

# Cost Overrun Facility Agreement

**Araguaia Niquel Metais Ltda.**

as the Company

and

**OMF Fund III (F) Ltd**

as the COF Lender

relating to a secured subordinated US\$25 million credit facility

## CONTENTS

| Clause                                          | Page |
|-------------------------------------------------|------|
| 1. DEFINITIONS AND INTERPRETATION.....          | 2    |
| 2. THE FACILITY.....                            | 13   |
| 3. PURPOSE.....                                 | 13   |
| 4. CONDITIONS OF TRANSFER .....                 | 13   |
| 5. TRANSFER .....                               | 13   |
| 5A. UTILISATION .....                           | 14   |
| 6. REPAYMENT .....                              | 15   |
| 7. PREPAYMENT.....                              | 16   |
| 8. RESTRICTIONS.....                            | 17   |
| 9. INTEREST.....                                | 17   |
| 10. INTEREST PERIODS.....                       | 19   |
| 11. BREAK COSTS.....                            | 19   |
| 12. TAX GROSS UP AND INDEMNITIES.....           | 19   |
| 13. INCREASED COSTS .....                       | 22   |
| 14. OTHER INDEMNITIES.....                      | 23   |
| 15. MITIGATION BY THE COF LENDER .....          | 24   |
| 16. FEES, COSTS AND EXPENSES .....              | 24   |
| 17. REPRESENTATIONS .....                       | 25   |
| 18. UNDERTAKINGS .....                          | 43   |
| 19. EVENTS OF DEFAULT .....                     | 55   |
| 20. CHANGES TO THE COF LENDER .....             | 61   |
| 21. CHANGES TO THE COMPANY .....                | 63   |
| 22. CONDUCT OF BUSINESS BY THE COF LENDER ..... | 63   |
| 23. PAYMENT MECHANICS.....                      | 63   |
| 24. SET OFF .....                               | 65   |
| 25. NOTICES .....                               | 66   |

|     |                                                      |    |
|-----|------------------------------------------------------|----|
| 26. | CALCULATIONS AND CERTIFICATES .....                  | 68 |
| 27. | PARTIAL INVALIDITY .....                             | 68 |
| 28. | REMEDIES AND WAIVERS .....                           | 68 |
| 29. | AMENDMENTS AND WAIVERS .....                         | 69 |
| 30. | CONFIDENTIALITY .....                                | 69 |
| 31. | COUNTERPARTS .....                                   | 70 |
| 32. | GOVERNING LAW .....                                  | 70 |
| 33. | ARBITRATION .....                                    | 70 |
| 34. | WAIVER OF IMMUNITY .....                             | 72 |
|     | Schedule 1 : INITIAL CONDITIONS PRECEDENT .....      | 73 |
|     | Schedule 2 : COF TRANSFER REQUEST .....              | 80 |
|     | Schedule 3 : FORM OF NOTES .....                     | 81 |
|     | Schedule 4 : REPAYMENT SCHEDULE .....                | 83 |
|     | Schedule 5 : UTILISATION CONDITIONS .....            | 84 |
|     | Schedule 6 : CASH SWEEP CALCULATION CERTIFICATE..... | 85 |

**THIS AGREEMENT** is dated \_\_\_\_\_ and made:

**BETWEEN:**

- (1) **ARAGUAIA NIQUEL METAIS LTDA.**, a company incorporated under the laws of Brazil (CNPJ number 97.515.035/0001-03) whose registered office is at Avenida Raja Gabaglia, 1132, salas 1401 and 1402, Bairro Luxemburgo, Belo Horizonte, MG, CEP 30380-403 (the "**Company**"); and
- (2) **OMF FUND III (F) LTD**, a company established under the laws of the Cayman Islands with number 354407 whose registered office is at PO Box 309, Ugland House, Grand Cayman, KY1-1104 (the "**COF Lender**").

**WHEREAS:**

- (A) The Company is undertaking a development stage, long-life ferronickel project consisting of the operation of multiple open-pit mines and a processing facility located in the Brazilian state of Pará, approximately 40 km northwest of the town of Conceição do Araguaia and 760 km south of the state capital Belém, including the corresponding Transmission Line (the "**Project**").
- (B) The Company and OMF Fund III (CR) Ltd are parties, amongst others, to a US\$ 25 million royalty agreement dated 28 August 2019, as amended and novated on 30 March 2020, and as further amended on 23 November 2021 (together, the "**Royalty Agreement**").
- (C) The Company expects that the Project's development, design, construction, commissioning and completion will require total funding of at least US\$ 570 million, to be provided by:
  - (1) an equity investment in Horizonte Minerals plc (the "**Issuer**"), the Company's ultimate holding company, in an amount of between US\$ 145 million and US\$ 170 million (the "**Equity Investment**") under and in accordance with the Investment Agreement. The Company expects that the COF Lender will subscribe for US\$ 50 million of the Equity Investment;
  - (2) an issue of secured subordinated convertible notes (the "**Convertible Notes**") in an amount of up to US\$ 65 million by the Issuer. The Company expects that the COF Lender will purchase US\$ 50 million of the Convertible Notes;
  - (3) the Issuer's on-loan to the Company of the proceeds of the Equity Investment and the Convertible Note (together with any other loans to the Company by the Issuer or its affiliates, the "**Intra-Group Loans**");
  - (4) senior credit facilities in an amount of approximately US\$ 346 million comprising term loan facilities and interest rate hedging facilities (the "**Senior Facilities**"). The Company and the banks, financial institutions and export credit agencies providing the Senior Facilities, among others, have entered into a common terms agreement dated 23 December 2021, as amended on or around the date of this Agreement (the "**Senior CTA**"); and
  - (5) a secured cost overrun facility, to be available, subject to the terms and conditions of this Agreement, to fund cost overruns in the construction and commissioning of the Project, in an amount of US\$ 25 million.

- (D) Under an intercreditor agreement to be entered into by, among others, the Company, the providers of the Senior Facilities, OMF Fund III (CR) Ltd as counterparty to the Royalty Agreement and the COF Lender as provider of the Cost Overrun Facility (the "**Intercreditor Agreement**"), the Cost Overrun Facility shall be:
- (1) subordinated to the Senior Facilities and the Royalty Agreement; and
  - (2) senior to the Intra-Group Loans.
- (E) The parties wish to enter into this Agreement to set forth the terms and conditions of the Cost Overrun Facility, acknowledging that its availability shall be subject to, among other things, the terms of the Senior Facilities, including the Base Case Financial Model (as defined in the Senior CTA), the Senior CTA and the Intercreditor Agreement, as at the time of COF Financial Close (as defined below) being satisfactory to the COF Lender.

**NOW IT IS AGREED** as follows:

## **SECTION 1 INTERPRETATION**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

- (A) In this Agreement, unless the context expressly provides otherwise: (i) words and expressions defined in the Senior CTA as at the date of this Agreement shall bear the same meanings in this Agreement; and (ii) references to clauses, sections and schedules of the Senior CTA are to such clauses, sections and schedules as at the date of the Senior CTA.
- (B) In addition, unless the context expressly provides otherwise, the following words or expressions shall bear the meanings set out below.

**"Availability Period"** means the period from and including the date of COF Financial Close to (but excluding) the earlier to occur of:

- (1) the Project Completion Date;
- (2) subject to Clause 3.1(h) of the Intercreditor Agreement, 30 September 2026;
- (3) the date on which the Cost Overrun Facility is drawn in full; and
- (4) **[redacted – confidential information]**.

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

- (1) the interest which the COF Lender should have received for the period from the date of receipt of all or any part of its funding the Cost Overrun Loan or an Unpaid Sum to the last day of the current Interest Period in respect of the Cost Overrun Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds

- (2) the amount which the COF Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

**"Cash Sweep Calculation Certificate"** means the certificate in the form set out at Schedule 6 (*Cash Sweep Calculation Certificate*).

**"Commitment"** means US\$ 25,000,000 to the extent not cancelled, reduced or transferred by it under this Agreement.

**"Commitment Fee"** is a fee to be paid quarterly in arrears in accordance with Clause 16.1 (*Commitment Fees*) by the Company to the COF Lender for its maintaining the Commitment during the relevant period.

**[redacted – confidential information].**

**[redacted – confidential information].**

**"COF Finance Document"** means this Agreement, the Completion Agreement, each Security Document, the Intercreditor Agreement, **[redacted – confidential information]**, the COF Transfer Request and any other document designated as a "COF Finance Document" by the Company and the COF Lender.

**"COF Financial Close"** means the later of:

- (1) the date on which the COF Lender has received all of the documents and other evidence listed in Schedule 1 (*Initial Conditions Precedent*) in form and substance satisfactory to the COF Lender, and the COF Lender shall notify the Company promptly upon being so satisfied; and
- (2) the date on which the COF Lender gives its final notice to the Company that all of the Conditions (as defined in the Subscription Agreement) have been satisfied or waived.

**"COF Fundamental Events of Default"** shall mean the following Events of Default:

- (a) the Borrower fails to pay on or before the due date any amount due to:
  - (i) the Royalty Holder under the Royalty Finance Documents; or
  - (ii) the COF Lender under the COF Finance Documents,

and, in each case, the failure to pay is not waived or remedied within three Business Days of notice to the Administrative Agent;

- (b) any Royalty Finance Document or COF Finance Document is repudiated, contested or disaffirmed by any Obligor in whole or in part, ceases to be in full force and effect, or is invalidated, becomes unlawful,

or rendered unenforceable by any act, regulation or governmental action or is determined to be invalid or unenforceable by a court or other judicial entity or if any Obligor has ceased to perform its obligations under any Royalty Finance Document or COF Finance Document and such repudiation is not waived or remedied within 30 days of such action or not cured within 45 days from the date of the entry of such judgement;

- (c) all or any portion of the Collateral is attached, sold, transferred, Encumbered or assigned by a person other than the COF Lender or the Secured Parties or without the consent of the COF Lender or the Senior Lenders (other than pursuant to a Permitted Asset Disposition or Permitted Encumbrance, as applicable) and in the case of such attachment shall remain unlifted, unstayed or undischarged for a period of 60 days;
- (d) an Encumbrancer or any other Person, other than the COF Lender or the Secured Parties, legally takes possession of any portion of the Collateral by appointment of a receiver, receiver and manager, or otherwise;
- (e) (i) any Security Document, once executed and delivered, ceases at any time for any reason to provide the Security, rights, titles, interests, remedies, powers or privileges created thereby, (ii) any Security created in any portion of the collateral pledged pursuant to the Security Documents shall cease to be effective or fail to have the priority originally created under the Security Documents, (iii) the validity of the Security Documents or the applicability thereof to the obligations of the Obligors hereunder or any part thereof, shall be repudiated in writing by the Obligors, or (iv) the COF Lender's or the Senior Lenders' security interest or other rights in any portion of the collateral pledged pursuant to the Security Documents shall terminate in any manner other than that contemplated by the COF Finance Documents or the Financing Documents;
- (f) the occurrence of an Expropriation Event;
- (g) any Event of Default occurs which would result in any Royalty Finance Document, any COF Finance Document or any Collateral becoming invalid, unenforceable, repudiated or extinguished; and
- (h) the Company ceases or takes any action to:
  - (i) abandon all or any material portion of the Collateral or the Project;
  - (ii) put the Project on care and maintenance; or
  - (iii) otherwise suspends or fails to maintain development, construction or mining or processing operations at the Project in each case, as each such activity is applicable to the stage of development of the Project (which, prior to the Project Completion Date, means the development and construction of the Project and after the achievement of the Project Completion Date and the conduct of mining and processing operations to produce for export and sale

of ferronickel and other Minerals in accordance with the Mine Plan),

provided that no COF Fundamental Event of Default shall be deemed to have occurred under this paragraph (g) if: (i) such suspension is for sound operational reasons in accordance with Good Industry Practice, (ii) such suspension would not reasonably be expected to last more than 45 days, (iii) the Company has notified the Intercreditor Agent of such suspension and is otherwise in compliance with: (A) Section 9.3(e) of the Senior CTA; (B) clause 18.7(B) (*Notifications to the COF Lender and the Senior Lenders*) of this Agreement insofar as it relates to Section 9.3(e) of the Senior CTA; and (C) the corresponding reporting covenants under the other COF Finance Documents and Finance Documents, and (iv) the Project and its operations are restored and operating substantially as at the time prior to such suspension not later than 105 days after the commencement of such suspension.

**"COF Transfer Date"** means the date on which the COF Lender transfers funds [redacted – confidential information] under and in accordance with Clause 5 (*Transfer*).

**"COF Transfer Request"** means a notice substantially in the form set out in Schedule 2 (*COF Transfer Request*).

**"Collateral"** means any property of the Company upon which a security interest in favour of any of the Collateral Agents, for the benefit of the COF Lender, is purported to be granted pursuant to any Security Document.

**"Common Security Documents"** means the Collateral Agency, Accounts and Security Agreement and each Security Document, as defined therein.

**"Convertible Loan Note Instrument"** means the convertible loan note instrument dated 23 November 2021 between the Issuer and the COF Lender.

**"Convertible Notes"** has the meaning given to that term at Recital (C)(2).

**"Cost-to-Complete Certificate"** has the meaning given to that term in the Intercreditor Agreement.

**"Cost Overrun"** means:

- (a) any Construction Cost incurred or projected to be incurred which results, as confirmed by the Independent Technical Consultant, in the aggregate amount of Construction Costs incurred or projected to be incurred in relation to the Project, exceeding the aggregate amount of Construction Costs (including all amounts which are included in the Base Case Financial Model as contingencies relating to Construction Costs) referred to in the Base Case Financial Model, as delivered on the Effective Date (as may be updated under the Senior CTA), *plus*
- (b) any interest on the Cost Overrun Facility payable in accordance with Clauses 9.2 (*Payment of Interest*) and 9.3 (*Unpaid COF Cost Overrun Amounts*), *plus*

- (c) any interest, fees and repayment instalments in respect of the loans under the Senior Facilities not otherwise paid in accordance with the Cash Flow Waterfall.

**"Cost Overrun Facility"** means the facility described in Clause 2 (*The Facility*).

**"Cost Overrun Loan"** means the loan made or to be made under the Cost Overrun Facility or the principal amount outstanding for the time being of that loan.

**"Costs Certificate"** has the meaning given to that term in the Senior CTA.

**"Decision"** has the meaning given to that term in the Intercreditor Agreement.

**"Default"** means an Event of Default or any event or circumstance specified in Clause 19 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the COF Finance Documents or any combination of any of the foregoing) be an Event of Default.

**"Delegate"** means any delegate, agent, attorney or co-trustee appointed by the COF Lender.

**"Disruption Event"** means either or both of:

- (1) 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 Cost Overrun Facility (or otherwise in order for the transactions contemplated by the COF Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (2) 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:
  - (a) from performing its payment obligations under the COF Finance Documents; or
  - (b) from communicating with other Parties in accordance with the terms of the COF Finance Documents,

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

**"Equity Investment"** has the meaning given to that term at Recital (C)(1).

**"Facility Office"** means the registered office of the COF Lender or such other office or offices as may be notified by the COF Lender to the Company from time to time in writing as the office or offices through which it will perform its obligations under this Agreement.

**"FEOD Dispute Notice"** has the meaning given to that term in the Intercreditor Agreement.

**"Final Repayment Date"** means 15 October 2032.

**"First Repayment Date"** means the Initial Repayment Date (as defined in the Senior CTA).

**"Funds Reservation Fee"** is a fee capitalised quarterly in arrears in accordance with Clause 16.2 (*Funds Reservation Fee*).

**"Intercreditor Agreement"** has the meaning given to that term at Recital (D).

**"Interest Payment Date"** means, in respect of an Interest Period, the last day of that Interest Period.

**"Interest Period"** means, in relation to the Cost Overrun Loan, each period determined in accordance with Clause 10 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 9.4 (*Default interest*).

**"Interest Rate"** means 13 per cent. per annum.

**"Intra-Group Loans"** has the meaning given to that term at Recital (C)(3).

**"Investment Agreement"** means the investment agreement between the Issuer and Orion Mine Finance Fund III LP dated on or about 23 November 2021.

**"Issuer"** has the meaning given to that term at Recital (C)(1).

**"Legal Opinion"** means any legal opinion delivered to the COF Lender under Clause 4.1 (*Initial conditions precedent*).

**"Material Adverse Effect"** means any event, matter or circumstance (or series of events, matters or circumstances), which has had or is reasonably likely to have with the passage of time a material adverse effect upon:

- (A) the business, financial condition, operations or prospects of the Company;
- (B) the Company's ability to perform its payment obligations under the Senior Facilities when due;
- (C) the rights or remedies of the COF Lender under the COF Finance Documents;
- (D) the legality, validity, perfection, priority or enforceability of any Security created or purportedly created pursuant to any Security Document; or
- (E) the implementation of the Project, including (x) any material delay to its construction schedule as a result of which the COF Lender, acting reasonably, does not expect the Project Completion Date to occur prior to the Project Completion Longstop Date and (y) any Cost-to-Complete Shortfall that exceeds US\$1,000,000 (one million US Dollars).

**"Note"** means each of the Brazilian law governed promissory notes issued by the Company in favour of the COF Lender substantially in the form set out in Schedule 3 (*Form of Notes*), duly executed by one or more authorised officers of the Company in accordance with the Company's bylaws or pursuant to a power of attorney empowering individuals to execute the relevant Note on behalf of the Company duly granted in accordance to the provisions of the Company's bylaws and of Brazilian applicable Law, as the case may be.

**"Obligations"** means all indebtedness, liabilities, indemnities and other obligations owed by the Company to the COF Lender hereunder and under any other COF Finance Document, whether actual or contingent, direct or indirect, matured or not, now existing or hereafter arising.

**"Officer's Certificate"** means a certificate in form satisfactory to the COF Lender acting reasonably, signed by an authorised member of the core management of the Company.

**"Party"** means a party to this Agreement.

**"Perfection Requirements"** means, in relation to any Security Document and/or the Security created or expressed to be created thereunder, each of the registrations, filings, notices and any other actions and steps required to perfect such Security.

**"Permitted Encumbrance"** means, in respect of any property of the Company or any Obligor, any of the following:

- (A) any Encumbrances created in favour of the Secured Parties, the lender(s) hereunder and the Royalty Holder(s) under the Royalty Agreement under or pursuant to the terms of the Security Documents;
- (B) any other Encumbrances securing: (i) the Obligations; (ii) any obligations under the Royalty Agreement; and (iii) any obligations under this Agreement;
- (C) any Encumbrances arising from any tax, assessment or other governmental charge or other Encumbrances arising by operation of law, in each case if the obligation underlying any such Encumbrances is timely paid, not yet due or, if due, is being Contested;
- (D) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Encumbrances arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are subject to Contest and, where Contested, individually or together with all other Permitted Encumbrances outstanding on any date of determination do not materially adversely affect the use of the property to which they relate;
- (E) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Encumbrances imposed by ERISA (The Employee Retirement Income Security Act of 1974 of the United States and the rules and regulations promulgated thereunder, together

with any successors) or which interferes with the ordinary conduct of business of the Project;

- (F) deposits to secure the performance of bids, trade contracts and leases (other than Debt), statutory obligations, performance bonds, dispute resolution proceedings (including labour lawsuits) and other obligations of a like nature incurred in the ordinary course of business;
- (G) easements, rights of way restriction and other similar encumbrances affecting real property which, in the aggregate, are not substantial in the amount, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of the Company;
- (H) Encumbrances securing judgments for the payment of money not constituting an Event of Default (as defined in the Senior CTA) or an Event of Default (as defined herein) hereunder or securing appeal or other surety bonds related to such judgments;
- (I) Encumbrances securing Debt of the Company permitted pursuant to paragraph (c) of the definition of Permitted Debt (as defined in the Senior CTA); and
- (J) any statutory liens having priority under mandatory provisions of Brazilian law.

**“Project”** has the meaning given to that term in Recital (A).

**“Receiver”** means a receiver or receiver and manager or administrative receiver of the whole or any part of the property charged under the Security Documents.

**“Remaining Cash Flow”**, in respect of any Cash Sweep Period, means the remaining balance in the Offshore USD Proceeds Account after all payments under section 3.5 (*Cash Sweeps*) of the Senior CTA and paragraphs *first* to *eleventh* inclusive of Section 3.1(b) of the Collateral Agency, Accounts and Security Agreement have been made in accordance with the Senior CTA, Collateral Agency, Accounts and Security Agreement and the Intercreditor Agreement, respectively.

**“Repayment Date”** means the last day of each Fiscal Quarter commencing on the First Repayment Date and ending on the Final Repayment Date.

**“Repayment Instalment”** has the meaning given to that term at Clause 6.1 (*Repayment*).

**“Repeating Representations”** means each of the representations set out in Clause 17 (*Representations*).

**“Restricted Payment”** means any payment by such Person to:

- (A) any other Person, of dividends or other distribution (whether in cash or in kind) and any bonus issue or any return of capital including any

payment in respect, or on the redemption, of any share capital whether at a premium or otherwise;

- (B) any other Person on account of any payment of interest, principal or any other amount in respect of any shareholder loans or loan notes or in respect of any financial indebtedness owed by the Company to any of its direct or indirect shareholders or other affiliates, including any purchase by the Company of any shareholder loans or such financial indebtedness in each case including Subordinated Intercompany Debt (excluding Subordinated Intercompany Debt used for the making of payments (i) under the Royalty PPE and (ii) under this Agreement, in each case, on and from the date of, and as permitted under, the Intercreditor Agreement and, when entered into, the Collateral Agency, Accounts and Security Agreement);
- (C) any other Person of any payment or discharge by way of set-off, counterclaim or otherwise in respect of indebtedness made by the Company to any of its direct or indirect shareholders or other affiliates or in respect of shareholder loans; and
- (D) any other Person of any payment of any management, administration, advisory, consultancy or other similar type of fees or expenses made by the Company to any of its Affiliates,

provided that, for the avoidance of doubt, (i) payments under any Permitted Debt financing document (other than Permitted Debt subject to a Subordination Agreement (but excluding the Royalty PPE)) and (ii) payments under the Glencore Offtake Agreement (including the Marketing Fee (as defined therein) and any amounts owed pursuant to price fluctuations or due to adjustments in weight), shall not be deemed a Restricted Payment.

**"Royalty Agreement"** has the meaning given to that term in Recital (B).

**"Royalty Finance Document"** has the meaning given to that term in the Intercreditor Agreement.

**"Sanctions"** means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by any governmental body, the U.S. Departments of State or Commerce in the United States of America, Her Majesty's Treasury, the United Nations Security Council, the European Union or OFAC.

**"Second Completion"** has the meaning given in the Investment Agreement.

**"Security Documents"** means each of:

- (1) the deed of accession to the Common Security Documents; and
- (2) each Common Security Document,

in each case in the form executed on or about the date of this Agreement or to be executed over after acquired property or any other future asset acquired by the Company under the terms of this Agreement or any Common Security Document (together with any declaration deeds and other documents required to be executed from time to time under the Common Security Documents).

**"Senior CTA"** has the meaning given to that term at Recital (C)(4).

**"Senior Facilities"** has the meaning given to that term at Recital (C)(4), as may be increased in accordance with the terms of the Intercreditor Agreement.

**"Senior Financing Documents"** means the Senior CTA and related finance documents and security documents implementing the arrangements contemplated in the Senior CTA.

**"Subsidiary"** means an entity of which a person has direct or indirect control or owns directly or indirectly more than fifty 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.

**"Unpaid COF Overrun Amount"** has the meaning given to that term at Clause 9.3(A) (*Unpaid COF Overrun Amounts*).

**"Unpaid Sum"** means any sum due and payable but unpaid by the Company under the COF Finance Documents. For the avoidance of doubt, neither:

- (a) accrued interest which has been capitalized in accordance with Clause 9.2 (*Payment of Interest*); nor
- (b) a Repayment Instalment which has been deferred to the last day of the next succeeding Fiscal Quarter in accordance with Clause 9.3 (*Unpaid Repayment Instalments*),

shall constitute an Unpaid Sum.

**"Utilisation"** means the utilisation (whether deemed or otherwise) of the Cost Overrun Facility.

**"Utilisation Conditions"** means the conditions of utilisation set out in Schedule 5 (*Utilisation Conditions*).

**"Utilisation Date"** has the meaning given to it in Clause 5A.1 (*Utilisation*).

## 1.2 Construction

- (A) Unless a contrary indication appears, a reference in this Agreement to:
  - (1) the **"Company"**, **"the COF Lender"**, any **"Party"** 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 COF Finance Documents;
  - (2) a document in **"agreed form"** is a document which is previously agreed in writing by or on behalf of the Company and the COF Lender;
  - (3) a Default or an Event of Default is **"continuing"** if it has not been remedied or waived;

- (4) a "**COF Finance Document**" or any other agreement or instrument is a reference to that COF Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (5) the words "**including**" and "**in particular**" shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;
- (6) 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);
- (7) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (8) a provision of law is a reference to that provision as amended or re-enacted; and
- (9) a time of day is a reference to that time in London.
- (B) Section, Clause and Schedule headings are for ease of reference only.
- (C) Unless a contrary indication appears, a term used in any other COF Finance Document or in any notice given under or in connection with any COF Finance Document has the same meaning in that COF Finance Document or notice as in this Agreement.

### 1.3 **Currency symbols and definitions**

"\$", "US\$" and "US dollars" denote the lawful currency of the United States of America.

### 1.4 **Third party rights**

- (A) Unless expressly provided to the contrary in a COF 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) Notwithstanding any term of any COF 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 **Effectiveness**

It is agreed that this Agreement shall not become effective until the Intercreditor Agreement has been entered into by all parties to it.

## **SECTION 2 THE FACILITY**

### **2. THE FACILITY**

Subject to the terms of this Agreement, the COF Lender shall make available to the Company a facility in an amount equal to the Commitment.

### **3. PURPOSE**

#### **3.1 Purpose**

The Company shall apply all amounts borrowed by it under the Cost Overrun Facility solely towards financing Cost Overruns.

#### **3.2 Monitoring**

The COF Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

### **4. CONDITIONS OF TRANSFER**

#### **4.1 Initial conditions precedent**

The Company may not deliver the COF Transfer Request unless the COF Lender has received all of the documents and other evidence listed in Schedule 1 (*Initial Conditions Precedent*) in form and substance satisfactory to the COF Lender, and the COF Lender shall notify the Company promptly upon being so satisfied.

#### **4.2 Further conditions precedent**

Subject to Clause 4.1 (*Initial conditions precedent*), the COF Lender will only be obliged to comply with Clause 5 (*Transfer*) if on the date of the COF Transfer Request and on the proposed COF Transfer Date:

- (1) no Default or Event of Default is continuing; and
- (2) the Repeating Representations to be made by the Company are true and correct in all material respects by reference to the facts and circumstances then subsisting.

## **SECTION 3 TRANSFER AND UTILISATION**

### **5. TRANSFER**

#### **5.1 Delivery of a COF Transfer Request**

[redacted – confidential information].

## 5.2 Completion of a COF Transfer Request

- (A) The COF Transfer Request is irrevocable and will not be regarded as having been duly completed unless:
  - (1) the proposed COF Transfer Date is a Business Day falling within the Availability Period;
  - (2) the currency and amount of the COF Transfer comply with Clause 5.3 (*Currency and Amount*); and
  - (3) the COF Lender has received a Costs Certificate and a Cost-to-Complete Certificate, which shall be approved by the Independent Technical Consultant at least ten Business Days prior to the proposed COF Transfer Date.

## 5.3 Currency and Amount

- (A) The currency specified in a COF Transfer Request must be US dollars.
- (B) The amount of the proposed COF Transfer shall be equal to the COF Transfer Amount.

## 5.4 Transfer

[redacted – confidential information].

## 5A. UTILISATION

### 5A.1 Utilisation

- (A) [redacted – confidential information].
- (B) On the Utilisation Date, the Company shall deliver a Note evidencing the Cost Overrun Loan, duly executed in accordance with the Company's bylaws or pursuant to power of attorney empowering individuals to execute the relevant Note on behalf of the Company duly granted in accordance with the provisions of the Company's bylaws and of Brazilian applicable Law, as the case may be.
- (A) 5A.2 Cancellation of Commitment Subject to the Intercreditor Agreement, the Company may, if it gives the COF Lender not less than 10 Business Days' prior notice, cancel the whole of the Commitment; provided that, if:
  - (1) [redacted – confidential information];
  - (2) the Utilisation Date has not occurred; and
  - (3) such notice is given on any day falling on or prior to 24 June 2024,

the Company shall pay to the COF Lender a cancellation fee on the effective date of such cancellation (the "**Cancellation Date**") in an amount equal to the Commitment Fees and the Funds Reservation Fees that would have accrued in accordance with Clause 16.1 (*Commitment Fees*) and Clause 16.2 (*Funds Reservation Fee*) in respect of the period commencing on (and including) the

Cancellation Date and ending on (but excluding) the date falling four Months thereafter.

- (B) The Commitment which, at that time, is unutilised shall automatically be immediately cancelled at the end of the Availability Period.

#### **SECTION 4**

#### **REPAYMENT, PREPAYMENT AND CANCELLATION**

### **6. REPAYMENT**

#### **6.1 Repayment of Cost Overrun Loan**

- (A) The Company shall, commencing on the First Repayment Date and on each Repayment Date thereafter, make a repayment of the Cost Overrun Loan in an amount equal to the percentage set opposite such Repayment Date in Schedule 4 (*Repayment Schedule*) of this Agreement of the aggregate amount of the Cost Overrun Loan as at the expiry of the Availability Period (each, a **"Repayment Instalment"**).
- (B) If on any date on which any amount is due to be paid by the Company under a COF Finance Document there is not sufficient cash standing to the credit of the Offshore USD Proceeds Account to pay such amount in full in accordance with the Cashflow Waterfall, the Company shall apply any cash available in accordance with the Cashflow Waterfall as follows:
  - (1) *First*, towards Unpaid COF Overrun Amounts;
  - (2) *Second*, towards interest accrued in accordance with clause 9.2 (*Payment of interest*);
  - (3) *Third*, towards principal due and payable in respect of the Cost Overrun Loan; and
  - (4) *Fourth* towards mandatory prepayments under and in accordance with this Agreement then due and payable.
- (C) In the event that the First Repayment Date is to occur earlier than 31 March 2025 (the **"Revised First Repayment Date"**) the Company shall promptly but in any event no later than ten days prior to the Revised First Prepayment Date, replace each of the outstanding Notes with new Notes, such replacement Notes to be in form and substance satisfactory to the COF Lender, and, when applicable, an amendment to each outstanding acknowledgment of debt evidencing the Revised First Repayment Date, to reflect the change in the repayment schedule included in the Notes, due to the final determination of the Revised First Repayment Date, both documents in form in substance satisfactory to the COF Lender.
- (D) Without prejudice to any provision of this Agreement, the Company shall repay the aggregate Cost Overrun Loan in full to the extent it remains outstanding on the Final Repayment Date.

## **7. PREPAYMENT**

### **7.1 Voluntary prepayment of Cost Overrun Loan**

- (A) Subject to the Intercreditor Agreement, the Company may, if it gives the COF Lender not less than 10 Business Days' (or such shorter period as the COF Lender may agree) prior notice, prepay the whole or any part of the Cost Overrun Loan on a Repayment Date.
- (B) The Cost Overrun Loan may only be prepaid after the last day of the Availability Period.

### **7.2 Cash Sweep**

The Company shall, within 15 days of each Calculation Date following the Project Completion Date, deliver a Cash Sweep Calculation Certificate to the COF Lender and make, on the date on which it makes a cash sweep payment to the Senior Lenders under clause 3.5 (*Cash Sweeps*) of the Senior CTA, a mandatory prepayment of the Cost Overrun Loan outstanding on such Calculation Date in an amount equal to the lesser of:

- (A) the amount of the Cost Overrun Loan required to be prepaid (if any) so that, after completion of that prepayment, the total principal amount of the Cost Overrun Loan divided by the total principal amount of the Cost Overrun Facility shall be equal to the total principal amount outstanding under the ECA Facility Loans divided by the total principal amount of the ECA Facilities; and
- (B) the Remaining Cash Flow.

### **7.3 Illegality**

If, at any time, in any applicable jurisdiction it is or becomes unlawful for the COF Lender, notwithstanding any change in its Facility Office, to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain the Cost Overrun Loan, and it also is or becomes unlawful for any Affiliate of the COF Lender to do so following a transfer of the COF Lender's rights and obligations under the COF Finance Documents to such Affiliate:

- (A) the COF Lender shall promptly notify the Company upon becoming aware of that event;
- (B) the Commitment will be immediately cancelled; and
- (C) the Company shall repay the Cost Overrun Loan outstanding on the last day of the Interest Period for the Cost Overrun Loan occurring after the COF Lender has notified the Company or, if earlier, the date specified by the COF Lender in the notice delivered to the Company (being no earlier than the last day of any applicable grace period permitted by law).

### **7.4 Application**

Any prepayment of the Cost Overrun Loan made pursuant to this Clause 7 shall be applied to the remaining Repayment Instalments in inverse order of maturity.

## **8. RESTRICTIONS**

### **8.1 Notices of Prepayment**

Any notice of prepayment, authorisation or other election given by any Party under Clause 7 (*Prepayment*) shall (subject to the terms thereof) be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant prepayment is to be made and the amount of that prepayment.

### **8.2 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.

### **8.3 No reborrowing**

The Company may not reborrow any part of the Cost Overrun Facility which is prepaid or repaid.

### **8.4 Prepayment in accordance with Agreement**

The Company shall not repay or prepay all or any part of the Cost Overrun Loan except at the times and in the manner expressly provided for in this Agreement.

### **8.5 No reinstatement of Commitment**

No amount of the Commitment cancelled under this Agreement may be subsequently reinstated.

### **8.6 Effect of repayment and prepayment on Commitment**

If all or part of the Cost Overrun Loan is repaid or prepaid and is not available for redrawing, an amount of the Commitment (equal to the amount of that part of the Cost Overrun Loan which is repaid or prepaid) will be deemed to be cancelled on the date of the repayment or prepayment.

## **SECTION 5 COST OF UTILISATION**

## **9. INTEREST**

### **9.1 Calculation of interest**

The rate of interest on the Cost Overrun Loan for each Interest Period is the Interest Rate.

### **9.2 Payment of interest**

On each Interest Payment Date the Company shall pay accrued interest on the Cost Overrun Loan to which that Interest Period relates or, to the extent that there is not sufficient cash standing to the credit of the Offshore USD Proceeds Account to pay such accrued interest (or a portion of such accrued interest) due pursuant to this clause 9.2 in accordance with the Cashflow Waterfall, then the amount of any shortfall shall,

on such Interest Payment Date, be capitalised onto the amount of the Cost Overrun Loan.

### 9.3 Unpaid Repayment Instalments

If on any date on which a Repayment Instalment is due to be paid by the Company under this Agreement there is not sufficient cash standing to the credit of the Offshore USD Proceeds Accounts to pay such Repayment Instalment in accordance with the Cashflow Waterfall:

- (A) such unpaid Repayment Instalment (each, an "**Unpaid COF Overrun Amount**") shall be deferred to be paid on the last day of the next succeeding Fiscal Quarter; and
- (B) upon deferral of such Unpaid COF Overrun Amount, the Company shall promptly but in any event no later than ten days from the due date, replace the outstanding Notes evidencing the deferred amounts with new Notes, such replacement Notes to be in form and substance satisfactory to the COF Lender, and, when applicable, an amendment to the applicable outstanding acknowledgments of debt, to reflect the deferral of such Unpaid COF Overrun Amount and the obligation to pay such amount plus accrued interests thereon on the last day of the next succeeding Fiscal Quarter, both documents in form in substance satisfactory to the COF Lender.

### 9.4 Default interest

- (A) If the Company fails to pay any amount payable by it under a COF 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 2% per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a COF Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the COF Lender (acting reasonably). Any interest accruing under this Clause 9.4 shall be immediately payable by the Company on demand by the COF Lender. For the avoidance of doubt, neither:

- (1) the capitalisation of accrued interest in accordance with Clause 9.2 (*Payment of Interest*); nor
- (2) the deferral of a Repayment Instalment to the last day of the next succeeding Fiscal Quarter in accordance with Clause 9.3 (*Unpaid Repayment Instalments*),

shall constitute a failure by the Company to pay an amount payable by it under a COF Finance Document on its due date.

- (B) Default interest (if unpaid) arising on an overdue amount in accordance with Clause 9.4(A) above 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. INTEREST PERIODS**

### **10.1 Interest Periods**

- (A) The first Interest Period for the Cost Overrun Loan shall start on the Utilisation Date and end on the last day of the Fiscal Quarter next to occur; provided that if the Utilisation Date falls on any of the last five Business Days of that Fiscal Quarter, the first Interest Period for the Cost Overrun Loan shall end on the last day of the Fiscal Quarter next to occur after the end of that Fiscal Quarter.
- (B) Each subsequent Interest Period shall start on the last day of the previous Interest Period and end on the last day of the Fiscal Quarter next to occur.
- (C) An Interest Period for the Cost Overrun Loan shall not extend beyond the Final Repayment Date.

### **10.2 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).

### **10.3 Consolidation**

If two or more Interest Periods relate to Unpaid COF Overrun Amounts and end on the same date, those Unpaid COF Overrun Amounts will be consolidated into, and treated as, a single Unpaid COF Overrun Amount on the last day of such Interest Periods.

## **11. BREAK COSTS**

The Company shall, within thirty days of demand by the COF Lender, pay to the COF Lender its Break Costs attributable to all or any part of the Cost Overrun Loan or an Unpaid COF Overrun Amount being paid or prepaid by the Company on a day other than the last day of an Interest Period for the Cost Overrun Loan or Unpaid COF Overrun Amount. The COF Lender shall, as soon as reasonably practicable after a demand by the Company, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

## **SECTION 6 ADDITIONAL PAYMENTS AND OBLIGATIONS**

## **12. TAX GROSS UP AND INDEMNITIES**

### **12.1 Definitions**

In this Agreement:

**"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 COF Finance Document, other than a FACTA Deduction.

**"Tax Payment"** means either the increase in a payment made by the Company to the COF Lender under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax indemnity*).

Unless a contrary indication appears, in this Clause 12 a reference to **"determines"** or **"determined"** means a determination made in the absolute discretion of the person making the determination.

#### 12.2 **Tax gross-up**

- (A) The Company shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (B) The Company shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the COF Lender accordingly. Similarly, the COF Lender shall notify the Company on becoming so aware in respect of a payment payable to the COF Lender.
- (C) If a Tax Deduction is required by law to be made by the Company, the amount of the payment due from the Company 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 the Company is required to make a Tax Deduction, the Company 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 thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Company shall deliver to the COF Lender evidence reasonably satisfactory to it that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

#### 12.3 **Tax indemnity**

- (A) The Company shall (within 10 Business Days of demand by the COF Lender accompanied by supporting evidence) pay to the COF Lender an amount equal to the loss, liability or cost which the COF Lender determines will be or has been (directly or indirectly) suffered for or on account of Tax by the COF Lender in respect of a COF Finance Document.
- (B) Paragraph (A) above shall not apply:
  - (1) with respect to any Tax assessed on the COF Lender:
    - (a) under the law of the jurisdiction in which the COF Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the COF Lender is treated as resident for tax purposes; or
    - (b) under the law of the jurisdiction in which the COF Lender'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 the COF Lender; or

- (2) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*).
- (C) If the COF Lender makes, or intends to make a claim under paragraph (A) above it shall promptly notify the Company of the event which will give, or has given, rise to the claim.

#### 12.4 Tax Credit

If the Company makes a Tax Payment and the COF Lender determines 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) the COF Lender has obtained and utilised that Tax Credit,

the COF Lender shall pay an amount to the Company which the COF Lender 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 Company.

#### 12.5 Stamp taxes

The Company shall pay and, within 30 days of demand, indemnify the COF Lender against any cost, loss or liability that the COF Lender incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any COF Finance Document.

#### 12.6 VAT

- (A) Any amount expressed to be payable under a COF Finance Document by the Company to the COF Lender is deemed to be exclusive of any value added tax or any other Tax of a similar nature ("**VAT**") which is chargeable in connection with that amount, and accordingly, subject to paragraph (B) below, if VAT is or becomes chargeable in connection with any payment made by the COF Lender to the Company under a COF Finance Document and the COF Lender is required to account to the relevant tax authority for the VAT, the Company must pay to the COF Lender (in addition to and at the same time as paying that amount) an amount equal to the amount of the VAT (and the COF Lender must promptly provide an appropriate VAT invoice to that Party).
- (B) Where a COF Finance Document requires the Company to reimburse or indemnify the COF Lender for any cost or expense, the Company shall reimburse or indemnify (as the case may be) the COF Lender for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that the COF Lender reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

### 13. INCREASED COSTS

#### 13.1 Increased costs

- (A) Subject to Clause 13.3 (*Exceptions*), the Company shall, within 30 days of a demand by the COF Lender, pay for the account of the COF Lender the amount of any Increased Costs incurred by the COF Lender 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 or (ii) compliance with any law or regulation made after the date of this Agreement.
- (B) In this Agreement "**Increased Costs**" means:
  - (1) a reduction in the rate of return from the Cost Overrun Facility or on the COF Lender's (or its Affiliate's) overall capital;
  - (2) an additional or increased cost; or
  - (3) a reduction of any amount due and payable under any COF Finance Document, which is incurred or suffered by the COF Lender or any of its Affiliates to the extent that it is attributable to the COF Lender having entered into its Commitment or funding or performing its obligations under any COF Finance Document.

#### 13.2 Increased cost claims

- (A) If the COF Lender intends to make a claim pursuant to Clause 13.1 (*Increased costs*), the COF Lender shall notify the Company of the event giving rise to the claim.
- (B) the COF Lender shall, as soon as practicable after a demand by the Company, provide a certificate confirming the amount of its Increased Costs (including reasonably detailed supporting evidence).

#### 13.3 Exceptions

- (A) Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
  - (1) attributable to a Tax Deduction required by law to be made by the Company;
  - (2) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (B) of Clause 12.3 (*Tax indemnity*) applied); or
  - (3) attributable to the wilful breach by the COF Lender or its Affiliates of any law or regulation.
- (B) In this Clause 13.3, a reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 12.1 (*Definitions*).

## 14. OTHER INDEMNITIES

### 14.1 Currency indemnity

- (A) If any sum due to the COF Lender from the Company under the COF 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:

- (1) making or filing a claim or proof against the Company; or
- (2) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Company shall as an independent obligation, within three 30 days of demand, indemnify the COF Lender 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 the COF Lender at the time of its receipt of that Sum.

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

### 14.2 Other indemnities

- (A) The Company shall, within 30 days of demand, indemnify the COF Lender against any cost, loss or liability incurred by it as a result of:

- (1) the occurrence of any Event of Default;
- (2) a failure by the Company to pay any amount due under a COF Finance Document on its due date;
- (3) funding, or making arrangements to fund, the COF Transfer Amount requested by the Company in a COF Transfer Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason solely of default or negligence by the COF Lender); or
- (4) the Cost Overrun Loan (or part of the Cost Overrun Loan) not being prepaid in accordance with a notice of prepayment given by the Company.

- (B) The Company shall promptly indemnify the COF Lender, each Affiliate of the COF Lender and each officer or employee of the COF Lender or its Affiliate, against any cost, loss or liability incurred by the COF Lender or its Affiliate (or officer or employee of the COF Lender or Affiliate) in connection with or arising out of the use of proceeds under the Cost Overrun Facility or Encumbrances being taken (including those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the use of proceeds under the Cost Overrun Facility), unless such loss or liability is caused by the gross negligence or wilful misconduct of the COF Lender or its Affiliate (or employee or officer of the COF Lender or Affiliate). Any Affiliate or

any officer or employee of the COF Lender or its Affiliate may rely on this Clause 14.2 subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

## **15. MITIGATION BY THE COF LENDER**

### **15.1 Mitigation**

- (A) The COF Lender shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.2 (*Illegality*), Clause 12 (*Tax gross-up and indemnities*) or Clause 13 (*Increased Costs*) including transferring its rights and obligations under the COF Finance Documents to another Affiliate or Facility Office.
- (B) Paragraph (A) above does not in any way limit the obligations of the Company under the COF Finance Documents.

### **15.2 Limitation of liability**

- (A) The Company shall promptly indemnify the COF Lender for all costs and expenses reasonably incurred by the COF Lender as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (B) The COF Lender is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of the COF Lender (acting reasonably), to do so might be prejudicial to it.

## **16. FEES, COSTS AND EXPENSES**

### **16.1 Commitment Fees**

The Company shall pay to the COF Lender a Commitment Fee equal to 2.00 per cent. per annum of the total Commitment, for the period commencing on the date of this Agreement and ending on the earlier of (i) the Utilisation Date, and (ii) the last day of the Availability Period, and payable quarterly in arrears on the last day of each Fiscal Quarter.

### **16.2 Funds Reservation Fee**

On and from the COF Transfer Date and until the earlier of (i) the Utilisation Date, and (ii) the last day of the Availability Period, a Funds Reservation Fee equal to 11.00 per cent. per annum shall accrue on the COF Transfer Amount in arrears and be capitalised on the last day of each Fiscal Quarter.

In the event that no Utilisation of the Cost Overrun Facility is deemed to be made in accordance with clause 5A.1, the Company shall, within 15 days of each Calculation Date following the Project Completion Date, deliver a Cash Sweep Calculation Certificate to the COF Lender and make, on the date on which it makes a cash sweep payment to the Senior Lenders under clause 3.5 (*Cash Sweeps*) of the Senior CTA, a payment towards the Funds Reservation Fee outstanding on such Calculation Date in an amount equal to 30% of the Remaining Cash Flow for the relevant Cash Sweep Period and as set out in the Cash Sweep Calculation Certificate.

### **16.3 Transaction expenses**

The Company shall promptly on demand pay the COF Lender the amount of all costs and expenses reasonably incurred by the COF Lender (including by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution and perfection of:

- (A) the COF Finance Documents; and
- (B) any other COF Finance Documents executed after the date of this Agreement.

### **16.4 Amendment costs**

If (x) the Company requests an amendment, waiver or consent or (y) an amendment is required pursuant to Clause 23.7 (*Change of currency*), the Company shall, within 30 days of demand, reimburse the COF Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by the COF Lender (including by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

### **16.5 Enforcement and preservation costs**

The Company shall, within thirty 30 of demand, pay to the COF Lender 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 COF Finance Document and any proceedings instituted by or against the COF Lender as a consequence of enforcing these rights.

## **SECTION 6 REPRESENTATIONS, COVENANTS AND EVENTS OF DEFAULT**

### **17. REPRESENTATIONS**

#### **17.1 General**

The Company makes the representations and warranties set out in this Clause 17 to the COF Lender.

#### **17.2 Organisation and Powers**

The Company:

- (A) has been duly incorporated or formed and is validly existing under the laws of its jurisdiction of incorporation or formation, as applicable;
- (B) has all requisite corporate power and authority to own or lease its property and assets and to carry on its business;
- (C) has all requisite corporate power and authority to enter into and deliver each of the COF Finance Documents, and the transactions contemplated thereby, to which it is or will become a party, and to take all necessary action to perform its obligations thereunder (including the power and authority to grant the Security pursuant to the Security Documents and to perform the obligations set forth therein); and
- (D) is duly qualified, licensed or registered to do business in each jurisdiction in which the nature of its business or the property or assets owned or leased by it make such qualification, licensing or registration necessary. No proceeding has been instituted or, to the knowledge of the Company, threatened in any such jurisdiction revoking, limiting or curtailing, or seeking to revoke, limit or curtail, such power and authority or qualification, licensing or registration. The Company is up to date in all of its corporate filings in all material respects and is (if applicable) in good standing under Applicable Laws.

### **17.3 Authorisation; No Conflict**

The execution and delivery by the Company of the COF Finance Documents and the Material Project Documents to which it is a party, and the performance by it of its obligations hereunder and thereunder, have been duly authorized by all necessary corporate or other action on its part and do not:

- (A) contravene any provision of its constitutional documents, including, without limitation, any unanimous shareholder agreements or declarations, as applicable, or any resolution of its shareholders, partners or directors (or any committee thereof);
- (B) conflict with, result in a breach of, or constitute a default or an event creating rights of acceleration, termination, modification or cancellation or a loss of rights under (with or without the giving of notice or lapse of time or both), any Material Project Document other than to the extent that such conflict has been expressly resolved in any relevant Direct Agreement;
- (C) conflict with or result in any breach of any of the terms, covenants, conditions, or provisions of, or constitute a default under, any of the terms, covenants, conditions, or provisions of any material agreement, contract, document or instrument to which it is a party or which is binding upon it or any of its assets;
- (D) in any material respect, violate any Applicable Law; or
- (E) other than as contemplated by the COF Finance Documents, result in, or require, the creation or imposition of any Encumbrance on any property or assets of the Company.

### **17.4 Execution; Binding Obligation**

Each COF Finance Document to which the Company is or will become a party:

- (A) has been, or when delivered under or in connection with this Agreement will be, duly executed and delivered by the Company; and
- (B) constitutes, or when delivered under or in connection with this Agreement will constitute, a legal, valid and binding agreement of the Company, in full force and effect and enforceable against the Company in accordance with its terms and admissible into evidence in the courts of Brazil, provided that (i) the Brazilian Security Documents shall be subject to the formalities indicated therein in order for them to be effective against third parties, and (ii) in order for foreign documents to be admissible in courts in Brazil, each party shall (if executing outside of Brazil) arrange for execution in front of a notary (and in some cases apostilled) and the documents must be translated into Portuguese by a sworn translator and registered with the relevant registry of titles and deeds (cartório de registro de títulos e documentos) in Brazil.

#### 17.5 Consents

The Company is not required to give any notice to, make any filing with or obtain any Authorization, Order or other consent or approval of any Person in connection with the execution or delivery of or performance of its obligations under any COF Finance Document to which it is a party, or the consummation of the transactions contemplated herein and therein, other than:

- (A) those that have already been obtained and copies of which have been provided to the COF Lender, and
- (B) those Authorizations set out as to be obtained following the Effective Date in Schedule F (*Material Project Authorizations*) of the Senior CTA.

#### 17.6 Corporate Structure; Subsidiaries

- (A) As of the date of this Agreement and COF Financial Close, Part A of Schedule K (*Corporate Organization Chart*) of the Senior CTA sets forth the true and complete list of the Sponsor and all of its Subsidiaries, including the Company, including the type and number of issued and outstanding shares or other equity interests of each such Subsidiary and the Person in whose name such shares or equity interests are registered.
- (B) Except as set out in Part A of Schedule K (*Corporate Organization Chart*) of the Senior CTA, no Person has any option, warrant, right (pre-emptive, contractual or otherwise) or other security or conversion privilege of any kind that is exercisable or convertible into, or exchangeable for, or otherwise carries the right of the holder to purchase or otherwise acquire (whether or not subject to conditions) common shares or other equity interests of the Company or any other Obligor (other than the Sponsor).
- (C) The Company is not engaged in any joint purchasing arrangement, joint venture, partnership and other joint enterprise with any other Person.
- (D) No Person has a direct or indirect ownership interest in the Company, except as set out in Part A of Schedule K (*Corporate Organization Chart*) of the Senior CTA, or the Project Property (other than the Real Property).
- (E) To the Company's knowledge and belief, no funds invested in the shares of the

Company are of illicit origin.

(F) The Company has no Subsidiaries.

#### **17.7 Principal Place of Business and Other Locations**

The jurisdiction of incorporation, principal place of business, location of corporate records, and location of tangible assets (except for inventory which is in transit) of the Company as of the date hereof is Brazil.

#### **17.8 Residence for Tax Purposes**

For tax purposes, the Company is resident of Brazil (and no other jurisdiction).

#### **17.9 Solvency**

Immediately after giving effect to the transactions to occur on COF Financial Close, the Company will not be insolvent within the meaning of the Applicable Law of Brazil.

#### **17.10 No Defaults; Material Project Documents**

No event has occurred or circumstance exists that (with or without the giving of notice or lapse of time or both) has contravened, conflicted with or resulted in, or may contravene, conflict with or result in, a violation or breach of, or give the Company or any other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, suspend performance under or to repudiate, cancel, terminate or modify, any Material Project Document, Material Project Authorization or Order to which it is a party or by which it or its properties and assets may be bound in any material respect, and, to the knowledge of the Company, each other Person that is party thereto is in compliance in all material respects with the terms and requirements thereof. Without limiting the generality of the foregoing:

- (A) all Material Project Documents are listed in Schedule G (Material Project Documents) of the Senior CTA (or if such schedule is replaced in accordance with the Senior CTA, such replacement schedule), and true and complete copies thereof have been made or will be made available upon execution, as applicable, to the COF Lender (and no amendment, modification or supplement relating thereto has been made without having been disclosed to and (to the extent required pursuant to Section 9.12(j)(ii) of the Senior CTA, approved) by the Administrative Agent);
- (B) neither the Company, nor, to the knowledge of the Company, as at the date of this Agreement and COF Financial Close only, any other Person, is in default or breach in the observance or performance of any material term, covenant or obligation to be performed by the Company or such Person under any Material Project Document to which the Company or such Person is a party or by which it is otherwise bound (including its property and assets) and each such Material Project Document is in good standing, constitutes a legal, valid and binding agreement of each of the parties thereto, is in full force and effect and is enforceable in accordance with its terms;
- (C) no Material Project Document has been terminated, cancelled or repudiated (in each case, in whole or in part) other than to the extent such Material Project Document has been replaced (or the Company is diligently pursuing the

replacement of) in accordance with Section 11.1(s) of the Senior CTA, and the Company has no knowledge of the invalidity, rescission, avoidance or repudiation of any such Material Project Document and the Company has not received notice of any sanctioning procedure by a Governmental Body or notice of termination in relation to any such Material Project Document or repudiation of any transaction contemplated thereby; and

- (D) no material litigation, arbitration or administrative proceedings of or before any Governmental Body has or have been started or, as at the date of this Agreement or the COF Financial Close only, to the best of the Company's knowledge and belief, threatened in writing, in each case against the Company or any of its Affiliates, in relation to the transactions contemplated under a Material Project Document.

#### **17.11 Title to Real Property**

Schedule I (*Project Real Property*) of the Senior CTA and Schedule J (*Other Real Property*) of the Senior CTA (or if such schedules are replaced in accordance with the Senior CTA, such replacement schedules) set out a complete and accurate list of the Real Property in which the Company (or to the extent acquired in accordance with clause 9.1(gg) of the Senior CTA, Landco) has a right, title or interest, other than in relation to (x) Real Property to which the Company (or to the extent acquired in accordance with clause 9.1(gg) of the Senior CTA, Landco) has acquired a right, title or interest since the first Business Day of the then current calendar quarter or (y) any updates to Schedule I (*Project Real Property*) and Schedule J (*Other Real Property*) in relation to which the approval of the Administrative Agent is awaited in accordance with Section 9.3(f)(iii) of the Senior CTA. The Company (or to the extent such Real Property is acquired in accordance with clause 9.1(gg) of the Senior CTA, LandCo), subject to Permitted Encumbrances:

- (A) has valid easement and/or purchase agreements regarding the real property included within the Real Property; or
- (B) has valid judicial injunctions regarding the Real Property, except such properties covered under Clause 17.11(A) above.

Other than to the extent such Real Property is owned by third party landowners, such Real Property is free and clear of all Encumbrances other than Permitted Encumbrances. The Company does not hold any other freehold, leasehold or other real property interests or rights (including licenses from landholders permitting the use of land, leases, rights of way, occupancy rights, surface rights and easements).

#### 17.12 Other Collateral

- (A) The Obligors have good and valid title to, or leasehold interest in, all other Collateral, free and clear of all Encumbrances other than Permitted Encumbrances.
- (B) Upon filing, (to the extent applicable) approval of the applicable government authorities in Brazil, and registration of the Security Documents before the competent Governmental Body, in accordance with the respective Security Documents, the Securities created under the Security Documents will be effective to create in favour of the COF Lender, legal, valid, and enforceable first priority security interests on all of the Obligors' assets, rights, revenues and properties intended to be covered thereby. The Company does not have outstanding, nor is it contractually bound to create any Security on or with respect to any of its assets, rights, revenues or property, except for Permitted Encumbrances. In the event of conversion of any Security under the Brazilian Security Documents, including a conversion of Securities created under pledge into fiduciary assignment in accordance with Brazilian Applicable Laws, the Securities created under the Security Documents will be effective to create in favour of the COF Lender, legal, valid, and enforceable first priority security interests on all of the Obligors' assets, rights, revenues and properties intended to be covered thereby.

#### 17.13 Project Property

Without limiting the generality of Clauses 17.11 and 17.12:

- (A) the Company owns or otherwise has valid rights to access and to use for the purposes of the Project all of, and does not own any material properties or assets other than, the Project Property needed for the first eight years of Mine Plan, and no Person other than the Company (or, to the extent acquired in accordance with clause 9.1(gg) of the Senior CTA, Landco), has any rights to participate in the Project Real Property or operate the Project;
- (B) the Project Real Property constitutes all real property, mineral, surface interests, legal reserves and ancillary rights (including rights of access) necessary for the development and mining operations of the Project, in accordance with the first eight years of the Mine Plan; and
- (C) other than pursuant to Applicable Laws, there are no restrictions on the ability of the Company to exploit the Project Real Property.

#### 17.14 Maintenance of Project Property

Except in relation to the Project Real Property, all mining concession fees, maintenance fees, recording fees, preservation patents and Taxes and all other amounts (other than Tax-Notice no. 11327590 of 29/10/2019 issued by the Brazilian Agency for the Environment and Renewable Natural Resources (*Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis – IBAMA*) to collect TCFA (*Environmental Control Inspection Fee*) due by Araguaia in 2019) have been paid when due and payable and all other actions and all other obligations as are required to maintain the Project Property in good standing, have been taken and complied with in all material respects.

#### 17.15 No Expropriation

No Expropriation Event has occurred nor has any notice been given or proceeding commenced by a Governmental Body or Person in respect thereof nor, to the knowledge of the Company, is there any intent or proposal to give any such notice or commence with respect to an Expropriation Event.

#### 17.16 Insurance

The Collateral, the Project and the businesses and operations of the Company are or will be (as applicable) insured in accordance with Section 9.1(f) of the Senior CTA. The insurance policies, to the extent required to be in place from time to time, are in full force and effect and the Company has not breached the terms and conditions of any insurance policies it is required to obtain and maintain in accordance with Section 9.1(e) of the Senior CTA in any material respect nor failed to give any material notice or present any material claim thereunder nor has received any notice from any insurer providing that any such insurances has ceased to be in full force and effect. There are no material claims under any such policy as to which any insurer is denying liability or defending under a reservation of rights clause.

#### 17.17 Status of Authorisations

- (A) The Authorizations and Other Rights specified in Schedule F (*Material Project Authorizations*) of the Senior CTA (as such schedule may be supplemented by notice by the Company in writing to the Administrative Agent from time to time in accordance with the Senior CTA) are all Material Project Authorizations.
- (B) As of the date of this Agreement, all Material Project Authorizations specified in Part A of Schedule F (*Material Project Authorizations*) of the Senior CTA:
  - (1) have been duly obtained, taken, given or made;
  - (2) are valid and in full force and effect and admissible into evidence in the courts of Brazil;
  - (3) are not subject to proceedings or appeal or similar proceeding by or before any Governmental Body that could reasonably be expected to cause the cancellation of the relevant Material Project Authorization; and
  - (4) are free from conditions or requirements that have not been met or complied with where the failure to so satisfy may allow for the material modification or revocation thereof.
- (C) On any date on which this representation is made or deemed made from and after COF Financial Close:
  - (1) any Material Project Authorizations specified in Schedule F (*Material Project Authorizations*) of the Senior CTA that are required by Applicable Law to be in effect as of the date on which such representation is made or deemed to have been made:
    - (a) have been duly obtained, taken, given or made
    - (b) are valid and in full force and effect and admissible into evidence in

the courts of Brazil;

- (c) are not subject to proceedings or appeal or similar proceeding by or before any Governmental Body that could cause or result in the cancellation of the relevant Material Project Authorization; and
  - (d) are free from conditions or requirements that have not been met or complied with where the failure to so satisfy may allow the material modification or revocation thereof.
- (2) with respect to any Material Project Authorization specified in Schedule F (*Material Project Authorizations*) of the Senior CTA that is not required under Applicable Law to be in effect as of the date on which such representation is made or deemed to be made, the Company has applied (or will apply) for all such Material Project Authorizations and has no reason to believe that it will not obtain those Material Project Authorizations by the date on which such Material Project Authorization is required (x) to develop, construct, own, finance or operate the Project or (y) to perform any obligations under any COF Finance Document or that those Material Project Authorizations will be subject to any conditions or requirements that cannot be met or complied with,

except for rights that can reasonably be expected to be obtained on commercially reasonable terms at the time required, the Material Project Documents contain all rights that are necessary for the conduct of the Business of the Company as contemplated by the COF Finance Documents.

- (D) As of COF Financial Close, each Authorization and Other Right that is necessary under the laws governing any Security Document to which it is a party or otherwise applicable given the location of the Project Property subject to such Security Document for the COF Lender and the Secured Parties' exercise of any rights of foreclosure, transfer, sale, assignment or set-off in respect of any of the Security pledged by it for the benefit of the COF Lender and the Secured Parties pursuant to such Security Document are set forth on Schedule F (*Material Project Authorizations*) of the Senior CTA.
- (E) The Project, if constructed in accordance with the Construction Plan, Budget and Schedule, the Mine Plan and otherwise developed as contemplated by the Material Project Documents, will conform and comply in all material respects with the covenants, conditions, restrictions and reservations of any such Authorizations and Other Rights and all Applicable Laws.

#### **17.18 Bank Accounts**

The Company has no other bank accounts other than the Project Accounts, the Payroll and Taxes Account and Bradesco Account (each as defined in the Collateral Agency, Accounts and Security Agreement) as set out in Schedule I (*Accounts*) to the Collateral Agency, Accounts and Security Agreement (or if such schedule is replaced in accordance with the Intercreditor Agreement, such replacement schedule).

#### **17.19 Applicable Laws; Conduct of Operations**

The Company, including in the conduct of operations at the Project, is and has been in compliance in all material respects with all Applicable Laws (but not including Sanctions, Anti-Corruption Laws or AML Legislation, which are discussed in Clauses

17.20, 17.21 and 17.22, below, respectively) and, without limiting the generality of the foregoing, all exploration, development and mining operations in respect of the Real Property have been conducted in accordance with Good Industry Practice and all material workers' compensation and health and safety regulations have been complied with. As of the date hereof, there is no pending or, to the knowledge of the Company, proposed changes to Applicable Laws that would render illegal or materially restrict the development of the Project or the conduct of operations at the Project, or that could otherwise reasonably be expected to result in a Material Adverse Effect.

#### **17.20 Sanctions**

- (A) Neither the Company nor any of its directors, officers or employees or, to the best knowledge of the Company, agents or Affiliates of the Company (A) is a Sanctions Target; or (B) has engaged in any dealings with, involving or for the benefit of a Sanctions Target.
- (B) The Company and its directors and officers and, to the best knowledge of the Company, employees, agents (acting in their official capacities in connection with the Project) and Affiliates of the Company, are in compliance with applicable Sanctions.
- (C) The Company and any Affiliates of the Company have implemented and maintain in effect policies and procedures designed to promote and achieve compliance by the Company and its directors, officers, employees and agents with applicable Sanctions.
- (D) Neither the Company nor any of the directors, officers, employees or agents (acting in their official capacities in connection with the Project) of the Company is or has been subject to any action, litigation, claim, proceeding or, to the best knowledge of the Company, investigation (it being understood that for the purposes of this clause, knowledge shall reflect the terms set forth in section 1.5 of the Senior CTA and shall also mean that the relevant persons contemplated therein are not aware of any action undertaken by the Company that would reasonably be expected to result in any such investigation), in each case with regard to any actual or alleged violation of Sanctions.
- (E) The Company will not, directly or indirectly, use any part of any proceeds of the Cost Overrun Loan (A) to fund or facilitate any activities or business of, with or involving any Sanctions Target or (B) in any manner that would constitute or give rise to a violation of Sanctions by any Person, including the COF Lender.

#### **17.21 Anti-Corruption Laws**

- (A) Neither the Company nor any of its directors, officers or employees or, to the best knowledge of the Company, Affiliates or agents (acting in their official capacities in connection with the Project), or any other Persons acting on behalf of the Company, has made any Prohibited Payment, engaged in any Prohibited Practice or taken any action that would give rise to a violation of any applicable Anti-Corruption Laws.
- (B) The Company and any Affiliates of the Company have implemented and maintain in effect policies and procedures designed to promote and achieve compliance by the Company and the directors, officers, employees and agents of the Company with applicable Anti-Corruption Laws.

- (C) Neither the Company nor any of the directors, officers, employees or, to the best knowledge of the Company, agents (acting in their official capacities in connection with the Project) of the Company is or has been subject to any action, litigation, claim, proceeding or, to the best knowledge of the Company, investigation, in each case with regard to any actual or alleged violation of Anti-Corruption Laws.
- (D) The Company will not, directly or indirectly, use any part of any proceeds of the Cost Overrun Loan for any Prohibited Payment or Prohibited Practice or in any other manner that would give rise to a violation of Anti-Corruption Laws by any Person, including the COF Lender.

#### **17.22 AML Legislation**

- (A) Neither the Company nor any of its directors, officers or employees or, to the best knowledge of the Company, Affiliates or agents of the Company, or any other Persons acting on behalf of the Company, has taken any action, directly or indirectly, that would constitute a violation by such Persons of applicable AML Legislation.
- (B) The Company and any Affiliates of the Company have implemented and maintain in effect policies and procedures designed to promote and achieve compliance by the Company and the directors, officers, employees and agents of the Company with applicable AML Legislation.
- (C) Neither the Company nor any of the directors, officers, employees or agents (acting in their official capacities in connection with the Project) of the Company is or has been subject to any action, litigation, claim, proceeding or, to the best knowledge of the Company, investigation, in each case with regard to any actual or alleged violation of AML Legislation.
- (D) The Company will not, directly or indirectly, use any part of any proceeds of the Cost Overrun Loan for any activity that would constitute or give rise to a violation of applicable AML Legislation by any Person, including the COF Lender.

#### **17.23 Environmental Matters**

Without limiting the generality of Clauses 17.13 (*Project Property*) and 17.17 (*Status of Authorisations*):

- (A) the Company and the development, construction and operations of the Project are and have been in compliance with all Environmental and Social requirements, save to the extent, as applicable, in accordance with all material respects with the actions and time schedules established in the ESAP and any Corrective Action Plan;
- (B)
  - (1) subject to subclause (2) below, the Company has obtained (or has filed with the applicable Governmental Body of the GOB a petition to obtain, as the case may be), and has maintained in full force and effect and there are no facts, circumstances or conditions likely to give rise to a denial, non-renewal, termination, suspension or revocation of any Environmental License

applicable to the Project and Related Facilities, all Authorisations any of them are required to hold under the Environmental and Social Laws (including the Environmental Licenses) currently necessary to develop, construct and/or operate (as applicable in the light of the status of the development, construction and operation of the Project and Related Facilities) the Project and Related Facilities or to conduct any other exploration, development, drilling or mining operations currently being conducted by it; and

- (2) to the knowledge of the Company, all such Authorisations not currently required will be obtained in the ordinary course prior to the time such Authorisations may be required;
- (C) no Material Environmental or Social Incident has occurred with respect to the Project, save to the extent that such Material Environmental or Social Incident has been notified in accordance with Section 4.5 (*Notices*) of Schedule Q to the Senior CTA or, if actions and time schedules have been established in the ESAP and any Corrective Action Plan, the Borrower is in accordance therewith;
- (D) to the knowledge of the Company, no Hazardous Substances have been generated, used, treated, recycled, stored on or transported to or from, or Released on, or are migrating from or are present on all or any portion of the Real Property or the Project except to the extent any such Hazardous Substances could not reasonably be expected to result in a Material Environmental and Social Effect or an Environmental and Social Claim (save to the extent that such Environmental and Social Claim has been notified in accordance with Section 4.5 (*Notices*) of Schedule Q to the Senior CTA) against the Company or with respect to the Project and Related Facilities;
- (E) except as otherwise listed in Schedule T (*Litigation*) the Senior CTA, neither the Company nor the Project and Related Facilities is subject to any pending or, to the knowledge of the Company, threatened material Environmental and Social Claim (save where any Environmental and Social Claim has been notified in accordance with Section 4.5 (*Notices*) of Schedule Q to the Senior CTA) (and, to the knowledge of the Company, there are no Environmental or Social Matters, facts, conditions or occurrences that could reasonably be expected to give rise to any such material Environmental and Social Claim), including any:
  - (1) material claim, notice, complaint, allegation, investigation, order, each in writing, that relates to the Environment, natural resources, Hazardous Substances, human health or safety matters or any other matter covered by the Environmental and Social Requirements (including the Closure and Rehabilitation Plan), and which could reasonably require or result in any material work, repairs, rehabilitation, reclamation, remediation, construction, obligations, liabilities or expenditures; or
  - (2) material demand, Order, notice from or procedution by or before a Governmental Body with respect to any matter covered by the Environmental and Social Requirements (including the Closure and Rehabilitation Plan), including any other Applicable Laws of Brazil, respecting the use, Release, storage, treatment, transportation, rehabilitation, reclamation, remediation or disposition of, or exposure to, any Hazardous Substances from the Real Property;
- (F) save to the extent such audits, assessments, reports, studies or tests are the

subject of contractual non-disclosure obligations, the Company has made available to the COF Lender a true and complete copy of each material environmental and social audit, assessment, report, study or test of which it possesses or has custody or control over relating to the Project, including any environmental and social impact assessment study reports and any other material environmental or social information;

- (G) the Company has provided to the COF Lender a true and complete copy of the HSEC Policy in effect as at the date hereof;
- (H) there are no material environmental liabilities in respect of the development or operations (as applicable) at the Project other than those identified in the Material Project Authorisations, applicable Authorisations (including Environmental Licenses), Corrective Action Plan, EISA, ESMPs, and ESAP;
- (I) the ESMPs contain summary descriptions of the environmental aspects of the Project Property and the development and/or operation (as applicable) of the Project as now conducted and as currently proposed to be conducted until the Final Maturity Date;
- (J) to the knowledge of the Company, there are no pending or proposed (in writing) changes to the Environmental and Social Laws or any other Authorisations referred to in sub-clause (b) above that would materially restrict the development, construction or operation of the Project, or that could otherwise reasonably be expected to result in material non-compliance with such Environmental and Social Laws or Authorisations;
- (K) the Company has an ESMS, which is in compliance with the Environmental and Social Requirements, covering all necessary ESMPs, except as otherwise set forth in ESAP or any Corrective Action Plan;
- (L) the Company has designed, and plans to construct, operate, manage and monitor, the slag management facilities in accordance with the GISTM Standards; and
- (M) all written information relating to the Project and Related Facilities submitted by the Company to any governmental authority in connection with any Environmental License was true and accurate in all material respects and did not omit to state any fact necessary to make such information not materially misleading, in each case on the date as of which such information was stated and in the light of the circumstances under which such information was prepared.

#### **17.24 Community Matters**

- (A) The Company's consultation and dealing with any community and other persons and groups located on or near the Project Real Property affected by the Project regarding the proposed exploration, development, operating, closure and rehabilitation of the Project Property (and with which the Project is required to consult, in accordance with the Applicable Law of Brazil and the applicable Performance Standards) and the Project has been conducted in a structured and culturally appropriate manner as envisaged by the Performance Standards and the HSEC Policy.

- (B) The Company has disclosed to the COF Lender all material correspondence, notices and other documents from or involving such other affected persons or groups, or Persons acting on their behalf.

#### **17.25 Employee and Labour Matters**

The Company is in material compliance with all Applicable Laws of Brazil and Performance Standards in respect of employment and employment practices, terms and conditions of employment, pay equity and wages; there is not currently any strikes, slowdowns or work stoppages by the employees of the Company, nor as at COF Financial Close otherwise, to the Company's knowledge, directly affecting the Project. As at the date of this Agreement, the Company is not a party to a collective bargaining agreement.

#### **17.26 Security**

The Company has implemented security practices and procedures at the Project in accordance with Applicable Laws of Brazil and consistent with the Performance Standards, the Equator Principles, the HSEC Policy and Good Industry Practice.

#### **17.27 Employee Benefit Plans**

Each Employee Benefit Plan mandated by a Governmental Body that is intended to qualify for special tax treatment meets all of the requirements for such treatment and has obtained all necessary approvals of all relevant Governmental Bodies. No Employee Benefit Plan has any unfunded liabilities, determined in accordance with IFRS, that have not been fully accrued on the Financial Statements or that will not be fully offset by insurance. All Employee Benefit Plans are registered where required by, and are in good standing under, all Applicable Laws of Brazil. For purposes of this Clause 17.27, "**Employee Benefit Plan**" means any employee benefit plan, pension plan, program, policy or arrangement sponsored, maintained or contributed to by the Company or with respect to which the Company has any liability or obligation.

#### **17.28 Taxes**

- (A) All material Taxes due and payable by the Company (whether or not shown due on any Tax Returns and whether or not assessed (or reassessed) by the appropriate Governmental Body) have been timely paid when due except for any such Taxes the payment of which is being Contested and that there are no material disputes pending or threatened with any government tax authority in Brazil.

- (B) All assessments and reassessments received by the Company in respect of material Taxes have been paid when due or are otherwise being Contested in Brazil in the proper courts.
- (C) All material Tax Returns required by Applicable Law to be filed by or with respect to the Company have been properly prepared and timely filed when due and all such Tax Returns (including information provided therewith or with respect thereto) are true, complete and correct in all material respects, and no material fact or facts have been omitted therefrom which would make any such Tax Returns misleading in any respect.
- (D) As of the date hereof and COF Financial Close, there are no outstanding agreements, waivers, objections or arrangements extending the statutory period of limitations applicable to any claim for Taxes due from or with respect to the Company or any taxable period, nor has any such agreement, waiver, objection or arrangement been requested.
- (E) No filing or stamp Taxes are required to be paid by Applicable Law in connection with the execution of the COF Finance Documents or any payments to be made pursuant thereto (other than any filing or registration fees in connection with the execution of the COF Finance Documents), which shall be paid promptly after the execution of each such COF Finance Document.

#### **17.29 Intellectual Property**

The Company owns, licenses or otherwise has the right to use all material licenses, patents, patent applications, trademarks, trademark applications, service marks, trade names, copyrights, copyright applications, franchises, authorizations and other intellectual property rights that are necessary for the operation of the Project, without infringement upon or conflict with the rights of any other Person with respect thereto (other than any intellectual property the absence of which or any such infringement upon or conflict with respect to which would not have a material impact on the Company's ability to develop or operate the Project). To the Company's knowledge, no slogan or other advertising device, product, process, method, substance, part or other material now employed by the Company infringes upon or conflicts with any rights owned by any other Person. No claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Company, threatened which could reasonably be expected to be adversely determined and which, if adversely determined, could reasonably be expected to have a Material Adverse Effect.

#### **17.30 Books and Records**

The minute books and corporate records of the Company are true and correct in all material respects and contain all minutes of all meetings and all resolutions of the shareholders or directors (or any committee thereof), as applicable, of the Company (and, as at COF Financial Close, true and correct copies thereof have been provided by the Company to the COF Lender).

### **17.31 Financial Statements and Financial Model**

- (A) The Company's Financial Statements have been prepared in accordance and in compliance with IFRS applied on a consistent basis throughout, as of their date of filing, and such Financial Statements present fairly, in all material respects, the financial condition of the Company, as at the date specified therein and for the period then ended.
- (B) There are no off-balance sheet transactions, arrangements, obligations (including contingent obligations) or other relationships of the Company with unconsolidated entities or other Persons.
- (C) BDO has been the auditor of the Company since 2016 and will be the auditor of the Company for fiscal year 2021 and 2022; and any other auditors of the Company will be, in each case, generally accepted as well-know, respected and large auditing firms.
- (D) As of COF Financial Close, the Base Case Financial Model has been prepared based on assumptions believed in good faith by the Company to be reasonable in light of the circumstances in which they were made.

### **17.32 Absence of Change**

Except as disclosed in the Financial Statements, since the date of the last Financial Statements delivered to the COF Lender in accordance with this Agreement, there has been no event, change or effect which, individually or in the aggregate, has had, or could reasonably be expected to have, a Material Adverse Effect.

### **17.33 Related Party Transactions**

As at COF Financial Close, except as disclosed in the Company's annual audited Financial Statements as at 6 August 2021, 2021 and as otherwise disclosed in Schedule N (*Related Party Transactions*) of the Senior CTA or in writing by the Company to the Administrative Agent prior to the date hereof or as permitted by the Senior CTA after the date of the Senior CTA, the Company has not: (i) made any payment or loan to, or borrowed any moneys from or otherwise been indebted to, any Related Party thereof; or (ii) been a party to any Contract with any Related Party thereof, other than independent contractor or indemnification agreements entered into with officers or directors of the Company which, in the case of subparagraph (i) or (ii) hereof, remains in effect on the date hereof.

### **17.34 Other Contracts**

The Company has not entered into any material Contracts relating to the Project (other than the COF Finance Documents, Transaction Documents and the other Project Documents) that have not been disclosed in writing to the COF Lender.

### **17.35 No Liabilities**

The Company has no material liabilities, contingent or otherwise, other than those reflected in the Financial Statements or otherwise incurred pursuant to or as permitted by the Transaction Documents and the other Project Documents.

#### **17.36 Litigation**

As of the date hereof and COF Financial Close, there are no Orders which remain unsatisfied against the Company or consent decrees or injunctions to which the Company is subject. As of the date hereof and COF Financial Close, other than as set out in Schedule T (*Litigation*) of the Senior CTA, there are no material actions, suits, proceedings or (to the knowledge of the Company) investigations at law or in equity or by any Person by or before any Governmental Body pending or, to the knowledge of the Company, threatened against or directly affecting the Company (or any of its properties or assets) or, to the knowledge of the Company, otherwise having a material impact on the ability of the Company to develop or operate the Project and, to the knowledge of the Company, there is no ground on which any such action, suit or proceeding might be commenced.

#### **17.37 Debt Instruments**

The Company does not have any Debt other than Permitted Debt.

#### **17.38 No Subordination**

Save for the Finance Documents, there is no Contract to which the Company is a party or by which it or any of its properties or assets may be bound that requires the subordination in right of payment of any of the Obligations under the COF Finance Documents to any other obligation of it.

#### **17.39 Technical Report**

The estimated measured, indicated and inferred mineral resources and proven and probable mineral reserves set out in the Technical Report for the Project have been prepared in accordance with accepted mining industry practices and the National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* of the Canadian Securities Administrators (“**NI 43-101**”). The Company does not have any knowledge that the mineral resources or mineral reserves (or any other material aspect of the Technical Report) are inaccurate in any material respect.

#### **17.40 No Default**

No Default or Event of Default has occurred and is continuing under, or as a result of entering into, any COF Finance Document.

#### **17.41 Disclosure**

All information which has been prepared by or on behalf of the Company relating to the Obligors and their Subsidiaries and/or in connection with the Project or its financing, and disclosed in writing to the COF Lender, is, as of the date of such information, true, complete and accurate in all material respects.

#### **17.42 Foreign Controls**

The execution, delivery and performance of the COF Finance Documents by the Company are, under applicable foreign exchange control regulations or metals control regulations of Brazil, not subject to any notification or authorization except:

- (A) such as have been made or obtained; or
- (B) such as will be made or obtained at a later date (including the register to be made with the Brazilian Central Bank, tax returns, and information to be provided to the Mining Registry regarding the exploitation of ore).

#### **17.43 Rank of Debt**

The obligations of the Company and each Obligor under the COF Finance Documents to which it is a party to pay the Cost Overrun Loan and any and all other amounts due thereunder constitute direct and unconditional senior obligations of the Company and each Obligor and will at all times rank at least equal in right of payment with all other present and future indebtedness and other obligations of the Company and each Obligor, except for any obligations which have priority under the Intercreditor Agreement.

#### **17.44 No Immunity; Proper Legal Form; No Need to Qualify Under Brazilian or Other Applicable Law**

- (A) Neither the Company nor any of their properties have any immunity from the jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) under the laws of the United States, Brazil or other relevant jurisdiction in respect of its obligations under the COF Finance Documents. To ensure the legality, validity, enforceability or admissibility into evidence in Brazil of the COF Finance Documents, it is not necessary that such COF Finance Document or any other document be filed or recorded with any Governmental Body in Brazil (except for (a) notarization by a public notary of the signatures of the parties who signed the COF Finance Documents outside Brazil; (b) an apostille of the COF Finance Documents by the competent authority of the country of its origin or the competent Brazilian consulate certifying the signature of the notary, as the case may be; (c) the translation of the COF Finance Documents into the Portuguese language by a certified translator (tradutor público juramentado) in Brazil; (d) registration of the certified translation of the COF Finance Documents before the competent registry of titles and deeds (cartório de registro de títulos e documentos) in Brazil in order for the relevant foreign governed Finance Documents to be admissible in courts in Brazil; and (e) any other registration, filling or formality as provided in the Brazilian Security Documents).
- (B) Each of the COF Finance Documents is in proper legal form under the Applicable Laws of Brazil for the enforcement thereof against the Company under such Applicable Laws; provided that, in the event of enforcement of this Agreement in the courts of Brazil a translation of this Agreement into Portuguese, prepared by a court-approved translator or other official translator shall be required. Each Note, when duly executed and delivered, constitutes an enforceable extrajudicial title under the Applicable Laws of Brazil, provided that the enforceability of each Note shall at all times be strictly subject to the provisions of this Agreement including Clause 20.2(D) (Notes) of this Agreement. The submission to jurisdiction, appointment of the process agent and consents and waivers by the Company in clause 33 of this Agreement are valid and irrevocable.
- (C) It is not necessary in order for the COF Lender to enforce any of its rights or

remedies under the COF Finance Documents or solely by reason of the execution, delivery and performance by the Company of the COF Finance Documents that the COF Lender be licensed or qualified with any Governmental Body in Brazil, or be entitled to carry on business in Brazil.

- (D) It is not necessary for the COF Lender to be resident, domiciled or carrying on business in its jurisdiction of incorporation by reason only of the entry into, performance and/or enforcement of any COF Finance Document or any Security constituted thereby.

#### **17.45 Development Plan**

The Development Plan contains summary descriptions of the Project Property and the development and operation of the Project as proposed to be conducted throughout the life of the mine.

#### **17.46 [NOT USED]**

#### **17.47 Valid Security Interests**

The security interests created by the Security Documents constitute (or will constitute by the date set out in clause 18.2 (*Further Assurances - Security*)) and subject to completion of the steps set out in clause 17.44(A) (*No Immunity; Proper Legal Form; No Need to Qualify Under Brazilian or Other Applicable Law*) legal, valid, binding and enforceable security interests.

#### **17.48 Investment Company Act of 1940**

The Company is not, and after giving effect to the transactions contemplated hereby, will not be, subject to registration as an “investment company” or “controlled” by a company subject to registration as an “investment company,” within the meaning of the United States Investment Company Act of 1940, as amended.

#### **17.49 Margin Regulations**

The Company is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying any “margin stock” (as defined in Regulation U of the Board of Governors of the Federal Reserve System of the United States) or to extend credit to others for such purpose and no part of the proceeds of the Cost Overrun Loan will be used for the purpose whether immediate, incidental or ultimate, of buying or carrying any “margin stock” (as defined in Regulation U of the Board of Governors of the Federal Reserve System of the United States) or to extend credit to others for such purpose. No part of the proceeds of the Cost Overrun Loan will be used, whether directly or indirectly and whether immediately, incidentally or ultimately, for any purpose which entails a violation of or which is inconsistent with Regulation G, T, U or X promulgated by the Board (12 C.F.R. Sections 207, 220, 221 and 224, respectively).

#### **17.50 Use of Proceeds**

The proceeds of all Utilisations have been used in accordance with the terms and conditions of this Agreement and all applicable COF Finance Documents.

### **17.51 Ownership**

No person has any right to call for the issue or transfer of any share capital or loan stock in the Company, other than in accordance with the Security Documents.

### **17.52 Times when representations made**

- (A) All the representations and warranties in this Clause 17 are made by the Company on the date of this Agreement.
- (B) The Repeating Representations are deemed to be made to the COF Lender by reference to the facts and circumstances then existing on the COF Transfer Date notwithstanding any investigation made at any time by or on behalf of the COF Lender.

## **18. UNDERTAKINGS**

### **18.1 Security Documents**

As security for the due and punctual payment of all of the Obligations, the Company shall grant, or cause to be granted, on or before the date required in accordance with this Agreement, a continuing security interest and legal, valid and perfected Encumbrances in favour of the relevant Collateral Agent over all of the Collateral, and in furtherance thereof shall deliver or cause to be delivered to the relevant Collateral Agent, for the benefit of the COF Lender, in form and substance satisfactory to the COF Lender's legal counsel, acting reasonably:

- (A) the Security Documents;
- (B) the Intercreditor Agreement; and
- (C) any Subordination Agreement to the extent that any such subordination agreement relates to this Agreement.

### **18.2 Further Assurances – Security**

The Company shall take, or cause to be taken, such action and execute and deliver or cause to be executed and delivered to the Collateral Agents such agreements, documents and instruments as the Administrative Agent or the Collateral Agents (acting at the direction of the Intercreditor Agent, acting in accordance with the Intercreditor Agreement) shall reasonably request pursuant to Article IV of the Collateral Agency, Accounts and Security Agreement.

### **18.3 Security Effective Notwithstanding Date of the Cost Overrun Loan**

The Security shall be effective and shall continue to secure the secured liabilities and the undertakings in this Agreement and the other COF Finance Documents with respect thereto shall be continuing, whether the monies hereby or thereby secured or any part thereof shall be advanced before or after or at the same time as the creation of any such Security or before or after or upon the date of execution of this Agreement. The secured liabilities cover the obligations and liabilities of the Obligors under this Agreement. The Security shall not be affected by any payments under this Agreement or any of the other COF Finance Documents, but shall constitute continuing security

interests to and in favour of the applicable Collateral Agent for the benefit of the COF Lender from time to time.

#### **18.4 No Merger**

The Security shall not merge in any other security interests. No judgment obtained by or on behalf of the COF Lender shall in any way affect any of the provisions of this Agreement, the other COF Finance Documents or the Security. For greater certainty, no judgment obtained by or on behalf of the COF Lender shall in any way affect the obligation of the Company to pay interest or to pay other amounts at the rates, times and in the manner provided in this Agreement.

#### **18.5 Affirmative Covenants**

The Company shall:

- (A) duly and punctually pay the Obligations at the times and places and in the manner required by the terms of the COF Finance Documents;
- (B) maintain its corporate existence; keep proper books of account and records; maintain its good standing status (if applicable) at all times in all jurisdictions where it carries on business; and operate its business and construct and operate the Project in accordance with Good Industry Practice and in compliance, with the Mine Plan, with the Construction Plan, Budget and Schedule, (in all material respects) with Applicable Law (but not including Sanctions, Anti-Corruption Laws or AML Legislation, which are discussed in clause 18.5(S), below), (in all material respects) with the Project Authorizations, (in all material respects) with the Other Rights and (in all material respects) the Material Project Documents;
- (C) and shall procure that Landco shall (to the extent applicable), except as otherwise permitted by the Senior CTA, maintain the Project Real Property in good standing, perform or cause to be performed all required assessment work thereon, paying or causing to be paid all concession, permit and license maintenances fees in respect thereof, paying or causing to be paid all rents and other payments in respect of leased properties forming a part thereof and otherwise maintaining the Project Real Property in compliance, in all material respects, with Applicable Law and Good Industry Practice, except where the failure to make such payment (or cause such payment to be made) or to so own or maintain such Project Real Property would not reasonably be expected to materially and adversely affect the ownership, operation or safety of the Project;
- (D) by the date which is 12 months prior to the end of the eighth year of the Mine Plan, have acquired (or, to the extent acquired in accordance with clause 9.1(gg) of the Senior CTA, procure that Landco has acquired) right, title or interest in all real property, mineral, surface interests, legal reserves and ancillary rights (including rights of access) necessary for the development and mining operations of the Project, in accordance with the Mine Plan then in effect;
- (E) subject to applicable health and safety procedures maintained by the Company in accordance with Good Industry Practice and the Environmental and Social Requirements:

- (1) prior to the Project Completion Date, semi-annually and, on and after the Project Completion Date, once annually, in each case, during its business hours and upon reasonable prior written notice from the COF Lender; and
- (2) at all times and without notice if:
  - (a) an Event of Default shall have occurred and be continuing; or
  - (b) an Emergency Event shall have occurred and be continuing,

permit representatives from the COF Lender (including its consultants and/or assignees), at the cost and expense of the Company, to enter into or onto its property, to conduct inspections and testing, to inspect any of the Collateral and to examine its financial books, accounts and records and to discuss its financial condition with its senior officers and its auditors upon reasonable advance notice in writing and in each case during normal business hours, in a manner that does not unreasonably disrupt the operation of the Project, provided that the COF Lender shall coordinate its visits to the Project site to the extent reasonably practicable to do so.
- (F) keep insured with financially sound and reputable insurance and reinsurance companies all of the Collateral (including the Project Property) in amounts and against losses or damages on a basis consistent with Good Industry Practice, Applicable Law, and as set forth in, and substantially in accordance with, Schedule O (*Insurance Policies*) of the Senior CTA and cause:
  - (1) the policies of insurance referred to above to contain endorsements for the benefit of the COF Lender substantially in the form set out in Schedule O (*Insurance Policies*) of the Senior CTA;
  - (2) the policies of reinsurance to be assigned to the applicable Offshore Collateral Agent for the benefit of the COF Lender and to use reasonable efforts to cause each participating reinsurer to acknowledge such assignment, all in a form acceptable to the Administrative Agent acting reasonably, and include a provision that such policies will not be cancelled without thirty (30) days' prior written notice being given to the Administrative Agent by the issuers thereof or be amended in any manner which is prejudicial to the COF Lender;
  - (3) the Collateral Agents and the COF Lender to be named as an additional insured with respect to public liability insurance; and
  - (4) the Onshore Collateral Agent to be named as loss payee of all indemnification proceeds under all insurance policies (other than those insurance policies covering liabilities to third parties, that are payable directly to such third parties);
- (G) provide the COF Lender as soon as reasonably practicable with such evidence of insurance as the COF Lender may from time to time reasonably require;
- (H) subject to Clause (S), obtain, as and when required, and preserve, maintain, and comply with, all Material Project Authorizations which are required to permit the Company to:
  - (1) build, develop and operate the Project as contemplated by the Mine Plan, the Construction Plan, Budget and Schedule, and carry out the Business; and

- (2) perform its obligations under the COF Finance Documents to which it is a party;
- (I) in all material respects, timely file, or cause to be timely filed, all Tax Returns required to be filed by it and pay, or cause to be paid, all Taxes due and payable by it, whether shown to be due and payable on such Tax Returns or on any assessment lawfully received by it or otherwise, except to the extent any such Taxes are being Contested, unless payment any such Tax that is being Contested is required under Applicable Law;
- (J) comply with Schedule Q (*Environmental and Social Rider*) of the Senior CTA and shall promptly deliver or furnish, or cause to be delivered or furnished, to the COF Lender, copies of all documents, reports and other evidence that it provides in connection with Schedule Q (*Environmental and Social Rider*) of the Senior CTA;
- (K) [Reserved];
- (L) [Reserved];
- (M) (i) ensure that the only mining activities taking place on the Project Real Property are those under the control and direction of the Company in furtherance of the Project and (ii) build, develop and operate the Project in compliance with the requirements of any Environmental License, Order or other Authorization in respect of the Project;
- (N) warrant and defend the right, title and interest of the Company in and to any of the Collateral, and every part thereof, against the claims of any Person, subject only to Permitted Encumbrances;
- (O) cause the design, construction, completion and operation of the Project (including any work not currently contemplated by the Mine Plan but approved in accordance with this Agreement) to be carried out and completed with diligence and continuity and in all material respects in accordance with Applicable Law, the Environmental and Social Requirements, Environmental Licenses, the plans and specifications set forth in the Development Plan, the Construction Plan, Budget and Schedule and the Good Industry Practice;
- (P) provide the COF Lender with evidence satisfactory to it that the financial terms and conditions of the Utilisation are duly registered, on the terms provided by applicable Brazilian regulations, with the Registry of Financial Operations module of the Electronic Declaratory Registry of the Central Bank of Brazil (*ROF – Registro de Operações Financeiras*) to ensure the Company's ability to remit funds to and from Brazil for receipt and payment of amounts under the Utilisation;
- (Q) obtain, and provide evidence reasonably satisfactory to the COF Lender of, the registration of the schedule of payment for the Utilisation with the Central Bank of Brazil for the purpose of registering the Cost Overrun Loan promptly after the date of the Utilisation, but in no event later than 30 days after the date of the Utilisation;
- (R) maintain committed power supply arrangements, at all times, in relation to the necessary power supply required at that time for the Project to achieve Project Completion and to ensure ongoing compliance with the Mine Plan;

- (S) maintain all of its ownership, lease, use, license and other interests in the Project assets as are necessary for it to be able to operate the Project in accordance with Good Industry Practice;
- (T) (i) comply with all applicable Sanctions, Anti-Corruption Laws, and AML Legislation; and (ii) continue to implement and enforce policies and procedures designed to promote and achieve compliance with applicable Sanctions, Anti-Corruption Laws, and AML Legislation;
- (U) [reserved];
- (V) use the proceeds of the Cost Overrun Loan solely for the purpose set out in this Agreement;
- (W) shall at all times following the Project Completion Date, be a party as a seller to the Glencore Offtake Agreement which shall (x) provide for the annual sale of not less than 100% of the Ferronickel and (y) have a tenor through the later of the Final Maturity Date under the ECA Facility Agreements and the Commercial Facility Agreement;
- (X) [reserved];
- (Y) [reserved];
- (Z) [reserved];
- (AA) on or before the date that falls sixty (60) days after the Effective Date, deliver or cause to be delivered to the COF Lender, in each case in form and substance satisfactory to Senior Lenders' counsel, acting reasonably, the Brazilian Security Document;
- (BB) procure, at its own cost, that any Security conferred or to be conferred by it under any Security Document is registered and maintained as a first priority interest with the relevant authorities within the period prescribed by Applicable Laws and is maintained and perfected with the relevant authorities, and take all actions and sign all documents required to create, perfect and maintain the security interest as a first priority lien in favour of the applicable Collateral Agent under each of the Security Documents in full force and effect, perfected and enforceable in accordance with its terms, in accordance with the requirements described under each Security Document;

- (CC) comply with section 9.1(cc) (Affirmative Covenants) of the Senior CTA;
- (DD) grant to the Secured Parties and the COF Lender, no later than thirty (30) days from the acquisition of any ownership title over any Project Real Property by the Company (or to the extent acquired in accordance with clause 9.1(gg) of the Senior CTA, Landco), a fiduciary interest (*alienação fiduciária em garantia*) over such acquired Project Real Property by means of a fiduciary assignment over real estate agreement;
- (EE) comply with section 9.1(ee) (Affirmative Covenants) of the Senior CTA;
- (FF) shall at all times maintain all Minerals and other minerals forming part of the Collateral that are to be stockpiled, stored, warehoused or otherwise kept off the Project Real Property at the locations identified in Schedule W (*Inventory Stockpiles*) of the Senior CTA;
- (GG) if at any time the Company seeks to acquire ownership of any Project Real Property by way of Landco, the Company shall, (i) prior to any such acquisition, deliver to the COF Lender a detailed land acquisition plan, which shall include any information requested by the COF Lender pursuant to Section 9.11 of the Senior CTA, and (ii) within a reasonable period of time to be agreed with the COF Lender, cause a security interest over Landco and its assets to be granted for the benefit of the Secured Parties and the COF Lender, in each case in form and substance reasonably satisfactory to the COF Lender; and
- (HH) comply with Section 9.1(hh) (Affirmative Covenants) of the Senior CTA and deliver or furnish, or cause to be delivered or furnished, to the COF Lender, copies of all Material Project Documents or amendments of Material Project Documents that it provides in connection with that section.

#### 18.6 Senior CTA

The Company shall promptly deliver or furnish, or cause to be delivered or furnished, to the COF Lender, copies of all documents, reports and other evidence that it provides in connection with Clause 9.2 (*Financial Covenants*) of the Senior CTA.

#### 18.7 Notifications to the COF Lender

- (A) The Company shall promptly notify the COF Lender (but in any event no later than 3 days from the Company's discovery thereof) of any Default or Event of Default upon becoming aware of its occurrence.
- (B) The Company shall promptly deliver or furnish, or cause to be delivered or furnished, to the COF Lender, copies of any notifications that it delivers or provides to the Administrative Agent or Senior Lenders pursuant to Clause 9.3 (*Notifications to the Senior Lenders*), Section 9.4 (*Other Reports; Certain Direct Agreements*), Section 9.5 (*Project Reporting – Construction Plan, Budget and Schedule, Material Project Documents, Material Project Authorizations and Mine Plan*) and Section 9.13 (*Post-Effective Date Covenants*) of the Senior CTA.

#### 18.8 Base Case Financial Model

The Company shall promptly deliver or furnish, or cause to be delivered or furnished,

to the COF Lender a copy or copies of any updates to the Financial Model that it provides pursuant to Section 9.6 (*Base Case Financial Model*) of the Senior CTA.

#### **18.9 Quarterly Financial Reporting**

- (A) The Company shall provide to the Administrative Agent for each bank account of the Company access to the relevant bank statements via the relevant bank's online service.
- (B) As soon as available and in any event within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, the Company shall deliver to the COF Lender:
  - (1) a copy of each Obligor's quarterly unaudited financial statements for such Fiscal Quarter;
  - (2) a copy of each Compliance Certificate that it delivers pursuant to Clause 9.7(b)(ii) (*Quarterly Financial Reporting*) of the Senior CTA; and
  - (3) a description of the material variances for the currently applicable Construction Plan, Budget and Schedule or, as the case may be, the Annual Budget and Forecast Report and the Annual Operations Report.

#### **18.10 Annual Financial Reporting**

- (A) As soon as available and in any event within 90 days after the end of each Fiscal Year, the Company shall deliver to the COF Lender:
  - (1) a copy of the Company's and each other Obligor's audited annual financial statements for such Fiscal Year; and
  - (2) a copy of each Compliance Certificate that it delivers pursuant to Clause 9.8(a)(ii) (*Annual Financial Reporting*) of the Senior CTA.
- (B) On or prior to the date that is forty-five (45) days prior to the Commercial Operations Date, and no later than December 15 of each calendar year thereafter, the Company shall deliver to the COF Lender (i) an Annual Budget and Forecast Report in respect of the upcoming calendar year and (ii) a copy of the then-current Base Case Financial Model; provided, however, that if the content of such report is dependent on information to be provided by third parties and such third parties have not provided such information within a reasonable period prior to December 15, the Company shall use its commercially reasonable efforts to provide such report as soon as possible after December 15, but shall, in any event, provide such report by December 31. Each Annual Budget and Forecast Report shall be accompanied by the Officer's Certificate provided by the Company in accordance with the Senior CTA stating that the budget is a reasonable estimate for the period covered thereby and is in compliance with the requirements of this Clause 18.13(B).
- (C) No later than thirty (30) days after the receipt of any Annual Budget and Forecast Report, the COF Lender (acting reasonably and in consultation with the Independent Technical Consultant) shall approve the amount of Operating Costs and Capital Expenditures set forth in such Annual Budget and Forecast Report or shall advise the Company of any material inconsistencies requiring

revision in accordance with the Base Case Financial Model and the Mine Plan that it has previously approved.

- (D) If, on the first day of the relevant calendar year, the proposed amount of Operating Costs and Capital Expenditures has not been approved pursuant to Clause 18.13(B), the then-current amount of Operating Costs and Capital Expenditures shall remain in effect until the parties can reach an agreement with respect to the amount of Operating Costs and Capital Expenditures for such year.

#### **18.11 Environmental and Social Rider**

The Company shall act in accordance with Schedule Q (*Environmental and Social Rider*) of the Senior CTA. The Company shall promptly deliver or furnish, or cause to be delivered or furnished, to the COF Lender, copies of all documents, reports and other evidence that it provides in connection with Schedule Q (*Environmental and Social Rider*) of the Senior CTA.

#### **18.12 Changes to Accounting Policies**

If there is any material change in a period to the accounting policies, practices and calculation methods used by the Company in preparing its Financial Statements or components thereof as compared to any previous period, the Company shall provide the COF Lender reasonable advance notice of the proposed material change, including all information which the COF Lender may reasonably require relating to the impact of any such material change on the comparability of the reports provided to the COF Lender after any such material change to previous reports. Until the COF Lender has approved such material change in writing, the Company shall continue to prepare and provide any reports to the COF Lender hereunder in accordance with the accounting policies, practices and calculation methods in effect prior to such material change.

#### **18.13 Know Your Customer Documentation**

- (A) The Company shall promptly, upon the request of the COF Lender, supply to the COF Lender any documentation or evidence that is reasonably required by the COF Lender to enable the COF Lender to:
  - (1) carry out and be satisfied that it has complied with all necessary “know your customer” requirements that the COF Lender is obliged to carry out (i) under all Applicable Laws (including AML Legislation and the USA Patriot Act) contemplated under this Agreement and (ii) under any other requirements and guidelines applicable to the COF Lender as may be set out by the governing board or Governmental Body having jurisdiction over the COF Lender from time to time; and
  - (2) comply with its obligations under all Applicable Laws to prevent money laundering and corruption and to conduct ongoing monitoring of the business relationship with the Company.
- (B) Upon request, the Company will promptly notify the COF Lender of any changes in any information supplied by it relating to any matter referred to in paragraph (a) above such as:
  - (1) a change in the legal or beneficial ownership of 20% or more of the Company's

issued share capital, as well as information about a Person acquiring a legal or beneficial interest in 20% or more of the Company's issued share capital; and

- (2) a change in the nature of the Company's business from the date of this Agreement, as well as information about the Company starting or ceasing business operations in a country other than Brazil.

#### **18.14 Negative Covenants**

(A) The Company shall not:

- (1) (A) use, or authorize the use of, any corporate funds or the proceeds of the Cost Overrun Loan, directly or indirectly, for any Prohibited Payment or Prohibited Practice; (B) use any part of the Cost Overrun Loan proceeds, directly or indirectly, to fund or facilitate any activities or business of, with or involving any Sanctions Target or in any other manner that would constitute or give rise to a violation of Sanctions by any Person, including the COF Lender; or (C) violate any applicable AML Legislation, Anti-Corruption Laws or Sanctions;
- (2) dispose of all or any part of the Company's present or future assets or the Project Property including any portion of any mining concessions (or other mineral interest) or the Collateral, except pursuant to a Permitted Asset Disposition;
- (3) make any payment of royalties in respect of Minerals from the Project Real Property other than the amounts required under the Royalty Agreement or as required by Applicable Laws, or enter into any royalty, stream financing or similar agreement with any other Person in relation to the Project Real Property and the Royalty Agreement; or
- (4) create, incur, assume or suffer to exist any Encumbrance upon all or any part of the Collateral, whether now owned or hereafter acquired, other than Permitted Encumbrances.

(B) The Company shall not be entitled to make a Restricted Payment unless:

- (1) the first scheduled Repayment Installment has been paid (or is being paid on the date of the relevant Restricted Payment);
- (2) the Project Completion Date has occurred;
- (3) no Default or Event of Default under this Agreement has occurred and is continuing and no Default or Event of Default would result from the proposed Restricted Payment;
- (4) the Debt Service Reserve Amount on deposit in the Debt Service Reserve Account is at least equal to the Required Debt Service Reserve Amount and any cash sweep payment required pursuant to Section 3.4 of the Senior CTA and relevant to that period is made prior to the Restricted Payment;
- (5) the Company has complied with its obligations under Sections 3.3, 3.4 and 3.5 of the Senior CTA in advance of, or simultaneously with the making of the relevant Restricted Payment or transfer in accordance with the Cash Flow

Waterfall;

(6) the Company certifies (and such certification is confirmed promptly by the Senior Lenders) that:

- (a) on the relevant Repayment Date, the Historic Debt Service Cover Ratio for the twelve-month period immediately prior to the date of the Restricted Payment is not less than 1.40:1;
- (b) the Loan Life Cover Ratio for the period beginning on the day after the date of the Restricted Payment until the Final Maturity Date under the ECA Facility Agreements and the Commercial Facility Agreement is not less than 1.50:1;
- (c) Project Life Cover Ratio for the period beginning on the day after the date of the Restricted Payment until the Project Termination Date is not less than 1.85:1; and
- (d) the Projected Debt Service Cover Ratio for the twelve-month period immediately following the date of the Restricted Payment is not less than 1.50:1.

For the avoidance of doubt, none of the foregoing ratios shall be subject to remedy by the making of additional equity contributions or any other funding from any other Obligor or Affiliate of the Company.

- (7) The proposed date of such Restricted Payment is at least thirty (30) days after a Repayment Date.
- (8) Immediately after giving effect to such Restricted Payment, the credit balance in the Offshore Collateral Accounts (other than the amounts on deposit in the Debt Service Reserve Account) and the Onshore Collateral Accounts will not be less than the aggregate of anticipated Operating Costs based on the then-current Annual Budget and Forecast Report for the next 45 days.
- (C) The Company shall not (i) except for the Finance Documents, enter into any agreement or arrangement or take any action which restricts or purports to restrict the ability of the Company, the Company's shareholders or any of their Affiliates to pay dividends, or make any other distributions to, or repay Debt, in each case, owing to the Company, the Company's shareholders or any of their Affiliates, or (ii) enter into any agreement or arrangement or take any action which restricts or purports to restrict the ability of the Company or any of its Affiliates to deliver Minerals or perform its other obligations under the Finance Documents, the COF Finance Documents and the Glencore Offtake Agreement.
- (D) The Company shall not create, incur, assume, or otherwise become directly or indirectly liable upon or in respect of, or suffer to exist, any Debt other than Permitted Debt.
- (E) The Company shall not enter into any hedge instrument or incur any hedge obligations unless such hedge instrument is, and such obligations are, pursuant to a Permitted Hedge Agreement.

- (F) The Company shall not change its jurisdiction of incorporation or any material respect of the nature of its business or operations from the Business, or engage directly or indirectly in any material business activity, or purchase or otherwise acquire any material property, in either case, not related to or in furtherance of the conduct of the Business, or as reasonably required to perform its obligations under the Finance Documents and the COF Finance Documents.
- (G) The Company shall not have any material liabilities other than pursuant to the Transaction Documents, other Project Documents or Permitted Debt.
- (H) The Company shall not issue any guarantees or indemnities, other than pursuant to the Royalty Agreement, by the endorsement of negotiable instruments for deposit or collection (or similar) in the ordinary course of business, guarantees of obligations of employees, guarantees of obligations of suppliers in the ordinary course of business and guarantees provided in connection with the granting of performance bonds in favour of contractors/government authorities in the ordinary course of business and the granting of any guarantees over Subordinated Intercompany Debt or as otherwise permitted pursuant to the Finance Documents.
- (I) [RESERVED].
- (J) The Company shall not:
  - (1) enter into any Additional Material Project Documents without the approval of the Majority Lenders and the COF Lender, such approval not to be unreasonably withheld; or
  - (2) amend in any material respect or waive any material provision of or suspend, terminate or assign or transfer or give notice of suspension, termination or assignment or transfer of:
    - (a) other than in relation to the Glencore Offtake Agreement, any Material Project Document without Majority Lender and COF Lender consent; provided that in all cases any amendments thereto shall be acceptable to the Independent Technical Consultant including in respect of the tests contained in the Project Completion Certificates; provided further that any termination of a Material Project Document shall not constitute a breach of this clause to the extent it is replaced in accordance with clause 11.1(s) of the Senior CTA;
    - (b) enter into any Change Order which, together with all other Change Orders entered into after the COF Financial Close, (x) gives rise to additional Project Costs in excess of an aggregate of US\$25,000,000, (y) amends, supplements or modifies in any material respect any provision of a Material Project Document relating to the payment of liquidated damages, warranties, liabilities, performance tests, amount or timing of posting or content of performance bonds or guarantees or the payment schedule, or (z) materially amends supplements or modifies the technical specifications of the Project, without Majority Lender consent;
    - (c) the Glencore Offtake Agreement without Majority Lender and COF

Lender consent; or

- (d) any convertible note instrument related to any Convertible Note without Majority Lender consent;
- (3) settle any dispute or claim under a Material Project Document or compromise or settle any liability, in either case that results in payments in excess of US\$3,000,000 becoming due from the Company without Majority Lender and COF Lender consent.
- (K) The Company shall not make any Capital Expenditures other than Permitted Capital Expenditures or incur additional expenditures in any Fiscal Year, in the aggregate, of more than 5% over the budgeted amounts set forth in the Operating Costs and Capital Expenditures section of the Annual Budget and Forecast Report approved pursuant to Clause 18.13(C) for such Fiscal Year with such allowable variances noted for the benefit of the Administrative Agent in the periodic reporting obligations in accordance with section 9.5(g) (*Monthly and Quarterly Operations Reports*) of the Senior CTA.
- (L) Subject to Clause 19.17(J), the Company shall not, directly or indirectly, enter into, or amend, any transaction or agreement with or for the benefit of any Affiliate of the Company (other than as listed on Schedule N (*Related Party Transactions*) of the Senior CTA or to the extent constituting a Permitted Asset Disposition) except in the ordinary course of business and upon terms and conditions at least as favourable to the Company as would be obtainable by the Company at the time in a comparable arm's-length transaction with a Person that is not an Affiliate of the Company.
- (M) The Company shall not transfer or assign any Debt owed to it or consent to the assignment of any Debt owed by it to any Obligor.
- (N) The Company shall not amend, revise, supplement or replace the Mine Plan or the Construction Plan, Budget and Schedule in any material respect without the prior written consent of the COF Lender, not to be unreasonably withheld, conditioned or delayed.
- (O) The Company shall not, other than as permitted under the Finance Documents, directly or indirectly purchase, acquire or lease any property from, or sell, transfer or otherwise Dispose of any property to, or otherwise deal or enter into any agreement with, any Related Party (other than an Obligor), unless such transaction is undertaken on fair and commercially reasonable terms and conditions no less favourable to the Company than would have been obtained in a comparable fair market transaction with a person who is not an affiliate of the Company.
- (P) The Company shall not enter into any transaction to change or reorganize its capital structure or materially amend its articles, by laws or any other corporate documents in a manner that prejudices the COF Lender.
- (Q) The Company shall not undertake or permit any amalgamation, merger, spin-off, consolidation, sale, reorganization, liquidation or dissolving or other fundamental corporate transaction.
- (R) The Company shall not establish or acquire any subsidiary without the prior

consent of the COF Lender (such consent not to be unreasonably withheld or delayed).

- (S) The Company shall not maintain any deposit or security accounts other than the accounts listed in Schedule I (*Accounts*) of the Collateral Agency, Accounts and Security Agreement.
- (T) The Company shall not take any action that would make it impractical or impossible for the Company to deliver Ferronickel at the time and in the quantities required pursuant to the Glencore Offtake Agreement.
- (U) The Company shall not allow, other than any Permitted Encumbrances, the creation or imposition of any Encumbrance on any property or assets of the Company.

## 19. **EVENTS OF DEFAULT**

The occurrence of any of the following events, including the lapse of any cure period (if any) set forth below, or the issuance of notice (if any) in respect thereof, shall constitute an “**Event of Default**” (save for Clause 19.28 (*Remedies*)).

### 19.1 **Non-payment**

If:

- (A) the Company fails to pay on or before the due date any amount due to the COF Lender; or
- (B) any Completion Guarantor fails to make a payment on or before its due date under the Completion Agreement,

unless, in each case, the failure to pay is caused by an administrative or technical error or a Disruption Event which is remedied within three Business Days.

### 19.2 **Completion Agreement**

Except as set forth in Clause 19.1(B) above, any Completion Guarantor shall default in the due performance or observance of any term, covenant or agreement contained in Article 5 of the Completion Agreement and such breach remains unremedied for a period of 30 days after the earlier of: (i) written notice by the Administrative Agent to such Completion Guarantor, and (ii) any of the Obligors' becoming aware of such breach.

### 19.3 **Breach of Obligations**

- (A) The Company shall default in any requirement of Section 9.2 of the Senior CTA, provided that no Event of Default will occur under this Clause 19.3(A) if within ten Business Days of the earlier of (i) the Administrative Agent giving notice of such failure to comply to the Company and (ii) the date on which the Company becomes aware of such failure to comply, any Obligor makes additional equity contributions, such that the ratios set out in Section 9.2 of the Senior CTA would have been met on the most recent Calculation Date had such additional equity contributions been made on the day immediately prior to such Calculation Date, provided further that a breach of Section 9.2 of the Senior CTA shall not be capable of remedy on more than two non-consecutive Calculation Dates, provided further than no Obligor shall be able to cure an Event of Default pursuant to this Clause 19.3(A) with equity contributions more than twice.
- (B) The Company shall default in the due performance or observance of any term, condition or provision of this Agreement not otherwise specified in this Clause 19 and, other than in the case of any breach of Clauses 18.5(T) (*Affirmative Covenants*), 18.7(A) (*Notifications to the COF Lender*) or 18.7(B) (*Notifications*) to the extent that a breach of Clause 18.7(B) relates to Section 9.3(b)(iii) of the Senior CTA (for which no cure period shall apply) or Clause 18.14(T) (Negative Covenants) (for which a 7 day cure period shall apply) and any breach of Clause 18.14 (Negative Covenants) (for which a 15 day cure period shall apply) other than Clauses 18.14(A), 18.14(B), 18.14(D), 18.14(E), 18.14(F), 18.14(G), 18.14(H), 18.14(K), 18.14(M), 18.14(P), 18.14(Q), or 18.14(R) (for which no cure period shall apply), such breach remains unremedied for a period of 20 days after the earlier of: (i) written notice by the COF Lender to the Company; and (ii) any of the Obligors' becoming aware of such breach, or if the default is not capable of being cured within 20 days and the Company is diligently pursuing a cure, within a further 10 days.

#### **19.4 Misrepresentation**

The Company makes any representation or warranty under any COF Finance Document, or in any certificate, Financial Statement or other document furnished to the COF Lender, to which it is a party which is incorrect or incomplete when made or deemed to be made (except to the extent any such representation or warranty expressly relates to an earlier date, and in such case, shall be true and correct on and as of such earlier date) or, to the extent such representation or warranty is not already qualified by materiality, such representation or warrant is incorrect or incomplete in any material respect when made or deemed to be made and in each case the circumstances so misrepresented are not corrected within 30 days after notice from the COF Lender to the Company, specifying such breach and requiring the underlying circumstances to be rectified.

#### **19.5 Insolvency**

The Company admits in writing its inability, or fails, to pay its material debts generally as they become due.

#### **19.6 Cross-Default**

The Company (i) fails to make any payment when such payment is due and payable to any Person in relation to any Debt (other than Debt incurred under the COF Finance Documents, the Senior Finance Documents or the Royalty Agreement) having a principal amount in excess of the applicable Threshold Amount, and any applicable

grace period in relation thereto as provided for under the applicable instrument or agreement evidencing such Debt has expired (without giving effect to any waivers, amendments, modifications or extensions thereunder); or (ii) defaults in the observance or performance of any other material agreement or condition in relation to any such Debt or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs or condition exists, the effect of which default or other condition, if not remedied within any applicable grace period, would be to cause, or to permit the holder of such Debt to declare such Debt to become due prior to its stated maturity date.

#### **19.7 Insolvency Proceedings**

The Company shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization, insolvency or other relief under any bankruptcy, insolvency, receivership or similar law, or admits in writing that it is unable to pay its debts as they become due, or generally fails to pay its debts as they become due, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in Clause 19.8 below, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, intervenor, sequestrator, conservator or similar official, or liquidator of itself or of all or a substantial part of its assets, (iv) file an answer admitting the material allegations of, or consents to, or defaults in answering, a petition filed against it in any bankruptcy, reorganization or insolvency proceeding where such action or failure to act will result in a determination of bankruptcy or insolvency against it, (v) make a general assignment for the benefit of creditors, (vi) take any corporate action to authorize any of the foregoing, (vii) take any step to implement under Applicable Law a moratorium, composition, assignment or similar arrangement with any creditors, or (viii) take any action for the purpose of effecting any of the foregoing.

#### **19.8 Involuntary Proceedings**

An involuntary proceeding shall be commenced or involuntary petition shall be filed in any court of competent jurisdiction or by or before any government or governmental agency of competent jurisdiction, seeking (i) liquidation, reorganization, dissolution, winding up, insolvency or other relief under any bankruptcy, insolvency, receivership, arrangement with creditors, a composition or similar law in respect of the Company, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Company and, in any such case, such proceeding or petition shall continue undismissed and unstayed (x) in the case of proceedings in respect of an amount up to one million Dollars (\$1,000,000), 30 days and (y) in the case of proceedings in respect of an amount in excess of one million Dollars (\$1,000,000) if the Company posts a judicial deposit (*depósito elisivo*) within such procedure in accordance with the applicable legal term under Brazilian Law No. 11.101 of February 9, 2005, as amended or otherwise causes such proceeding to be stayed or dismissed, no Event of Default shall be deemed to have occurred during the applicable statutory period of ten (10) days.

#### **19.9 Winding Up**

An order is made or a resolution is passed for the winding up, liquidation or dissolution of the Company.

#### **19.10 Events of Default**

The occurrence of:

- (A) any "Event of Default" as defined in the Royalty Agreement or the Senior CTA, without giving effect to any amendments or waivers from the Royalty Holder or the Senior Lenders (other than amendments and waivers permitted pursuant to the Intercreditor Agreement);
- (B) any Event of Default, as set forth under any Facility Agreement; or
- (C) any "Completion Default" as defined in the Completion Agreement.

#### **19.11 Repudiation**

Any COF Finance Document is repudiated, contested or disaffirmed by the Company in whole or in part, ceases to be in full force and effect, or is invalidated, becomes unlawful, or rendered unenforceable by any act, regulation or governmental action or is determined to be invalid or unenforceable by a court or other judicial entity or if the Company has ceased to perform its obligations under any COF Finance Document and such repudiation is not waived or remedied within 45 days of such action or not cured within 60 days from the date of the entry of such judgement.

#### **19.12 Final Judgment**

An adverse final judgment, order, writ of execution, garnishment, attachment, arbitral award or similar process that is not capable of further appeal, for an amount in excess of the applicable Threshold Amount, is issued or levied against the Company or any of the Collateral; provided that to the extent that any such action or process is appealable or contestable, such judgment, order, writ of execution, garnishment, attachment, arbitral award or similar process remains unpaid, unstayed on appeal, undischarged, unbonded or undismissed for a period of fifteen (15) days after the right of appeal or contest arises.

#### **19.13 Collateral**

All or any portion of the Collateral is attached, sold, transferred, Encumbered or assigned by a person other than the COF Lender or the Secured Parties or without the consent of COF Lender (other than pursuant to a Permitted Asset Disposition or Permitted Encumbrance, as applicable) and in the case of such attachment shall remain unlifted, unstayed or undischarged for a period of 60 days.

#### **19.14 Appropriation**

An Encumbrancer or any other Person, other than the COF Lender or the Secured Parties, legally takes possession of any portion of the Collateral by appointment of a receiver, receiver and manager, or otherwise.

#### **19.15 Abandonment**

The Company ceases or takes any action to:

- (A) abandon all or any material portion of the Collateral or the Project;
- (B) put the Project on care and maintenance; or

- (C) otherwise suspends or fails to maintain development, construction or mining or processing operations at the Project in each case, as each such activity is applicable to the stage of development of the Project (which, prior to the Project Completion Date, means the development and construction of the Project and after the achievement of the Project Completion Date and the conduct of mining and processing operations to produce for export and sale of ferronickel and other Minerals in accordance with the Mine Plan);

provided that no Event of Default shall be deemed to have occurred under Clause 19.15(C) above if: (A) such suspension is for sound operational reasons in accordance with Good Industry Practice, (B) such suspension would not reasonably be expected to last more than 45 days, (C) the Company has notified the COF Lender of such suspension and is otherwise in compliance with Section 9.3(e) (*Notifications to the Senior Lenders*) of the Senior CTA and Clause 18.18 (*Notifications to the COF Lender and the Senior Lenders*) of this Agreement (an “**Emergency Event**”) and (D) the Project and its operations are restored and operating substantially as at the time prior to such suspension not later than 105 days after the commencement of such suspension.

#### **19.16 Authorisations**

The Company fails to obtain, or loses the right to, or benefit of, a Material Project Authorisation, or any Authorisation in respect of the transactions contemplated by the COF Finance Documents is modified in a manner adverse in a material respect to the Company or the COF Lender; provided that the foregoing shall not constitute the occurrence of an Event of Default if such circumstance is capable of being remedied and the Company is diligently pursuing and obtains a replacement of such Material Project Authorisation within 45 days after failing to obtain or losing the right to, or benefit of, a Material Project Authorisation.

#### **19.17 Change of Control**

A Change of Control occurs.

#### **19.18 Project Document Termination**

Any Material Project Party issues a notice of termination or otherwise notifies in writing its intent to terminate the Material Project Document to which it is a party; (ii) any Material Project Party repudiates the Material Project Document to which it is a party and disclaims any liability thereunder or evidences an intent to repudiate such Material Project Document or disclaim any liability thereunder; or (iii) a material default occurs and is continuing under any Material Project Document; provided, that, in respect of the Mining Concessions, no cure period shall apply, and provided further that, in the case of the other Material Project Documents, the foregoing shall not constitute the occurrence of an Event of Default if, in all cases, the Company is diligently pursuing and obtains a replacement of such Material Project Document on terms and conditions reasonably satisfactory to the COF Lender (acting in consultation with the Independent Technical Consultant) within 45 days after such material default, invalidity, illegality or other cessation to be in full force and effect, provided that such 45 day period shall only apply if in the reasonable judgment of the COF Lender, such Material Project Document is capable of being replaced.

#### **19.19 Compliance**

Any Obligor, or any director or officer of any Obligor, has breached, or, to the knowledge of the Company, is the subject of any investigation or proceeding relating to any violation of, any AML Legislation, any Anti-Corruption Laws or any Sanctions, or (ii) any employee or agent of any Obligor has breached or, to the knowledge of the Company, is the subject of any investigation or proceeding relating to any violation of, any AML Legislation, any Anti-Corruption Laws or any Sanctions.

#### **19.20 Expropriation**

The occurrence of an Expropriation Event.

#### **19.21 Cost-to-Complete Shortfall**

A Cost-to-Complete Certificate evidences:

- (A) a Cost-to-Complete Shortfall ; or
- (B) the Project is not capable of achieving Project Completion by the Project Completion Longstop Date.

#### **19.22 Project Completion**

Failure to achieve Project Completion by the Project Completion Longstop Date.

#### **19.23 Debt Service Reserve Account**

19.24 At any time following Project Completion but prior to the Senior Discharge Date (as defined in the Intercreditor Agreement), the Required Debt Service Reserve Amount shall fail to be on deposit in the Debt Service Reserve Account on two consecutive Calculation Dates.

#### **19.25 Restructuring**

The Company by reason of actual or anticipated financial difficulties, begins negotiations generally with its creditors for the rescheduling or restructuring of any of its indebtedness or any financial indebtedness of the Company is subject to a moratorium.

#### **19.26 EIA**

It is proven that the Company failed to conduct each EIA in accordance with the Environmental and Social Laws of Brazil.

#### **19.27 Security**

(i) Any Security Document, once executed and delivered, ceases at any time for any reason to provide the Security, rights, titles, interests, remedies, powers or privileges created thereby, (ii) any Security created in any portion of the collateral pledged pursuant to the Security Documents shall cease to be effective or fail to have the priority originally created under the Security Documents, (iii) the validity of the Security Documents or the applicability thereof to the obligations of the Company hereunder or any part thereof, shall be repudiated in writing by the Company, or (iv) COF Lender's security interest or other rights in any portion of the collateral pledged pursuant to the Security Documents shall terminate in any manner other than that contemplated by the

COF Finance Documents.

#### **19.28 Environmental Claim**

As set forth in Section 5 (*Events of Default and Remedies*) of Schedule Q (*Environmental and Social Rider*) of the Senior CTA.

#### **19.29 Remedies Upon Default**

Subject to the terms of the Intercreditor Agreement and, on and from the date of the Collateral Agency, Accounts and Security Agreement, the Collateral Agency, Accounts and Security Agreement, on and at any time after the occurrence of an Event of Default which is continuing the COF Lender may:

- (A) by notice to the Company:
  - (1) cancel the Commitment at which time it shall immediately be cancelled;
  - (2) declare that all or part of the Cost Overrun Loan, together with accrued interest (including capitalised interest), and all other amounts accrued or outstanding under the COF Finance Documents be immediately due and payable, at which time they shall become immediately due and payable; and/or
  - (3) declare that all or part of the Cost Overrun Loan be payable on demand, at which time they shall immediately become payable on demand by the COF Lender; and/or
- (B) exercise any or all of its rights, remedies, powers or discretions under the COF Finance Documents, including taking any lawful action in its sole discretion to enforce the security created pursuant to the Security Documents and to apply the proceeds thereof.

### **SECTION 7 CHANGES TO PARTIES**

#### **20. CHANGES TO THE COF LENDER**

##### **20.1 Assignments and transfers by the COF Lender**

- (A) Subject to this Clause 20, [redacted – confidential information]:
    - (1) [redacted – confidential information]; or
    - (2) [redacted – confidential information]:
      - (a) [redacted – confidential information]; or
      - (b) [redacted – confidential information],
- provided that:

- (i) [redacted – confidential information]:

- (A) [redacted – confidential information];

(B) [redacted – confidential information]; and

(C) [redacted – confidential information]; and

(ii) [redacted – confidential information].

and in so doing, may assign and/or transfer the relevant Notes and rights thereunder to that person (the "New Lender").

- (B) For the avoidance of doubt, in respect of any such assignment or transfer, the Company shall, at the Company's cost, execute such other documents as the Existing Lender may reasonably require in connection therewith to complete such assignment or transfer to the New Lender and, in the case of a transfer, the release of the Existing Lender from its obligations under the COF Finance Documents.

## 20.2 Notes

- (A) Upon the assignment by the COF Lender of all of its rights in accordance with Clause 20.1 (*Assignments and transfers by the COF Lender*), the Company shall, at the request of the assignee, execute and deliver to such assignee a duly authorised and executed new Note or an acknowledgment of debt by way of public deed granted before a Notary Public in the Federative Republic of Brazil, as permitted by applicable law, in an amount equal to the aggregate principal amount of the Cost Overrun Loan assigned to such assignee.
- (B) Payment of:
- (1) the principal amount of any Note or acknowledgment of debt, as applicable, shall *pro tanto* discharge the obligation of the Company to repay that portion of the Cost Overrun Loan to which such Note or acknowledgement of debt relates, and *vice versa*; and
  - (2) interest accrued on any Note or acknowledgment of debt, as applicable, shall *pro tanto* discharge the obligation of the Company to pay such amount of interest on that portion of the Cost Overrun Loan to which such Note or acknowledgement of debt relates, and *vice versa*.
- (C) Upon final and indefeasible payment in full of the sum represented by a Note or acknowledgment of debt (by way of remittance or otherwise), such Note shall be returned by the COF Lender or the relevant assignee, as applicable, to the Company or destroyed at the Company's direction, or such acknowledgment of debt shall be cancelled by way of a public deed of cancellation thereto.
- (D) The COF Lender shall not (i) charge, collect, enforce or otherwise seek to receive payment of any amounts under the Notes, or (ii) assign, transfer, novate or otherwise dispose of the Notes, in each case in any way that would contravene the provisions of this Clause 20.2 (*Notes*) or any other relevant provision of the COF Finance Documents. Any dispute involving this Agreement shall be deemed to correspondingly apply to the enforceability of the Notes and any decisions rendered by a relevant authority adjudicated to resolve such dispute shall be deemed to also correspondingly affect the Notes, to the extent permitted by Applicable Laws.

**21. CHANGES TO THE COMPANY**

**21.1 Assignments and transfers by the Company**

The Company may not assign any of its rights or transfer any of its rights or obligations under the COF Finance Documents.

**SECTION 8  
THE COF LENDER**

**22. CONDUCT OF BUSINESS BY THE COF LENDER**

No provision of this Agreement will:

- (A) interfere with the right of the COF Lender to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (B) oblige the COF Lender 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 the COF Lender to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

**SECTION 9  
ADMINISTRATION**

**23. PAYMENT MECHANICS**

**23.1 Payments to the COF Lender**

- (A) On each date on which the Company is required to make a payment under a COF Finance Document, the Company shall make the same available to the COF Lender (unless a contrary indication appears in a COF Finance Document) for value on the due date at the time and in such funds specified by the COF Lender 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 COF Lender, in each case, specifies.
- (C) This Clause is subject to the terms of the Notes.

**23.2 Distributions**

Subject to the Intercreditor Agreement, the COF Lender may (with the consent of the Company) apply any amount received by it in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Company under the COF Finance Documents or in or towards purchase of any amount of any currency to be so applied.

### 23.3 Partial payments

- (A) Subject to the Intercreditor Agreement, if the COF Lender receives a payment for application against amounts due in respect of any COF Finance Documents that is insufficient to discharge all the amounts then due and payable by the Company under the COF Finance Documents, the COF Lender shall apply that payment towards the obligations of the Company under those COF Finance Documents in the following order:
  - (1) **first**, in or towards payment of any Unpaid COF Overrun Amount;
  - (2) **second**, in or towards payment of any accrued interest, fee or commission due but unpaid under the COF Finance Documents;
  - (3) **third**, in or towards payment of any principal due but unpaid under the COF Finance Documents; and
  - (4) **fourth**, in or towards payment of any other sum due but unpaid under the COF Finance Documents.
- (B) The COF Lender may vary the order set out in paragraphs (A)(2) to (4) above.
- (C) Paragraphs (A) and (B) above will override any appropriation made by the Company.

### 23.4 Set-off by the Company

All payments to be made by the Company under the COF Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set off or counterclaim.

### 23.5 Business Days

Any payment under the COF 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).

### 23.6 Currency of account

- (A) Subject to paragraphs (B) and (C) below, US dollars is the currency of account and payment for any sum due from the Company under any COF Finance Document.
- (B) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (C) Any amount expressed to be payable in a currency other than US dollars shall be paid in that other currency.

### 23.7 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:

- (1) any reference in the COF Finance Documents to, and any obligations arising under the COF 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 COF Lender (after consultation with the Company); and
- (2) 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 COF Lender (acting reasonably).
- (B) If a change in any currency of a country occurs, this Agreement will, to the extent the COF Lender (acting reasonably and after consultation with the Company) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice and otherwise to reflect the change in currency.

#### **23.8 Disruption to Payment Systems etc.**

If either the COF Lender determines (in its discretion) that a Disruption Event has occurred or the COF Lender is notified by the Company that a Disruption Event has occurred:

- (A) the COF Lender may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the Cost Overrun Facility as the COF Lender may deem necessary in the circumstances;
- (B) the COF Lender shall not be obliged to consult with the Company in relation to any changes mentioned in paragraph (A) 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) any such changes agreed upon by the COF Lender and the Company 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 COF Finance Documents notwithstanding the provisions of Clause 29 (*Amendments and Waivers*); and
- (D) the COF Lender shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (save for negligence or fraud of the COF Lender) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 23.8.

#### **24. SET OFF**

Subject to the Intercreditor Agreement, the COF Lender may set off any matured obligation due from the Company under the COF Finance Documents against any matured obligation owed by the COF Lender to the Company, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the COF Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set off.

## 25. **NOTICES**

### 25.1 **Communications in writing**

Any communication to be made under or in connection with the COF Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### 25.2 **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 COF Finance Documents is:

- (A) in the case of the Company, that identified with its name below;
- (B) in the case of the COF Lender, that identified with its name below,

or, subject always to Clause 26.6 (*Callback Contacts*), any substitute address, fax number or department or officer as a Party may notify to the other Party, by not less than five Business Days' notice, if a change is made.

### 25.3 **Delivery**

- (A) Any communication or document made or delivered by one person to another under or in connection with the COF Finance Documents will only be effective:
  - (1) if by way of fax, when received in legible form; or
  - (2) 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 26.2 (*Addresses*), if addressed to that department or officer.
- (B) Any communication or document to be made or delivered to the COF Lender will be effective only when actually received by the COF Lender and then only if it is expressly marked for the attention of the department or officer identified with the COF Lender's signature below (or any substitute department or officer as the COF Lender shall specify for this purpose).
- (C) Any communication or document made or delivered to the Company in accordance with this Clause 26.3 will be deemed to have been made or delivered to the Company.
- (D) Any communication or document which becomes effective, in accordance with paragraphs (A) to (C) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### **25.4 Electronic communication**

- (A) Any communication to be made between the Parties under or in connection with the COF Finance Documents may be made by electronic mail or other electronic means (including by way of posting to a secure website) and if the Parties:
  - (1) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
  - (2) 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 such electronic communication as specified in paragraph (A) above to be made between the Parties may only be made in that way to the extent that the Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (C) Any such electronic communication as specified in paragraph (A) above made between the Parties will be effective only when actually received (or made available) in readable form.
- (D) Any electronic communication which becomes effective, in accordance with paragraph (C) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (E) Any reference in a COF Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 26.4.

#### **25.5 English language**

- (A) Any notice given under or in connection with any COF Finance Document must be in English.
- (B) All other documents provided under or in connection with any COF Finance Document must be
  - (1) in English; or
  - (2) if not in English, and if so required by the COF Lender, acting reasonably, 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, including any documents granted by means of a public deed under Brazilian law.

#### **25.6 Callback Contacts**

Notwithstanding any other provision of this Agreement, no notice, instruction or other communication relating to any change in any details of the Company or the COF Lender relating to payment (including identity of the such Person, receiving bank or

receiving account number, broker or broker account number), or in any details of such Person's callback contact, will be valid, and shall not be complied with by any Party unless:

- (A) written notice of the change is given in accordance with Clause 26.2 (*Addresses*);
- (B) the Person giving notice of the change is not a callback contact further to Clause 26.2(B) (*Addresses*); and
- (C) such instruction is confirmed verbally by telephone or voice over internet protocol call, and not by writing in any form, between the Company's callback contact and the COF Lender's callback contact using the relevant details for that callback contact in Clause 26.2(B) (*Addresses*).

## **26. CALCULATIONS AND CERTIFICATES**

### **26.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a COF Finance Document, the entries made in the accounts maintained by the COF Lender are *prima facie* evidence of the matters to which they relate.

### **26.2 Certificates and determinations**

Any certification or determination by the COF Lender of a rate or amount under any COF Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### **26.3 Day count convention**

Any interest, commission or fee accruing under a COF 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.

## **27. PARTIAL INVALIDITY**

If, at any time, any provision of a COF Finance Documents 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.

## **28. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, any right or remedy under a COF Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any COF Finance Document. No election to affirm any COF Finance Document 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 COF Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

**29. AMENDMENTS AND WAIVERS**

- (A) Any term of the COF Finance Documents may be amended or waived with the agreement of the COF Lender and the Company.
- (B) [redacted – confidential information].
- (C) [redacted – confidential information].

**30. CONFIDENTIALITY**

**30.1 Non-disclosure of Confidential Information**

A Party shall not disclose Confidential Information except:

- (A) if the disclosure is expressly permitted by this Agreement;
- (B) to its employees, agents, officers, directors, auditor, professional advisers, partners, consultants, joint venturers or sub-contractors ("Representatives"), or the Representative of an Affiliate or of the parties to the Senior Facilities, the Royalty Agreement, the Convertible Notes or any equity funding in relation to the Project, who require the information for the purposes of or related to such document, such funding or this Agreement, with the prior requirement that they keep the disclosed information confidential in accordance with this clause 19;
- (C) with the written consent of the Party who supplied the Confidential Information, which consent may be given or withheld in its absolute discretion;
- (D) if the Party, or an Affiliate of the Party, holding the Confidential Information is required to do so by Law, including by a recognised stock exchange, an Authority or in connection with legal proceedings relating to this Agreement; or
- (E) if disclosure is made on a confidential basis to:
  - (1) an actual or prospective transferee or assignee of the Party's rights and obligations under this Agreement; or
  - (2) an actual or prospective financier or acquirer of the Party or its Affiliates; or
  - (3) and any of their professional advisers; provided each recipient of Confidential Information agrees to keep the disclosed information confidential in accordance with this Clause 31.

**30.2 Disclosure by recipient of Confidential Information**

A Party disclosing Confidential Information as permitted by this Agreement shall ensure that persons receiving Confidential Information from it do not disclose the Confidential Information except as permitted by this Agreement.

**30.3 Return of Confidential Information**

A Party who has disclosed Confidential Information to a prospective transferee, assignee or financier as provided for by this Agreement shall obtain from that person

prior to disclosure an undertaking that, on the request of the disclosing Party, it will immediately deliver or re-deliver to that Party all documents or other materials containing or referring to the Confidential Information in its possession, power or control.

**30.4 Survival of termination**

This Clause 31 continues to bind a Person notwithstanding that such Person ceases to be a Party to this Agreement or this Agreement expires or is terminated for any reason, until the period that ends two years after the date of expiry or earlier termination (as applicable) of this Agreement.

**30.5 Announcements and press releases**

A Party shall not make press or other announcements or releases relating to this Agreement and the transactions the subject of this Agreement without the approval of the other Parties to the form and manner of the announcement or release, such approval not to be unreasonably withheld or delayed, unless and to the extent that the announcement or release is required to be made by the Party, or an Affiliate of the Party, by Law, including by a recognised stock exchange.

**31. COUNTERPARTS**

Each COF 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 COF Finance Document.

**SECTION 10  
GOVERNING LAW AND ENFORCEMENT**

**32. GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

**33. ARBITRATION**

**33.1 Arbitration**

Subject to Clause 33.4 (*Lender's option*) and subject to the terms of the Intercreditor Agreement, any dispute arising out of or in connection with this Agreement or any other COF Finance Document (including a dispute relating to the existence, validity or termination of this Agreement or any other COF Finance Document or any non-contractual obligation arising out of in connection with this Agreement or any other COF Finance Document) (a "**Dispute**") shall be referred to and finally resolved by arbitration under the Arbitration Rules of the London Court of International Arbitration (LCIA).

**33.2 Formation of arbitral tribunal, seat and language of arbitration**

(A) The arbitral tribunal shall consist of three arbitrators. The claimant(s), irrespective of number, shall nominate jointly one arbitrator; the respondent(s), irrespective of number, shall nominate jointly the second arbitrator, and a third

arbitrator (who shall act as Chairman) shall be appointed by the arbitrators nominated by the claimant(s) and respondent(s) or, in the absence of agreement on the third arbitrator within 15 days of the appointment of the second arbitrator, by the LCIA Court (as defined in the Rules).

- (B) The seat of arbitration shall be London, England.
- (C) The language of the arbitration shall be English.
- (D) The arbitration agreement set out in this Clause 33 (*Arbitration*) shall be governed by English law.

### **33.3 Recourse to courts**

For the purposes of arbitration pursuant to this Clause 33 (*Arbitration*), the Parties waive any right of application to determine a preliminary point of law or appeal on a point of law under Sections 45 and 69 of the Arbitration Act 1996.

### **33.4 Lender's option**

Before the COF Lender has filed a "Request for Arbitration" or "Response" in each case as defined in the Arbitration Rules of the LCIA (as the case may be), the COF Lender may by notice in writing to all other Parties require that all Disputes or a specific Dispute be heard by a court of law. If the COF Lender gives such notice, the Dispute to which such notice refers shall be determined in accordance with Clause 33.5 (*Jurisdiction of English Courts*).

### **33.5 Jurisdiction of English courts**

If the COF Lender issues a notice pursuant to Clause 33.4 (*Lender's option*), the provisions of this Clause 33.5 shall apply:

- (A) the courts of England have exclusive jurisdiction to settle any Dispute;
- (B) the Parties agree that the courts of England are the most appropriate and convenient courts to settle any Dispute and accordingly no Party will argue to the contrary; and
- (C) notwithstanding paragraph (A) above, the COF Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the COF Lender may take concurrent proceedings in any number of jurisdictions.

### **33.6 Service of process**

- (A) Without prejudice to any other mode of service allowed under any relevant law, the Company:
  - (1) irrevocably appoints Horizonte Minerals PLC whose registered office is at Rex House, 4-12 Regent Street, London SW1Y 4RG as its agent for service of process in relation to any proceedings before the English courts in connection with any COF Finance Document; and

- (2) agrees that failure by an agent for the service of process to notify the Company 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 Company must immediately (and in any event within 15 days of such event taking place) appoint another agent on terms acceptable to the COF Lender. Failing this, the COF Lender may appoint another agent for this purpose.

**34. WAIVER OF IMMUNITY**

- (A) The Company waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:
  - (1) the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and
  - (2) the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action in rem, for the arrest, detention or sale of any of its assets and revenues.
- (B) The Company agrees that in any Proceedings in England this waiver shall have the fullest scope permitted by the English State Immunity Act 1978 and that this waiver is intended to be irrevocable for the purposes of the English State Immunity Act 1978.

**This Agreement has been entered into on the date stated at the beginning of this Agreement**

## **SCHEDULE 1 : INITIAL CONDITIONS PRECEDENT**

### **1. CORPORATE DOCUMENTATION**

- (A) Certified copies of the constitutional documents (including any unanimous shareholder agreements or declarations, as applicable) of each Obligor, attached to an Officer's Certificate of each Obligor.
- (B) A copy of the resolutions of the board of directors and shareholders (as applicable) meeting of each Obligor approving the terms of, and the transactions contemplated by, the COF Finance Documents and resolving that it execute, deliver and perform the COF Finance Documents and authorising a specified person or persons to execute the COF Finance Documents on its behalf, attached to the Officer's Certificate of each Obligor.
- (C) Specimen signatures of each person from each Obligor authorised by the resolutions to sign the COF Finance Documents, a copy of the duly registered powers of attorney and any other notices or documents under or in connection with the COF Finance Documents, attached to the Officer's Certificate of each Obligor.
- (D) A certificate of each Obligor (signed by an authorised representative) confirming that (i) borrowing or guaranteeing or securing, as appropriate, the total commitments would not cause any borrowing, guarantee, security or similar limit binding on the relevant Obligor to be exceeded; (ii) each copy document relating to it specified in this section 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) all representations and warranties are true, accurate and complete; and (iv) no event has occurred and is continuing or would result from the COF Finance Documents as at the date of this Agreement which constitutes an Event of Default.
- (E) A certificate of status, compliance, good standing or like certificate with respect to each Obligor issued by the appropriate government official in the jurisdiction of its incorporation.

### **2. COF FINANCE DOCUMENTS AND SECURITY DOCUMENTS**

- 2.1 A copy of the Senior CTA certified as true and complete as at the date of this Agreement by the Company.
- 2.2 Duly executed original copies of each COF Finance Document.
- 2.3 Duly executed original copies of each Security Document (other than any deeds of accession to the Common Security Documents).
- 2.4 Evidence that no prior notice of any security interest has been received by any of the parties to the contractual arrangements and accounts which are the subject of the Security Documents, and that amounts payable in relation to such contractual arrangements shall be paid without set-off or counterclaim.
- 2.5 Evidence that no liens or encumbrances are registered against the Obligors (other than Permitted Encumbrances).

- 2.6 Evidence that all Perfection Requirements in respect of the Security Documents have been completed.

3. **ROYALTY AGREEMENT**

Duly executed certified copies of the Royalty Agreement.

4. **EQUITY INVESTMENT**

- (A) Duly executed certified copies of each document entered into in connection with the Equity Investment.
- (B) Evidence that all conditions precedent to the Equity Investment have been satisfied or waived.

5. **CONVERTIBLE NOTES**

- (A) Duly executed certified copies of each document entered into in connection with the Convertible Notes.
- (B) Evidence that all conditions precedent to the Convertible Notes have been satisfied or waived.
- (C) The Issuer has lent the proceeds of the Equity Investment and the Convertible Notes to the Company, and the Independent Technical Consultant has confirmed that the Company has spent 90 per cent. (90%) of such proceeds on Construction Costs.

6. **INTRA GROUP LOANS**

Duly executed certified copies of each Intra Group Loan Agreement.

7. **AUTHORISATIONS**

All material Authorisations required for the development and construction of the Project being in good standing.

8. **DUE DILIGENCE**

- (A) Evidence that the COF Lender has completed all technical, legal, market, tax and financial due diligence, and is satisfied with the results.
- (B) The COF Lender shall have received a copy of each of the following documents and reports delivered to the Administrative Agent in accordance with Schedule B (*Conditions Precedent*) to the Senior CTA (in each case on the basis that the COF Lender acknowledges that the reports will not be for its benefit, nor addressed to it, nor available for it to rely upon):

- (1) a copy of the engagement letter and a technical due diligence report from the Independent Technical Consultant;
- (2) a copy of the engagement letter from the Independent Insurance Consultant;
- (3) a copy of the documents set forth in Section 8 (Environmental and Social Conditions Precedent to Effective Date) of Schedule Q (Environmental and Social Rider from the Independent Environmental, Social, Health and Safety Consultant; and
- (4) a copy of the engagement letter and the financial model review report from the Independent Model Consultant.

9. **BASE CASE FINANCIAL MODEL, MINE PLAN, MODEL AUDIT REPORT AND BUDGETS**

A copy of all documents provided to the Administrative Agent under Schedule B (Conditions Precedent), Part II (Conditions Precedent to First Utilization), paragraphs 9.1, 9.2, 9.3, 9.4 and 9.5 (Base Case Financial Model, Mine Plan, Model Audit Report and Budgets) of the Senior CTA, including:

- (1) An electronic copy of the Base Case Financial Model updated to reflect any factual data known to be inaccurate or to correct any manifest error only, delivered no more than ninety (90) days and no less than thirty (30) days prior to the first Utilization (as defined in the Senior CTA) under the Senior CTA, certified by an authorized signatory of the Company as being a true and accurate copy of the original thereof, which demonstrates that from 31 March, 2025, on each Calculation Date until the Final Maturity Date:
  - (a) Loan Life Cover Ratio for the Senior Facilities to be greater than 1.80:1;
  - (b) minimum Projected Debt Service Cover Ratio for any 12-month period commencing on the Initial Repayment Date (as defined in the Senior CTA) and ending on the Final Maturity Date to be greater than 1.50:1; and
  - (c) Average Projected Debt Service Cover Ratio to be greater than 1.70:1 for the period beginning on the Initial Repayment Date (as defined in the Senior CTA) and ending on the Final Maturity Date.
- (2) The Construction Budget, Plan and Schedule, which shall be consistent with the General Work and Investment Plan and shall be delivered no more than ninety (90) days and no less than thirty (30) days prior to the first Utilization under the Senior CTA.
- (3) Mine Plan, which shall be in form and substance satisfactory to them, acting on the advice of the Independent Technical Consultant.
- (4) Confirmation from the Company that no material Construction Costs have been incurred to date in relation to the Project which are not included in the Base Case Financial Model.
- (5) Confirmation from the Company that sufficient funding has been made available in order to achieve Project Completion.

10. **COST-TO-COMPLETE SHORTFALL**

Evidence that:

- (1) the providers of the Senior Facilities have each received their credit approvals; and
- (2) once the Senior Facilities have reached financial close, there will be no Cost-to-Complete Shortfall.

11. **PROJECT ACCOUNTS**

Evidence that the Project Accounts have been opened with the applicable Account Banks.

12. **LEGAL OPINIONS**

- (A) A legal opinion of Freitas Ferraz Capuruço Braichi Riccio Advogados, legal advisers to the Company as to Brazilian law (including to confirm current status of land rights and existing mortgages thereon) addressed to the COF Lender, substantially in the form distributed to the COF Lender prior to signing this Agreement.
- (B) A legal opinion of Pinheiro Neto Advogados, legal advisers to the COF Lender as to Brazilian law addressed to the COF Lender, substantially in the form distributed to the COF Lender prior to signing this Agreement.
- (C) A legal opinion of Simmons & Simmons LLP, legal advisers to the COF Lender as to English law addressed to the COF Lender, substantially in the form distributed to the COF Lender prior to signing this Agreement.
- (D) A legal opinion of Norton Rose Fullbright LLP, legal advisers in England to the Company.
- (D) To the extent that such legal opinions relate to the Security Documents, the legal opinions to be provided to the Administrative Agent under: (i) Schedule B (*Conditions Precedent*), Part I (*Conditions Precedent to Effective Date*), paragraph 1 (*Legal Opinions*) of the Senior CTA; and (ii) Schedule B (*Conditions Precedent*), Part II (*Conditions Precedent to First Utilisation*), paragraph 8 (*Legal Opinions*) of the Senior CTA, in each case with reliance on each such legal opinion to be extended to the COF Lender.

13. **VERMELHO**

Duly executed original copy of the royalty agreement in respect of the Vermelho project (the “**Vermelho Royalty Agreement**”).

- (B) Final and complete agreed form drafts of each of the following Vermelho security documents:
  - (1) security documents in respect of the asset security as further described in Clause 13.1 (*Asset Security*) of the Vermelho Royalty Agreement;
  - (2) security documents in respect of the loan security as further described in Clause 13.2 (*Loan Security*) of the Vermelho Royalty Agreement; and
  - (3) security documents in respect of the share security as further described in Clause 13.3 (*Share Security*) of the Vermelho Royalty Agreement.
- (C) Evidence that there are no material changes to the Vermelho development schedule or budget, and that no such material changes are planned.

14. **FEES**

All Commitment Fees payable at that time in accordance with Clause 16.1 (*Commitment Fees*) shall have been paid in full. Any other fees payable by the Company under and in accordance with this Agreement shall have been paid in full.

15. **KNOW YOUR CUSTOMER INFORMATION**

Each Obligor shall have provided all information necessary to comply with any money laundering regulations, know your customer checks and other identification procedures as may be requested by the COF Lender.

16. **FINANCE DOCUMENTS & MATERIAL PROJECT DOCUMENTS**

A copy of all documents provided to the Administrative Agent under Schedule B (*Conditions Precedent*), Part II (*Conditions Precedent to First Utilization*), paragraph 2 (*Finance Documents*) of the Senior CTA.

17. **PROJECT DOCUMENTS; PERMITS, CONSENTS AND APPROVALS**

A copy of all documents provided to the Administrative Agent under Schedule B (*Conditions Precedent*), Part II (*Conditions Precedent to First Utilization*), paragraph 4 (*Project Documents; Permits, Consents and Approvals*) of the Senior CTA.

18. **ENVIRONMENTAL AND SOCIAL CPS**

A copy of all documents provided to the Administrative Agent under: (i) (i) Schedule B (*Conditions Precedent*), Part I (*Conditions Precedent to Effective Date*), paragraph 5 (*Environmental and Social CPS*) of the Senior CTA; and (ii) Schedule B (*Conditions Precedent*), Part II (*Conditions Precedent to First Utilization*), paragraph 5 (*Environmental and Social CPS*) of the Senior CTA.

19. **INSURANCES**

All of the following (in each case in form and substance satisfactory to each Senior Lender and the COF Lender):

- (A) Evidence satisfactory to the Independent Insurance Consultant that the Company has in full force and effect the Insurances pursuant to Schedule O (*Insurance Policies*) to the Senior CTA.
- (B) Insurance Broker's letter of undertaking in relation to the relevant Insurances.
- (C) Reinsurance Broker's Letter of undertaking in relation to the relevant reinsurances.
- (D) Evidence satisfactory to the Independent Insurance Consultant that each relevant policy of insurance taken out has attached to it an endorsement in a form satisfactory to the Independent Insurance Consultant.

20. **INITIAL FINANCIAL STATEMENTS**

- (A) Certified copies of the most recently delivered financial statements (delivered pursuant to Sections 9.7(b) and 9.8(a) of the Senior CTA) together with all subsequently available audited and unaudited financial statements of the Obligor.
- (B) A certificate signed by an authorized signatory of each applicable Obligor that there has been no Material Adverse Effect since the preparation of its most recently delivered financial statements (delivered pursuant to Sections 9.7(b) and 9.8(a) of the Senior CTA).

21. **ADDITIONAL DOCUMENTS**

- (A) Evidence that any process agent referred to in Clause 33.6 (*Service of process*) has accepted its appointment.
- (B) A copy of the Compliance Programs and the HSEC Policy.
- (C) A copy of the Corporate Organization Chart set out in Schedule K to the Senior CTA attached to the Officer's Certificate of the Company.
- (D) With respect to the COF Finance Documents executed by any Obligor organised and existing under Brazilian law, satisfactory evidence of: (a) notarisation by a public notary of the signatures of the parties who signed the COF Finance Documents outside Brazil; (b) an apostille of the COF Finance Documents by the competent authority of the country of its origin or the competent Brazilian consulate certifying the signature of the notary, as the case may be; (c) the translation of the COF Finance Documents into the Portuguese language by a certified translator (*tradutor publico juramentado*) in Brazil; and (d) registration of the certified translations of the COF Finance Documents before the competent registry of titles and deeds (*cartorio de registro de titulus e documentos*) in Brazil.

## SCHEDULE 2 : COF TRANSFER REQUEST

From: ARAGUAIA NIQUEL METAIS LTDA.

To: the COF Lender

Dated:

Dear Sirs

**Araguaia Niquel Metais Ltda. – Cost Overrun Facility Agreement  
dated [       ] (the "Agreement")**

1. We refer to the Agreement. This is a COF Transfer Request. Terms defined in the Agreement have the same meaning in this COF Transfer Request unless given a different meaning in this COF Transfer Request.
2. **[redacted – confidential information]**.
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) of the Agreement is satisfied on the date of this COF Transfer Request.
4. **[redacted – confidential information]**.
5. This COF Transfer Request is irrevocable.

Yours faithfully

.....  
authorised signatory for  
Araguaia Niquel Metais Ltda.

### SCHEDULE 3 : FORM OF NOTES

| <u>PROMISSORY NOTE</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <u>NOTA PROMISSÓRIA</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Amount: [•]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Valor: [•]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Date of Issue: [•]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Data de Emissão: [•]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Place of Issue: City of Belo Horizonte, State of Minas Gerais, Brazil                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Local de Emissão: Cidade de Belo Horizonte, Estado de Minas Gerais, Brasil.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Place of Payment: City of Belo Horizonte, State of Minas Gerais, Brazil.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Praça de Pagamento: Cidade de Belo Horizonte, Estado de Minas Gerais, Brasil.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Due Date: [•]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Data de Vencimento: [•]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>By this PROMISSORY NOTE, <b>ARAGUAIA NIQUEL METAIS LTDA.</b>, a company incorporated under the laws of Brazil (CNPJ number 97.515.035/0001-03) whose registered office is at Avenida Raja Gabaglia, 1132, salas 1401 and 1402, Bairro Luxemburgo, Belo Horizonte, MG, CEP 30380-403, shall pay to <b>OMF FUND III (F) LTD</b>, a company established under the laws of the Cayman Islands with number 354407 whose registered office is at PO Box 309, Ugland House, Grand Cayman, KY1-1104, the amount in Brazilian currency equivalent to [•], converted pursuant to the exchange rate PTAX sale as of the business day immediately before the payment date, as published by the Central Bank of Brazil.</p> | <p>Por esta NOTA PROMISSÓRIA, <b>ARAGUAIA NIQUEL METAIS LTDA.</b>, sociedade constituída sob as leis do Brasil, inscrita no CNPJ sob o nº 97.515.035/0001-03, com sede na Avenida Raja Gabaglia, 1132, salas 1401 and 1402, Bairro Luxemburgo, Belo Horizonte, MG, CEP 30380-403 concorda em pagar à <b>OMF FUND III (F) LTD</b>, empresa constituída nas Ilhas Cayman, registrada sob o nº 354407, com sede na PO Box 309, Ugland House, Grand Cayman, KY1-1104, o valor, em Reais, equivalente a [•], convertido de acordo com a taxa de câmbio PTAX de venda do dia útil imediatamente anterior ao dia do pagamento, conforme apurada pelo Banco Central do Brasil.</p> |
| <p>This promissory note shall be governed and interpreted in accordance with the laws of the Federative Republic of Brazil. The parties elect the courts of the place of payment to proceed with the execution of this Promissory Note.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <p>Este instrumento será regido e interpretado de acordo com as leis da República Federativa do Brasil. As partes elegem o foro da praça de pagamento para proceder à execução desta Nota Promissória.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>This promissory note constitutes a ‘Note’ as defined under, and issued pursuant to, the provisions of the Cost Overrun Facility Agreement entered into between Araguaia Niquel Metais Ltda and OMF Fund III (F) Ltd on or about [•] (the “<b>Cost Overrun Facility Agreement</b>”) and the parties acknowledge that this promissory note shall at all times be subject to the terms of the Cost Overrun Facility Agreement including Clauses 5A.1(B), 6.1(C),</p>                                                                                                                                                                                                                                              | <p>Esta nota promissória constitui uma Nota (“Note”) definida e emitida conforme as disposições do contrato denominado Cost Overrun Facility Agreement, celebrado entre Araguaia Niquel Metais Ltda e OMF Fund III (F) Ltd na data de [•] (o “<b>Cost Overrun Facility Agreement</b>”) e as Partes ora reconhecem que esta nota promissória deverá, a qualquer tempo, sujeitar-se aos termos do Cost Overrun Facility Agreement, incluindo o disposto nas suas</p>                                                                                                                                                                                                         |

|                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>9.3(B), 17.44(B) and 20.2 of the Cost Overrun Facility Agreement.</p> <p>This Promissory Note is issued in both English and Portuguese. Should there be any conflict and/or inconsistency between the English version and the Portuguese version, the Portuguese version shall prevail.</p> <p>Belo Horizonte, Minas Gerais, [date]</p> <p><b>ARAGUAIA NIQUEL METAIS LTDA.</b></p> <p>_____<br/>Name:<br/>Position:</p> | <p>Cláusulas 5A.1(B), 6.1(C), 9.3(B), 17.44(B), e 20.2.</p> <p>Esta Nota Promissória é emitida simultaneamente nos idiomas inglês e português. No caso de haver quaisquer divergências e/ou inconsistências entre a versão em inglês e a versão em português, a versão em português prevalecerá.</p> <p>Belo Horizonte, Minas Gerais, [data]</p> <p><b>ARAGUAIA NIQUEL METAIS LTDA.</b></p> <p>_____<br/>Nome:<br/>Cargo:</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

#### SCHEDULE 4 : REPAYMENT SCHEDULE

| Repayment Date         | Repayment Installment (%)                      |
|------------------------|------------------------------------------------|
| Initial Repayment Date | 3,23%                                          |
| Repayment Date 2       | 3,23%                                          |
| Repayment Date 3       | 3,23%                                          |
| Repayment Date 4       | 3,23%                                          |
| Repayment Date 5       | 3,23%                                          |
| Repayment Date 6       | 3,23%                                          |
| Repayment Date 7       | 3,23%                                          |
| Repayment Date 8       | 3,23%                                          |
| Repayment Date 9       | 3,23%                                          |
| Repayment Date 10      | 3,23%                                          |
| Repayment Date 11      | 3,23%                                          |
| Repayment Date 12      | 3,23%                                          |
| Repayment Date 13      | 3,23%                                          |
| Repayment Date 14      | 3,23%                                          |
| Repayment Date 15      | 3,23%                                          |
| Repayment Date 16      | 3,23%                                          |
| Repayment Date 17      | 3,23%                                          |
| Repayment Date 18      | 3,23%                                          |
| Repayment Date 19      | 3,23%                                          |
| Repayment Date 20      | 3,23%                                          |
| Repayment Date 21      | 3,23%                                          |
| Repayment Date 22      | 3,23%                                          |
| Repayment Date 23      | 3,23%                                          |
| Repayment Date 24      | 3,23%                                          |
| Repayment Date 25      | 3,23%                                          |
| Repayment Date 26      | 3,23%                                          |
| Repayment Date 27      | 3,23%                                          |
| Repayment Date 28      | 3,23%                                          |
| Repayment Date 29      | 3,23%                                          |
| Repayment Date 30      | 3,23%                                          |
| Final Maturity Date    | Remaining balance of the outstanding principal |

## SCHEDULE 5 : UTILISATION CONDITIONS

1. A Cost Overrun has occurred.
2. The Company has completed its first borrowing under the Senior Facilities.
3. The then current Cost-to-Complete Certificate does not state that there is a Cost-to-Complete Shortfall, nor that the Project is not capable of achieving Project Completion by the Project Completion Longstop Date, provided that, if the Senior Lenders have agreed to fund Senior Loans pursuant to the terms of the Senior CTA on the basis of such Cost-to-Complete Certificate (notwithstanding if such Cost-to-Complete Certificate states that there is a Cost-to-Complete Shortfall or that the Project is not capable of achieving Project Completion by the Project Completion Longstop Date), then the COF Lender shall deem such Cost-to-Complete Certificate satisfactory for purposes of making the proceeds of the Cost Overrun Facility **[redacted – confidential information]** available to be drawn into the Cost Overrun Account (as such term is defined in the Collateral Agency, Accounts and Security Agreement).
4. The Offshore Account Bank has not received a notice:
  - (A) from the Company or the Administrative Agent, stating that a Fundamental Event of Default has occurred and is continuing has been received by the COF Lender (or if such notice has been received, no subsequent notice from the Administrative Agent stating that such Fundamental Event of Default is no longer continuing has been received by the COF Lender);
  - (B) from the COF Lender or the Royalty Holder, stating that it has served a FEOD Dispute Notice has been received by the Company and the Administrative Agent (or if such FEOD Dispute Notice has been received, no subsequent notice from the COF Lender or the Royalty Holder (or the Administrative Agent) stating that the dispute raised by the FEOD Dispute Notice has been satisfactorily resolved in accordance with the terms of this Agreement); or
  - (C) from the COF Lender, stating that it has not received the Cost-to-Complete Certificate, or that the Cost-to-Complete Certificate that it did receive was not approved by the Independent Technical Consultant, in each case, at least 10 Business Days prior to the proposed Utilisation Date (or if such notice has been received, no subsequent notice from the COF Lender has been received stating that this condition had now been satisfied).

## SCHEDULE 6 : CASH SWEEP CALCULATION CERTIFICATE

To: OMF Fund III (F) Ltd as COF Lender

From: Araguaia Niquel Metais Ltda as Borrower

[date]

Dear Sirs

**Araguaia Niquel Metais Ltda. – Cost Overrun Facility Agreement  
dated [ ] (the "Agreement")**

1. We refer to the Agreement. This is a Cash Sweep Calculation Certificate. Terms defined in the Agreement have the same meaning when used in this Cash Sweep Calculation Certificate unless given a different meaning in this Certificate.
5. This is delivered in accordance with Clause [7.2 (*Cash Sweep*)] [16.2 (*Funds Reservation Fee*)] of the Agreement.
6. We confirm that, as at the most recent Calculation Date, the Remaining Cash Flow is [●] Dollars (US\$[●]).
7. Provided that all relevant conditions in Clause 7.2 (*Cash Sweep*) of the Agreement are satisfied, the total amount of the Remaining Cash Flow to be applied in mandatory prepayment of the COF Loan in accordance with Section 7.2 (*Cash Sweep*) of the Agreement is [●] Dollars (US\$[●]).
8. Attached in Annex A are details of the calculations undertaken by the Borrower and other information necessary to enable the COF Lender to verify the accuracy of the matters set out in this certificate.

Signed

.....

[●]

for and on behalf of  
Araguaia Niquel Metais Ltda

## **Annex A**

**[details of calculations for Remaining Cash Flow]**

**EXECUTION PAGE:**

**THE COMPANY**

**EXECUTED** by  
for and on behalf of  
**ARAGUAIA NIQUEL METAIS LTDA.**

) *"Bernardo Vianna Freitas"*  
) .....  
) Signature  
) Bernardo Vianna Freitas  
.....  
Name  
  
Attorney-in-fact  
.....  
Title

For the attention of: [   ]

THE COF LENDER

EXECUTED by  
for and on behalf of  
the COF Lender

) "Garth Ebanks"  
) .....  
) Signature  
)  
Garth Ebanks  
.....  
Name:  
  
Director  
.....  
Title:

For the attention of: [       ]