

CONFORMED COPY - REDACTED

TERM AND REVOLVING FACILITIES AGREEMENT

19 OCTOBER 2017

between

**FIRST QUANTUM MINERALS LTD.
as Borrower**

**CERTAIN SUBSIDIARIES OF THE BORROWER
as Original Obligors**

**BNP PARIBAS and SOCIETE GENERALE, LONDON BRANCH
as Initial Mandated Lead Arrangers and Bookrunners**

**THE FINANCIAL INSTITUTIONS
as the Lenders**

**BNP PARIBAS
as Agent**

**BNP PARIBAS
as Security Agent**

ALLEN & OVERY

Allen & Overy LLP

0010155-0002583 BK:41323712.13

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THIS AGREEMENT is dated 19 October 2017 (the **Agreement**) and made

BETWEEN:

- (1) **FIRST QUANTUM MINERALS LTD.** a company organised under the laws of the Province of British Columbia, Canada with registered number BC1006807 (the **Borrower**);
- (2) **CERTAIN SUBSIDIARIES OF THE BORROWER** listed in Part 1 (The Original Obligors) of Schedule 1 (The Original Parties) as original obligors (together with the Borrower, the **Obligors**);
- (3) **BNP PARIBAS** and **SOCIETE GENERALE, LONDON BRANCH** as initial mandated lead arrangers and bookrunners, **BARCLAYS AFRICA GROUP, CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK** and **ING BANK, A BRANCH OF ING-DIBA AG** as mandated lead arrangers, **N.B.S.A. LIMITED** as lead arranger and **BANK OF MONTREAL, LONDON BRANCH, THE BANK OF NOVA SCOTIA, CITIGROUP GLOBAL MARKETS LIMITED, CREDIT SUISSE AG, LONDON BRANCH, EXPORT DEVELOPMENT CANADA, FIRSTRAND BANK LIMITED (LONDON BRANCH), HSBC BANK PLC, J.P. MORGAN SECURITIES PLC, NATIXIS SA, ROYAL BANK OF CANADA** and **STANDARD CHARTERED BANK** as arrangers (whether acting individually or together the **Arranger**);
- (4) **THE FINANCIAL INSTITUTIONS** listed in Part 2 (The Original Lenders) of Schedule 1 (The Original Parties) as lenders (the **Original Lenders**);
- (5) **BNP PARIBAS** as agent of the other Finance Parties (the **Agent**); and
- (6) **BNP PARIBAS** as security agent and trustee for the Secured Parties (the **Security Agent**).

IT IS AGREED that:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

Acceptable Bank means:

- (a) a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or A3 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency;
- (b) Original Lender; or
- (c) any other bank or financial institution approved by the Agent.

Accession Deed means a document substantially in the form set out in Schedule 9 (Form of Accession Deed).

Accounting Reference Date means 31 December.

Additional Guarantor means a company which becomes an Additional Guarantor in accordance with Clause 27 (Changes to the Obligors).

Affiliate means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

Agent's Spot Rate of Exchange means:

- (a) the Agent's spot rate of exchange; or
- (b) (if the Agent does not have an available spot rate of exchange) any other publicly available spot rate of exchange selected by the Agent (acting reasonably),

for the purchase of the relevant currency with the Base Currency in the Paris foreign exchange market at or about 11.00am on a particular day.

Agreed Environmental and Social Requirements means:

- (a) any Environmental Law or Social Law;
- (b) the World Bank Group (including IFC and MIGA) Environmental Health and Safety Policies and Guidelines including the International Finance Corporation Environmental Health and Safety Guidelines for Mining, the International Finance Corporation General Environmental Health and Safety Guidelines and the Performance Standards;
- (c) the Equator Principles; and
- (d) the "Principles and Standards of Practice" contained in the International Cyanide Management Code.

Annual Financial Statements has the meaning given to that term in Clause 21 (Information undertakings).

Assignment Agreement means an agreement substantially in the form set out in Schedule 5 (Form of Assignment Agreement) or any other form agreed between the relevant assignor and assignee.

Auditors means PwC or any other firm appointed by the Borrower to act as its statutory auditors.

Australia Corporations Act means the Corporations Act 2001 (Cth).

Australian Obligor means any Obligor organised and existing under the laws of Australia.

Australian PPSA means the Personal Property Securities Act 2009 (Cth).

Australian PPSA Deemed Security Interest means an interest of the kind referred to in section 12(3) of the Australian PPSA where the transaction concerned does not, in substance, secure payment or performance of an obligation.

Authorisation means an authorisation, consent, approval, resolution, licence (including, without limitation, any Mining Licences), exemption, filing, notarisation or registration.

Availability Period means:

- (a) in relation to the Facility A, the period from and including the date of this Agreement to and including 31 March 2018; and

- (b) in relation to the Facility B, the period from and including the first Utilisation Date under Facility B to and including the date which falls one month prior to the Termination Date (or, if not a Business Day, the preceding Business Day).

Available Commitment means, in relation to a Facility, a Lender's Commitment under that Facility minus (subject as set out below):

- (a) the Base Currency Amount of its participation in any outstanding Loans under that Facility; and
- (b) in relation to any proposed Loan, the Base Currency Amount of its participation in any other Loans that are due to be made under that Facility on or before the proposed Utilisation Date.

For the purposes of calculating a Lender's Available Commitment in relation to any proposed Loan under the Facility B only, an amount equal to that Lender's participation in any Facility B Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date shall not be deducted from that Lender's Facility B Commitment.

Available Facility means, in relation to a Facility, the aggregate for the time being of each Lender's Available Commitment in respect of that Facility.

Barclays Africa Group Barclays Africa Group means Absa Bank Limited (acting through its Corporate and Investment Bank), Barclays Bank of Botswana Limited, Barclays Bank Mauritius Limited and Barclays Bank Zambia Plc.

Base Case Model means the financial model including profit and loss, balance sheet and cashflow projections relating to the Group in the agreed form to be delivered by the Borrower to the Agent pursuant to Clause 4.1 (Initial conditions precedent) and as the same may be updated from time to time pursuant to Clause 21.4 (Base Case Model).

Base Currency means US\$.

Base Currency Amount means, in relation to a Loan, the amount specified in the Utilisation Request delivered by the Borrower for that Loan, as adjusted to reflect any repayment, prepayment or consolidation of a Loan.

Basel III means:

- (a) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
- (b) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (c) any further guidance or standards published by the Basel Committee on Banking Supervision relating to Basel III.

BBIL means Black Bark Investments Limited, a limited liability company organised and existing under the laws of the British Virgin Islands.

BBIL Share Charge means the share charge governed by the laws of the British Virgin Islands in favour of the Security Agent granted by FQMFL over the shares in BBIL from time to time in the agreed form.

BITT means a Tax in the name of Banking Insurance Transaction Tax (*Banka ve Sigorta Muameleleri Vergisi*) imposed by Expenditure Tax Law (*Gider Vergisi Kanunu*) numbered 6802 published in the Official Gazette dated 23 July 1956 and numbered 9362 (as amended), on all revenues, including interest received by the banks and insurance companies in Turkey with respect to their banking and insurance transactions.

Borrowings has the meaning given to that term in Clause 22.1 (Financial definitions).

Break Costs means the amount (if any) by which:

(a) [break costs redacted]

exceeds:

(b) [break costs redacted]

Business Day means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Paris, New York, Johannesburg, Zambia, Mauritius and Toronto.

BVI Obligors means any Obligor organised and existing under the laws of the British Virgin Islands.

Canadian Benefit Plans means any pension, retirement, savings, profit sharing, health, medical, dental, disability, life insurance, welfare or other employee benefit plan, program, policy or practice, whether written or oral, funded or unfunded, registered or unregistered, which is sponsored, maintained or contributed to or required to be contributed to by any Canadian Obligor or under which any Canadian Obligor has any actual or potential liability, other than a Canadian Pension Plan.

Canadian Obligor means any Obligor organised and existing under the laws of Canada or any province, territory or other political subdivision thereof.

Canadian Pension Plan means a pension plan which is or was sponsored, administered or contributed to, or required to be contributed to, by any Canadian Obligor or under which any Canadian Obligor has any actual or potential liability.

Capital Expenditure has the meaning given to that term in Clause 22.1 (Financial definitions).

Cash or Cash Equivalent Investments means at any time:

(a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;

(b) commercial paper not convertible or exchangeable to any other security:

(i) for which a recognised trading market exists;

- (ii) issued by an issuer incorporated in Canada, the United States of America or the United Kingdom;
 - (iii) which matures within one year after the relevant date of calculation; and
 - (iv) which has a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (c) any other debt security approved by the Majority Lenders,

in each case, denominated in US\$, Canadian Dollars, euros or sterling and to which any member of the Group is alone (or together with other members of the Group) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security (other than Security arising under the Transaction Security Documents); or

- (d) cash (denominated in an internationally recognised currency which is freely convertible) (i) in hand, (ii) at bank and credited to an account in the name of a member of the Group with an Acceptable Bank or (iii) deposited with an open ended mutual fund and, in each case, to which a member of the Group is alone (or together with other members of the Group) beneficially entitled and for so long as:
- (A) that cash is repayable within 90 days after the relevant date of calculation;
 - (B) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any member of the Group or of any other person whatsoever or on the satisfaction of any other condition;
 - (C) there is no Security over that cash except for any Permitted Security constituted by a netting or set-off arrangement entered into by members of the Group in the ordinary course of their banking arrangements; and
 - (D) the cash is freely available (except as mentioned in paragraph (A) above) to be applied in repayment or prepayment of the Facilities.

Change of Control occurs if any person or group of persons acting jointly or in concert gains control or acquires securities of the Borrower having 50 per cent. or more of the ordinary voting power to elect the board of directors of the Borrower.

For the purposes of this definition, **control** and **acting jointly or in concert** have the meanings given to them in the Securities Act (Ontario) and any rules promulgated thereunder.

Charged Property means all of the assets of the Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

CO means the Swiss Federal Code of Obligations of 30 March 1911.

Cobre Panama Project means the Cobre Panama copper gold porphyry development project and the connected power station and port development in the District of Donoso, Colon Province in Panama, currently in construction.

Code means the US Internal Revenue Code of 1986.

Commitment means a Facility A Commitment or a Facility B Commitment.

Compliance Certificate means a certificate substantially in the form set out in Schedule 6 (Form of Compliance Certificate).

Confidential Information means all information relating to the Borrower, any Obligor, the Group, the Finance Documents or a Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or a Facility from either:

- (a) any member of the Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes:

- (i) information that:
 - (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 39 (Confidential Information);
 - (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
 - (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraph (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and
- (ii) any Funding Rate or Reference Bank Quotation.

Confidentiality Undertaking means, at any time, a confidentiality undertaking substantially in the then current recommended form of the LMA or in any other form agreed between the Borrower and the Agent.

Constitutional Documents means in respect of any Obligor, the articles of incorporation, articles of amendment and/or articles of amalgamation, as applicable, of such entity, and, in each case, such entity's by-laws, and in the case of:

- (a) a Swedish Obligor, such Swedish Obligor's Certificate of Registration (Sw. *Registeringsbevis*) and Articles of Association (Sw. *Bolagsordning*);
- (b) a Dutch Obligor, the deed of incorporation (*oprichtingsakte*), the articles of association (*statuten*) and an extract from the Trade Register (*Handelsregister*);
- (c) a BVI Obligor, such BVI Obligor's Certificate of Incorporation and Memorandum and Articles of Association (including any amendments thereto);

- (d) an Irish Obligor, the certificate of incorporation, any certificate of incorporation on change of name (if any) and the constitution;
- (e) a Canadian Obligor organised under the law of the province of British Columbia, the certificate of incorporation, notice of articles, and articles;
- (f) a Finnish Guarantor, the articles of association (*fi. yhtiöjärjestys*) and an extract (*Fi. kaupparekisteriote*) from the Finnish Trade Register;
- (g) a Spanish Obligor, an updated excerpt issued by the relevant Spanish Commercial Registry (*Registro Mercantil*) containing, at least, the following information (i) a certificate of existence and solvency (*vigencia y solvencia*), (ii) due incorporation (*certificación de constitución*), (iii) reproduction copy of the up-to-date consolidated by-laws (*estatutos sociales actualizados*), (iv) management body (*órgano de administración*) and (v) absence of causes of liquidation or winding-up (*certificación de ausencia de causas de liquidación o disolución*);
- (h) a Zambian Obligor, such Zambian Obligor's certificate of incorporation and articles of association;
- (i) an Australian Obligor, the constitution, the certificate of incorporation and any certificate of incorporation of change of name (if any); and
- (j) a Turkish Obligor, the articles of association (*ana sözleşme*).

CRD IV means:

- (a) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and
- (b) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms,

in each case as amended or supplemented from time to time.

Debt Purchase Transaction means, in relation to a person, a transaction where such person:

- (a) purchases by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

any Commitment or amount outstanding under this Agreement.

Default means an Event of Default or any event or circumstance specified in Clause 24 (Events of Default) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

Defaulting Lender means any Lender:

- (a) which has failed to make its participation in a Loan available (or has notified the Agent or the Borrower (which has notified the Agent) that it will not make its participation in a Loan available) by the Utilisation Date of that Loan in accordance with Clause 5.4 (Lenders' participation);
- (b) which has otherwise rescinded or repudiated a Finance Document; or
- (c) with respect to which an Insolvency Event has occurred and is continuing,

unless, in the case of paragraph (a) above:

- (i) its failure to pay is caused by:
 - (A) administrative or technical error; or
 - (B) a Disruption Event; andpayment is made within three Business Days of its due date; or
- (ii) the Lender is disputing in good faith whether it is contractually obliged to make the payment in question.

Delegate means any delegate, agent, attorney, co-trustee or co-security agent appointed by the Security Agent.

Disposal has the meaning given to that term in Clause 8.2 (Disposal/MPSA Facility Proceeds).

Disposal Proceeds has the meaning given to that term in Clause 8.2 (Disposal/MPSA Facility Proceeds).

Disruption Event means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facilities (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

Dutch Obligor means any Obligor organised and existing under the laws of the Netherlands.

EGSA means Exploraciones Geologicas, S.A., a company organised and existing under the laws of Panama.

Eligible Institution means any Lender or other bank, financial institution, trust, fund or other entity selected by the Borrower and which, in each case, is not a member of the Group.

Environment means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, land under water).

Environmental Law means any applicable law or regulation which relates to:

- (a) the pollution or protection of the Environment;
- (b) the conditions of the workplace; or
- (c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

Environmental or Social Claim means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law and/or Social Law.

Environmental Permits means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by any member of the Group.

Equator Principles means that set of ten principles set out in the paper entitled "A financial industry benchmark for determining, assessing and managing social and environmental risk in project financing" dated July 2006 and developed in co-operation with the International Finance Corporation and adopted by various banks and financial institutions, together with any amendments thereto as from time to time in effect, including Equator Principles III dated 4 June 2013 (to the extent applicable).

Event of Default means any event or circumstance specified as such in Clause 24 (Events of Default).

Excluded Reinvestment Proceeds has the meaning given to that term in Clause 8.2 (Disposal/MPSA Facility Proceeds).

Excluded Subsidiary means:

- (a) MPSA;
- (b) Inmet I;
- (c) Inmet II;
- (d) FQM Construction;

- (e) Punta Rincon;
- (f) Rio Caimito;
- (g) EGSA;
- (h) FQMPPF; or
- (i) any other Subsidiary of MPSA.

Existing Canadian Pension Plans means those pension plans set out in Schedule 12 (Existing Canadian Pension Plans).

Existing Debt means Financial Indebtedness pursuant to the FQM Bonds and until the first Utilisation Date, the FQM Facilities Agreement.

Existing Guarantees means:

- (a) any guarantee given by a Guarantor in respect of the FQM Bonds; and
- (b) those guarantees set out in Schedule 13 (Existing Guarantees).

Existing Intra-Group Loans means those loans and deposits set out in Schedule 11 (Existing Intra-Group Loans).

Existing KPMC Loan means the loan provided by KPMC to MPSA in an amount of up to US\$1,200,000,000 (or its equivalent in other currencies) in connection with cash call obligations in respect of the Cobre Panama Project.

Facility means the Facility A or the Facility B.

Facility A means the term loan facility made available under this Agreement as described in paragraph (a) of Clause 2.1 (The Facilities).

Facility A Commitment means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading **Facility A Commitment** in Part 2 (The Original Lenders) of Schedule 1 (The Original Parties) and the amount of any other Facility A Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (Increase); and
- (b) in relation to any other Lender, the amount in the Base Currency of any Facility A Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (Increase),

to the extent not cancelled, reduced or transferred by it under this Agreement.

Facility A Lender means a Lender under Facility A.

Facility A Loan means a loan made or to be made under Facility A or the principal amount outstanding for the time being of that loan.

Facility A Repayment Date means each date set out in paragraph (a) of Clause 6.1 (Repayment of Facility A Loans).

Facility B means the revolving credit facility made available under this Agreement as described in paragraph (b) of Clause 2.1 (The Facilities).

Facility B Commitment means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading **Facility B Commitment** in Part 2 (The Original Lenders) of Schedule 1 (The Original Parties) and the amount of any other Facility B Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (Increase); and
- (b) in relation to any other Lender, the amount in the Base Currency of any Facility B Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (Increase),

to the extent not cancelled, reduced or transferred by it under this Agreement.

Facility B Lender means a Lender under Facility B.

Facility B Loan means a loan made or to be made under Facility B or the principal amount outstanding for the time being of that loan.

Facility Office means:

- (a) in respect of a Lender, the office or offices notified by that Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement provided that a Lender shall not nominate more than two Facility Offices at any one time unless it is necessary in order to receive payments due to it without withholding or deduction of or on account of Tax or to benefit from the provisions of Clause 14.2 (Tax gross-up); or
- (b) in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

FATCA means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraph (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

FATCA Application Date means:

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;

- (b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or
- (c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraph (a) or (b) above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

FATCA Deduction means a deduction or withholding from a payment under a Finance Document required by FATCA.

FATCA Exempt Party means a Party that is entitled to receive payments free from any FATCA Deduction.

Fee Letter means:

- (a) any letter or letters dated on or about the date of this Agreement between the Agent and the Borrower (or the Security Agent and the Borrower) setting out any of the fees referred to in Clause 13 (Fees) or any other fees agreed between the Borrower and any Finance Party from time to time; and
- (b) any agreement setting out fees payable to a Finance Party referred to in paragraph (h) of Clause 2.2 (Increase) of this Agreement or under any other Finance Document.

Finance Document means this Agreement, any Accession Deed, any Compliance Certificate, any Fee Letter, any Resignation Letter, any Selection Notice, the Subordination Agreement, any Transaction Security Document, any Utilisation Request and any other document designated as a "Finance Document" by the Agent and the Borrower.

Finance Document Dispute has the meaning given to that term in Clause 43 (Enforcement).

Finance Lease has the meaning given to that term in Clause 22.1 (Financial definitions).

Finance Party means the Agent, the Arranger, the Security Agent or a Lender.

Financial Indebtedness means any indebtedness for or in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);
- (c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of Finance Leases;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirement for de-recognition under IFRS);
- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the

termination or close-out of that Treasury Transaction, that amount) shall be taken into account);

- (g) (without double counting) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (h) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the Termination Date or are otherwise classified as borrowings under IFRS;
- (i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 90 days after the date of supply;
- (j) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under IFRS; and
- (k) (without double counting) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (j) above.

Financial Quarter has the meaning given to that term in Clause 22.1 (Financial definitions).

Financial Year has the meaning given to that term in Clause 22.1 (Financial definitions).

Finnish Guarantor has the meaning given to that term in paragraph (e) of Clause 19.11 (Guarantee Limitation).

First Extended Termination Date means the date falling 12 Months after the Initial Termination Date.

FQM Bonds means:

- (a) the US\$1,120,498,000, 7.00 per cent. senior notes due February 2021 issued by the Borrower pursuant to an indenture dated 12 February 2014, as supplemented by supplemental indentures dated 12 February 2014, 8 April 2014, 31 May 2016 and 1 June 2016;
- (b) the US\$850,000,000, 7.25 per cent. senior notes due May 2022 issued by the Borrower pursuant to an indenture dated 13 May 2014, as supplemented by supplemental indentures dated 13 May 2014, 31 May 2016 and 1 June 2016;
- (c) the US\$1,100,000,000, 7.25 per cent. senior notes due April 2023 issued by the Borrower pursuant to an indenture dated 22 March 2017, as supplemented by a supplemental indenture dated 22 March 2017; and
- (d) the US\$1,100,000,000, 7.50% per cent. senior notes due April 2025 issued by the Borrower pursuant to an indenture dated 22 March 2017, as supplemented by a supplemental indenture dated 22 March 2017.

FQM Bonds Earliest Due Date means the earliest stated maturity date of the FQM Bonds and any other bonds or notes issued by the Borrower (in each case to the extent not redeemed in full).

FQM Construction means FQM Construction and Development S.A., a company organised and existing under the laws of Panama.

FQM Facilities Agreement means the up to US\$2,200,000,000 facilities agreement between (amongst others) the Borrower and Absa Bank Limited (acting through its Corporate and Investment Bank), Barclays Bank Mauritius Limited, Barclays Bank Zambia Plc., BNP Paribas, Societe Generale, London Branch and Standard Chartered Bank as initial mandated lead arrangers dated 27 May 2016 (as amended from time to time).

FQM Finance Companies means the companies identified as "FQM Finance Companies" in Part 1 (The Original Obligors) of Schedule 1 (The Original Parties) and any other member of the Group (except an Excluded Subsidiary) from time to time which receives or provides cash flows in the form of loans or deposits from or to an Obligor in an aggregate amount which exceeds US\$25,000,000 (or its equivalent in other currencies) at any time during the term of this Agreement.

FQM Intermediary Companies means the companies identified as "FQM Intermediary Companies" in Part 1 (The Original Obligors) of Schedule 1 (The Original Parties), any other member of the Group (except an Excluded Subsidiary) from time to time which receives dividends from the Obligors in an aggregate amount which exceeds US\$25,000,000 (or its equivalent in other currencies) at any time during the term of this Agreement and, after the transfer referred to in paragraph (a) of the definition of "Kalumbila Reorganisation", Kiwara UK Limited and Kiwara Netherlands B.V.

FQM Operating Companies means the companies identified as "FQM Operating Companies" in Part 1 (The Original Obligors) of Schedule 1 (The Original Parties) and any other member of the Group (except an Excluded Subsidiary) from time to time which meets the Op-Co Threshold Test.

FQMFL means FQM Finance Ltd., a company organised and existing under the law of the British Virgin Islands.

FQMFP means FQM Panama Finance Limited, a company organised and existing under the law of the British Virgin Islands.

FQMOL means First Quantum Mining and Operations Limited, a company organised and existing under the laws of Zambia.

Franco-Nevada Streaming Agreement means the US\$1,000,000,000 precious metals stream agreement dated 20 August 2012 between Franco-Nevada (Barbados) Corporation, MPSA, Inmet I, Inmet II and IFC referred to on its front page as a purchase and sale agreement, as amended and restated on 2 November 2015 and as further amended, novated, supplemented, extended or restated.

Funding Rate means any individual rate notified by a Lender to the Agent pursuant to paragraph (a)(ii) of Clause 12.4 (Cost of funds).

Group means the Borrower and each of its Subsidiaries for the time being.

Group Structure Chart means the group structure chart delivered as a condition precedent under Part 1 (Conditions Precedent to first utilisation) of Schedule 2 (Conditions Precedent) under the heading "Other documents and evidence" as updated pursuant to Clause 21.5 (Information: miscellaneous).

Guarantor means an Original Guarantor or an Additional Guarantor.

HMT has the meaning given to that term in the definition of Sanctions in this Agreement.

Holding Company means, in relation to a person, any other person in respect of which it is a Subsidiary.

IFC means Inmet Finance Company S.à r.l., a company organised and existing under the laws of Luxembourg.

IFRS means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements and as applied in the Original Financial Statements.

Impaired Agent means the Agent at any time when:

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment;
- (b) the Agent otherwise rescinds or repudiates a Finance Document;
- (c) (if the Agent is also a Lender) it is a Defaulting Lender under paragraph (a) or (b) of the definition of Defaulting Lender; or
- (d) an Insolvency Event has occurred and is continuing with respect to the Agent;

unless, in the case of paragraph (a) above:

- (i) its failure to pay is caused by:
 - (A) administrative or technical error; or
 - (B) a Disruption Event; andpayment is made within three Business Days of its due date; or
- (ii) the Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

Increase Confirmation means a confirmation substantially in the form set out in Schedule 8 (Form of Increase Confirmation).

Increase Lender has the meaning given to that term in Clause 2.2 (Increase).

Information has the meaning given to that term in Clause 20.12 (No misleading information).

Initial Termination Date means 31 December 2020.

Inmet I means Inmet Panama I S.à r.l., a company organised and existing under the laws of Luxembourg and after the migration referred to in paragraph (a) of the definition of "MPSA Reorganisation", the migrated entity, organised and existing under the laws of Barbados.

Inmet II means Inmet Panama II S.A., a company organised and existing under the laws of Luxembourg and after the migration referred to in paragraph (b) of the definition of "MPSA Reorganisation", the migrated entity, organised and existing under the laws of Barbados.

Insolvency Event in relation to a Finance Party means that the Finance Party:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
 - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
 - (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has exercised in respect of it one or more of the stabilisation powers pursuant to Part 1 of the Banking Act 2009 and/or has instituted against it a bank insolvency proceeding pursuant to Part 2 of the Banking Act 2009 or a bank administration proceeding pursuant to Part 3 of the Banking Act 2009;
- (g) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (h) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (i) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (j) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (i) above; or

- (k) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

Intellectual Property means:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, know-how and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered; and
- (b) the benefit of all applications and rights to use such assets of each Obligor (which may now or in the future subsist).

Inter-Company Transaction means:

- (a) the acquisition by a member of the Group (other than an Excluded Subsidiary) of any shares or securities in another member of the Group; or
- (b) any sale, lease, licence, transfer or other disposal of any asset by an Obligor to another member of the Group (other than an Excluded Subsidiary),

subject to the requirements of Clause 27.2 (Additional Guarantors) being met.

Interest Period means, in relation to a Loan, each period determined in accordance with Clause 11 (Interest Periods) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 10.3 (Default interest).

Inter-Group Loan Assignment Agreement means an agreement entered or to be entered into by any Obligor in favour of the Security Agent, granting security over its rights in respect of any Financial Indebtedness:

- (a) outstanding from a Non-Obligor (other than an Excluded Subsidiary); and
- (b) outstanding from a member of the KMP Group,

in the agreed form.

Inter-Group Loans List means the list of any loan or deposit in an amount greater than or equal to US\$1,000,000 (or its equivalent in other currencies) made by a member of the Group to another member of the Group, delivered as a condition precedent under Part 1 (Conditions Precedent to first utilisation) of Schedule 2 (Conditions Precedent) under the heading "Other documents and evidence" and as updated pursuant to Clause 21.5 (Information: miscellaneous).

Interpolated Screen Rate means, in relation to LIBOR for any Loan, the rate (rounded upwards to four decimal places) which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each as of the Specified Time for the currency of that Loan.

Irish Companies Act means the Companies Act 2014 of Ireland.

Irish Obligors means any Obligor organised and existing under the laws of Ireland.

Joint Venture means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity.

Kalumbila means Kalumbila Minerals Limited, a company organised and existing under the laws of the Republic of Zambia.

Kalumbila Reorganisation means:

- (a) the transfer by Oryx Limited of all its assets (**Oryx Assets**) in exchange for shares in Kiwara UK Limited;
- (b) the transfer by Kiwara UK Limited of all Oryx Assets to Kiwara Netherlands B.V. in exchange for shares in Kiwara Netherlands B.V.;
- (c) the solvent liquidation of Oryx Limited;
- (d) the change of Cover Investments Limited's residence for tax purposes from Ireland to the United Kingdom;
- (e) the change of Kiwara Resources Limited's residence for tax purposes from the British Virgin Islands to the United Kingdom; and
- (f) any other action notified to the Agent which may be required to give effect to the transactions referred to in paragraphs (a) through (e) above.

KHL means Kansanshi Holdings Limited, a company organised and existing under the laws of Ireland.

KHL Share Charge means the share charge governed by Irish law in favour of the Security Agent granted by BBIL over the shares in KHL from time to time in the agreed form.

KMP means Kansanshi Mining Plc, a company organised and existing under the laws of the Republic of Zambia.

KMP Group means KMP, KHL and BBIL.

KMP Share Charge means the share charge governed by Zambian law in favour of the Security Agent granted by KHL over the shares in KMP from time to time in the agreed form.

KPMC means Korea Panama Mining Corporation, a company organised and existing under the laws of Yukon, Canada.

KPMC Acquisition means the acquisition by the Borrower of the KPMC Shares and KPMC Shareholder Loans.

KPMC Completion Date means the date of completion of the KPMC Acquisition.

KPMC Loan means the loan provided by the Borrower (or, after the transfers referred to in paragraph (c) of the definition of "KPMC Reorganisation", FQMPF) to KPMC (or, after the transfers referred to in paragraph (c) of the definition of "KPMC Reorganisation", MPSA) in an aggregate amount of up to US\$600,000,000 (or its equivalent in other currencies) in connection with cash call obligations in respect of the Cobre Panama Project.

KPMC Reorganisation means:

- (a) the transfer by the Borrower of 50 per cent. of the shares in KPMC to Inmet II;
- (b) the transfer by the Borrower of the KPMC Shareholder Loans to FQMPF and the transfer by KPMC of the KPMC Shareholder Loans to MPSA;
- (c) the transfer by the Borrower of the KPMC Loan to FQMPF and the transfer by KPMC of the KPMC Loan to MPSA;
- (d) the transfer by KPMC of 50 per cent. of the MPSA Loan to FQMPF and the transfer by KPMC of 50 per cent. of the MPSA Loan to Korea Resources Corporation or any of its Subsidiaries;
- (e) the transfer by KPMC to Inmet II of the 10 per cent. interest in MPSA held by the Borrower through its 50 per cent. interest in KPMC (either directly, indirectly or through the dissolution of KPMC); and
- (f) any other action notified to the Agent which may be required to give effect to the transactions referred to in paragraphs (a) through (e) above.

KPMC Shareholder Loans means the shareholder loans made by LS-Nikko to KPMC acquired by the Borrower under and in accordance with the KPMC SPA.

KPMC Shares means 50 per cent. of the issued and outstanding common shares in KPMC acquired by the Borrower under and in accordance with the KPMC SPA.

KPMC SPA means the purchase agreement for shares and shareholder loans dated 30 August 2017 between LS-Nikko and the Borrower in relation to the acquisition of the KPMC Shares and the KPMC Shareholders Loans, as amended, novated, supplemented, extended or restated.

Las Cruces means Cobre Las Cruces S.A.U., a company organised and existing under the laws of Spain.

LCIA means the London Court of International Arbitration.

Legal Opinion means any legal opinion delivered to the Agent under Clause 4.1 (Initial conditions precedent) or Clause 27 (Changes to the Obligors).

Legal Reservations means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in the Legal Opinions.

Lender means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with Clause 2.2 (Increase) or Clause 25 (Changes to the Lenders),

which in each case has not ceased to be a Party as such in accordance with the terms of this Agreement.

LIBOR means, in relation to any Loan:

- (a) the applicable Screen Rate as of the Specified Time for dollars and for a period equal in length to the Interest Period of that Loan; or
- (b) as otherwise determined pursuant to Clause 12.1 (Unavailability of Screen Rate),

and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.

Limitation Acts means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

LMA means the Loan Market Association.

Loan means a Facility A Loan or a Facility B Loan.

LS-Nikko means LS-Nikko Copper Inc, a company organised and existing under the laws of the Republic of Korea.

Luxembourg Guarantor means any Guarantor organised and existing under the laws of Luxembourg.

Luxembourg Obligor means any Obligor organised and existing under the laws of Luxembourg.

Majority Lenders means a Lender or Lenders whose Commitments aggregate more than $66\frac{2}{3}$ per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than $66\frac{2}{3}$ per cent. of the Total Commitments immediately prior to that reduction).

Margin means on and from the date of this Agreement, in relation to:

- (a) Facility A, [margin redacted]
- (b) Facility B, [margin redacted]

but if a Compliance Certificate has been delivered in accordance with Clause 21.2 (Provision and contents of Compliance Certificate), then the Margin for each Loan under a Facility will be the percentage per annum set out below in the column for that Facility opposite the range for the ratio of Net Debt to EBITDA as reflected in the then most recent Compliance Certificate delivered in accordance with Clause 21.2 (Provision and contents of Compliance Certificate):

Net Debt to EBITDA Ratio	Facility A Margin per cent. p.a.	Facility B Margin per cent. p.a.
Greater than 4.75:1	[margin redacted]	[margin redacted]
Greater than 4.50:1 but less than or equal to 4.75:1	[margin redacted]	[margin redacted]

Greater than 3.75:1 but less than or equal to 4.50:1 [margin redacted] [margin redacted]

Greater than 3.00:1 but less than or equal to 3.75:1 [margin redacted] [margin redacted]

Less than or equal to 3.00:1 [margin redacted] [margin redacted]

However any increase or decrease in the Margin for a Loan shall take effect on the date which is five Business Days after the date of receipt by the Agent of the Compliance Certificate for that Relevant Period pursuant to Clause 21.2 (Provision and contents of Compliance Certificate).

Material Adverse Effect means a material adverse effect on:

- (a) the business, operations, assets or condition (financial or otherwise) of the Group;
- (b) the ability of any Obligor to perform any of its obligations under any of the Finance Documents; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

MCM means Mauritanian Copper Mines S.A., a company organised and existing under the laws of Mauritania.

MCT means Metal Corp Trading AG, a company organised and existing under the laws of Switzerland.

Mining Licences means any mining, exploration, transportation, processing or milling licence, mining concession or mining approval (or any other licence required to carry out activities related to a mining business in a given jurisdiction).

Monitoring Accountants means PwC or any other firm approved in advance by the Majority Lenders (such approval not to be unreasonably withheld or delayed).

Month means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

MPSA means Minera Panama S.A., a company organised and existing under the laws of Panama.

MPSA Assets means:

- (a) any shares held by the Borrower in the capital of KPMC or an Excluded Subsidiary (the **MPSA Shares**);
- (b) any loans or deposits made by the Borrower to KPMC or an Excluded Subsidiary;
- (c) dividends, distributions and other payments made or to be made to the Borrower in respect of the MPSA Shares; and
- (d) any lock-up accounts, blocked accounts and special collateral accounts of the Borrower which are exclusively held in respect of its direct or indirect interest in an Excluded Subsidiary or KPMC.

MPSA Facility Proceeds has the meaning given to that term in Clause 8.2 (Disposal/MPSA Facility Proceeds).

MPSA Loan means the loan provided by KPMC (or, after the transfers referred to in paragraph (d) of the definition of "KPMC Reorganisation", FQMPF and Korea Resources Corporation or any of its Subsidiaries) to MPSA in an aggregate amount of up to US\$1,200,000,000 (or its equivalent) in connection with cash call obligations in respect of the Cobre Panama Project.

MPSA Reorganisation means:

- (a) the migration of Inmet I to Barbados, including changing its name and residence for tax purposes from Luxembourg to Barbados;
- (b) the migration of Inmet II to Barbados, including changing its name and residence for tax purposes from Luxembourg to Barbados;
- (c) the transfer by IFC to FQMPF of all its loans made to MPSA;
- (d) the transfer by IFC to the Borrower or FQMFL of all loans made by IFC to any member of the Group (other than MPSA); and
- (e) any other action notified to the Agent which may be required to give effect to the transactions referred to in paragraphs (a) through (d) above.

Net Debt to EBITDA Ratio has the meaning given to that term in Clause 22.1 (Financial definitions).

New Lender has the meaning given to that term in Clause 25 (Changes to the Lenders).

Non-Consenting Lender has the meaning given to that term in Clause 38.6 (Replacement of Lender).

Non-Obligor means any member of the Group which is not an Obligor.

Non-Obligor Inter-Group Lenders means:

- (a) 7563191 Canada Inc., a company organised and existing under the laws of Canada with registered number 756319-1; and
- (b) any other member of the Group who becomes party to the Subordination Agreement and is a Non-Obligor.

Obligor means the Borrower, a Guarantor or KMP.

Obligors' Agent means the Borrower, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.4 (Obligors' Agent).

OFAC has the meaning given to that term in the definition of Sanctions in this Agreement.

Op-Co Threshold Test means, in relation to a member of the Group, that member having earnings before interest, tax, depreciation and amortisation calculated on the same basis as EBITDA (as defined in Clause 22.1 (Financial definitions)) representing five per cent. or more of EBITDA (as defined in Clause 22.1 (Financial definitions)) or has gross assets or turnover (excluding intra-group items) representing five per cent. or more of the gross assets or turnover of the Group, calculated on a consolidated basis.

Original Financial Statements means in relation to the Borrower the consolidated audited financial statements for its Financial Year ended 31 December 2016.

Original Guarantors means the companies identified as "FQM Operating Companies" (except for KMP), "FQM Finance Companies" and "FQM Intermediary Companies" in Part 1 (The Original Obligors) of Schedule 1 (The Original Parties).

Original Jurisdiction means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated as at the date of this Agreement or, in the case of an Additional Guarantor, as at the date on which that Additional Guarantor becomes a Party as a Guarantor.

Participating Member State means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

Party means a party to this Agreement.

Permitted Acquisition means:

- (a) the KPMC Acquisition; and
- (b) any acquisition by any member of the Group of a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them) but only if:
 - (i) at the date on which the relevant member of the Group commits to make the acquisition:
 - (A) there is no breach of any financial covenant in Clause 22 (Financial covenants) and no breach of any financial covenant in Clause 22 (Financial covenants) would occur as a result of the acquisition;
 - (B) the acquired company, business or undertaking is principally engaged in the business of mining or metal processing, or is engaged in the furtherance of such activity;
 - (C) if the acquisition is for cash consideration (except for cash consideration funded by the proceeds of an issuance of fully paid up share capital of the Borrower), the Borrower provides a certificate (signed by the Chief Financial Officer and a director or two of its directors) to the Agent confirming the Net Debt to EBITDA Ratio on a pro forma basis immediately following completion of the acquisition and if the Net Debt to EBITDA Ratio is, on a pro forma basis, equal to or greater than 3.50:1

immediately following completion of the acquisition, then the aggregate consideration (excluding associated costs and expenses) for the acquisition and any Financial Indebtedness or other assumed actual or contingent liability, in each case remaining in the acquired company (or any such business) at the date of the acquisition (when aggregated with the consideration (excluding associated costs and expenses) for any other Permitted Acquisition permitted under this paragraph (b) and any Financial Indebtedness or other assumed actual or contingent liability, in each case remaining in any such acquired companies or businesses at the time of acquisition) does not exceed in aggregate during the term of the Facilities the sum of:

- (1) US\$500,000,000 or its equivalent in other currencies; and
 - (2) the amount of any unused Excluded Reinvestment Proceeds;
- (ii) no Event of Default is continuing or would occur as a result of the acquisition; and
- (iii) within 90 days from the date of the acquisition, the Borrower shall provide the Agent with an updated Base Case Model to the extent required under Clause 21.4 (Base Case Model).

Permitted Disposal means any sale, lease, licence, transfer or other disposal which is on arm's length terms:

- (a) in respect of each FQM Operating Company and MPSA only, of output from the mines owned by the relevant disposing entity made in the ordinary course of business by it and any disposal of obsolete or redundant assets which are no longer used or required or of assets which are to be replaced;
- (b) arising as a result of any Permitted Security;
- (c) of cash or cash equivalent investments in exchange for other cash or cash equivalent investments;
- (d) of the:
 - (i) the shares in, or assets of, any Obligor (other than a member of the KMP Group, Las Cruces, Kalumbila and FQMOL); or
 - (ii) the shares in Kalumbila or FQMOL which does not exceed in aggregate during the term of this Agreement 20 per cent. of the total shares in Kalumbila or FQMOL (as applicable); and
- (e) of the:
 - (i) shares in, or assets of, any Non-Obligor (other than an Excluded Subsidiary); and
 - (ii) connected power station of the Cobre Panama Project (but excluding, for the avoidance of doubt, the shares of any entity that has an interest in the Cobre Panama Project),

in each case, provided that in relation to disposals referred to in paragraphs (d) and (e) above:

- (A) on the date on which the relevant member of the Group commits to the disposal, there is no breach of a financial covenant in Clause 22 (Financial covenants) and no breach of a financial covenant in Clause 22 (Financial covenants) would occur as a result of the making of the disposal;
- (B) no Event of Default is continuing or would occur as a result of the disposal;
- (C) within 90 days from the date of the disposal, the Borrower shall provide the Agent with an updated Base Case Model to the extent required under Clause 21.4 (Base Case Model); and
- (D) in the case of a disposal referred to in paragraph (d)(ii) above, the identity of the party or parties acquiring those shares or assets has been approved in advance in writing by the Agent acting on the instructions of the Majority Lenders (such approval not to be unreasonably withheld or delayed).

Permitted Distribution means, in relation to a Financial Year, the payment of a dividend or other distribution on or in respect of share capital by the Borrower, provided that on the date of the payment:

- (a) there is no breach of any financial covenant in Clause 22 (Financial covenants) and no breach of any financial covenant in Clause 22 (Financial covenants) would occur as a result of the making of the payment;
- (b) no Event of Default is continuing or would occur as a result of the making of the payment; and
- (c) the amount of such dividend or other distribution for that Financial Year, when aggregated with the amount of any other dividend or distribution paid or declared by the Borrower for that Financial Year, does not exceed the higher of:
 - (i) US\$20,000,000 (or its equivalent in other currencies); and
 - (ii) an amount equal to 50 per cent. of the consolidated net profit of the Borrower for the immediately preceding Financial Year (as set out in the Annual Financial Statements for the immediately preceding Financial Year), provided that to the extent that dividends or other distributions are less than 50 per cent. of the consolidated net profit of the Borrower in any Financial Year (as set out in the Annual Financial Statements for the relevant Financial Year), such shortfall may be carried forward and distributed by the Borrower in subsequent Financial Years.

Permitted Financial Indebtedness means Financial Indebtedness:

- (a) incurred by the Borrower, provided that:
 - (i) on the date of incurrence of such Financial Indebtedness:
 - (A) there is no breach of a financial covenant in Clause 22.2 (Financial condition) and no breach of a financial covenant in Clause 22.2 (Financial condition) would occur as a result of the incurrence of such Financial Indebtedness;
 - (B) no Event of Default is continuing or would occur as a result of the incurrence of such Financial Indebtedness;

- (C) such Financial Indebtedness is subordinated to or rank *pari passu* with the claims of the Finance Parties under the Finance Documents; and
 - (D) such Financial Indebtedness is not in the form of bonds or notes or, if such Financial Indebtedness is in the form of bonds or notes, the stated maturity date of such bonds or notes is not earlier than the Termination Date;
- (b) incurred pursuant to the Existing Debt;
 - (c) incurred pursuant to (i) the Franco-Nevada Streaming Agreement (including incurred as a result of any amendments to the Franco-Nevada Streaming Agreement after the date of this Agreement) and (ii) to the extent that the Borrower acquires, directly or indirectly, any additional interest in MPSA after the date of this Agreement, any further Financial Indebtedness constituted by any other other precious metals streaming agreement entered into in connection with the Cobre Panama Project;
 - (d) if no Financial Indebtedness is outstanding under paragraph (e) below, incurred by MPSA of up to US\$2,500,000,000 for use solely in connection with the Cobre Panama Project;
 - (e) if no Financial Indebtedness is outstanding under paragraph (d) above, incurred by any member of the Group in the form of senior secured notes in an aggregate amount of up to US\$1,500,000,000 (or its equivalent in other currencies), provided that the stated maturity of such notes is not earlier than the Termination Date;
 - (f) incurred by Kalumbila pursuant to a secured equipment financing facility agreement in an aggregate principal amount of up to US\$100,000,000 (or its equivalent in other currencies) with Caterpillar Financial Services Corporation;
 - (g) incurred by any member of the Group in an aggregate principal amount of up to US\$150,000,000 (or its equivalent in other currencies) during the term of this Agreement in respect of equipment finance leases which are not permitted by the preceding paragraphs of this definition;
 - (h) incurred by MCT in relation to working capital trade lines in an aggregate amount of up to US\$400,000,000 (or its equivalent in other currencies) during the term of this Agreement which may be secured against the relevant broker accounts;
 - (i) incurred by KMP or Kalumbila in an aggregate amount of up to US\$500,000,000 (or its equivalent in other currencies) pursuant to an unsecured term facility;
 - (j) in respect of bonds or standby letters of credit in an aggregate principal amount of up to US\$350,000,000 (or its equivalent in other currencies) for the Group during the term of this Agreement, required by regulation to be issued on behalf of a member of the Group in respect of potential liabilities pursuant to any Agreed Environmental and Social Requirements binding on them;
 - (k) arising under or in connection with the Finance Documents;
 - (l) arising under:
 - (i) a Permitted Loan;
 - (ii) a Permitted Guarantee; or

- (iii) any Treasury Transaction as permitted by Clause 23.26 (Treasury Transactions);
- (m) until the KPMC Completion Date, incurred by MPSA pursuant to the Existing KPMC Loan and on and after the KPMC Completion Date, incurred by MPSA pursuant to the MPSA Loan, provided that, in each case, such Financial Indebtedness shall not fall due for payment before the Termination Date;
- (n) incurred by any member of the Group in respect of any overdraft up to an aggregate amount of US\$20,000,000 (or its equivalent in other currencies) on a net basis and on bank accounts held with Citibank, N.A. or any other financial institution, which are subject to a cash pooling agreement;
- (o) of up to US\$600,000,000 (or its equivalent in other currencies) in aggregate during the term of this Agreement for any member of the Group in relation to unsecured working capital trade lines which are not permitted by the preceding paragraphs;
- (p) incurred by any Non-Obligor (other than an Excluded Subsidiary) the principal amount of which is less than US\$25,000,000 in aggregate (or its equivalent in other currencies) during the term of this Agreement; and
- (q) incurred by any member of the Group of up to US\$1,000,000,000 (or its equivalent in other currencies) in aggregate pursuant to (i) any prepaid gold or silver forward transaction or (ii) any streaming agreement related to the gold or silver production.

Permitted Guarantee means:

- (a) a guarantee arising under or in connection with the Finance Documents;
- (b) any Existing Guarantee;
- (c) any guarantee of the FQM Bonds given by an Additional Guarantor;
- (d) any guarantee given by the Borrower, IFC or an Excluded Subsidiary in respect of Financial Indebtedness permitted under paragraph (c) of the definition of Permitted Financial Indebtedness, provided that such guarantee provided by the Borrower is limited in recourse to the MPSA Assets;
- (e) any guarantee by any member of the Group of any bonds or notes issued by the Borrower permitted under Clause 23.21 (Financial Indebtedness), provided that any member of the Group that guarantees any bonds or notes issued by the Borrower permitted under Clause 23.21 (Financial Indebtedness) and that is not a Guarantor becomes an Additional Guarantor in accordance with Clause 27.2 (Additional Guarantors);
- (f) any joint and several liability arising as a result of the fiscal unity (*fiscale eenheid*) between the Dutch Obligors;
- (g) any guarantee given by an Obligor in respect of Permitted Financial Indebtedness (other than Financial Indebtedness permitted under paragraph (c), (d) or (e) of the definition of Permitted Financial Indebtedness) incurred by a member of the Group provided that:
 - (i) there is no breach of any financial covenant in Clause 22 (Financial covenants) and no breach of any financial covenant in Clause 22 (Financial covenants) would occur as a result of the granting of such guarantee; and

- (ii) no Event of Default is continuing or would occur as a result of the granting of such guarantee;
- (h) any guarantee in respect of Financial Indebtedness referred to in paragraph (d) of the definition of Permitted Financial Indebtedness given by:
 - (i) the Borrower, but only if such guarantee:
 - (A) (I) will only guarantee debt service repayments as they are scheduled to fall due and any accelerated payments and (II) is released once the Cobre Panama Project is certified as having satisfied the financial completion test under the Financial Indebtedness permitted under paragraph (d) of the definition of Permitted Financial Indebtedness; or
 - (B) is limited in recourse to the MPSA Assets;
 - (ii) IFC; or
 - (iii) an Excluded Subsidiary;
- (i) any guarantee in respect of Financial Indebtedness referred to in paragraph (e) of the definition of Permitted Financial Indebtedness given by:
 - (i) the Borrower, but only if such guarantee is limited in recourse to the MPSA Assets;
 - (ii) IFC; or
 - (iii) an Excluded Subsidiary;
- (j) any guarantee by the Borrower of a Relevant Joint Venture to the extent permitted by Clause 23.11 (Joint ventures) and further provided that:
 - (i) there is no breach of a financial covenant in Clause 22 (Financial covenants) and no breach of a financial covenant in Clause 22 (Financial covenants) would occur as a result of the granting of such guarantee; and
 - (ii) no Event of Default is continuing or would occur as a result of the granting of such guarantee; and
- (k) any guarantee given in respect of the netting or set-off arrangements permitted pursuant to paragraph (g) of the definition of Permitted Security.

Permitted Joint Venture means any investment in any Relevant Joint Venture where:

- (a) the Relevant Joint Venture (other than any Zambian Joint Venture) is engaged in a business substantially the same as that carried on by the Group; and
- (b) the aggregate of:
 - (i) all amounts subscribed for shares in, lent to, or invested in all Relevant Joint Ventures by any member of the Group;
 - (ii) the contingent liabilities of any member of the Group under any guarantee given in respect of the liabilities of any Relevant Joint Venture; and

- (iii) the book value of any assets transferred by any member of the Group to any Relevant Joint Venture,

does not exceed US\$300,000,000 (or its equivalent in other currencies) during the term of this Agreement.

Permitted Loan means:

- (a) any trade credit extended by any member of the Group to its customers on normal commercial terms and in the ordinary course of its trading activities;
- (b) Financial Indebtedness which is referred to in the definition of, or otherwise constitutes, Permitted Financial Indebtedness (except under paragraph (l)(i) of that definition);
- (c) the Existing Intra-Group Loans listed in Schedule 11 (Existing Intra-Group Loans);
- (d) on and after the KPMC Completion Date, the KPMC Loan;
- (e) a loan or deposit made by an Obligor to another Obligor;
- (f) a loan or deposit made by the Borrower, any FQM Finance Company or any Excluded Subsidiary to an Excluded Subsidiary so long as the aggregate amount of the Financial Indebtedness under any such loans or deposits does not exceed US\$3,000,000,000 (or its equivalent in other currencies) at any time;
- (g) a loan or deposit made by an Obligor to a Non-Obligor (except any Excluded Subsidiary) so long as the aggregate amount of the Financial Indebtedness under any such loans or deposits does not exceed US\$25,000,000 (or its equivalent in other currencies) at any time;
- (h) a loan or deposit made by an Non-Obligor (except any Excluded Subsidiary) to an Obligor so long as the aggregate amount of the Financial Indebtedness under any such loans or deposits does not exceed US\$25,000,000 (or its equivalent in other currencies) at any time;
- (i) a loan or deposit made by a Non-Obligor (except any Excluded Subsidiary) to a Non-Obligor (except any Excluded Subsidiary) so long as the aggregate amount of the Financial Indebtedness under any such loans or deposits does not exceed US\$25,000,000 (or its equivalent in other currencies) at any time; and
- (j) any loan or deposit (other than a loan or deposit made by a member of the Group to another member of the Group) so long as the aggregate amount of the Financial Indebtedness under any such loans does not exceed US\$25,000,000 (or its equivalent in other currencies) at any time,

in each case, provided that:

- (i) if a member of the Group makes any loan or deposit to an Obligor in an aggregate amount greater than or equal to US\$1,000,000 (or its equivalent in other currencies), the creditor and the debtor of such Financial Indebtedness must, by no later than the date falling 90 days after the date of that loan or deposit, become party to the Subordination Agreement as an Intra-Group Lender and a Debtor (as defined, in each case, in the Subordination Agreement) respectively; and
- (ii) if an Obligor makes any loan or deposit to:

- (A) a Non-Obligor (other than an Excluded Subsidiary); or
- (B) a member of the KMP Group,

in an aggregate amount greater than or equal to US\$1,000,000 (or its equivalent in other currencies), that Obligor grants, by no later than the date falling 90 days after the date of that loan or deposit, security over its rights in respect of such Financial Indebtedness in favour of the Security Agent substantially in the form of the Inter-Group Loan Assignment Agreement.

Permitted Reorganisation means:

- (a) the Kalumbila Reorganisation;
- (b) the KPMC Reorganisation;
- (c) the MPSA Reorganisation; and
- (d) the solvent liquidation or reorganisation of any member of the Group so long as (i) the Borrower's rights and obligations under the Finance Documents are unaffected and (ii) any payments or assets distributed as a result of such liquidation or reorganisation are either distributed to any one or more of the Obligors or distributed to a Non-Obligor (except any Excluded Subsidiary) provided that such Non-Obligor shall become an Additional Guarantor in accordance with Clause 27.2 (Additional Guarantors).

Permitted Security means:

- (a) any Transaction Security;
- (b) any Security or Quasi-Security securing Financial Indebtedness permitted under paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), (n) or (q)(i) of the definition of Permitted Financial Indebtedness, provided that in the case of:
 - (i) paragraph (a) of the definition of Permitted Financial Indebtedness, such Security or Quasi-Security is:
 - (A) granted in connection with a Permitted Acquisition permitted under paragraph (b) of that definition; and
 - (B) granted over the shares in the capital of any special purpose vehicle incorporated for the purpose of that Permitted Acquisition or the target company the subject to that Permitted Acquisition or the assets of such special purpose vehicle or such target company;
 - (ii) paragraph (c) of the definition of Permitted Financial Indebtedness, such Security or Quasi-Security is granted by:
 - (A) the Borrower, provided that such Security or Quasi-Security is limited in recourse to the MPSA Assets;
 - (B) IFC, provided that such Security or Quasi-Security is limited to Security over its loans made to an Excluded Subsidiary; or
 - (C) an Excluded Subsidiary;

- (iii) paragraph (e) of the definition of Permitted Financial Indebtedness, such Security or Quasi-Security is identical to the Security or Quasi-Security granted in respect of the Franco-Nevada Streaming Agreement; and
- (iv) paragraph (q)(i) of the definition of Permitted Financial Indebtedness, such Security or Quasi-Security is:
 - (A) identical to the Transaction Security; and
 - (B) the beneficiary of such Security or Quasi-Security has entered into an intercreditor arrangement with the Finance Parties on terms acceptable to the Majority Lenders (acting in their absolute discretion);
- (c) security incurred by any member of the Group in the ordinary course of business in connection with unemployment insurance or other forms of governmental insurance or benefits, or to secure performance of tenders, statutory obligations, leases and contracts (other than for financial indebtedness) entered into in the ordinary course of business or to secure obligations on surety or appeal bonds;
- (d) security incurred by any member of the Group for taxes, assessments or other governmental charges or levies not at the time delinquent or thereafter payable without penalty or being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with IFRS shall have been set aside on its books;
- (e) security of carriers, warehousemen, mechanics, material men, suppliers and landlords incurred by any member of the Group in the ordinary course of business for sums not overdue or being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with IFRS shall have been set aside on its books;
- (f) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by any member of the Group;
- (g) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group but only so long as (i) such arrangement does not permit credit balances of Obligors to be netted or set off against debit balances of members of the Group which are not Obligors and (ii) such arrangement does not give rise to other Security over the assets of Obligors in support of liabilities of members of the Group which are not Obligors;
- (h) any payment or close out netting or set-off arrangement pursuant to any Treasury Transaction or foreign exchange transaction entered into by a member of the Group which constitutes Permitted Financial Indebtedness;
- (i) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the date of this Agreement if:
 - (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;
 - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and

- (iii) the Security or Quasi-Security is removed or discharged within three months of the date of acquisition of such asset;
- (j) any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group if:
 - (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that company;
 - (ii) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
 - (iii) the Security or Quasi-Security is removed or discharged within three months of that company becoming a member of the Group;
- (k) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group; and
- (l) security or set-off arrangements entered into by any Dutch Obligor in the ordinary course of its banking arrangements which arise from the general banking conditions (*algemene voorwaarden*).

Permitted Transaction means:

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Finance Documents;
- (b) any Permitted Reorganisation; and
- (c) transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of business on arm's length terms.

Punta Rincon means Punta Rincon Energy Company, S.A., a company organised and existing under the laws of Panama.

Quarter Date has the meaning given to that term in Clause 22.1 (Financial definitions).

Quasi-Security has the meaning given to that term in Clause 23.14 (Negative pledge).

Quotation Day means, in relation to any period for which an interest rate is to be determined, two London Business Days before the first day of that period (unless market practice differs in the Relevant Market for that currency, in which case the Quotation Day for that currency will be determined by the Agent in accordance with market practice in the Relevant Market (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days)).

Ratio Enhancement Period means the period commencing from the date falling five Business Days after the date on which the Borrower delivers a Compliance Certificate confirming that the Net Debt to EBITDA Ratio is equal to or greater than 3.50:1 until the date on which the Borrower delivers a

Compliance Certificate confirming that the Net Debt to EBITDA Ratio is less than 3.50:1 for the most recent four consecutive Relevant Quarters.

Ravensthorpe Recommencement Date means the date on which the Borrower makes a public announcement that commercial operations at the Ravensthorpe nickel mine have recommenced.

Receiver means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

Redemption means any redemption, buy-back, repurchase, defeasance, retirement, repayment or cancellation of any FQM Bond or any other bond or note issued by any member of the Group (in each case, other than at the applicable stated maturity date).

Redemption Sum means, in relation to a Redemption, the aggregate consideration payable to holders of the applicable FQM Bond or other bond or note in respect of that Redemption.

Reference Bank Quotation means any quotation supplied to the Agent by a Reference Bank.

Reference Bank Rate means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Reference Banks as either:

- (a) if:
 - (i) the Reference Bank is a contributor to the Screen Rate; and
 - (ii) it consists of a single figure,
the rate (applied to the relevant Reference Bank and the relevant currency and period) which contributors to the Screen Rate are asked to submit to the relevant administrator; or
- (b) in any other case, the rate at which the relevant Reference Bank could fund itself in the relevant currency for the relevant period with reference to the unsecured wholesale funding market.

Reference Banks means such banks as may be appointed by the Agent in consultation with the Borrower (and such banks consent to their appointment).

Related Fund in relation to a fund (the **first fund**), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

Relevant Joint Venture means a Joint Venture other than MPSA, the Subsidiaries of MPSA and KPMC, but including any Zambian Joint Venture.

Relevant Jurisdiction means, in relation to an Obligor:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
- (c) any jurisdiction where it conducts its business; and

- (d) the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it.

Relevant Market means the London interbank market.

Relevant Period has the meaning given to that term in Clause 22.1 (Financial definitions).

Relevant Quarter means each period of 12 months ending on or about the last day of a Financial Quarter.

Repayment Instalment has the meaning given to that term in paragraph (a) of Clause 6.1 (Repayment of Facility A Loans).

Repeating Representations means each of the representations set out in Clause 20.2 (Status) to Clause 20.8 (Insolvency), Clause 20.11 (No default), paragraph (e) of Clause 20.12 (No misleading information), paragraphs (d) and (e) of Clause 20.13 (Original Financial Statements), Clause 20.14 (No proceedings pending or threatened), Clause 20.16 (Environmental and social laws), Clause 20.18 (Anti-corruption law), Clause 20.19 (Sanctions), Clause 20.21 (Transaction Security) to Clause 20.23 (Group Structure Chart and Inter-Group Loans List) (only insofar as Clause 20.23 relates to Group Structure Charts and Inter-Group Loans Lists provided pursuant to Clause 21.5 (Information: miscellaneous)), Clause 20.25 (Obligors) to Clause 20.27 (Pensions).

Representative means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

Resignation Letter means a letter substantially in the form set out in Schedule 10 (Form of Resignation Letter).

Restricted Party means a person that is (a) listed on, or owned or controlled by a person listed on, or acting on behalf of a person listed on, any Sanctions List (b) located in, incorporated under the laws of, or owned or (directly or indirectly) controlled by, or acting on behalf of, a person located in or organised under the laws of a country or territory that is the target of Sanctions or (c) otherwise a target of Sanctions (signifying a person with whom a US person or other national of a Sanctions Authority would be prohibited or restricted by law from engaging in trade, business or other activities).

Rio Caimito means Reserva Natural Privada Rio Caimito, S.A., a company organised and existing under the laws of Panama.

RUSF means a Tax in the name of Resource Utilization Support Fund (*Kaynak Kullanimini Destekleme Fonu*) imposed by the Decree of the Council of Ministers of the Republic of Turkey (Decree No. 88/12944) published in the Official Gazette dated 7 June 1988 and numbered 19835, as amended with the Decision of the Council of Ministers of Turkey No. 2012/4116 published in the Official Gazette numbered 28515 and dated 1 January 2013.

Sanctions means the economic sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by (a) the United States government, (b) the United Nations, (c) the European Union or any of its present or future member states, (d) the United Kingdom, (e) the Canadian government or (f) the respective governmental institutions and agencies of any of the foregoing, including, without limitation, the Office of Foreign Assets Control of the US Department of Treasury (**OFAC**), the United States Department of State, Her Majesty's Treasury (**HMT**) and Global Affairs Canada (together the **Sanctions Authorities**).

Sanctions Authorities has the meaning given to that term in the definition of Sanctions in this Agreement.

Sanctions List means the Specially Designated Nationals and Blocked Persons list maintained by OFAC, the Consolidated List of Financial Sanctions Targets maintained by HMT, the lists maintained by the Office of the Superintendent of Financial Institutions Canada with respect to terrorism or any similar list maintained by, or public announcement of Sanctions designation made by, any of the Sanctions Authorities.

Screen Rate means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency and for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.

Second Extended Termination Date means the date falling 24 Months after the Initial Termination Date.

Secured Obligations means all present and future liabilities and obligations at any time due, owing or incurred by any member of the Group to any Secured Party under the Finance Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

Secured Parties means each Finance Party from time to time party to this Agreement and any Receiver or Delegate.

Security means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect (including any "security interest" as defined in sections 12(1) or (2) of the Australian PPSA but excluding an Australian PPSA Deemed Security Interest).

Selection Notice means a notice substantially in the form set out in Part 2 (Selection Notice applicable to a Facility A Loan) of Schedule 3 (Requests and Notices) given in accordance with Clause 11 (Interest Periods) in relation to Facility A.

Social Law means any law, rule or regulation in any country in which an Obligor carries on business which are binding on that Obligor and which relates to:

- (a) labour;
- (b) social security;
- (c) the regulation of industrial relations (between government, employers and employees);
- (d) the protection of occupational and public health and safety;
- (e) the regulation of public participation in businesses or enterprises;
- (f) the protection and regulation of ownership of land rights (both formal and traditional), immovable goods and intellectual and cultural property rights;

- (g) the protection and empowerment of indigenous peoples or ethnic groups;
- (h) the projection, restoration and promotion of cultural heritage;
- (i) all other laws, rules and regulations providing for the protection of employees and citizens;
- (j) the implementation of any International Labour Conventions signed and ratified by any country in which a member of the Group operates;
- (k) the implementation of any United Nations treaty, convention or covenant on human rights signed and ratified by any country in which a member of the Group operates.

Spanish Civil Procedural Law means Law 1/2000 of 7 January, on procedural law ("*Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil*"), as amended from time to time.

Spanish Commercial Code means the Spanish Commercial Code published by virtue of the Royal Decree of 22 August 1885 (*Real decreto de 22 de agosto de 1885 por el que se publica el Código de Comercio*), as amended from time to time.

Spanish Companies Act means Royal Legislative Decree 1/2010, of 2 July, whereby the companies act is approved ("*Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital*"), as amended from time to time.

Spanish Insolvency Act means Law 22/2003 of 9 July 2003, on bankruptcy ("*Ley 22/2003, de 9 de julio, Concursal*"), as amended from time to time.

Spanish Obligor means any Obligor organised and existing under the laws of Spain.

Spanish Public Document means a public document (*document público*) granted before a Spanish public notary in the form of a *escritura pública*.

Specified Time means a day or time determined in accordance with Schedule 7 (Timetables).

Subordination Agreement means the subordination agreement dated on or about the date of this Agreement and made between, among others, the Borrower, the other Obligors, certain members of the Group and the Security Agent in the agreed form.

Subsidiary means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting capital or similar right of ownership and control for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise.

Swedish Obligors means any Obligor organised and existing under the laws of Sweden.

Swiss Federal Tax Administration means the tax authorities referred to in article 34 of the Swiss Withholding Tax Act.

Swiss Withholding Tax means taxes imposed under the Swiss Withholding Tax Act.

Swiss Withholding Tax Act means the Swiss Federal Act on the Withholding Tax of 13 October 1965 (*Bundesgesetz über die Verrechnungssteuer*), together with the related ordinances, regulations and guidelines, all as amended and applicable from time to time.

Tax means any tax (including BITT), levy (including RUSF), impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same), and whether disputed or not.

Termination Date means:

- (a) subject to Clause 5.6 (Extension option – Facility A), in relation to Facility A, the Initial Termination Date; and
- (b) subject to Clause 5.7 (Extension option – Facility B), in relation to Facility B, the Initial Termination Date.

Total Commitments means the aggregate of the Total Facility A Commitments and the Total Facility B Commitments, being US\$2,200,000,000 as at the date of this Agreement as the same may be increased or reduced from time to time in accordance with this Agreement.

Total Facility A Commitments means the aggregate of the Facility A Commitments, being US\$700,000,000 as at the date of this Agreement as the same may be increased or reduced from time to time in accordance with this Agreement.

Total Facility B Commitments means the aggregate of the Facility B Commitments, being US\$1,500,000,000 as at the date of this Agreement as the same may be increased or reduced from time to time in accordance with this Agreement.

Transaction Security means the Security created or expressed to be created in favour of the Security Agent or any other Secured Party pursuant to the Transaction Security Documents.

Transaction Security Documents means

- (a) the KMP Share Charge;
- (b) the KHL Share Charge;
- (c) the BBIL Share Charge; and
- (d) the Inter-Group Loan Assignment Agreement,

together with any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents.

Transfer Certificate means a certificate substantially in the form set out in Schedule 4 (Form of Transfer Certificate) or any other form agreed between the Agent and the Borrower.

Transfer Date means, in relation to an assignment or a transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
- (b) the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.

Treasury Transactions means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

Turkish Obligor means any Obligor organised and existing under the laws of the Republic of Turkey.

Uninvested Proceeds has the meaning given to that term in Clause 8.2 (Disposal/MPSA Facility Proceeds).

Unpaid Sum means any sum due and payable but unpaid by an Obligor under the Finance Documents.

US means the United States of America.

US Tax Obligor means an Obligor resident for tax purposes in the US or some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

Utilisation Date means the date of a Loan, being the date on which the relevant Loan is to be made.

Utilisation Request means a notice substantially in the form set out in Part 1 (Utilisation Request – Loans) of Schedule 3 (Requests and Notices).

VAT means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

Zambian Joint Ventures means:

- (a) the housing project developments with associated infrastructure being developed in connection with the Kansanshi mine and situate at Kabitaka comprising up to 900 housing units and at Kipemba comprising up to 4000 housing units;
- (b) the Kalumbila Town development being developed in connection with the development of the Sentinel mine comprising up to 5,000 housing units, industrial, commercial, retail and banking units with associated infrastructure; and
- (c) a Zambian mortgage credit institution to be established to issue guaranteed mortgage bonds to facilitate the acquisition of the housing units built and to be built as part of the before-mentioned housing projects for employees and contractors of the members of the Group employed and working at the Kansanshi and Sentinel mines.

Zambian Obligor means any Obligor organised and existing under the laws of Zambia.

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) the **Agent**, the **Arranger**, any **Finance Party**, any **Lender**, any **Obligor**, any **Party**, any **Secured Party**, the **Security Agent** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents and, in the case of the Security Agent, any person

for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;

- (ii) a document in **agreed form** is a document which is previously agreed in writing by or on behalf of the Borrower and the Agent;
 - (iii) **assets** includes present and future properties, revenues and rights of every description;
 - (iv) unless a contrary indication appears, a **Finance Document** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (v) a **group of Lenders** includes all the Lenders;
 - (vi) **guarantee** means (other than in Clause 19 (Guarantee and indemnity)) a standby letter of credit, an indemnity and any other obligation (howsoever called) of any person to pay, purchase or provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets or services or otherwise) for the payment of or to assist in or provide means of discharging or otherwise be responsible for, any indebtedness of, or the solvency of any other person;
 - (vii) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (viii) a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (ix) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (x) the equivalent in any currency (the **first currency**) of any amount in another currency (the **second currency**) shall be construed as a reference to the amount in the first currency which could be purchased with that amount in the second currency at the Agent's Spot Rate of Exchange on a particular day;
 - (xi) a **provision of law** is a reference to that provision as amended or re-enacted; and
 - (xii) a **time of day** is a reference to Paris time,
- (b) The determination of the extent to which a rate is **for a period equal in length** to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
- (c) Clause and Schedule headings are for ease of reference only.
- (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

- (e) A Default (other than an Event of Default) is **continuing** if it has not been remedied or waived and an Event of Default is **continuing** if it has not been waived.
- (f) Where it relates to a Spanish Obligor, and unless the contrary intention appears, a reference to:
- (i) an **insolvency proceeding** includes a *declaración de concurso* (either a *declaración de concurso necesario* or a *declaración de concurso voluntario*) and any step or proceeding related to a concurso under the Spanish Insolvency Law (including, without limitation, any petition filed under article 5 bis or article 231 of the Spanish Insolvency Law);
 - (ii) **winding up, administration or dissolution** includes a *liquidación, disolución, procedimiento concursal* or any similar situation under the Spanish corporate, commercial and civil law regulation;
 - (iii) a **compulsory manager, receiver or administrator** includes an *administrador concursal, liquidador* or any other person performing a similar function appointed as a result of any proceedings described in paragraphs (i) and (ii) above;
 - (iv) **control** has the meaning stated under article 42 of the Spanish Commercial Code;
 - (v) **financial assistance** has the meaning stated under Chapter VI of Title IV of the Spanish Companies Act;
 - (vi) **security** includes any mortgage (*hipoteca*), pledge (*prenda*) and, in general, any in rem security right governed by Spanish law; and
 - (vii) a **guarantee** includes any accessory personal guarantee (*fianza*), performance bond (*aval*), joint and several guarantee (*garantía solidaria*) and first demand guarantee (*garantía a primer requerimiento*).
- (g) Where it relates to a Turkish Obligor, and unless the contrary intention appears, a reference to:
- (i) a **moratorium** or a **composition** includes *konkordato* for the purposes of Execution and Bankruptcy Law of Turkey (Law No. 2004);
 - (ii) **winding-up** includes *tasfiye*, **dissolution** includes *infisah*, **reorganisation** includes *yeniden yapılandırma* and **bankruptcy** includes *iflas* under Turkish law;
 - (iii) a **liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator** include *tasfiye memuru, kayyum, icra veya iflas memuru* and *kayyum idaresi* under Turkish law;
 - (iv) a **suspension of payments** includes *ödemelerin tatil edilmesi* under Turkish law; and
 - (v) the **courts of England** and the **English courts**, mean the High Court of England and Wales based in London (and any competent United Kingdom appellate court in respect of any appeal relating to any judgment or order originally of the High Court of England and Wales).

1.3 Currency symbols and definitions

- (a) **\$, USD, US\$ and dollars** denote the lawful currency of the United States of America.
- (b) **Canadian Dollars and CAD\$** denote the lawful currency of Canada.
- (c) **euro** denote the single currency of the Participating Member States.

- (d) **AUD** denote the lawful currency of Australia.
- (e) **sterling** denote the lawful currency of the United Kingdom.

1.4 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Act**) to enforce or enjoy the benefit of any term of this Agreement.
- (b) Subject to paragraph (a) of Clause 38.3 (Other exceptions) but otherwise notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

1.5 Swedish trust provisions

If any party to this Agreement that is incorporated in Sweden (the **Obligated Party**) is required to hold an amount on trust on behalf of another party (the **Beneficiary**), the Obligated Party shall hold such money as agent for the Beneficiary on a separate account in accordance with the Swedish Act of 1944 in respect of assets held on account (*Sw. Lag (1944:181) om redovisningsmedel*) and shall promptly pay or transfer the same to the Beneficiary or as the Beneficiary may direct.

2. THE FACILITIES

2.1 The Facilities

Subject to the terms of this Agreement, the Lenders make available:

- (a) a Base Currency term loan facility in an aggregate amount equal to the Total Facility A Commitments; and
- (b) a Base Currency revolving credit facility in an aggregate amount equal to the Total Facility B Commitments.

2.2 Increase

- (a) The Borrower may by giving prior notice to the Agent by no later than the date falling 15 Business Days after the effective date of a cancellation of:
 - (i) the Available Commitments of a Defaulting Lender in accordance with Clause 7.7 (Right of cancellation in relation to a Defaulting Lender); or
 - (ii) the Commitments of a Lender in accordance with:
 - (A) Clause 7.1 (Illegality); or
 - (B) paragraph (a) of Clause 7.6 (Right of cancellation and repayment in relation to a single Lender),

request that the Commitments relating to any Facility be increased (and the Commitments relating to that Facility shall be so increased) in an aggregate amount in the Base Currency of up to the amount of the Available Commitments or Commitments relating to that Facility so cancelled.

- (b) Any request that the Commitments be increased shall be made as follows:

- (i) the increased Commitments will be assumed by one or more Eligible Institutions (each an **Increase Lender**) each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender in respect of those Commitments;
 - (ii) each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;
 - (iii) each Increase Lender shall become a Party as a "Lender" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;
 - (iv) the Commitments of the other Lenders shall continue in full force and effect; and
 - (v) any increase in the Commitments relating to a Facility shall take effect on the date specified by the Borrower in the notice referred to above or any later date on which the Agent executes an otherwise duly completed Increase Confirmation delivered to it by the relevant Increase Lender.
- (c) The Agent shall, subject to paragraph (d) below, as soon as reasonably practicable after receipt by it of a duly completed Increase Confirmation appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Increase Confirmation.
- (d) The Agent shall only be obliged to execute an Increase Confirmation delivered to it by an Increase Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender. The Agent shall promptly notify the Borrower and the Increase Lender upon being so satisfied.
- (e) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as it would have been had it been an Original Lender.
- (f) The Borrower shall promptly on demand pay the Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by either of them and, in the case of the Security Agent, by any Receiver or Delegate in connection with any increase in Commitments under this Clause 2.2.
- (g) The Increase Lender shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee in an amount equal to the fee which would be payable under Clause 25.4 (Assignment or transfer fee) if the increase was a transfer pursuant to Clause 25.6 (Procedure for transfer) and if the Increase Lender was a New Lender.
- (h) The Borrower may pay to the Increase Lender a fee in the amount and at the times agreed between the Borrower and the Increase Lender in a Fee Letter.

- (i) Neither the Agent nor any Lender shall have any obligation to find an Increase Lender and in no event shall any Lender whose Commitment is replaced by an Increase Lender be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents.
- (j) Clause 25.5 (Limitation of responsibility of Existing Lenders) shall apply *mutatis mutandis* in this Clause 2.2 in relation to an Increase Lender as if references in that Clause to:
 - (i) an **Existing Lender** were references to all the Lenders immediately prior to the relevant increase;
 - (ii) the **New Lender** were references to that **Increase Lender**; and
 - (iii) a **re-transfer** and **re-assignment** were references to respectively a **transfer** and **assignment**.

2.3 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by an Obligor which relates to a Finance Party's participation in a Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by that Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

2.4 Obligors' Agent

- (a) Each Obligor (other than the Borrower) by its execution of this Agreement or an Accession Deed irrevocably appoints the Borrower (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
 - (i) the Borrower on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions to execute on its behalf any Accession Deed to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and
 - (ii) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Borrower,

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

- (b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Obligors' Agent or given to the Obligors' Agent under any Finance Document on behalf of another Obligor or in connection with any Finance Document (whether or not known to any other Obligor and whether occurring before or after such other Obligor became an Obligor under any Finance Document) shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Obligors' Agent and any other Obligor, those of the Obligors' Agent shall prevail.

3. PURPOSE

3.1 Purpose

The Borrower shall apply all amounts borrowed by it under the Facilities towards:

- (a) refinancing the FQM Facilities Agreement and payment of all refinancing costs associated thereto;
- (b) its general corporate purposes and/or Permitted Loans to be used for Capital Expenditure and operating expenditure;
- (c) payment of all fees, costs and expenses incurred in connection with the Facilities; and
- (d) any other purpose with the prior written consent of the Lenders.

3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

- (a) The Lenders will only be obliged to comply with Clause 5.4 (Lenders' participation) in relation to any Loan if on or before the Utilisation Date for that Loan, the Agent has received all of the documents and other evidence listed in Part 1 (Conditions Precedent to first utilisation) of Schedule 2 (Conditions Precedent) in form and substance satisfactory to the Agent (acting reasonably). The Agent shall notify the Borrower and all the Lenders promptly upon being so satisfied. A failure to satisfy any of the conditions required by this paragraph (a) can only be waived with the consent of the Agent (acting on the instructions of all the Lenders).
- (b) If the conditions in paragraph (a) above are not satisfied or waived in accordance with this Agreement by a date falling 90 days after the date of this Agreement then, unless the Agent (acting on the instructions of the Majority Lenders) agrees otherwise, the Borrower shall not be entitled to deliver a Utilisation Request and the Commitments shall be immediately cancelled.
- (c) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.2 Further conditions precedent

Subject to Clause 4.1 (Initial conditions precedent), the Lenders will only be obliged to comply with Clause 5.4 (Lenders' participation), if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) no Default is continuing or would result from the proposed Loan; and
- (b) in relation to any Loan on the first Utilisation Date, all the representations and warranties in Clause 20 (Representations) or, in relation to any other Loan, the Repeating Representations to be made by each Obligor are true in all material respects.

4.3 Maximum number of Loans

The Borrower may not deliver a Utilisation Request if as a result of the proposed Loan:

- (a) more than one Facility A Loan would be outstanding; or
- (b) more than 10 Facility B Loans would be outstanding.

5. UTILISATION – LOANS

5.1 Delivery of a Utilisation Request

The Borrower may utilise a Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time.

5.2 Completion of a Utilisation Request for Loans

- (a) Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:
 - (i) it identifies the Facility to be utilised;
 - (ii) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;
 - (iii) the currency and amount of the Loan comply with Clause 5.3 (Currency and amount); and
 - (iv) the proposed Interest Period complies with Clause 11 (Interest Periods).
- (b) Only one Loan may be requested in each Utilisation Request.

5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be the Base Currency.
- (b) The amount of the proposed Loan must be:
 - (i) an amount equal to US\$50,000,000 or more (in increments of US\$10,000,000) for Facility A or, if less, the Available Facility; or
 - (ii) an amount equal to US\$50,000,000 or more (in increments of US\$10,000,000) for Facility B or, if less, the Available Facility.

5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met and subject to Clause 6.2 (Repayment of Facility B Loans), each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- (c) The Agent shall notify each Lender of the amount of each Loan, the amount of its participation in that Loan and, if different, the amount of that participation to be made available in accordance with Clause 31.1 (Payments to the Agent) by the Specified Time.

5.5 Cancellation of Commitment

- (a) The Facility A Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for Facility A.
- (b) The Facility B Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for Facility B.

5.6 Extension option – Facility A

- (a) If:
 - (i) no Default is continuing; and
 - (ii) the FQM Bonds Earliest Due Date is a date falling after the First Extended Termination Date or the Second Extended Termination Date (as applicable),

the Borrower may by giving notice to the Agent not less than the date falling six Months before the Initial Termination Date, request at its election that the Termination Date for Facility A be extended to the First Extended Termination Date or, if the FQM Bonds Earliest Due Date is a date falling after the Second Extended Termination Date, to the Second Extended Termination Date (each such request, a **First Extension Request A**).

- (b) If:
 - (i) no Default is continuing; and
 - (ii) the FQM Bonds Earliest Due Date is a date falling after the Second Extended Termination Date,

the Borrower may by giving notice to the Agent not less than the date falling six Months before the First Extended Termination Date, request that the Termination Date for Facility A be extended to the Second Extended Termination Date (a **Second Extension Request A**).

- (c) The Agent shall promptly notify each Facility A Lender of a First Extension Request A or a Second Extension Request A (each an **Extension Request A**).
- (d) Each Facility A Lender may, in its sole discretion, agree to any Extension Request A. If any Facility A Lender refuses or is deemed to have refused an Extension Request A, its Facility A Commitments will not be extended.
- (e) Subject to paragraph (i) below, each Facility A Lender that agrees to:

- (i) a First Extension Request A no later than the date falling 30 days after the date of the First Extension Request A (or such other period agreed between the Borrower and the Agent (acting on the instructions of the Majority Lenders under Facility A)) (the **First Extension Consent Deadline A**), will extend its Facility A Commitments to the First Extended Termination Date or the Second Extended Termination Date (as applicable) from the Initial Termination Date and the Termination Date with respect to the Facility A Commitments of that Facility A Lender will be extended accordingly; and
 - (ii) a Second Extension Request A no later than the date falling 30 days after the date of the Second Extension Request A (or such other period agreed between the Borrower and the Agent (acting on the instructions of the Majority Lenders under Facility A)) (the **Second Extension Consent Deadline A**), will extend its Facility A Commitments to the Second Extended Termination Date from the First Extended Termination Date and the then current Termination Date with respect to the Facility A Commitments of that Facility A Lender will be extended accordingly.
- (f) If any Facility A Lender fails to reply to an Extension Request A:
- (i) in relation to a First Extension Request A, on or before the First Extension Consent Deadline A; or
 - (ii) in relation to a Second Extension Request A, on or before the Second Extension Consent Deadline A,
- it will be deemed, in each case, to have refused that Extension Request A and its Facility A Commitments will not be extended.
- (g) Each Extension Request A is irrevocable.
- (h) If one or more (but not all) of the Facility A Lenders agree to an Extension Request A, then the Agent must notify the Borrower and the Facility A Lenders which have agreed to the extension, identifying in that notification which Facility A Lenders have not agreed to the Extension Request A.
- (i) Paragraph (e) above will only apply if the Facility A Lenders whose aggregate Facility A Commitments exceed 51 per cent. of the Total Facility A Commitments consent to the applicable Extension Request A.
- (j) Subject to the Termination Date for Facility A being extended in accordance with paragraph (e) above, the Borrower shall pay to the Agent for the account of each Facility A Lender which has consented to:
- (i) the First Extension Request A, an extension fee:
 - (A) in the case of a First Extension Request A to extend the Termination Date of Facility A to the First Extended Termination Date, in an amount equal to 0.25 per cent. of the aggregate Facility A Commitment to be extended on the Initial Termination Date; or
 - (B) in the case of a First Extension Request A to extend the Termination Date of Facility A to the Second Extended Termination Date, in an amount equal to 0.50 per cent. of the aggregate Facility A Commitment to be extended on the Initial Termination Date; and

- (ii) the Second Extension Request A, an extension fee in an amount equal to 0.25 per cent. of the aggregate Facility A Commitment to be extended on the First Extended Termination Date.
- (k) If a Lender has refused or is deemed to have refused an Extension Request A, the Borrower may exercise its rights under Clause 38.6 (Replacement of Lender) in respect of that Lender.

5.7 Extension option – Facility B

- (a) If:
 - (i) no Default is continuing; and
 - (ii) the FQM Bonds Earliest Due Date is a date falling after the First Extended Termination Date or the Second Extended Termination Date (as applicable),

the Borrower may by giving notice to the Agent not less than the date falling six Months before the Initial Termination Date, request at its election that the Termination Date for Facility B be extended to the First Extended Termination Date or, if the FQM Bonds Earliest Due Date is a date falling after the Second Extended Termination Date, to the Second Extended Termination Date (each such request, a **First Extension Request B**).

- (b) If:
 - (i) no Default is continuing; and
 - (ii) the FQM Bonds Earliest Due Date is a date falling after the Second Extended Termination Date,

the Borrower may by giving notice to the Agent not less than the date falling six Months before the First Extended Termination Date, request that the Termination Date for Facility B be extended to the Second Extended Termination Date (a **Second Extension Request B**).

- (c) The Agent shall promptly notify each Facility B Lender of a First Extension Request B or a Second Extension Request B (each an **Extension Request B**).
- (d) Each Facility B Lender may, in its sole discretion, agree to any Extension Request B. If any Facility B Lender refuses or is deemed to have refused an Extension Request B, its Facility B Commitments will not be extended.
- (e) Subject to paragraph (i) below, each Facility B Lender that agrees to:
 - (i) a First Extension Request B no later than the date falling 30 days after the date of the First Extension Request B (or such other period agreed between the Borrower and the Agent (acting on the instructions of the Majority Lenders under Facility B)) (the **First Extension Consent Deadline B**), will extend its Facility B Commitments to the First Extended Termination Date or the Second Extended Termination Date (as applicable) from the Initial Termination Date and the Termination Date with respect to the Facility B Commitments of that Facility B Lender will be extended accordingly; and
 - (ii) a Second Extension Request B no later than the date falling 30 days after the date of the Second Extension Request B (or such other period agreed between the Borrower and the Agent (acting on the instructions of the Majority Lenders under Facility B)) (the **Second Extension Consent Deadline B**), will extend its Facility B Commitments to the Second Extended Termination Date from the First Extended Termination Date and the then current

Termination Date with respect to the Facility B Commitments of that Facility B Lender will be extended accordingly.

- (f) If any Facility B Lender fails to reply to an Extension Request B:
 - (i) in relation to a First Extension Request B, on or before the First Extension Consent Deadline B; or
 - (ii) in relation to a Second Extension Request B, on or before the Second Extension Consent Deadline B,

it will be deemed, in each case, to have refused that Extension Request B and its Facility B Commitments will not be extended.

- (g) Each Extension Request B is irrevocable.
- (h) If one or more (but not all) of the Facility B Lenders agree to an Extension Request B, then the Agent must notify the Borrower and the Facility B Lenders which have agreed to the extension, identifying in that notification which Facility B Lenders have not agreed to the Extension Request B.
- (i) Paragraph (e) above will only apply if the Facility B Lenders whose aggregate Facility B Commitments exceed 51 per cent. of the Total Facility B Commitments consent to the applicable Extension Request B.
- (j) Subject to the Termination Date for Facility B being extended in accordance with paragraph (e) above, the Borrower shall pay to the Agent for the account of each Facility B Lender which has consented to:
 - (i) the First Extension Request B, an extension fee:
 - (A) in the case of a First Extension Request B to extend the Termination Date of Facility B to the First Extended Termination Date, in an amount equal to 0.25 per cent. of the aggregate Facility B Commitment to be extended on the Initial Termination Date; or
 - (B) in the case of a First Extension Request B to extend the Termination Date of Facility B to the Second Extended Termination Date, in an amount equal to 0.50 per cent. of the aggregate Facility B Commitment to be extended on the Initial Termination Date; and
 - (ii) the Second Extension Request B, an extension fee in an amount equal to 0.25 per cent. of the aggregate Facility B Commitment to be extended on the First Extended Termination Date.
- (k) If a Lender has refused or is deemed to have refused an Extension Request B, the Borrower may exercise its rights under Clause 38.6 (Replacement of Lender) in respect of that Lender.

6. REPAYMENT

6.1 Repayment of Facility A Loans

- (a) The Borrower shall repay the aggregate Facility A Loans in instalments by repaying on each Facility A Repayment Date an amount which reduces the Base Currency Amount of the outstanding aggregate Facility A Loans by the amount set out opposite that Facility A Repayment Date below:

Facility A Repayment Date	Repayment Instalment
31 December 2019	one seventh of the aggregate Facility A Loans borrowed as at close of business in London on the last day of the Availability Period in relation to Facility A
30 June 2020	one seventh of the aggregate Facility A Loans borrowed as at close of business in London on the last day of the Availability Period in relation to Facility A
31 December 2020	if the Termination Date for Facility A has not been extended in accordance with Clause 5.6 (Extension option – Facility A), the outstanding balance in respect of Facility A in full if the Termination Date for Facility A has been extended in accordance with Clause 5.6 (Extension option – Facility A), one seventh of the aggregate Facility A Loans borrowed as at close of business in London on the last day of the Availability Period in relation to Facility A
the date falling six months before the First Extended Termination Date	if the Termination Date for Facility A has been extended in accordance with Clause 5.6 (Extension option – Facility A), one seventh of the aggregate Facility A Loans borrowed as at close of business in London on the last day of the Availability Period in relation to Facility A
First Extended Termination Date	if the Termination Date for Facility A has been extended to the First Extended Termination Date (but not to the Second Extended Termination Date) in accordance with Clause 5.6 (Extension option – Facility A), the outstanding balance in respect of Facility A in full if the Termination Date for Facility A has been extended to the Second Extended Termination Date in accordance with Clause 5.6 (Extension option – Facility A), one seventh of the aggregate Facility A Loans borrowed as at close of business in London on the last day of the Availability Period in relation to Facility A
the date falling six months before the Second Extended Termination Date	if the Termination Date for Facility A has been extended to the Second Extended Termination Date in accordance with Clause 5.6 (Extension option – Facility A), one seventh of the aggregate Facility A Loans borrowed as at close of business in London on the last day of the Availability Period in relation to Facility A
Second Extended Termination Date	the outstanding balance in respect of Facility A in full

(b) The Borrower may not reborrow any part of the Facility A which is repaid.

6.2 Repayment of Facility B Loans

(a) Subject to paragraph (b) below, the Borrower shall repay each Facility B Loan on the last day of its Interest Period.

- (b) Without prejudice to the Borrower's obligation under paragraph (a) above, if:
- (i) one or more Facility B Loans are to be made available to the Borrower:
 - (A) on the same day that a maturing Facility B Loan is due to be repaid by the Borrower; and
 - (B) in whole or in part for the purpose of refinancing the maturing Facility B Loan; and
 - (ii) the proportion borne by each Lender's participation in the maturing Facility B Loan to the amount of that maturing Facility B Loan is the same as the proportion borne by that Lender's participation in the new Facility B Loans to the aggregate amount of those new Facility B Loans,

the aggregate amount of the new Facility B Loans shall, unless the Borrower notifies the Agent to the contrary in the relevant Utilisation Request, be treated as if applied in or towards repayment of the maturing Facility B Loan so that:

- (A) if the amount of the maturing Facility B Loan exceeds the aggregate amount of the new Facility B Loans:
 - I. the Borrower will only be required to make a payment under Clause 31.1 (Payments to the Agent) in an amount in the relevant currency equal to that excess; and
 - II. each Lender's participation in the new Facility B Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Facility B Loan and that Lender will not be required to make a payment under Clause 31.1 (Payments to the Agent) in respect of its participation in the new Facility B Loans; and
- (B) if the amount of the maturing Facility B Loan is equal to or less than the aggregate amount of the new Facility B Loans:
 - I. the Borrower will not be required to make a payment under Clause 31.1 (Payments to the Agent); and
 - II. each Lender will be required to make a payment under Clause 31.1 (Payments to the Agent) in respect of its participation in the new Facility B Loans only to the extent that its participation in the new Facility B Loans exceeds that Lender's participation in the maturing Facility B Loan and the remainder of that Lender's participation in the new Facility B Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Facility B Loan.

- (c) All outstanding Facility B Loans shall be repaid in full on the Termination Date.

6.3 Effect of cancellation and prepayment on scheduled repayments

- (a) If any Facility A Loan is repaid or prepaid in accordance with Clause 7.6 (Right of cancellation and repayment in relation to a single Lender) or Clause 7.1 (Illegality) then, other than to the extent that any part of the relevant Commitment is subsequently increased pursuant to Clause 2.2 (Increase), the amount of the Repayment Instalments for each Facility A Repayment Date falling after that repayment or prepayment will reduce in inverse chronological order by the amount of the Facility A Loan repaid or prepaid.

- (b) If any Facility A Loan is prepaid in accordance with Clause 7.4 (Voluntary prepayment of Facility A Loans) or Clause 8.2 (Disposal/MPSA Facility Proceeds) then the amount of the Repayment Instalment for each Facility A Repayment Date falling after that prepayment will reduce in inverse chronological order by the amount of the Facility A Loan prepaid.

7. ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION

7.1 Illegality

If, in any applicable jurisdiction, it becomes unlawful for a Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in any Loan or it becomes unlawful for any Affiliate of a Lender for that Lender to do so:

- (a) that Lender, shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Borrower, each Available Commitment of that Lender will be immediately cancelled; and
- (c) to the extent that the Lender's participation has not been transferred pursuant to Clause 38.6 (Replacement of Lender), the Borrower shall repay that Lender's participation in the Loans on the last day of the Interest Period for each Loan occurring after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment(s) shall be cancelled in the amount of the participations repaid.

7.2 Sanctions

- (a) If a member of the Group directly or indirectly, uses, lends, makes payments of, contributes or otherwise makes available, all or any part of the proceeds of any Loan or other transaction(s) contemplated by this Agreement to fund any trade, business or other activities (or permits or authorises any other person to do any of the foregoing) in any manner that would result in any Lender being in breach of any Sanctions or becoming a Restricted Party:
 - (i) that Lender shall promptly notify the Agent upon becoming aware of that event;
 - (ii) upon the Agent notifying the Borrower, at that Lender's election, each Available Commitment of that Lender will be immediately cancelled; and
 - (iii) at that Lender's election, the Borrower shall repay that Lender's participation in the Loans on the last day of the Interest Period for each Loan occurring after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law or regulation) and that Lender's corresponding Commitment(s) shall be cancelled in the amount of the participations repaid.
- (b) If any member of the Group becomes a Restricted Party, any Lender may, by notifying the Agent, elect that each Available Commitment of that Lender will be immediately cancelled and the Borrower shall repay that Lender's participation in the Loans on the last day of the Interest Period for each Loan occurring after the Agent has notified the Borrower of such election or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law or regulation) and that Lender's corresponding Commitment(s) shall be cancelled in the amount of the participations repaid.

7.3 Voluntary cancellation

The Borrower may, if it gives the Agent not less than five Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of US\$50,000,000 and integral multiples of US\$10,000,000) of an Available Facility. Any cancellation under this Clause 7.3 shall reduce the Commitments of the Lenders rateably under that Facility.

7.4 Voluntary prepayment of Facility A Loans

- (a) The Borrower may, if it gives the Agent not less than five Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of that Facility A Loan (but, if in part, being an amount that reduces the Base Currency Amount of that Facility A Loan by a minimum amount of US\$50,000,000 (or if less the outstanding Facility A Loan) and integral multiples of US\$10,000,000).
- (b) A Facility A Loan may only be prepaid on the last day of an Interest Period ending after the last day of the Availability Period for Facility A.

7.5 Voluntary prepayment of Facility B Loans

- (a) The Borrower may, if it gives the Agent not less than five Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a Facility B Loan (but if in part, being an amount that reduces the Base Currency Amount of the Facility B Loan by a minimum amount of US\$50,000,000 (or if less the outstanding Facility B Loan) and integral multiples of US\$10,000,000).
- (b) A Facility B Loan may only be prepaid on the last day of an Interest Period.

7.6 Right of cancellation and repayment in relation to a single Lender

- (a) If:
 - (i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 14.2 (Tax gross-up); or
 - (ii) any Lender claims indemnification from the Borrower or an Obligor under Clause 14.3 (Tax indemnity) or Clause 15.1 (Increased costs),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of cancellation of the Commitment(s) of that Lender and its intention to procure the repayment of that Lender's participation in the Loans.

- (b) On receipt by the Agent of the notice from the Borrower referred to in paragraph (a) above in relation to a Lender, the Commitment(s) of that Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrower has given notice under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in any Loan together with all interest and other amounts accrued under the Finance Documents.

7.7 Right of cancellation in relation to a Defaulting Lender

- (a) If any Lender becomes a Defaulting Lender, the Borrower may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent 15 Business Days' notice of cancellation of each Available Commitment of that Lender.
- (b) On the notice referred to in paragraph (a) above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.
- (c) The Agent shall as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders.

8. MANDATORY PREPAYMENT AND CANCELLATION

8.1 Exit

Upon the occurrence of:

- (a) a Change of Control; or
- (b) the sale of all or substantially all of the assets of the Group whether in a single transaction or a series of related transactions,

the Facilities will be cancelled and all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents, shall become immediately due and payable.

8.2 Disposal/MPSA Facility Proceeds

- (a) For the purposes of this Clause 8.2 and Clause 8.3 (Application of mandatory prepayments and cancellations):
 - (i) **Disposal** means a sale, lease, licence, transfer or other disposal by any person of any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions).
 - (ii) **Disposal Proceeds** means the consideration received by any Obligor (including any amount received in repayment of intercompany debt) for any Disposal referred to in paragraph (d) or (e)(ii) of the definition of Permitted Disposals, except for Excluded Reinvestments Proceeds and Uninvested Proceeds and after deducting:
 - (A) any expenses which are incurred by any member of the Group with respect to that Disposal to persons who are not members of the Group; and
 - (B) any Tax incurred and required to be paid by the seller in connection with that Disposal.
 - (iii) **Excluded Reinvestment Proceeds** means any proceeds arising from a Disposal which is permitted under paragraph (d) or (e)(ii) of the definition of Permitted Disposal where the net consideration received (when aggregated with the net consideration received for any other Disposal which is permitted under paragraph (d) or (e)(ii) of the definition of Permitted Disposal) either (I) does not exceed US\$250,000,000 or its equivalent in aggregate during the term of this Agreement or (II) exceeds US\$250,000,000 or its equivalent in aggregate during the term of this Agreement, where at the Borrower's election, proceeds in excess of US\$250,000,000 are:

- (A) to be reinvested or applied within 12 months of such Disposal:
 - I. by way of Capital Expenditure, in the existing assets of the Group;
 - II. if such Disposal is permitted under paragraph (d) of the definition of Permitted Disposal, in mining assets comparable or superior as to type, value and quality as those that were the subject of such Disposal; or
 - III. to pay cash consideration in connection with a Permitted Acquisition permitted under paragraph (b) of that definition; or
- (B) not reinvested or applied within 12 months of such Disposal, but at the end of that period, the relevant member of the Group has entered into a binding commitment such that such proceeds are to be reinvested within 180 days of that date:
 - I. by way of Capital Expenditure, in the existing assets of the Group;
 - II. if such Disposal is permitted under paragraph (d) of the definition of Permitted Disposal, in mining assets comparable or superior as to type, value and quality as those that were subject of such Disposal; or
 - III. to pay cash consideration in connection with a Permitted Acquisition permitted under paragraph (b) of that definition.

- (iv) **MPSA Facility Proceeds** means, at any time during a Ratio Enhancement Period, an amount equal to the aggregate principal amount of any Financial Indebtedness incurred by any member of the Group referred to in paragraph (d) or (e) of the definition of Permitted Financial Indebtedness.
- (v) **Uninvested Proceeds** means any Excluded Reinvestment Proceeds which are not used for the specific purpose within the specified period (as set out in the definition of Excluded Reinvestment Proceeds).

- (b) The Borrower shall prepay Loans and cancel Available Commitments, in amounts equal to the amounts of Disposal Proceeds, MPSA Facility Proceeds and Uninvested Proceeds at the times and in the order of application contemplated by Clause 8.3 (Application of mandatory prepayments and cancellations).
- (c) Where Excluded Reinvestment Proceeds include amounts which are intended to be used for a specific purpose within a specified period (as set out in the definition of Excluded Reinvestment Proceeds), the Borrower shall ensure that those amounts are used for that purpose and within that period.

8.3 Application of mandatory prepayments and cancellations

- (a) A prepayment of Loans or cancellation of Available Commitments using Disposal Proceeds or MPSA Facility Proceeds made under Clause 8.2 (Disposal/MPSA Facility Proceeds) shall be applied in the following order:
 - (i) first, in cancellation of Available Commitments under the Facility A (and the Available Commitments of the Lenders under the Facility A will be cancelled rateably); and
 - (ii) secondly, in prepayment of Facility A Loans as contemplated in paragraphs (c) to (f) below inclusive on a pro rata basis.

- (b) A prepayment of Loans using Uninvested Proceeds made under Clause 8.2 (Disposal/MPSA Facility Proceeds) shall be applied in prepayment of Facility A Loans as contemplated in paragraphs (c) to (f) below inclusive on a pro rata basis.
- (c) Unless the Borrower makes an election under paragraph (e) below, the Borrower shall prepay the Loans, in the case of any prepayment relating to the amounts of Disposal Proceeds, MPSA Facility Proceeds or Uninvested Proceeds, promptly upon receipt of those proceeds.
- (d) Each prepayment of Facility A Loans under Clause 8.2 (Disposal/MPSA Facility Proceeds) shall be applied towards a reduction in Repayment Instalments in the manner specified in paragraph (b) of Clause 6.3 (Effect of cancellation and prepayment on scheduled repayments).
- (e) Subject to paragraph (f) below, the Borrower may elect that any prepayment under Clause 8.2 (Disposal/MPSA Facility Proceeds) be applied in prepayment of a Loan on the last day of the Interest Period relating to that Loan. If the Borrower makes that election then a proportion of the Loan equal to the amount of the relevant prepayment will be due and payable on the last day of its Interest Period.
- (f) If the Borrower has made an election under paragraph (e) above but an Event of Default has occurred and is continuing, that election shall no longer apply and a proportion of the Loan in respect of which the election was made equal to the amount of the relevant prepayment shall be immediately due and payable (unless the Majority Lenders otherwise agree in writing)

9. RESTRICTIONS

9.1 Notices of cancellation or prepayment

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 7 (Illegality, voluntary prepayment and cancellation) or paragraph (e) of Clause 8.3 (Application of mandatory prepayments and cancellations) shall (subject to the terms of those Clauses) be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

9.2 Interest and other amounts

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.

9.3 No reborrowing of Facility A

The Borrower may not reborrow any part of the Facility A which is prepaid.

9.4 Reborrowing of Facility B

Other than pursuant to Clause 8.3 (Application of mandatory prepayments and cancellations), any part of the Facility B which is prepaid or repaid may be reborrowed in accordance with the terms of this Agreement.

9.5 Prepayment in accordance with Agreement

The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

9.6 No reinstatement of Commitments

Subject to Clause 2.2 (Increase), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

9.7 Agent's receipt of notices

If the Agent receives a notice under Clause 7 (Illegality, voluntary prepayment and cancellation) or an election under paragraph (e) of Clause 8.3 (Application of mandatory prepayments and cancellations), it shall promptly forward a copy of that notice or election to either the Borrower or the affected Lender, as appropriate.

9.8 Effect of repayment and prepayment on Commitments

If all or part of any Lender's participation in a Loan under a Facility is repaid or prepaid and is not available for redrawing (other than by operation of Clause 4.2 (Further conditions precedent)), an amount of that Lender's Commitment (equal to the Base Currency Amount of the amount of the participation which is repaid or prepaid) in respect of that Facility will be deemed to be cancelled on the date of repayment or prepayment.

9.9 Application of prepayments

Any prepayment of a Loan (other than a prepayment pursuant to Clause 7.1 (Illegality) or Clause 7.6 (Right of cancellation and repayment in relation to a single Lender)) shall be applied pro rata to each Lender's participation in that Loan.

10. INTEREST

10.1 Calculation of interest

The rate of interest on each Loan for each Interest Period is the [interest rate redacted]:

- (a) Margin; and
- (b) LIBOR.

10.2 Payment of interest

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period (and, if the Interest Period is longer than six Months, on the dates falling at six Monthly intervals after the first day of the Interest Period).

10.3 Default interest

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is [interest rate redacted] higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 10.3 shall be immediately payable by the Obligor on demand by the Agent.
- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:

- (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
 - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be [interest rate redacted] higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

10.4 Notification of rates of interest

- (a) The Agent shall promptly notify the relevant Lenders and the Borrower of the determination of a rate of interest under this Agreement.
- (b) The Agent shall promptly notify the Borrower of each Funding Rate relating to a Loan.

10.5 Minimum interest payment/Swiss Withholding Tax

- (a) The rates of interest provided for in this Agreement are minimum interest rates.
- (b) When entering into this Agreement, the Parties have assumed that the interest payable at the rates set out in this Clause 10 or in other Clauses of this Agreement, if any, is not and will not become subject to Swiss Withholding Tax (the **Swiss Tax Deduction**). Notwithstanding the foregoing, if a Swiss Tax Deduction is required by law in respect of any interest payable by an Obligor under a Finance Document and should it be unlawful for that Obligor to comply with Clause 14.2 (Tax gross-up) for any reason, where this would otherwise be required by the terms of Clause 14.2 (Tax gross-up) (taking into account the exclusions in Clause 14.2 (Tax gross-up)), then:
 - (i) the applicable interest rate in relation to that interest payment shall be the interest rate which would have applied to that interest payment as provided for by Clause 10.1 (Calculation of interest) divided by one minus the rate at which the relevant Swiss Tax Deduction is required to be made under Swiss domestic tax law and/or applicable double taxation treaties (where the rate at which the relevant Swiss Tax Deduction is required to be made is for this purpose expressed as a fraction of one); and
 - (ii) that Obligor shall:
 - (A) pay the relevant interest at the adjusted rate in accordance with paragraph (i) above;
 - (B) make the Swiss Tax Deduction on the interest so recalculated; and
 - (C) all references to a rate of interest under the Finance Documents shall be construed accordingly.
- (c) To the extent that interest payable by an Obligor under a Finance Document becomes subject to Swiss Withholding Tax, each relevant Lender and the Obligor shall promptly co-operate in completing any procedural formalities (including submitting forms and documents required by the appropriate Tax authority) to the extent possible and necessary (i) for the relevant Obligor to obtain authorisation to make interest payments without them being subject to Swiss Withholding Tax or to being subject to Swiss Withholding Tax at a rate reduced under applicable double taxation treaties and (ii) to ensure that any person which is entitled to a full or partial refund under any applicable double taxation treaty is so refunded.

11. INTEREST PERIODS

11.1 Selection of Interest Periods and Terms

- (a) The Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan is a Facility A Loan and has already been borrowed) in a Selection Notice.
- (b) Each Selection Notice for Facility A Loan is irrevocable and must be delivered to the Agent by the Borrower not later than the Specified Time.
- (c) If the Borrower fails to deliver a Selection Notice to the Agent in accordance with paragraph (b) above, the relevant Interest Period will, subject to Clause 11.2 (Changes to Interest Periods), be three Months.
- (d) Subject to this Clause 11, the Borrower:
 - (i) may select an Interest Period of three or six Months for a Facility A Loan; and
 - (ii) may select an Interest Period of one, three or six Months for a Facility B Loan,or, in each case, any other period agreed between the Borrower, the Agent and all the Lenders in relation to the relevant Loan.
- (e) An Interest Period for a Loan shall not extend beyond the Initial Termination Date, the First Extended Termination Date and the Second Extended Termination Date.
- (f) Each Interest Period for a Facility A Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.
- (g) A Facility B Loan has one Interest Period only.

11.2 Changes to Interest Periods

- (a) Prior to determining the interest rate for a Facility A Loan, the Agent may shorten an Interest Period for any Facility A Loan to ensure there are sufficient Facility A Loans (with an aggregate Base Currency Amount equal to or greater than the relevant Repayment Instalment) which have an Interest Period ending on a Facility A Repayment Date for the Borrower to make the relevant Repayment Instalment due on that date.
- (b) If the Agent makes any of the changes to an Interest Period referred to in this Clause 11.2, it shall promptly notify the Borrower and the Lenders.

11.3 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

11.4 Consolidation of Loans

If two or more Interest Periods relating to Facility A Loans end on the same date, those Facility A Loans will, unless the Borrower specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Facility A Loan on the last day of the Interest Period.

12. CHANGES TO THE CALCULATION OF INTEREST

12.1 Unavailability of Screen Rate

(a) Interpolated Screen Rate

If no Screen Rate is available for LIBOR for the Interest Period of a Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.

(b) Reference Bank Rate

If no Screen Rate is available for LIBOR for:

- (i) the currency of a Loan; or
- (ii) the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate,

the applicable LIBOR shall be the Reference Bank Rate as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of that Loan.

(c) Cost of funds

If paragraph (b) above applies but no Reference Bank Rate is available for the relevant currency or Interest Period, there shall be no LIBOR for that Loan and Clause 12.4 (Cost of funds) shall apply to that Loan for that Interest Period.

12.2 Calculation of Reference Bank Rate

- (a) Subject to paragraph (b) below, if LIBOR is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.
- (b) If at or about noon on the Quotation Day none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.

12.3 Market disruption

If before noon (London time) on the Quotation Day for the relevant Interest Period the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 30 per cent. of that Loan) that the cost to it of funding its participation in that Loan from whatever source it may reasonably select for the relevant currency would be in excess of LIBOR then Clause 12.4 (Cost of funds) shall apply to that Loan for the relevant Interest Period.

12.4 Cost of funds

- (a) If this Clause 12.4 applies, the rate of interest on each Lender's share of the relevant Loan for the relevant Interest Period shall be the [interest rate redacted]:
 - (i) the Margin; and
 - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event by close of business on the date falling 15 Business Days after the Quotation Day (or, if earlier, on the date falling ten Business Days before the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the

cost to the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select.

- (b) If this Clause 12.4 applies and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (d) If this Clause 12.4 applies pursuant to Clause [interest rate redacted] and:
 - (i) a Lender's Funding Rate is less than LIBOR; or
 - (ii) a Lender does not supply a quotation by the time specified in paragraph (a)(ii) above,

the cost to that Lender of funding its participation in that Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.

12.5 Notification to Company

If Clause 12.4 (Cost of funds) applies the Agent shall, as soon as is practicable, notify the Borrower.

12.6 Break Costs

- (a) The Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

12.7 Yearly Rate of Interest

For the purposes of the Interest Act (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith by a Canadian Obligor is to be calculated on the basis of a 360-day or 365-day year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or 365, as applicable. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.

12.8 Criminal Interest

If any provision of this Agreement would oblige a Canadian Obligor to make any payment of interest or other amount payable to any Finance Party in an amount or calculated at a rate which would be prohibited by applicable laws or would result in a receipt by that Finance Party of "interest" at a "criminal rate" (as such terms are construed under the Criminal Code (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by that Finance Party of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows:

- (a) first, by reducing the amount or rate of interest required to be paid to the affected Finance Party under Clause 10 (Interest); and
- (b) thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid to the affected Finance Party which would constitute interest for purposes of s347 of the Criminal Code (Canada).

13. FEES

13.1 Commitment fee

- (a) The Borrower shall pay to the Agent (for the account of each Lender) a fee in the Base Currency computed at the rate of:
 - (i) [fee redacted]; and
 - (ii) [fee redacted].
- (b) The accrued commitment fee is calculated daily and is payable on each Quarter Date which ends during the relevant Availability Period, on the last day of the relevant Availability Period and on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.
- (c) No commitment fee is payable to the Agent (for the account of a Lender) on any Available Commitment of that Lender for any day on which that Lender is a Defaulting Lender.

13.2 Arrangement fee

The Borrower shall pay to the Agent (for the account of each Original Lender) an arrangement fee in the amount and at the times agreed in a Fee Letter.

13.3 Agency fee

The Borrower shall pay to the Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

13.4 Security Agent fee

The Borrower shall pay to the Security Agent (for its own account) a security agent fee in the amount and at the times agreed in a Fee Letter.

14. TAX GROSS-UP AND INDEMNITIES

14.1 Definitions

In this Agreement:

Protected Party means a Finance Party which is or will be subject to any liability or required to make any payment for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

Tax Credit means a credit against, relief or remission for, or repayment of, any Tax.

Tax Deduction means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.

Tax Payment means either the increase in a payment made by an Obligor to a Finance Party under Clause 14.2 (Tax gross-up) or a payment under Clause 14.3 (Tax indemnity).

Unless a contrary indication appears, in this Clause 14 a reference to **determines** or **determined** means a determination made in the absolute discretion of the person making the determination.

14.2 Tax gross-up

- (a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrower and that Obligor.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

14.3 Tax indemnity

- (a) The Borrower shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
 - (i) with respect to any Tax assessed on a Finance Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
 - (ii) to the extent a loss, liability or cost:

- (A) is compensated for by an increased payment under Clause 14.2 (Tax gross-up); or
 - (B) relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 14.3, notify the Agent.

14.4 Tax Credit

If an Obligor makes a Tax Payment and the relevant Finance Party determines (in its absolute discretion) that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

14.5 Stamp taxes

The Borrower shall pay and, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

14.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the **Supplier**) to any other Finance Party (the **Recipient**) under a Finance Document, and any Party other than the Recipient (the **Relevant Party**) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
 - (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit

or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and

- (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 14.6 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994 or any similar term to have the meaning in the similar legislation in the relevant jurisdiction).
- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

14.7 FATCA information

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall promptly notify that other Party and the Agent.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;

- (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

14.8 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Borrower and the Agent and the Agent shall notify the other Finance Parties.

15. INCREASED COSTS

15.1 Increased costs

- (a) Subject to Clause 15.3 (Exceptions) the Borrower shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation;
 - (ii) compliance with any law or regulation made after the date of this Agreement; or
 - (iii) the implementation or application of or compliance with Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.
- (b) In this Agreement **Increased Costs** means:
- (i) a reduction in the rate of return from a Facility or on a Finance Party's (or its Affiliate's) overall capital;
 - (ii) an additional or increased cost; or
 - (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

15.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 15.1 (Increased costs) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs provided that each Finance Party will not be obliged to divulge any confidential or sensitive information.

15.3 Exceptions

- (a) Clause 15.1 (Increased costs) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;
 - (iii) compensated for by Clause 14.3 (Tax indemnity) (or would have been compensated for under Clause 14.3 (Tax indemnity) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 14.3 (Tax indemnity) applied);
 - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation; or
 - (v) attributable to the implementation or application of or compliance with the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement (but excluding any amendment arising out of Basel III) (**Basel II**) or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates).
- (b) In this Clause 15.3 reference to a **Tax Deduction** has the same meaning given to the term in Clause 14.1 (Definitions).

16. OTHER INDEMNITIES

16.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a **Sum**), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the **First Currency**) in which that Sum is payable into another currency (the **Second Currency**) for the purpose of:
 - (i) making or filing a claim or proof against that Obligor; or
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify each Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert

that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

16.2 Other indemnities

The Borrower shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability incurred by it as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 30 (Sharing among the Finance Parties);
- (c) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

16.3 Indemnity to the Agent

The Borrower shall immediately on demand indemnify the Agent against:

- (a) any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:
 - (i) investigating any event which it reasonably believes is a Default;
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
 - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and
- (b) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 31.11 (Disruption to Payment Systems etc) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents.

16.4 Indemnity to the Security Agent

- (a) Each Obligor jointly and severally shall immediately on demand indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
 - (i) any failure by the Borrower to comply with its obligations under Clause 18 (Costs and expenses);

- (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;
 - (v) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents; or
 - (vi) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 16.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

17. MITIGATION BY THE LENDERS

17.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (Illegality), Clause 14 (Tax gross-up and indemnities) or Clause 15 (Increased Costs) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

17.2 Limitation of liability

- (a) The Borrower shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 17.1 (Mitigation).
- (b) A Finance Party is not obliged to take any steps under Clause 17.1 (Mitigation) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

18. COSTS AND EXPENSES

18.1 Transaction expenses

The Borrower shall, promptly on demand, pay the Agent, the Arranger, and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred and properly documented by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement and the Transaction Security; and

- (b) any other Finance Documents executed after the date of this Agreement.

18.2 Amendment costs

If:

- (a) an Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 31.10 (Change of currency),

the Borrower shall, within three Business Days of demand, reimburse each of the Agent and the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred and properly documented by the Agent and the Security Agent (and, in the case of the Security Agent, by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

18.3 Security Agent's additional remuneration

- (a) In the event of:
 - (i) a Default;
 - (ii) the Security Agent being requested by an Obligor or the Majority Lenders to undertake duties which the Security Agent and the Borrower agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or
 - (iii) the Security Agent and the Borrower agreeing that it is otherwise appropriate in the circumstances,

the Borrower shall pay to the Security Agent any additional remuneration that may be agreed between them or determined pursuant to paragraph (b) below.

- (b) If the Security Agent and the Borrower fail to agree upon the nature of the duties or upon the additional remuneration referred to in paragraph (a) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Borrower or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Borrower) and the determination of any investment bank shall be final and binding upon the Parties.

18.4 Enforcement and preservation costs

The Borrower shall, within three Business Days of demand, pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

19. GUARANTEE AND INDEMNITY

19.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally:

- (a) jointly and severally guarantees (in relation to a Swedish Obligor, as for its own debt (*Sw. proprieborgen*)) to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- (b) jointly and severally undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) severally agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 19 if the amount claimed had been recoverable on the basis of a guarantee.

19.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

19.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 19 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

19.4 Waiver of defences

The obligations of each Guarantor under this Clause 19 will not be affected by an act, omission, matter or thing which, but for this Clause 19, would reduce, release or prejudice any of its obligations under this Clause 19 (without limitation and whether or not known to it or any Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;

- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

19.5 Guarantor intent

Without prejudice to the generality of Clause 19.4 (Waiver of defences), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

19.6 Immediate recourse

- (a) Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 19. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.
- (b) Each Spanish Obligor acknowledges that the guarantee provided by it under this Clause 19 must be construed as a first demand guarantee (*garantía a primera demanda*) and not as a guarantee (*fianza*) and, therefore, the benefits of preference (*exención*), order (*orden*) and division (*división*) shall not be applicable.

19.7 Appropriations

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 19.

19.8 Deferral of Guarantors' rights

- (a) Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no

Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 19:

- (i) to be indemnified by an Obligor;
 - (ii) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
 - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
 - (iv) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 19.1 (Guarantee and indemnity);
 - (v) to exercise any right of set-off against any Obligor; and/or
 - (vi) to claim or prove as a creditor of any Obligor in competition with any Finance Party.
- (b) If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties (or, in the case of a Swedish Obligor or a Luxembourg Obligor, hold such benefit, payment or distribution as agent for the Finance Parties) and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 31 (Payment mechanics).

19.9 Release of Guarantors' right of contribution

If any Guarantor (a **Retiring Guarantor**) ceases to be a Guarantor in accordance with the terms of the Finance Documents for the purpose of any sale or other disposal of that Retiring Guarantor then on the date such Retiring Guarantor ceases to be a Guarantor:

- (a) that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents; and
- (b) each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.

19.10 Additional security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

19.11 Guarantee Limitation

- (a) Notwithstanding any other provisions of this Agreement or any other Finance Document, the obligations of each Luxembourg Guarantor under the Finance Documents, in respect of the obligations owed by any Obligor under or in connection with the Finance Documents, that is not a direct or indirect subsidiary of that Luxembourg Guarantor, shall be limited at any time to an aggregate amount (without duplication) not exceeding the higher of 95 per cent. of:
- (i) the Luxembourg Guarantor's own funds (*capitaux propres*), as referred to in annex I (**Annex I**) to the grand-ducal regulation dated 18 December 2015 determining the form and content of the presentation of balance sheet and profit and loss account implementing articles 34, 35, 46 and 47 of the Luxembourg law dated 19 December 2002 concerning the trade and companies register and the accounting and annual accounts of undertakings, as amended, (the **2002 Law**), increased by the amount of any debts owed to a company of the same group of the Luxembourg Guarantor, as shown in (x) the latest interim financial statements available (if any), as approved by the shareholders of the Luxembourg Guarantor, at the date of demand of payment under this Agreement or, if not available, (y) the latest annual financial statements (*comptes annuels*) available at the date of demand of payment under this Agreement; and
 - (ii) the Luxembourg Guarantor's own funds (*capitaux propres*), as referred to in Annex I of the 2002 Law, increased by the amount of any debts owed to a company of the same group of the Luxembourg Guarantor, at the date of entry into this Agreement.

None of the above restrictions shall apply to the extent that this Agreement secures the obligations of the Luxembourg Guarantor under the Finance Documents.

- (b) The obligations of each Guarantor incorporated as a Swedish limited liability company (Sw. *aktiebolag*) (each a **Swedish Guarantor**) in its capacity as a Guarantor under this Clause 19 shall be limited if (and only if) required by the provisions of the Swedish Companies Act (Sw. *Aktiebolagslagen (2005:551)*) regulating distribution of assets (Chapter 17, Section 1-4) and prohibited loans and security (Chapter 21, Section 1, 3) (or its equivalent from time to time). It is understood that the liability of each Swedish Guarantor under this guarantee only applies to the extent permitted by the above provision of the Swedish Companies Act.
- (c) For the avoidance of doubt, if the direct shareholder (the **Direct Parent**) of a Swedish Guarantor is not an entity incorporated within the European Economic Area, such Swedish Guarantor shall not have any obligation under this Clause 19 in respect of the obligations of an Obligor being (i) its Direct Parent or (ii) an entity over which the Direct Parent, alone or together with any other person, has a controlling influence in the meaning of Chapter 21, Section 1, paragraph 5 of the Swedish Companies Act.
- (d) Any guarantee, indemnity, obligation or liability granted or assumed pursuant to this Clause 19 by a Spanish Obligor (a **Spanish Guarantee**) shall not extend to any obligation or amounts that would render such Spanish Guarantee in contravention of sections 143.2, 149 or 150 of the Spanish Companies Act. Furthermore, no Spanish Guarantee or any guarantee, indemnity, obligation or liability assumed by the Spanish Obligors under the Finance Documents may, in any case, secure any payment, prepayment, repayment or reimbursement obligations derived from any Finance Document used or that may be used for the purposes of payment of acquisition debt (in the sense of section 143.2, 149 or 150 of the Spanish Companies Act), or payment of any related costs or transaction expenses.
- (e) The guarantee provided pursuant to this Clause 19 by a Guarantor incorporated in Finland (each a **Finnish Guarantor**) shall be limited if (and only if) required by the application of Chapter 13,

Sections 1 and 10 of the Finnish Companies Act (*osakeyhtiölaki*, 1.9.2006/624, as amended) regulating, respectively, the distribution of assets and prohibited financial assistance, and it is agreed that the liability of each Finnish Guarantor under this guarantee only applies to the extent permitted by the above-mentioned provisions of the Finnish Companies Act.

- (f) (i) If and to the extent that:
 - (A) MCT under a Finance Document guarantees and/or secures obligations of its direct or indirect parent companies (up-stream liabilities) or sister companies (cross-stream liabilities); and
 - (B) a guarantee payment in fulfilling such obligations would, under Swiss law and practice, constitute a repayment of capital (*Einlagerückgewähr*), a violation of the legally protected reserves (*gesetzlich geschützte Reserven*) or the payment of a (constructive) dividend (*Gewinnausschüttung*) by MCT or would otherwise be restricted under Swiss corporate law,

(Restricted Obligations), such Restricted Obligations (and the amount of any payment in relation thereto) shall from time to time be limited to the amount permitted to be paid under Swiss law and practice, provided that, such limited amount shall at no time be less than the profits and reserves of MCT available for distribution as dividends (being, according to Swiss law and practice as of the date of this Agreement, the balance sheet profits and any reserves available for this purpose, in each case in accordance with art. 675(2) and article 671(1) and (2), no. 3 and (4) of the Swiss Code of Obligations) at the time or times payment under or pursuant to this Agreement or otherwise under a Finance Document is requested from MCT and further provided that such limitation (as may apply from time to time or not) shall not (generally or definitively) free MCT from payment obligations hereunder in excess thereof, but merely postpone the payment date therefore until such times as payment is again permitted notwithstanding such limitation.

- (ii) In case MCT must make a payment in respect of Restricted Obligations under a Finance Document and is obliged to withhold Swiss Withholding Tax in respect of such payment, MCT shall:
 - (A) procure that such payments can be made without deduction of Swiss Withholding Tax, or with deduction of Swiss Withholding Tax at a reduced rate, by discharging the liability to such tax by notification pursuant to applicable law (including double tax treaties) rather than payment of the tax;
 - (B) if the notification procedure pursuant to paragraph (A) above does not apply, deduct Swiss Withholding Tax at the rate of 35 per cent. (or such other rate as in force from time to time), or if the notification procedure pursuant to paragraph (A) above applies for a part of the Swiss Withholding Tax only, deduct Swiss Withholding Tax at the reduced rate resulting after the discharge of part of such tax by notification under applicable law, from any payment made by it in respect of Restricted Obligations and promptly pay any such taxes to the Swiss Federal Tax Administration;
 - (C) notify the Agent that such notification, or as the case may be, deduction has been made and provide the Agent with evidence that such a notification of the Swiss Federal Tax Administration has been made or, as the case may be, such taxes deducted have been paid to the Swiss Federal Tax Administration;

- (D) in the case of a deduction of Swiss Withholding Tax, use its best efforts to ensure that any person other than the Security Agent, which is entitled to a full or partial refund of the Swiss Withholding Tax deducted from such payment in respect of Restricted Obligations, will, as soon as possible after such deduction:
 - I. request a refund of the Swiss Withholding Tax under applicable law (including tax treaties) and pay to the Security Agent upon receipt any amounts so refunded; or
 - II. if the Agent or a Secured Party is entitled to a full or partial refund of the Swiss Withholding Tax deducted from such payment and if requested by the Security Agent, provide the Agent or Secured Party those documents that are required by law and applicable tax treaties to be provided by the payer of such tax in order to enable the Agent or Secured Party to prepare a claim for refund of Swiss Withholding Tax.
- (E) to the extent such a deduction is made, not be obliged to either gross-up or indemnify in accordance with Clauses 14.2 (Tax gross-up) or 14.3 (Tax indemnity), or otherwise pay for such deductions in relation to any such payment made by it in respect of any Restricted Obligations unless such payment is permitted under the laws of Switzerland then in force. This paragraph (E) is without prejudice to the gross-up or indemnification obligations of any Obligor other than MCT.
- (iii) If MCT is obliged to withhold Swiss Withholding Tax in accordance with paragraph (ii) above, the Agent shall be entitled to further request payment under the guarantee as per this Clause 19 and other indemnity granted to it under this Agreement and apply proceeds therefrom against the Restricted Obligations up to an amount which is equal to that amount which would have been obtained if no withholding of Swiss Withholding Tax were required, whereby such further payments shall always be limited to the maximum amount of the freely distributable capital of MCT as set out in paragraph above. In case the proceeds irrevocably received by the Agent and the Secured Parties pursuant to paragraph (ii)(D) (refund) above and this paragraph (additional enforcements) have the effect that the proceeds received by the Agent and the Secured Parties exceed the Secured Obligations, then the Agent or the relevant Secured Party shall return such overcompensation to MCT.
- (iv) If and to the extent requested by the Agent and if and to the extent this is from time to time required under Swiss law (restricting profit distributions), in order to allow the Agent (and the Finance Parties) to obtain a maximum benefit under the Finance Documents and, in particular, this paragraph (f), MCT shall promptly implement the following:
 - (A) the preparation of an up-to-date audited balance sheet;
 - (B) the confirmation of its auditors that the relevant amount represents (the maximum of) freely distributable profits;
 - (C) the prompt convening of a meeting of its shareholders which will approve the (resulting) profit distribution;
 - (D) if the enforcement of any Restricted Obligations would be limited as a result of any matter referred to in this paragraph (f), MCT shall, to the extent permitted by applicable law, (I) write up or realise any of its assets shown in its balance sheet with a book value that is significantly lower than the market value of the assets, in case of realisation, however, only if such assets are not necessary for MCT's business (*nicht betriebsnotwendig*) and/or (II) reduce its share capital; and

(E) all such other measures reasonably necessary and/or to promptly procure the fulfilment of all prerequisites reasonably necessary to allow MCT and relevant parent company to promptly make the payments and perform the obligations agreed hereunder from time to time with a minimum of limitations.

(g) The guarantee provided under this Agreement by a Guarantor incorporated in the Republic of Turkey constitutes a guarantee of third party's obligations (*üçüncü kişinin fiilini taahhüt*) as stipulated under Article 128 of the Code of Obligations (Law No. 6098) of the Republic of Turkey.

20. REPRESENTATIONS

20.1 General

Each Obligor makes the representations and warranties set out in this Clause 20 to each Finance Party.

20.2 Status

- (a) It is a limited liability company/corporation, duly incorporated and validly existing under the law of its Original Jurisdiction.
- (b) It has the power to own its assets and carry on its business as it is being conducted.
- (c) It is not a US Tax Obligor.

20.3 Binding obligations

Subject to the Legal Reservations:

- (a) the obligations expressed to be assumed by it in each Finance Document to which it is a party are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a) above), each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.

20.4 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents and the granting of the Transaction Security do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its Constitutional Documents; or
- (c) any agreement or instrument (including any FQM Bond or any other bond or note issued by any member of the Group) binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

20.5 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is or will be a party and the transactions contemplated by those Finance Documents.

- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Finance Documents to which it is a party.

20.6 Validity and admissibility in evidence; Authorisations

- (a) All Authorisations required:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
 - (ii) to make the Finance Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect.

- (b) All Authorisations and contracts necessary for the conduct of its business, trade and ordinary activities have been obtained or effected and are in full force and effect unless the absence of which has or is reasonably likely to have a Material Adverse Effect.
- (c) It is not in breach of any contract or Authorisation which breach has or is reasonably likely to have a Material Adverse Effect.

20.7 Governing law and enforcement

Subject to the Legal Reservations:

- (a) the choice of governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions; and
- (b) any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

20.8 Insolvency

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 24.7 (Insolvency proceedings); or
- (b) creditors' process described in Clause 24.8 (Creditors' process),

has been taken or, to the knowledge of the Borrower, threatened in relation to any member of the Group; and none of the circumstances described in Clause 24.6 (Insolvency) applies to any member of the Group provided that in the case of a member of the Group which is not an Obligor, such event has or is reasonably likely to have a Material Adverse Effect.

20.9 No filing or stamp taxes

Under the laws of its Relevant Jurisdiction it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except any filing or recording or stamp tax which is referred to in any Legal Opinion and which will be made or paid, as the case may be, prior to or promptly after the date of the relevant Finance Document.

20.10 Deduction of Tax

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document to a Lender.

20.11 No default

- (a) No Event of Default and, on the date of this Agreement, no Default is continuing or is reasonably likely to result from the making of any Loan or the entry into, the performance of, or any transaction contemplated by, any Finance Document.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument (including any agreement or instrument relating to any loan or deposit made by any member of the Group to another member of the Group) which is binding on it or to which its assets are subject which has or is reasonably likely to have a Material Adverse Effect.

20.12 No misleading information

Save as disclosed in writing to the Agent prior to the date of this Agreement:

- (a) any information provided by any member of the Group to the Finance Parties for the purposes of this Agreement (the **Information**) was true and accurate in all material respects as at the date of the relevant report or document containing the Information or (as the case may be) as at the date the Information is expressed to be given;
- (b) the Base Case Model has been prepared in accordance with IFRS as applied to the Original Financial Statements, and the financial projections contained in the Base Case Model have been prepared on the basis of recent historical information, are fair and based on reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration;
- (c) the expressions of opinion or intention contained in the Information were made after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds;
- (d) no event or circumstance has occurred or arisen and no information has been omitted from the Information and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the Information being untrue or misleading in any material respect;
- (e) all other factual written information provided by any member of the Group (including its advisers) to a Finance Party was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect; and
- (f) the budgets and forecasts supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.

20.13 Original Financial Statements

- (a) Its Original Financial Statements were prepared in accordance with IFRS consistently applied.

- (b) Its audited Original Financial Statements give a true and fair view of its financial condition and results of operations during the relevant financial year.
- (c) There has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Obligors taken as a whole, in the case of the Borrower) since the date of the Original Financial Statements.
- (d) Its most recent financial statements delivered pursuant to Clause 21.1 (Financial statements):
 - (i) have been prepared in accordance with IFRS as applied to the Original Financial Statements and the Base Case Model; and
 - (ii) give a true and fair view of (if audited) or fairly represent (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.
- (e) Since the date of the most recent financial statements delivered pursuant to Clause 21.1 (Financial statements) there has been no material adverse change in the business, assets or financial condition of the Obligors taken as a whole.

20.14 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it or any member of the Group.

20.15 No breach of laws

- (a) It has not breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.
- (b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any FQM Operating Company which have or are reasonably likely to have a Material Adverse Effect.

20.16 Environmental and social laws

- (a) Each member of the Group is in compliance with Clause 23.3 (Environmental and Social Compliance) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) No Environmental or Social Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Group where that claim has or is reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.

20.17 Taxation

- (a) It is not materially overdue in the filing of any Tax returns and it is not overdue in the payment of any amount in respect of Tax of US\$1,000,000 (or its equivalent in any other currency) or more.

- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it with respect to Taxes.
- (c) It is resident for Tax purposes only in its Original Jurisdiction.

20.18 Anti-corruption law

Each member of the Group, its directors or officers, or (to the best of its knowledge) any Affiliate, agent or employee of the Obligors, has conducted its businesses in compliance with applicable anti-bribery, anti-corruption and anti-money laundering laws, regulations and rules and has instituted and maintains policies and procedures designed to promote and achieve compliance with such laws and no utilisation or use of proceeds of the Facilities will violate such laws.

20.19 Sanctions

- (a) No Obligor, nor any member of the Group, nor any of their respective directors, officers or employees nor, to the best knowledge of the Obligors, any Affiliate or joint venture partner or other persons acting on any of their behalf:
 - (i) is a Restricted Party; or
 - (ii) has received notice of or is aware of any claim, action, suit, proceeding or investigation against it with respect to Sanctions by any Sanctions Authority.
- (b) Each member of the Group has instituted and maintains policies and procedures designed to promote and achieve compliance with applicable Sanctions.
- (c) No utilisation or use of proceeds of the Facilities will violate applicable Sanctions.

20.20 Security and Financial Indebtedness

- (a) No Security or Quasi-Security exists over all or any of the present or future assets of any member of the Group other than as permitted by this Agreement.
- (b) No member of the Group has any Financial Indebtedness outstanding other than as permitted by this Agreement.
- (c) No Obligor (other than Inmet Finance Company S.à r.l.) has provided Project Investments as defined in the Franco-Nevada Streaming Agreement.

20.21 Transaction Security

- (a) The Transaction Security has or will have the priority and ranking stated in that Transaction Security Document (subject to the releases, registrations, filings, notifications and other actions and steps detailed in paragraphs 4 and 7(j) of Part 1 (Conditions Precedent to first utilisation) of Schedule 2 (Conditions Precedent) and Clause 23.35 (Conditions subsequent)) and it is not subject to any prior ranking or *pari passu* ranking Security.
- (b) The shares of any member of the Group which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights.
- (c) The constitutional documents of companies whose shares are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security other than any approvals which have been obtained.

- (d) There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any member of the KMP Group (including any option or right of pre-emption or conversion).
- (e) It is the sole legal and beneficial owner of the respective assets over which it purports to grant Security.

20.22 Title to assets

It has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

20.23 Group Structure Chart and Inter-Group Loans List

- (a) The Group Structure Chart delivered to the Agent pursuant to Part 1 (Conditions Precedent to first utilisation) of Schedule 2 (Conditions Precedent) and Clause 21.5 (Information: miscellaneous) is true, complete and accurate in all material respects and shows the following information:
 - (i) each member of the Group, including current name, its Original Jurisdiction (in the case of an Obligor), its jurisdiction of incorporation (in the case of a member of the Group which is not an Obligor) and/or its jurisdiction of establishment and indicating whether a company is not a company with limited liability; and
 - (ii) all minority interests in any member of the Group and any person in which any member of the Group holds shares in its issued share capital or equivalent ownership interest of such person.
- (b) The Inter-Group Loans List delivered to the Agent pursuant to Part 1 (Conditions Precedent to first utilisation) of Schedule 2 (Conditions Precedent) and Clause 21.5 (Information: miscellaneous) is true, complete and accurate in all material respects.

20.24 Accounting Reference Date

The Accounting Reference Date of each Obligor is 31 December.

20.25 Obligors

Each Subsidiary of the Borrower which at that time qualifies as a FQM Operating Company, FQM Finance Company and/or FQM Intermediary Company is a Guarantor (except for KMP).

20.26 Immunity

- (a) The entry into by it of each Finance Document constitutes, and the exercise by it of its rights and performance of its obligations under each Finance Document will constitute, private and commercial acts performed for private and commercial purposes.
- (b) It will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to any Finance Document.

20.27 Pensions

Neither the Borrower nor any of its Subsidiaries incorporated in Canada maintains a Canadian Pension Plan or a Canadian Benefit Plan, other than the Existing Canadian Pension Plans.

20.28 Independent advice

- (a) Each Zambian Obligor has sought independent legal advice in relation to its entry into this Agreement and in particular in giving the guarantee and indemnity under Clause 19 (Guarantee and indemnity) and, accordingly, each Zambian Obligor has made its own independent decision to enter into this Agreement.
- (b) Each Obligor confirms that in entering into this Agreement, it has not relied on or been influenced by any advice, communication or act of the Agent or any other Finance Party.

20.29 Times when representations made

- (a) All the representations and warranties in this Clause 20 are made by each Obligor on the date of this Agreement.
- (b) All the representations and warranties in this Clause 20 are deemed to be made by each Additional Guarantor on the day on which it becomes (or it is proposed that it becomes) an Additional Guarantor.
- (c) The Repeating Representations are deemed to be made by each Obligor on the date of each Utilisation Request, on each Utilisation Date and on the first day of each Interest Period.
- (d) Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

21. INFORMATION UNDERTAKINGS

The undertakings in this Clause 21 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

In this Clause 21:

Annual Financial Statements means the financial statements for a Financial Year delivered pursuant to paragraph (a) of Clause 21.1 (Financial statements).

Quarterly Financial Statements means the financial statements delivered pursuant to paragraph (b) of Clause 21.1 (Financial statements).

21.1 Financial statements

The Borrower shall supply to the Agent in sufficient copies for all the Lenders:

- (a) as soon as they are available, but in any event within 120 days after the end of each of its Financial Years ending on or after 31 December 2017, its audited consolidated financial statements for that Financial Year;
- (b) as soon as they are available, but in any event within 45 days after the end of each Financial Quarter ending on or after 30 September 2017, its consolidated interim financial statements for that Financial Quarter (other than any Financial Quarter ending on 31 December).

21.2 Provision and contents of Compliance Certificate

- (a) The Borrower shall supply to the Agent with each set of its Annual Financial Statements and each set of its Quarterly Financial Statements delivered under Clause 21.1 (Financial statements) a Compliance Certificate.
- (b) The Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 22 (Financial covenants), specify the applicable Margin, commitment fee and whether a Ratio Enhancement Period exists or the period of time that has elapsed since the last Ratio Enhancement Period.
- (c) Each Compliance Certificate shall be signed by at least one of either the Chief Financial Officer or a Director or the Treasurer of the Borrower.
- (d) Each Compliance Certificate shall include confirmation of which members of the Group (including any company to be acquired pursuant to a Permitted Acquisition but excluding any Excluded Subsidiaries) are the then current FQM Operating Companies, FQM Finance Companies and FQM Intermediary Companies. A report by the Auditors or, if the Majority Lenders so require, the Monitoring Accountants that a Subsidiary is or is not a FQM Operating Company, FQM Finance Company or FQM Intermediary Company shall in the absence of manifest error, be conclusive and binding on the Parties.

21.3 Requirements as to financial statements

- (a) The Borrower shall procure that each set of Annual Financial Statements and Quarterly Financial Statements includes a balance sheet, profit and loss account and cashflow statement. In addition the Borrower shall procure that:
 - (i) each set of Annual Financial Statements shall be audited by the Auditors; and
 - (ii) each set of Annual Financial Statements and Quarterly Financial Statements is accompanied by a statement by the Chief Financial Officer of the Borrower commenting on the performance of the Group for the period to which the financial statements relate and the Financial Year to date and any material developments or proposals affecting the Group or its business.
- (b) Each set of financial statements delivered pursuant to Clause 21.1 (Financial statements):
 - (i) shall be certified by a director of the Borrower as giving a true and fair view of (in the case of Annual Financial Statements for any Financial Year), or fairly representing (in other cases), its financial condition and operations as at the date as at which those financial statements were drawn up and, in the case of the Annual Financial Statements, shall be accompanied by any letter addressed to the shareholders of the Borrower by the Auditors and accompanying those Annual Financial Statements; and
 - (ii) shall be prepared using IFRS, accounting practices and financial reference periods consistent with those applied in the preparation of the then current Base Case Model unless, in relation to any set of financial statements, the Borrower notifies the Agent that there has been a change in IFRS or the accounting practices and its Auditors deliver to the Agent:
 - I. a description of any change necessary for those financial statements to reflect IFRS or accounting practices upon which the then current Base Case Model; and

- II. sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 22 (Financial covenants) has been complied with, and to make an accurate comparison between the financial position indicated in those financial statements and the Base Case Model.

Any reference in this Agreement to any financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Base Case Model was prepared.

21.4 Base Case Model

- (a) The Borrower shall provide the Agent with an updated Base Case Model acceptable to the Majority Lenders:
 - (i) by 31 March of each year during the life of the Facilities from 2018; and
 - (ii) within 90 days of a Permitted Acquisition or a Permitted Disposal (as described in paragraphs (d) and (e) of that definition) which was not contemplated in the then current Base Case Model.
- (b) Each updated Base Case Model shall:
 - (i) be based on the same set of assumptions and methodology agreed by the Lenders and used by the Borrower to prepare the initial Base Case Model to be provided as a condition precedent pursuant to Clause 4.1 (Initial conditions precedent);
 - (ii) include (for the avoidance of doubt) the revised cash flow forecasts and budgeted production levels for a period to the Termination Date; and
 - (iii) demonstrate compliance with the financial covenants in Clause 22 (Financial covenants) for the period from and including the date of the updated Base Case Model to and including the Termination Date.

21.5 Information: miscellaneous

The Borrower shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

- (a) at the same time as they are dispatched, copies of all documents dispatched by the Borrower to its shareholders generally (or any class of them) or dispatched by the Borrower to its creditors generally (or any class of them);
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which, if adversely determined, are reasonably likely to have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, details of any event which will require a prepayment to be made under Clause 8.2 (Disposal/MPSA Facility Proceeds) and details of any Permitted Reorganisation;
- (d) promptly, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Obligors with the terms of any Transaction Security Documents;

- (e) within 120 days of a Permitted Reorganisation, Permitted Acquisition or Permitted Disposal details of that Permitted Reorganisation, Permitted Acquisition or Permitted Disposal together with an updated Group Structure Chart and an updated Inter-Group Loans List, in the case of an Inter-Group Loans List certified by an authorised signatory of the Borrower, showing the structure of the Group and outstanding loans or deposits in an amount greater than or equal to US\$1,000,000 made by a member of the Group to another member of the Group following that Permitted Reorganisation, Permitted Acquisition and Permitted Disposal;
- (f) on each anniversary of the date of this Agreement, (i) an updated Group Structure Chart and (ii) an updated Inter-Group Loans List, in the case of an Inter-Group Loans List certified by an authorised signatory of the Borrower, together with (to the extent not already provided pursuant to paragraph (e) above) a summary of any changes (including changes in share ownership);
- (g) promptly following the Ravensthorpe Recommencement Date, a notice confirming that the Ravensthorpe Recommencement Date has occurred;
- (h) promptly upon becoming aware of them, details of any event or circumstance which has or is reasonably likely to have a Material Adverse Effect;
- (i) if requested to do so by the Agent, a certificate confirming the amount (if any) which has been applied in accordance with paragraph (c) of Clause 8.2 (Disposal/MPSA Facility Proceeds) within the requisite time periods;
- (j) promptly, details of any change in its Accounting Reference Date;
- (k) promptly upon becoming aware, a notice that any member of the Group has become a Restricted Party; and
- (l) promptly on request, such further information regarding the financial condition, business and operations of any member of the Group as any Finance Party through the Agent may reasonably request.

21.6 Notification of default

- (a) Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a reasonable request by the Agent, the Borrower shall supply to the Agent a certificate signed by the Chief Financial Officer and a director or two of its directors on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

21.7 "Know your customer" checks

- (a) If:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;

- (ii) any change in the status of an Obligor (or of a Holding Company of an Obligor) or the composition of the shareholders of an Obligor (or of a Holding Company of an Obligor) after the date of this Agreement; or
- (iii) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.
- (c) The Borrower shall, by not less than ten Business Days' prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Guarantor pursuant to Clause 27 (Changes to the Obligors).
- (d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Guarantor obliges the Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Guarantor.

22. FINANCIAL COVENANTS

22.1 Financial definitions

In this Agreement:

Borrowings means, at any time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of any indebtedness of members of the Group for or in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any acceptances under any acceptance credit or bill discount facility (or dematerialised equivalent);

- (c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) any Finance Lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirements for de-recognition under IFRS);
- (f) (without double counting) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (g) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the Termination Date or are otherwise classified as borrowings under IFRS;
- (h) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind the entry into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 90 days after the date of supply;
- (i) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under IFRS;
- (j) until the KPMC Completion Date, the Existing KPMC Loan and on and after the KPMC Completion Date, the MPSA Loan; and
- (k) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above.

Capital Expenditure means any expenditure or obligation in respect of expenditure which, in accordance with IFRS, is treated as capital expenditure (and including the capital element of any expenditure or obligation incurred in connection with a Finance Lease), but excluding any capitalised interest which would be classified as capital expenditure.

Cash Available for Debt Service means, for any period, the excess of:

- (a) the proceeds of production of metals and/or by-products generated by the Group during such period (taking into account any increase or decrease in the working capital of the Group during such period) converted into US\$, if necessary;

less

- (b) operating and non-operating costs incurred by the Group (excluding any operating and non-operating costs funded directly or indirectly by any arrangements accepted as Permitted Financial Indebtedness during such period) including taxes, royalties, maintenance Capital Expenditures relating to such production but excluding interest.

Consolidated Tangible Net Worth means, on any date, the aggregate of:

- (a) the amounts paid up or credited as paid up on the issued share capital of the Borrower (other than any redeemable shares which have, on such date, been called for redemption in

accordance with their terms and excluding any amount in respect of any convertible security constituting indebtedness when originally issued until such time as such security is converted into an equity security); and

- (b) the net amount standing to the credit (or debit) of the consolidated reserves of the Borrower (including share capital and share premiums, capital reserves and non-distributable reserves, retained earnings and other distributable reserves), based on the latest published audited consolidated balance sheet of the Borrower (the **latest balance sheet**) but adjusted by:
 - (i) deducting any dividend or other distribution proposed, declared or made by members of the Group (except to the extent it has been taken into account in the latest balance sheet);
 - (ii) deducting any amount attributable to goodwill or any other intangible asset;
 - (iii) deducting any amount attributable to an upward revaluation of assets (other than financial instruments) after 31 December 2013 or, in the case of assets of a company which becomes a member of the Group after that date, the date on which that company becomes a member of the Group;
 - (iv) reflecting any variation in the amount of the issued share capital of the members of the Group after the date of the latest balance sheet (and any change in the consolidated reserves of the Borrower resulting from that variation);
 - (v) reflecting any variation in the interest of a member of the Group in any other member of the Group since the date of the latest balance sheet (to be calculated on the assumption that the variation had occurred immediately before the latest balance sheet date);
 - (vi) excluding any amounts debited or credited to deferred tax which relates to the revaluation of any item which is excluded from the calculation; and
 - (vii) excluding any amounts relating to warrants issued by the Borrower prior to conversion thereof into issued share capital.

Consolidated Total Debt means, on any date, the Total Debt of the Group calculated on a consolidated basis.

Debt Service means, for any period, the sum of:

- (a) the principal amount of loans or other similar amounts in respect of any Borrowings of the Group as scheduled to be repaid during such period; and
- (b) Interest Expense for such period,

(including, for the avoidance of doubt (without double counting), all Debt Service payable in respect of the Finance Documents for such period).

Debt Service Cover Ratio (Historic) means, in respect of any Relevant Period, the ratio of:

- (a) Cash Available for Debt Service on the last day of such Relevant Period; to
- (b) Debt Service on the last day of such Relevant Period.

Debt to Equity Ratio means, in respect of any Relevant Period, the ratio of:

- (a) Consolidated Total Debt on the last day of such Relevant Period; to
- (b) Consolidated Tangible Net Worth on the last day of such Relevant Period.

EBITDA means, in respect of any Relevant Period, the consolidated operating profit of the Group before taxation (excluding the results from discontinued operations):

- (a) before deducting any interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments whether paid, payable or capitalised by any member of the Group (calculated on a consolidated basis) in respect of that Relevant Period;
- (b) not including any accrued interest owing to any member of the Group;
- (c) after adding back any amount attributable to the amortisation or depreciation of assets of members of the Group;
- (d) after deducting the amount of any profit of any Non-Group Entity to the extent that the amount of the profit included in the financial statements of the Group exceeds the amount actually received in cash by members of the Group through distributions by the Non-Group Entity;
- (e) before taking into account any unrealised gains or losses on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis);
- (f) before taking into account any gain or loss arising from an upward or downward revaluation of any other asset; and
- (g) excluding the charge to profit represented by the expensing of stock options,

in each case, to the extent added, deducted or taken into account, as the case may be, for the purposes of determining operating profits of the Group before taxation.

Finance Lease means any lease or hire purchase contract which would, in accordance with IFRS, be treated as a balance sheet liability (other than a lease or hire purchase contract which would, in accordance with IFRS, have been treated as an operating lease).

Financial Quarter means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

Financial Year means the annual accounting period of the Group ending on or about 31 December in each year.

Interest Expense means, for any period, the amount in US\$ necessary to pay in full all interest, premium and similar amounts (howsoever characterised and including):

- (a) the interest element of Finance Leases;
- (b) discount and acceptance fees payable (or deducted);
- (c) fees payable in connection with the issue or maintenance of any bond or letter of credit, guarantee or other insurance against Financial Indebtedness and issued by a third party on behalf of the Group;
- (d) repayment and prepayment premiums payable or incurred in repaying or prepaying any Financial Indebtedness; and

- (e) commitment, utilisation and non-utilisation fees payable or incurred in respect of Financial Indebtedness accruing in respect of this Agreement and all other Financial Indebtedness of the Group which has become due and payable during that period, other than any arrangement or underwriting fees payable or incurred in respect of this Agreement.

Net Debt to EBITDA Ratio means, in respect of any Relevant Period, the ratio of Total Debt (less Cash or Cash Equivalent Investments) on the last day of that Relevant Period to EBITDA in respect of that Relevant Period.

Non-Group Entity means any investment or entity (which is not itself a member of the Group (including associates and Joint Ventures)) in which any member of the Group has an ownership interest.

Quarter Date means each of 31 March, 30 June, 30 September and 31 December in each year.

Relevant Period means each period of 12 months ending on or about the last day of the Financial Year and each period of 12 months ending on or about the last day of each Financial Quarter.

Total Debt means, at any time, the aggregate amount of all obligations of members of the Group for or in respect of Borrowings at that time but:

- (a) excluding any such obligations to any other member of the Group;
- (b) including, in the case of Finance Leases only, their capitalised value; and
- (c) excluding any such obligations under:
 - (i) the Franco-Nevada Streaming Agreement or any other other streaming agreement entered into by the Group to the extent permitted under the terms of this Agreement where the Borrowings under such streaming agreement do not qualify as borrowings under IFRS;
 - (ii) until the KPMC Completion Date, the Existing KPMC Loan;
 - (iii) on and after the KPMC Completion Date, the MPSA Loan; or
 - (iv) the KPMC SPA,

and so that no amount shall be included or excluded more than once.

22.2 Financial condition

The Borrower shall ensure that:

- (a) **Debt Service Cover Ratio (Historic)**

The Debt Service Cover Ratio (Historic) in respect of any Relevant Period specified in column 1 below shall not be less than the ratio set out in column 2 below opposite that Relevant Period:

Column 1 Relevant Period	Column 2 Ratio
Relevant Period expiring 30 September 2017	1.15:1

Each Relevant Period expiring on or after 31 December 2017 1.25:1

(b) **Net Debt to EBITDA Ratio**

Net Debt to EBITDA Ratio in respect of any Relevant Period specified in column 1 below shall not exceed the ratio set out in column 2 below opposite that Relevant Period.

Column 1 Relevant Period	Column 2 Ratio
Relevant Period expiring 30 September 2017	5.25:1
Relevant Period expiring 31 December 2017	5.00:1
Relevant Period expiring 31 March 2018	5.00:1
Relevant Period expiring 30 June 2018	5.00:1
Relevant Period expiring 30 September 2018	4.75:1
Relevant Period expiring 31 December 2018	4.75:1
Relevant Period expiring 31 March 2019	4.75:1
Relevant Period expiring 30 June 2019	4.75:1
Relevant Period expiring 30 September 2019	4.50:1
Relevant Period expiring 31 December 2019	4.50:1
Relevant Period expiring 31 March 2020	4.00:1
Relevant Period expiring 30 June 2020	4.00:1
Each Relevant Period expiring on or after 30 September 2020	3.50:1

(c) **Debt to Equity Ratio**

The Debt to Equity Ratio in respect of any Relevant Period specified in column 1 below shall not exceed the ratio set out in column 2 below opposite that Relevant Period:

Column 1 Relevant Period	Column 2 Ratio
Each Relevant Period	1:1

22.3 Financial testing

The financial covenants set out in Clause 22.2 (Financial condition) shall be calculated in accordance with IFRS and tested by reference to each of the financial statements delivered pursuant to

paragraphs (a) and (b) of Clause 21.1 (Financial statements) and/or each Compliance Certificate delivered pursuant to Clause 21.2 (Provision and contents of Compliance Certificate).

23. GENERAL UNDERTAKINGS

The undertakings in this Clause 23 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

Authorisations and compliance with laws

23.1 Authorisations

Each Obligor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) if requested by any Lender, supply copies to the Agent (certified by an authorised signatory) of,

any Authorisation required under any law or regulation of a Relevant Jurisdiction to:

- (i) enable it to perform its obligations under the Finance Documents;
- (ii) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document; and
- (iii) carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

23.2 Compliance with laws

Each Obligor shall (and the Borrower shall ensure that each member of the Group will) comply in all respects with all laws to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

23.3 Environmental and Social Compliance

Each Obligor shall (and the Borrower shall ensure that each member of the Group will):

- (a) comply with the Agreed Environmental and Social Requirements;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Permits; and
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law or Social Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

23.4 Environmental or Social Claims

Each Obligor shall (through the Borrower), promptly upon becoming aware of the same, inform the Agent in writing of:

- (a) any Environmental or Social Claim against any member of the Group which is current, pending or threatened; and

- (b) any facts or circumstances which are reasonably likely to result in any Environmental or Social Claim being commenced or threatened against any member of the Group,

where the claim, if determined against that member of the Group, has or is reasonably likely to have a Material Adverse Effect.

23.5 Anti-corruption law

- (a) No Obligor shall (and the Borrower shall ensure that no other member of the Group will) directly or indirectly use the proceeds of the Facilities for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977, the Canadian Corruption of Foreign Public Officials Act or other similar legislation in other jurisdictions.
- (b) Each Obligor shall (and the Borrower shall ensure that each other member of the Group will):
 - (i) conduct its businesses in compliance with applicable anti bribery, anti-corruption and anti-money laundering laws; and
 - (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

23.6 Sanctions

- (a) The Obligors shall not, and shall not permit or authorise any member of the Group or other person to, directly or indirectly, use, lend, make payments of, contribute or otherwise make available, all or any part of the proceeds of any Loan or other transaction(s) contemplated by this Agreement to fund any trade, business or other activities:
 - (i) involving or for the benefit of any Restricted Party; or
 - (ii) in any other manner that would result in violation of Sanctions by any person (including any person participating in the Loan hereunder, whether as underwriter, adviser, investor, lender, hedge provider, facility or security agent or otherwise).
- (b) The Borrower shall ensure that:
 - (i) no person that is a Restricted Party will have any legal or beneficial interest in any funds repaid or remitted by the Borrower to any Finance Party in connection with a Facility; and
 - (ii) it shall not use any revenue or benefit derived from any activity or dealing with a Restricted Party for the purpose of discharging amounts owing to any Finance Party in respect of a Facility.
- (c) The Borrower shall and shall procure that each member of the Group shall implement and maintain appropriate policies and procedures and safeguards designed to prevent any action that would be contrary to paragraph (a) or (b) above.
- (d) Each Obligor shall, and shall procure that each other member of the Group will, promptly upon becoming aware of the same, supply to the Agent details of any claim, action, suit, proceedings or investigation against it with respect to Sanctions.

23.7 Taxation

- (a) Each Obligor shall pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

- (i) such payment is being contested in good faith;
 - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Agent under Clause 21.1 (Financial statements); and
 - (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.
- (b) Subject to paragraph (c) below, no member of the Group (other than FQMFL) may change its residence for Tax purposes.
 - (c) Paragraph (b) above shall not apply to any change of residence for Tax purposes referred to in the definition of Kalumbila Reorganisation and MPSA Reorganisation.

Restrictions on business focus

23.8 Merger

No Obligor shall (and the Borrower shall ensure that no member of the Group will) enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than a Permitted Transaction or any sale, lease, transfer or other disposal permitted pursuant to Clause 23.15 (Disposals).

23.9 Change of business

The Borrower shall procure that no substantial change is made to the general nature of the business of the Group taken as a whole from that carried on by the Group taken as a whole at the date of this Agreement.

23.10 Acquisitions

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Borrower shall ensure that no other member of the Group will) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them).
- (b) Paragraph (a) above does not apply to an acquisition of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company which is:
 - (i) a Permitted Acquisition;
 - (ii) a Permitted Transaction;
 - (iii) a Permitted Joint Venture; or
 - (iv) an Inter-Company Transaction.

23.11 Joint ventures

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Borrower shall ensure that no other member of the Group will):
 - (i) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or

- (ii) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).
- (b) Paragraph (a) above does not apply to:
- (i) the Cobre Panama Project;
 - (ii) a Permitted Acquisition;
 - (iii) a Permitted Disposal;
 - (iv) a Permitted Loan; or
 - (v) a Permitted Joint Venture.

Restrictions on dealing with assets and Security

23.12 Preservation of assets

Each Obligor shall maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary in the conduct of its business.

23.13 Pari passu ranking

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

23.14 Negative pledge

In this Clause 23.14, **Quasi-Security** means an arrangement or transaction described in paragraph (b) below.

Except as permitted under paragraph (c) below:

- (a) No Obligor shall (and the Borrower shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.
- (b) No Obligor shall (and the Borrower shall ensure that no other member of the Group will):
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iv) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

- (c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, which is:
 - (i) Permitted Security; or
 - (ii) a Permitted Transaction.

23.15 Disposals

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Borrower shall ensure that no other member of the Group will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal which is:
 - (i) a Permitted Disposal;
 - (ii) a Permitted Transaction;
 - (iii) an Inter-Company Transaction; or
 - (iv) a sale, lease, transfer or other disposal to a Joint Venture, to the extent permitted by Clause 23.11 (Joint ventures).

23.16 Arm's length basis

- (a) Except as permitted by paragraph (b) below, no Obligor shall (and the Borrower shall ensure that no other member of the Group will) enter into any transaction with any person (including any other member of the Group) except on arm's length terms and for full market value.
- (b) Subject to paragraph (c) below, the following transactions shall not be a breach of this Clause 23.16:
 - (i) intra-Group loans permitted under Clause 23.17 (Loans or credit);
 - (ii) fees, costs and expenses payable under the Finance Documents in the amounts set out in the Finance Documents delivered to the Agent under Clause 4.1 (Initial conditions precedent) or agreed by the Agent; and
 - (iii) any Permitted Transaction.
- (c) Paragraph (b) above shall not apply in respect of any transaction with MCT which must be on arm's length terms and for full market value.

Restrictions on movement of cash

23.17 Loans or credit

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Borrower shall ensure that no other member of the Group will) be a creditor in respect of any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to:
 - (i) a Permitted Loan;

- (ii) a Permitted Transaction; or
- (iii) a loan or credit made to a Joint Venture to the extent permitted by Clause 23.11 (Joint ventures).

23.18 No guarantees or indemnities

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Borrower shall ensure that no other member of the Group will) incur or allow to remain outstanding any guarantee in respect of any obligation of any person.
- (b) Paragraph (a) above does not apply to a guarantee which is:
 - (i) a Permitted Guarantee; or
 - (ii) a Permitted Transaction.

23.19 Dividends, share redemption and cash holdings

- (a) Except as permitted under paragraph (b) below, the Borrower shall not:
 - (i) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
 - (ii) repay or distribute any dividend or share premium reserve;
 - (iii) pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of any of the shareholders of the Borrower; or
 - (iv) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so.
- (b) Paragraph (a) above does not apply to:
 - (i) a Permitted Distribution; or
 - (ii) a Permitted Transaction (other than one referred to in paragraph (c) of the definition of that term).
- (c) The Borrower shall ensure that no Non-Obligor (except any Excluded Subsidiary) and no Swedish Obligor will hold cash or cash equivalent investments in excess of US\$40,000,000 in aggregate during the term of this Agreement.

23.20 Redemption of FQM Bonds

- (a) Subject to paragraph (b) below, no Obligor shall (and the Borrower shall ensure that no other member of the Group will) transfer, sell, dispose of or otherwise effect a Redemption of any FQM Bond or any other bonds or notes issued by any member of the Group.
- (b) Paragraph (a) above will not apply to any Redemption by a member of the Group of which the Redemption Sum is:
 - (i) not paid in cash; or
 - (ii) paid in cash, provided that:

- (A)
 - I. the Borrower can demonstrate that on the date of the Redemption there is no breach of any financial covenant in Clause 22 (Financial covenants) and no breach of any financial covenant in Clause 22 (Financial covenants) would occur as a result of the making of the payment;
 - II. the Net Debt to EBITDA Ratio is less than 3.50:1 immediately after the consummation of the Redemption or, if the Net Debt to EBITDA Ratio is equal to or greater than 3.50:1, the Redemption Sum, when aggregated with the Redemption Sum of all other Redemptions under this paragraph (A) made during the term of the Facilities while the Net Debt to EBITDA Ratio was equal to or greater than 3.50:1, must not exceed US\$500,000,000 (or its equivalent in other currencies); and
 - III. no Event of Default (other than an Event of Default described in Clause 24.5 (Cross default) relating to FQM Bonds or any other bond or note issued by any member of the Group) is continuing or would result from the Redemption or tender offer for cash;
- (B) the Redemption arises pursuant to a mandatory offer to purchase, prepay or redeem made under the terms of the FQM Bonds or any other bond or note issued by any member of the Group which is permitted under Clause 23.21 (Financial Indebtedness) as a result of a change of control event or asset disposal under and as defined in the relevant FQM Bond, other bond or note; or
- (C) the cash portion of the Redemption Sum is funded in full by the proceeds of:
 - I. an issuance of fully paid up share capital of the Borrower; or
 - II. any bond or note issued by a member of the Group after the date of this Agreement which is permitted under Clause 23.21 (Financial Indebtedness).

23.21 Financial Indebtedness

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Borrower shall ensure that no other member of the Group will) incur or allow to remain outstanding any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to Financial Indebtedness which is:
 - (i) Permitted Financial Indebtedness; or
 - (ii) a Permitted Transaction.

23.22 Insurance

- (a) The Borrower shall maintain on its own behalf and on behalf of each other Obligor, insurances on and in relation to its business and assets and the business and assets of each other Obligor, against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.
- (b) All insurances must be with reputable independent insurance companies or underwriters.

- (c) All proceeds of any insurance claim (except those to be applied to meet a third party claim) shall be applied in the replacement, reinstatement and/or repair of the assets or otherwise in amelioration of the loss in respect of which the claim was made as soon as possible after receipt.

23.23 Pensions

The Borrower shall not (and shall ensure that none of its Subsidiaries incorporated in Canada will) establish, acquire or maintain any Canadian Pension Plan or Canadian Benefit Plan, other than the Existing Canadian Pension Plans.

23.24 Maintenance of books and records and access

- (a) Each Obligor shall ensure that the statutory books required to be maintained by it under each applicable law are maintained in a form and manner required by each such applicable law.
- (b) If a Default is continuing or the Agent reasonably suspects a Default is continuing, each Obligor shall, within 72 hours notice by the Agent to the relevant Obligor, permit the Agent and/or the Security Agent and/or accountants or other professional advisers and contractors of the Agent or Security Agent free access at all reasonable times at the risk and cost of the Obligor or Borrower to the premises (including mining sites), assets, books, accounts and records of such Obligor.

23.25 Amendments

- (a) Subject to paragraph (c) below, no Obligor shall (and the Borrower shall ensure that no other member of the Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of:
 - (i) a Finance Document other than in accordance with Clause 38 (Amendments and waivers);
 - (ii) a Constitutional Document, the indentures relating to the FQM Bonds or any other bonds or notes issued by a member of the Group permitted under Clause 23.21 (Financial Indebtedness) or any agreement evidencing the Existing KPMC Loan, KMPC Loan or MPSA Loan except (A) in writing in a way which could not be reasonably expected materially and adversely to affect the interests of the Lenders or (B) in the case of the KMPC Loan or MPSA Loan, to effectuate any transfer referred to in the definition of "MPSA Reorganisation" or "KPMC Reorganisation"; or
 - (iii) the Franco-Nevada Streaming Agreement except in writing in any way which does not increase the payment deposit in excess of US\$1,356,000,000 or extend the term (each as defined in the Franco-Nevada Streaming Agreement).
- (b) The Borrower shall promptly supply to the Agent a copy of any document relating to any of the matters referred to in paragraphs (a)(i), (a)(ii) and (a)(iii) above.
- (c) Paragraph (a) above shall not apply to any amendment to the indenture relating to an FQM Bond or other bond or note issued by any member of the Group in accordance with Clause 23.21 (Financial Indebtedness), provided that:
 - (i) such amendment has been approved by the requisite majority of holders of that FQM Bond, other bond or note and such amendment could not be reasonably expected materially and adversely to affect the interests of the Lenders;

(ii) the effect of such amendment is aligning any term of that FQM Bond, other bond or note with the terms of any other FQM Bond, other bond or note issued by a member of the Group in accordance with Clause 23.21 (Financial Indebtedness); or

(iii) the effect of such amendment is explicitly permitted under the terms of this Agreement,

and, in each case, the effect of such amendment does not shorten the stated maturity date of that FQM Bond, other bond or note.

23.26 Treasury Transactions

No Obligor shall (and the Borrower will procure that no other member of the Group will) enter into any Treasury Transaction, other than those entered into in the ordinary course of business and not primarily for speculative purposes.

23.27 Further assurance

(a) Each Obligor shall (and the Borrower shall procure that each other member of the Group will) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):

(i) to perfect the Security (or any security interest (as defined in the Australian PPSA)) created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law;

(ii) to confer on the Security Agent or confer on the Secured Parties Security over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or

(iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.

(b) Each Obligor shall (and the Borrower shall procure that each other member of the Group will) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security (or any security interest (as defined in the Australian PPSA)) conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

23.28 Application of FATCA

The Borrower shall procure that no Obligor shall become a US Tax Obligor.

23.29 Change of ownership

(a) Other than as a result of a Permitted Reorganisation or Permitted Disposal, the Borrower shall procure that no FQM Operating Company (other than KMP) or FQM Finance Company shall cease to be a wholly-owned Subsidiary (directly or indirectly) of the Borrower.

- (b) The Borrower shall remain the legal and beneficial owner (directly or indirectly) of at least 80 per cent. of the issued share capital (excluding any part of that issued share capital that carries no right to vote or participate beyond a specified amount in a distribution of either profits or capital) in each of KMP and MPSA.

23.30 Financial assistance

Each Obligor shall comply in all respects with sections 678 and 679 of the Companies Act 2006 and any equivalent legislation in other jurisdictions including in relation to the execution of the Transaction Security Documents and payment of amounts due under this Agreement.

23.31 Spanish Public Document

Within 30 Business Days of the date of this Agreement, each Spanish Obligor shall raise this Agreement and the resolutions of each Spanish Obligor's governing body (*órgano de administración*) and sole shareholder (*accionista único*) approving the terms of, and the transactions contemplated by this Agreement, to the status of a Spanish Public Document. Any amendment, novation, supplement, extension, restatement or replacement of this Agreement, as well as any Accession Deed entered into by a Spanish Obligor shall also be raised to the status of a Spanish Public Document within five Business Days of the date thereof.

23.32 Translation

- (a) The Parties agree that, upon the taking of any of the steps set out in Clause 24.18 (Acceleration), the Agent will be entitled to either (i) request that the Spanish Obligors procure or (ii) independently obtain without consultation, a translation into Spanish of this Agreement. In either case, the costs arising from the translation shall be borne by the Spanish Obligors.
- (b) Any translation obtained in accordance with paragraph (a) above shall be made by a certified English-Spanish translator (*traductor jurado*) (which, in the case of a request by the Agent, must be chosen with the Agent's consent). A translation obtained pursuant to a request from the Agent shall be available to the Agent within 30 days following such request.

23.33 Fiscal unity

No Non-Obligor or other company shall become a member of the fiscal unity (*fiscale eenheid*) between the Dutch Obligors.

23.34 Intellectual Property

Each Obligor shall (and the Borrower shall procure that each other member of the Group will):

- (a) preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant Group member;
- (b) use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;
- (c) make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property in full force and effect and record its interest in that Intellectual Property;
- (d) not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely

affect the existence or value of the Intellectual Property or imperil the right of any member of the Group to use such property; and

- (e) not discontinue the use of the Intellectual Property,

where failure to do so, in the case of paragraphs (a) and (b) above or, in the case of paragraphs (d) and (e) above, such use, permission to use, omission or discontinuation, is reasonably likely to have a Material Adverse Effect.

23.35 Conditions subsequent

- (a) The Borrower shall by no later than the date falling 30 days after the date of this Agreement provide the following in form and substance satisfactory to the Agent (acting reasonably):
 - (i) evidence of receipt by the Companies Registration Office in Dublin of a Form C6 signed on behalf of Cover Investments Limited and BNP Paribas in respect of the release of security created pursuant to the deed of assignment dated 27 May 2016 between, amongst others, Cover Investments Limited and BNP Paribas;
 - (ii) evidence of receipt by the Companies Registration Office in Dublin of a Form C6 signed on behalf of Kansanshi Holdings Limited and BNP Paribas in respect of the release of security created pursuant to the deed of assignment dated 27 May 2016 between, amongst others, Kansanshi Holdings Limited and BNP Paribas;
 - (iii) evidence of receipt by the Companies Registration Office in Dublin of a Form C6 signed on behalf of Kansanshi Holdings Limited and BNP Paribas in respect of the release of security created pursuant to the share charge dated 27 May 2016 between, amongst others, Kansanshi Holdings Limited and BNP Paribas;
 - (iv) evidence of receipt by the Companies Registration Office in Dublin of particulars (in the prescribed form) of the Inter Group Loan Assignment Agreement and submitted in respect of each Irish Obligor;
 - (v) completed memoranda of satisfaction in the prescribed form in respect of charges currently lodged against Oryx Limited to be filed at the Companies Registry (Barbados);
 - (vi) completed applications for registration of the following security for each Obligor and Non-Obligor Inter-Group Lender registered in the British Virgin Islands:
 - (A) the inter-company loan assignment agreement to be entered into between the various companies and BNP Paribas;
 - (B) the charge over the shares in Kansanshi Holdings Limited to be entered into between BBIL and BNP Paribas; and
 - (C) the charge over the shares in BBIL to be entered into between FQM Finance Ltd and BNP Paribas;
 - (vii) completed applications for de-registration of the following security against for each Obligor and Non-Obligor Inter-Group Lender registered in the British Virgin Islands:
 - (A) the inter-company loan assignment agreement dated 27 May 2016 between the various companies and BNP Paribas;

- (B) the charge over the shares in Kansanshi Holdings Limited dated 27 May 2016 between BBIL and BNP Paribas; and
 - (C) the charge over the shares in BBIL dated 27 May 2016 between FQM Finance Ltd and BNP Paribas; and
- (viii) a copy of the annotated share register of BBIL evidencing the security over the shares in BBIL, certified by its registered agent.
- (b) The Borrower shall by no later than 30 June 2018 provide a copy of a ratifying resolution of the shareholders of MCM authorising and approving the terms of, and the transactions contemplated by, the Finance Documents to which MCM is a party and the execution, delivery and performance the Finance Documents to which it is a party in form and substance satisfactory to the Agent (acting reasonably).

24. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 24 is an Event of Default (save for Clause 24.18 (Acceleration) and Clause 24.19 (Ravensthorpe maintenance)).

24.1 Non-payment

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and
- (b) payment is made within three Business Days of its due date.

24.2 Financial covenants

Any requirement of Clause 22 (Financial covenants) is not satisfied.

24.3 Other obligations

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 24.1 (Non-payment) and Clause 24.2 (Financial covenants)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within five days of the earlier of (i) the Agent giving notice to the Borrower or relevant Obligor and (ii) the Borrower or an Obligor becoming aware of the failure to comply.

24.4 Misrepresentation

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made.

24.5 Cross default

- (a) Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).
- (d) Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) Any "event of default" howsoever defined occurs pursuant to the Existing Debt.
- (f) No Event of Default will occur under this Clause 24.5 if either (i) the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than US\$25,000,000 (or its equivalent in any other currency or currencies) or (ii) such event relates to a Non-Obligor and does not have or is unlikely to have a material adverse effect on the business, operations, assets or condition (financial or otherwise) of any Obligor or any Excluded Subsidiary.

24.6 Insolvency

- (a) A member of the Group:
 - (i) is unable or admits inability to pay its debts as they fall due;
 - (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law;
 - (iii) suspends or threatens to suspend making payments on any of its debts;
 - (iv) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness;
 - (v) in the case of any member of the Group organised and existing under the laws of Luxembourg only, such company has lost its creditworthiness (*ébranlement de crédit*);
 - (vi) in the case of any Dutch Obligor, files a notice under section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*);
 - (vii) in the case of any Swedish Obligor, is required to prepare a special balance sheet (*Sw. kontrollbalansräkning*); or
 - (viii) in the case of any Turkish Obligor incorporated as a joint stock company in the Republic of Turkey, non-compliance by the Turkish Obligor with its statutory obligations under Article 376 of the Turkish Commercial Code (Law No. 6102),

provided that in the case of any Non-Obligor, such event has or is reasonably likely to have a material adverse effect on the business, operations, assets or condition (financial or otherwise) of any Obligor or any Excluded Subsidiary.

- (b) The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities) provided that in the case of any Non-Obligor, such event has or is reasonably likely to have a material adverse effect on the business, operations, assets or condition (financial or otherwise) of any Obligor or any Excluded Subsidiary.
- (c) A moratorium is declared in respect of any indebtedness of any member of the Group provided that in the case of any Non-Obligor, such event has or is reasonably likely to have a material adverse effect on the business, operations, assets or condition (financial or otherwise) of any Obligor or any Excluded Subsidiary. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.
- (d) Without limiting the generality of paragraphs (a) to (c) above, the occurrence of any event or procedure in relation to any member of the Group incorporated in Switzerland which is analogous to those listed in the paragraphs (a) to (c) above including, inter alia and without limiting the scope of this Clause 24.6, "*Zahlungsunfähigkeit*" (inability to pay its debts), "*Zahlungseinstellung*" (suspending making payments), "*häftiger Kapitalverlust*" or "*Überschuldung*" within the meaning of art. 725 and art. 820 para. 1 CO (half of the share capital and the legal reserves not covered; over-indebtedness, ie liabilities not covered by the assets), duty of filing of the balance sheet with the judge due to over-indebtedness or insolvency pursuant to art. 725a and art. 820 para. 1 CO, "*Konkurseröffnung und Konkurs*" (declaration of bankruptcy and bankruptcy), "*Nachlassverfahren*" (composition with creditors) including in particular "*Nachlassstundung*" (moratorium) and proceedings regarding "*Nachlassvertrag*" (composition agreements) and "*Notstundung*" (emergency moratorium), proceedings regarding Fälligkeitsaufschub (postponement of maturity), "*Konkursaufschub/Gesellschaftsrechtliches Moratorium*" (postponement of the opening of bankruptcy; moratorium proceedings) pursuant to art. 725a or art. 820 para. 2 CO, notification of the judge of a capital loss or over-indebtedness under these provisions and "*Auflösung/Liquidation*" (dissolution/liquidation).

24.7 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, examinership, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group provided that in the case of any Non-Obligor, such event has or is reasonably likely to have a material adverse effect on the business, operations, assets or condition (financial or otherwise) of any Obligor or any Excluded Subsidiary;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of any member of the Group provided that in the case of any Non-Obligor, such event has or is reasonably likely to have a material adverse effect on the business, operations, assets or condition (financial or otherwise) of any Obligor or any Excluded Subsidiary;
 - (iii) the appointment of a liquidator, receiver, examiner, administrative receiver, administrator, compulsory manager or other similar officer in respect of any member of the Group or any of its assets provided that in the case of any Non-Obligor, such event has or is reasonably likely to have a material adverse effect on the business, operations, assets or condition (financial or otherwise) of any Obligor or any Excluded Subsidiary;
 - (iv) enforcement of any Security over any assets of any member of the Group provided that in the case of any Non-Obligor, such event has or is reasonably likely to have a material adverse effect on the business, operations, assets or condition (financial or otherwise) of any Obligor or any Excluded Subsidiary; or

- (v) in respect of a Spanish Obligor, (a) the commencement of negotiations with its creditors for the purposes set forth in section 5 bis of the Spanish Insolvency Act with a view to rescheduling any of its indebtedness, or the filing of an application under section 5 bis of the Spanish Insolvency Act; or (b) the request for judicial homologation (homologación judicial) of any of its Financial Indebtedness pursuant to Fourth Additional Disposition of Spanish Insolvency Act,

or any analogous procedure or step is taken in any jurisdiction.

- (b) Paragraph (a) above shall not apply to:

- (i) any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement; or
- (ii) any step or procedure contemplated by paragraph (b) of the definition of "Permitted Transaction".

24.8 Creditors' process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of a member of the Group having an aggregate value of US\$25,000,000 or its equivalent and is not discharged within 14 days, provided that in the case of any Non-Obligor, such event has or is reasonably likely to have a material adverse effect on the business, operations, assets or condition (financial or otherwise) of any Obligor or any Excluded Subsidiary.

24.9 Unlawfulness and invalidity

- (a) It is or becomes unlawful for an Obligor or any other member of the Group to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective or any subordination created under the Subordination Agreement is or becomes unlawful.
- (b) Any obligation or obligations of any Obligor or any other member of the Group under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.
- (c) Any Finance Document ceases to be in full force and effect or any Transaction Security or any subordination created under the Subordination Agreement ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

24.10 Cessation of business

Any FQM Operating Company suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business (except as a result of a Permitted Disposal or a Permitted Transaction) which in each case has or is reasonably likely to have a Material Adverse Effect.

24.11 Audit qualification

The Auditors qualify the audited annual consolidated financial statements of the Borrower.

24.12 Expropriation

- (a) The authority or ability of any FQM Operating Company to conduct its business is materially limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any FQM Operating Company or any of its assets.
- (b) Any FQM Operating Company is prevented by any person acting under the authority of any national, regional or local government from exercising normal control over all or any material part of its assets and revenues and such event in the opinion of the Lender has or is reasonably likely to have a Material Adverse Effect.

24.13 Repudiation and rescission of agreements

An Obligor (or any other relevant party other than a Finance Party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

24.14 Litigation

- (a) Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Finance Documents or the transactions contemplated in the Finance Documents or against any member of the Group or its assets which have or are reasonably likely to have a Material Adverse Effect.
- (b) For the purposes of this Clause 24.14, a reference to any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes that are threatened in relation to the Finance Documents or against any member of the Group or their respective assets is a reference to an overt threat made in writing and evidencing a present intention to sue but not any unasserted possible claims.

24.15 Material adverse change

Any event or circumstance (or series of events or circumstances) occurs which, in the opinion of the Majority Lenders, has or is reasonably likely to have a Material Adverse Effect unless:

- (a) in the opinion of the Majority Lenders, such event or circumstance is (or such series of events or circumstances are) capable of remedy;
- (b) the Borrower commences good faith discussions with the Agent (acting on the instructions of the Majority Lenders) within five Business Days of the date of occurrence of such event or circumstance (or series of events or circumstances) with a view to remedying such Material Adverse Effect; and
- (c) the Borrower remedies or mitigates to the reasonable satisfaction of the Agent (acting on the instructions of the Majority Lenders) such event or circumstance (or series of events or circumstances) within the period specified by the Agent during the good faith discussions.

24.16 Licences and other business related Authorisations

The production licence or any other Authorisation required by any FQM Operating Company or MPSA to conduct its business is revoked, suspended, terminated or there is a material breach by any FQM Operating Company or MPSA of the terms of any production licence or any other Authorisation required by any of them to conduct its business.

24.17 Abandonment

Any FQM Operating Company or MPSA shall abandon all or any significant portion of its interest in any material assets or surrender, cancel or release, or suffer any termination or cancellation or any of its substantial rights, title or interest in any material assets if such action has or is reasonably likely to have a Material Adverse Effect.

24.18 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Majority Lenders:

- (a) by notice to the Borrower:
 - (i) cancel the Total Commitments at which time they shall immediately be cancelled;
 - (ii) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable; and/or
 - (iii) declare that all or part of the Loans be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
- (b) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents,

provided that paragraph (a) above shall be deemed to have taken effect automatically and without any further action on the part of the Agent or the Lenders upon the occurrence of an Event of Default by any member of the Group which Event of Default is described in Clause 24.6 (Insolvency) or Clause 24.7 (Insolvency proceedings).

24.19 Ravensthorpe care and maintenance

Until the Ravensthorpe Recommencement Date, the suspension of the Ravensthorpe nickel operation and placing it on care and maintenance will not by itself constitute a breach of any representation and warranty or undertaking in any Finance Document or result in the occurrence of an Event of Default by reference to those provisions or events.

25. CHANGES TO THE LENDERS

25.1 Assignments and transfers by the Lenders

Subject to this Clause 25 and to Clause 26 (Restriction on Debt Purchase Transactions), a Lender (the **Existing Lender**) may:

- (a) assign any of its rights (together with a proportional interest in any Transaction Security Documents governed by Swedish law); or
- (b) transfer by novation any of its rights and obligations,

under any Finance Document to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the **New Lender**).

25.2 Borrower consent

- (a) An Existing Lender must obtain the consent of the Borrower before it may make an assignment or transfer in accordance with Clause 25.1 (Assignments and transfers by the Lenders) unless the assignment or transfer is:
 - (i) to another Lender or an Affiliate of a Lender;
 - (ii) to a fund which is a Related Fund of that Existing Lender; or
 - (iii) made at a time when an Event of Default is continuing.
- (b) The consent of the Borrower to an assignment or transfer (if required) must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent five Business Days after the Borrower is given notice of the request by that Existing Lender unless it is expressly refused by the Borrower within that time.

25.3 Other conditions of assignment or transfer

- (a) An assignment will only be effective on:
 - (i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it had been an Original Lender; and
 - (ii) performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.
- (b) A transfer will only be effective if the procedure set out in Clause 25.6 (Procedure for transfer) is complied with.
- (c) If:
 - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 15 (Increased Costs),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under that Clause to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (c) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facilities.

- (d) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes

effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

25.4 Assignment or transfer fee

- (a) Subject to paragraph (b) below, the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) [fee redacted].
- (b) No fee is payable pursuant to paragraph (a) above if:
 - (i) the Agent agrees that no fee is payable; or
 - (ii) the assignment or transfer is made by an Existing Lender:
 - (A) to an Affiliate of that Existing Lender;
 - (B) to a fund which is a Related Fund of that Existing Lender; or
 - (C) in connection with primary syndication of any Facility.
- (c) If any New Lender fails to pay any transfer fee payable by it under this Agreement on the due date, the Agent may at any time after the due date deduct an amount equal to such transfer fee from any moneys held from time to time by the Agent for the account of that New Lender.

25.5 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents, the Transaction Security or any other documents;
 - (ii) the financial condition of any Obligor;
 - (iii) the performance and observance by any Obligor or any other member of the Group of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender, the other Finance Parties and the Secured Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Finance Document or the Transaction Security; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 25; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Transaction Documents or otherwise.

25.6 Procedure for transfer

- (a) Subject to the conditions set out in Clause 25.2 (Borrower consent) and Clause 25.3 (Other conditions of assignment or transfer) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- (b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 25.10 (Pro rata interest settlement), on the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the **Discharged Rights and Obligations**);
 - (ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor or other member of the Group and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
 - (iii) the Agent, the Arranger, the Security Agent, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights, and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arranger, the Security Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
 - (iv) the New Lender shall become a Party as a "Lender".

25.7 Procedure for assignment

- (a) Subject to the conditions set out in Clause 25.2 (Borrower consent) and Clause 25.3 (Other conditions of assignment or transfer) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered

to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

- (b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to Clause 25.10 (Pro rata interest settlement), on the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released from the obligations (the **Relevant Obligations**) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
 - (iii) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 25.7 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 25.6 (Procedure for transfer), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) provided that they comply with the conditions set out in Clause 25.2 (Borrower consent) and Clause 25.3 (Other conditions of assignment or transfer).

25.8 Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate, an Assignment Agreement or an Increase Confirmation, send to the Borrower a copy of that Transfer Certificate, Assignment Agreement or Increase Confirmation.

25.9 Security over Lenders' rights

- (a) In addition to the other rights provided to Lenders under this Clause 25, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:
 - (i) any charge, assignment or other Security to secure obligations to a federal reserve or central bank including without limitation, any assignment of rights to a special purpose vehicle where security over securities issued by such special purpose vehicle is to be created in favour of a federal reserve or central bank; and
 - (ii) any charge, assignment or other Security granted to any holders (or agent, trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

- (A) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or other Security for the Lender as a party to any of the Finance Documents; or
 - (B) require any payments to be made by an Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.
- (b) Notwithstanding any other provision of this Agreement, the Parties agree that any novation effected in accordance with this Clause 25 shall, in relation to any Security governed by Swedish law, take effect as an assignment and transfer of such Security.
 - (c) In case of assignment, transfer or novation by the Existing Lender to a New Lender of all or any part of its rights and obligations under any of the Finance Documents, the Existing Lender and the New Lender agree that, for the purposes of article 1278 of the Luxembourg Civil Code (to the extent applicable), the Security created under the Finance Documents, securing the rights assigned, transferred or novated thereby, will be preserved for the benefit of the New Lender.

25.10 Pro rata interest settlement

- (a) If the Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 25.6 (Procedure for transfer) or any assignment pursuant to Clause 25.7 (Procedure for assignment) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):
 - (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (**Accrued Amounts**) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
 - (ii) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts so that, for the avoidance of doubt:
 - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and
 - (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 25.10, have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this Clause 25.10 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.
- (c) An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 25.10 but which does not have a Commitment shall be deemed not to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents.

26. RESTRICTION ON DEBT PURCHASE TRANSACTIONS

The Borrower shall not, and shall procure that each other member of the Group shall not, enter into any Debt Purchase Transaction or beneficially own all or any part of the share capital of a company that is a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of "Debt Purchase Transaction".

27. CHANGES TO THE OBLIGORS

27.1 Assignment and transfers by Obligors

No Obligor or any other member of the Group may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

27.2 Additional Guarantors

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 21.7 ("Know your customer" checks), the Borrower may request that any of its Subsidiaries become a Guarantor.
- (b) The Borrower shall procure that each member of the Group (other than KMP) that:
 - (i) is an:
 - (A) FQM Operating Company;
 - (B) FQM Finance Company; or
 - (C) FQM Intermediary Company;
 - (ii) receives payment or assets as part of a Permitted Reorganisation; or
 - (iii) provides a guarantee of any bonds or notes issued by the Borrower referred to in paragraph (e) of the definition of "Permitted Guarantee",

shall, unless it is already a Guarantor, as soon as reasonably practicable and in any event within 90 days of the date (i) of any Compliance Certificate which shows it has become a FQM Operating Company, FQM Finance Company or FQM Intermediary Company, (ii) it receives payment or assets or (iii) of the relevant guarantee (as applicable):

- (A) become an Additional Guarantor;
- (B) enter into an agreement granting security in favour of the Security Agent (substantially in the form of the Inter-Group Loan Assignment Agreement) over its rights in respect of any Financial Indebtedness outstanding from:
 - I. any Non-Obligor (other than an Excluded Subsidiary) to the proposed Additional Guarantor; and
 - II. any member of the KMP Group to the proposed Additional Guarantor; and
- (C) provide evidence of the subordination and related obligations substantially in the form of those contained in the Subordination Agreement of all Financial Indebtedness outstanding from the proposed Additional Guarantor to any other member of the Group.

- (c) A member of the Group shall become an Additional Guarantor if:
 - (i) the Borrower and the proposed Additional Guarantor deliver to the Agent a duly completed and executed Accession Deed; and
 - (ii) the Agent has received all of the documents and other evidence listed in Part 2 (Conditions Precedent required to be delivered by an Additional Guarantor) of Schedule 2 (Conditions Precedent) in relation to that Additional Guarantor, and any additional Transaction Security Document each in form and substance satisfactory to the Agent.
- (d) The Agent shall notify the Borrower and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part 2 (Conditions Precedent required to be delivered by an Additional Guarantor) of Schedule 2 (Conditions Precedent).
- (e) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (d) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

27.3 Resignation of a Guarantor

- (a) In this Clause 27.3 **Third Party Disposal** means the disposal of an Obligor to a person which is not a member of the Group, where the disposal is permitted under Clause 23.15 (Disposals) or made with the prior written approval of the Majority Lenders.
- (b) The Borrower may request that a Guarantor (other than the Borrower) ceases to be a Guarantor by delivering to the Agent a Resignation Letter if:
 - (i) that Guarantor is being disposed of by way of a Third Party Disposal and the Borrower has confirmed this is the case;
 - (ii) that Guarantor ceases or shall cease to exist pursuant to a Permitted Reorganisation and the Borrower has confirmed this is or will be the case, or
 - (iii) all the Lenders have consented to the resignation of that Guarantor.
- (c) The Agent shall accept a Resignation Letter and notify the Borrower and the Lenders of its acceptance if:
 - (i) the Borrower has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;
 - (ii) no payment is due from the Guarantor under Clause 19.1 (Guarantee and indemnity); and
 - (iii) the Borrower has confirmed that it shall ensure that the Disposal Proceeds will be applied in accordance with Clause 8.2 (Disposal/MPSA Facility Proceeds) and the Excluded Reinvestment Proceeds will be applied in accordance with paragraph (c) of Clause 8.2 (Disposal/MPSA Facility Proceeds).
- (d) The resignation of that Guarantor shall not be effective until:

- (i) if the relevant Third Party Disposal or Permitted Reorganisation (as appropriate) will be completed in stages, the date on which that Guarantor ceases to be a member of the Group or ceases to exist (as applicable); or
- (ii) in any other case, the date of the relevant Third Party Disposal or Permitted Reorganisation (as applicable),

at which time that company shall cease to be a Guarantor and shall have no further rights or obligations under the Finance Documents as a Guarantor.

27.4 Repetition of representations

Delivery of an Accession Deed constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in paragraph (b) of Clause 20.29 (Times when representations made) are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

27.5 Resignation and release of security on disposal

If a Guarantor is or is proposed to be the subject of a Third Party Disposal or ceases to exist pursuant to a Permitted Reorganisation then:

- (a) where that Guarantor created Transaction Security over any of its assets or business in favour of the Security Agent or Transaction Security in favour of the Security Agent was created over the shares or equivalent of that Guarantor, the Security Agent may (at its discretion), at the cost and request of the Borrower, release those assets, business or shares (or equivalent) and issue certificates of non-crystallisation; and
- (b) any resignation of that Guarantor and related release of Transaction Security referred to in paragraph (a) above shall become effective only on the making of that disposal or reorganisation.

28. ROLE OF THE AGENT, THE ARRANGER AND THE SECURITY AGENT

28.1 Appointment of the Agent

- (a) Each of the Arranger and the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Arranger and the Lenders authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
- (c) In connection with the raising of any Finance Document (or any ratification or amendment thereto) into the status of a Spanish Public Document, the Agent shall act as the agent and representative of each Finance Party and is hereby authorised on behalf of each Finance Party to enter into, enforce the rights of each Finance Party and represent each Finance Party in respect of the granting of any Spanish Public Document.

28.2 Appointment of the Security Agent

- (a) Each of the Secured Parties irrevocably appoints the Security Agent to act as its trustee in connection with the Transaction Security Documents.

- (b) Each of the Secured Parties authorises the Security Agent to exercise the rights specifically given to the Security Agent under or in connection with the Finance Documents together with any other incidental rights, expressly including appearing before Spanish notaries to grant or execute any Spanish Public Document.
- (c) In respect of Transaction Security Documents governed by Swedish law (or Transaction Security Documents governed the laws of any other jurisdiction which does not recognise the concept of a trust), each of the Secured Parties irrevocably:
 - (i) appoints the Security Agent to act as its agent under and in connection with such Transaction Security Documents;
 - (ii) authorises the Security Agent on its behalf to enter into, deliver, sign, execute and enforce the Transaction Security Documents; and
 - (iii) authorises the Security Agent on its behalf to perform the duties and to exercise the rights, powers, authorities and discretions that are specifically given to it under or in connection with the Transaction Security Documents, together with any other incidental rights, powers, authorities and discretions.
- (d) For the purpose of this Clause 28.2 and to the extent permitted by applicable law, each Secured Party incorporated in Germany releases the Security Agent from the restrictions under section 181 second alternative of the German Civil Code.

28.3 Instructions

- (a) The Agent or the Security Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent or Security Agent, as the case may be, in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Agent or the Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent or the Security Agent, as the case may be, may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent or the Security Agent as the case maybe by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.

- (d) The Agent or the Security Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- (e) In the absence of instructions, the Agent or the Security Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) Neither the Agent or the Security Agent is authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

28.4 Duties of the Agent

- (a) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (c) Without prejudice to Clause 25.8 (Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower), paragraph (b) above, shall not apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.
- (d) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent, the Arranger or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.
- (g) The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

28.5 Role of the Arranger

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

28.6 Role of the Security Agent

- (a) The Security Agent shall hold the benefit of the Transaction Security Documents on trust for the Secured Parties or, in relation to any Transaction Security Documents governed by the laws of Sweden, hold such Transaction Security Documents as agent on behalf of the Secured Parties.
- (b) If the Security Agent receives notice from a party referring to this Agreement or any other Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Secured Parties.

- (c) The Security Agent does not have any duties except those expressly set out in the Finance Documents.

28.7 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Agent or the Arranger as a trustee or fiduciary of any other person.
- (b) None of the Agent, the Arranger or the Security Agent shall be bound to account to any Lender (or in the case of the Security Agent, any other Secured Party) for any sum or the profit element of any sum received by it for its own account.

28.8 Business with the Group

The Agent, the Arranger and the Security Agent may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

28.9 Rights and discretions

- (a) The Agent or the Security Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) rely on any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his or her knowledge or within his or her power to verify;
 - (iii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (iv) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Agent or the Security Agent may assume (unless, in relation to the Agent, it has received notice to the contrary in its capacity as agent for the Lenders) that:
 - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 24.1 (Non-payment));

- (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and
 - (iii) any notice or request made by the Borrower (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) The Agent or the Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Agent or the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to it (and so separate from any lawyers instructed by the Lenders) if the Agent or the Security Agent, as the case may be, in its reasonable opinion deems this to be desirable.
- (e) The Agent or the Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by it or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Agent, the Security Agent, any Receiver and any Delegate may act in relation to the Finance Documents through its officers, employees and agents and Agent and not:
- (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part, of any such person,
- unless such error or such loss was directly caused by the Agent's, the Security Agent's, Receiver's or Delegate's, as the case may be, gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise the Agent and the Security Agent as the case may be may disclose to any other Party any information it reasonably believes it has received as agent or trustee as the case may be, under this Agreement.
- (h) Without prejudice to the generality of paragraph (g) above, the Agent:
- (i) may disclose; and
 - (ii) on the written request of the Borrower or the Majority Lenders shall, as soon as reasonably practicable, disclose,
- the identity of a Defaulting Lender to the Borrower and to the other Finance Parties.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent, the Arranger nor the Security Agent is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Agent or the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

28.10 Responsibility for documentation

None of the Agent, the Arranger, the Security Agent, any Receiver or Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by any Finance Party, any Obligor or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

28.11 No duty to monitor

Neither the Agent or the Security Agent shall be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

28.12 Exclusion of liability

- (a) Without limiting paragraph (b) or (c) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent), neither the Agent nor the Security Agent will be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security;
 - (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or

(B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action; or

(iv) in the case of the Security Agent only, any shortfall which arises on the enforcement or realisation of the Charged Property.

(b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent, in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this Clause 28.12 subject to Clause 1.4 (Third party rights) and the provisions of the Third Parties Act.

(c) No Party (other than the Security Agent) may take any proceedings against any officer, employee or agent of the Security Agent in respect of any claim it might have against the Security Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Security Agent may rely on this Clause 28.12 subject to Clause 1.4 (Third party rights) and the provisions of the Third Parties Act.

(d) Neither the Agent nor the Security Agent will be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by it if the Agent or the Security Agent, as the case may be, has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by it for that purpose.

(e) Nothing in this Agreement shall oblige the Agent, the Arranger or the Security Agent to carry out:

(i) any "know your customer" or other checks in relation to any person; or

(ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender,

on behalf of any Lender and each Lender confirms to the Agent, the Arranger and the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent, the Arranger or the Security Agent.

(f) Without prejudice to any provision of any Finance Document excluding or limiting the Agent's, the Security Agent's, Receiver's or Delegate's liability, any liability of the Agent, the Security Agent, Receiver or Delegate arising under or in connection with any Finance Document or the Transaction Security shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Agent, the Security Agent, Receiver or Delegate as the case may be or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent, the Security Agent, Receiver or Delegate at any time which increase the amount of that loss. In no event shall the Agent, the Security Agent, Receiver or Delegate as the case maybe, be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent, the Security Agent, Receiver or Delegate as the case may be has been advised of the possibility of such loss or damages.

- (g) The Security Agent shall not be under any obligation to insure any of the Charged Property or to require any other person to maintain that insurance and shall not be responsible for any losses which may be suffered as a result of the lack or inadequacy of that insurance.
- (h) The Security Agent shall not be liable for any failure, omission or defect in giving notice of, registering or filing, or procuring registration or filing of, or otherwise protecting or perfecting, the security constituted over the Charged Property.

28.13 Lenders' indemnity to the Agent and the Security Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, the Security Agent and every Receiver and every Delegate, immediately on demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by any of them (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 31.11 (Disruption to Payment Systems etc), notwithstanding the Agent's, the Security Agent's or the Receiver's or the Delegate's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent, Security Agent, Receiver or Delegate under the Finance Documents (unless the relevant Agent, Security Agent, Receiver or Delegate has been reimbursed by an Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Borrower shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent or the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent or the Security Agent to an Obligor.

28.14 Resignation of the Agent and the Security Agent

- (a) The Agent or the Security Agent may resign and appoint one of its Affiliates acting through an office as successor by giving notice to the Lenders and the Borrower.
- (b) Alternatively the Agent or the Security Agent may resign by giving 30 days' notice to the Lenders and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Agent or Security Agent.
- (c) If the Majority Lenders have not appointed a successor Agent or Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Agent or Security Agent (after consultation with the Borrower) may appoint a successor Agent or Security Agent, as the case may be.
- (d) If the Agent or the Security Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent or trustee and the Agent or Security Agent is entitled to appoint a successor Agent or the Security Agent under paragraph (c) above, the Agent or the Security Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent or the successor Security Agent to become a party to this Agreement as Agent or Security Agent (as the case maybe) agree with the proposed successor Agent or the successor Security Agent amendments to this Clause 28 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency/security agency fee payable under this Agreement which are consistent with the successor Agent's or Security Agent's normal fee rates and those amendments will bind the Parties.

- (e) The retiring Agent or Security Agent shall make available to its successor such documents and records and provide such assistance as the successor Agent or Security Agent may reasonably request for the purposes of performing its functions as Agent or Security Agent, as the case may be, under the Finance Documents. The Borrower shall, within three Business Days of demand, reimburse the retiring Agent or Security Agent, as the case may be, for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (f) The Agent's or the Security Agent's resignation notice shall only take effect upon the appointment of a successor and in relation to the Security Agent only, the transfer of the Charged Property to that successor.
- (g) Upon the appointment of a successor, the retiring Agent or Security Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 16.3 (Indemnity to the Agent) or Clause 16.4 (Indemnity to the Security Agent), as the case may be, and this Clause 28 (and any agency fees for the account of the retiring Agent or security agent fees for the account of the retiring Security Agent) shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Agent or the Security Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent or Security Agent under the Finance Documents, either:
 - (i) the Agent or Security Agent fails to respond to a request under Clause 14.7 (FATCA information) and a Lender reasonably believes that the Agent or Security Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
 - (ii) the information supplied by the Agent or Security Agent pursuant to Clause 14.7 (FATCA information) indicates that the Agent or Security Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
 - (iii) the Agent or the Security Agent notifies the Borrower and the Lenders that the Agent or the Security Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,

and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent or the Security Agent were a FATCA Exempt Party, and that Lender, by notice to the Agent or the Security Agent, requires it to resign.

28.15 Replacement of the Agent and Security Agent

- (a) After consultation with the Borrower, the Majority Lenders may, by giving 30 days' notice to the Agent or Security Agent (as applicable) (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent or Security Agent by appointing a successor Agent or successor Security Agent.
- (b) The retiring Agent or Security Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent or Security Agent such documents and records and provide such assistance as the successor Agent or Security Agent may

reasonably request for the purposes of performing its functions as Agent or Security Agent under the Finance Documents.

- (c) The appointment of the successor Agent or Security Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent or Security Agent. As from this date, the retiring Agent or Security Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 16.3 (Indemnity to the Agent) or 16.4 (Indemnity to the Security Agent) and this Clause 28 (and any agency fees for the account of the retiring Agent or Security Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Agent or Security Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

28.16 Confidentiality

- (a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) In acting as Security Agent for the Secured Parties, the Security Agent shall be regarded as acting through its trustee or agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (c) If information is received by another division or department of the Agent or the Security Agent, it may be treated as confidential to that division or department and the Agent or the Security Agent shall not be deemed to have notice of it.

28.17 Relationship with the Lenders

- (a) Subject to Clause 25.10 (Pro rata interest settlement) in respect of the Agent only, the Agent or the Security Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's or the Security Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

- (b) Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 34.6 (Electronic communication)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 34.2 (Addresses) and paragraph (a)(i) of Clause 34.6 (Electronic communication) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

28.18 Credit appraisal by the Lenders

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent, the Arranger and the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (d) the adequacy, accuracy or completeness of the Information and any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

28.19 Agent's and Security Agent's management time

Any amount payable to the Agent and the Security Agent under Clause 16.2 (Other indemnities), Clause 18 (Costs and expenses) and Clause 28.13 (Lenders' indemnity to the Agent and the Security Agent) shall include the cost of utilising that the Agent and the Security Agent' management time or other resources, to the extent such time is spent on exceptional matters outside the ordinary course of administering the Facilities, and will be calculated on the basis of such reasonable daily or hourly rates as the Agent and the Security Agent applies for other similar debt facilities and may notify to the Borrower in advance, and is in addition to any fee paid or payable to the Agent and the Security Agent under Clause 13 (Fees).

28.20 Deduction from amounts payable by the Agent

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

28.21 Reliance and engagement letters

Each Finance Party and Secured Party confirms that each of the Arranger, the Security Agent and the Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or

reports already accepted by the Arranger, Agent or Security Agent) the terms of any reliance letter or engagement letters relating to any reports or letters provided by accountants in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

28.22 Additional Security Agent

The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate security agent or as a co-trustee jointly with it:

- (a) if it is necessary in performing its duties and if the Security Agent considers that appointment to be in the interest of the Finance Parties;
- (b) for the purposes of complying with or confirming to any legal requirements, restrictions or conditions which the Security Agent deems to be relevant; or
- (c) for the purposes of obtaining or enforcing any judgment or decree in any jurisdiction,

and the Security Agent will give notice to the other Parties of any such appointment.

28.23 Transaction Security Documents

- (a) The Security Agent shall accept without investigation, requisition or objection whatever title any person may have to the assets which are subject to the Transaction Security Documents and shall not:
 - (i) be bound or concerned to examine or enquire into the title of any person; or
 - (ii) be liable for any defect or failure in the title of any person, whether that defect or failure was known to the Security Agent or might have been discovered upon examination or enquiry and whether it is capable of remedy or not.
- (b) Upon the appointment of any successor Security Agent under Clause 28.14 (Resignation of the Agent and the Security Agent), the resigning Security Agent shall execute and deliver any documents and do any other acts and things which may be necessary to vest in the successor Security Agent all the rights vested in the resigning Security Agent under the Transaction Security Documents.

28.24 Information from the Obligors

Each Obligor shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.

28.25 Custodians and nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust (or held as agent) as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust or agency created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

28.26 Delegation by the Security Agent

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.
- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

28.27 Acceptance of title

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Obligor may have to any of the Charged Property and shall not be liable for, or bound to require any Obligor to remedy, any defect in its right or title.

28.28 Winding up of trust and agency

If the Security Agent, with the approval of the Agent, determines that:

- (a) all of the obligations secured by the Transaction Security Documents have been fully and finally discharged; and
- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and all authorisations given or granted to the Security Agent under this Agreement shall be revoked and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Transaction Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 28.14 (Resignation of the Agent and the Security Agent) shall release, without recourse or warranty, all of its rights under each Transaction Security Document.

28.29 Powers supplemental to Trustee Acts

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

28.30 Disapplication of Trustee Acts

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency

with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

28.31 Role of Reference Banks

- (a) No Reference Bank is under any obligation to provide a quotation or any other information to the Agent.
- (b) No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
- (c) No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 28.31 subject to Clause 1.4 (Third party rights) and the provisions of the Third Parties Act.

28.32 Third party Reference Banks

A Reference Bank which is not a Party may rely on Clause 28.31 (Role of Reference Banks), paragraph (a) of Clause 38.3 (Other exceptions) and Clause 40 (Confidentiality of Funding Rates and Reference Bank Quotations) subject to Clause 1.4 (Third party rights) and the provisions of the Third Parties Act.

29. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

30. SHARING AMONG THE FINANCE PARTIES

30.1 Payments to Finance Parties

If a Finance Party (a **Recovering Finance Party**) receives or recovers any amount from an Obligor other than in accordance with Clause 31 (Payment mechanics) (a **Recovered Amount**) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 31 (Payment mechanics),

without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and

- (c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the **Sharing Payment**) equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 31.6 (Partial payments).

30.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the **Sharing Finance Parties**) in accordance with Clause 31.6 (Partial payments) towards the obligations of that Obligor to the Sharing Finance Parties.

30.3 Recovering Finance Party's rights

On a distribution by the Agent under Clause 30.2 (Redistribution of payments) of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

30.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the **Redistributed Amount**); and
- (b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

30.5 Exceptions

- (a) This Clause 30 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause 30, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified the other Finance Party of the legal or arbitration proceedings; and
 - (ii) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

31. PAYMENT MECHANICS

31.1 Payments to the Agent

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency and with such bank as the Agent, in each case, specifies.

31.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 31.3 (Distributions to an Obligor) and Clause 31.4 (Clawback and pre-funding) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency.

31.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 33 (Set-Off)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

31.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) Unless paragraph (c) below applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.
- (c) If the Agent has notified the Lenders that it is willing to make available amounts for the account of the Borrower before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Borrower:
 - (i) the Borrower shall on demand refund it to the Agent; and
 - (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

31.5 Impaired Agent

- (a) If, at any time, the Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with Clause 31.1 (Payments to the Agent) may instead either:
- (i) pay that amount direct to the required recipient(s); or
 - (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of **Acceptable Bank** and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment (the **Paying Party**) and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the **Recipient Party** or **Recipient Parties**).

In each case such payments must be made on the due date for payment under the Finance Documents.

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties pro rata to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 31.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Agent in accordance with Clause 28.15 (Replacement of the Agent and Security Agent), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 31.2 (Distributions by the Agent).
- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
 - (i) that it has not given an instruction pursuant to paragraph (d) above; and
 - (ii) that it has been provided with the necessary information by that Recipient Party,

give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

31.6 Partial payments

- (a) If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:
- (i) first, in or towards payment pro rata of any unpaid amount owing to the Agent or the Security Agent under those Finance Documents;

- (ii) secondly, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under those Finance Documents;
 - (iii) thirdly, in or towards payment pro rata of any principal due but unpaid under those Finance Documents; and
 - (iv) fourthly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (a)(iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

31.7 Set-off by Obligors

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

31.8 Business Days

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

31.9 Currency of account

- (a) Subject to paragraphs (b) to (e) below, the Base Currency is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that Loan or Unpaid Sum is denominated, pursuant to this Agreement, on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated, pursuant to this Agreement, when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.

31.10 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency

or currency unit of that country designated by the Agent (after consultation with the Borrower); and

- (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

31.11 Disruption to Payment Systems etc

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Borrower that a Disruption Event has occurred:

- (a) the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facilities as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 38 (Amendments and waivers);
- (e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 31.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

32. GENERAL AUSTRALIAN PPSA PROVISIONS

To the extent that a security interest (as defined in the Australian PPSA) is created under a Finance Document, the following applies:

- (a) each Finance Party need not give any notice under the Australian PPSA (including a notice of a verification statement) under or arising out of anything relating to that security interest or Finance Document unless the notice is required by the Australian PPSA and the giving of it cannot be excluded;

- (b) the Borrower and each Guarantor waives its right to receive anything from each Finance Party under section 275 of the Australian PPSA, and shall not make any request of any Finance Party under that section;
- (c) the Borrower and each Guarantor authorises and requests each Finance Party under section 275(7)(c) of the Australian PPSA to obtain from the holder of any other Security or Australian PPSA Deemed Security Interest over the relevant collateral any of the information referred to in section 275(1) of the Australian PPSA;
- (d) each Party contracts out of each provision of the Australian PPSA which section 115 permits, except sections 117, 118, 123, 126, 128, 129, 134(1) and 135; however, each of those sections is contracted out of to the extent that a provision in it would be contrary to or limit an express or implied right on the part of any Finance Party provided for in the relevant Finance Document; and
- (e) any disposal or other exercise of any right, power or remedy under this Agreement will only be taken to be made under a provision which has not been excluded in paragraph (d) above, if a Finance Party so elects.

33. SET-OFF

A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

34. NOTICES

34.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

34.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Obligors, that identified with its name below;
- (b) in the case of each Lender or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of the Agent or the Security Agent, that identified with its name below,

or any substitute address, fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five Business Days' notice.

34.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 34.2 (Addresses), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or Security Agent's signature below (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Agent.
- (d) Any communication or document made or delivered to the Borrower in accordance with this Clause 34.3 will be deemed to have been made or delivered to each of the Obligors.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00pm in the place of receipt shall be deemed only to become effective on the following day.

34.4 Notification of address and fax number

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 34.2 (Addresses) or changing its own address or fax number, the Agent shall notify the other Parties.

34.5 Communication when Agent is Impaired Agent

If the Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Agent, communicate with each other directly and (while the Agent is an Impaired Agent) all the provisions of the Finance Documents which require communications to be made or notices to be given to or by the Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement Agent has been appointed.

34.6 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

- (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Agent or the Security Agent only if it is addressed in such a manner as the Agent or Security Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00pm in the place of receipt shall be deemed only to become effective on the following day.

34.7 Use of websites

- (a) The Borrower acknowledges and agrees that any information provided under this Agreement may be delivered to a Lender (through the Agent) on to an electronic website if:
 - (i) the Agent and that Lender agree;
 - (ii) the Agent appoints a website provider and designates an electronic website for this purpose;
 - (iii) the designated website is used for communication between the Agent and the Lenders;
 - (iv) the Agent notifies the Lenders of the address and password for the website;
 - (v) the information can only be posted on the website by the Agent; and
 - (vi) the information posted is in a format agreed between the Borrower and the Agent.
- (b) The reasonable costs related to the website shall be borne by the Borrower.
- (c) Any Lender which has agreed to receive information via an electronic website may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the designated website. The Borrower shall at its own cost comply with any such request within ten Business Days.

34.8 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

35. CALCULATIONS AND CERTIFICATES

35.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are prima facie evidence of the matters to which they relate.

35.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

35.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

36. PARTIAL INVALIDITY

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

37. REMEDIES AND WAIVERS

37.1 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of any Finance Party or Secured Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of any Finance Party or Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

37.2 Waiver of immunity

To the fullest extent permitted by law, each Obligor irrevocably and unconditionally:

- (a) submits to the jurisdiction of the English courts in relation to any Finance Document Dispute to be resolved in accordance with Clause 43 (Enforcement) and waives and agrees not to claim any sovereign or other immunity from the jurisdiction of the English courts in relation to any Finance Document Dispute to be resolved in accordance with Clause 43 (Enforcement) (including to the extent that such immunity may be attributed to it), and agrees to ensure that no such claim is made on its behalf;
- (b) submits to the jurisdiction of the English courts and the courts of any other jurisdiction in relation to the recognition of any judgment or order of the English courts in relation to any Finance Document Dispute (including a judgment or order in support of any arbitration) and in relation to the recognition of any arbitral award and waives and agrees not to claim any sovereign or other immunity from the jurisdiction of the English courts or the courts of any other jurisdiction in relation to the recognition of any such judgment or court order or arbitral award and agrees to ensure that no such claim is made on its behalf; and
- (c) consents to the enforcement of any order or judgment or award made or given in accordance with Clause 43 (Enforcement) in connection with any Finance Document Dispute and the giving of any relief in the English courts and the courts of any other jurisdiction whether before or after final judgment or arbitral award including (i) relief by way of interim or final injunction or order for specific performance or recovery of any property, (ii) attachment of

its assets and (iii) enforcement or execution against any property, revenues or other assets whatsoever (irrespective of their use or intended use) and waives and agrees not to claim any sovereign or other immunity from the jurisdiction of the English courts or the courts of any other jurisdiction in relation to such enforcement and the giving of such relief (including to the extent that such immunity may be attributed to it), and agrees to ensure that no such claim is made on its behalf.

38. AMENDMENTS AND WAIVERS

38.1 Required consents

- (a) Subject to Clause 38.2 (All Lender matters) and Clause 38.3 (Other exceptions), any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrower and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 38.
- (c) Without prejudice to the generality of paragraphs (c), (d) and (e) of Clause 28.9 (Rights and discretions), the Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.
- (d) Each Obligor agrees to any such amendment or waiver permitted by this Clause 38 which is agreed to by the Borrower. This includes any amendment or waiver which would, but for this paragraph (d), require the consent of all of the Obligors.
- (e) Paragraph (c) of Clause 25.10 (Pro rata interest settlement) shall apply to this Clause 38.
- (f) The Agent may determine administrative matters and make, without reference to any Lender, technical amendments arising out of manifest errors on the face of this Agreement, where such amendments would not prejudice or otherwise be adverse to the position of any Lender under this Agreement.

38.2 All Lender matters

Subject to Clause 38.4 (Replacement of Screen Rate), an amendment, waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of **Majority Lenders** in Clause 1.1 (Definitions);
- (b) an extension to the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (d) a change in currency of payment of any amount under the Finance Documents;
- (e) an increase in any Commitment or the Total Commitments, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the relevant Facility;
- (f) a change to the Obligors (other than in accordance with Clause 27 (Changes to the Obligors) or the addition of any borrower under this Agreement;

- (g) any provision which expressly requires the consent of all the Lenders;
- (h) Clause 2.3 (Finance Parties' rights and obligations), Clause 5.1 (Delivery of a Utilisation Request), Clause 7.1 (Illegality), Clause 8 (Mandatory prepayment and cancellation), Clause 9.9 (Application of prepayments), Clause 25 (Changes to the Lenders), Clause 27 (Changes to the Obligors), this Clause 38, Clause 42 (Governing law) or Clause 43.1 (Jurisdiction of English courts);
- (i) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
 - (i) the guarantee and indemnity granted under Clause 19 (Guarantee and indemnity);
 - (ii) the Charged Property; or
 - (iii) the manner in which the proceeds of enforcement of the Transaction Security are distributed,

(except in the case of paragraphs (ii) and (iii) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document);
- (j) the release of any guarantee and indemnity granted under Clause 19 (Guarantee and indemnity) or of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document;
- (k) any amendment to the order of priority or subordination under the Subordination Agreement; or
- (l) Clause 7.2 (Sanctions), Clause 20.18 (Anti-corruption law), Clause 20.19 (Sanctions), Clause 23.5 (Anti-corruption law) or Clause 23.6 (Sanctions),

shall not be made, or given, without the prior consent of all the Lenders.

38.3 Other exceptions

- (a) An amendment or waiver which relates to the rights or obligations of the Agent, the Arranger, the Security Agent or a Reference Bank (each in their capacity as such) may not be effected without the consent of the Agent, the Arranger, the Security Agent or that Reference Bank, as the case may be.
- (b) Any amendment or waiver which:
 - (i) relates only to the rights or obligations applicable to a particular Loan, Facility or class of Lender; and
 - (ii) does not adversely affect the rights or interests of Lenders in respect of any other Loan or Facility or another class of Lender,

may be made in accordance with this Clause 38 but as if references in this Clause 38 to the specified proportion of Lenders (including, for the avoidance of doubt, all the Lenders) whose consent would, but for this paragraph (b), be required for that amendment or waiver were to that proportion of the Lenders participating in that particular Loan or Facility or forming part of that particular class.

38.4 Replacement of Screen Rate

Subject to paragraph (a) of Clause 38.3 (Other exceptions) if any Screen Rate is not available for dollars, any amendment or waiver which relates to providing for another benchmark rate to apply in relation to dollars in place of that Screen Rate (or which relates to aligning any provision of a Finance Document to the use of that other benchmark rate) may be made with the consent of the Majority Lenders and the Borrower.

38.5 Excluded Commitments

If:

- (a) any Defaulting Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any term of any Finance Document or any other vote of Lenders under the terms of this Agreement within 15 Business Days of that request being made; or
- (b) any Lender which is not a Defaulting Lender fails to respond to such a request (other than an amendment, waiver or consent referred to in paragraphs (b), (c) and (e) of Clause 38.2 (All Lender matters)) within 20 Business Days of that request being made,

(unless, in either case, the Borrower and the Agent agree to a longer time period in relation to any request):

- (i) its Commitment(s) shall not be included for the purpose of calculating the Total Commitments under the relevant Facility/ies when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments has been obtained to approve that request; and
- (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

38.6 Replacement of Lender

(a) If:

- (i) any Lender becomes a Non-Consenting Lender (as defined in paragraph (d) below); or
- (ii) an Obligor becomes obliged to repay any amount in accordance with Clause 7.1 (Illegality) or to pay additional amounts pursuant to Clause 15.1 (Increased costs), Clause 14.2 (Tax gross-up) or Clause 14.3 (Tax indemnity) to any Lender,

then the Borrower may, on 20 Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 25 (Changes to the Lenders) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution (a **Replacement Lender**) which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 25 (Changes to the Lenders) for a purchase price in cash payable at the time of transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under Clause 25.10 (Pro rata interest settlement)), Break Costs and other amounts payable in relation thereto under the Finance Documents.

(b) The replacement of a Lender pursuant to this Clause 38.8 shall be subject to the following conditions:

- (i) the Borrower shall have no right to replace the Agent or Security Agent;
 - (ii) neither the Agent nor the Lender shall have any obligation to the Borrower to find a Replacement Lender;
 - (iii) in the event of a replacement of a Non-Consenting Lender such replacement must take place no later than 30 days after the date on which that Lender is deemed a Non-Consenting Lender;
 - (iv) in no event shall the Lender replaced under Clause 38.6 be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents; and
 - (v) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary know your customer or other similar checks under all applicable laws and regulations in relation to that transfer.
- (c) A Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.
- (d) If:
- (i)
 - (A) the Borrower or the Agent (at the request of the Borrower) has requested the Lenders to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Finance Documents;
 - (B) the consent, waiver or amendment in question requires the approval of all the Lenders; and
 - (C) Lenders whose Commitments aggregate more than 80 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 80 per cent. of the Total Commitments prior to that reduction), have consented or agreed to such waiver or amendment;
 - (ii) a Facility A Lender has refused or is deemed to have refused an Extension Request A; or
 - (iii) a Facility B Lender has refused or is deemed to have refused an Extension Request B,

then any Lender who does not and continues not to consent or agree to such waiver or amendment or, in the case of paragraph (ii) and (iii) above, any Facility A Lender or Facility B Lender who has refused or is deemed to have refused an Extension Request A or an Extension Request B (as applicable), shall be deemed a **Non-Consenting Lender**.

38.7 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining:
 - (i) the Majority Lenders; or
 - (ii) whether:

- (A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the relevant Facility/ies; or
- (B) the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents, that Defaulting Lender's Commitments under the relevant Facility/ies will be reduced by the amount of its Available Commitments under the relevant Facility/ies and, to the extent that that reduction results in that Defaulting Lender's Total Commitments being zero, that Defaulting Lender shall be deemed not to be a Lender for the purposes of paragraphs (i) and (ii) above.

- (b) For the purposes of this Clause 38.7, the Agent may assume that the following Lenders are Defaulting Lenders:
 - (i) any Lender which has notified the Agent that it has become a Defaulting Lender; and
 - (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b), or (c) of the definition of **Defaulting Lender** has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Agent) or the Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

38.8 Replacement of a Defaulting Lender

- (a) The Borrower may, at any time a Lender has become and continues to be a Defaulting Lender, by giving 15 Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 25 (Changes to the Lenders) all (and not part only) of its rights and obligations under this Agreement to to an Eligible Institution (a **Replacement Lender**) which confirms its willingness to assume and does assume all the obligations, or all the relevant obligations, of the transferring Lender in accordance with Clause 25 (Changes to the Lenders) for a purchase price in cash payable at the time of transfer which is either:
 - (i) in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under Clause 25.10 (Pro rata interest settlement), Break Costs and other amounts payable in relation thereto under the Finance Documents; or
 - (ii) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Borrower and which does not exceed the amount described in paragraph (a) above.
- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause 38.8 shall be subject to the following conditions:
 - (i) the Borrower shall have no right to replace the Agent or Security Agent;
 - (ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Borrower to find a Replacement Lender;
 - (iii) the transfer must take place no later than 30 Business Days after the notice referred to in paragraph (a) above;

- (iv) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and
 - (v) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer to the Replacement Lender.
- (c) The Defaulting Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

39. CONFIDENTIAL INFORMATION

39.1 Confidentiality

Except as permitted by Clause 39.2 (Disclosure of Confidential Information) and Clause 39.3 (Disclosure to numbering service providers):

- (a) each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone;
- (b) each Finance Party agrees to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information; and
- (c) no Party shall disclose any information of the kind mentioned in section 275(1) of the Australian PPSA.

39.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates (which, in the case of the Original Lenders, shall include any of its Affiliates (including branches), and any of its or their representatives in any jurisdiction), Related Funds and any of its insurers or reinsurers and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives (and including, for the avoidance of doubt, in each case, any of its or their head offices or branches) such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

- (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (b) of Clause 28.17 (Relationship with the Lenders));
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or tribunal or any governmental, quasi-governmental, administrative, supervisory, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law, rule or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 25.9 (Security over Lenders' rights);
- (viii) who is an insurer, insurance broker, service provider, rating agency or any direct or indirect provider of credit protection to that Finance Party or any of its Affiliates (which, in the case of the Original Lenders, shall include any of its Affiliates (including any head office or branch), and any of its or their representatives in any jurisdiction);
- (ix) who is a Party; or
- (x) with the consent of the Borrower,

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;

- (C) in relation to paragraphs (b)(v), (b)(vi), (b)(vii), and (b)(viii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances; and
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Finance Party; and
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

39.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facilities and/or one or more Obligors the following information:
 - (i) names of Obligors;
 - (ii) country of domicile of Obligors;
 - (iii) place of incorporation of Obligors;
 - (iv) date of this Agreement;
 - (v) Clause 42 (Governing law);
 - (vi) the names of the Agent and the Arranger;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amounts of, and names of, the Facility/ies;
 - (ix) amount of Total Commitments;
 - (x) currency of the Facility/ies;
 - (xi) type of Facility/ies;
 - (xii) ranking of Facility/ies;
 - (xiii) Termination Date for Facility/ies;

(xiv) changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and

(xv) such other information agreed between such Finance Party and the Borrower,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility/ies and/or one or more Obligor by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) Each Obligor represents that none of the information set out in paragraphs (a)(i) to (a)(xv) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Borrower and the other Finance Parties of:
 - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility/ies and/or one or more Obligor; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility/ies and/or one or more Obligor by such numbering service provider.

39.4 Entire agreement

This Clause 39 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

39.5 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

39.6 Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 39.2 (Disclosure of Confidential Information) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 39.

39.7 Continuing obligations

The obligations in this Clause 39 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

40. CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

40.1 Confidentiality and disclosure

- (a) The Agent and each Obligor agree to keep each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) and (d) below.
- (b) The Agent may disclose:
 - (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Borrower pursuant to Clause 10.4 (Notification of rates of interest); and
 - (ii) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender or Reference Bank, as the case may be.
- (c) The Agent may disclose any Funding Rate or any Reference Bank Quotation, and each Obligor may disclose any Funding Rate, to:
 - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
 - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
 - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the

Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and

- (iv) any person with the consent of the relevant Lender, as the case may be.
- (d) The Agent's obligations in this Clause 40 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 10.4 (Notification of rates of interest) provided that (other than pursuant to paragraph (b)(i) above) the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

40.2 Related obligations

- (a) The Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Agent, any Reference Bank Quotation for any unlawful purpose.
- (b) The Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:
 - (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 40.1 (Confidentiality and disclosure) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
 - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 40.

40.3 No Event of Default

No Event of Default will occur under Clause 24.3 (Other obligations) by reason only of an Obligor's failure to comply with this Clause 40.

41. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

42. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

43. ENFORCEMENT

43.1 Jurisdiction of English courts

- (a) In relation to any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a **Dispute**), the Majority Lenders shall elect to settle any such Dispute either in accordance with this Clause 43.1 or in accordance with Clause 43.4 (Arbitration).
- (b) Subject to Clause 43.4 (Arbitration), the courts of England have exclusive jurisdiction to settle any Dispute and each Party submits to the exclusive jurisdiction of the English courts.

- (c) Each Party waives any objection to the English courts on the basis that they are an inappropriate or inconvenient forum to settle any Dispute.

43.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
 - (i) irrevocably appoints First Quantum Minerals (UK) Ltd., Tennyson House, 159-165 Great Portland Street, London, England W1W 5PA as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
 - (ii) agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (on behalf of all the Obligors) must immediately (and in any event within five days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

43.3 Spanish Executive Proceedings

- (a) Upon enforcement, the sum payable by any Spanish Obligor pursuant to this Agreement shall be the total aggregate amount of the balance of the accounts maintained by the Agent (or the relevant Lender, as the case may be) pursuant to Clause 35.1 (Accounts). For the purposes of articles 517 *et seq.* of Spanish Civil Procedural Law, the Parties expressly agree that such balances shall be considered as due, liquid and payable and may be claimed pursuant to the same provisions of such law.
- (b) For the purpose of the provisions of Art. 517. *et seq.* of the Spanish Civil Procedural Law, it is expressly agreed by the Parties that the determination of the debt to be claimed through the executive proceedings shall be effected by the Agent (or the relevant Lender, as the case may be) by means of the appropriate certificate evidencing the balances shown in the relevant account(s) referred to in paragraph (a) above. By virtue of the foregoing, to exercise executive action by the Agent or any of the Lenders it will be sufficient to present:
 - (i) an original notarial first or authentic copy (*copia autorizada*) of this Agreement;
 - (ii) a notarial certificate, if necessary, for the purposes described in paragraph (c) below;
 - (iii) the notarial document (*acta notarial*) which incorporates the certificate issued by the Agent (or the relevant Lender, as the case may be) of the amount due by the Spanish Obligor including an excerpt of the credits and debits (including the interest applied) which appear in the relevant account(s) referred to in paragraph (a) above, evidencing that the determination of the amounts due and payable by the Spanish Obligor has been calculated as agreed in this Agreement and that such amounts coincide with the balance of such accounts; and
 - (iv) a notarial document (*acta notarial*) evidencing that the Spanish Obligor has been served notice of the amount that is due and payable.
- (c) Paragraph (b) above is also applicable to any Lender with regard to its Commitment. Such Lender may issue the appropriate certification of the balances of the relevant account(s) referred to in paragraph (a) above and the certification of the balances of such accounts may be legalised by a notary.

- (d) The amount of the balances so established shall be notified to the Spanish Obligor in an attestable manner at least three days in advance of exercising the executive action set out in paragraph (b) above.
- (e) The Spanish Obligors hereby expressly authorise the Agent (and each Lender, as appropriate) to request and obtain certificates and documents issued by the notary who has formalised this Agreement in order to evidence its compliance with article 517, number 4 of Spanish Civil Procedural Law; and to request any second or subsequent copies of the relevant Spanish Public Document in which this Agreement is formalised. The cost of such certificate and documents will be for the account of the Spanish Obligor in the manner provided under this Agreement.

43.4 Arbitration

- (a) Notwithstanding the procedures referred to in Clause 43.1 (Jurisdiction of English courts), the Majority Lenders may by notice in writing to the other Parties (an **Arbitration Election Notice**) require that any dispute arising out of or in connection with the Finance Documents (including a dispute relating to the existence, validity or termination of any Finance Document or any non-contractual obligation arising out of or in connection with the Finance Documents) (a **Finance Document Dispute**) shall be referred to and finally resolved by arbitration in accordance with the LCIA rules as in force and effect from time to time.
- (b) If court proceedings have already been commenced pursuant to Clause 43.1 (Jurisdiction of English courts) prior to an Arbitration Election Notice, that Arbitration Election Notice must be given no later than the date for service of the acknowledgement of service in those court proceedings, and following such Arbitration Election Notice being given, those court proceedings shall be stayed by consent with no order as to costs and each Party shall instruct solicitors to execute a consent order to this effect prior to the date for service of the defence in the court proceedings.
- (c) Once a Finance Document Dispute is referred to arbitration in accordance with this Clause 43.4, the Parties will not be entitled to bring the same dispute before the English courts.
- (d) The arbitral tribunal shall be composed of three arbitrators. The Claimant (or Claimants jointly) shall nominate one arbitrator for appointment by the LCIA Court. The Respondent (or Respondents jointly) shall nominate one arbitrator for appointment by the LCIA Court. The two arbitrators thus nominated shall, once appointed, nominate a third presiding arbitrator, provided that failing such nomination of a third presiding arbitrator within 30 days from the service of the response, the third presiding arbitrator shall be nominated and appointed by the President for the time being of the London Court of International Arbitration.
- (e) Notwithstanding any provision to the contrary in the LCIA rules, the Parties agree that any arbitrator may have the same nationality as any party to the arbitration.
- (f) Each Party expressly agrees and consents to this procedure for nominating and appointing the arbitral tribunal. To the extent that it is not permitted to choose its own arbitrator pursuant to this clause, each Party irrevocably and unconditionally waives any right to choose its own arbitrator.
- (g) The request for arbitration shall also be served on each Party.
- (h) Any Party to an arbitration commenced pursuant to this Clause 43.4 may, prior to the constitution of an arbitral tribunal in respect of that arbitration, join any Party to that arbitration by delivery of a notice to the Party it seeks to join at the address given for the sending of notices under this Agreement. Any Party may, subject to and in accordance with the LCIA rules, be joined to any arbitration commenced under the Finance Documents and each Party consents to such joinder for the purposes of the Rules.

- (i) The Parties agree to the consolidation of any two or more arbitrations commenced pursuant to Clause 43.4, subject to and in accordance with the Rules.
- (j) The arbitral tribunal shall be empowered to settle each and every dispute submitted to it in separate awards and at different times.
- (k) The seat or legal place of arbitration shall be London, England and the English language shall be used throughout the arbitral proceedings. The applicable law of this Clause 43 shall be the law of England and Wales.
- (l) To the extent permitted by law, each Party waives any objection, on the basis that a Finance Document Dispute has been resolved in a manner contemplated by this Clause 43.4, to the validity or enforcement of any arbitral award. Each Party waives any rights under any applicable and procedural law to appeal any arbitration award or to seek determination of a preliminary point of law with respect to such proceedings.
- (m) Judgement of the award may be entered into any court having jurisdiction thereof.

EXECUTION:

The Parties have shown their acceptance of the terms of this Agreement by executing it after the Schedules.

SCHEDULE 1

THE ORIGINAL PARTIES

PART 1

THE ORIGINAL OBLIGORS

BORROWER	REGISTRATION NUMBER (OR EQUIVALENT, IF ANY) AND ORIGINAL JURISDICTION
First Quantum Minerals Ltd.	BC1006807, British Columbia, Canada
OTHER ORIGINAL OBLIGORS	REGISTRATION NUMBER (OR EQUIVALENT, IF ANY) AND ORIGINAL JURISDICTION
FQM Finance Companies	
Inmet Finance Company S.à r.l.	B155.174, Luxembourg
FQM Finance Ltd.	455366, BVI
FQM Operating Companies	
Kalumbila Minerals Limited	64262, Zambia
Kansanshi Mining Plc	37529, Zambia
First Quantum Mining and Operations Limited	36100, Zambia
Mauritanian Copper Mines S.A.	2379 Mauritania
FQM Australia Nickel Pty Ltd	ACN 135761465, Australia
Çayeli Bakir Isletmeleri A.S.	1389, Turkey
Pyhäsalmi Mine Oy	1712341-0, Finland
Cobre Las Cruces S.A.U.	A-28814135, Spain
Metal Corp Trading AG	CHE-115.397.310, Switzerland
FQM Intermediary Companies	
Kiwara Resources Zambia Limited	64260, Zambia
Kiwara Resources Limited	1002730, BVI

Cover Investments Limited	250108, Ireland
Oryx Limited	13085, Barbados
Kansanshi Holdings Limited	278070, Ireland
Black Bark Investments Ltd	455362, BVI
Mauritan Holdings Ltd.	621817, BVI
FQM Australia Holdings Pty Ltd.	ACN 136613075, Australia
FQM Aus Nickel (BVI) Ltd.	1558582, BVI
FQM Australia Holdings (BVI) Ltd.	1558489, BVI
Inmet Cobre Espana S.A.U.	A-91705038, Spain
CLC Holdings Oy	2389092-3, Finland
CLC Copper II B.V.	34129494, Netherlands
CLC Copper I B.V.	34241191, Netherlands
Inmet Finland Oy	1635992-3, Finland
Inmet Sweden Holdings AB	556693-7131, Sweden
Metal Corp (Sweden) AB	556797-8183, Sweden

PART 2

THE ORIGINAL LENDERS

Name of Original Lender	Facility A Commitment (US\$)
ABSA BANK LIMITED (ACTING THROUGH ITS CORPORATE AND INVESTMENT BANK)	31,600,000
BANK OF MONTREAL, LONDON BRANCH	24,000,000
THE BANK OF NOVA SCOTIA	24,000,000
BARCLAYS BANK OF BOTSWANA LIMITED	7,900,000
BARCLAYS BANK MAURITIUS LIMITED	33,180,000
BARCLAYS BANK ZAMBIA PLC	6,320,000
BNP PARIBAS	95,000,000
CITIBANK, N.A. LONDON BRANCH	32,000,000
CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK	64,000,000
CREDIT SUISSE AG, LONDON BRANCH	16,000,000
EXPORT DEVELOPMENT CANADA	24,000,000
FIRSTRAND BANK LIMITED (LONDON BRANCH)	8,000,000
HSBC BANK PLC	16,000,000
ING BANK, A BRANCH OF ING-DIBA AG	79,000,000
JPMORGAN CHASE BANK, N.A., LONDON BRANCH	24,000,000
NATIXIS SA	32,000,000
N.B.S.A. LIMITED	48,000,000
ROYAL BANK OF CANADA	24,000,000
SOCIETE GENERALE, LONDON BRANCH	79,000,000
STANDARD CHARTERED BANK	32,000,000

Name of Original Lender	Facility B Commitment (US\$)
ABSA BANK LIMITED (ACTING THROUGH ITS CORPORATE AND INVESTMENT BANK)	68,400,000
BANK OF MONTREAL, LONDON BRANCH	51,000,000
THE BANK OF NOVA SCOTIA	51,000,000
BARCLAYS BANK OF BOTSWANA LIMITED	17,100,000
BARCLAYS BANK MAURITIUS LIMITED	71,820,000
BARCLAYS BANK ZAMBIA PLC	13,680,000
BNP PARIBAS	205,000,000
CITIBANK, N.A. LONDON BRANCH	68,000,000
CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK	136,000,000
CREDIT SUISSE AG, LONDON BRANCH	34,000,000
EXPORT DEVELOPMENT CANADA	51,000,000
FIRSTRAND BANK LIMITED (LONDON BRANCH)	17,000,000
HSBC BANK PLC	34,000,000
ING BANK, A BRANCH OF ING-DIBA AG	171,000,000
JPMORGAN CHASE BANK, N.A., LONDON BRANCH	51,000,000
NATIXIS SA	68,000,000
N.B.S.A. LIMITED	102,000,000
ROYAL BANK OF CANADA	51,000,000
SOCIETE GENERALE, LONDON BRANCH	171,000,000
STANDARD CHARTERED BANK	68,000,000

SCHEDULE 2

CONDITIONS PRECEDENT

PART 1

CONDITIONS PRECEDENT TO FIRST UTILISATION

1. Obligors

- (a) A copy of the Constitutional Documents of each Obligor and each Non-Obligor Inter-Group Lender.
- (b) A copy of a resolution of the board of directors or managers, as applicable or, if applicable, a committee of the board of directors of each Obligor and each Non-Obligor Inter-Group Lender (or in respect of an Australian Obligor or a Non-Obligor Inter-Group Lender registered in Australia, a copy of an extract of a resolution of the board of directors):
 - (i) authorising and approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (ii) in the case of an Original Guarantor or Non-Obligor Inter-Group Lender, confirming the transactions contemplated by the Finance Documents to which it is a party are in the best interests of that Original Guarantor or Non-Obligor Inter-Group Lender (as applicable), giving reasons;
 - (iii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
 - (iv) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (v) in the case of an Obligor other than the Borrower, authorising the Borrower to act as its agent in connection with the Finance Documents.
- (c) If required under applicable corporate law, a copy of a resolution by all holders of the issued shares or general manager, as applicable, of each relevant Obligor and each Non-Obligor Inter-Group Lender authorising and approving the terms of, and the transactions contemplated by, the Finance Documents to which that Obligor or Non-Obligor Inter-Group Lender, as applicable, is a party and resolving that the relevant Obligor or Non-Obligor Inter-Group Lender, as applicable, execute, deliver and perform the Finance Documents to which it is a party (other than a ratifying resolution of the shareholders of MCM).
- (d) In relation to any Swedish Obligor, a copy of a resolution of the board of directors or managers, as applicable, of the shareholder of such Swedish Obligor, approving that such Swedish Obligor enters into this Agreement and any other Finance Document to which that Swedish Obligor is a party.
- (e) If applicable, a copy of a resolution of the board of directors of the relevant Obligor, establishing the committee referred to in paragraph (b) above.

- (f) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) and (c) above in relation to the Finance Documents and related documents.
- (g) A certificate of the Borrower (signed by a director or authorised signatory) confirming that:
 - (i) borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not:
 - (A) cause any borrowing, guarantee, security or similar limit binding on any Obligor or any Non-Obligor Inter-Group Lender to be exceeded; or
 - (B) breach the terms of any Financial Indebtedness outstanding in respect of any Obligor or any Non-Obligor Inter-Group Lender; and
 - (ii) there is no event or circumstance existing which would have a Material Adverse Effect.
- (h) A certificate of the Borrower (signed by a director or authorised signatory) confirming that all necessary consents and waivers with respect to its contractual obligations for the purposes of the transactions contemplated under the Facilities have been obtained or waived.
- (i) A certificate of an authorised signatory of the Borrower certifying that each copy document relating to it specified in this Part 1 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement.
- (j) A certificate of each Obligor other than the Borrower and each any Non-Obligor Inter-Group Lender (signed by a director or general manager, as applicable):
 - (i) confirming that borrowing or guaranteeing or securing, as the case may be, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded, nor constitute unlawful financial assistance for the purposes of the relevant legislation in any Relevant Jurisdiction.
 - (ii) certifying that each copy document relating to it specified in this Part 1 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement.
 - (iii) in relation to any Irish Obligor, confirming that borrowing or guaranteeing or securing, as the case may be, the Total Commitments shall not constitute a transaction prohibited by section 239 of the Irish Companies Act.

2. Powers of attorney

- (a) Mauritanian powers of attorney.
- (b) Powers of attorney for each Australian Obligor and each Non-Obligor Inter-Group Lender registered in Australia.

3. Certificates and searches

Australia

- (a) Extract of the public records of each Obligor and each Non-Obligor Inter-Group Lender registered in Australia produced by the Australian Securities and Investments Commission.
- (b) Search of the Personal Property Securities Register in respect of each Obligor and each Non-Obligor Inter-Group Lender registered in Australia.

Barbados

- (c) Searches against Oryx Limited at:
 - (i) the Corporate Affairs and Intellectual Property Office (Barbados); and
 - (ii) the Supreme Court Registry (Barbados).
- (d) Search against the Borrower in the register of mortgages and charges maintained by the Registrar of the Corporate Affairs and Intellectual Property Office (Barbados).

BVI

- (e) A certificate of incumbency for each Obligor registered in the British Virgin Islands.
- (f) Company searches at the Registry of Corporate Affairs and the High Court Registry for each Obligor and Non-Obligor Inter-Group Lender registered in the British Virgin Islands.

Canada

- (g) A certificate of good standing in British Columbia regarding the Borrower.
- (h) Updates of Personal Property Security Act (Canada), bankruptcy, execution and the litigation searches made against the Borrower in British Columbia and Ontario.
- (i) Financing statement against the Borrower in British Columbia

Finland

- (j) Extracts from the Finnish Trade Register concerning each Obligor registered in Finland.
- (k) Insolvency certificates from the Finnish Bankruptcy and Enterprise Reorganization Register concerning each Obligor registered in Finland.

Ireland

- (l) Searches made by independent law searchers against each of the Obligors registered in Ireland dated the same date as this Agreement at:
 - (i) the Companies Registration Office in Dublin;
 - (ii) the Petitions Section of the Central Office of the High Court of Ireland; and
 - (iii) the Judgements Office of the Central Office of the High Court of Ireland.

Luxembourg

- (m) In relation to Inmet Finance Company S.à r.l.:
 - (i) an excerpt (*extrait*) issued by the Luxembourg Trade and Companies Register dated the same date as this Agreement; and
 - (ii) a non-registration certificate (*certificat de non-enregistrement*) issued by the Luxembourg Trade and Companies Register regarding the absence of judicial proceedings dated the same date as this Agreement.

Mauritania

- (n) A certification of MCM's solvency (certificate negative de recherche d'une procedure collective) issued by the Trade Registry where MCM is registered.
- (o) A certificate of non-mortgage for MCM.

Netherlands

- (p) Updated excerpt from the Trade Register in the Netherlands in respect of the Dutch Obligors.

Switzerland

- (q) In relation to MCT:
 - (i) an up-to-date certified excerpt from the commercial register of the canton of Zug (*beglaubigter Handelsregisterauszug*);
 - (ii) a certified copy of the up-to-date articles of association of MCT (*beglaubigter Statuten*) (containing a financial assistance clause allowing for up- and cross-stream security and guarantee); and
 - (iii) affirmative tax ruling clearance from the Swiss Federal Tax Administration (in form and substance satisfactory to the Agent).

Turkey

- (r) Evidence that the Resolution of the Obligors registered in Turkey has been notarised and affixed to the company minute books of the relevant Obligor.

4. Registrations

- (a) Completed Companies Form 35 for each of the Zambian Obligors relating to the discharge of the Inter-Group Loan Assignment Agreement duly signed by BNP Paribas.
- (b) Completed Companies Form 35 for the discharge of the share charge against KMP duly signed by BNP Paribas.
- (c) Section 409 and 1001 authorisation from Cover Investments Limited and KHL permitting McCann FitzGerald to file particulars of the Inter-Group Loan Assignment Agreement with the Companies Registration Office and Revenue Commissioners in Ireland and a section 1001 authorisation from KHL permitting McCann FitzGerald to file particulars of the KMP Share Charge with the Revenue Commissioners of Ireland.
- (d) Completed applications for de-registration of the inter-company loan assignment agreement dated 27 May 2016 between the various companies (other than any Obligor or Non-Obligor Inter-Group Lender incorporated in Barbados or the British Virgin Islands) and BNP Paribas.

5. Finance Documents

- (a) The Subordination Agreement executed by all parties thereto.
- (b) This Agreement executed by the members of the Group party to this Agreement.
- (c) Any relevant Utilisation Request executed by the Borrower.

- (d) The Fee Letters executed by the Borrower.
- (e) The Inter-Group Loan Assignment Agreement executed by all parties thereto.
- (f) The KHL Share Charge, the KMP Share Charge and the BBIL Share Charge in each case executed by all parties thereto.
- (g) All share certificates (or in the case of the BBIL Share Charge and the KHL Share Charge, originals of all relevant share certificates), transfers and stock transfer forms or equivalent duly executed by the relevant Obligor in blank in relation to the assets subject to or expressed to be subject to the Transaction Security and other documents of title to be provided under the Transaction Security Documents will be available immediately following the first Utilisation Date.
- (h) With respect to the BBIL Share Charge, all relevant signed and undated directors' resignation letters, signed and dated letters of authority relating to the directors' resignation letters and any signed and dated letters of instruction to the registered agent of the BBIL.
- (i) With respect to the KHL Share Charge, all relevant signed and undated director's resignation letters, signed and dated letters of authority relating to the director's resignation letters, any shareholder letters of authority relating to a stock transfer form executed in blank, any irrevocable proxy and any irrevocable appointment and any other document required to be delivered pursuant to the terms of the KHL Share Charge.
- (j) Notices and acknowledgements required pursuant to the Inter-Group Loan Assignment Agreement.

6. Legal Opinions

The following legal opinions, each addressed to the Agent, the Security Agent and the Original Lenders and capable of being relied upon by any persons who become Lenders pursuant to the primary syndication of the Facility:

- (a) a legal opinion of Allens, legal advisers to the Agent and the Arranger as to Australian law;
- (b) a legal opinion of Clarke Gittens Farmer, legal advisers to the Agent and the Arranger as to the law of Barbados;
- (c) a legal opinion of Harney Westwood & Riegels, legal advisers to the Agent and the Arranger as to the law of the British Virgin Islands;
- (d) a legal opinion of Blake, Cassels & Graydon LLP, legal advisers to the Agent and the Arranger as to Canadian law;
- (e) a legal opinion of Dittmar & Indrenius Attorneys Ltd., legal advisers to the Agent and the Arranger as to Finnish law;
- (f) a legal opinion of McCann Fitzgerald, legal advisers to the Agent and the Arranger as to Irish law;
- (g) a legal opinion of Arendt & Medernach S.A., legal advisers to the Agent and the Arranger as to Luxembourg law;
- (h) a legal opinion of Exco Afrique GHA Mauritanie, legal advisers to the Agent and the Arranger as to Mauritanian law;

- (i) a legal opinion of Loyens & Loeff N.V., legal advisers to the Agent and the Arranger as to Dutch law;
- (j) a legal opinion of Allen & Overy LLP, legal advisers to the Agent and the Arranger as to English law;
- (k) a legal opinion of Walder Wyss Ltd., legal advisers to the Agent and the Arranger as to Swiss law;
- (l) a legal opinion of Cuatrecasas, Gonçalves Pereira, S.L.P, legal advisers to the Agent and the Arranger as to Spanish law;
- (m) a legal opinion of Advokatfirman Cederquist KB, legal advisers to the Agent and the Arranger as to Swedish law;
- (n) a legal opinion of Gedik & Eraksoy, legal advisers to the Agent and the Arranger as to Turkish law;
- (o) a legal opinion of Yazici Law Offices, legal advisers to the Agent and the Arranger as to Turkish law in respect of Turkish stamp tax only;
- (p) a legal opinion of Çakmak Avukatlık Ortaklığı, legal advisers to the Borrower as to Turkish law in respect of Turkish stamp tax only;
- (q) a legal opinion of Musa Dudhia & Co., legal advisers to the Agent and the Arranger as to Zambian law; and
- (r) a legal opinion of Sidley Austin, legal advisers to the Borrower confirming that the execution and delivery by each Obligor of the relevant Finance Documents and the performance of its obligations under or as set out in those Finance Documents do not conflict with the terms of the FQM Bonds.

7. Other documents and evidence

- (a) Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 13 (Fees), Clause 14.5 (Stamp taxes) and Clause 18 (Costs and expenses) have been paid or will be paid on or prior to the first Utilisation Date.
- (b) Evidence that the fees, costs and expenses then due from the Borrower under the FQM Facilities Agreement have been paid or will be paid on or prior to the first Utilisation Date.
- (c) Evidence that any process agent referred to in Clause 43.2 (Service of process), if not an Obligor, has accepted its appointment.
- (d) The Group Structure Chart certified by an authorised signatory of the Borrower.
- (e) The Base Case Model.
- (f) A copy, certified by an authorised signatory of the Borrower to be a true copy, of the Original Financial Statements.
- (g) A copy of the consolidated financial statements of the Borrower for the Financial Quarter ending 30 June 2017.

- (h) A copy of any documentation or other evidence which is reasonably requested by the Agent (for itself or on behalf of any Lender) in order for the Agent or such Lender to comply with all necessary "know your customer" requirements under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents which the Agent or any Lender is obliged to comply with where the necessary information is not already available to it.
- (i) The list showing details of any outstanding loan or deposit in an amount greater than or equal to US\$1,000,000 (or its equivalent in other currencies) made by a member of the Group to another member of the Group and certified by an authorised signatory of the Borrower and copies of documentation evidencing such loans and deposits.
- (j) Evidence that the amounts outstanding pursuant to FQM Facilities Agreement have been or will be immediately following first the Utilisation Date repaid in full and the available commitments cancelled and that all security granted pursuant to these arrangements has been or will be immediately following the first Utilisation Date, released including in particular:
 - (i) deed of release – English law;
 - (ii) deed of release – BVI law; and
 - (iii) deed of release – Irish law.
- (k) A copy of the executed prepayment and cancellation notice served pursuant to clause 7.3 (Voluntary cancellation) and clause 7.4 (Voluntary prepayment of Facility A Loans) of the FQM Facilities Agreement.
- (l) A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (m) A copy of the compliance certificate delivered under the FQM Facilities Agreement in respect of the relevant period ending 30 June 2017, confirming the Net Debt to EBITDA Ratio.
- (n) In relation to any Australian Obligor or Non-Obligor Inter-Group Lender registered in Australia, all forms and funding necessary to complete any registrations of the Inter-Group Loan Assignment Agreement on the Personal Properties Security Register under the Australian PPSA, as requested by the Security Agent.
- (o) Confirmation from each Original Lender to the Agent that it has carried out its "know your customer" procedures to its satisfaction.
- (p) A funds flow statement.

PART 2

CONDITIONS PRECEDENT REQUIRED TO BE DELIVERED BY AN ADDITIONAL GUARANTOR

1. An Accession Deed executed by the Additional Guarantor and the Borrower.
2. A copy of the Constitutional Documents of the Additional Guarantor.
3. A copy of a resolution of the board or, if applicable, a committee of the board of directors of the Additional Guarantor (or in respect of an Additional Guarantor incorporated in Australia, a copy of an extract of a resolution of the board of directors):
 - (a) approving the terms of, and the transactions contemplated by, the Accession Deed and the Finance Documents and resolving that it execute, deliver and perform the Accession Deed and any other Finance Document to which it is party;
 - (b) confirming that the transactions contemplated by, the Accession Deed and the Finance Documents are in the best interests of the relevant Additional Guarantor, giving reasons;
 - (c) authorising a specified person or persons to execute the Accession Deed and other Finance Documents on its behalf;
 - (d) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (e) authorising the Borrower to act as its agent in connection with the Finance Documents.
4. If applicable, a copy of a resolution of the board of directors of the Additional Guarantor, establishing the committee referred to in paragraph 3 of this Part 2 of Schedule 2.
5. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 of this Part 2 of Schedule 2.
6. If required under applicable corporate law a copy of a resolution signed by all the holders of the issued shares or general manager, as applicable, of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.
7. A copy of a resolution of the board of directors of each corporate shareholder of each Additional Guarantor approving the terms of the resolution referred to in paragraph 6 of this Part 2 of Schedule 2.
8. A certificate of the Additional Guarantor (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded, nor constitute unlawful financial assistance for the purposes of any legislation in any Relevant Jurisdiction and, in relation to any Irish Obligor, shall not constitute a transaction prohibited by section 239 of the Irish Companies Act.
9. A certificate of an authorised signatory of the Additional Guarantor certifying that each copy document listed in this Part 2 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Deed.

10. A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Letter or for the validity and enforceability of any Finance Document.
11. If available, the latest audited financial statements of the Additional Guarantor.
12. Such legal opinions as the agent may require regarding the capacity of the Additional Guarantor to enter into the Accession Deed and other Finance Documents and the enforceability of those documents.
13. If the proposed Additional Guarantor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 43.2 (Service of process), if not an Obligor, has accepted its appointment in relation to the proposed Additional Guarantor.
14. An agreement granting security in favour of the Security Agent (substantially in the form of the Inter-Group Loan Assignment Agreement) over its rights in respect of any Financial Indebtedness outstanding from:
 - (a) any Non-Obligor (other than an Excluded Subsidiary) to that Additional Guarantor; and
 - (b) any member of the KMP Group to that Additional Guarantor.
15. Evidence of the subordination and related obligations substantially in the form of those contained in the Subordination Agreement of all Financial Indebtedness outstanding from any Additional Guarantor to any other member of the Group.
16. Any notices or documents required to be given or executed under the terms of any security documents.
17. A certificate or other evidence from any Additional Guarantor incorporated in Australia and signed by a director certifying that such Additional Guarantor is not in breach of Chapter 2E or Chapter 2J.3 of the Australia Corporations Act.
18. In relation to any Additional Guarantor incorporated in Australia all forms and funding necessary to complete any registrations of the Inter-Group Loan Assignment Agreement on the Personal Properties Security Register under the Australian PPSA as requested by the Security Agent.
19. In relation to any Additional Guarantor incorporated in Luxembourg:
 - (a) an excerpt (*extrait*) issued by the Luxembourg Trade and Companies Register dated the same date as its accession to this Agreement; and
 - (b) a non-registration certificate (*certificat de non-enregistrement*) issued by the Luxembourg Trade and Companies Register regarding the absence of judicial proceedings dated the same date as its accession to this Agreement.

SCHEDULE 3
REQUESTS AND NOTICES

PART 1

UTILISATION REQUEST – LOANS

From: First Quantum Minerals Ltd.

To: [Agent]

Dated:

Dear Sirs

**US\$2,200,000,000 Term and Revolving Facilities Agreement
dated [●] 2017 (the Facilities Agreement)**

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:
 - (a) Proposed Utilisation Date: [] (or, if that is not a Business Day, the next Business Day)
 - (b) Currency of Loan: US\$
 - (c) Amount: [] or, if less, the Available Facility
 - (d) Interest Period: []
 - (e) Facility to be utilised: [Facility A] [Facility B]
3. We confirm that each condition specified in Clause 4.2 (Further conditions precedent) of the Facilities Agreement is satisfied on the date of this Utilisation Request.
4. [This Loan is to be made in [whole]/[part] for the purpose of refinancing [identify maturing Facility B Loan]/[The proceeds of this Loan should be credited to [account]].
5. [This Utilisation Request is accompanied by a prepayment and cancellation notice in relation to the total commitments pursuant to the FQM Facilities Agreement.]¹
6. This Utilisation Request is irrevocable.

Yours faithfully

authorised signatory for
First Quantum Minerals Ltd.

¹ In relation to the first Utilisation Date only

PART 2

SELECTION NOTICE APPLICABLE TO A FACILITY A LOAN

From: First Quantum Minerals Ltd.

To: [Agent]

Dated:

Dear Sirs

US\$2,200,000,000 Term and Revolving Facilities Agreement dated [●] 2017 (the Facilities Agreement)

1. We refer to the Facilities Agreement. This is a Selection Notice. Terms defined in the Facilities Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We refer to the following Facility A Loan[s] with an Interest Period ending on []*.
3. We request that the next Interest Period for the above Facility A Loan[s] is [].
4. This Selection Notice is irrevocable.

Yours faithfully

authorised signatory for

First Quantum Minerals Ltd.

NOTES:

- * Insert details of all Facility A Loans which have an Interest Period ending on the same date.

SCHEDULE 4

FORM OF TRANSFER CERTIFICATE

To: [] as Agent and [] as Security Agent

From: [The Existing Lender] (the **Existing Lender**) and [The New Lender] (the **New Lender**)

Dated:

US\$2,200,000,000 Term and Revolving Facilities Agreement dated [●] 2017 (the Facilities Agreement)

1. We refer to the Facilities Agreement. This agreement (the Agreement) shall take effect as a Transfer Certificate for the purposes of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 25.6 (Procedure for transfer) of the Facilities Agreement:
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with Clause 25.6 (Procedure for transfer) of the Facilities Agreement all of the Existing Lender's rights and obligations under the Facilities Agreement, the other Finance Documents and in respect of the Transaction Security which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Facilities Agreement as specified in the Schedule.
 - (b) The proposed Transfer Date is [].
 - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 34.2 (Addresses) of the Facilities Agreement are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 25.5 (Limitation of responsibility of Existing Lenders) of the Facilities Agreement.
4. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
5. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
6. This Agreement has been entered into on the date stated at the beginning of this Agreement.

Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments,]

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as a Transfer Certificate for the purposes of the Facilities Agreement by the Agent and the Transfer Date is confirmed as [].

[Agent]

By:

[Security Agent]

By:

SCHEDULE 5

FORM OF ASSIGNMENT AGREEMENT

To: [] as Agent and [], [] as Security Agent, First Quantum Minerals Ltd. as Borrower, for and on behalf of each Obligor

From: [the Existing Lender] (the **Existing Lender**) and [the New Lender] (the **New Lender**)

Dated:

US\$2,200,000,000 Term and Revolving Facilities Agreement dated [●] 2017 (the Facilities Agreement)

1. We refer to the Facilities Agreement. This is an Assignment Agreement. This agreement (the Agreement) shall take effect as an Assignment Agreement for the purposes of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 25.7 (Procedure for assignment) of the Facilities Agreement:
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facilities Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Facilities Agreement as specified in the Schedule.
 - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Facilities Agreement specified in the Schedule.
 - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [].
4. On the Transfer Date the New Lender becomes party to the relevant Finance Documents as a Lender.
5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 34.2 (Addresses) of the Facilities Agreement are set out in the Schedule.
6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 25.5 (Limitation of responsibility of Existing Lenders) of the Facilities Agreement.
7. This Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 25.8 (Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower) of the Facilities Agreement, to the Borrower (on behalf of each Obligor) of the assignment referred to in this Agreement.
8. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

9. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

10. This Agreement has been entered into on the date stated at the beginning of this Agreement.

Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

**Commitment/rights and obligations to be transferred
by assignment, release and accession**

[insert relevant details]

[Facility office address, fax number and attention details for notices and account details for payments]

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as an Assignment Agreement for the purposes of the Facilities Agreement by the Agent and the Transfer Date is confirmed as [].

Signature of this Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to in this Agreement, which notice the Agent receives on behalf of each Finance Party.

[Agent]

By:

[Security Agent]

By:

SCHEDULE 6

FORM OF COMPLIANCE CERTIFICATE

To: [] as Agent

From: First Quantum Minerals Ltd.

Dated:

Dear Sirs

US\$2,200,000,000 Facilities Agreement dated [●], 2017 (the Facilities Agreement)

1. We refer to the Facilities Agreement. This is a Compliance Certificate. Terms defined in the Facilities Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that, in accordance with Clause 22.2 (Financial condition) of the Facilities Agreement:

Net Debt to EBITDA Ratio is []:1

Debt Service Cover Ratio (Historic) is []:1

Debt to Equity Ratio []:1

[details to be provided]
3. [We confirm that no Default/Event of Default is continuing.]*
4. We confirm that Repeating Representations are true and correct in all material respects.
5. We confirm the following companies² meet the Op-Co Threshold Test and therefore constitute FQM Operating Companies [●] and the following companies are FQM Finance Companies and/or FQM Intermediary Companies for the purposes of the Facilities Agreement [●].
6. We confirm that the cash or cash equivalent investments held by each Non-Obligor (except an Excluded Subsidiary) and each Swedish Obligor is US\$[●]³
7. We confirm that the Margin is [●].
8. [We confirm that the rate of the commitment fee is [●]]
9. [We confirm that a Ratio Enhancement Period exists.]/[We confirm that no Ratio Enhancement Period has existed for [●] consecutive Relevant Quarters.]

² Include any companies to be acquired pursuant to a Permitted Acquisition.

³ Must be less than US\$40,000,000.

Signed

[Chief Financial Officer/Director/Treasurer]
of First Quantum Minerals Ltd.

NOTES:

- * If this statement cannot be made, the certificate should identify any Default/Event of Default that is continuing and the steps, if any, being taken to remedy it.

SCHEDULE 7

TIMETABLES

Loans in US\$

Delivery of a duly completed Utilisation Request (Clause 5.1 (Delivery of a Utilisation Request)) or a Selection Notice (Clause 11.1 (Selection of Interest Periods and Terms))	U-3 11.00am latest
Agent notifies the Lenders of the Loan in accordance with Clause 5.4 (Lenders' participation)	U-3 4.30pm
LIBOR is fixed	Quotation Day 11.00am
Reference Bank Rate calculated by reference to available quotations in accordance with Clause 12.2 (Calculation of Reference Bank Rate)	Noon on the Quotation Day
"U" =	date of utilisation or, if applicable, in the case of a Facility A Loan that has already been borrowed, the first day of the relevant Interest Period for that Facility A Loan
"U - X" =	X Business Days prior to date of utilisation

SCHEDULE 8

FORM OF INCREASE CONFIRMATION

To: [] as Agent, [] as Security Agent, and First Quantum Minerals Ltd. as Borrower, for and on behalf of each Obligor

From: [*the Increase Lender*] (the **Increase Lender**)

Dated:

US\$2,200,000,000 Term and Revolving Facilities Agreement dated [●] 2017 (the **Facilities Agreement**)

1. We refer to the Facilities Agreement. This agreement (the **Agreement**) shall take effect as an Increase Confirmation for the purposes of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 2.2 (Increase) of the Facilities Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment(s) specified in the Schedule (the **Relevant Commitment(s)**) as if it had been an Original Lender under the Facilities Agreement in respect of the Relevant Commitment(s).
4. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment(s) is to take effect (the **Increase Date**) is [].
5. On the Increase Date, the Increase Lender becomes party to the relevant Finance Documents as a Lender.
6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 34.2 (Addresses) of the Facilities Agreement are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph (h) of Clause 2.2 (Increase) of the Facilities Agreement.
8. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
9. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
10. This Agreement has been entered into on the date stated at the beginning of this Agreement.

Note: The execution of this Increase Confirmation may not be sufficient for the Increase Lender to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of the Increase Lender to ascertain whether any other documents or other formalities are required to obtain the benefit of the Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

**Relevant Commitment/rights and obligations
to be assumed by the Increase Lender**

[insert relevant details]

[Facility office address, fax number and attention details for
notices and account details for payments]

[Increase Lender]

By:

This Agreement is accepted as an Increase Confirmation for the purposes of the Facilities Agreement by the Agent and the Increase Date is confirmed as [].

[Agent]

By:

[Security Agent]

By:

SCHEDULE 9

FORM OF ACCESSION DEED

To: [●] as Agent and [●] as Security Agent for itself and each of the Finance Parties

From: [*Subsidiary*] and First Quantum Minerals Ltd.

Dated:

Dear Sirs

US\$2,200,000,000 Term and Revolving Facilities Agreement dated [●] 2017 (the Facilities Agreement)

1. We refer to the Facilities Agreement. This deed (the **Accession Deed**) shall take effect as an Accession Deed for the purposes of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Accession Deed unless given a different meaning in this Accession Deed.
2. [*Subsidiary*] agrees to become an Additional Guarantor and to be bound by the terms of the Facilities Agreement and the other Finance Documents as an Additional Guarantor pursuant to Clause (27.2) (Additional Guarantors) of the Facilities Agreement. [*Subsidiary*] is a company duly incorporated under the laws of [*name of relevant jurisdiction*] and is a limited liability company with registered number [●].
3. [*Subsidiary's*] administrative details for the purposes of the Facilities Agreement are as follows:

Address:

Fax No:

Attention:
4. The [*Subsidiary*] and the Security Agent agree that the Security Agent shall hold:
 - (a) any Security in respect of the [*Subsidiary's*] obligations and liabilities created or expressed to be created pursuant to the Finance Documents;
 - (b) all proceeds of that Security; and
 - (c) all obligations expressed to be undertaken by the [*Subsidiary*] to pay amounts in respect of those obligations and liabilities to the Security Agent as trustee and agent for the Secured Parties (in the Finance Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the [*Subsidiary*] (in the Finance Documents or otherwise) in favour of the Security Agent as agent (in relation to any Security governed by Swedish law) and trustee for the Secured Parties,

on trust for the Secured Parties on the terms and conditions contained in the Facilities Agreement (or, in case of any Security governed by Swedish law, as agent for the Secured Parties).
5. This Accession Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

6. [[*Subsidiary*]⁴ agrees to appear before a Notary Public in Spain to raise this document to the status of a Spanish Public Document and to provide the Agent with an authorised notarial copy (*copia autorizada*) of the same.]

THIS ACCESSION DEED has been signed on behalf of the Security Agent (for the purposes of paragraph 4 above only), signed on behalf of the Borrower and executed as a deed by [*Subsidiary*] and is delivered on the date stated above.

Insert appropriate signature blocks for Security Agent, Borrower and Subsidiary

⁴ Only applicable if the acceding Subsidiary is incorporated in Spain.

SCHEDULE 10

FORM OF RESIGNATION LETTER

To: [●] as Agent

From: [*resigning Obligor*] and First Quantum Minerals Ltd.

Dated:

Dear Sirs

**US\$2,200,000,000 Term and Revolving Facilities Agreement
dated [●] 2017 (the Facilities Agreement)**

1. We refer to the Facilities Agreement. This is a Resignation Letter. Terms defined in the Facilities Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to Clause 27.3 (Resignation of a Guarantor) of the Facilities Agreement, we request that [*resigning Guarantor*] be released from its obligations as a Guarantor under the Facilities Agreement and the Finance Documents.
3. We confirm that:
 - (a) no Default is continuing or would result from the acceptance of this request; and
 - (b) [this request is given in relation to a Third Party Disposal of [*resigning Guarantor*]/[this request is given in relation to a Permitted Reorganisation]];
 - (c) [the Disposal Proceeds have been or will be applied in accordance with Clause 8.2 (Disposal/MPSA Facility Proceeds) of the Facilities Agreement;]
 - (d) [the Excluded Reinvestment Proceeds have been or will be applied in accordance with paragraph (c) of Clause 8.2 (Disposal/MPSA Facility Proceeds) of the Facilities Agreement;]
4. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

First Quantum Minerals Ltd.

[*Resigning Guarantor*]

By:

By:

SCHEDULE 11

EXISTING INTRA-GROUP LOANS

*Balance as at 17 October 2017 of US\$1,222,251,697 due to repayment of bank overdrafts for Inmet Finance Company S.à r.l.

Name of Creditor	Name of Debtor	Amount on 30 September 2017 (US\$)
Inmet Finance Company S.à r.l.	Minera Panama S.A.	Excluded
FQM Finance Ltd	Kalumbila Minerals Limited	2,037,566,188
FQM Finance Ltd	FQM Australia Nickel Pty Ltd	668,596,833
CLC Copper II B.V.	Cobre Las Cruces S.A.	383,046,624
Inmet Finance Company S.à r.l.	CLC Copper I B.V.	380,349,995
Kansanshi Holdings Limited	FQM Finance Ltd	349,463,682
First Quantum Minerals Ltd	FQM Finance Ltd	388,323,017
FQM Finance Ltd	Inmet Finance Company S.à r.l.	255,772,578*
Inmet Finance Company S.à r.l.	Inmet Finland OY	212,211,807
First Quantum Mining and Operations Ltd	Kalumbila Minerals Limited	130,796,583
Metal Corp (Sweden) AB	First Quantum Minerals Ltd	84,682,599
FQM Finance Ltd	Mauritanian Copper Mines SA	82,656,804
First Quantum Minerals Ltd	HV Mining Limited Partnership	64,615,356
Cover Investments Limited	FQM Finance Ltd	58,702,615
FQM Finance Ltd	First Quantum Mining and Operations Ltd	43,703,791
7563191 Canada Inc.	First Quantum Minerals Ltd	23,923,445
Inmet Cobre Espana S.A.U.	Cobre Las Cruces S.A.U.	23,787,217
First Quantum Minerals Ltd	HV Mining Limited Partnership	22,659,261
Pyhäsalmi Mine OY	Inmet Cobre Espana S.A.U.	18,883,512
FQM Finance Ltd	Skyblue Enterprises Inc	14,223,256
Cover Investments Limited	Kiwara Resources Zambia Limited	14,122,502

Name of Creditor	Name of Debtor	Amount on 30 September 2017 (US\$)
FQM Finance Ltd	Afro American Finance Corp	12,553,548
FQM Finance Ltd	FQM (Peru) Ltd	11,213,377
First Quantum Minerals Ltd	FQM (Peru) Ltd	9,998,086
FQM Finance Ltd	FQM Exploration (Zambia) Ltd.	8,783,985
FQM Finance Ltd	Lumina Copper Corp	7,501,535
FQM Finance Ltd	Minera Antares Peru SAC	7,080,396
FQM Finance Ltd	Kafue Transport Services Limited	4,862,717
First Quantum Minerals Ltd	6770177 Canada Ltd.	4,712,719
FQM Finance Ltd	First Quantum Minerals SA (Proprietary) Limited	3,886,501
First Quantum Minerals (Australia) Pty Limited	FQM Exploration (Australia) Pty Ltd.	3,354,643
FQM Finance Ltd	FQM Exploration (Chile) SA	2,438,788
First Quantum Minerals Ltd	FQM Exploration Holdings Ltd	2,348,045
FQM Finance Ltd	First Quantum Exploration (SRB) d.o.o.	1,695,934
FQM Finance Ltd	FQM Exploration Holdings Ltd	1,265,806
Cover Investments Limited	Kiwara Resources Ltd	1,137,737

SCHEDULE 12

EXISTING CANADIAN PENSION PLANS

Name of Existing Canadian Pension Plan	Details (if provided)
Pension plan – The Retirement Plan of First Quantum Minerals Ltd.	The retirement plan is one plan document which consists of the Defined Benefit and Defined Contribution Plan
First Quantum Minerals Ltd – Retirement Compensation Arrangement	Together with the Zeitler RCA Trust Agreement, Defined Benefit retirement compensation arrangement for a former employee.
Supplemental Executive Retirement Plan (SERP)	N/A
Termination Agreements	N/A
Employee Group Benefits	Consists of the following benefits: Group Life Insurance, Dependent Life Insurance, Group Accidental and Dismemberment (AD&D) Insurance, Optional Life Insurance, Optional AD&D Insurance, Long Term Disability, Short Term Disability, Extended Health Insurance, Dental Insurance, Out of country medical emergency insurance, Employee Assistance Program.
International Benefit plan for Expats	N/A
Fitness benefit for employees	\$500 annual allowance
Paid parking for directors	N/A
Car allowance for directors	N/A
Provincial health care plans	British Columbia provincial medical premiums
Provincial worker's compensation insurance	Premiums paid in British Columbia, Ontario, Quebec
Maternity leave plan and top up provision to plan.	Top up provision based on years of service- 70%-80% of annual salary for first 15 weeks of maternity leave.
Approved leaves of absence	Vacation days, bereavement, sick days, birth of child, adoption leave, jury duty, parental leave, family emergency leave, family medical leave etc.
Company sponsored employee events	Christmas party, luncheons for special occasions, monthly employee meeting.
Company sponsored training and development of employees	When requested/required for role.

SCHEDULE 13

EXISTING GUARANTEES

Person on behalf of which the guarantee is issued	Guarantor / issuer	Project / beneficiary	Currency	Amount	Dated
First Quantum Minerals Ltd.	Canadian Imperial Bank of Commerce	Various closure and pension obligations in Canada	CAN\$	18,000,000	2-Dec-05
First Quantum Minerals Ltd.	Standard Chartered Bank	Closure and environmental obligations of First Quantum Mining and Operations Ltd	US\$	1,671,076	30-Jul-08
Pyhäsalmi Mine Oy	Op Financial Group	Closure and environmental obligations at Pyhäsalmi Mine Oy	EUR	1,200,000	5-May-08
Pyhäsalmi Mine Oy	Op Financial Group	Closure and environmental obligations at Pyhäsalmi Mine Oy	EUR	25,000	5-Mar-2010
Pyhäsalmi Mine Oy	Op Financial Group	Closure and environmental obligations at Pyhäsalmi Mine Oy	EUR	989,000	24-Jun-2014
Pyhäsalmi Mine Oy	Op Financial Group	Closure and environmental obligations at Pyhäsalmi Mine Oy	EUR	10,000	15-Aug-14
Cobre Las Cruces S.A.U.	BBVA	Closure and environmental obligations at Cobre Las Cruces S.A.U.	EUR	5,000,000	06-Aug-03
Cobre Las Cruces S.A.U.	BBVA	Closure and environmental obligations at Cobre Las Cruces S.A.U.	EUR	8,000,000	07-May-13
Cobre Las Cruces S.A.U.	BBVA	Closure and environmental obligations at Cobre Las Cruces S.A.U.	EUR	895,896	09-Jul-15
Cobre Las Cruces S.A.U.	BBVA	Closure and environmental obligations at Cobre Las Cruces S.A.U.	EUR	189,016	04-Apr-07
Cobre Las Cruces S.A.U.	BBVA	Closure and environmental obligations at Cobre Las Cruces S.A.U.	EUR	105,763	10-Jul-06

Person on behalf of which the guarantee is issued	Guarantor / issuer	Project / beneficiary	Currency	Amount	Dated
Cobre Las Cruces S.A.U.	BBVA	Closure and environmental obligations at Cobre Las Cruces S.A.U.	EUR	259,500	20-Nov-09
Cobre Las Cruces S.A.U.	BBVA	Closure and environmental obligations at Cobre Las Cruces S.A.U.	EUR	39,368	19-Oct-10
Cobre Las Cruces S.A.U.	BBVA	Closure and environmental obligations at Cobre Las Cruces S.A.U.	EUR	178,192	19-Oct-10
Cobre Las Cruces S.A.U.	BBVA	Closure and environmental obligations at Cobre Las Cruces S.A.U.	EUR	31,800	10-Nov-11
Cobre Las Cruces S.A.U.	BBVA	Closure and environmental obligations at Cobre Las Cruces S.A.U.	EUR	40,066	29-Oct-14
Cobre Las Cruces S.A.U.	BBVA	Closure and environmental obligations at Cobre Las Cruces S.A.U.	EUR	40,066	29-Oct-14
Cobre Las Cruces S.A.U.	BBVA	Closure and environmental obligations at Cobre Las Cruces S.A.U.	EUR	40,066	29-Oct-14
Cobre Las Cruces S.A.U.	BBVA	Closure and environmental obligations at Cobre Las Cruces S.A.U.	EUR	36,408	10-Jul-15
Cobre Las Cruces S.A.U.	BBVA	Closure and environmental obligations at Cobre Las Cruces S.A.U.	EUR	36,408	10-Jul-15
Cobre Las Cruces S.A.U.	BBVA	Closure and environmental obligations at Cobre Las Cruces S.A.U.	EUR	36,408	10-Jul-15
Cobre Las Cruces S.A.U.	BBVA	Closure and environmental obligations at Cobre Las Cruces S.A.U.	EUR	36,408	10-Jul-15
Cobre Las Cruces S.A.U.	BBVA	Power obligation at Cobre Las Cruces S.A.U.	EUR	420,000	1-Dec-16
Cobre Las Cruces S.A.U.	BBVA	Power obligation at Cobre Las Cruces S.A.U.	EUR	550,000	1-Dec-16

Person on behalf of which the guarantee is issued	Guarantor / issuer	Project / beneficiary	Currency	Amount	Dated
Cruces S.A.U.		Las Cruces S.A.U.			
Cobre Las Cruces S.A.U.	Abarca Compañía de Seguros S.A.	Closure obligations at Cobre Las Cruces S.A.U.	EUR	36,975,678	14-Mar-17
Cayeli Bakir Isletmeleri A.S.	Turkiye Is Bankasi A.S.	Various local obligations at Cayeli Bakir Isletmeleri A.S.	TRY	58,736	08-Jun-15
Cayeli Bakir Isletmeleri A.S.	Turkiye Is Bankasi A.S.	Various local obligations at Cayeli Bakir Isletmeleri A.S.	TRY	464,630	17-Mar-14
Cayeli Bakir Isletmeleri A.S.	Turkiye Is Bankasi A.S.	Various local obligations at Cayeli Bakir Isletmeleri A.S.	TRY	12,757	08-Apr-15
Minera Panama S.A.	National de Seguros	Closure obligations at Minera Panama S.A.	USD	77,100,000	11-Dec-13
Minera Panama S.A.	International de Seguros	Environmental and compliance obligations at Minera Panama S.A.	USD	6,000,000	24-Feb-16
Mauritanian Copper Mines S.A.	Generale de Banque de Mauritanie	Closure obligations at Mauritanian Copper Mines S.A.	USD	1,609,000	16-Jun-10
Minera Panama S.A.	International de Seguros	Environmental and compliance obligations at Minera Panama S.A.	USD	6,000,000	24-Feb-16
Faloxia Pty Ltd	Standard Chartered Bank	Faloxia VAT obligations	BWP	50,000	22-Jun-15
Copper Range Company	Citibank, N.A.	White Pine Mine Facility	US\$	2,854,000	19-Jan-12
Kansanshi Mining Plc	First Quantum Minerals Ltd.	Loan agreement with Standard Chartered Bank	US\$	350,000,000	27-Mar-14
Kansanshi Mining Plc	Barclays Bank Zambia Plc	Closure obligations for Kansanshi Mining Plc	US\$	53,596,144	31-Mar-17
Kansanshi Mining Plc	Standard Chartered Bank	Closure obligations for Kansanshi Mining Plc	US\$	8,318,673	30-Jul-08

Person on behalf of which the guarantee is issued	Guarantor / issuer	Project / beneficiary	Currency	Amount	Dated
Kalumbila Minerals Limited	First Quantum Minerals Ltd.	Loan agreement with Caterpillar Financial Services Corporation	US\$	100,000,000	2-Apr-14
Metal Corp Trading AG	First Quantum Minerals Ltd.	Various financial agreements	US\$	25,000,000	19-Aug-10

FQM FINANCE LTD.)
by:)

DAVID SILVESTRO

SIGNATURE

DAVID SILVESTRO

NAME PRINTED

Director

TITLE

Before me: FRANCOIS GAUTHIER

Notary Public: Francois Gauthier

Address for Notices: Abacus Trust and Management Services Limited
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The British Virgin Islands

Facsimile No.: +44 (0) 20 7291 6655

Attention: Group Corporate Secretary

Electronic Mail: Sarah.Robertson@fqml.com

FQM OPERATING COMPANIES

KALUMBILA MINERALS LIMITED)
by:)

KWALELA M LAMASWALA
SIGNATURE

Kwalela M LAmasawala
NAME PRINTED

Director
TITLE

Before me: MOSES PHIRI

Notary Public: Moses Phiri

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Attention: Group Company Secretary

Electronic Mail: Sarah.Robertson@fqml.com

KANSANSHI MINING PLC)
by:)

KWALELA M LAMASWALA
SIGNATURE
Kwalela M Lamaswala
NAME PRINTED
Director
TITLE

Before me: MOSES PHIRI

Notary Public: Moses Phiri

JOYCE MUWO MWANSA
SIGNATURE
Joyce Muwo Mwansa
Company Secretary
TITLE

Before me: MOSES PHIRI

Notary Public: Moses Phiri

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Electronic Mail: Sarah.Robertson@fqml.com

FIRST QUANTUM MINING AND)
OPERATIONS LIMITED)
by:

KWALELA M LAMASWALA
SIGNATURE

Kwalela M Lamaswala
NAME PRINTED

Director
TITLE

Before me: MOSES PHIRI

Notary Public: Moses Phiri

JOYCE MUWO MWANSA
SIGNATURE

Joyce Muwo Mwansa
NAME PRINTED

Company Secretary
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Before me: MOSES PHIRI

Notary Public: Moses Phiri

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Attention: Group Company Secretary

Electronic Mail: Sarah.Robertson@fqml.com

SIGNED for **FQM AUSTRALIA NICKEL**)
PTY LTD by its attorney under power of)
attorney dated 12 October 2017 in the presence
of:

SARAH ROBERTSON
ATTORNEY SIGNATURE

Sarah Robertson
NAME PRINTED

Corporate Secretary
TITLE

Before me: FRANCOIS GAUTHIER

Notary Public: Francois Gauthier

REENA MODHA
WITNESS SIGNATURE

Reena Modha
NAME PRINTED

Solicitor
TITLE

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Notary Public: Francois Gauthier

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Attention: Group Company Secretary

Electronic Mail: Sarah.Robertson@fqml.com

ÇAYELI BAKIR ISLETMELERİ A.S.)
by:)

SARAH ROBERTSON

SIGNATURE

Sarah Robertson

NAME PRINTED

Corporate Secretary

TITLE

Before me: FRANCOIS GAUTHIER

Notary Public: Francois Gauthier

SIGNATURE

NAME PRINTED

TITLE

Before me: _____

Notary Public: _____

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Rize
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PYHÄSALMI MINE OY)
by:)

DAVID SILVESTRO

SIGNATURE

David Silvestro

NAME PRINTED

Director

TITLE

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COBRE LAS CRUCES, S.A.U.)
by:)

SARAH ROBERTSON
SIGNATURE
Sarah Robertson
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Corporate Secretary
TITLE

Before me: FRANCOIS GAUTHIER

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Attention: Group Company Secretary

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METAL CORP TRADING AG)
by:)

SARAH ROBERTSON
SIGNATURE

Sarah Robertson
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Corporate Secretary
TITLE

Before me: FRANCOIS GAUTHIER

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Attention: Group Company Secretary

Electronic Mail: Sarah.Robertson@fqml.com

FQM INTERMEDIARY COMPANIES

KIWARA RESOURCES ZAMBIA)
LIMITED by:)

KWALELA M LAMASWALA
SIGNATURE

Kwalela M Lamaswala
NAME PRINTED

Director
TITLE

Before me: FRANCOIS GAUTHIER

Notary Public: Francois Gauthier

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Attention: Group Company Secretary

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KIWARA RESOURCES LIMITED)
by:)

DAVID SILVESTRO

SIGNATURE

David Silvestro

NAME PRINTED

Director

TITLE

Before me: FRANCOIS GAUTHIER

Notary Public: Francois Gauthier

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British Virgin Islands

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Attention: Group Company Secretary

Electronic Mail: Sarah.Robertson@fqml.com

SIGNED and **DELIVERED** as a **DEED** by

SARAH ROBERTSON

as attorney for

COVER INVESTMENTS LIMITED

in the presence of:

REENA MODHA

Witness signature

REENA MODHA

Witness name

SOLICITOR

Witness occupation

Aston House, Cornwall Avenue, London N3

1LF

Witness Address

Before me: FRANCOIS GAUTHIER

Notary Public: Francois Gauthier

Address for Notices: Matsack Trust Limited, 70 Sir John Rogerson's Quay, Dublin 2, Ireland

Facsimile No.: +44 (0) 20 7291 6655

Attention: Group Company Secretary

Electronic Mail: Sarah.Robertson@fqml.com

ORYX LIMITED)
by:)

CHLOE A NOEL
SIGNATURE

CHLOE A NOEL
NAME PRINTED

SECRETARY
TITLE

Before me: MAITRE FRANCOIS GAUTHIER

Notary Public: MAITRE FRANCOIS
GAUTHIER

Address for Notices: c/o The Corporate Secretary Limited
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Whitepark Road
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Bridgetown
Barbados

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Attention: Group Company Secretary

Electronic Mail: Sarah.Robertson@fqml.com

SIGNED and **DELIVERED** as a **DEED** by

SARAH ROBERTSON

as attorney for

KANSANSHI HOLDINGS LIMITED

in the presence of:

REENA MODHA

Witness signature

REENA MODHA

Witness name

SOLICITOR

Witness occupation

ASTON HOUSE, CORNWALL AVENUE,

LONDON, N3 1LF

Witness Address

Before me: MAITRE FRANCOIS GAUTHIER

Notary Public: MAITRE FRANCOIS

GAUTHIER

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Attention: Group Company Secretary

Electronic Mail: Sarah.Robertson@fqml.com

MAURITAN HOLDINGS LIMITED)
by:)

DAVID SILVESTRO

SIGNATURE
DAVID SILVESTRO

NAME PRINTED
DIRECTOR

TITLE

Before me: MAITRE FRANCOIS GAUTHIER

Notary Public: MAITRE FRANCOIS GAUTHIER

SIGNATURE

NAME PRINTED

TITLE

Before me: _____

Notary Public: _____

Address for Notices: c/o Abacus Trust And Management Services Ltd., Geneva Place 2nd Floor 333
Waterfront Drive, Road Town, Tortola, BVI

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Attention: Group Company Secretary

Electronic Mail: Sarah.Robertson@fqml.com

SIGNED for FQM AUSTRALIA)
HOLDINGS PTY LTD by its attorney under)
power of attorney dated 12 October 2017 in the
presence of:

SARAH ROBERTSON
ATTORNEY SIGNATURE
SARAH ROBERTSON
NAME PRINTED
CORPORATE SECRETARY
TITLE

Before me: MAITRE FRANCOIS GAUTHIER

Notary Public: MAITRE FRANCOIS GAUTHIER

REENA MODHA
WITNESS SIGNATURE
REENA MODHA
NAME PRINTED
SOLICITOR
TITLE

Before me: _____

Notary Public: _____

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Attention: Group Company Secretary

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FQM AUS NICKEL (BVI) LTD.)
by:)

DAVID SILVESTRO

SIGNATURE

DAVID SILVESTRO

NAME PRINTED

DIRECTOR

TITLE

Before me: MAITRE FRANCOIS GAUTHIER

Notary Public: MAITRE FRANCOIS GAUTHIER

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Attention: Group Company Secretary

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INMET COBRE ESPAÑA, S.A.U.)
by:)

SARAH ROBERTSON
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SARAH ROBERTSON
NAME PRINTED
CORPORATE SECRETARY
TITLE

Before me: MAITRE FRANCOIS GAUTHIER

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Attention: Group Company Secretary

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CLC HOLDINGS OY)
by:)

DAVID SILVESTRO

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DAVID SILVESTRO

NAME PRINTED
DIRECTOR

TITLE

Before me: MAITRE FRANCOIS GAUTHIER

Notary Public: MAITRE FRANCOIS GAUTHIER

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Attention: Group Company Secretary

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CLC COPPER II B.V.)
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Attention: Group Company Secretary

Electronic Mail: Sarah.Robertson@fqml.com

INMET FINLAND OY)
by:)

DAVID SILVESTRO

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DAVID SILVESTRO

NAME PRINTED
DIRECTOR

TITLE

Before me: MAITRE FRANCOIS GAUTHIER

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Attention: Group Company Secretary

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INMET SWEDEN HOLDINGS AB)
by:)

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Attention: Group Company Secretary

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METAL CORP (SWEDEN) AB)
by:)

DAVID SILVESTRO

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DAVID SILVESTRO

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Attention: Group Company Secretary

Electronic Mail: Sarah.Robertson@fqml.com

THE AGENT

BNP PARIBAS)
by:)

MAXENCE LEONARD
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MAXENCE LEONARD
NAME PRINTED
METALS & MINING
TITLE

WILLIAM LABAT-LABOURDETTE
SIGNATURE
WILLIAM LABAT-LABOURDETTE
NAME PRINTED
METALS & MINING
TITLE

Before me: MAITRE FRANCOIS GAUTHIER

Notary Public: MAITRE FRANCOIS GAUTHIER

Address for Notices: CIB Agency EMEA
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Attention: Catherine Felix
Virginie Taboul

Electronic Mail: catherine.felix@bnpparibas.com
virginie.taboul@bnpparibas.com

THE SECURITY AGENT

BNP PARIBAS)
by:)

MAXENCE LEONARD
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METALS & MINING
TITLE

WILLIAM LABAT-LABOURDETTE
SIGNATURE
WILLIAM LABAT-LABOURDETTE
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Attention: Catherine Felix
Virginie Taboul

Electronic Mail: catherine.felix@bnpparibas.com
virginie.taboul@bnpparibas.com

THE ARRANGERS

BANK OF MONTREAL, LONDON)
BRANCH)
by:)

SCOTT MATTHEWS

SIGNATURE
SCOTT MATTHEWS

NAME PRINTED
CFO

TITLE

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

TOM WOOLGAR

SIGNATURE
TOM WOOLGAR

NAME PRINTED
MANAGING DIRECTOR

TITLE

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

THE BANK OF NOVA SCOTIA)
by:

MARK LEE
SIGNATURE
MARK LEE
NAME
MANAGING DIRECTOR
TITLE

Before me: MICHELLE SCOTT-BRYAN

Notary Public: MICHELLE SCOTT-BRYAN

SONYA BIKHIT
SIGNATURE
SONYA BIKHIT
NAME
DIRECTOR
TITLE

Before me: MICHELLE SCOTT-BRYAN

Notary Public: MICHELLE SCOTT-BRYAN

**ABSA BANK LIMITED (ACTING)
THROUGH ITS CORPORATE AND)
INVESTMENT BANK)**

by:

T. J. E. MERS
SIGNATURE

T. J. E. MERS
NAME

AUTHORISED
TITLE

Before me: NNDITSHENI ERNEST
MABOKO

Notary Public: NNDITSHENI ERNEST
MABOKO

C.D. KING
SIGNATURE

C.D. KING
NAME

AUTHORISED SIGNATORY
TITLE

Before me: NNDITSHENI ERNEST
MABOKO

Notary Public: NNDITSHENI ERNEST
MABOKO

BARCLAYS BANK OF BOTSWANA)
LIMITED)
by:

BRIGHTON BANDA
SIGNATURE
BRIGHTON BANDA
NAME
MD(A)
TITLE

Before me: ONE LISA SEIKANO

Notary Public: ONE LISA SEIKANO

LESLEY BRADLEY
SIGNATURE
LESLEY BRADLEY
NAME
CORPORATE DIRECTOR
TITLE

Before me: ONE LISA SEIKANO

Notary Public: ONE LISA SEIKANO

BARCLAYS BANK MAURITIUS LIMITED)
by:)

RAJEN MANIKION
SIGNATURE

RAJEN MANIKION
NAME

SENIOR CORPORATE MANAGER
TITLE

Before me: IBRAHIM GOPEE

Notary Public: IBRAHIM GOPEE

SHIREEN DOWLUT-BEEBEEJAUN
SIGNATURE

SHIREEN DOWLUT-BEEBEEJAUN
NAME

HEAD OF RISK CONTROL UNIT
TITLE

Before me: IBRAHIM GOPEE

Notary Public: IBRAHIM GOPEE

BARCLAYS BANK ZAMBIA PLC)
by:)

MARGARET SCHOTT
SIGNATURE

MARGARET SCHOTT
NAME

HEAD PUBLIC SECTOR
TITLE

Before me: MOSES PHIRI

Notary Public: MOSES PHIRI

KINGSTONE NGULUBE
SIGNATURE

KINGSTONE NGULUBE
NAME

CORPORATE CREDIT MANAGER
TITLE

Before me: MOSES PHIRI

Notary Public: MOSES PHIRI

BNP PARIBAS)
by:)

MAXENCE LEONARD
SIGNATURE
MAXENCE LEONARD
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Before me: MAITRE FRANCOIS GAUTHIER

Notary Public: MAITRE FRANCOIS GAUTHIER

WILLIAM LABAT-LABOURDETTE
SIGNATURE
WILLIAM LABAT-LABOURDETTE
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Before me: MAITRE FRANCOIS GAUTHIER

Notary Public: MAITRE FRANCOIS GAUTHIER

CITIGROUP GLOBAL MARKETS)
LIMITED)
by:)

JAN KLIMA
SIGNATURE

JAN KLIMA
NAME PRINTED

VICE PRESIDENT
TITLE

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

CREDIT AGRICOLE CORPORATE AND)
INVESTMENT BANK)
by:

D. RAGUENDEZ
SIGNATURE

NAME: D. RAGUENDEZ

TITLE: MANAGING DIRECTOR

Before me: MAITRE FRANCOIS
GAUTHIER

Notary Public: MAITRE FRANCOIS
GAUTHIER

BRUNO REPUSSARD
SIGNATURE

NAME: BRUNO REPUSSARD

TITLE: EXECUTIVE DIRECTOR

Before me: MAITRE FRANCOIS
GAUTHIER

Notary Public: MAITRE FRANCOIS
GAUTHIER

CREDIT SUISSE AG, LONDON BRANCH)
By:)
)

GARRETT LYNSKEY
SIGNATURE

NAME: GARRETT LYNSKEY

TITLE: AUTHORISED SIGNATORY

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

BRIAN FITZGERALD
SIGNATURE

NAME: BRIAN FITZGERALD

TITLE: AUTHORISED SIGNATORY

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

EXPORT DEVELOPMENT CANADA)
by:)

MOSHE COHEN
SIGNATURE

NAME: MOSHE COHEN

TITLE: FINANCING MANAGER

Before me: LEILA SHAHPARAKI

Notary Public: LEILA SHAHPARAKI

PHILIP SAUVE
SIGNATURE

NAME: PHILIP SAUVE

TITLE: SENIOR ASSOCIATE

Before me: LEILA SHAHPARAKI

Notary Public: LEILA SHAHPARAKI

**FIRSTRAND BANK LIMITED (LONDON
BRANCH)**

by:

)
)

DEREK COETZEE
SIGNATURE

NAME: DEREK COETZEE

TITLE: AUTHORISED SIGNATORY

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

TREVOR DAVIS
SIGNATURE

NAME: TREVOR DAVIS

TITLE: AUTHORISED SIGNATORY

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

HSBC BANK PLC)
by:)

DAVID WATSON

SIGNATURE

DAVID WATSON

NAME PRINTED

DIRECTOR, NATURAL RESOURCES, UK
BANKING

TITLE

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

SIGNATURE

NAME PRINTED

TITLE

Before me: _____

Notary Public: _____

ING BANK, A BRANCH OF ING-DIBA AG)
by:)

J. BINNEMA
SIGNATURE
J. BINNEMA
NAME PRINTED
DIRECTOR
TITLE

Before me: DR. REGINA
ENGELSTADTER

Notary Public: DR. REGINA
ENGELSTADTER

CRINA L. NECHIFOR
SIGNATURE
CRINA L. NECHIFOR
NAME PRINTED
HEAD NATURAL RESOURCES AND
SMEF
TITLE

Before me: DR. REGINA
ENGELSTADTER

Notary Public: DR. REGINA
ENGELSTADTER

J.P. MORGAN SECURITIES PLC)
by:)

FRANCK GOMBOE
SIGNATURE

NAME: FRANCK GOMBOE

TITLE: EXECUTIVE DIRECTOR

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

NATIXIS SA
by:

)
)

DAVID DEMEZ
SIGNATURE

NAME: DAVID DEMEZ

TITLE: HEAD OF MINING

Before me: MAITRE FRANCOIS
GAUTHIER

Notary Public: MAITRE FRANCOIS
GAUTHIER

STANSLAS DE COINTET
SIGNATURE

NAME: STANSLAS DE COINTET

TITLE: VICE PRESIDENT

Before me: MAITRE FRANCOIS
GAUTHIER

Notary Public: MAITRE FRANCOIS
GAUTHIER

N.B.S.A. LIMITED
by:

)
)

KEVIN RYDER
SIGNATURE

NAME: KEVIN RYDER

TITLE: DIRECTOR

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

DAVID SIDGWICK
SIGNATURE

NAME: DAVID SIDGWICK

TITLE: DIRECTOR

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

ROYAL BANK OF CANADA

by:

)
)

EDOARDO PINTO
SIGNATURE

NAME: EDOARDO PINTO

TITLE: VICE PRESIDENT

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

SOCIETE GENERALE, LONDON)
BRANCH)
by:

WILLIAM TURLINGTON _____

SIGNATURE

WILLIAM TURLINGTON _____

NAME

HEAD OF LONDON MMF EMEA + CIS _____

TITLE

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

STANDARD CHARTERED BANK)
by:)

TONY PINCHES
SIGNATURE
TONY PINCHES
NAME PRINTED
EXECUTIVE DIRECTOR
TITLE

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

THE ORIGINAL LENDERS

**ABSA BANK LIMITED (ACTING)
THROUGH ITS CORPORATE AND)
INVESTMENT BANK)**

by:

T.J.E. MERS
SIGNATURE

T.J.E. MERS
NAME

AUTHORISED
TITLE

Before me: NNDITSHENI ERNEST
MABOKO

Notary Public: NNDITSHENI ERNEST
MABOKO

C. D. KING
SIGNATURE

C. D. KING
NAME

AUTHORISED SIGNATORY
TITLE

Before me: NNDITSHENI ERNEST
MABOKO

Notary Public: NNDITSHENI ERNEST
MABOKO

BANK OF MONTREAL, LONDON)
BRANCH)
by:)

SCOTT MATTHEWS
SIGNATURE

SCOTT MATTHEWS
NAME PRINTED

CFO
TITLE

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

TOM WOOLGAR
SIGNATURE:

TOM WOOLGAR
NAME PRINTED

MANAGING DIRECTOR
TITLE

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

THE BANK OF NOVA SCOTIA)
by:

MARK LEE
SIGNATURE

MARK LEE
NAME

MANAGING DIRECTOR
TITLE

Before me: MICHELLE SCOTT-BRYAN

Notary Public: MICHELLE SCOTT-BRYAN

SONYA BIKHIT
SIGNATURE

SONYA BIKHIT
NAME

DIRECTOR
TITLE

Before me: MICHELLE SCOTT-BRYAN

Notary Public: MICHELLE SCOTT-BRYAN

BARCLAYS BANK OF BOTSWANA)
LIMITED)
by:

BRIGHTON BANDA
SIGNATURE

BRIGHTON BANDA
NAME

MD(A)
TITLE

Before me: ONE LISA SEIKANO

Notary Public: ONE LISA SEIKANO

LESLEY BRADLEY
SIGNATURE

LESLEY BRADLEY
NAME

CORPORATE DIRECTOR
TITLE

Before me: ONE LISA SEIKANO

Notary Public: ONE LISA SEIKANO

BARCLAYS BANK MAURITIUS LIMITED)

by:

RAJEN MANIKION
SIGNATURE

RAJEN MANIKION
NAME

SENIOR CORPORATE MANAGER
TITLE

Before me: IBRAHIM GOPEE

Notary Public: IBRAHIM GOPEE

SHIREEN DOWLUT-BEEBEEJAUN
SIGNATURE

SHIREEN DOWLUT-BEEBEEJAUN
NAME

HEAD OF RISK CONTROL UNIT
TITLE

Before me: IBRAHIM GOPEE

Notary Public: IBRAHIM GOPEE

BARCLAYS BANK ZAMBIA PLC
by:

)
)

MARGARET SCHOTT
SIGNATURE

MARGARET SCHOTT
NAME

HEAD PUBLIC SECTOR
TITLE

Before me: MOSES PHIRI

Notary Public: MOSES PHIRI

KINGSTONE NGULUBE
SIGNATURE

KINGSTONE NGULUBE
NAME

CORPORATE CREDIT MANAGER
TITLE

Before me: MOSES PHIRI

Notary Public: MOSES PHIRI

BNP PARIBAS)
by:)

MAXENCE LEONARD
SIGNATURE

MAXENCE LEONARD
NAME PRINTED

METALS & MINING
TITLE

Before me: MAITRE FRANCOIS GAUTHIER

Notary Public: MAITRE FRANCOIS
GAUTHIER

WILLIAM LABAT-LABOURDETTE
SIGNATURE

WILLIAM LABAT-LABOURDETTE
NAME PRINTED

METALS & MINING
TITLE

Before me: MAITRE FRANCOIS GAUTHIER

Notary Public: MAITRE FRANCOIS
GAUTHIER

CITIBANK, N.A. LONDON BRANCH)
by:)

JAN KLIMA
SIGNATURE

JAN KLIMA
NAME PRINTED

VICE PRESIDENT
TITLE

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

CREDIT AGRICOLE CORPORATE AND)
INVESTMENT BANK)
by:

D. RAGUENEZ
SIGNATURE

D. RAGUENEZ
NAME:

TITLE: MANAGING DIRECTOR

Before me: MAITRE FRANCOIS
GAUTHIER

Notary Public: MAITRE FRANCOIS
GAUTHIER

BRUNO REPUSSARD
SIGNATURE

NAME: BRUNO REPUSSARD

TITLE: EXECUTIVE DIRECTOR

Before me: MAITRE FRANCOIS
GAUTHIER

Notary Public: MAITRE FRANCOIS
GAUTHIER

CREDIT SUISSE AG, LONDON BRANCH)
By:)
)

GARRETT LYNSKE
SIGNATURE

GARRETT LYNSKE
NAME:

AUTHORISED SIGNATORY
TITLE:

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

BRIAN FITZGERALND
SIGNATURE

BRIAN FITZGERALND
NAME:

AUTHORISED SIGNATORY
TITLE:

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

EXPORT DEVELOPMENT CANADA

by:

)
)

MOSHE COHEN
SIGNATURE

MOSHE COHEN
NAME:

FINANCING MANAGER
TITLE:

Before me: LEILA SHAHPARAK

Notary Public: LEILA SHAHPARAK

SIGNATURE PHILIP SAUVÉ

NAME: PHILIP SAUVÉ

TITLE: SENIOR ASSOCIATE

Before me: LEILA SHAHPARAK

Notary Public: LEILA SHAHPARAK

**FIRSTRAND BANK LIMITED (LONDON
BRANCH)**

by:

)
)

DEREK COETZEE
SIGNATURE

DEREK COETZEE

NAME:

AUTHORISED SIGNATORY

TITLE:

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

TREVEOR DAVIS
SIGNATURE

TREVEOR DAVIS

NAME:

AUTHORISED SIGNATORY

TITLE:

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

HSBC BANK PLC

)

by:

)

DAVID WATSON

SIGNATURE

DAVID WATSON

NAME PRINTED

DIRECTOR, NATURAL RESOURCES, UK
BANKING

TITLE

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

ING BANK, A BRANCH OF ING-DIBA AG
by:

J. BINNEMA
SIGNATURE

J. BINNEMA
NAME PRINTED

DIRECTOR
TITLE

Before me: DR REGINA
ENGELSTADTER

Notary Public: DR REGINA
ENGELSTADTER

CRINA L. NECHIFER
SIGNATURE

CRINA L. NECHIFER
NAME PRINTED

HEAD NATURAL RESOURCES AND
SMEF
TITLE

Before me: DR REGINA
ENGELSTADTER

Notary Public: DR REGINA
ENGELSTADTER

JPMORGAN CHASE BANK, N.A.,)
LONDON BRANCH)
by:

FRANCK GOMBOC
SIGNATURE

NAME: FRANCK GOMBOC

TITLE: EXECUTIVE DIRECTOR

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

NATIXIS SA
by:

)
)

DAVID DERREZ
SIGNATURE

DAVID DERREZ
NAME:

HEAD OF MINING
TITLE:

Before me: MAITRE FRANCOIS
GAUTHIER

Notary Public: MAITRE FRANCOIS
GAUTHIER

STANISLAS DE COINTET
SIGNATURE

STANISLAS DE COINTET
NAME:

VICE PRESIDENT
TITLE:

Before me: MAITRE FRANCOIS
GAUTHIER

Notary Public: MAITRE FRANCOIS
GAUTHIER

N.B.S.A. LIMITED
by:

)
)

KEVIN RYDER
SIGNATURE

KEVIN RYDER
NAME:

DIRECTOR
TITLE:

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

DAVID SEDGWICK
SIGNATURE

DAVID SEDGWICK
NAME:

DIRECTOR
TITLE:

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

ROYAL BANK OF CANADA

by:

)

)

EDOARDO PINTO
SIGNATURE

EDOARDO PINTO

NAME:

VICE PRESIDENT

TITLE:

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

SOCIETE GENERALE, LONDON)
BRANCH)

by:

WILLIAM TURLINGTON

SIGNATURE

WILLIAM TURLINGTON

NAME

HEAD OF LONDON, MMF, EMEA AND C1S

TITLE

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER

STANDARD CHARTERED BANK)
by:)

TONY PINCHES
SIGNATURE

TONY PINCHES
NAME PRINTED

EXECUTIVE DIRECTOR
TITLE

Before me: EDWARD GARDINER

Notary Public: EDWARD GARDINER