of:

*[Handwritten Signature]*  
\_\_\_\_\_  
Signature  
*BEVEN SCHWABER*  
\_\_\_\_\_  
Print name

*[Handwritten Signature]*  
\_\_\_\_\_  
Signature

*LINDA NAGLE*  
\_\_\_\_\_  
Print name

*DIRECTOR*  
\_\_\_\_\_  
Office held