

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): March 10, 2023

METALS ACQUISITION CORP
(Exact name of registrant as specified in its charter)

Cayman Islands
(State or other jurisdiction
of incorporation)

001-40685
(Commission
File Number)

98-1589041
(IRS Employer
Identification No.)

Century House, Ground Floor
Cricket Square, P.O. Box 2238
Grand Cayman KY1-1107, Cayman Islands
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: **(817) 698-9901**

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2 below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Units, each consisting of one Class A ordinary shares, \$0.0001 par value, and one-third of one redeemable warrant	MTALU	New York Stock Exchange LLC
Class A ordinary shares included as part of the units	MTAL	New York Stock Exchange LLC
Redeemable warrants included as part of the units, each whole warrant exercisable for one Class A ordinary share at an exercise price of \$11.50	MTAL WS	New York Stock Exchange LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

Loan Note Subscription Agreement

On March 10, 2023, Metals Acquisition Corp. (Australia) Pty Ltd ("MAC-Sub"), a wholly owned subsidiary of Metals Acquisition Corp ("MAC"), and Metals Acquisition Limited ("MAC Limited") (which will merge with and into MAC and be the surviving entity ("New MAC") following the Business Combination (defined below)), as guarantors, entered into a mezzanine debt facility loan note subscription agreement (the "Mezz Facility") with Sprott Private Resource Lending II (Collector-2), LP, (the "Lender") and Sprott Resource Lending Corp., as agent and security trustee for the Lender, to provide a mezzanine loan facility to finance, in part, MAC-Sub's acquisition of the shares of Cobar Management Pty. Limited ("CMPL" a wholly owned subsidiary of Glencore Operations Australia Pty Limited ("Glencore")) and, therefore, CMPL's interest in the Cornish, Scottish and Australian mine ("CSA Mine") (the "Business Combination") for total consideration up to \$1.1 billion, consisting of \$775 million up front cash consideration (with the potential to be scaled up to \$875 million depending on equity demand) to Glencore, plus MAC Limited issuing up to 10,000,000 of its ordinary shares, par value \$0.0001 per share ("New MAC Ordinary Shares"), to Glencore (with Glencore having the option to scale down to none subject to MAC raising sufficient equity), plus paying a \$75,000,000 deferred cash payment to Glencore tied to a future equity raise undertaken by MAC Limited following completion plus two separate \$75,000,000 contingent payments to Glencore tied to future copper price thresholds, plus MAC-Sub entering into a net smelter royalty pursuant to which, the CMPL will pay to Glencore a royalty of 1.5% of all net smelter copper concentrate produced from the CSA Mine and associated approximately US\$31 million worth of transaction costs (together, the "Business Combination Consideration").

The Mezz Facility provides for, among other things, US\$135,000,000 total funding available to MAC with a maturity of five (5) years from the closing of the Business

Combination. The interest rate on the Mezz Facility will be paid on a quarterly basis and is calculated as the aggregate of (i) the Interest Rate Margin (outlined below), and (ii) the greater of the 3-month term SOFR rate or 2.00% per annum. The Interest Rate Margin is calculated based on the copper price on the first day of each calendar quarter as quoted on the London Metal Exchange (“LME”). The variation in the copper price will determine the margin rate as well as the composition of interest payments (being either cash and/or capitalized to the principal (provided no event of default is continuing)) as described below:

LME Copper Price	Margin	Payment
<\$3.40/lb	12.00%	100% capitalized / 0% Cash
>\$3.40/lb to \$3.85/lb	10.00%	60% capitalized / 40% Cash
>\$3.85/lb	8.00%	0% capitalized / 100% Cash

Under the Mezz Facility, any outstanding principal amount (together with all capitalized interest) is to be paid in full (i.e., bullet repayment) at the maturity date of the Mezz Facility. MAC-Sub is subject to standard and customary mandatory prepayment terms for a facility of this nature. MAC-Sub cannot make any voluntary pre-payments before the second anniversary of the term of the facility. After that time MAC-Sub may voluntarily prepay the whole facility amount only, subject to it also paying a prepayment premium of 4.00% for a prepayment during year 3 (noting that no prepayment premium is payable for voluntary prepayments thereafter).

The Mezz Facility will be secured against (i) all property, assets, undertaking and rights of CMPL including without limitation all property and assets comprising the CSA Mine, (ii) all property, assets, undertakings and rights of MAC, including all equity interests held directly by MAC in MAC-Sub, (iii) all property, assets, undertakings and rights of MAC-Sub, (iv) all property, assets, undertaking and rights of any other affiliates of MAC related to CMPL or the CSA Mine, and (v) all intercompany loans owing by CMPL, MAC-Sub, MAC or any MAC affiliate related to CMPL or the CSA Mine to each or to any affiliate of MAC, and (vi) any other property, asset, right or undertaking of MAC or is subsidiaries that is subject to a security granted to any lender under the three senior credit facilities pursuant to that certain Syndicated Facility Agreement, dated as of February 28, 2023, by and among MAC-Sub and the senior lenders party thereto (the “SFA”). The security under the Mezz Facility will be subordinated to encumbrances granted under the SFA. CMPL and MAC-Sub (and any other direct or indirect affiliates of MAC holding a direct or indirect interest in the CSA Mine assets) will also guarantee the obligations of MAC under the Mezz Facility.

Except as otherwise described above, the Mezz Facility is subject to substantially similar terms relating to conditions, representations and warranties, customary terms, covenants, conditions precedents, events of default and other provisions as the SFA governing the three senior credit facilities (as previously filed as Exhibit 10.1 to MAC’s Current Report on Form 8-K filed on March 2, 2023).

The foregoing description of the Mezz Facility does not purport to be complete and is subject to, and qualified in its entirety by reference to the full text of the Mezz Facility, a copy of which is filed as Exhibit 10.1 hereto and is incorporated herein by reference.

Subscription Agreement

On March 10, 2023, in connection with the Mezz Facility, New MAC, MAC, Sprott Private Resource Lending II (Collector), LP (the “Equity Subscriber”) and Sprott Private Resource Lending II (Collector-2), LP, (the “Warrant Subscriber”) entered into a subscription agreement (the “Subscription Agreement”) pursuant to which the Equity Subscriber has committed to purchase 1,500,000 New MAC Ordinary Shares (the “Subscribed Shares”) at a purchase price of \$10.00 per share and an aggregate purchase price of \$15,000,000. In addition, in accordance with the terms of the Mezz Facility, and subject to the consummation of the transactions contemplated thereby, the Warrant Subscriber will receive 3,187,500 warrants to purchase New MAC Ordinary Shares (the “New MAC Financing Warrants”) once the Mezz Facility begins. Each New MAC Financing Warrant will entitle the holder to purchase one New MAC Ordinary Share. The New MAC Financing Warrant documentation will contain customary anti-dilution clauses. The New MAC Financing Warrants will be fully transferrable and will last for the full term of the Mezz Facility with an exercise price of US\$12.50 per share. Upon exercise, New MAC may either (i) cash-settle the New MAC Warrants, or (ii) direct the holder to offset the exercise price against the outstanding principal amount of the facility. New MAC may elect to accelerate the exercise date for the New MAC Financing Warrants if New MAC Ordinary Shares are quoted on a recognized stock exchange as over two (2) times the exercise price for twenty (20) consecutive trading days.

The obligations to consummate the transactions contemplated by the Subscription Agreement are conditioned upon, among other things, customary closing conditions and the consummation of the transactions contemplated by the Mezz Facility and the Business Combination Agreement.

The foregoing description of the Subscription Agreement does not purport to be complete and is subject to, and qualified in its entirety by reference to the full text of the Subscription Agreement, a copy of which is filed as Exhibit 10.2 hereto and is incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The disclosure set forth above under the caption “*Mezzanine Debt Facility Agreement*” in Item 1.01 of this Current Report on Form 8-K is incorporated by reference herein.

Item 3.02 Unregistered Sale of Equity Securities.

The disclosure set forth above under the caption “*Subscription Agreement*” in Item 1.01 of this Current Report on Form 8-K is incorporated by reference herein. The Subscribed Shares and the New MAC Financing Warrants and the transactions contemplated by the Subscription Agreement will not be registered under the Securities Act, in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits:

Exhibit	Description
10.1	Mezzanine Debt Facility Loan Note Subscription Agreement, dated as of March 10, 2023, by and between Metals Acquisition Corp. (Australia) Pty Ltd, Metals Acquisition Corp, Metals Acquisition Limited, Sprott Private Resource Lending II (Collector), LP., and Sprott Resource Lending Corp.
10.2	Subscription Agreement, dated as of March 10, 2023, by and between Metals Acquisition Limited, Metals Acquisition Corp, Sprott Private Resource Lending II (Collector), LP and Sprott Private Resource Lending II (Collector-2), LP.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: March 15, 2023

Metals Acquisition Corp

By: /s/ Michael James McMullen
Name: Michael James McMullen
Title: Chief Executive Officer

CERTAIN CONFIDENTIAL INFORMATION (MARKED BY BRACKETS AS “[*]”) HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS BOTH
(I) NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED.**

US\$135,000,000 Mezzanine Debt Facility

Loan Note Subscription Agreement

Metals Acquisition Corp. (Australia) Pty Ltd
Sprott Private Resource Lending II (Collector-2), LP

Dated 10 March 2023



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This Agreement is made on

2023

Parties

Company

Name Metals Acquisition Limited incorporated in Jersey
Registered number 144625
Address Suite 400, 425 Houston Street, Fort Worth, Texas 76102, United States of America
Email mick.mcmullen@metalsacqcorp.com
Attention Mick McMullen

Borrower

The Entity listed in Part 1 (*The Original Obligors*) of Schedule 1 (*The Original Parties*) as borrower

Original Guarantors

The Entities listed in Part 1 (*The Original Obligors*) of Schedule 1 (*The Original Parties*) as original guarantors

Arranger

Name Sprott Private Resource Lending II (Collector-2), LP as mandated lead arranger and bookrunner
Corporation number 1000142548
Address [***]
Email [***]
Attention [***]

Original Lender

The Entity listed in Part 2 (*The Original Lender*) of Schedule 1 (*The Original Parties*) as lender

Agent

Name Sprott Resource Lending Corp.
Corporation number 774839-6
Address [***]
Email [***]
Attention [***]

Security Trustee

Name Sprott Resource Lending Corp.
Corporation number 774839-6
Address [***]
Email [***]
Attention: [***]

It is agreed:

**SECTION 1
INTERPRETATION**

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

Aboriginal Heritage Law means any State or Commonwealth legislation that provides for the recognition and protection of sites of significance to Aboriginal people;

Acceptable Bank means:

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

Accession Letter means a document substantially in the form set out in Schedule 5 (*Form of Accession Letter*);

Account Bank means the Initial Account Bank or a replacement account bank which is an Acceptable Bank and acceptable to the Agent (acting on the instructions of the Majority Lenders) appointed in accordance with this Agreement;

Account Bank Agreement means:

- (a) in relation to the Initial Account Bank the 'account bank agreement' to be entered into prior to Financial Close and the accompanying document titled 'conditions of consent to charge; and
- (b) in relation to any other Account Bank, any account bank agreement entered into between the Borrower and the Account Bank in accordance with clause 24.1(d) (*Establishment and maintenance of the Project Accounts*);

Acquisition means the acquisition of 100% of the issued share capital in the Target by the Borrower under the Sale and Purchase Agreement;

Additional Business Day means any day specified as such in the Reference Rate Terms;

Additional Guarantor means a company which becomes an Additional Guarantor in accordance with clause 27 (*Changes to the Obligors*);

Additional Obligor means an Additional Guarantor;

Additional Prepayment Interest Premium means a prepayment interest premium payable to a Lender in an amount equal to 4.00% of the principal amount of the Loan prepaid or repaid (in addition to the amount of such prepayment or repayment and in addition to any accrued interest);

Adjusted EBITDA means for any period, EBITDA for that period adjusted by deducting (to the extent that the following items are not already deducted in determining EBITDA):

- (a) any payments of any income (or similar) taxes paid by a member of the Borrower Group and adding back any tax rebates, refunds or credit in respect of any such taxes received by the member of the Borrower Group, in each case during that period;
- (b) any amounts payable under the Silver Streaming Facility but excluding any amounts payable under the Copper Streaming Facility; and
- (c) any Capital Expenditure actually paid in cash by a member of the Borrower Group during that period;

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;

Annual Operating Budget means the cash flow budget for the Borrower Group approved by the board of the Borrower, to be provided to the Agent under clause 4.1 (*Initial conditions precedent*), as updated and amended from time to time as required under and in accordance with clause 20.6 (*Periodic reporting*);

Approved Hedge Counterparty means each 'Arranger' and each 'Original Lender' (under and as defined in the Senior Facility Agreement) and each of their Affiliates;

Approved Hedging Programme means the document entitled "*Approved Hedging Programme – Project Chariot 2023*" provided to the Agent under clause 4.1 (*Initial conditions precedent*) as amended in accordance with this Agreement;

Associate has the meaning given to it in section 128F(9) of the Tax Act;

AUD Proceeds Account means the account held with the Initial Account Bank and styled '*AUD Proceeds Account*' and any replacement bank account with an Account Bank with the approval of the Agent and agreed between the Borrower and the Agent to be the AUD Proceeds Account;

Auditors means Ernst & Young, or any other firm approved in advance by the Majority Lenders (such approval not to be unreasonably withheld or delayed);

Australian Withholding Tax means any Australian Tax required to be withheld or deducted from any interest or other payment under division 11A of part III of the Tax Act or subdivision 12-F of Schedule 1 to the *Taxation Administration Act 1953* (Cth);

Authorisation means:

- (a) an authorisation, consent, approval, resolution, licence (including each Water Licence), permit, order, concession, franchise, exemption, filing or registration; or
- (b) in relation to anything which will be fully or partly prohibited or restricted by law if a Governmental Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action;

Authorised Signatory means:

- (a) in respect of an Obligor, any director or secretary, or any person from time to time nominated as an Authorised Signatory by the Obligor by a notice to the Agent accompanied by certified copies of signatures of all new persons so appointed in accordance with clause 20.8(g) (*Information: miscellaneous*); and
- (b) in respect of the Agent, Security Trustee or a Lender, any person whose title or acting title includes the word Managing Partner, Managing Director or cognate expressions, or any officer or director;

Availability Period means the period from and including the date of this Agreement to and including the earlier of:

- (a) the date of Completion; and
- (b) 1 June 2023;

Available Cash means any amounts classified according to applicable IFRS as 'Cash' (which is held with an Acceptable Bank);

Available Commitment means a Lender's Commitment under the Facility minus:

- (a) the amount of its participation in any outstanding Utilisations under the Facility; and
- (b) in relation to any proposed Utilisation, the amount of its participation in any Utilisations that are due to be made under the Facility on or before the proposed Utilisation Date;

Available Facility means the aggregate for the time being of each Lender's Available Commitment in respect of the Facility;

Base Case Financial Model means the excel document in a form and substance equivalent to that provided at Financial Close comprising the reserves position, business plan, production, operating and financial forecasts (including forecast Capital Expenditure and forecast Revenues) of the Borrower Group from the date of Financial Close until the end of the currently forecast life of mine, or in relevant cases, such longer term as necessary to demonstrate compliance with any forward-looking financial covenants required under this Agreement, provided to the Agent under clause 4.1 (*Initial conditions precedent*), as updated annually and from time to time in accordance with clause 20.5 (*Updates to Base Case Financial Model*) and for the purposes of evidencing that the Borrower is permitted to increase the amount of hedging permitted under the Approved Hedging Programme or to make Permitted Acquisitions;

Base Copper and Silver Forward Price means the US dollar unhedged copper and silver price forecast being the lower of:

- (a) the forward curve provided by AME Research (as applicable);
- (b) the LME Forward Curve for Copper and CME Forward Curve for Silver (as applicable); or
- (c) as otherwise agreed between the Borrower and the Agent (acting on the instructions of the Majority Lenders);

Base FX Assumption means on any date, the AUD-USD rate of exchange on Bloomberg screen FRD at or about 11 a.m. on the relevant date or as otherwise agreed between the Borrower and the Agent (acting on the instructions of the Majority Lenders);

Beneficiaries has the meaning given to it in the Security Trust Deed;

Borrower Affiliate means the Borrower, any Affiliates of the Borrower, any trust of which it or any of its Affiliates is a trustee, any partnership of which it or any of its Affiliates is a partner and any trust, fund or other entity which is managed by, or is under the control of, it or any of its Affiliates;

Borrower Group means the Borrower and each of its Subsidiaries;

Break Costs means any amount specified as such in the Reference Rate Terms;

Business Day means a day (other than a Saturday or Sunday) on which banks are open for general business in Sydney, New York, Toronto, Hong Kong, Singapore and any Additional Business Day;

Cambiate Equipment Supply Agreement means the cambiate equipment supply (loaders & trucks) agreement relating to the Project with Sandvik Mining and Construction Australia Pty Ltd and dated 30 June 2020;

Capital Expenditure means any expenditure or monetary obligation of the Borrower Group of a capital nature in connection with the Project (including Sustaining Capital Expenditure and repairs and maintenance, to the extent they are capital in nature);

Cash Equivalent Investments means at any time:

- (a) certificates of deposit maturing within six months after the relevant date of calculation and issued by an Acceptable Bank;
- (b) bonds, debentures, stock, treasury bills, notes or any other security issued or guaranteed by the government of the United States of America, the Commonwealth of Australia or any government of any State or Territory of the Commonwealth of Australia, the United Kingdom, any member state of the European Economic Area or any Participating Member State (other than Portugal, Ireland, Greece or Spain) or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;
- (c) commercial paper not convertible or exchangeable to any other security:
 - (i) for which a recognised trading market exists;
 - (ii) issued by an issuer incorporated in the United States of America, Australia, the United Kingdom, any member state of the European Economic Area or any Participating Member State;
 - (iii) which matures within six months after the relevant date of calculation; and
 - (iv) which has a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (d) any investment in money market funds:
 - (i) which have a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited;

- (ii) which invest substantially all their assets in securities of the types described in paragraphs (a) to (c); and
- (iii) to the extent that investment can be turned into cash on not more than 30 days' notice;

- (e) overnight deposits held with an Acceptable Bank; or
- (f) any other debt security approved by the Majority Lenders,

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

Cashflow Waterfall means the order of payments that may be made from the Proceeds Accounts as set out in Part A *Pre-Enforcement Cashflow Waterfall*) of Schedule 5 (*Cashflow Waterfalls*) of the Intercreditor Deed;

Cayman Companies Act means the Companies Act (as revised) of the Cayman Islands;

Cement Supply Agreement means the document titled "*Forward Purchase Agreement – Supply of Cement*" with a commencement date of 1 January 2022 between the Target and East Coast Cement Pty. Ltd. ACN 603 062 497;

Central Bank Rate has the meaning given to that term in the Reference Rate Terms;

Certain Funds Period means the period from the date of this Agreement to and including the earlier of:

- (a) Financial Close; and
- (b) 1 June 2023;

Clean Up Period means the period on and from Completion to and including the date which is 90 days after Completion;

Cobar Terminal Services Agreement means the document titled "*Cobar Terminal Services Agreement*" dated 31 August 2021 between the Target and Aurizon Port Services NSW Pty Ltd ACN 103 570 181;

Code means the US Internal Revenue Code of 1986;

Commitment means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading "Commitment" in Part 2 (*The Original Lender*) of Schedule 1 (*The Original Parties*) and the amount of any other Commitment transferred to it under this Agreement; and
 - (b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,
- to the extent not cancelled, reduced or transferred by it under this Agreement;

Company Security Documents means:

- (a) the Jersey Company SIA; and
- (b) any other Jersey law governed security documents to be entered into between the Company and the Security Trustee in respect of all the Company's assets and undertakings, including the shares in the Borrower;

Complementary Acquisition has the meaning given in paragraph (d) of the definition of **Permitted Acquisition**;

Completion has the meaning given in the Sale and Purchase Agreement;

Compliance Certificate means a certificate substantially in the form set out in Schedule 7 (*Form of Compliance Certificate*);

Confidential Information means all information relating to any Obligor, the Group, 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 member of the Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes 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 44 (*Confidentiality*); or
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers;
- (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraph (a) or (b) or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; or
- (iv) is included in a Jersey Consent Letter provided in connection with the registration of a Company Security Document governed by Jersey law;

Confidentiality Undertaking means a confidentiality undertaking substantially in a form as set out in Schedule 9 (*Form of Confidentiality Undertaking*) or in any other form agreed between the Borrower and the Agent;

Consent Deed means a consent deed in a form acceptable to the Agent (acting reasonably) in relation to the attachment of the Transaction Security to the following:

- (a) the Diesel Supply Agreement;
- (b) the Cement Supply Agreement; and
- (c) any other Material Contract which the Agent determines (acting reasonably) requires consent to the Transaction Security attaching to it or any property in connection with it;

Consultancy Services Umbrella Agreement means the document titled "*Umbrella Agreement – Consultancy Services*" dated 8 February 2021 between the Target and Golder Associates Pty Ltd ACN 006 107 857;

Contamination means the presence of any substance at a level exceeding that naturally occurring:

- (a) in relation to land, in, on or under that land;
- (b) in relation to groundwater percolating through land, in that groundwater;
- (c) in relation to a river or stream, in its waters, in, on or under its bed or riparian land or in or on animal or plant life growing in its waters or on its bed; or
- (d) in relation to sea or oceanic waters, in those waters, on or under its bed or in or on animal or plant life growing in its waters or on its bed;

Cooling Plant Agreement means the document titled "*Wet Equipment Hire Contract*" dated 6 September 2019 between the Target and Aggreko Generator Rentals Pty Ltd ACN 001 991 457;

Copper Purchase Agreement means the agreement to be dated before Financial Close entitled "*copper purchase agreement*" between the Company as seller, the Borrower, the Stream Purchaser as purchaser and which will, following completion of a section 260B whitewash procedure under the Corporations Act, be acceded to by the Target, in Agreed Form;

Copper Streaming Facility means the financial accommodation made available to the Company under the Copper Purchase Agreement;

Copper Streaming Facility Security Documents means the "*Copper Security Documents*" as defined in the Copper Purchase Agreement, in Agreed Form;

Copper Stream Security Trust Deed means the deed entitled "*Security Trust Deed (Copper Stream)*" dated on or about the date before Financial Close and made between, among others, the Company and the security trustee named in that deed, in Agreed Form;

Copper Streaming Intercompany Loan Agreement means the intercompany loan between the Company and the Borrower to be dated before Financial Close under which the proceeds of the upfront deposit to be paid by the Stream Purchaser under the Copper Purchase Agreement are on-lent to the Borrower, in Agreed Form;

Corporations Act means the *Corporations Act 2001* (Cth);

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

- (a) acquires by way of assignment, novation or transfer;
- (b) enters into any sub-participation in respect of; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of, or allowing it to control the exercise of rights relating to,

any Commitment or amount outstanding under this Agreement;

Debt Service means for any Relevant Period, the aggregate amount of:

- (a) interest and other amounts in the nature of interest (but excluding all capitalised interest), margin, fees and other recurrent payments in the nature of the foregoing, paid or incurred during that period (as stated on the Borrower's financial statements) in relation to Financial Indebtedness of the Borrower Group including amounts payable under or in connection with the Copper Streaming Facility (if any) and including any commitment fees, ongoing fees and all similar fees of a periodic nature, but excluding any upfront fees and amounts payable under the Silver Streaming Facility; and
- (b) scheduled payments of principal of 'Facility A' (under and as defined in the Senior Facility Agreement), but excluding:
 - (i) the final bullet repayment of that facility on the termination date of that facility;
 - (ii) any voluntary or mandatory prepayments or repayments; and
 - (iii) any Cash Sweep (under and as defined in the Senior Facility Agreement),

plus or minus the net amount of any difference payments under the Hedging Agreements (but excluding the net close out amounts payable to the Borrower under a Hedging Agreement which has been closed out or terminated),

paid during that Relevant Period by the Borrower Group;

Debt Service Cover Ratio means, for any Relevant Period, the ratio of:

- (a) Adjusted EBITDA; to
- (b) Debt Service;

Default means an Event of Default or any event or circumstance specified in clause 25 (*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 them) be an Event of Default;

Defaulting Finance Party means any Finance Party (other than a Lender which is a Borrower Affiliate):

- (a) which (in any capacity) has failed to make a payment when due under this Agreement or has notified a Party that it will not make such a payment;
- (b) which (in any capacity) has otherwise rescinded or repudiated a Finance Document; or
- (c) which:
 - (i) is or is adjudicated to be insolvent;
 - (ii) applies or resolves to be wound up, given protection against creditors or placed in bankruptcy or any analogous process; or
 - (iii) is subject to the appointment of a liquidator, administrator, manager, trustee in bankruptcy or any analogous process,

unless, in the case of paragraph (a):

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

Derivative Transaction means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price;

Diesel Supply Agreement means the document titled "*Diesel Supply Agreement*" dated 7 September 2012 between the Target and Glencore Singapore Pte Limited ABN 42 883 745 924;

Disposal means any sale, lease, licence, bailment, transfer or other disposal;

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

Distribution Account means the account held with the Initial Account Bank and styled *Distribution Account* and any replacement bank account with an Account Bank with the approval of the Agent and agreed between the Borrower and the Agent to be the Distribution Account;

Distributions means:

- (a) any payment by:
 - (i) MAC or the Company; or
 - (ii) a member of the Borrower Group to the Company or MAC or to any of MAC's or the Company's wholly-owned Subsidiaries that are not themselves members of the Borrower Group, in relation to share capital (including by way of redemption, reduction or repayment of share capital), payments of dividends, payments of principal or interest in relation to shareholder loans;

- (b) any Sponsor Affiliate Payment;
- (c) \$75,000,000 deferred consideration payable to Glencore Operations Australia Pty Limited under the Sale and Purchase Agreement;

- (d) the First Contingent Copper Payment; and
- (e) the Second Contingent Copper Payment;

EBITDA means for any period, the total consolidated operating income of the Borrower Group for that period as stated in the Borrower's financial statements before interest and taxation and:

- (a) after adding back any amount attributable to the amortisation, depreciation or impairment charges and any unrealised gains or losses in respect of any Derivative Transactions other than any Derivative Transaction entered into in accordance with the Approved Hedging Programme;
- (b) excluding any exceptional, one off, non-recurring or extraordinary items which represent gains or losses including those arising on:
 - (i) the restructuring of the activities of an entity and reversals of any provisions for the cost of restructuring;
 - (ii) disposals, revaluations or impairment of non-current assets; and
 - (iii) disposals of assets associated with discontinued operations,
 on the basis that the closing out of any Derivative Transactions is not an item of an unusual or non-recurring nature for these purposes;
- (c) excluding any upward or downward adjustment of any non-cash provision during that period; and
- (d) excluding unrealised mark-to-market gains and losses under any Derivative Transaction entered into in accordance with the Approved Hedging Programme;

Economic Assumptions means, in relation to the Base Case Financial Model, assumptions relating to escalation factors, Base Copper and Silver Forward Price, Base FX Assumption, hedging volumes and prices, discount rates, interest rates, inflation rates and Taxes, and any other assumption which in the reasonable opinion of the Agent (acting on the instructions of the Majority Lenders) is necessary to run the Base Case Financial Model;

Environment means all aspects of the surroundings of human beings including:

- (a) the physical factors of those surroundings, such as land, the waters and the atmosphere;
- (b) the biological factors of those surroundings, such as animals, plants and other forms of life; and
- (c) the aesthetic factors of those surroundings such as appearance, sounds, smells, tastes and textures;

Environment and Social Expert means:

- (a) SRK Consulting; or
- (b) any replacement environmental and social expert or adviser appointed by agreement between the Agent (acting on the instructions of the Majority Lenders) and the Borrower;

Environmental Claim means any claim, proceeding or investigation by any person in respect of any Environmental Law;

Environmental Law means any applicable law in any jurisdiction in which any member of the Group conducts business which relates to the pollution or protection of the environment or harm to or the protection of human health or the health of animals or plants;

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

Equity Contribution means the contribution (in form and substance satisfactory to the Agent acting on the instructions of all Lenders) to the funds required for completion of the Acquisition not funded by Utilisations under the Facility and drawings under the Other Debt Documents;

ERISA means the *US Employee Retirement Income Security Act of 1974*, as amended from time to time, and the regulations promulgated and rulings issued thereunder;

ERISA Affiliate means any trade or business (whether or not incorporated) that for purposes of Title I or Title IV of ERISA or section 412 of the Code would be deemed at any relevant time to be a single employer or otherwise aggregated with any Obligor or a Subsidiary of an Obligor under section 414 of the Code;

ERISA Event means any one or more of the following:

- (a) any reportable event, as defined in section 4043 of ERISA, with respect to a Plan, other than those events as to which the notice period referred to in section 4043(a) of ERISA has been waived as of the date hereof;
- (b) the filing of a notice of intent to terminate any Plan (including any such notice with respect to a plan amendment referred to in section 4041(e) of ERISA);
- (c) the institution of proceedings, or the occurrence of an event or condition which would reasonably be expected to constitute grounds for the institution of proceedings by the Pension Benefit Guaranty Corporation under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan;
- (d) the failure to make a required contribution to any Plan that would result in the imposition of a lien or other encumbrance or the provision of security under section 430 of the Code or section 303 or 4068 of ERISA, or the arising of such a lien or encumbrance;
- (e) the application for waiver of, or any failure to satisfy, the minimum funding standard under section 412 of the Code or section 302 of ERISA, whether or not waived;
- (f) a determination that any Plan is, or is expected to be, considered an at-risk plan within the meaning of section 430 of the Code or section 303 of ERISA;

- (g) receipt by an Obligor or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from an Obligor or any ERISA Affiliate of any notice, concerning the imposition of liability with respect to the withdrawal or partial withdrawal from a Multiemployer Plan or a determination that a Multiemployer Plan is, or is expected to be, "insolvent" (within the meaning of Section 4245 of ERISA), in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 305 of ERISA), or terminated (within the meaning of Section 4041A or Section 4042 of ERISA);
- (h) the failure of an Obligor or any ERISA Affiliate to pay when due (after expiration of any applicable grace period) any instalment payment with respect to withdrawal liability under Section 4201 of ERISA;
- (i) the cessation of operations at a facility of an Obligor or any ERISA Affiliate in the circumstances described in section 4062(e) of ERISA, or the withdrawal by an Obligor or any ERISA Affiliate from a Plan during a plan year for which it was a "substantial employer", as defined in section 4001(a)(2) of ERISA;
- (j) an Obligor, a Subsidiary of an Obligor or an ERISA Affiliate incurring any liability under Title IV of ERISA with respect to any Plan (other than premiums due and not delinquent under section 4007 of ERISA); or
- (k) the occurrence of an act or omission which could give rise to the imposition on an Obligor, a Subsidiary of an Obligor or an ERISA Affiliate of fines, penalties, taxes or related charges under the Code or ERISA in respect of any Plan;

Event of Default means any event or circumstance specified as such in clause 25 (*Events of Default*);

Facility means the term loan facility made available under this Agreement as described in clause 2 (*The Facility*);

Facility Office means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement;

FATCA means:

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

FATCA Application Date means:

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

- (b) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraph (a), the first date from which such payment may become subject to a deduction or withholding required by FATCA;

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

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

Final Adjustment Amount has the meaning given in the Sale and Purchase Agreement;

Final Adjustment Interest Amount has the meaning given in the Sale and Purchase Agreement;

Finance Document means:

- (a) this Agreement;
- (b) the Loan Note Deed Poll;
- (c) any Loan Note;
- (d) any Compliance Certificate;
- (e) any Mandate and Commitment Letter;
- (f) any Accession Letter;
- (g) any Resignation Letter;
- (h) the Security Trust Deed;
- (i) the Intercreditor Deed;
- (j) any Recognition Certificate;
- (k) any Transaction Security Document;

- (l) any Tripartite Deed;
- (m) any Utilisation Request;
- (n) any Reference Rate Supplement;
- (o) any Account Bank Agreement;
- (p) the Subordination of Claims Letter; and
- (q) any other document designated as such by the Agent and the Borrower;

Finance Party means the Agent, the Arranger, the Security Trustee or a Lender;

Financial Close means the date on which the Agent, acting on behalf of the Lenders, confirms that the initial conditions precedent are satisfied or waived in accordance with clause 4.1 (*Initial conditions precedent*);

Financial Covenant means each of the covenants set out in clause 21.1 (*Financial covenants*);

Financial Indebtedness means any indebtedness for or in respect of:

- (a) moneys borrowed and any debit balance at any financial institution;
- (b) any amount raised by acceptance under any acceptance credit, bill acceptance or bill endorsement facility or dematerialised equivalent;
- (c) any amount raised under 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 IFRS, be treated as a balance sheet liability (other than any liability in respect of a lease or hire purchase contract which would, in accordance with IFRS in force before 1 January 2019, have been treated as an operating lease);
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any redeemable shares where the holder has the right, or the right in certain conditions, to require redemption;
- (g) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing, including amounts payable under the Silver Streaming Facility and the Copper Streaming Facility;
- (h) excluding the First Contingent Copper Payment and the Second Contingent Copper Payment, consideration for the acquisition of assets or services payable more than 90 days after acquisition;
- (i) any Derivative Transaction (and, when calculating the value of any Derivative Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Derivative Transaction, that amount) shall be taken into account);
- (j) 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; 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);

First Contingent Copper Payment means the unsecured, subordinated payment of up to \$75,000,000 deferred consideration payable by the Company to Glencore Operations Australia Pty Limited under the Sale and Purchase Agreement payable if, over the life of the Project, the average daily LME closing price of copper is greater than US\$9,370 per metric tonne for any rolling 18 month period (starting at Completion);

Freehold Property means each freehold property held by the Target listed in Part 1 (*Freehold Property*) of Schedule 17 (*Real Property*).

Freehold Property Mortgages means each mortgage to be granted by the Target in favour of the Security Trustee in respect of the Freehold Property;

Funds Flow Statement means the statement of sources and uses of funds prepared by the Borrower in relation to the completion of the Acquisition, provided (and satisfactory) to the Agent in accordance with clause 4.1 (*Initial conditions precedent*);

Glencore NSR Royalty Agreement means the Cobar royalty deed to be entered into on or around Completion between Target, the Company and Glencore Operations Australia Pty Limited, in Agreed Form;

Golder Umbrella Agreement means the document titled "*Umbrella Contract - Consultancy Services*" dated 26 February 2021 between the Target and Golder Associates Pty Ltd ACN 006 107 857;

Good Mining Practice means the exercise of that degree of skill, care, prudence, operational and financial foresight and operating practice which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking as the Obligors under the same or similar circumstances, with the exercise of skill, care, prudence, operational and financial foresight and operating practices to be substantially in accordance with recognised best practices in the mining industry in Australia;

Governmental Agency means any government or any governmental, semi-governmental or judicial entity or authority. It also includes any self-regulatory organisation

established under statute or any stock exchange;

Group means MAC, the Company, the Borrower and each Subsidiary of MAC, the Company or the Borrower;

Guarantee means the guarantee, undertaking and indemnity given under clause 17 (*Guarantee*);

Guarantor means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with clause 27 (*Changes to the Obligors*);

GST Law means the same as "GST law" means in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

Haulage Agreement means the document titled "*Rail Haulage Services Agreement*" dated on or around 1 December 2009 and as varied on 1 December 2015 and 8 September 2020 between the Target and Qube Logistics (Rail) Pty Ltd ACN 082 313 415 (formerly South Spur Rail Services Pty Ltd);

Hedge Counterparty means any person which is, or has become, a party to the Security Trust Deed as a Hedge Counterparty in accordance with the Security Trust Deed and to the Intercreditor Deed as a Hedge Counterparty in accordance with the Intercreditor Deed;

Hedge Protocol means the document entitled "*Hedge Protocol*" and provided to the Agent under clause 4.1 (*Initial conditions precedent*) as amended in accordance with this Agreement detailing, among other things, the minimum and maximum volumes, the initial and on-going hedging, approved counterparties to any Derivative Transaction and requirements for close out provisions;

Hedging Agreement means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by the Borrower and a Hedge Counterparty for the purpose of hedging only the types of liabilities and/or risks in relation to the Facility which is required or permitted to be entered into by this Agreement;

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

IFRS means the International Financial Reporting Standards applied in accordance with generally accepted accounting principles, standards and practices in Australia;

Independent Technical Expert means:

- (a) SRK Consulting; or
- (b) any replacement technical expert or adviser appointed by agreement between the Agent (acting on the instructions of the Majority Lenders) and the Borrower;

Indirect Tax means any goods and services tax, consumption tax, value added tax or any tax of a similar nature;

Initial Account Bank means Citibank N.A., Sydney Branch;

Insurances means the insurances required to be taken out or maintained by the Obligors to comply with this Agreement and the Transaction Security Documents;

Intercreditor Deed means the deed entitled "*Intercreditor Deed*" to be dated before Financial Close and made between, among others, the Borrower, the Original Lender, the Agent and the Security Trustee;

Intercreditor Deed Accession Deed has the meaning given to the term "*Accession Deed*" in the Intercreditor Deed;

Interest Payment means the aggregate amount of interest that:

- (a) is, or is scheduled to become, payable under any Finance Document; and
- (b) relates to the Loan;

Interest Payment Date means the last day of each Interest Period;

Interest Period means:

- (a) in relation to the Loan:
 - (i) the first Interest Period commences on the date on which the Loan is advanced to the Borrower and deposited in the USD Proceeds Account and ends on the next Quarter Date which is at least three months after the date on which the Loan is advanced to the Borrower and such Quarter Date is expected to be 30 September 2023; and
 - (ii) each subsequent Interest Period commences on the last day of the immediately preceding Interest Period for the Loan and ends on the next Quarter Date to occur (or, if sooner, the Termination Date); and
- (b) in relation to an Unpaid Sum, each period determined in accordance with clause 9.3 (*Default interest*) and clause 6.3 (*Default interest*) of the Loan Note Deed Poll,

subject to adjustment in accordance with the rules specified as Business Day Conventions in the Reference Rate Terms;

Ipsa Facto Event has the meaning given to it in clause 17.1 (*Guarantee*);

ITSA means an indirect tax sharing agreement which:

(a) satisfies the requirements of section 444-90 of the Taxation Administration Act 1953 (Cth); and

(b) covers all group liabilities of the GST Group to which an Obligor is a member;

Jersey Companies Law means the Companies (Jersey) Law 1991;

Jersey Company SIA means the Jersey law security interest agreement to be granted by the Company which is incorporated in Jersey in favour of the Security Trustee in respect of all intangible Jersey situs assets held by that Company;

Jersey Consent Letter means a consent letter (in the form acceptable to the Security Trustee) executed by any party granting a Company Security Document governed by the laws of Jersey, consenting to the registration of a financing statement on the SIR, in respect of the security interest to be created pursuant to such Company Security Document;

Joint Venture means any form of joint venture, whether a company, unincorporated entity, undertaking, association, partnership or other similar entity or arrangement;

JORC Code means the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves published by the Joint Ore Reserves Committee of the Australasian Institute of Mining and Metallurgy, the Australian Institute of Geoscientists and the Minerals Council of Australia, effective as at December 2012, as updated from time to time;

Key Material Contract means each of the following Material Contracts:

(a) the Offtake Agreement;

(b) the Transitional Services Agreement;

(c) the Sale and Purchase Agreement;

(d) the PPX Supply Contract;

(e) the ME Supply Contract;

(f) the Shiploader Agreement;

(g) the Haulage Agreement;

(h) the Cobar Terminal Services Agreement;

(i) the Cooling Plant Agreement;

(j) the Cambiate Equipment Supply Agreement;

(k) the Ventilation Construction Agreement;

(l) the Project Leases;

(m) any Material Contract which in the opinion of the Agent (acting on the instructions of the Majority Lenders, each acting reasonably) is a Key Material Contract for the purposes of this definition; and

(n) any document entered into for the purpose of varying, novating, supplementing, extending, replacing or restating any of the above;

Key Tenement means each Tenement other than:

(a) Exploration Licence 6223 (1992) and Exploration Licence 6907 (1992); and

(b) any other Tenement the Agent (acting on the instructions of all the Lenders) agrees is not a Key Tenement;

Leasehold Property Mortgages means each mortgage to be granted by the Target in favour of the Security Trustee in respect of the Project Leases;

Legal Opinions means each of the legal opinions given under Schedule 2 (*Conditions precedent*);

Legal Reservations means:

(a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, liquidation, reorganisation, moratoria, administration and other laws generally affecting the rights of creditors;

(b) the time barring of claims under applicable limitations laws, the possibility that an undertaking to assume liability for or indemnity of a person against non-payment of stamp duty may be void and defences of set-off or counterclaim; and

(c) any other matters which are set out as qualifications or reservations as to matters of law in the Legal Opinions;

Lender means:

(a) any Original Lender; and

(b) any bank, financial institution, trust, fund or other entity which has become a Party as a "Lender" in accordance with clause 26 (*Changes to the Lenders*),

which in each case has not ceased to be a Party in accordance with this Agreement;

Lender Presentation means the document in the form approved by the Company concerning the Group which, at the Company's request and on its behalf, was prepared in relation to this transaction;

Less Key Material Contract means each of the following Material Contracts:

- (a) the Diesel Supply Agreement;
- (b) the Cement Supply Agreement;
- (c) the Consultancy Services Umbrella Agreement;
- (d) any Material Contract which in the opinion of the Agent (acting on the instructions of the Majority Lenders, each acting reasonably) is a Less Key Material Contract for the purposes of this definition; and
- (e) any document entered into for the purpose of varying, novating, supplementing, extending, replacing or restating any of the above;

Life of Mine Plan means, at any time, the independent technical report summary dated 13 May 2022 prepared by Behre Dolbear Australia Pty Ltd in accordance with the SEC Regulation S-K technical Report Summary requirements in respect of CSA Copper Mine – New South Wales – Australia, provided to the Agent under clause 4.1 (*Initial conditions precedent*) as such mine plan may be amended or updated at such time in accordance with the in accordance with this Agreement;

LME Cash Settlement Price means the daily official 'LME Cash Settlement Price' for Copper Grade 'A' in USD, as published on Fastmarkets MB;

Loan means the loan made or to be made under the Facility or the principal amount outstanding for the time being of the loan (including any amounts capitalised under the loan under clause 9.2 (*Payment of interest*) or clause 9.3(c) (*Default interest*);

Loan Note means a loan note issued under the Loan Note Deed Poll;

Loan Note Deed Poll means the deed poll entitled "Loan Note Deed Poll" dated on or after the date of this Loan Note Subscription Agreement in the form set out in Schedule 11 (*Form of Loan Note Deed Poll*);

MAC means Metals Acquisition Corp, an exempted company incorporated in the Cayman Islands with company number 372802;

MAC Security Documents means the Cayman law governed security documents to be entered into between MAC and the Security Trustee in respect of all MAC's assets and undertakings, including the shares in the Borrower;

MAC Merger means the proposed merger between the Company and MAC pursuant to Part 18B of the *Companies (Jersey) Law 1991* (as amended) and Part XVI of the *Companies Act (As Revised)* of the Cayman Islands in which the surviving company is the Company, effected in accordance with the MAC Merger Agreement;

MAC Merger Agreement means the agreement titled '*merger agreement and plan of merger*' between the Company and MAC dated before Financial Close provided pursuant to Schedule 2 (*Conditions precedent*), in Agreed Form;

Majority Lenders means a Lender or Lenders whose Commitments aggregate at least 66⅔% of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated at least 66⅔% of the Total Commitments immediately before the reduction). Where a Lender's Commitment has been reduced to zero, but it has an outstanding participation in any outstanding Utilisation, then for this purpose its Commitment will be taken to be the aggregate amount of its participation;

Mandate and Commitment Letter means the mandate and commitment letter dated 27 December 2022 between the Borrower, MAC and the Arranger;

Margin means the percentage rate per annum set out in the right column within the table below by reference to the corresponding LME Cash Settlement Price the two Additional Business Days before the first day of the Interest Period:

LME Cash Settlement Price US\$ per metric tonne	Margin % per annum
less than or equal to 7,495	12.00
greater than 7,495 but less than or equal to 8,490	10.00
greater than 8,490	8.00

Material Adverse Effect means a material adverse effect on:

- (a) the business, operation, property, condition (financial or otherwise) or prospects of the Obligor taken as a whole; or
- (b) the ability of the Obligor (taken as a whole) to perform their obligations under the Finance Documents; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted under any of, the Finance Documents or the rights or remedies of any Finance Party or the Security Trustee under any of the Finance Documents;

Material Contracts means:

- (a) each Key Material Contract;
- (b) each Less Key Material Contract;
- (c) any other contract entered into by a member of the Borrower Group which is material to the operation of the Project and which the Agent determines (acting on the instructions of the Majority Lenders, each acting reasonably) is a Material Contract;

- (d) any other document designated as such by the Agent and the Borrower; and
- (e) any document entered into for the purpose of varying, novating, supplementing, extending, replacing or restating any of the above;

ME Supply Contract means the document titled "*Mobile Equipment Supply Contract (Supply of Capital Equipment and Associated Services)*" dated 30 June 2020 between Mount Isa Mines Limited ACN 009 661 447 (acting in its personal capacity and as agent for the Target and Ernest Henry Mining Pty Ltd ACN 008 495 574) and Sandvik Mining and Construction Australia Pty Ltd ACN 003 771 382;

Mining Act means the *Mining Act 1992* (NSW);

Mining Mortgages means:

- (a) each mortgage to be granted by the Target in favour of the Security Trustee in respect of the Tenements under the Target General Security Deed;
- (b) any mining mortgage over a tenement that becomes a Tenement after Financial Close; and
- (c) any mining mortgage granted by a Guarantor in favour of the Security Trustee;

Month means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, subject to adjustment in accordance with the rules specified as Business Day Conventions in the Reference Rate Terms;

Multiemployer Plan means any multiemployer plan as defined in section 4001(a)(3) of ERISA, which is or was contributed to by an Obligor, a Subsidiary of an Obligor or an ERISA Affiliate (or to which any of the foregoing had any obligation to contribute or any liability, contingent or otherwise);

Native Title Claim means any application, claim, right or entitlement, (whether arising by statute or otherwise) of any indigenous person or traditional owner to any estate or interest in land by which that person or owner is applying for or claiming or has that estate or interest in land because that person is indigenous, is a traditional owner or otherwise has a relationship with the land including any application, claim, right or entitlement under the *Native Title Act 1993* (Cth) or any analogous legislation;

New Lender has the meaning given in clause 26 (*Changes to the Lenders*);

NSR Royalty means the 1.5% copper only net smelter return royalty granted by Target to Glencore Operations Australia Pty Limited under the Glencore NSR Royalty Agreement;

NYSE means the New York Stock Exchange;

Obligor means the Borrower or a Guarantor;

Obligor General Security Deed means the general security deed to be entered into between the Borrower, the Company, MAC and the Security Trustee;

Obligor Shares means any shares, membership or other equity interests, or other equity securities in or issued by any Obligor or Target but excluding the Company;

Offshore Associate means an Associate:

- (a) which is a non-resident of Australia and does not acquire, or would not acquire, the relevant Loan Notes and corresponding participations in carrying on a business in Australia at or through a permanent establishment of the Associate in Australia; or
- (b) which is a resident of Australia and which acquires, or would not acquire, the relevant Loan Notes and corresponding participations in carrying on a business in a country outside Australia at or through a permanent establishment of the Associate in that country; and

which is not acquiring the Loan Notes or receiving payment in the capacity of a clearing house, custodian, funds manager or responsible entity of a registered scheme;

Offtake Agreement means:

- (a) the offtake agreement to be entered into between the Target as seller and Glencore International AG as the buyer on or before Completion; and
- (b) any additional or replacement offtake agreement, on market-based commercial terms consistent with the Base Case Financial Model and approved by the Agent (acting on the instructions of the Majority Lenders);

Offtaker means Glencore International AG and any other offtaker under an Offtake Agreement approved by the Agent;

Operating Costs means all costs and expenses incurred and paid or payable by the Borrower Group in the ordinary course of business in connection with the day-to-day activities of the Project, including (without double-counting):

- (a) cash expenses incurred in connection with the operation and maintenance of the Project that are not of a capital nature;
- (b) administrative, management and employee costs;
- (c) payments under any equipment leases;

- (d) payments of an operating nature under the Material Contracts (including water, land leases, rail and port usage);

- (e) insurance premia and deductibles; and
- (f) any other operating or recurring costs and expenses of the Borrower Group in connection with the operation and/or maintenance of the Project (excluding Debt Service) that the Borrower and the Agent agree are Operating Costs;

Original Financial Statements means:

- (a) in relation to the Borrower, the audited consolidated financial statements of the Borrower Group for the financial years or half year, ended 2022, 2021 and 2020;
- (b) in relation to MAC, its audited financial statements for its financial years ended 31 December 2020, 31 December 2021 and 31 December 2022; and
- (c) in relation to any other Obligor, its audited financial statements delivered to the Agent as required by clause 27 *Changes to the Obligors*;

Original Guarantor means each entity listed as such in Part 1 (*The Original Obligors*) of Schedule 1 (*The Original Parties*);

Original Issue Discount has the meaning given to that term in clause 5.6 (*Original Issue Discount*);

Original Obligor means the Borrower or an Original Guarantor;

Other Debt means the Permitted Financial Indebtedness incurred in respect of the Senior Debt Facilities, the Silver Streaming Facility, the Copper Streaming Facility and the NSR Royalty;

Other Debt Documents means each of the following:

- (a) in respect of the Senior Debt Facilities:
 - (i) the Senior Facility Agreement;
 - (ii) the Senior Facility Security Documents; and
 - (iii) the Senior Security Trust Deed;
- (b) in respect of the Silver Streaming Facility:
 - (i) the Silver Purchase Agreement;
 - (ii) the Silver Streaming Facility Security Documents;
 - (iii) the Silver Stream Security Trust Deed; and
 - (iv) the Silver Streaming Intercompany Loan Agreement;
- (c) in respect of the NSR Royalty:
 - (i) the Glencore NSR Royalty Agreement; and
 - (ii) all "NSR Documents" as defined in the Intercreditor Deed; and

- (d) in respect of the Copper Streaming Facility:
 - (i) the Copper Purchase Agreement;
 - (ii) the Copper Streaming Facility Security Documents;
 - (iii) the Copper Stream Security Trust Deed; and
 - (iv) the Copper Streaming Intercompany Loan Agreement,

and any other document, agreement or understanding (in writing or not) between any Obligors or between an Obligor and any shareholder of any of them which evidences Financial Indebtedness of an Obligor to another Obligor or shareholder of any of them;

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

Party means a party to this Agreement;

Perfection Requirements means the making or procuring of the appropriate perfection, stamping, endorsements, notarisations, notifications, Authorisations and registration requirements of the Transaction Security Documents and/or the Security created under them;

Permitted Acquisition means:

- (a) the Acquisition of the Target;
- (b) any acquisition under the definition of Permitted Disposal;
- (c) any acquisition of Cash Equivalent Investments so long as those Cash Equivalent Investments become subject to the Transaction Security as soon as is reasonably practicable following such acquisition (other than in the case of Cash Equivalent Investments maturing within 30 days;

- (d) any acquisition of, subscription for or investment in any business or undertaking, or shares or securities (or equivalent ownership interests) of, any company or corporation (a **Complementary Acquisition**), unless the Complementary Acquisition would have a Material Adverse Effect, and so long as:
- (i) the aggregate consideration during the life of the Facility for the Complementary Acquisitions (together with the aggregate investment in Permitted Joint Ventures) does not exceed US\$50,000,000;
 - (ii) no Event of Default is continuing on the closing date for the Complementary Acquisition or would occur as a result of the Complementary Acquisition;
 - (iii) the acquired company, corporation, business or undertaking is primarily engaged in, or the acquired company, corporation business assets and undertaking will be used primarily in connection with, a base or precious metals business the same as, substantially similar to or directly related to or directly complementary to that carried on by the Target immediately before the Complementary Acquisition and so long as such company, corporation, business or undertaking does not produce or deal in coal or uranium; and
 - (iv) where the consideration during the life of the Facility for the Complementary Acquisition exceeds US\$25,000,000, an updated Base Case Financial Model has been delivered by the Borrower to the Agent and approved by the Agent (acting on the instructions of the Majority Lenders), updated in accordance with clause 20.5 (*Updates to Base Case Financial Model*), showing a projected Debt Service Cover Ratio of at least 1.5:1.0 on a pro-forma basis following completion of such acquisition; and

- (e) any other acquisition with the prior consent of the Agent (acting on the instructions of the Majority Lenders);

Permitted Disposal means any Disposal which, except in the case of paragraph (b), is on arm's length terms:

- (a) of trading stock or cash made by any member of the Group in the ordinary course of trading of the disposing entity;
- (b) of Product under the Offtake Agreement;
- (c) of any asset by a member of the Group (the **Disposing Company**) to another member of the Group (the **Acquiring Company**), but if:
 - (i) the Disposing Company is an Obligor, the Acquiring Company must also be an Obligor;
 - (ii) the Disposing Company is the Borrower, the Acquiring Company must be an Obligor in the Borrower Group;
 - (iii) the Disposing Company had given Security over the asset, the Acquiring Company must have given equivalent Security over that asset;
 - (iv) the Disposing Company is a Guarantor, the Acquiring Company must be a Guarantor guaranteeing at all times an amount no less than that guaranteed by the Disposing Company; and
 - (v) the Disposing Company is a Guarantor in the Borrower Group, the Acquiring Company must be a Guarantor in the Borrower Group guaranteeing at all times an amount no less than that guaranteed by the Disposing Company;
- (d) of assets (other than shares, businesses, real property/intellectual property) in exchange for other assets comparable or superior as to type, value and quality (other than an exchange of a non-cash asset for cash);
- (e) of obsolete or redundant vehicles, plant and equipment for cash;
- (f) of Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments;
- (g) arising as a result of any Permitted Security;
- (h) of assets to, in connection with or for the purpose of the creation of, a Permitted Joint Venture, so long as, if any such disposal shall include real property of the Target or a Tenement, the net book value (when aggregated with the net book value of all such Disposals in respect of the Target) does not exceed US\$10,000,000 (or its equivalent) in total during any 12 month period;
- (i) of assets (other than shares or businesses) for cash (that is not otherwise permitted by the preceding paragraphs) so long as the net book value (when aggregated with the net book value of all such Disposals) does not exceed US\$10,000,000 (or its equivalent) in total during any 12 month period;

- (j) of assets (other than shares or businesses), in connection with, or for the purpose of, such assets then continuing to be used by the Borrower or Target under a lease back or hire purchase contract, so long as the net book value (when aggregated with the net book value of all such Disposals) does not exceed US\$30,000,000 (or its equivalent) in total;
- (k) pursuant to the grant of leasehold interests in, or licences of, residential property to employees of the Borrower or Target in the ordinary course of business; and
- (l) with the prior written consent of the Agent, acting on the instructions of all Lenders,

so long as, in each case, no Event of Default is subsisting on the date of such Disposal or would occur as a result of such Disposal, and such Disposal would not have, or could not reasonably be expected to have, a Material Adverse Effect;

Permitted Distribution means the payment of any Distribution so long as:

- (a) except in the case of a Distribution described under (i) below, the Distribution is made on a date not later than ten Business Days after the most recent Interest Payment Date, following the payment by the Borrower of the applicable interest in respect thereof and in accordance with the Cashflow Waterfall;

- (b) no Event of Default is continuing or would occur as a result of making the Distribution;
- (c) the making of the Distribution would not cause or result in a breach of any Financial Covenant;
- (d) no Offtake Agreement has been terminated, unless it has been replaced with an offtake agreement which the Agent has confirmed in writing is acceptable to it (acting on the instructions of the Majority Lenders);
- (e) the amount of cash or Cash Equivalent Investments (net of any redemption costs) freely available to the Borrower Group immediately following the Distribution is not less than US\$30,000,000;
- (f) the Borrower has not exercised its right to remedy a breach of the Financial Covenant under clause 21.1 (*Financial covenants*) in the six months immediately preceding the Distribution;
- (g) the Reserve Tail Ratio for the most recently ended Relevant Period is not less than 25%;
- (h) the Debt Service Cover Ratio set out in the Compliance Certificate for the most recently ended Relevant Period is not less than 1.20:1.00; and
- (i) in the case of a Distribution under paragraph (c), (d) or (e) of the definition of **Distribution**, such Distribution is paid solely out of:
 - (i) following completion of the MAC Merger, the net proceeds of the issuance of equity by the Company; or
 - (ii) monies held in the Distribution Account;

Permitted Financial Indebtedness means Financial Indebtedness:

- (a) in respect of the Borrower, incurred under the Senior Debt Facility so long as the total outstanding liabilities of the Borrower under or in connection with the Senior Debt Facility do not exceed the aggregate of US\$230,000,000 and A\$40,000,000 plus any interest accruing thereon;

- (b) in respect of the Company and Borrower, incurred under the Silver Purchase Agreement;
- (c) in respect of the Borrower, incurred under the Silver Streaming Intercompany Loan Agreement;
- (d) in respect of the Company and the Borrower, incurred under the Copper Purchase Agreement but only to the extent that it is actually utilised as required in order to achieve Completion of the Acquisition;
- (e) in respect of the Borrower, incurred under the Copper Streaming Intercompany Loan Agreement, but only to the extent that it is actually utilised as at Financial Close;
- (f) in respect of the Target, incurred under the NSR Royalty;
- (g) incurred under any other Transaction Document, including in respect of the Sale and Purchase Agreement, any future or contingent consideration payable under it;
- (h) so long as it is in accordance with the Approved Hedging Programme, arising under a foreign exchange transaction for spot or forward delivery entered into in connection with protection against fluctuation in currency rates where that foreign exchange exposure arises in the ordinary course of trade, but not a foreign exchange transaction for investment or speculative purposes;
- (i) arising under a Permitted Loan or as permitted by clause 22.17 (*Derivative Transactions*);
- (j) under leases and hire purchase contracts constituting Financial Indebtedness under paragraph (d) of that definition of vehicles, plant, equipment or computers, so long as the aggregate capital value of all such items so leased under outstanding leases by members of the Group does not exceed US\$30,000,000 (or its equivalent in any other currency or currencies) at any time;
- (k) not permitted by the preceding paragraphs and the outstanding principal amount of which does not exceed US\$10,000,000 (or its equivalent in any other currency or currencies) in aggregate for the Group at any time and which is on an unsecured basis;
- (l) under leases and hire purchase contracts constituting Financial Indebtedness undertaken in connection with a Permitted Disposal and not otherwise exceeding \$15,000,000 (or its equivalent in any other currency or currencies) at any time; and
- (m) with the prior written consent of the Agent, acting on the instructions of the Majority Lenders,

so long as, in each case, no Event of Default is subsisting on the date such Financial Indebtedness is incurred or would occur as a result of the incurrence of such Financial Indebtedness;

Permitted Joint Venture means any investment in any Joint Venture, unless such investment would have a Material Adverse Effect, and so long as:

- (a) the aggregate investment amount during the life of the Facility (together with the aggregate consideration for all Complementary Acquisitions):

- (i) does not exceed US\$10,000,000; or

- (ii) exceeds US\$10,000,000 and a Base Case Financial Model, updated in accordance with clause 20.5 *Updates to Base Case Financial Model*, has been delivered by the Borrower to the Agent and approved by the Agent (acting on the instructions of the Majority Lenders) showing a projected Debt Service Cover Ratio of at least 1.5:1.0 on a pro-forma basis following completion of the investment;
- (b) no Event of Default is continuing on the closing date for such investment or would occur as a result of such investment (unless such investment is being entered into under a purchase obligation binding on the Borrower and, at the time such purchase obligation was assumed, no Event of Default was continuing or occurred as a result of the assumption of the purchase obligation);
- (c) the Joint Venture is or will be primarily engaged in, or the Joint Venture will be used primarily in connection with, a base or precious metals business the same as, substantially similar to or directly related to or directly complementary to that carried on by the Target immediately before the investment in such Joint Venture, and so long as that Joint Venture (or the venture partner) does not produce or deal in coal or uranium; and
- (d) no Obligor may invest real property of the Obligor or a Tenement in a Joint Venture (except where the disposal would be a Permitted Disposal);

Permitted Loan means:

- (a) any loans, refundable deposits, advance payments or trade credit extended by any member of the Group to its customers on normal commercial terms and in the ordinary course of its trading activities;
- (b) Financial Indebtedness which is referred to in the definition of, or otherwise constitutes, Permitted Financial Indebtedness (except under paragraph (i) of that definition);
- (c) a loan made by:
 - (i) an Obligor within the Borrower Group to another Obligor within the Borrower Group; and
 - (1) a member of the Group which is not an Obligor within the Borrower Group to another member of the Group so long as it is subordinated to the Facilities to the satisfaction of the Agent, acting on the instructions of the Majority Lenders;
- (d) any loan made by the Borrower which is funded solely by cash otherwise available for Distributions in accordance with this Agreement;
- (e) any loan made by the Borrower not otherwise permitted by the preceding paragraphs if the amount of that loan when aggregated with the amount of all such loans permitted under this paragraph (e) does not exceed US\$2,500,000 (or its equivalent) in aggregate for the Borrower at any time, so long as no Event of Default is continuing on the date such loan is made or would occur as a result of the making of the loan; and
- (f) any loan made with the prior written consent of the Agent, acting on the instructions of the Majority Lenders;

Permitted Security means:

- (a) any lien arising by operation of law and in the ordinary course of trading so long as the debt it secures is paid when due or contested in good faith and appropriately provisioned;
- (b) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances:
 - (i) across accounts of that Group member;
 - (ii) across accounts of members of the Borrower Group that are Obligors;
 - (iii) across accounts of Obligors that are not part of the Borrower Group; or
 - (iv) across accounts of members of the Group that are not Obligors;
- (c) any payment or close out netting or set-off arrangement under any transactional banking facilities or any Derivative Transaction or foreign exchange transaction entered into by a member of the Group which constitutes Permitted Financial Indebtedness, excluding any Security under a credit support arrangement;
- (d) any contractual right of set-off, other than in respect of Financial Indebtedness, pursuant to a contract entered into in the ordinary course of business;
- (e) any Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms (or on terms more favourable to the members of the Group) so long as the debt it secures is paid when due or contested in good faith and sufficient reserves of liquid assets have been set aside to pay the debt if the contest is unsuccessful;
- (f) any Security arising as a result of a disposal which is a Permitted Disposal;
- (g) any Security in respect of real property which is or arises by any order, memorial, notification, easement benefit or burden, or lease existing at the date of this Agreement and which is evident from the certificate of title to such real property or a purchaser's caveat;
- (h) any Security granted in relation to any Permitted Joint Venture, so long as such Security is limited to cross-security solely over the assets of the Permitted Joint Venture solely to secure amounts payable between the joint venturers in connection with the Permitted Joint Venture and arising in the ordinary course of business and on arm's length terms;
- (i) any Security arising as a consequence of any leases or hire purchase contracts (constituting Financial Indebtedness under paragraph (d) of that definition) of vehicles, plant, equipment or computers permitted under paragraph (j) of the definition of Permitted Financial Indebtedness and only over the asset being financed, or otherwise any PPS Lease (as defined in the PPSA) provided for by a transaction which does not secure payment or performance of an obligation;
- (j) any Security already subsisting but not legally possible or reasonably feasible to be discharged and listed in Schedule 8 *Existing Security*) except to the extent the principal amount secured by it exceeds the amount stated in that Schedule;

- (k) any Security listed Schedule 8 (*Existing Security*), including any replacement Security upon any successive refinancing thereof, so long as the Financial Indebtedness secured thereby is Permitted Financial Indebtedness;
- (l) any Security in respect of the Financial Indebtedness in respect of the Other Debt, so long as it subsists in accordance with the Intercreditor Deed; or
- (m) any Security not otherwise permitted by the preceding paragraphs securing obligations which do not exceed US\$5,000,000 (or equivalent) in aggregate for the Borrower at any time from the date of Financial Close, so long as, if the assets subject to this Security are real property of an Obligor or a Tenement, such Security would not have, or could not reasonably be expected to have, a Material Adverse Effect, and so long as no Event of Default is continuing on the date of creation of such Security or would occur as a result of the creation of such Security and provided that no Project Assets or Obligor Shares are subject to any such Security;

Permitted Transaction means:

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security given, or other transaction arising, either under the Finance Documents or as otherwise approved by the Agent on the instructions of the Majority Lenders provided that no such disposal, Security or other transaction involves any Disposal or Security being granted over any Project Assets or any Obligor Shares; or
- (b) a dual listing by the Company on the Australian Securities Exchange and the issue of any securities by the Company in connection with that listing or any other equity raise; or
- (c) the raising of any equity in connection with the Acquisition and any restructure, redemption or other matters undertaken in connection with the Acquisition associated with the Company's listing on the NYSE, subject to any such restructure, redemptions and other matters being limited to those expressly set out in the MAC Merger Agreement or the Sale and Purchase Agreement (other than redemptions which will occur in compliance with and as required to be undertaken by the Company under applicable law) and having been completed before Financial Close;

Plan means an "employee benefit plan" as defined in section 3(3) of ERISA that is subject to Title IV of ERISA and that is sponsored, maintained or contributed to by an Obligor, a Subsidiary of an Obligor or any ERISA Affiliate or in respect of which an Obligor, a Subsidiary of an Obligor or an ERISA Affiliate has or has had an obligation to contribute or any liability (contingent or otherwise);

PPSA means the Personal Property Securities Act 2009 (Cth);

PPX Supply Contract means the document titled "Supply Contract (*Supply of PPX Parts, GET, Drilling Consumables, Services and other items*)" dated on or around 1 October 2020 between Mount Isa Mines Limited ACN 009 661 447 (in its personal capacity and acting as agent for the Target and Ernest Henry Mining Pty Ltd ACN 008 495 574) and Sandvik Mining and Construction Australia Pty Ltd ACN 003 771 382;

Primary Term Rate means the rate specified as such in the applicable Reference Rate Terms;

Principal Outstanding means, at any time, the outstanding principal amount of the Loan made under the Facility, including any amounts capitalised under clause 9.2 (*Payment of interest*) or clause 9.3(c) (*Default interest*) of this Agreement or clause 6.2 (*Payment of interest*) or clause 6.3 (*Default interest*) of the Loan Note Deed Poll;

Proceeds Account means each the AUD Proceeds Account and the USD Proceeds Account;

Product means the present and future right, title and interest of an Obligor in and to all copper and silver and other metals and minerals mined, extracted or derived from the Project;

Project means:

- (a) the management, operation, maintenance, repair and expansion of the mines owned by the Target as at the date of this Agreement; and
- (b) the extraction, production, recovery, sale, transportation, storage, processing and delivery of copper, silver and by product metals in concentrate in respect of those mines;

Project Account means each of the following accounts in the name of the Borrower and/or Target and held with the Account Bank:

- (a) USD Proceeds Account;
- (b) AUD Proceeds Account; and
- (c) Distribution Account;

Project Area means the area the subject of the Tenements, the Freehold Properties and the Project Leases;

Project Assets means all the right, title and interest both present and future of the Obligors which is attributable to the Project and includes all the right, title and interest both present and future of the Obligors in, to, under or derived from:

- (a) the Tenements, the Freehold Properties, the Project Leases and all other documentation and agreements under which an Obligor derives the right to conduct mining or exploration for Product at the Project;
- (b) the Product;
- (c) the Project Area, including any title to or interest in land in a Project Area now or at a later time held by an Obligor;

- (d) each Offtake Agreement;
- (e) the Insurances;
- (f) every contract for the use by any third party of any of the assets and property included in the Project;
- (g) all Authorisations in relation to the Project;
- (h) the Material Contracts and any other contract, agreement, permit, lease, licence, consent, easement, right of way and other rights or interests in land, which relate to the development, operation or maintenance of the Project, or to the mining production, transportation, storage, treatment, processing or marketing of a Product;
- (i) all exploration and mining information, documents, maps, reports, records, studies and other written data, including all data stored on magnetic tapes, disks or diskettes or any other computer storage media, relating to geological, geochemical and geophysical work, feasibility studies and other operations conducted with respect to the Project; and

- (j) all buildings, improvements, structures, systems, fixtures, plant, machinery, tools and other personal property at any time used or intended for use in connection with or incidental to the exploration, mining, storage, transporting and processing of Product, and all facilities and infrastructure (including any treatment or processing plant) associated with the Project;

Project Leases means each perpetual land lease held by the Target listed in Part 2 *Project Leases*) of Schedule 17 (*Real Property*) and any additional or replacement lease used or to be used in connection with the Project;

Quarter Date Means each of 31 March, 30 June, 30 September and 31 December;

Quotation Time means the relevant time (if any) specified as such in the applicable Reference Rate Terms;

Real Property Mortgages means:

- (a) the Freehold Property Mortgages;
- (b) the Leasehold Property Mortgages; and
- (c) the Water Licence Mortgages;

Recognition Certificate has the meaning given in the Security Trust Deed;

Reference Rate Supplement means a document which:

- (a) is agreed in writing by the Borrower and the Agent (acting on the instructions of all Lenders);
- (b) specifies the relevant terms which are expressed in this Agreement to be determined by reference to Reference Rate Terms; and
- (c) has been made available to the Borrower and each Finance Party;

Reference Rate Terms means, in relation to:

- (a) the Loan or Unpaid Sum;
- (b) an Interest Period for the Loan or Unpaid Sum (or other period for the accrual of commission or fees); or
- (c) any term of this Agreement relating to the determination of a rate of interest in relation to the Loan or Unpaid Sum,

the terms set out for the Loan, Unpaid Sum or accrual, in Schedule 13 (*Reference Rate Terms*) or in any Reference Rate Supplement;

Register means a register maintained by the Agent under clause 35 (*The Register*);

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

Relevant Market the market specified as such in the Reference Rate Terms;

Relevant Period means:

- (a) for the purposes of testing the Financial Covenants, each rolling period of 12 consecutive months ending on 31 March, 30 June, 30 September and 31 December; and
- (b) for each other purpose, each rolling period of 12 consecutive months ending on the last day of a financial year and the date falling three, six and nine months after the last day of a financial year, being as at the date of Financial Close, 31 March, 30 June, 30 September and 31 December, except that the first Relevant Period will end on the first such date which falls at least three months after Financial Close;

Repeating Representations means each of the representations set out in clause 18 (*Corporate Representations*) and 19 (*Project Representations*) other than those set

out in clause 18.12(a) and clause 18.12(b);

Reporting Day means the day specified as such in the Reference Rate Terms;

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

Reserve Tail Ratio means the ratio expressed as a percentage of:

- (a) the projected remaining proven and probable Reserves as from the Termination Date to the forecast end of the mine life for the Project; and
- (b) the projected remaining proven and probable Reserves as from the date of Financial Close to the forecast end of the mine life for the Project,

as included in the relevant updated Reserves Statement (taking into account the projected future production set out in the most recently delivered updated Base Case Financial Model);

Reserves means reserves of copper as determined in accordance with the JORC Code;

Reserves Statement means a statement of proven and probable Reserves in relation to the Project which is prepared in accordance with the JORC Code;

Resignation Letter means a letter substantially in the form set out in Schedule 6 (*Form of Resignation Letter*);

Revenue means, for any period, the aggregate of the following amounts actually received (or, where not received at any date of the calculation, projected to be actually received as contemplated in the Base Case Financial Model) by the Obligors that are member of the Borrower Group during that period:

- (a) Sales Proceeds;
- (b) net amounts received under or in relation to any Hedging Agreement;
- (c) any interest on the Project Accounts; and
- (d) any other recurring monies received by the Obligors (including proceeds of Disposals of assets, insurance proceeds and amounts received by way of damages) and for any purpose whatsoever,

but excluding:

- (e) the proceeds of the Utilisation and any other financial accommodation (other than under a Hedging Agreement) made available by a Lender;
- (f) the proceeds of any financial accommodation made available under the Other Debt Documents; and
- (g) the proceeds of any Insurance in respect of liabilities to third parties;

Review Event means the occurrence of any of the following events (whether or not it is in the control of any Obligor):

- (a) suspension of trading of shares of MAC or the Company, or any other relevant subsidiary if applicable, from the NYSE or, to the extent its shares are listed on the Australian Securities Exchange, Australian Securities Exchange, for 10 consecutive Business Days, other than in connection with the MAC Merger or completion of the Acquisition in accordance with the terms of the Sale and Purchase Agreement before Financial Close;
- (b) MAC or, following completion of the MAC Merger, the Company ceases to hold directly or indirectly at least 50% of the voting shares of, or otherwise ceases to control, the Borrower and, after its acquisition by the Borrower, the Target. For this purpose, control has the meaning given in section 50AA of the Corporations Act;
- (c) the Target ceases to own the Key Tenements relating to the Project;
- (d) unplanned cessation of mining or processing at the Project for more than 14 Business Days; or
- (e) the occurrence of a Tax Event;

RFR Banking Day means any day specified as such in the Reference Rate Terms;

Sale and Purchase Agreement means the document titled "*CMPL share sale agreement*" dated 17 March 2022 between the Borrower, MAC, the Company and Glencore Operations Australia Pty Limited in respect of the acquisition of 100% of the issued share capital in the Target by the Borrower as amended or varied before the date of this Agreement;

Sales Proceeds means moneys received from the sale of Product, including moneys received under any Offtake Agreement;

Sanctions means any trade, economic or financial sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, His Majesty's Treasury, the Australian Department of Foreign Affairs and Trade, the New Zealand Ministry of Foreign Affairs and Trade, the Hong Kong Commerce, Industry and Tourism Branch of the Commerce and Economic Development Bureau, the Monetary Authority of Singapore, the Ministry of Finance Japan or the government of Canada;

Second Contingent Copper Payment means the unsecured, subordinated payment of up to \$75,000,000 deferred consideration payable by the Company to Glencore Operations Australia Pty Limited under the Sale and Purchase Agreement payable if, over the life of the mine, the average daily LME closing price of copper is greater than US\$9,920 per metric tonne for any rolling 24-month period (commencing at Completion);

Secured Property means all of the assets of the Obligors which from time to time are the subject of the Transaction Security;

Security means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect, including any "security interest" as defined in section 12(1) or (2) of the PPSA;

Security Trust Deed means the deed entitled "Security Trust Deed for the Cobar Mezzanine Security Trust" dated on or about the date of this Agreement and made between, among others, the Company and the Security Trustee;

Security Trust Deed Accession Deed has the meaning given to the term "Accession Deed" in the Security Trust Deed;

Security Trustee has the meaning given to it in the Security Trust Deed;

Senior Debt Facilities means the financial accommodation made available to the Borrower under the Senior Facility Agreement;

Senior Facility Agreement means the agreement dated 28 February 2023 entitled "US\$205,000,000 term loan facility, US\$25,000,000 revolving loan facility, A\$40,000,000,000 letter of credit facility" between, among others, the Borrower as borrower and Citisecurities Limited as agent, in Agreed Form;

Senior Facility Security Documents means the "Transaction Security Documents" as defined in the Senior Facility Agreement in each case in Agreed Form.

Senior Security Trustee has the meaning given to it in the Intercreditor Deed;

Senior Security Trust Deed means the deed entitled "Security Trust Deed" to be dated before Financial Close and made between, among others, the Borrower, the Company and the Senior Security Trustee, in Agreed Form.

Shiploader Agreement means the document titled "Newcastle Shiploader Services Agreement" dated on or about January 2014 as varied on 30 August 2021 between the Target and Aurizon Port Services Pty Ltd ACN 103 570 181 (formerly Conports Pty Ltd);

SIJL means the *Security Interests (Jersey) Law 2012*.

SIR means the security interest register maintained under Part 8 of the SIJL.

Silver Purchase Agreement means the agreement to be dated before Financial Close entitled "silver purchase agreement" between the Company as seller, the Borrower, the Stream Purchaser as purchaser and which will, following completion of a section 260B whitewash procedure under the Corporations Act, be acceded to by the Target, in Agreed Form;

Silver Stream Security Trust Deed means the deed entitled "Security Trust Deed (Silver Stream)" to be dated before Financial Close and made between, among others, the Company and the security trustee named in that deed in Agreed Form;

Silver Streaming Facility means the financial accommodation made available to the Company under the Silver Purchase Agreement;

Silver Streaming Facility Security Documents means the "Stream Security Documents" as defined in the Silver Purchase Agreement in each case in Agreed Form;

Silver Streaming Intercompany Loan Agreement means the intercompany loan between the Company and the Borrower to be dated before Financial Close under which the proceeds of the upfront deposit to be paid by the Stream Purchaser under the Silver Purchase Agreement are on-lent to the Borrower, in Agreed Form;

Social Laws means any applicable law or regulation which relates to:

- (a) employment and labour, including occupational health and safety and collective bargaining;
- (b) respect of human rights, including fair treatment, non-discrimination and equal opportunity;
- (c) land acquisition and restrictions on land use;
- (d) community consultation on matters that directly affect them;
- (e) native title and protection of cultural property and heritage; or
- (f) protection of community health, safety and security;

Specified Time means a day or time determined in accordance with Schedule 10 (*Timetables*);

Sponsor Affiliate means MAC and the Company and each of their affiliates and related funds, trusts, partnerships and controlled entities;

Sponsor Affiliate Payment means any payment to a Sponsor Affiliate in respect of any management or other fees;

Stream Purchaser means Osisko Bermuda Limited, an exempted company existing under the laws of Bermuda, and its permitted successors and assigns;

Subordination of Claims Letter means the letter dated on or about the date of this agreement between, among others, MAC and the Agent in respect of claims under certain due diligence reports;

Subsidiary has the meaning given in the Corporations Act, but as if body corporate includes any entity and, in respect of any entity incorporated or established in Jersey, a subsidiary within the meaning of articles 2 and 2A of the Companies (Jersey) Law 1991. It also includes an entity required by current accounting practice to be included in the consolidated annual financial statements of that entity or would be required if that entity were a corporation;

Sustaining Capital Expenditure means Capital Expenditure contemplated in the Annual Operating Budget which is incurred by the Borrower Group in order to maintain or sustain the production capacity of the Project;

Target means Cobar Management Pty. Limited (ACN 083 171 546), a company existing under the laws of New South Wales, and its successors and permitted assigns

in accordance with the Finance Documents;

Target General Security Deed means the general security deed (including mining mortgage) to be entered into between the Target and the Security Trustee;

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 them);

Tax Act means the *Income Tax Assessment Act 1936* (Cth);

Tax Consolidated Group means a Consolidated Group or an MEC Group as defined in the *Income Tax Assessment Act 1997* (Cth);

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

Tax Event means the introduction of or any change in (or in the interpretation, administration or application of) any tax law or regulation made after the date of this Agreement with respect to the Obligors which results in an adverse tax consequence to an assumption for tax under the Base Case Financial Model, and the Base Case Financial Model, when updated for such assumption in accordance with clause 20.5 (*Updates to Base Case Financial Model*) does not show satisfaction of the Financial Covenants;

Tax Funding Agreement means a tax funding agreement between the members of a Tax Consolidated Group which includes:

- (a) reasonably appropriate arrangements for the funding of Tax payments by the "Head Company" (as defined in the Tax Act) having regard to the position of each member of the Tax Consolidated Group;
- (b) an undertaking from each member of the Tax Consolidated Group to compensate each other member adequately for loss of Tax attributes (including Tax losses and Tax offsets) as a result of being a member of the Tax Consolidated Group; and
- (c) an undertaking from the "Head Company" (as defined in the Tax Act) to pay all group liabilities (as described in section 721-10 of the Tax Act) of the Consolidated Group before the members of the Tax Consolidated Group make any payments to the "Head Company" (as defined in the Tax Act) under the agreement;

Tax Sharing Agreement means any agreement that satisfies the requirements of section 721-25 of the Tax Act for being a valid tax sharing agreement;

Technical Assumptions means, in relation to the Base Case Financial Model, forecast and actual Revenue, Operating Costs and technical operating assumptions relating to the Project and any other assumption that in the Agent's reasonable opinion (acting on the instructions of the Majority Lenders) is necessary to run the Base Case Financial Model (other than Economic Assumptions);

Tenements means:

- (a) each tenement listed in Schedule 16 (*Tenements*) held by the Target or another Obligor under the Mining Act;
- (b) each tenement acquired by an Obligor or any Affiliate thereof after the date of this Agreement which is related to the Project, or is in respect of an area adjacent to an existing Tenement;
- (c) each other tenement held by an Obligor or any Affiliate thereof which is required for the Project in accordance with the then current Life of Mine Plan;
- (d) each present or future interest from time to time held by or on behalf of an Obligor or any Affiliate thereof in any present or future right, lease, licence, claim, permit or other authority which confers or may confer a right to prospect or explore for or mine any metals or minerals in any part of the area covered by the tenements referred to in paragraphs (a) to (c) of this definition;
- (e) each present or future renewal, replacement, extension, modification, amendment, substitution, conversion, amalgamation, relocation, adjustment, resurvey, additional location, consolidation, derived right or variation of any of the mineral rights described above (whether extending over the same or a greater or lesser area);

(f) each present or future application for or an interest in any of the above which confers or which, when granted, will confer the same or similar rights in relation to the Project; and

(g) each other tenement the Agent (acting on the instructions of the Majority Lenders) and the Borrower agree in writing to be a Tenement;

Term Reference Rate means in relation to the Loan:

- (a) the applicable Primary Term Rate as of the Quotation Time; or
- (b) as otherwise determined pursuant to clause 10.1 (*Interest calculation if no Primary Term Rate*);

Termination Date means the date falling five years after the Utilisation Date;

Total Commitments means the aggregate of the Commitments, being \$135,000,000 at the date of this Agreement;

Total Net Debt means, in relation to the Borrower Group, at the end of any Relevant Period, the sum of the following items (as stated on the Borrower's financial statements):

- (a) the consolidated Financial Indebtedness of the Borrower Group;

- (i) including any liabilities related to:
 - (A) the Facility;
 - (B) the Senior Debt Facilities; and
 - (C) the Copper Streaming Facility (if any); and
- (ii) excluding any liabilities related to:
 - (A) unrealised Derivative Transactions;
 - (B) the Silver Streaming Facility;
 - (C) the NSR Royalty; and
 - (D) any other subordinated loans referred to or permitted under this Agreement

less

- (b) the Available Cash and Cash Equivalent Investments;

Total Net Debt to EBITDA means, for any Relevant Period, the ratio of:

- (a) Total Net Debt; to
- (b) EBITDA;

Transaction Documents means the Finance Documents, the Other Debt Documents and the Material Contracts;

Transaction Security means the Security created or expressed to be created in favour of, or held for the benefit of, the Security Trustee under the Transaction Security Documents;

Transaction Security Documents means any documents:

- (a) listed as a Transaction Security Document in paragraph 2(f) of Part 1 (*Conditions precedent to Utilisation*) of Schedule 2 (*Conditions precedent*);
- (b) required to be delivered to the Agent under paragraph 3 of Part 2 (*Conditions Precedent required to be Delivered by an Additional Obligor*) of Schedule 2 (*Conditions precedent*); or
- (c) entered into by any Obligor and which create a Security over any of its assets in favour of, or for the benefit of, the Security Trustee in respect of all or any part of the obligations of the Obligors (with or without securing the obligations of other Obligors) under the Transaction Documents;

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

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

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

Transitional Services Agreement means the document contemplated in the Sale and Purchase Agreement to be titled "Transitional Services Agreement" to be dated on or before Completion and to be entered into between the Company, the Target and an entity within the Glencore Group;

Tripartite Deed means:

- (a) each tripartite deed to be granted in respect of the following Key Material Contracts:
 - (i) the Offtake Agreement;
 - (ii) the Transitional Services Agreement;
 - (iii) the Sale and Purchase Agreement;
 - (iv) the Shiploader Agreement;
 - (v) the Haulage Agreement;
 - (vi) the Cobar Terminal Services Agreement;
 - (vii) the Cooling Plant Agreement;
 - (viii) the Ventilation Construction Agreement;
- (b) each Consent Deed; and

- (c) any consent letter or side agreement made or to be made between an Obligor, the Agent and a counterparty to a Material Contract in relation to that Material Contract in accordance with clause 23.8 (*New Tripartite Deed*);

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

US means the United States of America;

USD Proceeds Account means the account held with the Initial Account Bank and styled *USD Proceeds Account* and any replacement bank account with an Account Bank with the approval of the Agent and agreed between the Borrower and the Agent to be the USD Proceeds Account;

Utilisation means the utilisation of the Facility;

Utilisation Date means the date of the Utilisation, being the date on which the Loan is to be made;

Utilisation Request means a notice substantially in the form set out in Schedule 3 (*Utilisation Request*);

Ventilation Construction Agreement means the document titled "*Construction Agreement (Cooling Turnkey Solution)*" dated 1 September 2021 between the Target and Gordon Brothers Industries Pty Ltd ACN 160 126 456;

Warrants means the 3,187,500 transferrable share purchase warrants issued by the Company, with each whole warrant entitling the holder thereof to purchase one ordinary share in the capital of the Company with a par value of \$0.0001 per share, for a term of 5 years from their date of issue for and at an exercise price of USD12.50 per ordinary share, subject to customary anti-dilution terms.

Water Licence Mortgages means each mortgage granted or to be granted by the Target or another Obligor in favour of the Security Trustee in respect of the Target's interest in the Water Licences; and

Water Licences means each water access licence listed in Part 3 (*Water Licences*) of Schedule 17 (*Real Property*) and any additional or replacement licence, permit or authorisation in respect of water used or to be used in connection with the Project.

1.2 Construction

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

- (i) the **Agent**, the **Arranger**, any **Finance Party**, any **Hedge Counterparty**, any **Lender**, any **Obligor**, any **Party**, any **Account Bank** or the **Security Trustee** shall be construed so as to include its executors, administrators, successors, substitutes (including by novation) and assigns to, or of, its rights and/or obligations under the Finance Documents or Transaction Documents;
- (ii) **MAC** shall be construed so as to refer to the Company immediately on and following completion of the MAC Merger;
- (iii) an agreement, document or instrument being in **Agreed Form** is a reference to that agreement, document or instrument in the form as at Financial Close or as amended in accordance with this Agreement and the Intercreditor Deed
- (iv) **assets** includes present and future properties, revenues and rights of every description;
- (v) a **Finance Document** or **Transaction Document** or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (vi) a **group of Lenders** includes all the Lenders;

(vii) **guarantee** means (other than in clause 17 (*Guarantee*)):

(A) any guarantee, letter of credit, bond, indemnity or similar assurance against loss; or

(B) 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;

(viii) **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;

(ix) a **person** or **entity** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality) or two or more of them and any reference to a particular person or entity (as so defined) includes a reference to that person's or entity's executors, administrators, successors, substitutes (including by novation) and assigns;

(x) 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 and if not having the force of law, with which responsible entities in the position of the relevant Party would normally comply;

(xi) a provision of law or a regulation is a reference to that provision as amended or re-enacted from time to time;

(xii) a time of day is a reference to Sydney time; and

- (xiii) the words **including, for example** or **such as** when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
- (b) The determination of the extent to which a rate is **for a period equal in length** to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined under this Agreement.
- (c) Section, clause and Schedule headings are for ease of reference only.
- (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (e) A Default (other than an Event of Default) or Review Event is **continuing** if it has not been remedied to the satisfaction of the Majority Lenders or waived and an Event of Default is **continuing** if it has not been remedied to the satisfaction of the Majority Lenders or waived.
- (f) "Where this Agreement specifies an amount in a given currency (**thespecified currency**) "or its equivalent", the "equivalent" is a reference to the amount of any other currency which, when converted into the specified currency utilising the Agent's spot rate of exchange (or, if the Agent does not have an available spot rate of exchange, any publicly available spot rate of exchange selected by the Agent (acting reasonably) for the purchase of the specified currency with that other currency at or about 11:00am on the relevant date, is equal to the relevant amount in the specified currency.

- (g) A reference in this Agreement to a page or screen of an information service displaying a rate shall include:
 - (i) any replacement page of that information service which displays that rate; and
 - (ii) the appropriate page of such other information service which displays that rate from time to time in place of that information service, and, if such page or service ceases to be available, shall include any other page or service displaying that rate specified by the Agent after consultation with the Borrower.
- (h) A reference in this Agreement to a Central Bank Rate shall include any successor rate to, or replacement rate for, that rate.
- (i) Any Reference Rate Supplement overrides anything in:
 - (i) Schedule 13 (*Reference Rate Terms*); or
 - (ii) any earlier Reference Rate Supplement.
- (j) In each Finance Document, where it relates to a person (i) incorporated, (ii) established, (iii) constituted, (iv) formed, (v) which carries on, or has carried on, business, or (vi) that owns immovable property, in each case, in Jersey, a reference to:
 - (i) a "composition, compromise, assignment or arrangement with any creditor", "winding-up", "administration", "insolvency", "insolvent", "bankruptcy", "liquidation" or "dissolution" includes, without limitation, "bankruptcy" (as that term is interpreted pursuant to Article 8 of the Interpretation (Jersey) Law 1954), a compromise or arrangement of the type referred to in Article 125 of the Companies (Jersey) Law 1991, any procedure or process referred to in Part 21 of the Companies (Jersey) Law 1991, and any other similar proceedings affecting the rights of creditors generally under Jersey law, and shall be construed so as to include any equivalent or analogous proceedings;
 - (ii) a "liquidator", "receiver", "administrative receiver", "administrator" or the like includes, without limitation, the Viscount of the Royal Court of Jersey, Autorisés, any provisional liquidator or liquidator appointed pursuant to Part 21 of the Companies (Jersey) Law 1991, or any other person performing the same function of each of the foregoing;
 - (iii) a "Transaction Security Interest", "security interest", "security", "encumbrance" or the like includes, without limitation, any hypothèque, whether conventional, judicial or arising by operation of law and any security interest created pursuant to the Security Interests (Jersey) Law 1983 or Security Interests (Jersey) Law 2012 and any related legislation; and
 - (iv) any equivalent or analogous procedure or step being taken in connection with insolvency includes any corporate action, legal proceedings or other formal procedure or step being taken in connection with an application for a declaration of en désastre being made in respect of any such entity or any of its assets (or the making of such declaration) or the service of a statutory demand pursuant to Part 21 of the Companies (Jersey) Law 1991 in respect of such entity.

1.3 Currency symbols and definitions

US\$, USD and US dollars denote the lawful currency of the United States of America, **AS**, **AUD** and **Australian dollars** denote the lawful currency of Australia.

1.4 Limitation on liability of trustee Lenders

Any limitation of liability conforming to the requirements of Schedule 4 (*Form of Transfer Certificate*) contained in a Transfer Certificate signed by a Lender which is a trustee of a fund will apply in respect of that Lender as if incorporated in this Agreement.

1.5 Obligor's agent

- (a) All communications and notices under the Finance Documents to and from the Obligor may be given to or by the Borrower and each Obligor irrevocably authorises each Finance Party to give those communications to the Borrower.
- (b) Each Obligor (other than the Borrower) irrevocably appoints the Borrower to act on its behalf as its agent in connection with the Finance Documents and irrevocably authorises the Borrower on its behalf to:

- (i) supply all information relating to itself as contemplated by any Finance Document to any Finance Party;
 - (ii) give and receive all communications and notices (including a Utilisation Request) and instructions under the Finance Documents; and
 - (iii) agree and sign all documents under or in connection with the Finance Documents (including any amendment, novation, supplement, extension or restatement of or to any Finance Document) without further reference to, or the consent of, that Obligor.
- (c) An Obligor shall be bound by any act of the Borrower under this clause 1.5 irrespective of whether the Obligor knew about it or whether it occurred before the Obligor became an Obligor under any Finance Document.
- (d) To the extent that there is any conflict between any communication or notice by the Borrower on behalf of an Obligor and any other Obligor, those of the Borrower shall prevail.
- (e) An Obligor which is a shareholder of another Obligor consents to the Obligor of which it is a shareholder entering into and performing its obligations under each Transaction Document.

1.6 Target pre-accession

Where a provision of a Finance Document imposes, or purports to impose, an obligation on, or otherwise relates to, the Target before it becomes a party to the Finance Document, the provision will be read as imposing an obligation on the Borrower to procure that the Target complies with that obligation, or (to the extent possible) as relating to the Target as if it were a party to the Finance Document as an Obligor.

1.7 Joint Activities

The Lenders carry on jointly the activity of supplying services to the Borrower. Those services consist of making available the Facility in accordance with the terms of the Finance Documents (the **Services**). The Borrower acknowledges that:

- (a) it has, in its sole discretion, requested that the Lenders supply the Services on a joint basis; and
- (b) the Lenders are not in competition for the provision of those Services to the Borrower.

SECTION 2 THE FACILITIES

2 The Facility

2.1 The Facility

Subject to this Agreement, the Lenders will subscribe for Loan Notes and by way of subscription make available to the Borrower a US dollar term loan facility in an aggregate amount equal to the Total Commitments.

2.2 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with clause 2.2(c). The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and any part of the Utilisation or any other amount owed by an Obligor which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by that Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

3 Purpose

3.1 Purpose

The Borrower shall apply all amounts received by it under the Facility towards part of the purchase consideration for the Acquisition under the Sale and Purchase Agreement in accordance with the Funds Flow Statement.

3.2 Monitoring

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

4 Conditions of Utilisation

4.1 Initial conditions precedent

- (a) The Borrower may not deliver the Utilisation Request unless the Agent has received all of the documents and other evidence listed in Part 1 *Conditions precedent to Utilisation*) of Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Agent acting on the instructions of all Lenders. The Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.
- (b) The Obligors agree that, as part of the Agent and the Lenders reviewing the matters referred to in Clause 4.1(a) (*Initial conditions precedent*), they may identify matters that in their opinion require amendments to a Finance Document which must be entered into before the Borrower may deliver a Utilisation Request. If they do, then the Agent will notify the Borrower of the amendments and propose a draft amending agreement (acting on the instructions of all Lenders). The Obligors must then promptly enter into the amendment agreement and provide all other documents and evidence in connection with the entry into of it reasonably requested by the Agent acting on the instructions of all Lenders. If the Agent has notified the Borrower that an amendment agreement is required, the Obligors agree that the Borrower may not deliver a Utilisation Request until the Agent notifies the Borrower that the amendment agreement has been entered into and all other documents and evidence in connection with the entry into of it reasonably requested by the Agent acting on the instructions of all Lenders have been provided to the satisfaction of the Agent acting on the instructions of all Lenders. The Agent agrees to notify the Borrower and the Lenders promptly upon being so satisfied.

4.2 Further conditions precedent

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

- (a) subject to clause 4.5 (*Certain Funds*), no Default is continuing or would result from the proposed Utilisation; and
- (b) subject to clause 4.5 (*Certain Funds*), the Repeating Representations to be made by each Obligor are true in all material respects and not misleading.

4.3 Maximum number of Utilisations

- (a) The Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation more than one Loan would be outstanding.
- (b) The Borrower may not request that the Loan be divided.

4.4 Conditions Subsequent

The continuing obligation of the Lenders to make available or maintain any accommodation under the Facility is subject to the following:

- (a) within 30 days of Financial Close (and as soon as reasonably practicable following completion of a section 260B whitewash procedure), the accession of Target as an Additional Guarantor to the Finance Documents as required to satisfy clause 22.5 (*Guarantor Coverage*);
- (b) within 30 Business Days of Financial Close, provision to the Agent of a copy of each certificate of currency in respect of the material insurances of Target noting the interests of the Security Trustee where it is customary and practicable to do so;

- (c) within ten Business Days of Financial Close (or such longer period as the Agent may agree in its reasonable discretion), the Borrower shall procure that the following is delivered to the Security Trustee:
 - (i) a certified copy of the register of members of the Target;
 - (ii) signed but undated blank transfer forms in relation to all issued shares in the Target;
 - (iii) evidence satisfactory to the Security Trustee that the Senior Security Trustee has received the original share certificate(s) for all issued shares in the Target; and
 - (iv) evidence satisfactory to the Security Trustee that the constitution of the Target has been amended to remove any directors' or other officers' discretion to refuse transfers of shares in the Target and do not otherwise restrict or inhibit any transfer or creation or enforcement of the Transaction Security;
- (d) within 30 Business Days of Financial Close, provision to the Agent of a copy of each contract to which the Target is a party with a total cost of at least \$10 million over the life of the contract (including the Cambiate Equipment Supply Agreement) or which is otherwise material to the operations of the Target and which was not disclosed to the Agent before Financial Close;
- (e) within 30 days of Financial Close, evidence that the Target has withdrawn from the deed of cross guarantee dated 4 December 2018 and is released with effect on and from the date of Completion from any obligations that have previously arisen and may be due under that deed;
- (f) within 5 Business Days of Financial Close, in respect of any Transaction Security Document to be entered by the Company (which is incorporated under the laws of the Cayman Islands), evidence of the completion of each registration to be made under Cayman Islands law pursuant to each such Transaction Security Document; and
- (g) on or before the first Interest Payment Date, there is an aggregate cash balance standing to the credit of the Proceeds Accounts of at least US\$30,000,000.

4.5 Certain Funds

During the Certain Funds Period each Lender agrees that it will:

- (a) comply with any duly completed Utilisation Request for the Utilisation under the Facility for the purposes of financing the Acquisition or making other payments in respect of the Acquisition in accordance with Clause 3.1 (*Purpose*) in an amount up to the Total Commitment for (**aCertain Funds Utilisation**); and
- (b) not exercise any rights which exist in favour of the Lenders to:
 - (i) cancel its Commitment to the extent to do so would prevent or limit the making of a Certain Funds Utilisation;
 - (ii) rescind, terminate or cancel the Facility or exercise any similar right or remedy or make or enforce any claim it may have to the extent to do so would prevent or limit the making of a Certain Funds Utilisation;

- (iii) refuse to make available or participate in the Utilisation under the Facility in relation to a Certain Funds Utilisation;

- (iv) exercise any right of set-off or counterclaim in respect of the Utilisation to the extent to do so would prevent or limit the making of a Certain Funds Utilisation; or
- (v) cancel, accelerate or cause repayment or prepayment of any amounts owing under the Facility to the extent to do so would prevent or limit the making of a Certain Funds Utilisation,

unless at the time of the Utilisation Request or on the proposed Utilisation Date for the utilisation:

- (A) clause 4.1 (*Initial conditions precedent*) has not been satisfied;
- (B) a Major Representation in respect of an Obligor or the Target is untrue or misleading in any material respect (whether by omission or otherwise) or unable to be made for any reason;
- (C) a Major Default in respect of an Obligor or the Target is subsisting or would result from the Utilisation being made;
- (D) an event has occurred under the Sale and Purchase Agreement which permits MAC, the Company or the Borrower to issue a notice of termination in respect of the Sale and Purchase Agreement or terminate the Sale and Purchase Agreement;
- (E) a mandatory prepayment event has occurred under clause 7.3 (*Other mandatory prepayment events*) of this Agreement;
- (F) the Borrower has not provided evidence to the Agent that it holds (or will hold, immediately before completion) sufficient cleared funds in:
- (1) the Borrower's bank accounts (together with cleared funds in the Company bank accounts available for such purpose); and
 - (2) bank accounts of Glencore Operations Australia Pty Limited that are nominated by the Borrower under the Sale and Purchase Agreement to receive, in whole or in part, the purchase price under the Sale and Purchase Agreement and in respect of which the Borrower has the right to request repayment of such proceeds should Completion not occur by the end of the Certain Funds Period,
- to pay in full the purchase price under the Sale and Purchase Agreement in order to complete the Acquisition; or
- (G) it is unlawful for any of the Lenders to perform any of its obligations under the Finance Documents for any reason.

- (c) In this clause 4.5:

Major Representations means a representation:

- (i) in respect of each Obligor, under clauses 18.1 (*Status*), 18.2 (*Binding obligations*), 18.3 (*Non-conflict with other obligations*), 18.4 (*Power and authority*), 18.5 (*Validity and admissibility in evidence*), 18.7 (*Insolvency*), 18.13 (*Ranking*), 18.16 (*Borrower as SPV*), 18.21 (*Good title to assets*) and 18.27 (*Sanctions*); and

- (ii) in respect of Target, under clauses 18.1 (*Status*), 18.2 (*Binding obligations*), 18.3 (*Non-conflict with other obligations*), 18.4 (*Power and authority*), 18.5 (*Validity and admissibility in evidence*), 18.7 (*Insolvency*), 18.13 (*Ranking*) and 18.27 (*Sanctions*);

Major Undertaking means an undertaking under clause 23.5 (*Special Purpose Vehicle*), and a negative undertaking under clause 18.27 (*Sanctions*), 22.9 (*Financial Indebtedness*), 22.10 (*Loans or credit*), 22.11 (*Negative pledge*), 22.12 (*Disposals*), 22.13 (*Mergers/Acquisitions*), 22.14 (*Change of business*) or 23.7 (*Offtake Agreements*); and

Major Default means with respect to the Obligors, an Event of Default under clauses 25.1 (*Non-payment*), 25.3 (*Other obligations*) (insofar as it relates to a breach of any Major Undertaking), 25.4 (*Misrepresentation*) (insofar as it relates to a breach of any Major Representation), 25.5 (*Cross default*), 25.6 (*Insolvency*), 25.7 (*Insolvency proceedings*), 25.8 (*Creditors' process*), 25.10 (*Unlawfulness*), 25.11 (*Repudiation*); 25.13 (*Vitiation of Finance Documents*) or 25.14 (*Cessation of business*).

SECTION 3 UTILISATION

5 Utilisation

5.1 Delivery of a Utilisation Request

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

5.2 Completion of a Utilisation Request

- (a) The Utilisation Request for the Loan under the Facility is irrevocable and will not be regarded as having been duly completed unless:
- (i) the proposed Utilisation Date is a Business Day within the Availability Period; and
 - (ii) the currency and amount of the Utilisation comply with clause 5.3 (*Currency and amount*).
- (b) Only one Loan may be requested in the Utilisation Request.

5.3 Currency and amount

- (a) The currency specified in the Utilisation Request must be US dollars.
- (b) The amount of the proposed Loan under the Facility must be an amount equal to the Available Facility.

5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in the Loan available by the Utilisation Date through its Facility Office. This will constitute the subscription for Loan Notes by the Lenders.

- (b) The amount of each Lender's participation in the Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately before making the Loan.
- (c) Each Lender shall make its participation in the Loan available to the Borrower by depositing the proceeds of the Loan (being its participation in the Loan less the Original Issue Discount) into the USD Proceeds Account or such other account as requested by the Borrower and consented to be the Agent (in its absolute discretion).

5.5 Issue of Loan Notes

- (a) On the Utilisation Date the Borrower shall issue the Loan Notes to the Original Lender.
- (b) The Loan Notes shall have:
 - (i) a maximum aggregate principal amount equal to the sum of a Lender's Commitment (plus a Lender's pro rata share of the aggregate amount of any interest owed to the Lenders that is compounded or capitalised into the Loan from time to time); and
 - (ii) an aggregate principal amount outstanding equal to a Lender's participation in the Principal Outstanding from time to time but so that if the principal amount outstanding on a Lender's Loan Notes from the Borrower would otherwise be zero but the Lender's Commitment is greater than zero the Borrower will be indebted to the Lender for one US dollar and accordingly the aggregate principal amount outstanding of the Lenders' Loan Notes at that time will be one US dollar.
- (c) The Borrower will before the date described under clause 5.5(a) sign and seal the Loan Note Deed Poll and forward it to the Agent in escrow. On receipt of the money referred to in clause 5.4 (*Lenders' participation*), the Agent will date the Loan Note Deed Poll and the Borrower will be taken to have delivered the Loan Note Deed Poll.
- (d) On receipt of the funds from the Lender in accordance with clause 5.4 (*Lenders' participation*) the Agent shall do the following:
 - (i) pay those funds to the relevant account specified in the Utilisation Notice; and
 - (ii) enter the Loan Notes to be issued under paragraph (a) in the Register. That entry will constitute issue of the Loan Notes.

5.6 Original Issue Discount

The Loan shall be made to the Borrower at an original issue discount equal to 2% of the Loan, which original issue discount shall be deducted from the Utilisation and shall not be credited against the interest payable pursuant to clause 9 (*Interest*) or any other term of this Agreement, but shall constitute additional interest paid in advance (the **Original Issue Discount**).

5.7 Cancellation of Commitment

The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.

SECTION 4 REPAYMENT, PREPAYMENT AND CANCELLATION

6 Repayment

The Borrower shall repay the Principal Outstanding under the Facility in full on the Termination Date, together with all accrued but unpaid interest, and all other amounts accrued or outstanding under the Finance Documents.

7 Prepayment and Cancellation

7.1 Illegality

If, in any applicable jurisdiction, it becomes unlawful (or impossible as a result of a change in law or regulation) for any Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in the Utilisation or it becomes unlawful or impossible as a result of a change in law or regulation for any Affiliate of a Lender to do so:

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Borrower, each Available Commitment of that Lender will be immediately cancelled; and

- (c) to the extent that the Lender's participation has not been transferred under clause 7.6(e) (*Right of replacement or repayment and cancellation in relation to a single Lender*), the Borrower shall repay that Lender's participation in the Utilisations made to the Borrower on the last day of the Interest Period for the Utilisation occurring after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be immediately cancelled in the amount of the participations repaid.

7.2 Review Event

- (a) If a Review Event occurs:
- (i) the Borrower shall promptly notify the Agent upon becoming aware of that event;
 - (ii) a Lender shall not be obliged to fund the Utilisation;
 - (iii) during the 45 day period starting on the earlier of the date on which the Agent receives notice of the Review Event and the date on which the Agent becomes aware of the Review Event (**Negotiation Period**) the Borrower and each other Obligor will seek to negotiate amendments to the Finance Documents to reflect the altered commercial parameters of the transaction as a consequence of the occurrence of the Review Event; and
 - (iv) if the Obligors and the Lenders are unable to agree amendments to the Finance Documents by the end of the Negotiation Period, and despite anything else in any Finance Document, at the conclusion of the Negotiation Period, the Agent, acting on the instructions of the Majority Lenders, may at any time within 20 days following the end of the Negotiation Period, by giving not less than 60 days' notice to the Borrower, cancel each Available Commitment of each Lender and declare the Utilisation, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents immediately due and payable, whereupon each such Available Commitment will be immediately cancelled, the Facility shall immediately cease to be available for further utilisation and the Utilisation, accrued interest and other amounts shall become immediately due and payable.

7.3 Other mandatory prepayment events

- (a) If:
- (i) there is a breach of any of the representations in clause 18.27 (*Sanctions*) or undertakings in clause 22.18 (*Sanctions*); or
 - (ii) an Obligor sells, transfers, disposes all or substantially all of its assets,
- then:
- (iii) the Borrower shall promptly notify the Agent upon becoming aware of that event; and
 - (iv) the Agent, acting on the instructions of the Majority Lenders, shall cancel the Available Commitment of each Lender and declare the Utilisation, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents immediately due and payable, whereupon each such Available Commitment will be immediately cancelled, the Facility shall immediately cease to be available for further utilisation and the Utilisation, accrued interest and other amounts shall become immediately due and payable.
- (b) If an Obligor receives cash proceeds from Insurance claims exceeding US\$5,000,000 in aggregate in any financial year, excluding:
- (i) proceeds received in respect of third party liabilities, loss of revenue, public liability, personal injury or directors' and officers' liability; and
 - (ii) proceeds that are committed to be applied to reinstate or replace assets within 90 days following the relevant Obligor's receipt of such proceeds or to meet the liability in respect of which relevant claim was made,
- then the Borrower must promptly after receipt, apply an amount equal to such cash proceeds in reduction of the Facility.
- (c) The Agent shall cancel the Available Commitment of each Lender in an aggregate amount equal to the amount prepaid under clause 7.3(b).
- (d) The Borrower agrees that if an Obligor is required to make a prepayment pursuant to this clause 7.3 on a date falling before the date which is three years after the Utilisation Date, then the Borrower must also pay the applicable Additional Prepayment Interest Premium to each Lender on the date of such prepayment.

7.4 [intentionally blank]

7.5 Voluntary prepayment of the Facility

- (a) Prior to the date falling two years after the Utilisation Date, the Borrower may not prepay the whole or any part of the Loan.

- (b) On and following the date falling two years after the Utilisation Date, the Borrower may, if it gives the Agent not less than five Business Days' (or such shorter period as the Majority Lenders and the Agent may agree) prior notice, prepay the whole (but not part) of the Loan outstanding under the Facility.
- (c) If the Borrower elects to make a prepayment under clause 7.5(b) on a date falling on or after the date which is two years after the Utilisation Date and before the date which is three years after the Utilisation Date, the Borrower must also pay the applicable Additional Prepayment Interest Premium to each Lender on the date of such prepayment.

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

- (a) If:

- (i) any sum payable to any Lender by an Obligor is required to be increased under clause 12.2(c) (*Tax gross-up*); or
- (ii) any Lender claims any sum from the Borrower under clause 12.3 (*Tax indemnity*) or clause 13.1 (*Increased Costs*),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or claim continues, give the Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Utilisation or give the Agent notice of its intention to replace that Lender in accordance with clause 7.6(e).

- (b) On receipt of a notice of cancellation referred to in clause 7.6(a) in relation to a Lender, the Available Commitment(s) of that Lender shall be immediately reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under clause 7.6(a) (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in the Utilisation and that Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.
- (d) If the repayment pursuant to clause 7.6(c) is to be made on a date falling before the date which is three years after the Utilisation Date, the Borrower must also pay to the relevant Lender the applicable Additional Prepayment Interest Premium.
- (e) If:
 - (i) any of the circumstances set out in clause 7.6(a) apply to a Lender; or
 - (ii) an Obligor becomes obliged to pay any amount in accordance with clause 7.1 (*Illegality*) to any Lender,

the Borrower may, on 21 Business Days' prior notice to the Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer under clause 26 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to a Lender or another bank, or financial institution, or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (including credit derivatives) in any such case selected by the Borrower which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with clause 26 (*Changes to the Lenders*) for a purchase price in cash payable at the time of the transfer in an amount equal to the Principal Outstanding of the Lender's participation in the outstanding Utilisation and all accrued interest (to the extent that the Agent has not given a notification under clause 26.9 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (f) The replacement of a Lender under clause 7.6(e) shall be subject to the following conditions:
 - (i) the Borrower shall have no right to replace the Agent or the Security Trustee;
 - (ii) neither the Agent nor any Lender shall have any obligation to find a replacement Lender;
 - (iii) in no event shall the Lender replaced under clause 7.6(e) be required to pay or surrender any of the fees received by such Lender under the Finance Documents; and
 - (iv) the Lender shall only be obliged to transfer its rights and obligations under clause 7.6(e) once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (g) A Lender shall perform the checks described in clause 7.6(f)(iv) as soon as reasonably practicable following delivery of a notice referred to in clause 7.6(e) and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

7.7 Right of cancellation in relation to a Defaulting Finance Party

- (a) The Borrower may give the Agent five Business Days' notice of cancellation of the Available Commitment of a Lender that is, and continues to be, a Defaulting Finance Party.
- (b) On the notice becoming effective, the Available Commitment of the Defaulting Finance Party will reduce to zero.
- (c) The Agent shall notify all the Lenders as soon as practicable after receiving the notice.

8 Restrictions

8.1 Notices of Cancellation or Prepayment

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

8.2 Interest and other amounts

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

8.3 No reborrowing of the Facility

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

8.4 Prepayments in accordance with Agreement

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

8.5 No reinstatement of Commitments

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

8.6 Agent's receipt of Notices

If the Agent receives a notice under clause 7 (*Prepayment and Cancellation*) it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.

8.7 Effect of repayment and prepayment on Commitments

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

8.8 Application of prepayments

Any prepayment of the Utilisation under clause 7.2 (*Review Event*), clause 7.3 (*Other mandatory prepayment events*) or clause 7.5 (*Voluntary prepayment of the Facility*) shall be applied pro rata to each Lender's participation in the Utilisation.

SECTION 5 COSTS OF UTILISATION

9 Interest

9.1 Calculation of interest

The rate of interest on the Loan for any day during an Interest Period is the percentage rate per annum which is the aggregate of the applicable:

- (a) Margin; and
- (b) Term Reference Rate for that day, except that if that rate is less than 2.00%, the Term Reference Rate shall be deemed to be 2.00%.

9.2 Payment of interest

- (a) The Borrower shall pay accrued interest on the Loan on each Interest Payment Date in accordance with clauses 9.2(b) to 9.2(d).
- (b) The Borrower may elect (by giving the Agent no less than five Business Days' prior written notice) that an amount less than or equal to the Maximum Elected Capitalised Proportion (if any) of all accrued interest on the Loan that is payable on that Interest Payment Date be capitalised and added to, and form part of, the principal amount outstanding of the Loan on that Interest Payment Date.

- (c) Subject to clause 9.2(d), the Borrower shall pay to the Agent in cash on each Interest Payment Date an amount (if any) equal to the Cash Component.
 - (d) If on any Interest Payment Date there is any Interest Shortfall Amount that Interest Shortfall Amount will be capitalised and added to, and form part of, the principal amount outstanding of the Loan on that Interest Payment Date.
 - (e) For the purpose of this clause 9.2:
 - (i) **Cash Component** means, in respect of an Interest Payment Date:
 - (A) the amount of accrued interest on the Loan that is payable on that Interest Payment Date,
 - less
 - (B) the amount of interest (if any) capitalised pursuant to clause 9.2(b).
 - (ii) **Interest Shortfall Amount** means, in respect of an Interest Payment Date:
 - (A) the amount of accrued interest on the Loan that is payable in cash on that Interest Payment Date,
 - less
 - (B) the amount available under paragraph (l) of the Cashflow Waterfall] on that date for the Borrower to apply towards the payment of the Cash Component,
- provided always that such amount cannot be a negative amount.
- (iii) **Maximum Elected Capitalised Proportion** means the percentage set out below based on the LME Cash Settlement Price two Additional Business Days before the first day of the Interest Period provided that, if on an Interest Payment Date:
 - (A) an Event of Default has occurred and is continuing; or
 - (B) the Obligors are not in compliance with any representation, covenant or undertaking in the Finance Documents,

the Maximum Elected Capitalised Proportion shall be 0%

LME Cash Settlement Price US\$ per metric tonne	Maximum Elected Capitalised Proportion %
less than or equal to 7,495	100
greater than 7,495 but less than or equal to 8,490	60
greater than 8,490	0

9.3 Default interest

- (a) If an Obligor fails to:
- (i) pay any amount payable by it under a Finance Document on its due date; or
 - (ii) capitalise any amount payable by it under this Agreement in accordance with clauses 9.2(b) or 9.2(d) (*Payment of interest*),
- 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 clause 9.3(b), is the sum of 2% per annum and the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted the Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this clause 9.3 shall be immediately payable by the Obligor on demand by the Agent.
- (b) If any amount overdue in accordance with clause 9.3(a) consists of all or part of the Loan which became due on a day which was not the last day of an Interest Period relating to the 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 the Loan; and
 - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be the sum of 2% per annum and the rate which would have applied if the overdue amount had not become due.
- (c) Default interest incurred in accordance with this clause 9.3 (if unpaid) 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.

9.4 Notification of rates of interest

- (a) The Agent shall promptly upon an Interest Payment being determinable notify:
- (i) the Borrower of the Interest Payment;
 - (ii) each relevant Lender of the proportion of that Interest Payment which relates to that Lender's participation in the Loan; and
 - (iii) the relevant Lenders and the Borrower of:
 - (A) each applicable rate of interest relating to the determination of that Interest Payment; and
 - (B) to the extent it is then determinable, the Term Reference Rate (if any) relating to the Loan.
- (b) This clause 9.4 shall not require the Agent to make any notification to any Party on a day which is not a Business Day.

10 Changes to the Calculation of Interest

10.1 Interest calculation if no Primary Term Rate

If no Primary Term Rate is available for the Interest Period of the Loan, the applicable Term Reference Rate shall be the Central Bank Rate for the Quotation Day.

10.2 [Intentionally blank]

10.3 [Intentionally blank]

10.4 [Intentionally blank]

10.5 Break Costs

- (a) If an amount is specified as Break Costs in the Reference Rate Terms, the Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs (if any) attributable to all or any part of the Loan or an Unpaid Sum being paid by the Borrower on a day before the last day of an Interest Period for the Loan or that Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they become, or may become, payable.

**SECTION 6
ADDITIONAL PAYMENT OBLIGATIONS**

12 Tax Gross-Up and Indemnities**12.1 Definitions**

- (a) In this clause 12:

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; and

Tax Payment means either the increase in a payment made by an Obligor to a Finance Party under clause 12.2 (*Tax gross-up*) or a payment under clause 12.3 (*Tax indemnity*).

12.2 Tax gross-up

- (a) Each Obligor shall make all payments to be made by it under the Finance Documents without any Tax Deduction unless such Tax Deduction is required by law.
- (b) The Borrower or a Finance Party shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. If the Agent receives such notification from a Lender it shall notify the Borrower and that Obligor.
- (c) If a Tax Deduction is required by law to be made by an Obligor except in relation to a Tax described in clause 12.3(b)(i) or 12.3(b)(ii), the Obligor shall pay an additional amount together with the payment so that, after making any Tax Deduction, the Finance Party receives an amount equal to the payment which would have been due if no Tax Deduction had been required.

- (d) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment evidence satisfactory to that Finance Party, acting reasonably, that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

12.3 Tax indemnity

- (a) The Borrower shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document or a transaction or payment under it.
- (b) clause 12.3(a) shall not apply:
- (i) with respect to any Tax assessed on a Finance Party 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:
- (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
- (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction; or
- (ii) with respect to Australian Withholding Tax in respect of any interest paid to an Offshore Associate of the relevant Obligor; or
- (iii) to the extent the relevant loss, liability or cost:
- (A) is compensated for by an additional amount under clause 12.2 (*Tax gross-up*); or
- (B) relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making or intending to make a claim under clause 12.3(a) shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this clause 12.3, notify the Agent.

12.4 Tax Credit

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

- (a) a Tax Credit is attributable to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and

- (b) that Finance Party has obtained, utilised and retained that Tax Credit,

subject to clause 30 (*Conduct of Business by the Finance Parties*), the Finance Party shall pay an amount to the Obligor which that Finance Party determines in its absolute discretion will leave it (after that payment) in the same after-Tax position as it would have been in had the circumstances not arisen which caused the Tax Payment to be required to be made by the Obligor.

12.5 Stamp duties and Taxes

The Borrower shall:

- (a) pay; and
- (b) within three Business Days of demand, indemnify each Finance Party against any cost, expense, loss or liability that Finance Party incurs in relation to, all stamp duty, registration or other similar Tax payable in respect of any Finance Document except Transfer Certificates.

12.6 Indirect Tax

- (a) All payments to be made by an Obligor under or in connection with any Finance Document have been calculated without regard to Indirect Tax. If all or part of any such payment is the consideration for a taxable supply or chargeable with Indirect Tax then, when the Obligor makes the payment:
- (i) it must pay to the Finance Party an additional amount equal to that payment (or part) multiplied by the appropriate rate of the Indirect Tax; and
- (ii) the Finance Party will promptly provide to the Obligor a tax invoice complying with the relevant law relating to that Indirect Tax.
- (b) Where a Finance Document requires an Obligor to reimburse or indemnify a Finance Party for any costs or expenses, that Obligor shall also at the same time pay and indemnify that Finance Party against all Indirect Tax incurred by that Finance Party in respect of the costs or expenses save to the extent that that Finance Party is entitled to repayment or credit in respect of the Indirect Tax. The Finance Party will promptly provide to the Obligor a tax invoice complying with the relevant law relating to that Indirect Tax.

12.7 FATCA Information

- (a) Subject to clause 12.7(c), each Party shall, within 10 Business Days of a reasonable request by another Party:
- (i) confirm to that other Party whether it is:
- (A) a FATCA Exempt Party; or
- (B) not a FATCA Exempt Party;
- (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
- (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.

- (b) If a Party confirms to another Party under clause 12.7(a)(i) that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) clause 12.7(a) shall not oblige any Finance Party to do anything, and clause 12.7(a)(iii) shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
- (i) any law or regulation;
- (ii) any fiduciary duty; or
- (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with clause 12.7(a)(i) or 12.7(a)(ii) (including where clause 12.7(c) applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

12.8 FATCA Deduction

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

13 Increased Costs

13.1 Increased Costs

- (a) Subject to clause 13.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:

- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
- (ii) compliance with any law or regulation,

made after the date of this Agreement. This includes any law or regulation with regard to capital adequacy, prudential limits, liquidity, reserve assets or Tax.

(b) In this Agreement **Increased Costs** means:

- (i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital (including as a result of any reduction in the rate of return on capital as more capital is required to be allocated);
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document,

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

13.2 Increased cost claims

- (a) A Finance Party intending to make a claim under clause 13.1 (*Increased Costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

13.3 Exceptions

- (a) clause 13.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;
 - (iii) compensated for by clause 12.3 (*Tax indemnity*) (or would have been compensated for under clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in clause 12.3(b) (*Tax indemnity*) applied); or
 - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

14 Other Indemnities

14.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (**aSum**), 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;
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, expense, 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.

14.2 Other indemnities

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

- (a) the occurrence of any Default or Review Event;
- (b) the Lender Presentation or any other information produced or approved by an Obligor under or in connection with the Finance Documents or the transactions they contemplate being or being alleged to be misleading or deceptive in any respect;
- (c) any enquiry, investigation, subpoena (or similar order) or litigation with respect to any Obligor or with respect to the transactions contemplated or financed under this Agreement;

- (d) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, expense, loss or liability arising as a result of clause 31 (*Sharing among the Finance Parties*);
- (e) funding, or making arrangements to fund, its participation in the Utilisation requested by the Borrower in the 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);
- (f) the Utilisation (or part of the Utilisation) not being prepaid in accordance with a notice of prepayment given by the Borrower;
- (g) an amount being paid or payable by that Finance Party to the Agent or another Finance Party under clause 29.11 (*Lenders' indemnity to the Agent*); or
- (h) security being provided by that Finance Party to the Agent under clause 29.7(j) (*Rights and discretions*) or clause 29.11(d) (*Lenders' indemnity to the Agent*) including costs and expenses in providing that security and, if the security is cash, the Borrower shall pay interest on the amount provided from the date of provision in the manner provided in clause 9.3 (*Default interest*).

14.3 Indemnity to the Agent

The Borrower shall promptly indemnify the Agent against any cost, expense, loss or liability incurred by the Agent (acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is a Default;
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or

- (c) instructing lawyers, accountants, tax advisers, surveyors or other experts or professional advisers as permitted under this Agreement.

15 Mitigation by the Finance Parties

15.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Borrower, use reasonable endeavours to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or its Commitment being cancelled under, any of clause 7.1 (*Illegality*), clause 12 (*Tax Gross-Up and Indemnities*) (other than clause 12.6 (*Indirect Tax*)) or clause 13 (*Increased Costs*) (or clauses 8 (*Mandatory prepayment*), 9 (*Tax gross up and indemnities*) and 10 (*Increased costs*) of the Loan Note Deed Poll to the extent it relates to these clauses of this Agreement), including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Clause 15.1(a) does not in any way limit the obligations of any Obligor under the Finance Documents.

15.2 Limitation of liability

- (a) The Borrower shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under clause 15.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under clause 15.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

16 Costs and Expenses

16.1 Transaction expenses

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

- (a) this Agreement and any other documents referred to in this Agreement and the Transaction Security (including the attachment and perfection of the Transaction Security); and
- (b) any other Finance Documents executed after the date of this Agreement,

and any costs and expenses reasonably incurred in connection with the annual site visit by the Lenders in accordance with clause 20.12 (*Site visit*).

16.2 Amendment and other costs

If:

- (a) an Obligor requests an amendment, waiver or consent or makes or initiates a request or demand under the PPSA;
- (b) an amendment is required under clause 34.10 (*Change of currency*); or

- (c) an amendment is required under clause 42.4 (*Replacement of Primary Term Rate*),

the Borrower shall, within three Business Days of demand, reimburse the Agent and each other Finance Party for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent or other Finance Party in responding to, evaluating, negotiating or complying with that request or requirement.

16.3 Enforcement costs

The Borrower shall, within three Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party in connection with:

- (a) the enforcement of, or the preservation of any rights under, any Finance Document; and
- (b) any proceedings instituted by or against the Security Trustee as a consequence of taking or holding the Transaction Security.

SECTION 7 GUARANTEE

17 Guarantee

17.1 Guarantee

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each Obligor of all that Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that:
 - (i) whenever an Obligor does not pay any amount when due under or in connection with any Finance Document (or anything which would have been due if the Finance Document or the amount was enforceable, valid and not illegal), immediately on demand by the Finance Party that Guarantor shall pay that amount as if it was the principal obligor; and
 - (ii) if an Ipso Facto Event has occurred, then immediately on demand by the Agent that Guarantor shall pay the Loan, accrued interest and other amounts referred to in clause 25.25(b) (*Acceleration*) 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, expense, 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 of the cost, expense, loss or liability shall be equal to the amount which that Finance Party would otherwise have been entitled to recover.

Each of clauses 17.1(a), 17.1(b)(i), 17.1(b)(ii) and 17.1(c) is a separate obligation. None is limited by reference to the other.

- (ii) **Ipso Facto Event** means an Obligor is the subject of:
 - (a) an announcement, application, compromise, arrangement, managing controller, or administration as described in section 415D(1), 434J(1) or 451E(1) of the Corporations Act; or
 - (a) any process which under any law with a similar purpose may give rise to a stay on, or prevention of, the exercise of contractual rights.

17.2 Continuing guarantee

This Guarantee is a continuing obligation 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.

17.3 Reinstatement

If any payment to or any discharge, release or arrangement given or entered into by a Finance Party (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is avoided or reduced for any reason (including as a result of insolvency, breach of fiduciary or statutory duties or any similar event) in whole or in part, then the liability of each Guarantor under this clause 17 will continue or be reinstated as if the discharge, release or arrangement had not occurred and any relevant security shall be reinstated.

17.4 Waiver of defences

The obligations of each Guarantor under this clause 17 will not be affected by an act, omission, matter or thing which, but for this clause 17, would reduce, release or prejudice any of its obligations under this clause 17 (without limitation and whether or not known to it or any Finance Party) including:

- (a) any time, waiver or other concession or consent granted to, or composition with, any Obligor or other person;
- (b) the release or resignation of any other Obligor or any other person;
- (c) any composition or arrangement with any creditor of any Obligor or other person;
- (d) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, execute, 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;
- (e) 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;
- (f) 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 any change in the purpose of, any extension of or any increase in the Facility or the addition of any new facility under any Finance Document or other document or security;

- (g) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security;
- (h) any set off, combination of accounts or counterclaim;
- (i) any insolvency or similar proceedings; or
- (j) this Agreement or any other Finance Document not being executed by or binding against any other Obligor or any other party.

References in clause 17.1 (*Guarantee*) to obligations of an Obligor or amounts due will include what would have been obligations or amounts due but for any of the above, as well as obligations and amounts due which result from any of the above.

17.5 Immediate recourse

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this clause 17. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

17.6 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 or recovered (by set off or otherwise) 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) without limiting clause 17.6(a), refrain from applying any moneys received or recovered (by set off or otherwise) from any Guarantor or on account of any Guarantor's liability under this clause 17 in discharge of that liability or any other liability of an Obligor and claim or prove against anyone in respect of the full amount owing by the Obligors.

17.7 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 Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this clause 17:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor or provider of security for 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 under, 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 any Guarantor has given a Guarantee under clause 17.1 (*Guarantee*);
- (e) to exercise any right of set-off against any Obligor;
- (f) to claim or prove as a creditor of any Obligor in competition with any Finance Party; and/or
- (g) in any form of administration of an Obligor (including liquidation, winding up, bankruptcy, voluntary administration, dissolution or receivership or any analogous process) prove for or claim, or exercise any vote or other rights in respect of, any indebtedness of any nature owed to it by the Obligor.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with clause 34 (*Payment Mechanics*).

17.8 Release of Guarantors' right of contribution

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

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

17.9 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.

17.10 Specific waiver of customary law rights

Without limitation to the preceding and without prejudice to the generality of any waiver granted in the Finance Documents, each Obligor irrevocably and unconditionally abandons and waives any right which it may have at any time under the existing or future laws of Jersey:

- (a) whether by virtue of the droit de discussion or otherwise to require that recourse be had to the assets of any other person before any claim is enforced against the Obligor in respect of the obligations or liabilities assumed by the Obligor under any document, including without limitation under any Finance Document; and
- (b) whether by virtue of the droit de division or otherwise to require that any liability under any document, including without limitation any Finance Document, be divided or apportioned with any other person or reduced in any manner whatsoever.

SECTION 8 REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

18 Corporate Representations

Each Obligor makes the representations and warranties set out in this clause 18 to each Finance Party on the date of this Agreement.

18.1 Status

- (a) It is a company or corporation, duly incorporated, validly existing and (where applicable) in good standing under the laws of its jurisdiction of incorporation.
- (b) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

18.2 Binding obligations

Subject to the Legal Reservations and Perfection Requirements:

- (a) the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and
- (b) without limiting the generality of clause 18.2(a), each Transaction Security Document to which it is a party creates (or when executed will create) the Security which that Transaction Security Document purports to create and that Security is valid and effective.

18.3 Non-conflict with other obligations

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

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

18.4 Power and authority

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 Transaction Documents to which it is a party and the transactions contemplated by the Transaction Documents.

18.5 Validity and admissibility in evidence

All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party;
- (b) to make the Transaction Documents to which it is a party, its legal, valid, binding and enforceable obligations, admissible in evidence in its jurisdiction of incorporation;

- (c) to perfect the Transaction Security; and
- (d) for it and its Subsidiaries to carry on their business,

have been obtained or effected and are in full force and effect other than:

- (e) the registration of any security interest against any party which is not an Obligor created under a Finance Document on the register held under the PPSA; or
- (f) any Authorisation which will be obtained or effected in satisfaction of the conditions precedent in Part 1 (*Conditions precedent to Utilisation*) or Part 2 (*Conditions Precedent required to be Delivered by an Additional Obligor*) (as applicable) of Schedule 2 (*Conditions precedent*) or by the Agent or Security Trustee.

18.6 Governing law and enforcement

- (a) The choice of law referred to in clause 52 (*Governing Law*) as the governing law of the Transaction Documents will be recognised and enforced in its jurisdiction of incorporation.

- (b) Any judgment obtained against it in any jurisdiction referred to in clause 53 (*Enforcement*) in relation to a Transaction Document will be recognised and enforced in its jurisdiction of incorporation.

18.7 Insolvency

No:

- (a) corporate action, legal proceeding or other procedure or step described in clause 25.7(a) (*Insolvency proceedings*); or
- (b) creditors' process described in clause 25.8 (*Creditors' process*),

has been taken in relation to a member of the Group, and none of the circumstances described in clause 25.6 (*Insolvency*) applies to a member of the Group.

18.8 No stamp Taxes

Under the law of its jurisdiction of incorporation it is not necessary that any stamp, registration or similar Tax be paid on or in relation to the Transaction Documents or the transactions contemplated by the Transaction Documents, save for:

- (a) any payment referred to in any legal opinion delivered to the Agent under this Agreement or disclosed by or behalf of an Obligor to the Agent;
- (b) which has been paid or will be paid in satisfaction of the conditions precedent in Part 1 (*Conditions precedent to Utilisation*) or Part 2 (*Conditions Precedent required to be Delivered by an Additional Obligor*) (as applicable) of Schedule 2 (*Conditions precedent*) or by the Agent; or
- (c) payment of the registration fees required to register a financing statement in respect of each Company Security Document governed by Jersey law on the SIR (the **Jersey Registrations**),

which stamp duty, Taxes and fees will be paid promptly after the date of the relevant Transaction Security Document (or, in the case of the Jersey Registrations, at the date and time agreed in the relevant Jersey Consent Letter) or at such later date as the Agent may approve.

18.9 No default, Review Event or MAE

- (a) No Event of Default or Review Event is continuing or might reasonably be expected to result from the making of the Utilisation or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.
- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which might have a Material Adverse Effect.

18.10 Disclosure

It has disclosed in writing to the Original Lender all information known to it which could reasonably be expected to be material to the ability of the Group (taken as a whole) to perform their obligations under the Transaction Documents or to the Original Lender's assessment of the nature and degree of risk undertaken by it in granting financial accommodation to the Group in entering into the Transaction Documents.

18.11 No misleading information

- (a) Any factual information provided by or on behalf of an Obligor or any other member of the Group in or for the purposes of the Lender Presentation (excluding projections) or provided in writing in connection with the Finance Documents and the transactions they contemplate was true and accurate in all material respects and not misleading as at the date it was provided or as at the date (if any) at which it is stated.
- (b) The Base Case Financial Model and any financial projections provided by or on behalf of an Obligor or any other member of the Group have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.
- (c) Nothing has occurred or been omitted from the information provided in writing in connection with the Finance Documents and no information has been given or withheld that results in the information provided by or on behalf of an Obligor or any other member of the Group being untrue or misleading in any material respect.

18.12 Financial statements

- (a) Its Original Financial Statements were prepared in accordance with IFRS consistently applied.
- (b) Its Original Financial Statements give a true and fair view and fairly represent its financial condition as at the end of the relevant financial year and operations during the relevant financial year (consolidated in the case of the Borrower).
- (c) Its most recent financial statements delivered under clause 20.1 (*Financial statements*):
- (i) have been prepared in accordance with clause 20.3 (*Requirements as to financial statements*); and
- (ii) give a true and fair view of (if audited) or fairly present (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.
- (d) There has been no material adverse change in its business or financial condition (or the business or consolidated financial condition of the Group, in the case of the Borrower) since the most recent financial statements delivered under Schedule 2 (*Conditions precedent*) or clause 20.1 (*Financial statements*) as applicable.

18.13 Ranking

Its obligations under the Finance Documents to which it is a party constitute direct, unconditional obligations and (in all respects and at all times) rank in right and priority of payment and in point of security ahead of all its other obligations (actual or contingent, present or future) except:

- (a) obligations mandatorily preferred by law; or
- (b) a Permitted Security.

18.14 No proceedings pending

- (a) No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency has or have (to the best of its knowledge and belief) been started or threatened against it or any of its Subsidiaries.
- (b) No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any government or other regulatory body which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief) been made against it or any of its Subsidiaries.

18.15 Trustee

It does not enter into any Finance Document or hold any property as trustee.

18.16 Borrower as SPV

As at the date of this Agreement, the Borrower has not engaged in any transaction or engaged in any business other than the Acquisition and matters immediately preparatory to it.

18.17 Authorised Signatories

Any person specified as its Authorised Signatory under Schedule 2 (*Conditions precedent*) or clause 20.8 (*Information: miscellaneous*) is authorised to sign the Utilisation Request and other notices on its behalf except where it has previously notified the Agent that the authority has been revoked.

18.18 Tax Consolidation

- (a) If any Obligor is a member of a Tax Consolidated Group at any time, it is a member of a Tax Consolidated Group for which the Head Company (as defined in the *Income Tax Assessment Act 1997*) is the Borrower, and each member of that Tax Consolidated Group is party to a valid Tax Sharing Agreement and a Tax Funding Agreement.
- (b) If any Obligor is a member of a GST Group at any time, it is a member of a GST Group for which the Representative Member (as defined in the GST Law) is the Borrower, and each member of that GST Group is party to a valid ITSA.
- (c) It is not (and none of its Subsidiaries is) materially overdue in the filing of any Tax returns and it is not (and none of its Subsidiaries is) overdue in the payment of any amount in respect of Tax of US\$100,000 (or its equivalent in any other currency or currencies) or more.
- (d) No claims are being, or are reasonably likely to be, made against it (or any of its Subsidiaries) with respect to Taxes such that a liability of, or claim against, any member of the Group of US\$100,000 (or its equivalent in any other currency or currencies) or more is reasonably likely to arise.

18.19 Ranking

The Transaction Security has or will have the ranking in priority which it is expressed to have in the Transaction Security Documents (if any) and it is not subject to any prior ranking or pari passu ranking Security other than Permitted Security.

18.20 No immunity

Neither it nor its assets has immunity from the jurisdiction of a court or from legal process.

18.21 Good title to assets

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

18.22 Shares

The shares, membership or other interests, or other securities in or issued by any member of the Group which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights. The constitutional or other documents of entities whose shares, membership or other interests, or other securities are subject to the Transaction Security do not and could not restrict or inhibit any transfer or creation or enforcement of the Transaction Security.

18.23 [Intentionally blank]

18.24 Group Structure Chart

- (a) The group structure chart delivered to the Agent as a condition precedent to the Utilisation is true, complete and accurate in all material respects on the Utilisation Date.
- (b) The most recent group structure chart delivered to the Agent under this Agreement is true, complete and accurate in all material respects.
- (c) All necessary intra-Group loans, transfers, share exchanges and other steps resulting in the final Group structure are set out in the group structure chart and have been or will be taken in compliance with all relevant laws and regulations and all requirements of relevant regulatory authorities.

18.25 Company representations

- (a) To the best of its honest understanding and belief, neither MAC, the Company, nor any of their Subsidiaries, is likely to be, and after the making of the Utilisation, the application of the proceeds and the repayment thereof by any Obligor, and the consummation of the other transactions contemplated hereby would likely to be, an "investment company", or is likely to be, and after making of the Utilisation, the application of the proceeds and the repayment thereof by any Obligor, and the consummation of the other transactions contemplated hereby would likely to be "controlled" by an "investment company", within the meaning of the US Investment Company Act of 1940, as amended. Neither the making of the Utilisation nor the application of the proceeds or repayment thereof by any Obligor, nor the consummation of the other transactions contemplated hereby, will violate any provision of such Act or any rule, regulation or order of the US Securities and Exchange Commission thereunder.

- (b) No proceeds of the Utilisation will be used to purchase or carry any Margin Stock (as defined in US Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof) or to extend credit for the purpose of purchasing or carrying any Margin Stock. Neither the making of the Utilisation nor the use of the proceeds of it will violate or be inconsistent with US Regulation T, U or X of the Board of Governors of the Federal Reserve System from time to time in effect or any successor to all or a portion thereof. Following the application of the proceeds of the Utilisation not more than 25% of the value of the assets (either of the Company only or of the Group on a consolidated basis) will be Margin Stock.
- (c) No ERISA Event has occurred or is reasonably likely to occur other than as would not, individually or in the aggregate, have a Material Adverse Effect.
- (d) Except as would not reasonably be expected to have a Material Adverse Effect, no Obligor nor any ERISA Affiliate currently or will at any time sponsor, maintain, contribute to, or has or will have any liability in respect of, or has ever sponsored, maintained, contributed to, or had any liability in respect of, a Plan.
- (e) As of the date hereof and throughout the term of the Agreement, the Borrower is not and will not be using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by section 3(42) of ERISA) of one or more Plans in connection with the Facility.

18.26 Financial Indebtedness

It has not entered into any agreement to incur, and has not incurred before the date of this Agreement, any Financial Indebtedness other than Permitted Financial Indebtedness.

18.27 Sanctions

- (a) No Obligor nor any of their respective shareholders, Subsidiaries, directors, officers, employees, agents or representatives or other person acting on behalf of the Obligor or any of its Subsidiaries is an individual or entity (each a **Person**) that:
- (i) is, or is owned or controlled, either directly or indirectly, by, or is otherwise acting on behalf of, a Person that is the subject of any Sanctions; or
 - (ii) is part of, controlled by, or owned by the government, or any agency or instrumentality of the government, of a Comprehensively Sanctioned Country or Territory,
- (a **Sanctioned Person**).
- (b) No Obligor nor any of their respective shareholders, Subsidiaries, or directors, is located, organised or resident in a country or territory that is, or whose government is, the subject of Sanctions, including the Crimea Region of Ukraine, the Democratic Republic of North Korea, the Donetsk People's Republic, the Luhansk People's Republic, Cuba, Iran, Sevastopol, Sudan and Syria (a **Comprehensively Sanctioned Country or Territory**).
- (c) No Obligor is part of, controlled by, or owned by the government, or any agency or instrumentality of the government, of a Comprehensively Sanctioned Country or Territory.

- (d) To its knowledge, no Obligor is in violation of any applicable Sanctions.
- (e) Neither it nor any of its Subsidiaries or any director, officer, agent, employee, affiliate or other person acting on behalf of the Obligor or any of its Subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of any applicable anti-bribery law, including but not limited to, the *United Kingdom Bribery Act 2010* (the **UK Bribery Act**) and the *U.S. Foreign Corrupt Practices Act of 1977* (the **FCPA**);
- (f) Each Obligor and, to the knowledge of the Obligor, its affiliates have conducted their businesses in compliance with the UK Bribery Act, the FCPA and similar laws, rules or regulations and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

18.28 Interests in property

It has disclosed in writing to the Agent any interest it has in:

- (a) any aircraft, aircraft engine, airframe or helicopter;
- (b) any motor vehicle, watercraft or intellectual property that has a value of more than US\$250,000;
- (c) any deposit account with a financial institution other than the Finance Parties where the total credit balance of the deposit account is or may become more than US\$50,000 (and, if there is more than one, the total credit balance of all those deposit accounts is or may become more than US\$50,000); and
- (d) any shares, stock, stock units, interests in a managed investment scheme or other securities, or negotiable instruments where the total value of all of them is more than US\$500,000.

18.29 Jersey Representations

In relation to each Obligor incorporated in Jersey:

- (a) all returns, resolutions and documents required by any legislation to be filed with the Jersey Registrar of Companies or the Jersey Financial Services Commission in respect of the Obligor have been duly prepared, kept and filed (within all applicable time limits) and are correct;
- (b) it is exempt from any requirement to hold a business licence under the *Control of Housing and Work (Jersey) Law 2012*;
- (c) it does not conduct any unauthorised "financial service business" (as defined in the *Financial Services (Jersey) Law 1998*);
- (d) it is not in breach of any approvals, authorisations, consents, licences, permits or registrations issued to it by any regulatory or governmental authority in Jersey and will not be in breach of the same as a result of entering into any of the Finance Documents;
- (e) it is and will remain an "international services entity" (within the meaning of the *Goods and Services Tax (Jersey) Law 2007*);
- (f) it is charged to income tax in Jersey at a rate of zero per cent. under the *Income Tax (Jersey) Law 1961*;

- (g) it has not owned and does not own land in Jersey; and
- (h) it is and will remain a company that is complying in full with its obligations to disclose beneficial owner information to the Jersey Financial Services Commission under the *Financial Services (Disclosure and Provision of Information)(Jersey) Law 2020*.

19 Project Representations

19.1 Mining activity Authorisations

All mining tenements and Authorisations necessary and which it is possible and practical to obtain at the date of the making or repetition (as the case may be) of this representation and warranty for the carrying on of mining operations on the Tenements, the conduct of the Project, the sale of Product and for the entering into and performance by each Obligor of its obligations under the Material Contracts, have been obtained, are in full force and effect by the date of the making or repetition (as the case may be) of this representation and warranty and it has no reason to believe that those to be obtained in the future will not be granted.

19.2 Tenements and Water Licences

- (a) Each Tenement and Water Licence:
 - (i) is legal, valid and subsisting and all terms and conditions of the Tenements and Water Licences have been complied with, and no event has occurred or condition exists which would permit the cancellation, forfeiture, termination or revocation of a Tenement or Water Licence; and
 - (ii) that is a mining lease gives the holder thereof the exclusive right to mine within the boundaries of that mining lease.
- (b) The Tenements and Water Licences confer on the Target all material rights required to enable it to develop, operate, manage and maintain the Project in accordance with the then applicable Base Case Financial Model and Life of Mine Plan in all material respects.
- (c) Subject to the Transaction Security, the Target is the legal and beneficial holder of the Tenements and Water Licences as being held by it and no person other than the Target has any legal or beneficial interest in any of the Tenements and Water Licences.
- (d) Entitlements under the Water Licences (taken as a whole) are adequate for the Target to meet the water requirements of operating the Project in accordance with Good Mining Practice at the date of this Agreement.

19.3 Compliance with Tenements and Water Licences

All of the terms and conditions of the Tenements and Water Licences have been complied with and no event has occurred and no condition exists (or it may reasonably be anticipated by the Obligor, would exist by virtue of impending notice, lapse of time or the satisfaction of some other condition) in each case which would permit the cancellation, termination, forfeiture or suspension of any of the Tenements and Water Licences.

19.4 No orders

It has not received from any Governmental Agency any notice or order requiring it or any other person to perform or cease to perform any act in relation to the Project or so as to restrict the performance of the terms of any of the Material Contracts which have been executed or the construction, development and operation of the Project in accordance with the Base Case Financial Model and the Material Contracts.

19.5 No revocation

It has not received notice of and is not aware of any intention of any Governmental Agency to revoke or resume any of the Tenements, the Water Licences, the Project Leases, the Freehold Property or Authorisations required in connection with the Project.

19.6 Compliance with Environmental Laws

- (a) Each Obligor is in compliance with all Environmental Laws in all material respects and no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or could reasonably be expected to have a Material Adverse Effect.
- (b) No act or omission has occurred and there is no circumstance relating to its assets or its business or the assets or business of any of its Subsidiaries which has given rise to:

- (i) a claim against it or any of its Subsidiaries;
 - (ii) a requirement of substantial expenditure by it or any of its Subsidiaries; or
 - (iii) a requirement that it or any of its Subsidiaries ceases or substantially alters an activity,
- under Environmental Law which has or could reasonably be expected to have a Material Adverse Effect.

(c) None of its assets is subject to contamination:

- (i) that is material in circumstances where the relevant entity is not taking all reasonable steps to remedy such contamination; or
- (ii) to an extent which has or could reasonably be expected to have a Material Adverse Effect.

(d) None of its assets breach applicable environmental standards and no emissions or discharges breach standards or limits imposed by all relevant laws and Authorisations which gives rise to:

- (i) a material non-compliance in circumstances where the relevant entity is not taking all reasonable steps to remedy such non-compliance; or
- (ii) non-compliance which has or could reasonably be expected to have a Material Adverse Effect.

(e) The Project does not have and is not likely to have a significant impact on one or more of the matters of national environmental significance under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), and as such is not an action that is required to be referred to the Department of Climate Change, Energy, the Environment and Water for assessment and approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

19.7 Material Contracts

In relation to the Material Contracts:

- (a) it has given the Agent copies of all material agreements including amendments and updates which relate to the Project and all such copies are true and complete;
- (b) the copies of the Material Contracts which have been provided to the Agent contain the entire agreement of the parties to them and supersede all previous agreements and understandings between them in relation to the Project;
- (c) its material obligations under the Material Contracts are valid and binding and enforceable in accordance with their terms and conditions subject to laws generally affecting creditors' rights and to principles of equity;
- (d) none of the Material Contracts nor any of the terms or conditions of the Material Contracts have been varied or supplemented in a material respect, or replaced without being approved in writing by the Agent; and
- (e) it has not breached any of its material obligations in any material respect under the Material Contracts and is not aware of any act, omission or circumstance having occurred which would give any other party legal grounds to terminate, rescind or vary any Material Contract.

19.8 No Native Title Claims

There is no Native Title Claim or site of significance to Aboriginal people under any Aboriginal Heritage Law affecting the Project which has or is reasonably likely to have a Material Adverse Effect.

19.9 Intellectual property

Each applicable Obligor is entitled to use, or will be entitled to use at the relevant time, all intellectual and commercial property rights necessary for, or intended to be used by it in conjunction with the operation of the Project.

19.10 Repetition

The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on:

- (a) the date of the Utilisation Request and the first day of each Interest Period;
- (b) the date of each Compliance Certificate; and
- (c) in the case of an Additional Obligor, the day on which the company becomes (or it is proposed that the company becomes) an Additional Obligor.

20 Information Undertakings

The undertakings in this clause 20 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.

20.1 Financial statements

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

- (a) as soon as they become available, but in any event within 120 days after the end of each of its financial years:

- (i) its audited consolidated financial statements for that financial year; and
 - (ii) the audited financial statements of each Obligor for that financial year; and
- (b) as soon as they become available, but in any event within 90 days after the end of each half of each of its financial years:
- (i) its unaudited consolidated financial statements for that financial half year; and
 - (ii) the unaudited financial statements of each Obligor for that financial half year; and
- (c) as soon as they become available, but in any event within 30 days after the end of each quarter of its financial years:
- (i) its unaudited consolidated financial statements for that quarter; and
 - (ii) the unaudited financial statements of each Obligor for that quarter.

20.2 Provision and contents of Compliance Certificate

- (a) The Borrower shall supply to the Agent, with each set of financial statements delivered under clause 20.1(a)(i), 20.1(b)(i) or 20.1(c)(i) (*Financial statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with clause 21.1 (*Financial covenants*) as at the date as at which those financial statements were drawn up.
- (b) Each Compliance Certificate shall be signed by two directors or a director and the company secretary of the Borrower.

20.3 Requirements as to financial statements

- (a) The Borrower shall procure that each set of annual financial statements delivered by the Borrower under clause 20.1(a) (*Financial statements*) shall be audited by the Auditors.
- (b) Each set of financial statements delivered by the Borrower under clause 20.1 (*Financial statements*) shall be certified by a director of the relevant company as giving a true and fair view of (in the case of annual financial statements for any financial year), or (in other cases) fairly representing, its financial condition as at the date as at which those financial statements were drawn up.
- (c) The Borrower shall procure that each set of financial statements delivered under clause 20.1 (*Financial statements*) is prepared using IFRS.

- (d) The Borrower shall procure that each set of financial statements of an Obligor delivered under clause 20.1 (*Financial statements*) is prepared using IFRS, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, it notifies the Agent that there has been a change in IFRS, the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of the Obligor) deliver to the Agent:
 - (i) a description of any change necessary for those financial statements to reflect the IFRS, accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared; and
 - (ii) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether clause 21.1 (*Financial covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

20.4 Year-end

No Obligor shall change its financial year-end.

20.5 Updates to Base Case Financial Model

- (a) The Borrower must provide to the Agent an updated draft Base Case Financial Model in respect of the Project which includes:
 - (i) a Reserves Statement;
 - (ii) forecast Revenue;
 - (iii) forecast Capital Expenditure;
 - (iv) Economic Assumptions; and
 - (v) Technical Assumptions,
 at the following times:
 - (A) on each anniversary following the Utilisation Date;
 - (B) at any time to the extent necessary to reflect any material change to the Economic Assumptions or Technical Assumptions or any other change for which approval is sought, such as when the Life of Mine Plan or Reserves are updated;
 - (C) for the purposes of evidencing that the Borrower is permitted to increase the amount of hedging permitted under the Approved Hedging Programme or to make Permitted Acquisitions or enter Permitted Joint Ventures;

- (D) if, after consultation with the Borrower, the Agent (acting on the instructions of the Majority Lenders) considers a review is required because of any circumstance or matter which may have affected the accuracy or efficacy of the Base Case Financial Model; and
- (E) if there is an estimated material change to the then existing Base Case Financial Model for example upon the occurrence of a mandatory prepayment event under clause 7.2 (*Review Event*) or 7.3 (*Other mandatory prepayment events*) or an Event of Default under clause 25 (*Events of Default*).

- (b) The Borrower will promptly provide the Agent with all information relevant to or reasonably requested by the Agent in order to enable the Lenders to conduct the review of the draft Base Case Financial Model.
- (c) If there is any disagreement between the Borrower and the Agent about the economic or technical assumptions in the Base Case Financial Model the Agent agrees to consult with the Borrower in good faith as to any disagreement regarding the relevant assumptions and projections and to seek the advice of an Independent Technical Expert.
- (d) If, after the consultation under clause 20.5(c), the Agent and the Borrower, with reference to the advice of an Independent Technical Expert, are unable to reach an agreement, the Agent will make a determination with respect to the relevant assumption and projection and such determination shall, in the absence of manifest error, be final and binding upon the Parties.
- (e) On receipt of that determination under clause 20.5(d) the Borrower must promptly revise the draft Base Case Financial Model and provide the Agent with an updated draft Base Case Financial Model. That revision must:
 - (i) if the change relates to assumptions, be consistent with the basis for determining these under the previous draft Base Case Financial Model and reflect any determination of assumptions and projections under clause 20.5(d); and
 - (ii) be limited to changes that are required:
 - (A) where the Base Case Financial Model shows that the ratios set out in clause 21.1 (*Financial covenants*) will not be complied with; or
 - (B) as necessary to address concerns raised by the Agent that the changes proposed to the Base Case Financial Model are not reasonable in terms of the assumptions in the Base Case Financial Model;
 - (iii) be based on the principles and methodology used in preparing the initial Base Case Financial Model; and
 - (iv) subject to paragraph 20.5(e)(ii), be agreed by the Agent.
- (f) The Borrower will provide the Agent with an electronic copy of the revised Base Case Financial Model promptly after any revision is agreed.

20.6 Periodic reporting

(a) Independent Environmental and Social Report

- (i) On each anniversary following the Utilisation Date, the Borrower must provide to the Agent a report from the Environment and Social Expert outlining compliance with Environmental Laws and Social Laws, environmental and social impact assessment and related programs and plans, tailing storage facility reviews, issues, breaches, plans, Scope 1 and 2 emissions together with emissions reduction plans.
- (ii) Within 45 days after June 30 and December 31 of each year, in each case as may be updated from time to time by the Agent, the Borrower must provide to the Agent a semi-annual environmental and social governance checklist in the form attached as Schedule 14 (*Form of environmental and social governance checklist*), containing such additional information as is reasonably requested by the Agent or the Environment and Social Expert.

(b) Annual Operating Budget and Life of Mine Plan

- (i) No less than 30 days before the start of each financial year of the Borrower, the Borrower must provide to the Agent, its Annual Operating Budget and Life of Mine Plan.
- (ii) Any Annual Operating Budget or Life of Mine Plan provided under this clause 20.6 will be reviewed by the Agent and must meet with the Agent's approval (acting on the instructions of the Majority Lenders). If the Agent does not approve of the Annual Operating Budget or Life of Mine Plan (as applicable), the Obligors must continue to comply with the previous Annual Operating Budget or Life of Mine Plan (as applicable) and references in the Finance Documents to the Life of Mine Plan will be to the previous Annual Operating Budget or Life of Mine Plan (as applicable).

(c) Annual Reserves Statement

On each anniversary following the Utilisation Date, the Borrower must provide to the Agent an updated Reserves Statement.

20.7 Quarterly operating report

At the same time as delivery of any Compliance Certificate under clause 20.2 (*Provision and contents of Compliance Certificate*), the Borrower must provide to the Agent the Borrower Group's quarterly operating report (in substantially the form approved by the Agent before Financial Close).

20.8 Information: miscellaneous

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

- (a) all documents dispatched by an Obligor to its shareholders (or any class of them) or its creditors generally (or any class of them) at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings or Environmental Claims which are current, threatened or pending against any member of the Group, and which, if adversely determined, could reasonably be expected to have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, the details of:
 - (i) any judgment or order of a court, arbitral tribunal or other tribunal;
 - (ii) any order or sanction of any governmental or other regulatory body which is made against any member of the Group;
 - (iii) any claims with respect to Sanctions;

- (iv) any revised Reserves Statements;
 - (v) any material changes to the Life of Mine Plan or Annual Operating Budget;
 - (vi) any material damage to any asset;
 - (vii) any material Environmental Permit change;
 - (viii) any changes to Material Contracts or Water Licences;
 - (ix) any unscheduled stoppages to mining or processing for more than 14 days;
 - (x) any Native Title Claims,
- and in each case, which could reasonably be expected to have a Material Adverse Effect;
- (d) promptly following a change in the structure of the Group (including following completion of the MAC Merger), an updated group structure chart;
 - (e) promptly following receipt of the Agent's written request, such further information regarding the financial condition, business and operations of any member of the Group as any Finance Party (through the Agent) may reasonably request;
 - (f) promptly following receipt of the Agent's written request, such information as the Agent may reasonably require about the Secured Property and compliance of the Obligors with any Transaction Security Documents;
 - (g) promptly, notice of any change in Authorised Signatories of the Borrower signed by a director or secretary of the Borrower accompanied by specimen signatures of any new signatories, except that no notice of change shall be effective until the Agent and the Lenders have conducted "know your customer" checks on each such new Authorised Signatory as required under clause 20.10(a) ("*Know your customer*" checks); and
 - (h) any event where creditors are outstanding 30 days beyond the agreed credit terms (other than any amounts being disputed in good faith).

20.9 Notification of Default or Review Event

- (a) Each Obligor shall notify the Agent of any Default or Review Event (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 the Agent, the Borrower shall supply to the Agent a certificate signed by two of its directors on its behalf certifying that no Default or Review Event is continuing (or if a Default or Review Event is continuing, specifying the Default or Review Event and the steps, if any, being taken to remedy it).

20.10 "Know your customer" checks

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

- (ii) any change in the status of an Obligor (or of a Holding Company of an Obligor) after the date of this Agreement or any changes to shareholdings of an Obligor;
- (iii) any change in the Authorised Signatories of an Obligor after the date of this Agreement; or
- (iv) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender before such assignment or transfer,

obliges the Agent or any Lender (or, in the case of clause 20.10(a)(iv), any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in clause 20.10(a)(iv), on behalf of any prospective new Lender) in order for the

Agent, such Lender or, in the case of the event described in clause 20.10(a)(iv), any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations under the transactions contemplated in the Finance Documents.

- (b) The Borrower shall by not less than ten Business Days' prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Obligor under clause 27 (*Changes to the Obligors*).
- (c) Following the giving of any notice under clause 20.10(b), if the accession of such Additional Obligor obliges the Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations under the accession of such Subsidiary to this Agreement as an Additional Obligor.
- (d) The Borrower shall promptly supply, or procure the supply of, such documentation and other evidence reasonably requested by the Agent (for itself or on behalf of any Finance Party) from time to time in relation to an Obligor or an Additional Obligor to enable the Finance Party to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to the Finance Party.

20.11 Inspection

Each Obligor shall, and the Borrower shall ensure that each member of the Borrower Group will, permit the Agent and/or the Security Trustee and/or delegates and/or accountants or other professional advisers and contractors of the Agent or Security Trustee access at all reasonable times and on reasonable notice at the risk and cost of the Obligor to:

- (a) the premises, assets, books, accounts and records of the Project, each Obligor and each other member of the Borrower Group;
- (b) the Tenements, the Project Leases, the Freehold Properties and any other Secured Property and to inspect or observe all or any facilities or operations of each member of the Borrower Group, the Project or any other Secured Property; and
- (c) following an Event of Default to meet and discuss matters with senior management.

20.12 Site visit

Each Obligor shall permit each Finance Party to participate in:

- (a) an annual conference call with its senior management; and
- (b) at least one Project site visit in each successive 12-month period after the date of this Agreement.

20.13 New Material Contracts

Each Obligor shall, within ten Business Days of entering into a Material Contract after the date of this Agreement, supply to the Agent (in sufficient copies for all the Lenders) a certified copy of that Material Contract.

20.14 Updated due diligence information

- (a) Each Obligor shall, on or before the end of the Clean Up Period, provide to the Agent a further or updated legal due diligence reports from Squire Patton Boggs (and, if requested by the Agent acting on the instructions of the Majority Lenders, Hetherington Legal), addressed to the Lenders (or with an associated reliance letter addressed to the Lenders), in a form and substance satisfactory to the Agent acting on the instructions of the Majority Lenders (each acting reasonably) with updated sections covering:
 - (i) regulatory compliance;
 - (ii) environment and planning compliance;
 - (iii) environment and planning approvals; and
 - (iv) Aboriginal heritage compliance,in each case, by reference to the information then available to the Borrower as the owner of the Target and the Project.
- (b) Following delivery of those further or updated legal due diligence reports, each Obligor shall promptly, at its cost, undertake any remedying works the Agent acting on the instructions of the Majority Lenders (each acting reasonably) considers necessary or desirable in relation to the matters referred to in those reports.

20.15 MAC Merger

Each Obligor shall provide any information requested by the Agent (acting on the instructions of the Majority Lenders (each acting reasonably) in connection with the MAC Merger and subsequent listings.

21 Financial Covenants

21.1 Financial covenants

The Borrower shall ensure that at all times:

- (a) the aggregate of Available Cash and Cash Equivalent Investments of the Borrower Group is at least US\$30,000,000. During the period from Financial Close to the date falling 12 months after Financial Close, the calculation of Available Cash will include any undrawn and available portion of "Facility B" (provided pursuant to and as defined in, the Senior Facility Agreement);
- (b) the Reserve Tail Ratio is projected to be greater than 25%; and
- (c) Total Net Debt to EBITDA shall on any date during the period from Financial Close to the date falling 12 months after Financial Close:
 - (i) be not more than 3.25:1.00 if no amounts are outstanding under the Copper Streaming Facility on that date; and
 - (ii) be not more than 3.50:1.00 if any amounts are outstanding under the Copper Streaming Facility on that date, and thereafter:
 - (iii) be not more than 3.00:1.00 if no amounts are outstanding under the Copper Streaming Facility on that date; and
 - (iv) be not more than 3.25:1.00 if any amounts are outstanding under the Copper Streaming Facility on that date.

21.2 Financial covenant testing

- (a) Each Financial Covenant shall be tested as at each date a Compliance Certificate must be delivered in accordance with clause 20.2 (*Provision and contents of Compliance Certificate*).
- (b) The Financial Covenants in clauses 21.1(a) and 21.1(c) shall be tested by reference to the latest financial statements delivered under clause 20.1 (*Financial statements*) and the Financial Covenant in clause 21.1(b) shall be tested by reference to the Base Case Financial Model.

21.3 Financial Covenant Cure

- (a) If a Financial Covenant set out in clause 21.1(a) or 21.1(c) (*Financial covenants*) is not satisfied at any time (a **Relevant Breach**), the Borrower may procure that the Relevant Breach is cured in accordance with this clause 21.3.
- (b) Subject to clause 21.3(d), a Relevant Breach under:
 - (i) clause 21.1(a) (*Financial covenants*) may be cured by the Borrower being funded for such an amount as would result in the relevant Financial Covenant being complied with no later than 30 days after notifying the Agent of an actual or anticipated breach of such Financial Covenant; and

- (ii) clause 21.1(c) (*Financial covenants*) may be cured by:
 - (A) during the Senior Subordination Period, the Borrower prepaying:
 - (1) where a refinancing of the Senior Facility Agreement has not occurred under Clause 6.2 (*Refinancing of Senior Debt*) of the Intercreditor Deed, 'Facility A' (under and as defined in the Senior Facility Agreement) in such an amount as would result in the relevant Financial Covenant being complied with no later than 30 days after notifying the Agent of an actual or anticipated breach of such Financial Covenant, or
 - (2) where a refinancing of the Senior Facility Agreement has occurred under Clause 6.2 (*Refinancing of Senior Debt*) of the Intercreditor Deed, any term facility then outstanding in favour of the New Senior Financier (as defined in the Intercreditor Deed) which was used to prepay 'Facility A' (under and as defined in the Senior Facility Agreement) in such an amount as would result in the relevant Financial Covenant being complied with no later than 30 days after notifying the Agent of an actual or anticipated breach of such Financial Covenant; and
 - (B) at any time following the Senior Subordination Period the Borrower:
 - (1) subject to the Borrower complying with Clause 7.5 (*Voluntary prepayment of the Facility*) in respect of any prepayment, prepaying such an amount as would result in the relevant Financial Covenant being complied with no later than 30 days after notifying the Agent of an actual or anticipated breach of such Financial Covenant; or
 - (2) being funded for such an amount as would result in the relevant Financial Covenant being complied with no later than 30 days after notifying the Agent of an actual or anticipated breach of such Financial Covenant,
- with the Agent at its sole discretion (acting on the instructions of all Lenders) having the right to elect whether 21.3(b)(ii)(B)(1) or 21.3(b)(ii)(B)(2) will apply,

subject to the requirement that any funding under clause 21.3(b)(i) and 21.3(b)(ii)(B)(2) or prepayment under clause 21.3(b)(ii)(A)(1), 21.3(b)(ii)(A)(2) and 21.3(b)(ii)(B)(1) must be funded by either or both of:

- (iii) a subscription for shares or other equity interests in the Borrower or other cash funding from the Company; or
 - (iv) proceeds from any subordinated loans (or other financial accommodation) which are permitted as Permitted Financial Indebtedness.
- (c) If following the occurrence of additional funding or prepayment in accordance with clause 21.3(b) and upon re-calculation of the Financial Covenant that resulted in the Relevant Breach (assuming that aggregate of Available Cash and Cash Equivalent Investments, Total Net Debt (as applicable) for the Relevant Period has been reduced or increased, as applicable, (pro forma) by the amount of such prepayment), the Financial Covenant set out in clause 21.1(a) or 21.1(c) (*Financial covenants*) is met, no Default or Event of Default shall occur as a result of any such breach or anticipated breach (and the Borrower shall be deemed to have satisfied the requirements of the Financial Covenant) as of the relevant date of determination with the same effect as though there has been no failure to comply and the breach shall be deemed to have been cured.

- (d) The Borrower shall not be entitled to the remedy set out in clause 21.3(b), if:
- (i) the Borrower has already exercised the remedy three times since the date of Financial Close; or
 - (ii) with respect to a Relevant Period, the Borrower has exercised the remedy with respect to the preceding Relevant Period.

21.4 Accounting Policy

- (a) If any changes to IFRS materially alter the effect of the undertakings in this clause 21 or the related definitions, the Borrower and the Agent (acting on the instructions of the Majority Lenders) will negotiate in good faith to amend the relevant undertakings and definitions so that they have an effect comparable to that at the date of this Agreement.
- (b) If the amendments are not agreed within 30 days (or any longer period agreed between the Borrower and the Agent (acting on the instructions of the Majority Lenders)) then the Borrower will provide with its financial statements any reconciliation statements (audited, where applicable) necessary to enable calculations based on IFRS as they were before those changes, and the changes will be ignored for the purposes of this clause 21.

22 General Undertakings

The undertakings in this clause 22 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.

22.1 Constitution

Each Obligor must not amend its constitution, or permit it to be amended, in any way which would be reasonably likely to have a Material Adverse Effect.

22.2 Authorisations

Each Obligor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Agent of,

any Authorisation required to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document, and any Authorisation required for it to carry on its business (including the Project).

22.3 Compliance with laws

Each Obligor shall comply in all respects with all laws (including Environmental Laws and Social Laws) to which it may be subject, if failure so to comply has or could reasonably be expected to have a Material Adverse Effect.

22.4 Taxation

- (a) Each Obligor shall pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
 - (i) such payment is being contested in good faith;
 - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Agent under clause 20.1 (*Financial statements*); and
 - (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.
- (b) No member of the Group may change its residence for Tax purposes.
- (c) Each Obligor undertakes to ensure that the Tax Sharing Agreement and Tax Funding Agreement delivered pursuant to clause 4.1 (*Initial conditions precedent*) are maintained in full force and effect and that each member of that Tax Consolidated Group complies with that Tax Sharing Agreement and Tax Funding Agreement, and they are not varied without the Agent's consent.
- (d) No Obligor may enter into a deed of cross guarantee or assumption deed with any entity which is not an Obligor for the purposes of ASIC Corporations (Wholly-owned Companies) Instrument 2016/785.

22.5 Guarantor Coverage

Where an entity becomes a Group member, it must become a Guarantor under this Agreement unless it is a dormant entity. The Borrower shall ensure that each such entity becomes an Additional Guarantor as soon as reasonably practicable and in any event within 30 days of such entity becoming a Group member.

22.6 Change of Obligor details

- (a) Each Obligor must notify the Agent at least 14 days before:
 - (i) the Obligor changes its name as recorded in a public register in its jurisdiction of incorporation or in its constituent documents; and

- (ii) any ACN or ARBN allocated to the Obligor changes, is cancelled or otherwise ceases to apply to it (or if it does not have any such applicable number, one is allocated, or otherwise starts to apply, to it).

(b) No Obligor may become trustee of a trust or a partner in a partnership.

22.7 No transfer or reconstruction

Each Obligor must not transfer or change its jurisdiction of incorporation or formation or enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction (except to carry out a reconstruction or amalgamation while solvent on terms approved by the Agent (acting on the instructions of all the Lenders)). A dual listing on the Australian Securities Exchange will not be restricted by this clause or require the prior consent of the Agent.

22.8 Conduct of business and preservation of assets

Each Obligor shall:

- (a) carry on its business in accordance with Good Mining Practice and in a proper, orderly and efficient manner and not cease, or significantly change the general nature of the business of the Borrower or the Borrower Group from that carried on at the date of this Agreement; and
- (b) maintain in accordance with Good Mining Practice and in good working order and condition (ordinary wear and tear excepted) all of its assets necessary in the conduct of its business and the Project and correct any defect to the extent that failure to do so would be reasonably likely to have a Material Adverse Effect.

22.9 Financial Indebtedness

- (a) Except as permitted under clause 22.9(b), no member of the Group shall incur or allow to remain outstanding any Financial Indebtedness.
- (b) Clause 22.9(a) does not apply to Financial Indebtedness which is:
 - (i) Permitted Financial Indebtedness; or
 - (ii) a Permitted Transaction.

22.10 Loans or credit

No member of the Group shall be a creditor in respect of any Financial Indebtedness other than a Permitted Loan.

22.11 Negative pledge

Except as permitted under clause 22.11(c):

- (a) No member of the Group shall create or permit to subsist any Security over any of its assets.
- (b) Without limiting clause 22.11(a), no member of the Group 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 an Obligor or any other member of the Group or its Affiliate;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter into any title retention arrangement 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;
 - (iv) 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
 - (v) enter into any other preferential arrangement having a similar effect.

- (c) Clauses 22.11(a) and 22.11(b) do not apply to any Security or arrangement which is:
 - (i) a Permitted Security; or
 - (ii) a Permitted Transaction.

22.12 Disposals

No member of the Group 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 of any asset other than any Permitted Disposal or as part of a Permitted Transaction.

22.13 Mergers/Acquisitions

No member of the Group shall enter into:

- (a) any amalgamation, demerger, merger, continuation, scheme of arrangement or corporate reconstruction;

- (b) any Joint Venture; or
- (c) any acquisition,

in each case other than the MAC Merger, a Permitted Acquisition, a Permitted Joint Venture or a Permitted Transaction.

22.14 Change of business

Each Obligor shall procure that no substantial change is made to the general nature of the business of a Group member or the Group from that carried on at the date of this Agreement.

22.15 Arm's length basis

- (a) Except as permitted by clause 22.15(b), no Obligor shall enter into any transaction with any person except on arm's length terms.
- (b) The following transactions shall not be a breach of this clause 22.15:
 - (i) intra-Group loans permitted under clause 22.10 (*Loans or credit*);
 - (ii) fees, costs and expenses payable under the Transaction Documents in the amounts set out in the Transaction Documents delivered to the Agent under clause 4.1 (*Initial conditions precedent*) or agreed by the Agent; and
 - (iii) any Permitted Transaction.

22.16 Dividends and share redemption

- (a) Except as permitted under clause 22.16(b), no Obligor shall:
 - (i) declare, make or pay any dividend, charge, fee, Distribution or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) to its members or on or in respect of its share or equity capital (or any class of its share or equity capital) or subordinated debt;
 - (ii) repay or distribute any dividend or share premium reserve;

- (iii) pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of any of the shareholders of the Borrower, MAC or the Company; or
- (iv) redeem, repurchase, defease, retire or repay any of its share or equity capital, membership interests or subordinated debt or resolve to do so.
- (b) Clause 22.16(a) does not apply to:
 - (i) a Permitted Distribution;
 - (ii) a Permitted Transaction (other than one referred to in paragraph (c) of the definition of that term);
 - (iii) a Distribution by the Target to the Borrower; or
 - (iv) any:
 - (A) declaration or payment of any dividend or other distribution in relation to share capital (including by way redemption, reduction or repayment of share capital); or
 - (B) any payment of principal or interest pursuant to the Silver Streaming Intercompany Loan Agreement or the Copper Streaming Intercompany Loan Agreement,in each case, made to the Company to allow it to satisfy its obligations as and when due under the Silver Purchase Agreement and the Copper Purchase Agreement in accordance with the order of the Cashflow Waterfall as if such amount was being paid (and in place of such amount being paid) directly from the Proceeds Accounts.

22.17 Derivative Transactions

- (a) No Obligor shall enter into any Derivative Transaction, other than in accordance with the Approved Hedging Programme.

22.18 Sanctions

- (a) Each Obligor undertakes that it will not engage in, or be a party to, any transaction or activity:
 - (i) with a Sanctioned Person;
 - (ii) with a Person who is owned or controlled, either directly or indirectly, by, or is otherwise acting on behalf of, a Sanctioned Person;
 - (iii) that is for the benefit of a Sanctioned Person; or
 - (iv) that would amount to a breach of any applicable Sanctions.
- (b) Each Obligor undertakes that:

- (i) the processing of any transaction by a Finance Party in accordance with an Obligor's instructions will not breach any laws or regulations relating to anti-bribery laws or anti-money laundering, counter-terrorism financing or economic and trade sanctions applicable to an Obligor;

- (ii) without limiting the above, neither it nor any of its shareholders, Subsidiaries, directors, officers, employees, agents or representatives will directly or indirectly, use any services or products provided by any Finance Party, conduct any transaction through a Finance Party, use the proceeds of the Facility, or lend, contribute, or otherwise make available such proceeds to any Subsidiary, joint venture partner, or other person:
- (A) to fund any activities or business of or with a Sanctioned Person or for the benefit of a Sanctioned Person; or
- (B) in any manner that would be prohibited by applicable Sanctions or would otherwise cause a Finance Party to be in breach of any applicable Sanctions; and
- (iii) it will not fund any repayment of the Facility with proceeds derived from any transaction that would be prohibited by applicable Sanctions or would otherwise cause any Finance Party to be in breach of any applicable Sanctions.

22.19 Incorrect representation or warranty

Each Obligor must promptly notify the Agent if any representation or warranty made by it or any Obligor or on its behalf in connection with a Finance Document is found to have been incorrect or misleading in a material respect when made.

22.20 Redomicile

No Obligor shall complete a re-domicile process without the prior written consent of the Agent (acting on the instructions of the Majority Lenders (each acting reasonably)).

23 Project Undertakings

23.1 Operation of Project

Each Obligor agrees to ensure that the Project and the Project Assets are diligently operated and maintained and ore is diligently mined from the Tenements in accordance with the Base Case Financial Model and the Material Contracts, all applicable laws and Authorisations and in accordance with Good Mining Practice.

23.2 Project Assets

Each Obligor agrees to ensure that:

- (a) the Project Assets;
- (i) are kept in good working order and condition; and
- (ii) are protected from theft, loss or damage,
- to the extent that a prudent operator would do so and that any material defects in their condition which will or may prejudice the development or operation of the Project are promptly rectified;
- (b) the Project Assets are used, directly or indirectly, only for the purposes of the Project; and
- (c) it has a legal and enforceable right of access to each Project Asset.

23.3 Authorisations

Each Obligor agrees to ensure that:

- (a) any Authorisation necessary for an Obligor to enter into the Material Contracts to which it is a party, observe obligations under them and allow them to be enforced and complied with;
- (b) any Authorisation (including each Environmental Permit) necessary for the timely development and operation of the Project (including associated infrastructure) in accordance with the Base Case Financial Model and the Material Contracts;
- (c) each Key Tenement, Water Licence and Project Lease; and
- (d) each other tenement providing access or containing dumps, services, infrastructure or ore reserves,

in each case, is obtained, renewed or replaced on time, complied with and otherwise maintained in good order and in full force and effect;

23.4 Ownership

Each Obligor agrees not to decrease or alter its entitlement to Product, or its right, title, estate or interest in the other Project Assets and any Key Tenement.

23.5 Special Purpose Vehicle

- (a) Each Obligor must not engage in any business, transaction or dealing other than as permitted under the Finance Documents, in relation to the Project and any business activities which are ancillary to such business.

- (b) No member of the Borrower Group may open or maintain any bank account other than the Project Accounts.

23.6 Material Contracts

Each Obligor agrees:

- (a) to comply with its obligations under each Material Contract to which it is a party; and
- (b) to take the action that a prudent, diligent and reasonable person would take to cause each party to a Material Contract to comply with its obligations in connection with that Material Contract and, if a party defaults in the performance of those obligations, the Obligor takes the action that a prudent, diligent and reasonable person would take to cause that party to comply with its obligations or pay an amount equal to the loss and damage it suffers which is caused or contributed to by that default,

and to ensure that:

- (c) none of the Material Contracts are assigned, novated, materially varied, rescinded, repudiated, cancelled, suspended or terminated, and no repudiation by any party is accepted by it;
- (d) no Material Contract is entered into except in the ordinary course of ordinary business on arm's length commercial terms, and in every case with other parties who can demonstrate adequate experience and financial capacity to undertake successfully their respective obligations under that contract;

- (e) it does not abandon, settle, compromise, discontinue or become nonsuited in respect of proceedings against any party in connection with a Material Contract;
- (f) it does not waive any of its rights or release any person including a third party, from that person's obligations in connection with a Material Contract;
- (g) it does not by any act or omission give or cause circumstances to arise which would give any other party legal grounds to rescind, repudiate, terminate, suspend or vary any Material Contract or any provision of any of them; and
- (h) within 30 days of entering into any Material Contract falling within paragraph (c) of the definition of "*Material Contract*", it provides a copy of that Material Contract to the Agent.

23.7 Offtake Agreements

Each Obligor must:

- (a) use its best endeavours to ensure that the each Offtake Agreement remains in full force and effect for the sale of in aggregate 100% of the material produced by the Target until, at least, the date falling one year following the Termination Date (except to the extent such Offtake Agreement is terminated and replaced within 90 days, or otherwise amended, novated, supplemented, extended or restated in accordance with the Finance Documents, on market terms substantially no worse than the existing Offtake Agreement being terminated);
- (b) not novate or transfer, or agree to novate or transfer, the Offtake Agreements to any person who is not an Offtaker or replace, or agree to replace, an Offtaker with any person who is not a person who has (in the opinion of the Agent) the financial capacity to perform its obligations under the relevant replacement offtake agreement; and
- (c) not enter into any other offtake, purchase, refining or finishing agreement with any person other than an Offtaker (and in which case, on terms the same or substantially the same as the Offtake Agreements) without the prior written approval of the Agent (such approval not to be unreasonably withheld), other than the Offtake Agreements.

23.8 New Tripartite Deed

Each Obligor agrees if requested by the Agent following:

- (a) entry into a new Material Contract;
- (b) an existing Material Contract being designated as a Key Material Contract; or
- (c) upon a person obtaining an interest in a Tenement,

in each case that the Agent (acting reasonably) (acting on the instructions of the Majority Lenders (each acting reasonably)) determines, after consulting the Borrower in good faith, requires a side agreement, the relevant Obligor must enter into, and must use its reasonable endeavours to procure that the counterparty to the Material Contract enters into, a side agreement in form and of substance satisfactory to the Agent (acting reasonably) under which that counterparty consents to the Obligor granting Security over all of its rights, title and interest in, to and under the Material Contract or Tenement, as the case may be.

23.9 Mining operations on Tenements

Each Obligor agrees to ensure that its mining activities as reflected in the latest Base Case Financial Model take place only on Tenements.

23.10 Tenements

Each Obligor must ensure that, at all times:

- (a) it has, and continues to have, good and valid title to its interests in the Key Tenements and Water Licences and its title is in full force and effect;
- (b) it is in compliance with the material conditions under which each Tenement and Water Licence was issued;
- (c) it has the exclusive right to mine in the area covered by each Key Tenement that is a mining lease;
- (d) it has all necessary rights of access and entry to the mine site including on all relevant freehold and leasehold land held by an Obligor or any other person and rights to carry out all activities required for the purpose of the Project on that freehold or leasehold land, so as to enable the Project to be developed, constructed, operated and maintained in accordance with the Life of Mine Plan; and
- (e) none of the Target's interests in the Water Licences are assigned, novated, materially varied, rescinded, repudiated, cancelled, suspended or terminated without the prior written consent of the Agent, acting on the instructions of the Majority Lenders.

23.11 Project Tenements

Each Obligor agrees to ensure that:

- (a) each tenement that becomes a Tenement after Financial Close, is encumbered by a Mining Mortgage and is not subject to any royalty other than the NSR Royalty;
- (b) each Freehold Property, Water Licence and Project Lease required, used or to be used in the mining, processing and production of copper and silver as contemplated in the Base Case Financial Model for the Project, acquired by an Obligor after Financial Close is encumbered by a Real Property Mortgage;
- (c) it holds and maintains its interest in the Tenements, the Water Licences, the Project Leases and the Freehold Properties free of Security (other than Permitted Security) and the Tenements, the Water Licences, Project Leases and Freehold Properties and any other tenement, lease or licence which contains proved and probable resources are not cancelled, suspended, reduced, surrendered, defaulted against, allowed to lapse or be transferred except for statutory surrenders;
- (d) it complies on time with and observes and performs all conditions and requirements of the Tenements, the Water Licences, the Project Leases and does whatever may be reasonably required to keep the Tenements, the Water Licences, the Project Leases and the Freehold Properties in full force and effect; and
- (e) it has rights of access to and entry upon all relevant freehold, leasehold and other land and rights to carry out all activities required for the purposes of the Project so as to enable the Project to be developed and carried out in accordance with the Base Case Financial Model and the Material Contracts.

23.12 Caveats, notifications or dealings

Each Obligor agrees to do everything necessary to remove any caveat, notification or dealing placed on the title to a Tenement, a Project Lease or Freehold Property without the Agent's consent (acting on the instructions of the Majority Lenders) other than a Permitted Security.

23.13 Environmental compliance

Each Obligor shall comply in all material respects with all Environmental Laws and Social Laws, obtain and maintain any Environmental Permits and take all reasonable steps in anticipation of known or expected future changes to or obligations under Environmental Law or any Environmental Permits.

23.14 Environmental Claims

Each Obligor shall inform the Agent in writing as soon as reasonably practicable upon becoming aware of:

- (a) any Environmental Claim which has been commenced or (to the best of such Obligor's knowledge and belief) is threatened against any member of the Group; or
- (b) any facts or circumstances which will or might reasonably be expected to result in any Environmental Claim being commenced or threatened against any member of the Group,

in each case where such Environmental Claim might reasonably be expected, if determined against that member of the Group, to have a Material Adverse Effect.

23.15 Environmental approvals

Each Obligor agrees to ensure that:

- (a) the Project Assets and all aspects of the occupation and use of land used by or for the Project comply with all Environmental Permits for the Project and all Environmental Laws in all material respects;
- (b) if there is any non-compliance with Environmental Laws, the impact on the Environment is minimised;
- (c) there is no material unlawful Contamination of any land used by or for the Project or any adjacent air, land or waters; and
- (d) environmental and other clean-up and rehabilitation is carried out in a proper and timely manner, in all material respects and in accordance with any applicable Environmental Laws and Environmental Permits.

23.16 Waste product

Each Obligor agrees to ensure that the transportation, dealing, creation, storage or discharge to the Environment of any waste product in connection with the Project is in accordance with any Environmental Permit for the Project, and otherwise not in violation of any Environmental Law, and all Environmental Permits necessary for those activities are obtained and are valid and correct in all material respects and there is no material breach of those Environmental Permits.

23.17 Discharge of contamination

Each Obligor agrees to ensure that the discharge of any Contamination to the Environment in connection with the Project is in all material respects in accordance with any Environmental Permit for the Project, and otherwise in all material respects not in violation of any Environmental Law, and all Environmental Permits necessary for such discharge are obtained and are valid and correct at the time of discharge and there is no material breach of any of those Environmental Permits.

23.18 No requirement for remedial work

Each Obligor agrees to do everything within its power to ensure:

- (a) there is no material Contamination of:
 - (i) the Project or adjacent areas which would entitle any Governmental Agency to issue any notice or direction requiring the owner or occupier of that area to undertake any remedial work or to require compensation; or
 - (ii) on or under any site on which the Project is carried on other than that which is safely stored or exists in both instances in accordance with lawful authority; and
- (b) the carrying out of the Project will not cause any material Contamination of:
 - (i) the Project or adjacent areas which would entitle any Governmental Agency to issue any notice or direction requiring the owner or occupier of that area to undertake any remedial work or to require compensation; or
 - (ii) on or under any site on which the Project is carried on other than that which is safely stored or exists in both instances in accordance with lawful authority.

23.19 Social Laws

Each Obligor agrees to ensure that the Project Assets and all aspects of the occupation and use of land used by or for the Project comply with all Social Laws for the Project where failure to do so has or is reasonably likely to have a Material Adverse Effect.

23.20 Royalties

Each Obligor agrees to ensure that no royalty, product payment or any other payment of interest having the same or similar effect is payable, is created or exists pursuant to the Project or in respect of the Product other than the NSR Royalty.

23.21 Exploration costs

Each Obligor must not:

- (a) incur exploration costs (other than non-discretionary costs and expenses in relation to staff salaries and annual expenditure commitments to the extent to which each of those payments is necessary to keep the Tenements in good standing) while any Event of Default is continuing; and
- (b) incur exploration costs (other than non-discretionary costs and expenses in relation to staff salaries and annual expenditure commitments to the extent to which each of those payments is necessary to keep the Tenements in good standing) while any Review Event is continuing.

23.22 Limit on Acquisitions

Each member of the Group must not acquire or establish any business, acquire any shares or interest in any person, acquire any assets or incorporate any new Subsidiary except for a Permitted Acquisition.

23.23 Insurance

Each Obligor agrees to:

- (a) obtain, comply with and maintain insurances with a reputable and substantial insurer in accordance with prudent business practice having regard to the nature of the Project, the Project Assets and the other assets of the Obligors (including all insurance required by applicable law or a Material Contract);
- (b) on request by the Agent, provide the Agent with details of its insurances and evidence that all insurances are in full force and that all premiums have been paid;
- (c) ensure that all insurances (other than in respect of workers' compensation, directors' and officers' liability, public liability or non-owned aircraft, travel, journey policies):
 - (i) are on terms customary for the relevant type of insurance;
 - (ii) are in the name of the relevant Obligor;
 - (iii) note the Security Trustee as loss payee; and
 - (iv) note the Security Trustee as an insured and insure the Security Trustee's insurable interests;
- (d) notify the Agent if anything happens which gives rise, or may give rise, to an insurance claim of US\$1,000,000 or more or if an insurance claim of US\$1,000,000 or more is refused either in whole or in part;
- (e) apply the proceeds from any insurance claim in relation to Secured Property:
 - (i) if the proceeds are greater than US\$5,000,000, at the option of the Agent (acting on the instructions of the Majority Lenders); or

(ii) otherwise, at the relevant Obligor's option,

towards:

(iii) the replacement or repair of the relevant Secured Property; or

(iv) repayment or reduction of any financial accommodation under any Finance Document in accordance with the Finance Document,

except that the Obligors need not apply the proceeds received from any workers' compensation, directors' and officers' liability, public liability or non-owned aircraft, travel, journey policy.

23.24 Notify interests in other property

Each Obligor must notify the Agent at least 14 days before the Obligor:

(a) acquires any aircraft, aircraft engine, airframe or helicopter that has a value of more than US\$1,000,000;

(b) acquires any motor vehicle, watercraft or intellectual property that has a value of more than US\$250,000;

(c) opens any new deposit account (noting that rolling over of a term deposit does not need to be notified) with a financial institution other than the Finance Parties, where the total credit balance of the deposit account is or may become more than US\$50,000 (and, if there is more than one, the total credit balance of all those deposit accounts is or may become more than US\$50,000); and

(d) acquires any interest in any shares, stock, stock units, interests in a managed investment scheme or other securities, or negotiable instruments where the total value of all of them is more than US\$500,000.

24 Accounts

24.1 Establishment and maintenance of the Project Accounts

(a) The Borrower and/or the Target must establish and maintain the Project Accounts at all times with the Account Bank and in accordance with the Intercreditor Deed.

(b) Each Project Account must be a separate interest bearing bank account held with the Account Bank.

(c) The Project Accounts will be denominated in the following currencies:

(i) USD Proceeds Account: United State Dollars;

(ii) AUD Proceeds Account: Australian Dollars; and

(iii) Distribution Account: United State Dollars.

(d) The Account Bank:

(i) must be an Authorised Deposit-taking Institution (ADI) (as defined in the *Banking Act 1959* (Cth)) which is an Acceptable Bank, as selected by the Borrower;

(ii) must have executed an Account Bank Agreement in form and substance approved by the Agent (under which, among other things, it agrees to hold the Project Accounts as sub-security trustee for the Security Trustee); and

(iii) pursuant to the terms of that Account Bank Agreement will have no right of set-off, except to the extent the Agent (acting on the instructions of all Lenders) agrees and in any case any amounts recovered by set off against the Project Accounts will be recovered moneys to be shared in accordance with the Finance Documents.

(e) If the Account Bank ceases to be an Acceptable Bank, the Agent may, by notice to the Borrower, require the Borrower to replace the Account Bank in accordance with the Account Bank Agreement.

(f) The authorised signatories to each Project Account will be any person from time to time nominated as an authorised representative by the Borrower by notice to the Agent and the Account Bank (with a certified copy of that person's specimen signature) or such other persons who are agreed from time to time by the Agent and the Account Bank.

(g) Until all amounts owing under this Agreement and each other Finance Document are unconditionally repaid in full and each Transaction Security has been discharged, the Borrower agrees that:

(i) it will not withdraw from any Project Account if that withdrawal would cause the account to become overdrawn;

(ii) it will cause all interest and other earnings on any Project Account to be credited to the Proceeds Account;

(iii) no later than 5 Business Days after the end of each calendar month and otherwise on request by the Agent, it will provide copies of account statements for each Project Account to the Agent. Each Obligor irrevocably waives any right of confidentiality that may exist in respect of the giving of those statements to the Agent. The Borrower is not obliged to provide copies of bank statements where the Agent is also the Account Bank; and

- (iv) it will deal with the amounts standing to the credit of the Project Accounts in accordance with this clause 24 and not otherwise.
- (h) None of the restrictions in this clause 24 on the withdrawal of funds from the Project Accounts affects the obligations of the Borrower to make all payments of indebtedness required to be made to any of the Finance Parties on the due date for payment in accordance with the Finance Documents.
- (i) Without limiting clause 24.4 (*Cashflow Waterfall and cash trap - Proceeds Account*), the Borrower must not withdraw, or attempt to withdraw, funds from any Project Account whilst an Event of Default is subsisting (other than from a Proceeds Account to pay Operating Costs or Debt Service), except with the prior written consent of the Agent.
- (j) At any time whilst an Event of Default is subsisting, the Agent (acting on the instruction of Majority Lenders) may take exclusive control of the operation of each Project Account. The Agent must notify the Borrower if:
 - (i) it intends to exercise its rights to be a signatory to a Project Account; or
 - (ii) it takes exclusive control of the operation of each Project Account.
- (k) Except with the prior written consent of the Agent or as expressly permitted by the Finance Documents, no Obligor may open or maintain in its own name any bank, savings or other account other than the Project Accounts. No money may be deposited into any account by an Obligor other than into a Project Account.
- (l) All amounts withdrawn from any Project Account for application in or towards making a specific payment or meeting a specific liability as provided for in this Agreement must be so applied and made and for no other purpose.
- (m) A reference to the balance of, or amount standing to the credit of, any Project Account is a reference to the cash balance in that Project Account.

24.2 Replacement of Account Bank

[*Not used*]

24.3 Proceeds Account

On receipt, unless the Agent otherwise agrees, the Borrower must deposit, or cause to be deposited, into a Proceeds Account:

- (a) all money received by an Obligor from Sales Proceeds or otherwise from the sale of minerals (including copper and silver) extracted or derived from the Project and any other operating revenue received by an Obligor;
- (b) net amounts received by an Obligor under or in relation to any Hedging Agreement;
- (c) interest on the Project Accounts;
- (d) the proceeds of the Loan under this Agreement and the proceeds of loans received under each Other Debt Document;
- (e) any liquidated damages payable under or in connection with the Material Contracts;
- (f) all GST refunds and input tax credits;
- (g) all net proceeds received under any Derivative Transaction entered into in accordance with the Approved Hedging Programme;
- (h) any Equity Contribution received by an Obligor;
- (i) the proceeds of any insurance (including all business interruption insurance proceeds) in relation to the Project received by an Obligor that have not been used for reinstatement or replacement of the relevant asset to which the insurance proceeds related within 60 days of receipt;
- (j) any Final Adjustment Amount and Final Adjustment Interest Amount received by the Borrower under the Sale and Purchase Agreement; and
- (k) all other amounts received by an Obligor (or to its order) in connection with the Project or its interest in the Project.

24.4 Cashflow Waterfall and cash trap - Proceeds Account

Subject to clause 24.5(a)(ii) (*Distribution Account*), all amounts deposited into a Proceeds Account may only be withdrawn in order to be applied in accordance with the provisions of the Cashflow Waterfall.

24.5 Distribution Account

- (a) The Borrower may only transfer amounts into the Distribution Account:
 - (i) in accordance with clause 24.4 (*Cashflow Waterfall and cash trap - Proceeds Account*); and
 - (ii) provided that each of the conditions in paragraphs (a) to (h) of the definition of Permitted Distribution must have been satisfied.
- (b) The Borrower may only withdraw amounts standing to the credit of the Distribution Account for the purpose of paying Permitted Distributions.

Each of the events or circumstances set out in this clause 25 is an Event of Default (save for clauses 25.25 (*Acceleration*), 25.26 (*Independent accountant or expert*) and 25.27 (*Clean Up*)).

25.1 Non-payment

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

- (a) administrative or technical error; or
- (b) a Disruption Event, and

payment is made within two Business Days of its due date.

25.2 Financial covenants

Any requirement of clause 21.1 (*Financial covenants*) is not satisfied.

25.3 Other obligations

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in clause 25.1 (*Non-payment*) and clause 25.2 (*Financial covenants*)) or with any condition of any waiver or consent by a Finance Party under or in connection with any Finance Document.
- (b) No Event of Default under clause 25.3(a) will occur if the failure to comply is capable of remedy and is remedied within ten Business Days of the earlier of:
 - (i) the Agent giving notice to the Borrower; and
 - (ii) any Obligor or the Borrower becoming aware of the failure to comply.

25.4 Misrepresentation

- (a) Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.
- (b) No Event of Default under clause 25.4(a) will occur if the failure to comply is capable of remedy and is remedied within ten Business Days of the earlier of:
 - (i) the Agent giving notice to the Borrower; and
 - (ii) any Obligor or the Borrower becoming aware of the misrepresentation.

25.5 Cross default

- (a) Any Financial Indebtedness of any Obligor or member of the Group is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Obligor or member of the Group is declared to be or otherwise becomes due and payable before its specified maturity as a result of an event of default or review event (however described).

- (c) Any commitment for any Financial Indebtedness of any Obligor or member of the Group is cancelled or suspended by a creditor of any of them as a result of an event of default or review event (however described).
- (d) Any creditor of any Obligor or member of the Group becomes entitled to declare any Financial Indebtedness of any Obligor or member of the Group due and payable before its specified maturity as a result of an event of default or review event (however described).
- (e) No Event of Default will occur under this clause 25.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within clauses 25.5(a) to 25.5(d) is less than US\$10,000,000 (or its equivalent in any other currency or currencies).

25.6 Insolvency

- (a) An Obligor or member of the Group:
 - (i) is or is presumed or deemed to be unable or admits inability to pay its debts as they fall due (including, in respect of any Obligor or member of the Group incorporated in the Cayman Islands, within the meaning of Section 93 of the Cayman Companies Act);
 - (ii) suspends making payments on any of its debts; or
 - (iii) 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) A moratorium is declared in respect of any indebtedness of any member of the Group.

25.7 Insolvency proceedings

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) The suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, liquidation, striking off, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor or member of the Group other than the MAC Merger or a solvent liquidation or reorganisation of any member of the Group which is not an Obligor except an application made to a court for the purpose of winding up such a person which is disputed by an Obligor or the relevant member of the Group acting diligently and in good faith and dismissed within 14 Business Days;
 - (b) a composition, compromise, assignment or arrangement with any creditor of any Obligor or member of the Group;
 - (c) the appointment of a liquidator (other than in respect of a solvent liquidation of a member of the Group which is not an Obligor), receiver, administrative receiver, administrator, restructuring officer, compulsory manager or other similar officer in respect of any Obligor or member of the Group or any of its assets except on application made to a court for the purpose of appointing such a person which is disputed by an Obligor or the relevant member of the Group acting diligently and in good faith and dismissed within 14 Business Days; or
 - (d) enforcement of any Security over any assets of any member of the Group,
- or any analogous procedure or step is taken in any jurisdiction.

25.8 Creditors' process

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of an Obligor or member of the Group having an aggregate value of US\$10,000,000.

25.9 Ownership of the Obligors

- (a) Prior to completion of the MAC Merger, an Obligor (other than MAC or the Company) is not or ceases to be directly or indirectly a wholly owned Subsidiary of MAC.
- (b) On and from completion of the MAC Merger, an Obligor (other than the Company) is not or ceases to be directly or indirectly a wholly owned Subsidiary of the Company.

25.10 Unlawfulness

It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective.

25.11 Repudiation

An Obligor repudiates a Finance Document or evidences an intention to repudiate a Finance Document or any Transaction Security.

25.12 Material adverse change

Any other event or series of events, whether related or not, occurs (including a material adverse change in the business, assets or financial condition of any Obligor or the value of the Secured Property) which has or is reasonably likely to have a Material Adverse Effect.

25.13 Vitiating of Finance Documents

A provision of a Finance Document is or becomes or is claimed by a party other than a Finance Party, the Security Trustee or Hedge Counterparty to be wholly or partly invalid, void, voidable or unenforceable in any material respect.

25.14 Cessation of business

Any member of the Group suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of the MAC Merger, a Permitted Disposal or a Permitted Transaction.

25.15 Litigation

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened, or any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body is made, in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against any member of the Group or its assets which have, or has, or are, or is, reasonably likely to have a Material Adverse Effect.

25.16 Material Contracts

A provision of a:

- (a) Key Material Contract is or becomes or is claimed by a party other than a Finance Party, the Security Trustee or Hedge Counterparty to be wholly or partly invalid, void, voidable or unenforceable in any material respect; or
- (b) Less Key Material Contract is or becomes or is claimed by a party other than a Finance Party, the Security Trustee or Hedge Counterparty to be wholly or partly invalid, void, voidable or unenforceable in any material respect and that Less Key Material Contract is not replaced with a contract covering the same subject on terms acceptable to the Agent within 45 days of the earlier of:
 - (i) the Agent giving notice to the Borrower;

(ii) an Obligor becoming aware of the occurrence of such event; and

(iii) such party making that claim.

25.17 Compulsory acquisition

All or any part of the assets of an Obligor:

- (a) is compulsorily acquired by, or by order of, a Governmental Agency or under any law, and that Obligor does not receive compensation for that acquisition which is acceptable to the Agent acting on the instructions of the Majority Lenders and this has, or is likely to have, a Material Adverse Effect; or
- (b) is subject to an order of a Governmental Agency for its sale, vesting or divesting in whole or part, and that Obligor does not receive compensation for such sale, vesting or divesting which is acceptable to the Agent acting on the instructions of the Majority Lenders and this has, or is likely to have, a Material Adverse Effect.

25.18 Delisting

Other than pursuant to the Company's "de-SPAC" process, any shares of the Company are removed from the official list of the New York Stock Exchange.

25.19 Abandonment and care and maintenance

The Project is:

- (a) abandoned; or
- (b) placed on a care and maintenance basis,

except as contemplated in the current approved Base Case Financial Model.

25.20 Other material Authorisations

An Authorisation which is material to:

- (a) the performance by any Obligor of a Transaction Document;
- (b) the validity or enforceability of a Transaction Document;
- (c) the security of the Finance Parties; or

(d) the Project Assets,

is repealed, revoked, cancelled, terminated, withdrawn, forfeited, materially reduced, surrendered or expires, or is modified or amended or conditions are attached to it in a manner which has or is likely to have a Material Adverse Effect;

25.21 Environmental Laws and Social Laws

An Obligor does not comply with any Environmental Laws or Social Laws in respect of the Project where such failure has a Material Adverse Effect.

25.22 Default under other Finance Document

An event occurs which is called an "event of default" under any Finance Document (other than this document), or a "termination event" under a Hedging Agreement with a Hedge Counterparty, or any other event occurs which renders enforceable a Security granted by an Obligor under the Finance Documents.

25.23 Sanctions default

- (a) Without prejudice to clause 7.3(a)(i), clause 25.3 (*Other obligations*) or clause 25.4 (*Misrepresentation*), if there is a breach of clause 18.27 (*Sanctions*), or a Finance Party has reasonable grounds to suspect a breach of any of those representations or undertakings, then without prejudice to any other remedy, including any right of termination the Finance Party may have under this Agreement or at law, the Finance Party may immediately terminate this Agreement for breach by providing written notice of termination to the Borrower.
- (b) Notwithstanding any other provision of this Agreement, as a consequence of termination under this clause 25.23, the Finance Party shall not be:
 - (i) liable to perform any of its obligations under this Agreement;
 - (ii) required to make any payments which would, or may, constitute a breach of applicable Sanctions;
 - (iii) liable for any loss or damage or other costs or expenses of any kind whatsoever that the Obligors may suffer as a result of such termination.
- (c) The Obligors shall indemnify each Finance Party for any cost, loss, expense, damage, claim or liability whatsoever (including legal and other professional expenses) arising out of or in connection with any breach or suspected breach of clause 18.27 (*Sanctions*).

25.24 Employee Plans

Any ERISA Event shall have occurred, or the representations in clauses 18.25(c), 18.25(d) or 18.25(e) (*Company representations*) shall be breached, and the liability of an Obligor or its ERISA Affiliates, either individually or in the aggregate, related to such ERISA Event or breaches, individually or when aggregated with all other ERISA Events, and all such breaches would have or would be reasonably expected to have a Material Adverse Effect.

25.25 Acceleration

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

- (a) by notice to the Borrower:

- (i) cancel each Available Commitment of each Lender whereupon each such Available Commitment shall immediately be cancelled and the Facility shall immediately cease to be available for further utilisation;
 - (ii) declare that all or part of the Utilisation, 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; and / or
 - (iii) declare that all or part of the Utilisation be payable on demand, whereupon they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and / or
- (b) exercise or direct the Security Trustee under the Security Trust Deed to exercise any or all of its rights, remedies, powers or discretions under the Transaction Documents.

25.26 Independent accountant or expert

- (a) Without limiting the rights of the Finance Parties under this Agreement, at any time after the occurrence of a Default the Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrower appoint a firm of independent accountants or other experts (including independent technical experts) to review and report to the Agent and the Finance Parties on the affairs, performance, financial condition and business of any Obligor.
- (b) Each Obligor shall do everything in its power to ensure any review and report referred to in clause 25.26(a) can be carried out promptly, completely and accurately. Without limitation, it shall co-operate fully with the review and ensure that the accountants and experts are given access to all premises and records of each Obligor and are given all information concerning any Obligor which they require from time to time.

25.27 Clean Up

- (a) A breach of any representation, warranty or undertaking that relates exclusively to Target (and not to any other Obligor), or an Event of Default that relates exclusively to Target (and not any other Obligor) that is capable of remedy (in each case, the **Relevant Circumstances**) shall not be taken to be an Event of Default if it occurs during the Clean Up Period, unless the default:
- (i) relates to a Major Default (as defined in clause 4.5(c)); or
 - (ii) has been procured by or approved or caused by an Obligor.
- (b) The Obligors must diligently pursue any action proposed by the Agent to promptly remedy any Relevant Circumstances during the Clean Up Period, and will promptly notify the Agent upon becoming aware of any Relevant Circumstances during the Clean Up Period.
- (c) If any Relevant Circumstances are subsisting at the end of the Clean Up Period there shall be an Event of Default.

SECTION 9 CHANGES TO PARTIES

26 Changes to the Lenders

26.1 Assignments and transfers by the Lenders

Subject to this clause 26, a Lender (the **Existing Lender**) may:

- (a) assign any of its rights; or
- (b) transfer any of its Loan Notes and transfer by novation any of its rights and obligations,

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

26.2 Conditions of assignment or transfer

- (a) The consent of the Borrower is required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is:
- (i) to another Lender or an Affiliate of a Lender;
 - (ii) to an Affiliate of a Related Fund of the Lender;
 - (iii) to an Affiliate of a Related Fund of an Affiliate of the Lender;
 - (iv) to a Related Fund of the Lender;
 - (v) to a Related Fund of an Affiliate of the Lender;
 - (vi) made at a time when an Event of Default is continuing; or

(vii) to a securitisation or funding vehicle where the Lender remains lender of record and retains voting rights.

- (b) The consent of the Borrower to an assignment or transfer must not be unreasonably withheld or delayed or subject to unreasonable conditions. The Borrower will be deemed to have given its consent five Business Days after the Existing Lender has requested it unless consent is expressly refused by the Borrower within that time.
- (c) A Lender shall not transfer a Loan Note or assign or transfer rights to a person whom the officers of the relevant Existing Lender involved on a day to day basis in the administration of the Facility know to be an Offshore Associate of the Borrower.
- (d) Other than an assignment where the Lender remains lender of record, an assignment will only be effective:
 - (i) on receipt by the Agent of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties and the other Beneficiaries as it would have been under if it was an Original Lender;

- (ii) on performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender; and
 - (iii) on receipt by the Agent of confirmation from the Security Trustee that the Security Trustee has performed all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender (the receipt of which the Agent shall promptly notify to the Existing Lender and the New Lender) and the New Lender has become bound by a relevant Recognition Certificate.
- (e) A transfer will only be effective:
- (i) if the procedure set out in clause 26.5 (*Procedure for transfer*) is complied with;
 - (ii) on performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such transfer to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New "ender; and
 - (iii) on receipt by the Agent of confirmation from the Security Trustee that the Security Trustee has performed all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such transfer to a New Lender (the receipt of which the Agent shall promptly notify to the Existing Lender and the New Lender) and the New Lender has become bound by a relevant Recognition Certificate.
- (f) If:
- (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under clause 12 (*Tax Gross-Up and Indemnities*) or clause 13 (*Increased Costs*),
- then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This clause 26.2(f) shall not apply:
- (iii) in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility; or
 - (iv) where the payment is in relation to Australian Withholding Tax and there are at least two Lenders after the assignment, transfer or change, and the New Lender, or Lender acting through its new Facility Office, is not an Offshore Associate of the Borrower.
- In such instances, the New Lender, or Lender acting through its new Facility Office will be entitled to full payment under clause 12 (*Tax Gross-Up and Indemnities*).
- (g) Each New Lender, by executing the relevant Transfer Certificate, confirms that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or before the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

- (h) A Lender may not assign or novate any of its rights or obligations under the Finance Documents or change its Facility Office, if the New Lender or the Lender acting through its new Facility Office would be entitled to exercise any rights under clause 7.1 (*Illegality*) as a result of circumstances existing as at the date the assignment, transfer or change is proposed to occur.

26.3 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of USD\$5,000.

26.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
 - (ii) the financial condition of any Obligor or any other person;
 - (iii) the performance and observance by any Obligor or any other person of its obligations under the Finance Documents or any other documents; or

- (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document, and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender, the other Finance Parties and the Beneficiaries that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities and any other person in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities and any other person whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer from a New Lender of any of the rights and obligations assigned or transferred under this clause 26; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor or any other person of its obligations under the Finance Documents or otherwise.

26.5 Procedure for transfer

- (a) Subject to the conditions set out in clause 26.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with clause 26.5(c) when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to clauses 26.2(b) and 26.5(c), as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with this Agreement and delivered in accordance with this Agreement, execute that Transfer Certificate.
- (b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) The Agent may refrain from executing a Transfer Certificate pending satisfaction of clause 26.2(d)(ii) and acting reasonably, may delay executing a Transfer Certificate pending a payment, distribution or Utilisation under or in respect of the Finance Documents.
- (d) Each Party other than the Existing Lender irrevocably authorises the Agent to execute any Transfer Certificate on its behalf.
- (e) Subject to clause 26.9 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) the Loan Notes are transferred as specified in the Transfer Certificate;
 - (ii) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its other rights and obligations under the Finance Documents each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the **Discharged Rights and Obligations**);
 - (iii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
 - (iv) the Agent, the Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arranger and the Existing Lender shall each be released from further obligations to each other under the Finance Documents;
 - (v) the New Lender shall become a Party as a **Lender** and entitled to the benefits of any other document entered into by the Agent as agent for the Lenders and will be bound by obligations equivalent to the obligations from which the Existing Lender is released under clauses 26.5(e)(ii) and 26.5(e)(iv);
 - (vi) the Agent shall update the Register to reflect the transfer of Loan Notes with the New Lender as holder; and

- (vii) for the purposes of this Agreement, Commitments, participations in the Loan and rights and obligations will be taken to have been transferred under a Transfer Certificate even though it operates as a novation and Commitments, participations in the Loan and rights and obligations are replaced rather than transferred.

26.6 [Not used]

26.7 Copy of Transfer Certificate to Borrower

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate, send to the Borrower a copy of that Transfer Certificate.

26.8 Security over Lenders' rights

In addition to the other rights provided to Lenders under this clause 26, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure

obligations of that Lender including:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

- (c) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
- (d) require any payments to be made by an Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

26.9 Pro rata interest settlement

- (a) If the Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any novation under clause 26.5 (*Procedure for transfer*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):
 - (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (**Accrued Amounts**) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
 - (ii) the rights assigned or novated by the Existing Lender will not include the right to the Accrued Amounts, so that:
 - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and

- (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this clause 26.9, have been payable to it on that date, but after deduction of the Accrued Amounts.

- (b) In this clause 26.9, references to **Interest Period** shall be construed to include a reference to any other period for accrual of fees.
- (c) An Existing Lender which retains the right to the Accrued Amounts under this clause 26.9 but which does not have a Commitment shall be deemed not to be a Lender for the purposes of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents.

27 Changes to the Obligors

27.1 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.

27.2 Additional Guarantors

- (a) Subject to compliance with clauses 20.10(c) and 20.10(d) (*"Know your customer" checks*) and without prejudice to the Borrower's obligations set out under 22.5 (*Guarantor Coverage*), the Borrower may request that any Group member become an Additional Guarantor or a Group member must become an Additional Guarantor in order to comply with clause 22.5 (*Guarantor Coverage*). That Subsidiary shall become an Additional Guarantor if:
 - (i) the Borrower delivers to the Agent a duly completed and executed Accession Letter executed as a deed;
 - (ii) the Agent has received all of the documents and other evidence listed in Part 2 (*Conditions Precedent required to be Delivered by an Additional Obligor*) of Schedule 2 (*Conditions precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent acting on the instructions of all Lenders;
 - (iii) the relevant member of the Group accedes to the Security Trust Deed as an *"Additional Obligor"* by signing and delivering to the Security Trustee a Security Trust Deed Accession Deed and any other documents or information required under the Security Trust Deed; and
 - (iv) the relevant member of the Group accedes to the Intercreditor Deed as an *"Additional Obligor"* by signing and delivering to the Security Trustee an Intercreditor Deed Accession Deed and any other documents or information required under the Intercreditor Deed.
- (b) The Agent shall notify the Borrower and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it acting on the instructions of all Lenders) all the documents and other evidence listed in Part 2 (*Conditions Precedent required to be Delivered by an Additional Obligor*) of Schedule 2 (*Conditions precedent*).
- (c) The Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever as a result of giving any such notification.

27.3 Repetition of Representations

Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the Repeating Representations are true and correct in relation to it as at the date

of delivery as if made by reference to the facts and circumstances then existing.

27.4 Resignation of a Guarantor

- (a) The Borrower may request that a Guarantor (other than the Borrower and the Company) ceases to be a Guarantor by delivering to the Agent a Resignation Letter.
- (b) The Agent shall accept a Resignation Letter and notify the Borrower and the Lenders of its acceptance if:
 - (i) no Default is continuing or would result from the acceptance of the Resignation Letter (and the Borrower has confirmed this is the case);
 - (ii) all the Lenders have consented to the request,whereupon that company shall cease to be a Guarantor and shall have no further rights or obligations under the Finance Documents as a Guarantor.

28 Restriction on Debt Purchase Transactions

28.1 Prohibition on Debt Purchase Transactions by the Group

Without limiting clause 26.2 (*Conditions of assignment or transfer*), neither MAC nor the Company shall, and shall procure that each Borrower Affiliate shall not, be a Lender or enter into any Debt Purchase Transactions or beneficially own or control all or a material part of the equity of an entity that is a Lender or a party to a Debt Purchase Transaction.

28.2 Disenfranchisement on Debt Purchase Transactions entered into by Borrower Affiliates

- (a) Subject to clause 26.2 (*Conditions of assignment or transfer*), for so long as a Borrower Affiliate:
 - (i) beneficially owns any participation in the Utilisation drawn utilising a Commitment; or
 - (ii) has entered into a Debt Purchase Transaction relating to such a participation or Commitment and such agreement or arrangement has not been terminated:
 - (A) in ascertaining whether the Majority Lenders, all Lenders or Lenders representing any given percentage of the Total Commitments give a consent, approval, waiver, amendment, instructions or other decision under the Finance Documents such participation and Commitment shall be deemed to be zero; and
 - (B) for the purposes of clause 42.2 (*All Lender matters*), such Borrower Affiliate or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender (unless it is a Lender with another Commitment and is not a Borrower Affiliate).
- (b) Each Lender shall promptly notify the Agent in writing if:

- (i) it knowingly enters into a Debt Purchase Transaction with a Borrower Affiliate; or
 - (ii) such transaction is terminated or ceases to be with a Borrower Affiliate.
- (c) Each Borrower Affiliate that is a Lender agrees that:
- (i) unless the Agent otherwise agrees, it shall not attend or participate in any meeting or conference call of Lenders or be entitled to receive the agenda or any minutes of any such meeting or conference call; and
 - (ii) in its capacity as Lender, unless the Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Agent or one or more of the Lenders.

SECTION 10 THE FINANCE PARTIES

29 Role of the Agent and the Arranger

29.1 Appointment of the Agent

- (a) Each of the Arranger and the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents. The Agent will be agent for the Arranger and the Lenders except as described in clause 29.1(d).
- (b) Each of the Arranger and the Lenders irrevocably appoints the Agent to act as its agent to execute a relevant Recognition Certificate on its behalf, ratifies that execution, and agrees it is therefore bound as set out the Recognition Certificate by the terms set out in the Security Trust Deed.
- (c) Each of the Arranger and the Lenders authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
- (d) Where the Agent provides services in connection with the administration of the Utilisation, and the Loan Notes, that is when it calculates rates and amounts, keeps records, keeps the Register, receives and distributes payments and information received under clauses 20.1 (*Financial statements*) and 20.8 (*Information: miscellaneous*), and receives and deals with the Utilisation Request, it does not provide those services as agent for the Arranger or the Lenders, but as principal, but the remainder of this clause 29 still applies.

29.2 Instructions

- (a) The Agent shall:

- (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:

(A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and

(B) in all other cases, the Majority Lenders if the relevant Finance Document stipulates the matter is a Majority Lender decision; and

- (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with clause 29.2(a)(i).

- (b) The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion. The Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
- (d) The Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions. The Agent may specify that the security be cash, in which case the Borrower must provide it on request, failing which each Lender must on request pay its proportion of the cash according to its Commitment. Any amount recovered by the Agent under any security will be taken to be an amount paid by the party which gave that security.
- (e) In the absence of instructions, the Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

29.3 Duties of the Agent

- (a) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to clause 29.3(c), the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (c) Without prejudice to clause 26.7 (*Copy of Transfer Certificate to Borrower*), clause 29.3(b) shall not apply to any Transfer Certificate.
- (d) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent receives notice from a Party referring to this Agreement, describing a Default or a Review Event and stating that the circumstance described is a Default or a Review Event, it shall promptly notify the other Finance Parties.

- (f) If the Agent is aware of the non-payment of any principal, interest or other fee payable to a Finance Party (other than the Agent or the Arranger) under this Agreement it shall promptly notify the other Finance Parties.
- (g) The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).
- (h) If the Agent receives a request by a Lender, the Agent will provide a privacy notice (in the form recommended by the Asia Pacific Loan Market Association (Australian Branch) or as otherwise directed by a Finance Party) to a representative of the officers of an Obligor whose personal information has been collected on behalf of the Finance Parties, which details the manner in which personal information collected in connection with this Agreement may be used and disclosed by the Finance Parties.

29.4 Role of the Arranger

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

29.5 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Agent or the Arranger as a trustee or fiduciary of any other person.
- (b) Neither the Agent nor the Arranger shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

29.6 Business with the Group

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

29.7 Rights and discretions

- (a) The 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 Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the Finance Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and

- (iii) rely on a written statement 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 clause 29.7(a)(iii)(A), may assume the truth and accuracy of that written statement.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
 - (i) no Default or Review Event has occurred (unless it has actual knowledge of a Default arising under clause 25.1 *Non-payment*);
 - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and
 - (iii) any notice or request made by the Borrower (other than the Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) The Agent may engage and pay for the advice or services of any lawyers, accountants, surveyors or other experts or professional advisers.
- (d) Without prejudice to the generality of clause 29.7(c) or 29.7(d), the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be necessary.
- (e) The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the 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) The Agent may act in relation to the Finance Documents through its officers, employees, secondees and agents.
- (g) Unless a Finance Document expressly provides otherwise the Agent may disclose to any other Party any information it reasonably believes it has received as Agent under this Agreement.
- (h) Without limiting clause 29.7(g), the Agent may disclose the identity of a Defaulting Finance Party to the other Finance Parties and the Borrower and shall disclose it on the written request of the Borrower or the Majority Lenders.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Agent 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.
- (k) The Parties need not enquire whether any instructions from all or a percentage of Lenders or the Majority Lenders have been given to the Agent or as to the terms of those instructions. As between the other Parties on the one hand and the Agent and Lenders on the other, everything done by the Agent under or in relation to the Finance Documents will be taken to be authorised.

29.8 Responsibility for documentation

Neither the Agent nor the Arranger is responsible or liable for:

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

29.9 No duty to monitor

The Agent shall not be bound to enquire:

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

29.10 Exclusion of liability

- (a) Without limiting clause 29.10(b) (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent), the 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, 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 or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document, other than by reason of its gross negligence or wilful misconduct; or
 - (iii) without prejudice to the generality of clauses 29.10(a)(i) and 29.10(a)(ii), any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of:
 - (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 to any person, any diminution in value or any liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the Agent) may take any proceedings against any officer, employee, seconded or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee, seconded or agent in relation to any Finance Document and any officer, employee, seconded or agent of the Agent may rely on this clause 29.10.
- (c) The 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 Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or the Arranger to carry out:
 - (i) any "know your customer" or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender or for any Affiliate of any Lender,
 on behalf of any Lender and each Lender confirms to the Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Arranger.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Agent's liability, any liability of the Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been suffered (as determined by reference to the date of default of the 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 Agent at any time which increase the amount of that loss. In no event shall the 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 Agent has been advised of the possibility of such loss or damages.

29.11 Lenders' indemnity to the Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately before their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, expense, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, expense, loss or liability under clause 34.11 (*Disruption to payment systems etc*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor under a Finance Document).

- (b) A Lender's share will be the proportion of its share of the Total Commitments or, if the Total Commitments are then zero, its share of the Total Commitments immediately before their reduction to zero. Where a Lender's Commitment has been reduced to zero, but it has a participation in any outstanding Utilisation, then for this purpose its Commitment will be taken to be the aggregate amount of its participation (and the Total Commitments calculated accordingly).
- (c) If any Lender fails to pay its share of any amount due under clause 29.11(a), one or more other Lenders may pay all or part of that share to the Agent. In that case, the defaulting Lender must immediately pay each such paying Lender the amount paid by that paying Lender together with interest equal to the rate from time to time certified by the paying Lender to be its cost of funds plus a margin of 2% per annum, compounding monthly.

- (d) If any Lender fails to provide its share of security to the Agent when requested under clause 29.7 *Rights and discretions*) one or more other Lenders may provide all or part of that share on its behalf. Where that security is cash the non providing Lender must immediately pay each Lender that provided cash the amount provided by it together with interest equal to its cost of funds plus a margin of 2% per annum, compounding monthly.

29.12 Resignation of the Agent

- (a) The Agent may resign and appoint one of its Affiliates acting through an office in Australia as successor by giving notice to the Lenders and the Borrower.
- (b) Alternatively the Agent may resign by giving 30 days' notice to the Lenders and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Agent.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with clause 29.12(b) within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Borrower) may appoint a successor Agent (acting through an office in the same time zone as Australia).
- (d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under clause 29.12(c), the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this clause 29 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with then current market practice for the appointment and protection of agents of syndicated financing transactions together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Agent shall make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents. The Borrower shall, within three Business Days of demand, reimburse the retiring Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.

- (f) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under clause 29.12(e)) but shall remain entitled to the benefit of clause 14.3 (*Indemnity to the Agent*) and this clause 29 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) After consultation with the Borrower, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with clause 29.12(b). In this event, the Agent shall resign in accordance with clause 29.12(b) (or, if at any time the Agent is a Defaulting Finance Party, by giving any shorter notice determined by the Majority Lenders).
- (i) The Agent shall resign in accordance with clause 29.12(b) (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent under clause 29.12(c)) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
- (i) the Agent fails to respond to a request under clause 12.7 (*FATCA Information*) and a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
 - (ii) the information supplied by the Agent under clause 12.7 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
 - (iii) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

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

29.13 Confidentiality

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

29.14 Relationship with the Lenders

- (a) Subject to clause 26.9 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:

- (i) entitled to or liable for any payment due under any Finance Document on that day; and
- (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

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

- (b) Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Lender for the purposes of clause 37.2 (*Addresses*) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.
- (c) The Agent may rely on or receive instructions from any attorney acting on behalf of a Lender, or any person acting on behalf of a Lender whose title or acting title includes the word Manager, Head, Executive, Director or President or cognate expressions, or any secretary or director of a Lender.

29.15 Credit appraisal by the Lenders

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

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, priority, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document; and
- (d) the adequacy, accuracy or completeness of the Lender Presentation and any other information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Documents or any other agreement, arrangement or document.

29.16 Agent's management time

Any amount payable to the Agent under clause 14.3 (*Indemnity to the Agent*), clause 16 (*Costs and Expenses*) and clause 29.11 (*Lenders' indemnity to the Agent*) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Borrower and the Lenders.

29.17 Deduction from amounts payable by the Agent

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

30 Conduct of Business by the Finance Parties

No provision of this Agreement or the Loan Note Deed Poll will:

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

31 Sharing among the Finance Parties

31.1 Payments to Finance Parties

If a Finance Party (a **Recovering Finance Party**) receives or recovers (including by combination of accounts or set off) any amount from an Obligor other than in accordance with clause 34 (*Payment Mechanics*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with clause 34 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the **Sharing Payment**) equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with clause 34.6 (*Partial payments*).

31.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the **Sharing Finance Parties**) in accordance with clause 34.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

31.3 Recovering Finance Party's rights

- (a) Unless clause 31.3(b) applies:

- (i) the receipt or recovery referred to in clause 31.1 (*Payments to Finance Parties*) will be taken to have been a payment for the account of the Agent and not to the Recovering Finance Party for its own account, and the liability of the relevant Obligor to the Recovering Finance Party will only be reduced to the extent of any distribution retained by the Recovering Finance Party under clause 31.1(c) (*Payments to Finance Parties*); and
- (ii) (without limiting clause 31.3(a)(i)) the relevant Obligor shall indemnify the Recovering Finance Party against a payment under clause 31.1(b) to the extent that (despite clause 31.3(a)(i)) its liability has been discharged by the recovery or payment.

(b) Where:

- (i) the amount referred to in clause 31.1 (*Payments to Finance Parties*) above was received or recovered otherwise than by payment (for example, set off); and
- (ii) the relevant Obligor, or the person from whom the receipt or recovery is made, is insolvent at the time of the receipt or recovery, or at the time of the payment to the Agent, or becomes insolvent as a result of the receipt or recovery,

then the following will apply so that the Finance Parties have the same rights and obligations as if the money had been paid by the relevant Obligor to the Agent for the account of the Finance Parties and distributed accordingly:

- (iii) each other Finance Party will assign to the Recovering Finance Party an amount of the debt owed by the relevant Obligor to that Finance Party under the Finance Documents equal to the amount received by that Finance Party under clause 31.2 (*Redistribution of payments*);
- (iv) the Recovering Finance Party will be entitled to all rights (including interest and voting rights) under the Finance Documents in respect of the debt so assigned; and
- (v) that assignment will take effect automatically on payment of the Sharing Payment by the Agent to the other Finance Party.

31.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the **Redistributed Amount**);
- (b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor and the relevant Obligor shall indemnify the Sharing Finance Party against a payment under clause 31.4(a) to the extent that the relevant Obligor's liability has been discharged by the recovery or payment; and

- (c) to the extent necessary, any debt assigned under clause 31.3(b) (*Recovering Finance Party's rights*) will be reassigned.

31.5 Exceptions

- (a) This clause 31 shall not apply to the extent that the Recovering Finance Party would not, after making any payment under this clause, have a valid and enforceable claim (or right of proof in an administration) against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
 - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

32 Compliance with Loan Note Deed Poll

Each Finance Party shall comply with the Loan Note Deed Poll.

33 Public Offer

33.1 Public offer by Borrower

The Borrower represents that it:

- (a) has made invitations to become a Lender under this Agreement or for the transfer or subscription of Loan Notes and corresponding participations under this Agreement:
 - (i) to at least ten parties, each of whom, as at the date the relevant invitation was made, it believes carries on the business of providing finance or investing or dealing in securities in the course of operating in financial markets, for the purposes of section 128F(3)(a)(i) of the Tax Act, and each of whom has been disclosed to the Arranger; or
 - (ii) in an electronic form that is used by financial markets for dealing in debentures (as defined in section 128F(9) of the Tax Act) or debt interests (as defined in sections 974-15 and 974-20 of the *Income Tax Assessment Act 1997*) such as Reuters or Bloomberg.
- (b) At least ten of the parties to whom the Borrower has made invitations referred to in clause 33.1(a)(i) were not, as at the date the invitations were made, to the knowledge of the relevant officers of the Borrower involved in the transaction, Associates of any of the others of those ten offerees.
- (c) It has not made invitations referred to in clause 33.1 to parties whom its relevant officers involved in the transaction on a day to day basis are aware are Offshore Associates of the Borrower.

33.2 Arranger's confirmation

- (a) The Arranger confirms that none of the potential offerees whose names were disclosed to it by the Borrower before the date of this Agreement were known or suspected by it to be an Offshore Associate of the Arranger or an Associate of any other such offeree.

- (b) It will immediately advise the Borrower or the Agent if the invitee' disclosed to it by the Borrower or the Agent are known or suspected by it to be an Offshore Associate of the Arranger or an Associate of any other offeree.

33.3 Lenders' representations and warranties

The Lender named in Schedule 1 (*The Original Parties*) represents and warrants to the Borrower that if it received an invitation under clause 33.1(a) at the time it received the invitation it was, and at the time it acquires a Loan Note it will be, carrying on the business of providing finance, or investing or dealing in securities, in the course of operating in financial markets.

33.4 Information

In connection with any Loan Note held by it or issued to it, each of the Arranger and each Lender will provide to the Borrower when reasonably requested by the Borrower any factual information in its possession or which it is reasonably able to provide to assist the Borrower to demonstrate (based upon tax advice received by the Borrower) that the public offer test under s 128F of the Tax Act has been satisfied in relation to the Loan Note where to do so will not in the Arranger's or the Lender's reasonable opinion breach any law or regulation or any duty of confidence.

33.5 Co-operation if Section 128F requirements not satisfied

If, for any reason, the requirements of Section 128F of the Tax Act have not been satisfied in relation to interest payable on the Loan (except to an Offshore Associate of the Borrower), then on request by the Agent, the Arranger or the Borrower, each Party shall co-operate and take steps reasonably requested with a view to satisfying those requirements:

- (a) where a Finance Party breached clause 33.2 (*Arranger's confirmation*) or clause 33.3 (*Lenders' representations and warranties*), at the cost of that Finance Party; or
- (b) in all other cases, at the cost of the Borrower.

SECTION 11 ADMINISTRATION

34 Payment Mechanics

34.1 Payments to the Agent

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time in immediately available funds or if agreed by the Agent in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the city of the Agent with such bank as the Agent specifies.
- (c) Payment by an Obligor to the Agent for the account of a Finance Party satisfies the Obligor's obligations to make that payment.

34.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to clause 34.3 (*Distributions to an Obligor*) and clause 34.4 (*Clawback and pre-funding*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank specified by that Party.

34.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with clause 35 (*The Register*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

34.4 Clawback and pre-funding

- (a) Where a sum is to be paid by a Party (the **Payer**) to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Agent pays an amount to another Party:
 - (i) which it is to receive from another Party and it proves to be the case that the Agent had not actually received that amount, and clause 34.4(c) does not apply, or
 - (ii) otherwise erroneously or mistakenly (in the reasonable opinion of the Agent),

then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

- (c) If the Agent has notified the Lenders that it is willing to make available amounts for the account of the Borrower before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Borrower:
 - (i) the Agent shall notify the Borrower of that Lender's identity and the Borrower shall on demand refund it to the Agent; and
 - (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.
- (d) If the Agent makes a payment under clause 34.4(b)(i) or 34.4(c), the Payer will still remain liable to make the assumed payment, but until the other Party does repay the Agent under clause 34.4(b)(i) or 34.4(c), the Payer's liability will be to the Agent in the Agent's own right.
- (e) If the Agent makes a payment under clause 34.4(b)(i) to a Party (the **Recipient**) which is, or is taken to be, in respect of the liability of any other Party under the Finance Documents, that other Party will still remain liable as if that payment had not been made, but until the Recipient does repay the Agent under clause 34.4(b), the other Party's liability will be to the Agent in the Agent's own right.
- (f) Payment by the Agent of an amount to a Party is not a representation that the amount is then payable to that Party.

34.5 Agent a Defaulting Finance Party

- (a) If, at any time, the Agent becomes Defaulting Finance Party, a Party which is required to make a payment under the Finance Documents to the Agent for the account of other Parties under clause 34.1 (*Payments to the Agent*) may instead on the due date for payment either pay that amount direct to the required payee or pay that amount to an interest-bearing account held in the name of the payer and designated as a trust account for the benefit of the payee or payees with an Acceptable Bank.
- (b) All interest accrued on the trust account will be for the benefit of the beneficiaries of that trust account pro rata to their respective entitlements.
- (c) A Party which has made a payment under clause 34.5(a) shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts in the trust account.
- (d) Promptly upon the appointment of a successor Agent under clause 29.12 (*Resignation of the Agent*), each Party which has made a payment to a trust account under clause 34.5(a) shall give all requisite instructions to the bank to transfer the amount (together with any accrued interest) to the successor Agent for distribution under clause 34.2 (*Distributions by the Agent*).

34.6 Partial payments

- (a) If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Agent 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 amounts payable but unpaid in respect of fees, costs, expenses, losses or liabilities of the Agent or the Arranger under the Finance Documents or the Security Trustee under the Finance Documents;
 - (ii) secondly, in or towards payment pro rata of all amounts (including interest) payable by the Obligor to Lenders in respect of amounts or security paid or provided by the Lenders to the Agent in place of another Lender under clause 29.11(c) or 29.11(c) (*Lenders' indemnity to the Agent*);
 - (iii) thirdly, in or towards payment pro rata of all amounts payable by the Obligor to Lenders in respect of amounts or security paid by the Lenders to the Agent under clause 29.11(a) or clause 29.2 (*Instructions*) plus interest on such amounts;
 - (iv) fourthly, in or towards payment pro rata of any accrued interest, fees or commission due but unpaid under the Finance Documents;
 - (v) fifthly, in or towards payment pro rata of any principal due but unpaid under the Finance Documents; and

- (vi) sixthly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

- (b) The Agent shall, if so directed by all Lenders, vary the order set out in clauses 34.6(a)(ii) to 34.6(a)(vi) inclusive.
- (c) Clauses 34.6(a) and 34.6(b) will override any appropriation made by an Obligor.

34.7 No set-off by Obligors

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

34.8 Business Days

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.
- (c) Where a payment obligation under a Finance Document does not prescribe the terms for such payment, such payment shall be due within 5 Business Days following the receipt of written demand delivered by the Agent.

34.9 Currency of account

- (a) Subject to clauses 34.9(b) and 34.9(c), 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.

34.10 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Borrower); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

34.11 Disruption to payment systems etc

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

- (a) the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in clause 34.11(a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in clause 34.11(a) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the Finance Documents notwithstanding the provisions of clause 42 (*Amendments and Waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions under or in connection with this clause 34.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed under clause 34.11(d).

34.12 Anti-money laundering

- (a) A Finance Party may delay, block or refuse to process any payment or other transaction without incurring any liability if the Finance Party knows or reasonably suspects that the transaction or the application of its proceeds will:
 - (i) breach, or cause a Finance Party to breach, any applicable laws or regulations of any jurisdiction (including any sanctions); or
 - (ii) allow the imposition of any penalty on the Finance Party or its Affiliates under any such law or regulation,including where the transaction or the application of its proceeds involves any entity or activity the subject of any applicable sanctions of any jurisdiction binding on the Finance Party or its Affiliate, or the direct or indirect proceeds of unlawful activity.
- (b) As soon as practicable after a Finance Party becomes aware that it will delay, block or refuse to process a transaction under clause 34.12(a), it will notify the Borrower and the Agent and consult in good faith but in each case only to the extent the Finance Party determines it is legally permitted to do so. In making that determination the Finance Party shall act reasonably.
- (c) The Borrower shall promptly advise the Agent if any Obligor enters into any Finance Document in the capacity as agent and promptly supply, or procure the supply of, such information as may be reasonably requested by the Agent (for itself or on behalf of any Finance Party) from time to time in relation to any principal for which an Obligor may be acting.

- (d) Each Obligor undertakes to exercise its rights and perform its obligations under the Finance Documents in accordance with all applicable laws or regulations relating to anti-money laundering, counter-terrorism financing or sanctions.

34.13 "Know your customer"

Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations under the transactions contemplated in the Finance Documents.

35 The Register

35.1 Establishment of Register

The Agent shall establish and maintain a register in the Australian Capital Territory, Victoria or New South Wales or any other place in Australia approved by the Obligors (taking into account stamp duty considerations).

35.2 The Register

- (a) The Agent shall inscribe the following information in the Register in respect of each Loan Note:
- (i) its issue date and outstanding principal amount which will equal the relevant Lender's pro rata share of the Outstanding Principal;
 - (ii) the name and address of the initial Lender and each subsequent Lender;
 - (iii) the account or address in Australia or outside Australia of the Lender to which payments are to be made; and
 - (iv) details of all transfers or assignments, advances, repayments, prepayments and redemption of all or part of the Loan Note.
- (b) The Agent shall update the Register to note changes and shall rectify any errors in the Register of which it becomes aware or of which it has been notified, including on each Interest Payment Date to reflect increases in the principal amount outstanding of the Loan Notes as a consequence of increases in the Principal Outstanding of the Loan resulting from any amounts capitalised under clause 9.2 (*Payment of interest*) or clause 9.3(c) (*Default interest*) of this Agreement or clause 6.2 (*Payment of interest*) or clause 6.3 (*Default interest*) of the Loan Note Deed Poll.
- (c) Each Lender and the Borrower may inspect the Register upon giving reasonable notice to the Agent.

35.3 Register is paramount

- (a) The Borrower and the Agent shall recognise the Lender whose name appears in the Register as the absolute owner of the Loan Notes inscribed in its name on the Register without regard to any other record or instrument.

- (b) No notice of any trust or other interest in any Loan Note will be entered on the Register. Neither the Borrower nor the Agent need take notice of any other interest in, or claim to, a Loan Note, except as ordered by the court of competent jurisdiction or required by law.

- (c) The Register will be conclusive as to the amount of the Loan Notes subject to rectification for fraud or error.

36 Set-Off

If a Default is continuing a Finance Party may, but need not, set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any obligation owed by that Finance Party to that Obligor (whether or not matured), 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.

37 Notices

37.1 Communications in writing

Any communication or document to be made or delivered under or in connection with the Finance Documents:

- (a) must be in writing;
- (b) in the case of:
- (i) a notice by an Obligor; or
 - (ii) a specification of a bank or account by the Agent under clause 34.1(b) or a Lender under clause 34.2 (*Distributions by the Agent*),
- must be signed by an Authorised Signatory of the sender (directly or with a facsimile signature), subject to clause 37.6 (*Email communication*), clause 37.7 (*Communication through secure website*) and clause 37.7(f) (*Reliance*), and
- (c) unless otherwise stated, may be made or delivered by fax, by letter, by email or as specified in clause 37.7 (*Communication through secure website*).

37.2 Addresses

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

- (a) in the case of the Borrower, that identified with its name below;

- (b) in the case of each Lender or any other Original Obligor, that specified in Schedule 1 (*The Original Parties*) or notified in writing to the Agent on or before the date on which it becomes a Party; and
- (c) in the case of the Agent, that identified with its name below,

or any substitute address, fax number, email address or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five Business Days' notice.

(iii) Address for service of communications:

Agent:	Sprott Resource Lending Corp.
Address:	[***]
Email:	[***]
Attention:	[***]
Borrower:	
Attention:	Chris Rosario
Address:	c/o Squire Patton Boggs Level 21/300 Murray Street, Perth WA 6000

37.3 Delivery

- (a) Any communication or document to be made or delivered by one Party to another under or in connection with the Finance Documents will be taken to be effective or delivered:
 - (i) if by way of fax, when the sender receives a successful transmission report unless the recipient informs the sender that it has not been received in legible form by any means within two hours after:
 - (A) receipt, if in business hours in the city of the recipient; or
 - (B) if not, the next opening of business in the city of the recipient; or
 - (ii) if by way of letter or any physical communication, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address; or
 - (iii) if by way of email, as specified in clause 37.6 (*Email communication*); or
 - (iv) if it complies with clause 37.7 (*Communication through secure website*),and, in the case of a communication, if a particular department or officer is specified as part of its address details provided under clause 37.2 (*Addresses*), if addressed to that department or officer.
- (b) All communication to or from an Obligor must be sent through the Agent.

- (c) Any communication or document made or delivered to the Borrower in accordance with this clause 37 will be deemed to have been made or delivered to each of the Obligors.
- (d) A communication by fax, email or under clause 37.7 (*Communication through secure website*) after business hours in the city of the recipient will be taken not to have been received until the next opening of business in the city of the recipient.

37.4 Notification of address, fax number and email address

Promptly upon receipt of notification of an address, fax number and email address or change of address, fax number or email address of an Obligor under clause 37.2 (*Addresses*) or upon changing its own address, fax number or email address, the Agent shall notify the other Parties.

37.5 Communication when Agent is a Defaulting Finance Party

If and so long as the Agent is a Defaulting Finance Party, the Parties may, instead of communicating with each other through the Agent, communicate with each other directly and all the Finance Documents which require communications to be made or notices to be given to or by the Agent are varied so that communications may be made and notices given to or by the relevant Parties directly.

37.6 Email communication

- (a) Any communication or document under or in connection with the Finance Documents may be made or delivered by or attached to an email and will be effective or delivered only:
 - (i) in the case of a notice to the Agent of a Default, Review Event or Event of Default or a notice to the Agent under or referred to in clause 7.2 (*Review Event*) or clause 25 (*Events of Default*), when actually opened in legible format by the recipient Party;

- (ii) in all other cases, on the first to occur of the following:
 - (A) when it is dispatched by the sender to each of the email addresses specified by the recipient, unless for each of the addresses, the sender receives an automatic notification that the email has not been received (other than an out of office greeting for the named addressee) and it receives the notification before two hours after the last to occur (for all addresses) of:
 - (1) dispatch, if in business hours in the city of the address; or
 - (2) if not, the next opening of business in such city;
 - (B) the sender receiving a message from the intended recipient's information system confirming delivery of the email; and
 - (C) the email being available to be read at one of the email addresses specified by the sender; and
 - (iii) if the email is in an appropriate and commonly used format, and any attached file is a pdf, jpeg, tiff or other appropriate and commonly used format.
- (b) In relation to an email with attached files:

- (i) if the attached files are more than 3MB in total, then:
 - (A) at the time of dispatch the giver of the email must send a separate email without attachments notifying the recipient of the dispatch of the email; and
 - (B) if the recipient notifies the sender that it did not receive the email with attached files, and the maximum size that is able to receive under its firewalls, then the sender shall promptly send to the recipient the attached files in a manner that can be received by the recipient; and
- (ii) if the recipient of the email notifies the sender that it is unable to read the format of an attached file or that an attached file is corrupted, specifying appropriate and commonly used formats that it is able to read, the sender must promptly send to the recipient the file in one of those formats or send the attachment in some other manner; and
- (iii) if within two hours of:
 - (A) dispatch of the email if in business hours in the city of the recipient; or
 - (B) if not, the next opening of business in the city of the recipient,

the recipient notifies the sender as provided in clause 37.6(b)(i)(B) or 37.6(b)(ii)' then the relevant attached files will be taken not to have been received until the sender complies with that clause.
- (c) An email which is a covering email for a notice signed by the Obligor's Authorised Signatory does not itself need to be signed by an Authorised Signatory.
- (d) Email and other electronic notices from the Agent generated by Loan IQ or other system software do not need to be signed.

37.7 Communication through secure website

- (a) The Agent may establish a secure website to which access is restricted to the Agent and the Lenders or the Obligors or both (and, where applicable, their respective financial and legal advisers).
- (b) After the Agent notifies the Lenders or the Borrower on behalf of the Obligors or both (as the case may be) of the establishment of the secure website, then any communication or document given or delivered by or to the Agent to or by Lenders or Obligors (as the case may be):
 - (i) may be given by means of the secure website in the manner specified by the Agent (or in the absence of such specification, as specified by the operator of the website); and
 - (ii) unless otherwise agreed will be taken to be made or delivered upon satisfaction of the following:
 - (A) a communication or document being posted on that secure website;
 - (B) either:
 - (1) receipt by the Agent of an email from the relevant website confirming that the website has sent an email to the relevant Party's email addresses nominated under clause 37.7(d) notifying that a communication or document has been uploaded on the website; or
 - (2) the website containing or providing confirmation that the communication or document has been opened by the intended recipient; and
 - (C) compliance with any other requirements specified by the Agent under clause 37.7(c).
- (c) By notice to the Lenders or the Borrower on behalf of the Obligors or both (as the case may be) the Agent (acting reasonably) may from time to time specify and amend rules concerning the operation of the secure website in the manner in which communications or documents may be posted, and will be taken to have been made or delivered. Those rules will bind the recipients of the notice and the Agent.

- (d) When it establishes the secure website, the Agent shall nominate to the website for each Party the email address given to it by the Party under this clause 37. Subsequently, the nominated email address for each Party for that website will be the address nominated by that Party to the secure website or by the Agent (who will notify the Party accordingly). It is the responsibility of each Party to ensure that the email address nominated for it is up-to-date. The Agent shall notify the website of changes in email addresses notified to it.
- (e) The Company consents to the inclusion in the secure website of its company logo.
- (f) Each of the other Parties agrees that the Agent is not liable for any liability, loss, damage, costs or expenses incurred or suffered by them as a result of their access or use of the secure website or inability to access or use the secure website except to the extent caused by its gross negligence or wilful misconduct.

37.8 Reliance

- (a) Any communication or document sent under this clause 37 can be relied on by the recipient if the recipient reasonably believes it to be genuine and (if such a signature is required under clause 37.1(b) (*Communications in writing*)) it bears what appears to be the signature (original or facsimile or email) of an Authorised Signatory of the sender (without the need for further enquiry or confirmation).
- (b) Each Party must take reasonable care to ensure that no forged, false or unauthorised notices are sent to another Party.

37.9 English language

- (a) Any notice or other communication given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

38 Obligor's compliance with Loan Note Deed Poll

The Borrower will comply with the Loan Note Deed Poll from the date of this document whether or not it has been executed and each Obligor will procure that the Borrower comply with the Loan Note Deed Poll from the date of this document whether or not it has been executed.

39 Calculations and Certificates

39.1 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.

39.2 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.

39.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

39.4 Settlement conditional

If:

- (a) any Finance Party has at any time released or discharged:
 - (i) an Obligor from its obligations under any Finance Document; or
 - (ii) any assets of an Obligor from a Security,
 in either case in reliance on a payment, receipt or other transaction to or in favour of any Finance Party; or
- (b) any payment, receipt or other transaction to or in favour of any Finance Party has the effect of releasing or discharging:
 - (i) an Obligor from its obligations under any Finance Document; or
 - (ii) any assets of an Obligor from a Security,

and:

- (c) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason (including under any law relating to insolvency, sequestration, liquidation, winding up or bankruptcy and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person); and
- (d) that claim is upheld or is conceded or compromised by a Finance Party,

then:

- (e) each Finance Party will immediately become entitled against that Obligor to all rights (including under any Finance Document) as it had immediately before that release or discharge; and
- (f) that Obligor must, to the extent permitted by law:
 - (i) immediately do all things and execute all documents as any Finance Party may, acting reasonably, require to restore to each Finance Party all those rights; and
 - (ii) indemnify each Finance Party against all costs and losses suffered or incurred by it in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

This clause 34.4 survives in accordance with clause 49 (*Indemnities and Reimbursement*).

40 Partial Invalidity

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

41 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 of the Finance Documents. 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.

42 Amendments and Waivers

42.1 Required consents

- (a) Subject to clause 42.2 (*All Lender matters*) and clause 42.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Obligors and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this clause 42.
- (c) Clause 26.9(c) shall apply to this clause 42.

42.2 All Lender matters

- (a) Subject to clause 42.4 (*Replacement of Primary Term Rate*), an amendment or waiver of any term of any Finance Document that has the effect of changing or which relates to:

- (i) the definition of "Majority Lenders" in clause 1.1 (*Definitions*);
- (ii) a waiver of any of the conditions precedent under clause 4.1 (*Initial conditions precedent*);
- (iii) an extension to the date of payment of any amount under the Finance Documents;
- (iv) a reduction in the Margin or a reduction in the amount, or a change in the currency, of any payment of principal, interest, fees or commission payable or any other payment obligation;
- (v) an increase in any Commitment, an extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the Facility;
- (vi) a change to the Borrower or Guarantors other than in accordance with clause 27 (*Changes to the Obligors*);
- (vii) any provision which expressly requires the consent of all the Lenders;
- (viii) clause 46 (*Anti-money laundering and sanctions*);
- (ix) clause 2.2 (*Finance Parties' rights and obligations*), clause 5.1 (*Delivery of a Utilisation Request*), clause 7.1 (*Illegality*), clause 7.2 (*Review Event*), clause 8.8 (*Application of prepayments*), clause 26 (*Changes to the Lenders*), clause 27 (*Changes to the Obligors*), clause 31 (*Sharing among the Finance Parties*), clause 34.6 (*Partial payments*), this clause 42, clause 52 (*Governing Law*) or clause 53.1 (*Jurisdiction*);
- (x) (other than as expressly permitted by the provisions of this Agreement or the Security Trust Deed):
 - (A) the nature or scope of the Transaction Security or the nature or scope of the guarantee and indemnity granted under clause 17 (*Guarantee*);
 - (B) the Secured Property; or
 - (C) the manner in which the proceeds of enforcement of the Transaction Security are distributed; or

- (xi) the release of any guarantee and indemnity granted under clause 17 (*Guarantee*) or of any Transaction Security unless permitted under this Agreement or the Security Trust Deed or relating to a disposal of an asset which is the subject of the Transaction Security, or of the grantor of the guarantee and indemnity or Transaction Security or of the grantor's Holding Company, where such disposal is permitted under this Agreement,

shall not be made without the prior consent of all the Lenders.

- (b) Where one or more Defaulting Finance Parties have been disenfranchised under clause 43.4 (*Disenfranchisement of Defaulting Finance Parties*), no amendment of the kind referred to in clause 42.1(a) which applies to Defaulting Finance Parties in a manner different from other Finance Parties may be made without the consent of the Defaulting Finance Parties.

42.3 Other exceptions

An amendment or waiver which relates to the rights or obligations of the Agent or the Arranger (each in their capacity as such) may not be effected without the consent of the Agent or, as the case may be, the Arranger.

42.4 Replacement of Primary Term Rate

- (a) Subject to clause 42.3 (*Other exceptions*), if a Rate Replacement Event has occurred in relation to the Primary Term Rate, any amendment or waiver which relates to:

- (i) providing for the use of a Replacement Benchmark in place of the Primary Term Rate; and

(ii)

- (A) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
- (B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
- (C) implementing market conventions applicable to that Replacement Benchmark;
- (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
- (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders) and the Obligors.

- (b) If any Lender fails to respond to a request for an amendment or waiver described in clause 42.4(a) within 14 Business Days (or such longer time period in relation to any request which the Borrower and the Agent may agree) of that request being made:
 - (i) its Commitment(s) shall not be included for the purpose of calculating the Total Commitments under the Facility when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and
 - (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.
- (c) In this clause 42.4:

Rate Replacement Event means, in relation to the Primary Term Rate:

- (a) the methodology, formula or other means of determining the Primary Term Rate has, in the opinion of the Majority Lenders, and the Obligors materially changed;

(a)

(i)

- (A) the administrator of the Primary Term Rate or its supervisor publicly announces that such administrator is insolvent; or
- (a) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of the Primary Term Rate is insolvent,

so long as, in each case, at that time, there is no successor administrator to continue to provide the Primary Term Rate;

- (ii) the administrator of the Primary Term Rate publicly announces that it has ceased or will cease, to provide the Primary Term Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide the Primary Term Rate;
- (2) the supervisor of the administrator of the Primary Term Rate publicly announces that the Primary Term Rate has been or will be permanently or indefinitely discontinued;

- (iii) the administrator of the Primary Term Rate or its supervisor announces that the Primary Term Rate may no longer be used; or
- (3) the supervisor of the administrator of the Primary Term Rate makes a public announcement or publishes information:
 - (A) stating that the Primary Term Rate is no longer, or as of a specified future date will no longer be, representative of the underlying market or the economic reality that it is intended to measure and that representativeness will not be restored (as determined by such supervisor); and
 - (a) with awareness that any such announcement or publication will engage certain triggers for fallback provisions in contracts which may be activated by any such pre-cessation announcement or publication;
- (b) the administrator of the Primary Term Rate (or the administrator of an interest rate which is a constituent element of the Primary Term Rate) determines that the Primary Term Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
 - (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Obligors) temporary; or
 - (4) the Primary Term Rate is calculated in accordance with any such policy or arrangement for a period of at least three months; or

- (c) in the opinion of the Majority Lenders and the Obligors, the Primary Term Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

Relevant Nominating Body means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

- (iv) **Replacement Benchmark** means a benchmark rate which is:
 - (a) formally designated, nominated or recommended as the replacement for the Primary Term Rate by:
 - (i) the administrator of the Primary Term Rate (so long as the market or economic reality that such benchmark rate measures is the same as that measured by the Primary Term Rate); or
 - (1) any Relevant Nominating Body,
 and if replacements have, at the relevant time, been formally designated, nominated or recommended under both clauses, the "*Replacement Benchmark*" will be the replacement under paragraph (a)(i);
 - (b) in the opinion of the Majority Lenders and the Obligors, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to the Primary Term Rate; or
 - (b) in the opinion of the Majority Lenders and the Obligors, an appropriate successor to the Primary Term Rate.

43 Instructions and Decisions

43.1 Abstentions

In determining whether the Majority Lenders, have given instructions or a consent, approval, waiver, amendment or other decision, a Lender will be deemed to have Commitments or a participation of zero if it has so elected by notice to the Agent.

43.2 Transferees bound

A consent, approval, waiver, amendment or other decision by a Lender or any instruction to the Agent by a Lender binds that Lender's assigns and successors unless revoked under clause 43.3 (*Limitations on revocation*).

43.3 Limitations on revocation

Any instructions, consent, approval, waiver, amendment or other decision by the Majority Lenders may be revoked only by the Majority Lenders, and may not be revoked if the decision has been acted upon.

43.4 Disenfranchisement of Defaulting Finance Parties

- (a) For so long as a Defaulting Finance Party has any Available Commitment, in ascertaining the Majority Lenders or whether any given percentage (including unanimity) of the Total Commitments or the Commitments of any specified group of Lenders or the agreement of all Lenders or all of any specified group of Lenders has been obtained in respect of any request for instructions, consent, approval, waiver, amendment or other decision under the Finance Documents, that Defaulting Finance Party's Commitments will be reduced by the amount of its Available Commitments.

- (b) For the purposes of this clause 43.4, the Agent may assume that the following Lenders are Defaulting Finance Parties:
 - (i) any Lender which has notified the Agent that it has become a Defaulting Finance Party;

- (ii) any Lender in relation to which the relevant officers of the Agent having day to day conduct of its role are aware that any of the events or circumstances referred to in the definition of "Defaulting Finance Party" has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Agent) or the Agent is otherwise aware that the Lender has ceased to be a Defaulting Finance Party.

43.5 Replacement of a Defaulting Finance Party

- (a) The Borrower may, at any time a Lender has become and continues to be a Defaulting Finance Party, by giving 14 Business Days' prior written notice to the Agent and such Lender require that Defaulting Finance Party to do one of the following under clause 26 (*Changes to the Lenders*) and the Defaulting Finance Party shall comply with the notice:

- (i) transfer all of its rights and obligations under this Agreement;
- (ii) transfer all of the undrawn Commitment of the Lender; or
- (iii) transfer all of its rights and obligations in respect of the Facility,

to a Lender or another bank, financial institution, or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (including credit derivatives) (a **Replacement Lender**) selected by the Borrower, and which (unless the Agent is a Defaulting Finance Party) is acceptable to the Agent (acting reasonably), which confirms its willingness to assume and does assume all the obligations or all the relevant obligations of the transferring Lender (including the assumption of the transferring Lender's participations or unfunded participations (as the case may be) on the same basis as the transferring Lender) for a purchase price in cash payable at the time of transfer equal to the Principal Outstanding of such Lender's participation in the outstanding Utilisation and all accrued interest and/or Break Costs and other amounts payable in relation to them under the Finance Documents.

- (b) Any transfer of rights and obligations of a Defaulting Finance Party under this clause 43 shall be subject to the following conditions:

- (i) the Borrower shall have no right to replace the Agent or Security Trustee;
- (ii) neither the Agent nor the Defaulting Finance Party shall have any obligation to the Borrower to find a Replacement Lender;
- (iii) the transfer must take place no later than 14 days after the notice referred to in clause 43.5(a); and
- (iv) in no event shall the Defaulting Finance Party be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Finance Party under the Finance Documents.

44 Confidentiality

44.1 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 44.2 (*Disclosure of Confidential Information*) and clause 44.3 (*Disclosure to numbering service providers*), 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. To the extent that Confidential Information comprises personal information of any officer, director or employee of an Obligor, each Finance Party agrees to hold that personal information in accordance with the Australian Privacy Principles set out in the *Privacy Act 1988* (Cth).

44.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds 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 under this clause 44.2(a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom clause 44.2(b)(i) or 44.2(b)(ii) applies to receive communications, notices, information or documents delivered under the Finance Documents on its behalf (including, without limitation, any person appointed under clause 29.14(c) (*Relationship with the Lenders*));
 - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in clause 44.2(b)(i) or 44.2(b)(ii);
 - (v) to whom information is required or requested to be disclosed by any court or tribunal of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or under any applicable law or regulation (except this clause does not permit the disclosure of any information under section 275(4) of the PPSA unless section 275(7) of the PPSA applies);

- (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 (except this clause does not permit the disclosure of any information under section 275(4) of the PPSA unless section 275(7) of the PPSA applies);
- (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) under clause 26.8 *Security over Lenders' rights*;
- (viii) who is a Party; or
- (ix) with the consent of the Borrower;

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

- (x) in relation to clause 44.2(b)(i) or 44.2(b)(ii) and 44.2(b)(iii), 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;
 - (xi) in relation to clause 44.2(b)(iv), 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;
 - (xii) in relation to clauses 44.2(b)(v), 44.2(b)(vi) and 44.2(b)(vii), the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances; and
- (c) to any person appointed by that Finance Party or by a person to whom clause 44.2(b)(i) or 44.2(b)(ii) 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 clause 44.2(c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Finance Party; and
 - (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

44.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Obligors the following information:
 - (i) names of Obligors;
 - (ii) country of domicile of Obligors;
 - (iii) place of incorporation of Obligors;
 - (iv) date of this Agreement;
 - (v) clause 52 (*Governing Law*);
 - (vi) the names of the Agent and the Arranger;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amounts of, and names of, the Facility (and any tranches);
 - (ix) amount of Total Commitments;
 - (x) currencies of the Facility;
 - (xi) type of Facility;
 - (xii) ranking of Facility;
 - (xiii) Termination Date for Facility;
 - (xiv) changes to any of the information previously supplied under clauses 44.3(a)(i) to 44.3(a)(xiii); and
 - (xv) such other information agreed between such Finance Party and the Borrower,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Obligor by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) Each Obligor represents that none of the information set out in clauses 44.3(a)(i) to 44.3(a)(xv) is, nor will at any time be, unpublished price-sensitive information.

44.4 Entire agreement

This clause 44 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.

44.5 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

44.6 Notification of disclosure

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

- (a) Of the circumstances of any disclosure of Confidential Information made under clauses 44.2(b)(v) and 44.2(b)(vi) (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that clause 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 44.

44.7 Continuing obligations

The obligations in this clause 44 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

- (a) the date on which all amounts payable by the Obligor 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
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

45 PPSA Provisions

45.1 Exclusion of certain provisions

Where any Finance Party has a security interest (as defined in the PPSA) under any Finance Document, to the extent the law permits:

- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
 - (i) each Finance Party with the benefit of the security interest need not comply with section 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and
 - (ii) sections 142 and 143 of the PPSA are excluded;
- (b) for the purposes of section 115(7) of the PPSA, each Finance Party with the benefit of the security interest need not comply with sections 132 and 137(3);
- (c) each Party waives its right to receive from any Finance Party any notice required under the PPSA (including a notice of a verification statement);
- (d) if a Finance Party with the benefit of a security interest exercises a right, power or remedy in connection with it, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Finance Party states otherwise at the time of exercise. However, this clause 45 does not apply to a right, power or remedy which can only be exercised under the PPSA; and

- (e) if the PPSA is amended to permit the Parties to agree not to comply with or to exclude other provisions of the PPSA, the Agent may notify the Borrower and the Finance Parties that any of these provisions is excluded, or that the Finance Parties need not comply with any of these provisions.

This does not affect any rights a person has or would have other than by reason of the PPSA and applies despite any other clause in any Finance Document.

45.2 Further assurances

Whenever the Agent requests an Obligor to do anything:

- (a) to ensure any Finance Document (or any security interest (as defined in the PPSA) or other Security under any Finance Document) is fully effective, enforceable and perfected with the contemplated priority;
- (b) for more satisfactorily assuring or securing to the Finance Parties the property the subject of any such security interest or other Security in a manner consistent with the Finance Documents; or

- (c) for aiding the exercise of any power in any Finance Document,

the Obligor shall do it promptly at its own cost. This may include obtaining consents, signing documents, getting documents completed and signed and supplying information, delivering documents and evidence of title and executed blank transfers, or otherwise giving possession or control with respect to any property the subject of any security interest or Security.

46 Anti-money laundering and sanctions

- (a) Notwithstanding any other provision of a Finance Document to the contrary, a Finance Party is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any AML/CTF Law or economic or trade sanctions laws or regulations applicable to that Finance Party, including without limitation the Charter of the *United Nations Act 1945* (Cth), the *Charter of the United Nations (Dealing with Assets) Regulations 2008* (Cth), the *Banking (Foreign Exchange) Regulations 1959* (Cth), the *Autonomous Sanctions Regulations 2011* (Cth) and any other applicable sanctions legislation.
- (b) Notwithstanding any other provision of a Finance Document to the contrary, each Obligor agrees to provide any information and documents that are within its possession, custody or control reasonably required by any Finance Party in order for that Finance Party to comply with any AML/CTF Laws.
- (c) If any Finance Party forms the view that, in its reasonable opinion, it is required to disclose information obtained in connection with the Finance Documents to any person in order to comply with any AML/CTF Laws, the parties agree that, to the extent permitted by law, such disclosure will not breach any duty of confidentiality owed by that Finance Party to any other party to this Agreement.

47 [Intentionally blank]

48 Counterparts

- (a) This Agreement may be executed in any number of counterparts, each executed by one or more parties. A party may do this by executing a signature page and electronically transmitting a copy to one or more others or their representative.

- (b) If this Agreement is signed electronically, the parties' intention is to print this Agreement out after all parties that have signed electronically have done so, so that where a party prints it out, the first print-out by that party after all signatories who have signed electronically have done so will also be an executed original counterpart of this Agreement.

49 Indemnities and Reimbursement

All indemnities and reimbursement obligations (and any other payment obligations of any Obligor) in each Finance Document are continuing and survive termination of the Finance Document, repayment of the Utilisation and cancellation or expiry of the Commitments.

50 Acknowledgement

Except as expressly set out in the Finance Documents none of the Asia Pacific Loan Market Association, the Finance Parties or any of their advisers have given any representation or warranty or other assurance to any Obligor in relation to the Finance Documents and the transactions they contemplate, including as to tax or other effects. The Obligors have not relied on any of them or on any conduct (including any recommendation) by any of them. The Obligors have obtained their own tax and legal advice.

51 Contractual recognition of bail-in

51.1 Definitions

In this clause 51:

- (v) **Article 55 BRRD** means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

Bail-In Action means the exercise of any Write-down and Conversion Powers.

- (vi) **Bail-In Legislation** means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (a) in relation to the United Kingdom, UK Bail-In Legislation; and
- (b) in relation to any state, other than such an EEA Member Country or the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

EEA Member Country means any member state of the European Union, Iceland, Liechtenstein and Norway.

- (vii) **EU Bail-In Legislation Schedule** means the document described as such and published by the Loan Market Association (or any successor person) from time to time;

Resolution Authority means any body which has authority to exercise any Write-down and Conversion Powers.

- (viii) **UK Bail-In Legislation** means part I of the *United Kingdom Banking Act 2009* and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings); and

Write-down and Conversion Powers means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and
- (a) in relation to any UK Bail-In Legislation:
 - (i) any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (1) any similar or analogous powers under that UK Bail-In Legislation; and
- (b) in relation to any other applicable Bail-In Legislation:
 - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right has been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (2) any similar or analogous powers under that Bail-In Legislation.

51.2 Contractual Recognition of Bail-In

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including:
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

SECTION 12 GOVERNING LAW AND ENFORCEMENT

52 Governing Law

This Agreement is governed by New South Wales law.

53 Enforcement

53.1 Jurisdiction

- (a) The courts having jurisdiction in New South Wales have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement) (a **Dispute**).
- (b) The Parties agree that those courts are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Notwithstanding clause 53.1(a), no Finance Party or Beneficiary shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties and the Beneficiaries may take concurrent proceedings in any number of jurisdictions.

53.2 Service of process

Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in Australia):

- (a) irrevocably appoints the Borrower as its agent for service of process in relation to any proceedings in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

The Borrower accepts its appointment as agent for service under clause 53.2 (*Service of process*).

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

Schedule 1 The Original Parties

Part 1 The Original Obligor

Name of Borrower	ABN/ACN/ARBN	Address for Service of Notice
Metals Acquisition Corp. (Australia) Pty Ltd	ACN 657 799 758	c/o Squire Patton Boggs Attention: Chris Rosario Level 21.300 Murray St, Perth WA 6000 Email: chris.rosario@squirepb.com
Name of Original Guarantor	ABN/ACN/ARBN/ Registration number	Address for Service of Notice
Metals Acquisition Corp (an exempted company incorporated in the Cayman Islands)	372802 (Cayman Islands)	Suite 400, 425 Houston St, Ft Worth, Texas, 76102 Attn: Mick McMullen Email: mick.mcmullen@metalsacqcorp.com
Metals Acquisition Limited	144625 (Jersey)	3rd Floor, 44 Esplanade, St. Helier, JE4 9WG, Jersey Attn: Mick McMullen Email: mick.mcmullen@metalsacqcorp.com

Part 2 The Original Lender

Name of Original Lender	Commitment (US\$)	Address for Service of Notice
Sprott Private Resource Lending II (Collector-2), LP	135,000,000	Address: [***] Email: [***] Attn: [***]
Total	135,000,000	

Schedule 2 Conditions precedent

Part 1 Conditions precedent to Utilisation

1 Original Obligor

- (a) A verification certificate given by two directors or a director and secretary of each Original Obligor substantially in the form as set out in Part 3 (*Form of Verification Certificate*) of this Schedule, with the attachments referred to in that form, and dated no earlier than five days before the Utilisation Date. No constitution for a member of the Borrower Group that is attached to a verification certificate may contain a right for a director to refuse to register a share transfer that occurs as a result of a financier enforcing its security over such shares.
- (b) All documents and other evidence reasonably requested by the Agent or an Original Lender (through the Agent) in order for the Agent or the Lender to carry out all necessary "know your customer" or other similar checks in relation to each Original Obligor and each of its Authorised Signatories under all applicable laws and regulations where such information is not already available to the recipient.
- (c) A certificate signed by an Authorised Signatory of each Original Obligor, substantially in the form provided to the Borrower before signing this Agreement setting out details required by the Finance Parties for the purposes of registering financing statements or financing change statements on the register under the PPSA or otherwise perfecting security interests arising under the Finance Documents, including:
 - (i) relevant serial numbers of personal property which may or must be described by serial number;
 - (ii) information regarding any chattel paper or other personal property which is subject to or expressed to be subject to the Transaction Security in respect of which a security interest can be perfected by control or possession.

(Terms used in this paragraph 2(d) have the meanings given in the PPSA.)

2 Transaction Documents

- (a) This Agreement executed by each Original Obligor and any amendments to the Agreement as required by the Agent.
- (b) The Loan Note Deed Poll executed by the Borrower;
- (c) The Security Trust Deed executed by the members of the Group party to this Agreement and each Recognition Certificate.

- (d) The Intercreditor Deed in form and substance satisfactory to the agent executed by the members of the Group party to this Agreement and each other party thereto.
- (e) The Approved Hedging Programme and Hedge Protocol.
- (f) The Tripartite Deeds.
- (g) The following Transaction Security Documents:
 - (i) the Obligor General Security Deed;
 - (ii) the Company Security Documents;

- (iii) the MAC Security Documents; and
- (iv) a copy of all notices required to be sent under the Transaction Security Documents executed by the relevant Obligors and duly acknowledged by the addressee where applicable.
- (h) All share certificates, transfers and stock transfer forms or equivalent duly executed by the relevant Obligor in blank in relation to the assets subject to or expressed to be subject to the Transaction Security and other documents of title to be provided under the Transaction Security Documents or evidence that such documents have been received by the Senior Security Trustee or will be received by the Senior Security Trustee contemporaneous with Completion of the Acquisition.
- (i) In respect of any Obligor incorporated in or having assets situated in Jersey;
 - (i) a duly completed Jersey Consent Letter signed by the relevant Obligor and any individual named therein as the contact for service for the applicable Obligor consenting to the inclusion of their name and contact details in a financing statement;
 - (ii) a search of the SIR made against each Obligor on the date of the relevant Transaction Security Document showing that no financing statements have been registered against it (other than in favour of the Senior Security Trustee, the Security Trustee and the Stream Provider);
 - (iii) a verification statement issued by the Registrar of the SIR indicating that a financing statement has been successfully registered in respect of each grantor under the Transaction Security Document; and
 - (iv) if an Obligor is not incorporated in Jersey, confirmation that the process agent required to be appointed under the Transaction Security Document to which that Obligor is party, has accepted its appointment in relation to that Obligor.
- (j) in respect of any Transaction Security Document which is securing the shares of a Jersey entity:
 - (i) if required, a copy of a special resolution amending its articles of association to permit the taking and enforcement of security without, inter alia, a right for directors to refuse, in their discretion, to register a transfer of shares; and
 - (ii) a copy of an extract of its register of members including an annotation in a form agreed with the Security Trustee and identifying the shares over which a security has been granted, duly certified by an authorised signatory of that company as at the date of the Transaction Security Document.
- (k) A copy of the following Key Material Contracts, certified by the Borrower that they are true and correct copies as provided to it by Glencore Operations Australia Pty Limited:
 - (i) the Offtake Agreement;
 - (ii) the Transitional Services Agreement;
 - (iii) the Sale and Purchase Agreement;
 - (iv) the PPX Supply Contract;

- (v) the ME Supply Contract;
- (vi) the Shiploader Agreement;
- (vii) the Haulage Agreement;
- (viii) the Cobar Terminal Services Agreement;
- (ix) the Cooling Plant Agreement;
- (x) the Ventilation Construction Agreement;
- (xi) the Project Leases;
- (xii) any other document designated as a Key Material Contract (other than the Cambiate Equipment Supply Agreement) by the Agent and the Borrower.

- (l) The Subordination of Claims Letter.
- (m) A copy of each Other Debt Document, executed by the members of the Group party to them and each other party thereto, certified by the Borrower that they are true and correct copies.
- (n) All parties to the Finance Documents having agreed any amendments, or additions, to the Finance Documents which are required by the Original Lender following the review by the Original Lender of the Other Debt Documents.

3 Legal opinions

- (a) A legal opinion of DLA Piper Australia, legal advisers to the Arranger and the Agent in Australia, in form and substance satisfactory to the Original Lender, with respect to the Finance Documents and Transaction Security Documents.
- (b) A legal opinion of Squire Patton Boggs, legal advisers to the Borrower in Australia, in form and substance satisfactory to the Original Lender, with respect to the Finance Documents, Transaction Security Documents and the Key Material Contracts (other than the Cambiate Supply Agreement).
- (c) If an Original Obligor is incorporated in a jurisdiction outside Australia, a legal opinion of the legal advisers to the Arranger and the Agent in the relevant jurisdiction, in form and substance satisfactory to the Original Lender, Transaction Security Documents and the Key Material Contracts (other than the Cambiate Supply Agreement).
- (d) If a party to the Intercreditor Deed is incorporated (i) in Australia, a legal opinion of Squire Patton Boggs, legal advisers to the Borrower in Australia, in form and substance satisfactory to the Lenders, with respect to the Intercreditor Deed and (ii) in a jurisdiction outside Australia, a legal opinion of the legal advisers to the Arranger and the Agent (or legal advisers to that party) in the relevant jurisdiction, in form and substance satisfactory to the Original Lender, with respect to the Intercreditor Deed.
- (e) A legal opinion of legal advisers to the Company in Switzerland, from a firm and in a form and substance satisfactory to the Original Lender, with respect to the Offtake Agreement.
- (f) A legal opinion of Linklaters, legal advisers to the Arranger and the Agent in the United Kingdom, in form and substance satisfactory to the Original Lender, with respect to the governing law of the Offtake Agreement.

4 Due diligence reports

- (a) The following finalised due diligence reports addressed to the Lenders (or with associated reliance letters addressed to the Lenders), in a form and substance satisfactory to the Lenders:
 - (i) Legal due diligence reports from Squire Patton Boggs and Hetherington Legal.
 - (ii) Technical and Environmental due diligence report from SRK Consulting.
 - (iii) Insurance due diligence report from Fenchurch Insurance Brokers.
 - (iv) Tax due diligence report from PwC.
 - (v) Audit report from PwC with respect to the Base Case Financial Model.

5 Financial information

- (a) A copy, certified by an Authorised Signatory of the Borrower to be a true copy, of the Original Financial Statements of each Obligor.
- (b) Evidence the Borrower will be capitalised by way of an Equity Contribution (which, for clarity, includes an amount of equity of up to \$100,000,000 to be subscribed for by Glencore Operations Australia Pty Limited in the Company contemporaneous with Financial Close, which will be used to offset the purchase price payable by the Borrower under the Sale and Purchase Agreement by the same amount (the **Glencore Equity**):
 - (i) of not less than \$415,000,000, including the PIPE equity raise and SPAC cash-in trust (net of redemptions) and the Glencore Equity; and
 - (ii) such that its debt to equity ratio is no greater than 60:40 at Financial Close and as set out under the Funds Flow Statement (where "debt" means the Total Commitments under this Agreement plus the total of all amounts available for drawing under the Other Debt Documents);
- (c) Evidence the Equity Contribution referred to in paragraph 5(b), together with any undrawn Facility on Financial Close plus any amounts available for drawing under the Other Debt Documents will be sufficient to fund the payment of the acquisition purchase price under the Sale and Purchase Agreement, and as set out under the Funds Flow Statement.
- (d) Evidence that financial close has been achieved under each of the Other Debt Documents or will be achieved contemporaneously with Financial Close.

6 Fees costs and expenses

Evidence that the fees, costs and expenses then due from the Borrower under clause 16 (*Costs and Expenses*) have been paid or will be paid by the Utilisation Date.

7 Financial Indebtedness and Security

The following documents in relation to the Financial Indebtedness of, Security and guarantees granted by, the Original Obligors:

- (a) completion of searches in relation to each Obligor as at Financial Close;

- (b) evidence of registration of Security; and
- (c) evidence of discharge of existing Financial Indebtedness or Security or guarantees or duly completed and executed discharges and releases (if applicable) in registrable form which are not permitted by this Agreement.

8 Other documents

(a) Process Agent

Evidence that any process agent referred to in clause 53.2 (*Service of process*), if not an Original Obligor, has accepted its appointment.

(b) Authorisations

- (i) Evidence of ministerial consent for the Acquisition in respect of each Tenement listed in Schedule 16 (*Tenements*) that is an exploration licence (other than exploration licences EL5693, EL5983 and EL 6907).
- (ii) A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Transaction Document or for the validity and enforceability of any Transaction Document.

(c) Group Structure Chart

A group structure chart for the Group before and following completion of the MAC Merger and the Acquisition.

(d) Base Case Financial Model

Receipt of a Base Case Financial Model of the Obligors demonstrating compliance with:

- (i) Maximum leverage of 60:40 debt: equity at Financial Close;
- (ii) Financial Covenants calculated as at Financial Close (post Acquisition).

(e) Funds Flow Statement

A funds flow statement setting out the amounts to be paid at Financial Close under the Finance Documents, and the payers and receipts of such payments on Financial Close.

(f) Tax

A certified copy of the Tax Sharing Agreement, Tax Funding Agreement and ITSA.

(g) Project Accounts

- (i) Evidence that the Project Accounts have been opened with the Account Bank in accordance with this Agreement and the Account Bank Agreement.
- (ii) The Account Bank Agreement duly executed by the members of the Group party to this Agreement and each other party thereto.

(h) Hedging

Evidence that the Approved Hedging Programme in respect of Financial Indebtedness incurred under the Senior Facility Agreement has been transacted or will be immediately after Financial Close.

(i) Minimum Achieved Hedge Price

Evidence of a minimum achieved hedge price of \$3.60/lb for 30% of base case production over three years based on the Base Case Financial Model at Financial Close.

(j) Insurance

Evidence that the required insurance policies are in full force and effect, and note the Agent and Security Trustee as interested party.

(k) Completion under Sale and Purchase Agreement

An original certificate executed by two directors or a director and secretary of the Borrower confirming:

- (i) completion of the Acquisition will occur in accordance with the Sale and Purchase Agreement;
- (ii) all material authorisations and approvals, including FIRB approval if required, in connection with the Acquisition are in full force and effect, including in relation to the acquisition of any residential property owned by the Target and the issuance of any scrip consideration to Glencore Operations Australia Pty Limited;
- (iii) all conditions precedent to the Acquisition have been satisfied (other than payment of the purchase price) and no conditions precedent to the Acquisition have been or will be waived or amended (unless the Agent has given its prior written consent acting on the instructions of all Lenders);
- (iv) there has been no termination, amendment or waiver of any Material Contract;
- (v) no Material Adverse Change has occurred under and as defined in the Sale and Purchase Agreement;

- (vi) all representations made by an Obligor under the Sale and Purchase Agreement are true in all material respects and not misleading;
 - (vii) no material actions, suits or proceedings are pending or threatened in writing against any Obligor with respect to the Acquisition; and
 - (viii) arrangements satisfactory to the Agent (acting on the instructions of all Lenders) are in place to transition any outstanding performance bonds or guarantees to equivalent instruments under the Senior Facility Agreement.
- (l) MAC Merger and Acquisition
- (i) Evidence that:

- (A) the MAC Merger has been completed or will be completed contemporaneously with Financial Close in accordance with the MAC Merger Agreement and listed its shares on the NYSE;
 - (B) the Company has convened a meeting of shareholders to approve the Acquisition;
 - (C) the Company's shareholders have approved:
 - (1) the Acquisition; and
 - (2) the issue of equity in connection with the Acquisition that is necessary to provide the Equity Contribution;
 - (D) the Company has met all other requirements that need to be met before Completion that are imposed by applicable law or regulation in connection with its "de-SPAC" process.
- (ii) All documents, notices, evidence, agreements, registrations and filings requested by the Agent or required to be entered into, delivered, registered or filed under any applicable law or under any Transaction Document for the MAC Merger to become effective.
- (m) Warrants
- Evidence that the Warrants have been issued or will be issued to the Original Lender contemporaneous with the Utilisation Date and that the Company has entered into such legal, valid and binding documentation required for the issuance of such Warrants in form and substance satisfactory to the Agent.
- (n) Whitewash
- Agreed form of all documentation required to carry out a 'whitewash' process in respect of the Target.

Part 2 Conditions Precedent required to be Delivered by an Additional Obligor

1 Additional Obligors

- (a) A verification certificate given by two directors or a director and secretary of the Additional Obligor in the form set out in Part 3 *Form of Verification Certificate* of this Schedule, with the attachments referred to in that form, and dated no earlier than the date of the Accession Letter. No constitution for a Borrower Group entity that is attached to a verification certificate may contain a right for a director to refuse to register a share transfer that occurs as a result of a financier enforcing its security over such shares.
- (b) All documents and other evidence reasonably requested by the Agent or any other Lender in order for that party to carry out all necessary "know your customer" or other similar checks in relation to the Additional Obligor and each of its Authorised Signatories under all applicable laws and regulations where such information is not already available to the recipient.
- (c) A certificate signed by an Authorised Signatory of the Additional Obligor, substantially in the form provided to the Borrower before signing this Agreement setting out details required by the Finance Parties for purposes of registering financing statements or financing change statements on the register held under the PPSA or otherwise perfecting security interests arising under the Finance Documents, including:
 - (i) relevant serial numbers of personal property which may or must be described by serial number; and
 - (ii) information regarding any chattel paper or other personal property which is subject to or expressed to be subject to the Transaction Security in respect of which a security interest can be perfected by control or possession.

(Terms used in this paragraph 1 have the meanings given in the PPSA.)

2 Accession to Finance Documents

- (a) An Accession Letter, duly executed by the Additional Obligor and the Borrower.
- (b) Unless the Additional Obligor is an "Obligor" under the Security Trust Deed, a Security Trust Deed Accession Deed, duly executed by the Additional Obligor and the Borrower.
- (c) Unless the Additional Obligor is an "Obligor" under the Intercreditor Deed, an Intercreditor Deed Accession Deed, duly executed by the Additional Obligor and the Borrower.

3 Transaction Security Documents

- (a) If the Additional Obligor is the Target:
 - (i) the Target General Security Deed;
 - (ii) the Freehold Property Mortgages;
 - (iii) the Leasehold Property Mortgages;
 - (iv) the Water Licence Mortgages; and
 - (v) the Mining Mortgages.

- (b) Any security documents in favour of the Security Trustee, the Finance Parties as defined in the Security Trust Deed, or a Finance Party as trustee for the Security Trustee as specified by the Agent in respect of the obligations of the proposed Additional Obligor (with or without securing the obligations of other Obligors) under the Finance Documents, giving Security over all or substantially all its assets which may be the subject of Security by law except to the extent otherwise agreed by the Agent acting on the instructions of the Majority Lenders.
- (c) Any notices or documents required to be given or executed under those security documents or by the Agent or Security Trustee in respect of those security documents or Security.
- (d) Evidence that any other step then required to be taken under those security documents or by the Agent or Security Trustee in respect of those security documents or Security has been taken.
- (e) Evidence that the following has been delivered to the Senior Security Trustee: All share certificates, transfers and stock transfer forms or equivalent duly executed by the relevant Additional Obligor in blank in relation to the assets subject to or expressed to be subject to the Transaction Security Documents.
- (f) In respect of any Additional Obligor incorporated in or having assets situated in Jersey:
 - (i) a duly completed Jersey Consent Letter signed by the relevant Additional Obligor and any individual named therein as the contact for service for the applicable Additional Obligor consenting to the inclusion of their name and contact details in a financing statement;
 - (ii) a search of the SIR made against each Additional Obligor on the date of the relevant Transaction Security Document showing that no financing statements have been registered against it (other than in favour of the Security Trustee);
 - (iii) a verification statement issued by the Registrar of the SIR indicating that a financing statement has been successfully registered in respect of each grantor under the Transaction Security Document; and
 - (iv) if an Additional Obligor is not incorporated in Jersey, confirmation that the process agent required to be appointed under the Transaction Security Document to which that Additional Obligor is party, has accepted its appointment in relation to that Additional Obligor.
- (g) In respect of any Transaction Security Document which is securing the shares of a Jersey entity:
 - (i) if required, a copy of a special resolution amending its articles of association to permit the taking and enforcing of security without, inter alia, a right for directors to refuse, in their discretion, to register a transfer of shares; and
 - (ii) a copy of an extract of its register of members including an annotation in a form agreed with the Security Trustee and identifying the shares over which security has been granted, duly certified by an authorised signatory of that company as at the date of the Transaction Security Document.

4 Legal Opinions

- (a) A legal opinion of DLA Piper Australia, legal advisers to the Arranger, Security Trustee and the Agent in Australia.
- (b) If the Additional Obligor is incorporated in a jurisdiction outside Australia, a legal opinion of the legal advisers to the Borrower or the Arranger, Security Trustee and the Agent or another Beneficiary (as agreed by the Agent) in the jurisdiction in which the Additional Obligor is incorporated.

5 Financial Information

If available, the latest audited financial statements of the Additional Obligor.

6 Financial Indebtedness and Security

The following documents in relation to the Financial Indebtedness of, Security and guarantees granted by, the Additional Obligor:

- (a) completion of searches in relation to the Additional Obligor dated no earlier than the date of the Accession Letter;
- (b) evidence of registration of any Security; and
- (c) evidence of discharge of any existing Financial Indebtedness or Security.

7 Other documents

- (a) Authorisations

A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Letter or for the validity and enforceability of any Finance Document.

(b) Process Agent

If the proposed Additional Obligor is incorporated in a jurisdiction outside Australia, evidence that the process agent specified in clause 53.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.

(c) Financial assistance

Evidence (if applicable) that Part 2J.3 of the Corporations Act (or the equivalent provisions in any other relevant jurisdiction) have been complied with in relation to the Accession Letter (if required) and the transactions contemplated under it.

(d) Tax

(i) Evidence that the Additional Obligor has acceded to the Tax Sharing Agreement and Tax Funding Agreement.

(ii) Evidence that the Additional Obligor has acceded to the ITSA.

Part 3 Form of Verification Certificate

From: Metals Acquisition Corp. (Australia) Pty Ltd (ACN 657 799 758)

To: [] as Agent

Metals Acquisition Corp. (Australia) Pty Ltd – Loan Note Subscription Agreement

Dated [****] (the **Agreement**)

[I am a director]/[We are directors] of Metals Acquisition Corp. (Australia) Pty Ltd ACN 657 799 758 of [address] (**Company**) and [am]/[are each] authorised to execute this Certificate in the name of the Company.

[I/We] refer to the Agreement. Terms defined in the Agreement shall have the same meaning in this certificate unless given a different meaning in this certificate.

Attached are complete copies of the following:

- 1 The constitutional documents of the Company.
- 2 [For an Obligor incorporated in Jersey only] a copy of all consents to issue shares issued to it under the Control of Borrowing (Jersey) Order 1958, as amended and all other Jersey regulatory approvals, authorisations, consents, licences, permits or registrations issued to it (if any);
- 3 [For an Obligor incorporated in Jersey only] copies of its registers of directors, secretaries and members;
- 4 [For an Obligor incorporated in Jersey only] a copy of a written authorisation of all of its shareholders approving the entry into the Finance Documents to which it is a party for the purposes of Article 74(2)(a) of the Jersey Companies Law;
- 5 [For an Obligor incorporated in the Cayman Islands only] a copy of its register of directors and officers, register of members and registers of mortgages and charges of the relevant Obligor;
- 6 [For an Obligor incorporated in the Cayman Islands only] a certificate of good standing of the relevant Obligor issued by the Registrar of Companies in the Cayman Islands dated no earlier than 30 days prior to the date of this certificate.
- 7 Extracts of minutes of a meeting of directors of the Company:
 - (a) Approving the terms of, and the transactions contemplated by, the Finance Documents to which it is expressed to be a party and resolving that it execute, deliver and perform the Finance Documents to which it is expressed to be a party [and in the case of the Original Guarantors, including a statement of corporate benefit] and authorising a specified person or persons as Authorised Signatory to execute the Finance Documents to which it is a party, on its behalf;
 - (b) Authorising the execution of [each Finance Document to which it is expressed to be a party on its behalf]/[a power of attorney for execution of each Finance Document to which it is expressed to be a party]; [and]
 - (c) Authorising a specified person or persons, on its behalf, as Authorised Signatory to sign and/or dispatch all documents and notices (including, if relevant, the Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is expressed to be a party [and]

(d) [For Obligor incorporated in Jersey only][including a resolution or other suitable statement to the effect that the solvency test specified in Article 74(2)(b) of the Jersey Companies Law is satisfied after the entry into of the Finance Documents to which it is a party.]

8 [Any power of attorney [duly stamped and registered where necessary] under which the Company executed any Finance Document to which it is expressed to be a party, executed under common seal or by two directors or a director and a secretary.]

9 A resolution signed by all the holders of the issued shares in the Company, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Company is expressed to be a party and a certificate of solvency by [a director] of that Company.

- 10 A specimen signature of each Authorised Signatory which is authorised to give notices for the Company.
- 11 The only Financial Indebtedness of the Obligor is Permitted Financial Indebtedness.
- 12 The only Security that subsists over any of the Obligor's assets is Permitted Security.
- 13 [Insert other matters to be verified, including any details required by the Finance Parties for the purposes of registering financing statements or financing change statements on the register held under the PPSA or otherwise perfecting security interests arising under the Finance Documents. Where the Company is incorporated in a jurisdiction outside Australia, consider including reference to copies of any Authorisation or document required under Part 1 (*Conditions Precedent to Utilisation*) or Part 2 (*Conditions Precedent required to be Delivered by an Additional Obligor*) of Schedule 2 (*Conditions precedent*).]

The Company is solvent. It is not prevented by Chapter 2E of the Corporations Act from entering into and performing any of the Finance Documents to which it is expressed to be a party.

Borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on any Original Obligor to be exceeded.

Director

[Director]

Loan Note Subscription Agreement |

DLA Piper | 166

Schedule 3 Utilisation Request

From: Metals Acquisition Corp. (Australia) Pty Ltd (ACN 657 799 758)

To: [] as Agent

Dated: [*****]

Dear [*****]

Metals Acquisition Corp. (Australia) Pty Ltd – Loan Note Subscription Agreement dated [***] (the Agreement)**

- 1 We refer to the Agreement. This is the Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
- 2 We wish to borrow the Loan on the following terms:
- Proposed Utilisation Date: [*****] (or, if that is not a Business Day, the next Business Day)
- Currency of Loan: US dollars
- Amount: [*****] or, if its amount exceeds the Available Facility, such lesser amount whose amount equals, the Available Facility
- Interest Period: The period from and including the Utilisation Date to the next Quarter Date
- 3 We confirm that each condition specified in clause 4.2 (*Further conditions precedent*) of the Agreement is satisfied on the date of this Utilisation Request [except as described in the notice dated [*****] given to you, a copy of which is attached].
- 4 The proceeds of the Loan should be credited to the following Project Account:
- Account Name:
- BSB:
- Account Number:
- 5 This Utilisation Request is irrevocable.

Yours faithfully

Authorised Signatory for
Metals Acquisition Corp. (Australia) Pty Ltd

Loan Note Subscription Agreement |

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Schedule 4 Form of Transfer Certificate

To: [] as Agent

From: [The Existing Lender] (the **Existing Lender**) and [The New Lender] (the **New Lender**)

Dated: [*****]

Metals Acquisition Corp. (Australia) Pty Ltd - Loan Note Subscription Agreement dated [***] (the Agreement) and the Loan Note Deed Poll dated [*****] by the Borrower (the Loan Note Deed Poll)**

- 1 We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
- 2 We refer to clause 26.5 (*Procedure for transfer*) of the Agreement:
 - (a) The Existing Lender transfers Loan Notes with a maximum aggregate face amount and aggregate principal outstanding representing the Commitment and amounts lent (including amounts capitalised under clause 9.2 (*Payment of interest*) or clause 9.3(c) (*Default interest*) of this Agreement or clause 6.2 (*Payment of interest*) or clause 6.3 (*Default interest*) of the Loan Note Deed Poll) referred to in the Schedule with effect from and including the Transfer Date in accordance with clause 26.5 (*Procedure for transfer*).
 - (b) The Existing Lender and the New Lender novate all or part of the Existing Lender's Commitment, other rights, and obligations referred to in the Schedule.
 - (c) The proposed Transfer Date is [*****].
 - (d) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of clause 37.2 (*Addresses*) of the Agreement are set out in the Schedule.
- 3 The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in clauses 26.4(a) and 26.4(c) (*Limitation of responsibility of Existing Lenders*) of the Agreement.
- 4 In this paragraph, terms defined in the Security Trust Deed have the same meaning. If the New Lender is not already a Beneficiary under the Security Trust Deed, the Security Trustee agrees on behalf of itself and all other Beneficiaries as set out in the Recognition Certificate issued under the Security Trust Deed in favour of the Agent. In consideration for that agreement, the New Lender agrees that upon becoming a Lender it is bound by the Recognition Certificate, and therefore by the terms set out in the Security Trust Deed as set out in the Recognition Certificate. This Transfer Certificate does not impose any other obligation nor constitute any other conduct by the Security Trustee or other Beneficiaries. Each Obligor agrees with the New Lender as set out in the Recognition Certificate.
- 5 This Transfer Certificate 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 Transfer Certificate.
- 6 This Transfer Certificate is governed by New South Wales law.
- 7 This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

- 8 [Where the transferee is a trustee under Australian law of a fund, this certificate may if the Agent and the Security Trustee agree contain a provision limiting its liability under the Finance Documents to fund assets except to the extent its right to apply the fund assets towards satisfaction of that liability is impaired because of a breach of trust or other impropriety, such provision to be in the following form or as otherwise agreed by the Agent and the Security Trustee. Each of the Agent's and the Security Trustee's decision is its own. It need not consult or obtain instructions and is not bound by instructions.
 - (a) [Trustee] enters into and performs this Transfer Certificate and the Agreement and the transactions they contemplate only as trustee of the Trust, except where expressly stated otherwise. This applies also in respect of any past and future conduct (including omissions) relating to this Transfer Certificate and the Agreement or those transactions.
 - (b) Under and in connection with this Transfer Certificate and the Agreement and those transactions and conduct:
 - (i) [Trustee]'s liability (including for negligence) is limited to the extent it can be satisfied out of the assets of the Trust. [Trustee] need not pay any such liability out of other assets;
 - (ii) another party may only do the following (but any resulting liability remains subject to this paragraph):
 - (A) prove and participate in, and otherwise benefit from, any form of insolvency administration of [Trustee] but only with respect to Trust assets;
 - (B) exercise rights and remedies with respect to Trust assets, including set-off;
 - (C) enforce its security (if any) and exercise contractual rights; and
 - (D) bring any other proceedings against [Trustee], seeking relief or orders that are not inconsistent with the limitations in this paragraph, and may not otherwise:
 - (E) bring proceedings against [Trustee];
 - (F) take any steps to have [Trustee] placed into any form of insolvency administration (but this does not prevent the appointment of a receiver, or a receiver and manager, in respect of Trust assets); or
 - (G) seek by any means (including set-off) to have a liability of [Trustee] to that party (including for negligence) satisfied out of any assets of [Trustee] other than Trust assets.
 - (c) Paragraphs 8(a) and 8(b) apply despite any other provision in this Transfer Certificate or the Agreement but do not apply with respect to any liability of [Trustee] to another party (including for negligence) to the extent that [Trustee] has no right or power to have Trust assets applied towards satisfaction of that liability, or its right or power to do so is subject to a deduction, reduction, limit or requirement to make good, in any case because [Trustee] has acted beyond power or improperly in relation to the Trust.

- (d) The limitation in paragraph 8(b)(i) is to be disregarded for the purposes (but only for the purposes) of the rights and remedies described in paragraph 8(b)(ii), and interpreting this Transfer Certificate and the Agreement and any security for them, including determining the following:

- (i) whether amounts are to be regarded as payable (and for this purpose damages or other amounts will be regarded as a payable if they would have been owed had a suit or action barred under paragraph 8(b)(i) been brought);
- (ii) the calculation of amounts owing; or
- (iii) whether a breach or default has occurred,

but any resulting liability will be subject to the limitations in this paragraph.]

The Schedule

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments,]

[Existing Lender] [New Lender]

By: By:

This Transfer Certificate is [executed as a deed and] accepted by the Agent, [and for the purposes of paragraph [4] [and 8] only, executed by it on behalf of the] Security Trustee. The Transfer Date is confirmed as [*****].

[]

By: _____

Schedule 5 Form of Accession Letter

To: [] as Agent

From: [Subsidiary] and Metals Acquisition Corp. (Australia) Pty Ltd (ACN 657 799 758)

Dated: [*****]

Dear [*****]

Metals Acquisition Corp. (Australia) Pty Ltd - Loan Note Subscription Agreement dated [***] (the Agreement)**

We refer to the Agreement. This is an Accession Letter. Terms defined in the Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.

[Subsidiary] agrees to become an Additional Guarantor and to be bound by the Agreement as an Additional Guarantor under clause 27.2 (*Additional Guarantors*) of the Agreement. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction].

[Subsidiary's] administrative details are as follows:

Address:

Fax No:

Attention:

This Accession Letter is governed by New South Wales law.

[This Accession Letter is entered into by deed.]

Metals Acquisition Corp. (Australia) Pty Ltd

[Subsidiary]

By:

By:

Schedule 6 Form of Resignation Letter

To: [] as Agent
From: [resigning Obligor] and Metals Acquisition Corp. (Australia) Pty Ltd (ACN 657 799 758)
Dated: [*****]
Dear [*****]

Metals Acquisition Corp. (Australia) Pty Ltd - Loan Note Subscription Agreement dated [***] (the Agreement)**

We refer to the Agreement. This is a Resignation Letter. Terms defined in the Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.

Under clause 27.4 (*Resignation of a Guarantor*) of the Agreement, we request that [resigning Obligor] be released from its obligations as a Guarantor under the Agreement.

We confirm that:

no Default is continuing or would result from the acceptance of this request; and

[*****]*

This Resignation Letter is governed by New South Wales law.

Metals Acquisition Corp. (Australia) Pty Ltd [Subsidiary]

By: _____ By: _____

* Insert any other conditions required by the Facility Agreement.

Schedule 7 Form of Compliance Certificate

To: [] as Agent
From: Metals Acquisition Corp. (Australia) Pty Ltd (ACN 657 799 758)
Dated: [*****]
Dear [*****]

Metals Acquisition Corp. (Australia) Pty Ltd - Loan Note Subscription Agreement dated [***] (the Agreement)**

1 We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.

2 We confirm that:

- (a) the Debt Service Cover Ratio is [*****];
- (b) the aggregate of Available Cash and Cash Equivalent Investments of the Borrower Group is [], [including any undrawn and available portion of "Facility B" (provided pursuant to and as defined in, the Senior Facility Agreement)] [*Note: wording in brackets only applicable for the period from Financial Close to the date falling 12 months after Financial Close*];
- (c) the Reserve Tail Ratio is projected to be greater than 25%; and
- (d) Total Net Debt to EBITDA is [*****],

and the calculations with respect to each of them are set out in the spreadsheet provided with this Compliance Certificate.

3 We confirm that the Repeating Representations are true and correct by reference to the facts and circumstances existing as of the date of this Compliance Certificate and that no Default is continuing.

Signed: _____
Director of Metals Acquisition Corp. (Australia) Pty Ltd [Company Secretary]/[Director] of Metals Acquisition Corp. (Australia) Pty Ltd

Schedule 8 Existing Security

No.	PPSR Number	PMSI	Collateral Class	Grantor	Secured Party Group	Collateral Description Amount secured
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1.	201611090053086	Yes	Other Goods	Cobar Management Pty Ltd	ORICA AUSTRALIA PTY LTD ACN 004 117 828	All goods sold or supplied, and all equipment loaned, rented, bailed or otherwise made available by the secured party to the grantor. Contract Target value: \$13.85M, Completed Date: 31 Dec 2025.
2.	201304020032029	Yes	Other Goods	ABN 38 083 171 546	SCHNEIDER ELECTRIC (AUSTRALIA) PTY LIMITED ACN 004 969 304; SCHNEIDER ELECTRIC IT AUSTRALIA PTY LTD ACN 088 913 866; SCHNEIDER ELECTRIC BUILDINGS AUSTRALIA PTY LTD ACN 008 059 345; SCHNEIDER ELECTRIC SYSTEMS AUSTRALIA PTY LTD ACN 000 522 261; M & C ENERGY PTY LTD ACN 104 501 091	Electrical components Amount secured: under \$5,000,000
3.	201112203237636	Yes	Other Goods	ACN 00 083 171 546; COBAR MANAGEMENT PTY. LIMITED	AGGREKO GENERATOR RENTALS PTY. LIMITED ACN 001 991 457	All equipment leased, rented or otherwise made available to the grantor by the secured party. Contract Target value: \$5.89M Completed Date: 30 Aug 2023.
4.	201208010044673	Yes	Other Goods	ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	JENNMAR AUSTRALIA PTY LTD ACN 078 584 531	Amount secured: under \$5,000,000

No.	PPSR Number	PMSI	Collateral Class	Grantor	Secured Party Group	Collateral Description Amount secured
4.	201208010044673	Yes	Other Goods	ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	JENNMAR AUSTRALIA PTY LTD ACN 078 584 531	Amount secured: under \$5,000,000
5.	201208230032315	Yes	Other Goods	ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	SANDVIK MINING AND CONSTRUCTION AUSTRALIA PTY LTD ACN 003 771 382	All goods sold, leased, rented, bailed, consigned or otherwise made available to the grantor by the secured party including but not limited to parts, consumables and equipment other than such property released by the secured party (expressly or by its terms). The property may include inventory, and may be subject to control. The grantor breaches the security agreement if, without the secured party's consent or agreement, it disposes of collateral (even in the ordinary course of business). Sandvik has three entries in the Contract Register and 4 Purchasing Document numbers.

No.	PPSR Number	PMSI	Collateral Class	Grantor	Secured Party Group	Collateral Description Amount secured
						It is unclear which PPSR entry corresponds to the relative Contract Register entry/ Purchasing Document number.

						<p>The four Purchasing Document IDs are: CTR-530561 - Contract target value: \$3.94M, Completed Date: 31 Dec 2026</p> <p>4600008762 - Contract Target value: \$27.97M, Completed Date: 30 Jun 2023</p> <p>4600010829 – Contract Target value: \$1.77M, Completed Date: 31 Aug 2026</p> <p>4600010452 – Contract Target value: \$12M, Completed Date: unclear.</p> <p>NB the discrepancy between listed Contract Numbers and Purchasing Documents is likely due to - Contract Number - 4600010452 having expired.</p>
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No.	PPSR Number	PMSI	Collateral Class	Grantor	Secured Party Group	Collateral Description Amount secured
6.	201208230032646	Yes	Other Goods	ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	SANDVIK MINING AND CONSTRUCTION AUSTRALIA PTY LTD ACN 003 771 382	<p>All goods sold, leased, rented, bailed, consigned or otherwise made available to the grantor by the secured party including but not limited to parts, consumables and equipment other than such property released by the secured party (expressly or by its terms). The property may include inventory, and may be subject to control. The grantor breaches the security agreement if, without the secured party's consent or agreement, it disposes of collateral (even in the ordinary course of business).</p> <p>Amount secured: Values per the above entry 5.</p>
7.	201401150040130	Yes	Other Goods	ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	FUCHS LUBRICANTS (AUSTRALASIA) PTY LTD ACN 005 681 916	<p>All goods supplied by the secured party to the grantor including but not limited to lubricants, equipment and related goods supplied.</p> <p>Amount secured: under \$5,000,000</p>

No.	PPSR Number	PMSI	Collateral Class	Grantor	Secured Party Group	Collateral Description Amount secured
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8.	201505310004843	No	Other Goods	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	HMR DRILLING SERVICES PTY LTD ACN 133 922 559	<p>1 700 Series Feedframe, coupled with a 90kw power pack, clearly marked HMR RIG 20, 1 x seacontainer, 1 x f40 water pump, and all drilling equipment associated with the contract with Glencore, CSA Site</p> <p>HMR has three entries in the Contract Register and 3 Purchasing Document numbers.</p> <p>It is unclear which PPSR entry corresponds to the relative Contract Register entry/ Purchasing Document number.</p> <p>The three Contract Numbers are:</p> <p>4600008686 – Contract Target value: \$7.05M, Completed Date: 6 Feb 2022</p> <p>4600011898 - Contract Target value: \$7.45M, Completed Date: 31 Dec 2025</p> <p>4600013534 - Contract Target value: \$16.25M, Completed Date: 31 Dec 2025.</p>
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No.	PPSR Number	PMSI	Collateral Class	Grantor	Secured Party Group	Collateral Description Amount secured
9.	201611230052290	Yes	Other Goods	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	RICOH AUSTRALIA PTY LTD ACN 000 593 171	MPC6004-MPC6004-MPC6004 Amount secured: under \$5,000,000
10.	201612230039798	Yes	Other Goods	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	COMMONWEALTH STEEL COMPANY PTY LIMITED ACN 000 007 698	All goods sold, leased, hired, rented, bailed, supplied on consignment, sold subject to a conditional sale agreement including retention of title or otherwise made available by the secured party to the grantor. Amount secured: under \$5,000,000
11.	201709250036207	Yes	Motor Vehicle	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	EPIROC AUSTRALIA PTY LTD ACN 000 086 706	All motor vehicles (as defined in the Personal Property Security Act and Regulations) and their associated parts, accessories and equipment rented, leased, hired, bailed, supplied on consignment, sold subject to a conditional sale agreement including retention of title, or otherwise made available to the grantor by the secured party. Amount secured: under \$5,000,000

No.	PPSR Number	PMSI	Collateral Class	Grantor	Secured Party Group	Collateral Description Amount secured
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12.	201709250036426	Yes	Other Goods	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	EPIROC AUSTRALIA PTY LTD ACN 000 086 706	All goods, equipment and / or other tangible property (including any accessions to those goods, equipment and / or property) sold, leased, hired, rented, bailed, supplied on consignment, sold subject to a conditional sale agreement including retention of title or otherwise made available by the secured party to the grant Amount secured: under \$5,000,000
13.	201712150048498	Yes	Other Goods	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	WESTRAC PTY LTD ACN 009 342 572	All goods, equipment and/or other tangible property (including any accessions to those goods, equipment and/or property) sold, leased, hired, rented, bailed, supplied on consignment, sold subject to a conditional sale agreement (including retention of title) or otherwise made available by the secured party to the grantor. Westrac has two entries in the Contract Register

No.	PPSR Number	PMSI	Collateral Class	Grantor	Secured Party Group	Collateral Description Amount secured
						It is unclear which PPSR entry corresponds to the relative Contract Register entry/ Purchasing Document number. The two Contract Numbers are: 4600011236 – Contract Target Value: \$12M; Completed Date: 31 December 2023. 4600009645 – Contract Target Value: \$55K; Completed Date: 31 December 2021.
14.	201807240027161	Yes	Motor Vehicle	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	WESTRAC PTY LTD ACN 009 342 572	All motor vehicles (as defined in the Personal Property Securities Act and Regulations) rented leased, bailed, supplied on consignment or sold subject to conditional sale agreement including retention of title or otherwise made available to the grantor by the secured party. Amount secured: See above Westrac entry 13 for values.

No.	PPSR Number	PMSI	Collateral Class	Grantor	Secured Party Group	Collateral Description Amount secured
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15.	201902280012732	Yes	Other Goods	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	METSO AUSTRALIA LIMITED ACN 000 197 428	All goods, equipment and/or other tangible property (including any accessions to those goods, equipment and/or property) sold, leased, hired, rented, bailed, supplied on consignment, sold subject to a conditional sale agreement including retention of title or otherwise made available by the secured party to the grantor. Supply of Mills components contract -Purchasing Document 4600008327 Completion date was for 11 March 2022 (this works are ongoing). Value: \$5,747,555
16.	201904160032141	Yes	Other Goods	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	RICOH AUSTRALIA PTY LTD ACN 000 593 171	All goods, equipment and/or other tangible property (including any accessions to those goods, equipment and/or property) sold, leased, hired, rented, bailed, supplied on consignment, sold subject to a conditional sale agreement including retention of title or otherwise made available by the secured party to the grantor.
						Amount secured: under \$5,000,000

No.	PPSR Number	PMSI	Collateral Class	Grantor	Secured Party Group	Collateral Description Amount secured
17.	201904160046593	No	Other Goods	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	HMR DRILLING SERVICES PTY LTD ACN 133 922 559	1 x 1300 series feedframe coupled with 1 x 110kw power pack, rod handler and LM DCi plus all associated running equipment including Sea Container, pumps and running gear. Amount secured: Value per above HMR entry 8.
18.	201904160056103	No	Other Goods	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	HMR DRILLING SERVICES PTY LTD ACN 133 922 559	1 X 700 Series Feedframe coupled with a 90kw Power Pack identified with serial no. LM-90-2007-012 ASSET No. DD0030 including all equipment required to complete the drilling program. Including sea containers, pumps and drilling equipment for HMR Drilling. Serial no. LM90-2007-012 Amount secured: Value per above HMR entry 8.

No.	PPSR Number	PMSI	Collateral Class	Grantor	Secured Party Group	Collateral Description Amount secured
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19.	201904160056436	No	Other Goods	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	HMR DRILLING SERVICES PTY LTD ACN 133 922 559	1 X 700 Series feedframe coupled with a 90kw power pack DC; Serial No. LM90-2017-026 HMR Asset No.: D0035 including all relevant drilling equipment. Sea containers, pumps and all relevant equipment. Amount secured: Value per above HMR entry 8.
20.	201910010015640	Yes	Other Goods	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	RICOH AUSTRALIA PTY LTD ACN 000 593 171	All goods, equipment and/or other tangible property (including any accessions to those goods, equipment and/or property) sold, leased, hired, rented, bailed, supplied on consignment, sold subject to a conditional sale agreement including retention of title or otherwise made available by the secured party to the grantor. Amount secured: under \$5,000,000

No.	PPSR Number	PMSI	Collateral Class	Grantor	Secured Party Group	Collateral Description Amount secured
21.	202008270014464	Yes	Other Goods	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	RICOH AUSTRALIA PTY LTD ACN 000 593 171	All goods, equipment and/or other tangible property (including any accessions to those goods, equipment and/or property) sold, leased, hired, rented, bailed, supplied on consignment, sold subject to a conditional sale agreement including retention of title or otherwise made available by the secured party to the grantor. Amount secured: under \$5,000,000
22.	202011250009949	Yes	Other Goods	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	RICOH AUSTRALIA PTY LTD ACN 000 593 171	All goods, equipment and/or other tangible property (including any accessions to those goods, equipment and/or property) sold, leased, hired, rented, bailed, supplied on consignment, sold subject to a conditional sale agreement including retention of title or otherwise made available by the secured party to the grantor. Amount secured: under \$5,000,000

No.	PPSR Number	PMSI	Collateral Class	Grantor	Secured Party Group	Collateral Description Amount secured
23.	202012220042280	Yes	Other Goods	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	PJL GROUP PTY LTD ACN 151 805 408	ATLAS COPCO MT6020 SERIAL NUMBER - AV0 08X 424 ARR# 8997 2067 00 Amount secured: under \$5,000,000

24.	202110070010464	Yes	Other Goods	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	RICOH AUSTRALIA PTY LTD ACN 000 593 171	All goods, equipment and/or other tangible property (including any accessions to those goods, equipment and/or property) sold, leased, hired, rented, bailed, supplied on consignment, sold subject to a conditional sale agreement including retention of title or otherwise made available by the secured party to the grantor. Amount secured: under \$5,000,000
25.	202112240064035	No	Motor Vehicle	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	AUSTRALIAN TRUCK & 4WD RENTALS PTY LTD ACN 056 422 309	Amount secured: under \$5,000,000

No.	PPSR Number	PMSI	Collateral Class	Grantor	Secured Party Group	Collateral Description Amount secured
26.	202112240065170	No	Motor Vehicle	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	AUSTRALIAN TRUCK & 4WD RENTALS PTY LTD ACN 056 422 309	Amount secured: under \$5,000,000
27.	202112240065664	No	Motor Vehicle	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	AUSTRALIAN TRUCK & 4WD RENTALS PTY LTD ACN 056 422 309	Amount secured: under \$5,000,000
28.	202112240065981	No	Motor Vehicle	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	AUSTRALIAN TRUCK & 4WD RENTALS PTY LTD ACN 056 422 309	Amount secured: under \$5,000,000
29.	202202030022654	Yes	Motor Vehicle	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	WESTRAC PTY LTD ACN 009 342 572	Amount secured: Value per above Westrac entry 13.

No.	PPSR Number	PMSI	Collateral Class	Grantor	Secured Party Group	Collateral Description Amount secured
30.	202202170002442	Yes	Other Goods	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	RICOH AUSTRALIA PTY LTD ACN 000 593 171	All goods, equipment and/or other tangible property (including any accessions to those goods, equipment and/or property) sold, leased, hired, rented, bailed, supplied on consignment, sold subject to a conditional sale agreement including retention of title or otherwise made available by the secured party to the grantor. Amount secured: under \$5,000,000

31.	202203280004151	Yes	Motor Vehicle	COBAR MANAGEMENT PTY. LIMITED ACN 083 171 546; COBAR MANAGEMENT PTY. LIMITED	WESTRAC PTY LTD ACN 009 342 572	Amount secured: Value per above Westrac entry 13.
32.	202205040057935	Yes	Other Goods	COBAR MANAGEMENT PTY. LIMITED ACN 00 083 171 546; COBAR MANAGEMENT PTY. LIMITED	C J D EQUIPMENT PTY LTD ACN 008 754 523	All goods, equipment and/or other tangible property (including any accessions to those goods, equipment and/or property) sold, leased, hired, rented, bailed, supplied on consignment, sold subject to a conditional sale agreement (including retention of title) or otherwise made available by the secured party to the grantor, including but not limited to construction equipment, parts, spares and service. Amount secured: under \$5,000,000

Schedule 9 Form of Confidentiality Undertaking

[LMA CONFIDENTIALITY LETTER (SELLER). A SEPARATE LMA CONFIDENTIALITY LETTER IS AVAILABLE FOR USE BETWEEN A SELLER'S AGENT/BROKER AND A PURCHASER'S AGENT/BROKER]

[Letterhead of Seller]

Date: []

To: [insert name of Potential Purchaser]

Re: **The Agreement**

Borrower: Metals Acquisition Corp. (Australia) Pty Ltd (ACN 657 799 758) (the **Company**)

Date:

Amount:

Agent:

Dear [*****]

We understand that you are considering acquiring an interest in the Agreement which, subject to the Agreement, may be by way of novation, assignment, the entering into, whether directly or indirectly, of a sub-participation 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 or by way of investing in or otherwise financing, directly or indirectly, any such novation, assignment, sub-participation or other transaction (the **Acquisition**). In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

1 Confidentiality Undertaking

You undertake:

- (a) to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information; and
- (b) until the Acquisition is completed to use the Confidential Information only for the Permitted Purpose.

2 Permitted Disclosure

We agree that you may disclose:

- (a) to any of your Affiliates and any of your or their officers, directors, employees, professional advisers and auditors such Confidential Information as you shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph 2(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) subject to the requirements of the Agreement, to any person:
- (i) to (or through) whom you assign or transfer (or may potentially assign or transfer) all or any of your rights and/or obligations which you may acquire under the Agreement such Confidential Information as you shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this paragraph 2(b)(ii) has delivered a letter to you in equivalent form to this letter;
 - (ii) with (or through) whom you enter into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to the Agreement or any Obligor such Confidential Information as you shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this paragraph 2(b)(i) has delivered a letter to you in equivalent form to this letter;
 - (iii) to whom information is required or requested to be disclosed by 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 such Confidential Information as you shall consider appropriate; and
- (c) notwithstanding paragraphs 2(a) and 2(b), Confidential Information to such persons to whom, and on the same terms as, a Finance Party is permitted to disclose Confidential Information under the Agreement, as if such permissions were set out in full in this letter and as if references in those permissions to Finance Party were references to you.

3 Notification of Disclosure

You agree (to the extent permitted by law and regulation) to inform us:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph 2(b)(ii) 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 letter.

4 Return of copies

If you do not enter into the Acquisition and we so request in writing, you shall return or destroy all Confidential Information supplied to you by us and destroy or permanently erase (to the extent technically practicable) all copies of Confidential Information made by you and use your reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under paragraph 2(b)(ii).

5 Continuing obligations

The obligations in this letter are continuing and, in particular, shall survive and remain binding on you until:

- (a) if you become a party to the Agreement as a lender of record, the date on which you become such a party to the Agreement;
- (b) if you enter into the Acquisition but it does not result in you becoming a party to the Agreement as a lender of record, the date falling 12 months after the date on which all of your rights and obligations contained in the documentation entered into to implement that Acquisition have terminated; or
- (c) in any other case the date falling 12 months after the date of your final receipt (in whatever manner) of any Confidential Information.

6 No representation; consequences of breach, etc

You acknowledge and agree that:

- (a) neither we, nor any member of the Group nor any of our or their respective officers, employees or advisers (each a **Relevant Person**):
 - (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or the assumptions on which it is based; or
 - (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or be otherwise liable to you or any other person in respect of the Confidential Information or any such information; and
- (b) we or members of the Group may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.

7 Entire Agreement: No Waiver; Amendments, etc

- (a) This letter constitutes the entire agreement between us in relation to your obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- (b) No failure to exercise, nor any delay in exercising, any right or remedy under this letter will operate as a waiver of any such right or remedy or constitute an election to affirm this letter. No election to affirm this letter will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy under this letter.
- (c) The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.

8 Inside information

You acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and you undertake not to use any Confidential Information for any unlawful purpose.

9 Nature of undertakings

The undertakings given by you under this letter are given to us and are also given for the benefit of the Company and each other member of the Group.

10 Third party rights

- (a) Subject to this paragraph 10 and to paragraphs 6 and 9, a person who is not a party to this letter has no right under the *Contracts (Rights of Third Parties) Act 1999* (the **Third Parties Act**) to enforce or to enjoy the benefit of any term of this letter.
- (b) The Relevant Persons may enjoy the benefit of the terms of paragraphs 6 and 9 subject to and in accordance with this paragraph 10 and the provisions of the Third Parties Act.
- (c) Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person to rescind or vary this letter at any time.

11 Governing law and jurisdiction

- (a) This letter (including the agreement constituted by your acknowledgement of its terms) (the **Letter**) and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of the transaction contemplated by this Letter) are governed by English law.
- (b) The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter (including a dispute relating to any non-contractual obligation arising out of or in connection with either this Letter or the negotiation of the transaction contemplated by this Letter).

12 Bail-In

It is agreed that, notwithstanding any other term of any agreement, arrangement or understanding between us, each of us acknowledges and accepts that any liability either of us has to the other under or in connection with this letter may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of this letter to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

13 Definitions and construction

- (a) In this letter (including the acknowledgement set out below) terms defined in the Agreement shall, unless the context otherwise requires, have the same meaning and:

Article 55 BRRD means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms (as amended or re-enacted).

Bail-In Action means the exercise of any Write-down and Conversion Powers.

Bail-In Legislation means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time[; and
- (b) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation].

Confidential Information means all information relating to the Company, any Obligor, the Group, the Finance Documents, the Facility and/or the Acquisition which is provided to you in relation to the Finance Documents or the Facility by us or any of our affiliates or 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:

- (a) is or becomes public information other than as a direct or indirect result of any breach by you of this letter; or
- (b) is identified in writing at the time of delivery as non-confidential by us or our advisers; or
- (c) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you after that date, from a source which is, as far as you are aware, unconnected with the Group and which, in either case, as far as you are aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

EEA Member Country means any member state of the European Union, Iceland, Liechtenstein and Norway.

EU Bail-In Legislation Schedule means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

Group means the Company and its subsidiaries for the time being (as such term is defined in the *Companies Act 2006*).

Permitted Purpose means considering and evaluating whether to enter into the Acquisition.

Resolution Authority means any body which has authority to exercise any Write-down and Conversion Powers.

Write-down and Conversion Powers means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule[;
- (b) in relation to any other applicable Bail-In Legislation:
 - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (1) any similar or analogous powers under that Bail-In Legislation.]
- (c) Any reference to 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.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

For and on behalf of

[Seller]

To: [Seller]

The Company and each other member of the Group

We acknowledge and agree to the above:

For and on behalf of

[Potential Purchaser]

Schedule 10 Timetables

Delivery of a duly completed Utilisation Request (clause 5.1 (<i>Delivery of a Utilisation Request</i>))	Five Business Days before the Utilisation Date
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Schedule 11 Form of Loan Note Deed Poll

Loan Note Deed Poll

Metals Acquisition Corp. (Australia) Pty Ltd
as issuer of Loan Notes

Dated 2023

Borrower

Name Metals Acquisition corp. (Australia) Pty Ltd as issuer of Loan Notes

It is agreed:

1 Definitions and interpretation

1.1 Definitions

The following definitions and (unless defined below) definitions in the Subscription Agreement apply in this Deed Poll unless the context requires otherwise.

Lender means a person listed in Part 2 (*The Original Lender*) of Schedule 1 (*The Original Parties*) to the Subscription Agreement or subsequently inscribed in the Register as the holder of a Loan Note which has not ceased to be a party to the Subscription Agreement in accordance with the terms of the Subscription Agreement;

Loan Notes means the rights of a Lender under this Deed Poll, title to which are recorded in and evidenced by an inscription in the Register; and

Subscription Agreement means the loan note subscription agreement so entitled dated [****] between the Borrower, Sprott Resource Lending Corp. as Agent and Security Trustee and others.

1.2 Interpretation

Clause 1.2 (*Construction*) of the Subscription Agreement applies in this Deed Poll as if references to “this Agreement” were to “this Deed Poll”.

2 Rights of Lenders

This Deed Poll is a deed poll. Each Finance Party has the benefit of this Deed Poll and can enforce it even if not in existence at the time this Deed Poll is executed.

3 Creation of Loan Notes

By this Deed, the Borrower creates Loan Notes on the date of this Deed Poll in favour of each Lender with an aggregate principal amount outstanding from time to time equal to the Principal Outstanding of the Loan at such time as recorded in the Register.

4 Acknowledgement of debt

The Borrower acknowledges that it is indebted to the Lenders for the principal amount outstanding of the Loan Notes from time to time (and that the principal amount outstanding of the Loan Notes from time to time will be equal to the Principal Outstanding of the Loan at such time), as recorded in the Register.

5 Nature and status of Loan Notes

5.1 Constitution and title

The Loan Notes are constituted by this Deed Poll and inscription in the Register. Title to them is conclusively evidenced for all purposes by inscription in the Register subject to rectification for fraud or error. No certificate or other evidence of title to a Loan Note will be issued by or on behalf of the Borrower unless the Borrower determines otherwise or is required to do so by law.

5.2 Status

The Loan Notes rank equally among themselves and with all other unsecured, unsubordinated debt of the Borrower.

5.3 Transfer

The Loan Notes are transferable only in accordance with the Subscription Agreement.

5.4 Guarantee

The Loan Notes have the benefit of the guarantee and indemnity in clause 17 (*Guarantee*) of the Subscription Agreement.

6 Interest

6.1 Calculation of interest

The rate of interest on the Loan for any day during an Interest Period is calculated in accordance with clause 9.1 (*Calculation of interest*) of the Subscription Agreement.

6.2 Payment of interest

The Borrower shall pay accrued interest on the Loan on each Interest Payment Date in accordance with clause 9.2 (*Payment of interest*) of the Subscription Agreement.

6.3 Default interest

If an Obligor fails:

- (a) to pay any amount payable by it under a Finance Document on its due date; or
- (b) capitalise any amount payable by it under this Deed Poll in accordance with clause 6.2 (*Payment of interest*) or clause 9.2(b) or 9.2(d) (*Payment of interest*) of the Subscription Agreement,

interest shall accrue on the overdue amount in accordance with clause 9.3 (*Default interest*) of the Subscription Agreement.

7 Repayment

The Borrower shall repay the Principal Outstanding under the Facility, together with all accrued but unpaid interest, and all other amounts accrued or outstanding under the Finance Documents in accordance with clause 6 (*Repayment*) of the Subscription Agreement.

8 Mandatory prepayment

The Borrower will make repayments required of it under clause 7 (*Prepayment and Cancellation*) of the Subscription Agreement.

9 Tax gross up and indemnities

Amounts payable by the Borrower are increased, and the Borrower will indemnify the Lenders, as required by clause 12 (*Tax Gross-Up and Indemnities*) of the Subscription Agreement.

10 Increased costs

The Borrower will pay any amounts required by clause 13.1 (*Increased Costs*) of the Subscription Agreement.

11 Payments

Each Borrower agrees to make all payments under a Loan Note in accordance with clause 34 (*Payment Mechanics*) of the Subscription Agreement.

12 Events of default

If the Agent makes a declaration under:

- (a) clause 25.25(a)(ii) (*Acceleration*) of the Subscription Agreement, the Borrowers will prepay the outstanding principal amount of each Loan evidenced by the Loan Notes, all capitalised and accrued interest and all other amounts accrued under the Finance Documents; or
- (b) clause 25.25(a)(iii) (*Acceleration*) of the Subscription Agreement, the Loans will immediately be repayable on demand by the Agent on the instructions of the Majority Lenders together with all capitalised and accrued interest and all other amounts accrued under the Finance Documents.

13 Notices

Clause 37 (*Notices*) of the Subscription Agreement applies to this Deed Poll.

14 Governing law

This Deed Poll and the Loan Notes are governed by New South Wales law.

15 Jurisdiction

- (a) The courts having jurisdiction in New South Wales have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed Poll or the Loan Notes (including a dispute regarding the existence, validity or termination of this Deed Poll or the Loan Notes) (a **Dispute**).
- (b) The Parties agree that those courts are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Notwithstanding clause 15(a), no Finance Party or Beneficiary shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties and the Beneficiaries may take concurrent proceedings in any number of jurisdictions.

[Insert signature page]

Schedule 12 [Not used]

Schedule 13 Reference Rate Terms

Choice of Term Fallback Option

Central Bank Rate will apply as a fallback.

Definitions

Additional Business Days An RFR Banking Day.

Alternative Term Rate None specified.

Alternative Term Rate Adjustment

None specified.

Break Costs

An amount reasonably determined by a Lender to be incurred because of the liquidation or re-employment of deposits or other funds acquired or contracted for by that Lender to fund or maintain the Loan or amount (including loss of margin) and because of the reversing or termination of any agreement or arrangement entered into by that Lender to hedge, fix or limit its effective cost of funding or maintaining the Loan or amount.

Business Day Conventions (definition of **Interest Period** and **Month**:

- (a) If any period is expressed to accrue by reference to a Month or any number of Months then, in respect of the last Month of that period:
- (i) subject to paragraph (iii), 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;
 - (ii) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
 - (iii) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.
- (b) If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

Central Bank Rate

- (a) The short-term interest rate target set by the US Federal Open Market Committee as published by the Federal Reserve Bank of New York from time to time; or
- (b) if that target is not a single figure, the arithmetic mean of:
- (i) the upper bound of the short-term interest rate target range set by the US Federal Open Market Committee and published by the Federal Reserve Bank of New York; and
 - (ii) the lower bound of that target range.

Primary Term Rate

The three-month Term SOFR reference rate administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period published (before any correction, recalculation or republication by the administrator) by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate).

Quotation Day

Two Additional Business Days before the first day of the relevant Interest Period (unless market practice differs in the relevant syndicated loan market, in which case the Quotation Day will be determined by the Agent in accordance with that market practice (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days)).

Quotation Time

The Quotation Day prior to 5:00 p.m.(New York time).

Relevant Market

The market for overnight cash borrowing in USD collateralised by US Government securities.

Reporting Day

- (a) Subject to paragraph (b) below, the Quotation Day.
- (b) If the Term Reference Rate is, or is based on the Central Bank Rate, the date falling one Business Day after the Quotation Day.

RFR Banking Day

Any day other than:

- (a) a Saturday or Sunday; and
- (b) a day on which the Securities Industry and Financial Markets Association (or any successor organisation) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities.

Schedule 14 Form of environmental and social governance checklist

Sprott Lending Fund ESG Score Card – H2 2022			
Name of Company:		Date of Survey:	
Name of Mine / Project:			
Topic	Environmental Questions	Yes/No	Notes

Statutory Compliance	Does the company have a policy to comply with all relevant permits, local environmental laws, regulations and standards?		
	Has the company obtained all relevant environmental permits and are they up to date?		
Risk Management	Does the company have a risk management process to assess the environmental risks arising from its operations?		
Emergency Management Plan	Does the Company have an Emergency Management Plan to guide the response to an environmental incident?		
Environmental Track Record	Does the company record all serious environmental incidents and conduct full investigations?		
	Has the company paid any charges, fines or penalties for non-compliance with environmental regulations and standard within the last three years?		
Discharges	Are discharges (quality and quantity) and pollution prevention measures monitored and compliant with your permits, local laws, regulations and standards?		

Land Clearance	Are your land clearances well managed, including thorough consultations with local authorities and affected communities, and compliant with your permits?		
Tailings Management	Are your Tailings Management Facilities compliant with your permits? If not, please elaborate.		
	In the past six months, have you modified your Tailings Management Facilities (beyond the original intend scope) or made material changes?		
	In the past six months, have your Tailings Management Facilities been inspected by the Engineer of Record or a regulatory authority? If yes, what were the findings?		
Topic	Social Questions	Yes/No	Notes
Labor Law	Are local labour laws, regulations and standards effective and are they enforced by the local authorities?		
Child Labor	Is the company adhering to local minimum working age regulations?		
Social Impact	Has the company conducted a social impact assessment?		
Topic	Governance Questions	Yes/No	Notes
Business Integrity	Is there a designated person at the company with responsibility for managing compliance issues, ethics, and potential conflicts of interest?		
	Does the company have a code of ethics?		
	Does the company have a whistleblower policy?		

Human Resources	Does the company have an HR policy that informs workers of their rights and conditions of employment?		
	Does the company have an appropriate health and safety policy for the health and safety risks of its operations?		
Health & Safety	Has the company paid charges, fines or penalties for non-compliance with health and safety regulations in the last 3 years?		
	Does the company record accidents and conduct investigations of any serious accidents?		

Schedule 16 Tenements

No.	Tenement	Holder	Expiration
1.	Consolidated Mining Lease No 5 (1992)	Target	24 June 2028
2.	Exploration Licence 5693 (1992)	Target	7 February 2027
3.	Exploration Licence 5983 (1992)	Target	30 August 2027
4.	Exploration Licence 6223 (1992)	Target has 0% legal interest and 90% beneficial interest.	5 April 2023
5.	Exploration Licence 6907 (1992)	Target has 100% legal interest and 90% beneficial interest.	11 October 2027
6.	Mining Purpose Lease 1093 (1906)	Target	5 February 2029
7.	Mining Purpose Lease 1094 (1906)	Target	5 February 2029
8.	Exploration Lease (Application) 6565 (and any resulting tenement arising from it)	Target	As applicable

Schedule 17 Real Property

Part 1 Freehold Property

No.	Property Details (Land, Certificate of Title, Address)	Registered Proprietor
1.	Lot 2 in Deposited Plan 247893 2/247893 16 Monaghan Street, Cobar	Target
2.	Lot 399 in Deposited Plan 43571 399/43571 49 Elizabeth Crescent, Cobar	Target
3.	Lot 48 in Deposited Plan 220704 48/220704 49 Elizabeth Crescent, Cobar	Target
4.	Lot 49 in Deposited Plan 220704 49/220704 49 Elizabeth Crescent, Cobar	Target
5.	Lot 1 of Section 15 in Deposited Plan 758254 1/15/758254 51 Elizabeth Crescent, Cobar	Target
6.	Lot 16 in Deposited Plan 792294 16/792294 26 Jones Drive, Cobar	Target
7.	Lot 13 in Deposited Plan 793808 13/793808 25 Bathurst Street, Cobar	Target
8.	Lot 70 in Deposited Plan 860711 70/860711 13 Wood Street, Cobar	Target
9.	Lot 60 in Deposited Plan 860711 60/860711 8 Wood Street, Cobar	Target
10.	Lot 8 in Deposited Plan 260360 8/260360 2 Rosewood Place, Cobar	Target

No.	Property Details (Land, Certificate of Title, Address)	Registered Proprietor
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11.	Lot 42 in Deposited Plan 792294 42/792294 5 Jandra Crescent, Cobar	Target
12.	Lot 2 in Deposited Plan 262665 2/262665 18 Belagoy Street, Cobar	Target
13.	Lot 22 in Deposited Plan 806636 22/806636 17 Acacia Drive, Cobar	Target
14.	Lot 10 in Deposited Plan 792294 10/792294 21 Jones Drive, Cobar	Target
15.	Lot 56 in Deposited Plan 863149 56/863149 4 Bilby Close, Cobar	Target
16.	Lot 16 in Deposited Plan 806636 16/806636 24 Acacia Drive, Cobar	Target
17.	Lot 35 in Deposited Plan 261594 35/261594 7 Brigalow Place, Cobar	Target
18.	Lot 10 in Deposited Plan 860711 10/860711 15 Bannister Court, Cobar	Target
19.	Lot 9 in Deposited Plan 860711 9/860711 15 Bannister Court, Cobar	Target
20.	Lot 1 in Deposited Plan 1115073 1/1115073 2 Duffy Drive, Cobar	Target

No.	Property Details (Land, Certificate of Title, Address)	Registered Proprietor
21.	Lot 10 in Deposited Plan 1115073 10/1115073 10 Clifton Place, Cobar	Target
22.	Lot 2 in Deposited Plan 1115073 2/1115073 4 Duffy Drive, Cobar	Target
23.	Lot 31 in Deposited Plan 1115073 31/1115073 3 Duffy Drive, Cobar	Target
24.	Lot 32 in Deposited Plan 1115073 32/1115073 5 Duffy Drive, Cobar	Target
25.	Lot 33 in Deposited Plan 1115073 33/1115073 7 Duffy Drive, Cobar	Target
26.	Lot 36 in Deposited Plan 1115073 36/1115073 13 Duffy Drive Cobar	Target
27.	Lot 7 in Deposited Plan 1115073 7/1115073 4 Clifton Place, Cobar	Target
28.	Lot 46 in Deposited Plan 1115073 46/1115073 33 Duffy Drive, Cobar	Target
29.	Lot 6 in Deposited Plan 860711 6/860711 12 Bannister Court, Cobar	Target
30.	Lot 38 in Deposited Plan 220704 38/220704 36 Elizabeth Crescent, Cobar	Target

No.	Property Details (Land, Certificate of Title, Address)	Registered Proprietor
31.	Lot 5 in Deposited Plan 860711 5/860711 10 Bannister Court, Cobar	Target
32.	Lot 43 in Deposited Plan 860711 43/860711 27 Nullamut Street, Cobar	Target
33.	Lot 42 in Deposited Plan 860711 42/860711 25 Nullamut Street, Cobar	Target
34.	Lot 122 in Deposited Plan 1057930 122/1057930 28 Prince Street, Cobar	Target
35.	Lot 123 in Deposited Plan 1057930 123/1057930 26 Prince Street, Cobar	Target
36.	Lot 41 in Deposited Plan 847169 41/847169 11 Acacia Drive, Cobar	Target
37.	Lot 33 in Deposited Plan 129492 33/129492 57 Morrison Street, Cobar	Target

Part 2 Project Leases

No.	Property Details (Land, Certificate of Title, Address)	Registered Proprietor
1.	Lease 3667 located on the whole of Lot 1 in Deposited Plan 1186316 (Perpetual lease) 1/1186316 565 Kidman Way, Cobar	Target
2.	Lease 9565 located on the whole of Lot 4277 in Deposited Plan 766965 (Perpetual lease) 4277/766965 465 CSA Access Road, Cobar	Target
3.	Lease 731 located on the whole of Lot 6336 in Deposited Plan 769222 6336/769222 465 CSA Access Road, Cobar	Target
4.	Lease 14587 located on the whole of Lot 1 in Deposited Plan 1105750 1/1105750 465 CSA Access Road, Cobar	Target

Part 3 Water Licences

No.	Licence Details	Registered Proprietor
1.	Water Access Licence 28539	Target as holder
2.	Water Access Licence 28887	Target as holder
3.	Water Access Licence 36334	Cobar Operations Pty Ltd in 16050/41500 share Peak Gold Mines Pty Ltd in 11890/41500 share Target in 13560/41500 as tenants in common.
4.	Water Access Licence 36336	Cobar Operations Pty Ltd in 16050/41500 share Peak Gold Mines Pty Ltd in 11890/41500 share Target in 13560/41500 share as tenants in common.

5.	Water Access Licence 36335	Cobar Operations Pty Ltd in 16050/41500 share Peak Gold Mines Pty Ltd in 11890/41500 share Target in 13560/41500 share as tenants in common.
6.	Water Access Licence 36337	Cobar Operations Pty Ltd in 16050/41500 share Peak Gold Mines Pty Ltd in 11890/41500 share Target in 13560/41500 share as tenants in common.

Signature page

Executed as an agreement.

AGENT

EXECUTED by **Sprott Resource Lending Corp.** in the presence of:

)	
)	
)	
)	
<u>/s/ Corey Posesorski</u>	)	<u>/s/ Jim Grosdanis</u>
Signature of witness	)	Signature of authorised signatory
)	
)	
<u>COREY POSESORSKI</u>	)	<u>JIM GROSDANIS</u>
Name of witness (Block Letters)	)	Name of authorised signatory (Block Letters)
)	
)	
)	
<u>/s/ Baldeep Nagra</u>	)	<u>/s/ Narinder Nagra</u>
Signature of witness	)	Signature of authorised signatory
)	
)	
<u>BALDEEP NAGRA</u>	)	<u>NARINDER NAGRA</u>
Name of witness (Block Letters)	)	Name of authorised signatory (Block Letters)
)	
)	
)	

SECURITY TRUSTEE

EXECUTED by **Sprott Resource Lending Corp.** in the presence of:

)	
)	
)	
)	
<u>/s/ Corey Posesorski</u>	)	<u>/s/ Jim Grosdanis</u>
Signature of witness	)	Signature of authorised signatory
)	
)	
<u>COREY POSESORSKI</u>	)	<u>JIM GROSDANIS</u>
Name of witness (Block Letters)	)	Name of authorised signatory (Block Letters)
)	
)	
<u>/s/ Baldeep Nagra</u>	)	<u>/s/ Narinder Nagra</u>
Signature of witness	)	Signature of authorised signatory
)	
)	
<u>BALDEEP NAGRA</u>	)	<u>NARINDER NAGRA</u>
Name of witness (Block Letters)	)	Name of authorised signatory (Block Letters)

THE ARRANGER

EXECUTED by **Sprott Private Resource Lending II (Collector-2), LP**, by its general partner Sprott Private Resource Lending LLC in the presence of:

)
)

/s/ Michael McMullen

Signature of director

MICHAEL MCMULLEN

Name of director (block letters)

THE ORIGINAL GUARANTORS

EXECUTED for **METALS ACQUISITION CORP** by:

/s/ Michael McMullen

Signature of director

MICHAEL MCMULLEN

Name of director (block letters)

EXECUTED for **METALS ACQUISITION LIMITED** by:

/s/ Michael McMullen

Signature of director

MICHAEL MCMULLEN

Name of director (block letters)

CERTAIN CONFIDENTIAL INFORMATION (MARKED BY BRACKETS AS “[*]”) HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED.**

SUBSCRIPTION AGREEMENT

This SUBSCRIPTION AGREEMENT (this “Subscription Agreement”) is entered into on March 10, 2023, by and among Metals Acquisition Limited, a private limited company newly incorporated under the laws of Jersey, Channel Islands (the “Issuer”), Metals Acquisition Corp., a Cayman Islands exempted company (the “Company”), Sprott Private Resource Lending II (Collector), LP (“Equity Subscriber”) and Sprott Private Resource Lending II (Collector-2), LP (“Warrant Subscriber”).

WHEREAS, pursuant to, and upon the terms and subject to the conditions set forth in, the Share Sale Agreement dated as of March 17, 2022, as amended by the Deed of Consent and Covenant, dated as of November 22, 2022 (as may be amended, supplemented, or otherwise modified from time to time, the “Share Sale Agreement”), by and among the Issuer, the Company, Metals Acquisition Corp. (Australia) Pty Ltd, an Australian private company (“MAC-Sub”) and Glencore Operations Australia Pty Limited, an Australian private company (“Glencore”), the following transactions (collectively, the “Transaction”) will occur on the Closing Date (as defined below), subject to the consummation of the Merger (as defined below): (i) MAC-Sub will acquire from Glencore 100% of the issued share capital of Cobar Management Pty Limited, an Australian private company (“CMPL”); (ii) the Issuer and/or the Company will pay at least \$775,000,000 (with the potential to be scaled up to \$875,000,000 depending on equity demand) to Glencore; (iii) the Issuer will issue up to 10,000,000 of the Issuer’s ordinary shares of a par value of \$0.0001 per share (the “Ordinary Shares”) to Glencore (with Glencore having the option to scale down to none subject to the Company and the Issuer raising sufficient equity); (iv) Glencore will be entitled to a \$75,000,000 deferred cash payment tied to a future equity raise, which may be converted into additional equity; (v) Glencore will be entitled to two separate \$75,000,000 contingent payments tied to future copper prices; and (vi) the Issuer and MAC-Sub will enter into a net smelter royalty pursuant to which after the Closing (as defined below), CMPL will pay to Glencore a royalty of 1.5% of all net smelter copper concentrate produced from the mining tenure held by CMPL at the time of the Closing; and

WHEREAS, in connection with the Transaction, pursuant to that certain Plan of Merger (the “Plan of Merger”), prior to the Closing Date (the “Effective Time”), the Company will be merged with and into the Issuer (the “Merger”), with the Issuer continuing as the surviving company (the “Issuer”) and CMPL being an indirect subsidiary of the Issuer following the Transaction; and

WHEREAS, in connection with the Transaction, MAC-Sub has entered into a loan note subscription agreement dated March 10, 2023 (the “Mezzanine Facility Agreement”) with Sprott Private Resource Lending II (Collector-2), LP (the “Mezzanine Lender”), pursuant to which the Mezzanine Lender has agreed to make available to MAC-Sub a \$135,000,000 mezzanine debt facility (the “Mezzanine Facility”); and

WHEREAS, in connection with the Transaction, Equity Subscriber desires to subscribe for and purchase from the Issuer, immediately prior to or substantially concurrently with, and contingent upon, the consummation of the Transaction, that number of the Ordinary Shares, set forth on the signature page hereto (the “Subscribed Shares”) for a purchase price of \$10.00 per share (the “Per Share Subscription Price” and the aggregate of such Per Share Subscription Price for all Subscribed Shares being referred to herein as the “Subscription Amount”), and the Issuer desires to issue and sell to Equity Subscriber the Subscribed Shares in consideration of the payment of the Subscription Amount by or on behalf of Equity Subscriber to the Issuer; and

WHEREAS, substantially concurrently with and following the execution of this Subscription Agreement, the Issuer will enter into subscription agreements (the “Other Subscription Agreements”) and, together with this Subscription Agreement, the “Subscription Agreements”) with certain other accredited investors (the “Other Subscribers”) and, together with Equity Subscriber, the “Equity Subscribers”), which are on substantially the same terms as the terms of this Subscription Agreement (other than (i) the amount of Ordinary Shares to be subscribed for and purchased by the Other Subscribers and (ii) the Warrants (as defined below), which are not being subscribed for by the Other Subscribers), pursuant to which such investors shall agree to purchase on the closing date of the Transaction (the “Closing Date”) Ordinary Shares (the “Other Subscribed Shares”) and, together with the Subscribed Shares, the “Aggregate Subscribed Shares”).

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties and covenants, and subject to the conditions, herein contained, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

1. Subscription. Subject to the terms and conditions hereof, Equity Subscriber hereby subscribes for and agrees to purchase at the Closing (as defined below), and the Issuer hereby agrees to issue and sell to Equity Subscriber, upon the payment of the Subscription Amount, the Subscribed Shares (such subscription and issuance, the “Subscription”). The Issuer hereby expressly covenants and agrees that the Subscription Amount shall be used exclusively for the Transaction or after the consummation thereof by the Issuer and its subsidiaries (including CMPL) for working capital and other corporate purposes.

2. Closing.

(a) The consummation of the Subscription (the “Closing”) shall be contingent upon the Merger, and shall be contingent upon and occur on the Closing Date immediately prior to or concurrently with the consummation of the Transaction.

(b) At least fifteen (15) Business Days before the anticipated Closing Date, the Issuer shall deliver written notice to Equity Subscriber (the “Closing Notice”) specifying (i) the anticipated Closing Date and (ii) the wire instructions for delivery of the Subscription Amount to the Issuer. No later than three (3) Business Days after receiving the Closing Notice, Equity Subscriber shall deliver to the Issuer such information as is reasonably requested in the Closing Notice in order for the Issuer to issue the Subscribed Shares to Equity Subscriber. Ten (10) Business Days prior to the expected Closing Date specified in the Closing Notice, Equity Subscriber shall deliver to the Issuer, the Subscription Amount in cash via wire transfer to the account specified in the Closing Notice. At the Closing, the Issuer shall issue the Subscribed Shares to Equity Subscriber and cause the Subscribed Shares to be registered in book entry form, free and clear of any liens or other restrictions (other than those arising under this Subscription Agreement or state or federal securities laws), in the name of Equity Subscriber (or its nominee in accordance with its delivery instructions) or to a custodian designated by Equity Subscriber, as applicable. In the event that the consummation of the Transaction does not occur within ten (10) Business Days after the anticipated Closing Date specified in the Closing Notice, the Issuer shall promptly (but in no event later than ten (10) Business Days after the anticipated Closing Date specified in the Closing Notice) return the funds so delivered by Equity Subscriber to the Issuer by wire transfer in immediately available funds to the account specified by Equity Subscriber; provided that, unless this Subscription Agreement has been validly terminated pursuant to Section 7 hereof, neither the failure of the Closing to occur on the Closing Date specified in the Closing Notice nor such return of funds shall (x) terminate this Subscription Agreement, (y) be deemed to be a failure of any of the conditions to Closing set forth in this Section 2, or (z) otherwise relieve any party of any of its obligations hereunder, including Equity Subscriber’s obligation to redeliver the Subscription Amount and purchase the Subscribed Shares at the Closing in the event the Issuer delivers a subsequent Closing Notice. For the purposes of this Subscription Agreement, “Business Day” means any day other than a Saturday, Sunday or a day on which the Federal Reserve Bank of New York is closed. Prior to or at the Closing, Equity Subscriber and Warrant Subscriber shall deliver to the Company a duly completed and executed Internal Revenue Service Form W-9 or appropriate Form W-8.

(c) The Closing shall be subject to the satisfaction or valid waiver (to the extent a valid waiver is capable of being issued) by the party (the Issuer and the Company, on the one hand, or Equity Subscriber, on the other) entitled to the benefit thereof, of the conditions that, on or prior to the Closing Date:

(i) the Subscribed Shares shall have been approved for listing on the New York Stock Exchange (the “NYSE”) or the Nasdaq Stock Market LLC (“Nasdaq”), subject to official notice of issuance, and no suspension of the qualification of the Subscribed Shares for offering or sale or trading on NYSE or Nasdaq, or, to the Issuer’s knowledge, initiation or threatening of any proceedings for any of such purposes, shall have occurred;

(ii) all conditions precedent to the closing of the Transaction set forth in the Share Sale Agreement, including, without limitation, the required approval of the Company’s shareholders, shall have been satisfied (as determined by the parties to the Share Sale Agreement, and other than those conditions which, by their nature, are to be satisfied at the closing of the Transaction, but subject to satisfaction or waiver thereof by the party entitled to the benefit thereof under the Share Sale Agreement, including to the extent that any such condition is dependent upon the consummation of the purchase and sale of the Aggregate Subscribed Shares pursuant to the Subscription Agreements) or waived in writing by the party entitled to the benefit thereof under the Share Sale Agreement; and

(iii) no governmental authority shall have enacted, issued, promulgated, enforced or entered any judgment, order, law, rule or regulation (whether temporary, preliminary or permanent) which is then in effect and has the effect of making consummation of the transactions contemplated hereby illegal or otherwise restraining, prohibiting or enjoining consummation of the transactions contemplated hereby (except in the case of a governmental authority located outside the United States where such judgment, order, law, rule or regulation would not be reasonably expected to have a Company Material Adverse Effect (as defined below)).

(d) The obligation of each of the Issuer and the Company to consummate the Closing shall be subject to the satisfaction or valid waiver by the Issuer and the Company of the additional conditions that, on or prior to the Closing Date:

(i) all representations and warranties of Equity Subscriber and Warrant Subscriber contained in this Subscription Agreement are true and correct in all material respects at and as of the Closing Date (other than (x) representations and warranties that are qualified as to materiality or Subscriber Material Adverse Effect (as defined below), which representations and warranties shall be true in all respects or (y) representations and warranties that speak as of a specified earlier date, which representations and warranties shall be true and correct in all material respects (or, if qualified by materiality or Subscriber Material Adverse Effect, which representations shall be true and correct in all respects) as of such specified date), in each case without giving effect to the consummation of the Transaction, and consummation of the Closing shall constitute a reaffirmation by Equity Subscriber and Warrant Subscriber of each of the representations and warranties of Equity Subscriber and Warrant Subscriber contained in this Subscription Agreement as of the Closing;

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(ii) Equity Subscriber shall have wired the Subscription Amount in accordance with Section 2(b) of this Subscription Agreement and otherwise performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Subscription Agreement to be performed, satisfied or complied with by it at or prior to the Closing; and

(iii) Equity Subscriber and Warrant Subscriber shall have provided to the Issuer and the Company the information requested in Annex A hereto.

(e) The obligation of Equity Subscriber to consummate the Closing shall be subject to the satisfaction or valid waiver in writing by Equity Subscriber of the additional conditions that, on or prior to the Closing Date:

(i) all conditions precedent to the closing of the Mezzanine Facility set forth in the Mezzanine Facility Agreement, have been satisfied (as determined by the parties to the Mezzanine Facility Agreement, and other than those conditions which, by their nature, are to be satisfied at the closing of the Mezzanine Facility, but subject to satisfaction or waiver thereof by the party entitled to the benefit thereof under the Mezzanine Facility Agreement, including to the extent that any such condition is dependent upon the consummation of the purchase and sale of the Aggregate Subscribed Shares pursuant to the Subscription Agreements) or waived in writing by the party entitled to the benefit thereof under the Mezzanine Facility Agreement; and

(ii) all representations and warranties of the Issuer and the Company contained in this Subscription Agreement are true and correct in all material respects at and as of the Closing Date (other than (A) representations and warranties that are qualified as to materiality or Company Material Adverse Effect (as defined below), which representations and warranties shall be true in all respects or (B) representations and warranties that speak as of a specified earlier date, which representations and warranties shall be true and correct in all material respects (or, if qualified by materiality or Company Material Adverse Effect, which representations shall be true and correct in all respects) as of such specified date), in each case without giving effect to the consummation of the Transaction, and consummation of the Closing shall constitute a reaffirmation by the Issuer and the Company of each of the representations and warranties of the Issuer and the Company, respectively, contained in this Subscription Agreement as of the Closing; provided that in the event this condition would otherwise fail to be satisfied as a result of a breach of one or more of the representations and warranties of the Issuer or the Company contained in this Subscription Agreement and the facts underlying such breach would also cause a condition to Glencore’s obligations under the Share Sale Agreement to fail to be satisfied, this condition shall nevertheless be deemed satisfied in the event Glencore waives such condition with respect to such breach under the Share Sale Agreement;

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(iii) the Issuer and the Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Subscription Agreement to be performed, satisfied or complied with by them at or prior to the Closing, except where the failure of such performance, satisfaction or compliance would not or would not reasonably be expected to materially and adversely affect the economic benefits to Equity Subscriber or Warrant Subscriber under this Subscription Agreement; and

(iv) there shall have been no amendment or modification to the Share Sale Agreement that materially and adversely affects the economic benefits to Equity Subscriber or Warrant Subscriber under this Subscription Agreement without having received Equity Subscriber’s and Warrant Subscriber’s prior written consent.

3. Issuer Representations and Warranties. For the purposes of this Section 3, the term “Issuer” shall refer to (i) the Issuer as of the date hereof, and (ii) for the purposes of the representations contained in subsections (f), (h) and (k) of this Section 3 and to the extent such representations and warranties are made as of the Closing Date, the combined company after giving effect to the Transaction as of the Closing Date. The Issuer represents and warrants to Equity Subscriber, Warrant Subscriber and the Placement Agents (as defined below) that as of the date hereof:

(a) The Issuer (i) has been duly incorporated and is validly existing as a private limited company in good standing under the laws of Jersey, Channel Islands, (ii) has the requisite corporate power and authority to own, lease and operate its properties, to carry on its business as it is now being conducted and to enter into and perform its obligations under this Subscription Agreement, and (iii) is duly licensed or qualified to conduct its business and, if applicable, is in good standing under the laws of each jurisdiction (other than its jurisdiction of incorporation) in which the conduct of its business or the ownership of its properties or assets requires such license or qualification, except, with respect to the foregoing clause (iii), where the failure to be in good standing would not reasonably be expected to have a Company Material Adverse Effect.

(b) As of the Closing Date, the Subscribed Shares will be duly authorized and, when issued and delivered to Equity Subscriber against full payment therefor in accordance with the terms of this Subscription Agreement, will be validly issued.

(c) As of the Closing Date, the Warrants (as defined below) will be duly authorized and, when issued and delivered to Warrant Subscriber against full payment therefor in accordance with the terms of this Subscription Agreement, will be validly issued and constitute the valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors generally and by the availability of equitable remedies.

(d) The Subscribed Shares and the Warrants are not, and following the Closing, will not be, subject to any Transfer Restriction. The term “Transfer Restriction” means any condition to or restriction on the ability of the undersigned to pledge, sell, assign or otherwise transfer the Subscribed Shares or Warrants under any organizational document, policy or agreement of, by or with the Issuer, but excluding (i) the restrictions on transfer described in Section 5(d) of this Subscription Agreement with respect to the status of the Ordinary Shares as “restricted securities” pending their registration for resale under the Securities Act of 1933, as amended (the “Securities Act”), in accordance with the terms of this Subscription Agreement, and (ii) compliance with routine transfer registration provisions under the Issuer’s organizational documents and agreements and policies of the Issuer’s transfer agent and (iii) restrictions on the resale of the Subscribed Shares under the applicable securities laws of the Province of Ontario.

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(e) This Subscription Agreement has been duly authorized, executed and delivered by the Issuer, and assuming the due authorization, execution and delivery of the same by Equity Subscriber and Warrant Subscriber, this Subscription Agreement shall constitute the valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors generally and by the availability of equitable remedies.

(f) The execution and delivery of this Subscription Agreement, the issuance and sale of the Subscribed Shares and the Warrants and the compliance by the Issuer with all of the provisions of this Subscription Agreement and the consummation of the transactions contemplated herein will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of the Issuer pursuant to the terms of (i) any indenture, mortgage, deed of trust, loan agreement, lease, license or other agreement or instrument to which the Issuer is a party or by which the Issuer is bound or to which any of the property or assets of the Issuer is subject; (ii) the organizational documents of the Issuer; or (iii) any statute or any judgment, order, rule or regulation of any court or governmental agency or body, domestic or foreign, having jurisdiction over the Issuer or any of its properties that, in the case of clauses (i) and (iii), would reasonably be expected to have a Company Material Adverse Effect.

(g) Assuming the accuracy of all of Equity Subscriber’s and Warrant Subscriber’s representations and warranties set forth in Section 5 of this Subscription Agreement, the Issuer is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority, self-regulatory organization or other person in connection with the execution, delivery and performance of this Subscription Agreement (including, without limitation, the issuance of the Subscribed Shares and Warrants), other than (i) filings required by applicable state and Ontario securities laws, (ii) filings with the United States Securities and Exchange Commission (the “Commission”), including the filing of the Registration Statement pursuant to Section 6 below, (iii) filings required by the NYSE or, in the event the Company becomes listed on Nasdaq, Nasdaq, including with respect to obtaining approval of the Company’s shareholders, (iv) filings required to consummate the Transaction as provided under the Share Sale Agreement, (v) any filing of notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, or any law or regulation of any other jurisdiction related to competition or merger control, if applicable, (vi) those that will be obtained, made or given, as applicable, on or prior to the Closing, and (vii) consents, waivers, authorizations, orders, notices or filings, the failure of which to obtain would not reasonably be expected to have a Company Material Adverse Effect or have a material adverse effect on the Issuer’s legal authority to consummate the transactions contemplated hereby, including the issuance and sale of the Subscribed Shares and Warrants.

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(h) As of the date hereof, the entire authorized share capital of the Company consists of 221,000,000 Ordinary Shares, consisting of 200,000,000 Class A ordinary shares, 20,000,000 Class B ordinary shares and 1,000,000 preference shares. As of the Closing Date (and immediately after the consummation of the Transaction), the entire authorized share capital of the Issuer will consist of 220,000,000 Ordinary Shares and 1,000,000 preference shares of a par value of \$0.0001 per share.

(i) Assuming the accuracy of all of Equity Subscriber’s and Warrant Subscriber’s representations and warranties set forth in Section 5 of this Subscription Agreement, no registration under the Securities Act is required for the offer and sale of the Subscribed Shares and Warrants by the Issuer to Equity Subscriber and Warrant Subscriber and the Subscribed Shares and the Warrants are not being offered in a manner involving a public offering under, or in a distribution in violation of, the Securities Act or any state securities law.

(j) Neither the Issuer nor any person acting on its behalf has engaged or will engage in any form of general solicitation or general advertising (within the meaning of Regulation D) in violation of the Securities Act in connection with any offer or sale of the Subscribed Shares and Warrants.

(k) No broker or finder is entitled to any brokerage or finder’s fee or commission from the Issuer solely in connection with the sale of the Subscribed Shares or the Warrants to Equity Subscriber and Warrant Subscriber, respectively.

(l) The Issuer has provided Equity Subscriber and Warrant Subscriber an opportunity to ask questions regarding the Issuer and made available to Equity Subscriber and Warrant Subscriber all the information reasonably available to the Issuer that Equity Subscriber or Warrant Subscriber has reasonably

requested to make an investment decision with respect to the Subscribed Shares or Warrants, as applicable.

(m) Except for such matters as have not had and would not reasonably be expected to have a Company Material Adverse Effect, the Issuer is in compliance with all laws applicable to the conduct of its business. The Issuer has not received any written, or to its knowledge, other communication from a governmental entity that alleges that the Issuer is not in compliance with or is in default or violation of any applicable law, except where such non-compliance, default or violation would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(n) The Issuer has been formed for the purpose of consummating the Merger and, prior to the consummation of the Merger, maintains limited operations and does not employ any employees and does not maintain any employee benefit or stock option or similar equity incentive plans.

(o) The Issuer is as at the date hereof, and will be as at the Closing Date, a “foreign issuer” as defined in Section 2.8 of Ontario Securities Commission Rule 72-503 - *Distributions Outside Canada*.

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(p) The Issuer is not as at the date hereof, and will not be at the Closing Date, a reporting issuer in any jurisdiction of Canada.

4. Company Representations and Warranties. For purposes of this Section 4, the term “Company” shall refer to (i) the Company as of the date hereof, and (ii) for purposes of the representations contained in subsections (d) and (h) of this Section 4 and to the extent such representations and warranties are made as of the Closing Date, the combined company after giving effect to the Transaction as of the Closing Date. The Company represents and warrants to Equity Subscriber, Warrant Subscriber and the Placement Agents (as defined below) that as of the date hereof:

(a) The Company (i) has been duly incorporated and is validly existing as a corporation in good standing under the laws of the Cayman Islands, (ii) has the requisite corporate power and authority to own, lease and operate its properties, to carry on its business as it is now being conducted and to enter into and perform its obligations under this Subscription Agreement, and (iii) is duly licensed or qualified to conduct its business and, if applicable, is in good standing under the laws of each jurisdiction (other than its jurisdiction of incorporation) in which the conduct of its business or the ownership of its properties or assets requires such license or qualification, except, with respect to the foregoing clause (iii), where the failure to be in good standing would not reasonably be expected to have a Company Material Adverse Effect. For purposes of this Subscription Agreement, a “Company Material Adverse Effect” means any event, circumstance, change, development, effect or occurrence (collectively “Effect”) that, individually or in the aggregate with all other Effects, (a) is or would reasonably be expected to be materially adverse to the business, financial condition or results of operations of the Issuer or the Company and its subsidiaries, taken as a whole, *provided, however*, that a reduction or expected reduction in the operating cash flows of the Company of less than \$250,000,000 in any fiscal year shall not be considered a Company Material Adverse Effect; or (b) would prevent, materially delay or materially impede the performance by the Issuer or the Company or its subsidiaries of their respective obligations under this Subscription Agreement, the Share Sale Agreement or the consummation of the Transaction before the Outside Date (as defined below); *provided, however*, that, in the case of clause (a), none of the following (or the effect of any of the following) shall be deemed to constitute, alone or in combination, or be taken into account in the determination of whether, there has been or will be a Company Material Adverse Effect: (i) any change or proposed change in applicable law (including subordinate legislation) or GAAP or IFRS, as applicable (including, in each case, the interpretation thereof) or changes in enforcement policies or official interpretations thereof or decisions of general applicability by any governmental entity, in each case, after the date of this Subscription Agreement; (ii) events, changes or conditions generally affecting the industries or geographic areas in which the Company and its subsidiaries operate, including the copper mining industry generally; (iii) any changes in general economic conditions, including changes in the credit, debt, securities, financial or capital markets (including changes in interest or exchange rates, prices of any security or market index or commodity or any disruption of such markets); (iv) declared or undeclared acts of war, armed hostilities, sabotage, civil unrest, protests, demonstrations, cyberattacks or terrorism, or any escalation or worsening of any such acts of war, armed hostilities, sabotage, civil unrest, protests, demonstrations, cyberattacks or terrorism, or changes in global, national, regional, state or local political or social conditions; (v) any hurricane, tornado, flood, earthquake, mudslide, wildfire, natural disaster, epidemic, disease outbreak, pandemic (including, for the avoidance of doubt, the novel coronavirus, SARS-CoV-2 or COVID-19 and all related measures, strains and sequences) or other acts of God; (vi) any actions taken or not taken by the Issuer or the Company as required by this Subscription Agreement, the Share Sale Agreement or any other agreement executed and delivered in connection with the Transaction and specifically contemplated by the Share Sale Agreement; (vii) a government directive, sanction, order, ban, rule or guideline in relation to any event (including a pandemic); (viii) a strike or industrial dispute which has as its result a national or statewide application; (ix) any fact, matter or circumstance disclosed in writing by or on behalf of Glencore to the Issuer or the Company prior to the date of this Subscription Agreement, (x) the unavailability (at commercially reasonable prices) of critical inputs required for the operation of CMPL’s business supplied by third parties (xi) any change or effect that is cured (including by payment of money) or ceases to exist on or before the Closing Date; (xii) any failure of CMPL and its subsidiaries, taken as a whole to meet any projections, forecasts, guidance, estimates or financial or operating predictions of revenue, earnings, cash flow or cash position (provided, that any Effect underlying such failure (except to the extent otherwise excluded by other clauses in this definition) may be taken into account in determining whether a Company Material Adverse Effect has occurred or would reasonably be expected to occur); or (xiii) any Effect attributable to the announcement or execution, pendency, negotiation, consummation or performance of this Subscription Agreement or the Transaction (including the impact thereof on relationships, contractual or otherwise, with customers, suppliers, employees, licensors, providers, distributors, partners, investors, or other third parties related thereto), except in the cases of clauses (i) through (v), to the extent that the Company is materially and disproportionately affected thereby as compared with other participants in the industry in which the Company operates.

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(b) This Subscription Agreement has been duly authorized, executed and delivered by the Company, and assuming the due authorization, execution and delivery of the same by Equity Subscriber and Warrant Subscriber, this Subscription Agreement shall constitute the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors generally and by the availability of equitable remedies.

(c) The execution and delivery of this Subscription Agreement and the compliance by the Company with all of the provisions of this Subscription Agreement and the consummation of the transactions contemplated herein will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of the Company pursuant to the terms of (i) any indenture, mortgage, deed of trust, loan agreement, lease, license or other agreement or instrument to which the Company is a party or by which the Company is bound or to which any of the property or assets of the Company is subject; (ii) the organizational documents of the Company; or (iii) any statute or any judgment, order, rule or regulation of any court or governmental agency or body, domestic or foreign, having jurisdiction over the Company or any of its properties that, in the case of clauses (i) and (iii), would reasonably be expected to have a Company Material Adverse Effect.

(d) Assuming the accuracy of all of Equity Subscriber’s and Warrant Subscriber’s representations and warranties set forth in Section 5 of this Subscription Agreement, the Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or

registration with, any court or other federal, state, local or other governmental authority, self-regulatory organization or other person in connection with the execution, delivery and performance of this Subscription Agreement, other than (i) filings required by applicable state and Ontario securities laws, (ii) filings with the United States Securities and Exchange Commission (the “Commission”), including the filing of the Registration Statement pursuant to Section 6 below, (iii) filings required by the NYSE or, in the event the Company becomes listed on Nasdaq, Nasdaq, including with respect to obtaining approval of the Company’s shareholders, (iv) filings required to consummate the Transaction as provided under the Share Sale Agreement, (v) any filing of notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, or any law or regulation of any other jurisdiction related to competition or merger control, if applicable, (vi) those that will be obtained, made or given, as applicable, on or prior to the Closing, and (vii) consents, waivers, authorizations, orders, notices or filings, the failure of which to obtain would not reasonably be expected to have a Company Material Adverse Effect or have a material adverse effect on the Company’s legal authority to consummate the transactions contemplated hereby, including the issuance and sale of the Subscribed Shares.

(e) Other than where the failure to timely file would not reasonably be expected to have a Company Material Adverse Effect, as of their respective dates, all reports required to be filed by the Company with the Commission (the “SEC Reports”) complied in all material respects with the applicable requirements in existence as of such dates of the Securities Act and the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and the rules and regulations of the Commission promulgated thereunder, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, as of such dates, in the light of the circumstances under which they were made, not misleading. Except as disclosed in the SEC Reports, the financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing and fairly present in all material respects the financial position of the Company as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, year-end audit adjustments.

(f) Neither the Company nor any person acting on its behalf has engaged or will engage in any form of general solicitation or general advertising (within the meaning of Regulation D) in violation of the Securities Act in connection with any offer or sale of the Subscribed Shares.

(g) No broker or finder is entitled to any brokerage or finder’s fee or commission from the Company solely in connection with the sale of the Subscribed Shares to Equity Subscriber or the sale of the Warrants to the Warrant Subscriber.

(h) The Company has provided Equity Subscriber and Warrant Subscriber an opportunity to ask questions regarding the Company and made available to Equity Subscriber and Warrant Subscriber all the information reasonably available to the Company that Equity Subscriber and Warrant Subscriber has reasonably requested to make an investment decision with respect to the Subscribed Shares and the Warrants.

(i) Except for such matters as have not had and would not reasonably be expected to have a Company Material Adverse Effect, the Company is in compliance with all laws applicable to the conduct of its business. The Company has not received any written, or to its knowledge, other communication from a governmental entity that alleges that the Company is not in compliance with or is in default or violation of any applicable law, except where such non-compliance, default or violation would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(j) As of the date hereof, the Company’s issued and outstanding Class A ordinary shares (the “Company Shares”) are registered pursuant to Section 12(b) of the Exchange Act and listed for trading on the NYSE or Nasdaq. There is no suit, action, claim, proceeding or investigation pending or, to the knowledge of the Company, threatened against the Company by the NYSE or Nasdaq or the Commission with respect to any intention by such entity to deregister the Company Shares or to prohibit or terminate the listing of the Company Shares on the NYSE or Nasdaq, excluding, for the purposes of clarity, the customary ongoing review by the NYSE or Nasdaq in connection with the Transaction.

(k) There are no shareholder agreements, voting trusts or other agreements or understandings to which the Company is a party or by which it is bound relating to the voting of any securities of the Company, other than (1) as set forth in the SEC Reports and (2) as contemplated by the Share Sale Agreement.

(l) The Company has not engaged in any “directed selling efforts” (within the meaning of Regulation S) with respect to the Subscribed Shares, and the Company and its affiliates has complied with the offering restrictions requirement of Regulation S. The Company is a “foreign issuer” as defined in Regulation S.

(m) The Other Subscription Agreements reflect the same Per Share Subscription Price and other terms with respect to the purchase of the Other Subscribed Shares that are no more favorable to the Other Subscribers thereunder than the terms of this Subscription Agreement, other than terms particular to the regulatory requirements of such Other Subscribers or their affiliates or related funds that are mutual funds or are otherwise subject to regulations related to the timing of funding and the issuance of the related Other Subscribed Shares; *provided*, that Equity Subscriber and Warrant Subscriber acknowledge that certain Equity Subscribers purchasing a significant portion of the Aggregate Subscribed Shares have the additional right to receive a number of Class B ordinary shares of the Company from Green Mountain Metals LLC, a Cayman Islands limited liability company and the sponsor of the Company.

5. Equity Subscriber and Warrant Subscriber Representations and Warranties. Equity Subscriber and Warrant Subscriber represent and warrant to the Issuer and the Company and the Placement Agents that as the date hereof:

(a) Each Equity Subscriber and Warrant Subscriber (i) is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation, and (ii) has the requisite power and authority to enter into and perform its obligations under this Subscription Agreement.

(b) This Subscription Agreement has been duly executed and delivered by Equity Subscriber and Warrant Subscriber, and assuming the due authorization, execution and delivery of the same by the Issuer and the Company, this Subscription Agreement shall constitute the valid and legally binding obligation of Equity Subscriber and Warrant Subscriber, enforceable against Equity Subscriber and Warrant Subscriber in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors generally and by the availability of equitable remedies.

(c) The execution and delivery of this Subscription Agreement, the purchase of the Subscribed Shares and the Warrants and the compliance by Equity Subscriber and Warrant Subscriber with all of the provisions of this Subscription Agreement and the consummation of the transactions contemplated herein will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of Equity Subscriber and Warrant Subscriber pursuant to the terms of (i) any indenture, mortgage, deed of trust, loan agreement, lease, license or other agreement or instrument to which Equity Subscriber and Warrant Subscriber are

parties or by which Equity Subscriber and Warrant Subscriber are bound or to which any of the property or assets of Equity Subscriber and Warrant Subscriber are subject; (ii) the organizational documents of Equity Subscriber and Warrant Subscriber; or (iii) any statute or any judgment, order, rule or regulation of any court or governmental agency or body, domestic or foreign, having jurisdiction over Equity Subscriber and Warrant Subscriber or any of its properties that, in the case of clauses (i) and (iii), would reasonably be expected to have a Subscriber Material Adverse Effect. For purposes of this Subscription Agreement, a “Subscriber Material Adverse Effect” means an event, change, development, occurrence, condition or effect with respect to Equity Subscriber or Warrant Subscriber that would reasonably be expected to have a material adverse effect on Equity Subscriber’s or Warrant Subscriber’s ability to timely consummate the transactions contemplated hereby, including the purchase of the Subscribed Shares or the Warrants.

(d) (i) If Equity Subscriber or Warrant Subscriber are located in the United States or is a U.S. person, Equity Subscriber or Warrant Subscriber (A) is a “qualified institutional buyer” (as defined in Rule 144A under the Securities Act) or an institutional “accredited investor” (within the meaning of Rule 501(a)(1), (2), (3), (7), (9) or (12) under the Securities Act), in either case satisfying the applicable requirements set forth on Annex A hereto and an “institutional account” as defined in FINRA Rule 4512(c), and is not an entity formed for the specific purpose of acquiring the Subscribed Shares and is an “institutional account” as defined by FINRA Rule 4512(c) and a sophisticated institutional investor, experienced in investing in private equity transactions and capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) is a sophisticated investor, experienced in investing in private equity transactions and capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, (C) has exercised independent judgment in evaluating its participation in the purchase of the Subscribed Shares or Warrants, (D) is acquiring the Subscribed Shares or Warrants only for its own account and not for the account of others, or if Subscriber is subscribing for the Subscribed Shares as a fiduciary or agent for one or more investor accounts, each owner of such account is a qualified institutional buyer or an institutional accredited investor and Subscriber has full investment discretion with respect to each such account, and the full power and authority to make the acknowledgements, representations and agreements herein on behalf of each owner of each such account, and (E) is not acquiring the Subscribed Shares or Warrants with a view to, or for offer or sale in connection with, any distribution thereof in violation of the Securities Act (and has provided the Company with the requested information on Annex A), and (F) understands that the offering meets the exemptions from filing under FINRA Rules 5123(b)(1)(A), (C) and (J); and (ii) if located outside the United States and not a U.S. person, (A) Equity Subscriber or Warrant Subscriber is acquiring the Subscribed Shares in an “offshore transaction” meeting the requirements of Rule 903 of Regulation S under the Securities Act, (B) Equity Subscriber and Warrant Subscriber understand that the offering meets the exemptions from filing under FINRA Rule 5123(c), (C) Equity Subscriber and Warrant Subscriber are aware that the sale to them is being made in reliance on a private placement exemption from, or in a transaction not subject to, registration under the Securities Act, and the purchaser and the person, if any, for whose account or benefit the purchaser is acquiring the Securities offered pursuant to this Subscription, was located outside the United States and was not a U.S. person at the time (x) the offer was made to it and (y) when the buy order for such Subscribed Shares or Warrants was originated, and continues to be located outside the United States and not to be a U.S. person and has not purchased such Subscribed Shares or Warrants for the account or benefit of any person located in the United States or who is a U.S. person, or entered into any arrangement for the transfer of such Subscribed Shares or Warrants or any economic interest therein to any person located in the United States or any U.S. person, (D) Equity Subscriber and Warrant Subscriber are authorized to consummate the purchase of the Subscribed Shares or Warrants offered pursuant to this Subscription in compliance with all applicable laws and regulations of the jurisdiction where such sales are to be made noting that the Equity Subscriber and Warrant Subscriber are residents in Ontario or subject to the laws of Ontario, is purchasing the Subscribed Shares as principal for its own account, and is an “accredited investor” within the meaning of Ontario Securities Commission Rule 45-501 - *Ontario Prospectus and Registration Exemptions* by virtue of satisfying the indicated criterion as set out in Annex B hereto. In either case, the Subscribed Shares have not been registered under the Securities Act or any other applicable securities laws of any other jurisdiction, are being offered in transactions not requiring registration under the Securities Act, and unless so registered, may not be reoffered, resold or otherwise transferred except in compliance with the registration requirements of the Securities Act or any other applicable securities laws, pursuant to any exemption therefrom or in a transaction not subject thereto. Equity Subscriber and Warrant Subscriber understand that no disclosure or offering document has been prepared by the Placement Agents in connection with the offer and sale of the Subscribed Shares and Warrants. Equity Subscriber understands that the Subscribed Shares may not be offered, resold, transferred, pledged (other than in connection with ordinary course prime brokerage relationships) or otherwise disposed of by Warrant Subscriber absent an effective registration statement under the Securities Act, except (i) to the Company or a subsidiary thereof, (ii) to non-U.S. persons pursuant to offers and sales that occur outside the United States within the meaning of Regulation S under the Securities Act or (iii) pursuant to another applicable exemption from the registration requirements of the Securities Act, and, in each of cases (ii) and (iii), in accordance with any applicable securities laws of the states and other jurisdictions of the United States, and that any book-entry positions or certificates representing the Subscribed Shares and Warrants shall contain the legend set forth in this [Section 5\(d\)](#). Equity Subscriber understand and agree that the Subscribed Shares will be subject to transfer restrictions under applicable securities laws and, as a result of these transfer restrictions, Equity Subscriber may not be able to readily offer, resell, transfer, pledge (other than in connection with ordinary course prime brokerage relationships) or otherwise dispose of the Subscribed Shares and may be required to bear the financial risk of an investment in the Subscribed Shares for an indefinite period of time. Equity Subscriber and Warrant Subscriber understand that they have been advised to consult legal counsel and tax and accounting advisors prior to making any offer, resale, pledge, transfer or disposition of any of the Subscribed Shares and Warrants.

Each book entry for the Subscribed Shares and Warrants shall contain a notation, and each certificate (if any) evidencing the Ordinary Shares and Warrants shall be stamped or otherwise imprinted with legends, in substantially the following form (or to substantially the following effect):

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE (NOTWITHSTANDING THE FOREGOING, THE SECURITIES REPRESENTED HEREBY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES). BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE SUBSCRIBER AGREES FOR THE BENEFIT OF METALS ACQUISITION LIMITED (THE “ISSUER”) THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT AND IS EFFECTIVE AT THE TIME OF SUCH TRANSFER, OR

(C) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY PERMITTED TRANSFER IN ACCORDANCE WITH THE ABOVE, THE COMPANY RESERVES THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS 4 MONTHS AND A DAY AFTER THE LATER OF (i) [*insert the closing date*], AND (ii) THE DATE THE ISSUER BECAME A REPORTING ISSUER IN ANY PROVINCE OR TERRITORY OF CANADA.

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(e) Equity Subscriber and Warrant Subscriber understand and agree that Equity Subscriber and Warrant Subscriber are purchasing the Subscribed Shares and Warrants directly from the Issuer. Equity Subscriber and Warrant Subscriber further acknowledge that there have not been, and Equity Subscriber and Warrant Subscriber hereby expressly and irrevocably acknowledge and agree that they are not relying on, any representations, warranties, covenants or agreements or statements made to either Equity Subscriber or Warrant Subscriber by or on behalf of the Issuer, the Company, Glencore or the Issuer's, the Company's or Glencore's respective affiliates or any of the respective subsidiaries, control persons, officers, directors, employees, partners, agents or representatives, or any other party to the Transaction or any other person or entity (including the Placement Agents), expressly or by implication, (including by omission), other than those representations, warranties, covenants, agreements and statements of the Issuer and the Company expressly set forth in this Subscription Agreement, and Equity Subscriber and Warrant Subscriber are not relying on any other purported representations, warranties, covenants, agreements or statements (including by omission). Equity Subscriber and Warrant Subscriber acknowledge that certain information provided by the Issuer and the Company was based on projections, and such projections were prepared based on assumptions and estimates that are inherently uncertain and are subject to a wide variety of significant business, economic and competitive risks and uncertainties that could cause actual results to differ materially from those contained in the projections. Equity Subscriber and Warrant Subscriber acknowledge that such information and projections were prepared without the participation of the Placement Agents and that the Placement Agents do not assume responsibility for independent verification of, or the accuracy or completeness of, such information or projections. Equity Subscriber and Warrant Subscriber agree that neither the Placement Agents nor any of its affiliates or any of their respective affiliates' control persons, officers, directors or employees, shall be liable (including in contract, tort, under federal or state securities laws or otherwise) to either Equity Subscriber and Warrant Subscriber pursuant to this Subscription Agreement for any action heretofore or hereafter taken or omitted to be taken by any of them in connection with the purchase of the Subscribed Shares or Warrants. On behalf of itself and its affiliates and any of their respective control persons, officers, directors or employees, Equity Subscriber and Warrant Subscriber releases the Placement Agents and any of their respective affiliates in respect of any losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses or disbursements related to this Subscription Agreement or the transactions contemplated hereby. Equity Subscriber and Warrant Subscriber agree not to commence any litigation or bring any claim against the Placement Agents nor any of their affiliates in any court or any other forum which relates to, may arise out of, or is in connection with, the placement of the Ordinary Shares. Equity Subscriber and Warrant Subscriber undertook this investment freely and after obtaining independent legal advice.

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(f) In making its decision to purchase the Subscribed Shares and Warrants, Equity Subscriber and Warrant Subscriber have relied solely upon independent investigation made by Equity Subscriber and Warrant Subscriber and upon the representations, warranties and covenants of the Issuer and the Company expressly set forth herein (and no other representations and warranties). Equity Subscriber and Warrant Subscriber acknowledge and agree that both Equity Subscriber and Warrant Subscriber have received and had adequate time to review such information as Equity Subscriber and Warrant Subscriber deem necessary in order to make an investment decision with respect to the Subscribed Shares and Warrants, including with respect to the Issuer, the Company and the Transaction (including CMPL and its subsidiaries (collectively, the "Acquired Companies")). Equity Subscriber and Warrant Subscriber acknowledge they have conducted their own investigation of the Company, the Subscribed Shares, and Warrants and has not relied on any statements or other information provided by the Placement Agents concerning the Issuer, the Company, the Subscribed Shares, the Warrants or the offer and sale of the Subscribed Shares and Warrants, and has been offered the opportunity to ask questions of the Issuer and the Company and received answers thereto, including on the financial information, as either Equity Subscriber or Warrant Subscriber deemed necessary in connection with their decision to purchase the Subscribed Shares and Warrants. Equity Subscriber and Warrant Subscriber have made their own assessment and are satisfied concerning the relevant tax and other economic considerations relevant to its investment in the Subscribed Shares and Warrants. Without limiting the generality of the foregoing, Equity Subscriber and Warrant Subscriber acknowledge that Equity Subscriber and Warrant Subscriber have reviewed the SEC Reports. Equity Subscriber and Warrant Subscriber represent and agree that Equity Subscriber and Warrant Subscriber and the Equity Subscriber and Warrant Subscriber's professional advisor(s), if any, have had the full opportunity to ask such questions, receive such answers and obtain such information as Equity Subscriber and Warrant Subscriber and such undersigned's professional advisor(s), if any, have deemed necessary to make an investment decision with respect to the Subscribed Shares and Warrants. Equity Subscriber and Warrant Subscriber and agree that none of Citigroup Global Markets Inc., UBS Securities LLC, Canaccord Genuity LLC and Ashanti Capital Pty Ltd., each acting as a placement agent to the Company (collectively, the "Placement Agents"), nor any affiliate of the Placement Agents has provided Equity Subscriber and Warrant Subscriber with any information or advice with respect to the Subscribed Shares and Warrants nor is such information or advice necessary or desired. Neither the Placement Agents nor any of their affiliates have made or make any representation or warranty, whether express or implied, of any kind or character as to the Issuer, the Company or the Acquired Companies or the quality or value of the Subscribed Shares and or the quality or value of the Warrants and the Placement Agents and any of their respective affiliates may have acquired non-public information with respect to the Issuer, the Company or the Acquired Companies which Equity Subscriber and Warrant Subscriber agree need not be provided to it. In connection with the issuance of the Subscribed Shares to Equity Subscriber and with the issuance of the Warrants to Warrant Subscriber, neither the Placement Agents nor any of their affiliates have acted as a financial advisor or fiduciary to neither Equity Subscriber or Warrant Subscriber. Equity Subscriber and Warrant Subscriber agree that neither the Placement Agents nor any of their affiliates or any control persons, officers, directors, employees, partners, agents or representatives of any of the foregoing shall be liable to either Equity Subscriber or Warrant Subscriber for any action heretofore or hereafter taken or omitted to be taken by any of them in connection with Equity Subscriber's and Warrant Subscriber's purchase of the Subscribed Shares and Warrants. Equity Subscriber and Warrant Subscriber understand that the Placement Agents and their directors, officers, employees, representatives and controlling persons have made no independent investigation with respect to the Issuer, the Company or the Subscribed Shares or the Warrants or the accuracy, completeness or adequacy of any information supplied to the Placement Agents by the Issuer and the Company. On behalf of Equity Subscriber, Warrant Subscriber, Equity Subscriber's affiliates and Warrant Subscriber's affiliates, Equity Subscriber and Warrant Subscriber release the Placement Agents and their respective affiliates in respect of any losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses or disbursements related to the Subscription. Equity Subscriber and Warrant Subscriber agree not to commence any litigation or bring any claim against any of the Placement Agents nor any of their affiliates in any court or any other forum which relates to, may arise out of, or is in connection with, the Subscription. This undertaking is given freely and after obtaining independent legal advice.

(g) Equity Subscriber and Warrant Subscriber became aware of this offering of the Subscribed Shares and Warrants solely by means of direct contact between Equity Subscriber, Warrant Subscriber, the Issuer and the Company or by means of contact from the Placement Agents and/or their respective advisors (including, without limitation, attorneys, accountants, bankers, consultants and financial advisors), agents, control persons, representatives, affiliates, directors, officers, managers, members, and/or employees, and/or the representatives of such persons (such parties referred to collectively as “Representatives”). The Subscribed Shares and Warrants were offered to Equity Subscriber and Warrant Subscriber solely by direct contact between Equity Subscriber, Warrant Subscriber, the Issuer and the Company and/or its Representatives. Equity Subscriber and Warrant Subscriber did not become aware of this offering of the Subscribed Shares and Warrants, nor were the Subscribed Shares and Warrants offered to Equity Subscriber and Warrant Subscriber, by any other means, and none of the Issuer, the Company, the Placement Agents or their respective Representatives acted as investment advisor, broker or dealer to Equity Subscriber and Warrant Subscriber. Equity Subscriber and Warrant Subscriber acknowledge that they are not relying upon, and have not relied upon, any statement, representation or warranty made by any person or entity (including, without limitation, the Issuer, the Company, the Placement Agents and/or their respective Representatives), other than the representations and warranties expressly set forth in this Subscription Agreement, in making their investment or decision to invest in the Issuer and the Company. Equity Subscriber and Warrant Subscriber acknowledge that the Issuer and the Company represents and warrants that the Subscribed Shares and Warrants (i) were not offered by any form of general solicitation or general advertising, including methods described in Section 502(c) of Regulation D under the Securities Act, and (ii) are not being offered in a manner involving a public offering under, or in a distribution in violation of, the Securities Act, or any state securities laws.

(h) Equity Subscriber and Warrant Subscriber acknowledge that they are aware that there are substantial risks incident to the purchase and ownership of the Subscribed Shares and Warrants. Equity Subscriber and Warrant Subscriber has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Subscribed Shares and Warrants, and Equity Subscriber and Warrant Subscriber have had an opportunity to seek, and have sought, such accounting, legal, business and tax advice as Equity Subscriber and Warrant Subscriber have considered necessary to make an informed investment decision, and have the ability to bear the economic risks of its prospective investment and can afford the complete loss of such investment. Equity Subscriber and Warrant Subscriber acknowledge that they (i) are a sophisticated investor, experienced in investing in business and financial transactions and capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, and (ii) have exercised independent judgment in evaluating its purchase of the Subscribed Shares and Warrants. Equity Subscriber and Warrant Subscriber acknowledges that they (i) are a sophisticated investor, experienced in investing in business and financial transactions and capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, and (ii) have exercised independent judgment in evaluating its purchase of the Subscribed Shares and Warrants. Equity Subscriber and Warrant Subscriber acknowledge that their purchase of Subscribed Shares and Warrants (i) are fully consistent with Equity Subscriber’s and Warrant Subscriber’s financial needs, objectives and condition, (ii) comply and are fully consistent with all of Equity Subscriber’s and Warrant Subscriber’s applicable investment policies, guidelines and other restrictions, (iii) have been duly authorized and approved by all necessary action (corporate or otherwise), and (iv) do not and will not violate or constitute a default under Equity Subscriber’s and Warrant Subscriber’s charter, by-laws or other constituent documents or under any law, rule, regulation, agreement or other obligation by which we are bound and are a fit, proper and suitable investment, notwithstanding the substantial risks inherent in investing in or holding the Subscribed Shares or Warrants. Equity Subscriber and Warrant Subscriber understand that the purchase and sale of the Subscribed Shares and Warrants hereunder meets (i) the institutional accounts exemptions from filing under FINRA Rule 5123(b)(1)(A), (ii) the institutional customer exemption from filing under FINRA Rule 2111(b), (iii) the qualified institutional buyers exemption from filing under FINRA Rule 5123(b)(1)(C) and (iv) the accredited investors exemption from filing under FINRA Rule 5123(b)(1)(J).

(i) Alone, or together with any professional advisor(s), Equity Subscriber and Warrant Subscriber represent and acknowledge that Equity Subscriber and Warrant Subscriber have adequately analyzed and fully considered the risks of an investment in the Subscribed Shares and Warrants and determined that the Subscribed Shares and Warrants are a suitable investment for Equity Subscriber and Warrant Subscriber and that Equity Subscriber and Warrant Subscriber are able at this time and in the foreseeable future to bear the economic risk of a total loss of Equity Subscriber and Warrant Subscriber’s investment in the Issuer and the Company. Equity Subscriber and Warrant Subscriber acknowledge specifically that a possibility of total loss exists.

(j) Equity Subscriber and Warrant Subscriber understand and agree that no federal or state agency has passed upon or endorsed the merits of the offering of the Subscribed Shares and the Warrants or made any findings or determination as to the fairness of this investment.

(k) Equity Subscriber and Warrant Subscriber are in compliance with all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the United States and administered by the U.S. Department of Treasury, U.S. Department of Commerce, or the U.S. Department of State, and (b) the United Nations Security Council, the European Union as administered by any European Union member state, or the United Kingdom’s HM Treasury (collectively, “Sanctions”). Neither Equity Subscriber and Warrant Subscriber, nor any of their officers, directors, employees, or, to their knowledge, agents, are, or are owned or controlled by any person that is the target of Sanctions, including (x) a person or entity that is named on any sanctions-related list of designated persons, including the List of Specially Designated Nationals and Blocked Persons, the Executive Order 13599 List, the Foreign Sanctions Evaders List or the Sectoral Sanctions Identifications List, each of which is administered by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”), the Denied Persons List, Entity List, or Unverified List administered by the U.S. Department of Commerce, Bureau of Industry and Security, and sanctions-related lists set forth in any Executive Order issued by the President of the United States and administered by OFAC, or any other list of prohibited or restricted parties promulgated by OFAC, the Department of Commerce, the Department of State, Her Majesty’s Treasury, the European Union or any member state thereof, or the United Nations Security Council, (y) organized, located, or resident in, or a citizen, national or the government, including any political subdivision, agency or instrumentality thereof, of any country or territory subject to comprehensive sanctions (currently, Cuba, Iran, North Korea, Syria, and the Crimea, Donetsk and Luhansk regions of Ukraine) or (z) a non-U.S. shell bank or providing banking services indirectly to a non-U.S. shell bank (collectively, (x) through (z), a “Restricted Person”). Equity Subscriber and Warrant Subscriber agree to provide the Company or law enforcement agencies, if requested thereby, such records and information as required by applicable law, provided that Equity Subscriber and Warrant Subscriber are permitted to do so under applicable law. Equity Subscriber and Warrant Subscriber represent that if they are a financial institution subject to the Bank Secrecy Act (31 U.S.C. Section 5311 et seq.), as amended by the USA PATRIOT Act of 2001 and its implementing regulations (collectively, the “BSA/PATRIOT Act”), that Equity Subscriber and Warrant Subscriber are in material compliance with the BSA/PATRIOT Act, and maintains policies and procedures reasonably designed to comply with applicable obligations under the BSA/PATRIOT Act. Equity Subscriber and Warrant Subscriber also represent that they maintain policies and procedures reasonably designed to ensure compliance with Sanctions, including for the screening of its investors to confirm that they are not Restricted Persons. Equity Subscriber and Warrant Subscriber further represent and warrant that they maintain policies and procedures reasonably designed to ensure that the funds held by Equity Subscriber and Warrant Subscriber and used to purchase the Subscribed Shares and Warrants were legally derived and were not obtained, directly or indirectly, from a Restricted Person or related to any activities that may contravene U.S. federal, state or non-U.S. anti-money laundering laws (including the BSA/PATRIOT Act), anti-corruption or Sanctions laws and regulations or activities that may otherwise be deemed criminal. Equity Subscriber and Warrant Subscriber further represent and warrant that any returns from Equity Subscriber’s and Warrant Subscriber’s investment will not be used to finance any illegal activities, or any activities that would cause the Company to violate Sanctions. Equity Subscriber and Warrant Subscriber are not a “foreign person,” “foreign government,” or a “foreign entity,” in each case, as defined in Section 721 of the Defense Production Act of 1950, as amended, including, without limitation, all implementing regulations thereof (the “DPA”). Equity Subscriber and Warrant Subscriber are not

(l) Equity Subscriber and Warrant Subscriber do not have, as of the date hereof, and during the 30-day period immediately prior to the date hereof Equity Subscriber and Warrant Subscriber have not entered into, any “put equivalent position” as such term is defined in Rule 16a-1 under the Exchange Act or short sale positions with respect to the securities of the Issuer or the Company. Notwithstanding the foregoing, in the case of a subscriber that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of Equity Subscriber’s and Warrant Subscriber’s assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of Equity Subscriber’s and Warrant Subscriber’s assets, the representation set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Subscribed Shares and Warrants covered by this Subscription Agreement.

(m) If Equity Subscriber and Warrant Subscriber are employee benefit plans that are subject to Title I of ERISA, a plan, an individual retirement account or other arrangement that is subject to Section 4975 of the Internal Revenue Code of 1986, as amended (the “Code”), or employee benefit plans that are governmental plans (as defined in Section 3(32) of ERISA), a church plan (as defined in Section 3(33) of ERISA), non-U.S. plans (as described in Section 4(b)(4) of ERISA) or other plan that is not subject to the foregoing but may be subject to provisions under any other federal, state, local, non-U.S. or other laws or regulations that are similar to such provisions of ERISA or the Code, or entities whose underlying assets are considered to include “plan assets” of any such plan, account or arrangement (each, a “Plan”, collectively, the “Plans”) subject to the fiduciary or prohibited transaction provisions of ERISA or Section 4975 of the Code or other laws or regulations that are similar to such provisions, then Equity Subscriber and Warrant Subscriber represent and warrant that neither the Issuer, the Company, nor any of its respective affiliates (the “Transaction Parties”) has acted as the Plan’s fiduciary, or has been relied on for advice, with respect to its decision to acquire and hold the Subscribed Shares or Warrants, and none of the Transaction Parties shall at any time be relied upon as the Plan’s fiduciary with respect to any decision to acquire, continue to hold or transfer the Subscribed Shares or Warrants.

(n) At the Closing, Equity Subscriber will have sufficient funds to pay the Subscription Amount pursuant to Section 2(b) of this Subscription Agreement.

(o) Equity Subscriber agrees that, notwithstanding Section 10(h) of this Subscription Agreement, the Placement Agents may rely upon the representations and warranties made by Equity Subscriber or Warrant Subscriber to the Issuer and the Company in this Subscription Agreement.

(p) No broker, finder or other financial consultant has acted on behalf of Equity Subscriber and Warrant Subscriber in connection with this Subscription Agreement or the transactions contemplated hereby in such a way as to create any liability on the Issuer or the Company.

(q) Equity Subscriber and Warrant Subscriber hereby acknowledge and agree that (i) the Placement Agents are each acting solely as a Placement Agent in connection with the Subscription contemplated by this Subscription Agreement and are not acting as an underwriter or in any other capacity and are not and shall not be construed as a fiduciary for the undersigned, the Issuer, the Company or any other person or entity in connection with the transactions contemplated herein, (ii) neither the Placement Agents nor any of their respective Representatives have made, or will make, any representation or warranty, whether express or implied, of any kind or character and have not provided any advice or recommendation in connection with the transactions contemplated herein, (iii) the Placement Agents and their respective Representatives will have no responsibility with respect to (x) any representations, warranties or agreements made by any person or entity under or in connection with the Subscription as contemplated by this Subscription Agreement or the transactions contemplated herein or any of the documents furnished pursuant thereto or in connection therewith, or the execution, legality, validity or enforceability (with respect to any person) of any thereof, or (y) the business, affairs, financial condition, operations, properties or prospects of, or any other matter concerning the Issuer, the Company, the Acquired Companies or the transactions contemplated herein, (iv) the Placement Agents and their respective Representatives shall have no liability or obligation (including without limitation, for or with respect to any losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses or disbursements incurred by Equity Subscriber, Warrant Subscriber, the Issuer, the Company or any other person or entity), whether in contract, tort or otherwise, to Equity Subscriber and Warrant Subscriber, or to any person claiming through Equity Subscriber and Warrant Subscriber, in respect of the transactions contemplated herein, (v) neither the Placement Agents nor their respective Representatives have made an independent investigation with respect to the Issuer, the Company or the Subscribed Shares or the Warrants or the accuracy, completeness or adequacy of any information supplied to Equity Subscriber and Warrant Subscriber by the Issuer or the Company, and (vi) the Placement Agents have not prepared a disclosure or offering document in connection with the offer and sale of the Subscribed Shares and Warrants.

(r) Except for the representations and warranties contained in this Section 5, Neither Equity Subscriber nor Warrant Subscriber makes an express or implied representation or warranty, and Equity Subscriber and Warrant Subscriber hereby disclaims any such representation or warranty with respect to the execution and delivery of this Subscription Agreement and the consummation of the transactions contemplated herein.

(s) If Equity Subscriber is located in or receiving this offer in Australia, Equity Subscriber warrants that (i) it is a person or body referred to in Section 708(11) or 708(12) of the *Corporations Act 2001* (Cth); or (ii) that a qualified accountant has issued a certificate, no more than six months prior to the date of this Subscription Agreement, confirming that Equity Subscriber (x) has net assets of at least AU\$2.5 million; or (y) has a gross annual income for each of the last two financial years of at least AU\$250,000 per annum; or (iii) it is otherwise an “exempt offeree” for the purposes of Section 708 of the *Corporations Act 2001* (Cth) and does not require disclosure from the Company under Part 6D.2 of the *Corporations Act* in order for the Company to issue the Subscribed Shares to Equity Subscriber under this Subscription Agreement; and (iv) it agrees to comply with to Section 707(3) of the *Corporations Act 2001* (Cth) and acknowledges Equity Subscriber will be prohibited from on-selling the Subscribed Shares to investors in Australia for a period of 12 months after their issuance unless such purchaser falls within an exception set out in Section 708 of the *Corporations Act 2001* (Cth).

6. Registration of Subscribed Shares.

(a) The Issuer agrees that the Issuer will file with the Commission (at the Issuer’s sole cost and expense) a registration statement registering the resale of the Ordinary Shares (the “Registration Statement”) no later than thirty calendar days after the Closing Date, and the Issuer shall use its commercially reasonable efforts to have the Registration Statement declared effective as soon as practicable after the filing thereof, but no later than the earlier of (i) sixty calendar days after the filing thereof (or, in the event the Commission reviews and has written comments to the Registration Statement, the ninetieth calendar

day following the filing thereof) and (ii) the tenth Business Day after the date the Issuer is notified (orally or in writing, whichever is earlier) by the Commission that the Registration Statement will not be “reviewed” or will not be subject to further review ((i) and (ii) collectively, the “Effectiveness Deadline”); provided that if such day falls on a Saturday, Sunday or other day that the Commission is closed for business, the Effectiveness Deadline shall be extended to the next Business Day on which the Commission is open for business. The Issuer will use its commercially reasonable efforts to provide a draft of the Registration Statement to the undersigned for review (but not comment) at least two (2) Business Days in advance of filing the Registration Statement; provided that, for the avoidance of doubt, in no event shall the Issuer be required to delay or postpone the filing of such Registration Statement as a result of or in connection with Equity Subscriber’s review. Unless otherwise agreed to in writing by Equity Subscriber, Equity Subscriber shall not be identified as a statutory underwriter in the Registration Statement unless requested by the Commission or another regulatory agency; provided, that if the Commission or another regulatory agency requests that a Equity Subscriber be identified as a statutory underwriter in the Registration Statement, Equity Subscriber will have the opportunity to withdraw from the Registration Statement upon its prompt written request to the Issuer. Notwithstanding the foregoing, if the Commission prevents the Issuer from including any or all of the shares proposed to be registered under the Registration Statement due to limitations on the use of Rule 415 of the Securities Act for the resale of the Ordinary Shares by the applicable shareholders or otherwise, such Registration Statement shall register for resale such number of Ordinary Shares which is equal to the maximum number of Ordinary Shares as is permitted by the Commission on. In such event, the number of Ordinary Shares to be registered for each selling shareholder named in the Registration Statement shall be reduced pro rata among all such selling shareholders. The Issuer agrees that, except for such times as the Issuer is permitted hereunder to suspend the use of the prospectus forming part of a Registration Statement, the Issuer will use its commercially reasonable efforts to cause such Registration Statement to remain effective with respect to Equity Subscriber until the earlier of (i) two years from the issuance of the Ordinary Shares, (ii) the date on which all of the Ordinary Shares shall have been sold, and (iii) on the first date on which the undersigned can sell all of its Ordinary Shares (or shares received in exchange therefor) under Rule 144 without limitation as to the manner of sale or the amount of such securities that may be sold. If requested by Equity Subscriber, the Issuer shall use its commercially reasonable efforts to (i) cause the removal of the restrictive legends from any Ordinary Shares being sold under the Registration Statement or pursuant to Rule 144 at the time of sale of such Registrable Securities (as defined below) and, at the request of a Holder (as defined below), cause the removal of all restrictive legends from any Registrable Securities held by such Holder that may be sold by such Holder without restriction under Rule 144, including without limitation, any volume and manner of sale restrictions, and (ii) cause its legal counsel to deliver an opinion, if necessary, to the transfer agent in connection with the instruction under subclause (i) to the effect that the removal of such restrictive legends in such circumstances may be effected under the Securities Act, in each case upon the receipt of customary representations and other documentation, if any, from the Holder as reasonably requested by the Issuer, its counsel or the transfer agent, establishing that restrictive legends are no longer required. The Issuer shall use its commercially reasonable efforts to have the legend removal referenced above apply to all shares held by Equity Subscriber in a single transaction. The Issuer will use commercially reasonable efforts to file all reports, and provide all customary and reasonable cooperation, necessary to enable Holder to resell Registrable Securities pursuant to the Registration Statement or Rule 144, as applicable, qualify the Registrable Securities for listing on the applicable stock exchange on which the Ordinary Shares are then listed and update or amend the Registration Statement as necessary to include Registrable Securities. “Registrable Securities” shall mean, as of any date of determination, the Ordinary Shares and any other equity security issued or issuable with respect to the Ordinary Shares by way of share subdivision, dividend, distribution, recapitalization, merger, exchange, replacement or similar event, *provided, however*, that such securities shall cease to be Registrable Securities at the earliest of (A) three years, (B) the date all Ordinary Shares held by a Holder may be sold by such Holder without volume or manner of sale limitations pursuant to Rule 144 and without the requirement for the Issuer to be in compliance with the current public information required under Rule 144(c)(1) (or Rule 144(i)(2), if applicable), (C) the date on which such securities have actually been sold by a Holder, and (D) when such securities shall have ceased to be issued and outstanding. “Holder” shall mean Equity Subscriber or any affiliate of Equity Subscriber to which the rights under this Section 6 shall have been assigned. The undersigned agrees to disclose its beneficial ownership, as determined in accordance with Rule 13d-3 of the Exchange Act, of Ordinary Shares to the Issuer (or its successor) promptly upon request to assist the Issuer in making the determination described above. The Issuer’s obligations to include the Ordinary Shares in the Registration Statement are contingent upon Equity Subscriber furnishing in writing to the Issuer such information regarding Equity Subscriber, the securities of the Issuer held by Equity Subscriber and the intended method of disposition of the Ordinary Shares as shall be reasonably requested by the Issuer to effect the registration of the Ordinary Shares, and Equity Subscriber shall execute such documents in connection with such registration as the Issuer may reasonably request that are customary of a selling shareholder in similar situations, including providing that the Issuer shall be entitled to postpone and suspend the effectiveness or use of the Registration Statement during any customary blackout or similar period or as permitted hereunder. In the case of the registration effected by the Issuer pursuant to this Subscription Agreement, the Issuer shall, upon reasonable request, inform Equity Subscriber as to the status of such registration. Equity Subscriber shall not be entitled to use the Registration Statement for an underwritten offering of Ordinary Shares. Notwithstanding anything to the contrary contained herein, the Issuer may delay or postpone filing of such Registration Statement, and from time to time require Equity Subscriber not to sell under the Registration Statement or suspend the use or effectiveness of any such Registration Statement if it determines that in order for the registration statement to not contain a material misstatement or omission, an amendment thereto would be needed, or if such filing or use could materially affect a bona fide business or financing transactions of the Issuer or would require premature disclosure of information that could materially adversely affect the Issuer (each such circumstance, a “Suspension Event”); provided, that, (w) the Issuer shall not so delay filing or so suspend the use of the Registration Statement for a period of more than sixty (60) consecutive days or more than two times in any 360-day period and (x) the Issuer shall use commercially reasonable efforts to make such registration statement available for the sale by the undersigned of such securities as soon as practicable thereafter.

(b) Upon receipt of any written notice from the Issuer (which notice shall not contain any material non-public information regarding the Issuer) of the occurrence of any Suspension Event during the period that the Registration Statement is effective or if as a result of a Suspension Event the Registration Statement or related prospectus contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made (in the case of the prospectus) not misleading, the undersigned agrees that (i) it will immediately discontinue offers and sales of the Ordinary Shares under the Registration Statement (excluding, for the avoidance of doubt, sales conducted pursuant to Rule 144) until the undersigned receives copies of a supplemental or amended prospectus (which the Issuer agrees to promptly prepare) that corrects the misstatement(s) or omission(s) referred to above and receives notice that any post-effective amendment has become effective or unless otherwise notified by the Issuer that it may resume such offers and sales, and (ii) it will maintain the confidentiality of any information included in such written notice delivered by the Issuer unless otherwise required by law, subpoena or regulatory request or requirement. If so directed by the Issuer, the undersigned will deliver to the Issuer, or in the undersigned’s sole discretion destroy, all copies of the prospectus covering the Subscribed Shares in the undersigned’s possession; *provided, however*, that this obligation to deliver or destroy all copies of the prospectus covering the Ordinary Shares shall not apply (w) to the extent the undersigned is required to retain a copy of such prospectus (A) in order to comply with applicable legal, regulatory, self-regulatory or professional requirements or (B) in accordance with a bona fide pre-existing document retention policy or (x) to copies stored electronically on archival servers as a result of automatic data back-up.

7. **Termination.** This Subscription Agreement shall terminate and be void and of no further force and effect, and all rights and obligations of the parties hereunder shall terminate without any further liability on the part of any party in respect thereof, upon the earlier to occur of (a) such date and time as the Share Sale Agreement is terminated in accordance with its terms, (b) such date and time as the Mezzanine Facility Agreement is terminated in accordance with its terms, (c) upon the mutual written agreement of the Issuer and the Company and Equity Subscriber and Warrant Subscriber to terminate this Subscription Agreement, or (c) August 2, 2023 (the “Outside Date”); provided, that nothing herein will relieve any party from liability for any willful breach hereof (including, for the avoidance of doubt, a Equity Subscriber or Warrant Subscriber’s willful breach of Section 2(c) of this Subscription Agreement with respect to its representations, warranties and covenants as of the date of the Closing) prior to the time of termination, and each party will be entitled to any remedies at law or in equity to recover losses, liabilities or damages arising from such breach. The Issuer and the Company shall notify Equity Subscriber and Warrant Subscriber of the termination of the Share Sale Agreement promptly after the termination thereof. For the avoidance of doubt, if any termination hereof occurs after the delivery by Equity Subscriber of the Subscription Amount for the Subscribed Shares, the Issuer and the Company shall promptly (but not later than one (1) Business Day thereafter) return the Subscription Amount to Equity Subscriber by wire transfer of immediately available funds to the account

8. **No Short Sales.** Equity Subscriber and Warrant Subscriber hereby agrees that, from the date of this Subscription Agreement until the Closing Date (or earlier termination of this Subscription Agreement), none of Equity Subscriber, Warrant Subscriber or any Person acting on behalf of Equity Subscriber or Warrant Subscriber or pursuant to any understanding with Equity Subscriber or Warrant Subscriber will engage in any Short Sales (as defined below) with respect to securities of the Issuer and the Company, as applicable. For purposes of this Section 8, “**Short Sales**” shall mean all “short sales” as defined in Rule 200 promulgated under Regulation SHO under the Exchange Act, and all short positions effected through any direct or indirect stock pledges (other than pledges in the ordinary course of business as part of prime brokerage arrangements), forward sale contracts, options, puts, calls, swaps and similar arrangements (including on a total return basis), or sales or other short transactions through non-U.S. broker dealers or foreign regulated brokers. Notwithstanding the foregoing, (i) nothing in this Section 8 shall prohibit other entities under common management with Equity Subscriber or Warrant Subscriber that have no knowledge of this Subscription Agreement or of Equity Subscriber’s Subscription (including Equity Subscriber’s or Warrant Subscriber’s controlled affiliates and/or affiliates) from entering into any Short Sales and (ii) in the case of an Investor that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Investor’s assets and the portfolio managers have no knowledge of the investment decisions made by the portfolio managers or desks managing other portions of such Investor’s assets, the limitations set forth in the first sentence of this Section 8 shall only apply with respect to the portion of assets managed by the portfolio managers or desks that made the investment decision to purchase the Subscribed Shares covered by this Subscription Agreement.

9. **Trust Account Waiver.** Equity Subscriber and Warrant Subscriber hereby acknowledge that the Company has established a trust account (the “**Trust Account**”) containing the proceeds of its initial public offering (the “**IPO**”) and from certain private placements occurring simultaneously with the IPO (including interest accrued from time to time thereon) for the benefit of the public shareholders of the Company and certain other parties (including the underwriters of the IPO). For and in consideration of the Company entering into this Subscription Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Equity Subscriber and Warrant Subscriber hereby (i) agree that they nor any of their related parties do not now and shall not at any time hereafter have any right, title, interest or claim of any kind in or to any assets held in the Trust Account or distributions therefrom, and shall not make any claim against the Trust Account (including any distributions therefrom), in each case, regardless of whether such claim arises as a result of, in connection with or relating in any way to this Subscription Agreement or any other matter, and regardless of whether such claim arises based on contract, tort, equity or any other theory of legal liability (any and all such claims are collectively referred to hereafter as the “**Released Claims**”) and (ii) irrevocably waive any Released Claims that they nor any of their related parties may have against the Trust Account (including any distributions therefrom) now or in the future as a result of, or arising out of, any negotiations, contracts or agreements with the Company and will not seek recourse against the Trust Account (including any distributions therefrom) for any reason whatsoever (including for an alleged breach of any agreement with the Company or its related parties); *provided, however*, that nothing in this Section 9 shall serve to limit or prohibit Equity Subscriber’s and Warrant Subscriber’s right to pursue a claim against the Company or for legal relief against assets held outside the Trust Account (including from and after the consummation of a transaction other than as contemplated by this document) or for specific performance, injunctive or other equitable relief in connection with the consummation of the Transaction so long as such claim would not affect the Company’s ability to fulfil its obligation to effectuate the Buyer Guarantor Shareholder Redemptions (as defined in the Share Sale Agreement). Equity Subscriber and Warrant Subscriber acknowledge and agree that such irrevocable waiver is material to this document and specifically relied upon by the Company to induce the Company to enter into this document, and such parties further intend and understand such waiver to be valid, binding and enforceable against them and their related parties under applicable law. Equity Subscriber and Warrant Subscriber agree not to seek recourse or make or bring any action, suit, claim or other proceeding against the Trust Account as a result of, or arising out of, this Subscription Agreement, the transactions contemplated hereby or the Subscribed Shares or the Warrants regardless of whether such claim arises based on contract, tort, equity or any other theory of legal liability. Equity Subscriber and Warrant Subscriber acknowledge and agree that they shall not have any redemption rights with respect to the Subscribed Shares pursuant to the Company’s organizational documents in connection with the Transaction or any other business combination, any subsequent liquidation of the Trust Account, the Company or otherwise. In the event Equity Subscriber and Warrant Subscriber or any of their related parties have any claim against the Company in connection with, as a result of, relating to or arising out of, this Subscription Agreement, the transactions contemplated hereby or the Subscribed Shares or the Warrants, Equity Subscriber and Warrant Subscriber and their related parties (or claimant on any of their behalves or in lieu of any of them) shall pursue such claim solely against the Company and its assets outside the Trust Account and not against the Trust Account or any monies or other assets in the Trust Account.

10. **Miscellaneous.**

(a) All notices, requests, demands, claims, and other communications hereunder shall be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (i) when delivered personally to the recipient, (ii) when sent by electronic mail, on the date of transmission to such recipient; (iii) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid), or (iv) four (4) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and, in each case, addressed to the intended recipient at its address specified on the signature page hereof or to such electronic mail address or address as subsequently modified by written notice given in accordance with this Section 10(a).

(b) Equity Subscriber and Warrant Subscriber acknowledge that (i) the Issuer and the Company will rely on the acknowledgments, understandings, agreements, representations and warranties made by Equity Subscriber and Warrant Subscriber contained in this Subscription Agreement and (ii) the Placement Agents will rely on the representations and warranties made by Equity Subscriber and Warrant Subscriber and the Company, as the case may be, contained in this Subscription Agreement. Prior to the Closing, Equity Subscriber and Warrant Subscriber agree to promptly notify the Issuer and the Company and the Placement Agents if they become aware that any of the acknowledgments, understandings, agreements, representations and warranties of Equity Subscriber and Warrant Subscriber set forth herein are no longer accurate in all material respects. The Issuer and the Company acknowledges that Equity Subscriber and Warrant Subscriber and others (including Placement Agents) will rely on the acknowledgments, understandings, agreements, representations and warranties contained in this Subscription Agreement.

(c) Each of the Issuer, the Company, the Placement Agents, Equity Subscriber and Warrant Subscriber is irrevocably authorized to produce this Subscription Agreement or a copy hereof to any interested party as requested or required by law, rule or regulation in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby; provided that, with respect to production by the Issuer and the Company, such party will provide Equity Subscriber and Warrant Subscriber with at least three (3) Business Days’ prior written notice of such production to the extent legally permissible and subject to Section 10(s).

(d) Regardless of whether the Closing occurs, Equity Subscriber and Warrant Subscriber shall pay all of its own expenses in connection with this Subscription Agreement and the transactions contemplated herein.

(e) Neither this Subscription Agreement nor any rights that may accrue to Equity Subscriber and Warrant Subscriber hereunder (other than the Subscribed Shares acquired hereunder, if any) may be transferred or assigned. Neither this Subscription Agreement nor any rights that may accrue to the Issuer and the Company hereunder may be transferred or assigned (provided, that, for the avoidance of doubt, each of the Issuer and the Company may transfer the Subscription Agreement and its rights hereunder solely in connection with the consummation of the Transaction and exclusively to another entity under the control of, or under common control with, the Issuer and the Company). Notwithstanding the foregoing, Equity Subscriber and Warrant Subscriber may assign their rights and obligations under this Subscription Agreement to one or more of their affiliates (including other investment funds or accounts managed or advised by the investment manager who acts on behalf of Equity Subscriber and Warrant Subscriber) or, with the Issuer and the Company's prior written consent, to another person, provided that no such assignment shall relieve Equity Subscriber and Warrant Subscriber of their obligations hereunder if any such assignee fails to perform such obligations, unless each of the Issuer and the Company has given its prior written consent to such relief, and such assignee agrees in writing to be bound by the terms hereof.

(f) All the agreements, representations and warranties made by each party hereto in this Subscription Agreement shall survive the Closing.

(g) The Issuer or the Company may request from Equity Subscriber and Warrant Subscriber such additional information as the Issuer or the Company may reasonably determine necessary to evaluate the eligibility of Equity Subscriber and Warrant Subscriber to acquire the Subscribed Shares and Warrants, to register the resale of the Subscribed Shares and Warrants or otherwise consummate or evidence the transaction contemplated by this Subscription Agreement, and Equity Subscriber and Warrant Subscriber shall provide such information as may be reasonably requested, to the extent readily available and to the extent consistent with its internal policies and procedures provided that the Issuer and the Company agree to keep any such information provided by Equity Subscriber and Warrant Subscriber confidential other than as necessary to include in any registration statement the Issuer and the Company is required to file hereunder or in connection herewith. Equity Subscriber and Warrant Subscriber acknowledge and agree that if they do not provide the Issuer or the Company with such requested information, the Issuer and the Company may not be able to register the Subscribed Shares and Warrants for resale pursuant to Section 6 hereof. Equity Subscriber and Warrant Subscriber hereby agrees that the Subscription Agreement, as well as the nature of Equity Subscriber's and Warrant Subscriber's obligations hereunder, may be disclosed in any public announcement or disclosure required by the Commission and in any registration statement, proxy statement, consent solicitation statement or any other Commission filing to be filed by the Issuer and the Company in connection with the issuance of the Subscribed Shares and Warrants contemplated by this Subscription Agreement and/or the Transaction, in each case without Equity Subscriber and Warrant Subscriber's prior written consent.

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(h) This Subscription Agreement may not be amended, modified, waived or terminated (other than pursuant to the terms of Section 7 above) except by an instrument in writing, signed by each of the parties hereto; provided, that this Subscription Agreement may be amended, modified, waived or terminated with the written consent of the Issuer, the Company and the holders then committed to purchase a majority of the Aggregate Subscribed Shares to be purchased at the Closing, including each holder (together with its affiliates and accounts and funds controlled or managed by it or its affiliates) then committed to purchase at least \$20,000,000 of the Aggregate Subscribed Shares (or, if after the Closing, the Issuer, the Company and the holders then holding a majority of the then issued and outstanding Aggregate Subscribed Shares); provided further, that Section 5, this Section 10(h), and Section 10(j) of this Subscription Agreement may not be amended, terminated or waived in a manner that is material and adverse to the Placement Agents without the written consent of the Placement Agents. Upon the effectuation of such waiver, modification, amendment or termination in conformance with this Section 10(h), such amendment, modification, waiver or termination shall be binding on Equity Subscriber and Warrant Subscriber and effective as to all of this Subscription Agreement. The Issuer and the Company shall promptly give written notice thereof to Equity Subscriber and Warrant Subscriber if Equity Subscriber and Warrant Subscriber have not previously consented to such amendment, modification, waiver or termination in writing; provided that the failure to give such notice shall not affect the validity of such amendment, modification, waiver or termination. Notwithstanding anything to the contrary herein, (i) any amendment, modification or waiver that has a disproportionate effect on Equity Subscriber or Warrant Subscriber (considered apart from any disproportionate effect owing to the aggregate amount of the Subscribed Shares held by such Equity Subscriber and Warrant Subscriber), relative to any of the Other Subscribers shall require the consent of Equity Subscriber and Warrant Subscriber and (ii) any amendment to Section 6 or Section 7 of this Subscription Agreement shall require the consent of Equity Subscriber and Warrant Subscriber.

(i) This Subscription Agreement constitutes the entire agreement, and supersedes all other prior agreements, understandings, representations and warranties, both written and oral, among the parties hereto, with respect to the subject matter hereof, except that any confidentiality agreement with respect to the undersigned or its affiliates shall remain in full force and effect following the amendment, modification, waiver or termination of this Subscription Agreement.

(j) Except as otherwise provided herein, this Subscription Agreement shall be binding upon, and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns, and the agreements, representations, warranties, covenants and acknowledgments contained herein shall be deemed to be made by, and be binding upon, such heirs, executors, administrators, successors, legal representatives and permitted assigns. The parties hereto acknowledge and agree that each of the Placement Agents is an express third-party beneficiary of its express rights in Section 3, Section 4, Section 5, Section 10(h) and this Section 10(j) of this Subscription Agreement. In addition, (i) the Issuer and the Company acknowledges and agrees that each of the Placement Agents is a third-party beneficiary of the acknowledgments, understandings, agreements, covenants, representations and warranties made by the Issuer and the Company contained in this Subscription Agreement, and (ii) Equity Subscriber and Warrant Subscriber acknowledge and agree that each of the Placement Agents is a third-party beneficiary of the acknowledgments, understandings, agreements, covenants, representations and warranties made by Equity Subscriber and Warrant Subscriber contained in this Subscription Agreement. Each of the parties hereto shall be entitled to seek and obtain equitable relief, without proof of actual damages, including an injunction or injunctions or order for specific performance to prevent breaches of this Subscription Agreement and to enforce specifically the terms and provisions of this Subscription Agreement to cause Equity Subscriber to fund the Subscription Amount and cause the Closing to occur if the conditions in Section 2 this Subscription Agreement have been satisfied or, to the extent permitted by applicable law, waived by the applicable party entitled to waive any such condition. Each party hereto further agrees that none of the parties hereto or the Placement Agents shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 10(j), and each party hereto irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

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(k) If any provision of this Subscription Agreement shall be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Subscription Agreement shall not in any way be affected or impaired thereby and shall continue in full force and effect.

(l) [Reserved.]

(m) This Subscription Agreement may be executed and delivered in one or more counterparts (including by facsimile or electronic mail or in

.pdf or any other form of electronic delivery (including any electronic signature complying with U.S. federal E-SIGN Act of 2000)) and by different parties in separate counterparts, with the same effect as if all parties hereto had signed the same document. All counterparts so executed and delivered shall be construed together and shall constitute one and the same agreement.

(n) The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Subscription Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties hereto and the Placement Agents shall be entitled to seek an injunction or injunctions to prevent breaches or threatened breaches of this Subscription Agreement and to enforce specifically the terms and provisions of this Subscription Agreement, this being in addition to any other remedy to which such party is entitled to seek at law, in equity, in contract, in tort or otherwise. The parties hereto further agree not to assert that a remedy of specific enforcement pursuant to this Section 10(n) is unenforceable, invalid, contrary to applicable law or inequitable for any reason and to waive any defenses in any action for specific performance, including the defense that a remedy at law would be adequate. In addition, the prevailing party in any action to enforce the provisions of this agreement shall be entitled to fees and expenses incurred in connection therewith. The parties acknowledge and agree that this Section 10(n) is an integral part of the transactions contemplated hereby and without that right, the parties hereto would not have entered into this Subscription Agreement.

(o) This Subscription Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to the principles of conflicts of laws that would otherwise require the application of the law of any other jurisdiction.

(p) EACH PARTY HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS SUBSCRIPTION AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY OR ANY AFFILIATE OF ANY OTHER SUCH PARTY, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS OR OTHERWISE. THE PARTIES AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS SUBSCRIPTION AGREEMENT OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS SUBSCRIPTION AGREEMENT.

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(q) The parties agree that all disputes, legal actions, suits and proceedings arising out of or relating to this Subscription Agreement must be brought exclusively in the state courts of New York or in the federal courts located in the state and county of New York (collectively the "Designated Courts"). Each party hereby consents and submits to the exclusive jurisdiction of the Designated Courts. No legal action, suit or proceeding with respect to this Subscription Agreement may be brought in any other forum. Notwithstanding the foregoing, a final judgement in any such action may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each party hereby irrevocably waives all claims of immunity from jurisdiction and any objection which such party may now or hereafter have to the laying of venue of any suit, action or proceeding in any Designated Court, including any right to object on the basis that any dispute, action, suit or proceeding brought in the Designated Courts has been brought in an improper or inconvenient forum or venue. Each of the parties also agrees that delivery of any process, summons, notice or document to a party hereof in compliance with Section 10(a), of this Subscription Agreement shall be effective service of process for any action, suit or proceeding in a Designated Court with respect to any matters to which the parties have submitted to jurisdiction as set forth above.

(r) This Subscription Agreement may only be enforced against, and any claim, action, suit or other legal proceeding based upon, arising out of, or related to this Subscription Agreement, or the negotiation, execution or performance of this Subscription Agreement, may only be brought against the entities that are expressly named as parties hereto and then only with respect to the specific obligations set forth herein with respect to such party. No past, present or future director, officer, employee, incorporator, manager, member, partner, shareholder, affiliate, agent, attorney or other representative of any party hereto or of any affiliate of any party hereto, or any of their successors or permitted assigns, shall have any liability for any obligations or liabilities of any party hereto under this Subscription Agreement or for any claim, action, suit or other legal proceeding based on, in respect of or by reason of the transactions contemplated hereby. Each of the Issuer, Company, Equity Subscriber and Warrant Subscriber further acknowledge and agree that each Placement Agent is a third-party beneficiary of the representations and warranties of the Issuer, the Company, Equity Subscriber and Warrant Subscriber in this Subscription Agreement.

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(s) The Issuer shall, by 9:00 a.m., Eastern Time, on the first Business Day immediately following the date of this Subscription Agreement, issue one or more press releases or file with the Commission a Current Report on Form 8-K (collectively, the "Disclosure Document") disclosing, to the extent not previously publicly disclosed, all material terms of the transactions contemplated hereby (and by the Other Subscription Agreements), the Transaction and any other material, nonpublic information that each of the Issuer and the Company has provided to Equity Subscriber and Warrant Subscriber at any time prior to the filing of the Disclosure Document. Notwithstanding the foregoing, or anything contained to the contrary in Section 10(c), neither the Issuer nor the Company shall publicly disclose the name of Equity Subscriber and Warrant Subscriber or any affiliate or investment advisor of Equity Subscriber and Warrant Subscriber, or include the name of Equity Subscriber and Warrant Subscriber or any affiliate or investment advisor of Equity Subscriber and Warrant Subscriber in any press release or in any filing with the Commission or any regulatory agency or trading market, without the prior written consent (including by e-mail) of Equity Subscriber and Warrant Subscriber, except as required by the federal securities laws, rules or regulations and to the extent such disclosure is required by other laws, rules or regulations, at the request of the staff of the Commission or regulatory agency or under the NYSE or Nasdaq regulations, in which case the Issuer and the Company shall provide Equity Subscriber and Warrant Subscriber with reasonable prior written notice (including by e-mail) of such permitted disclosure, and shall reasonably consult with Equity Subscriber and Warrant Subscriber regarding such disclosure. Subject to the limitations of the following sentence, Equity Subscriber and Warrant Subscriber hereby consents to the publication and disclosure in any Form 8-K filed by the Issuer with the Commission, in any filing with the Commission made in connection with the Share Sale Agreement and the Transaction, including any proxy statement, prospectus or registration statement related thereto or any other filing with the Commission pursuant to applicable securities laws, of Equity Subscriber's and Warrant Subscriber's name and identity and the nature of Equity Subscriber's and Warrant Subscriber's commitments, arrangements and understandings under and relating to this Subscription Agreement and, if deemed required or appropriate by the Issuer, a copy of this Subscription Agreement. Notwithstanding the foregoing or anything contained to the contrary in Section 10(c), the Issuer may make disclosures to an auditor or governmental or regulatory authority pursuant to any routine investigation, inspection, examination or inquiry without providing Equity Subscriber and Warrant Subscriber with any notification thereof, unless Equity Subscriber and Warrant Subscriber are the subject of any such investigation, inspection, examination or inquiry (in which case the preceding sentence shall govern).

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(t) The obligations of Equity Subscriber and Warrant Subscriber under this Subscription Agreement are several and not joint with the obligations of any Other Subscriber or any other investor under the Other Subscription Agreements, and Equity Subscriber and Warrant Subscriber shall not be responsible in any way for the performance of the obligations of any Other Subscriber under this Subscription Agreement or any other investor under the Other Subscription Agreements. The decision of Equity Subscriber and Warrant Subscriber to purchase Subscribed Shares and Warrants pursuant to this Subscription Agreement has been made by Equity Subscriber and Warrant Subscriber independently of any Other Subscriber or any other investor and independently of any information, materials, statements or opinions as to the business, affairs, operations, assets, properties, liabilities, results of operations, condition (financial or otherwise) or prospects of the Issuer or the Company or any of their subsidiaries which may have been made or given by any Other Subscriber or investor or by any agent or employee of any Other Subscriber or investor, and neither Equity Subscriber nor Warrant Subscriber nor any of their agents or employees shall have any liability to any Other Subscriber or investor (or any other person) relating to or arising from any such information, materials, statements or opinions. Nothing contained herein or in any Other Subscription Agreement, and no action taken by Equity Subscriber or Warrant Subscriber or investor pursuant hereto or thereto, shall be deemed to constitute Equity Subscriber and Warrant Subscriber and other investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that Equity Subscriber and Warrant Subscriber and other investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the this Subscription Agreement and the Other Subscription Agreements. Equity Subscriber and Warrant Subscriber acknowledge that no Other Subscriber has acted as agent for Equity Subscriber and Warrant Subscriber in connection with making their investment hereunder and no Other Subscriber will be acting as agent of Equity Subscriber and Warrant Subscriber in connection with monitoring their investment in the Subscribed Shares or enforcing their rights under this Subscription Agreement. Equity Subscriber and Warrant Subscriber shall be entitled to independently protect and enforce their rights, including without limitation the rights arising out of this Subscription Agreement, and it shall not be necessary for any Other Subscriber or investor to be joined as an additional party in any proceeding for such purpose.

(u) In accordance with the terms of that certain Mezzanine Facility Agreement entered into between the Issuer and Warrant Subscriber, the Issuer agrees, subject to loan funds being made available under the Mezzanine Facility, to issue to Warrant Subscriber concurrently with the Closing and for no additional consideration therefor, subject to the same terms and conditions as the issuance and sale of the Subscribed Shares, 3,187,500 transferrable warrants to purchase Ordinary Shares (the "Warrants"), with each whole Warrant entitling the holder to purchase one Ordinary Share. The documentation evidencing the Warrants shall be in form and on terms satisfactory to the Warrant Subscriber and shall have terms substantially consistent with the Company's existing public warrants which will be assumed by the Issuer in the Transaction, except that (i) the exercise price for the Warrants shall be \$12.50 per Ordinary Share, (ii) the Warrants shall expire on the date which is five years after the their date of issue, (iii) the Issuer may cash settle the Warrants or may direct the holder to set off the Warrant exercise price against principal amounts outstanding under the Mezzanine Facility, (iv) the exercise of the Warrants may be accelerated at the Issuer's election if the trading price of the Ordinary Shares is higher than 2.0 times the exercise price for not less than 20 consecutive trading days, (v) the Warrants shall not be listed on the NYSE and (vi) the Warrants (and the Ordinary Shares underlying the Warrants) shall have the benefit of the registration rights set forth in this Subscription Agreement.

[Signature pages follow.]

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IN WITNESS WHEREOF, each of the Issuer, Company Equity Subscriber and Warrant Subscriber has executed or caused this Subscription Agreement to be executed by its duly authorized representative as of the date first set forth above.

METALS ACQUISITION LIMITED

By: /s/ Mick McMullen
Name: Mick McMullen
Title: CEO
Address for Notices:
Century House, Ground Floor
Cricket Square, P.O. Box 2238
Grand Cayman KY1-1107, Cayman Islands

METALS ACQUISITION CORP.

By: /s/ Jaco Crouse
Name: Jaco Crouse
Title: Chief Financial Officer
Address for Notices:
Century House, Ground Floor
Cricket Square, P.O. Box 2238
Grand Cayman KY1-1107, Cayman Islands

Signature Page to MAC Subscription Agreement

EQUITY SUBSCRIBER:
Signature of Equity Subscriber:

By: /s/ Narinder Nagra
Name: Narinder Nagra
Title: Managing Partner
Date: March 10 2023
Name of Equity Subscriber:

SPROTT PRIVATE RESOURCE
LENDING II (COLLECTOR), LP

(Please print. Please indicate name and capacity of person signing above)

Name in which shares are to be registered
(if different):
Email Address: [***]
Subscriber's EIN: 98-1481238

Jurisdiction of residency: _____ Canada _____

Number of Subscribed Shares subscribed for::	1,500,000
Price Per Subscribed Share:	\$ 10.00
Subscription Amount:	\$ 15,000,000

You must pay the Subscription Amount by wire transfer of United States dollars in immediately available funds to the account of the Company specified by the Company in the Closing Notice.

WARRANT SUBSCRIBER:
Signature of Warrant Subscriber:

By: /s/ Gregory Caione _____
Name: Gregory Caione
Title: Managing Partner
Date: March 10 2023 _____
Name of Warrant Subscriber:

SPROTT PRIVATE RESOURCE
LENDING II (COLLECTOR-2), LP
(Please print. Please indicate name and capacity of person signing above)

Name in which shares are to be registered
(if different):
Email Address: [***]
Subscriber's EIN: N/A

Signature Page to MAC Subscription Agreement

Jurisdiction of residency: _____ United States _____

Number of Warrants subscribed for:	3,187,500
Exercise Price Per Ordinary Share:	\$ 12.50

Signature Page to MAC Subscription Agreement

ANNEX A

ELIGIBILITY REPRESENTATIONS OF EQUITY SUBSCRIBER

This Annex A should be completed and signed by Equity Subscriber and constitutes a part of the Subscription Agreement.

- A. QUALIFIED INSTITUTIONAL BUYER STATUS (Please check the box, if applicable)
- Subscriber is a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act).
- B. FINRA INSTITUTIONAL INVESTOR STATUS (Please check the box)
- Subscriber is a "institutional investor" (as defined in FINRA Rule 2111).
- C. ACCREDITED INVESTOR STATUS (Please check the box)
- Subscriber is an "accredited investor" (within the meaning of Rule 501(a) under the Securities Act) and has marked and initialed the appropriate box below indicating the provision under which it qualifies as an "accredited investor."
- D. NON-U.S. PERSON STATUS (Please check the box)
- Subscriber is a non-U.S. person located outside of the United States.
- E. AFFILIATE STATUS
(Please check the applicable box)

SUBSCRIBER:

- is:
 is not:

an "affiliate" (as defined in Rule 144 under the Securities Act) of the Issuer or acting on behalf of an affiliate of the Issuer.

Rule 501(a), in relevant part, states that an "accredited investor" shall mean any person who comes within any of the below listed categories, or who the issuer reasonably believes comes within any of the below listed categories, at the time of the sale of the securities to that person. Subscriber has indicated, by marking and initialing the appropriate box below, the provision(s) below which apply to Subscriber and under which Subscriber accordingly qualifies as an "accredited investor."

- Any bank, registered broker or dealer, insurance company, registered investment company, business development company, or small business investment company;
- Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of \$5,000,000;
- Any employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, if a bank, insurance company, or registered investment advisor makes the investment decisions, or if the plan has total assets in excess of \$5,000,000;
- Any corporation, similar business trust, partnership or any organization described in Section 501(c)(3) of the Internal Revenue Code, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;
- Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;

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- Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000. For purposes of calculating a natural person's net worth: (a) the person's primary residence must not be included as an asset; (b) indebtedness secured by the person's primary residence up to the estimated fair market value of the primary residence must not be included as a liability (except that if the amount of such indebtedness outstanding at the time of calculation exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess must be included as a liability); and (c) indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the residence must be included as a liability;
- Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.
- Any trust with assets in excess of \$5,000,000, not formed to acquire the securities offered, whose purchase is directed by a sophisticated person; or
- Any entity in which all of the equity owners are accredited investors meeting one or more of the above tests.

F. FINRA INSTITUTIONAL ACCOUNT STATUS

(Please check the applicable subparagraphs):

- Subscriber is an "institutional account" under FINRA Rule 4512(c).
- Subscriber is not an "institutional account" under FINRA Rule 4512(c).

SUBSCRIBER: **Sprott Private Resource Lending II (Collector), LP**

Print Name:

By: /s/ Narinder Nagra
Name: Narinder Nagra
Title: Managing Partner

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- Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000. For purposes of calculating a natural person's net worth: (a) the person's primary residence must not be included as an asset; (b) indebtedness secured by the person's primary residence up to the estimated fair market value of the primary residence must not be included as a liability (except that if the amount of such indebtedness outstanding at the time of calculation exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess must be included as a liability); and (c) indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the residence must be included as a liability;
- Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.
- Any trust with assets in excess of \$5,000,000, not formed to acquire the securities offered, whose purchase is directed by a sophisticated person; or
- Any entity in which all of the equity owners are accredited investors meeting one or more of the above tests.

F. FINRA INSTITUTIONAL ACCOUNT STATUS

(Please check the applicable subparagraphs):

- Subscriber is an "institutional account" under FINRA Rule 4512(c).
- Subscriber is not an "institutional account" under FINRA Rule 4512(c).

SUBSCRIBER: **Sprott Private Resource Lending II (Collector-2), LP**

Print Name:

By: /s/ Gregory Caione
Name: Gregory Caione
Title: Managing Partner

ANNEX B

Accredited Investor - (defined in Ontario Securities Commission Rule 45-501 ("OSC Rule 45-501")) means:

- (a) a bank listed in Schedule I or II of the *Bank Act* (Canada), or an authorized foreign bank listed in Schedule III of that Act;
- (b) the Business Development Bank incorporated under the *Business Development Bank Act* (Canada);
- (c) a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* (Ontario) or under the *Trust and Loan Companies Act* (Canada), or under comparable legislation in any other jurisdiction;
- (d) a co-operative credit society, credit union central, federation of caisses populaires, credit union or league, or regional caisse populaire, or an association under the *Cooperative Credit Associations Act* (Canada), in each case, located in Canada;
- (e) a company licensed to do business as an insurance company in any jurisdiction;
- (f) a subsidiary entity of any person or company referred to in paragraph (a), (b), (c), (d) or (e), where the person or company owns all of the voting shares of the subsidiary entity;
- (g) a person or company registered under the *Securities Act* (Ontario) or securities legislation in another jurisdiction as an adviser or dealer, other than a limited market dealer;
- (h) the government of Canada or of any jurisdiction, or any crown corporation, instrumentality or agency of a Canadian federal, provincial or territorial government;
- (i) any Canadian municipality or any Canadian provincial or territorial capital city;
- (j) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any instrumentality or agency thereof;
- (k) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial pension commission or similar regulatory authority;
- (l) a registered charity under the *Income Tax Act* (Canada);
- (m) an individual who beneficially owns, or who together with a spouse beneficially own, financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$1,000,000;
- (n) an individual whose net income before taxes exceeded \$200,000 in each of the two most recent years or whose net income before taxes combined with that of a spouse exceeded \$300,000 in each of those years and who, in either case, has a reasonable expectation of exceeding the same net income level in the current year;

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- (o) an individual who has been granted registration under the *Securities Act* (Ontario) or securities legislation in another jurisdiction as a representative of a person or company referred to in paragraph (g), whether or not the individual's registration is still in effect;
- (p) a promoter of the issuer or an affiliated entity of a promoter of the issuer;
- (q) a spouse, parent, brother, sister, grandparent or child of an officer, director or promoter of the issuer;
- (r) a person or company that, in relation to the issuer, is an affiliated entity or a person or company referred to in clause (c) of the definition of distribution in subsection 1(1) of the *Securities Act* (Ontario) ("Control Person");
- (s) an issuer that is acquiring securities of its own issue;
- (t) a company, limited liability company, limited partnership, limited liability partnership, trust or estate, other than a mutual fund or non-redeemable investment fund, that had net assets of at least \$5,000,000 as reflected in its most recently prepared financial statements;
- (u) a person or company that is recognized by the Ontario Securities Commission as an accredited investor;
- (v) a mutual fund or non-redeemable investment fund that, in Ontario, distributes its securities only to persons or companies that are accredited investors (as defined in OSC Rule 45-501);
- (w) a mutual fund or non-redeemable investment fund that, in Ontario, distributes its securities under a prospectus for which a receipt has been granted by the Director of the Ontario Securities Commission or, if it has ceased distribution of its securities, has previously distributed its securities in this manner;
- (x) a fully managed account if it is acquiring a security that is not a security of a mutual fund or non-redeemable investment fund;
- (y) an account that is fully managed by a trust corporation registered under the *Loan and Trust Corporations Act* (Ontario) or under the *Trust and Loan Companies Act* (Canada), or under comparable legislation in any other jurisdiction;
- (z) an entity organized outside of Canada that is analogous to any of the entities referred to in paragraphs (a) through (g) and paragraph (k) in form and function; or

X (aa) a person or company in respect of which all of the owners of interests, direct or indirect, legal or beneficial, are persons or companies that are accredited investors (as defined in OSC Rule 45-501).

For the purposes hereof:

“company” means any corporation, incorporated association, incorporated syndicate or other incorporated organization;

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“control person” means,

- (a) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and, if a person or company holds more than 20 per cent of the voting rights attached to all outstanding voting securities of an issuer, the person or company is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer, or
- (b) each person or company in a combination of persons or companies, acting in concert by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and, if a combination of persons or companies holds more than 20 per cent of the voting rights attached to all outstanding voting securities of an issuer, the combination of persons or companies is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;

“director” means a director of a company or an individual performing a similar function or occupying a similar position for any person;

“entity” means a company, syndicate, partnership, trust or unincorporated organization;

“financial assets” means cash, securities, or any contract of insurance or deposit or evidence thereof that is not a security for the purposes of the *Securities Act* (Ontario);

“fully managed account” means an investment portfolio account of a client established in writing with a portfolio adviser who makes investment decisions for the account and has full discretion to trade in securities of the account without requiring the client’s express consent to a transaction;

“individual” means a natural person, but does not include a partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, or a natural person in his or her capacity as trustee, executor, administrator or other legal personal representative;

“mutual fund” means an issuer whose primary purpose is to invest money provided by its security holders and whose securities entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets, including a separate fund or trust account, of the issuer

“non-redeemable investment fund” means an issuer:

- (a) whose primary purpose is to invest money provided by its securityholders;
- (b) that does not invest,
 - (i) for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer that is a mutual fund or a non-redeemable investment fund, or
 - (ii) or the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer that is a mutual fund or a non-redeemable investment fund, and
- (c) that is not a mutual fund;

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“officer” means,

- (a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager,
- (b) every individual who is designated as an officer under a by-law or similar authority of the registrant or issuer, and
- (c) every individual who performs functions similar to those normally performed by an individual referred to in clause (a) or (b) immediately above;

“person” means an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative;

“portfolio adviser” means,

- (a) a portfolio manager; or
- (b) a broker or investment dealer exempted from registration as an adviser under subsection 148(1) of the Regulation made under the *Securities Act* (Ontario) if that broker or investment dealer is not exempt from the by-laws or regulations of the Toronto Stock Exchange or the Investment Dealers’ Association of Canada referred to in that subsection;

“portfolio manager” means an adviser registered for the purpose of managing the investment portfolio of clients through discretionary authority granted by the clients;

“promoter” means,

- (a) a person or company who, acting alone or in conjunction with one or more other persons, companies or a combination thereof, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of the issuer, or
- (b) a person or company who, in connection with the founding, organizing or substantial reorganizing of the business of the issuer, directly or indirectly, receives in consideration of services or property, or both services and property, 10% or more of any class of securities of the issuer or 10% or more of the proceeds from the sale of any class of securities of a particular issue, but a person or company who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this definition if such person or company does not otherwise take part in founding, organizing or substantially reorganizing the business;

“related liabilities” means liabilities incurred or assumed for the purpose of financing the acquisition or ownership of financial assets and liabilities that are secured by financial assets; and

“spouse”, in relation to an individual, means another individual to whom that individual is married, or another individual of the opposite sex or the same sex with whom that individual is living in a conjugal relationship outside marriage.

For purposes of these definitions, a company:

- (a) is an “affiliate” of another company if one of them is the subsidiary of the other or if both are subsidiaries of the same company or if each of them is controlled by the same person or company.
- (b) is “controlled” by another person or company or by two or more companies if,
 - (i) voting securities of the first-mentioned company carrying more than 50 per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company or by or for the benefit of the other companies; and
 - (ii) the votes carried by such securities are entitled, if exercised, to elect a majority of the board of directors of the first-mentioned company.
- (c) is a “subsidiary” of another company if,
 - (i) it is controlled by,
 - A. that other, or
 - B. that other and one or more companies each of which is controlled by that other, or
 - C. two or more companies each of which is controlled by that other; or
 - (ii) it is a subsidiary of a company that is that other’s subsidiary.