

Dated 28 December 2016

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**SILVER BEAR RESOURCES INC.**

**as Parent**

**JOINT STOCK COMPANY PROGNOZ**

**as JSC Prognoz**

**SILVER BEAR HOLDINGS LIMITED**

**as SBR Barbados**

**SILVER BEAR RESOURCES B.V.**

**as SBR B.V.**

**INFLECTION MANAGEMENT CORPORATION LIMITED**

**as Lender 1**

**A.B. ATERRA RESOURCES LTD.**

**as Lender 2**

**and**

**INFLECTION MANAGEMENT CORPORATION LIMITED**

**as Security Agent**

**CONSENT, AMENDMENT AND RESTATEMENT DEED**

**RELATING TO**

**THE FACILITIES AGREEMENT DATED 5 SEPTEMBER 2016**

 **NORTON ROSE FULBRIGHT**

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THIS DEED is dated 28 December 2016 and made between:

- (1) **SILVER BEAR RESOURCES INC.**, a company organised under the laws of Ontario, Canada with corporation number No. 2044471 with its registered address at: 5300, 199 Bay Street, Toronto, Ontario, Canada, M5L 1B9 as borrower and guarantor (the "**Parent**");
- (2) **JOINT STOCK COMPANY PROGNOZ**, a joint stock company organised under the laws of the Russian Federation with main state registration number (OGRN) 1031402052956, with its registered address at office 603, 36/1 Ordzhonikidze Street, Yakutsk, Republic of Saha (Yakutia), 677000, Russian Federation in its capacity as borrower and guarantor ("**JSC Prognoz**", and together with the Parent, the "**Borrowers**", and each of them - a "**Borrower**");
- (3) **SILVER BEAR HOLDINGS LIMITED**, a company organised under the laws of Barbados with company No. 23655 with its registered address at: Whitepark House, White Park Road, Bridgetown, Barbados as guarantor ("**SBR Barbados**");
- (4) **SILVER BEAR RESOURCES B.V.**, a company organised under the laws of The Netherlands with registration number 67088996 with its registered address at: Zekeringstraat 21 B, 1014 BM Amsterdam and having its statutory seat (*statutaire zetel*) in Amsterdam, the Netherlands as guarantor ("**SBR B.V.**");
- (5) **INFLECTION MANAGEMENT CORPORATION LIMITED** as lender (the "**Lender 1**");
- (6) **A.B. ATERRA RESOURCES LTD.** as lender (the "**Lender 2**", and together with Lender 1, the "**Lenders**", and each of them - the "**Lender**"); and
- (7) **INFLECTION MANAGEMENT CORPORATION LIMITED** as security agent (the "**Security Agent**").

**RECITALS:**

- (A) Pursuant to the facilities agreement dated 5 September 2016 between, among others, the Borrowers and the Lenders (the "**Original Facility Agreement**"), the Lenders agreed to make available to the Borrowers a credit facility of up to USD55,200,000.
- (B) The Borrowers have requested the consent of the Lenders to the Corporate Reorganisation (as defined below).
- (C) The Lenders are willing to provide their consent to the Corporate Reorganisation on the terms and subject to the conditions set out in this Deed.
- (D) The Parties also wish to amend and restate the Original Facility Agreement in accordance with clause 29 (*Amendments and Waivers*) of the Original Facility Agreement on the terms and conditions set out in this Deed.

IT IS AGREED as follows:

## 1 Definitions and interpretation

1.1 In this Deed:

**Assets** means 100% of the issued shares of JSC Prognoz and 100% of the issued shares of SBR B.V.

**Corporate Reorganisation** means a corporate reorganisation of the Obligors by way of:

- (a) the JSC Prognoz Transfer; and
- (b) the SBR B.V. Transfer.

**Effective Date** means the date on which each Lender confirms to the Borrowers that it has received each of the documents and other evidence listed in Schedule 1 (*Conditions precedent*) in form and substance satisfactory to it.

**JSC Prognoz Transfer** means the transfer of 100% of the issued shares of JSC Prognoz as a contribution in kind from SBR Barbados to SBR B.V. on the basis of a contribution in kind agreement to be made between SBR Barbados, SBR B.V. and JSC Prognoz (the "**JSC Prognoz Transfer Agreement**").

**JSC Prognoz's Transfer Effective Date** means the date on which SBR B.V. will become the legal and beneficial owner of all of the issued shares of JSC Prognoz pursuant to the JSC Prognoz Transfer Agreement.

**Original Facility Agreement** means the facilities agreement dated 5 September 2016 between, among others, the Borrowers and the Lenders.

**Party** means a party to this Deed.

**Restated Facility Agreement** means the Original Facility Agreement as amended and restated by this Deed in the form set out in Schedule 3 (*Restated Facility Agreement*) to this Deed.

**SBR B.V.'s Transfer Effective Date** means the date on which the Parent will become the legal and beneficial owner of all of the issued shares of SBR B.V. pursuant to the SBR B.V. Transfer Agreement.

**SBR B.V. Share Pledge** means the agreement (in the form of a Dutch law notarial deed) on pledge of 100% of the issued shares of SBR B.V. between the Security Agent, SBR B.V. and the Parent.

**SBR B.V. Transfer** means the sale of 100% of the issued shares of SBR B.V. by SBR Barbados to the Parent on the basis of a sale and purchase agreement to be made between SBR Barbados and the Parent, accompanied by a Dutch law notarial deed of transfer between SBR Barbados, SBR B.V. and the Parent (the "**SBR B.V. Transfer Agreement**").

- 1.2 Unless a contrary indication appears, a term defined in the Original Facility Agreement has the same meaning in this Deed.
- 1.3 Unless otherwise specified the provisions of clause 1.2 (*Construction*) of the Original Facility Agreement shall also apply to this Deed but references to "this Agreement" are to this Deed.
- 1.4 The Borrowers and the Lenders designate this Deed as a Finance Document in accordance with the Original Facility Agreement. For the avoidance of doubt, any failure of the Borrowers to perform any of their obligations under this Deed will constitute an Event of Default under clause 18.3 (*Other obligations*) of the Original Facility Agreement.

## **2 Consent of the Lenders**

- 2.1 With effect from the Effective Date and subject to the terms of this Deed, the Lenders consent to the Corporate Reorganisation as required under the terms of the Original Facility Agreement and the Transaction Security Documents provided that the following conditions are satisfied:
  - (a) the Corporate Reorganisation will not affect in any way any of the obligations of the Obligors under the Finance Documents, other than as provided for in this Deed;
  - (b) no assets other than the Assets shall be transferred or otherwise disposed of by SBR Barbados or any other Obligor in the context of the JSC Prognoz Transfer Agreement and the SBR B.V. Transfer Agreement;
  - (c) the Corporate Reorganisation will otherwise be implemented in compliance with all requirements of applicable laws and regulations;
  - (d) the Repeating Representations and the representations given in Clause 6.1 of this Deed are true as at the Effective Date, the JSC Prognoz's Transfer Effective Date and SBR B.V.'s Transfer Effective Date with the reference to the facts and circumstances then existing on such date; and
  - (e) no Default has occurred or is continuing on the Effective Date, the JSC Prognoz's Transfer Effective Date and SBR B.V.'s Transfer Effective Date and neither the JSC Prognoz Transfer nor the SBR B.V. Transfer will result in a Default.
- 2.2 For the avoidance of doubt, if any of the conditions set out in Clause 2.1 above are not complied with, then with effect from the date on which such non-compliance occurs it shall constitute an Event of Default.

### **3 Amendment and restatement**

3.1 With effect from the later of:

- (a) the JSC Prognoz Transfer Effective Date, and
- (b) the Effective Date,

the Original Facility Agreement will be amended and restated as set out in Schedule 3 (*Restated Facility Agreement*) to this Deed.

3.2 The provisions of the Original Facility Agreement will, except as amended and restated by this Deed, continue in full force and effect.

3.3 This Deed is supplemental to, and shall be construed as one with, the Original Facility Agreement.

3.4 Any references in any Finance Documents to the "Facilities Agreement" or to any provisions thereof will be construed as a reference to the Original Facility Agreement, or that provision, as amended and restated by this Deed.

### **4 Release of SBR Barbados and the Barbados Security Documents**

4.1 With effect from the later of:

- (a) the JSC Prognoz Transfer Effective Date, and
- (b) the Effective Date,

each of the Finance Parties releases and discharges SBR Barbados from all of its liabilities and obligations under the Finance Documents to which it is a party and the Parent from all its liabilities and obligations under the SBR Barbados Share Change and the Parties therefore agree that the Barbados Security Documents shall terminate and SBR Barbados shall cease to be an Obligor under the Finance Documents.

### **5 Obligors' consent**

5.1 Each Obligor hereby consents to the JSC Prognoz Transfer, SBR B.V. Transfer, the terms of this Deed and the terms of the Restated Facility Agreement and confirms that:

- (a) it agrees to the release of SBR Barbados from all of its liabilities and obligations under the Finance Documents to which it is a party and the Parent from all its liabilities and obligations under the SBR Barbados Share Change;
- (b) the termination of the Barbados Security Documents;

- (c) the provisions of the Finance Documents to which it is a party, its obligations thereunder and any Transaction Security created pursuant thereto remain in full force and effect; and
  - (d) it will continue to be bound by the terms of the Finance Documents to which it is a party as amended by this Deed.
- 5.2 SBR B.V. hereby:
- (a) consents to the JSC Prognoz Transfer;
  - (b) agrees to accede to the Restated Facility Agreement and to become a guarantor thereunder; and
  - (c) agrees to be bound by the terms of this Deed and the terms of the Restated Facility Agreement.

## **6 Representations**

- 6.1 As at the date of this Deed, the Effective Date, the JSC Prognoz's Transfer Effective Date and the SBR B.V. Transfer Effective Date with the reference to the facts and circumstances on each such date, each Obligor represents and warrants to each Finance Party that:
- (a) no Default exists, is continuing or is expected to arise; and
  - (b) the Repeating Representations are true and accurate.
- 6.2 As at the Effective Date with the reference to the facts and circumstances on each such date, SBR B.V. makes the representations and warranties set out in clause 15 (*Representations*) of the Restated Facility Agreement (other than those set out in clauses 15.15(b) and (c), 15.16 and 15.18) to each Finance Party.

## **7 Conditions Precedent**

- 7.1 Each Lender shall notify the Borrowers promptly on being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Schedule 1 (*Conditions Precedent*).

## **8 Conditions subsequent**

- 8.1 The Obligors shall, as soon as possible, but in any event within the time limits set out in Schedule 2 (*Conditions Subsequent*), provide each Lender with all of the documents and evidence (in each case in form and substance satisfactory to each Lender) listed in Schedule 2 (*Conditions Subsequent*). Failure to comply by the Obligors with the provisions of this Clause 8

*(Conditions Subsequent)* shall constitute an Event of Default under the Restated Facility Agreement.

## **9 Miscellaneous**

- 9.1 Each Obligor shall, at the request of the Lenders and at its own expense, do all such acts and things necessary to give effect to the terms of this Deed.
- 9.2 Except as expressly set out in Clause 4 (*Release of SBR Barbados and the Barbados Security Documents*) of this Deed, nothing in this Deed shall prejudice any right or remedy of any Finance Party under the Original Facility Agreement or any other Finance Document.
- 9.3 Nothing in this Deed shall prejudice the rights of the Finance Parties under clause 18 (*Events of Default*) of the Original Facility Agreement in case the consent pursuant to Clause 2 (*Consent of the Lenders*) of this Deed is deemed to have not become effective.

## **10 Counterparts**

- 10.1 This Deed may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

## **11 Governing Law**

- 11.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England.

## **12 Incorporation of Terms**

- 12.1 The provisions of clauses 1.4 (*Third Party Rights*), 33 (*Arbitration*) and 34 (*Waiver of Immunity*) of the Original Facility Agreement shall apply to this Deed *mutatis mutandis* except that references in such clauses to "this Agreement" shall be construed as references to this Deed.

**This Deed has been executed as a deed, and it has been delivered on the date stated at the beginning of this Deed.**

**Schedule 1**  
**Conditions precedent**

**1 The Parent**

- (a) To the extent required under the laws of the province of Ontario and the federal laws of Canada and/or the constitutional documents of the Parent, a certified copy of a resolution of an authorized governing body of the Parent:
  - (i) approving the terms of, and the transactions contemplated by, this Deed and resolving that it execute, deliver and perform this Deed and consummate the transactions contemplated thereby; and
  - (ii) authorising a specified person to execute this Deed on its behalf.

**2 JSC Prognoz**

- (a) A notarised copy of the charter of JSC Prognoz together with the list of registration thereof with the relevant competent authorities.
- (b) A certified copy of the extract of the Unified state register of legal entities in respect of JSC Prognoz dated no earlier than 30 days prior to the date of this Deed.
- (c) To the extent required under Russian law and/or the charter of JSC Prognoz, a certified copy of a resolution of the sole shareholder of JSC Prognoz:
  - (i) approving the terms of, and the transactions contemplated by, this Deed and resolving that it execute, deliver and perform this Deed and consummate the transactions contemplated thereby; and
  - (ii) authorising a specified person to execute this Deed on its behalf.

**3 SBR Barbados**

- (a) To the extent required under the Barbados law and/or the constitutional documents of SBR Barbados, a certified copy of a resolution of an authorized governing body of SBR Barbados:
  - (i) approving the terms of, and the transactions contemplated by, this Deed and resolving that it execute, deliver and perform this Deed and consummate the transactions contemplated thereby; and
  - (ii) authorising a specified person to execute this Deed on its behalf.

**4 SBR B.V.**

- (a) A copy of the constitutional documents of SBR B.V.
- (b) A certified copy of a resolution of an authorised corporate governance body of SBR B.V.
  - (i) approving the terms of, and the transactions contemplated by, this Deed and resolving that it execute, deliver and perform such document and consummate the transactions contemplated thereby; and
  - (ii) authorising a specified person to execute this Deed on its behalf.
- (c) a true copy of a notarial deed of amendments to the articles of association of SBR B.V. providing for a mechanism allowing the transfer of the voting rights in SBR B.V. to the Security Agent upon occurrence of an enforcement event under the SBR B.V. Share Pledge together with an extract from the Dutch Chamber of Commerce reflecting the registration of such amendments.

**5 Other documents and evidence**

- (a) This Deed duly executed by the parties thereto.
- (b) Any other document or evidence the Lenders may in their sole reasonable discretion deem necessary.

## Schedule 2

### Conditions Subsequent

#### 1 JSC Prognoz Transfer

- (a) Within 25 Business Days from the date of the JSC Prognoz Transfer Agreement:
  - (i) a copy of the duly executed JSC Prognoz Transfer Agreement; and
  - (ii) a statement from the depo account of SBR B.V. opened with the Depository Limited Liability Company "Depository "Algorithm", evidencing:
    - (A) the opening of the above depo account;
    - (B) that SBR B.V is the sole shareholder of JSC Prognoz; and
    - (C) that the pledge created pursuant to the Prognoz Share Pledge has been recorded on the above depo account and continues to be in full force and effect.

#### 2 SBR B.V. Transfer

- (a) Within 10 Business Days from the date of the SBR B.V. Transfer Agreement:
  - (i) a copy of the duly executed SBR B.V. Transfer Agreement; and
  - (ii) an original shareholders register (*aandeelhoudersregister*) of SBR B.V. evidencing that the Parent has become the sole shareholder of SBR B.V.
- (b) Within 20 Business Days from the date of the SBR B.V. Transfer Agreement:
  - (i) the SBR B.V. Share Pledge duly executed by parties thereto.
  - (ii) to the extent required under the laws of the province of Ontario and the federal laws of Canada and/or the constitutional documents of the Parent, a certified copy of a resolution of an authorized governing body of the Parent:
    - (A) approving the terms of, and the transactions contemplated by, the SBR B.V. Share Pledge and resolving that it execute, deliver and perform the SBR B.V. Share Pledge and consummate the transactions contemplated thereby; and
    - (B) authorising a specified person to execute the SBR B.V. Share Pledge on its behalf.

**3 Amendment of the Prognoz Share Pledge**

- (a) Within 20 Business Days from the date of the JSC Prognoz Transfer Agreement:
- (i) the amendment agreement to the Prognoz Share Pledge dated 6 September 2016, to reflect replacement of SBR Barbados by SBR B.V., duly executed by all parties thereto; and
  - (ii) the amendment agreement to the out-of-court enforcement agreement dated 6 September 2016 in relation to the securities pledged under the amended Prognoz Share Pledge, to reflect replacement of SBR Barbados by SBR B.V., duly executed by all parties thereto.

**Schedule 3**  
**Restated Facility Agreement**

*[Intentionally left blank]*

*Execution version*

**FACILITIES AGREEMENT**

**Dated 5 September 2016 (as amended and restated pursuant to a consent, amendment and restatement deed dated 28 December 2016)**

**for**

**SILVER BEAR RESOURCES INC.**

**as Borrower 1**

**and**

**JOINT STOCK COMPANY PROGNOZ**

**as Borrower 2**

**with**

**THE COMPANIES LISTED IN PART I OF SCHEDULE 1**

**as Guarantors**

**with**

**INFLECTION MANAGEMENT CORPORATION LIMITED**

**as Lender 1**

**and**

**A.B. ATERRA RESOURCES LTD.**

**as Lender 2**

**and with**

**INFLECTION MANAGEMENT CORPORATION LIMITED**

**as Security Agent**

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**THIS AGREEMENT** was originally dated 5 September 2016, is amended and restated pursuant to a consent, amendment and restatement deed dated 28 December 2016 and is made between:

- (1) **SILVER BEAR RESOURCES INC.**, a company organised under the laws of Ontario, Canada with corporation number No. 2044471 with its registered address at: 5300, 199 Bay Street, Toronto, Ontario, Canada, M5L 1B9 (the "**Borrower 1**" or the "**Parent**");
- (2) **JOINT STOCK COMPANY PROGNOZ**, a joint stock company organised under the laws of the Russian Federation with main state registration number (OGRN) 1031402052956, with its registered address at office 603, 36/1 Ordzhonikidze Street, Yakutsk, Republic of Saha (Yakutia), 677000, Russian Federation (the "**Borrower 2**" or "**JSC Prognoz**", and together with Borrower 1, the "**Borrowers**", and each of them - a "**Borrower**");
- (3) **THE COMPANIES** listed in Part I of Schedule 1 (*The Original Parties*) as guarantors (the "**Guarantors**");
- (4) **INFLECTION MANAGEMENT CORPORATION LIMITED** as lender (the "**Lender 1**");
- (5) **A.B. ATERRA RESOURCES LTD.** as lender (the "**Lender 2**", and together with Lender 1, the "**Lenders**", and each of them - the "**Lender**");
- (6) **INFLECTION MANAGEMENT CORPORATION LIMITED** as security agent (the "**Security Agent**");

IT IS AGREED as follows:

## **Section 1 - INTERPRETATION**

### **1 DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this Agreement:

**"Accounting Principles"** means:

- (a) in respect of the Parent, IFRS; and
- (b) in respect of any other Obligor, accounting policies and principles generally accepted in its jurisdiction of incorporation.

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

"**Auditors**" means PricewaterhouseCoopers.

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, permit, exemption, filing, notarisation or registration.

"**Availability Period**" means, in respect of the Tranche A1 and Tranche A2, the period commencing on the Facility Signing Date and ending on the date falling one (1) Month after the Facility Signing Date, unless a longer period is agreed between the Lenders and the Borrowers.

"**Available Commitment**" means a Lender's Commitment minus:

- (a) the amount of such Lender's participation in any outstanding Loans; and
- (b) in relation to any proposed Utilisation, the amount of such Lender's participation in any Loans that are due to be made on or before the proposed Utilisation Date,

subject to possible increase or decrease pursuant to Clause 2.3 (*Increase*).

"**Available Facility**" means the aggregate for the time being of each Lender's Available Commitment.

"**Barbados Security Documents**" means (i) an agreement on fixed and floating charge of assets of SBR Barbados between SBR Barbados and the Security Agent and (ii) an agreement on charge of 100% of shares of SBR Barbados between the Parent and the Security Agent.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in Moscow, Toronto, Nicosia, Amsterdam and New York.

"**Change of Control**" means:

- (a) the Parent ceases directly or indirectly to Control the Obligors; or
- (b) SBR B.V. ceases to hold 100% of the issued share capital of JSC Prognoz.

In this definition:

"**Control**" means, in relation to a Person, that a Person (or Persons acting in concert):

- (a) has the power (whether by way of ownership of shares or participatory interests, proxy, contract, agency or otherwise) to:
  - (i) cast, or control the casting of, the maximum number of votes that might be cast at a general meeting of that Person;
  - (ii) appoint or remove all of the directors, management committee, supervisory committee or other equivalent officers of that Person;

- (iii) appoint or remove the president, managing director or chief executive officer of that Person; and
  - (iv) give directions with respect to that Person which the president, managing director, chief executive officer, directors, management committee, supervisory committee or other equivalent officers (of that Person) are obliged to comply with (including, but not limited to, operating and financial matters and policies) or otherwise to determine the activities of that Person; or
- (b) holds beneficially 100% of the issued share capital of that Person. and "**Controlling**" and "**Controlled**" shall be construed accordingly.

"**Person**" shall include any individual, partnership, association, joint stock company, joint venture, corporation, trust (including discretionary trust), limited liability company, unincorporated organisation or other enterprise, or a government, agency or political subdivision thereof;

"**Persons acting in concert**" in relation to a Person, are Persons that actively co-operate, pursuant to an agreement or understanding (whether formal or informal) with a view to exercising Control over that Person;

"**Commitment**" means, in relation to a Lender, either of the following:

- (a) the Tranche A1 Commitment; or
- (b) the Tranche A2 Commitment; or
- (c) the Tranche B Commitment; or
- (d) the Tranche C Commitment.

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

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

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

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 30 (Confidentiality); or
- (ii) is identified in writing at the time of delivery as non-confidential by any Obligor or any of its advisers; or
- (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Obligors and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

**"Confidentiality Undertaking"** means a confidentiality undertaking in the form agreed between the Borrowers and the Lenders.

**"Consent, Amendment and Restatement Deed"** means the consent, amendment and restatement deed dated 28 December 2016 and made between the Parties.

**"Convertible Notes"** means 15% convertible promissory notes issued by the Parent on 4 December 2015 and held by Lender 1 and Lender 2.

**"Corporate Reorganisation"** has the meaning given to it in the Consent, Amendment and Restatement Deed.

**"Default"** means an Event of Default or any event or circumstance specified in Clause 18 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

**"Dispute"** means any dispute arising out of or in connection with this Agreement (including a dispute relating to any non-contractual obligations arising out of or in connection with this Agreement or a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity).

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

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

- (i) from performing its payment obligations under the Finance Documents;  
or
- (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

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

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

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

**"Environmental Claim"** means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law.

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

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

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

**"Event of Default"** means any event or circumstance specified as such in Clause 18 (*Events of Default*).

**"Excess Cash"** means the net amount of cash held by JSC Prognoz as of 30 June and 31 December of each calendar year, after payment of all current liabilities but less the higher of (i) \$5,000,000 and (ii) the cash amount budgeted by JSC Prognoz for the subsequent three (3) months of operations, both reserved to JSC Prognoz for working capital, and will be rounded to the nearest \$1,000.

**"Existing Non-Convertible Notes"** means:

- (a) \$3,500,000 non-convertible notes dated 26 February 2015, as amended on 18 March 2015 issued by the Parent and held by Lender 2;
- (b) \$3,500,000 non-convertible notes dated 27 February 2015 issued by the Parent and held by Lender 1;
- (c) C\$3,300,000 non-convertible notes dated 11 January 2016 issued by the Parent and held by Lender 1;
- (d) \$14,500,000 contingent non-convertible note dated 30 March 2016 issued by the Parent and held by Lender 1; and
- (e) \$5,500,000 contingent non-convertible note dated 30 March 2016 issued by the Parent and held by Lender 2.

**"Exploration Licence"** means (a) licence No. YaKU 12692 BP dated 28 September 2004 issued to JSC Prognoz for the geological exploration of the Endybalskaya ploschad, (b) any licensing agreements or other documents attached to or otherwise forming part of such licence, (c) any extensions, amendments, variations and renewals of or substitutions in respect of the whole or any part of such licence, licensing agreement or other documents, and (d) the exploration rights and interests of JSC Prognoz in and under paragraphs (a), (b) and (c) above.

**"Facility"** means:

- (a) the Tranche A1; or
- (b) the Tranche A2; or
- (c) the Tranche B; or
- (d) the Tranche C.

**"Facility Signing Date"** means 5 September 2016.

**"Final Maturity Date"** means the date falling forty eight (48) months from the date on which the Total Tranche A1 Commitments and Total Tranche A2 Commitments are drawn by the Borrowers in full or cancelled.

**"Finance Document"** means:

- (a) this Agreement;
- (b) each Transaction Security Document;
- (c) the Consent, Amendment and Restatement Deed;
- (d) each Utilisation Request; and

- (e) any other document designated as such by the Lenders and the Borrowers.

**"Finance Party"** means each of the Security Agent and a Lender.

**"Financial Indebtedness"** means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (i) any amount raised by the issue of redeemable shares which are redeemable (other than at the option of the issuer) before the Final Maturity Date or are otherwise classified as borrowings under applicable accounting principles;
- (j) (any amount of any liability under any advance or deferred purchase agreement if:
  - (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question; or
  - (ii) the agreement is in respect of the supply of assets or services and payment is due more than sixty (60) days after the date of supply; and

- (k) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above.

**"Financial Year"** means each period of twelve (12) months commencing on 1 January and ending on 31 December in each year.

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

**"IFRS"** means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

**"Interest Period"** means, in relation to a Loan, each period determined in accordance with Clause 9.1 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).

**"Interest Rate"** means fifteen (15) per cent. per annum.

**"JSC Prognoz's Transfer Effective Date"** has the meaning given to it in the Consent, Amendment and Restatement Deed.

**"JSC Prognoz Transfer Agreement"** has the meaning given to it in the Consent, Amendment and Restatement Deed.

**"Loan"** means the Tranche A1 Loan or the Tranche A2 Loan or the Tranche B Loan or Tranche C Loan, as the case may be; and **"Loans"** means all of them.

**"Material Adverse Effect"** means in the reasonable opinion of the Lenders a material adverse effect on:

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

**"Material Licences"** means with respect to JSC Prognoz, each permit, licence, consent, approval, authorisation (other than the Exploration Licence and the Mining Licence) and any agreement issued to JSC Prognoz or to which JSC Prognoz is a party relating to the development or the operation of the Project which suspension, revocation, expiration, termination, cancellation or failure to renew (in whole or in part) could reasonably be expected to have a Material Adverse Effect.

**"Mining Licence"** means licence No. YaKU 03626 BE dated 28 August 2013 issued to JSC Prognoz for the exploration and mining at the Deposit Vertikalnoye, (b) any licensing agreements or other documents attached to or otherwise forming part of such licence, (c) any extensions, amendments, variations and renewals of or substitutions in respect of the whole or any part of such licence, licensing agreement or other documents, and (d) the exploration and mining rights and interests of JSC Prognoz in and under paragraphs (a), (b) and (c) above.

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

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

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

**"New Lender"** has the meaning given to that term in Clause 19 (*Changes to the Lenders*).

**"Obligor"** means any of Borrower 1, Borrower 2 or any of the Guarantors.

**"Original Financial Statements"** means:

- (a) in relation to the Parent its audited consolidated financial statements for its financial year ended 31 December 2015 prepared in accordance with IFRS consistently applied;
- (b) in relation to each Obligor (save for SBR Barbados) its audited financial statements for its financial year ended 31 December 2015 prepared in accordance with the Accounting Principles consistently applied;
- (c) in relation to SBR Barbados its audited financial statements for its financial year

ended 31 December 2014 prepared in accordance with the Accounting Principles consistently applied.

**"Original Jurisdiction"** means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated as at the date of this Agreement.

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

**"Permitted Corporate Reorganisation"** means:

- (a) the Corporate Reorganisation; or
- (b) any other corporate reorganisation of the Obligors which is undertaken with the consent of all Lenders.

**"Prognoz Loan Agreement"** means a loan agreement between SBR Barbados as lender and JSC Prognoz as borrower dated 23 August 2016, and as such loan agreement will be subsequently assigned to the Lenders following the first Utilisation Request under this Agreement, and amended and restated to be substantially in the form of this Agreement concurrently with such assignment and as a condition thereto.

**"Project"** means development and construction by JSC Prognoz of the Mangazeisky property located approximately 400 km north of Yakutsk in the Republic of Saha (Yakutia), Russian Federation.

**"Project Assets"** means all assets (excluding for the avoidance of doubt the Material Licences, the Mining Licence and the Exploration Licence) whether movable or immovable, now owned or hereafter acquired by or for the benefit of JSC Prognoz which are used or intended for use in or forming part of the Project.

**"Project Completion Date"** means the last day of the period of three (3) consecutive Months during which the Project produced at least one hundred and fifty thousand (150,000) ounces of silver during each such Month.

**"Relevant Jurisdiction"** means, in relation to an Obligor any jurisdiction where it conducts its business.

**"Repeating Representations"** means each of the representations set out in Clause 15.1 (*Status*) to Clause 15.5 (*Share capital*), Clause 15.7 (*Governing law and enforcement*), Clause 15.10 (*No default*) to Clause 15.13 (*Pari passu ranking*), Clause 15.19 (*Financial Indebtedness*) to Clause 15.28 (*No Material Adverse Effect*) (inclusive).

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

**"Russian Tax Code"** means Part I of the Tax Code of the Russian Federation and Part II of the Tax Code of the Russian Federation.

**"Russian VAT"** means value added tax as imposed in accordance with the Russian Tax Code and any other tax of a similar fiscal nature imposed in the Russian Federation or any political subdivision or authority thereof or therein having power to tax (instead of or in addition to value added tax) from time to time.

**"SBR Barbados"** means Silver Bear Holdings Limited, a company organised under the laws of Barbados with company No. 23655 with its registered address at: Whitepark House, White Park Road, Bridgetown, Barbados.

**"SBR B.V."** means Silver Bear Resources B.V., a company organised under the laws of

The Netherlands with registration number 67088996 with its registered address at: Zekeringstraat 21 B, 1014 BM Amsterdam.

"**SBR B.V. Transfer Agreement**" has the meaning given to it in the Consent, Amendment and Restatement Deed.

"**Secured Obligations**" means all obligations at any time due, owing or incurred by any Obligor to any Secured Party under the Finance Documents, including, but not limited to, the obligations set out in Clause 21.2 (*Parallel debt (Covenant to pay the Security Agent)*), whether present or future, actual or contingent (and whether incurred solely or jointly and whether as principal or surety or in some other capacity).

"**Secured Parties**" means each Finance Party from time to time party to this Agreement.

"**Security**" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Social Law**" means any applicable law or regulation which relates to:

- (a) labour and employment conditions;
- (b) occupational health and safety;
- (c) public health, safety and security;
- (d) indigenous peoples; or
- (e) resettlement or economic displacement of persons.

"**Subsidiary**" means any person (referred to as the "**first person**") in respect of which another person (referred to as the "**second person**"):

- (a) holds a majority of the voting rights in that first person or has the right under the constitution of the first person to direct the overall policy of the first person or alter the terms of its constitution; or
- (b) beneficially owns, directly or indirectly, more than 50% of the issued share capital of the undertaking;
- (c) is a member of that first person and has the right to appoint or remove a majority of its board of directors or equivalent administration, management or supervisory body; or
- (d) has the right to exercise a dominant influence (which could include the right to give directions with respect to operating and financial policies of the first person which its directors are obliged to comply with whether or not for its benefit) over the first person by virtue of provisions contained in the constitutional documents of the first person or by virtue of a control contract

which is in writing and is authorised by the articles (or equivalent) of the first person and is permitted by the law under which such first person is established;

- (e) is a member of that first person and controls alone, or pursuant to an agreement with other shareholders or members, a majority of the voting rights in the first person or the rights under its constitution to direct the overall policy of the first person or alter the terms of its constitution; or
- (f) has the power to exercise, or actually exercises dominant influence or control over the first person; or
- (g) together with the first person are managed on a unified basis,
- (h) and, for the purposes of this definition, a person shall be treated as a member of another person if any of that person's Subsidiaries is a member of that other person or if any shares in that other person are held by a person acting on behalf of it or any of its Subsidiaries.

**"Tax"** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

**"Total Commitments"** means the aggregate of the Commitments, being USD 55,200,000 at the date of this Agreement.

**"Total Tranche A1 Commitments"** means the aggregate of the Tranche A1 Commitments in US dollars under the heading "Tranche A1 Commitments" in Part II of Schedule 1 (*The Original Parties*).

**"Total Tranche A2 Commitments"** means the aggregate of the Tranche A2 Commitments in US dollars under the heading "Tranche A2 Commitments" in Part II of Schedule 1 (*The Original Parties*).

**"Total Tranche B Commitments"** means the aggregate of the Tranche B Commitments under the heading "Tranche B Commitments" in Part II of Schedule 1 (*The Original Parties*).

**"Total Tranche C Commitments"** means the aggregate of the Tranche C Commitments under the heading "Tranche C Commitments" in Part II of Schedule 1 (*The Original Parties*).

**"Tranche"** means Tranche A1, Tranche A2, Tranche B or Tranche C, as the case may be.

**"Tranche A1"** means the term loan facility described in paragraph (a) of Clause 2.1 (*The Facilities*).

**"Tranche A1 Commitment"** means, in relation to a Lender, the amount in US dollars set

out opposite its name under the heading "Tranche A1 Commitments" in Part II of Schedule 1 (*The Original Parties*) and the amount of any other Tranche A1 Commitment transferred to it under this Agreement or altered pursuant to Clause 2.3 (*Increase*), to the extent not cancelled, reduced or transferred by it under this Agreement; and "**Tranche A1 Commitments**" shall be construed accordingly.

"**Tranche A1 Loan**" means the loan made or to be made under Tranche A1 or the principal amount outstanding of that loan.

"**Tranche A2**" means the term loan facility described in paragraph (b) of Clause 2.1 (*The Facilities*).

"**Tranche A2 Commitment**" means, in relation to a Lender, the amount in US dollars set out opposite its name under the heading "Tranche A2 Commitments" in Part II of Schedule 1 (*The Original Parties*) and the amount of any other Tranche A2 Commitment transferred to it under this Agreement or altered pursuant to Clause 2.3 (*Increase*), to the extent not cancelled, reduced or transferred by it under this Agreement; and "**Tranche A2 Commitments**" shall be construed accordingly.

"**Tranche A2 Loan**" means the loan made or to be made under Tranche A2 or the principal amount outstanding of that loan.

"**Tranche B**" means the term loan facility described in paragraph (c) of Clause 2.1 (*The Facilities*).

"**Tranche B Commitment**" means, in relation to a Lender, the amount in US dollars set out opposite its name under the heading "Tranche B Commitments" in Part II Schedule 1 (*The Original Parties*) and the amount of any other Tranche B Commitment transferred to it under this Agreement or altered pursuant to Clause 2.3 (*Increase*), to the extent not cancelled, reduced or transferred by it under this Agreement; and "**Tranche B Commitments**" shall be construed accordingly.

"**Tranche B Loan**" means the loan made or to be made under Tranche B or the aggregate amount outstanding of that loan.

"**Tranche C**" means the term loan facility described in paragraph (d) of Clause 2.1 (*The Facilities*).

"**Tranche C Commitment**" means, in relation to a Lender, the amount in US dollars set out opposite its name under the heading "Tranche C Commitments" in Part II of Schedule 1 (*The Original Parties*) and the amount of any other Tranche C Commitment transferred to it under this Agreement or altered pursuant to Clause 2.3 (*Increase*), to the extent not cancelled, reduced or transferred by it under this Agreement; and "**Tranche C Commitments**" shall be construed accordingly.

"**Tranche C Loan**" means the loan made or to be made under Tranche C or the aggregate amount outstanding of that loan.

**"Transaction Security"** means the Security created or expressed to be created in favour of the Security Agent and/or the Lenders pursuant to the Transaction Security Documents.

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

- (a) agreement on pledge of 100% of shares of JSC Prognoz dated 6 September 2016 and made between the Lenders and, prior to the JSC Prognoz's Transfer Effective Date, SBR Barbados, and, following the JSC Prognoz's Transfer Effective Date, SBR B.V., which provides for an out-of-court enforcement procedure, as amended from time to time (the "**Prognoz Share Pledge**");
- (b) agreement on pledge of movable property (including future assets) of JSC Prognoz dated 6 September 2016 and made between the Lenders and JSC Prognoz which provides for an out-of-court enforcement procedure, as amended from time to time (the "**Movable Property Pledge Agreement**");
- (c) agreement on pledge of 100% of shares of SBR B.V. between the Parent, SBR B.V. and the Security Agent, as amended from time to time (the "**SBR B.V. Share Pledge**");
- (d) a general security agreement dated 5 September 2016 between, *inter alios*, the Parent and the Security Agent, as amended from time to time; and
- (e) any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents.

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

**"Utilisation"** means a utilisation of a Facility.

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

**"Utilisation Request"** means a notice substantially in the form set out in Schedule 3 (*Utilisation Request*) of this Agreement.

**"VAT"** means value added tax or any similar tax imposed by any relevant authority.

**"VAT Refund Proceeds"** means the proceeds of any claim by the Borrower 2 for a refund of Russian VAT from the Russian state budget on account of amounts paid by the Borrower 2 in respect of Russian VAT related to the capital expenditures for the Project.

## 1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:

- (i) any "**Lender**", any "**Obligor**", any "**Guarantor**", 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 Finance Documents;
  - (ii) "**assets**" includes present and future properties, revenues and rights of every description;
  - (iii) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
  - (iv) "**guarantee**" means (other than in Clause 14 (*Guarantee and Indemnity*)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
  - (v) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (vi) 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);
  - (vii) 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;
  - (viii) a provision of law is a reference to that provision as amended or re-enacted; and
  - (ix) a time of day is a reference to Nicosia time unless expressly provided otherwise.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

- (d) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been waived.

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

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

"Canadian Dollar" and "C\$" each means the lawful currency of Canada.

### 1.4 **Third Party Rights**

Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce any term of this Agreement.

## Section 2 - THE FACILITIES

### 2 THE FACILITIES

#### 2.1 The Facilities

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

- (a) to Borrower 1, a US dollar secured term loan facility in an aggregate amount equal to the Total Tranche A1 Commitments;
- (b) to Borrower 2, a US dollar secured term loan facility in an aggregate amount equal to the Total Tranche A2 Commitments;
- (c) to Borrower 2, a US dollar term loan working capital facility in an aggregate amount equal to the Total Tranche B Commitments; and
- (d) to Borrower 2, a US dollar term loan contingency facility in an aggregate amount equal to the Total Tranche C Commitments.

#### 2.2 Lender' rights and obligations

- (a) The obligations of each Lender under the Finance Documents are several. Failure by a Lender to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Lender is responsible for the obligations of any other Lender under the Finance Documents.
- (b) The rights of each Lender under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Lender from an Obligor shall be a separate and independent debt.
- (c) A Lender may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

#### 2.3 Increase

- (a) In case a Lender (the "**Non-Participating Lender**") has not participated in a Loan for any reason and has notified the other Lender and each Borrower not later than thirty (30) days prior to the proposed Utilisation Date, unless other procedure was agreed by the Lenders, the other Lender may, but shall not be obliged to, by giving notice to the Non-Participating Lender, the Security Agent and each Borrower, increase its Available Commitment for the participation in such Loan by the amount of either one or all of the Non-Participating Lender's Tranche A2 Commitment, the Tranche B Commitment or the Tranche C Commitment.

- (b) Upon such increase the Available Commitment of the Non-Participating Lender shall be decreased for the amount for which the Available Commitment of the other Lender has been so increased.

## **2.4 Borrowers' obligations**

- (a) The obligations of each Borrower under this Agreement are joint and several such that each Borrower shall be jointly and severally liable for the obligations of the other Borrower.
- (b) The obligations of each Borrower under this Agreement will not be affected by any act, omission, matter or thing which, but for this paragraph, would reduce, release or prejudice any of its obligations under this Agreement (without limitation and whether or not known to it or any Finance Party) including:
  - (i) any time, waiver or consent granted to, or composition with, a Borrower or other person;
  - (ii) the release of any other Borrower or any other person under the terms of any composition or arrangement with any creditor of any Obligor;
  - (iii) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
  - (iv) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Borrower or any other person;
  - (v) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Finance Document or any other document or security;
  - (vi) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
  - (vii) any insolvency or similar proceedings.

## **3 PURPOSE**

### **3.1 Purpose**

- (a) The Borrower 1 shall apply all amounts borrowed by it under Tranche A1 towards the repayment of principal and accrued interest to the Lenders under

the Existing Non-Convertible Notes. The Borrower 1 shall utilise the Tranche A1 Loan only in the amount equal to the outstanding principal amount and accrued interest under the Existing Non-Convertible Notes, even if such amount is less than the amount of the Total Tranche A1 Commitments. The Parties hereby agree that the Borrower 1's obligations under the Existing Non-Convertible Notes will be offset against obligations of the Lenders to provide Tranche A1 Loan to Borrower 1.

- (b) The Borrower 2 shall apply all amounts borrowed by it under Tranche A2 towards funding of commissioning of the Project, general and administrative costs, exploration expenditures and working capital purposes related to the Project incurred directly by Borrower 2 or indirectly by any of the Obligors.
- (c) The Borrower 2 shall apply all amounts borrowed by it under Tranche B towards funding of commissioning of the Project, general and administrative costs, exploration expenditures, working capital purposes related to the Project, incurred directly by Borrower 2 or indirectly by any of the Obligors, and reimbursement to the Borrower 2 of any amounts of Russian VAT paid by it out of its own funds.
- (d) The Borrower 2 shall apply all amounts borrowed by it under Tranche C towards funding of contingency expenses related to commissioning of the Project incurred directly by Borrower 2 or indirectly by any of the Obligors.

### 3.2 Monitoring

No Lender is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement. For the avoidance of doubt, any Lender may (in its sole discretion) nonetheless monitor and/or request information from the Borrowers to verify the application of any amount borrowed pursuant to this Agreement in order to comply with applicable law or regulation.

## 4 CONDITIONS OF UTILISATION

### 4.1 Conditions precedent for Loans

- (a) No Borrower may deliver a Utilisation Request with respect to any Loan unless each Lender has received (or waived receipt of) all of the documents and other evidence listed in Part I of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Lenders (acting reasonably). Each Lender shall notify the Borrowers promptly upon being so satisfied.
- (b) The Borrower 2 may not deliver a Utilisation Request with respect to a Tranche B Loan unless the Lenders have received (or waived receipt of) all of the documents and other evidence listed in Part II of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Lenders acting in their sole discretion. Each Lender shall notify the Borrower 2 promptly upon being so satisfied.

- (c) The Borrower 2 may not deliver a Utilisation Request with respect to a Tranche C Loan unless the Lender 1 has received (or waived receipt of) all of the documents and other evidence listed in Part III of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to it acting in its sole discretion. The Lender 1 shall notify the Borrower 2 promptly upon being so satisfied.
- (d) A Lender shall not be obliged to provide to the Borrowers any information or explanation in respect of the satisfaction of any conditions precedent listed in Part II and Part III of Schedule 2 (*Conditions Precedent*).

#### 4.2 Further conditions precedent

Each Lender will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if on the date of a Utilisation Request and on the proposed Utilisation Date:

- (a) no Default is continuing or would result from the proposed Loan;
- (b) the Repeating Representations to be made by each Obligor are true in all material respects;
- (c) no other Lender has refused to make its participation in a Loan, subject to provisions of Clause 2.3 (Increase); and
- (d) no deterioration has occurred in the political or economic situation generally in the Russian Federation, as determined by the Lenders in their sole discretion.

## Section 3 - UTILISATION

### 5 UTILISATION

#### 5.1 Delivery of a Utilisation Requests

- (a) Each Borrower may utilise the Facility by delivery to each Lender of a separate, duly completed Utilisation Request not later than 9.30 am three (3) Business Days prior to the relevant Utilisation Date. Other than in respect of Tranche C, each Borrower shall deliver separate Utilisation Requests to both Lenders on the same day and with the same proposed Utilisation Date. Subject to Clause 2.3 (*Increase*) and other than in respect of Tranche C, no Borrower may deliver a Utilisation Request to one Lender alone.
- (b) The Borrower 2 shall notify the Lenders of its intention to utilise a Tranche B Loan and/or Tranche C Loan not later than sixty (60) days prior to the proposed Utilisation Date by delivering a separate notice to each Lender substantially in the form set out in Schedule 4 (*Utilisation Notice in Relation to Tranche B Loan and/or Tranche C Loan*) of this Agreement (the "**Utilisation Notice**") on the same day and with the same proposed Utilisation Date.

#### 5.2 Completion of a Utilisation Request

- (a) The Utilisation Request is irrevocable and will not be regarded as having been duly completed in respect of Tranche A1 and Tranche A2, unless the proposed Utilisation Date is a Business Day within the Availability Period.
- (b) Only one Loan may be requested in each Utilisation Request.

#### 5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be US dollars.
- (b) The amount of the proposed Utilisation of each Loan must be *pro rata* to each Lender's Commitment.
- (c) The amount of Tranche A1 Loan must be equal to the outstanding principal amount and accrued interest under the Existing Non-Convertible Notes.

#### 5.4 Lenders' participation

If the conditions set out in this Agreement have been met, subject to Clause 2.3 (*Increase*), each Lender shall make its participation in each Loan available by the Utilisation Date *pro rata* to its Commitments.

#### 5.5 Automatic Cancellation

Any part of Tranche A1 and Tranche A2 that has not been utilised by the end of the

Availability Period shall be automatically cancelled.

#### **Section 4 - REPAYMENT, PREPAYMENT AND CANCELLATION**

### **6 REPAYMENT**

#### **6.1 Repayment of the Facility**

- (a) Subject to earlier prepayment or repayment in accordance with the terms of this Agreement, each Borrower shall repay the aggregate Loans made to it by the Lenders on the Final Maturity Date by making a payment to each Lender in the amount representing that Lender's *pro rata* share in all outstanding Loans as at the Final Maturity Date.
- (b) The Parties hereby agree that the Tranche A1 Loan may be settled and repaid by Borrower 1 by way of set-off of Borrower 1's obligations under the Tranche A1 Loan against the obligation of the Lenders to pay to SBR Barbados the amount owing to SBR Barbados for the assignment of the Prognoz Loan Agreement from SBR Barbados to the Lenders, such amount owing by the Lenders to SBR Barbados to be returned to Borrower 1 by way of return of paid up capital to Borrower 1 by SBR Barbados, such that the set-off contemplated herein may be effected.

#### **6.2 Re-borrowing**

No Borrower may re-borrow any part of the Facility which is repaid.

### **7 PREPAYMENT**

#### **7.1 Illegality**

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

- (a) upon that Lender notifying the respective Borrower, the Available Commitment of that Lender will be immediately cancelled; and
- (b) each Borrower shall repay that Lender's participation in the Loans made to it on the last day of the Interest Period for each Loan occurring after the Lender has notified the respective Borrower or, if earlier, the date specified by the Lender (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be cancelled in the amount of the participations repaid.

#### **7.2 Change of control**

If a Change of Control, other than due to the Permitted Corporate Reorganisation,

occurs:

- (a) the Parent shall promptly notify the Lenders upon becoming aware of that event;
- (b) a Lender shall not be obliged to fund any Utilisation; and
- (c) if a Lender so requires and notifies the Borrowers within ten (10) days of becoming aware of the Change of Control, such Lender shall, by not less than three (3) days notice to the Borrowers, cancel the Commitment of that Lender and declare the participation of that Lender in all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Commitment of that Lender will be cancelled and all such outstanding amounts will become immediately due and payable.

### **7.3 Voluntary prepayment of Loans**

Subject to Clause 7.4 (*Restrictions*), each Borrower may, if it gives the Lenders not less than thirty (30) days' (or such shorter period as the Lenders may agree) prior notice, prepay the whole or any part of any Loan made to it to the Lenders by making two payments to the Lenders (one in favour of the Lender 1 and another one in favour of the Lender 2) *pro rata* to the Lenders' shares in the relevant Loan as at the date of the prepayment without any prepayment fee.

### **7.4 Restrictions**

- (a) Any notice of prepayment given under Clause 7.3 (*Voluntary prepayment of Loans*) shall be irrevocable and shall specify the date or dates upon which the relevant prepayment is to be made and the amount of that prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid.
- (c) No Borrower shall repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (d) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (e) If any Lender receives a notice under this Clause 7 (*Prepayment*) it shall promptly forward a copy of that notice to either the Borrowers or the other Lender, as appropriate.
- (f) If all or part of any Lender's participation in a Loan is repaid or prepaid and is not available for redrawing, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be

cancelled on the date of repayment or prepayment. Unless this Agreement provides to the contrary, any cancellation under this Clause shall reduce the Commitments of the Lenders rateably under a Facility.

**7.5 Mandatory prepayment from the Excess Cash (Cash Sweep)**

Within ninety (90) days following each of 30 June and 31 December falling after the Project Completion Date, and in any event no later than starting from 31 December 2017, the Borrower 2 shall apply all the Excess Cash in prepayment of the Loans to the Lenders, in each case by making two payments to the Lenders (one in favour of the Lender 1 and another one in favour of the Lender 2) *pro rata* to the Lenders' shares in all outstanding Loans as at the date of such prepayment.

**7.6 Mandatory prepayment from the VAT Refund Proceeds**

If the Borrower 2 receives any VAT Refund Proceeds, it shall promptly (and in any event within five (5) Business Days of receipt) apply the same in prepayment of the Tranche B Loans to the Lenders by making two payments to the Lenders (one in favour of the Lender 1 and another one in favour of the Lender 2) *pro rata* to the Lenders' shares in all outstanding Tranche B Loans as at the date of such prepayment.

## Section 5 - COSTS OF UTILISATION

### 8 INTEREST

#### 8.1 Calculation of interest

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

#### 8.2 Payment of interest

- (a) Each Borrower shall pay accrued interest on each Loan to each Lender on the last day of each Interest Period.
- (b) On 1 July 2017 interest accrued during the first Interest Period on any Loan shall be capitalised and shall be added to the principal amount of such Loan.

#### 8.3 Default interest

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is two per cent. (2%) per annum higher than the rate which would have been payable if the overdue amount had, during the period of nonpayment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Lenders (acting reasonably). Any interest accruing under this Clause 8.3 (*Default interest*) shall be immediately payable by the Obligor on demand by the Lenders.
- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
  - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
  - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be two per cent. (2%) per annum higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

### 9 INTEREST PERIODS

## 9.1 Interest Periods

- (a) Subject to paragraph (b) below, each Interest Period (other than the first) shall be three (3) Months.
- (b) The first Interest Period for a Loan shall start on the Utilisation Date of that Loan and shall expire on 1 July 2017.
- (c) Each subsequent Interest Period for a Loan shall start on the last day of the immediately preceding Interest Period.
- (d) An Interest Period for any Loan shall not extend beyond the Final Maturity Date. If an Interest Period would otherwise overrun the Final Maturity Date, it will be shortened so that it ends on the Final Maturity Date.

## Section 6 - ADDITIONAL PAYMENT OBLIGATIONS

### 10 TAX GROSS-UP AND INDEMNITIES

#### 10.1 Definitions

(a) In this Agreement:

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

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

**"Tax Deduction"** means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

**"Tax Payment"** means either the increase in a payment made by a Borrower to a Finance Party under Clause 10.2 (*Tax gross-up*) or a payment under Clause 10.3 (*Tax indemnity*).

(b) Unless a contrary indication appears, in this Clause 10 (*Tax Gross Up and Indemnities*) a reference to **"determines"** or **"determined"** means a determination made in the absolute discretion of the person making the determination.

#### 10.2 Tax gross-up

- (a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Parent shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify each Lender accordingly. Similarly, a Lender shall notify that Obligor on becoming so aware in respect of a payment payable to that Lender.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

- (e) Within thirty (30) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to each Lender entitled to the payment evidence reasonably satisfactory to the Lenders that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

### 10.3 Tax indemnity

- (a) Each Borrower shall (within five (5) Business Days of demand) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
  - (i) with respect to any Tax assessed on a Finance Party under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes, if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
  - (ii) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 10.2 (*Tax gross-up*).
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Parent of the event which will give, or has given, rise to the claim.

### 10.4 Tax Credit

- (a) If an Obligor makes a Tax Payment and the relevant Finance Party determines that:
  - (i) 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
  - (ii) that Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall within thirty (30) days from the date of obtaining and utilising of that Tax Credit pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

- (b) A Finance Party shall use its reasonable endeavours to obtain any Tax Credit available in respect of a Tax Deduction made by an Obligor in relation to a payment to that Lender.
- (c) To enable the Finance Parties to claim the Tax Credit, the Obligors shall promptly provide the Finance Parties with evidence of the Tax Deduction being paid to the tax authorities and supply such other information as the Finance Parties may reasonably request.

#### 10.5 Stamp taxes

The Borrowers shall, within three (3) Business Days of demand, pay and indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

#### 10.6 VAT

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

demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.

- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

#### 10.7 Tax residency form

Within thirty (30) days of receipt of a written request of the Borrower 2 each Lender shall use its reasonable efforts to provide to the Borrower 2 a written document (a "**Residence Confirmation**") issued by the relevant government authority in its jurisdiction of tax residence confirming that it is a tax resident of that jurisdiction (such Residence Confirmation shall be either apostilled or legalised at a consulate) and a written document in form and substance reasonably satisfactory to the Borrower 2 (a "**Beneficial Ownership Confirmation**") issued by the relevant Lender to the Borrower 2 (being the tax agent) confirming that the relevant Lender is the beneficial owner of the income to be received under this Agreement. The Lender 2 may provide to the Borrower 2 the Residence Confirmation and the Beneficial Ownership Confirmation in respect of the Holding Company of the Lender 2.

### 11 OTHER INDEMNITIES

#### 11.1 Currency indemnity

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

that Obligor shall as an independent obligation, within three (3) Business Days

of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

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

## 11.2 Other indemnities

Each Obligor shall (as a joint and several obligation with each other Obligor) within three (3) Business Days of demand, indemnify each other Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 22 (*Sharing among the Finance Parties*);
- (c) funding, or making arrangements to fund, its participation in a Loan requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower.

## 12 MITIGATION BY THE LENDERS

### 12.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Parent, 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 7.1 (*Illegality*) or Clause 10 (*Tax Indemnities*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

### 12.2 Limitation of liability

- (a) Each Obligor shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 12.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 12.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

## **13 COSTS AND EXPENSES**

### **13.1 Transaction expenses**

Each Borrower shall promptly on demand pay each Finance Party the amount of all documented costs and expenses (including legal fees) in the total amount of up to USD 200,000 reasonably incurred by any of them in connection with the negotiation, preparation, printing, execution and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement; and
- (b) any other Finance Documents executed after the date of this Agreement.

### **13.2 Amendment costs**

If (a) an Obligor requests an amendment, waiver or consent under any Finance Document or (b) an amendment is required pursuant to Clause 23.6 (*Change of currency*), each Borrower or that Obligor (as appropriate) shall, within five (5) Business Days of demand, reimburse each Lender for the amount of all documented costs and expenses (including legal fees) reasonably incurred by such Lender in responding to, evaluating, negotiating or complying with that request or requirement, subject to a cap in respect of legal fees agreed between the Lenders and the Parent.

### **13.3 Enforcement and preservation costs**

Each Borrower shall, within five (5) Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees and fees of other professional advisors and together with any applicable VAT) incurred by that Finance Party in connection with seeking professional advice to determine whether an Event of Default has occurred, the enforcement of, or the preservation of any rights under, any Finance Document and any proceedings instituted by or against such Finance Party as a consequence of enforcing these rights, including without limitation to pay to the Security Agent the amount of all costs and expenses (including Taxes, legal fees and fees of other professional advisors and together with any applicable VAT) incurred by it in connection with seeking professional advice to determine whether an Event of Default has occurred, the enforcement of or the preservation of any rights under any Finance Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing

these rights.

## Section 7 - GUARANTEE

### 14 GUARANTEE AND INDEMNITY

#### 14.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally, jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, the Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 14 (*Guarantee and Indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

#### 14.2 Continuing guarantee

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

#### 14.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 14 (*Guarantee and Indemnity*) will continue or be reinstated as if the discharge, release or arrangement had not occurred.

#### 14.4 Waiver of defences

The obligations of each Guarantor under this Clause 14 (*Guarantee and Indemnity*)

will not be affected by an act, omission, matter or thing which, but for this Clause 14 (*Guarantee and Indemnity*), would reduce, release or prejudice any of its obligations under this Clause 14 (*Guarantee and Indemnity*) (without limitation and whether or not known to it or any Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any Obligor;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person, or any change in the name of an Obligor, its capital structure, or constitution, or as a result of an Obligor being amalgamated, or merged with another person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

#### 14.5 **Guarantor intent**

Without prejudice to the generality of Clause 14.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that this guarantee and indemnity shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; advancing the Project including in accordance with Clause 3 (*Purpose*); enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, documented costs and/or expenses associated with any of the foregoing.

#### 14.6 **Immediate recourse**

Each of the Guarantors waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Guarantor under this Clause 14 (*Guarantee and Indemnity*). This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

#### 14.7 **Appropriations**

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

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of the Guarantor's liability under this Clause 14 (*Guarantee and Indemnity*).

#### 14.8 **Deferral of Guarantors' rights**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Lenders otherwise direct, no Guarantor shall exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 14 (*Guarantee and Indemnity*):

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity under Clause 14.1 (*Guarantee and indemnity*);

- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

If either Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Lenders in accordance with Clause 23 (*Payment Mechanics*).

#### 14.9 **Additional security**

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

## **Section 8 - REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

### **15 REPRESENTATIONS**

Each Obligor makes the representations and warranties set out in this Clause 15 (*Representations*) to each Finance Party on the date of this Agreement.

#### **15.1 Status**

- (a) It is a company, duly incorporated and validly existing under the laws of its Original Jurisdiction.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

#### **15.2 Binding obligations**

The obligations expressed to be assumed by it in each Finance Document to which it is a party are legal, valid, binding and enforceable obligations, subject to applicable bankruptcy, liquidation, insolvency and other similar laws and regulations relating to or affecting the enforcement of creditors' rights generally and equitable remedies.

#### **15.3 Non-conflict with other obligations**

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

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

#### **15.4 Power and authority**

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.
- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Finance Documents to which it is a party.

#### **15.5 Share capital**

The shares in the Obligors are fully paid. Other than the Convertible Notes and options to purchase shares issued under any stock option plan approved by the shareholders of the Parent there are no agreements or arrangements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any Obligor (including any option or right of pre-emption or conversion).

#### 15.6 **Validity and admissibility in evidence**

- (a) All Authorisations and any other acts, conditions or things required:
  - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
  - (ii) to make the Finance Documents to which it is a party admissible in evidence in its Relevant Jurisdictions (other than the requirement to provide a Russian court with a notarised translation of any Finance Document which is in a language other than Russian),  
  
have been obtained, effected, done, fulfilled or performed and are in full force and effect.
- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of the Obligors have been obtained or effected and are in full force and effect, if failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect.
- (c) The Mining Licence, the Exploration Licence and the Material Licences have been obtained or effected in full compliance with applicable law and are in full force and effect. All such Mining Licence, the Exploration Licence and the Material Licences are sufficient in scope and substance for the development and operation of the Project.
- (d) JSC Prognoz has complied with all terms and conditions of each of the Mining Licence and the Exploration Licence, including without limitation, has complied with all work obligations contained in the Mining Licence and the Exploration Licence.

#### 15.7 **Governing law and enforcement**

- (a) The choice of the law stated to be the governing law of each Finance Document will be recognised and enforced in its Relevant Jurisdictions, provided that in any proceeding in a court of competent jurisdiction in the province of Ontario, Canada, the court would apply the law chosen in each Finance Document provided that:

- (i) the choice of law is bona fide and legal and there is no reason for avoiding the choice of law on the grounds of public policy under laws of the province of Ontario;
- (ii) in any such proceeding, and notwithstanding the choice of law, a court:
  - (A) will not take judicial notice of the provisions of the law of, but will apply such provisions if they are pleaded and proven to its satisfaction by expert testimony;
  - (B) will apply the laws of the province of Ontario and the federal laws of Canada applicable therein that under would be characterised as procedural and will not apply the choice of law set forth in each Finance Document that would be characterised as procedural;
  - (C) will apply the laws of the province of Ontario and the federal laws of Canada that have overriding effect; and
  - (D) will not apply any foreign law if such application would be characterised as a direct or indirect enforcement of a foreign revenue, expropriatory, penal or other public law or if its application would be contrary to public policy.
- (b) Any judgment obtained in relation to a Finance Document in the jurisdiction of the stated governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions, provided that a court of competent jurisdiction in the province of Ontario, would give a judgment based upon a final and conclusive in personam judgment of a court exercising jurisdiction in the jurisdiction stated as the governing law of each Finance Document for a sum certain obtained against an Obligor without reconsideration of the merits provided that:
  - (i) an action to enforce the judgment must be commenced in a court of competent jurisdiction in the province of Ontario within any applicable limitation period;
  - (ii) a court of competent jurisdiction in the province of Ontario has discretion to stay or decline to hear an action on the judgment if the judgment is under appeal or there is another subsisting judgment in any jurisdiction relating to the same cause of action as the judgment which is sought to be enforced;
  - (iii) a court of competent jurisdiction in the province of Ontario will render judgment only in Canadian Dollars;
  - (iv) an action in a court of competent jurisdiction in the province of Ontario on the foreign judgment may be affected by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally; and

- (v) the court exercising jurisdiction under the stated governing law of each Finance Document had jurisdiction over the Obligor as recognised under the laws of the province of Ontario for purposes of enforcement of foreign judgements.
- (c) Any arbitral award obtained in relation to a Finance Document in the seat of that arbitral tribunal as specified in that Finance Document will be recognised and enforced in its Relevant Jurisdictions, subject to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) and applicable laws of the Relevant Jurisdiction which regulates enforcement of the arbitral awards.

#### 15.8 **Insolvency**

No:

- (a) corporate action, legal proceeding or other procedure or step described in Clause 18.7 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 18.8 (*Creditors' process*),

has been taken or, to its knowledge, threatened in relation to any Obligor and none of the circumstances described in Clause 18.6 (*Insolvency*) applies to any Obligor.

#### 15.9 **No filing or stamp taxes**

Under the laws of the respective Original Jurisdiction it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except as otherwise expressly stated in respect of each Transaction Security in each Transaction Security Document, which registrations, notifications, notarisations, filing, notarial, courts and similar taxes and fees will be made and paid promptly in accordance with the terms and conditions of the relevant Finance Document and applicable law.

#### 15.10 **No default**

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Finance Document, except for any Event of Default existing but waived by the Lenders under the Existing Non-Convertible Notes.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of the foregoing, would constitute) a default or termination event (howsoever described) under any other agreement or instrument which

is binding on it or to which its assets are subject which has or is reasonably likely to have a Material Adverse Effect.

**15.11 No misleading information**

- (a) To the best of its knowledge any factual information provided by or on behalf of any Obligor in contemplation of, or in connection with, its entry into and performance of any Finance Document was, in each case, true, complete and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) To the best of its knowledge any financial projections made by or on behalf of any Obligor and provided to the Finance Parties have been prepared as at their date on the basis of recent historical information and on the basis of reasonable assumptions.

**15.12 Financial statements**

- (a) Its Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied.
- (b) Its Original Financial Statements give a true and fair view of (if audited) or fairly represent (if unaudited) its financial condition and its results of operations during the relevant period.
- (c) There has been no material adverse change in its assets, business or financial condition since the date of the Original Financial Statements.
- (d) Its most recent financial statements delivered pursuant to Clause 16.1 (*Financial statements*):
  - (i) have been prepared in accordance with the Accounting Principles; and
  - (ii) give a true and fair view of (if audited) or fairly represent (if unaudited) its financial condition as at the end of, and results of operations for, the period to which they relate.
- (e) The most recent financial statements of the Parent delivered pursuant to Clause 16.1 (*Financial statements*):
  - (i) have been prepared in accordance with IFRS; and
  - (ii) give a true and fair view of (if audited) or fairly represent (if unaudited) the Parent's consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.
- (f) Since the date of the Original Financial Statements or, once subsequent financial statements have been delivered pursuant to Clause 16.1 (*Financial*

statements), the most recent financial statements delivered under Clause 16.1 (*Financial statements*), there has been no material adverse change in its assets, business or financial condition.

**15.13 Pari passu ranking**

Without limiting any other provision contained in this Agreement or any other Finance Document, its payment obligations under the Finance Documents to which it is a party rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

**15.14 No proceedings pending or threatened**

No litigation, arbitration, criminal or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against it.

**15.15 No breach of laws**

- (a) It has not breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.
- (b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against JSC Prognoz which have or are reasonably likely to have a Material Adverse Effect.
- (c) No notice, order, directive, designation, resolution or proposal of any public body or authority concerning the breach or any potential breach of any terms of the Mining Licence has been delivered to JSC Prognoz.

**15.16 Environmental and social compliance**

- (a) JSC Prognoz is in compliance with Clause 17.19 (*Environmental and social compliance*) in all material respects and no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) No Environmental Claim has been commenced or is threatened against JSC Prognoz where that claim has or is reasonably likely, if determined against JSC Prognoz, to have a Material Adverse Effect.

**15.17 Taxation**

- (a) It is not overdue in the filing of any Tax returns and it is not overdue in the payment of any amount in respect of Tax.

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

**15.18 Anti-corruption law and money laundering**

- (a) JSC Prognoz has conducted its operations related to the Project in compliance with applicable anti-corruption laws and has instituted as at the Facility Signing Date an anti-corruption policy.
- (b) JSC Prognoz is in compliance with all applicable laws concerning money laundering. Neither JSC Prognoz nor, to the best of its knowledge, any of its officers, directors, authorised employees, Affiliates, agents or representatives have committed or engaged in any activities which are restricted by the anti-corruption and/or money laundering legislation.

**15.19 Financial Indebtedness**

No Obligor has any Financial Indebtedness outstanding other than as permitted by this Agreement, and except for the Convertible Notes and the Existing Non-Convertible Notes.

**15.20 Security and Ranking**

- (a) The Transaction Security has or will have first ranking priority and it is not subject to any prior ranking or *pari passu* ranking Security.
- (b) No Security or Quasi-Security exists over all or any of the present or future assets of the Obligors except as permitted under Clause 17.17 (*Negative pledge*).
- (c) No litigation, arbitration, criminal, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in respect of assets subject or to be subject to the Transaction Security which may result in inability to complete all necessary perfection requirements in respect of the Transaction Security or affect its first ranking priority.

**15.21 Legal and beneficial ownership**

It is, or will be (at the time it purports to grant such Security), the sole legal and beneficial owner of the respective assets over which it purports to grant Security free from any claims, third party rights or competing interests other than Security permitted under Clause 17.17 (*Negative pledge*).

**15.22 Good title to assets**

JSC Prognoz has (or will have upon acquisition of the relevant asset) a good, valid

and marketable title to all the Project Assets necessary to develop and operate the Project.

**15.23 No immunity**

In any proceedings taken in its jurisdiction of incorporation in relation to the Finance Documents to which it is a party, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.

**15.24 Private and commercial acts**

(a) Its execution of the Finance Documents to which it is a party constitutes, and its exercise of its rights and performance of its obligations thereunder will constitute, private and commercial acts done and performed for private and commercial purposes.

(b) Each Obligor is acting as principal and not as an agent in relation to its entry into and performance by it of, and the transactions contemplated by, the Finance Documents to which it is a party.

**15.25 Centre of main interests and establishments**

For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "**Regulation**"), its "centre of main interests" (as that term is used in Article 3(1) of the Regulation) is situated in its Original Jurisdiction and it has no "establishment" (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction.

**15.26 Books and records**

It has maintained and will maintain its books and records in a manner consistent with the Accounting Principles.

**15.27 Use of Proceeds**

No Loan has been used for any purpose not expressly permitted pursuant to Clause 3.1 (*Purpose*).

**15.28 No Material Adverse Effect**

No event or circumstance has occurred since the date of the Original Financial Statements which has had or might have a Material Adverse Effect.

**15.29 Repetition**

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on the date of each Utilisation Request, each Utilisation Date and the first (1st) day of each Interest Period.

## 16 INFORMATION UNDERTAKINGS

The undertakings in this Clause 16 (*Information Undertakings*) remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

In this Clause 16 (*Information Undertakings*):

"**Annual Financial Statements**" means the financial statements delivered pursuant to paragraphs (a), (d) and (e) of Clause 16.1 (*Financial statements*).

### 16.1 Financial statements

Each Obligor shall supply to the Lenders:

#### Parent

- (a) as soon as the same become available, but in any event within one hundred and fifty (150) days after the end of each of its Financial Years, the audited annual consolidated financial statements of the Parent for that Financial Year prepared in accordance with IFRS consistently applied;
- (b) as soon as the same become available, but in any event within sixty (60) days after the end of each financial quarter, the consolidated financial statements of the Parent for that each financial quarter prepared in accordance with IFRS consistently applied;
- (c) as soon as the same become available, but in any event within sixty (60) days after the end of each financial quarter, management accounts of the Parent with a management discussion and analysis ("MD&A") of results for such financial quarter;

#### JSC Prognoz

- (d) as soon as the same become available, but in any event within one hundred and fifty (150) days after the end of each of its Financial Years, the audited annual financial statements of JSC Prognoz for that Financial Year prepared in accordance with the Accounting Principles consistently applied;
- (e) as soon as the same become available, but in any event within sixty (60) days after the end of each financial quarter, quarterly unaudited financial statements of JSC Prognoz prepared in accordance with the Accounting Principles consistently applied.

### 16.2 Cash Sweep Certificate

JSC Prognoz undertakes to deliver a certificate to each Lender within thirty (30) calendar days following each 30 June and 31 December falling after the Project

Completion Date, and in any event no later than starting from 31 December 2017, setting out the following:

- (a) the amount of the Excess Cash;
- (b) the calculation of the Excess Cash; and
- (c) the date upon which such Excess Cash shall be used to repay a portion of the Loans, which may not be later than ninety (90) calendar days after each 30 June and 31 December respectively.

### **16.3 Reports about the status of the Project**

- (a) Until the Project Completion Date occurs JSC Prognoz shall within ten (10) Business Days after the end of each Month deliver to each Lender monthly construction reports relating to the Project substantially in the form of the relevant construction reports that have been delivered to the Lenders by JSC Prognoz before the Facility Signing Date.
- (b) After the Project Completion Date JSC Prognoz shall within ten (10) Business Days after the end of each calendar Month, starting from the Project Completion Date, deliver to each Lender monthly production reports regarding the status of the Project in the form and substance satisfactory to each Lender.

### **16.4 Requirements as to financial statements**

- (a) Each set of financial statements and management accounts delivered by the Obligors pursuant to Clause 16.1 (*Financial statements*) shall be certified by an authorised representative of the relevant Obligor (provided that evidence in form and substance satisfactory to the Lenders of such authorisation shall be delivered together with such financial statements or management accounts (as applicable)) as giving a true and fair view of (in the case of the Annual Financial Statements), or fairly representing (in other cases), its financial condition and operations as at the date as at which those financial statements or management accounts (as applicable) were drawn up and, in the case of the Annual Financial Statements, shall be accompanied by any letter addressed to the management of the relevant Obligor by the Auditors and accompanying those Annual Financial Statements.
- (b) Each Obligor shall procure that each set of financial statements and management accounts delivered pursuant to Clause 16.1 (*Financial statements*) includes a balance sheet and profit and loss account. In addition, the each Obligor shall procure that:
  - (i) each set of Annual Financial Statements shall be audited by the Auditors;
  - (ii) each set of Annual Financial Statements delivered pursuant to paragraphs (a) - (e) of Clause 16.1 (*Financial statements*) is prepared

using the Accounting Principles and accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements unless, in relation to any set of Annual Financial Statements, they notify the Lenders that there has been a change in the Accounting Principles, accounting practices or reference periods and the Auditors deliver to the Lenders:

- (A) a description of any change necessary for those Annual Financial Statements to reflect the Accounting Principles, accounting practices and reference periods upon which the Original Financial Statements were prepared; and
  - (B) sufficient information, in form and substance as may be reasonably required by the Lenders, to enable the Lenders to make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.
- (iii) JSC Prognoz shall procure that each set of financial statements of JSC Prognoz delivered pursuant to paragraphs (d) - (e) of Clause 16.1 (*Financial statements*) shall be accompanied by the following information:
- (A) a breakdown of the accounts receivable and accounts payable to JSC Prognoz (specifying overdue amounts);
  - (B) information concerning the existence of overdue debts in relation to taxes and other mandatory payments owed to the federal budget of the Russian Federation, the budgets of the constituent entities of the Russian Federation, local budgets and non-budgetary funds amounting to over five (5) % of the net assets of JSC Prognoz;
  - (C) information concerning overdue salary debts to employees of JSC Prognoz;
  - (D) information concerning the existence of any current claims in respect of the bank accounts of JSC Prognoz to the extent such information is provided by the relevant bank of JSC Prognoz.
- (iv) Any reference in this Agreement to those Annual Financial Statements shall be construed as a reference to those Annual Financial Statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

#### 16.5 Information: miscellaneous

JSC Prognoz shall supply to each Lender:

- (a) promptly upon becoming aware of them, the details of any litigation, arbitration, criminal, regulatory or administrative proceedings which are current, threatened or pending against any Obligor, and which might, if adversely determined, have a Material Adverse Effect;
- (b) promptly upon becoming aware, any information regarding an actual or expected event which has or is reasonably likely to have a Material Adverse Effect;
- (c) promptly, such information as the Security Agent may reasonably require about the assets subject to the Transaction Security and compliance of the Obligors with the terms of any Transaction Security Documents;
- (d) copies of all Authorisations necessary in order to develop and operate the Project, the Mining Licence, the Exploration Licence and all the Material Licences of each Obligor and any amendments thereto that are obtained or renewed after the date of this Agreement within ten (10) Business Days of the issue thereof;
- (e) copies of any notice, order, directive, designation, resolution or proposal of any public body or authority concerning the Mining Licence and Exploration Licence;
- (f) promptly, details of any filing, recording or enrolling of any Finance Document with any court or other authority in any jurisdiction where it is required to be registered in order to be valid;
- (g) promptly on request of any Lender (acting reasonably), such further information (including, where requested, copies of financial records, general ledgers and other books of account) regarding the financial condition, business, operations and/or legal matters (including, but not limited to, all registrations and all licences) of any Obligor (including, but not limited to, (A) any requested amplification or explanation of (1) any item in any financial statements or (2) other material provided by any Obligor under this Agreement and (B) an up-to-date copy of any register of shareholders (or its equivalent)) as any Finance Party may request.

#### **16.6 Auditors**

No Obligor shall (and each Obligor shall ensure that no other Obligor will) change its auditors from those retained by it as at the date of this Agreement except with the consent of the Lenders which may not be unreasonably withheld.

#### **16.7 Notification of default**

- (a) Each Obligor shall notify the Lenders in writing of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence

(unless that Obligor is aware that a notification has already been provided by another Obligor).

- (b) Promptly upon a request by any Lender, each Borrower shall supply to such a Lender a certificate signed by its authorised signatories (or other authorised persons) on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

## **17 GENERAL UNDERTAKINGS**

The undertakings in this Clause 17 (*General Undertakings*) remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### **17.1 Authorisations**

- (a) Each Obligor shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required under any law or regulation of a Relevant Jurisdiction to:
  - (i) enable it to perform its obligations under the Finance Documents;
  - (ii) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document to which it is a party; and
  - (iii) carry on its business and/or operations where failure to do so has or is reasonably likely to have a Material Adverse Effect;
  - (iv) develop and operate the Project;
- (b) JSC Prognoz shall supply certified copies of all Authorisations mentioned in paragraph (a) above, of any Material Licence, the Mining Licence, the Exploration Licence and any amendments thereto.
- (c) JSC Prognoz shall perform and observe all the conditions and restrictions contained in, or imposed on it by, the Mining Licence, the Exploration Licence and each Material Licence.
- (d) JSC Prognoz shall use its best efforts to extend the term of the Exploration Licence.

### **17.2 Compliance with laws**

Each Obligor shall comply in all respects with all laws to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

### **17.3 Anti-corruption laws and money-laundering**

- (a) JSC Prognoz shall conduct its businesses in compliance with applicable anti-corruption laws.
- (b) JSC Prognoz shall comply with all applicable laws concerning money laundering. Neither JSC Prognoz nor any officers, directors, authorised employees, Affiliates, agents or representatives of JSC Prognoz may commit or be engaged in any prohibited practice.

#### 17.4 Taxation

- (a) Each Obligor shall comply with all Tax laws applicable to it and pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
  - (i) such payment is being contested in good faith;
  - (ii) the applicable Taxes plus penalties for non-payment do not exceed USD 1,000,000 (or its equivalent in any other currencies) for any Obligor at any time;
  - (iii) adequate reserves are being maintained for those Taxes (including any penalties) and the costs required to contest them where payment is being contested; and
  - (iv) such payment can be lawfully withheld.
- (b) No Obligor may change its residence for Tax purposes without the prior written consent of the Lenders (which may not be unreasonably withheld).
- (c) Each Obligor shall notify the Lenders of any claim described in Clause 18.17 (Taxes) in respect of Taxes promptly upon becoming aware of its occurrence.
- (d) Each Obligor shall ensure that no actual or contingent capital gains tax liability of any Obligor is triggered or realised, whether by reason of capital gains tax de-grouping or for any other reason where such triggering or realisation of such latent capital gains tax liability has or is reasonably likely to have a Material Adverse Effect.

#### 17.5 Acquisitions

No Obligor shall:

- (a) acquire a company or any shares or securities or a business or assets (or, in each case, any interest in any of them); or
- (b) incorporate a company,

other than in the course of the Permitted Corporate Reorganisation.

## 17.6 Disposals

- (a) Except as permitted under paragraph (b) below, no Obligor shall enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose (including, but not limited to, any sale and lease-back) of any asset or shares of the Obligor's Subsidiaries.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal on arm's length terms:
  - (i) which is carried out with the prior written approval of the Lenders;
  - (ii) which is carried out in the course of the Permitted Corporate Reorganisation; and
  - (iii) of trading stock or cash made by any Obligor in the ordinary course of trading of the disposing entity.

## 17.7 Dividends and share redemption

No Obligor shall without prior written consent of the Lenders:

- (a) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital) or make any material payment to its Affiliates or management (other than payments between Obligors and payment of salaries and bonuses to its employees and management in the reasonable amount);
- (b) make loans or advances to any of its shareholders, Affiliates and management;
- (c) repay or distribute any dividend or share premium reserve; or
- (d) redeem, repurchase, decrease, retire or repay any of its share capital or resolve to do so.

## 17.8 Distributions to Joint Ventures

Without prejudice to Clause 17.7 (*Dividends and share redemption*), the Obligors shall not make or pay any distribution, loans or advances (whether in cash or in kind) to any joint venture or any joint venture partner unless prior written approval of the Lenders has been granted.

## 17.9 Arm's length basis

No Obligor shall enter into any transaction with any person except on arm's length terms and for full market value, save for transactions between the Obligors.

#### 17.10 **Financial Indebtedness**

- (a) Except as permitted by paragraph (b) below, no Obligor may incur any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to:
  - (i) any Financial Indebtedness incurred with the prior written approval of the Lenders;
  - (ii) any Financial Indebtedness attracted from third party lenders and provided for the Project to which all Lenders gave prior written consent;
  - (iii) any Financial Indebtedness under financial leases of JSC Prognoz in the aggregate amount of up to USD 5,000,000; and
  - (iv) any Financial Indebtedness incurred under any loans or credit entered into between the Obligors.

#### 17.11 **Loans or credit**

- (a) Except as permitted by paragraph (b) below, no Obligor shall be a creditor in respect of any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to:
  - (i) any loans or credit entered into with the prior written approval of the Lenders;
  - (ii) any loans or credit entered into between the Obligors.

#### 17.12 **No guarantees, sureties or indemnity**

- (a) Except as permitted under paragraph (b) below, no Obligor shall incur or allow to remain outstanding any guarantee, surety, indemnity or other Security in respect of any obligation of any person.
- (b) Paragraph (a) above does not apply to:
  - (i) any guarantee or surety or indemnity to be given under or in connection with any Finance Document;
  - (ii) any guarantee or surety or indemnity to be given by the Parent to equipment suppliers under or in connection with equipment supply contracts entered into by any Obligor in the aggregate amount of up to USD 1,000,000. If any such guarantee or surety or indemnity is to be given by the Parent and as a result the aggregate amount of all such guarantees, sureties and indemnities given by the Parent would exceed

USD 1,000,000, such guarantee or surety or indemnity shall be subject to prior written approval of the Lenders.

**17.13 No other business and conduct of business**

- (a) Each Obligor shall conduct its business in a reasonable and prudent manner and in accordance with its constitutional documents and the Finance Documents.
- (b) No Obligor shall make any material changes, or permit any material changes to be made, to its constituent documents in any manner without prior written consent of the Lenders which may not be unreasonably withheld.
- (c) Each Obligor shall:
  - (i) maintain its accounts, books and records separately from any other person;
  - (ii) maintain separate accounts and financial statements;
  - (iii) not commingle its assets with those of any other person;
  - (iv) conduct its business in its own name;
  - (v) ensure that any costs in relation to any shared premises are fairly and reasonably allocated; and
  - (vi) not acquire or allow to be transferred to it any obligations whatsoever of any of its shareholders.

**17.14 No change of business**

No Obligor shall make or permit any material change to the nature or scope of the business activities of the Borrowers or the Obligors from that carried on at the date of this Agreement.

**17.15 Pari Passu ranking**

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

**17.16 Transaction Security**

Each Obligor undertakes to procure that the Transaction Security has or will have first ranking priority and does not at any time become subject to any prior ranking or

*pari passu* ranking Security and to take all necessary action and measures to perfect and protect all the Transaction Security.

#### 17.17 **Negative pledge**

In this Clause 17.17 (*Negative pledge*), "**Quasi-Security**" means an arrangement or transaction described in paragraph (c) below.

(a) No Obligor shall create or permit to subsist any Security over the whole or any part of its assets other than the Transaction Security.

(b) No Obligor shall:

(i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any Obligor;

(ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;

(iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(iv) enter into any other preferential arrangement having a similar effect,

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

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

(i) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by any Obligor;

(ii) a Transaction Security;

(iii) any Security over equipment for purposes of any vendor equipment financing as permitted pursuant to Clause 17.10 (*Financial Indebtedness*).

#### 17.18 **Material Transactions**

No Obligor shall enter into any transaction, agreement or arrangement or a series of transactions, agreements or arrangements where the obligations or the potential liability thereunder is in excess of USD 5,000,000 (or its equivalent in another currency) without the prior written consent of the Lenders other than:

- (i) any Finance Document;
- (ii) the JSC Prognoz Transfer Agreement; and
- (iii) the SBR B.V. Transfer Agreement.

**17.19 Environmental and social compliance**

JSC Prognoz shall:

- (a) comply with all Environmental Laws and Social Laws in all material respects; and
- (b) obtain, maintain and ensure compliance with all requisite material Environmental Permits.

**17.20 Environmental claims**

JSC Prognoz shall promptly upon becoming aware of the same, inform the Lenders in writing of:

- (a) any Environmental Claim against JSC Prognoz which is current, pending or threatened; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against JSC Prognoz, where the claim, if determined against JSC Prognoz, has or is reasonably likely to have a Material Adverse Effect.

**17.21 Insurance**

- (a) JSC Prognoz shall maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.
- (b) All insurances must be with reputable independent insurance companies or underwriters approved by the Lenders.
- (c) JSC Prognoz shall:
  - (i) maintain at all times at its own expense the insurances listed in Schedule 5 (*Existing Insurances*) (the "**Existing Insurances**") until the Project Completion Date;
  - (ii) procure that all Existing Insurances are maintained with an insurer approved by the Lenders;

- (iii) procure that each policy in respect of each and every Existing Insurance is renewed no later than five (5) Business Days before the expiry of any such existing policy;
  - (iv) use all reasonable endeavours to prevent the happening of any act, omission, breach or default which would be reasonably likely to render void or voidable any Existing Insurance; and
  - (v) after the Project Completion Date maintain at its own expense insurance against such risks as may be reasonably requested by the Lenders and on such other terms and conditions agreed by JSC Prognoz.
- (d) The Parent shall:
- (i) maintain at all times at its own expense all risk covered insurance relating to the Project in general until the Project Completion Date;
  - (ii) procure that all insurances under paragraph (i) above are maintained with an insurer approved by the Lenders;
  - (iii) procure that each policy in respect of each and every insurance under paragraph (i) above is renewed no later than five (5) Business Days before the expiry of any such existing policy;
  - (iv) use all reasonable endeavours to prevent the happening of any act, omission, breach or default which would be reasonably likely to render void or voidable any insurance under paragraph (i) above; and
  - (v) after the Project Completion Date maintain at its own expense insurance as may be requested by the Lenders and on such terms and conditions satisfactory to the Lenders.

#### 17.22 **Access**

Each Obligor shall permit the Security Agent and the Lenders and/or accountants or other professional advisers and contractors of the Security Agent and the Lenders free access at all reasonable times and on reasonable notice at the cost of the relevant Obligor and the Borrowers to (a) the premises, assets, books, accounts and records of each Obligor and (b) meet and discuss matters with management of the relevant Obligor.

#### 17.23 **Use of proceeds**

Each Borrower undertakes that any amounts borrowed under the Facility shall only be used for the purposes set out in Clause 3.1 (*Purpose*).

#### 17.24 **Merger**

No Obligor shall enter into any amalgamation, de-merger, merger or consolidation, other than the Permitted Corporate Reorganisation, except with the prior written consent of the Lenders which cannot be unreasonably withheld.

**17.25 Capital structure**

No Obligor shall issue, split, redeem or consolidate any shares or otherwise change its capital structure other than:

- (a) with the prior written consent of the Lenders which cannot be unreasonably withheld except that Borrower 1 shall be permitted, without the prior written consent of the Lenders, to issue new common shares from treasury in one or more private placement transactions to arm's length investors, all in accordance with the applicable rules of the Toronto Stock Exchange, but provided that the aggregate gross proceeds raised from such equity financings shall not exceed \$7,500,000; or
- (b) in the context of the Permitted Corporate Reorganisation.

**17.26 Further assurance**

- (a) Each Obligor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as each Lender may reasonably specify (and in such form as each Lender may reasonably require in favour of the Security Agent or its nominee(s)):
  - (i) to perfect the Security created or intended to be created under or evidenced by the Transaction Security Documents or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law; and/or
  - (ii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- (b) Each Obligor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

**17.27 Project**

- (a) JSC Prognoz shall carry out the final development of the Project substantially in accordance with the presentation made to the Lenders and the Board of Directors of the Parent dated 22 February 2016 and titled "The Mangazeisky Silver Project – Path to Production".

- (b) JSC Prognoz will maintain, preserve, protect, keep and comply with:
  - (i) the Mining Licence and the Material Licences;
  - (ii) all of its ownership, lease, use, licence and other interests in, and other contractual obligations relating to, the Project Assets, as are necessary for it to be able to operate the Project substantially in accordance with sound mining and business practice; and
  - (iii) all of the Project Assets owned by it in good repair, working order, and condition, and make necessary and proper repairs, renewals, and replacements so that the business carried on in connection therewith may be properly conducted at all times, unless the continued maintenance of any of such Project Assets is no longer necessary or economically desirable for the operation of the Project, such operation to be substantially in accordance with sound mining and business practice.

#### 17.28 Conditions Subsequent

JSC Prognoz shall:

- (a) not later than thirty (30) days after each of 10 January and 1 July of each calendar year after the date of this Agreement prior to the Project Completion Date, and not later than thirty (30) days after 10 January of each calendar year after the Project Completion Date, execute amendment agreement to the Movable Property Pledge Agreement to reflect the pledge over the equipment delivered in relation to the Project during the previous six (6) months period (or, after the Project Completion Date, during the previous one (1) year period), and acquired by JSC Prognoz during such relevant period and to do all such acts or execute all such other documents required for the execution, registration and perfection of such amendment agreement, including filing a notice to the Register of movable pledges notifications;
- (b) simultaneously with the assignment of receivables under the Prognoz Loan Agreement by SBR Barbados to the Lenders, execute amendment and restatement agreement in respect of the Prognoz Loan Agreement to restate the Prognoz Loan Agreement substantially in the form of this Agreement on the terms satisfactory to each Lender;
- (c) within the time periods agreed in the Consent, Amendment and Restatement Deed, execute all required amendments to the Transaction Security Documents and do all such acts or execute all such documents as each Lender may reasonably specify to register and perfect the Security created or intended to be created under or evidenced by the Transaction Security Documents and required to secure obligations of JSC Prognoz under the Prognoz Loan Agreement by the Transaction Security Documents on the terms satisfactory to each Lender;

- (d) procure the receipt of the VAT Refund Proceeds within twelve (12) months after the Project Completion Date; and
- (e) upon acquisition by JSC Prognoz of title to any immovable property, at the request of a Lender, execute mortgage agreement in notarized form for purposes of creation of Security in favour of the Lenders over such immovable property and do all such acts or execute all such documents as each Lender may reasonably specify to register and perfect the Security created or intended to be created over such immovable property on the terms satisfactory to each Lender.

## **18 EVENTS OF DEFAULT**

Each of the events or circumstances set out in Clause 18 (*Events of Default*) is an Event of Default (save for Clause 18.22 (*Acceleration*)).

### **18.1 Non-payment**

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

- (a) its failure to pay is caused by:
  - (i) administrative or technical error; or
  - (ii) a Disruption Event; and
- (b) payment is made within three (3) Business Days of its due date.

### **18.2 Certain obligations**

- (a) Any Borrower does not comply with Clause 3.1 (*Purpose*) in the Lenders' reasonable opinion;
- (b) Any Obligor does not comply with the provisions of Clause 17.28 (*Conditions Subsequent*).

### **18.3 Other obligations**

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 18.1 (*Non-payment*) and Clause 18.2 (*Certain obligations*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of being remedied and is remedied within ten (10) Business Days of the earlier of (i) any Lender giving notice to the relevant Borrower or

the relevant Obligor and (ii) the relevant Borrower or the relevant Obligor becoming aware of the failure to comply.

#### 18.4 **Misrepresentation**

- (a) Any representation or statement made or repeated by any Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or repeated.
- (b) No Event of Default under paragraph (a) above will occur if the circumstances giving rise to such misrepresentation are capable of remedy and are remedied such that the representation or statement would be true if deemed to be repeated with reference to the facts and circumstances then existing within five (5) Business Days of the earlier of (i) any Lender giving notice to a Borrower or the relevant Obligor and (ii) a Borrower or an Obligor becoming aware of the failure to comply.

#### 18.5 **Cross default**

- (a) Any Financial Indebtedness of any Obligor is not paid when due nor within any originally applicable grace period, except for any failure to pay any Existing Non-Convertible Note where the default created by such failure to pay has been waived by the Lenders as of the Facility Signing Date.
- (b) Any Financial Indebtedness of any Obligor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any Obligor is cancelled or suspended by a creditor of any Obligor as a result of an event of default (however described).
- (d) Any creditor of any Obligor becomes entitled to declare any Financial Indebtedness of any Obligor due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 18.5 if the aggregate amount of Financial Indebtedness in respect of financial leases falling within paragraphs (a) to (d) above is less than USD 2,500,000 (or its equivalent in any other currency).

#### 18.6 **Insolvency**

- (a) Any Obligor:
  - (i) is unable or admits inability to pay its debts as they fall due;

- (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law;
  - (iii) suspends or threatens to suspend making payments on any of its debts; or
  - (iv) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of any Obligor is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of any Obligor. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

#### **18.7 Insolvency proceedings**

- (a) Any corporate action, corporate reorganisation, restructuring, legal proceedings or other procedure or step is taken in relation to:
- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of any Obligor;
  - (iii) initiation of insolvency proceedings in relation to any Obligor;
  - (iv) implementation of measures to prevent the bankruptcy of any Obligor (including, but not limited, to the implementation of pre-judicial recovery (financial recovery of the debtor prior to opening of insolvency proceedings));
  - (v) the appointment of a liquidator (other than in respect of a solvent liquidation of an Obligor), receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Obligor or any of its assets; or
  - (vi) enforcement of any Security over any assets of any Obligor, or any analogous procedure or step is taken in any jurisdiction.
- (b) No Event of Default will occur under this Clause 18.7 in respect of:

- (i) any petition or similar action which is frivolous or vexatious and is dismissed within twenty (20) Business Days of being filed; or
- (ii) any solvent liquidation or reorganisation of any Obligor in the course of Permitted Corporate Reorganisation.

**18.8 Creditors' process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of any Obligor.

**18.9 Failure to comply with court judgment or arbitral award**

Any Obligor fails to comply with or pay by the required time any sum due from it under any final judgment or any final order made or given by a court or arbitral tribunal or other arbitral body, in each case of competent jurisdiction.

**18.10 Unlawfulness and invalidity**

- (a) It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents.
- (b) Any obligation or obligations of any Obligor under any Finance Documents are not or cease to be legal, valid, binding or enforceable.
- (c) Any Finance Document ceases to be in full force and effect or any Transaction Security ceases to be legal, valid, binding, enforceable or effective.

**18.11 Effectiveness of Security**

- (a) Any Transaction Security created or expressed to be created or evidenced by, or any Security constituted by, the Transaction Security Documents is not or ceases to be in full force and effect or is, or becomes, invalid or the validity or applicability thereof to any sums expressed to be secured thereby is denied.
- (b) Any Transaction Security Document does not create in favour of the Security Agent the Security which it is expressed to create with the ranking and priority it is expressed to have or is not enforceable in accordance with its terms.

**18.12 Repudiation and rescission of agreements**

An Obligor rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

**18.13 Cessation of business or interruption of business**

- (a) JSC Prognoz suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.
- (b) Any Authorisation or any Material Licence required by JSC Prognoz to conduct all or a material part of its business is modified, varied, recalled, revoked or otherwise ceases to be in full force and effect to the extent that such an event has a Material Adverse Effect.
- (c) The Mining Licence is recalled, revoked, suspended or otherwise ceases to be in full force and effect.
- (d) A notice, order, directive, designation, resolution or proposal of any public body or authority concerning the breach or any potential breach of any terms of the Mining Licence has been delivered to JSC Prognoz which has or is likely to have a Material Adverse Effect.

#### 18.14 **Expropriation**

The authority or ability of any Obligor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, compulsory acquisition, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Obligor or any of its assets or the shares in that Obligor (including without limitation the displacement of all or material part of the management of any Obligor).

#### 18.15 **Material adverse change**

Any event or circumstance occurs which the Lenders reasonably believe has or is reasonably likely to have a Material Adverse Effect.

#### 18.16 **Litigation**

Any litigation, arbitration, criminal, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced against any Obligor or its assets where the aggregate amount claimed under all such proceedings exceeds USD 1,500,000 (or its equivalent in any other currency).

#### 18.17 **Taxes**

Any Obligor:

- (a) fails to pay any Taxes required to be paid by it within the time period allowed for payment; and
- (b) a tax authority issues a claim in respect of such Taxes (whether or not such claim is contested by the applicable Obligor),

for an amount exceeding USD 1,500,000 (or its equivalent in any other

currency) in aggregate for the Obligors at any time.

**18.18 Convertibility/Transferability**

Any foreign exchange law is amended, enacted or introduced that (in the reasonable opinion of the Lenders) has or reasonably likely to have the effect of prohibiting, restricting or seriously delaying in any respect any payment that any Obligor is required to make pursuant to the terms of any of the Finance Documents.

**18.19 Reorganisation**

There is any reorganisation or restructuring of any Obligor or there is a change in the

ownership of any of the shares and/or the participatory interests of any Obligor other than:

- (a) a change in the ownership of the shares of the Parent;
- (b) a Permitted Corporate Reorganisation;
- (c) a Change of Control; or
- (d) a reorganisation or restructuring with the prior written consent of the Lenders.

**18.20 Political and economic risk**

A deterioration occurs in the political and/or economic situation generally in a Relevant Jurisdiction, or an act of war or hostilities, invasion, armed conflict or act of foreign enemy, revolution, insurrection, insurgency or threat thereof occurs in or in relation to a Relevant Jurisdiction, unless (in any such case) in the reasonable opinion of the Lenders this does not and will not have a Material Adverse Effect.

**18.21 Completion**

The Project Completion Date has not occurred on or before 31 December 2017.

**18.22 Acceleration**

On and at any time after the occurrence of an Event of Default either Lender may, by notice to the Borrowers:

- (a) cancel the Total Commitments whereupon they shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;

- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lenders; and/or
- (d) direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents or exercise any or all of its rights, remedies, powers or discretions to the extent permitted under the Finance Documents.

#### 18.23 Enforcement of Transaction Security

After the occurrence of an Event of Default and acceleration pursuant to Clause 18.22 (*Acceleration*), the Lenders and Security Agent shall proceed as follows:

- (a) firstly, the Lenders and Security Agent shall enforce the Transaction Security created pursuant to either the Prognoz Share Pledge or the SBR B.V. Share Pledge;
- (b) secondly, and provided that the Finance Parties have not received a non-binding offer for the acquisition of shares of either JSC Prognoz, or SBR B.V., on a market conditions satisfactory to both Lenders, within forty-five (45) days after commencement of enforcement of either Prognoz Share Pledge or the SBR B.V. Share Pledge, either Lender may exercise the rights set out in paragraph (a) of Clause 18.24 (*Assignment Option*) below; and
- (c) thirdly, and provided that neither Lender has exercised the Assignment Option, the Lenders and Security Agent shall enforce the Transaction Security created pursuant to other Transaction Security Documents.

#### 18.24 Assignment Option

- (a) Either Lender (the "**Assignee**") may require (the "**Assignment Option**") the other Lender (the "**Assignor**") to assign and transfer to the Assignee on the assignment date (the "**Assignment Date**") all rights, title, benefit and interest that the Assignor has or is entitled to under (i) this Agreement, (ii) Prognoz Loan Agreement, and (iii) any other loan agreements or debt instruments between the Assignor (as a lender) and any Obligor, for a consideration (the "**Consideration**") equal to the sum of:
  - (i) the outstanding principal amount owed by the Borrowers to the Assignor under this Agreement;
  - (ii) the outstanding principal amount owed by the Borrowers to the Assignor under the Prognoz Loan Agreement; and
  - (iii) the outstanding principal amount owed by the Obligors to the Assignor under any other loan agreements or debt instruments between the Assignor (as a lender) and any Obligor,

excluding, for the avoidance of doubt, any accrued but unpaid interest, default interest, fees and penalties thereon.

- (b) The Assignment Option shall be exercised by the Assignee by giving the Assignor a notice (the "**Assignment Notice**") specifying the Assignment Date which shall be no later than the twentieth (20<sup>th</sup>) Business Day following the date of the Assignment Notice. The Consideration shall be paid by the Assignee to the Assignor on the Assignment Date.
- (c) Unless agreed otherwise by the Lenders, if each Lender has given the other Lender the Assignment notice, the Assignment Option may only be exercised by Lender 1.

## **Section 9 - CHANGES TO PARTIES**

### **19 CHANGES TO THE LENDERS**

#### **19.1 Assignments, transfers and sub-participations by the Lenders**

- (a) A Lender may:
  - (i) assign any of its rights;
  - (ii) transfer by novation any of its rights and obligations; or
  - (iii) sub-participate any of its rights,  
  
under any Finance Documents to other entity (the "**New Lender**") with the consent of the Parent and the other Lender.
- (b) Notwithstanding paragraph (a) above, in case of sale or transfer by a Lender of more than 20% + 1 share of the Parent's shares, such Lender may assign, transfer or sub-participate or sub-contract any of its rights and/or obligations under any Finance Documents without the prior consent of the Parent or the other Lender to the purchaser of such shares or its affiliates.
- (c) Notwithstanding paragraph (a) above, each Lender may assign, transfer or sub-participate or sub-contract any of its rights and/or obligations under any Finance Documents without the prior consent of the Parent or the other Lender to any of its Affiliates or to the other Lender.
- (d) The Lender shall notify the Parent of any assignment of its rights under the Finance Documents (including any security created under the Finance Documents) pursuant to paragraphs (a), (b) and (c) above.
- (e) Following any assignment or transfer referred to in paragraph (a), (b) and (c) above, references to the exercise of rights and discretions by the Lender shall be construed as references to the exercise of such rights or discretions by the New Lender.

### **20 CHANGES TO THE OBLIGORS**

#### **20.1 Assignments and transfer by Obligors**

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

## Section 10 - THE FINANCE PARTIES

### 21 THE SECURITY AGENT

#### 21.1 Security Agent as trustee

- (a) The Security Agent declares that it holds the Transaction Security on trust for the Secured Parties on the terms contained in this Agreement.
- (b) Each Lender authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

#### 21.2 Parallel debt (Covenant to pay the Security Agent)

- (a) Notwithstanding any other provision of this Agreement, each Borrower hereby irrevocably and unconditionally undertakes to pay to the Security Agent, as creditor in its own right and not as representative or trustee of the other Secured Parties, sums equal to and in the currency of each amount payable by each Borrower to each of the Secured Parties under each of the Finance Documents as and when that amount falls due for payment under the relevant Finance Document or would have fallen due but for any discharge resulting from failure of another Secured Party to take appropriate steps, in insolvency proceedings affecting that Borrower, to preserve its entitlement to be paid that amount.
- (b) The Security Agent shall have its own independent right to demand payment of the amounts payable by each Borrower under this Clause 21.2 (*Parallel debt (Covenant to pay the Security Agent)*) irrespective of any discharge of that Borrower's obligation to pay those amounts to the other Secured Parties resulting from failure by them to take appropriate steps, in insolvency proceedings affecting that Borrower, to preserve their entitlement to be paid those amounts.
- (c) Any amount due and payable by each Borrower to the Security Agent under this Clause 21.2 (*Parallel debt (Covenant to pay the Security Agent)*) shall be decreased to the extent that the other Secured Parties have received (and are able to retain) payment in full of the corresponding amount under the other provisions of the Finance Documents and any amount due and payable by that Borrower to the other Secured Parties under those provisions shall be decreased to the extent that the Security Agent has received (and is able to retain) payment in full of the corresponding amount under this Clause 21.2 (*Parallel debt (Covenant to pay the Security Agent)*).

- (d) The rights of the Secured Parties (other than the Security Agent) to receive payment of amounts payable by each Borrower under the Finance Documents are several and are separate and independent from, and without prejudice to, the rights of the Security Agent to receive payment under this paragraph (a) above.

### 21.3 Enforcement through Security Agent only

- (a) The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Transaction Security Documents executed by the Security Agent in its capacity as security agent (the "**Common Security Documents**") except through the Security Agent, unless otherwise provided in the Common Security Documents.
- (b) The other Finance Parties shall co-operate with each other and with the Security Agent in realising the property and assets subject to the Common Security Documents and in ensuring that the net proceeds realised under the Common Security Documents

after deduction of the expenses of realisation are applied in accordance with Clause 21.27 (*Order of application*).

### 21.4 Instructions

- (a) The Security Agent shall:
  - (i) subject to paragraphs (c) and (d) below exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in the interest of all Lenders in accordance with any instructions given to it by all Lenders;
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with sub-paragraph (i) above;
  - (iii) not enter into any transactions with its affiliates in respect of the Transaction Security without prior written approval by Lender 2.
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from all Lenders as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Paragraph (a) above shall not apply:

- (i) where a contrary indication appears in this Agreement;
  - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, Clauses 21.7 (*No duty to account*) to Clause 21.11 (*Exclusion of liability*), Clause 21.13 (*Confidentiality*) to Clause 21.15 (*Credit appraisal by the Secured Parties*), Clause 21.17 (*Reliance and engagement letters*) to Clause 21.20 (*Custodians and nominees*) and Clause 21.22 (*Acceptance of title*) to Clause 21.26 (*Disapplication of Trustee Acts*); or
  - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
    - (A) Clause 21.27 (*Order of application*); and
    - (B) Clause 21.30 (*Permitted Deductions*).
- (d) In exercising any discretion to exercise a right, power or authority under the Finance Documents where either:
- (i) it has not received any instructions as to the exercise of that discretion; or
  - (ii) the exercise of that discretion is subject to paragraph (c)(iv) above, the Security Agent shall do so having regard to the interests of all the Secured Parties.
- (e) Without prejudice to the provisions of the remainder of this Clause 21.4 (*Instructions*), in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate, provided that the Security Agent has notified the Lender 2 not less than two (2) times with not less than fourteen (14) days between each notification and has not received any response from the Lender 2 within seven (7) days after the second notification.
- (f) The Security Agent is not authorised to act on behalf of another Finance Party (without first obtaining that Finance Party's consent) in any legal or arbitration proceedings relating to any Transaction Security Document provided that this shall not limit its rights under this Agreement to enforce the Transaction Security for the benefit of any other Finance Party.

## 21.5 Duties of the Security Agent

- (a) The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly:
  - (i) forward to the Lenders a copy of any document received by the Security Agent from any Obligor under any Finance Document; and
  - (ii) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) Except where a Finance Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Security Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Lenders.
- (e) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

#### **21.6 No fiduciary duties to Obligors**

Nothing in this Agreement constitutes the Security Agent as an agent, trustee or fiduciary of any Obligor.

#### **21.7 No duty to account**

The Security Agent shall not be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account.

#### **21.8 Rights and discretions**

- (a) The Security Agent may:
  - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) assume that:
    - (A) any instructions received by it from the Lenders are duly given in accordance with the terms of the Finance Documents;
    - (B) unless it has received notice of revocation, that those instructions have not been revoked; and

- (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Finance Documents for so acting have been satisfied; and
- (iii) rely on a certificate from any person:
  - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,
    - as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent may assume (unless it has received notice to the contrary in its capacity as Security Agent for the Secured Parties) that:
  - (i) no Default has occurred;
  - (ii) any right, power, authority or discretion vested in any Party has not been exercised; and
  - (iii) any notice made by each Borrower is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts with the prior approval of the Lenders.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Security Agent may, with the prior approval of the Lenders, at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by the Lenders) if the Security Agent in its reasonable opinion deems this to be desirable.
- (e) The Security Agent may rely on the advice or services of any reputable law firms listed in any of the bands of Chambers and Partners and Legal 500 rankings, accountants and tax advisers comprising Big 4 auditor firms: PricewaterhouseCoopers, EY, Deloitte and KPMG (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.

- (f) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee under this Agreement.
- (g) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (h) Notwithstanding any provision of any Finance Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

#### **21.9 Responsibility for documentation**

The Security Agent is not responsible or liable for:

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

#### **21.10 No duty to monitor**

The Security Agent shall not be bound to enquire:

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

## 21.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Security Agent), the Security Agent will not be liable for:
- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Transaction Security unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security;
  - (iii) any shortfall which arises on the enforcement or realisation of the Transaction Security; or
  - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
    - (A) any act, event or circumstance not reasonably within its control; or
    - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,  
  
including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party (other than the Security Agent) may take any proceedings against any officer, employee or agent of the Security Agent in respect of any claim it might have against the Security Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Security and any officer, employee or agent of the Security Agent may rely on, and enjoy the benefit of, this Clause 21.11 (*Exclusion of liability*) and the provisions of the Third Parties Act.

- (c) The Security Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Security Agent if the Security Agent has taken its best efforts to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Security Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Security Agent to carry out:
  - (i) any "know your customer" or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any other Secured Party,

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

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

#### **21.12 Resignation of the Security Agent**

- (a) The Security Agent may resign by giving thirty (30) days' notice to the Lenders and the Parent. In such case, the retiring Security Agent shall appoint Lender 2 as a successor Security Agent, unless all Lenders have agreed to appoint another successor Security Agent.
- (b) If Lender 2 was appointed as Security Agent, Lender 2 in its capacity as Security Agent may resign by giving thirty (30) days' notice to the Lenders and the Parent. In such case, the retiring Security Agent shall appoint a successor Security Agent which shall be one of the following: Citibank, UBS, HSBC, Rothschild Group, Credit Suisse, Deutsche Bank, Pictet, J. Safra Sarasin, Conyers Dill & Pearman, Trident Trust, Rhone Trust or any other reputable bank or trust company, unless all Lenders have agreed to appoint another successor Security Agent within thirty (30) days' period.

- (c) The retiring Security Agent shall make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Finance Documents.
- (d) The Security Agent's resignation notice shall only take effect upon:
  - (i) the appointment of a successor; and
  - (ii) the transfer of all the Transaction Security to that successor and the completion of all the necessary perfection requirements.
- (e) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 21.24 (*Winding up of trust*) and paragraph (c) above) but shall remain entitled to the benefit of this Clause 21 (*The Security Agent*). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party (including, but not limited to, the establishing of parallel debt in accordance with Clause 21.2 (*Parallel debt (Covenant to pay the Security Agent)*) with respect to successor Security Agent) as may be required to grant and perfect Transaction Security in favour of successor Security Agent.
- (f) A Lender may, by notice to the Security Agent, require it to resign in accordance with paragraph (a) above. In this event, the Security Agent shall resign in accordance with paragraph (a) above.

#### 21.13 **Confidentiality**

Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

#### 21.14 **Information from the Lenders**

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

#### 21.15 **Credit appraisal by the Secured Parties**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Secured Party confirms to

the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

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

#### **21.16 Deduction from amounts payable by the Security Agent**

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

#### **21.17 Reliance and engagement letters**

The Security Agent may obtain and rely on any certificate or report from any Obligor's auditor and may enter into any reliance letter or engagement letter relating to that certificate or report on such terms as it may consider appropriate (including, without limitation, restrictions on the auditor's liability and the extent to which that certificate or report may be relied on or disclosed).

#### 21.18 **No responsibility to perfect Transaction Security**

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Obligor to any of the Transaction Security;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;
- (d) take, or to require any Obligor to take, any step to perfect its title to any of the Transaction Security or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Transaction Security Document.

#### 21.19 **Insurance by Security Agent**

- (a) The Security Agent shall not be obliged:
  - (i) to insure any assets subject to the Transaction Security;
  - (ii) to require any other person to maintain any insurance; or
  - (iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document.

and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Lenders request it to do so in writing and the Security Agent fails to do so within fourteen (14) days after receipt of that request.

#### 21.20 **Custodians and nominees**

The Security Agent may, with the prior consent of Lender 2, appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

#### 21.21 **Delegation by the Security Agent**

- (a) The Security Agent may, with the prior consent of Lender 2, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent may, in its discretion, think fit in the interests of the Secured Parties.
- (c) The Security Agent shall not be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of any such delegate or sub-delegate.

#### 21.22 **Acceptance of title**

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

#### 21.23 **Releases**

Upon a disposal of any of the Transaction Security pursuant to the enforcement of the Transaction Security by the Security Agent, the Security Agent is irrevocably authorised (at the cost of the Obligors and without any consent, sanction, authority or further confirmation from any other Secured Party) to release, without recourse or warranty, that property from the Transaction Security and to execute any release of the Transaction Security or other claim over that asset and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

#### 21.24 **Winding up of trust**

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

- (a) all of the Secured Obligations and all other obligations secured by the Transaction Security Documents have been fully and finally discharged; and

- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Transaction Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 21.12 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Transaction Security Document.

#### **21.25 Powers supplemental to Trustee Acts**

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

#### **21.26 Disapplication of Trustee Acts**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the

Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

#### **21.27 Order of application**

All amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Finance Documents, under Clause 21.2 (*Parallel debt (Covenant to pay the Security Agent)*), or in connection with the realisation or enforcement of all or any part of the Transaction Security shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (in its capacity as such) (other than pursuant to Clause 21.2 (*Parallel debt (Covenant to pay the Security Agent)*));
- (b) in payment or distribution to the Lenders, for application towards the

discharge of all sums due and payable by any Obligor under any of the Finance Documents in accordance with Clause 23.2 (*Partial payments*);

- (c) if none of the Obligors is under any further actual or contingent liability under any Finance Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Obligor; and
- (d) the balance, if any, in payment or distribution to the relevant Obligor.

#### 21.28 **Investment of proceeds**

Prior to the application of the proceeds of the Transaction Security in accordance with Clause 21.27 (*Order of application*) the Security Agent may, with the prior consent of Lender 2, hold all or part of those proceeds in one or more interest bearing suspense or impersonal accounts in the name of the Security Agent with any financial institution and for so long as the Security Agent thinks fit (the interest being credited to the relevant account) pending the application from time to time of those monies at the Security Agent's discretion in accordance with the provisions of Clause 21.27 (*Order of application*).

#### 21.29 **Currency conversion**

- (a) For the purpose of, or pending the discharge of, any of the Secured Obligations the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at the available rate of exchange.
- (b) The obligations of the Obligor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

#### 21.30 **Permitted Deductions**

The Security Agent shall be entitled (a) to set aside by way of reserve amounts required to meet and (b) to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any law or regulation to make from any distribution or payment made by it under this Agreement, and to pay all Taxes which may be assessed against it in respect of any of the Transaction Security, or as a consequence of performing its duties or exercising its rights, powers, authorities and discretions, or by virtue of its capacity as Security Agent under any of the Finance Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

#### 21.31 **Amounts received by the Obligor**

If the Obligor receives or recovers any amount which, under the terms of any of the Finance Documents, should have been paid to the Security Agent, the Obligor will

hold the amount received or recovered on trust for the Security Agent and promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement.

#### 21.32 **Application and consideration**

In consideration for the covenants given to the Security Agent by the Obligor in relation to Clause 21.2 (*Parallel debt (Covenant to pay the Security Agent)*), the Security Agent agrees with the Obligor to apply all moneys from time to time paid by the Obligor to the Security Agent in accordance with the foregoing provisions of this Clause 21 (*The Security Agent*).

### 22 **SHARING AMONG THE FINANCE PARTIES**

#### 22.1 **Payments to Finance Parties**

If a Lender (a "**Recovering Lender**") receives or recovers any amount from an Obligor other than in accordance with Clause 23 (*Payment Mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Lender shall, within three (3) Business Days, notify details of the receipt or recovery to the other Lender;
- (b) the other Lender shall determine whether the receipt or recovery is in excess of the amount the Recovering Lender would have been paid had the receipt or recovery been received or made in accordance with Clause 23 (*Payment Mechanics*); and
- (c) the Recovering Lender shall, within three (3) Business Days of demand by the other Lender, pay to such Lender an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which such Lender determines may be retained by the Recovering Lender as its share of any payment to be made, in accordance with Clause 23.2 (*Partial payments*).

#### 22.2 **Redistribution of payments**

The Lender that received the Sharing Payment shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Lender) (the "**Sharing Finance Parties**") in accordance with Clause 23.2 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

#### 22.3 **Recovering Lender's rights**

On a distribution by the Recovering Lender under Clause 22.1(c) of a payment received by such Recovering Lender from an Obligor, as between the relevant Obligor and the Recovering Lender, an amount of the Recovered Amount equal to

the Sharing Payment will be treated as not having been paid by that Obligor, provided that such amount has been applied in discharge of the relevant amounts owed by such Obligor to the relevant Sharing Finance Parties that received the Sharing Payment.

#### 22.4 Exceptions

- (a) This Clause 22 (*Sharing among the Finance Parties*) shall not apply to the extent that the Recovering Lender would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Lender is not obliged to share with the other Lender any amount which the Recovering Lender has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified the other Lender of the legal or arbitration proceedings; and
  - (ii) the other Lender had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

## Section 11 - ADMINISTRATION

### 23 PAYMENT MECHANICS

#### 23.1 Payments to the Lenders

On each date on which an Obligor is required to make a payment under a Finance Document, that Obligor shall make the same available to each Lender (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by that Lender as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

Payments by each Obligor under a Finance Document shall be made to the following accounts:

Lender 1

Bank:

Lender 1

Banking Information

Lender 2

Lender 2

Banking Information

#### 23.2 Partial payments

- (a) If a Lender receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Lender shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:

- (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of the Lender under the Finance Documents;
- (ii) **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
- (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
- (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

(b) Paragraph (a) above will override any appropriation made by an Obligor.

### 23.3 No set-off by Obligors

Unless otherwise provided by this Agreement, including, but not limited to Clause 6.1(b) (*Repayment of the Facility*), all payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

### 23.4 Business Days

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

### 23.5 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 an Obligor under any 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.

### 23.6 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as

the lawful currency of that country, then:

- (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Lenders (after consultation with the Parent); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Lenders (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Lenders (acting reasonably and after consultation with the Parent) specify to be necessary, be amended to comply with any generally accepted conventions and market practice and otherwise to reflect the change in currency.

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

If the Lenders jointly determine (in their discretion) that a Disruption Event has occurred or the Lenders are notified by the Parent that a Disruption Event has occurred:

- (a) the Lenders may, and shall if requested to do so by the Parent, consult with the Parent with a view to agreeing with the Parent such changes to the operation or administration of the Facility as the Lenders may deem necessary in the circumstances;
- (b) the Lenders shall not be obliged to consult with the Parent in relation to any changes mentioned in paragraph (a) above if, in their 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 Lenders and the Parent shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 29 (*Amendments and Waivers*).

#### **24 SET-OFF**

A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a

market rate of exchange in its usual course of business for the purpose of the set-off.

## **25 NOTICES**

### **25.1 Communications in writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter or, subject to Clause 25.4 (*Electronic communication*), via electronic mail.

### **25.2 Addresses**

The address and e-mail (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Borrower 1:
  - (i) **Borrower 1**
  - (ii) **Contact Information**
  
- (b) in the case of the Borrower 2:
  - (i) **Borrower 2**
  - (ii) **Contact Information**
  
- (c) in the case of SBR B.V.:
  - (i) **Contact Information**
  - (ii)
  
- (d) in the case of the Lender 1:
  - (i) Address:  
**Contact Information**

(ii) **Lender 1  
Contact Information**

(e) in the case of the Lender 2:

**Lender 2  
Contact Information**

or any substitute address or e-mail or department or officer as the Party may notify other Parties by not less than five (5) Business Days' notice.

**25.3 Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
- (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five (5) 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 25.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document made or delivered to the Parent in accordance with this Clause will be deemed to have been made or delivered to each of the Obligors.
- (c) Any communication or document which becomes effective, in accordance with paragraphs (a) to (b) 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 any two Parties under or in

connection with the Finance Documents may be made by electronic mail or other electronic means, to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:

- (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five (5) Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### **25.5 English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Lenders, 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.

### **26 CALCULATIONS AND CERTIFICATES**

#### **26.1 Accounts**

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

#### **26.2 Certificates and Determinations**

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

### **26.3 Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of three hundred and sixty (360) days.

## **27 PARTIAL INVALIDITY**

If, at any time, any provision of the 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, on the part of any Finance Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

## **29 AMENDMENTS AND WAIVERS**

Any term of the Finance Documents may be amended or waived only with the consent of all Lenders and the Obligors and any such amendment or waiver will be binding on all Parties.

## **30 CONFIDENTIALITY**

### **30.1 Confidential Information**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 30.2 (*Disclosure of Confidential Information*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

### **30.2 Disclosure of Confidential Information**

Any Finance Party may disclose:

- (a) to any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if

any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

- (b) to any person:
- (i) to (or through) whom it assigns or transfers or sub-participates (or may potentially assign or transfer or sub-participate) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Security Agent and, in each case, to any of that person's Affiliates, representatives and professional advisers;
  - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, representatives and professional advisers;
  - (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (b) (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
  - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
  - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
  - (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
  - (vii) who is a Party; or
  - (viii) with the consent of the Parent;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
  - (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
  - (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between a Borrower and the relevant Finance Party; and
  - (d) the Parent may disclose any Finance Document or any Confidential Information to the Toronto Stock Exchange or any applicable Canadian securities regulatory authority, and nothing in this Clause 30 (*Confidentiality*) shall prevent Parent from filing any Finance Document on the System for Electronic Document Analysis and Retrieval (SEDAR) where required by applicable Canadian securities laws.

### 30.3 Entire agreement

This Clause 30 (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

#### 30.4 **Undisclosed material facts and material changes**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may constitute a material fact or material change for purposes of Canadian securities legislation and Toronto Stock Exchange requirements and that disclosure of such facts or changes, or trading with knowledge of such facts or changes, is prohibited by applicable securities legislation in Canada as insider trading, tipping and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose, or to trade with knowledge of such facts or changes until such facts or changes, where such trading would constitute a breach of Canadian securities legislation, have been generally disclosed.

#### 30.5 **Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Parent:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 30.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 30 (*Confidentiality*).

#### 30.6 **Continuing obligations**

The obligations in this Clause 30 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve (12) months from the earlier of:

the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

- (a) the date on which such Finance Party otherwise ceases to be a Finance Party.

### 31 **COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

## **Section 12 - 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 and shall be construed in accordance with English law.

### **33 ARBITRATION**

#### **33.1 Arbitration**

All Disputes arising out of or in connection with this Agreement (including a Dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual obligation arising out of or in connection with this Agreement) shall be referred to and finally resolved by arbitration under the Arbitration Rules (the "**Rules**") of the LCIA (formerly the London Court of International Arbitration).

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

- (a) The arbitral tribunal shall consist of three (3) 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 be a Queen's Counsel of at least five (5) years' standing and who shall serve as Chairman, shall be appointed by the LCIA Court (as defined in the Rules) within fifteen (15) days of the appointment of the second arbitrator.
- (b) In the event the claimant(s) or the respondent(s) shall fail to nominate an arbitrator within the time limits specified in the Rules, such arbitrator shall be appointed by the LCIA Court within fifteen (15) days of such failure. In the event that both the claimant(s) and the respondent(s) fail to nominate an arbitrator within the time limits specified in the Rules, all three (3) arbitrators shall be appointed by the LCIA Court within fifteen (15) days of such failure who shall designate one of them as chairman.
- (c) If all the parties to an arbitration so agree, there shall be a sole arbitrator appointed by the LCIA Court within fifteen (15) days of such agreement.
- (d) The seat of arbitration shall be London, England and the language of the arbitration shall be English.
- (e) Insofar as any provision contained in the Rules is incompatible with applicable English law, that provision or relevant part of that provision is to be excluded.
- (f) For the purpose of arbitration pursuant to this Clause 33.1 (*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.

### **34 WAIVER OF IMMUNITY**

#### **34.1 Waiver of Immunity**

Each Obligor waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:

- (a) the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and
- (b) 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.

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

**Schedule 1  
THE ORIGINAL PARTIES**

**Part I  
The Guarantors**

1. SILVER BEAR RESOURCES B.V., a company organised under the laws of The Netherlands with registration number 67088996 with its registered address at: Zekeringstraat 21 B, 1014 BM Amsterdam and having its statutory seat (*statutaire zetel*) in Amsterdam, the Netherlands, as guarantor;
2. SILVER BEAR RESOURCES INC, a company organised under the laws of Ontario, Canada with corporation number No. 2044471 with its registered address at: 5300, 199 Bay Street, Toronto, Ontario, Canada, M5L 1B9; and
3. JOINT STOCK COMPANY PROGNOZ, a joint stock company organised under the laws of the Russian Federation with main state registration number (OGRN) 1031402052956, with its registered address at office 603, building 1, 36 Ordzhonikidze Street, Yakutsk, Republic of Saha (Yakutia), 677000, Russian Federation.

**Part II  
The Lenders**

Name of the Lender	Tranche Commitment	A1 Tranche Commitment	A2 Tranche Commitment	B Tranche Commitment	C
<b>INFLECTION MANAGEMENT CORPORATION LIMITED</b>	\$22,900,000	\$7,700,000	\$8,300,000	\$2,000,000	
<b>A.B. ATERRA RESOURCES LTD.</b>	\$10,300,000	\$2,300,000	\$1,700,000		
<b>Total</b>	\$33,200,000	\$10,000,000	\$10,000,000	\$2,000,000	

**Schedule 2**  
**CONDITIONS PRECEDENT**

**Part I - Conditions Precedent applicable to all Loans**

**1. Obligors**

- (a) A certified copy of a resolution of an authorised corporate governance body (as the case may be, general shareholders' meeting, management board, board of directors or other as required by law and constitutional documents) of each Obligor:
  - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party and consummate the transactions contemplated thereby;
  - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (b) A certified copy of disinterested shareholder approval of the Finance Documents by a special meeting of shareholders of the Parent to be held on or about 31 August 2016 in accordance with the rules of the Toronto Stock Exchange and minority approval in accordance with Multilateral Instrument 61-101 – Protection of Minority Security Holders in Special Transactions.
- (c) A certificate of each Obligor:
  - (i) attaching true copies (save for JSC Prognoz) of its constitutional documents;
  - (ii) as to incumbency and the true signatures of its officers and other authorised signatories;
  - (iii) confirming each representation and warranty made by each Obligor under the Agreement to which it is party, is true, accurate and complete in all material respects, no Material Adverse Effect has occurred since 31 August 2016, and no Event of Default has occurred that is continuing; and

- (iv) as to such other matters as the Lenders may reasonably require in connection with a change in law which requires additional disclosure by the Obligor. The Lenders shall notify the relevant Obligor no less than four (4) Business Days before the Utilisation Date of any such other matter.
- (d) Notarised copy of the charter of JSC Prognoz, including any amendments and changes thereto.
- (e) A certificate confirming corporate existence for each Obligor (other than JSC Prognoz) issued by the relevant corporate regulator in such Obligor's Original Jurisdiction, and in respect of JSC Prognoz, a certified copy of its certificate of state registration as a legal entity and extract from the Unified State Register of Legal Entities dated not earlier than thirty (30) days prior to the date of this Agreement.
- (f) Copies of insurance policies listed in Schedule 5 (*Existing Insurances*).

## **2. Finance Documents**

- (a) This Agreement duly executed by all original parties to it.
- (b) Each Transaction Security Document duly executed by all parties thereto.

## **3. Other documents and evidence**

- (a) Delivery and filing on SEDAR of a NI 43-101 Technical Report in respect of feasibility study for the Project in the form and substance satisfactory to the Lenders.
- (b) Confirmation satisfactory to the Lenders that any measures required in the relevant jurisdiction to register or perfect (including by control) the Security to be created under the Transaction Security Documents have been taken and completed, save for the Barbados Security Documents.
- (c) Evidence in the form and substance satisfactory to the Lenders that the Barbados Security Documents have been filed for registration with the relevant authority and the relevant stamp duty paid.
- (d) Extract from the shareholders register of JSC Prognoz evidencing registration of pledge over the 100% of shares of JSC Prognoz in favour of the Lenders.
- (e) A copy of the Original Financial Statements.

- (f) Receipt of any applicable regulatory, government and third party approvals required for execution of the Finance Documents in a form and substance satisfactory to the Lenders;
- (g) A certificate of JSC Prognoz confirming that no notice, order, directive, designation, resolution or proposal of any public body or authority concerning the breach or any potential breach of any terms of the Mining Licence and Exploration Licence has been delivered to JSC Prognoz.
- (h) A copy of any other Authorisation or other document which the Lenders consider to be necessary in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.

**Part II - Additional Conditions Precedent applicable to  
Tranche B**

- (a) The Lenders received a written notice of the Borrower 2 with intention to utilise a Tranche B Loan not later than sixty (60) days before the proposed Utilisation Date.
- (b) Adoption of all required internal approvals, including, but not limited to, approval of the investment committees, of each Lender for utilisation of Tranche B.
- (c) A letter signed by an authorised signatory of JSC Prognoz attaching the financial statements and bank accounts statements of JSC Prognoz confirming that as of 1 December 2016 no funding of the Project was obtained by the Obligor from any third party lenders.
- (d) A certificate of JSC Prognoz confirming that no notice, order, directive, designation, resolution or proposal of any public body or authority concerning the breach or any potential breach of any terms of the Mining Licence and Exploration Licence has been delivered to JSC Prognoz.
- (e) A certificate of each Obligor:
  - (i) confirming each representation and warranty made by each Obligor under the Agreement to which it is party, is true, accurate and complete in all material respects, no Material Adverse Effect has occurred since 31 August 2016, and no Event of Default has occurred that is continuing; and
  - (ii) as to such other matters as the Lenders may reasonably require in connection with a change in law which requires

additional disclosure by the Obligor. The Lenders shall notify the relevant Obligor no less than two (2) Business Days before the Utilisation Date of any such other matter.

**Part III - Additional Conditions Precedent applicable to Tranche C**

- (a) The Lenders received a written notice of the Borrower 2 with intention to utilise a Tranche C Loan not later than sixty (60) days before the proposed Utilisation Date.
- (b) Adoption of all required internal approvals, including, but not limited to, approval of the investment committees, of the Lender 1 for utilisation of Tranche C.
- (c) The Borrower 2 provided to the Lender 1 information on the Project costs proposed to be financed by the Utilisation of Tranche C (including relevant invoices) in the form and substance satisfactory to the Lenders.
- (d) A certificate of JSC Prognoz confirming that no notice, order, directive, designation, resolution or proposal of any public body or authority concerning the breach or any potential breach of any terms of the Mining Licence and Exploration Licence has been delivered to JSC Prognoz.
- (e) A certificate of each Obligor:
  - (i) confirming each representation and warranty made by each Obligor under the Agreement to which it is party, is true, accurate and complete in all material respects, no Material Adverse Effect has occurred since 31 August 2016, and no Event of Default has occurred that is continuing; and
  - (ii) as to such other matters as the Lender 1 may reasonably require in connection with a change in law which requires additional disclosure by the Obligor. The Lender 1 shall notify the relevant Obligor no less than two (2) Business Days before the Utilisation Date of any such other matter.

**Schedule 3  
UTILISATION REQUEST**

To: [insert name] as the Lender

From: [●]

Dated: [insert date]

Dear Sirs,

**Facilities Agreement dated 5 September 2016 (the "Facilities Agreement")**

**UTILISATION REQUEST**

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.

2. We wish to borrow a Loan on the following terms:

Proposed Utilisation Date: [insert date] (or, if that is not a Business Day, the next Business Day)

Currency of Loan: USD

Amount: USD [insert amount] or, if less, the Available

Facility

We confirm that each condition specified in Clause 4.1 (*Conditions precedent for Loans*) and Clause 4.2 (*Further conditions precedent*) of the Facilities Agreement is satisfied on the date of this Utilisation Request.

3. The proceeds of this Loan should be credited to [insert full account details].

4. This Utilisation Request is irrevocable.

Yours faithfully,

authorised signatory for and on behalf of [●]

**Schedule 4**  
**UTILISATION NOTICE IN RELATION TO TRANCHE B LOAN AND/OR TRANCHE C LOAN**

To: [insert name] as the Lender

From: [●]

Dated: [insert date]

Dear Sirs,

**Facilities Agreement dated 5 September 2016 (the "Facilities Agreement")**

**UTILISATION NOTICE**

1. We refer to the Facilities Agreement. This is a Utilisation Notice. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Notice unless given a different meaning in this Utilisation Notice.
2. We wish to borrow [a Tranche B Loan and/or a Tranche C Loan] on the following terms:

Proposed Utilisation Date: [insert date] (or, if that is not a Business Day, the next Business Day)

Currency of Loan: USD

Amount: USD [insert amount] or, if less, the Available Facility

Yours faithfully,

authorised signatory for and on behalf of [●]

**Schedule 5  
EXISTING INSURANCES**

<b>Name of the insurer</b>	<b>Certificate of insurance number</b>
Joint-Stock Company "Regional insurance company "Sterkh"	СГО 074436
Joint-Stock Company "Regional insurance company "Sterkh"	111 №0101625560
Joint-Stock Company "Regional insurance company "Sterkh"	111 №0101625561
Joint-Stock Company "Regional insurance company "Sterkh"	112 №0101625562
Joint-Stock Company "Regional insurance company "Sterkh"	СНСю 075569

SIGNATORIES

Executed as a Deed by

SILVER BEAR RESOURCES INC.

Signed

*“Derk Hartman”*

Derk Hartman  
Chief Financial Officer

Executed as a Deed by

JOINT STOCK COMPANY PROGNOZ

Signed

*“Anna Fedorova”*

Anna Fedorova  
General Director

Executed as a Deed by

SILVER BEAR HOLDINGS LIMITED

Signed

*“Robert J Bourque”*

Robert J Bourque  
Director

Executed as a Deed by

SILVER BEAR RESOURCES B.V.

Signed

*“Derk Hartman”*

Derk Hartman  
Director

.....  
on behalf of

INFLECTION MANAGEMENT CORPORATION LIMITED

Signed

*“Christina Theodosiadou”*

Christina Theodosiadou  
Director

on behalf of

A.B. ATERRA RESOURCES LTD

Signed

*“Georgia Kafkalia”*

Georgia Kafkalia  
Director

INFLECTION MANAGEMENT CORPORATION LIMITED

*“Christina Theodosiadou”*

Christina Theodosiadou  
Director