

Denne meldingen til obligasjonseierne er kun utarbeidet på engelsk. For informasjon vennligst kontakt Nordic Trustee AS.

To the Bondholders in:

ISIN: NO0010955859 – Coburn Resources Pty Ltd Senior Secured Bond Issue 2021/2026

ISIN: NO0013187930 - Coburn Resources NO0010955859 RD 200324

ISIN: NO0013267369 - Coburn Resources NO0010955859 RD 200624

Oslo, 31 July 2024

SUMMONS FOR A WRITTEN RESOLUTION

Nordic Trustee AS (the "**Bond Trustee**") acts as bond trustee for the bondholders (the "**Bondholders**") in relation to the above-mentioned bonds (the "**Bonds**") issued by Coburn Resources Pty Ltd as issuer (the "**Issuer**") pursuant to the bond terms dated 25 March 2021, as amended on 8 April 2021, 15 December 2023, 6 March 2024 and 4 July 2024 (the "**Bond Terms**").

All capitalised terms used, but not defined herein, shall have the same meaning assigned to them in the Bond Terms. References to Clauses and paragraphs are references to Clauses and paragraphs of the Bond Terms.

The Issuer has requested that the Bond Trustee summons a Written Resolution of the Bondholders, approving the resolutions set out below.

The information in this summons (the "**Summons**") regarding the Issuer, market conditions and described transactions is provided by the Issuer. The Bond Trustee expressly disclaims all liability whatsoever relating to such information and the contents of this Summons.

1. BACKGROUND

The Issuer has been engaging with, among others, the WA Lender, the WCF Lender and certain Bondholders in respect of, among other things:

- a) Strandline Resources Limited's sale of the entire issued share capital of Strandline Resources UK Limited and its Tanzanian assets (more specifically defined in the Intercreditor Deed as the "**Tanzanian Disposal**");
- b) its entry into the Implementation Agreement (as defined below) to amend the NAIF Facility Agreement and Intercreditor Deed;
- c) to provide for the WA Lender to apply AUD15,000,000 of the share of the net sale proceeds of the Tanzanian Disposal to which it is entitled to the creation of a new AUD15,000,000 super senior facility (Facility C2) to be provided by the WA Lender to the Issuer (for purposes among other matters of project remediation costs and upgrade of the Mineral Separation Plant) and which amount is to be paid into a suspense account pending utilisation by the Issuer in accordance with the terms of Facility C2 of the NAIF Facility; and
- d) the release of Strandline Resources UK Limited (the "**Released Guarantor**") from its obligations as a guarantor and security provider under, among other things, the Bond Terms, pursuant to the Deed of Release (as defined below), the Guarantor Resignation Letter and the

Obligor and Guarantor Release Deed (as defined below) in order to effect the Tanzanian Disposal as contemplated by the Bond Terms.

Consequently, the Issuer has approached the Bond Trustee in order to obtain approval to enter into the documents specified in paragraph 2.2 and the amendments contemplated by paragraph 2.3.

Prior to the disclosure of this Summons, the Parent and the Issuer have discussed the terms of the request with a group of Bondholders representing approximately 70% of the Bonds (the "**Ad Hoc Committee**"). The Ad Hoc Committee has confirmed to the Bond Trustee that it supports the amendments requested by the Issuer in this Summons, on the terms and conditions set out in Section 2 (*Proposal*) below.

2. PROPOSAL

2.1 General

In accordance with the terms and conditions as further set out below, it is proposed that the Bondholders adopt a resolution whereby the below proposal (the "**Proposal**") is approved pursuant to a Written Resolution.

2.2 Documents

The Bondholders provide approval for the following documents to be entered into:

- a) Implementation Agreement No. 3 between, among others, the Bond Trustee and the Issuer (the "**Implementation Agreement**") (substantially in the form marked as **Schedule 2**);
- b) Deed of Release between, among others, Global Loan Agency Services Australia Nominees Pty Limited ACN 608 945 008 ("**Security Trustee**"), the Issuer and the Released Guarantor (the "**Deed of Release**") (substantially in the form marked as **Schedule 3**);
- c) Guarantor Resignation Letter from the Released Guarantor to the Bond Trustee and to be accepted by the Bond Trustee (the "**Guarantor Resignation Letter**") (substantially in the form marked as **Schedule 4**); and
- d) Obligor and Guarantor Release Deed from the Issuer and the Released Guarantor to the Security Trustee (the "**Obligor and Guarantor Release Deed**") (substantially in the form marked as **Schedule 5**).

2.3 Key amendments to the Intercreditor Deed and the NAIF Facility

- a) As noted above the WA Lender will apply AUD15,000,000 of the share of the net sale proceeds of the Tanzanian Disposal to which it is entitled to continue to make available an AUD15,000,000 super senior facility (Facility C2) to the Issuer under the NAIF Facility.
- b) The purpose of Facility C2 is among other matters for project remediation costs and upgrade of the Mineral Separation Plant.
- c) The amount of AUD15,000,000 is to be paid into a suspense account pending utilisation by the Issuer in accordance with the terms of Facility C2 of the NAIF Facility.
- d) The WA Lender will have a priority security interest in the amounts standing to the credit of the suspense account pending their utilisation in accordance with Facility C2.
- e) Facility C2 will continue to rank ahead of the Bonds for right of repayment including on an enforcement of the security held by the Security Trustee on the same terms as Facility C2 presently does under the Intercreditor Deed.

3. EVALUATION OF THE PROPOSAL

The Proposal is put forward to the Bondholders without further evaluation or recommendation from the Bond Trustee. Nothing herein shall constitute a recommendation to the Bondholders from the Bond Trustee. Each Bondholder should independently evaluate the Proposal and vote accordingly.

4. FURTHER INFORMATION

Any questions should be addressed to the Bond Trustee as follows: Vivian Trøsch, +47 22 87 94 22, trosch@nordictrustee.com.

5. WRITTEN RESOLUTION

Bondholders are hereby provided with a voting request for a Written Resolution pursuant to Clause 17.5 (*Written Resolutions*) of the Bond Terms. For the avoidance of doubt, no Bondholders' Meeting will be held.

It is proposed that the Bondholders resolve the following proposal:

"The Bondholders approve the Proposal as described in section 2 (Proposal) of this Summons.

The Bond Trustee is hereby authorized to implement the Proposal and carry out other necessary work to implement the Proposal, including to prepare, negotiate, finalize and enter into all necessary agreements in connection with documenting the decisions made by way of this Written Resolution as well as carry out necessary completion work, including agreeing on necessary amendments to the Bond Terms and other Finance Documents."

* * * *

Voting Period: The Voting Period shall expire ten (10) Business Days after the date of this Summons, being on 14 August 2024 at 13:00 Oslo time. The Bond Trustee must have received all votes necessary in order for the Written Resolution to be passed with the requisite majority under the Bond Terms prior to the expiration of the Voting Period.

How to vote: A scan of a duly completed and signed Voting Form (attached hereto as Schedule 1), together with proof of ownership/holdings must be received by the Bond Trustee no later than at the end of the Voting Period and must be submitted by e-mail to mail@nordictrustee.com.

The Proposal will be passed if either: (a) Bondholders representing at least a 2/3 majority of the total number of Voting Bonds vote in favour of the Proposal prior to the expiry of the Voting Period; or (b) (i) a quorum representing at least 50% of the total number of Voting Bonds submits a timely response to the Summons and (ii) the votes cast in favour of the Proposal represent at least a 2/3 majority of the Voting Bonds that timely responded to the Summons.

If no resolution is passed prior to the expiry of the Voting Period, the number of votes shall be calculated at the expiry of the Voting Period, and a decision will be made based on the quorum and majority requirements set out in Clause 17.1 (*Authority of the Bondholders' Meetings*).

The effective date of a Written Resolution passed prior to the expiry of the Voting Period is the date when the resolution is approved by the last Bondholder that results in the necessary voting majority being achieved.

If the above resolution is not adopted as proposed herein, the Bond Terms and other Finance Documents will remain unchanged.

Yours sincerely,
Nordic Trustee AS


for Vivian Trøsch

Enclosed:
Schedule 1: Voting form
Schedule 2: Form of Implementation Agreement No. 3
Schedule 3: Form of Deed of Release
Schedule 4: Form of Guarantor Resignation Letter
Schedule 5: Form of Obligor and Guarantor Release Deed

Schedule 1: Voting Form

ISIN: NO0010955859 – Coburn Resources Pty Ltd Senior Secured Bond Issue 2021/2026
NO0013187930
NO0013267369

The undersigned holder or authorised person/entity, votes in the following manner to the Proposal as defined in the Notice of a Written Resolution dated 31 July 2024.

In favour of the Proposal

Against the Proposal

We consent to the following information being shared with the Issuer's advisor (Gilbert + Tobin):

Our identity and amounts of Bonds owned

Our vote

ISIN NO0010955859 NO0013187930 NO0013267369	Amount of bonds owned
Custodian Name	Account number at Custodian
Company	Day time telephone number
	E-mail

Enclosed to this form is the complete printout from our custodian/VPS¹, verifying our bondholding in the bond issue as of _____.

We acknowledge that Nordic Trustee AS in relation to the Written Resolution for verification purpose may obtain information regarding our holding of Bonds on the above stated account in the securities register VPS.

Place, date

Authorized signature

Return by mail:

Nordic Trustee AS

PO Box 1470 Vika

N-0116 Oslo

Norway

Telephone: +47 22 87 94 00

E-mail: mail@nordictrustee.com

¹ If the Bonds are held in custody other than in the VPS, evidence provided from the custodian confirming that (i) you are the owner of the Bonds, (ii) in which account number the Bonds are held, and (iii) the amount of Bonds owned.

Schedule 2: Form of Implementation Agreement No. 3

Ashurst

Implementation Agreement No. 3 Coburn Resources Pty Ltd

2024

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THIS DEED is made on

2024

BETWEEN:

- (1) **Coburn Resources Pty Ltd** ACN 165 036 537 (**Borrower**);
- (2) **Strandline Resources Limited** ACN 090 603 642 (**Parent**);
- (3) **Strandline Resources UK Limited**, a company incorporated in England and Wales with company number 11841019 (**Strandline UK**, and together with the Borrower and the Parent, the **Obligors**);
- (4) **Global Loan Agency Services Australia Pty Ltd** ACN 608 829 303 of Level 4, 88 Phillip Street Sydney NSW 2000 in its capacity as intercreditor agent (the **Intercreditor Agent**);
- (5) **Global Loan Agency Services Australia Nominees Pty Ltd** ACN 608 945 008 of Level 4, 88 Phillip Street Sydney NSW 2000 in its capacity as Security Trustee (the **Security Trustee**);
- (6) **Nordic Trustee AS** of Kronprinsesse Märthas plass 1 N-0160 OSLO Norway in its capacity as bond trustee for the bondholders (the **Bond Trustee**);
- (7) **The Ministerial Body Corporate** preserved and continued pursuant to Section 5 of the *Industry and Technology Development Act 1998* (WA) of Department of Jobs, Tourism, Science and Innovation Level 11, 1 William Street Perth WA 6000 (**WA Lender**);
- (8) **National Australia Bank Limited** ABN 12 004 044 937 of Level 17, 395 Bourke Street Melbourne VIC 3000 (**WCF Lender**); and
- (9) **Global Loan Agency Services Australia Pty Ltd** ACN 608 829 303 of Level 4, 88 Phillip Street Sydney NSW 2000 in its capacity as agent under the New LNSA (**LNSA Agent**).

THE PARTIES AGREE AS FOLLOWS:

1. **Interpretation**

1.1 **Definitions**

In this document, the following definitions apply unless the context requires otherwise.

Amended NAIF Facility Agreement means the amended NAIF Facility Agreement as appended to this document in Appendix A.

Amended Intercreditor Deed means the amended Intercreditor Deed as appended to this document in Appendix B.

Amendment Document means each of the:

- (a) Amended NAIF Facility Agreement; and
- (b) Amended Intercreditor Deed.

Bond Terms means the bond terms dated 25 March 2021 between the Borrower, the Parent and the Bond Trustee as amended from time to time.

Conditions Precedent means each of the conditions set out in Schedule 1.

Effective Date has the meaning set out in clause 5 (*Effective Date*).

Finance Documents means the NAIF Facility Agreement and the Intercreditor Deed.

Finance Party means each of the Secured Creditors, the Intercreditor Agent, the Security Trustee and the LNSA Agent.

Intercreditor Deed means the intercreditor deed dated 31 May 2021 between (among others) the Borrower, the Parent, the Intercreditor Agent, the Bond Trustee and the WA Lender, as amended from time to time including on 15 December 2023 and 6 March 2024.

NAIF Facility Agreement means the facility agreement dated 31 May 2021 between the Borrower, the Parent and the WA Lender, as amended from time to time including on 27 October 2022, 15 December 2023, 6 March 2024 and 4 July 2024.

New LNSA means the super senior loan note facility agreement dated 6 March 2024 and made between, among others, the Borrower, the Parent and the LNSA Agent as amended from time to time.

Security Trust Deed means the deed entitled "Security Trust Deed" dated 31 May 2021 and made between, among others, the Borrower, the Intercreditor Agent and the Security Trustee.

Standstill Letter means the standstill letter dated 15 December 2023 between, among others, the Borrower, the Parent, the Existing Secured Creditors and the Intercreditor Agent as amended from time to time.

WCF Facility Agreement means the facility agreement dated 7 December 2022 between the Borrower, the Parent and the WCF Lender as amended from time to time including on 6 March 2024 and 4 July 2024.

1.2 **Terms from Security Trust Deed**

Terms used but not defined in this document have the meaning given to them in the Security Trust Deed.

1.3 **Interpretation**

In this document headings and bold type are for convenience only and do not affect the interpretation of this document and, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this document have a corresponding meaning;
- (d) an expression suggesting or referring to a natural person or an entity includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency;
- (e) a reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.3 implies that performance of part of an obligation constitutes performance of the obligation;

- (f) a reference to a clause, party or schedule is a reference to a clause of, and a party and schedule to, this document and a reference to this document includes any schedule;
- (g) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Governmental Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) a reference to a document includes all amendments or supplements to, or novations of, that document;
- (i) a reference to a party to any document includes that party's successors and permitted assigns;
- (j) a reference to an agreement other than this document includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (k) a reference to an asset includes all property of any nature, including a business, and all rights, revenues and benefits;
- (l) a reference to a document includes any agreement in writing, or any certificate, notice, deed, instrument or other document of any kind;
- (m) no provision of this document may be construed adversely to a party solely on the ground that the party was responsible for the preparation of this document or that provision;
- (n) a reference to a body, other than a party to this document (including an institute, association or authority), whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,
 - is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (o) references to time are to Perth time; and
- (p) where this document confers any power or authority on a person that power or authority may be exercised by that person acting personally or through an agent or attorney.

1.4 **Inclusive expressions**

Specifying anything in this document after the words 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

1.5 **Banking Code of Practice**

The Banking Code of Practice does not apply to this document or any banking service provided or other transaction contemplated under it.

1.6 Security Trustee

The Security Trustee's liability under this document is limited in accordance with the limitation of liability clause set out in clause 3.13 (*Limitation of liability of Security Trustee to Beneficiaries*) and clause 3.14 (*Security Trustee limitation of liability to non-Beneficiaries*) of the Security Trust Deed and those clauses apply as if set out in full in this document.

1.7 Finance Document and Secured Document

This document is a:

- (a) 'Finance Document' for the purposes of the Intercreditor Deed and each other Finance Document (in each case as amended by this document); and
- (b) 'Secured Document' for the purposes of the Security Trust Deed.

1.8 Preservation of Security Interests

- (a) For the avoidance of doubt, each Obligor confirms that the Transaction Security Interests and any guarantee given or to be given by it pursuant to or in connection with each Secured Document will remain in full force and effect and continue for the benefit of each Finance Party and the other Beneficiaries in accordance with the terms of that guarantee or security.
- (b) Each Obligor confirms that the 'Secured Obligations' as defined in the Security Trust Deed will be taken to include all present and future obligations owing (including amounts which are at any time payable, are owing but not payable or otherwise remain unpaid) by the Obligors to a Beneficiary under or in relation to any Secured Document (including each Finance Document as amended by this document).

2. Consideration

Each party acknowledges that it has received valuable consideration for entering into this document.

3. Intercreditor Agent confirmation

By each Finance Parties' entry into this document (other than the Intercreditor Agent and the Security Trustee), it confirms that it instructs the Intercreditor Agent to enter into this document and agree to the variations to the Intercreditor Deed in accordance with clause 4.2 (*Amendment Decisions relating to this deed*) of the Intercreditor Deed (as amended by this document).

4. Security Trustee confirmation

By each Finance Parties' entry into this document (other than the Security Trustee), it confirms that it instructs the Security Trustee to enter into this document and agree to the variations of the Intercreditor Deed in accordance with clause 7 (*Amendments and waivers*) of the Security Trust Deed.

5. Effective Date

- (a) The Effective Date is the date on which the last Finance Party has confirmed to the Borrower that it has received (or waived receipt of) each of the Conditions Precedent deliverable to it (in each case in form and substance satisfactory to it).

- (b) The Conditions Precedent are for the benefit of the party or parties as indicated in Schedule 1.
- (c) If a Condition Precedent has been included for the benefit of one party only, then only that party may, in its sole and absolute discretion, confirm satisfaction of that Condition Precedent or rely on or waive the breach or non-fulfilment of the Condition Precedent (except that a party must not waive a Condition Precedent if that waiver would result in a breach of law).
- (d) If a Condition Precedent has been included for the benefit of more than one party, then that Condition Precedent may only be satisfied on confirmation from all of those parties that it has been satisfied, or the breach or non-fulfilment of the Condition Precedent may be waived only by the consent of all those parties.
- (e) The breach or non-fulfilment of a Condition Precedent may only be waived in writing.

6. **Consents**

6.1 **Consent to Finance Documents**

- (a) With effect from the Effective Date:
 - (i) the WA Lender, the Bond Trustee, the WCF Lender, and the LNSA Agent;
 - (ii) the Security Trustee and the Intercreditor Agent; and
 - (iii) the Obligors,

confirm their consent to, and approval of (in each case, only to the extent they (or the Security Trustee or Intercreditor Agent (as applicable) on their behalf) are a party to such document or to the extent their consent or approval is required under any Secured Document):

- (A) the amendment of the NAIF Facility Agreement as contemplated by the Amended NAIF Facility Agreement; and
- (B) the amendment of the Intercreditor Deed as contemplated by the Amended Intercreditor Deed,

provided that the amendments under each Amendment Document only become effective in accordance with this document.

- (b) Each Obligor acknowledges it has read this document together with each Finance Document, and understands and accepts the amendments made to the Finance Documents by this document.
- (c) Each Finance Party will promptly notify the Borrower once it has received (or waived receipt of) all of the Conditions Precedent which are for its benefit.

6.2 **Acknowledgements**

Each party consents to the amendments effected by clause 6.1, and acknowledges and agrees that such amendment is effective despite any provision in any Finance Document requiring any other process or steps to give effect to such.

7. **Confirmations**

Each Obligor represents, warrants, acknowledges and confirms to and for the benefit of the Finance Parties at the Effective Date that:

- (a) each of the Secured Documents to which it is a party guarantees, secures and will continue to guarantee and secure the payment and discharge of the Secured Obligations and the security and guarantees created or conferred under the Secured Documents to which it is a party extend to all moneys, liabilities and obligations now or hereafter owed or incurred under the Secured Documents (as may be amended by this document) in accordance with their respective terms;
- (b) each of the Security Trust Deed, the Intercreditor Deed and the other Secured Documents to which it is a party and its liabilities and obligations thereunder continue in full force and effect and will continue to be valid, binding on, and enforceable against it in accordance with the terms of the Security Trust Deed, the Intercreditor Deed (as amended by this document) and/or (as the case may be) the other respective Secured Documents (as may be amended by this document); and
- (c) nothing in this document shall be construed or take effect as a waiver or release of any right or remedy under any Secured Document or any of the other instruments and agreements executed, delivered or entered into thereunder or pursuant thereto or otherwise,

despite the amendments to the Finance Documents as contemplated by the Amendment Documents and this document.

8. **Amendments**

- (a) With effect from the Effective Date:
 - (i) the Obligors, the Security Trustee, the Intercreditor Agent, the WA Lender, the Bond Trustee, the WCF Lender and the LNSA Agent agree that the Intercreditor Deed is amended to read as set out in Appendix B;
 - (i) the Obligors and the WA Lender agree that the NAIF Facility Agreement is amended to read as set out in Appendix A; and
 - (ii) references in the Secured Documents to the Intercreditor Deed and the NAIF Facility Agreement will be read and construed as references to those documents as amended by this document.
- (b) Paragraph (a) does not affect any right or obligation of any party to the relevant Finance Document that arises before the Effective Date.
- (c) Except as expressly amended by this document, no changes to any Finance Document are to be inferred or implied, and in all other respects the Finance Documents are confirmed and remain in full force and effect.

9. **Representations and warranties**

9.1 **Representations and warranties**

Each Obligor represents and warrants at the date of this document and on the Effective Date that:

- (a) all of the Repeating Representations (under and as defined in each of the NAIF Facility Agreement (as amended by this document), the WCF Facility Agreement and the New LNSA) are true as though they had been made at that date on the basis of the facts and circumstances then existing; and

- (b) no Default or Review Event (under and as defined in each of the NAIF Facility Agreement (as amended by this document), the WCF Facility Agreement and the New LNSA and the Bond Terms) continues or will result from Clause 8 taking effect,

and excluding any Defaults or Review Events that are waived under the Standstill Letter or are otherwise the subject of a standstill under the Standstill Letter.

9.2 **Reliance on representations and warranties**

Each Obligor acknowledges that each Finance Party has executed this document and agreed to take part in the transactions it contemplates in reliance on the representations and warranties that are made or repeated in this Clause 9.

10. **Counterparts**

This document may be executed in any number of counterparts, each executed by one or more parties. A party may do this by executing and electronically transmitting a copy to one or more others or their representative.

11. **General**

11.1 **Giving effect to this document**

Each Obligor must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that a Finance Party may reasonably require to give full effect to this document.

11.2 **Operation of this document**

Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.

11.3 **Exclusion of contrary legislation**

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

11.4 **Amendment**

This document can only be amended or replaced by another document signed by the parties.

12. **Governing law and jurisdiction**

- (a) This document is governed by the laws of Western Australia. The courts having jurisdiction in Western Australia, Australia have exclusive jurisdiction to settle any dispute arising out of or in connection with this document (including a dispute relating to the existence, validity or termination of this document) (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) Each Obligor irrevocably waives any immunity in respect of its obligations under this document that it may acquire from the jurisdiction of any court or any legal process for any reason including the service of notice, attachment before judgment, attachment in aid of execution or execution.
- (d) Notwithstanding paragraph (a), each Finance Party shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To

the extent allowed by law, a Finance Party may take concurrent proceedings in any number of jurisdictions.

Schedule 1

Conditions Precedent to Effective Date

No.	Condition Precedent	For the benefit of
1.	A copy of this document executed by each party to this document.	Each Finance Party
2.	A copy of the 'Suspense Account Agreement' (as that term is defined in the Amended NAIF Facility Agreement) has been executed by each party to that document.	WA Lender
3.	Global Loan Agency Services Australia Specialist Activities Pty Limited ACN 635 992 308 has opened the NAIF Facility C2 Suspense Account (as that term is defined in the Amended NAIF Facility Agreement).	WA Lender
4.	A verification certificate given by two directors of each Obligor, in favour of each Finance Party, dated no earlier than 10 days before the Effective Date.	Each Finance Party
5.	A legal opinion from Ashurst as legal advisers to the WA Lender in relation to this document.	WA Lender and each other Finance Party notified by Ashurst, as legal advisers to the WA Lender, to that Finance Party prior to the Effective Date
6.	ASIC and PPSR company extracts in relation to the Borrower and the Obligors (and their equivalent in each other relevant jurisdiction).	Each Finance Party
7.	Evidence that the fees, costs and expenses then due from the Borrower pursuant to the Finance Documents have been paid or will be paid before, or contemporaneously with, the Effective Date.	Each Finance Party

EXECUTED as a deed.

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

Obligors

EXECUTED by **STRANDLINE RESOURCES LIMITED** ACN 090 603 642 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by **COBURN RESOURCES PTY LTD** ACN 165 036 537 in accordance with section 127 of the *Corporations Act 2001* (Cth):

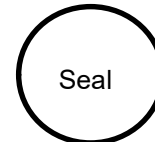
Signature of director

Signature of director/secretary

Name

Name

Signed sealed and delivered by **Strandline Resources UK Limited** in the presence of



Signature of authorised signatory

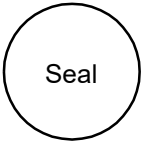
Signature of witness

Name of authorised signatory

Name of witness

Bond Trustee

SIGNED, SEALED AND DELIVERED by
NORDIC TRUSTEE AS in the presence of:



Signature of witness

Signature of authorised signatory

Name of witness

Name of authorised signatory

The WA Lender

Authorised signatory for and on behalf of the Ministerial body corporate preserved and continued pursuant to section 5 of the *Industry and Technology Development Act 1998* (WA):

WITNESSED by

Signature

Signature of Witness

Full name and position

Name of Witness

WCF Lender

SIGNED, SEALED and DELIVERED for
NATIONAL AUSTRALIA BANK LIMITED
by its Attorney who holds the position of
Level 2 Attorney under power of attorney in
the presence of:

Signature of witness

Name

Address of witness

Signature of attorney

Name

1 March 2007

Date of power of attorney

Intercreditor Agent

SIGNED, SEALED and DELIVERED for
GLOBAL LOAN AGENCY SERVICES
AUSTRALIA PTY LTD acting by its
attorney under power of attorney in the
presence of:

Signature of attorney

By executing this deed the attorney states that the
attorney has received no notice of revocation of the
power of attorney

Signature of witness

Name

Name

2 February 2022

Date of power of attorney

Address of witness

Security Trustee

SIGNED, SEALED and DELIVERED for
GLOBAL LOAN AGENCY SERVICES
AUSTRALIA NOMINEES PTY LTD acting
by its attorney under power of attorney in
the presence of:

Signature of attorney

By executing this deed the attorney states that the
attorney has received no notice of revocation of the
power of attorney

Signature of witness

Name

Name

2 February 2022

Date of power of attorney

Address of witness

LNSA Agent

SIGNED, SEALED and DELIVERED for
GLOBAL LOAN AGENCY SERVICES
AUSTRALIA PTY LTD acting by its
attorney under power of attorney in the
presence of:

Signature of attorney

By executing this deed the attorney states that the
attorney has received no notice of revocation of the
power of attorney

Signature of witness

Name

Name

2 February 2022

Date of power of attorney

Address of witness

Appendix A

Amended NAIF Facility Agreement

AS\$150,000,000

FACILITY AGREEMENT

dated 31 May 2021 as amended on 6 March 2024, 5 July 2024 and as further amended on
_____ 2024

for

COBURN RESOURCES PTY LTD

ACN 165 036 537

ASHURST AUSTRALIA

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THIS AGREEMENT is dated 31 May 2021 as amended on 27 October 2022, 15 December 2023, 6 March 2024, 5 July 2024 and _____ 2024 and made between:

- (1) **COBURN RESOURCES PTY LTD** ACN 165 036 537 (the "**Borrower**");
- (2) **STRANDLINE RESOURCES LIMITED** ACN 090 603 642 (the "**Parent**");
- (3) **STRANDLINE RESOURCES UK LIMITED** UK company number 11841019, a company incorporated in England and Wales ("**Strandline UK**"); and
- (4) **THE MINISTERIAL BODY CORPORATE PRESERVED AND CONTINUED PURSUANT TO SECTION 5 OF THE *INDUSTRY AND TECHNOLOGY DEVELOPMENT ACT 1998* (WA)** (the "**Original Lender**").

IT IS AGREED as follows:

SECTION 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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

"**Account Bank**" means:

- (a) National Australia Bank Limited; or
- (b) any other authorised deposit taking institution, with a long-term credit rating of A or higher by Standard & Poor's or a comparable rating from an internationally recognised credit rating agency, which is located in Australia, holds a Project Account and which is approved by the Lender.

"**Account Bank Deed**" means any document entered into between the Borrower, the Security Trustee and an Account Bank which is in form and substance acceptable to the Lender in relation to the operations of the Project Accounts, as required by Clause 16.1(c) (*General*).

"**Additional Guarantor**" means a company which becomes an Additional Guarantor in accordance with Clause 24 (*Changes to the Obligors*).

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

"**AIP Authority**" means the Australian Industry Participation Authority established under the *Australian Jobs Act 2013* (Cth) or such other Commonwealth authority from time to time responsible for AIP Plan policy appointed by the mining of the government of the Commonwealth.

"**AIP Plan**" or "**Australian Industry Participation Plan**" means the plan required to be developed by the Borrower and approved by the relevant Commonwealth government authority in accordance with the Australian Government Australian industry participation policy that demonstrates how Australian industry will be provided with full, fair and reasonable opportunity to supply goods and services from the Project.

"**Airstrip Contractor**" means the contractor with main responsibility for construction (including overseeing the construction) of the Airstrip Project (including any preparatory works in respect of the construction of the Airstrip Project), as notified by the Borrower to the Lender in writing prior to the construction of the Airstrip Project.

"**Airstrip Project**" means the new airstrip and associated airstrip infrastructure within the Project Area (and located wholly within the land the subject of the Pastoral Lease).

"**Airstrip Project Completion**" means the time at which the Lender has received (and the Lender has accepted the certificate in accordance with the definition of Airstrip Project Completion Certificate) the Airstrip Project Completion Certificate.

"**Airstrip Project Completion Certificate**" means the certificate from the Borrower, given promptly following completion of the Airstrip Project and signed by the Borrower and certified by the Airstrip Contractor (in respect of items (a), (b) and (c)) and accepted by the Lender (acting reasonably):

- (a) confirming the date of completion of construction of the Airstrip Project;
- (b) certifying that the Airstrip Project has been completed in accordance with all relevant contract specifications (including with the Airstrip Contractor in respect of its contract and each other contractor engaged for the Airstrip Project);
- (c) certifying that the construction and operation of the Airstrip Project complies, and at the date of the Airstrip Project Completion Certificate will comply, with all applicable regulatory and statutory requirements, such regulatory and statutory requirements to be listed in the Airstrip Project Completion Certificate (and including, for the avoidance of doubt any requirements under the *Mining Act 1978* (WA) and the *Planning and Development Act 2005* (WA)); and
- (d) confirming no Event of Default or Review Event has occurred and is continuing.

"**Amendment Agreement**" means the document titled "*Amendment Agreement – Facility Agreement*" dated 27 October 2022 between the Borrower, the Parent and the Lender.

"**Annual Budget**" means an annual budget and forecast for the Project covering each Month of each annual budget period under Clause 19.5(b) (*Base Case Financial Model and Annual Budget*), including budgeted profit and loss, cash flow forecast, capital expenditure budget and operation and maintenance budget, which must:

- (a) include a summary of the assumptions used in preparing that annual budget;
- (b) be approved by the board of the Borrower; and

(c) be agreed between the Borrower and the Lender,

as subsequently updated, supplemented or replaced in accordance with Clause 19.5 (*Base Case Financial Model and Annual Budget*).

"Approved Hedging Policy and Protocol" means the hedging policy and related hedging protocol approved by the Lender in accordance with Part I (*Conditions Precedent to Financial Close*), paragraph 8(h) of Schedule 2 (*Conditions Precedent*) (or any replacement hedging policy and protocol agreed between the Borrower and the Lender from time to time).

"ASX" means the Australian Securities Exchange or ASX Limited (ABN 98 008 624 691), as the context requires.

"AUD Collection Account" means the Australian dollar-denominated bank account opened or to be opened by the Borrower prior to Financial Close and designated by the Borrower as a "Collection Account", together with any replacement and substitute accounts opened with the prior written consent of the Lender, and sub-accounts of those accounts.

"AUD Debt Service Reserve Account" means the Australian dollar-denominated bank account opened or to be opened by the Borrower prior to Financial Close and designated as a "Debt Service Reserve Account", together with any replacement and substitute accounts opened with the prior written consent of the Lender, and sub-accounts of those accounts.

"Auditor-General" means the Auditor-General for Australia appointed in accordance with the *Auditor-General Act 1997* (Cth).

"Auditors" means BDO Audit (WA) Pty Ltd or any other firm approved in advance by the Lender (such approval not to be unreasonably withheld or delayed).

"Authorisation" means:

- (a) an authorisation, consent, approval, resolution, licence, 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.

"Availability Period" means:

- (a) in relation to Facility B, the period from and including the date of Financial Close to and including the earlier of:
 - (i) the date of Project Completion;
 - (ii) the last day of the Ramp Up Period; and
 - (iii) the Sunset Project Completion Date; and

- (b) in relation to Facility C1, the period from and including the date of Financial Close to and including the date that is 5 years from Financial Close.
- (c) in relation to Facility C2, the period from and including the date of the Second Amendment Agreement to and including 31 October 2024 (or any later date agreed by the Lender).

"Available Commitment" means, in relation to a Facility, the Lender's Commitment under that Facility minus:

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

"Base Case Financial Model" or **"BCFM"** means the computer model relating to the Project and used to produce financial cashflow projections for the Borrower and the Project, provided as a condition precedent under Part I (*Conditions Precedent to Financial Close*), paragraph 3(g) of Schedule 2 (*Conditions Precedent*) as subsequently updated, supplemented or replaced from time to time in accordance with Clause 19.5 (*Base Case Financial Model and Annual Budget*). The Base Case Financial Model shall be agreed between the Borrower and the Lender (using TZMI or other agreed price decks and other economic assumptions agreed to by the Lender), and for the avoidance of doubt, shall only incorporate any amounts relating to Facility C1 or Facility C2 on and from the date that all of the conditions precedent under paragraph (b) or paragraph (c) of Clause 4.1 (*Initial conditions precedent*) (as applicable) have been satisfied or waived.

"Bond Escrow Account" means the bank account established by or on behalf of the Borrower with DNB Bank ASA, into which the proceeds of the Bonds are paid on settlement of the Bonds, before they are paid to the Borrower.

"Bond Issue Amount" means:

- (a) in respect of the Bonds, the issue amount of Bonds under the Bond Terms; or
- (b) if there is a Bond Refinancing, the "total available commitment" (however described) under a Bond Refinancing Agreement.

"Bond Refinancing" means any facility entered into for the purposes of refinancing or replacing (however described) the Bonds that meets the conditions in Clause 20.33 (*Bond Refinancing*).

"Bond Refinancing Agreement" means any agreement or terms entered into in connection with any Bond Refinancing.

"Bond Refinancing Reserve Account" means the account established by or on behalf of the Borrower with DNB Bank ASA, into which the Borrower pays funds pending a repayment of the Bonds.

"Bond Repayments" means all scheduled principal repayments in respect of the Bonds or any Bond Refinancing which the Borrower is required to pay to comply with its obligations

under the Bond Terms or any Bond Refinancing Agreement, excluding the final principal repayment under the Bond Terms or any Bond Refinancing Agreement (as applicable).

"Bond Terms" means the bond terms for the Coburn Resources Pty Ltd Senior Secured Bond Issue 2021/2026 ISIN NO 0010955859 arranged by Pareto Securities AS and ABG Sundal Collier ASA.

"Bond Trustee" means Nordic Trustee AS in its capacity as bond trustee for the Bonds.

"Bond Trustee Security" means :

- (a) until Financial Close, the general security deed given by the Borrower in favour of the Bond Trustee;
- (b) the Security granted by the Borrower over the Bond Escrow Account and the Bond Refinancing Reserve Account in favour of the Bond Trustee; and
- (c) the Security granted by the Borrower in favour of the Bond Trustee over claims against NT Services AS under the Escrow Agreement dated in or about March 2021 between the Borrower, NT Services AS and the Bond Trustee.

"Bonds" means the US\$60,000,000 amortizing term facility, provided to the Borrower by way of a Norwegian bond issue to which, among others, the Bond Trustee (as bond trustee for the Bond issue) and the Parent (as completion guarantor) will be a party.

"Builder" means the person engaged to undertake Building Work on the Project.

"Building Work" has the meaning given in the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

"Bulk Earthworks Contract" means the document entitled "Major Works Agreement – Coburn Mineral Sands Project – Bulk Earthworks and Access Road Package" dated 31 July 2020 between the Parent and TMM Group (Operations) Pty Ltd ABN 69 149 312 603, as assigned to the Borrower under an agreement between the Parent (as assignor), the Borrower (as assignee) and TMM Group (Operations) Pty Ltd.

"Business Day" means a day (other than a Saturday, Sunday or public holiday in that place) on which banks are open for general business in Perth, Sydney, Canberra and Oslo.

"Calculation Date" means:

- (a) in respect of the Loan Life Cover Ratio or the Reserve Tail Ratio, each Quarter End Date after the date of Financial Close; and
- (b) in respect of the Debt Service Cover Ratio, each Quarter End Date after the date of Project Completion.

"Calculation Period" means:

- (a) in respect of any Calculation Date which is less than 6 Months after the date of Project Completion, the period from the date of Project Completion to and including that Calculation Date; and

- (b) in respect of any Calculation Date thereafter, the period of 6 Months ending on and including that Calculation Date.

"Camp Accommodation Contract" means the document dated on or before Financial Close between the Borrower and the camp accommodation provider in relation to accommodation at the Project site.

"Cash Share Excess Cash" means, in respect of each Cash Share or Lock Up Cash Sweep Date, the amount calculated as:

- (a) the amount available in the Collection Account on the immediately preceding Quarter End Date after all amounts set out in paragraphs (a) to (j) (inclusive) of Clause 16.4 (*Withdrawals (post Ramp Up Period)*) have been paid at that Quarter End Date; less
- (b) the Minimum Unrestricted Cash Balance.

"Cash Share or Lock Up Cash Sweep Date" means each date which is 3 Business Days after delivery of a Compliance Certificate following the date of Project Completion.

"Cash Sweep Excess Cashflow" means, in respect of a Cash Share or Lock Up Cash Sweep Date, the amount calculated as:

- (a) the amount available in the Collection Accounts on the immediately preceding Quarter End Date after all amounts set out in paragraphs (a) to (i) (inclusive) of Clause 16.4 (*Withdrawals (post Ramp Up Period)*) have been paid at that Quarter End Date; less
- (b) the aggregate of:
 - (i) the Minimum Unrestricted Cash Balance; and
 - (ii) A\$10,000,000,

which, if less than zero, will be deemed to be zero.

"Catch-up Sweep Amount" means, in respect of any Lock Up Cash Sweep Event:

- (a) the aggregate amount that would have been paid under Clause 7.7(a) (*Lock up and cash sweep mandatory prepayment*) on the final Cash Share or Lock Up Cash Sweep Date in respect of that Lock Up Cash Sweep Event if the paragraph (b)(ii) of the definition of Cash Sweep Excess Cashflow were "\$0" (instead of "A\$10,000,000");

less:

- (b) the sum of all Cash Sweep Excess Cashflow that has been paid under Clause 7.7(a) (*Lock up and cash sweep mandatory prepayment*) on the final Cash Share or Lock Up Cash Sweep Date in respect of that Lock Up Cash Sweep Event.

"CFADS" means, in relation to any period, an amount (which may be a negative or positive figure) calculated by deducting "B" from "A", where:

- (a) "A" is the aggregate (without double counting) of:
 - (i) the Operating Revenue of the Borrower received or (as the case may be) projected in the Base Case Financial Model to be received in that period; and
 - (ii) amounts received into a Collection Account from the WCP Relocation Reserve Account in accordance with Clauses 16.7(d) and (e) (*WCP Relocation Reserve Account*); and
- (b) "B" is the aggregate (without double counting) of:
 - (i) the Operating Costs of the Borrower paid or (as the case may be) projected in the Base Case Financial Model to be paid in that period; and
 - (ii) amounts paid from a Collection Account to the WCP Relocation Reserve Account in accordance with Clause 16.4(i) (*Withdrawals (post Ramp Up Period)*),

and where any of the above amounts are denominated in a foreign currency, converted into Australian dollars:

- (c) for hedged amounts, by taking into account the effect of any Treasury Transactions permitted by this Agreement which, in respect of any calculation of the Debt Service Cover Ratio shall reflect the actual effect of (and the relevant amount will be the amount received by the Borrower under) the Treasury Transaction and in respect of any calculation of the Loan Life Cover Ratio shall reflect the forecast effect of the Treasury Transaction as set out in the then-current Base Case Financial Model; and
- (d) for unhedged amounts, converted into Australian dollars at the relevant exchange rate used in the assumptions in the Base Case Financial Model for the relevant period.

"Chemours Ilmenite Agreement" means the document entitled "Coburn Ilmenite Agreement" dated 17 April 2020 between the Parent (as seller), Chemours Company FC, LLC, Chemours International Operations Sàrl and Chemours Company Singapore Pte. Ltd, as assigned to the Borrower under an agreement between the Parent (as assignor), the Borrower (as assignee), Chemours Company FC, LLC, Chemours International Operations Sàrl and Chemours Company Singapore Pte. Ltd..

"Chilches Premium Zircon Agreement" means the document entitled "Offtake Agreement – Coburn Heavy Mineral Sands Project, Australia" dated 2 July 2020 between the Parent (as seller) and Chilches Materials S.A., as assigned to the Borrower under an agreement between the Parent (as assignor), the Borrower (as assignee) and Chilches Materials S.A..

"Code" means the US Internal Revenue Code of 1986.

"Collection Accounts" means the AUD Collection Account and the USD Collection Account.

"Commitment" means a Facility B Commitment or Facility C Commitment.

"Committed Funding" means the aggregate (without double counting) of the following amounts:

- (a) for the purposes of the Physical Completion Cost to Complete Test and the Project Completion Cost to Complete Test:
 - (i) the Available Commitment for Facility B, after any Utilisation of Facility B is made under an issued Utilisation Request (if any);
 - (ii) the "available commitment" (however described) under the Bonds including any amount standing to the credit of the Bond Escrow Account;
 - (iii) the amount standing to the credit of the Collection Accounts and the Insurance Proceeds Account at that time;
 - (iv) the Cost Overrun Account Proceeds, provided that the Cost Overrun Conditions have been satisfied, in which case a revised Project Completion Cost to Complete Certificate and (where applicable) a revised Physical Completion Cost to Complete Certificate may be provided to the Lender;
 - (v) the amount of any liquidated damages under a Project Document (which have not already been deposited into a Collection Account) and which the Borrower demonstrates to the satisfaction of the Lender are due and payable to the Borrower at such time by a counterparty to a Project Document, to the extent that either:
 - (A) the Borrower is entitled to draw an amount in respect of such liquidated damages under a performance bond, bank guarantee or any other form of security under that Project Document; or
 - (B) the Lender is otherwise satisfied that such amount will actually be paid by that counterparty to the Project Document prior to:
 - (aa) for the purposes of the Physical Completion Cost to Complete Test, the then scheduled date for satisfying the Physical Completion Test; and
 - (bb) for the purposes of the Project Completion Cost to Complete Test, the earlier of the then scheduled date for achieving Project Completion and the Sunset Project Completion Date; and
 - (vi) the amount of any other committed sources of funding available to the Borrower (which has been accepted by the Lender); and
- (b) for the purposes of the Project Completion Cost to Complete Test only, forecast Operating Revenue (other than any liquidated damages already covered by paragraph (iv) above) up to the Forecast Project Completion Date in accordance with the Base Case Financial Model (using the low case for TZMI),

and to the extent any of the above amounts are denominated in a foreign currency, converted into Australian dollars at the relevant exchange rate used in the assumptions in the Base Case Financial Model for the relevant period.

"**Commonwealth**" means the Commonwealth of Australia.

"**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 the Borrower, any Obligor, the Group, the Transaction Documents or a Facility of which the Lender becomes aware in its capacity as Lender or which is received by the Lender in relation to the Transaction Documents or a Facility from:

- (a) any member of the Group or any of its advisers; or
- (b) another Secured Creditor, if the information was obtained by that Secured Creditor 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:

- (c) information that:
 - (i) is or becomes public information other than as a direct or indirect result of any breach by the Lender of Clause 32 (*Confidentiality*);
 - (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
 - (iii) is known by the Lender before the date the information is disclosed to it from any member of the Group or any of its advisers or is lawfully obtained by the Lender after that date, from a source which is, as far as the Lender is aware, unconnected with the Group and which, in either case, as far as the Lender is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"**Confidentiality Undertaking**" means a confidentiality undertaking in any form agreed between the Borrower and the Lender.

"**Construction Costs**" means the costs incurred by the Borrower or for which the Borrower is liable (including, for example, third party costs that are not directly incurred by the Borrower, but which are reimbursed by the Borrower) (without double counting):

- (a) in the engineering, design and construction of the Project in accordance with the Process Plant Design and Construct Contract and any other agreement between the Borrower and another person for the engineering, design or construction of the Project; and
- (b) otherwise as owner of the Project in connection with the construction of the Project,

where they are forecast, as forecast in accordance with the Base Case Financial Model.

"Construction Report" means a report substantially in a form set out in Part I (*Form of Construction Report*) of Schedule 9 (*Construction Report and Completion Tests*).

"Corporations Act" means the *Corporations Act 2001* (Cth).

"Cost Overrun Account" means the Australian dollar-denominated bank account opened or to be opened by the Borrower prior to Financial Close and designated by the Borrower as the "Cost Overrun Account", together with any replacement and substitute accounts opened with the prior written consent of the Lender, and sub-accounts of those accounts.

"Cost Overrun Account Proceeds" means, at any time, the amount standing to the credit of the Cost Overrun Account for the purposes of funding cost overruns in accordance with this Agreement.

"Cost Overrun Conditions" means each of the following conditions:

- (a) the Project Completion Cost to Complete Test and (where applicable) the Physical Completion Cost to Complete Test cannot be met without including in the Committed Funding, the Cost Overrun Account Proceeds, provided that any cost overrun in excess of the Cost Overrun Account Proceeds is to be satisfied from additional equity or Subordinated Borrower Debt; and
- (b) the Independent Technical Consultant has certified the cost overrun (including as to the amount of the cost overrun).

"Cost to Complete – Physical Completion" means at any time, the aggregate of (without double counting):

- (a) all Construction Costs at that time payable to achieve Physical Completion or are otherwise payable as set out in the Base Case Financial Model up to Physical Completion (and in each case, whether payable before or after Physical Completion) but not yet paid, as certified by the Independent Technical Consultant;
- (b) all Financing Costs (including capitalised interest) at that time payable up to Physical Completion but not yet paid, as set out in the Base Case Financial Model;
- (c) all Operating Costs at that time payable to achieve Physical Completion or are otherwise payable as set out in the Base Case Financial Model up to Physical Completion (and in each case, whether payable before or after Physical Completion) but not yet paid, as certified by the Independent Technical Consultant;
- (d) all Project Costs at that time payable to achieve Physical Completion or are otherwise payable as set out in the Base Case Financial Model up to Physical Completion (and in each case, whether payable before or after Physical Completion) but not yet paid, as certified by the Independent Technical Consultant;
- (e) all cost overruns to the Project Costs at that time payable, or which the Borrower forecasts will be payable to achieve Physical Completion or are otherwise payable as set out in the Base Case Financial Model up to Physical Completion (and in each

case, whether payable before or after Physical Completion) but not yet paid, as certified by the Independent Technical Consultant;

- (f) any scheduled principal repayments under any Working Capital Facility Agreement at that time payable up to Physical Completion but not yet paid, as set out in the Base Case Financial Model, other than any amounts falling due under the Working Capital Facility Agreement which will be available for simultaneous redrawing according to the terms of the Working Capital Facility Agreement;
- (g) amounts required to maintain the Minimum Unrestricted Cash Balance in the Collection Accounts up to Physical Completion, as set out in the Base Case Financial Model; and
- (h) any other costs which the Borrower forecasts it will incur in respect of the Project in connection with achieving Physical Completion or are otherwise payable as set out in the Base Case Financial Model up to Physical Completion (and in each case, whether payable before or after Physical Completion), but not yet paid, as certified by the Independent Technical Consultant,

and to the extent any of the above amounts are denominated in a foreign currency, converted into Australian dollars at the relevant exchange rate used in the assumptions in the Base Case Financial Model for the relevant period.

"Cost to Complete – Project Completion" means at any time, the aggregate of (without double counting):

- (a) all Construction Costs at that time payable to achieve Project Completion or are otherwise payable as set out in the Base Case Financial Model up to Project Completion (and in each case, whether payable before or after Project Completion) but not yet paid, as certified by the Independent Technical Consultant;
- (b) all Financing Costs (including capitalised interest) at that time payable up to Project Completion but not yet paid, as set out in the Base Case Financial Model;
- (c) all Operating Costs at that time payable to achieve Project Completion or are otherwise payable as set out in the Base Case Financial Model up to Project Completion (and in each case, whether payable before or after Project Completion) but not yet paid, as certified by the Independent Technical Consultant;
- (d) all Project Costs at that time payable to achieve Project Completion or are otherwise payable as set out in the Base Case Financial Model up to Project Completion (and in each case, whether payable before or after Project Completion) but not yet paid, as certified by the Independent Technical Consultant;
- (e) all cost overruns to the Project Costs at that time payable, or which the Borrower forecasts will be payable to achieve Project Completion or are otherwise payable as set out in the Base Case Financial Model up to Project Completion (and in each case whether payable before or after Project Completion) but not yet paid, as certified by the Independent Technical Consultant;

- (f) any scheduled principal repayments under any Working Capital Facility Agreement at that time payable up to Project Completion but not yet paid, as set out in the Base Case Financial Model, other than any amounts falling due under the Working Capital Facility Agreement which will be available for simultaneous redrawing according to the terms of the Working Capital Facility Agreement;
- (g) amounts required to maintain the Minimum Unrestricted Cash Balance in the Collection Accounts up to Project Completion, as set out in the Base Case Financial Model;
- (h) amounts required to Maintain the Debt Service Reserve Accounts at the DSRA Required Balance up to Project Completion, as set out in the Base Case Financial Model; and
- (i) any other costs which the Borrower forecasts it will incur in respect of the Project in connection with achieving Project Completion or are otherwise payable as set out in the Base Case Financial Model up to Project Completion (and in each case, whether payable before or after Project Completion), but not yet paid, as certified by the Independent Technical Consultant,

and to the extent any of the above amounts are denominated in a foreign currency, converted into Australian dollars at the relevant exchange rate used in the assumptions in the Base Case Financial Model for the relevant period

"Dangerous Substance" means any natural or artificial substance (including petroleum and whether in a solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any such other substance) capable of causing harm to the Environment or damaging the Environment or public health or welfare including any noxious, hazardous, toxic, dangerous, special or controlled waste or other polluting substance or matter.

"Debt Service Cover Ratio" means in respect of a Calculation Date, the ratio of C:D where:

- (a) "C" is the CFADS for the Calculation Period; and
- (b) "D" is the aggregate (without double counting) of:
 - (i) all Financing Costs;
 - (ii) all scheduled principal repayments in respect of the Facilities which the Borrower is required to pay to comply with its obligations under Clauses 6.1 (*Repayment of Facility B*) and 6.2 (*Repayment of Facility C*);
 - (iii) all Bond Repayments;
 - (iv) all principal repayments or other amounts in respect of each other Secured Creditor Agreement (excluding any Hedging Agreement) which the Borrower is required to pay to comply with its obligations under those Secured Creditor Agreements other than any amounts falling due under the Working Capital Facility Agreement which were available for simultaneous

redrawing according to the terms of the Working Capital Facility Agreement; and

- (v) the net amount of any payments (excluding any termination payments) under any Hedging Agreement,

in each case for the Calculation Period.

"Debt Service Reserve Accounts" means the AUD Debt Service Reserve Account and the USD Debt Service Reserve Account.

"Default" means an Event of Default or any event or circumstance specified in Clause 22 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"Denham Road Project" means the new road connecting the Project to Denham, Western Australia.

"Disruption Event" means either or both of:

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

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

"Distribution" means:

- (a) a dividend, distribution, share buy-back or other return of capital; and
- (b) any payment of principal, interest or any other amount under any Subordinated Parent Debt or Subordinated Borrower Debt.

"Distribution Conditions" means the following:

- (a) no Default, Review Event, Lock Up Cash Sweep Event or IES Event is continuing or would result from the proposed Distribution;
- (b) the later of:

- (i) the first scheduled principal repayment under the Bonds; and
- (ii) the date that is 12 Months after the end of the Ramp Up Period
has occurred;
- (c) Project Completion has occurred;
- (d) the Debt Service Reserve Accounts are funded to the DSRA Required Balance;
- (e) the WCP Relocation Reserve Account is funded in full in accordance with Clause 16.7 (*WCP Relocation Reserve Account*);
- (f) no Catch-up Sweep Amount (or any portion thereof) remains owing by the Borrower in accordance with Clause 7.7(b) (*Lock up and cash sweep mandatory prepayment*);
- (g) the payment of the proposed Distribution is made within 15 days after the date on which the Borrower provides a Compliance Certificate to the Lender and the NAIF Representative; and
- (h) the amount of the proposed Distribution is not more than the balance of the Collection Accounts at the relevant Calculation Date, after paying all amounts in paragraphs (a) to (m) (inclusive) of Clause 16.4 (*Withdrawals (post Ramp Up Period)*) and after deducting the Minimum Unrestricted Cash Balance on the relevant Calculation Date.

"DSRA Required Balance" means on any day the aggregate of:

- (a) all Financing Costs in respect of Facility B, Facility C1 and Facility C2 (but in respect of Facility C1 and Facility C2, only on and from the date that all of the conditions precedent under paragraph (b) (in respect of Facility C1) or paragraph (c) (in respect of Facility C2) of Clause 4.1 (*Initial conditions precedent*) have been satisfied or waived) and the Bonds, or if the Bonds have been redeemed or repaid in full and replaced with any Bond Refinancing, any Bond Refinancing;
- (b) all principal repayments in respect of Facility B and (in respect of Facility C1 or Facility C2, on and from the date that all of the conditions precedent under paragraph (b) (in respect of Facility C1) or paragraph (c) (in respect of Facility C2) of Clause 4.1 (*Initial conditions precedent*) have been satisfied or waived) Facility C1 or Facility C2 (as applicable), which the Borrower will be required to pay to comply with its obligations under Clauses 6.1 (*Repayment of Facility B*) and 6.2 (*Repayment of Facility C*); and
- (c) all Bond Repayments,

in each case, during the 6 Month period beginning on the day after that day, *provided that*, where in the 6 Month period beginning on the day after that day:

- (d) there is only 1 scheduled principal repayment to the Bonds, or if the Bonds have been redeemed or repaid in full and replaced with any Bond Refinancing, to any

Bond Refinancing, then the first principal repayment to Facility B and (in respect of Facility C1 or Facility C2, on and from the date that all of the conditions precedent under paragraph (b) (in respect of Facility C1) or under paragraph (c) (in respect of Facility C2) of Clause 4.1 (*Initial conditions precedent*) have been satisfied or waived) Facility C1 or Facility C2 (as applicable) will be included; or

- (e) there are no scheduled principal repayments to the Bonds, or if the Bonds have been redeemed or repaid in full and replaced with any Bond Refinancing, to any Bond Refinancing, then both the first and second principal repayment to Facility B and (in respect of Facility C1 or Facility C2, on and from the date that all of the conditions precedent under paragraph (b) (in respect of Facility C1) or under paragraph (c) (in respect of Facility C2) of Clause 4.1 (*Initial conditions precedent*) have been satisfied) Facility C1 or Facility C2 (as applicable) will be included.

"E&S Consultant" means the independent environmental and social consultant appointed by the Lender with prior consultation with the Borrower (and with the Lender acting reasonably) prior to Financial Close, or any other E&S consultant subsequently appointed by the Lender with prior consultation with the Borrower (and with the Lender acting reasonably) from time to time.

"Early Prepayment Conditions" means:

- (a) the Borrower delivers to the Lender and the NAIF Representative a Physical Completion Certificate dated no earlier than 10 Business Days prior to the proposed prepayment date showing that the Physical Completion Test has been satisfied;
- (b) the proposed prepayment date is a date during the Ramp Up Period; and
- (c) the proposed prepayment is being made for the purposes of, and in accordance with, Clause 19.3 (*Equity cure*).

"Electricity Supply Agreement" means the document dated on or before Financial Close between the Borrower and Contract Power Australia Pty Ltd (ABN 48 081 538 258) in relation to the supply of electricity to the Project site.

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

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

"Environmental and Social Law" means:

- (a) any applicable law or regulation which relates to:
 - (i) the pollution or protection of the Environment;

- (ii) the conditions of the workplace; or
 - (iii) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste; and
- (b) any applicable law or regulation concerning labour matters; social security; the regulation of industrial relations; the protection of health and safety; the protection and regulation of the ownership of land, immovable property, intellectual property, cultural property and other assets; the protection and empowerment of indigenous peoples or ethnic groups; the protection, restoration and promotion of cultural heritage; the protection of human rights; or the protection or empowerment of employees, citizens or other people.

"Environmental and Social Permit" means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental and Social Law for the operation of the business of any Obligor.

"Environmental or Social Claim" means any claim made, any notice of claim issued or any administrative, regulatory, judicial or arbitral action or proceedings taken by any person with respect to the Project or any activity relating to the Project, in each case, in connection with:

- (a) any breach, or alleged breach, of any applicable Environmental and Social Law or Environmental and Social Permit which results in, or is reasonably likely to result in, any Obligor or the Lender incurring any material liability or loss of any applicable Environmental and Social Permit; or
- (b) any Material E&S Incident.

"Event of Default" means any event or circumstance specified as such in Clause 22 (*Events of Default*).

"Facility" means Facility B or Facility C.

"Facility B" means the term loan facility made available under this Agreement as described in Clause 2(a)(i) (*The Facilities*).

"Facility B Amortisation Schedule" means the indicative amortisation schedule for Facility B in Part I of Schedule 8 (*Amortisation Schedules*) as adjusted as a condition precedent to Financial Close under Part I (*Conditions Precedent to Financial Close*), paragraph 8(i) of Schedule 2 (*Conditions Precedent*).

"Facility B Commitment" means:

- (a) in relation to the Original Lender, the amount in Australian dollars set opposite its name under the heading "Facility B Commitment" in Part I (*The Original Lender*) of Schedule 1 (*The Original Parties*) and the amount of any other Facility B Commitment transferred to it under this Agreement; and

- (b) in relation to any other Lender, the amount of any Facility B Commitment transferred to it under this Agreement,

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

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

"Facility B Repayment Date" means each date set out in the table in Part I (*Facility B Amortisation Schedule*) of Schedule 8 (*Amortisation schedules*).

"Facility B Repayment Instalment" has the meaning given to that term in Clause 6.1(a)(i) (*Repayment of Facility B*).

"Facility C" means Facility C1 or Facility C2 (as applicable).

"Facility C1" means the term loan facility made available under this Agreement as described in Clause 2(a)(ii) (*The Facilities*).

"Facility C2" means the term loan facility made available under this Agreement as described in Clause 2(a)(iii) (*The Facilities*).

"Facility C Amortisation Schedule" means the indicative amortisation schedule for Facility C in Part II of Schedule 8 (*Amortisation schedules*) as adjusted as a condition precedent to Financial Close under Part I (*Conditions Precedent to Financial Close*), paragraph 8(i) of Schedule 2 (*Conditions Precedent*), and further adjusted in accordance with the Schedule depending on the actual amount drawn under Facility C.

"Facility C1 Amortisation Schedule" means the indicative amortisation schedule for Facility C1 in Part III of Schedule 8 (*Amortisation schedules*).

"Facility C Commitment" means the aggregate of the Facility C1 Commitment and the Facility C2 Commitment, being A\$20,000,000 as at the date of the Amendment Agreement.

"Facility C1 Commitment" means:

- (a) in relation to the Original Lender, the amount in Australian dollars set opposite its name under the heading "Facility C1 Commitment" in Part I (*The Original Lender*) of Schedule 1 (*The Original Parties*) and the amount of any other Facility C1 Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount any Facility C1 Commitment transferred to it under this Agreement,

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

"Facility C2 Commitment" means:

- (a) in relation to the Original Lender, the amount in Australian dollars set opposite its name under the heading "Facility C2 Commitment" in Part I (*The Original Lender*)

of Schedule 1 (*The Original Parties*) and the amount of any other Facility C2 Commitment transferred to it under this Agreement; and

- (b) in relation to any other Lender, the amount any Facility C2 Commitment transferred to it under this Agreement,

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

"Facility C Loan" means a loan made or to be made under Facility C1 or Facility C2 or the principal amount outstanding for the time being of that loan.

"Facility C1 Loan" means a loan made or to be made under Facility C1 or the principal amount outstanding for the time being of that loan.

"Facility C2 Loan" means a loan made or to be made under Facility C2 or the principal amount outstanding for the time being of that loan.

"Facility C1 Repayment Date" means each date set out in the table in Part III (*Facility C1 Amortisation Schedule*) of Schedule 8 (*Amortisation schedules*).

"Facility C1 Repayment Instalment" has the meaning given to that term in Clause 6.2(a)(i) (*Repayment of Facility C1*).

"Facility C2 Repayment Date" means the earliest of (1) the New LNSA Termination Date (2) the Business Day before the date of the first scheduled repayment under the Bond Terms and (3) the Business Day before the date of the first scheduled repayment (including any "clean down") under the Working Capital Facility Agreement.

"Facility Office" means the office or offices in Australia notified by the Lender to the Borrower in writing on or before the date it becomes the 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) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

"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.

"Featherweight General Security Deed" means the featherweight security deed dated 30 July 2021 between the Parent and the Security Trustee, as amended on 15 December 2024.

"Federal Safety Commissioner" means the accrediting authority for the WHS Scheme under the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

"Fee Letter" means any letter or letters between the Lender or Security Trustee and an Obligor setting out any of the fees referred to in Clause 10.1 (*Participation Fee*), Clause 10.2 (*Facility B Commitment Fee*) or any other fee payable by an Obligor to the Security Trustee or the Lender.

"Finance Document" means:

- (a) this Agreement;
- (b) the Supplemental Agreement;
- (c) any Compliance Certificate;
- (d) any Fee Letter;
- (e) any Accession Letter;
- (f) any Resignation Letter,
- (g) the Security Trust Deed;
- (h) the Intercreditor Deed;
- (i) any Transfer Certificate;
- (j) any Transaction Security Document;
- (k) any Tripartite Deed;
- (l) any subordination deed entered into in respect of Subordinated Borrower Debt or Subordinated Parent Debt;
- (m) the Standstill Letter;
- (n) the Implementation Deed;
- (o) the Implementation Deed No. 2;
- (p) the Implementation Deed No. 3;
- (q) the Suspense Account Agreement;
- (r) any document amending any of the above; and
- (s) any other document designated as such by the Lender and the Borrower.

"Financial Close" means the time the Lender has received all of the documents and other evidence listed in Part I (*Conditions Precedent to Financial Close*) of Schedule 2

(*Conditions Precedent*) and evidence that each condition precedent set out in Part A of Schedule 12 (*Technical CPs, conditions subsequent and undertakings*) and Part A of Schedule 13 (*Environmental & Social CPs, conditions subsequent and action plans*) has been satisfied, in each case in form and substance satisfactory to the Lender.

"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 pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, 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 GAAP in force prior to 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;
- (h) consideration for the acquisition of assets or services payable more than 180 days after acquisition;
- (i) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (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) above.

"Financing Costs" means interest, fees, discounts, costs and expenses payable by the Borrower in relation to its Financial Indebtedness under the Secured Creditor Agreements, other than payments of principal, or termination or close out amounts under any Hedging

Agreement (other than, for the avoidance of doubt, any fees payable to the Intercreditor Agent, Security Trustee or the Bond Trustee in respect of those roles).

"First Facility B Repayment Date" means the date that is the earlier of:

- (l) 20 March 2028; and
- (m) the date that is 3 Months after the Bonds (or the Bond Refinancing, as applicable) are fully redeemed or repaid.

"First Facility C1 Repayment Date" means in respect of Facility C1, the date that is the First Facility B Repayment Date.

"Forecast Project Completion Date" means the earlier of:

- (a) the Sunset Project Completion Date; and
- (b) the date the Project is forecast to be completed, as most recently certified by the Borrower, confirmed by the Independent Technical Consultant and accepted by the Lender (acting reasonably) in a Project Completion Cost to Complete Certificate.

"GAAP" means generally accepted accounting principles, standards and practices in Australia.

"Good Operating Practice" means:

- (a) if a Project Document includes a standard of good practice which applies in a particular event or circumstance, for the purposes of that event or circumstance only, the standard of good practice defined in that Project Document; and
- (b) in all other cases, the exercise of skill, prudence and operating practice which would be reasonably and ordinarily expected from a skilled and experienced owner and operator engaged in the same business as the Borrower under similar circumstances, in compliance in all material respects with all applicable legislation, industry codes of practice, Authorisations and all relevant documents relating to the Project or the Borrower's business.

"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 the Parent and its Subsidiaries for the time being.

"Guarantor" means the Parent, Strandline UK or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 24 (*Changes to the Obligors*).

"Head Company" means the head company (as defined in the Tax Act) of the Tax Consolidated Group of which the Obligors are or become members.

"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 provisions of the Security Trust Deed.

"Hedging Agreement" means any ISDA 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 Facilities which is entered into in accordance with the Approved Hedging Policy and Protocol.

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

"IES" means the Borrower's Indigenous Engagement Strategy as provided to the Lender prior to the execution of this Agreement or as updated and agreed to by the Lender from time to time in accordance with this Agreement.

"IES Event" means any of the events specified in Clause 20.35(f) (*IES and IES Event*).

"IES Obligations" means undertakings, commitments and obligations of the Borrower in the IES including those specifically set out in the Schedule of Obligations.

"IES Report" means a report by the Borrower in form and substance satisfactory to the Lender as to its compliance with the IES Obligations over the immediately preceding Reporting Period.

"Implementation Deed" means the document entitled "Implementation Deed" dated 6 March 2024 between the Borrower, the Parent, Strandline UK, the Original Lender, the Bond Trustee, the WCF Lender, the Security Trustee, the Intercreditor Agent and the New LNSA Agent.

"Implementation Deed Effective Date" means the 'Effective Date' under and as defined in the Implementation Deed.

"Implementation Deed No.2" means the document entitled "Implementation Deed No.2" dated 4 July 2024 between the Borrower, the Parent, Strandline UK, the Original Lender, the Bond Trustee, the WCF Lender, the Intercreditor Agent and the New LNSA Agent.

"Implementation Deed No.3" means the document entitled "Implementation Deed No.3" dated _____ 2024 between the Borrower, the Parent, Strandline UK, the Original Lender, the Bond Trustee, the WCF Lender, the Intercreditor Agent, the Security Trustee and the New LNSA Agent.

"Implementation Report" means a report to be provided to the Lender and the AIP Authority in relation to implementation of the AIP Plan.

"Implementation Report Requirements" means the requirements for an Implementation Report set out in the *Australian Industry Participation Plans in Commonwealth Government Procurement User Guide for Tenderers* published by the Department of Innovation, Industry, Science and Research as at the date of this Agreement, as amended or replaced from time to time.

"Independent Expert" means the party selected under Clause 19.7 (*Independent expert*).

"Independent Technical Consultant" means the independent technical consultant appointed by the Lender with prior consultation with the Borrower (and with the Lender acting reasonably) prior to Financial Close, or any other independent technical consultant subsequently appointed by the Lender with prior consultation with the Borrower (and with the Lender acting reasonably) from time to time, provided that any such independent technical consultant shall be:

- (a) any one of the following firms:
 - (i) SRK Consulting (Australasia) Pty Ltd;
 - (ii) CSA Global Pty Ltd;
 - (iii) Palaris Mining Pty Ltd;
 - (iv) Behre Dolbear Australia Pty Ltd; or
- (b) any other firm approved by the Bond Trustee and the Lender.

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

"Industrie Bitossi Premium Zircon Agreement" means the document entitled "Offtake Agreement – Coburn Heavy Mineral Sands Project, Australia" dated 17 April 2020 between the Parent (as seller) and Industrie Bitossi S.p.A, Colorobbia Espana S.A. and Minerals 2000 S.A. (collectively as buyer), as amended by the document entitled "Variation of Offtake Agreement" dated 3 July 2020 between the same parties, and as assigned to the Borrower under an agreement between the Parent (as assignor), the Borrower (as assignee), Industrie Bitossi S.p.A, Colorobbia Espana S.A. and Minerals 2000 S.A..

"Information Commissioner" means the Australian Information Commissioner appointed in accordance with the *Australian Information Commissioner Act 2010* (Cth).

"Insurance Proceeds " means the proceeds of insurances taken by the Borrower in respect of the Project in accordance with clause 20.14 (*Insurance*) (other than for business interruption, consequential loss or third party public liability insurance).

"Insurance Proceeds Account" means the Australian dollar-denominated bank account opened by the Borrower and held with the Account Bank located in Australia, in the name of the Borrower and designated by the Borrower as the "Insurance Proceeds Account", together with any replacement and substitute accounts opened with the prior written consent of the Lender, and sub-accounts of those accounts.

"Intercreditor Agent" means Global Loan Agency Services Australia Pty Ltd ACN 608 829 303, or any replacement intercreditor agent.

"Intercreditor Amendment Deed" means the document entitled "Amendment Deed" dated 15 December 2023 between, among others, the Borrower, the Lender, the Security Trustee and the Bond Trustee.

"Intercreditor Deed" means the document entitled "Intercreditor Deed" dated 31 May 2021 between, among others, the Borrower, the Lender, the Security Trustee and the Bond Trustee as amended by the Intercreditor Amendment Deed and the Implementation Deed and further amended by the Implementation Deed No.3.

"Interest Payment Date" means:

- (a) for the first Interest Payment Date, 10 days before the first Quarter End Date that falls at least 3 Months after Financial Close; and
- (b) for each other Interest Payment Date, 10 days before each Quarter End Date after the previous Interest Payment Date, until and including the Termination Date.

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

"JORC Code" means the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves published by the Joint Ore Reserve 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 Person" means each of:

- (a) Jozsef Patarica; and
- (b) Belinda Murray,

and any other person that the Borrower and the Lender agree is a "Key Person" for the purposes of this Agreement (or the Borrower and the New LNSA Agent agree is a "Key Person" for the purposes of the New LNSA).

"Lender" means:

- (a) the 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 23 (*Changes to the Lender*),

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

"Life of Mine Plan" means, at any time, the then current life of mine plan prepared by the Borrower in respect of the Project as incorporated into the Base Case Financial Model as subsequently updated, supplemented or replaced from time to time in accordance with Clause 19.4 (*Base Case Financial Model and Annual Budget*).

"Liquidity" means, on any day, the aggregate closing unrestricted cash balance of the Group on that day, excluding any amounts available to be drawn under any debt facility (including the Senior Facilities and the WCF Facility) or standing to the credit balance of a New LNSA Escrow Account and excluding any proceeds of an insurance claim that are

to be applied to reinstate or replace assets, or to meet a liability, in each case, in respect of which those moneys were received but which, as at that day, have not yet been so applied

"LNG Supply Contract" means the document dated on or before Financial Close between the Borrower, Woodside Energy (LNG) Fuels and Power) Pty Ltd (ACN 626 310 727) and EDL LNG Fuel to Power Pty Ltd (ACN 054 545 069) in relation to the supply of trucked LNG to the Project site.

"Loan" means a Facility B Loan, a Facility C1 Loan or a Facility C2 Loan.

"Loan Life Cover Ratio" means in respect of a Calculation Date, the ratio of N:A where:

(a) "N" is the net present value of the projected CFADS for the period from that Calculation Date to the Termination Date (as shown in the then current Base Case Financial Model) (based on a discount rate calculated as the weighted average of the interest rate applying at that time to each of Facility B and (if applicable) Facility C1 and Facility C2 (each in accordance with this Agreement), the Bonds (as determined under the Bond Terms) or (if applicable) any Bond Refinancing (as determined under the Bond Refinancing Agreement) and the New LNSA Financing (as determined under the New LNSA)); and

(b) "A" is the aggregate amount of:

(i) all Loans under the Facilities;

(ii) all "loans", "utilisations" or "issuances" (however described) under any other Secured Creditor Agreement (less any amount standing to the credit of the Bond Escrow Account, any New LNSA Escrow Account and the Bond Refinancing Reserve Account),

(in each case, actual or forecast, as applicable), less any amounts held in the Debt Service Reserve Accounts, and to the extent any of these amounts are denominated in a foreign currency, converted into Australian dollars at the relevant exchange rate used in the assumptions in the Base Case Financial Model for the relevant period.

"Lock Up Cash Sweep Event" means on any Calculation Date on and from the date of Project Completion:

(a) the Loan Life Cover Ratio is less than 1.50:1 times;

(b) the Debt Service Cover Ratio is less than 1.40:1 times; or

(c) the Reserve Tail Ratio is less than 30%.

"Logistics Contract" means the logistics contract (in form and substance satisfactory to the Lender) to be entered into by the Borrower in respect of the Project.

"Majority Facility C Lenders" has the meaning given to that term in the New LNSA.

"Master Facility Agreement" means the agreement entered into between the Lender, NAIF and the Commonwealth dated on or around 31 October 2017.

"Material Adverse Effect" means a material adverse effect on:

- (a) the business, operations, financial, environmental or social condition, or assets of any Obligor; or
- (b) the ability of an Obligor to perform its payment or other material obligations under any Transaction Documents to which it is a party; or
- (c) the legality, validity or enforceability of the whole or any part of any Transaction Document or ranking of any Security granted or purporting to be granted pursuant to any of, the Transaction Documents.

"Material E&S Incident" means any incident, event or circumstance connected with the Project that results in:

- (a) the death of, or significant injury to, one or more persons;
- (b) a material threat to the health or safety of one or more persons;
- (c) significant damage to property or the Environment;
- (d) significant protest or other civil action (whether carried out by persons engaged in activities relating to the Project, the public or otherwise) which is directed against any Obligor or any activities relating to or connected with the Project; or
- (e) material breaches or violations of Environmental and Social Laws, applicable NAIF ESR Requirements and Environmental and Social Permits.

"Minimum Unrestricted Cash Balance" means A\$10,000,000.

"Mining Information" means all exploration and mining information, documents, maps, reports, records, studies and other written data in connection with the Project, including all data stored on magnetic tapes, disks or diskettes or any other computer storage media, relating to geological, geochemical, geophysical work, metallurgical, engineering and processing feasibility studies and other operations conducted in connection with the Project.

"Mining Services Contract" means the document dated on or before Financial Close between the Borrower and the mining services provider in relation to certain mining services to be provided for the Project.

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

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

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

"**NAIF**" means the Northern Australia Infrastructure Facility, a body corporate constituted under the NAIF Act.

"**NAIF Act**" means the *Northern Australia Infrastructure Facility Act 2016* (Cth).

"**NAIF ESR Requirement**" means the NAIF Environmental and Social Review of Transactions Policy (as updated from time to time) and including the NAIF ESR action plans set out in Schedule 13 (*E&S CPs and action plans*).

"**NAIF Facility C2 Suspense Account**" means a bank account established by the Security Trustee into which it pays the net sale proceeds of the Tanzanian Disposal to be distributed to the Original Lender in accordance with clause 7.5 (*Facility C2 mandatory prepayment*) and the Intercreditor Deed.

"**NAIF Representative**" means:

- (a) a director or secretary of NAIF, or any person who holds or purports to hold a position within NAIF which includes in that person's title or designation, the word "director", "chief", "head" or "general counsel" (or a person performing, or purporting to perform", the functions of any of them); or
- (b) any other person appointed by NAIF to act on its behalf, and which is notified to the Borrower from time to time.

"**Nanda Native Title Party**" means Violet Drury, Noel Kelly, Mary Tullock, Phyliss McMahon, Lorraine Whitby, Lorna Lewis, Steven Kelly, June Ruffin, Clive Mallard, Barry Randall, Bevan Drage, Bill Mallard and William Mallard for and on behalf of the Nanda People.

"**Nanjing Sanxiang Zircon Concentrate Agreement**" means the document entitled "Offtake Agreement – Coburn Heavy Mineral Sands Project, Australia –" dated 17 April 2020 between the Parent (as seller), Nanjing RZisources International Trading Co., Ltd and Sanxiang Advanced Materials Co., Ltd, as assigned to the Borrower under an agreement between the Parent (as assignor), the Borrower (as assignee), Nanjing RZisources International Trading Co., Ltd and Sanxiang Advanced Materials Co., Ltd.

"**New LNSA**" means the document entitled "Syndicated Loan Note Facility Agreement" to be entered into in or about March 2024 between, among others, the Parent, the Borrower, Strandline UK and the New LNSA Agent.

"**New LNSA Agent**" means Global Loan Agency Services Australia Pty Ltd ACN 608 829 303 in its capacity as agent under the New LNSA.

"**New LNSA Escrow Account**" means any bank account held by the New LNSA Agent (or an Affiliate of the New LNSA Agent), into which all proceeds of the New LNSA Financing are deposited and from which cash is to be released to the Borrower in accordance with the New LNSA.

"New LNSA Facility C Escrow Account" means any New LNSA Escrow Account in respect of 'Facility C' under and as defined in the New LNSA (in the form of that document as at the Implementation Deed Effective Date).

"New LNSA Financing" means the A\$20,000,000 term loan note facility, provided to the Borrower pursuant to the New LNSA.

"New LNSA Termination Date" means the earlier of (1) the date falling 12 months after the date of the Implementation Deed and (2) the termination date (however described) under the New LNSA.

"New Lender" has the meaning given to that term in Clause 23 (*Changes to the Lender*).

"Obligor" means the Borrower or a Guarantor.

"Offtake Agreement" means each of:

- (a) the Chemours Ilmenite Agreement;
- (b) the Nanjing Sanxiang Zircon Concentrate Agreement;
- (c) the Chilches Premium Zircon Agreement;
- (d) the Industrie Bitossi Premium Zircon Agreement;
- (e) the Venator Supply Agreement;
- (f) any other offtake agreement between an Obligor and a third party relating to the sale of Product from the Project; and
- (g) any other offtake agreement designated as an "Offtake Agreement" under the New LNSA.

"Operating Costs" means the costs, fees and expenses paid, payable or forecast to be paid (as applicable) by the Borrower (without double counting) in operating the Project (in respect of any forecast, as set out in the Base Case Financial Model) (excluding interest, fees and other amounts in the nature of interest on Financial Indebtedness or Taxes on those amounts not listed in the following) including:

- (a) payments under Project Documents and any other documents or contracts entered into by the Borrower in respect of the operation of the Project (other than the Process Plant Design and Construct Contract and the Bulk Earthworks Contract);
- (b) ongoing maintenance and repair costs, fees and expenses;
- (c) lease payments in respect of the Project;
- (d) sustaining capital expenditure (including maintenance and repair costs, fees and expenses which constitute capital expenditure);
- (e) government charges, rates, rent and other outgoings;
- (f) Royalty Obligations;

- (g) costs, fees and expenses of the Borrower to maintain its incorporation, office, staff (including wages and superannuation) and other marketing and administrative costs, fees and expenses in an amount no greater than that provided in the most recent Base Case Financial Model;
- (h) fees payable to the Intercreditor Agent, Security Trustee, the Bond Trustee and the New LNSA Agent in respect of those roles;
- (i) fees of consultants and other advisers;
- (j) insurance premiums;
- (k) Taxes; and
- (l) any other costs, fees and expenses the Borrower and the Lender agree are Operating Costs.

"Operating Report" means a report substantially in a form agreed between the Borrower and the Lender.

"Operating Revenue" means all amounts the Borrower receives, or is forecast to receive, in that period from or in relation to the Project in the nature of revenues received by the Borrower on a cash basis (in respect of any forecast, as set out in the Base Case Financial Model) including:

- (a) proceeds of all sales of Product;
- (b) all revenue (or amounts in the nature of revenue) received by the Borrower;
- (c) compensation and other amounts which represent a return on, or compensation for, lost revenue, the proceeds of any business interruption insurance claims and liquidated damages as described in paragraph (a)(iv) of Committed Funding;
- (d) interest on bank accounts to the extent paid into the Collection Accounts; and
- (e) any Tax rebate or refund,

and any other amounts the Borrower and the Lender agree are Operating Revenue, but excluding any amounts drawn under the Facilities or received under any other Secured Creditor Agreement.

"Operational Completion Certificate" means a certificate from the Borrower in the form of Part III (*Form of Operational Completion Certificate*) of Schedule 9 (*Construction Report and Completion Tests*), signed by the Borrower, certified by the Independent Technical Consultant and accepted by the Lender (acting reasonably) in respect of any item not certified by the Independent Technical Consultant. It shall not relate to the Airstrip Project.

"Operational Completion Tests" has the meaning given to it in Part III (*Form of Operational Completion Certificate*) of Schedule 9 (*Construction Report and Completion Tests*).

"Ore Resource and Reserve Report" means an ore resource and reserve report with respect to the Project, substantially in a form agreed between the Borrower and the Lender.

"Original Financial Statements" means:

- (a) in relation to the Parent, the audited consolidated financial statements of the Group for the financial year ended 30 June 2020;
- (b) in relation to each Original Obligor other than the Parent, its financial statements for its financial year ended 30 June 2020; and
- (c) in relation to any other Obligor, its audited financial statements delivered to the Lender as required by Clause 24 (*Changes to the Obligors*).

"Original Obligor" means the Borrower or the Parent.

"Party" means a party to this Agreement.

"Pastoral Lease" means the pastoral lease with registered number N049686 dated 12 May 2015 between the State of Western Australia acting through the Minister for Lands, a body corporate under the Land Administration Act 1997 as lessor and the Parent as lessee, in respect of the whole of land comprised in Certificate of Title Volume LR3067 Folio 231 and Certificate of Title Volume LR3085 Folio 124, as transferred to the Borrower prior to Financial Close.

"Permitted Acquisition" means:

- (a) in the case of the Parent or any Subsidiary (other than the Borrower) of the Parent:
 - (i) not used;
 - (ii) not used
 - (A) not used;
 - (B) not used;
 - (C) not used; or
 - (D) any acquisition or investment with the prior written consent of the Lender;
 - (iii) not used; and
- (b) in the case of the Borrower:
 - (i) any acquisition of Project Assets or any other asset to be used in connection with the Project; or
 - (ii) any other acquisition or investment with the prior written consent of the Lender.

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

- (a) of Product, pursuant to the Offtake Agreements;
- (b) of assets other than Product, in the ordinary course of ordinary trading of the applicable Obligor;
- (c) of assets (other than shares, mining tenements, businesses, real property or intellectual property or assets with a value greater than A\$50,000) 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);
- (d) of obsolete or redundant vehicles, plant and equipment for cash which are surplus or otherwise no longer required for the purpose of the Obligors' ordinary course of ordinary trading activities;
- (e) arising as a result of any Permitted Security;
- (f) with the prior written consent of the Lender;
- (g) all or any part of its interests in the Fungoni and Tajiri mineral sands projects provided that the aggregate amount of the net upfront consideration received for such Disposal is equal to or greater than A\$35,000,000; or
- (h) of assets (other than shares in an Obligor or Product) for cash where the higher of the market value and net consideration receivable (when aggregated with the higher of the market value and net consideration receivable for any other sale, lease, licence, transfer or other disposal not allowed under the preceding paragraphs) does not exceed:
 - (i) an aggregate of A\$500,000 (or its equivalent in any other currency or currencies) in any financial year;
 - (ii) not used;
- (i) not used; or
- (j) not used.

"Permitted Distribution" means:

- (a) the payment of a Distribution to the Borrower;
- (b) not used; or
- (c) not used.

"Permitted Financial Indebtedness" means Financial Indebtedness:

- (a) incurred under the Finance Documents;

- (b) incurred under the Bonds up to a maximum aggregate principal amount of US\$60,000,000 (or its equivalent in any other currency or currencies) or under any Bond Refinancing plus capitalised interest;
- (c) not used;
- (d) incurred under the Working Capital Facility Agreement, up to a maximum aggregate principal amount of A\$15,000,000 plus capitalised interest and on terms which meet the Working Capital Facility Agreement Conditions;
- (e) arising under Subordinated Parent Debt or Subordinated Borrower Debt;
- (f) under leases and hire purchase contracts constituting Financial Indebtedness under paragraph (d) of the definition of Financial Indebtedness which are shown in the Base Case Financial Model;
- (g) incurred in the ordinary course of business for the acquisition of an asset or service where the payment for the asset or services is on the supplier's standard or usual terms (or on terms more favourable to the Obligors) and deferred for a period of not more than 120 days;
- (h) under ordinary course ancillary banking facilities such as credit cards provided by a financial institution provided that the outstanding principal amount of which does not exceed A\$200,000 (or its equivalent in any other currency or currencies) in aggregate for the Obligors at any time;
- (i) under ordinary course bank guarantee or letter of credit facilities provided by a financial institution provided that the outstanding principal amount of which does not exceed A\$500,000 (or its equivalent in any other currency or currencies) in aggregate for the Obligors at any time;
- (j) any other facilities provided in the normal course of business by a financial institution provided that the outstanding principal amount of which does not exceed A\$500,000 (or its equivalent in any other currency or currencies) in aggregate for the Obligors at any time;
- (k) not used;
- (l) incurred or subsisting with the prior written consent of the Lender, the Bond Trustee and the WCF Lender;
- (m) not used;
- (n) any guarantee provided by the Parent in respect of the obligations of another Obligor; or
- (o) incurred under the New LNSA up to a maximum aggregate principal amount of A\$20,000,000 plus capitalised interest, and, to the extent they constitute Financial Indebtedness, fees, any make whole payments, costs and indemnities (including the Warrant Indemnity Amount) incurred in accordance with the terms of the New

LNSA (in the form of that document as at the Implementation Deed Effective Date) (or its equivalent in any other currency or currencies).

"Permitted Loan" means:

- (a) any trade credit extended by any Obligor to its customers on normal commercial terms and in the ordinary course of its trading activities; or
- (b) in the case of the Parent:
 - (i) any Subordinated Borrower Debt made to the Borrower; or
 - (ii) a loan to a Subsidiary of the Parent for the sole purpose of funding:
 - (A) the maintenance and operations of the Tanzanian Projects provided that the aggregate amount advanced under this paragraph does not exceed the amount specified for such purpose in the Base Case Financial Model; or
 - (B) any other costs and expenses incurred only for the purposes of the Tanzanian Disposal (including transaction costs, fees and expenses and amounts necessary or advisable to prepare the Tanzanian Projects for sale) that (1) do not exceed A\$250,000 in aggregate, or (2) have been approved in writing by the Lender; or
- (c) in the case of Strandline UK, the fully drawn US\$8,500,000 loan previously advanced by Strandline UK to Nyati Mineral Sands Limited under the Loan Agreement dated 15 May 2023 between Strandline UK and Nyati Mineral Sands Limited and assigned to the Security Trustee.

"Permitted Security" means:

- (a) any Security arising under the Transaction Security;
- (b) any Security arising under the Bond Trustee Security;
- (c) 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;
- (d) any netting or set-off arrangement entered into by any Obligor in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of Obligors and credit balances of Obligors;
- (e) any payment or close out netting or set-off arrangement pursuant to any transactional banking facilities or any Treasury Transaction or foreign exchange transaction entered into by any Obligor which constitutes Permitted Financial Indebtedness, excluding any Security under a credit support arrangement;
- (f) 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 an Obligor in the ordinary course of ordinary trading and on the supplier's standard

or usual terms (or on terms more favourable to the Obligors) so long as the debt it secures is paid when due or contested in good faith;

- (g) any arrangement or transaction which is a 'security interest' as defined in section 12(3) of the PPSA to the extent it does not secure any obligations (but excluding any transfer of accounts as defined in the PPSA);
- (h) any Security given by the Parent:
 - (i) not used:
 - (A) not used; and
 - (B) not used;
 - (ii) not used;
 - (iii) prior to the Implementation Deed Effective Date in respect of cash held by the Parent with any financial institution as security for ordinary course bank guarantee or letter of credit facility issued by such financial institution for the benefit of a Subsidiary (other than in respect of the Project, or the Fungoni or Tajiri mineral sands projects) up to, in aggregate A\$2,000,000;
- (i) any Security incurred or subsisting with the prior written consent of the Lender, the Bond Trustee and the WCF Lender; and
- (j) not used.

"Physical Completion" means the time at which:

- (a) the Lender has received the Physical Completion Certificate (and where applicable, the Lender has accepted the certificate in accordance with the definition of that certificate); and
- (b) no Event of Default or Review Event has occurred and is continuing,

and for the avoidance of doubt shall not include the Denham Road Project or the Airstrip Project.

"Physical Completion Certificate" means a certificate from the Borrower in the form, or substantially in the form of Part II (*Form of Physical Completion Certificate*) of Schedule 9 (*Construction Report and Completion Tests*), signed by the Borrower, certified by the Independent Technical Consultant and accepted by the Lender (acting reasonably) in respect of any item not certified by the Independent Technical Consultant. It shall not relate to the Denham Road Project or the Airstrip Project.

"Physical Completion Test" has the meaning given to it in Part II (*Form of Physical Completion Certificate*) of Schedule 9 (*Construction Report and Completion Tests*).

"Physical Completion Cost to Complete Certificate" means a certificate from the Borrower in the form, or substantially in the form of Part I (*Form of Physical Completion Cost to Complete Certificate*) of Schedule 10 (*Form of Cost to Complete Certificates*),

signed by a director of the Borrower and certified by the Independent Technical Consultant.

"Physical Completion Cost to Complete Test" means a test which will be satisfied if the Committed Funding at any time exceeds the Cost to Complete – Physical Completion at that time.

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

"Port Services Contract" means the document entitled "Port Access and Services Agreement" dated 16 December 2020 between the Borrower, the Parent and Mid West Ports Authority ABN 73 384 989 178.

"Power" means a power, right, authority, discretion or remedy which is conferred on a person:

- (a) under any Finance Document; or
- (b) by law in relation to any Finance Document.

"Probable Ore Reserve" has the meaning given to it in the JORC Code.

"Process Plant Design and Construct Contract" means the document dated on or before Financial Close between the Borrower and the contractor in relation to the design and construction of the process plant for the Project.

"Product" means zircon, zircon concentrate, rutile, ilmenite and any other mineral sand products produced from the Project.

"Project" means the Coburn Heavy Mineral Sands Project carried on by the Borrower situated in the Gascoyne region of Western Australia.

"Project Accounts" means the Collection Accounts, the WCP Relocation Reserve Account, the Debt Service Reserve Accounts, the Insurance Proceeds Account and the Cost Overrun Account.

"Project Area" means any freehold, leasehold or other estate or interest in land in respect of which the Borrower has an interest in, easement over, right of access to or entry upon, for the purposes of the Project, from time to time and, for the avoidance of doubt, includes the area comprised in the Project Tenements.

"Project Assets" means all the right, title, estate and interest both present and future of any Obligor in connection with the Project, including all right, title, estate and interest in, to, under or derived from:

- (a) the Project Tenements;
- (b) the Pastoral Lease;
- (c) the Authorisations;
- (d) all Product;

- (e) all proceeds of all sales of Product;
- (f) the Project Area, including any title to or interest in or right to enter or occupy land in the Project Area now or at a later time held by an Obligor;
- (g) all buildings, improvements, structures, systems, fixtures, plant, machinery, tools and other personal property at any time acquired, leased or held and used or intended for use in connection with or incidental to the construction, refurbishing, transporting and commissioning of the Project or the mining, extraction, transporting, processing, metallurgical reduction and treating, transporting of the Product, and all associated facilities and infrastructure;
- (h) the Project Accounts;
- (i) each Project Document;
- (j) each Hedging Agreement;
- (k) the insurance policies required to be taken out by the Borrower under Clause 20.14 (*Insurance*) and all claims and proceeds in respect of those insurance policies;
- (l) all Mining Information and other intellectual property forming part of or relating to the Project; and
- (m) all other contracts, agreements, permits, leases, licences, consents, which form part of or relate to the design, construction, development, commissioning, operation or maintenance of the Project, or to the mining, production, transportation, storage, treatment, processing or marketing of the Product or for any ancillary purpose.

"Project Completion" means the time at which:

- (a) the Lender has received (and where applicable, the Lender has accepted the certificate in accordance with the definition of that certificate):
 - (i) the Physical Completion Certificate; and
 - (ii) the Operational Completion Certificate;
- (b) no Event of Default or Review Event has occurred and is continuing; and
- (c) the Debt Service Reserve Accounts are funded to the DSRA Required Balance,

and for the avoidance of doubt shall not include the Denham Road Project or the Airstrip Project.

"Project Completion Cost to Complete Certificate" means a certificate from the Borrower in the form, or substantially in the form of Part II (*Form of Project Completion Cost to Complete Certificate*) of Schedule 10 (*Form of Cost to Complete Certificates*), signed by a director of the Borrower and certified by the Independent Technical Consultant.

"Project Completion Cost to Complete Test" means a test which will be satisfied if the Committed Funding at any time exceeds the Cost to Complete – Project Completion at that time.

"Project Costs" means the following amounts paid, payable, or forecast to be paid (whichever is applicable), by the Borrower in achieving Project Completion, (in respect of any forecast, as set out in the Base Case Financial Model) (excluding, interest, fees and other amounts in the nature of interest on Financial Indebtedness and Taxes not listed in the following), in respect of:

- (a) Construction Costs;
- (b) Project Area specific costs including rates and other outgoings in relation to the Project Area;
- (c) costs, fees and expenses of the Borrower's engineering, environmental, social, governmental, insurance and legal consultants under or in relation to the negotiation, preparation, execution and completion of the Project Documents or otherwise in connection with the Project;
- (d) costs, fees and expenses of start-up, testing and commissioning of the Project;
- (e) insurance premiums payable before completion of construction;
- (f) any Taxes payable before the completion of construction; and
- (g) any other cost that the Borrower and the Lender agree or that the Borrower and the New LNSA Agent agree are Project Costs.

"Project Document" means:

- (a) each Offtake Agreement;
- (b) the Process Plant Design and Construct Contract;
- (c) the Mining Services Contract;
- (d) the Bulk Earthworks Contract;
- (e) the Electricity Supply Agreement;
- (f) the LNG Supply Contract
- (g) the Camp Accommodation Contract;
- (h) the Port Services Contract;
- (i) on and from the date it is entered into, the Logistics Contract;
- (j) the Mining Agreement dated 20 September 2004 between the Parent and the Nanda Native Title Party, as assigned to the Borrower under an agreement between the Parent (as assignor), the Borrower (as assignee) and the Nanda Native Title Party;

- (k) the Heritage Agreement dated 3 October 2017 between the Parent and YMAC, being the native title representative body for the Geraldton and Pilbara representative areas under the NT Act and the duly appointed agent of the Nanda Claimant Group in respect of the Heritage Agreement, as assigned to the Borrower under an agreement between the Parent (as assignor), the Borrower (as assignee) and YMAC;
- (l) the Heritage Agreement (Pre-Native Title Determination) dated 3 October 2017 between the Parent and YMAC, being the native title representative body for the Geraldton and Pilbara representative areas under the NT Act and the duly appointed agent of The Malgana Shark Bay People Claimant Group in respect of the Heritage Agreement (Pre-Native Title Determination), as assigned to the Borrower under an agreement between the Parent (as assignor), the Borrower (as assignee) and YMAC;
- (m) the Land Management Protocol dated 9 April 2018 between Strandline and Bush Heritage Australia ACN 053 639 115, as assigned to the Borrower under an agreement between the Parent (as assignor), the Borrower (as assignee) and Bush Heritage Australia ACN 053 639 115;
- (n) the Compensation Agreement dated 15 February 2007 between the Parent and Harrold James Crawford, as assigned to the Borrower under an agreement between the Parent (as assignor), the Borrower (as assignee) and Harrold James Crawford;
- (o) any other document designated as a "Project Document" under the New LNSA; and
- (p) any other document agreed between the Borrower and the Lender (each acting reasonably) to be a Project Document.

"Project Tenement" means the following mining tenements:

- (a) M09/102;
- (b) M09/103;
- (c) M09/104;
- (d) M09/105;
- (e) M09/106;
- (f) M09/111;
- (g) M09/112;
- (h) E09/939;
- (i) E09/2355 (pending);
- (j) L09/21;
- (k) L09/43;

- (l) L09/99;
- (m) L09/101;
- (n) R09/2;
- (o) R09/3; and
- (p) R09/4 (pending),

and includes:

- (q) any present or future application, renewal, extension, modification, substitution, replacement, amalgamation, subdivision or variation of any of the above (whether extending over the same or a greater or lesser area); and
- (r) any tenement, lease, license, permit, agreement, document or instrument that the Borrower and the Lender agree to be a Project Tenement; and
- (s) any new tenement, lease, license, permit, agreement, document or instrument within the Project Area that is issued to the Borrower in connection with the Borrower's exploration programme (if any).

"Proved Ore Reserve" has the meaning given to it in the JORC Code.

"Quarter End Date" means 31 March, 30 June, 30 September and 31 December in any year.

"Ramp Up Period" means the period commencing on the date that is 18 Months after the date of Financial Close, until and including the date that is 27 Months after the date of Financial Close, or such other commencement and end dates that are agreed between the Lender and the Borrower.

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

"Repeating Representations" means:

- (a) each of the representations set out in Clause 17 (*Representations*), other than those set out in Clause 17.9 (*No stamp Taxes*) and Clauses 17.13(a) and 17.13(b) (*Financial statements*); and
- (b) not used.

"Reporting Period" means each period of 6 Months from Financial Close until the date of Project Completion (or part thereof in the case of the last period which will expire on the date of Project Completion) and thereafter each period of 12 Months (or part thereof) from Project Completion until all Loans has been repaid in full.

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

"Reserve Tail Ratio" means at any Calculation Date, the ratio (expressed as a percentage) of A:B where:

- (a) "A" means the aggregate total of Proved Ore Reserve and Probable Ore Reserve inventory as represented in the then current Life of Mine Plan which fits into the Base Case Financial Model which, according to the then current Life of Mine Plan which fits into the Base Case Financial Model, are forecast to be mined after the latest Termination Date; and
- (b) "B" means the total reserve inventory as represented in the then current Life of Mine Plan which fits into the Base Case Financial Model.

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

"Review Event" means any event or circumstance described in Clause 21 (*Review Events*) (other than Clause 21.5 (*Consequences of a Review Event*)).

"Royalty Obligations" means liabilities arising under or pursuant to:

- (a) any royalty payable to any Governmental Agency in connection with a Project Tenement;
- (b) any royalty payable on any native title or heritage agreement existing in respect of a Project Tenement at the date of this Agreement;
- (c) any royalty payable on a tenement that becomes a Project Tenement after the date of this Agreement, provided the royalty exists on the date it becomes a Project Tenement and was not created in contemplation of the acquisition by the Obligors; and
- (d) any other royalty approved by the Lender (such approval not to be unreasonably withheld).

"Schedule of Obligations" means the specific undertakings, commitments and obligations of the Borrower set out in Appendix B to the IES.

"Second Amendment Agreement" means the document titled "Second Amendment Agreement" dated 15 December 2023 and between the parties to the Agreement.

"Secured Creditor" has the meaning given to that term in the Intercreditor Deed.

"Secured Creditor Agreement" means:

- (a) this Agreement;
- (b) the Bond Terms;
- (c) any Bond Refinancing Agreement;

- (d) the Working Capital Facility Agreement; and
- (e) any Hedging Agreement;
- (f) the New LNSA; and
- (g) any other "Secured Creditor Agreement" as that term is defined in the Intercreditor Deed.

"**Secured Property**" means all of the assets of the Obligor 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 sections 12(1) or (2) of the PPSA.

"**Security Trust Deed**" means the deed entitled "Security Trust Deed" dated 31 May 2021 and made between, among others, the Borrower, the Lender and the Security Trustee.

"**Security Trustee**" means Global Loan Agency Services Australia Nominees Pty Limited ACN 608 945 008 or any replacement security trustee.

"**Senior Facility**" means each of:

- (a) the Facilities provided under this Agreement;
- (b) the Bonds (or, following redemption or repayment in full of the Bonds, any Bond Refinancing); and
- (c) the New LNSA Financing,

and "**Senior Facilities**" shall mean all of them. For the avoidance of doubt, "Senior Facility" and "Senior Facilities" shall exclude any Hedging Agreement.

"**Senior Management**" means the senior officers and managers of the Borrower.

"**Standstill Letter**" means the letter dated 15 December 2023 from Borrower to the Security Trustee, the Bond Trustee, the Lender, NAIF and the WCF Lender under which the Borrower seeks certain waivers and deferrals of payments, as amended from time to time.

"**Strandline UK**" means Strandline Resources UK Limited (a company incorporated in England and Wales with company number 11841019).

"**Subordinated Borrower Debt**" means any unsecured debt in the form of a shareholder loan incurred by the Borrower from the Parent with interest capitalised until the Bonds and the New LNSA Financing are repaid or the Distribution Conditions are met by the Borrower on customary contractual subordinated terms satisfactory to the Lender. The Borrower acknowledges and agrees that the terms of such subordination shall include the grant of security by the Parent over its rights and interests in and to such debt by way of the specific security deed referred to in paragraph (c) of the Transaction Security Documents definition.

"Subordinated Parent Debt" means any unsecured debt incurred by the Parent on customary contractual subordinated terms satisfactory to the Lender.

"Subsidiary" means a subsidiary within the meaning of Part 1.2 Division 6 of the Corporations Act.

"Sunset Financial Close Date" means 30 September 2021 or such later date as the Lender may agree.

"Sunset Project Completion Date" means 30 September 2024.

"Supplemental Agreement" means the deed poll (if any) given by the Borrower and the Parent in favour of the Lender on or before the date of Financial Close containing any additional representations, undertakings, Defaults or Review Events for the purposes of this Agreement.

"Suspense Account Agreement" means the suspense account agreement (however described) to be entered into between the Security Trustee (as escrow agent) and the Original Lender in respect of the NAIF Facility C2 Suspense Account.

"Tanzanian Disposal" means any sale, disposal or other form of monetisation strategy adopted by the Parent or any of its Subsidiaries of any interest in:

- (a) the whole or any part of a Tanzanian Project or assets referable to a Tanzanian Project; or
- (b) a Group member that owns shares in an entity involved in a Tanzanian Project or whose assets are primarily referable to a Tanzanian Project.

"Tanzanian Projects" means the Fungoni, Tajiri and Bagamoyo minerals sands projects.

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

"Tax Act" means the *Income Tax Assessment Act 1936*.

"Tax Consolidated Group" means a Consolidated Group or an MEC Group as defined in the *Income Tax Assessment Act 1997*.

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

"Technical Consultant's Certificate" means a certificate from the Independent Technical Consultant in the form, or substantially in the form of Schedule 11 (*Form of Technical Consultant's Certificate*).

"Termination Date" means:

- (a) in relation to Facility B, the date which is 15 years from the date of Financial Close;

- (b) in relation to Facility C1, the date which is 15 years from the date of Financial Close; and
- (c) in relation to Facility C2, the Facility C2 Repayment Date.

"TFA" 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 having regards 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) reasonably appropriate arrangements to ensure payments by members of the Tax Consolidated Group to the Head Company under the agreement are used to discharge relevant group liabilities (as described in section 721-10 of the Tax Act) of the Tax Consolidated Group.

The TFA may be contained in the same document as the TSA.

"Time to Complete Test" means a test which will be satisfied by the Borrower providing to the Lender a Project Completion Cost to Complete Certificate, confirming that the date of Project Completion is reasonably likely to be achieved by the Sunset Project Completion Date.

"Transaction Document" means each Finance Document and each other Secured Creditor Agreement.

"Transaction Security" means the Security created or expressed to be created in favour of, or held for the benefit of, the Lender pursuant to the Transaction Security Documents.

"Transaction Security Documents" means:

- (a) the general security deed dated 30 July 2021 between the Borrower and the Security Trustee;
- (b) the mortgage of the Pastoral Lease dated 30 July 2021 between the Borrower and the Security Trustee;
- (c) the specific security deed dated 30 July 2021 between the Parent and the Security Trustee;
- (d) the Featherweight Security Deed;
- (e) each Account Bank Deed;
- (f) until Financial Close, the general security deed to be granted by the Borrower in favour of the Bond Trustee;

- (g) the Norwegian law pledge to be granted by the Borrower over the Bond Escrow Account in favour of the Security Trustee;
- (h) the Norwegian law pledge to be granted by the Borrower over the Bond Escrow Account in favour of the Bond Trustee;
- (i) the Norwegian law pledge to be granted by the Borrower over the Bond Refinancing Reserve Account in favour of the Security Trustee (which may be combined in a single document with the Norwegian law pledge described in paragraph (g) above);
- (j) the Norwegian law pledge to be granted by the Borrower over the Bond Refinancing Reserve Account in favour of the Bond Trustee (which may be combined in a single document with the Norwegian law pledge described in paragraph (h) above);
- (k) any account bank deed or escrow agreement (however described) between the Borrower, the Security Trustee and NT Services AS in respect of the Bond Escrow Account and/or the Bond Refinancing Reserve Account;
- (l) any account bank deed or escrow agreement (however described) between the Borrower, the Bond Trustee and NT Services AS in respect of the Bond Escrow Account and/or Bond Refinancing Reserve Account;
- (m) the English law debenture dated 19 January 2024 granted by Strandline UK in favour of the Security Trustee;
- (n) any documents required to be delivered to the Lender under Part IV (*Conditions Precedent Required to be Delivered by an Additional Guarantor*), paragraph 8 of Schedule 2 (*Conditions Precedent*); and
- (o) any document entered into by any Obligor and which create a Security over any of its assets in favour of, or for the benefit of, the Lender 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 Lender and the Borrower.

"**Transfer Date**" means, in relation to an assignment or a transfer, the Transfer Date specified in the relevant assignment agreement or Transfer Certificate.

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

"**Tripartite Deed**" means:

- (a) the deed between the Security Trustee, the Borrower and each other party to the Chemours Ilmenite Agreement;

- (b) the deed between the Security Trustee, the Borrower and each other party to the Nanjing Sanxiang Zircon Concentrate Agreement;
- (c) the deed between the Security Trustee, the Borrower and each other party to the Chilches Premium Zircon Agreement;
- (d) the deed between the Security Trustee, the Borrower and each other party to the Industrie Bitossi Premium Zircon Agreement;
- (e) the deed between the Security Trustee, the Borrower and each other party to the Venator Supply Agreement;
- (f) the deed between the Security Trustee, the Borrower and each other party to the Process Plant Design and Construct Contract;
- (g) the deed between the Security Trustee, the Borrower and each other party to the Mining Services Contract;
- (h) the deed between the Security Trustee, the Borrower and each other party to the Bulk Earthworks Contract;
- (i) the deed between the Security Trustee, the Borrower and each other party to the Electricity Supply Agreement;
- (j) the deed between the Security Trustee, the Borrower and each other party to the LNG Supply Contract;
- (k) the deed between the Security Trustee, the Borrower and each other party to the Camp Accommodation Contract;
- (l) the deed between the Security Trustee, the Borrower and each other party to the Port Services Contract;
- (m) on and from the date it is entered into, the deed between the Security Trustee, the Borrower and each other party to the Logistics Contract;
- (n) any document designated as a "Tripartite Deed" under the New LNSA;
- (o) any other document designated as such by the Lender and the Borrower.

"TSA" means an agreement between the members of a Tax Consolidated Group which takes effect as a tax sharing agreement under section 721/25 of the Tax Act and complies with the Tax Act and any law, official directive, request, guideline or policy (whether or not having the force of law) issued in connection with the Tax Act. The TFA may be contained in the same document as the TSA.

"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 Debt Service Reserve Account" means the US dollar-denominated bank account opened or to be opened by the Borrower prior to Financial Close and designated as a "Debt Service Reserve Account", together with any replacement and substitute accounts opened with the prior written consent of the Lender, and sub-accounts of those accounts.

"USD Collection Account" means the US dollar-denominated bank account opened or to be opened by the Borrower prior to Financial Close and designated by the Borrower as a "Collection Account", together with any replacement and substitute accounts opened with the prior written consent of the Lender, and sub-accounts of those accounts.

"Utilisation" means a utilisation of a Facility.

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

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

"Venator Supply Agreement" means the Supply Agreement dated 2 March 2021 between the Borrower and Venator Americas LLC.

"Warrant Deed" means the warrant deed dated on or about the date of the Implementation Deed between the Parent and each "Original Lender" under the New LNSA.

"Warrant Indemnity Amount" has the meaning given to it in the New LNSA (in the form as at the Implementation Deed Effective Date and on the basis of the form of the Warrant Deed as at the Implementation Deed Effective Date).

"WCF Facility" means the facility under the Working Capital Facility Agreement.

"WCF Lender" means the lender under the Working Capital Facility Agreement.

"WCP ITE Review" means a review of the Base Case Financial Model by the Independent Technical Consultant certifying that the amounts to be deposited into the WCP Relocation Reserve Account under Clause 16.7(b) (*WCP Relocation Reserve Account*) are not less than 1/20th of the cost of the applicable relocation of the wet concentration plant.

"WCP Relocation Reserve Account" means the Australian dollar-denominated bank account opened by the Borrower and held with the Account Bank located in Australia, in the name of the Borrower and designated by the Borrower as a "WCP Relocation Reserve Account", together with any replacement and substitute accounts opened with the prior written consent of the Lender, and sub-accounts of those accounts

"WHS Scheme" means the scheme established under the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

"Working Capital Facility Agreement" means the working capital facility agreement between, among others, the Borrower and the WCF Lender for working capital, dated after the date of this Agreement and which is designated as the "Working Capital Facility Agreement" for the purposes of the Security Trust Deed and Intercreditor Deed and meets the Working Capital Facility Agreement Conditions.

"Working Capital Facility Agreement Conditions" means the conditions set out in Clause 20.34 (*Working Capital Facility Agreement Conditions*).

"YMAC" means the Yamatji Marlpa Aboriginal Corporation.

1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
- (i) the **"Lender"**, any **"Obligor"** or any **"Party"** shall be construed so as to include its executors, administrators, successors, substitutes (including by novation) and permitted assigns to, or of, its rights and/or obligations under the Finance Documents;
 - (ii) a document in **"agreed form"** is a document which is previously agreed in writing by or on behalf of the Borrower and the Lender or, if not so agreed, is in the form specified by the Lender;
 - (iii) a reference to an amount **"owing"** or **"outstanding"** under the Finance Documents includes any amounts owing to the Lender, NAIF or the Commonwealth;
 - (iv) **"assets"** includes present and future properties, revenues and rights of every description;
 - (v) a **"Finance Document"** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (vi) **"guarantee"** means:
 - (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;
 - (vii) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (viii) a **"person"** 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 permitted assigns;

- (ix) 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;
 - (x) a provision of law or a regulation is a reference to that provision as amended or re-enacted from time to time;
 - (xi) a time of day is a reference to Perth time;
 - (xii) 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;
 - (xiii) the words "**outstanding**", "**owing**", "**payable**", "**unpaid**" or similar expressions when used in connection with Facility C2 shall be deemed to include an amount equal to amounts standing to the credit of the NAIF Facility C2 Suspense Account (an amount paid to the NAIF Facility C2 Suspense Account shall not constitute repayment or prepayment (in each case however described) of Facility C2 or any other amount outstanding under this Agreement).
- (b) Section, Clause and Schedule headings are for ease of reference only.
 - (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
 - (d) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied to the satisfaction of the Lender acting reasonably or waived and an Event of Default is "**continuing**" if it has not been remedied to the satisfaction of the Lender acting reasonably or waived.
 - (e) A Review Event ceases to continue if a waiver notice is given to the Borrower in respect of that Review Event under the Intercreditor Deed.
 - (f) A Lock Up Cash Sweep Event is "**continuing**" after it occurs until the Borrower supplies the Lender and the NAIF Representative with a Compliance Certificate demonstrating that there is no Lock Up Cash Sweep Event under Clause 7.7 (*Lock up and cash sweep mandatory prepayment*).
 - (g) A reference in this Agreement to any amount or amounts, matter or thing being "**certified by the Independent Technical Consultant**" means the provision to the Lender of a written certification by the Independent Technical Consultant which must be accompanied by reasonable supporting calculations and evidence for that certification, which the Lender must promptly deliver to the Borrower following receipt by it from the Independent Technical Consultant.

- (h) Without limiting any other rights of access or audit at law or under a Finance Document, a reference in Clause 18.14 (*Right to access and audit*) to "records", "information", "documentation" or "books" is a reference to records, information, documentation or books in connection with the Obligors or the Project (and not to private records or information of the relevant personnel) to the extent that such records, information, documentation or books may be disclosed under those clauses without resulting in a breach of law or a breach of any confidentiality restriction owed by the relevant discloser to a third party (other than where the third party is an Obligor, or an agent, personnel, employee, officer or professional adviser of an Obligor).

1.3 Currency symbols and definitions

- (a) "A\$", "AUD" and "Australian dollars" denote the lawful currency of the Commonwealth of Australia and "US\$", "USD" and "US dollars" denote the lawful currency of the US.

1.4 Limitation on liability of trustee Lender

Any limitation of liability conforming to the requirements of Schedule 4 (*Form of Transfer Certificate*) contained in a Transfer Certificate or in an assignment agreement 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 Obligors' agent

- (a) All communications and notices under the Finance Documents to and from the Obligors may be given to or by the Borrower and each Obligor irrevocably authorises the Lender 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 the Lender and the NAIF Representative;
 - (ii) give and receive all communications and notices (including any 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 (*Obligors' agent*) 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.

1.6 Original Lender's rights, duties, powers and functions

- (a) Each Obligor acknowledges that:
 - (i) the Original Lender has entered into a Master Facility Agreement under which NAIF has agreed to provide financial accommodation to the Original Lender to enable the Original Lender to provide loans or other financial accommodation under finance documents to certain obligors to fund certain eligible projects;
 - (ii) the Original Lender must direct the Borrower under the Finance Documents to provide NAIF with a copy of all information, documents, notices or communications which are sent to the Original Lender under the Finance Documents;
 - (iii) the Original Lender must not do anything which has the effect of varying, or granting any waiver, consent, time or indulgence, under or in respect of a Finance Document without the prior written consent of NAIF;
 - (iv) the Original Lender will not release or discharge or agree to the release or discharge of any Obligor or any Security given or taken under any Finance Document without the prior written consent of NAIF and the Original Lender will not be in breach of any Finance Document for refusing a release or discharge on such basis;
 - (v) the Original Lender must consult with NAIF in connection with the exercise of its rights, powers and remedies and any action it proposes to take under or in relation to the Finance Documents, and exercise its rights, powers and remedies and take action under or in relation to the Finance Documents in accordance with reasonable directions (if any) of NAIF; and
 - (vi) as at the date of this Agreement, each Finance Document is a "Project Finance Document" for the purposes of (and as defined in) the Master Facility Agreement.
- (b) The Original Lender may appoint an agent or attorney to act on its behalf in relation to all or any of its rights and obligations under the Finance Documents.
- (c) Each Obligor agrees to provide a copy of all notices, certificates, requests for consent or approval, requests for waiver, information, reports, documents and other communications in connection with the Finance Documents provided or required to be provided to the Original Lender to the NAIF Representative at the same time as they are provided or required to be provided to the Original Lender. This clause applies to any obligation to give any communication to the Original Lender in the Finance Documents, even if the relevant clause does not expressly reference this requirement. Each Obligor agrees to directly provide to the NAIF Representative any further information relating to the Project, an Obligor or the Finance Documents reasonably requested by the NAIF Representative, and the Original Lender consents to such disclosure.

- (d) Notwithstanding anything contained or implied in the Finance Documents to the contrary, the parties expressly agree that the Original Lender, NAIF and the Commonwealth are not obliged to exercise a power, function, duty or right, statutory or otherwise, which is granted to or within the responsibility of any other Governmental Agency, or to influence, over-ride or direct any Governmental Agency in the proper exercise and performance of its legal duties and functions.
- (e) Nothing contained in this agreement or the Finance Documents or contemplated by this agreement or the Finance Documents has the effect of constraining the Original Lender, NAIF or the Commonwealth or placing any fetter on the Original Lender's, NAIF's or the Commonwealth's discretion or the discretion of any Governmental Agency or other government related functionary to exercise or not to exercise any of its rights, duties, powers or functions, statutory or otherwise.
- (f) Subject to paragraph (g) no party will be entitled to make any claim, demand, suit, proceeding or cause of action against the Original Lender under this agreement or the Finance Documents for any cost, liability, loss or expense relating to any exercise or failure by the Original Lender to exercise its statutory rights or duties.
- (g) Paragraph (f) does not limit any liability of the Original Lender which the Original Lender would have had to the party in accordance with this agreement or any Finance Document as a result of a breach by the Original Lender of a term of this agreement or any Finance Document but for paragraph (f).

1.7 Facilities

The Facilities under this Agreement are Facility B, Facility C1 and Facility C2. There is no 'Facility A' under this Agreement. This designation is to maintain consistency with the term sheet that originally documented the facilities, where the Bonds were designated 'Tranche A'.

SECTION 2 THE FACILITIES

2. THE FACILITIES

- (a) Subject to the terms of this Agreement, the Lender makes available to the Borrower:
- (i) an Australian dollar term loan facility in an aggregate amount equal to the Facility B Commitment;
 - (ii) an Australian dollar term loan facility in an aggregate amount equal to the Facility C1 Commitment. The parties acknowledge and agree that Facility C1 will not be drawn on Financial Close, and will not be drawn until all of the conditions precedent described in clause 4.1(b) have been satisfied or waived; and
 - (iii) an Australian dollar term loan facility in an aggregate amount equal to the Facility C2 Commitment. The parties acknowledge and agree that Facility C2 will not be drawn on Financial Close, and will not be drawn until all of the conditions precedent described in clause 4.1(c) have been satisfied or waived.

3. PURPOSE

3.1 Purpose

The Borrower shall apply all amounts borrowed by it under:

- (a) Facility B towards financing the Borrower's:
- (i) Project Costs to the extent those Project Costs are capital expenditure, or are commissioning costs that are capitalised operating expenditure (including pre-production expenditure which may include expenditure relating to mine establishment, pre-strip, operations readiness and environmental monitoring);
 - (ii) upfront financing fees and costs, interest and other amounts due under or in connection with the Facilities; and
 - (iii) if, after all amounts under paragraphs (i) and (ii) have been or will be financed and there is Available Commitment under Facility B, funding of the Debt Service Reserve Account up to the DSRA Required Balance,
- in each case as set out in the Base Case Financial Model;
- (b) Facility C1 towards financing the construction of the Airstrip Project as set out in the Base Case Financial Model; and
- (c) Facility C2 towards financing:
- (i) Project remediation costs including costs of expansion of the tailings storage capacity of the Project, "truck and shovel" costs related or incidental to such expansion; and

- (ii) upgrade of the MSP,
- or as otherwise agreed by the Lender.

3.2 Monitoring

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

4. CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

The Borrower may not deliver a Utilisation Request:

- (a) in respect of any Facility unless:
 - (i) the Lender has received all of the documents and other evidence listed in Part I (*Conditions Precedent to Financial Close*) of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Lender;
 - (ii) the Lender has received evidence (in form and substance satisfactory to the Lender) that each condition precedent set out in Schedule 12 (*Technical CPs and undertakings*) and Schedule 13 (*E&S CPs and action plans*) has been satisfied; and
 - (iii) the Lender has received evidence (in form and substance satisfactory to the Lender) that the equity amount raised by the Parent in satisfaction of the condition precedent in Part I (*Conditions Precedent to Financial Close*), paragraph 8(b) in Schedule 2 (*Conditions Precedent*) has been spent in full on Project Costs or, if not spent in full prior to the date of first Utilisation, that amount (or any unspent balance of that amount) will be spent simultaneously with first Utilisation; and
- (b) in respect of Facility C1 unless the Lender has received all of the documents and other evidence listed in Part II (*Conditions Precedent to Initial Utilisation – Facility C1*) of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Lender;
- (c) in respect of Facility C2 unless the Lender has received all of the documents and other evidence listed in Part III (*Conditions Precedent to Initial Utilisation – Facility C2*) of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Lender.

The Lender shall notify the Borrower promptly upon being so satisfied.

4.2 Further conditions precedent

The Lender will only be obliged to comply with Clause 5.5 (*Loan availability*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) in respect of Facility B, the Lender has received all of the following documents and other evidence (in each case in form and substance satisfactory to the Lender):
 - (i) for each Utilisation:

- (A) until the Physical Completion Test has been met:
 - (1) a Physical Completion Cost to Complete Certificate showing that the Physical Completion Cost to Complete Test has been satisfied; and
 - (2) a Project Completion Cost to Complete Certificate showing that the Project Completion Cost to Complete Test has been satisfied; or
- (B) after the Physical Completion Test has been met, a Project Completion Cost to Complete Certificate showing that the Project Completion Cost to Complete Test has been satisfied;
- (ii) a Project Completion Cost to Complete Certificate showing that the Time to Complete Test has been met (which for the avoidance of doubt, can be included in the same Project Completion Cost to Complete Certificate received by the Lender under paragraph (i) above);
- (iii) evidence that utilisations or drawdowns (however described) of Facility B and of the Bonds will occur on a pro rata basis (to the extent reasonably practicable) in accordance with Clause 5.2 (*Utilisation of Facility B – pro rata drawdowns*);
- (iv) if the proposed Utilisation is for the purposes of funding the AUD Debt Service Reserve Account, evidence that a pro rata utilisation or drawdown (however described) of the Bonds is being made on or before the date of the proposed Utilisation of Facility B for the purpose of funding the USD Debt Service Reserve Account in accordance with Clause 5.2 (*Utilisation of Facility B – pro rata drawdowns*); and
- (v) copies of the latest management accounts for the Obligors;
- (b) in respect of Facility C1, no Lock Up Cash Sweep Event has occurred and is continuing;
- (c) in respect of Facility C2:
 - (i) the first Loan does not exceed \$10,000,000; and
 - (ii) in respect of any proposed Loan which would result in the outstanding Facility C2 Loans exceeding \$10,000,000:
 - (A) the proposed Utilisation Date of that Loan is:
 - (1) on or after 31 May 2024; and
 - (2) on or after the date on which all amounts under the New LNSA (including, for the avoidance of any doubt, under each of 'Facility A' and 'Facility B' under and as defined in the New LNSA) have been fully drawn and all amounts standing to the

credit of any New LNSA Escrow Account in respect of 'Facility A' and 'Facility B' under and as defined in the New LNSA have been released or disbursed (however described) to the Borrower (or, in the case of amounts standing to the credit of any New LNSA Escrow Account in respect of 'Facility B' under and as defined in the New LNSA, will, before any proposed Loan under Facility C2 is advanced, be released or disbursed (however described)); and

- (B) the Lender has received all of the documents and other evidence it requires, in form and substance satisfactory to the Lender, to demonstrate sufficient progress by the Obligor in respect of:
 - (1) an equity raising proposed by the Parent to occur after the date of the Second Amendment Agreement;
 - (2) the Tanzanian Disposal;
 - (3) the revision to the Life of Mine Plan and BCFM to occur after the date of the Second Amendment Agreement; and
 - (4) a restructuring plan in respect of the Senior Facilities and the Working Capital Facility Agreement to occur after the date of the Second Amendment Agreement;
- (iii) the Lender is satisfied that the New LNSA Agent will simultaneously release or disburse (however described) to the Borrower from the New LNSA Facility C Escrow Account the full amount standing to the credit of the New LNSA Facility C Escrow Account (which shall be an amount not less than A\$5,000,000 unless a lower amount is requested by the Borrower and agreed to by the Lender and the New LNSA Agent);
- (iv) the Lender and the Majority Facility C Lenders are satisfied (each in their sole and absolute discretion) that the disbursement of funds from the New LNSA Facility C Escrow Account and the proposed Loan are only needed as a bridge to completion of the restructuring plan contemplated in Clause 20.43 (*Restructuring plan*) and the Majority Facility C Lenders and the Lender consider that that restructuring plan remains capable of completion according to the milestones expressed therein;
- (v) the Lender and the Majority Facility C Lenders are satisfied that total receipts from shipments of Product and refunds from business activity statements for the period commencing 1 March 2024 to 31 May 2024 (inclusive) are not less than A\$25,000,000 (excluding GST);
- (vi) the Lender and the Majority Facility C Lenders are satisfied that all trade creditors have substantially been paid within terms of trade;
- (vii) the Lender and the Majority Facility C Lenders have received a revised cash flow forecast to 31 May 2025 in form and substance satisfactory to the

Lender (acting on the advice of its independent financial adviser, including (but not limited to) McGrathNicol) and the Majority Facility C Lenders (acting on the advice of its "Independent Financial Advisor" (as that term is defined in the New LNSA); and

- (viii) the Borrower has paid the Lender the participation fee under Clause 10.1(b) (*Participation fee*); and
- (d) in respect of any Facility:
 - (i) other than as disclosed, waived or the subject of a standstill under the Standstill Letter, no Default or Review Event is continuing or would result from the proposed Loan;
 - (ii) other than as disclosed, waived or the subject of a standstill under the Standstill Letter, the Repeating Representations to be made by each Obligor are true in all material respects and not misleading;
 - (iii) the Utilisation is to be provided during the same financial year (ending 30 June) that the Utilisation Request was received by the Lender and the NAIF Representative;
 - (iv) the Lender has received a Technical Consultant's Certificate identifying details of the invoices which are to be funded by the proposed Utilisations, certified by the Independent Technical Consultant and accepted by the Lender (acting reasonably); and
 - (v) the Lender has received evidence (in form and substance satisfactory to the Lender) that each person engaged to undertake major Building Works on the Project and, where applicable, on the Airstrip Project, and required to be accredited for the purposes of the WHS Scheme:
 - (A) holds accreditation ("**Accreditation**"), and the Accreditation is not due to expire during the Building Works;
 - (B) has undertaken to maintain Accreditation; and
 - (C) where Accreditation is due to expire, satisfactory evidence that new Accreditation will be in place before commencement of the Building Works.

4.3 Maximum number of Utilisations

- (a) The Borrower may not deliver more than one Utilisation Request in any Month.

SECTION 3 UTILISATION

5. UTILISATION LOANS

5.1 Delivery of a Utilisation Request

The Borrower may utilise a Facility by delivery to the Lender and the NAIF Representative of a duly completed Utilisation Request not later than 11:00 am Perth time, at least 10 Business Days prior to the proposed Utilisation Date.

5.2 Utilisation of Facility B – pro rata drawdowns

- (a) For each Utilisation of Facility B, the Borrower must request a utilisation of the Bonds on a pro-rata basis (to the extent reasonably practicable, and using the A\$ equivalent (determined by reference to the Base Case Financial Model) of the Bond Issue Amount set at or about Financial Close ("**Bond Pro Rata Utilisation**").

For example, if at Financial Close, the A\$ equivalent of the Bond Issue Amount is A\$89,000,000, and Facility B is A\$130,000,000, the pro rata drawdowns will be made at the same time on the basis of 40.6% under the Bond Terms and 59.4% under Facility B (to the extent reasonably practicable).

- (b) Promptly following receipt, the Borrower must give a notice to the Lender (and the Bond Trustee) confirming the receipt of the proceeds of both the Utilisation and the Bond Pro Rata Utilisation, and the applicable amounts.
- (c) The Borrower must hold all proceeds of each Utilisation in the Collection Accounts and may not withdraw such proceeds from the Collection Accounts, until the Borrower has received the proceeds of both the Utilisation and the Bond Pro Rata Utilisation into the Collection Accounts.

5.3 Utilisation of Facility C2 – equal drawdowns

- (a) For each Utilisation of Facility C2 occurring after the Implementation Deed Effective Date, the Borrower must request a disbursement or release (however described) from the New LNSA Facility C Escrow Account which is equal to the Utilisation of Facility C2 ("**New LNSA Facility C Utilisation**").

For example, if the Borrower proposes to make a Utilisation under Facility C2 of A\$5,000,000, the Borrower must also request a disbursement or release (however described) from the New LNSA Facility C Escrow Account of A\$5,000,000.

- (b) Promptly following receipt, the Borrower must give a notice to the Lender (and the New LNSA Agent) confirming the receipt of the proceeds of both the Utilisation and the New LNSA Facility C Utilisation, and the applicable amounts.
- (c) The Borrower must hold all proceeds of each Utilisation in the Collection Accounts (or such other account as the Lender may direct at any time prior to the Utilisation) and may not withdraw such proceeds from the Collection Accounts, until the Borrower has received the proceeds of both the Utilisation and the New LNSA Facility C Utilisation into the Collection Accounts.

5.4 Completion of a Utilisation Request

- (a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
 - (i) it identifies the Facility to be utilised;
 - (ii) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;
 - (iii) the proposed Utilisation Date is in the same financial year that the Utilisation Request is received by the Lender;
 - (iv) the proposed Utilisation Date is not on the last day of a Month, and is at least 10 days before a Quarter End Date; and
 - (v) the amount of the Utilisation complies with Clause 5.4 (*Amount*).
- (b) Only one Loan may be requested in each Utilisation Request.

5.5 Amount

The amount of the proposed Loan must not be more than the Available Commitment and must be:

- (a) a minimum of A\$1,000,000 for Facility B or, if less, the Available Commitment; or
- (b) a minimum of A\$1,000,000 for Facility C1 and Facility C2 or, if less, the Available Commitment for that Facility C.

5.6 Loan availability

If the conditions set out in this Agreement have been met, the Lender shall make each Loan available by the Utilisation Date through its Facility Office.

5.7 Cancellation of Commitment

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

5.8 Cancellation of Commitment on Sunset Financial Close Date

If Financial Close has not been achieved by 5:00 pm Perth time on the Sunset Financial Close Date, the Commitments will be cancelled.

5.9 Limited recourse to the Original Lender

- (a) The Borrower acknowledges that the Original Lender may direct NAIF or the Commonwealth to pay an amount equal to the amount of any Loan that the Original Lender is required to make under this Agreement directly to the Borrower. The Borrower agrees that any such payment by NAIF or the Commonwealth to the Borrower will discharge the obligation of the Original Lender to make the Loan under Clause 5.5 (*Loan availability*).

- (b) Despite any other provision of this Agreement, the Original Lender:
- (i) shall have no obligation to provide any Utilisation requested by the Borrower under this Agreement; and
 - (ii) will not be liable for any claim the Borrower may have against it,
- except to the extent of the proceeds of any amount paid by the Commonwealth to the Original Lender in respect of that Utilisation or claim under the NAIF Act which is received by the Original Lender or paid to the Borrower at the direction of the Original Lender.
- (c) The Borrower waives all claims (including in respect of deceptive and misleading conduct) it may have against the Original Lender under or in connection with this Agreement in respect of which the Original Lender is not liable under paragraph (b) or in respect of any delay or postponement in the Original Lender providing a Utilisation requested by the Borrower under this Agreement due to a delay or postponement in it receiving the proceeds of any amount paid by NAIF or the Commonwealth to the Original Lender in respect of that Utilisation.

SECTION 4
REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

6.1 Repayment of Facility B

- (a) The Borrower must repay the Facility B Loans in instalments by:
 - (i) repaying the amounts, and on the dates, each as set out in the Facility B Amortisation Schedule (each a "**Facility B Repayment Instalment**"); and
 - (ii) repaying the total of the outstanding Facility B Loans on the Termination Date for Facility B.
- (b) The Borrower may not reborrow any part of Facility B which is repaid.

6.2 Repayment of Facility C

- (a) The Borrower must repay the Facility C Loans:
 - (i) in respect of the Facility C1 Loans, in instalments by repaying the amounts, and on the dates, each as set out in the Facility C1 Amortisation Schedule (each a "**Facility C1 Repayment Instalment**");
 - (ii) in respect of the Facility C2 Loans, repaying them in full on the Facility C2 Repayment Date; and
 - (iii) repaying the total of the outstanding Facility C Loans on the applicable Termination Dates for Facility C.
- (b) The Borrower may not reborrow any part of Facility C which is repaid.
- (c) The Borrower and the Lender acknowledge and agree that the Borrower must repay the Facility C2 Loans before repayment of Facility B Loans and Facility C1 Loans.
- (d) Subject to paragraph (e), the Borrower and the Original Lender acknowledge and agree that any payment of sale proceeds from the Tanzanian Disposal into the NAIF Facility C2 Suspense Account in accordance with clause 7.5 (*Facility C2 mandatory prepayment*) shall not constitute repayment or prepayment (however described) of Facility C2 Loans or any other Loan.
- (e) If on the Facility C2 Repayment Date any amount is standing to the credit of the NAIF Facility C2 Suspense Account, the Original Lender shall instruct the Security Trustee pay those amounts to the Original Lender:
 - (i) in repayment of the outstanding Facility C2 Loans in full (together with any accrued but unpaid interest on Facility C2 (which, for the avoidance of any doubt, shall not be paid *pari passu* with the New LNSA Financing); and
 - (ii) the balance (after the payments in paragraph (i) above) toward repaying the remaining Loans.

6.3 Acknowledgement of direction to the Obligors

- (a) The Original Lender may direct an Obligor to pay some or all amounts payable to the Original Lender under this agreement or any Finance Document (including any interest, fees, principal repayment or other payments) to NAIF or the Commonwealth or any agent on their behalf by notifying the Obligor and providing it with necessary account details.
- (b) Payment by the Obligor to that account in accordance with paragraph (a) above will discharge the obligation of the Obligor to pay the Original Lender to the extent of the payment.

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 the Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain any Utilisation or it becomes unlawful or impossible as a result of a change in law or regulation for any Affiliate of the Lender to do so (or if it becomes unlawful or impossible as a result of a change in law or regulation for NAIF or the Commonwealth to have provided financial accommodation under the Master Facility Agreement):

- (a) the Lender shall promptly notify the Borrower upon becoming aware of that event;
- (b) upon the Lender notifying the Borrower, the Available Commitment of the Lender will be immediately cancelled; and
- (c) the Borrower shall repay each Utilisation made to the Borrower on the next Interest Payment Date for the Utilisation occurring after the Lender has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law) and the Lender's corresponding Commitment(s) shall be cancelled in the amount repaid.

7.2 Insurance mandatory prepayment

Where the Borrower receives any Insurance Proceeds the Obligors must ensure those Insurance Proceeds are deposited immediately into the Insurance Proceeds Account in accordance with Clause 16.8 (*Insurance Proceeds Account*) and, subject to the Intercreditor Deed:

- (a) at any time while an Event of Default under Clause 22.1 (*Non-payment*), Clause 22.9 (*Insolvency*), Clause 22.10 (*Insolvency proceedings*) or Clause 22.11 (*Creditors' process*) is continuing, those Insurance Proceeds must promptly (and no later than 2 Business Days following receipt) be applied in full to prepay the Loans; or
- (b) at any time while an Event of Default (other than an Event of Default under Clause 22.1 (*Non-payment*), Clause 22.9 (*Insolvency*), Clause 22.10 (*Insolvency proceedings*) or Clause 22.11 (*Creditors' process*)) is continuing, those Insurance

Proceeds shall, at the election of the Lender (in its absolute discretion), be applied in full:

- (i) to prepay the outstanding Facility C2 Loans in full (together with any accrued but unpaid interest on Facility C2), *pari passu* with the New LNSA Financing; and
 - (ii) the balance (after the payments in paragraph (i) above) toward prepaying the remaining Loans; or
- (c) at any time prior to Project Completion while no Event of Default is continuing, those Insurance Proceeds must promptly (and no later than 2 Business Days following receipt) be applied:
- (i) to prepay the outstanding Facility C2 Loans in full (together with any accrued but unpaid interest on Facility C2), *pari passu* with the New LNSA Financing; and
 - (ii) the balance (after the payments in paragraph (i) above) toward prepaying the remaining the Loans,

other than an amount up to A\$5,000,000 for which any one of the following must apply:

- (iii) that amount is committed to be applied towards the repair, re-instatement and/or replacement of the relevant asset within 2 Months after receipt in cleared funds and actually used for the repair, re-instatement and/or replacement of the relevant asset within 6 Months after receipt in cleared funds;
 - (iv) the relevant asset or assets have already been repaired, re-instated or replaced by the time the Obligor receives the Insurance Proceeds; or
 - (v) the relevant asset or assets have been partially repaired, re-instated or replaced by the time the Obligor receives the Insurance Proceeds, and such amount of the Insurance Proceeds that is necessary to complete the repair, re-instatement and/or replacement of the relevant asset or assets are committed to be applied in accordance with paragraph (i) above; or
- (d) at any time on or after Project Completion and while no Event of Default is continuing:
- (i) where the Insurance Proceeds are for a total amount of A\$10,000,000 or less, one of the following must apply:
 - (A) that amount is committed to be applied towards the repair, re-instatement and/or replacement of the relevant asset within 2 Months after receipt in cleared funds and actually used for the repair, re-instatement and/or replacement of the relevant asset within 6 Months after receipt in cleared funds;

- (B) the relevant asset or assets have already been repaired, re-instated or replaced by the time the Obligor receives the Insurance Proceeds; or
 - (C) the relevant asset or assets have been partially repaired, re-instated or replaced by the time the Obligor receives the Insurance Proceeds, and such amount of the Insurance Proceeds that is necessary to complete the repair, re-instatement and/or replacement of the relevant asset or assets are committed to be applied in accordance with paragraph (i) above; and
- (ii) where the Insurance Proceeds are for a total amount greater than A\$10,000,000:
- (A) the Insurance Proceeds are received by an Obligor as a result of damage or destruction of any part of the Project ("**Insurance Event**");
 - (B) within 60 days (or such other period as the Lender may agree) of the Insurance Event, the Borrower has submitted a plan to repair, reinstate or replace the damaged or destroyed property, such that the Project will be in an equivalent position to that prior to the occurrence of the Insurance Event (the "**Reinstatement Program**");
 - (C) the Lender has approved the Reinstatement Program (acting reasonably); and
 - (D) the Lender is satisfied that the Borrower is able to meet its repayment obligations under the Senior Facilities,

then the Borrower may apply the Insurance Proceeds in accordance with the Reinstatement Program. If the Lender notifies the Borrower that:

- (E) it does not approve the Reinstatement Program (acting reasonably) within 30 Business Days of receipt; or
- (F) it is not satisfied that the Borrower is able to meet its repayment obligations under the Senior Facilities,

then the Borrower must promptly (and in any event within 2 Business Days following receipt of notice from the Lender) apply the Insurance Proceeds in full:

- (G) to prepay the outstanding Facility C2 Loans in full (together with any accrued but unpaid interest on Facility C2), *pari passu* with the New LNSA Financing; and
- (H) the balance (after the payments in paragraph (G) above) toward prepaying the remaining Loans.

For the purposes of this Clause, any amounts standing to the credit balance of the New LNSA Escrow Accounts shall be deducted from the amount outstanding under the New

LNSA for the purposes of calculating the amount to be paid, prepaid or otherwise distributed (in each case however described) to any "Lender" under the New LNSA pursuant to this Clause.

7.3 Project Asset sales mandatory prepayment

Subject to the Intercreditor Deed, if an Obligor sells or otherwise disposes of any Project Asset (other than a Permitted Disposal under paragraphs (a), (b) or (c) of the Permitted Disposal definition) and where the net proceeds of the sale or disposal are greater than A\$1,000,000, the Obligors must promptly (and no later than 2 Business Days following receipt) apply in prepayment:

(a) *first*, in repayment or prepayment of the outstanding Facility C2 Loans in full (together with any accrued but unpaid interest on Facility C2) on a pro rata basis with the facilities under the New LNSA until Facility C2 and the New LNSA Financing have been fully and finally repaid; and

(b) *second*, in repayment or prepayment of the remaining Loans,

of the Loans those proceeds other than where the proceeds are to be applied towards replacement assets as permitted under this Agreement.

For the purposes of this Clause, any amounts standing to the credit balance of the New LNSA Escrow Accounts shall be deducted from the amount outstanding under the New LNSA for the purposes of calculating the amount to be paid, prepaid or otherwise distributed (in each case however described) to any "Lender" under the New LNSA pursuant to this Clause.

7.4 Cash sharing

Subject to the Intercreditor Deed, on each Cash Share or Lock Up Cash Sweep Date, the Borrower must apply in prepayment of the Facilities:

(a) until paragraph (b) applies, 15% of any Cash Share Excess Cash; and

(b) on and from the date that is the earlier of (i) repayment in full of the Bonds; and (ii) the First Facility B Repayment Date, 50% of any Cash Share Excess Cash.

7.5 Facility C2 mandatory prepayment

(a) If, at any time while any Loan is outstanding under Facility C2 the Tanzanian Disposal completes then, subject to the Intercreditor Deed, the Borrower must (and the other Obligors must procure that the Borrower does) promptly (and no later than 2 Business Days following the occurrence of the event) apply the sale proceeds (net of any fees, costs, expenses and other transaction costs in relation to such disposal and any fee payable by the Borrower under the Standstill Letter) from the Tanzanian Disposal towards:

(i) *first*, payment of an amount into the NAIF Facility C2 Suspense Account which is equal to the outstanding Facility C2 Loans in full (together with any accrued but unpaid interest on Facility C2 and fees) on a pro rata basis with the facilities under the New LNSA until the New LNSA Financing has been fully and finally repaid and the amount standing to the credit of the

NAIF Facility C2 Suspense Account equals the outstanding Facility C2 Loans together with any accrued but unpaid interest on Facility C2 and fees; and

- (ii) *second*, applying 75% of the balance (after the payments under paragraph (a) above) towards repaying the remaining Senior Facilities and the WCF Facility on a pro rata basis.
- (b) The Borrower must not (and each other Obligor must procure that the Borrower does not) amend any provision of the New LNSA that relates to the distribution of proceeds relating to any Tanzanian Disposal without the prior written consent of the Lender.

For the purposes of this Clause, any amounts standing to the credit balance of the New LNSA Escrow Accounts shall be deducted from the amount outstanding under the New LNSA for the purposes of calculating the amount to be paid, prepaid or otherwise distributed (in each case however described) to any "Lender" under the New LNSA pursuant to this Clause.

7.6 Equity Cure Amount mandatory prepayment

Any Equity Cure Amount received by the Borrower must be applied:

- (i) *first*, in repayment or prepayment of the outstanding Facility C2 Loans in full (together with any accrued but unpaid interest on Facility C2) on a pro rata basis with the facilities under the New LNSA until Facility C2 and the New LNSA Financing have been fully and finally repaid; and
- (ii) *second*, in repayment or prepayment of the remaining Senior Facilities.

For the purposes of this Clause, any amounts standing to the credit balance of the New LNSA Escrow Accounts shall be deducted from the amount outstanding under the New LNSA for the purposes of calculating the amount to be paid, prepaid or otherwise distributed (in each case however described) to any "Lender" under the New LNSA pursuant to this Clause.

7.7 Lock up and cash sweep mandatory prepayment

(a) If a Lock Up Cash Sweep Event occurs and while it is continuing, the Borrower must apply 100% of the Cash Sweep Excess Cashflow (a "**Lock Up Amount**"):

- (i) *first*, in mandatory repayment or prepayment of the outstanding Facility C2 Loans in full (together with any accrued but unpaid interest on Facility C2) on a pro rata basis with the facilities under the New LNSA until Facility C2 and the New LNSA Financing have been fully and finally repaid; and
- (ii) *second*, in mandatory repayment or prepayment of the remaining Senior Facilities.

Each prepayment must be made on or before the Cash Share or Lock Up Cash Sweep Date that falls immediately after delivery of the Compliance Certificate that demonstrates the Lock Up Cash Sweep Event.

(b) On the first Cash Share or Lock Up Cash Sweep Date arising after a Lock Up Cash Sweep Event ceases to continue, the Borrower must apply the difference between:

- (i) the aggregate amount available in the Collection Accounts on the immediately preceding Quarter End Date after all amounts set out in paragraphs (a) to (j) (inclusive) of Clause 16.4 (*Withdrawals (post Ramp Up Period)*) have been paid at each such Quarter End Date; and
- (ii) the Minimum Unrestricted Cash Balance,

in mandatory prepayment of the Senior Facilities, up to the Catch-up Sweep Amount. In the event that there is an insufficient aggregate cash balance in the Collection Accounts (less the Minimum Unrestricted Cash Balance) on that Cash Share or Lock Up Cash Sweep Date to pay the Catch-up Sweep Amount in mandatory prepayment in accordance with this paragraph, then the Borrower must pay:

- (iii) the aggregate cash balance in the Collection Accounts (less the Minimum Unrestricted Cash Balance) on that first Cash Share or Lock Up Cash Sweep Date in mandatory prepayment of the Senior Facilities; and
- (iv) on each subsequent Cash Share or Lock Up Cash Sweep Date, the aggregate cash balance in the Collection Accounts (less the Minimum Unrestricted Cash Balance) in mandatory prepayment of the Senior Facilities until the whole of the Catch-up Sweep Amount has been applied in prepayment.

7.8 Mandatory prepayment – equity / other capital raise

If the Parent undertakes an equity capital raise or an Obligor undertakes any other fundraising or monetisation event (including, but not limited to, a royalty sale, preferred equity, hybrid or convertible instrument, a subordinated debt financing or a mezzanine debt financing) then, subject to the Intercreditor Deed, the Borrower must, and the Obligors must procure that the Borrower does, promptly (and no later than 2 Business Days following the occurrence of the event) apply the proceeds (net of any fees, costs, expenses and other transaction costs in relation to such equity capital raise or fundraising or monetisation event) towards repaying the outstanding Facility C2 Loans in full and the New LNSA Financing (in each case together with any accrued but unpaid interest on the Facility C2 Loans or New LNSA Financing (as applicable)) on a pro rata basis, until Facility C2 and the New LNSA Financing have been fully and finally repaid.

For the purposes of this Clause, any amounts standing to the credit balance of the New LNSA Escrow Accounts shall be deducted from the amount outstanding under the New LNSA for the purposes of calculating the amount to be paid, prepaid or otherwise distributed (in each case however described) to any "Lender" under the New LNSA pursuant to this Clause.

7.9 Mandatory prepayment – Senior Facility maturity

If, at any time while any Loan is outstanding, any scheduled interest amount or scheduled principal amount outstanding under a Senior Facility (other than this Agreement) or the

Working Capital Facility Agreement becomes due and payable, the Borrower must, if it receives notice in writing from the Lender (or NAIF or a NAIF Representative) immediately repay all Loans outstanding under the Facilities, together with accrued interest and any other amounts outstanding under this Agreement.

For the purposes of this Clause, any amounts standing to the credit balance of the New LNSA Escrow Accounts shall be deducted from the amount outstanding under the New LNSA for the purposes of calculating the amount to be paid, prepaid or otherwise distributed (in each case however described) to any "Lender" under the New LNSA pursuant to this Clause.

7.10 Voluntary cancellation

The Borrower may, if:

- (a) it gives the Lender not less than 5 Business Days' (or such shorter period as the Lender may agree) prior notice;
- (b) the Debt Service Reserve Accounts are funded to the DSRA Required Balance at that time;
- (c) it delivers to the Lender and the NAIF Representative a Physical Completion Certificate dated no earlier than 10 Business Days prior to the proposed cancellation date showing that the Physical Completion Test has been satisfied; and
- (d) (where only part of the Available Commitment is proposed to be cancelled and there will be outstanding Loans at the proposed cancellation date), it delivers to the Lender and the NAIF Representative:
 - (i) where the proposed cancellation date is prior to the date the Physical Completion Test has been met, a Physical Completion Cost to Complete Certificate and Project Completion Cost to Complete Certificate; and
 - (ii) where the proposed cancellation date is after the date the Physical Completion Test has been met, a Project Completion Cost to Complete Certificate,

in all cases dated no earlier than 10 Business Days prior to the proposed cancellation date showing that the Physical Completion Cost to Complete Test and/or the Project Completion Cost to Complete Test (as applicable) has been met,

cancel the whole or any part (being a minimum amount of A\$1,000,000) of an Available Commitment. Any cancellation under this Clause 7.10 shall reduce the Commitment of the Lender under that Facility.

7.11 Voluntary prepayment of Loans

- (a) Subject to the Intercreditor Deed, the Borrower may, if:
 - (i) it gives the Lender not less than 5 Business Days' (or such shorter period as the Lender may agree) prior notice; and

(ii) if the proposed prepayment is for only part of any Loan, either:

(A) Project Completion has occurred; or

(B) the Early Prepayment Conditions are satisfied,

prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of A\$1,000,000).

(b) A Loan may only be prepaid after the last day of the Availability Period for that Loan (or, if earlier, the day on which the applicable Available Commitment is zero).

7.12 NAIF Facility C2 Suspense Account

(a) Each Obligor shall take any action reasonably requested by the Original Lender to procure payment of amounts into the NAIF Facility C2 Suspense Account in accordance with clause 7.5 (*Facility C2 mandatory prepayment*).

(b) Subject to paragraphs (c) and (d), each Obligor acknowledges and agrees that amounts standing to the credit of the Facility C2 Suspense Account shall be held to the Original Lender's (and NAIF and each NAIF Representative's) order and the Security Trustee shall not be obliged to comply with any direction from the Borrower, any other Obligor or any other person in respect of those amounts.

(c) The Original Lender may, at any time and in its sole and absolute discretion, instruct the Security Trustee to pay all or any funds standing to the credit balance of the NAIF Facility C2 Suspense Account to the Original Lender in repayment of Facility C2.

(d) Each Obligor acknowledges and agrees that:

(i) any amount standing to the credit of the NAIF Facility C2 Suspense Account in accordance with clause 7.5 (*Facility C2 mandatory prepayment*) shall continue to constitute Facility C2 Loans and accordingly must be repaid or prepaid in full before repayment of Facility B Loans and Facility C1 Loans in accordance with clause 6.2(c) (*Repayment of Facility C*); and

(ii) consistent with clause 1.2(a)(xiii) (*Construction*), payment of any amount to the Facility C2 NAIF Suspense Account shall not constitute repayment or prepayment of any Facility C2 Loan or any other amount under or in connection with this Agreement.

(e) Each party acknowledges and agrees that:

(i) any interest earned on amounts standing to the credit of the NAIF Facility C2 Suspense Account shall be credited to the NAIF Facility C2 Suspense Account; and

(ii) neither the Security Trustee nor the Original Lender (nor any other person) is under any duty or obligation to account for any interest earned on any amounts standing to the credit of the NAIF Facility C2 Suspense Account.

- (f) The Borrower shall pay to the Security Trustee any fees or charges in connection with the NAIF Facility C2 Suspense Account.

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*), 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 without premium or penalty.

8.3 No reborrowing

The Borrower may not reborrow any part of Facility B or Facility C which is prepaid.

8.4 Prepayments in accordance with Agreement

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

8.5 No reinstatement of Commitments

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

8.6 Effect of repayment and prepayment on Commitments

If all or part of a Utilisation under a Facility is repaid or prepaid, an amount of the Lender's Commitment (equal to the amount which is repaid or prepaid) in respect of that Facility will be deemed to be cancelled on the date of repayment or prepayment.

8.7 Application of prepayments and cancellations

- (a) Any prepayment of Loans pursuant to Clause 7 (*Prepayment and Cancellation*) shall be applied:

- (i) other than for any mandatory prepayment under Clause 7.2 (*Insurance mandatory prepayment*), Clause 7.3 (*Project Asset sales mandatory prepayment*), Clause 7.4 (*Cash sharing*), 7.8 (*Mandatory prepayment – equity / other capital raise*), 7.9 (*Mandatory prepayment – Senior Facility and WCF Facility maturity*) or Clause 7.11 (*Voluntary prepayment of Loans*) and subject to the Intercreditor Deed, against each Senior Facility (and in the case of Clause 7.5 (*Facility C2 mandatory prepayment*), against each Senior Facility and the WCF Facility) on a pro-rata basis equal to the proportion borne by the total principal outstanding amount under each Senior Facility to the total amount being prepaid, where, in the case of the Bonds, the total principal outstanding amount shall be calculated to be net of any amount standing to the credit of the Bond Refinancing Reserve Account;

- (ii) against the Facility B Repayment Instalments, the Facility C1 Repayment Instalments and the Facility C2 Loans in the following order of maturity:
 - (A) for any mandatory prepayment under Clause 7.4 (*Cash sharing*) made while any principal amount under the Bonds or any Bond Refinancing is outstanding, in forward order of maturity;
 - (B) for any mandatory prepayment under Clause 7.4 (*Cash sharing*) made when the Bonds or any Bond Refinancing has been repaid in full, and for any other prepayment, in inverse order of maturity; and
 - (C) for any other prepayment under Clause 7 (*Prepayment and cancellation*), in inverse order of maturity; and
 - (iii) subject to the Intercreditor Deed and at any time while a Loan under Facility C is outstanding, pro rata between Facility B Loans and Facility C Loans (equal to the proportion borne by the total of the outstanding Facility B Loans to the total of the outstanding Facility C Loans).
- (b) The Parties acknowledge and agree that any reference in this Clause 8.7 to prepayment against the Bonds or any Bond Refinancing shall mean:
- (i) in the case of a mandatory prepayment under Clause 7.4 (*Cash sharing*) or Clause 7.7 (*Lock up and cash sweep mandatory prepayment*), a payment to the Bond Refinancing Reserve Account in an amount equal to the mandatory prepayment against the Bonds or any Bond Refinancing; and
 - (ii) in the case of any other mandatory prepayment, a redemption, repurchase or permanent repayment (however described) of the Bonds or any Bond Refinancing in an amount equal to the mandatory prepayment against the Bonds or any Bond Refinancing.
- (c) Any cancellation of Loans pursuant to Clause 7 (*Prepayment and Cancellation*) shall be made pro rata between the Senior Facilities.

SECTION 5 COSTS OF UTILISATION

9. INTEREST

9.1 Calculation of interest

The rate of interest on each Loan is:

- (a) 6.50% per annum for Facility B;
- (b) 6.50% per annum for Facility C1; and
- (c) 6.50% per annum for Facility C2,

subject to any increase under Clause 20.34 (*IES and IES Event*).

For the avoidance of any doubt, each Obligor acknowledges and agrees that amounts standing to the credit of the NAIF Facility C2 Suspense Account shall be deemed to be Facility C2 Loans and accordingly shall accrue interest at the rate described in paragraph (c).

9.2 Payment of interest

- (a) Subject to paragraph (c) below and Clause 9.3 (*Capitalisation of interest*), the Borrower shall pay accrued interest on each Loan in arrears on each Interest Payment Date.
- (b) If the interest rate for any period is increased (in accordance with Clause 20.34 (*IES and IES Event*)) after any interest has been paid in respect of any part of that period, the Borrower must pay additional interest on the next Interest Payment Date to make up any shortfall.
- (c) Any interest which would be payable on the last day of the Interest Period which is continuing on the Implementation Deed Effective Date (as defined under the Implementation Deed), will not be payable by the Borrower and will instead be automatically capitalised and added to the principal of the Facility on such date, provided that the amount of such capitalised interest will continue to accrue interest in accordance with this Clause 9 and the amount of all capitalised interest (including any interest which accrues on such capitalised amount once it forms part of the principal) must be paid by the Borrower on or before 30 September 2024.

9.3 Capitalisation of interest

- (a) Until the end of the Availability Period for a Facility (and subject to there being available undrawn Commitment under that Facility and no Event of Default is continuing), the Borrower may elect by notice to the Lender and the NAIF Representative at least 2 Business Days prior to an Interest Payment Date during the applicable Availability Period, to capitalise any interest that would be due to be paid under the applicable Facility on that Interest Payment Date (instead of paying interest for that Facility on that Interest Payment Date).
- (b) The Borrower hereby elects to capitalise all interest payable during the Availability Period, unless it notifies the Lender otherwise at least 2 Business Days before any

Interest Payment Date and such amount will be automatically capitalised on the Interest Payment Date and any such amount will continue to accrue interest in accordance with this Clause 9.3.

- (c) Any capitalised interest will be added to the principal outstanding under the applicable Facility, and interest due for that Facility on the relevant Interest Payment Date will be taken to have been paid on that Interest Payment Date.
- (d) If the Borrower gives a notice under Clause 9.3(b) (*Capitalisation of interest*) that it elects not to capitalise the interest for a Facility in accordance with Clause 9.3(a) (*Capitalisation of interest*) (or the period for any standing election ends), the Borrower must pay interest for that Facility on an Interest Payment Date.

9.4 Default interest

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is the sum of 2 per cent per annum and the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan of the overdue amount. Any interest accruing under this Clause 9.3 shall be immediately payable by the Obligor on demand by the Lender.
- (b) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount on each Interest Payment Date applicable to that overdue amount but will remain immediately due and payable.

10. FEES

10.1 Participation Fee

- (a) The Borrower shall pay to the Lender a participation fee of 2.25% of the total Facility B Commitment, due and payable on or before first Utilisation of Facility B.
- (b) The Borrower shall pay to the Lender a participation fee of \$50,000 in respect of Facility C2, on or within 3 Business Days of the date of the Second Amendment Agreement.
- (c) No participation fee is payable in respect of Facility C1.

10.2 Facility B Commitment Fee

- (a) The Borrower shall pay to the Lender a commitment fee in Australian dollars computed at the rate of 2% per annum on the Lender's Available Commitment under Facility B for the period from Financial Close to the end of the Availability Period for Facility B.
- (b) The accrued commitment fee is payable in arrears on each Interest Payment Date during the period from Financial Close to the end of the Availability Period for Facility B, on the last day of the Availability Period for Facility B, and on the cancelled amount of the Lender's Facility B Commitment at the time the cancellation is effective.

- (c) No commitment fee is payable in respect of Facility C.

10.3 Capitalisation of Facility B Commitment Fee

- (a) Until the end of the Availability Period for Facility B (and subject to there being available undrawn Commitment under Facility B and no Event of Default is continuing), the Borrower may elect by notice to the Lender and the NAIF Representative at least 2 Business Days prior to an Interest Payment Date during the Availability Period for Facility B, to capitalise the fee payable under Clause 10.2 (*Facility B Commitment Fee*) on that Interest Payment Date (instead of paying that fee on that Interest Payment Date).
- (b) The Borrower hereby elects to capitalise all fees payable under Clause 10.2 (*Facility B Commitment Fee*) during the Availability Period for Facility B, unless it notifies the Lender otherwise at least 2 Business Days before any Interest Payment Date and such amount will be automatically capitalised on the Interest Payment Date.
- (c) Any capitalised fee payable under Clause 10.2 (*Facility B Commitment Fee*) will be added to the principal outstanding under Facility B, and the fee payable under Clause 10.2 (*Facility B Commitment Fee*) due on the relevant Interest Payment Date will be taken to have been paid on that Interest Payment Date.
- (d) If the Borrower gives a notice under Clause 10.3(b) (*Capitalisation of Facility B Commitment Fee*) that it elects not to capitalise the fee payable under Clause 10.2 (*Facility B Commitment Fee*) in accordance with Clause 10.3(a) (*Capitalisation of Facility B Commitment Fee*) (or the period for any standing election ends), the Borrower must pay the fee under Clause 10.2 (*Facility B Commitment Fee*) on an Interest Payment Date in accordance with Clause 10.2 (*Facility B Commitment Fee*).

SECTION 6
ADDITIONAL PAYMENT OBLIGATIONS

11. TAX GROSS-UP AND INDEMNITIES

11.1 Definitions

- (a) In this Clause 11:

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

"**Tax Payment**" means either the increase in a payment made by an Obligor to the Lender under Clause 11.2 (*Tax gross-up*) or a payment under Clause 11.3 (*Tax indemnity*).

11.2 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) Each 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 other Parties accordingly.
- (c) If a Tax Deduction is required by law to be made by an Obligor except in relation to a Tax described in Clause 11.3(b)(i) or 11.3(b)(ii) (*Tax indemnity*), the Obligor shall pay an additional amount together with the payment so that, after making any Tax Deduction, the Lender 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 thirty 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 Lender evidence satisfactory to the Lender, acting reasonably, that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

11.3 Tax indemnity

- (a) The Borrower shall (within 10 Business Days of demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost which the Lender determines will be or has been (directly or indirectly) suffered for or on account of Tax by the Lender in respect of a Finance Document or a transaction or payment under it.
- (b) Paragraph (a) shall not apply:
- (i) with respect to any Tax assessed on the Lender if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lender:

- (A) under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which the Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction; or
- (ii) to the extent the relevant loss, liability or cost:
- (A) is compensated for by an increased payment under Clause 11.2 (*Tax gross-up*); or
 - (B) relates to a FATCA Deduction required to be made by a Party.
- (c) The Lender, if making or intending to make a claim pursuant to paragraph (a) above, shall promptly notify the Borrower of the event which will give, or has given, rise to the claim.

11.4 Tax Credit

If an Obligor makes a Tax Payment and the Lender 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) the Lender has obtained, utilised and retained that Tax Credit,

subject to Clause 25 (*Conduct of business by the Lender*), the Lender shall pay an amount to the Obligor which the Lender 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.

11.5 Stamp duties and Taxes

The Borrower shall:

- (a) pay; and
- (b) within three Business Days of demand, indemnify the Lender against any cost, expense, loss or liability the Lender incurs in relation to,

all stamp duty, registration or other similar Tax payable in respect of any Finance Document except Transfer Certificates.

11.6 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 Lender an additional amount equal to that payment (or part) multiplied by the appropriate rate of Indirect Tax; and

- (ii) the Lender 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 the Lender for any costs or expenses, that Obligor shall also at the same time pay and indemnify the Lender against all Indirect Tax incurred by the Lender in respect of the costs or expenses save to the extent that the Lender is entitled to repayment or credit in respect of the Indirect Tax. The Lender will promptly provide to the Obligor a tax invoice complying with the relevant law relating to that Indirect Tax.

11.7 FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige the Lender to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

11.8 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.

12. INCREASED COSTS

12.1 Increased costs

- (a) Subject to Clause 12.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the Lender, pay for the account of the Lender the amount of any Increased Costs incurred by the Lender, NAIF or the Commonwealth or any of their 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 a Facility or on the Lender's, NAIF's or the Commonwealth's (or their 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 the Lender, NAIF or the Commonwealth or any of their Affiliates to the extent that it is attributable to the Lender having entered into the Commitments or funding or performing its obligations under any Finance Document.

12.2 Increased cost claims

- (a) If the Lender (including on behalf of NAIF or the Commonwealth (as applicable)) intends to make a claim pursuant to Clause 12.1 (*Increased costs*), it shall promptly notify the Borrower of the event giving rise to the claim.
- (b) The Lender (including on behalf of NAIF or the Commonwealth) shall, at the same time as it provides notice to the Borrower under the preceding paragraph, provide

a certificate confirming the amount of its Increased Costs and reasonable details of its calculations in determining that amount.

12.3 Exceptions

Clause 12.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by an Obligor;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) compensated for by Clause 11.3 (*Tax indemnity*) (or would have been compensated for under Clause 11.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in Clause 11.3(b) (*Tax indemnity*) applied); or
- (d) attributable to the wilful breach by the Lender or its Affiliates of any law or regulation.

13. OTHER INDEMNITIES

13.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (i) making or filing a claim or proof against that Obligor; or
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify the Lender, NAIF and the Commonwealth (as applicable) 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.

13.2 Other indemnities

The Borrower shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify the Lender, NAIF and the Commonwealth (and each officer, agent, or employee of the Lender, NAIF and the Commonwealth) against any cost, expense, loss or liability (including legal fees) incurred by the Lender, NAIF and the Commonwealth (other than by reason of the fraud, gross negligence or wilful misconduct of any of them) as a result of or in connection with:

- (a) the occurrence of any Default;

- (b) any information produced by the Borrower under or in connection with the Finance Documents or the transactions they contemplate being 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 a Finance Document;
- (d) the exercise or attempted exercise of or the consideration of any Power in connection with any Finance Document or any failure to exercise any Power;
- (e) the Secured Property or the existence of any interest in, or control or Power with respect to, the Secured Property;
- (f) a failure by an Obligor to pay any amount due under a Finance Document on its due date;
- (g) funding, or making arrangements to fund, a Utilisation requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Lender alone);
- (h) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by the Borrower;
- (i) a Utilisation (or part of a Utilisation) being repaid, discharged or made payable other than at its maturity or on an Interest Payment Date;
- (j) investigating any event which it reasonably believes is a Default;
- (k) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
- (l) instructing lawyers, accountants, tax advisers, valuers, surveyors, insolvency practitioners or other experts or professional advisers as permitted under the Finance Documents.

14. MITIGATION BY THE LENDER

14.1 Mitigation

- (a) The Lender shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any Facility ceasing to be available or any amount becoming payable under or pursuant to, or its Commitment being cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 11 (*Tax Gross-up and Indemnities*) (other than Clause 11.6 (*Indirect Tax*)) or Clause 12 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

14.2 Limitation of liability

- (a) The Borrower shall promptly indemnify the Lender, NAIF and the Commonwealth for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under Clause 14.1 (*Mitigation*).
- (b) The Lender, NAIF and the Commonwealth are not obliged to take any steps under Clause 14.1 (*Mitigation*) if, in the opinion of the Lender, NAIF or the Commonwealth (as applicable and each acting reasonably), to do so might be prejudicial to it.

15. COSTS AND EXPENSES

15.1 Transaction expenses

The Borrower shall promptly on demand pay:

- (a) the Lender, NAIF and the Commonwealth the amount of all invoiced costs and expenses (including legal fees) reasonably incurred by the Lender, subject to approval by the Borrower prior to those costs and expenses being incurred, in connection with the negotiation, preparation, printing, execution and registration of:
 - (i) this Agreement, the Transaction Security and any other documents referred to in this Agreement or the Transaction Security; and
 - (ii) any other Finance Documents executed after the date of this Agreement; and
- (b) any invoiced reasonable costs, expenses and fees incurred in connection with the work carried out by the Independent Technical Consultant and the E&S Consultant appointed by the Lender in respect of the Project.

15.2 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; or
- (b) an amendment is required pursuant to Clause 26.7 (*Change of currency*),

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

15.3 Enforcement costs

The Borrower shall, within three Business Days of demand, pay to the Lender the amount of all costs and expenses (including legal fees on a full indemnity basis and Taxes) incurred by the Lender, NAIF or the Commonwealth in connection with:

- (a) the actual or contemplated enforcement of, or the preservation of any right or Power under, any Finance Document;

- (b) any proceedings instituted by or against the Lender, NAIF, the Commonwealth or the Security Trustee as a consequence of taking or holding the Transaction Security;
or
- (c) in connection with anything referred to in Clause 13.2(c) (*Other indemnities*).

SECTION 7
PROJECT ACCOUNTS

16. PROJECT ACCOUNTS

16.1 General

- (a) The Borrower shall maintain the Project Accounts in accordance with this Clause 16 (*Project Accounts*).
- (b) Each Obligor shall give such notices as the Lender may require in connection with the perfection or protection of the Security over the Project Accounts or for the purpose of giving effect to the provisions of this Clause 16 (*Project Accounts*).
- (c) The Project Accounts shall be separate accounts which are located in Australia and held with an Account Bank. The Borrower must procure that each Account Bank in respect of the Project Accounts enters into an Account Bank Deed.
- (d) The USD Collection Account and the USD Debt Service Reserve Account must be denominated in US dollars.
- (e) The Borrower acknowledges it will bear all currency and foreign exchange risk associated with any deposit or withdrawal from the Project Accounts.
- (f) The AUD Collection Account, the AUD Debt Service Reserve Account, the WCP Relocation Reserve Account and the Cost Overrun Account must be denominated in Australian dollars.
- (g) If any Obligor or an Account Bank receives any moneys for crediting to the USD Debt Service Reserve Account in a currency other than US dollars, that Obligor must convert those moneys into US dollars (at the applicable Account Bank's prevailing market rates for comparable transactions) on the date on which they are received. The amount must be paid into the USD Debt Service Reserve Account immediately after it is converted into US dollars.
- (h) If any Obligor or an Account Bank receives any moneys for crediting to the Collection Accounts:
 - (i) in US dollars, that Obligor must pay those moneys to the USD Collection Account;
 - (ii) in Australian dollars, that Obligors must pay those moneys to the AUD Collection Account; and
 - (iii) in a currency other than Australian dollars or US dollars, that Obligor must convert those moneys into Australian dollars (at the applicable Account Bank's prevailing market rates for comparable transactions) on the date on which they are received. The amount must be paid into the AUD Collection Account immediately after it is converted into Australian dollars.
- (i) The restrictions on the operation of, and withdrawal of funds from, the Project Accounts contained in this Agreement will not affect the obligations of the

Obligors to make all payments required to be made to the Lender on the respective due dates for payment in accordance with the Finance Documents.

- (j) The detailed operating procedures for each Project Account will be agreed from time to time between the Borrower and the applicable Account Bank. In the event of any inconsistency between this Agreement and those procedures, this Agreement will prevail.
- (k) Neither the ability of the Borrower to make any withdrawal from any Project Account in accordance with this Agreement nor any such withdrawal will be construed as a waiver by, or on behalf of, the Lender of any Security over the Project Accounts.
- (l) In receiving any payments into the Project Accounts or making any withdrawals from any Project Account, each Obligor shall ensure that it has obtained all such Authorisations as are necessary in order for such payment to be made into, or such withdrawal to be made from, the Project Accounts.

16.2 Collection Accounts

- (a) The Borrower shall open and maintain the Collection Accounts and shall procure that the following amounts are paid into it:
 - (i) proceeds of all sales of Product;
 - (ii) all amounts received by the Borrower under or in relation to any Hedging Agreement;
 - (iii) all amounts received by the Borrower under any Project Document whether by way of liquidated damages or other amounts;
 - (iv) any interest and other earnings on the Collection Accounts;
 - (v) the proceeds of all Loans made to the Borrower;
 - (vi) the proceeds of all "loans", "drawdowns" or "utilisations" (however described) of any other Secured Creditor Agreement;
 - (vii) all amounts received by the Borrower in connection with Subordinated Borrower Debt or any equity contribution;
 - (viii) any transfers from the Debt Service Reserve Accounts under Clauses 16.6(e), 16.6(f) and 16.6(g) (*Debt Service Reserve Accounts*);
 - (ix) any transfers from the WCP Relocation Reserve Account under Clauses 16.7(d) and 16.7(e) (*WCP Relocation Reserve Account*);and
 - (x) the proceeds received by the Borrower from a Permitted Disposal (other than a Permitted Disposal under paragraph (c) of the Permitted Disposal definition).

16.3 Withdrawals (pre and during Ramp Up Period)

Unless otherwise agreed by the Lender, prior to and during the Ramp Up Period, withdrawals from the Collection Accounts may only be made to pay or meet the following amounts in the following order of priority as and when those amounts fall due:

- (a) **(Taxes and royalties)** all Taxes and any royalty payable to any Governmental Agency in connection with a Project Tenement;
- (b) **(Fees and costs)** fees, expenses and costs due under a Secured Creditor Agreement, including fees and expenses of the Security Trustee and the Bond Trustee;
- (c) **(Costs and expenses)** Operating Costs (other than amounts covered by paragraph (b) above) and Project Costs payable including any payments to Hedge Counterparties under Hedging Agreements (other than termination amounts);
- (d) **(Interest payments)** any interest due and payable under this Agreement and any other Secured Creditor Agreement;
- (e) **(Hedge termination and working capital facility payments)** termination amounts payable to the Hedge Counterparties under the Hedging Agreements (if any) and scheduled repayments of principal under the Working Capital Facility Agreement (to the extent that such principal is not redrawn);
- (f) **(Mandatory prepayments)** mandatory prepayments under Clauses 7.1 (*Illegality*), 7.2 (*Insurance mandatory prepayment*), 7.3 (*Project Asset sales mandatory prepayment*) and 7.5 (*Facility C2 mandatory prepayment*) (if any);
- (g) **(Debt Service Reserve Accounts)** necessary payments to the Debt Service Reserve Accounts to ensure that the aggregate amount standing to the credit of the Debt Service Reserve Accounts is at least equal to the DSRA Required Balance; and
- (h) **(Voluntary prepayments)** voluntary prepayments under this Agreement and any other Secured Creditor Agreement.

16.4 Withdrawals (post Ramp Up Period)

Unless otherwise agreed by the Lender, after the last day of the Ramp Up Period, withdrawals from the Collection Accounts may only be made to pay or meet the following amounts in the following order of priority as and when those amounts fall due:

- (a) **(Taxes and royalties)** Taxes and any royalty payable to any Governmental Agency in connection with a Project Tenement;
- (b) **(Fees and costs)** fees, expenses and costs due under or in relation to a Secured Creditor Agreement, including fees and expenses of the Security Trustee and the Bond Trustee;
- (c) **(Costs and expenses)** Operating Costs (other than amounts covered by paragraph (b) above) and Project Costs payable, including any payments to Hedge Counterparties under Hedging Agreements (other than termination amounts);

- (d) **(Interest payments)** any interest due and payable under this Agreement and any other Secured Creditor Agreement;
- (e) **(Bond, hedging and working capital facility repayments)** scheduled repayments of principal under the Bonds, termination amounts payable to the Hedge Counterparties under the Hedging Agreements (if any) and scheduled repayments of principal under the Working Capital Facility Agreement (to the extent that such principal is not redrawn);
- (f) **(Secured Creditor Agreement repayments)** if no amount remains outstanding under the Bonds, scheduled repayments under this Agreement, any Bond Refinancing Agreement and any other Secured Creditor Agreement (other than amounts already covered under paragraph (e) above);
- (g) **(Mandatory prepayments)** mandatory prepayments under Clauses 7.1 (*Illegality*), 7.2 (*Insurance mandatory prepayment*), 7.3 (*Project Asset sales mandatory prepayment*) and 7.5 (*Facility C2 mandatory prepayment*) (if any);
- (h) **(Debt Service Reserve Accounts)** necessary payments to the Debt Service Reserve Accounts to ensure that the aggregate amount standing to the credit of the Debt Service Reserve Accounts is at least equal to the DSRA Required Balance;
- (i) **(WCP Relocation Reserve Account)** necessary payments to the WCP Relocation Reserve Account in accordance with Clause 16.7(b) (*WCP Relocation Reserve Account*);
- (j) **(Lock Up Amount)** any Lock Up Amount required to be paid out of the Collection Accounts under Clause 7.7(a) (*Lock up and cash sweep mandatory prepayment*);
- (k) **(Catch-up Sweep Amount)** any Catch-up Sweep Amount required to be paid out of the Collection Accounts under Clause 7.7(b) (*Lock up and cash sweep mandatory prepayment*);
- (l) **(Cash Share payments)** any amount payable under Clause 7.4 (*Cash Sharing*);
- (m) **(Voluntary prepayments)** voluntary prepayments under this Agreement or any other Secured Creditor Agreement;
- (n) **(Distributions)** Permitted Distributions by the Borrower; and
- (o) **(Other)** making such other withdrawals for such purposes as the Borrower may decide, provided such purpose is permitted under the Finance Documents.

16.5 Event of Default

- (a) Notwithstanding any other provision of this Agreement, if an Event of Default has occurred and is continuing:
 - (i) no amount will be payable to any Obligor from any Project Account;
 - (ii) no amount may be withdrawn by any Obligor, from any Project Account;
 and

- (iii) the Lender (or the Security Trustee on behalf of the Lender) will, to the fullest extent under all applicable laws and pursuant to the applicable Account Bank Deeds, be entitled (but not obliged) without prior notice to, or the consent of, any Obligor, to take control of, and to be the sole signatory on all Project Accounts.

16.6 Debt Service Reserve Accounts

- (a) The Borrower shall open and maintain the Debt Service Reserve Accounts.
- (b) Subject to paragraph (c) below, provided that all amounts owing under the New LNSA have been fully and finally repaid, the Borrower shall make payments to the Debt Service Reserve Accounts insofar as required to ensure that the amounts standing to the credit of the Debt Service Reserve Accounts is (in aggregate) at least equal to the DSRA Required Balance at each Quarter End Date following the end of the Ramp Up Period or (if earlier), following the date of Project Completion.
- (c) If, at any time, the aggregate balance of the Debt Service Reserve Accounts is less than the DSRA Required Balance, the Borrower must, no later than 30 days after the date the balance falls below the DSRA Required Balance, make payments to the Debt Service Reserve Accounts necessary to ensure that the amounts standing to the credit of the Debt Service Reserve Accounts is (in aggregate) at least equal to the DSRA Required Balance.
- (d) Other than as provided under paragraphs (e), (f) and (g) below, no amount may be withdrawn from the Debt Service Reserve Accounts.
- (e) The Borrower may, at any time, with 2 Business Days' notice to the Lender and to the extent that it otherwise would not have sufficient funds available in the Collection Accounts, withdraw amounts from a Debt Service Reserve Account in or towards payment of any amounts due but unpaid under this Agreement and the Bond (or Bond Refinancing) (other than Clause 7.1 (*Illegality*) or Clause 7.11 (*Voluntary prepayment of Loans*)). The Borrower will not be taken to have failed to comply with its obligation to ensure the amount standing to the credit of the Debt Service Reserve Accounts is at least equal to the DSRA Required Balance as a result of any withdrawal in accordance with this paragraph (e) if the amount standing to the credit of the Debt Service Reserve Accounts is at least equal to the DSRA Required Balance on or before the date that is 10 days from the date of that withdrawal.
- (f) If at any time the balance of the Debt Service Reserve Accounts exceeds the DSRA Required Balance, the Borrower may transfer the net excess amount standing to the credit of the Debt Service Reserve Accounts to the USD Collection Account or the AUD Collection Account (as applicable).
- (g) If the aggregate balance of each Collection Account is not sufficient to fully satisfy all the payments required under Clauses 16.3(a) to 16.3(f) (*Withdrawals from Collection Accounts – pre and during Ramp Up Period*) (inclusive) or required under Clauses 16.4(a) to 16.4(g), Clause 16.4(k) and Clause 16.4(l)

(Withdrawals from Collection Accounts – post Ramp Up Period) inclusive, the Lender is irrevocably authorised to withdraw from the AUD Debt Service Reserve Accounts the amount required to satisfy those payments in full or, if the balance of the AUD Debt Service Reserve Account is insufficient, to the maximum extent possible.

16.7 WCP Relocation Reserve Account

- (a) The Borrower shall open and maintain the WCP Relocation Reserve Account.
- (b) On and from the date that is 5 years prior to each scheduled relocation of the wet concentration plant (as determined in the Base Case Financial Model) and provided that all amounts owing under the New LNSA have been fully and finally repaid, the Borrower shall make payments to the WCP Relocation Reserve Account on each Quarter End Date equal to 1/20th of the projected cost of the relocation of the applicable wet concentration plant (as modelled in the Base Case Financial Model and reviewed and certified by the Independent Technical Consultant in accordance with Clause 18.6(h) (*Project Documents*)) until the date of the applicable relocation of the wet concentration plant. It is acknowledged that under the Base Case Financial Model wet concentration plant relocations occur in years 8 and 10 of operations and so on certain Quarter End Dates the Borrower will be making payments under this paragraph (b) in respect of 2 relocations.
- (c) Other than as provided under paragraphs (d) and (e) below, no amount may be withdrawn from the WCP Relocation Reserve Account.
- (d) The Borrower may, at any time, with 2 Business Days' notice to the Lender and to the extent that it otherwise would not have sufficient funds available in the Collection Accounts, withdraw amounts from the WCP Relocation Reserve Account and deposit those amounts into the AUD Collection Account in or towards payment of any costs and expenses incurred at that time in connection with the relocation of the wet concentration plant.
- (e) If there is any amount standing to the credit of the WCP Relocation Reserve Account after all amounts payable or forecast to be payable in connection with the relocation of the wet concentration plant have been paid, the Borrower may transfer that amount to the AUD Collection Account.

16.8 Insurance Proceeds Account

- (a) The Borrower shall open and maintain the Insurance Proceeds Account.
- (b) The Borrower shall procure that any Insurance Proceeds (other than for business interruption, consequential loss or third party or public liability insurance) received by or for the account of an Obligor are immediately deposited or transferred to the Insurance Proceeds Account.
- (c) Other than as provided under paragraph (d) below, no amount may be withdrawn from the Insurance Proceeds Account.

- (d) The Borrower may not withdraw or transfer any amount from the Insurance Proceeds Account other than:
 - (i) to pay a mandatory prepayment under Clause 7.2 (*Insurance mandatory prepayment*);
 - (ii) for the repair, re-instatement and/or replacement of the relevant asset or assets in accordance with Clause 7.2(c) (*Insurance mandatory prepayment*); or
 - (iii) otherwise as the Lender permits.

16.9 Cost Overrun Account

- (a) The Borrower shall open and maintain the Cost Overrun Account.
- (b) Other than as provided under paragraph (c) below, no amount may be withdrawn from the Cost Overrun Account.
- (c) The Borrower may not withdraw or transfer any amount from the Cost Overrun Account other than:
 - (i) to include the Cost Overrun Account Proceeds in the Committed Funding for the purposes of satisfying the Project Completion Cost to Complete and (where applicable) the Physical Completion Cost to Complete Test, provided that the Cost Overrun Conditions have been satisfied, in which case such Cost Overrun Account Proceeds shall be applied for those purposes;
 - (ii) if Project Completion has been achieved (which in this case may exclude the requirement that the Debt Service Reserve Accounts are funded to the DSRA Required Balance), to transfer the Cost Overrun Account Proceeds as follows:
 - (A) to the AUD Debt Service Reserve Account (to the extent required to ensure that the amounts standing to the credit of the Debt Service Reserve Accounts is (in aggregate) at least equal to the DSRA Required Balance); and
 - (B) any surplus after transfer to the AUD Debt Service Reserve Account in accordance with paragraph (A) above, to the Parent in repayment of Subordinated Borrower Debt; or
 - (iii) otherwise as the Lender and the Bond Trustee permit.

16.10 Administration and miscellaneous

- (a) The Borrower shall provide the Lender and any of their representatives with access, on reasonable notice and during normal business hours, to review the books and records relating to the Project Accounts.
- (b) Except where this Agreement specifically provides otherwise, no Obligor may exercise any right which it may have under any applicable law to direct an

Account Bank to transfer any amount standing to the credit of a Project Account to it or to its order.

SECTION 8
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

17. REPRESENTATIONS

Each Obligor makes the representations and warranties set out in this Clause 17 to the Lender on the date of this Agreement.

17.1 Status

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

17.2 Binding obligations

- (a) The obligations expressed to be assumed by it in each Transaction Document to which it is a party are, subject to any necessary stamping and Authorisations, equitable principles and laws generally affecting creditors' rights, legal, valid, binding and enforceable obligations.
- (b) Without limiting the generality of paragraph (a) above, each Transaction Security Document to which it is a party creates the Security which that Transaction Security Document purports to create and that Security is, subject to any necessary stamping Authorisations and registration requirements, equitable principles and laws generally affecting creditors' rights, valid and effective.

17.3 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 constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event under any such agreement or instrument.

17.4 Power and authority

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

17.5 Validity and admissibility in evidence

All Authorisations required:

- (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 create and perfect the Transaction Security and to ensure the Transaction Security has the priority and ranking it is expressed to have; and
- (d) for it to carry on its business at that time (including any Environmental and Social Permit), and which are material other than any Authorisation that cannot, in the ordinary course of normal operations, be obtained at that time,

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 Transaction Document on the Personal Property Securities Register; or
- (f) any Authorisation which will be obtained or effected in satisfaction of the conditions precedent in Part I or Part IV (as applicable) of Schedule 2 (*Conditions Precedent*) or by the Lender or Security Trustee.

17.6 Governing law and enforcement

- (a) The choice of law referred to in Clause 38 (*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 39 (*Enforcement*) in relation to a Transaction Document will be recognised and enforced in its jurisdiction of incorporation.

17.7 Insolvency

No:

- (a) corporate action, legal proceeding or other procedure or step described in Clause 22.10(a)(i) (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 22.11 (*Creditors' process*),

has been taken or, to the knowledge of the Borrower, threatened in relation to it; and none of the circumstances described in Clause 22.9 (*Insolvency*) applies to it.

17.8 Taxes

It has paid when due all Taxes payable by it under applicable law except to the extent that it is contesting payment in good faith (and which has been notified to the Lender), by appropriate means and in respect of which adequate provision for the payment of such

Taxes has been made as required by GAAP except where failure to pay may have a Material Adverse Effect.

17.9 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.

17.10 No default

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation, or the entry into, the performance of, or any transaction contemplated by, any 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 to which its assets are subject which might reasonably be expected to have a Material Adverse Effect.

17.11 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 Obligors (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 Obligors in entering into the Transaction Documents.

17.12 No misleading information

- (a) Any factual information provided by or on behalf of an Obligor (excluding projections or forecasts) in connection with the Transaction 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) Any projections or forecast provided by or on behalf of an Obligor to the Lender or the NAIF Representative 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 Transaction Documents and no information has been given or withheld that results in the information provided by or on behalf of an Obligor to the Lender or the NAIF Representative being untrue or misleading in any material respect.

17.13 Financial statements

- (a) Its Original Financial Statements were prepared in accordance with GAAP 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 Parent).

- (c) Its most recent financial statements delivered pursuant to Clause 18.1 (*Financial statements*):
 - (i) have been prepared in accordance with Clause 18.3 (*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 since the most recent financial statements delivered pursuant to Clause 18.1 (*Financial statements*).

17.14 Pari passu ranking

Its payment obligations under the Transaction Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

17.15 No proceedings pending

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

17.16 Trustee

- (a) It does not enter into any Transaction Document or hold any property as trustee.
- (b) It is the sole legal and beneficial owner of and has good title to all property held by it or on its behalf, and all undertakings carried on by it, free from Security, other than Permitted Security.

17.17 Authorised signatories

Any person specified as its authorised signatory under Schedule 2 (*Conditions Precedent*) or Clause 18.8 (*Information: miscellaneous*) is authorised to sign Utilisation Requests and other notices on its behalf except where it has previously notified the Lender that the authority has been revoked.

17.18 Tax Consolidation

- (a) It is a member of a Tax Consolidated Group for which the Head Company is the Parent.
- (b) Each Obligor and each other member of the Tax Consolidated Group is party to a TSA and TFA (each in form and substance satisfactory to the Lender).

- (c) It is not materially overdue in the filing of any Tax returns and it is not overdue in the payment of any amount in respect of Tax of A\$200,000 (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 with respect to Taxes such that a liability of, or claim against, it of A\$200,000 (or its equivalent in any other currency or currencies) or more is reasonably likely to arise.

17.19 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.

17.20 Permitted Security and Permitted Financial Indebtedness

- (a) The Secured Property is not subject to any Security other than Permitted Security.
- (b) No Obligor has provided or incurred any Financial Indebtedness other than Permitted Financial Indebtedness.

17.21 Good title to assets

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

17.22 Shares

The shares, membership or other interests, or other securities in or issued by any Obligor 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.

17.23 Compliance with laws

It is in compliance in all material respects with all laws and regulations (including any Environmental and Social Laws) that are applicable to it, its assets or any activity relating to the Project.

17.24 Group structure chart

- (a) The group structure chart delivered to the Lender as a condition precedent to the first Utilisation is true, complete and accurate in all material respects on the first Utilisation Date.
- (b) The most recent group structure chart delivered to the Lender under this Agreement is true, complete and accurate in all material respects.

17.25 Security

- (a) To the extent that it has entered into any Transaction Security Document, it is the sole legal and beneficial owner of the assets over which Security is purported to be given under that Transaction Security Document, subject to Permitted Security.

- (b) To the extent that it has entered into a Transaction Security Document that creates, or purports to create, Security over any shares, the shares over which such Security has been created, or purported to be created, constitute the entire issued share capital of the relevant person that has issued shares.
- (c) All of the Security which constitutes real property or tangible personal property is, or where installed pursuant to the Project Documents, will be, located in the Project Area.

17.26 Authorisations

- (a) Each Authorisation required to commence construction of the Project has been obtained (or will be obtained when so required) and is in full force and effect, and will be in full force and effect while so required.
- (b) Each Authorisation required to operate the Project will be obtained and will be in full force and effect prior to such Authorisation being required and for so long as required.
- (c) Each Authorisation in connection with the Project is issued in the Borrower's name (or has been assigned to the Borrower), is not the subject of any appeals or further proceedings or to any unsatisfied condition that could reasonably be expected to result in any materially adverse modification, or any suspension or revocation thereof.
- (d) The Borrower has no reasonable belief that, in connection with the Project, any Authorisation which has not yet been obtained but is of a type that is routinely granted on application and which would not normally be obtained at the current stage of construction or operation of the Project, will not be obtained prior to the time it becomes necessary for the current stage of construction or operation of the Project.
- (e) The Borrower is not in breach of any Authorisation in any material respect.
- (f) To the Borrower's knowledge, no counterparty to a Project Document is in breach of any Authorisation required under or in connection with the Project Document to which it is a party (including to perform its obligations under any such Project Document) in any material respect.

17.27 Land Claims

Except as otherwise disclosed to the Original Lender in writing (and accepted by the Original Lender), no land claims, occupation rights or sacred site claims (whether or not recognised by law) have been asserted in respect of all or any part of the Project from, by or with any person in relation to any estate or interest in the land used in connection with the Project (including the Project Area) which is held by that person or owner because that person is indigenous or is a traditional owner.

17.28 Environmental and social undertakings

- (a) Except as previously disclosed to the Original Lender in writing and accepted by the Original Lender, each Obligor has performed and observed all Environmental and Social Permits applicable to it in all material respects.

- (b) Except as previously disclosed to the Original Lender in writing and accepted by the Original Lender, no Material E&S Incident has occurred.
- (c) Except as previously disclosed to the Original Lender in writing and accepted by the Original Lender, there are no material Environmental or Social Claims current, pending or threatened against it or connected with the Project and no Obligor is in breach of any Environmental and Social Law which breach could reasonably be expected to result in a Material Adverse Effect.
- (d) The Borrower has adopted and complies in all material respects with an environmental policy that requires monitoring of and compliance with all Environmental and Social Laws, the NAIF ESR Requirement and Environmental and Social Permits applicable to it.
- (e) There has been no storage, leakage, spillage, release or emission of a Dangerous Substance by an Obligor or an Obligor's employees, contractors, agents, representatives or similar at, from or within the Project Area which:
 - (i) contravenes Environmental and Social Law binding on an Obligor or any Environmental and Social Permit in any material respect; or
 - (ii) is likely to have a Material Adverse Effect.
- (f) The Obligors will establish, as and when required in relation to the Project, appropriate procedures to monitor and audit compliance with the applicable Environmental and Social Laws, the NAIF ESR Requirement and Environmental and Social Permits.

17.29 Benefit

It benefits by entering into the Transaction Documents to which it is a party.

17.30 No immunity

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

17.31 Ownership of assets

The Borrower:

- (a) on and from Financial Close, is the sole legal and beneficial owner of the Project and all other Project Assets, free from Security other than Permitted Security;
- (b) has good and marketable title to all assets which are reflected in the latest audited financial statements;
- (c) on and from Financial Close, has:
 - (i) good and valid rights to use, occupy or access (as applicable) the Project Area by way of good and valid leasehold title, easement rights, land use permits, right of access or entry or similar rights and interests; and
 - (ii) the right to use all easements, wayleaves, rights of way and other rights (including water rights) necessary or desirable to implement the Project.

17.32 Base Case Financial Model

The Base Case Financial Model:

- (a) is based on reasonable assumptions;
- (b) is not inconsistent with the provisions of the Project Documents and the Transaction Documents;
- (c) has been prepared in good faith and with due care; and
- (d) fairly represents the Borrower's expectations.

17.33 Insurance

All insurances (and all re-insurance policies relating to them) which are required to be effected and maintained pursuant to this Agreement with respect to the Project and all activities relating to the Project:

- (a) have been so effected in accordance with this Agreement in the name of the Borrower on such terms and against such risks that would normally be maintained by prudent persons (acting in accordance with good industry practice) having an interest in such assets or carrying out such activities; and
- (b) are in full force and effect and no event or circumstance has occurred, nor has there been any omission to disclose a fact, which would in either case entitle any insurer under those insurances (or the re-insurance policies relating to them) to avoid its liability or otherwise reduce its liability.

17.34 Partnerships and Joint Ventures

The Borrower is not a limited or general partner in any partnership or a joint venturer in any joint venture or a member in any limited liability company.

17.35 Utilities

All utility services necessary for the construction and operation of the Project for the intended purposes are available at or to the Project Area or will be available as and when required on commercially reasonable terms.

17.36 Roads

All roads necessary for the full utilisation of the Project for its intended purposes under the Project Documents have either been completed or the necessary rights of way therefor have been or will be acquired at the time they are required for the Project (which for the avoidance of doubt, shall not include the Denham Road Project).

17.37 Construction and Implementation of the Project

- (a) All work done on the Project has been done substantially in accordance with the terms of the Project Documents, Good Operating Practice and all requirements of law.
- (b) The Project is being implemented in accordance with the terms of the Project Documents, Good Operating Practice and all requirements of law.

17.38 Intellectual Property

It owns or has the right to use all intellectual property which is necessary for the operation of the Project. No Obligor has received written notice or actual notice that:

- (a) any material product, process, method, substance, part or other material presently contemplated to be employed by the Borrower in connection with the Project will infringe in any manner any rights in intellectual property owned by any other person;
- (b) there is pending any claim or litigation against or affecting an Obligor contesting its right to use any such product, process, method, substance, part or other material; or
- (c) there is, or there is pending or proposed any patent, invention, device, application or any statute, law, rule, regulation, standard or code, which in such case could reasonably be expected to have a Material Adverse Effect.

17.39 Expropriation

- (a) It has not received notice of any material proposed rezoning of all or any part of the Project Area.
- (b) It has not received notice of any material expropriation of all or any part of the Project Area.

17.40 No management fees

The Borrower is not party to or bound by any contract or commitment to pay any royalty, license fee or management fee to an Affiliate in connection with the Project pursuant to any contract or agreement, except to the extent disclosed pursuant to the Project Documents or any corporate overhead charge included in the Base Case Financial Model up to A\$3,000,000 per annum (or any higher amount approved by the Lender).

17.41 Independent Technical Consultant and E&S Consultant

- (a) The Borrower:
 - (i) acknowledges and agrees that the Independent Technical Consultant has been appointed to perform the role of independent technical expert certifying the matters set out in the Finance Documents, and that a different Independent Technical Consultant may be appointed from time to time in consultation with the Borrower;
 - (ii) acknowledges and agrees that the E&S Consultant has been, or will be, appointed to perform the role of independent consultant certifying the matters set out in the Finance Documents, and that a different E&S Consultant may be appointed from time to time in consultation with the Borrower; and
 - (iii) acknowledges that the Lender, NAIF or the Commonwealth are not liable for, and have no liability in respect of, the performance by the Independent Technical Consultant or the E&S Consultant of their roles under the Finance Documents.

- (b) The Borrower will cooperate with the Independent Technical Consultant and the E&S Consultant and provide all information and documents within its possession, custody or control which are reasonably necessary to enable the Independent Technical Consultant and the E&S Consultant to perform each of their roles.
- (c) The Independent Technical Consultant shall:
 - (i) act for the benefit of all Secured Creditors and each Secured Creditor shall be entitled to rely on the work performed by the Independent Technical Consultant; and
 - (ii) be appointed on terms reasonably acceptable to the Bond Trustee and the Lender.

17.42 Native title and heritage

- (a) It has complied with all native title and cultural heritage laws, and all native title and cultural heritage agreements to which it is a party, in respect of the Project Tenements.
- (b) Except as disclosed to the Lender, no person has made any native title or cultural heritage claim in respect of the Project Tenements.
- (c) It has disclosed to the Lender all native title and cultural heritage agreements in respect of the Project Tenements.
- (d) The Base Case Financial Model includes all material liabilities of the Obligors payable in respect of native title and cultural heritage related to the Project Tenements.

17.43 Supplemental representations

Each Obligor gives the representations and warranties (if any) contained in the Supplemental Agreement.

17.44 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 each Utilisation Request and on each Quarter End Date; and
- (b) in the case of an Additional Guarantor, the day on which the company becomes (or it is proposed that the company becomes) an Additional Guarantor.

18. INFORMATION UNDERTAKINGS

The undertakings in this Clause 18 remain in force from the date of this Agreement for so long as any amount is outstanding under the Transaction Documents or any Commitment is in force.

18.1 Financial statements

The Borrower shall supply to the Lender and the NAIF Representative:

- (a) as soon as the same become available, but in any event within 120 days after the end of each of its financial years:
 - (i) the audited consolidated financial statements of the Parent and each other Guarantor (excluding Strandline UK) for that financial year; and
 - (ii) the financial statements of the Borrower and each Subsidiary (if any) of the Borrower for that financial year; and
 - (iii) the unaudited dormant entity accounts of Strandline UK for that financial year (and, if they are audited, the audited dormant entity accounts of Strandline UK); and
- (b) as soon as the same become available, but in any event within 60 days after the end of each first half of each of its financial years:
 - (i) the consolidated financial statements of the Parent and each other Guarantor (excluding Strandline UK) for that financial half year; and
 - (ii) the financial statements of the Borrower and each Subsidiary (if any) of the Borrower for that financial half year; and
- (c) as soon as they are available, but in any event within 45 days after the end of each quarter of its financial years, its consolidated financial statements including management accounts for that quarter and cumulative management accounts for the financial year to date.

18.2 Compliance Certificate

- (a) The Borrower shall supply to the Lender and the NAIF Representative with each set of financial statements delivered pursuant to Clause 18.1(c) (*Financial statements*) a Compliance Certificate setting out (in reasonable detail) computations as to:
 - (i) compliance with Clause 7.7 (*Lock up and cash sweep mandatory prepayment*) as at the date as at which those financial statements were drawn up;
 - (ii) where the Compliance Certificate is delivered during the period from the Implementation Effective Date until the "Termination Date" under the New LNSA, the level of the financial covenants under Clause 19.1(a) (*Financial ratios*) as at the date as at which those financial statements were drawn up; and
 - (iii) thereafter compliance with Clause 19.1(a) (*Financial ratios*) 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.

18.3 Requirements as to financial statements

- (a) The Borrower shall procure that each set of annual financial statements delivered by the Borrower pursuant to Clause 18.1(a)(i) (*Financial statements*) shall be audited by the Auditors.
- (b) Each set of financial statements delivered by the Borrower pursuant to Clause 18.1 (*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 of an Obligor delivered pursuant to Clause 18.1 (*Financial statements*) is prepared using GAAP.
- (d) The Borrower shall provide the Lender, the NAIF Representative and each of their representatives an opportunity to speak with representatives of Senior Management within a reasonable time after the delivery of its annual consolidated financial statements and after the delivery of its consolidated management accounts for each financial half-year to discuss the Borrower's performance, in each case for a reasonable period of time for each set of financial statements or accounts, as applicable.

18.4 Cashflow forecasting and cash balance reporting

- (a) The Borrower shall deliver to the Lender and to the NAIF Representative by the 5th Business Day of each calendar month a 4 week cash flow forecast for the Borrower.
- (b) The Borrower shall deliver to the Lender and to the NAIF Representative within 5 Business Days after the last day of each calendar month, details of the unrestricted cash balances of the Borrower, with reconciliations in respect of the immediately preceding calendar month.
- (c) The Borrower shall deliver to the Lender and to the NAIF Representative on the first Business Day of each quarter beginning with the first full quarter that occurs after Financial Close (as defined in the New LNSA) an updated 12 month forecast of the Borrower 's cash flow, profit and loss and balance sheet.

18.5 Budget

The Borrower shall deliver to the Lender and to the NAIF Representative within 30 days of the beginning of the Borrower's financial years a board approved consolidated monthly budget for that financial year.

18.6 Project Documents

The Borrower must supply to the Lender and the NAIF Representative:

- (a) promptly after entry into it, a copy of any Project Document that has not been previously provided to the Lender and the NAIF Representative, in form and substance acceptable to the Lender, NAIF and the Commonwealth;

- (b) promptly, a copy of any material document or contract entered into by the Borrower relating to the Project that has not previously been provided to the Lender and the NAIF Representative;
- (c) promptly, details of any termination, cancellation, rescission, discharge or material modification of any Project Document (other than termination or discharge through expiry or performance of the terms of the relevant Project Document) or any Authorisation required for the construction or operation of the Project (together with any copies of any documents relating thereto);
- (d) promptly after issue or receipt, a copy of any material notice, report, demand or correspondence under or in connection with any Project Document;
- (e) promptly after the Borrower is aware, details of any material breach or default of any Project Document by the Borrower or the counterparty to the Project Document;
- (f) promptly, but in any event within 7 days of becoming aware of the same, details of any potential or actual claim (with a value or potential value of more than A\$1,000,000 (or its equivalent)) or any other material dispute under any Project Document or any material default (however described) under any Project Document;
- (g) promptly after the Borrower is aware, details of any material increase in Project Costs that has not already been incorporated into any updated Base Case Financial Model or updated Annual Budget provided in accordance with clause 19.5 (*Base Case Financial Model and Annual Budget*);
- (h) a WCP ITE Review in form and substance satisfactory to the Lender:
 - (i) on or before the date that is 5 years prior to the scheduled relocation of the wet concentration plant (as determined in the Base Case Financial Model); and
 - (ii) on or before the date that is 18 Months prior to the scheduled relocation of the wet concentration plant (as determined in the Base Case Financial Model);
- (i) once every quarter (and at any other time reasonably requested by the Lender, NAIF or the Commonwealth):
 - (i) the updated TZMI market projections; or
 - (ii) confirmation that the TZMI market projections previously provided to the Lender and the NAIF Representative are up to date;
- (j) at any time it is updated by the Borrower, but no less than once every year, the Mineral Resource and Ore Reserve Report in form and substance satisfactory to the Lender;

- (k) prior to Project Completion, as soon as practicable but no later than 12 Business Days after each Month, a certified copy of the Borrower's Construction Report;
- (l) after Project Completion, as soon as practicable but no later than 12 Business Days after each calendar Month, a certified copy of the Borrower's Operating Report for the applicable Month; and
- (m) promptly after commencement of each Offtake Agreement, copies of the monthly statements in respect of the Offtake Agreements (including, but not limited to, copies of GST invoices).

18.7 Presentations

On a weekly basis (unless otherwise agreed in writing as part of the restructuring plan term sheet discussions contemplated by Clause 20.43 (*Restructuring plan*), the senior management of the Borrower (one of whom shall be the Chief Financial Officer) must give a presentation to the Lender and the NAIF Representative about the on-going business and financial performance of the Group, which presentation shall include details of compliance or non-compliance with all operational undertakings and financial covenants (including detailed calculations), and which is consistent with the weekly presentations provided to, among others, the Lender prior to the Implementation Deed Effective Date.

18.8 Information: miscellaneous

The Borrower shall supply to the Lender and the NAIF Representative:

- (a) promptly upon becoming aware of the same, details of any event or circumstance which has resulted in any material physical damage to any material part of the facilities or infrastructure connected with the Project;
- (b) all documents dispatched by any Obligor to its shareholders (or any class of them) or its creditors generally (or any class of them) or to the ASX at the same time as they are dispatched;
- (c) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened in writing or pending against any Obligor, and which might reasonably be expected, if adversely determined, to have a Material Adverse Effect;
- (d) promptly, any material notice, order or correspondence from or with a Governmental Agency relating to an Obligor, the Project or the Secured Property;
- (e) on or about each anniversary of the date of this Agreement, a report on the insurance policies in respect of the Project at the date of the report, on material claims and other material events with respect to those insurances during the previous 12 Months and evidence of renewal of any existing insurance policy;
- (f) promptly, details of any native title claims or other claims and any sacred site applications made by any person (other than an Obligor) with respect to the Project, Project Area or the Project Assets, and any material dispute with landowners located in or around the Project Area not already disclosed in writing to the Lender and the NAIF Representative;

- (g) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is made against any Obligor and which is reasonably likely to have a Material Adverse Effect;
- (h) promptly following a change in the structure of the Group, an updated group structure chart;
- (i) on each 31 July following Financial Close until the first 31 July at least 12 months following the date of Project Completion, numerical data on construction and operational jobs generated or supported by the Project in the previous financial year ending 30 June;
- (j) promptly, such further information regarding the financial condition, business and operations of any Obligor as the Lender, NAIF or the Commonwealth may reasonably request;
- (k) promptly, such information as the Lender, NAIF or the Commonwealth may reasonably require about the Secured Property and compliance of the Obligors with the terms of any Transaction Security Documents;
- (l) promptly, notice of any change in authorised signatories of any Obligor signed by a director or secretary of the relevant Obligor accompanied by specimen signatures of any new signatories, provided that no notice of change shall be effective until the Lender, NAIF and the Commonwealth have conducted "know your customer" checks on each such new authorised signatory as required under Clause 18.13(a) below; and
- (m) promptly (and, in any event, within 1 Business Days of becoming aware), notice that a Key Person (or any other person subject to a retention plan delivered to the New LNSA Agent as a condition precedent to "Financial Close" under the New LNSA) has ceased to be employed by the Obligors or that a Key Person (or that other person) has given written notice of their intention to resign their position with the Obligors.

18.9 Environmental matters

The Borrower must, promptly upon becoming aware, notify the Lender and the NAIF Representative of:

- (a) the occurrence of any current or threatened (in writing) Environmental or Social Claim, together with all details of such Environmental or Social Claim;
- (b) any event or circumstances that it believes (acting reasonably) are likely to result in any material Environmental and Social Claim;
- (c) any suspension, revocation, denial or non-renewal of any Environmental and Social Permits that continue to be required for the implementation of the Project;

- (d) any material non-compliance by it or (in relation to the Project) any counterparties to any Project Document carrying out any works or services at the Project with the NAIF ESR Requirements;
- (e) any Material E&S Incidents; and
- (f) any act or circumstances which has given rise to or which is reasonably likely to result in the issuing of an environmental protection order to it (or a person having a relevant connection to it) under the NAIF ESR Requirement or Environmental and Social Law.

18.10 Environmental and social reporting

- (a) Each Obligor must:
 - (i) prior to and for one (1) year following the date of Project Completion, within:
 - (A) sixty (60) days after the end of the six-month period ending on 30 June; and
 - (B) ninety (90) days after the six-month period ending on 31 December, deliver to the Lender a report summarising the Obligors' compliance (or any non-compliance and remedial actions taken) with the NAIF ESR Requirements during that six (6) month period, including a register of all Material E&S Incidents and Environmental and Social Claims that occurred during that six (6) month period;
 - (ii) after the date falling one (1) year after the date of Project Completion and within ninety (90) days after the end of each financial year thereafter, deliver to the Lender a report summarising the Obligors' compliance (or any non-compliance and remedial actions taken) with the Environmental and Social Requirements during that year, including a register of all Material E&S Incidents and Environmental and Social Claims that occurred during that year; and
 - (iii) provide to the Lender such other information as is reasonably requested by the Lender in relation to each Obligor's compliance with the NAIF ESR Requirements, as soon as reasonably practicable after the relevant request is made.
- (b) Each Obligor must, promptly after receipt, provide the Lender with a copy of any material amendment to any Environmental and Social Permits issued to it and a copy of any new Environmental and Social Permits issued to it.

18.11 Notification of Review Event

If a Review Event occurs, the Borrower shall promptly notify the Lender and the NAIF Representative upon becoming aware of that event.

18.12 Notification of Default

- (a) Each Obligor shall notify the Lender and the NAIF Representative of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a request by the Lender, NAIF or the Commonwealth, the Borrower shall supply to the Lender and the NAIF Representative a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).
- (c) The Borrower must notify the Lender and the NAIF Representative of any "default", "event of default", "review event" or "termination event" (in each case, however described) that occurs in respect of any Secured Creditor Agreement other than this Agreement or any other Finance Document (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

18.13 "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;
 - (iii) any change in the authorised signatories of an Obligor after the date of this Agreement; or
 - (iv) a proposed assignment or transfer by the Lender of any of its rights and obligations under this Agreement,

obliges the Lender (or, in the case of paragraph (iv) above, any prospective new Lender), NAIF or the Commonwealth 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 Lender, NAIF or the Commonwealth supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lender (for itself or, in the case of the event described in paragraph (iv) above, on behalf of any prospective new Lender), NAIF or the Commonwealth in order for the Lender or, in the case of the event described in paragraph (iv) above, any prospective new Lender, NAIF and the Commonwealth to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) The Borrower shall by not less than 10 Business Days' prior written notice to the Lender and the NAIF Representative, notify the Lender and the NAIF

Representative of its intention to request that one of its Subsidiaries becomes an Additional Guarantor pursuant to Clause 24 (*Changes to the Obligors*).

- (c) Following the giving of any notice pursuant to paragraph (b) above, if the accession of such Additional Guarantor obliges the Lender, NAIF or the Commonwealth 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 Lender, NAIF or the Commonwealth supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lender (for itself or on behalf of any prospective new Lender), NAIF or the Commonwealth in order for the Lender or any prospective new Lender, NAIF and the Commonwealth to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Guarantor.
- (d) The Borrower shall promptly supply, or procure the supply of, such documentation and other evidence reasonably requested by the Lender, NAIF or the Commonwealth from time to time in relation to an Obligor or an Additional Guarantor to enable the Lender, NAIF and the Commonwealth to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to the Lender, NAIF or the Commonwealth.

18.14 Right to access and audit

- (a) Without limiting any other rights of access or audit at law or under a Finance Document, each Obligor agrees and acknowledges that NAIF (or its representative), the Lender (or its representative) acting on instruction of NAIF, the Independent Technical Consultant or the E&S Consultant (each, an "**Inquirer**") is permitted to:
 - (i) conduct audits relevant to the performance of an Obligor's obligations under the Finance Documents;
 - (ii) access the premises of the Obligor to the extent relevant to the performance of this Agreement;
 - (iii) require the provision by the Obligor or its personnel of records and information in a data format and storage medium accessible by the Inquirer by use of the Inquirer's existing computer hardware and software;
 - (iv) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Obligor or any employee, officer, agent or professional adviser of the Obligor, or its personnel; and
 - (v) require assistance in respect of any inquiry into or concerning the Project or the Finance Documents.
- (b) Each Obligor must provide access to its computer hardware and software to the extent necessary for the Inquirer to exercise its rights under this Clause 18.14, and

provide the Inquirer with any reasonable assistance requested by the Commonwealth to use that hardware and software.

- (c) The Inquirer will use its reasonable endeavours to ensure that any audit under this Clause 18.14 does not unreasonably delay or disrupt in any material respect the Obligor's performance of its obligations under the Finance Documents or its business.
- (d) The rights of NAIF and the State under paragraph (a) above apply equally to the Auditor-General or a delegate of the Auditor-General, or the Information Commissioner or a delegate of the Information Commissioner, for the purpose of performing the Auditor-General's or Information Commissioner's statutory functions or powers.
- (e) Each Obligor must, and must procure that its personnel will, do all things necessary to comply with the Auditor-General's or his or her delegate's or the Information Commissioner's or his or her delegate's requirements, which are notified to the Obligor, provided such requirements are legally enforceable and within the power of the Auditor-General, the Information Commissioner, or his or her respective delegates.

18.15 Reporting to NAIF

Each Obligor must cooperate and provide reasonable assistance to NAIF to meet any publication or reporting requirements under the NAIF Act or any other law or regulation that may be applicable to NAIF from time to time.

18.16 Denham Road Project

The Borrower shall report to the Lender on an annual basis, in December of each year from the Second Amendment Agreement, in respect of:

- (a) the status of the Denham Road Project, including any forecast commencement date for the Denham Road Project;
- (b) the forecast capital costs of the Denham Road Project, and how the Borrower expects to fund those costs; and
- (c) any other information reasonably requested in advance by the Lender in respect of the Denham Road Project.

19. FINANCIAL COVENANTS

19.1 Financial ratios

The Borrower shall ensure that:

- (a) at each Calculation Date occurring after the date which is 12 months after the Implementation Effective Date:
 - (i) the Debt Service Cover Ratio is greater than 1.20:1;
 - (ii) the Loan Life Cover Ratio is greater than 1.30:1;
 - (iii) the Reserve Tail Ratio is greater than 20%;

(b) on the last day of each week (or such other period agreed in writing as part of the restructuring plan term sheet discussions contemplated by Clause 20.43 (*Restructuring plan*)) from the Implementation Effective Date until the "Termination Date" under the New LNSA, Group Liquidity is not less than A\$3,500,000 (and the Borrower shall report on compliance or non-compliance with this covenant in the management presentation contemplated by Clause 18.7 (*Presentations*));

(c) on the last day of each calendar month occurring from the Implementation Effective Date until the "Termination Date" under the New LNSA, the Borrower shall ensure that:

(i) Minimum Product output:

(A) in respect of each calendar month occurring between March 2024 and June 2024 (inclusive), it has produced not less than 10,000 dry metric tonnes of Product in that calendar month; and

(B) in respect of each calendar month occurring from July 2024 and thereafter, produced not less than 15,000 dry metric tonnes of Product in that calendar month,

and the Borrower shall report on compliance or non-compliance with this paragraph (i) in the management presentation contemplated by Clause 18.7 (*Presentations*); and

(ii) Minimum Product sales:

(A) in respect of each calendar month occurring between March 2024 and June 2024 (inclusive), it has sold Product to third parties on arm's length commercial terms (or better for the Borrower) for a minimum average net sale price of not less than US\$400 per tonne (exclusive of GST and on a free on board basis) in that calendar month; and

(B) in respect of each calendar month occurring from July 2024 and thereafter, it has sold Product to third parties on arm's length commercial terms (or better for the Borrower) for a minimum average net sale price of not less than US\$550 per tonne (exclusive of GST and on a free on board basis) in that calendar month,

and the Borrower shall report on compliance or non-compliance with this paragraph (ii) in the management presentation contemplated by Clause 18.7 (*Presentations*)).

19.2 Financial testing

Any amount or figure to be calculated or estimated under or for the purpose of a financial covenant in Clause 19.1 (*Financial ratios*) is to be calculated or estimated on the basis of the latest Base Case Financial Model and financial statements, Annual Budgets and Compliance Certificates delivered under Clause 18 (*Information Undertakings*).

19.3 Equity cure

- (a) Subject to paragraph (b) below, in respect of a breach of a financial covenant referred to in Clause 19.1(a)(i) and 19.1(a)(ii) (*Financial ratios*), the Borrower shall have the right to cure the breach as follows:
- (i) in the relevant Compliance Certificate, giving the Lender and the NAIF Representative notice (which notice is agreed to be irrevocable) that it will procure additional equity contribution or Subordinated Borrower Debt to be applied as a prepayment as set out below in paragraph (a)(ii):
- (A) in an amount ("**Equity Cure Amount**") sufficient so that when:
- (1) the Loan Life Cover Ratio is re-calculated on a notional basis as though the prepayment of the Equity Cure Amount has been made on the day immediately after the relevant Calculation Date; or
- (2) the Debt Service Cover Ratio is recalculated on a notional basis as though the prepayment of the Equity Cure Amount has been made on the first day of the Calculation Period ending on the relevant Calculation Date,
- the Event of Default under Clause 22.2 (*Financial covenants*) would not occur based on such calculation;
- (B) within 30 Business Days following delivery of the applicable Compliance Certificate; and
- (ii) that Equity Cure Amount is procured by the Borrower and applied in mandatory prepayment in accordance with Clause 8.7 (*Application of prepayments and cancellations*) within the 30 Business Day period referred to in Clause 19.3(a)(i)(B) above.
- (b) The Borrower may not cure any breach of the Loan Life Cover Ratio under Clause 19.1(a)(ii) (*Financial Covenants*) prior to the date of Project Completion.
- (c) If an Equity Cure Amount is prepaid in accordance with this Clause, the Loan Life Cover Ratio or Debt Service Cover Ratio (as applicable) will be re-calculated for the Calculation Period in which the applicable breach occurred, taking into account the Equity Cure Amount and as if such Equity Cure Amount had been received and applied in prepayment of the Facilities and a payment to the Bond Refinancing Reserve Account, in the pro rata proportion required under the Intercreditor Deed at the commencement of the relevant Calculation Period (in the case of the Debt Service Cover Ratio) or on the day after the relevant Calculation Date (in the case of the Loan Life Cover Ratio). For all other purposes of the Finance Documents, the pro rata amount of the Equity Cure Amount will be treated as having been prepaid on the date of actual prepayment.
- (d) If, after the Loan Life Cover Ratio or Debt Service Cover Ratio (as applicable) is re-calculated, the breach has been prevented or cured, the financial covenant

referred to in Clause 19.1(a)(i) or 19.1(a)(ii) (*Financial ratios*) (as applicable) shall be deemed to have been satisfied on the date of delivery of the relevant Compliance Certificate as though no breach had ever occurred, and any related Event of Default under Clause 22.2 (*Financial covenants*) shall be deemed never to have occurred.

- (e) The Borrower shall not have the ability to cure breaches of Clause 19.1(a)(i) or 19.1(a)(ii) (*Financial ratios*) under this Clause 19.3 (*Equity cure*):
 - (i) more than 5 times (in aggregate) during the term of the Facilities; and
 - (ii) on consecutive Calculation Dates.

19.4 Minimum Unrestricted Cash Balance

- (a) The Borrower shall ensure that on each Quarter End Date occurring after the date which is 12 months after the Implementation Effective Date the Collection Accounts have an aggregate cash balance at least equal to the Minimum Unrestricted Cash Balance.
- (b) Within 5 Business Days of the end of each Quarter End Date (and at other times if required by the Lender), the Borrower must provide to the Lender and the NAIF Representative copies of bank statements evidencing compliance with Clause 19.4(a) (*Minimum Unrestricted Cash Balance*).

19.5 Base Case Financial Model and Annual Budget

- (a) The Borrower will provide the Lender and the NAIF Representative with an updated Base Case Financial Model (including Life of Mine Plan) substantially similar in form and level of detail as the Base Case Financial Model delivered as a condition precedent to Financial Close as follows:
 - (i) on a quarterly basis, as soon as it is available, but in any event within 20 Business Days after the end of each quarter of its financial years;
 - (ii) promptly, but in any event within 20 Business Days of request by the Lender, if after consultation with the Borrower, the Lender reasonably 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 or Annual Budget in any material respect; and
 - (iii) within 20 Business Days of the Borrower becoming aware of any material change to the Life of Mine Plan (in which case only an updated Life of Mine Plan shall be provided by the Borrower) or any change to a material BCFM input;

each a "**Base Case Financial Model Review Date**".

- (b) The Borrower will provide the Lender and the NAIF Representative with an updated Annual Budget as follows:
 - (i) during the period from Financial Close until the date of Project Completion, promptly but in any event within 20 Business Days of the Borrower becoming aware of any material change to the Annual Budget; and

- (ii) on the date of Project Completion and on each anniversary of the date of Project Completion, as soon as it is available, but in any event within 20 Business Days,

each an "**Annual Budget Review Date**", and together with the Base Case Financial Model Review Dates, each a "**Review Date**".

- (c) The Borrower will promptly provide the Lender and the NAIF Representative with all information materially relevant to and/or reasonably requested by the Lender in order to conduct the review of the draft Base Case Financial Model or draft Annual Budget, which shall include (but not be limited to), the TZMI and Consensus Economics forecasts current at the time of preparing the draft Base Case Financial Model or draft Annual Budget.
- (d) The Lender may, at its discretion, review each updated Base Case Financial Model or updated Annual Budget.
- (e) Subject to paragraph (d) above, in reviewing the updated Base Case Financial Model or updated Annual Budget, the Lender must take into account:
 - (i) actual Operating Revenue and Operating Costs;
 - (ii) actual performance of the Project since the last Review Date; and
 - (iii) the forecast performance to be determined by reference to the technical and economic assumptions determined pursuant to Clause 19.5(g) and the updated Life of Mine Plan, including updated estimation of reserves.
- (f) In reviewing the updated Base Case Financial Model or updated Annual Budget the Lender may request and take into account the advice of the Independent Technical Consultant, and may but need not rely on information supplied by the Borrower.
- (g) Any economic assumptions incorporated in the updated Base Case Financial Model or updated Annual Budget will be agreed from time to time by the Lender and the Borrower, each acting reasonably and in good faith. In the absence of agreement, either party may refer the dispute to an Independent Expert under Clause 19.7 (*Independent expert*).
- (h) If the Lender determines that a revision is necessary to any updated Base Case Financial Model or Annual Budget provided to it pursuant to paragraphs (a) or (b) above (as applicable) because of any material change in the forecasts or assumptions used in the Base Case Financial Model or Annual Budget, it will notify the Borrower within 60 Business Days of receipt of the updated Base Case Financial Model or updated Annual Budget.
- (i) Subject to paragraph (j) below, on receipt of that notice the Borrower must promptly revise the Base Case Financial Model or Annual Budget (as applicable) and provide the Lender and the NAIF Representative with a further updated draft Base Case Financial Model or draft Annual Budget (as applicable). That revision must:

- (i) if the change relates to assumptions, be consistent with the basis for determining these under the previous updated Base Case Financial Model or updated Annual Budget and reflect any determination of technical assumptions and economic assumptions pursuant to Clause 19.5(g); and
 - (ii) be based on the principles and methodology used in preparing the initial Base Case Financial Model or Annual Budget (as applicable).
- (j) If the Borrower does not agree with the revisions in the updated Base Case Financial Model or updated Annual Budget (as applicable) set out in the notice issued by the Lender under paragraph (h) above, the dispute must be referred to an Independent Expert under Clause 19.7 (*Independent expert*). Until any dispute so referred is resolved, all calculations will be made on the basis of the previously agreed Base Case Financial Model or Annual Budget (as applicable) delivered to the Lender and the NAIF Representative.
- (k) Once agreed, the updated Base Case Financial Model or updated Annual Budget (as applicable) will be the Base Case Financial Model or Annual Budget (as applicable) for all relevant purposes under this Agreement.

19.6 Accounting Policy

- (a) If in the reasonable opinion of the Borrower or the Lender any changes to GAAP will materially alter the effect of the financial ratios under Clause 19.1 (*Financial ratios*) or the related definitions, the Borrower and the Lender will negotiate in good faith to amend the relevant financial ratios 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 Lender) then the Borrower will provide with its financial statements any reconciliation statements (audited, where applicable) necessary to enable calculations based on GAAP as they were before those changes, and the changes will be ignored for the purposes of this Clause 19.6.

19.7 Independent expert

- (a) The parties must submit any dispute:
- (i) under Clause 19.5(g) or (j) (*Base Case Financial Model and Annual Budget*); or
 - (ii) which the Borrower and the Lender each agree should be so submitted, to an Independent Expert.
- (b) The Independent Expert will be the person selected by agreement between the Borrower and the Lender or failing agreement within 14 days, by the Chair of the Resolution Institute or a delegate of the Chair. That person must have no direct or indirect personal interest in the outcome, excluding immaterial portfolio holdings in listed entities.

- (c) The parties must submit the dispute in writing to the Independent Expert on or promptly after appointment of the Independent Expert. The submission shall state the specific matter to be determined and all other reasonably relevant matters (including any requirements under this Agreement relating to that matter).
- (d) Each party shall direct the Independent Expert to act expeditiously and to give reasons for his or her determination.
- (e) Each party shall supply the Independent Expert with any information, assistance and co-operation which he or she may request in connection with his or her determination.
- (f) Unless otherwise provided in this Agreement or unless the Independent Expert, in his or her absolute discretion, determines that the conduct of any disputing party is such that it should bear all or a greater proportion, the reasonable fees and expenses of the Independent Expert shall be borne 100% by the Obligors.
- (g) The Independent Expert is an independent expert, not an arbitrator. The Independent Expert's decision will be conclusive and final and binding on the parties.

20. GENERAL 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 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 Lender of:
 - (i) any Authorisation required to perform its obligations under the Transaction Documents;
 - (ii) any Authorisation required for the conduct of its business, trade and ordinary activities (including any Environmental and Social Permit); and
 - (iii) any Authorisation required to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Transaction Document,

in each case including any material amendment, supplement or other modification to any Authorisation received by any Obligor after the date of this Agreement.
- (c) Each Obligor shall not, without the prior consent of the Lender (acting reasonably):

- (i) cancel or terminate any Authorisation or consent to or accept any cancellation or termination of any such Authorisation (other than any cancellation or termination upon expiration thereof);
- (ii) in any way vary, or consent or agree to the variation of any provision of such Authorisation in any material respect;
- (iii) petition, request or take any other legal or administrative action that seeks, or may be expected, to impair any Authorisation in any material respect or seeks to amend, modify or supplement any such Authorisation; or
- (iv) amend, supplement or modify any Authorisation in any material respect.

20.2 Compliance with laws

Each Obligor shall comply in all material respects with all laws that may be applicable to it, its assets or the Project (including the *Australian Jobs Act 2013* (Cth)).

20.3 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 Lender under Clause 18.1 (*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 Obligor may change its residence for Tax purposes.
- (c) Each Obligor shall file all tax returns required to be filed by it in any jurisdiction within the period required by law to the extent that any failure to file such tax returns would, or would be reasonably likely to, result in a Material Adverse Effect.
- (d) Each Obligor shall:
 - (i) maintain at all times a valid TFA and TSA which is in a form and substance satisfactory to the Lender; and
 - (ii) if the TFA or TSA is amended or replaced from time to time, ensure that it is amended or replaced to the satisfaction of the Lender, and only to the extent necessary that it remains a valid TFA or TSA (as the case may be) (having regard to changes in the composition or activities of the tax consolidated group).

20.4 Preservation of assets

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

20.5 Pari passu ranking

Each Obligor shall ensure that at all times its payment obligations under the Transaction Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

20.6 Negative pledge

- (a) No Obligor shall create or permit to subsist any Security over any of its assets.
- (b) Without limiting paragraph (a) no Obligor shall:
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor;
 - (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) Paragraphs (a) and (b) above do not apply to any Security or arrangement which is Permitted Security.

20.7 Disposals

No Obligor shall, enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset other than a Permitted Disposal.

20.8 Merger

No Obligor shall enter into any amalgamation, demerger, merger or corporate reconstruction or sell, lease or otherwise transfer or dispose of all or substantially all of its property.

20.9 Acquisitions

No Obligor shall acquire or own shares or other securities of any person, or acquire all or a substantial part of (whether by way of asset purchase or otherwise) the assets of any other person, other than a Permitted Acquisition. The Parent must ensure that before the date of Project Completion, no member of the Group shall acquire or own shares or other securities of any person, or acquire all or a substantial part of (whether by way of asset purchase or otherwise) the assets of any other person, other than a Permitted Acquisition.

20.10 Joint Ventures

No Obligor shall:

- (a) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or
- (b) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).

20.11 Existence, Conduct of Business etc

Each Obligor shall maintain and preserve its existence as a corporation under its jurisdiction of incorporation, and the Borrower shall engage only in the business of ownership, construction, operation and maintenance of the Project.

20.12 Change of business

- (a) The Borrower shall procure that no substantial change is made to the general nature of the business of the Borrower from that carried on at the date of this Agreement.
- (b) Until the date of Project Completion, the Parent shall procure that no substantial change is made to the general nature of the business of the Parent from that carried on at the date of this Agreement.

20.13 No new bank accounts

The Borrower must not maintain any bank account other than the Project Accounts, the Bond Escrow Account and the Bond Refinancing Reserve Account.

20.14 Insurance

- (a) Each Obligor shall take out and maintain all insurances required by applicable law.
- (b) In addition, the Borrower shall take out and maintain insurances in respect of the Project with a reputable insurer in the manner and to the extent which is in accordance with prudent business practice having regard to the nature of the business and assets of the Obligors in respect of the Project. To the extent not included in the above, the Borrower shall also give consideration to, and (unless the Borrower reasonably considers that such insurance is not available on economic or otherwise commercially reasonable terms) take out, public liability, business interruption and advanced business interruption insurance in respect of the Project, if recommended to do so by the insurance report provided as a condition precedent under Part I of Schedule 2 (*Conditions Precedent*).
- (c) The insurances maintained in accordance with paragraphs (a) and (b) above must be:
 - (i) on terms and conditions which are customary for the relevant type of insurance (or terms and conditions which are more favourable to the Obligor); and
 - (ii) in the names of the Borrower or Obligor (as applicable) for their respective rights and interests (noting the Security Trustee as a loss payee). However,

insurances need not note the Security Trustee as a loss payee if it is not customary practice in the insurance industry for that type of insurance.

- (d) The Borrower shall promptly produce to the Lender and the NAIF Representative (each acting reasonably) evidence satisfactory to the Lender of current insurance cover (including a certified copy of each policy or a certificate of currency) whenever the Lender reasonably asks.
- (e) The Borrower shall promptly notify the Lender if:
 - (i) an event occurs which gives rise, or may give rise, to an insurance claim of A\$500,000 or more; or
 - (ii) an insurance claim of A\$500,000 or more is refused either in whole or in part.
- (f) If an Event of Default is continuing and the Lender or Security Trustee notifies the Borrower, the Security Trustee may take over the relevant Obligor's rights to make, pursue or settle an insurance claim. Subject to any obligations it may have at law, the Security Trustee may exercise those rights in any manner it chooses.

20.15 Arm's length basis

- (a) Except as permitted by paragraph (b) below, no Obligor shall enter into any transaction with any person except on arm's length terms or better for the Obligor and for valuable commercial consideration from the other person.
- (b) The following transactions shall not be a breach of this Clause 20.15:
 - (i) the fees, costs and expenses payable under the Transaction Documents in the amounts set out in the Transaction Documents delivered to the Lender or the Security Trustee under Clause 4.1 (*Initial conditions precedent*) or agreed by the Lender; or
 - (ii) any transaction where the only parties to it are Obligors.

20.16 Constitution and financial year

No Obligor shall:

- (a) amend its constitution in any manner adverse to the rights or interests of the Lender; or
- (b) change its financial year.

20.17 Loans or credit

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

20.18 Project

The Borrower shall:

- (a) subject to paragraph (d) below, promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation that is required to commence construction of the Project;
- (b) subject to paragraph (d) below, promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation that is required to carry out the Project in accordance with the Project Documents and the Base Case Financial Model;
- (c) ensure that each Authorisation which has been obtained by or on behalf of the Borrower, and is either issued in the Borrower's name or on terms under which the Borrower is fully entitled to the use and benefit thereof in accordance with applicable law, is not the subject of any appeals or further proceedings or to any unsatisfied condition that could reasonably be expected to result in material modification, suspension or revocation thereof;
- (d) ensure that any Authorisation in connection with the Project that has not yet been obtained but is of a type that is routinely granted on application and which would not normally be obtained at the current stage of construction or operation of the Project, will be obtained on or prior to the time it becomes necessary for the applicable stage of construction or operation of the Project;
- (e) ensure that it is not in breach of any Authorisation for the construction or operation of the Project in any material respect;
- (f) ensure that the Project and Project Assets are:
 - (i) designed, constructed and completed in a proper and workmanlike manner and:
 - (A) in accordance with the designs, plans, requirements and specifications in or contemplated by the Base Case Financial Model, the Life of Mine Plan, the Environmental and Social Permits and, the Project Documents;
 - (B) in accordance with all applicable laws and Authorisations in all material respects;
 - (C) in accordance with good business practice for a project of the nature of the Project,

except to the extent those designs, plans, requirements and specifications are varied with the prior written consent of the Lender (acting reasonably); and
 - (ii) diligently operated, managed and maintained in a proper and workmanlike manner and in accordance with the Project Documents, Base Case Financial Model, Life of Mine Plan and Good Operating Practice;
- (g) ensure that the Product is diligently processed in a good and workmanlike manner as would a prudent producer in accordance with Good Operating Practice;

- (h) ensure that there is no material change in the design, development or operation of the Project from that assumed in or contemplated by the Base Case Financial Model or the Life of Mine Plan without the Lender's prior written consent;
- (i) ensure that no amounts are incurred or committed to be incurred which:
 - (i) during the period from the date of this Agreement until the date of Project Completion:
 - (A) exceed the higher of (1) \$4,000,000 or (2) 20% of the forecast Project Costs in any sub-category of Project Costs as set out in the Base Case Financial Model; or
 - (B) exceed, in aggregate across all sub-categories of Project Costs, the aggregate Project Costs as set out in the Base Case Financial Model by any amount which is not paid for by the Committed Funding (so that there cannot be any increase to the aggregate Project Costs unless the increase can be satisfied from Committed Funding under paragraph (a) of that definition); and
 - (ii) on and from the date of Project Completion, exceed 25% of the forecast Operating Costs as set out in the Base Case Financial Model,

in each case without the Lender's prior written consent;
- (j) promptly on becoming aware of it, notify the Lender and the NAIF Representative of any material adverse change to the processing methods for the Project from those provided for in the Base Case Financial Model and/or in existence as at the date of this Agreement;
- (k) notify the Lender and the NAIF Representative promptly of any unscheduled stoppages of or disruption to construction, development or operation at the Project for a period greater than 5 consecutive days;
- (l) maintain full and proper technical and financial records in relation to the Project;
- (m) promptly pay, when due, all Project Costs and Operating Costs in connection with the Project and the Project Documents; and
- (n) comply at all times with:
 - (i) the technical undertakings set out in Schedule 12 (*Technical CPs and undertakings*); and
 - (ii) the environmental and social action plans set out in Schedule 13 (*E&S CPs and action plans*).

20.19 Project Documents

The Borrower shall:

- (a) ensure that it (and not any other Obligor, except where that other Obligor is only a party as a guarantor of the Borrower's obligations) is a party to each Project

Document and each other material document or contract entered into relating to the Project or the operation of the Project;

- (b) ensure that none of its rights under or in respect of any of the Project Documents are at any time materially suspended (other than as a result of a force majeure) or materially limited as a result of any act or omission of the Borrower (including an event of default or default (however described) under a Project Document) without the prior written consent of the Lender (acting reasonably);
- (c) promptly notify the Lender and the NAIF Representative on becoming aware of any circumstances that exist which would, or would be reasonably likely to, give any other party to a Project Document legal grounds to terminate, cancel or revoke that Project Document;
- (d) not modify, amend or vary or permit the modification, amendment or variation of any term of any Project Document, or make or permit any waiver (expressly or impliedly) or extend or grant any time (including an extension of time) or indulgence or consent in respect of a provision of a Project Document or any supplemental or collateral agreement thereto without the prior written consent of the Lender (which shall not be unreasonably withheld or delayed) other than:
 - (i) where it is mandatory to do so under that Project Document;
 - (ii) changes of a minor nature or to correct a manifest error in accordance with the relevant Project Document; or
 - (iii) any Permitted Amendment or Waiver.

This paragraph (d) does not apply to ordinary course "variation claims" that are dealt with in accordance with the existing terms of the relevant Project Document.

For the purposes of this paragraph (d), a "**Permitted Amendment or Waiver**" means, in respect of any Project Document (other than any Offtake Agreement), any modification, amendment or variation to that Project Document, or any waiver, indulgence or consent granted or to be granted by the Borrower in respect of that Project Document, which satisfies all of the following criteria:

- (i) it does not result in any additional cost or liability to any Obligor, in any 12 Month period, of more than (i) 2.5% of the existing costs or liabilities under the contract in respect of that 12 Month period; or (ii) if less, A\$200,000, or in aggregate with any other previous Permitted Amendments or Waivers is not in excess of A\$500,000;
- (ii) it does not extend the date by which the counterparty must perform any obligation by more than 20 days in aggregate;
- (iii) it is not likely to have a Material Adverse Effect; and
- (iv) a copy of the proposed modification, amendment, variation, consent, waiver or indulgence has been provided to the Lender and the NAIF Representative;

- (e) ensure that each Project Document is in full force and effect and not terminated, cancelled, rescinded or discharged, in each case, without the prior written consent of the Lender unless:
 - (i) the termination or discharge of that Project Document follows full and final performance of the parties' obligations under that Project Document; or
 - (ii) it is demonstrated to the reasonable satisfaction of the Lender that such Project Document, or the arrangements contemplated by such Project Document, have been replaced by a replacement Project Document, or alternative arrangements, that is or on equivalent terms (or better for the Borrower) as the original Project Document or which are otherwise satisfactory to the Lender (acting reasonably) before that occurrence;
- (f) ensure that each Project Document (as supplemented or modified by the provisions or operation of the relevant Tripartite Deed):
 - (i) contain no restrictions, covenants and conditions that would adversely affect the use, possession, ownership, exploration, development, construction, operation and/or exploitation of the Project Assets in the manner contemplated by the Transaction Documents; and
 - (ii) on and from Financial Close, is capable of being:
 - (A) assigned to the Security Trustee; and
 - (B) the subject of a security granted to the Security Trustee;
- (g) not assign its rights under any Project Document to any person except as permitted under this Agreement;
- (h) duly and properly perform and comply with, in all material respects, its obligations under the Project Documents and any other material document or contract entered into by the Borrower relating to the Project (except to the extent, if any, they are inconsistent with the obligations of the relevant Obligors under the Transaction Documents);
- (i) enforce its rights and not waive any of its material rights or any other party's material obligations thereunder;
- (j) not enter into any Project Document or any other material document or contract relating to the Project, the entry into or performance of which would, or would be reasonably likely to, result in a Material Adverse Effect;
- (k) enter into and use commercially reasonable efforts to cause counterparties to Project Documents to enter into Tripartite Deeds.

20.20 Offtake Agreements

The Borrower shall ensure that at all times on or after the date of Project Completion, the revenue from contracted quantities of Product payable to the Borrower under the Offtake

Agreements for the purchase of Product under those Offtake Agreements will be equal to at least 75% of Operating Revenue for the following 18 Month period.

20.21 Use of Project Site

The Borrower shall not use or permit to be used, by persons under control of the Borrower, the Project or any applicable lease or easement for any purpose other than for the construction, operation and maintenance of the Project as contemplated by the Life of Mine Plan and Base Case Financial Model, or as contemplated by the leases relating to the Project or reserved by the lessor or grantor under the leases relating to the Project or any easement, without the prior written consent of the Lender, or locate any portion of the Project on a site other than the Project Area or the applicable easements.

20.22 Abandonment of Project

The Borrower shall not wilfully and voluntarily cease or stop construction or operation of the Project for a continuous period of more than 30 days, other than with the prior written consent of the Lender. For the avoidance of doubt, scheduled maintenance outages in accordance with the Base Case Financial Model will not be considered to be “wilful and voluntary” cessation or stoppage of the Project or its construction.

20.23 Dangerous substances

The Borrower shall not release into the environment any Dangerous Substances in breach of any Environmental and Social Laws, requirements of law or Authorisations which results or is likely to result in a Material Adverse Effect.

20.24 Annual Budget

- (a) The Borrower must not, without the prior written consent of the Lender, materially amend or vary the Annual Budget (including by adding any new sub-category or type of costs) other than in accordance with Clause 19.4 (*Base Case Financial Model and Annual Budget*).
- (b) The Borrower must comply with the then-current Annual Budget.

20.25 PPSA Policies and Steps

Each Obligor will promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA.

20.26 Environmental and social compliance

- (a) Each Obligor shall:
 - (i) comply in all material respects with all Environmental and Social Law, the NAIF ESR Requirements and Environmental and Social Permits that are required in connection with the Project;
 - (ii) obtain, maintain and ensure compliance in all material respects with all requisite Environmental and Social Permits and the NAIF ESR Requirements;
 - (iii) use all reasonable precautions to avoid any act or omission that would or is likely to result in a Material E&S Incident; and

- (iv) implement procedures to monitor compliance with, and aimed at preventing liability arising as a result of a breach of any Environmental and Social Law and the NAIF ESR Requirements,

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

- (b) Each Obligor shall, promptly upon becoming aware of the same, inform the Lender and the NAIF Representative in writing of:
 - (i) any claim, proceeding, formal notice or investigation by any person in respect of any Environmental and Social Law or the NAIF ESR Requirements against any Obligor which is current, pending or threatened; and
 - (ii) any facts or circumstances which are reasonably likely to result in any claim, proceeding, formal notice or investigation by any person in respect of any Environmental and Social Law or the NAIF ESR Requirements being commenced or threatened against any Obligor,

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

- (c) If any Material E&S Incident does arise:
 - (i) the Borrower shall, in consultation with the Lender, devise a plan (a "**Corrective Action Plan**") for remedying, managing, mitigating or otherwise addressing the effects of such Material E&S Incident which, to the extent the Corrective Action Plan relates to a breach of any NAIF ESR Requirements, shall be subject to written approval of the Lender (other than to the extent paragraph (iii) below applies);
 - (ii) each Obligor shall ensure that each material aspect of each Corrective Action Plan is implemented in accordance with that Corrective Action Plan and within the timescales provided for in that Corrective Action Plan; and
 - (iii) each Obligor shall, in any event, comply with any remedial action prescribed by any Governmental Agency in connection with the occurrence of such Material E&S Incident.
- (d) The consultation in paragraph (c) above shall take place prior to a Corrective Action Plan being devised unless the Borrower reasonably considers that any delay in devising the plan would materially and adversely affect the Borrower's ability to address the effects of the Material E&S Incident, in which case, the Borrower agrees to consult with the Lender as soon as reasonably practicable after the Corrective Action Plan has been devised.
- (e) Subject to paragraph (d) above, the Borrower may implement any Corrective Action Plan that has been devised prior to its approval by the Lender in accordance with paragraph (c)(i) above, provided that the Borrower shall, if required by the Lender, amend the Corrective Action Plan with 10 Business Days of request so that

it is in form and substance satisfactory to the Lender and, once amended, implement that amended Corrective Action Plan.

20.27 Anti-corruption law

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

20.28 Sanctions

Notwithstanding any other provision in this Agreement, the Borrower shall not:

- (a) use the proceeds of any Loan for the purpose of financing directly or indirectly the activities of any person or entity (or otherwise make available to any person or entity) which is currently listed on the SDN List (or any European Union or World Bank equivalent) or in a country which is currently subject to any OFAC Sanctions (or any European Union or World Bank equivalent), to the extent such financing would currently be prohibited by OFAC Sanctions (or any European Union or World Bank equivalent) if conducted by a person in the US or the European Union (as applicable); and/or
- (b) contribute or otherwise make available the proceeds of any Loan to any other person or entity if the Borrower has knowledge that such party intends to use such proceeds for the purpose of financing the activities of any person or entity which is currently on the SDN List (or any European Union or World Bank equivalent) or in a country which is subject to any OFAC Sanctions (or any European Union or World Bank equivalent), to the extent such financing would currently be prohibited by OFAC Sanctions (or any European Union or World Bank equivalent) if conducted by a person in the US or the European Union (as applicable).

20.29 Dividends and share redemption

- (a) Except as permitted under paragraph (b) below, no Obligor shall:
 - (i) declare, make or pay any Distribution, charge, fee or other distribution (or interest on any unpaid Distribution, 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 (other than a fee payable to a "Lender" (under and as defined in the New LNSA) in accordance with the terms of the New LNSA or the Warrant Indemnity Amount payable under the Warrant Deed (in the form of those documents as at the Implementation Deed Effective Date));

- (ii) repay or distribute any dividend or share premium reserve;
 - (iii) pay any management, advisory or other fee to or to the order of any of the shareholders of the Borrower or the Parent (other than a fee payable to a "Lender" (under and as defined in the New LNSA) in accordance with the terms of the New LNSA or the Warrant Indemnity Amount payable under the Warrant Deed (in the form of those documents as at the Implementation Deed Effective Date)); 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) Paragraph (a) above does not apply to a Permitted Distribution.

20.30 Financial Indebtedness

- (a) Except as permitted under paragraph (b) below, no Obligor shall incur or allow to remain outstanding any Financial Indebtedness.
- (b) Paragraph (a) does not apply to Financial Indebtedness which is Permitted Financial Indebtedness.

20.31 Financial assistance

Each Obligor shall comply in all respects with Part 2J.3 of the Corporations Act and any equivalent legislation in other jurisdictions.

20.32 Treasury Transaction

The Borrower shall not enter into any Treasury Transaction, other than for the purpose of protecting the Borrower against fluctuations in interest rates, currency exchange rates or commodity prices but not for speculative purposes, provided that the Treasury Transaction is made in accordance with the Approved Hedging Policy and Protocol or any other hedging policy agreed between the Borrower and the Lender.

20.33 Bond Refinancing

The Borrower must not refinance or replace (however described) the Bonds except where each of the following conditions are satisfied:

- (a) the total principal amount under the Bond Refinancing must not exceed the total principal amount under the Bonds at the time of the refinancing or replacement (after deducting any amount in the Bond Escrow Account and the Bond Refinancing Reserve Account, and any such amounts shall be applied in redemption of the Bonds on or prior to the Bond Refinancing);
- (b) the Bonds are refinanced or replaced in full and not only in part;
- (c) no Bond Refinancing occurs before the date of Project Completion;
- (d) the Bond Refinancing must not have any higher ranking in priority than Facility B, Facility C1 and Facility C2 in an enforcement scenario under the Intercreditor Deed (or any other intercreditor agreement);

- (e) any accession conditions under the Intercreditor Deed and the Security Trust Deed are satisfied;
- (f) where any proposed Bond Refinancing is by way of an amendment to the existing Bond Terms (rather than a new Bond Refinancing Agreement or terms), the amendment would not breach the restrictions on amendments under the Intercreditor Deed; and
- (g) the terms of repayment under the Bond Refinancing fall within the following debt sizing parameters:
 - (i) the Debt Service Cover Ratio with respect to the Senior Facilities is greater than 1.70:1, measured on a forward-looking basis as at each Calculation Date until the Termination Date;
 - (ii) the Loan Life Cover Ratio with respect to the Senior Facilities is greater than 1.70:1, measured on a forward-looking basis as at each Calculation Date until the Termination Date; and
 - (iii) amortisation of the Bond Refinancing in full by its stated maturity date.

20.34 Working Capital Facility Agreement Conditions

The Borrower acknowledges and agrees that it shall not enter into any Working Capital Facility Agreement (alone or with any other Obligor) except where each of the following conditions are satisfied:

- (a) the aggregate principal amount available under the Working Capital Facility Agreement does not exceed A\$15,000,000 (or its equivalent in any other currency or currencies);
- (b) the proposed WCF Lender is a financial institution with a long term credit rating of A or higher by Standard & Poor's or a comparable rating from an internationally recognised credit rating agency
- (c) the Working Capital Facility Agreement does not have an obligation to "clean down" (however described) the outstanding amounts under the Working Capital Facility Agreement that is more onerous than a clean down to zero once every 12 months, with a "clean down period" of no more than 5 Business Days;
- (d) the WCF Lender accedes to the Intercreditor Deed and the Security Trust Deed as a Beneficiary under and in accordance with the terms of the Intercreditor Deed and the Security Trust Deed; and
- (e) the WCF Lender does not benefit from any Security or guarantee other than the Transaction Security Interests.

20.35 IES and IES Event

- (a) The Borrower will provide to the Lender and the NAIF Representative:
 - (i) no later than 45 Business Days after the expiry of each Reporting Period, an IES Report; and

- (ii) at any time on reasonable request by the Lender, any other information in relation to the IES.
- (b) Without prejudice to Clause 20.35(a) (*IES and IES Event*), the Borrower must promptly notify the Lender and the NAIF Representative upon the occurrence of a material IES Event, together with details of such material IES Event.
- (c) The Borrower must at all times use its best endeavours to comply in all material respects with the IES Obligations.
- (d) The Borrower may update the IES from time to time by providing an updated copy of the IES to the Lender and the NAIF Representative, which must be in form and substance satisfactory to the Lender.
- (e) If the Borrower determines that it is unable to comply in all material respects with the IES Obligations, or in the Lender's reasonable opinion the IES Obligations are not being met in all material respects:
 - (i) in the case of the Borrower's determination that it is unable to comply, it must notify the Lender promptly;
 - (ii) it must consult with the Lender including providing information sufficient to ensure the Lender understands the extent of and reasons for non-compliance;
 - (iii) the Lender may require that a third-party mediator, consultant, expert or advisor ("**Advisor**") acceptable to the Lender is appointed (at the Borrower's cost) to advise it on the reasons for non-compliance;
 - (iv) the Lender may assess the circumstances (including appointing an Advisor) to determine whether in the reasonable opinion of the Lender there has been progress and genuine effort on the part of the Borrower to comply with and implement the IES;
 - (v) on request by the Lender within a reasonable time period as specified in the request, it must provide to the Lender a plan to remedy any non-compliance (a "**Remedy Plan**") or to propose a modified IES (a "**Proposed Revised IES**"); and
 - (vi) if in the reasonable opinion of the Lender, the Remedy Plan or the Proposed Revised IES (as the case may require) is in form and substance acceptable to it, the Lender will inform the Borrower that it agrees with it. In the case of an agreed Remedy Plan, the IES will be deemed to be amended to incorporate that Remedy Plan for the purposes of this Agreement. In the case of an agreed Proposed Revised IES, the IES will be replaced by the Proposed Revised IES for the purposes of this Agreement.
- (f) For the purposes of this Clause 20.35, an "**IES Event**" occurs (whether or not it is in the control of the Borrower) when:

- (i) in the Lender's opinion, the Borrower fails to provide the Lender with a Remedy Plan or Proposed Revised IES (as the case may require) within the specified timeframe following its request pursuant to paragraph (v) of Clause 20.35(e); or
 - (ii) the Lender notifies the Borrower within 60 days (or such longer period as the Lender reasonably determines) of receipt of the Remedy Plan or Proposed Revised IES (as the case may require) that the Remedy Plan or Proposed Revised IES is not acceptable to it pursuant to paragraph (vi) of Clause 20.35(e).
- (g) If an IES Event occurs, the Lender may in its discretion require at any time afterwards by notice to the Borrower that either or both the following will occur whilst the IES Event subsists:
- (i) no Distribution is a Permitted Distribution; or
 - (ii) the Interest Rate for Facility B, Facility C1 and Facility C2 is increased by 1% per annum,
- while the IES Event is continuing.

20.36 WHS Scheme

- (a) The Borrower must ensure that:
- (i) any Builder is required to comply with all requirements and conditions of the WHS Scheme;
 - (ii) any Builder maintains accreditation under the WHS Scheme; and
 - (iii) if the expiry date for its accreditation under the WHS Scheme is a date prior to the Sunset Project Completion Date, the Builder applies to the Federal Safety Commissioner for reaccreditation under the WHS Scheme by a date that is no later than 6 months prior to that accreditation expiry date.
- (b) The Borrower must promptly notify the Lender and the NAIF Representative as soon as it becomes aware of:
- (i) the Builder ceasing to be accredited under the WHS Scheme; or
 - (ii) any matter that is reasonably likely to affect or result in the loss of the Builder's accreditation under the WHS Scheme.

20.37 Australian Industry Participation (AIP) Plan

- (a) The Borrower must take all steps reasonably necessary to comply with the AIP Plan.
- (b) If any conflict arises between any part of the AIP Plan and any other part of the Finance Documents, the other part of the Finance Document prevails.
- (c) The Borrower must promptly prepare, finalise and submit to the Lender, the NAIF Representative and the AIP Authority an Implementation Report that meets the

Implementation Report Requirements. The Borrower must obtain the AIP Authority's agreement to the Implementation Report within the relevant time or times required by the AIP Plan or otherwise within the time or times required by the AIP Authority.

- (d) The Borrower must promptly comply with any requirements of the AIP Authority in preparing, finalising and submitting an Implementation Report including addressing any issues identified by the AIP Authority arising out of the Implementation Report or drafts of it.
- (e) The Borrower will keep the Lender, the NAIF Representative and the AIP Authority informed as to its progress in preparing, finalising and submitting an Implementation Report (including by providing drafts of the Implementation Report for consideration) and acknowledges that the Lender may discuss the Implementation Report and Implementation Report Requirements directly with the AIP Authority.
- (f) Once the AIP Authority has confirmed in writing to the Lender that it has agreed to the Implementation Report, the Lender will as soon as practicable confirm to the Borrower and the AIP Authority that the Implementation Report is acceptable to the Lender. The Borrower acknowledges that neither NAIF nor the Lender has any liability to the Borrower or otherwise in respect of the AIP Plan or Implementation Report (including as a result of accepting it) or any matter under or arising out of either of them.

20.38 Inspection

- (a) Each Obligor will procure that, on and from the date of this Agreement, site visits to the Project may be conducted, subject to paragraph (b) below and upon the reasonable prior request of the Lender, by:
 - (i) to the extent reasonably practicable, at the same time, up to two representatives nominated by the Lender on behalf of NAIF, by being provided with access to:
 - (A) the Project Assets; and
 - (B) the books, records, data and information which are in the custody or possession of that Obligor and relevant to the Project,at the following times:
 - (C) twice per calendar year;
 - (D) at any time and from time to time while an Event of Default, Review Event or Material E&S Incident is continuing or to verify that any Event of Default or Material E&S Incident has been rectified; and
 - (E) at any other time (at the cost of the representative of the Lender requiring that visit);

(ii) a reasonable number of representatives of each of the Independent Technical Consultant and the E&S Consultant and one representative of the Lender by being provided with access to:

- (A) the Project Assets; and
- (B) the books, records, data and information which are in the custody or possession of that Obligor,

on the following basis/at the following times:

- (C) prior to the date of Project Completion, once each Quarter;
- (D) after the date of Project Completion, once every six months;
- (E) in respect of the representatives of the Independent Technical Consultant and the Lender only, at all times at which tests in connection with the date of Project Completion are being performed to the extent reasonably necessary to enable the Independent Technical Consultant to perform its function with respect to those tests; and
- (F) at any time while an Event of Default or a Review Event is continuing or to verify that any Event of Default or Review Event has been rectified.

(b) Site visits pursuant to this Clause 20.38 will be conducted:

- (i) during normal business hours;
- (ii) in a manner that minimises disruption of the normal implementation of the Project and subject to reasonable advance notification; and
- (iii) subject to (x) applicable health and safety laws and regulations and (y) health and safety policies adopted by the counterparties to any Project Document carrying out any works or services at the Project at the time of the proposed site visit and the Obligors, in each case, acting in accordance with Good Operating Practice.

(c) Unless otherwise expressly provided in this Clause 20.38, all site visits shall be at the cost of the Borrower.

20.39 Supplemental undertakings

The Obligors must comply with the undertakings (if any) contained in the Supplemental Agreement.

20.40 Conditions subsequent

(a) By no later than 6 Months prior to the start of production at the Project, the Borrower shall procure that it enters into:

- (i) the Logistics Contract; and

- (ii) the Tripartite Deed referred to in paragraph (m) of that definition in respect of the Logistics Contract,

and provide to the Lender and the NAIF Representative certified copies of those documents which have been fully executed.

- (b) Promptly after it is granted, and in any event by no later than the date of Project Completion, the Parent must transfer to the Borrower any Project Tenement which is "pending" as at Financial Close.
- (c) The Borrower must comply with any condition subsequent as set out in Schedule 12 (*Technical CPs and undertakings*) and Schedule 13 (*E&S CPs and undertakings*) by the dates or times specified in those schedules.

20.41 Access to the Airstrip Project

The Borrower shall:

- (a) ensure that the Borrower has continuous access to and use of the airstrip and associated airstrip infrastructure constructed in connection with the Airstrip Project for use with the Project; and
- (b) in the event of a sale, transfer or other disposal of the Pastoral Lease, enter into a long-term access agreement (in form and substance satisfactory to the Lender and the NAIF Representative) with the proposed Pastoral Lease holder to ensure that the Borrower has continuous access to and use of the airstrip and associated airstrip infrastructure constructed in connection with the Airstrip Project for use with the Project.

20.42 Additional Undertakings

- (a) The Borrower must ensure that:
 - (i) the equity raising proposed by the Parent to occur after the date of the New LNSA occurs by no later than 31 August 2024; and
 - (ii) the Tanzanian Disposal comprises a Permitted Disposal and occurs by not later than 16 August 2024,

in each case, or by such later date as the Lender may agree in writing, and must ensure that all net immediately available cash proceeds of the Tanzanian Disposal (after having deducted all transaction costs, expenses, taxes, retention amounts, adjustment payments or any similar amount) is paid directly to the Security Trustee by the purchaser and applied in accordance with Clause 7.5 (*Facility C2 mandatory prepayment*).

- (b) Notwithstanding Clause 19.5 (*Base Case Financial Model and Annual Budget*), the Borrower must not amend the Base Case Financial Model or the Life of Mine Plan without the prior written consent of the Lender.

20.43 Restructuring plan

The Obligors must enter into:

- (a) a restructuring term sheet (as contemplated by the Standstill Letter) in form and substance satisfactory to the Lender by no later than 5 July 2024; and
- (b) definitive documentation in form and substance satisfactory to the Lender to give effect to that term sheet by no later than 16 August 2024,

in each case, or such later date as the Lender may agree in writing

21. REVIEW EVENTS

Each of the events or circumstances set out in Clause 21 (*Review Events*) is a Review Event (save for Clause 21.5 (*Consequences of Review Event*)), whether or not it is in the control of any Obligor.

21.1 Change of Control

Any person ceases to have or acquires, directly or indirectly, control of the Borrower or any other Obligor, where "control" has the meaning given to it in section 50AA of the Corporations Act.

21.2 Delisting

The shares of the Parent, listed on the ASX, are delisted or removed from the official list of the ASX, or are suspended from trading for a period of more than 5 consecutive trading days, and are not reinstated without any material adverse sanction.

21.3 Supplemental Review Events

Each Review Event (if any) specified in the Supplemental Agreement.

21.4 Key Person

Any Key Person ceases to be employed by the Borrower or the Parent and is not replaced by a similarly qualified and experienced person acceptable to the lender within 30 days of the date on which that Key Person ceased employment with the Borrower or the Parent.

21.5 Consequences of a Review Event

- (a) If a Review Event occurs, then unless the Review Event is waived within 20 Business Days after its occurrence in accordance with the Intercreditor Deed:
 - (i) the Available Commitment will be cancelled in full 20 Business Days after the occurrence of the Review Event; and
 - (ii) the Borrower shall repay each Utilisation in full no later than 150 days (or any shorter period required under the New LNSA) after the occurrence of the Review Event.
- (b) Despite anything else in this Agreement, a failure to repay the Utilisations in accordance with paragraph (a) above is an Event of Default.

22. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 22 is an Event of Default (save for Clause 22.28 (*Acceleration*) and Clause 22.29 (*Independent accountant*)).

22.1 Non-payment

An Obligor does not pay within 3 Business Days of the due date any amount payable pursuant to a Transaction Document at the place and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and
- (b) payment is made within 5 Business Days of its due date.

22.2 Financial covenants

Subject to Clause 19.3 (*Equity cure*), any requirement of Clause 19.1 (*Financial ratios*) is not satisfied (including, if Clause 19.3 (*Equity cure*) is used, any requirement under that Clause is not satisfied).

22.3 Other obligations

- (a) An Obligor does not comply with any provision of the Transaction Documents (other than those referred to in Clause 22.1 (*Non-payment*), Clause 22.2 (*Financial covenants*) and Clause 20.33 (*IES and IES Event*)) or with any condition of any waiver or consent by the Lender under or in connection with any Transaction Document which the Obligors have accepted as a condition.
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 15 Business Days of the earlier of (A) the Lender giving notice to the Borrower and (B) the Borrower becoming aware of the failure to comply.

22.4 Misrepresentation

- (a) Any representation or statement made or deemed to be made by an Obligor in the Transaction Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Transaction 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 paragraph (a) above will occur if the circumstances giving rise to the misrepresentation are capable of remedy and are remedied, or if the effect of the misrepresentation is overcome to the satisfaction of the Lender, in each case within 15 Business Days of the earlier of (A) the Lender giving notice to the Borrower and (B) the Borrower becoming aware of the misrepresentation.

22.5 Transaction Document

- (a) It is or becomes unlawful for an Obligor to perform any of its obligations under the Transaction Documents.
- (b) All or a material part of a Transaction Document is terminated or is or becomes void, illegal, invalid or unenforceable, or of limited force and effect.

- (c) An Obligor repudiates or evidences an intention to repudiate either the whole or a part of a Transaction Document.
- (d) A provision of a Transaction Document is or becomes or is claimed by a party other than the Lender or any other Secured Creditor to be wholly or partly invalid, void, voidable or unenforceable.
- (e) The guarantee provided by a Guarantor under the Security Trust Deed, or any Security constituted or purported to be constituted by the Transaction Security Documents, is not or ceases to be effective.
- (f) Any Transaction Security Document ceases to confer the Security it purports to create.
- (g) Any Security constituted or purported to be constituted by the Transaction Security Documents does not, or ceases to, have the priority purported to be created.

22.6 Default under Secured Creditor Agreement

An event occurs which is called an "event of default" or "termination event" (however described) under any Secured Creditor Agreement other than this Agreement, or any other event occurs which renders a Transaction Security Document enforceable.

22.7 Governmental Agency intervention

Any measure or series of measures taken, directed, authorised, ratified or approved by any Governmental Agency (including through the imposition of confiscatory taxation) which results in:

- (a) any of the Project Assets, or all or any part of the share capital of any Obligor, or any material amount of the revenues derived from any Project asset or the capital stock or share capital of any Obligor, being rezoned, nationalised, expropriated, compulsorily acquired or seized by a Governmental Agency; or
- (b) the assumption of custody or control by a Governmental Agency of:
 - (i) any Project Assets or any material amount of revenues derived from any Project asset; or
 - (ii) any material portion of the business or operations of any Obligor.

22.8 Cross default

- (a) Any Financial Indebtedness of any Obligor is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Obligor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default or review event (however described).
- (c) Any commitment for any Financial Indebtedness of any Obligor is cancelled or suspended by a creditor of any Obligor as a result of an event of default or review event (however described).

- (d) Any creditor of any Obligor becomes entitled to declare any Financial Indebtedness of any Obligor due and payable prior to its specified maturity as a result of an event of default or review event (however described).
- (e) No Event of Default will occur under this Clause 22.8 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than A\$1,000,000 (or its equivalent in any other currency or currencies).

22.9 Insolvency

- (a) An Obligor:
 - (i) is or is presumed or deemed to be unable or admits inability to pay its debts as they fall due;
 - (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 the Lender 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 Obligor.

22.10 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor other than a solvent liquidation or reorganisation of any Obligor;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of any Obligor;
 - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Obligor or any of its assets; or
 - (iv) enforcement of any Security over any assets of any Obligor,
 or any analogous procedure or step is taken in any jurisdiction.

22.11 Creditors' process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of an Obligor or the Parent having an aggregate value of A\$1,000,000 and is not discharged within 15 Business Days.

22.12 Ownership of the Project

The Borrower ceases to own 100% of the Project.

22.13 Ownership of the Borrower

The Parent ceases to own 100% of the shares of the Borrower.

22.14 Repudiation

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

22.15 Cessation of business

- (a) An Obligor suspends or ceases:
 - (i) to carry on (or threatens to suspend or cease to carry on) all or a material part of its business;
 - (ii) in the case of the Borrower, conducting the Project,

except as a result of a Permitted Disposal or with the prior written consent of the Lender.
- (b) The authority or ability of any Obligor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, compulsory acquisition, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Obligor or any of its assets or the shares in that Obligor (including without limitation the displacement of all or part of the management of any Obligor).

22.16 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 Obligor or its assets which have, or has, or are, or is, reasonably likely to have a Material Adverse Effect.

22.17 Revocation of Authorisation

- (a) An Authorisation which is:
 - (i) required for the entry into or performance by any Obligor of a Transaction Document or Project Document, or the validity and enforceability of a Transaction Document or a Project Document; or
 - (ii) material to the Security of the Lender; or
 - (iii) necessary for the Project

is repealed, revoked or terminated or expires or is modified or amended or conditions are attached to it in a manner unacceptable to the Lender.
- (b) An Obligor commits a material breach or default under an Authorisation referred to in paragraph (a) and that material breach or default is not rectified within 30 days

of such breach or default or such other period that is provided for or contemplated by the terms of that Authorisation.

22.18 Project Documents

- (a) There is a material breach or default under the Project Documents.
- (b) It is or becomes unlawful for an Obligor to perform any of its material obligations under a Project Document or a Project Document ceases to be in full force and effect other than by expiry or performance in accordance with its terms.
- (c) A Project Document is terminated, cancelled, discharged or rescinded or becomes capable of being terminated, cancelled, discharged or rescinded unless:
 - (i) the termination or discharge of a Project Document follows expiry of or full and final performance of the parties' obligations under that Project Document; or
 - (ii) it is demonstrated to the reasonable satisfaction of the Lender that such Project Document, or the arrangements contemplated by such Project Document, have been replaced by a replacement Project Document, or alternative arrangements, that is or are satisfactory to the Lender (acting reasonably) before that occurrence.
- (d) A Project Document is or becomes void, illegal, invalid, unenforceable, or of limited force or effect or is materially amended without the prior written consent of the Lender.

22.19 Abandonment

Other than as permitted under Clause 20.22 (*Abandonment of Project*), the Project is abandoned or placed on care and maintenance or the Borrower permanently abandons or cancels or evidences an intention to permanently abandon or cancel the construction or operation of the whole or a substantial part of the Project other than in accordance with the Life of Mine Plan.

22.20 Destruction of Project Assets

All or a substantial part of the tangible Project Assets are destroyed or damaged beyond repair.

22.21 Insurance cancelled

- (a) Any insurances (and all re-insurance policies relating to them) which are required to be effected and maintained pursuant to this Agreement with respect to the Project and all activities relating to the Project:
 - (i) are not, or cease to be, in full force and effect;
 - (ii) are unavailable at the time they are required to be effected; or
 - (iii) are or are likely to become void or cancelled.

(b) No Event of Default under paragraph (a) above will occur if the relevant insurance is replaced in compliance with Clause 20.14 (*Insurance*) within 10 Business Days of the earlier of:

(i) the Lender giving notice to the Borrower; and

(ii) the Borrower becoming aware of the event described in paragraph (a) above,

or where a failure to replace within 10 Business Days, or the absence or unavailability (for whatever reason) of, the relevant insurance is due to that insurance no longer being available from the existing insurer, and it is replaced within 45 days.

22.22 Failure in respect of Project Completion

Project Completion does not occur on or prior to the Sunset Project Completion Date.

22.23 Material adverse change

An event or circumstance occurs which has, or is reasonably likely to have (or a number of events or circumstances occur, whether related or not, which together have or are reasonably likely to have) a Material Adverse Effect.

22.24 Supplemental Events of Default

Each Event of Default (if any) specified in the Supplemental Agreement.

22.25 Restructuring plan and Additional Undertakings

(a) The Obligors fail to deliver the restructuring plan term sheet or fail to enter into definitive documentation in relation to that term sheet in the manner required by Clause 20.43 (*Restructuring plan*).

(b) The Obligors fail to comply with an Additional Undertaking of the type contemplated in Clause 20.42 (*Additional Undertakings*) within the time period specified in Clause 20.42.

22.26 Change of governing law or jurisdiction

Any step is taken or process commences, whether as a matter of law or otherwise, to change the governing law or the jurisdiction of this Agreement or any other Finance Document.

22.27 Warrant Deed

The Warrant Deed is modified, amended or varied, or any Obligor permits the modification, amendment or variation of any term of the Warrant Deed, where such modification, amendment or variation results in any increase in amounts owing or contingently owing to any "Lender" or any "Affiliate" of a "Lender" (as those terms are defined under the New LNSA).

22.28 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Lender may:

(a) by notice to the Borrower:

- (i) cancel each Available Commitment whereupon each such Available Commitment shall immediately be cancelled and the Facilities shall immediately cease to be available for further utilisation;
 - (ii) declare that all or part of the Utilisations, 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;
 - (iii) declare that all or part of the Utilisations be payable on demand, whereupon they shall immediately become payable on demand by the Lender; 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.

22.29 Independent accountant

- (a) Without limiting the rights of the Lender under this Agreement, at any time while the Lender considers that a Default is, or may be, continuing the Lender may, by notice to the Borrower appoint a firm of independent accountants or other experts to review and report to the Lender 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 paragraph (a) above 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.
- (c) The appointment of a firm of independent accountants or other experts under paragraph (a) will be at the cost of the Borrower, unless it is determined that, at the time of appointment, no Default was actually continuing.

**SECTION 9
CHANGES TO PARTIES**

23. CHANGES TO THE LENDER

23.1 Assignments and novations by the Lender

Subject to this Clause 23, the Lender (the "**Existing Lender**") may:

- (a) assign any of its rights; or
- (b) novate any of its rights and obligations,

under the Finance Documents to another person (the "**New Lender**").

23.2 Conditions of assignment or novation

(a) The consent of the Borrower is required for an assignment or novation by the Existing Lender, unless the assignment or novation is:

- (i) to an Affiliate of the Lender; or
- (ii) made at a time when an Event of Default is continuing;
- (iii) to a bank or financial institution that is an ADI and, if the assignment or novation is prior to the date of Project Completion, it has a long term credit rating of A or higher by Standard & Poor's or a comparable rating from an internationally recognised credit rating agency;
- (iv) to the Bond Trustee or any owner of the Bonds; or
- (v) to a securitisation or funding vehicle where the Lender remains lender of record.

(b) For the purposes of this Clause 23.2 (*Conditions of assignment or novation*), "**Affiliate**" includes, in relation to the Original Lender:

- (i) the State of Western Australia;
- (ii) NAIF;
- (iii) the Commonwealth;
- (iv) a body corporate that is established by a law of the Commonwealth or a law of Western Australia;
- (v) an entity where the ultimate legal or beneficial interest is held by a Western Australian or Commonwealth government entity; or
- (vi) a Commonwealth entity or Commonwealth company as those terms are defined in the *Public Governance, Performance and Accounting Act 2013* (Cth).

(c) The consent of the Borrower to an assignment or novation 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.

- (d) Other than an assignment where the Lender remains lender of record, an assignment will only be effective on:
 - (i) receipt by the Existing Lender (whether in the assignment agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Existing Lender) that the New Lender will assume the same obligations to the Borrower as it would have been under if it was the Original Lender; and
 - (ii) performance by the Existing Lender 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 Existing Lender shall promptly notify to the New Lender.
- (e) A novation will only be effective:
 - (i) if the procedure set out in Clause 23.4 (*Procedure for novation*) is complied with; and
 - (ii) on performance by the Existing Lender of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such novation to a New Lender, the completion of which the Existing Lender shall promptly notify to the New Lender.
- (f) If:
 - (i) the Lender assigns or novates 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, novation 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 11 (*Tax Gross-up and Indemnities*) or Clause 12 (*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, novation or change had not occurred.

- (g) The 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, novation or change is proposed to occur.

23.3 Limitation of responsibility of Existing Lender

- (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 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 novation or re-assignment from a New Lender of any of the rights and obligations assigned or novated under this Clause 23; 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.

23.4 Procedure for novation

- (a) Subject to the conditions set out in Clause 23.2 (*Conditions of assignment or novation*) a novation is effected in accordance with paragraph (c) below when the Borrower receives a duly completed and executed Transfer Certificate delivered to it by the Existing Lender and the New Lender.
- (b) Each Party other than the Existing Lender irrevocably authorises the Existing Lender to execute any Transfer Certificate on its behalf.
- (c) On the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to novate all its rights and obligations under the Finance Documents:
 - (A) 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**");

- (B) 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;
 - (C) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the obligations owed by the Existing Lender under the Finance Documents; and
- (ii) to the extent that in the Transfer Certificate the Existing Lender seeks to novate (some but not all) of its rights and obligations under the Finance Documents:
- (A) each of the Obligors and the New Lender are taken to be parties to a new agreement (the "**New Facility Agreement**") between them on the same terms as this Agreement except that:
 - (1) references to the Original Lender are replaced with references to the New Lender;
 - (2) the "Facility B Commitment", the "Facility C1 Commitment" and the "Facility C2 Commitment" are taken to be the amounts shown as such in the Transfer Certificate (the "**New Lender's Commitment**");
 - (B) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another under the New Facility Agreement ("**Assumed Rights and Obligations**") which are identical to the obligations and rights they would have had if the New Lender had made under the New Facility Agreement to the Borrower on the relevant date and in an amount equal to the relevant proportion a Facility B Loan, a Facility C1 Loan or a Facility C2 Loan corresponding to each such Loan outstanding on the Transfer Date (where:
 - (1) "relevant date" means the date on which the Loan was provided by the Existing Lender; and
 - (2) "relevant proportion" means the proportion which the New Lender's Facility B Commitment, Facility C1 Commitment or Facility C2 Commitment (as applicable) bears to the relevant Commitment of the Existing Lender prior to the Transfer Date)
 - (C) each of the Obligors and the Existing Lender shall be released from obligations towards one another under the Finance Documents and

their respective rights against one another under the Finance Documents shall be cancelled in each case to the extent those obligations and rights corresponds to the Assumed Rights and Obligations.

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

23.5 Copy of Transfer Certificate or assignment agreement to Borrower

The Existing Lender shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an assignment agreement, send to the Borrower a copy of that Transfer Certificate or assignment agreement.

23.6 Security over Lender's rights

In addition to the other rights provided to the Lender under this Clause 23, the 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 its obligations 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 the Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

- (i) release the 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
- (ii) 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 Lender under the Finance Documents.

24. CHANGES TO THE OBLIGORS

24.1 Assignments and novation by Obligors

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

24.2 Additional Guarantors

- (a) Subject to compliance with the provisions of Clause 18.13(c) and Clause 18.13(d) ("*Know your customer*" checks), the Borrower may request that any of its wholly owned Subsidiaries become an Additional Guarantor. That Subsidiary shall become an Additional Guarantor if:

- (i) the Borrower delivers to the Lender a duly completed and executed Accession Letter executed as a deed; and
 - (ii) the Lender has received all of the documents and other evidence listed in Part IV of Schedule 2 (*Conditions Precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Lender.
- (b) The Lender shall notify the Borrower promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part IV of Schedule 2 (*Conditions Precedent*).

24.3 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.

24.4 Resignation of a Guarantor

- (a) The Borrower may request that a Guarantor (other than the Parent) ceases to be a Guarantor by delivering to the Lender a Resignation Letter.
- (b) The Lender shall accept a Resignation Letter and notify the Borrower 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); and
 - (ii) the Lender has consented to the Borrower's 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.

SECTION 10
THE LENDER

25. CONDUCT OF BUSINESS BY THE LENDER

No provision of this Agreement will:

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

SECTION 11
ADMINISTRATION

26. PAYMENT MECHANICS

26.1 Payments to the Lender

- (a) On each date on which an Obligor is required to make a payment under a Finance Document, that Obligor shall make the same available to the Lender (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 Lender in such funds specified by the Lender as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the city of the Lender with such bank as the Lender, in each case, specifies.

26.2 Distributions to an Obligor

The Lender may (with the consent of the Obligor or in accordance with Clause 27 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

26.3 Partial payments

- (a) If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Lender shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
 - (i) **firstly**, in or towards payment pro rata of any amounts payable but unpaid in respect of fees, costs, expenses, losses or liabilities of the Lender under the Finance Documents;
 - (ii) **secondly**, in or towards payment of any accrued interest, fees or commission due but unpaid under the Finance Documents;
 - (iii) **thirdly**, in or towards payment of any principal due but unpaid under those Finance Documents; and
 - (iv) **fourthly**, in or towards payment of any other sum due but unpaid under the Finance Documents.
- (b) The Lender may vary the order set out in paragraphs (a)(ii)(a)(i) to (a)(iv) above inclusive.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.
- (d) This Clause 26.3 (*Partial payments*) is subject to the Intercreditor Deed.

26.4 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.

26.5 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.

26.6 Currency of account

- (a) Subject to paragraphs (b) and (c) below, Australian 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 Australian dollars shall be paid in that other currency.

26.7 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (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 Lender (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 Lender (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Lender (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 Australian bank market and otherwise to reflect the change in currency.

26.8 Disruption to payment systems etc.

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

- (a) the Lender may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facilities as the Lender may deem necessary in the circumstances;
- (b) the Lender shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) any such changes agreed upon by the Lender and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents; and
- (d) the Lender 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 Lender) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 26.8.

26.9 Anti-money laundering

- (a) The Lender, NAIF or the Commonwealth may delay, block or refuse to process any payment or other transaction without incurring any liability if the Lender, NAIF or the Commonwealth knows or reasonably suspects that the transaction or the application of its proceeds will:
 - (i) breach, or cause the Lender, NAIF or the Commonwealth to breach, any applicable laws or regulations of any jurisdiction (including any sanctions); or
 - (ii) allow the imposition of any penalty on the Lender, NAIF or the Commonwealth or their 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 Lender, NAIF or the Commonwealth or their Affiliate, or the direct or indirect proceeds of unlawful activity.
- (b) As soon as practicable after the Lender, NAIF or the Commonwealth becomes aware that it will delay, block or refuse to process a transaction under paragraph (a), it will notify the Borrower and consult in good faith but in each case only to the extent the Lender determines it is legally permitted to do so. In making that determination the Lender, NAIF or the Commonwealth shall act reasonably.
- (c) The Borrower shall promptly advise the Lender and the NAIF Representative 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 Lender or the NAIF Representative 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.

27. SET-OFF

If a Default is continuing the Lender, NAIF or the Commonwealth may, but need not, set off any matured obligation due from an Obligor under the Finance Documents against any obligation owed by any office of the Lender, NAIF or the Commonwealth 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 Lender, NAIF or the Commonwealth may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

28. NOTICES

28.1 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 Lender under Clause 26.1(b) (*Payments to the Lender*),

must be signed by an authorised signatory of the sender (directly or with a facsimile signature), subject to Clause 28.4 (*Email communication*) and Clause 28.5 (*Reliance*), and

- (c) unless otherwise stated, may be made or delivered by fax, by letter or by email.

28.2 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; and
- (b) in the case of the Lender or any other Original Obligor, that specified in Schedule 1 (*The Original Parties*) or notified in writing to the Lender (in the case of a change made by any Obligor) or notified to the Borrower (in the case of a change made by the Lender), on or prior to the date on which it becomes a Party,

or any substitute address, fax number, email address or department or officer as the Party may notify to the Lender or Borrower (as applicable) by not less than five Business Days' notice.

Address for service of communications:

Borrower:

Address: London House, Level 9, 216 St Georges Terrace, Perth WA 6000
Attention: Jamie Cann
Email: jamie.cann@strandline.com.au

28.3 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 28.4 (*Email communication*),
and, in the case of a communication, if a particular department or officer is specified as part of its address details provided under Clause 28.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document made or delivered to the Borrower in accordance with this Clause 28 will be deemed to have been made or delivered to each of the Obligors.
- (c) A communication by fax or email 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.

28.4 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) 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 e-mail has not been received (other than an out of office greeting for the named addressee) and it receives the notification before 2 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
 - (ii) 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 3 MB in total, then:
 - (A) at the time of dispatch the giver of the e-mail 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 subparagraph (i)(B) or (ii), then the relevant attached files will be taken not to have been received until the sender complies with that subparagraph.

- (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 Lender generated by Loan IQ or other system software do not need to be signed.

28.5 Reliance

- (a) Any communication or document sent under this Clause 28 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 28.1(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.

28.6 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 Lender, 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.

29. CALCULATIONS AND CERTIFICATES

29.1 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 the Lender are *prima facie* evidence of the matters to which they relate.

29.2 Certificates and Determinations

Any certification or determination by the Lender 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.

29.3 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 365 days or, in any case where the practice in the Australian bank market differs, in accordance with that market practice.

29.4 Settlement conditional

If:

- (a) the Lender 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 the Lender; or
 - (b) any payment, receipt or other transaction to or in favour of the Lender 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 the Lender,
- then:
- (e) the Lender 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 the Lender may, acting reasonably, require to restore to the Lender all those rights; and
 - (ii) indemnify the Lender 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.

30. 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.

31. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of the Lender, NAIF or the Commonwealth, 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 the Lender, NAIF

or the Commonwealth 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.

32. CONFIDENTIALITY

32.1 Confidential Information

The Lender agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 32.2 (*Disclosure of Confidential Information*) and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information. To the extent that Confidential Information comprises personal information of any officer, director or employee of an Obligor, the Lender agrees to hold that personal information in accordance with the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth).

32.2 Disclosure of Confidential Information

- (a) The Lender may disclose:
 - (i) 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 the Lender shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
 - (ii) to any person:
 - (A) 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 and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (B) 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;
 - (C) appointed by the Lender or by a person to whom paragraph (ii)(A) or (B) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;

- (D) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (ii)(A) or (ii)(B) above;
- (E) 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 pursuant to any applicable law or regulation (except this paragraph does not permit the disclosure of any information under section 275(4) of the PPSA unless section 275(7) of the PPSA applies);
- (F) 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 paragraph does not permit the disclosure of any information under section 275(4) of the PPSA unless section 275(7) of the PPSA applies);
- (G) to whom or for whose benefit the Lender charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 23.6 (*Security over Lender's rights*);
- (H) where the disclosure is necessary to obtain an Authorisation from any Governmental Agency;
- (I) in response to any request by a Commonwealth Minister or a House or Committee of the Parliament of the Commonwealth;
- (J) who is a Party; or
- (K) with the consent of the Borrower;

in each case, such Confidential Information as the Lender shall consider appropriate if:

- (L) in relation to paragraphs (ii)(A), (ii)(B) and (ii)(C) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (M) in relation to paragraph (ii)(D) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;

- (N) in relation to paragraphs (ii)(E), and (ii)(F) and (ii)(G) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender, it is not practicable so to do in the circumstances;
- (iii) to the Commonwealth, NAIF, any agent or attorney appointed by the Original Lender to act on its behalf under this Agreement;
- (iv) to any person appointed by the Lender or by a person to whom paragraph (ii)(A) or (ii)(B) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this sub-paragraph (iv) 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 Lender;
- (v) 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; and
- (vi) in the case of the Original Lender or NAIF, any Confidential Information where:
 - (A) the disclosure is necessary to comply with a directive or request of any Governmental Agency (whether or not having the force of law);
 - (B) the disclosure is necessary or desirable to obtain an Authorisation from any Governmental Agency;
 - (C) the disclosure is necessary or desirable in relation to any discovery of documents, or any proceedings before a court, tribunal or other Governmental Agency;
 - (D) disclosure is made to the Commonwealth, NAIF, any agent or attorney appointed by the Lender to act on its behalf under this Agreement, or in accordance with paragraph (b) below; or
 - (E) the disclosure is made:

- (1) in response to any request by a Commonwealth Minister; or a House or Committee of the Parliament of the Commonwealth; or
 - (2) by the Commonwealth (including with other Commonwealth agencies) where this serves the Commonwealth's legitimate interests.
- (b) The Lender may at any time disclose any information provided by any other party that is not publicly available (including the existence of or contents of any Finance Document):
 - (i) to any State department or Minister;
 - (ii) in accordance with all laws;
 - (iii) in the course of official duties by the Minister for State Development of Western Australia, the Premier of Western Australia, the Treasurer of Western Australia, the Under Treasurer of Western Australia, the Director General of the Western Australia Department of Jobs, Tourism, Science and Innovation, the Department of Treasury of Western Australia or the Department of Finance of Western Australia;
 - (iv) to satisfy the requirements of parliamentary accountability and parliamentary disclosure obligations;
 - (v) to the Western Australian Auditor-General for the purposes of satisfying its statutory duties;
 - (vi) in accordance with practice, convention or policies of the Western Australian government;
 - (vii) in annual reports of the Western Australia Department of Jobs, Tourism, Science and Innovation and the Western Australia Department of Treasury and the Western Australia Department of Finance;
 - (viii) in accordance with the *Freedom of Information Act 1992* (WA), the *Ombudsman Act 1976* (Cth) or the *Parliamentary Commissioner Act 1971* (WA); and
 - (ix) to the extent the Lender believes it is necessary to disclose the information in a value for money analysis of the Project.

32.3 Right to publicise AIP Plan and AIP Implementation Report information

The Borrower consents to the Original Lender, NAIF or any other Commonwealth agency:

- (a) publicising or reporting on the Borrower's performance in relation to the AIP Plan and level of compliance with the AIP Plan; and
- (b) publicising or reporting on any information contained in the AIP Plan or AIP Implementation Report under this Agreement.

32.4 Entire agreement

This Clause 32 constitutes the entire agreement between the Parties in relation to the obligations of the Lender under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

32.5 Inside information

The Lender 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 the Lender undertakes not to use any Confidential Information for any unlawful purpose.

32.6 Notification of disclosure

The Lender agrees (to the extent permitted by law and regulation) to inform the Borrower:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to Clause 32.2(a)(ii)(E) and/or Clause 32.2(a)(ii)(F) (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 32.

32.7 Continuing obligations

The obligations in this Clause 32 are continuing and, in particular, shall survive and remain binding on the Lender for a period of twelve months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which the Lender otherwise ceases to be the Lender.

33. PPSA PROVISIONS

33.1 Exclusion of certain provisions

Where the Lender 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) the Lender with the benefit of the security interest need not comply with sections 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, the Lender 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 the Lender any notice required under the PPSA (including a notice of a verification statement);
- (d) if the Lender 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 Lender states otherwise at the time of exercise. However, this Clause 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 Lender may notify the Borrower that any of these provisions is excluded, or that the Lender needs 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.

33.2 Further assurances

Whenever the Lender reasonably 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 Lender 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.

34. COUNTERPARTS

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

35. 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 Loans and cancellation or expiry of the Commitments.

36. ACKNOWLEDGEMENT

Except as expressly set out in the Finance Documents none of the Asia Pacific Loan Market Association, the Lender, NAIF or the Commonwealth 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.

37. NAIF REQUIREMENTS

37.1 Conflict of interest

Each of the Lender, NAIF and the Commonwealth may exercise its rights, powers and remedies in connection with a Finance Document even if this involves a conflict of interest or the Lender, NAIF or the Commonwealth has a personal interest in their exercise.

37.2 Liability for loss

None of the Lender, NAIF or the Commonwealth is liable for any loss that an Obligor suffers as a direct or indirect result of the exercise or attempted exercise of, or failure to exercise, any of its rights, powers or remedies in any Finance Document to which it is a party.

37.3 Publicity

- (a) If requested by NAIF or the Lender, each Obligor must cooperate and provide reasonable assistance to NAIF and the Lender to:
 - (i) meet any publication or reporting requirements either or both of them may have in respect of the Project or otherwise, including but not limited to, under the NAIF Act or any other law or regulation that may be applicable to NAIF or the Lender from time to time; and
 - (ii) more broadly cooperate with NAIF and the Lender in publicising the Project or any aspect of it including NAIF's or the Lender's involvement in the Project.
- (b) Each Obligor must obtain NAIF's prior written consent prior to issuing or authorising the issuance of any public communication that refers to NAIF or the Lender or NAIF's or the Lender's involvement in the Project (except to the extent that it is required by any law or stock exchange to issue the communication or make that disclosure, in which case it must use reasonable endeavours to obtain NAIF's prior written consent to the wording of that communication).
- (c) In addition to paragraph (b), each Obligor must obtain the Lender's prior written consent prior to issuing or authorising the issuance of any public communication that refers to the Lender or the Lender's involvement in the Project (except to the extent that it is required by any law or stock exchange to issue the communication or make that disclosure, in which case it must use reasonable endeavours to obtain the Lender's prior written consent to the wording of that communication)."

37.4 Trust

Where an Obligor is required under this agreement to indemnify, reimburse, or make any payment to or for the benefit of NAIF or the Commonwealth, then the obligation to do so will be owed to the Lender and the right to such indemnity, reimbursement or payment,

and any proceeds received by the Lender, will be held on trust for NAIF or the Commonwealth (as appropriate). The Lender will promptly account to NAIF or the Commonwealth (as appropriate) for any such proceeds.

SECTION 12
GOVERNING LAW AND ENFORCEMENT

38. GOVERNING LAW

This Agreement is governed by the laws of Western Australia, Australia.

39. ENFORCEMENT

39.1 Jurisdiction

- (a) The courts having jurisdiction in Western Australia, Australia have 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 39.1(a) above, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

39.2 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 Obligor of the process will not invalidate the proceedings concerned.

The Borrower accepts its appointment as agent for service under Clause 39.2 (*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 I
The Original Lender

Name of Original Lender	Facility B Commitment	Facility C1 Commitment	Facility C2 Commitment
The Ministerial body corporate preserved and continued pursuant to section 5 of the <i>Industry and Technology Development Act 1998</i> (WA)	A\$130,000,000	A\$5,000,000	A\$15,000,000

Address for service of notices (the Original Lender):

Address: Director General,
Department of Jobs, Tourism, Science and Innovation,
Level 11,
1 William Street
Perth WA 6000

CC:

Northern Australian Infrastructure Facility
Level 2
111 Grafton Street
Cairns QLD 4870
Australia

Email: NAIF@jtsi.wa.gov.au

Clint.Hammond@jtsi.wa.gov.au

CC:

Portfolio.Management@NAIF.gov.au

Attention: Clint Hammond, Infrastructure and Planning

CC:

Northern Australian Infrastructure Facility, Head of Portfolio Management

Schedule 2
CONDITIONS PRECEDENT

Part I
Conditions Precedent to Financial Close

1. Original Obligors

- (a) A verification certificate given by 2 directors of each Original Obligor substantially in the form as set out in Part V of this Schedule, with the attachments referred to in that form, and dated no earlier than 10 days before the first Utilisation Date.
- (b) All documents and other evidence reasonably requested by the Lender in order for 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 prior to signing this Agreement setting out details required by the Lender for the purposes of registering financing statements or financing change statements on the Personal Property Securities Register 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 (c) have the meanings given in the PPSA.)

2. Finance Documents

- (a) An original, duly executed by each of the parties thereto, stamped and registered or in a registrable form of:
 - (i) This Agreement duly executed.
 - (ii) Each Transaction Security Document.
 - (iii) The following other Finance Documents:
 - (A) the Supplemental Agreement (if any);
 - (B) the Security Trust Deed;
 - (C) the Intercreditor Deed;

- (D) each Tripartite Deed (other than the Tripartite Deed listed at paragraph (j) of the definition of that term); and
 - (E) each Fee Letter.
- (b) Executed copies of any other documents or things which are required to ensure that each Finance Document delivered under paragraph 2(a) of Part I of this Schedule 2 which must be stamped or registered can be stamped or registered (including payment of any stamp duty or registration fees) and any other forms required in respect of stamping or registration
 - (c) A copy of all notices required to be sent under the Transaction Security Documents executed by relevant Obligor and duly acknowledged by the addressee.
 - (d) 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 (including, for the avoidance of doubt, any title documents for each Project Tenement) to be provided under the Transaction Security Documents.
 - (e) The filing and/or registration of each Transaction Security Document and the Security created thereunder with all relevant authorities and/or in all relevant registers.
 - (f) Evidence that all Transaction Security (other than the Featherweight Security Deed, or as set out in the Intercreditor Deed) is first ranking.

3. Project Documents

- (a) A certified copy, duly executed by each of the parties thereto, of each Project Document (other than the Project Document listed at paragraph (i) of the definition of that term), which is in form and substance satisfactory to the Lender.
- (b) Evidence that all conditions precedent in relation to the effectiveness of each Project Document (other than any condition precedent in relation to the occurrence of Financial Close) have been satisfied or waived with prior Lender consent.
- (c) Without limiting paragraph (b) above, evidence that no "sunset dates" (however described) for achieving Financial Close (if any) in any Project Document have passed without amendment or waiver with prior Lender consent.
- (d) The filing and/or registration of each Project Document (where applicable) with all relevant authorities and/or in all relevant registers.
- (e) Evidence that the Obligor has received the Security, performance bond, bank guarantee, letter of credit or other credit support under the terms of each Offtake Agreement (if any) (other than any credit support that is only to be provided under the Offtake Agreements on a shipment by shipment basis), the Process Plant Design and Construct Contract and any other Project Document (if any) (where applicable).
- (f) Evidence that under the Offtake Agreements which exist at Financial Close:

- (i) the aggregate total amount payable by the counterparties to the Borrower under the Offtake Agreements for the purchase of Product (after taking into account any quantity reduction clause contained in any Offtake Agreement) for the first 5 years after the earliest date on which commercial production (as defined or determined under the Offtake Agreements) at the Project is forecast to commence (as certified by the Borrower, confirmed by the Independent Technical Consultant and accepted by the Lender) is equal to at least 75% of Operating Revenue for that period;
 - (ii) the backstop date or the deadline for satisfaction of any condition precedent (in each case, however described) with respect to the commencement of the purchase obligations of the offtaker under each Offtake Agreement referred to in paragraph (3)(f)(i) above is (in the case where such backstop date or condition precedent deadline is prescribed in that Offtake Agreement) no earlier than the date on which commercial production (as defined or determined under the relevant Offtake Agreement) at the Project is forecast to commence plus 3 months, as certified by the Borrower, confirmed by the Independent Technical Consultant and accepted by the Lender; and
 - (iii) a proportion of the material Product (including premium zircon, zircon, chloride ilmenite and rutile) are covered by those Offtake Agreements.
- (g) An electronic copy of the Base Case Financial Model (including the Life of Mine Plan) which has been agreed between the Borrower and the Lender.
 - (h) An electronic copy of the Annual Budget which has been agreed between the Borrower and the Lender.

4. Project Authorisations

- (a) Evidence that all relevant licences, rights and other regulatory approvals or Authorisations (including environmental, native title and other regulatory Authorisations) required by the Obligors to undertake the Project have been granted to the Borrower and are in full force and effect (including satisfaction of any conditions required under those licences, rights and other regulatory approvals or Authorisations).
- (b) Certified copies of all licences, rights and other regulatory approvals or Authorisations referred to in paragraph (a) above.
- (c) A certified copy of the AIP Plan which has been approved by the AIP Authority, and evidence that the applicable Obligors are in compliance with it.
- (d) Evidence that instrument number EPBC 2003/1221 granted 20 July 2006 (being the approval granted under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) for the purposes of carrying out the Project) has been extended so that the expiry date is no earlier than the Termination Date.

5. Project Accounts

- (a) Evidence that the Project Accounts have been opened and are being maintained.
- (b) Written notice of the account names and numbers for each Project Account.
- (c) Evidence that the Collection Accounts hold an aggregate cash balance not less than the Minimum Unrestricted Cash Balance.
- (d) Evidence that the Cost Overrun Account holds a cash balance not less than the amount shown for cost overrun contingencies in the Base Case Financial Model as agreed by the Lender.

6. Legal opinions

- (a) A legal opinion of Ashurst, legal advisers to the Lender and NAIF in Australia, on the legality and enforceability of the Finance Documents.
- (b) A legal opinion of Norton Rose Fulbright Australia, legal advisers to the Borrower, on the legality and enforceability of the Project Documents governed by Australian law (such opinion to be addressed to or otherwise able to be relied on by the Lender and NAIF).
- (c) If any party to a Project Document is incorporated in a jurisdiction outside Australia, a legal opinion of the legal advisers to the Borrower in the relevant jurisdiction on the corporate power of, and due execution of Project Documents by, that party (such opinion to be addressed to or otherwise able to be relied on by the Lender and NAIF).
- (d) If any Project Document is governed by the law of a jurisdiction outside Australia, a legal opinion of the legal advisers to the Borrower in the relevant jurisdiction on the enforceability of that Project Document (such opinion to be addressed to or otherwise able to be relied on by the Lender and NAIF).
- (e) A legal opinion from an independent accounting firm to the State of Western Australia in respect of the pass-through nature of the transaction under AASB 9 (such opinion to be addressed to or otherwise able to be relied on by the Lender and NAIF).

7. Due diligence

- (a) Completion of the following due diligence processes to the Lender's satisfaction:
 - (i) a full and comprehensive technical due diligence, in conjunction with the Independent Technical Consultant, including site visits to the Project and meetings with operational management;
 - (ii) a full and comprehensive legal due diligence, in conjunction with Norton Rose Fulbright Australia, legal advisers to the Borrower, including a review of all permits, licences and Project Documents;

- (iii) a full and comprehensive environmental and social due diligence, in conjunction with the Lender's independent environmental and social consultant, including with NAIF's Environmental and Social Review of Transactions Policy;
- (iv) a full and comprehensive financial due diligence, including a review of the Base Case Financial Model by the Lender's independent model auditor;
- (v) a full and comprehensive insurance due diligence, in conjunction with the Lender's independent insurance consultant;
- (vi) a full and comprehensive market analysis, in conjunction with the Lender's independent market consultant; and
- (vii) a full and comprehensive taxation due diligence, in conjunction with the Lender's independent taxation consultant,

in each case addressed to or otherwise able to be relied upon by the Lender, NAIF, the State of Western Australia and the Commonwealth.

- (b) Delivery of the Base Case Financial Model signed by management of the Borrower and completion of the Base Case Financial Model audit by the Lender's independent model auditor which is addressed to or otherwise able to be relied upon by the Lender, NAIF, the State of Western Australia and the Commonwealth.

8. Other documents and evidence

- (a) Evidence that all Project Assets (other than any Project Tenement which is "pending" as at the date of Financial Close) are in the name of the Borrower (including, but not limited to, a certified copy of any assignment deed, deed of covenant or other document required under any Project Document to properly assign, transfer or novate the Parent's right and obligations under that Project Document to the Borrower).
- (b) Evidence that the Parent has raised equity funding in an amount not less than the higher of:
 - (i) the equity amount showing in the Base Case Financial Model as at Financial Close; and
 - (ii) an amount to ensure an equity to debt ratio (when taking into account the Facility B Commitment and the total commitment (however described) provided to the Borrower under the Bond Terms) of no less than 31:69, and the Borrower has received that amount (by way of a subscription for shares or shareholder loans or Subordinated Borrower Debt),

and that amount has been deposited in a Collection Account.

- (c) Evidence that the Bonds have settled and an amount equal to the Bond Issue Amount under the Bond Terms has been deposited into the Bond Escrow Account.

- (d) A Physical Completion Cost to Complete Certificate showing that the Physical Completion Cost to Complete Test has been satisfied (without including any Cost Overrun Account Proceeds in the Committed Funding for the purposes of satisfying the Physical Completion Cost to Complete Test).
- (e) A Project Completion Cost to Complete Certificate showing that the Project Completion Cost to Complete Test and the Time to Complete Test have been satisfied (without including any Cost Overrun Account Proceeds in the Committed Funding for the purposes of satisfying the Project Completion Cost to Complete Test)).
- (f) Evidence that each person engaged to undertake major Building Works on the Project, and required to be accredited for the purposes of the WHS Scheme:
 - (i) holds accreditation ("**Accreditation**"), and the Accreditation is not due to expire during the Building Works;
 - (ii) has undertaken to maintain Accreditation; and
 - (iii) where Accreditation is due to expire, satisfactory evidence that new Accreditation will be in place before commencement of the Building Works.
- (g) Not used.
- (h) Evidence that the Approved Hedging Policy and Protocol has been agreed by the Borrower and the Lender.
- (i) The Facility B Amortisation Schedule and the Facility C Amortisation Schedule.
- (j) Evidence that each insurance policy required under this Agreement is in full force and effect (such evidence to be either certified copies of each insurance policy and confirmations of currency or a "certificate of insurance" from the Borrower's insurance broker describing the insurance coverage and loss payees) with the Security Trustee noted as loss payee as required under this Agreement.
- (k) A certificate signed by two authorised signatories of each Obligor stating that as at the date of Financial Close, they are not aware (having made due inquiries) of any Default or Review Event having occurred under the Finance Documents which is continuing.
- (l) Evidence that the fees, costs and expenses due and payable to the Lender, NAIF and the Security Trustee (including their advisers and consultants) have been paid or will be paid by the first Utilisation Date.
- (m) A group structure chart for the Group.
- (n) A copy, certified by an authorised signatory of the Borrower to be a true copy, of the Original Financial Statements of each Obligor.
- (o) Evidence that there is no Security registered against or granted by any Obligor other than Permitted Security.

- (p) Results of searches, enquiries and requisitions in relation to each Obligor, the Project Assets and all other property the subject of the Transaction Security (including, but not limited to, evidence that PPSA registration number 201508190086470 in favour of Jacana Minerals Limited has been removed from the register (as that term is defined in the PPSA)).
- (q) Evidence that there are no outstanding statutory charges (including rates and land tax) payable in respect of any property the subject of the Transaction Security.
- (r) Receipt of a satisfactory Base Case Financial Model, with financial covenants on each Calculation Date showing (using the TZMI base case price deck), in all cases assuming the Facility C Commitment has been drawn in full (whether or not the Facility C Commitment is available for drawing at that time):
 - (i) Loan Life Cover Ratio is greater than 1.70:1;
 - (ii) Debt Service Cover Ratio is greater than 1.70:1; and
 - (iii) Reserve Tail Ratio is greater than 30%.
- (s) A copy of any other Authorisation or other document, opinion or assurance which the Lender 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.
- (t) A copy of the TFA and TSA.
- (u) Evidence that the general security deed given by the Borrower in favour of the Bond Trustee has been discharged in full and any registration perfecting the Security under that document has been discharged from the Personal Property Securities register.
- (v) A certified copy, duly executed by each of the parties thereto, of the Bond Terms which is in form and substance satisfactory to the Lender.

Part II
Conditions Precedent to Initial Utilisation – Facility C1

1. Evidence that the Borrower has entered into a long-term agreement with the lease holder (or equivalent as required) to ensure continuous access and use of the location of the Airstrip Project for the intended purpose and that the long-term agreement with the lease holder is able to be transferred should the Pastoral Lease be transferred to another party.
2. Evidence that all licences, rights and other regulatory approvals or Authorisations (including environmental, native title and other regulatory Authorisations) required by the Obligors to undertake the Airstrip Project have been granted to the Borrower and are in full force and effect (including satisfaction of any conditions required under those licences, rights and other regulatory approvals or Authorisations).
3. Completion of all technical and financial (such as construction budget, programme, identity of contractor) and environmental due diligence (with any environmental due diligence to be completed in accordance with the NAIF ESR policy available on the NAIF website and as updated from time to time) in relation to the Airstrip Project required by the lender.
4. An updated Base Case Financial Model which reflects the updated construction program for the Airstrip Project and which shows that no Lock Up Cash Sweep Event is continuing or will occur as a result of the proposed Utilisation.
5. A copy of any other Authorisation or other document, opinion or assurance which the Lender 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 or in connection with the Airstrip Project.
6. Evidence that each person engaged to undertake major Building Works on the Project and, where applicable, on the Airstrip Project, and required to be accredited for the purposes of the WHS Scheme:
 - (a) holds accreditation ("**Accreditation**"), and the Accreditation is not due to expire during the Building Works;
 - (b) has undertaken to maintain Accreditation; and
 - (c) where Accreditation is due to expire, satisfactory evidence that new Accreditation will be in place before commencement of the Building Works.
7. The Facility C1 Amortisation Schedule .

Part III
Conditions Precedent to Initial Utilisation – Facility C2

1. An original, duly executed by each of the parties thereto, stamped and registered or in a registrable form of:
 - (a) The Second Amendment Agreement.
 - (b) The document titled "Amendment Agreement – Featherweight General Security Deed" between the Parent and the Security Trustee.
 - (c) The Intercreditor Amendment Deed.
 - (d) The Standstill Letter.
2. Receipt of the fee under Clause 10.1(b) (*Participation Fee*).
3. A legal opinion of Ashurst, legal advisers to the Lender and NAIF in Australia, on the legality and enforceability of the documents described in paragraphs 1(a) to (d) above.
4. A copy of any other Authorisation or other document, opinion or assurance which the Lender 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.

Part IV
Conditions Precedent Required to be
Delivered by an Additional Guarantor

1. An Accession Letter, duly executed by the Additional Guarantor and the Borrower.
2. A verification certificate given by 2 directors of the Additional Guarantor in the form set out in Part V of this Schedule, with the attachments referred to in that form, and dated no earlier than the date of the Accession Letter.
3. A copy of any other Authorisation or other document, opinion or assurance which the Lender 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.
4. If available, the latest audited financial statements of the Additional Guarantor.
5. A legal opinion of Ashurst, legal advisers to the Lender and NAIF in Australia.
6. If the Additional Guarantor is incorporated in a jurisdiction outside Australia, a legal opinion of the legal advisers to the Lender in the jurisdiction in which the Additional Guarantor is incorporated.
7. If the proposed Additional Guarantor is incorporated in a jurisdiction outside Australia, evidence that any process agent appointed for the purposes of the Finance Documents, if not an Obligor, has accepted its appointment in relation to the proposed Additional Guarantor.
8. Security documents in favour of the Lender as specified by the Lender in respect of the obligations of the proposed Additional Guarantor (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 Lender. Any security documents which are required by the Lender to be executed by the proposed Additional Guarantor.
9. A certificate signed by an authorised signatory of the Additional Guarantor, substantially in the form provided to the Borrower prior to signing this Agreement setting out details required by the Lender for purposes of registering financing statements or financing change statements on the Personal Property Securities Register or otherwise perfecting security interests arising under the Finance Documents, including:
 - (a) relevant serial numbers of personal property which may or must be described by serial number; and
 - (b) 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 9 have the meanings given in the PPSA.)

10. Any notices or documents required to be given or executed under the terms of those security documents or by the Lender in respect of those security documents or Security.
11. Evidence that any other step then required to be taken under the terms of those security documents or by the Lender in respect of those security documents or Security has been taken.
12. Evidence (if applicable) that the provisions of 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.

Part V
Form of Verification Certificate

From: [Borrower/Original Obligor/Additional Guarantor]

To: [Lender and NAIF Representative]

Coburn Resources Pty Ltd – A\$150,000,000 Term Facility Agreement
Dated [] (the "Agreement")

We are directors of [] of [address] ("**Company**")¹ and are each authorised to execute this Certificate in the name of the Company.

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. Extracts of minutes of a meeting of directors of the Company:
 - (a) Approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is expressed to be a party and resolving that it execute the Transaction Documents to which it is expressed to be a party and in the case of the Parent, including a statement of corporate benefit;
 - (b) Authorising the execution of [each Transaction Document to which it is expressed to be a party on its behalf]/[a power of attorney for execution of each Transaction 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, any 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.
3. [Any power of attorney [duly stamped and registered where necessary] under which the Company executed any Transaction Document to which it is expressed to be a party, executed under common seal or by two directors or a director and a secretary.]
4. [A resolution signed by all the holders of the issued shares in the Company, approving the terms of, and the transactions contemplated by, the Transaction Documents to which the Company is expressed to be a party and a certificate of solvency by [a director] of that Company.]
5. A specimen signature of each person authorised to give notices for the Company.
6. A Group structure diagram.

¹ Company will be the relevant Original Obligor or Additional Guarantor.

The Company is solvent. It is not prevented by Chapter 2E of the Corporations Act from entering into and performing any of the Transaction Documents to which it is expressed to be a party.

Borrowing or guaranteeing, as appropriate, the Commitments would not cause any borrowing, guaranteeing or similar limit binding on any Original Obligor to be exceeded.

For and on behalf of the [Borrower/Original Obligor/Additional Guarantor]

.....
Director

.....
Director

Dated: _____

**Schedule 3
UTILISATION REQUEST**

From: [Borrower]

To: [Lender and NAIF Representative]

Dated:

Dear Sirs

**Coburn Resources Pty Ltd – A\$150,000,000 Term Facility Agreement
dated [] (the "Agreement")**

1. We refer to the Agreement. This is a 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 a Loan on the following terms:

Proposed Utilisation Date:	[] (or, if that is not a Business Day, the next Business Day) or earlier
Facility to be utilised:	[Facility B]/[Facility C1/Facility C2]*
Amount:	[]
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 this Loan should be credited to [account].
5. This Utilisation Request is irrevocable.

Yours faithfully

.....

authorised signatory for

[name of Borrower]

* Delete as appropriate.

Schedule 4
FORM OF TRANSFER CERTIFICATE

To: Coburn Resources Pty Ltd

From: [*The Existing Lender*] (the "**Existing Lender**") and [*The New Lender*] (the "**New Lender**")

Dated:

Coburn Resources Pty Ltd – A\$150,000,000 Term Facility Agreement
dated [] (the "Agreement")

1. We refer to the Agreement and the related Security Trust Deed dated [] (the "**Security Trust Deed**") executed by the Security Trustee and others. 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 23.4 (*Procedure for novation*) of the Agreement:
 - (a) The Existing Lender and the New Lender agree to the Existing Lender and the New Lender with effect from and including the Transfer Date novating in accordance with Clause 23.4 (*Procedure for novation*) of the Agreement [all/that portion]² of the Existing Lender's Commitment and Loans under the Agreement specified in the Schedule, and all of the Existing Lender's rights and obligations under the Agreement, the other Finance Documents and in respect of the Transaction Security [which relate to that portion].
 - (b) The Transfer Date is [].
 - (c) To the extent permitted by law, the Existing Lender assigns to the New Lender all rights of action that it may have to the extent they relate to its novated Commitment and its corresponding rights and obligations and all sums provided under or in connection with the novated Commitment.
 - (d) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 28.2 (*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 paragraphs (a) and (c) of Clause 23.3 (*Limitation of responsibility of Existing Lender*) of the Agreement.
4. 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.

² If the Existing Lender only assigns a portion this may require further agreement between the Existing Lender and the New Lender and additional mechanics to manage this process.

5. This Transfer Certificate is governed by Western Australian law.
6. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.
7. *[Where the transferee is a trustee under Australian law of a fund, this certificate may if the Existing Lender agrees 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 Existing Lender. The Existing Lender's decision is its own. It need not consult or obtain instructions and is not bound by instructions.*
 - (a) *[Trustee]³ 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 Clause):*
 - (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 Clause*
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*

³ Replace each reference to "Trustee" with defined term for the party which is a trustee.

- (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 (a) and (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 (b)(i) is to be disregarded for the purposes (but only for the purposes) of the rights and remedies described in paragraph (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 (b)(ii) 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 Clause.]*

THE SCHEDULE

Commitment/rights and obligations to be transferred

Existing Lender	Commitments after novation	Address Details
		<i>[Only insert if there are changes]</i>
New Lender	Commitments after novation	Address Details
		<i>[Insert relevant details of address, account]</i>

[Existing Lender]

[New Lender]

By:

By:

[This Transfer Certificate is executed as a deed.]

Schedule 5
FORM OF ACCESSION LETTER

To: [Lender and NAIF Representative]

From: [Subsidiary] and Coburn Resources Pty Ltd

Dated:

Dear Sirs

Coburn Resources Pty Ltd – A\$150,000,000 Term Facility Agreement
dated [] (the "Agreement")

1. 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.
2. [Subsidiary] agrees to become an Additional Guarantor and to be bound by the terms of the Agreement as an Additional Guarantor pursuant to Clause 24.2 (*Additional Guarantors*) of the Agreement. [Subsidiary] is a company duly incorporated under the laws of [*name of relevant jurisdiction*].
3. [Subsidiary's] administrative details are as follows:

Address:

Fax No:

Attention:

4. This Accession Letter is governed by the laws of Western Australia.

[This Accession Letter is entered into by deed.]

Coburn Resources Pty Ltd

[Subsidiary]

Schedule 6
FORM OF RESIGNATION LETTER

To: [Lender and NAIF Representative]

From: [resigning Obligor] and Coburn Resources Pty Ltd

Dated:

Dear Sirs

Coburn Resources Pty Ltd – A\$150,000,000 Term Facility Agreement
dated [] (the "Agreement")

1. 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.
2. Pursuant to Clause 24.4 (*Resignation of a Guarantor*) of the Agreement, we request that [resigning Obligor] be released from its obligations as a Guarantor under the Agreement.
3. We confirm that:
 - (a) no Default is continuing or would result from the acceptance of this request; and
 - (b) []*
4. This Resignation Letter is governed by the laws of Western Australia.

Coburn Resources Pty Ltd

[Subsidiary]

By:

By:

* Insert any other conditions required by the Facility Agreement.

Schedule 7
FORM OF COMPLIANCE CERTIFICATE

To: [Lender and NAIF Representative]

From: Coburn Resources Pty Ltd

Dated:

Dear Sirs

Coburn Resources Pty Ltd – A\$150,000,000 Term Facility 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 the Loan Life Cover Ratio for the Calculation Period ending on [*insert Quarter End Date*] is [*insert*]:1. Details of calculations in respect of the Loan Life Cover Ratio are attached to this Compliance Certificate.
3. We confirm that the Reserve Tail Ratio as at [*insert Quarter End Date*] is [*insert*]%. Details of calculations in respect of the Reserve Tail Ratio are attached to this Compliance Certificate.
4. We confirm that the Collection Accounts hold an aggregate cash balance at least equal to the Minimum Unrestricted Cash Balance.
5. [We confirm that the Debt Service Cover Ratio for the Calculation Period ending on [*insert Quarter End Date*] is [*insert*]:1. Details of calculations in respect of the Debt Service Cover Ratio are attached to this Compliance Certificate.][*This paragraph 5 is to be included for each Compliance Certificate delivered for each Quarter End Date falling after the date of Project Completion.*]
6. [We give you notice that we will procure additional equity contributions/Subordinated Borrower Debt in an amount of A\$[*insert*] within 30 Business Days following the date of this Compliance Certificate and to apply that amount in mandatory prepayment of the Facilities within that period. We confirm that the Equity cure regime under Clause [19.3 (*Equity cure*)] of the Agreement has not been used:
 - (a) more than 5 times (in aggregate) during the term of the Facilities; or
 - (b) on consecutive Quarter End Dates.]

[*This paragraph 6 is only to be included if there has been a breach of the Loan Life Cover Ratio or the Debt Service Cover Ratio under Clause [19.1 (Financial ratios)] and the Borrower wishes to cure that breach in accordance with the equity cure regime in Clause [19.3 (Equity cure)].*]

7. We confirm that [no Lock Up Cash Sweep Event is continuing/a Lock Up Cash Sweep Event is continuing]. Details of calculations in respect of the Lock Up Cash Sweep Event are attached to this Compliance Certificate.
8. [Because a Lock Up Cash Sweep Event [is continuing/has ceased], we confirm that [Lock Up Amounts/ the Catch-up Sweep Amount] will be applied in prepayment of the Facilities in accordance with Clause [7.7 (*Lock up and cash sweep mandatory prepayment*)].*[This paragraph 8 is only to be included if mandatory prepayments are required to be made in accordance with Clause 7.7 (Lock up and cash sweep mandatory prepayment).]*
9. [We confirm that no Default or Review Event is continuing.]*

Signed:
	Director	Director
	of	of
	Coburn Resources Pty Ltd	Coburn Resources Pty Ltd

* If this statement cannot be made, the certificate should identify any Default or Review Event that is continuing and the steps, if any, being taken to remedy it.

Schedule 8
AMORTISATION SCHEDULES

Part I

Facility B Amortisation Schedule

Date	Facility B principal repayment
First Facility B Repayment Date	A\$1,600,000
First Facility B Repayment Date + 3 months	A\$2,300,000
First Facility B Repayment Date + 6 months	A\$2,600,000
First Facility B Repayment Date + 9 months	A\$2,550,000
First Facility B Repayment Date + 12 months	A\$3,800,000
First Facility B Repayment Date + 15 months	A\$4,000,000
First Facility B Repayment Date + 18 months	A\$3,450,000
First Facility B Repayment Date + 21 months	A\$3,250,000
First Facility B Repayment Date + 24 months	A\$5,700,000
First Facility B Repayment Date + 27 months	A\$3,350,000
First Facility B Repayment Date + 30 months	A\$2,750,000
First Facility B Repayment Date + 33 months	A\$3,100,000
First Facility B Repayment Date + 36 months	A\$4,350,000
First Facility B Repayment Date + 39 months	A\$4,100,000
First Facility B Repayment Date + 42 months	A\$4,550,000
First Facility B Repayment Date + 45 months	A\$3,200,000
First Facility B Repayment Date + 48 months	A\$2,750,000
First Facility B Repayment Date + 51 months	A\$5,200,000
First Facility B Repayment Date + 54 months	A\$4,950,000
First Facility B Repayment Date + 57 months	A\$4,150,000
First Facility B Repayment Date + 60 months	A\$3,000,000
First Facility B Repayment Date + 63 months	A\$4,100,000
First Facility B Repayment Date + 66 months	A\$7,100,000
First Facility B Repayment Date + 69 months	A\$6,150,000

Date	Facility B principal repayment
First Facility B Repayment Date + 72 months	A\$5,800,000
First Facility B Repayment Date + 75 months	A\$4,550,000
First Facility B Repayment Date + 78 months	A\$5,000,000
First Facility B Repayment Date + 81 months	A\$4,450,000
First Facility B Repayment Date + 84 months	A\$4,450,000
First Facility B Repayment Date + 87 months	A\$5,050,000
First Facility B Repayment Date + 90 months	A\$5,250,000
First Facility B Repayment Date + 93 months	A\$3,400,000

Part II
Facility C Amortisation Schedule

[Not used]

Part III
Facility C1 Amortisation Schedule

Date	Facility C1 principal repayment
First Facility C1 Repayment Date	\$50,000
First Facility C1 Repayment Date + 3 months	\$87,500
First Facility C1 Repayment Date + 6 months	\$100,000
First Facility C1 Repayment Date + 9 months	\$100,000
First Facility C1 Repayment Date + 12 months	\$150,000
First Facility C1 Repayment Date + 15 months	\$150,000
First Facility C1 Repayment Date + 18 months	\$137,500
First Facility C1 Repayment Date + 21 months	\$125,000
First Facility C1 Repayment Date + 24 months	\$225,000
First Facility C1 Repayment Date + 27 months	\$125,000
First Facility C1 Repayment Date + 30 months	\$100,000
First Facility C1 Repayment Date + 33 months	\$112,500
First Facility C1 Repayment Date + 36 months	\$162,500
First Facility C1 Repayment Date + 39 months	\$162,500
First Facility C1 Repayment Date + 42 months	\$175,000
First Facility C1 Repayment Date + 45 months	\$125,000
First Facility C1 Repayment Date + 48 months	\$112,500
First Facility C1 Repayment Date + 51 months	\$200,000
First Facility C1 Repayment Date + 54 months	\$187,500
First Facility C1 Repayment Date + 57 months	\$162,500
First Facility C1 Repayment Date + 60 months	\$112,500
First Facility C1 Repayment Date + 63 months	\$162,500
First Facility C1 Repayment Date + 66 months	\$275,000
First Facility C1 Repayment Date + 69 months	\$237,500
First Facility C1 Repayment Date + 72 months	\$225,000

Date	Facility C1 principal repayment
First Facility C1 Repayment Date + 75 months	\$175,000
First Facility C1 Repayment Date + 78 months	\$187,500
First Facility C1 Repayment Date + 81 months	\$175,000
First Facility C1 Repayment Date + 84 months	\$175,000
First Facility C1 Repayment Date + 87 months	\$187,500
First Facility C1 Repayment Date + 90 months	\$200,000
First Facility C1 Repayment Date + 93 months	\$137,500

This schedule assumes that the full \$5,000,000 Facility C1 Commitment is drawn. If a lesser amount is drawn, the amounts in this schedule will be reduced on a pro rata basis.

Part IV
Not used

Schedule 9
CONSTRUCTION REPORT AND COMPLETION TESTS

Part I
Form of Construction Report

To: [Lender and NAIF Representative]
From: Coburn Resources Pty Ltd as Borrower
Dated:
Reporting Period: [previous month][year]

Dear Sirs

Coburn Resources Pty Ltd – A\$150,000,000 Term Facility Agreement
dated [] (the "Agreement")

1. We refer to the Agreement. This is a Construction Report. Terms used in the Agreement shall have the same meaning in this Construction Report unless given a different meaning in this Construction Report.
2. Executive Summary
 - (a) Summary of key activities, events and issues for the previous month
3. Status of Project
 - (a) Details of all substantive construction work undertaken in the previous month
 - (b) Details of progress of construction work against timetables in each of the Process Plant Design and Construct Contract, Bulk Earthworks and Access Road Contract, Electricity Supply Agreement, LNG Supply Contract, and the Camp Accommodation Contract
 - (c) Schedule progress reporting, including the updated Project S-curve, Project critical path and Earned Value reporting
 - (d) An updated forecast accommodation profile
 - (e) Expected date for Project Completion and other key milestones including first ore to the WCP and first HMC to the MSP
 - (f) Explanation for any delays in progress of construction work / Details of any anticipated delays in progress of construction work
 - (g) Details of strategies implemented to overcome delays / avoid potential delays
 - (h) Details of any extensions of time / variations granted under each of the Process Plant Design and Construct Contract, Bulk Earthworks and Access Road Contract, Electricity Supply Agreement, LNG Supply Contract and the Camp Accommodation Contract

- (i) Details of any material updates or amendments to any works plans/programmes
- (j) Details of any anticipated material changes required to designs, plans or specifications
- (k) Statement of continuing compliance with quality management / assurance systems, including details of any non-compliance or approved deviations, any quality issues or anticipated quality issues (including defects / potential defects)
- (l) Details of operations readiness progress and status according to the operations readiness schedule
- (m) An updated project risk and opportunities register

4. Subcontracting and Project Documents

- (a) Details of all new material subcontractors engaged by each of the counterparty/ies (in accordance with the individual contract Principal approval obligations) to each of the Process Plant and Design Contract, water infrastructure contract], Bulk Earthworks and Access Road Contract, Electricity Supply Agreement, LNG Supply Contract, Mining Contract and the Camp Accommodation Contract
- (b) Details of any material disputes with a subcontractor relating to the Project (if applicable)
- (c) Confirmation that no Obligor who is a party to any Project Document is in default and that each Obligor who is a party to any Project Document has complied in all material respects with such Project Document
- (d) Any material non-compliances with the Project Documents are to be detailed and any corrective actions taken in respect of any non- compliance

5. Project Budgeting

- (a) Summary of project budgeting position, including explanation of any material differences between actual and forecast Project and/or Operating Costs
- (b) Provide details of material variations, trends and contingency drawdown in the form of a register,

5.1 Project Costs

Project Costs	Forecast Cost	Actual Cost	Forecast Cost
	[Previous Month]	[Previous Month]	[Next Month]
TOTAL Project Costs	[total]	[total]	[total]

<i>[detailed breakdown of components of Project Costs, as defined in Clause 1.1]</i>			
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5.2 Operating Costs

Operating Costs	Forecast Cost [Previous Month]	Actual Cost [Previous Month]	Forecast Cost [Next Month]
TOTAL Operating Costs	[total]	[total]	[total]
<i>[detailed breakdown of components of Project Costs, as defined in Clause 1.1]</i>			

6. Environmental & Social Compliance and industrial relations

- (a) Statement of continuing compliance with; Environmental & Social Law; Environmental & Social Permits; Authorisations
- (b) Details of any required corrective action to address any issues with compliance with; Environmental & Social Law; Environmental & Social Permits; Authorisations
- (c) Details of any material Environmental or Social Claims current, pending or threatened against the Borrower or connected with the Project (if applicable)
- (d) Details of any required corrective action to address any material Environmental or Social Claims current, pending or threatened against the Borrower or connected with the Project
- (e) Details of any industrial relations disputes relating to the Project, including any Material E&S Incidents or potential Material E&S Incidents (if applicable)
- (f) Details of required corrective action to address any Material E&S Incident /prevent potential Material E&S Incidents

7. Other Information

- (a) [Any other information reasonably requested from time to time by the Lender]

- (b) [Any other information the Borrower wishes to disclose to the Lender in respect of the construction works]

Signed:

..... Director

Of Coburn Resources Pty Ltd

..... Director

Of Coburn Resources Pty Ltd

Annexures

A. Photographs of Project Area

B. A copy of any construction report and any progress claim received from each contractor under each of the Process Plant Design and Construct Contract, Bulk Earthworks and Access Road Contract, Electricity Supply Agreement, LNG Supply Contract and the Camp Accommodation Contract

C. Authorisations obtained for the Project and [pending Authorisations / applications for Authorisations] (including Environmental and Social Permits)

D. Notices, orders or directions received by a Governmental Agency in relation to the Project

E. Other certifications / reports related to key milestones (if not within those in Item (A)) under each of the Process Plant Design and Construct Contract,, Bulk Earthworks and Access Road Contract, Electricity Supply Agreement, LNG Supply Contract and the Camp Accommodation Contract

F. [Any other information reasonably requested from time to time by the Lender]

Part II
Form of Physical Completion Certificate

To: [Lender and NAIF Representative]

[address]

[fax]

[attention]

Date: [●]

Dear Sirs

COBURN RESOURCES PTY LTD – A\$150,000,000 Term Facility Agreement dated [●] between, among others, the Borrower and the Lender (as amended, modified or supplemented from time to time) (the "Facility Agreement")

This Physical Completion Certificate (the "**Certificate**") is delivered to you pursuant to the Facility Agreement.

1. Definitions

Unless otherwise defined herein or the context otherwise requires, terms used herein shall have the meanings provided in, and shall be interpreted in accordance with the Facility Agreement. In addition, the following terms in this Certificate have the meanings specified:

"Contracts" means each of the Process Plant Design and Construct Contract, the Bulk Earthworks and Access Road Contract, the Electricity Supply Agreement, LNG Supply Contract and the Camp Accommodation Contract.

"Physical Completion Test" means each of the conditions and criteria set out in paragraph 2 (without reference to the Denham Road Project or the Airstrip Project), unless modified or waived by the Lender.

"WCP" means Wet Concentration Plant.

2. Achievement of Physical Completion

We hereby certify as follows:-

2.1 Completion of construction

All plant, associated services (including utilities, water and power supplies) and infrastructure required for the implementation of the Project in accordance with the Life of Mine Plan have been installed and constructed and each of the Contracts (and any construction subcontracts contemplated by them) have been completed in accordance with the respective definitions of completion within each Contract.

2.2 Performance tests

All the performance tests required to be passed or satisfied under the Contracts (if any) have been passed or satisfied except where any failure to pass or satisfy them would not have a material and adverse impact on the ability to of the Project to generate the cash flows contemplated in (and in accordance with) the current Base Case Financial Model.

2.3 Mineral Resource and Ore Reserve reconciliation

Grade control, assaying and mineral resource and ore reserve reconciliation systems are in place.

2.4 Payments

All Project Costs have been paid except for amounts (i) that are genuinely in dispute, and (ii) in respect of which the Borrower has set aside an appropriate and adequate reserve or any retention amounts under the relevant Contracts that the Borrower is entitled to retain.

2.5 Mining equipment

All primary mining equipment in accordance with the fleet schedule in the Mining Contract is located at site and is in good working order.

2.6 Plant handover and operating manuals documentation

All necessary installation documents, operating and maintenance manuals and other documentation relevant and relating to the operation or maintenance of the plant, equipment, infrastructure, residual storage impoundment and facilities part of the Project have been completed and/ or received.

2.7 Spares and consumables inventory

All required Critical Capital Spares and Operating Spares as listed in the Critical Spares and Consumables Schedule of the Borrower (which is agreed by the Lender, if required with input from the Independent Technical Consultant, prior to the date of this Certificate) are held in stock in the required quantities and that those capital spares, operating spares and consumables are adequate to enable the Project to be implemented; and adequate systems for maintaining inventories of all spare parts and consumables have been implemented.

2.8 Cost control

Cost control and management systems are in place.

2.9 Personnel

Adequate technically trained staff to the operation of the Project in accordance with the Life of Mine Plan organisation chart and Clause 20.18(f) (*Project*) of the Facility Agreement has been recruited. A manning chart showing management, technical, operating and maintenance staff has been provided along with this Certificate.

2.10 Supply and service contracts

All material supply and service contracts necessary for the operation of the Project have been entered into on terms that are appropriate in the context of the Project.

2.11 Authorisations

Each Authorisation (including the Licence to Operate (which does not place any materially adverse conditions upon the capacity of the Project to meet the Base Case Financial Model)) necessary for the continuous operation of the Project in accordance with the Contracts and the Base Case Financial Model has been obtained and is in full force where failure by it to obtain or maintain such Authorisation is reasonably likely to have a Material Adverse Effect.

2.12 Insurances

As of the date of this Certificate, the Borrower has commercial insurance and reinsurance cover in place as required by Clause 20.14 (*Insurance*) of the Facility Agreement.

2.13 Representations

The Repeating Representations are true in all material respects and not misleading in any material respect as of the date of this Certificate.

2.14 Events of Default

As at the date of this Certificate, no Event of Default has occurred which is continuing.

COBURN RESOURCES PTY LTD

By.....
Name.....
Title.....

The Independent Technical Consultant confirms the items under paragraphs 2.1 to 2.8 (inclusive)

By.....
Name.....
Title.....

The Lender accepts the items under paragraphs 2.9 to 2.11 (inclusive)

By.....

Name.....

Title.....

Part III
Form of Operational Completion Certificate

For the purposes of the Operational Completion Certificate:

1. Not later than thirty five (35) Business Days prior to the proposed commencement of the Operational Completion Test Period (as defined in the Operational Completion Certificate), the Borrower shall propose to the Lender and the Independent Technical Consultant a measurement and sampling procedure detailing the measurements and methodology to be used in carrying out the Operational Completion Tests (the "**Measurement and Sampling Procedure**"), for approval by the Lender and the Independent Technical Consultant. In the event that the Borrower, the Lender and the relevant Independent Technical Consultant cannot agree the Measurement and Sampling Procedure by the date which is twelve (12) Business Days' prior to the Borrower's proposed date to commence the Operational Completion Test Period, the Borrower shall notify the Lender and the relevant Independent Technical Consultant accordingly, and the Measurement and Sampling Procedure in the form approved by the relevant Independent Technical Consultant (acting reasonably) shall prevail. Within 5 Business Days' of receiving such notice from the Borrower, the relevant Independent Technical Consultant shall notify the Lender and the Borrower of the Measurement and Sampling Procedure.
2. The Borrower shall provide at least 10 Business Days' notice to the Lender and the relevant Independent Technical Consultant of the commencement of the Operational Completion Test Period. The Operational Completion Test Period may not commence until the Measurement and Sampling Procedure has been agreed or notified by the relevant Independent Technical Consultant in accordance with paragraph 1 above.
3. The Operational Completion Test period shall not begin until the ramp up period is complete and the Project is operating at the full capacity as set out in the "Physicals Schedule" in the current Base Case Financial Model.

To: [Lender and NAIF Representative]

[address]

[fax]

[attention]

Date: [●]

Dear Sirs

COBURN RESOURCES PTY LTD – A\$150,000,000 Term Facility Agreement dated [●] between, among others, Coburn Resources Pty Ltd and the Lender (as amended, modified or supplemented from time to time) (the "Facility Agreement")

This Operational Completion Certificate (the "**Certificate**") is delivered to you pursuant to the Facility Agreement.

1. Definitions

Unless otherwise defined herein or the context otherwise requires, terms used herein shall have the meanings provided in, and shall be interpreted in accordance with the Facility Agreement. In addition, the following terms in this Certificate have the meanings specified:

"Availability" means the percentage of a specified time period in which the process control system records the state of the relevant section of plant as either operating or ready to operate, without specifications as to whether any of the component equipment available to operate within that section is duty or standby equipment.

"DMU" means Dozer Mining Units.

"HMC" means Heavy Mineral Concentrate.

"Ilmenite" means ilmenite (that meets the Product Specifications) for Ilmenite.

"Measurement and Sampling Procedure" means the measurement and sampling procedure detailing the measurements and methodology to be used in carrying out the Operational Completion Tests, as agreed between the Borrower, the Lender and the relevant Independent Technical Consultant (or, if not agreed, as stipulated by the relevant Independent Technical Consultant (acting reasonably)) prior to the commencement of the Operational Completion Test Period.

"MSP" means Mineral Separation Plant.

"Operational Completion Tests" means each of the conditions and criteria set out in paragraph 2 (without reference to the Denham Road Project or the Airstrip Project), unless modified or waived by the Lender.

"Operational Completion Test Period" means the period of Three (3) month (including allowance for normal operational shutdown and maintenance periods) ending on [●]

during which the Operational Completion Tests have been carried out in accordance with the agreed Measurement and Sampling Procedure.

"Operational Utilisation" means the calculated product, Availability x Utilisation.

"Opex Schedule" means the Operating Costs schedule used in the Base Case Financial Model.

"Physicals Schedule" means the physicals schedule used in the Base Case Financial Model.

"Premium Zircon" means the zircon product which meets the Product Specifications for Premium Zircon as defined by the Chilches Materials Offtake Agreement.

"Product Specifications" means the chemical, mineralogical, metallurgical, particle size and radiometric properties of the product to be produced, being the higher (in terms of valuable mineral content) or lower (in terms of deleterious or penalty components) of the specifications in the "Product Data Sheet" on the Parent's website for the relevant product as at the date of the Facility Agreement (or any update to the "Product Data Sheet" which is accepted by the Lender with input from the Independent Technical Consultant).

"Recoverable Ilmenite" means the ilmenite product that is able to be extracted into Ilmenite as defined by the Chemours Offtake Agreement.

"Recoverable Zircon" means the zircon product that is able to be extracted into Premium Zircon or Zircon Concentrate as defined by the RZI/Sanxiang Offtake Agreement.

"ROM" means run of mine.

"Rutile" means rutile (including rutile-leucoxene minerals) that meet the Product Specifications for rutile as defined by the Coburn Rutile Offtake (once finalised).

"Utilisation" means the percentage of available time in which the process control system records the state of the relevant section of plant as operating, without specification as to whether any of the component equipment in operation is duty or standby equipment.

"WCP" means Wet Concentration Plant.

"Zircon Concentrate" means the zircon product which meets the Product Specifications for Zircon Concentrate as defined by the RZI/Sanxiang Agreement.

2. **Achievement of Operational Completion**

As determined from the data in the Operation Report over the Operational Completion Test Period supplied to the Lender we hereby certify as follows:

2.1 Mining test

Throughout the Operational Completion Test Period:

- (a) the tonnage of the ore mined and delivered to the DMU was at least 90% of that projected in the Physicals Schedule for the Operational Completion Test Period to be delivered to the DMU; and
- (b) the tonnage of the waste mined and delivered to the relevant waste dumping site(s) of the Project was at least 90% of that projected in the Life of Mine Plan for the Operational Completion Test Period to be delivered to the relevant waste dumping site(s).

Exposed areas of ROM ore are adequate to ensure production can continue beyond the Operational Completion Test Period.

2.2 Mined Grade test

Throughout the Operational Completion Test Period, mined grades for zircon and ilmenite for the ore blocks mined during the Operational Completion Test Period was at least 90% of the contained zircon and ilmenite forecast in the current Physicals Schedule during that period.

2.3 Reserves test

The ore actually mined and processed in the relevant ore blocks that have been mined since commencement of production have been reconciled against the tonnage and grade projections for those ore blocks in the reserve block model forming the basis for the Physicals Schedule, and that reconciliation demonstrates that:

- (a) in the Operational Completion Test Period the tonnage of the ore actually mined from the reserve blocks depleted has been at least 90% of that projected to be contained within the reserve blocks depleted in the reserve block model forming the basis of the Physicals Schedule;
- (b) the mined grades for zircon, ilmenite have both been at least 90% of that projected in the reserve block model forming the basis of the Life of Mine Plan for the ore blocks mined since commencement of production; and
- (c) the contained zircon and ilmenite in the ore actually mined has been at least 90% of that projected to be contained in the reserve block model forming the basis of the Physicals Schedule for the reserve blocks mined since commencement of production.

2.4 Process Plant Feed

Throughout the Operational Completion Test Period:

- (a) the tonnage of the ore fed to the WCP Rougher Spirals has been at least 90% of that projected to be treated in such WCP Rougher Spirals in the Operational Completion Test Period in the current Physicals Schedule during that period; and

- (b) the grade of zircon, ilmenite in the ore so fed to the WCP has been at least 90% of that projected to be treated in such WCP in that Operational Completion Test Period in the current Physicals Schedule during that period.

2.5 Recovery test

An average mineral recovery rate to final product of at least 90% of the recovery rate to final product in the Physicals Schedule over the Operational Completion Test Period has been achieved during the Operational Completion Test Period for each of:

- (a) Recoverable Zircon to Premium Zircon;
- (b) Recoverable Zircon to Zircon Concentrate; and
- (c) Recoverable Ilmenite to Ilmenite.

2.6 Production Test

Throughout the Operational Completion Test Period, the saleable mineral production of the plant has been at least 90% of that projected in that Operational Completion Test Period in the current Physicals Schedule during that period for each product item.

- (a) Premium Zircon;
- (b) Zircon Concentrate; and
- (c) Ilmenite.

2.7 Product Quality Test

The quality of at least 90% of the final product stockpiled or dispatched during the Operational Completion Test Period meets the required Product Specifications as per the sales contracts.

2.8 Product Stockpiling and Transportation Test

Throughout the Operational Completion Test Period, the quantity of the following mineral products shipped to the designated port facility has been at least 90% of that projected to be shipped in that Operational Completion Test Period in the current Base Case Financial Model during that period for each product item and not less than 90% in aggregate as projected to be shipped in that Operational Completion Test Period in the current Base Case Financial Model.

- (a) Premium Zircon;
- (b) Zircon Concentrate; and
- (c) Ilmenite.

Stockpiling facilities are functioning as per the design intent.

2.9 Product Offtake Acceptance and Penalty Test

No shipments of final products, generated during the Operation Completion Test Period, will be subjected to breaches of said product specifications that will result in:

- (a) For small batch shipment, rejection of more than 5% of the total product tonnage shipped, or,
- (b) For bulk shipments, total value of penalties applied of greater than 5% of net revenue.

2.10 Cost test

Throughout the Operational Completion Test Period:

- (a) the average unit mining operating cost per tonne of ore, per tonne of waste and per tonne of material mined did not exceed (in each case) 115% of the projected unit operating cost (in \$/tonne of ore, \$/tonne of waste and \$/tonne of material mined) in the Operating Costs schedule for the Operational Completion Test Period;
- (b) the average unit processing operating cost per tonne of ore processed during the Operational Completion Test Period did not exceed 115% of the projected unit operating cost (in \$/tonne ore) in the Operating Costs schedule for the Operational Completion Test Period; and
- (c) the total outbound logistics excluding shipping operating costs during the Operational Completion Test Period did not exceed 110% of the projected outbound operating expenditures (in \$/t) for the Operational Completion Test Period in the Operating Costs schedule for each product item.
 - (i) Premium Zircon;
 - (ii) Zircon Concentrate; and
 - (iii) Ilmenite.
- (d) the total project Operating Costs during the Operational Completion Test Period did not exceed 115% of the projected on site operating expenditures for the Operational Completion Test.

2.11 Operating cost

Through the Operational Completion Test Period, the cost per tonne of Product (which is comprised of mining costs, processing costs, outbound logistic costs, site g&a costs, sustaining capex costs and corporate overhead costs) produced by the plant has not exceeded 115% of that projected for that Operational Completion Test Period in the current Base Case Financial Model.

2.12 Environmental and social compliance

The Project is being implemented in compliance, in all material respects, with all applicable Environmental and Social Laws and Environmental and Social Permits that are required in connection with the Project.

2.13 Tailings Storage Facility

The design, construction and operation of the Tailings Storage Facility complies in all material respects with all applicable Environmental and Social Laws (including the Standards of Practice of ANCOLD and the Operating Manuals for the Tailings Storage Facility) and all applicable Environmental and Social Permits and the required rate of tailings placement is sustainable.

2.14 Operational Availability and Utilisation

Operational Utilisation at 90% of the assumed Operational Utilisation as stated in, or determined from, the Design Documentation in each Contract (or any other design documentation approved by the Independent Technical Consultant) has been achieved for the processing facilities over the Operational Completion Test Period for each of the following plant sections:

- (a) DMU;
- (b) WCP; and
- (c) MSP.

2.15 Continuity test

No material issues or matters have been identified since the commencement of operations that are likely to prevent the Project from being implemented in accordance with, and as contemplated by, the current Base Case Financial Model.

2.16 Financial ratios

With reference to the Base Case Financial Model most recently delivered to the Lender, as of the date of this Certificate, the Borrower is in compliance with the financial covenants contained in clause 19.1 (*Financial ratios*) of the Facility Agreement and the Lender has received a Compliance Certificate to that effect dated on the date of this Certificate.

2.17 No Default

As at the date of this Certificate, no Default or Review Event has occurred and is continuing.

2.18 Project Accounts

As of the date of this Certificate the aggregate balance credited to the Debt Service Reserve Accounts is no less than the DSRA Required Balance.

2.19 Insurances

As of the date of this Certificate, the Borrower has commercial insurance and reinsurance cover in place as required by clause 20.14 (*Insurance*) of the Facility Agreement.

2.20 Authorisations

Each Authorisation necessary for the continuous operation of the Project in accordance with the Project Documents and the Base Case Financial Model has been obtained and is in full force where failure by it to obtain or maintain such Authorisation is reasonably likely to have a Material Adverse Effect.

2.21 Representations

The Repeating Representations are true in all material respects and not misleading in any material respect as of the date of this Certificate.

COBURN RESOURCES PTY LTD

By.....
Name.....
Title.....

The Independent Technical Consultant confirms the matters under paragraphs 2.1 to 2.15 (inclusive).

[] as Independent Technical Consultant

By.....
Name.....
Title.....

The Lender accepts the items under paragraphs 2.16 to 2.21 (inclusive)

By.....
Name.....
Title.....

Schedule 10
FORM OF COST TO COMPLETE CERTIFICATES

Part I
Form of Physical Completion Cost to Complete Certificate

To: [Lender and NAIF Representative]
From: Coburn Resources Pty Ltd as Borrower
Dated:

Dear Sirs

**Coburn Resources Pty Ltd – A\$150,000,000 Term Facility Agreement dated [] (the
"Agreement")**

We refer to the Agreement. This is a Physical Completion Cost to Complete Certificate. Terms used in the Agreement shall have the same meaning in this Physical Completion Cost to Complete Certificate unless given a different meaning in this Physical Completion Cost to Complete Certificate.

The Borrower certifies as follows.

1. Physical completion test
 - (a) The forecast date of completion or passing of the "Physical Completion Test" is [insert date] ("**Physical Completion Date**").
2. Committed Funding (paragraph (a) of that definition)
 - (a) The Available Facility for Facility B (after any Utilisation of Facility B is made under an issued Utilisation Request (if any)) is A\$[insert];
 - (b) The "available commitment" (however described) under the Bonds including any amount standing to the credit of the Bond Escrow Account is US\$[insert];
 - (c) The aggregate amount standing to the credit of the USD Collection Account is US\$[insert];
 - (d) The aggregate amount standing to the credit of the AUD Collection Account is A\$[insert];
 - (e) The aggregate amount standing to the credit of the Insurance Proceeds Account is A\$[insert];
 - (f) The Cost Overrun Account Proceeds (provided that the Cost Overrun Conditions have been satisfied) is A\$[insert];
 - (g) The amount of any liquidated damages under a Project Document (which have not already been deposited into a Collection Account) and which the Borrower demonstrates to the satisfaction of the Lender are due and payable to the

Borrower at such time by a counterparty to a Project Document, to the extent that either:

- (A) the Borrower is entitled to draw an amount in respect of such liquidated damages under a performance bond, bank guarantee or any other form of security under that Project Document, is [insert figure and currency]; or
 - (B) the Lender is otherwise satisfied that such amount will actually be paid by that counterparty to the Project Document prior to the then scheduled date for satisfying the Physical Completion Test is [insert figure and currency].
- (h) Without double counting any of the above, the amount of any other committed sources of funding available to the Borrower (which has been accepted by the Lender) is [insert figure and currency].

The aggregate amount in paragraphs 2(a) – (h) (inclusive) is A\$[insert].

3. Cost to Complete – Physical Completion

Without double counting:

- (a) All Construction Costs at that time payable to achieve Physical Completion or are otherwise payable as set out in the Base Case Financial Model up to Physical Completion (and in each case, whether payable before or after Physical Completion) but not yet paid, are A\$[].
- (b) All Financing Costs (including capitalised interest) at that time payable up to Physical Completion but not yet paid, as set out in the Base Case Financial Model but not yet paid, are A\$[].
- (c) All Operating Costs at that time payable to achieve Physical Completion or are otherwise payable as set out in the Base Case Financial Model up to Physical Completion (and in each case, whether payable before or after Physical Completion) but not yet paid, are A\$[].
- (d) All Project Costs at that time payable to achieve Physical Completion or are otherwise payable as set out in the Base Case Financial Model up to Physical Completion (and in each case, whether payable before or after Physical Completion) but not yet paid, are A\$[].
- (e) All cost overruns to the Project Costs at that time payable, or which the Borrower forecasts will be payable to achieve Physical Completion or are otherwise payable as set out in the Base Case Financial Model up to Physical Completion (and in each case, whether payable before or after Physical Completion) but not yet paid, are A\$[].
- (f) Any scheduled principal repayments under any Working Capital Facility Agreement at that time payable up to Physical Completion but not yet paid, as set out in the Base Case Financial Model, other than any amounts falling due under the

Working Capital Facility Agreement which will be available for simultaneous redrawing according to the terms of the Working Capital Facility Agreement, but not yet paid, are A\$[].

- (g) Amounts required to maintain the Minimum Unrestricted Cash Balance in the Collection Accounts up to Physical Completion, as set out in the Base Case Financial Model but not yet paid, are A\$[].
- (h) Any other costs which the Borrower forecasts it will incur in respect of the Project in connection with achieving Physical Completion or are otherwise payable as set out in the Base Case Financial Model up to Physical Completion (and in each case, whether payable before or after Physical Completion), but not yet paid, are A\$[].

The aggregate amount in paragraphs 3(a) – (h) (inclusive) is A\$[insert].

4. Physical completion cost to complete test

The aggregate amount in paragraphs 2(a) – (h) (inclusive) above is greater than the aggregate amount in paragraphs 3(a) – (h) (inclusive) above.

Signed:

.....

Director

Of Coburn Resources Pty Ltd

INDEPENDENT TECHNICAL CONSULTANT CONFIRMATION

I,....., for and on behalf of the Independent Technical Consultant, certify that:

- (a) the factual information set out in this Physical Completion Cost to Complete Certificate (other than any factual information with respect to Financing Costs or with respect to paragraph 3(v)(A)) is true, correct and not misleading as at the date set out below; and
- (b) the non-factual information (including any forecasts and projections) set out in this Physical Completion Cost to Complete Certificate (other than any non-factual information with respect to Financing Costs or with respect to paragraph 3(v)(A)) is true, correct and not misleading as at the date set out below.

Date:

Signed:

.....

Name:

For and on behalf of the Independent Technical Consultant

Part II
Form of Project Completion Cost to Complete Certificate

To: [Lender and NAIF Representative]
From: Coburn Resources Pty Ltd as Borrower
Dated:

Dear Sirs

**Coburn Resources Pty Ltd – A\$150,000,000 Term Facility Agreement dated [] (the
"Agreement")**

We refer to the Agreement. This is a Project Completion Cost to Complete Certificate. Terms used in the Agreement shall have the same meaning in this Project Completion Cost to Complete Certificate unless given a different meaning in this Project Completion Cost to Complete Certificate.

The Borrower certifies as follows.

1. Project completion tests
 - (a) The forecast date of completion or passing of the “Physical Completion Tests” is [insert date]; and
 - (b) The forecast date of completion or passing of the “Operational Completion Tests” is [insert date],

("Project Completion Date").
2. Committed Funding
 - (a) The Available Facility for Facility B (after any Utilisation of Facility B is made under an issued Utilisation Request (if any)) is A\$[insert];
 - (b) The "available commitment" (however described) under the Bonds including any amount standing to the credit of the Bond Escrow Account is US\$[insert];
 - (c) The aggregate amount standing to the credit of the USD Collection Account is US\$[insert];
 - (d) The aggregate amount standing to the credit of the AUD Collection Account is A\$[insert];
 - (e) The aggregate amount standing to the credit of the Insurance Proceeds Account is A\$[insert];
 - (f) The Cost Overrun Account Proceeds (provided that the Cost Overrun Conditions have been satisfied) is A\$[insert];
 - (g) The amount of any liquidated damages under a Project Document (which have not already been deposited into a Collection Account) and which the Borrower

demonstrates to the satisfaction of the Lender are due and payable to the Borrower at such time by a counterparty to a Project Document, to the extent that either:

- (A) the Borrower is entitled to draw an amount in respect of such liquidated damages under a performance bond, bank guarantee or any other form of security under that Project Document [insert figure and currency]; or
 - (B) the Lender is otherwise satisfied that such amount will actually be paid by that counterparty to the Project Document prior to the earlier of the then scheduled date for achieving Project Completion and the Sunset Project Completion Date is [insert figure and currency];
- (h) The forecast Operating Revenue up to the Project Completion Date in accordance with the Base Case Financial Model (using the low case for TZMI) is A\$[insert]; and
- (i) Without double counting any of the above, the amount of any other committed sources of funding available to the Borrower (which has been accepted by the Lender) is [insert figure and currency].

The aggregate amount in paragraphs 2(a) – (i) (inclusive) is A\$[insert].

3. Cost to Complete – Project Completion

Without double counting:

- (a) all Construction Costs at that time payable to achieve Project Completion or are otherwise payable as set out in the Base Case Financial Model up to Project Completion (and in each case, whether payable before or after Project Completion) but not yet paid, are A\$[];
- (b) all Financing Costs (including capitalised interest) at that time payable up to Project Completion but not yet paid, as set out in the Base Case Financial Model are A\$[];
- (c) all Operating Costs at that time payable to achieve Project Completion or are otherwise payable as set out in the Base Case Financial Model up to Project Completion (and in each case, whether payable before or after Project Completion) but not yet paid, are A\$[];
- (d) all Project Costs at that time payable to achieve Project Completion or are otherwise payable as set out in the Base Case Financial Model up to Project Completion (and in each case, whether payable before or after Project Completion) but not yet paid, are A\$[];
- (e) all cost overruns to the Project Costs at that time payable, or which the Borrower forecasts will be payable to achieve Project Completion or are otherwise payable as set out in the Base Case Financial Model up to Project Completion (and in each case whether payable before or after Project Completion) but not yet paid, are A\$[];

- (f) any scheduled principal repayments under any Working Capital Facility Agreement at that time payable up to Project Completion but not yet paid, as set out in the Base Case Financial Model, other than any amounts falling due under the Working Capital Facility Agreement which will be available for simultaneous redrawing according to the terms of the Working Capital Facility Agreement are A\$[];
- (g) amounts required to maintain the Minimum Unrestricted Cash Balance in the Collection Accounts up to Project Completion, as set out in the Base Case Financial Model are A\$[];
- (h) amounts required to Maintain the Debt Service Reserve Accounts at the DSRA Required Balance up to Project Completion, as set out in the Base Case Financial Model are A\$[]; and
- (i) any other costs which the Borrower forecasts it will incur in respect of the Project in connection with achieving Project Completion or are otherwise payable as set out in the Base Case Financial Model up to Project Completion (and in each case, whether payable before or after Project Completion), but not yet paid, are A\$[].

The aggregate amount in paragraphs 3(a) – (i) (inclusive) is A\$[insert].

4. Cost to complete test

The aggregate amount in paragraphs 2(a) – (i) (inclusive) above is greater than the aggregate amount in paragraphs 3(a) – (i) (inclusive) above.

5. Time to complete test

The date of Project Completion is reasonably likely to be achieved by [insert date] (the "**Forecast Project Completion Date**", being earlier than the Sunset Project Completion Date (being [insert date])).

Signed:

.....

Director

Of Coburn Resources Pty Ltd

INDEPENDENT TECHNICAL CONSULTANT CONFIRMATION

I,....., for and on behalf of the Independent Technical Consultant, certify that:

- (a) the factual information set out in this Project Completion Cost to Complete Certificate (other than any factual information with respect to Financing Costs or

with respect to paragraph 3(vi)(A)) is true, correct and not misleading as at the date set out below; and

- (b) the non-factual information (including any forecasts and projections) set out in this Project Completion Cost to Complete Certificate (other than any non-factual information with respect to Financing Costs or with respect to paragraph 3(vi)(A)) is true, correct and not misleading as at the date set out below.

Date:

Signed:

.....

Name:

For and on behalf of the Independent Technical Consultant

Schedule 11
FORM OF TECHNICAL CONSULTANT'S CERTIFICATE

To: [NAIF and NAIF Representative]

From: [Independent Technical Consultant]

Dated:

Dear Sirs

Coburn Resources Pty Ltd – A\$150,000,000 Term Facility Agreement dated [] (the "Agreement")

1. This certificate is delivered to you in connection with the Utilisation Request(s) dated [] delivered to you by the Borrower pursuant to the Agreement.

2. Unless the context otherwise requires, terms defined in the Agreement have the same meaning in this certificate.

3. We certify, after due enquiry, that, on the date of this certificate:

(a) based on the information made available to us by [the Borrower] / [construction contractor] / [other] and our most recent review on [] of the construction progress to date, in our reasonable judgment, that:

(i) in relation to the following amounts identified in the Utilisation Request the relevant payment item/milestone has been achieved under the relevant contract:

ITEM/MILESTONE	CONTRACT	AMOUNT
[]	[]	[]

(ii) the total of the amounts the subject of this certificate is [] and we are not aware of any disputes in relation to these sums.

4. Copies of the invoices for payments referred to in paragraph 3 above are attached.

Yours faithfully,

[Independent Technical Consultant]

Schedule 12
TECHNICAL CPS, CONDITIONS SUBSEQUENT AND UNDERTAKINGS

	Work area	Action required	Notes
A.	Conditions Precedent to Financial Close		
(1)	Processing	The Borrower must undertake analysis to confirm power requirements for the project.	
(2)	Weather interruption	The Borrower must apply a 5-week float to the construction schedule or such other time satisfactory to the Independent Technical Consultant.	This was based on the construction schedule falling over 2 wet seasons. If it starts early this year (2021), it may be possible that completion is before the 2 nd wet season and this could be downgraded to 2.5 weeks. Will need to be confirmed by the contractual construction schedule.
(3)	Project contingency	The Borrower must allow a 15% contingency in addition to the base capital cost estimate.	The 15% contingency allowance should be based on the final capital cost estimate, including the final agreed contract values for all major contracts.
B.	Conditions Subsequent to Financial Close		
(1)	Grade control drilling	<p>(i) The Borrower must complete a grade control spacing drilling (“GC Space Drill”) over mining areas for at least the first six months of planned production (“First GC Space Drill”)</p> <p>(ii) GC Space Drill to be in the order of 65m x 50m (or such spacing to be agreed between Borrower and Lenders), with drill program to be presented to the Lenders and agreed prior to the drilling.</p> <p>(iii) Upon completion of each GC Space Drill, the Borrower must submit a report to the Lender (including Technical Adviser) on the outcome of the GC Space Drill.</p> <p>(iv) If the Borrower demonstrates to the satisfaction of the Lender that GC Space Drill is no longer required, then the GC Space Drill undertaking will not apply thereafter.</p> <p>(v) If the Lender (acting reasonably) decides that GC Space Drill is further required, then the Borrower</p>	<p>Timing:</p> <p>The First GC Space Drill to commence no later than 6 months after financial close.</p> <p>Subsequent GC Space Drill to commence at least 9 months prior to commencing mining in the Subsequent GC Mining Area.</p>

	Work area	Action required	Notes
		must continue to undertake GC Space Drill (“ Subsequent GC Space Drill ”) over mining areas for each subsequent 9 months of planned production (“ Subsequent GC Mining Area ”) until such time the Borrower can demonstrate to Lenders’ satisfaction that GC Space Drill is no longer required.	
(2)	Mine Planning	The Borrower must update the mine plan using grade control drilling data, as soon as the grade control assays is available, at least 6 months prior to mine commissioning. The mine plan needs to include slimes management and blending.	Timing: to complete at least 6 months prior to mine commission
(3)	Geotechnical engineering	The Borrower must undertake a dedicated site-specific geotechnical investigation should be carried out for the process plant foundations prior to detailed design.	Timing: to be completed prior to detailed design. Assumed to be included in the EPC contract (contractors’ responsibility)
(4)	Processing	The Borrower must undertake a variability trial to assess impact of changed feed quality (grade and assemblage) on mineral recovery.	Timing: to be completed before detailed design or other timing as agreed between the Borrower and the Independent Technical Consultant
(5)	Processing	The Borrower must undertake thickener trials using water sample sourced at the mine site.	Timing: to be completed before detailed design or other timing as agreed between the Borrower and the Independent Technical Consultant Assumed to be included in the EPC contract (contractors’ responsibility)
C.	Undertakings		
	Area	Action required	Notes
(1)	Project construction	The timeframe for project construction to be monitored and confirmed from time to time once the process plant EPC contract is finalised.	

Schedule 13
ENVIRONMENTAL & SOCIAL CPS, CONDITIONS SUBSEQUENT AND ACTION
PLANS

	Work area	Action required	Notes
A.	Conditions Precedent to Financial Close		
(1)	Mining Proposal and Mine Closure Plan	The Borrower must obtain a final approved Mining Proposal and Mine Closure Plan (including an approved Mine Closure Cost Estimate).	
(2)	Heritage	The Borrower must demonstrate that all commitments made and requirements for stakeholder consultation have been achieved.	The Heritage Act is being updated and in light of the recent Juukan Gorge incident and traditional Owners are more sensitive which creates heightened risk.
(3)	Archeological and ethnographic surveys	The Borrower must complete all required archaeological and ethnographic surveys, including M09/102 to the satisfaction of the Independent Technical Consultant.	Any issues found in the surveys will need to be considered. The Borrower had committed to complete the survey; hence this has likely been addressed.
(4)	Works Approval	The Borrower must receive all required and relevant Works Approvals for project construction.	
B.	Conditions subsequent to Financial Close		
(1)	Water supply permitting	The Borrower must obtain a 5C Licence to Abstract for 10.9 GLpa, before detailed design is completed or other timing as agreed between the borrower and the Independent Technical Consultant.	Timing: to be completed before detail design is completed or other timing as agreed between the borrower and the Independent Technical Consultant. Need to confirm final quantity based on technical decision outcomes.
C.	Undertakings		
(1)	Environmental & Social (E&S) governance and compliance	The borrower must ensure that there is an adequately staffed E&S team and that all systems, plans, policies and procedures are in place for the borrower to ensure their compliance to the required regulatory standards.	

EXECUTED as an Agreement

Borrower

[Execution block omitted]

Parent

[Execution block omitted]

Lender

[Execution block omitted]

Appendix B

Amended Intercreditor Deed

Intercreditor Deed

Each of the entities listed in Schedule 1

Global Loan Agency Services Australia Pty Ltd

ACN 608 829 303

Global Loan Agency Services Australia Nominees Pty
Limited

ACN 608 945 008

Each of the Secured Creditors listed in Schedule 2

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THIS DEED is made on 31 May 2021 as amended on 15 December 2023 and amended on the Second Amendment Effective Date.

BETWEEN:

- (1) **Each of the entities listed in Part I of Schedule 1** (each an **Original Obligor**);
- (2) **The entity listed in Part II of Schedule 1** (the **Additional Obligor**);
- (3) **Global Loan Agency Services Australia Pty Ltd** ACN 608 829 303 in its capacity as intercreditor agent (the **Intercreditor Agent**);
- (4) **Global Loan Agency Services Australia Nominees Pty Limited** ACN 608 945 008 in its capacity as Security Trustee (the **Security Trustee**); and
- (5) **Each person named in Schedule 2** (the **Initial Secured Lenders**).

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

These meanings apply unless the contrary intention appears.

Acceleration Notice means, in respect of an Obligor or Obligors, a notice from the Intercreditor Agent to a Beneficiary (in a form determined by the Intercreditor Agent) directing the Beneficiary to take all reasonable steps as soon as reasonably possible to do all of the following (to the extent applicable or it is able to) or those of the following directed by the Intercreditor Agent in its notice (to the extent applicable or it is able to), as applicable, in connection with the specified Finance Documents to which the Beneficiary is a party:

- (a) immediately accelerate the obligations of that Obligor or those Obligors in connection with those Finance Documents;
- (b) where those Finance Documents are a Hedging Agreement, subject to clause 10 (*Servicing of Secured Obligations, standstill and enforcement*), immediately close out and terminate the Hedge Transactions governed by that Hedging Agreement;
- (c) immediately require that Obligor or those Obligors to pay all amounts which are then due for payment, or may become due for payment, in connection with those Finance Documents (including transactions in connection with them); and
- (d) terminate all obligations and commitments of that Beneficiary under those Finance Documents.

Accession Deed means:

- (a) a Beneficiary Accession Deed; and
- (b) an Obligor and Guarantor Accession Deed.

Additional Obligor means an entity which becomes an Additional Obligor in accordance with clause 20 (*Changes to Obligors*) and includes the Additional Obligor specified in Schedule 1.

Aggregate Eligible Voting Amount means, at any time and with respect to any Decision, the sum of the Eligible Voting Amounts of all Secured Creditors which, pursuant to the Finance Documents, are entitled to vote on that Decision at that time.

Aggregate Secured Lender Eligible Voting Amount means, at any time and with respect to any Decision, the sum of the Eligible Voting Amounts of all Secured Lenders which, pursuant to the Finance Documents, are entitled to vote on that Decision at that time.

Amendment Decision means any decision relating to the amendment, modification, variation or supplement to or in respect of any provision of a Finance Document, other than in relation to:

- (a) a NAIF Specific Decision;
- (b) the registration, trading or listing of the Bonds; or
- (c) the replacement of the Bond Trustee and provisions related to the relationship between the Bondholders and the Bond Trustee and between the Bondholders (including but not limited to voting rules under the Bonds).

Applicable Standstill Period means, in respect of any Event of Default, the period referable to that Event of Default as set out in clause 11.8 (*Servicing of payments under Secured Lender Agreements after Default Notice*).

Approved Hedging Policy and Protocol means the hedging policy and related hedging protocol approved by the WA Lender as a condition precedent to "Financial Close" (as that term is defined in the NAIF Facility Agreement), or any replacement hedging policy and protocol agreed between the Borrower and the WA Lender from time to time.

Beneficiary means:

- (a) the Security Trustee;
- (b) the Intercreditor Agent;
- (c) a Secured Creditor; or
- (d) any other person who accedes to this deed as a Beneficiary under a Beneficiary Accession Deed,

and which has not ceased to be a Beneficiary in accordance with clause 18 (*Ceasing to be a Beneficiary*).

Beneficiary Accession Deed has the meaning given to it in the Security Trust Deed.

Bond means the debt instruments issued by the Borrower pursuant to the Bond Terms.

Bond Debt means all present, future, actual and contingent obligations and liabilities of the Obligors owing to the Bond Trustee under the Bond Terms or owing to any Bond Refinancing Providers under any Bond Refinancing Agreement (as applicable) and related Finance Documents, including but not limited to principal, interest, premiums and expenses.

Bond Escrow Account means the bank account established by or on behalf of the Borrower with DNB Bank ASA, into which the proceeds of the Bonds are paid on settlement of the Bonds under the Bond Terms.

Bondholder means a person who is registered in the Verdipapirsentralen ASA as the directly registered owner or nominee of a Bond, subject to the provisions of the Bond Terms.

Bond Issue Amount means:

- (a) in respect of the Bonds, the issue amount of Bonds under the Bond Terms; or
- (b) if there is a Bond Refinancing, the available commitment (however described) under the Bond Refinancing Agreement.

Bond Refinancing means any facility entered into for the purposes of refinancing or replacing (however described) the Bond Debt that meets the Bond Refinancing Conditions.

Bond Refinancing Agreement means any agreement or terms entered into in connection with any Bond Refinancing.

Bond Refinancing Conditions means the conditions set out in clause 13.1 (*Bond Refinancing Conditions*).

Bond Refinancing Providers means the trustee, banks or other financiers, in each case, who provide the Bond Refinancing to the Borrower.

Bond Refinancing Representative means, in respect of any Bond Refinancing, the bond trustee, facility agent or other representative of the entity or entities providing financial accommodation under the Bond Refinancing Agreement or, if there is no such representative, means the Bond Refinancing Providers.

Bond Refinancing Reserve Account means the bank account established by or on behalf of the Borrower with DNB Bank ASA, into which the Borrower pays funds pending a repayment of the Bond Debt.

Bond Terms means the bond terms for the Coburn Resources Pty Ltd Senior Secured Bond Issue 2021/2026 ISIN NO 0010955859 arranged by Pareto Securities AS and ABG Sundal Collier ASA.

Bond Trustee means Nordic Trustee AS.

Borrower means Coburn Resources Pty Ltd ACN 165 036 537.

Business Day means a day (other than a Saturday, Sunday or public holiday, in that place) on which banks are open for general business in Perth, Sydney, Canberra and Oslo.

Code means the US Internal Revenue Code of 1986.

Collateral Security means any Security, guarantee or other document or agreement at any time created or entered into by an Obligor or any other person as security for, or to credit enhance, the payment of amounts in respect of the Secured Obligations.

Commonwealth means the Commonwealth of Australia.

Controller has the meaning given in the Corporations Act.

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

Cost includes costs, charges and expenses, including those incurred in connection with advisers.

Cost to Complete Eligible Voting Amount means at any time (without double counting):

- (a) in the case of the Bond Trustee, the amount of the Bond Issue Amount including amounts standing to the credit of the Bond Escrow Account, less:

- (i) amounts redeemed, repaid or prepaid (however described) or cancelled and discharged under the Bond Terms; and
 - (ii) amounts standing to the credit of the Bond Refinancing Reserve Account; and
- (b) in the case of the Bond Refinancing Providers (if applicable) either:
- (i) if the Bond Refinancing takes the form of a facility agreement or other similar form:
 - (A) the total principal amount outstanding under the Bond Refinancing Agreement; plus
 - (B) the undrawn commitment under the Bond Refinancing Agreement at that time; or
 - (ii) if the Bond Refinancing takes the form of a bond issue or other similar form, the Bond Issue Amount relevant to a Bond Refinancing including amounts standing to the credit of any account equivalent to the Bond Escrow Account in connection with the Bond Refinancing, less:
 - (A) amounts redeemed, repaid or prepaid (however described) or cancelled and discharged under the Bond Refinancing Agreement; and
 - (B) amounts standing to the credit of any account equivalent to the Bond Refinancing Reserve Account in connection with the Bond Refinancing;
- (c) in the case of the WA Lender:
- (i) the total principal amount outstanding under the NAIF Facility Agreement less amounts redeemed, repaid or prepaid (however described) or which the WA Lender is at the relevant time unconditionally entitled to redeem or withdraw (however described) from the NAIF Facility C2 Suspense Account; plus
 - (ii) the undrawn commitment under the NAIF Facility Agreement at that time (including, for the avoidance of doubt, any undrawn commitment under "Facility C" of the NAIF Facility Agreement, whether or not that commitment is available for drawing at that time); and
- (d) in the case of the Super Senior SLNSA Facility Agent, the total principal amount outstanding under the Super Senior SLNSA including amounts standing to the credit of any Super Senior SLNSA Escrow Account, less amounts redeemed, repaid or prepaid (however described) (or which the Super Senior SLNSA Facility Agent is at the relevant time unconditionally entitled to redeem or withdraw (however described) from a Super Senior SLNSA Escrow Account) or cancelled under the Super Senior SLNSA,

in each case, up to the applicable Secured Obligations Limits.

Debt Service Reserve Account has the meaning given to that term in the NAIF Facility Agreement.

Decision means any:

- (a) Amendment Decision;
- (b) EoD Waiver Decision;
- (c) Non-EoD Decision;

- (d) decision relating to the taking of Enforcement Action; or
- (e) Review Event Waiver Decision,

but excluding any NAIF Specific Decision and, where the context requires, **Decide, Decided** or any other derivative thereof will be construed accordingly.

Decision Period means, having regard to clause 1.18 (*Meaning of 'reasonable period'*) the reasonable period of time which complies with either clause 4.12 (*Decision Period for General Decision Requests*), clause 11.2 (*Urgent action*), 11.5(b) and 11.5(c) (*Notice of Event of Default and appointment of administrator*) or clause 11.10 (*Decision Period for Enforcement Action*) within which the instructions of Beneficiaries is sought in connection with a General Decision Request, a Security Enforcement Request or a Review Event Waiver Request (as applicable), provided that a Decision Period shall:

- (a) not be for a period longer than 20 Business Days; and
- (b) subject to clause 4.12 (*Decision Period for General Decision Requests*), clause 11.2 (*Urgent action*), 11.5(b) and 11.5(c) (*Notice of Event of Default and appointment of administrator*) and clause 11.10 (*Decision Period for Enforcement Action*), not be for a period less than 15 Business Days, or if the applicable period of time under clause 4.12 (*Decision Period for General Decision Requests*), clause 11.2 (*Urgent action*), 11.5(b) (*Notice of Event of Default and appointment of administrator*), 11.5(c) (*Notice of Event of Default and appointment of administrator*) or clause 11.10 (*Decision Period for Enforcement Action*) (as applicable) is less than 15 Business Days, it will expire 1 Business Day before the end of that period of time.

Default means an Event of Default or Potential Event of Default.

Default Notice has the meaning given in clause 11.5(a)(i) (*Notice of Event of Default and appointment of administrator*).

Disposal means a sale, lease, transfer or other disposal by a person of any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions, whether related or not) and **Dispose** shall be construed accordingly.

Eligible Voting Amount means the:

- (a) Cost to Complete Eligible Voting Amount;
- (b) Pre-Enforcement Eligible Voting Amount; or
- (c) Post-Enforcement Eligible Voting Amount,

as applicable. Eligible Voting Amounts not denominated in Australian dollars will be notionally converted by the Intercreditor Agent to Australian dollars in accordance with clause 1.7 (*Conversion of amounts denominated in a currency other than Australian dollars*).

Enforcement Action means:

- (a) the bringing of any insolvency, liquidation, administration or similar proceedings with respect to an Obligor;
- (b) the appointment of any person as a Controller in relation to the property of an Obligor and/or the taking of action to enforce a Transaction Security Interest or other Security (including, for the avoidance of doubt, exercising any step-in rights available to the Security Trustee under any Tripartite Deed or other Transaction Security Interest); or

(c) the winding up or the taking of any formal steps to wind up an Obligor.

Enforcement Date means the day on which the Security Trustee is instructed under this deed to take Enforcement Action or a Beneficiary otherwise commences Enforcement Action.

EoD Waiver Decision means any decision relating to the waiver of any Event of Default, other than any NAIF Specific Decision.

Event of Default means any act, matter or event which is defined as an "Event of Default" (or such other analogous term) in a Finance Document.

FATCA means:

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

FATCA Application Date means:

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or
- (c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,

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

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

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

Fee Letter means any fee letter entered into in connection with another Finance Document which a Finance Party agrees with the Borrower is a "Fee Letter" for the purposes of this deed, including any fee letter pursuant to clause 2.7 (*Intercreditor Agent fee*) or clause 4 (*Security Trustee Remuneration*) of the Security Trust Deed.

Finally Paid means, in respect of a monetary liability:

- (a) payment or satisfaction in full; and

- (b) receipt by the Intercreditor Agent of evidence satisfactory to it that the liability has been paid or satisfied in full including, without limitation, receipt of notice from the person owed the monetary liability that it has been paid or satisfied in full.

Finance Document means:

- (a) this deed;
- (b) the First Amendment Deed;
- (c) the Implementation Deed;
- (d) the Security Trust Deed;
- (e) each Tripartite Deed;
- (f) each Secured Creditor Agreement and any substitution agreement or transfer instrument entered into in connection with the relevant Secured Creditor Agreement;
- (g) each Transaction Security Interest;
- (h) each Subordination Deed;
- (i) each Fee Letter;
- (j) each Accession Deed;
- (k) any other document or agreement the Intercreditor Agent and the Borrower agree is a Finance Document for the purposes of this deed; or
- (l) any document or agreement entered into for the purpose of amending, varying or novating any of the above.

Finance Party means:

- (a) a Secured Creditor;
- (b) the Intercreditor Agent (for its own account or for the account of a Secured Creditor); or
- (c) the Security Trustee (for its own account or for the account of a Secured Creditor).

First Amendment Deed means the Amendment Deed dated 15 December 2023 between, among others, the Intercreditor Agent, the Security Trustee and each Original Obligor.

First Payment EoD Standstill Period means, in relation to an Event of Default which is a Payment Event of Default, the period from the date the Default Notice referable to that Event of Default is given to the Intercreditor Agent to the date which is 15 Business Days after that date.

General Decision Request has the meaning given to it in clause 4.8(c)(ii) (*Voting seeking instructions*).

General Event of Default means an Event of Default which is not a Payment Event of Default or a NAIF Specific Event of Default.

Hedge Counterparties' Debt means the aggregate of each Hedge Counterparty's Potential Hedge Exposure.

Hedge Counterparties' Eligible Voting Amount means the Hedge Counterparties' Debt, limited to a maximum aggregate amount of US\$10,000,000 (the **Hedging Voting Cap**) and where the Hedge Counterparties' Debt exceeds the Hedging Voting Cap at any time, each Hedging Counterparty's voting rights under this deed shall correspond to its pro rata share of the aggregate of the Hedge Counterparties' Debt and reduced pro rata for the Hedging Voting Cap.

Hedge Counterparty means:

- (a) any person who is designated as a "Hedge Counterparty" in a Beneficiary Accession Deed; or
- (b) any permitted transferee or assignee of a Hedge Counterparty described in paragraph (a),

to the extent the relevant person is bound by the obligations of a "Hedge Counterparty" under this deed and remains a "Hedge Counterparty" under the relevant Hedging Agreement and which has not ceased to be a Beneficiary in accordance with clause 18 (*Ceasing to be a Beneficiary*).

Hedge Transaction means a transaction under a Hedging Agreement.

Hedging Agreement means any ISDA Master Agreement, confirmation, schedule or other agreement entered into or to be entered into by any Obligor and a Hedge Counterparty in accordance with the Approved Hedging Policy and Protocol.

Implementation Deed means the Implementation Deed dated in or about March 2024 between, among others, the Intercreditor Agent, the Security Trustee and each Original Obligor.

Insolvency Event means any of the following events:

- (a) an Obligor:
 - (i) is or is presumed or deemed to be unable or admits inability to pay its debts as they fall due;
 - (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 a Secured Lender 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 Obligor;
- (c) any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor other than a solvent liquidation or reorganisation of any Obligor;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of any Obligor;
 - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Obligor or any of its assets; or

- (iv) enforcement of any Security over any assets of any Obligor, or any analogous procedure or step is taken in any jurisdiction;
- (d) any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of an Obligor or the Parent having an aggregate value of A\$1,000,000 and is not discharged within 15 Business Days; or
- (e) anything analogous or with a substantially similar effect to any of the events specified in paragraphs (a) to (d) inclusive above happens under the law of any applicable jurisdiction.

Insolvency Event of Default means an Event of Default which is an Insolvency Event.

ISDA Master Agreement means a 2002 ISDA Master Agreement.

ISDA Novation Agreement means a novation agreement in relation to a Hedging Agreement in, or substantially in, the form of the ISDA Novation Agreement.

Majority Hedge Counterparties means the Hedge Counterparties whose Hedge Counterparties' Debt exceeds in aggregate 66²/₃% of the aggregate Hedge Counterparties' Debt at that time.

Material Event of Default means an Event of Default described in Schedule 3 (*Material Events of Default*).

Material Provision means any provision described in Schedule 4 (*Material Provisions*).

Minor Event of Default means any Event of Default which is not a Payment Event of Default, an Insolvency Event of Default, a breach of a financial covenant (however described), an Event of Default relating to the Warrant Deed or a NAIF Specific Event of Default.

NAIF means the Northern Australia Infrastructure Facility, a body corporate constituted under the NAIF Act.

NAIF Act means the *Northern Australia Infrastructure Facility Act 2016* (Cth).

NAIF Covenant means any event of default, termination event, representation, covenant, condition precedent or other provision under a NAIF Finance Document in respect of:

- (a) "IES" and "IES Event" (each as defined in the NAIF Facility Agreement);
- (b) "AIP Plan" or "Australian Industry Participation Plan" (each as defined in the NAIF Facility Agreement);
- (c) "WHS Scheme" (as defined in the NAIF Facility Agreement);
- (d) the NAIF ESR Requirements (as defined in the NAIF Facility Agreement); and
- (e) at any time after all amounts of principal, interest, make-whole amounts and fees (which, for the avoidance of doubt, shall not include the Warrant Indemnity Amount) outstanding under the Super Senior SLNSA have been fully and finally repaid, any other provision under the NAIF Finance Documents where there is no equivalent Event of Default, Review Event, termination event, representation, covenant, condition precedent or provision under any other Finance Document which is not a NAIF Finance Document.

NAIF Facility Agreement means the:

- (a) A\$150,000,000 Facility Agreement dated on or about the date of this deed between the Borrower, the Parent and the WA Lender; and
- (b) NAIF Supplemental Agreement (if any).

NAIF Facility C2 means "Facility C2" under the NAIF Facility Agreement.

NAIF Facility C2 Suspense Account means any bank account established by or on behalf of the Security Trustee, into which the Security Trustee pays the net sale proceeds of the Tanzanian Disposal to be distributed to the WA Lender in accordance with paragraph 14.5(a) (*Application of mandatory prepayments*).

NAIF Finance Document means:

- (a) the NAIF Facility Agreement;
- (b) any other document designated or defined as a "NAIF Finance Document" in a Beneficiary Accession Deed; or
- (c) any other document or agreement the Intercreditor Agent and the Borrower agree is a NAIF Finance Document for the purposes of this deed,

or any document or agreement entered into for the purposes of amending or novating any of the above.

NAIF Representative means:

- (a) a director or secretary of NAIF, or any person who holds or purports to hold a position within NAIF which includes in that person's title or designation, the word "director", "chief", "head", or "general counsel" (or a person performing, or purporting to perform, the functions of any of them); or
- (b) any other person appointed by NAIF to act on its behalf, and which is notified to the Borrower from time to time.

NAIF Specific Decision means, in relation to a NAIF Finance Document at any time, any decision which may be taken by the WA Lender in connection with:

- (a) the amendment, modification, variation or supplement to or in respect of any provision of the NAIF Finance Document;
- (b) satisfaction or waiver of any conditions precedent under the NAIF Finance Document;
- (c) a waiver of any provision of the NAIF Finance Document; or
- (d) any consent, approval or authorisation under, or pursuant to or in respect of any provision of the NAIF Finance Document,

in each case, in relation to a NAIF Covenant (or the definitions of "NAIF Covenant", "NAIF Specific Event of Default", "NAIF Finance Document" and "NAIF Specific Decision" in this deed).

NAIF Specific Event of Default means, at any time, an Event of Default which occurs under the NAIF Finance Documents in relation to a NAIF Covenant but, for the avoidance of doubt, does not include an Insolvency Event of Default, a Payment Event of Default, a Material Event of Default or an Other Event of Default.

NAIF Supplemental Agreement means the deed poll (if any) given by the Borrower and the Parent in favour of the WA Lender on or before the date of "Financial Close" (as that term is defined in the NAIF Facility Agreement) containing any additional representations, undertakings, Events of Default or Review Events for the purposes of the NAIF Facility Agreement.

New Finance Document has the meaning given to "New Secured Document" in clause 6.2 (*New Beneficiaries and New Secured Documents*) of the Security Trust Deed.

New Provider has the meaning given to it in clause 6.2 (*New Beneficiaries and New Secured Documents*) of the Security Trust Deed.

Non-EoD Decision means any decision relating to:

- (a) the satisfaction or waiver of any conditions precedent under a Finance Document (other than the Super Senior SLNSA, the NAIF Facility Agreement or the Implementation Deed);
- (b) any consent, approval or authorisation under, pursuant to or in respect of any provision of a Finance Document; or
- (c) the waiver or suspension of any other provision of a Finance Document,

other than an Amendment Decision, an EoD Waiver Decision, a Review Event Waiver Decision or a NAIF Specific Decision.

Obligor means an Original Obligor or an Additional Obligor, unless it has ceased to be an Obligor in accordance with clause 20 (*Changes to Obligors*).

Obligor and Guarantor Accession Deed has the meaning given to it in the Security Trust Deed.

Obligor and Guarantor Release Deed has the meaning given to it in the Security Trust Deed.

Other Event of Default means any Event of Default which is not a Payment Event of Default, an Insolvency Event of Default, a Material Event of Default or a NAIF Specific Event of Default.

Other Senior Debt means any principal amount owing under the Bond Terms, the Working Capital Facility Agreement or the NAIF Facility Agreement (other than Facility C2).

Parent means Strandline Resources Limited ACN 090 603 642.

Payment Event of Default means an Event of Default that is a payment default by an Obligor under a Finance Document and the applicable grace period under the Finance Document (before such failure becomes an Event of Default under the relevant Finance Document) has expired.

Permitted Acceleration Action means:

- (a) without limiting the rights of the Hedge Counterparties under clause 11.16 (*Restrictions on Hedge Counterparties terminating or closing out Hedge Transactions*), the exercise of any right to declare any amount due and payable before it would otherwise be due and payable or to otherwise accelerate payment of an amount, which is exercisable after an Event of Default or (to the extent permitted under the Hedging Agreements) a Termination Event (in the case of, and as defined in, a Hedging Agreement);

- (b) the cancellation by a Beneficiary (but not by an Obligor under its right to do so or any automatic cancellation at the end of any availability period (however described)) of any commitments;
- (c) the making of any monies that are payable subject to demand, payable by making a demand; or
- (d) instructing the Intercreditor Agent to issue an Acceleration Notice.

Permitted Disposal means a Disposal which is permitted, or not prohibited, by each Finance Document.

Post-Enforcement Eligible Voting Amount means at any time (without double counting):

- (a) in the case of the Bond Trustee or the Bond Refinancing Providers, the total principal amount outstanding under the Bond Terms or any Bond Refinancing Agreement (as applicable) plus capitalised interest and accrued and unpaid interest, less the aggregate of:
 - (i) amounts standing to the credit of the Bond Escrow Account (or any equivalent account in connection with any Bond Refinancing); and
 - (ii) amounts standing to the credit of the Bond Refinancing Reserve Account (or any equivalent account in connection with any Bond Refinancing);
- (b) in the case of the WA Lender, the amount of the total principal amount outstanding under the NAIF Facility Agreement plus capitalised interest, accrued and unpaid interest and all outstanding indemnifiable amounts less the aggregate of any amounts standing to the credit of the NAIF Facility C2 Suspense Account;
- (c) in the case of the WCF Lender, the amount of the total principal amount outstanding under the Working Capital Facility Agreement plus capitalised interest, accrued and unpaid interest and all outstanding indemnifiable amounts;
- (d) in the case of the Hedge Counterparties, the Hedge Counterparties' Eligible Voting Amount; and
- (e) in the case of the Super Senior SLNSA Facility Agent, the total principal amount outstanding under the Super Senior SLNSA plus capitalised interest, accrued and unpaid interest and all outstanding make whole and outstanding indemnifiable amounts, less the aggregate of any amounts standing to the credit of any Super Senior SLNSA Escrow Account,

in each case up to the applicable Secured Obligations Limits. For the avoidance of doubt, any Post-Enforcement Eligible Voting Amount shall not include any undrawn or unutilised (however described) amounts. All such undrawn or unutilised commitments will be cancelled on or before commencement of Enforcement Action.

Potential Event of Default means anything which, would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

Potential Hedge Exposure means, on any day in respect of a Hedge Counterparty, the amount (if any) payable by the Borrower to the Hedge Counterparty under its Hedging Agreement if the Hedge Transactions were closed out or terminated on that day in accordance with the Hedging Agreement and the amount payable was calculated in accordance with the Hedging Agreement. The amount will be determined on a net basis in accordance with the relevant Hedging Agreement, and if the sum of the Potential Hedge

Exposure is less than zero, the Potential Hedge Exposure of that Hedge Counterparty shall be counted as zero.

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

Pre-Enforcement Eligible Voting Amount means, (without double counting):

- (a) in the case of the Bond Trustee, the amount of the Bond Issue Amount including amounts standing to the credit of the Bond Escrow Account plus capitalised interest and accrued and unpaid interest, less:
 - (i) amounts redeemed, repaid or prepaid (however described) or cancelled and discharged under the Bond Terms; and
 - (ii) amounts standing to the credit of the Bond Refinancing Reserve Account; and
- (b) in the case of the Bond Refinancing Providers (if applicable) either:
 - (i) if the Bond Refinancing takes the form of a facility agreement or other similar form:
 - (A) the total principal amount outstanding under the Bond Refinancing Agreement plus capitalised interest and accrued and unpaid interest; plus
 - (B) the undrawn commitment under the Bond Refinancing Agreement at that time; or
 - (ii) if the Bond Refinancing takes the form of a bond issue or other similar form, the Bond Issue Amount relevant to a Bond Refinancing including amounts standing to the credit of any account equivalent to the Bond Escrow Account in connection with the Bond Refinancing plus capitalised interest and accrued and unpaid interest, less:
 - (A) amounts redeemed, repaid or prepaid (however described) or cancelled and discharged under the Bond Refinancing Agreement; and
 - (B) amounts standing to the credit of any account equivalent to the Bond Refinancing Reserve Account in connection with the Bond Refinancing;
- (c) in the case of the WA Lender:
 - (i) the total principal amount outstanding under the NAIF Facility Agreement plus capitalised interest, accrued and unpaid interest and all outstanding indemnifiable amounts; plus
 - (ii) the undrawn commitment under the NAIF Facility Agreement at that time (including, for the avoidance of doubt, any undrawn commitment under "Facility C" of the NAIF Facility Agreement, whether or not that commitment is available for drawing at that time),

less
 - (iii) amounts redeemed, repaid or prepaid (however described) (or which the WA Lender is at the relevant time unconditionally entitled to redeem or withdraw (however described) from the NAIF Facility C2 Suspense Account),

;

- (d) in the case of the WCF Lender:
 - (i) the total principal amount outstanding under the Working Capital Facility Agreement plus capitalised interest, accrued and unpaid interest and all outstanding indemnifiable amounts; plus
 - (ii) its undrawn commitment under the Working Capital Facility Agreement at that time; and
- (e) in the case of the Super Senior SLNSA Facility Agent:
 - (i) the total principal amount outstanding under the Super Senior SLNSA plus capitalised interest, accrued and unpaid interest and all outstanding make-whole amount and outstanding indemnifiable amounts; plus
 - (ii) the undrawn commitment under the Super Senior SLNSA at that time,
less
 - (iii) amounts redeemed, repaid or prepaid (however described) (or which the Super Senior SLNSA Facility Agent is at the relevant time unconditionally entitled to redeem or withdraw (however described) from a Super Senior SLNSA Escrow Account) or cancelled under the Super Senior SLNSA,

in each case up to the applicable Secured Obligations Limits.

Project has the meaning given to that term in the NAIF Facility Agreement.

Receiver includes a receiver or a receiver and manager.

Recovered Money means, in respect of a Recovered Money Distribution Date, the aggregate amount received or available to be applied by the Security Trustee under the Finance Documents.

Recovered Money Distribution Date means each day on or after an Enforcement Date on which Recovered Money is available for distribution in accordance with clause 16 (*Distribution of Recovered Money*).

Required Majority means the relevant level of Beneficiary support required in accordance with this deed to make a particular Decision.

Review Event means any act, matter or event which is defined as a "Review Event" (or such other analogous term or event) in a Finance Document.

Review Event Notice has the meaning given in clause 12.1 (*Notice of Review Event*).

Review Event Request has the meaning given in clause 12.2(a) (*Intercreditor to advise – Review Event Notice*).

Review Event Waiver Decision means any decision relating to waiver of a mandatory prepayment required as a result of a Review Event, other than a NAIF Specific Decision.

Second Amendment Effective Date means the "Effective Date" under the Implementation Deed.

Second Payment EoD Decision Period has the meaning given in clause 11.10(b)(i)(B) (*Decision Period for Enforcement Action*).

Second Payment EoD Standstill Period means, in relation to an Event of Default which is a Payment Event of Default, the period from the date of the Second Payment EoD Decision Period to the date which is 6 months after that date.

Secured Creditor means:

- (a) each Secured Lender;
- (b) (on and from its accession to this deed) each Hedging Counterparty;
- (c) any other person who is designated as a "Secured Creditor" in a Beneficiary Accession Deed; or
- (d) any permitted transferee or assignee of a Secured Creditor described above who, if not already a Beneficiary, enters into a Beneficiary Accession Deed.

Secured Creditor Agreement means:

- (a) each Secured Lender Agreement;
- (b) on accession of a Hedging Counterparty, each Hedging Agreement; and
- (c) any other document designated as a "Secured Creditor Agreement" in a Beneficiary Accession Deed.

Secured Lender means:

- (a) a person who is designated as a "Secured Lender" in Schedule 2 (*Initial Secured Lender*);
- (b) each other Super Senior Beneficiary;
- (c) (on and from its accession to this deed) any Bond Refinancing Provider;
- (d) (on and from its accession to this deed) the WCF Lender;
- (e) any other person who is designated as a "Secured Lender" in a Beneficiary Accession Deed; or
- (f) any permitted transferee or assignee of a Secured Lender described above who, if not already a Beneficiary, enters into a Beneficiary Accession Deed.

Secured Lender Agreement means:

- (a) the NAIF Facility Agreement;

- (b) the Bond Agreement;
- (c) (on accession of a Bond Refinancing Provider to this deed) any Bond Refinancing Agreement;
- (d) (on accession of the WCF Lender to this deed) the Working Capital Facility Agreement;
- (e) the Super Senior SLNSA; and
- (f) any other document designated as a "Secured Lender Agreement" in a Beneficiary Accession Deed.

Secured Obligations means, at any time, all obligations owing by the Obligor to a Beneficiary (including amounts that are payable, are owing but not payable or otherwise remain unpaid by an Obligor to a Beneficiary (which, in the case of the WA Lender, shall also include amounts payable or owing to NAIF or the Commonwealth)) under or in relation to any Finance Document at that time:

- (a) for any reason or circumstance in connection with any agreement, transaction, instrument (whether negotiable), document, event, act, omission or matter or thing whatsoever in relation to a Finance Document;
- (b) whether at law or otherwise;
- (c) whether present or future;
- (d) whether or not of a type within the contemplation of the parties at the date of this deed;
- (e) which are payable, are owing but not currently payable, are contingently owing, or remain unpaid, by an Obligor to or for the account of a Beneficiary (whether alone or not) under or in connection with a Finance Document;
- (f) which are at any time ascertained or unascertained;
- (g) which the Beneficiary has advanced or paid on an Obligor's behalf or at an Obligor's express or implied request under or in connection with a Finance Document;
- (h) which the Beneficiary is liable to pay by reason of any act or omission on an Obligor's part, or that the Beneficiary has paid or advanced in protecting or maintaining the Secured Property or any Transaction Security Interest (following an act or omission on an Obligor's part);
- (i) which are owed or incurred as principal, interest, fees, charges, Taxes, compensation or damages (whether for breach of contract, tort or incurred on any other ground), losses, costs or expenses, or payment of liquidated or unliquidated damages under or in connection with a Finance Document, or as a result of a breach or default under or in connection with a Finance Document;
- (j) which are reasonably foreseeable as likely, after that time, to fall within any of the above paragraphs; or
- (k) which comprise any combination of the above.

This definition applies:

- (a) whether an Obligor or the Beneficiary is liable as principal debtor, as surety, or otherwise;

- (b) whether incurred to or for the account of an Obligor alone, or together with another person;
- (c) even if an Obligor owes an amount or obligation to the Beneficiary because it was assigned or transferred to the Beneficiary, whether or not:
 - (i) the Obligor consented to or was aware of the assignment or transfer; or
 - (ii) the assigned obligation was secured before the assignment or transfer;
- (d) even if a Transaction Security Interest was assigned or transferred to the Beneficiary, whether or not:
 - (i) an Obligor consented to or was aware of the assignment or transfer; or
 - (ii) any of the Secured Obligations were previously unsecured;
- (e) if an Obligor is a trustee, whether or not it has a right of indemnity from the trust fund; or
- (f) in respect of money that an Obligor would have been liable to pay but for its liquidation.

Secured Obligations Limits means:

- (a) in respect of Secured Obligations owing to the Bond Trustee or the Bond Refinancing Providers (as applicable), the Bond Issue Amount not exceeding US\$60,000,000 plus capitalised interest, accrued and unpaid interest, fees and costs, less:
 - (i) the US\$ amount of any prepayments or prepayments of principal, redemption of Bonds or cancelled commitment; and
 - (ii) the aggregate US\$ amount standing to the credit of the Bond Escrow Account and the Bond Refinancing Reserve Account (or any equivalent accounts in connection with any Bond Refinancing),

excluding any make whole, early redemption or other premium (however described) payable in connection with any voluntary or mandatory prepayment or repayments under the Bond Terms or any Bond Refinancing Agreement (as applicable);
- (b) in respect of Secured Obligations owing to the WA Lender, the principal amount outstanding under the NAIF Facility not exceeding A\$150,000,000, plus capitalised interest, accrued and unpaid interest, fees and costs, less:
 - (i) the amount of any prepayments or repayments, redemption (in each case however described) (or which the WA Lender is entitled to redeem or withdraw (however described) from the NAIF Facility C2 Suspense Account); and
 - (ii) the aggregate amount standing to the credit of the NAIF Facility C2 Suspense Account;
- (c) in respect of Secured Obligations owing to the WCF Lender, the principal amount outstanding under the Working Capital Facility Agreement not exceeding A\$15,000,000, plus capitalised interest, accrued and unpaid interest, fees and costs;
- (d) in respect of Secured Obligations owing to all Hedge Counterparties, the aggregate Hedge Counterparties' Debt, limited to the maximum aggregated amount of US\$10,000,000; and

- (e) in respect of Secured Obligations owing to the Super Senior SLNSA Finance Parties, the principal amount outstanding under the Super Senior SLNSA not exceeding A\$20,000,000 plus capitalised interest, accrued and unpaid interest, any outstanding "Warrant Indemnity Amount", any outstanding "Make-whole Premium", and any outstanding fees and costs, less:
 - (i) the amount of any prepayments or repayments, redemption (in each case however described) (or which the Super Senior SLNSA Facility Agent is entitled to redeem or withdraw (however described) from a Super Senior SLNSA Escrow Account) or any amounts cancelled under the Super Senior SLNSA; and
 - (ii) the aggregate amount standing to the credit of each Super Senior SLNSA Escrow Account.

Secured Obligations Limits not denominated in Australian dollars will be notionally converted by the Intercreditor Agent to Australian dollars in accordance with clause 1.7 (*Conversion of amounts denominated in a currency other than Australian dollars*).

Security Enforcement Request has the meaning given to it in clause 11.6(a) (*Intercreditor Agent to advise – Default Notice*).

Security Trust means the security trust established under the Security Trust Deed.

Security Trust Deed means the document of that title dated on or about the date of this deed between, among others, each Original Obligor and the Security Trustee establishing the Security Trust.

Security Trust Fund means the amount held by the Security Trustee under Clause 2 (*Declaration of Trust*) of the Security Trust Deed together with any other property which the Security Trustee acquires to hold on the trusts of the Security Trust Deed including any Security which it holds in its capacity as trustee of the Security Trust and any property which represents the proceeds of sale of any such property or proceeds of enforcement of any Security.

Simple Majority Beneficiaries means, at any time and with respect to any Decision, the Secured Lenders and, where applicable, Hedging Counterparties which, pursuant to the Finance Documents, are entitled to vote on that Decision and whose Pre-Enforcement Eligible Voting Amount or Post-Enforcement Eligible Voting Amount (as applicable) exceed, in aggregate, 50% of the Aggregate Eligible Voting Amount for that Decision at that time, provided solely in respect of a Decision to take Enforcement Action as a result of a Minor Event of Default (and not if any other Event of Default is also continuing at the time of the Decision), for so long as any amounts of principal, interest, make-whole amounts and fees (which, for the avoidance of doubt, shall not include the Warrant Indemnity Amount) remain outstanding under the Super Senior SLNSA such Secured Lenders include all Super Senior Beneficiaries.

Standstill Commencement means the earlier of:

- (a) the Borrower becoming aware of the occurrence of an Event of Default (which is continuing); and
- (b) the date a Default Notice is given in relation to an Event of Default.

Subordination Deed means a deed entered into between the Borrower, the Security Trustee and any other person as subordinated creditor under which any Financial Indebtedness owing to that subordinated creditor is subordinated to the Secured Obligations.

Super Majority Beneficiaries means, at any time and with respect to any Decision, the Secured Lenders which, pursuant to the Finance Documents, are entitled to vote on that Decision and whose Cost to Complete Eligible Voting Amount or Pre-Enforcement Eligible Voting Amount (as applicable) exceed, in aggregate, 70% of the Aggregate Secured Lender Eligible Voting Amount for that Decision at that time, provided solely in respect of a Decision to take Enforcement Action as a result of a Minor Event of Default (and not if any other Event of Default is also continuing at the time of the Decision), for so long as any amounts of principal, interest, make-whole amounts and fees (which, for the avoidance of doubt, shall not include the Warrant Indemnity Amount) remain outstanding under the Super Senior SLNSA such Secured Lenders include all Super Senior Beneficiaries.

Super Senior Beneficiaries means each of:

- (a) the Super Senior SLNSA Finance Parties from time to time (in respect of the facilities under the Super Senior SLNSA only and for so long as any amounts remain outstanding under the facilities under the Super Senior SLNSA only); and
- (b) the WA Lender (in respect of NAIF Facility C2 only and for so long as any amounts remain outstanding under NAIF Facility C2 only),

provided such person is also a Beneficiary under the Security Trust Deed.

Super Senior Facilities means:

- (a) the NAIF Facility C2; and
- (b) the facilities under the Super Senior SLNSA,

in each case, together with all accrued and unpaid interest, capitalised interest, fees (however described), make-whole amounts and indemnifiable amounts relating to those facilities.

Super Senior SLNSA means the document titled "Syndicated Loan Note Facility Agreement" dated 6 March 2024 between, among others, the Original Obligors, the Super Senior SLNSA Facility Agent and the Security Trustee as amended on 5 July 2024 pursuant to the document entitled 'Implementation Deed No. 2' dated 5 July 2024 between, among others, the Original Obligors and the Super Senior SLNSA Facility Agent.

Super Senior SLNSA Escrow Account means an "Escrow Account" under the Super Senior SLNSA (as that term is defined as at the Second Amendment Effective Date) (or any other bank account that replaces that bank account).

Super Senior SLNSA Facility Agent means Global Loan Agency Services Australia Pty Ltd ACN 608 829 303 in its capacity as the agent for the lenders under the Super Senior SLNSA.

Super Senior SLNSA Finance Parties means each "Lender" under the Super Senior SLNSA (as that term is defined as at the Second Amendment Effective Date) and the Super Senior SLNSA Facility Agent.

Tanzanian Disposal means any sale, disposal or other form of monetisation strategy adopted by the Parent or any of its Subsidiaries of any interest in:

- (a) the whole or any part of a Tanzanian Project or assets referable to a Tanzanian Project; or
- (b) a Group member that owns shares in an entity involved in a Tanzanian Project or whose assets are primarily referable to a Tanzanian Project.

Tanzanian Projects means the Fungoni, Tajiri and Bagamoyo minerals sands projects and any other assets of the Group located in Tanzania.

Tripartite Deed means:

- (a) the deed between the Security Trustee, the Borrower and each other party to the Chemours Ilmenite Agreement (as that term is defined in the NAIF Facility Agreement);
- (b) the deed between the Security Trustee, the Borrower and each other party to the Nanjing Sanxiang Zircon Concentrate Agreement (as that term is defined in the NAIF Facility Agreement);
- (c) the deed between the Security Trustee, the Borrower and each other party to the Chilches Premium Zircon Agreement (as that term is defined in the NAIF Facility Agreement);
- (d) the deed between the Security Trustee, the Borrower and each other party to the Industrie Bitossi Premium Zircon Agreement (as that term is defined in the NAIF Facility Agreement);
- (e) the deed between the Security Trustee, the Borrower and each other party to the Venator Supply Agreement (as that term is defined in the NAIF Facility Agreement);
- (f) the deed between the Security Trustee, the Borrower and each other party to the Process Plant Design and Construct Contract (as that term is defined in the NAIF Facility Agreement);
- (g) the deed between the Security Trustee, the Borrower and each other party to the Mining Services Contract (as that term is defined in the NAIF Facility Agreement);
- (h) the deed between the Security Trustee, the Borrower and each other party to the Bulk Earthworks Contract (as that term is defined in the NAIF Facility Agreement);
- (i) the deed between the Security Trustee, the Borrower and each other party to the Electricity Supply Agreement (as that term is defined in the NAIF Facility Agreement);
- (j) the deed between the Security Trustee, the Borrower and each other party to the LNG Supply Contract (as that term is defined in the NAIF Facility Agreement);
- (k) the deed between the Security Trustee, the Borrower and each other party to the Camp Accommodation Contract (as that term is defined in the NAIF Facility Agreement);
- (l) the deed between the Security Trustee, the Borrower and each other party to the Port Services Contract (as that term is defined in the NAIF Facility Agreement);
- (m) on and from the date it is entered into, the deed between the Security Trustee, the Borrower and each other party to the Logistics Contract (as that term is defined in the NAIF Facility Agreement); and
- (n) any other document designated as such by the WA Lender and the Borrower.

Voting Day means the day on which any vote is made or required to be made by a Beneficiary under, and in accordance with the terms of, this deed, which shall be the final day of the applicable Decision Period.

WA Lender means the Ministerial body corporate preserved and continued pursuant to Section 5 of the *Industry and Technology Development Act 1998* (WA).

Warrant Deed means the warrant deed dated on or about the date of the Implementation Deed between the Parent and each "Original Lender" under the Super Senior SLNSA.

Warrant Indemnity Amount has the meaning given to it in the Senior Loan Note Subscription Agreement (as that term is defined as at the Second Amendment Effective Date and on the basis of the form of the Warrant Deed as at the Second Amendment Effective Date), provided that, for the purposes of this document, such amount shall be limited to A\$2,000,000.

WCF Lender means the lender under the Working Capital Facility Agreement.

Working Capital Facility Agreement means a working capital facility agreement which is designated or defined in a Beneficiary Accession Deed as the "Working Capital Facility Agreement" and that meets the Working Capital Facility Agreement Conditions.

Working Capital Facility Agreement Conditions means the conditions set out in clause 13.2 (*Working Capital Facility Agreement Conditions*).

1.2 **Definitions in the Security Trust Deed**

In this deed, any term which is not defined in this deed has the meaning given in the Security Trust Deed.

1.3 **References to certain general terms**

Unless the contrary intention appears, a reference in this deed to:

- (a) (without prejudice to the provisions in the Finance Documents regulating the way in which intercreditor decisions are made) a group of persons is a reference to any two or more of them jointly and to each of them individually;
- (b) (without prejudice to the provisions in the Finance Documents regulating the way in which intercreditor decisions are made) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (c) an agreement, representation or warranty by two or more Finance Parties binds them individually only;
- (d) anything (including an amount) is a reference to the whole and each part of it (but nothing in this clause 1.3(d) (*References to certain general terms*) implies that performance of part of an obligation constitutes performance of the obligation);
- (e) a document (including this deed) includes any amendment, change (as defined below), variation, supplement to, novation or replacement of it (except to the extent prohibited by a Finance Document);
- (f) a reference to any "change" in a document includes any amendment, variation, modification, restatement or, in the case of any Obligor only, any waiver or release by an Obligor or anything having an analogous meaning or effect;
- (g) **Australian dollars, dollars, \$ or A\$** is a reference to the lawful currency of Australia;
- (h) **US dollars or US\$** is a reference to the lawful currency of the United States of America;

- (i) a time of day is a reference to Perth time;
- (j) the word person includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated association and any Governmental Agency;
- (k) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (l) 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;
- (m) an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (n) a document includes any agreement (as defined above) in writing, or any certificate, notice, instrument or other document of any kind;
- (o) a body, other than a party to, or a beneficiary of, a Finance Document (including an institute, association or authority) whether statutory or not:
 - (i) that ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,
 is a reference to the body that replaces it or any body that substantially succeeds to its powers or functions;
- (p) a **guarantee** (other than under clause 20 (*Guarantee*) of the Security Trust Deed) means (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;
- (q) a Default "continuing" or "subsisting" is a reference to a Default that has not been waived or remedied in accordance with the relevant Finance Documents;
- (r) a Review Event ceases to "continue" or "subsist" if it is no longer continuing under the terms of the Finance Document which sets out the Review Event;
- (s) the provision by a Secured Creditor of financial accommodation and like expressions includes (where the context permits) the provision of financial accommodation via the subscription for an instrument;
- (t) the payment, prepayment or repayment of any principal or other indebtedness includes a reference to redemption, payment or other repayment of a bond, note or other instrument;
- (u) a Finance Party includes a reference to any person who acquires by novation or assignment from an existing Finance Party under a Finance Document;
- (v) law means common law, principles of equity and laws made by parliament (and laws made by parliament include state, territory and Commonwealth laws);
- (w) a related body corporate has the same meaning as in the Corporations Act;

- (x) a provision of law is a reference to that provision as amended or re-enacted;
- (y) a reference to a right or obligation vesting with the Bond Trustee shall be construed to be read as deriving from its capacity as agent under the Bond Terms, and any action taken by the Bond Trustee shall be deemed to be made on behalf of the Bondholders and not on behalf of itself; and
- (z) a reference to an amount **outstanding, owing, payable, unpaid** or similar expressions when used in connection with the NAIF Facility C2 shall be deemed to include an amount equivalent to amounts standing to the credit of the NAIF Facility C2 Suspense Account (an amount paid to the NAIF Facility C2 Suspense Account shall not constitute repayment or prepayment (in each case however described) of the NAIF Facility C2 or any other amount outstanding under the NAIF Facility Agreement).

1.4 **Bond Refinancing Representative**

If any Bond Refinancing takes the form of a syndicated facility agreement or other multi-lender financing, all instructions, votes and notices to be given or received in connection with that Bond Refinancing shall be given or received via the Bond Refinancing Representative, and all such instructions, votes and notices shall be conclusive. The Intercreditor Agent may assume that any voting requirements in connection with such instructions, votes or notices have been properly carried out in accordance with the Bond Refinancing Agreement.

1.5 **Super Senior SLNSA Facility Agent**

All instructions, votes and notices to be given or received in connection with the Super Senior SLNSA shall be given or received via the Super Senior SLNSA Facility Agent, and all such instructions, votes and notices shall be conclusive. The Intercreditor Agent may assume that any voting requirements in connection with such instructions, votes or notices have been properly carried out in accordance with the Super Senior SLNSA.

1.6 **No entitlement for Borrower to vote**

Despite anything in this deed or any other Finance Document, the Borrower shall not have any entitlement to vote on any Decision or NAIF Specific Decision under this deed, even in circumstances where the Borrower has acquired any Bonds or other Secured Obligations.

1.7 **Conversion of amounts denominated in a currency other than Australian dollars**

If an amount is denominated in a currency other than Australian dollars and, on a particular day, it is required to be converted to Australian dollars for the purposes of this deed, the amount will be converted to Australian dollars using the market based spot rate or mid rate on -1 Business Day to the date of determination, as determined by the Intercreditor Agent in respect of that day.

1.8 **Number**

In this deed, the singular includes the plural and vice versa.

1.9 **Headings**

In this deed, headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of the Finance Document.

1.10 **Status**

This deed is the Intercreditor Deed for the purposes of the Security Trust Deed.

1.11 **Priority of interpretation**

Without prejudice to clause 26.1 (*Application of Finance Documents*), to the extent that there is any inconsistency between the provisions of this deed and any other Finance Document, the order of priority of application is:

- (a) this deed,
- (b) the Security Trust Deed;
- (c) the Transaction Security Interests;
- (d) each Secured Creditor Agreement; and
- (e) any other Finance Document.

1.12 **Joint and several obligations**

If more than one person is identified as an Obligor, that expression refers to them, and the obligations of the Obligors under this deed bind them, jointly and severally.

1.13 **Security Trustee limitation of liability**

The Security Trustee's liability under this deed is limited in accordance with the limitation of liability clause set out in clause 3.13 (*Limitation of liability of Security Trustee to Beneficiaries*) and clause 3.14 (*Security Trustee limitation of liability to non-Beneficiaries*) of the Security Trust Deed and those clauses apply as if set out in full in this deed.

1.14 **Capacity of the Security Trustee**

The Security Trustee enters into the Finance Documents in its capacity as trustee of the Security Trust and in no other capacity and:

- (a) is bound to act on the instructions of the other Beneficiaries pursuant to, and in accordance with, the terms of this deed and the Security Trust Deed;
- (b) in the absence of such instructions from the Beneficiaries and subject to the terms of this deed and the Security Trust Deed, the Security Trustee is not bound to act including under any Finance Document; and
- (c) it is not obliged to do or refrain from doing anything under any document to which it is a party (including incurring any liability) unless the Security Trustee's liability is limited in the same manner as set out in clause 1.13 (*Security Trustee limitation of liability*).

1.15 **Capacity of Intercreditor Agent**

The Intercreditor Agent enters into this deed in its capacity as agent of the Finance Parties (other than the Security Trustee).

1.16 **Intercreditor Agent and Security Trustee same entity**

If the Intercreditor Agent and the Security Trustee are the same entity, any instructions given to one will be deemed to be given to both, at the same time.

1.17 **Bond Trustee limitation of liability**

The Bond Trustee's liability under this deed is limited in accordance with the limitation of liability clause set out in Part I (*Form of limitation of liability clause for Bond Trustee*) of

Schedule 6 (*Permissible limitation of liability clauses*) of the Security Trust Deed and that clause applies as if set out in full in this deed, as if references in that clause to "this deed" were a reference to this deed and with any other necessary changes.

1.18 **Meaning of 'reasonable period'**

Subject at all times to clause 11.2 (*Urgent action*), 11.5(b) and 11.5(c) (*Notice of Event of Default and appointment of administrator*) and 11.10(b)(i) (*Decision Period for Enforcement Action*) pursuant to which the parties acknowledge and agree that the Second Payment EoD Decision Period is reasonable, for the purposes of clause 11.5 (*Notice of Event of Default and appointment of administrator*), clause 11.10 (*Decision Period for Enforcement Action*) and clause 12.2(b) (*Intercreditor Agent to advise – Review Event Notice*) when specifying what, in its opinion, is a reasonable period, the Intercreditor Agent will take into account, without limitation:

- (a) the urgency within which instructions are required;
- (b) the facts and circumstances then subsisting;
- (c) the number of Beneficiaries involved;
- (d) the time reasonably required to liaise with each Beneficiary; and
- (e) if known, the minimum time period (if any) provided for casting votes in accordance with the terms of the relevant Secured Lender Agreements and (where applicable) Hedging Agreements (including, without limitation, terms relating to convening of Bondholder meetings and voting).

1.19 **WA Lender's rights, duties, powers and functions**

- (a) **(Agent)** The WA Lender may appoint an agent or attorney to act on its behalf in relation to all or any of its rights and obligations under the Finance Documents.
- (b) **(Notices)** Each Obligor, the Security Trustee and the Intercreditor Agent agree to provide a copy of all notices, certificates, requests for consent or approval, requests for waiver, information, reports, documents and other communications in connection with the Finance Documents provided or required to be provided to the WA Lender to the NAIF Representative at the same time as they are provided or required to be provided to the WA Lender. This clause applies to any obligation to give any communication to the WA Lender in the Finance Documents, even if the relevant clause does not expressly reference this requirement.
- (c) **(State Party's powers, functions or duties)** Notwithstanding anything contained or implied in the Finance Documents to the contrary, the parties expressly agree that the WA Lender, the NAIF and the Commonwealth are not obliged to exercise a power, function, duty or right, statutory or otherwise, which is granted to or within the responsibility of any other Governmental Agency, or to influence, over-ride or direct any Governmental Agency in the proper exercise and performance of its legal duties and functions.
- (d) **(No fettering)** Nothing contained in the Finance Documents or contemplated by the Finance Documents has the effect of constraining the WA Lender, the NAIF or the Commonwealth or placing any fetter on the WA Lender's, the NAIF's or the Commonwealth's discretion or the discretion of any Governmental Agency or other government-related functionary to exercise or not to exercise any of its rights, duties, powers or functions, statutory or otherwise.
- (e) **(No Claim)** Subject to paragraph (f) below no party will be entitled to make any claim, demand, suit, proceeding or cause of action against the WA Lender under the

Finance Documents for any loss, cost, liability or expense relating to any exercise or failure of the WA Lender to exercise its statutory rights or duties.

- (f) **(Liability for breach)** Paragraph (e) above does not limit any liability of the WA Lender which the WA Lender would have had to any party to this deed in accordance with any Finance Document as a result of a breach by the WA Lender of a term of any Finance Document but for paragraph (e).

2. **SCOPE OF RELATIONSHIPS - INTERCREDITOR AGENT**

2.1 **Appointment of Intercreditor Agent**

Each Finance Party (excluding the Security Trustee and the Intercreditor Agent) appoints the Intercreditor Agent to act as its agent in connection with the Finance Documents and each such Finance Party authorises such appointment.

2.2 **Extent of authority and obligations of Intercreditor Agent**

Each Finance Party (excluding the Security Trustee and the Intercreditor Agent) irrevocably authorises the Intercreditor Agent to:

- (a) take action on the Finance Party's behalf in accordance with this deed and any other Finance Document to which the Intercreditor Agent is a party; and
- (b) exercise their respective rights expressly set out in the Finance Documents (except under the respective Secured Creditor Agreements and related fee letters) and rights, powers and discretions reasonably incidental to them and carry out their respective obligations expressly set out in those documents.

The Finance Parties acknowledge that the Intercreditor Agent has no obligations except those expressly set out in this deed and any other Finance Documents to which it is a party.

2.3 **Acceptance by Intercreditor Agent**

The Intercreditor Agent agrees to act as the agent of the Finance Parties (excluding the Security Trustee and the Intercreditor Agent) in connection with the Finance Documents in accordance with this deed and the other Finance Documents to which it is a party.

2.4 **Powers of Intercreditor Agent**

The Intercreditor Agent has the Powers delegated to it under this deed and the other Finance Documents to which it is a party, and all other powers reasonably incidental to them subject to this deed including to:

- (a) obtain, accept, rely on, act on or decline to act on:
 - (i) assistance, advice and statements of solicitors, accountants and other experts and consultants engaged by it (including as its own independent counsel). In relying on the advice or services of any such experts (whether obtained by the Intercreditor Agent or any other Finance Party) the Intercreditor Agent 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, other than where such damages, costs or losses or diminution in value or other liability arises as a result of the Intercreditor Agent's fraud, gross negligence or wilful misconduct; and
 - (ii) any communication, certificate, notice or other document (including any facsimile transmission) in respect of which it is not actually aware that the signature thereon is not genuine and binding;

- (b) act in relation to the Finance Documents through its officers, employees, secondees and agents;
- (c) unless a Finance Document expressly provides otherwise, disclose to any other party to this deed, any information it reasonably believes it has received as Intercreditor Agent under this deed;
- (d) at any time seek directions or instructions of the Beneficiaries as to how it should act in relation to the Finance Documents (including whether it should give an approval or consent or exercise a Power under a Finance Document);
- (e) apply to a court for directions in relation to any question relating to any of its Powers and obligations under this deed or any other Finance Document or any applicable law, and may comply with any such direction;
- (f) do such things and execute such documents as it considers necessary or desirable for it to do or execute:
 - (i) pursuant to or in connection with any valid direction given by any Beneficiary;
 - (ii) in order to enable or facilitate the exercise of any Powers or the performance of any of its duties; and
- (g) from time to time agree any changes to, give any consent in relation to and grant any waivers of any Finance Document to which it is a party if that change, consent or waiver is:
 - (i) in the opinion of the Intercreditor Agent, to correct an obvious or minor error, ambiguity or inconsistency or is of a formal, technical or administrative nature only; or
 - (ii) in the opinion of the Intercreditor Agent, necessary to comply with the law or with the requirements of any Governmental Agency.

The Intercreditor Agent will notify each Beneficiary of any action taken by it under this paragraph (g) as soon as practicable after taking that action.

2.5 **Binding nature of relationship and no enquiries**

- (a) Each Finance Party agrees to be bound by anything properly done or properly not done by the Intercreditor Agent in accordance with the Finance Documents, whether or not on instructions and whether or not the Finance Party gave an instruction or approved of the act or omission.
- (b) In relation to any act of the Intercreditor Agent under a Finance Document, the Obligors may not and need not enquire as to the authority of the Intercreditor Agent to take such action.

2.6 **Excluded roles and duties of Intercreditor Agent**

The appointment as agent does not mean that the Intercreditor Agent:

- (a) is a trustee for the benefit of; or
- (b) is a partner of; or
- (c) has a fiduciary duty to, or other fiduciary relationship with,

any Finance Party, any Obligor or any other person, except as expressly set out in any Finance Document to which the Intercreditor Agent is a party.

2.7 **Intercreditor Agent fee**

The Obligors agree to pay to the Intercreditor Agent a fee in the amounts and at the times agreed between them from time to time.

2.8 **Duties administrative only**

The Intercreditor Agent's duties under the Finance Documents to which it is a party are solely mechanical and administrative in nature.

3. **SCOPE OF RELATIONSHIPS - SECURITY TRUSTEE**

3.1 **Acknowledgement of appointment of Security Trustee**

Each Beneficiary acknowledges and consents to the Security Trustee acting as security trustee in connection with the Finance Documents to which it is a party.

3.2 **Authority, obligations and powers of the Security Trustee**

Each Beneficiary acknowledges:

- (a) the extent and nature of the Powers granted to, and the Duties of, the Security Trustee under the Security Trust Deed;
- (b) that those Powers may be exercised by the Security Trustee to perform duties set out in this deed and the other Finance Documents to which the Security Trustee is a party; and
- (c) that the Security Trustee has no Duties except those expressly set out in the Finance Documents to which it is a party.

3.3 **Powers of the Security Trustee**

The Security Trustee has the Powers delegated to it under this deed and the other Finance Documents to which it is a party in that capacity, and all other powers reasonably incidental to them subject to this deed including to:

- (a) apply to a court for directions in relation to any question relating to any of its Powers and obligations under this deed or any other Finance Document or any applicable law, and may comply with any such direction; and
- (b) do such things and execute such documents as it considers necessary or desirable for it to do or execute:
 - (i) pursuant to or in connection with any valid direction given by any Beneficiary (other than the Security Trustee); and
 - (ii) in order to enable or facilitate the exercise of any Powers or the performance of any of its duties.

3.4 **Binding nature of relationship and no enquiries**

- (a) Each Beneficiary agrees to be bound by anything properly done or properly not done by the Security Trustee in accordance with the Finance Documents to which it is a party.

- (b) No Obligor need inquire whether any instructions have been given to the Security Trustee by the Intercreditor Agent or as to the terms of those instructions. As between the Obligors and the Security Trustee, all action taken by the Security Trustee under a Finance Document will be taken to be authorised.

3.5 **Excluded roles and duties of the Security Trustee**

The appointment as security trustee does not mean that the Security Trustee:

- (a) is a trustee for the benefit of; or
- (b) is a partner of; or
- (c) has a fiduciary duty to, or other fiduciary relationship with,

any Beneficiary, any Obligor or any other person, except as expressly set out in any Finance Document to which the Security Trustee is a party or as implied by law.

3.6 **Limits on duties of the Security Trustee**

Each Beneficiary and each Obligor acknowledges the limitations on duties of the Security Trustee under the Security Trust Deed (including, without limitation, under clause 3.4 (*Limitation on Duties*) of the Security Trust Deed). Without limitation, the Security Trustee does not have any duty or responsibility to exercise any Power if it has sought instructions from the Beneficiaries under clause 4 (*Voting*) as to whether it should exercise, or as to the manner of exercise, of the Power, pending its receipt of those instructions (despite any other provision of a Finance Document which imposes a duty on it to do so.

3.7 **No representation by Security Trustee**

Each Beneficiary acknowledges that the Security Trustee has made no representation or given any warranty upon which it has relied, except to the extent expressly set out in this deed or the Security Trust Deed.

4. **VOTING**

4.1 **Voting rights of Hedge Counterparties**

Notwithstanding any provision in the Finance Documents to the contrary, a Hedge Counterparty will only be entitled to provide its consent or vote on Decisions:

- (a) as permitted by clause 11.15 (*Process after Enforcement Date*);
- (b) in relation to Decisions requiring instructions from either the Majority Hedge Counterparties or each Hedge Counterparty under clause 4.2 (*Amendment Decisions relating to this deed*);
- (c) a Decision to amend clause 11.16 (*Restrictions on Hedge Counterparties terminating or closing out Hedge Transactions*) will not be effective unless approved by each Hedge Counterparty; and
- (d) to the extent this deed expressly refers to the consent, or right to vote, of the Hedge Counterparty.

4.2 **Amendment Decisions relating to this deed**

Subject to the provisions of clause 4.11 (*Missing votes*) and 4.14 (*Amendments to Finance Documents*), the following Amendment Decisions in respect of this deed shall (and may only) be taken if the Intercreditor Agent has received instructions to take such action from:

- (a) each Secured Lender (which, for the avoidance of doubt, shall not include any Hedge Counterparty), to amend the definition of "Aggregate Secured Lender Eligible Voting Amount", "Cost to Complete Eligible Voting Amount", "Pre-Enforcement Eligible Voting Amount", "Secured Lender", "Secured Lender Agreement", "Super Majority Beneficiaries", "Super Senior Beneficiaries", "Super Senior Facilities" or "Super Senior Finance Parties";
- (b) each Secured Lender and the Majority Hedge Counterparties:
 - (i) to amend the definition of "Eligible Voting Amount", "Finance Document", "Insolvency Event of Default", "Material Event of Default", "NAIF Covenant", "NAIF Specific Event of Default", "NAIF Finance Document", "NAIF Specific Decision", "Simple Majority Beneficiaries" or "Secured Obligations" or clause 10 (*Servicing of Secured Obligations, standstill and enforcement*), clause 16 (*Distribution of Recovered Money*) or this clause 4 (*Voting*), other than clause 4.6 (*NAIF Specific Decisions*) below, or any requirement in a clause requiring the agreement or instruction of (or which states that the Intercreditor Agent is to act on the instruction of) a Beneficiary, a specified majority of Beneficiaries (or a class of them) or all the Beneficiaries (or all of the applicable class of them);
 - (ii) which has the effect of varying the order of priority in the enforcement waterfall set out in clause 16 (*Distribution of Recovered Money*);
 - (iii) to amend the terms of the guarantee set out in clause 20 (*Guarantee*) of the Security Trust Deed;
 - (iv) to permit any re-assignment, re-transfer or release (whether partial or in full) of any Security created or evidenced by any Transaction Security Interest granted by an Obligor or otherwise release, materially modify or adversely affect any such Security or guarantee in each case granted by an Obligor (other than as permitted by, or in relation to a Permitted Disposal under, the Finance Documents), or to waive any requirement for an Obligor to grant any Security or any material waiver of the type or substance of Security contemplated to be granted;
 - (v) an amendment of any definition in the Finance Documents relevant to anything covered by this clause 4.2 (*Amendment Decisions relating to this deed*); and
- (c) each Secured Creditor, to amend the definition of "Aggregate Eligible Voting Amount", "Beneficiary", "Hedge Counterparties' Debt", "Hedge Counterparties' Eligible Voting Amount", "Payment Event of Default", "Post-Enforcement Eligible Voting Amount", "Potential Hedge Exposure", "Secured Creditor", "Secured Creditor Agreement" or "Secured Obligations Limits" or to amend clause 4.6 (*NAIF Specific Decisions*) below.

4.3 Other Amendment Decisions

- (a) Subject to the provisions of clause 4.6 (*NAIF Specific Decisions*), clause 4.11 (*Missing votes*) and clause 4.14 (*Amendments to Finance Documents*), Amendment Decisions (other than Amendment Decisions covered by clause 4.2 (*Amendment Decisions relating to this deed*)) shall (and may only) be taken if the Intercreditor Agent has received instructions to take such action from:
 - (i) in respect of any provision in any Secured Lender Agreement relating to:
 - (A) financial covenants (including definitions and means for calculation of financial covenants);

- (B) maturity dates (other than any extension or deferral);
 - (C) amortisation schedules and prepayment and cancellation provisions (including cash sweep and cash share provisions) (other than any extension or deferral and other than the update to the "Facility B Amortisation Schedule" and the "Facility C Amortisation Schedule" as a condition precedent to financial close under the NAIF Facility Agreement pursuant to Schedule 2 (*Conditions Precedent*), Part I (*Conditions Precedent to Financial Close*) item 8(i) of the NAIF Facility Agreement); and
 - (D) any increase in interest rates, fees or other pricing,
- all Beneficiaries with Pre-Enforcement Eligible Voting Amounts;
- (ii) in respect of the "Cost to Complete – Physical Completion" or "Cost to Complete – Project Completion" test under the NAIF Facility Agreement or the Bond Terms (or any similar or replacement "cost to complete" test under the NAIF Facility Agreement or the Bond Terms), the Super Majority Beneficiaries with Cost to Complete Eligible Voting Amounts;
 - (iii) in respect of a Material Provision (other than in respect of a financial covenant (however described) which, for the avoidance of doubt, is covered by paragraph (i) above) in the NAIF Facility Agreement or Bond Terms or Bond Refinancing Agreement (as applicable), the Super Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts;
 - (iv) in respect of any Pre-First Release Conditions Precedent (as that term is defined in the Bond Terms) under clause 6.2 (*Pre-First Release Conditions Precedent*) of the Bond Terms (other than the condition precedent in clause 6.2(p) relating to licences, rights and other regulatory approvals and Authorisations to the extent such licence, rights or other regulatory approval relates to a NAIF Covenant) or any condition under clauses 6.3(b) to 6.3(e) (inclusive) (*Disbursement of the proceeds*) of the Bond Terms or their equivalents under the NAIF Facility Agreement, the WA Lender and the Bond Trustee (provided that this is without prejudice to any waiver by any applicable Required Majority for an EoD Waiver Decision under clause 4.4 (*EoD Waiver Decisions*), such that if an EoD Waiver Decision results in a waiver of a Default, that Default will cease to be a draw-stop for the purpose of 4.2(c)(i) (*Further conditions precedent*) of the NAIF Facility Agreement or any equivalent provision under the Bond Terms or Bond Refinancing Agreement);
 - (v) in respect of any undertaking under clause 14 (*Information Undertakings*) of the Bond Terms or their equivalents under the NAIF Facility Agreement or the Super Senior SLNSA (which undertakings for the avoidance of doubt will at all times remain legally binding contractual undertakings enforceable by the Bond Trustee, WA Lender or the Super Senior SLNSA Facility Agent (as applicable) against the Obligors, provided that any such enforcement may include seeking specific performance but may not include taking Enforcement Action, taking any action described in paragraphs (a) to (d) of the definition of Acceleration Notice or seeking damages in respect of breach of that contractual undertaking, in each case, unless otherwise permitted under this deed) (other than in respect of a grant of an extension for a period of up to 10 Business Days to comply with the relevant information undertaking), the Super Senior SLNSA Facility Agent, the WA Lender and the Bond Trustee (provided that this is without prejudice to any waiver by any applicable

Required Majority for an EoD Waiver Decision under clause 4.4 (*EoD Waiver Decisions*));

- (vi) in respect of a condition precedent under:
 - (A) the Super Senior SLNSA, the Super Senior SLNSA Facility Agent; and
 - (B) the NAIF Facility Agreement, the WA Lender;
- (vii) in respect of any provision in the NAIF Facility Agreement, Bond Terms or Bond Refinancing Agreement (as applicable) or the Super Senior SLNSA not covered by paragraphs (i) to (vi) (inclusive) above, the Simple Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts; and
- (viii) in respect of any other representation, warranty, undertaking, condition precedent, Review Event, Event of Default or mandatory prepayment in any Finance Document not covered by paragraphs (i) to (vii) (inclusive) above, the Simple Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts,

provided that, in respect of Amendment Decisions under paragraphs (iii) and (vii) above, no Secured Lender under the Working Capital Facility Agreement shall be entitled to provide its consent or vote if the relevant Amendment Decision relates to a provision under the NAIF Facility Agreement, the Bond Terms or Bond Refinancing Agreement (as applicable) or the Super Senior SLNSA which is not reflected in the Working Capital Facility Agreement.

- (b) Any Amendment Decision taken in accordance with this clause 4.3 (*Other Amendment Decisions*) shall be deemed to apply to any equivalent provision under any other Finance Document (with the effect that an amendment of any such Finance Document will automatically occur once the Amendment Decision in accordance with this clause 4.3 (*Other Amendment Decisions*) has been taken).

4.4 **EoD Waiver Decisions**

- (a) Subject to the provisions of clause 4.6 (*NAIF Specific Decisions*) and clause 4.11 (*Missing votes*), EoD Waiver Decisions shall (and may only) be taken if the Intercreditor Agent has received instructions to take such action from:
 - (i) in respect of a Payment Event of Default under a Secured Lender Agreement, the relevant Secured Lender suffering the Payment Event of Default;
 - (ii) in respect of a Material Event of Default under a Secured Lender Agreement, the Super Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts; and
 - (iii) in respect of Other Events of Default, the Simple Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts.
- (b) Any EoD Waiver Decision taken in accordance with this clause 4.4 (*EoD Waiver Decisions*) shall be deemed to apply to any equivalent provision under any other Finance Document (with the effect that an EoD Waiver Decision of any such Finance Document will automatically occur once the EoD Waiver Decision in accordance with this clause 4.4 (*EoD Waiver Decision*) has been taken).
- (c) For the avoidance of any doubt and notwithstanding any other provision in a Finance Document, this clause 4.4 (*EoD Waiver Decisions*) shall not apply to any NAIF Specific Decision.

4.5 Non-EoD Decisions

Subject to the provisions of clause 4.6 (*NAIF Specific Decisions*) and clause 4.11 (*Missing votes*), Non-EoD Decisions shall (and may only) be taken if the Intercreditor Agent has received instructions to take such action from:

- (a) in respect of any failure by the Borrower to meet a "Cost to Complete – Physical Completion" or "Cost to Complete – Project Completion" test under the NAIF Facility Agreement or the Bond Terms (or any similar or replacement "cost to complete" test under the NAIF Facility Agreement or the Bond Terms), the Super Majority Beneficiaries with Cost to Complete Eligible Voting Amounts;
- (b) in respect of any Material Provisions, the Super Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts;
- (c) in respect of any proposed withdrawal from a Debt Service Reserve Account by the WA Lender or the Bond Trustee or the Bond Refinancing Representative (as applicable) for the purposes of meeting the Borrower's payment obligations as permitted to be paid in accordance with any cash flow waterfall under the NAIF Facility Agreement or the Bond Terms or any Bond Refinancing Agreement (as applicable), the Super Senior Beneficiaries until all amounts outstanding under the Super Senior Facilities have been repaid in full and, thereafter the Super Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts;
- (d) subject at all times to clause 14.3 (*Application of mandatory prepayments – general*), in respect of the approval (however described) with respect to the application of any insurance proceeds pursuant to a "Reinstatement Program" under and as defined in clause 7.2 (*Insurance mandatory prepayment*) of the NAIF Facility Agreement and under clause 12.5 (*Mandatory Prepayment and Redemption Events - Insurance mandatory redemption*) of the Bond Terms (or any equivalent provision under any Bond Refinancing), the Super Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts;
- (e) in respect of a payment of any amount under a Secured Lender Agreement, by the relevant Secured Lender under that Secured Lender Agreement;
- (f) in respect of a waiver of any requirement for an Obligor to grant any Security or any material waiver of the type or substance of Security contemplated to be granted, by each Secured Lender and the Majority Hedge Counterparties;
- (g) in respect of a waiver of any Pre-First Release Conditions Precedent (as that term is defined in the Bond Terms) under clause 6.2 (*Pre-First Release Conditions Precedent*) of the Bond Terms (other than the condition precedent in clause 6.2(p) relating to licences, rights and other regulatory approvals and Authorisations to the extent such licence, rights or other regulatory approval relates to a NAIF Covenant) or any condition under clauses 6.3(b) to 6.3(e) (inclusive) (*Disbursement of the proceeds*) of the Bond Terms or their equivalents under the NAIF Facility Agreement, the WA Lender and the Bond Trustee (provided that this is without prejudice to any waiver by any applicable Required Majority for an EoD Waiver Decision under clause 4.4 (*EoD Waiver Decisions*), such that if an EoD Waiver Decision results in a waiver of a Default, that Default will cease to be a draw-stop for the purpose of 4.2(c)(i) (*Further conditions precedent*) of the NAIF Facility Agreement or any equivalent provision under the Bond Terms or Bond Refinancing Agreement); and
- (h) in respect of a waiver or amendment of any undertaking under clause 14 (*Information Undertakings*) of the Bond Terms or their equivalents under the NAIF Facility Agreement or the Super Senior SLNSA (which undertakings for the avoidance of doubt will at all times remain legally binding contractual undertakings enforceable

by the Bond Trustee, WA Lender or Super Senior SLNSA Facility Agent (as applicable) against the Obligors, provided that any such enforcement may include seeking specific performance but may not include taking Enforcement Action, taking any action described in paragraphs (a) to (d) of the definition of Acceleration Notice or seeking damages in respect of breach of that contractual undertaking, in each case, unless otherwise permitted under this deed) (other than in respect of a grant of an extension for a period of up to 10 Business Days to comply with the relevant information undertaking), the Super Senior SLNSA Facility Agent, the WA Lender and the Bond Trustee (provided that this is without prejudice to any waiver by any applicable Required Majority for an EoD Waiver Decision under clause 4.4 (*EoD Waiver Decisions*));

- (i) subject to the preceding paragraphs, in respect of a condition precedent under:
 - (i) the Super Senior SLNSA, the Super Senior SLNSA Facility Agent; and
 - (ii) the NAIF Facility Agreement, the WA Lender and
- (j) in respect of any other representation, warranty, undertaking or condition precedent in a Finance Document not covered by paragraphs (a) to (i) (inclusive) above, the Simple Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts.

4.6 **NAIF Specific Decisions**

- (a) All NAIF Specific Decisions shall (and may only) be taken if the Intercreditor Agent has received instructions to take such action:
 - (i) on the basis of the voting procedures set out in the relevant NAIF Finance Document (if any); or
 - (ii) if there are no voting procedures set out in the relevant NAIF Finance Document, by the WA Lender unilaterally.
- (b) The WA Lender agrees to notify and consult in good faith with the Super Senior SLNSA Facility Agent for a period of not less than 5 Business Days (commencing from the date on which the WA Lender becomes aware of the need to make a NAIF Specific Decision) in relation to any proposed Enforcement Action relating to a NAIF Specific Decision before taking any such action.
- (c) Following the expiry of the 5 Business Day consultation period in respect of a NAIF Specific Decision (or such longer period as may be agreed between the WA Lender and the Super Senior SLNSA Facility Agent), that NAIF Specific Decision shall (and may only) be taken in accordance with paragraph (a).

4.7 **Other Decisions**

Subject to the restrictions on voting rights set out in clause 4.1 (*Voting rights of Hedge Counterparties*), and subject to clauses 4.6 (*NAIF Specific Decisions*) and clause 4.11 (*Missing votes*), any Decision not covered by clauses 4.2 (*Amendment Decisions relating to this deed*) to 4.6 (*NAIF Specific Decisions*) (inclusive), clause 11 (*Servicing of Secured Obligations, standstill and enforcement*) and clause 12 (*Review Events*) shall (and may only) be taken if the Intercreditor Agent has received instructions to take such action from the Simple Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts.

4.8 **Voting - seeking instructions**

Subject to clause 4.6 (*NAIF Specific Decisions*), whenever a Decision is required to be made by the Beneficiaries, or those Beneficiaries entitled to vote on the Decision, then subject to the provisions of this deed, that Decision will be made in accordance with the following

procedures (except where the Decision relates to the taking of Enforcement Action, in which case this clause 4.8 shall be subject to clause 10 (*Servicing of Secured Obligations, standstill and enforcement*) or where it is a Review Event Waiver Decision, in which case this clause 4.8 shall be subject to clause 12 (*Review Events*)):

- (a) when the Borrower wants the Intercreditor Agent to refer a Decision to all or any of the Beneficiaries, it must give a notice (**Decision Notice**) to the Intercreditor Agent of the Decision and indicate in the Decision Notice whether the Decision relates to a matter referred to in clause 4.2 (*Amendment Decisions relating to this deed*), clause 4.3 (*Other Amendment Decisions*), clause 4.4 (*EoD Waiver Decisions*), clause 4.5 (*Non-EoD Decisions*) or clause 4.7 (*Other Decisions*);
- (b) when any Beneficiary becomes aware of the need to make a Decision it must promptly inform the Intercreditor Agent;
- (c) promptly upon becoming aware of the need to make a Decision, the Intercreditor Agent must:
 - (i) advise the relevant Beneficiaries of the Decision proposed to be made and percentage of votes required to approve that Decision;
 - (ii) subject to clause 11.6(c) (*Intercreditor Agent to advise – Default Notice*) and clause 12.2(b) (*Intercreditor Agent to advise – Review Event Notice*), request (**General Decision Request**) that each such Beneficiary provide its Eligible Voting Amount calculation (including details of its determination including, where it is based on a market price or rate, the price or rates used in its calculation) and voting instructions in relation to the Decision;
 - (iii) specify the Decision Period within which the instructions of Beneficiaries in relation to the General Decision Request need to be received in order for the Intercreditor Agent to determine what action will be taken;
 - (iv) advise the relevant Beneficiaries of the applicable Voting Day for the purposes of the Beneficiaries notifying the Intercreditor Agent of their Eligible Voting Amounts under clause 4.9 (*Notification of Eligible Voting Amounts*); and
 - (v) inform the Obligors (and, if relevant, the Security Trustee) of the result of the relevant Decision promptly after it has been determined,

and may:

- (d) rely upon (without any duty to investigate) any written advice from that Beneficiary stating the Eligible Voting Amount of that Beneficiary and whether it approves of the Decision; and
- (e) after receipt of voting instructions from a Beneficiary, seek further information from that Beneficiary in respect of those instructions as it reasonably deems necessary.

4.9 **Notification of Eligible Voting Amount**

- (a) Upon request by the Intercreditor Agent under this deed, a Beneficiary must advise the Intercreditor Agent in writing of its Eligible Voting Amount as at 5.00 pm on the Business Day prior to the relevant Voting Day.
- (b) The Intercreditor Agent will rely on the Eligible Voting Amount notified to it under paragraph (a) above in making determinations under this deed.
- (c) Notwithstanding paragraphs (a) and (b) above and subject always to clause 4.8(d) (*Voting – seeking instructions*), a Hedging Counterparty must, promptly upon

request by the Intercreditor Agent, provide a copy of any Hedging Agreement to which it is a party, together with any other information reasonably requested by the Intercreditor Agent, in each case for the purposes of the Intercreditor Agent considering the value of any Hedging Transaction executed under a Hedging Agreement to which that Hedging Counterparty is a party.

4.10 **Voting of Hedge Counterparties**

For the purposes of clause 4.2(b) (Amendment Decisions relating to this deed) and subject to clause 4.11 (*Missing votes*), if:

- (a) at least the Majority Hedge Counterparties advise the Intercreditor Agent that they consent to the relevant Amendment Decision, the consent is taken to have been given by all Hedge Counterparties for the relevant Amendment Decision; or
- (b) less than the Majority Hedge Counterparties advise the Intercreditor Agent that they consent to the relevant Amendment Decision, then none of the Hedge Counterparties will be taken to have consented to the relevant Amendment Decision.

4.11 **Missing votes**

If, following the Intercreditor Agent's request for instructions to the Beneficiaries pursuant to a General Decision Request, a Security Enforcement Request, a Review Event Waiver Request or a request under clause 11.15 (*Process after Enforcement Date*), any Beneficiary:

- (a) does not provide instructions as to its Eligible Voting Amount before the day required under clause 4.9 (*Notification of Eligible Voting Amount*); or
- (b) provides a response but does not advise if it consents to the relevant Decision before the expiration of the Decision Period; or
- (c) makes its or their consent conditional in respect of the relevant Decision (to the extent that such condition is required to be satisfied prior to the effectiveness of the relevant Decision),

the Intercreditor Agent will:

- (d) in respect of paragraphs (a) and (b) treat the Beneficiary as having an Eligible Voting Amount of nil and not being a Beneficiary for the purposes of determining whether the Decision is approved and will incur no liability for doing so; and
- (e) in respect of paragraph (c) will regard the Beneficiary as not consenting to the Decision unless it receives confirmation from the Beneficiary prior to the expiration of the Decision Period that the relevant conditions have been satisfied.

4.12 **Decision Period for General Decision Requests**

Except where clauses 11.5(b) or 11.5(c) (*Notice of Event of Default and appointment of administrator*) apply, the provisions of clause 11.10 (*Decision Period for Enforcement Action*) relating to Decision Periods for General Events of Default in respect of Security Enforcement Requests will apply mutatis mutandis to Decision Periods in respect of General Decision Requests as if references to a Security Enforcement Request were references to a General Decision Request.

4.13 **Decisions made by Required Majority bind all Beneficiaries**

Any Decision made, and instructions given, by the Required Majority (including without limitation under clauses 10 (*Servicing of Secured Obligations, standstill and enforcement*) and 12 (*Review Events*)), and any action taken by the Intercreditor Agent and Security

Trustee in accordance with such Decision or instructions, binds all of the Beneficiaries. Without prejudice to clause 11.14 (*Beneficiaries to comply with Acceleration Notices*), the Obligors and the Beneficiaries are obliged to take any action required under the Finance Documents to implement a Decision made by the Required Majority.

4.14 **Amendments to the Finance Documents**

- (a) For the avoidance of doubt each of the Intercreditor Agent and the Security Trustee may effect any amendments to the Finance Documents to which it is a party for itself and for and on behalf of the Beneficiaries to give effect to any Decision made, and instructions given, by the Required Majority.
- (b) Subject to paragraph (c), each of the Intercreditor Agent and the Security Trustee may effect (including by instructing the Bond Trustee or any Bond Refinancing Representative (as applicable) to make amendments to the Bond Terms or any Bond Refinancing Agreement (as applicable) or to any Transaction Security Interest to which the Bond Trustee or any Bond Refinancing Representative (as applicable)) any amendments to the Finance Documents for itself and for and on behalf of the Beneficiaries which:
 - (i) it is permitted to make in accordance with this deed;
 - (ii) in the opinion of the Intercreditor Agent or Security Trustee, are required to correct an obvious or minor error, ambiguity or inconsistency or of a formal, technical or administrative nature only; or
 - (iii) in the opinion of the Intercreditor Agent or Security Trustee, are necessary to comply with the law or with the requirements of any Governmental Agency.
- (c) The Bond Trustee or any Bond Refinancing Representative (as applicable) each acknowledges and agrees that immediately upon receiving instructions from the Intercreditor Agent or the Security Trustee in accordance with this clause 4.14 (*Amendments to the Finance Documents*) to effect amendments to the Bond Terms or any Bond Refinancing Agreement (as applicable) or to any Transaction Security Interest to which the Bond Trustee or any Bond Refinancing Representative (as applicable) is a party, it shall take all steps necessary to effect those amendments to the Bond Terms or any Bond Refinancing Agreement (as applicable) or to any Transaction Security Interest to which the Bond Trustee or any Bond Refinancing Representative (as applicable) is a party, provided that where it has received instructions from the Intercreditor Agent or Security Trustee in accordance with this deed, it is not required to seek any further instructions from the Bondholders or Bond Refinancing Providers (as applicable).

4.15 **Super Senior Consultation Obligations**

- (a) Subject to paragraph (b) and to clause 4.6 (*NAIF Specific Decisions*), the WA Lender and the Super Senior SLNSA Facility Agent agree to consult in good faith with one another for a period of not less than 5 Business Days in relation to any Decisions requiring the vote or instructions of the Super Majority Beneficiaries or the Simple Majority Beneficiaries including in respect of any proposed Enforcement Action or any continuing Enforcement Action.
- (b) Following the expiry of the 5 Business Day consultation period in respect of a NAIF Specific Decision (or such longer period as may be agreed between the WA Lender and the Super Senior SLNSA Facility Agent) in accordance with paragraph (a), any Decision requiring the vote or instructions of the Super Majority Beneficiaries or the Simple Majority Beneficiaries shall then be made in accordance with this Clause 4 (*Voting*).

- (c) Nothing in this clause 4.15 shall limit the WA Lender or the Super Senior SLNSA Facility Agent's right to instruct the Intercreditor Agent to instruct the Security Trustee to appoint a Receiver at any time during a "decision period" (as defined in the Corporations Act) (including immediately) in accordance with clause 11.5 (*Notice of Event of Default and appointment of administrator*).

5. **INTERCREDITOR AGENT**

5.1 **Instructions, extent of discretions**

- (a) **(Consult with, and obtain instructions from, the relevant Beneficiaries)** If the Intercreditor Agent proposes to act (or give instructions to the Security Trustee to act) on any of the matters described in clauses 4.2 (*Amendment Decisions relating to this deed*) to clause 4.7 (*Other Decisions*) inclusive or clause 10 (*Servicing of Secured Obligations, standstill and enforcement*), it agrees to:
- (i) consult the Secured Lenders and (if the consent or vote of any Hedge Counterparty is expressly required on a particular Decision under this deed) the Hedge Counterparty, on the proposal; and
 - (ii) (subject to clause 4 (*Voting*)) take action if, and only if, it receives instructions to do so from:
 - (A) the Required Majority – on all Decisions listed in clauses 4.2 (*Amendment Decisions relating to this deed*) to 4.5 (*Non-EoD Decisions*) inclusive and in clause 4.7 (*Other Decisions*);
 - (B) the WA Lender - on all NAIF Specific Decisions listed in clause 4.6 (*NAIF Specific Decisions*);
 - (C) the Required Majority on all Decisions the subject of clause 10 (*Servicing of Secured Obligations, standstill and enforcement*); and
 - (D) the Simple Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts - on all other Decisions,in each case, in accordance with the provisions of this deed.
- (b) **(May refrain from taking action)** The Intercreditor Agent may refrain from exercising any right vested in it under the Finance Documents until it has received instructions in accordance with this deed as to whether it is to be exercised and, if applicable, the way in which it is to be exercised but may act in what it (in its sole discretion) considers to be the best interests of all Beneficiaries.
- (c) **(Assumptions as to instructions)** The Intercreditor Agent may assume that:
- (i) any instructions received by it from the Required Majority, any Beneficiary or any group of Beneficiaries (as applicable) are given in accordance with the terms of the Finance Documents; and
 - (ii) unless it has received notice of revocation, that those instructions have not been revoked.

5.2 **Intercreditor Agent's actions**

Whenever the Intercreditor Agent receives instructions pursuant to this deed, it agrees to follow them but only in so far as:

- (a) they are in accordance with this deed; and

- (b) they are not contrary to any law, including any law or regulation binding only on the Intercreditor Agent.

5.3 **Obligor not to investigate authority**

No Obligor need inquire whether any instructions have been given to the Intercreditor Agent by the Beneficiaries or as to the terms of those instructions. As between the Obligors and the Beneficiaries, all action taken by the Intercreditor Agent under a Finance Document will be taken to be authorised.

5.4 **Reliance on documents and experts**

The Intercreditor Agent may rely on:

- (a) any document (including any facsimile transmission or email communication) believed by it to be genuine and correct;
- (b) advice and statements of lawyers, independent accountants and other experts selected by the Intercreditor Agent;
- (c) statements by a Beneficiary as to Eligible Voting Amounts; and
- (d) a written statement from any person:
 - (i) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (ii) to the effect that such person approves of any particular dealing, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (i) above, may assume the truth and accuracy of that written statement.

5.5 **Monitoring and Events of Default**

- (a) The Intercreditor Agent is not required to:
 - (i) monitor, enquire or keep itself informed as to whether any party is in breach of its obligations under any Finance Document or another document or agreement to which an Obligor is a party or review or check whether any document or agreement is, or contains, a security interest for the purposes of the PPSA;
 - (ii) inspect the properties or books of each Obligor or to assess or keep under review the business, operations, financial condition, creditworthiness or state of affairs of any Obligor;
 - (iii) investigate whether or not an Event of Default has occurred or is continuing or whether any other event specified in any Finance Document has occurred; or
 - (iv) make any investigations into the affairs of any party (and in the event that it makes any such investigations, no other Beneficiary may rely on any such investigations undertaken by it).
- (b) The Intercreditor Agent is taken not to be aware of any fact or information (including a Default) until an authorised officer of the Intercreditor Agent with responsibility for administration of the transactions contemplated by the Finance Documents has received notice from a Secured Creditor or an Obligor stating the fact or information

(and in the case of a Default, describing it as such and giving details of the event) or the Intercreditor Agent receives notice of it under the relevant Finance Documents.

- (c) Until it becomes so aware, the Intercreditor Agent may assume that no Default has occurred and that each Obligor is complying with all its obligations in connection with the Finance Documents and need not inquire whether that is, in fact, the case.
- (d) If the Intercreditor Agent becomes so aware of a Default, it agrees to promptly notify the Secured Creditors.
- (e) In acting as agent for the Finance Parties, the Intercreditor Agent is regarded as acting through its agency division which will be treated as a separate entity from any other of its divisions or departments. If information is received by another division or department of the Intercreditor Agent, it may be treated as confidential to that division or department and the Intercreditor Agent is taken not to have notice of it.
- (f) The Intercreditor Agent may assume (unless it has received notice to the contrary) that any right, power, authority or discretion vested in any party or group (including any group of Beneficiaries) has not been exercised.
- (g) Except where a Finance Document provides otherwise, the Intercreditor Agent is not obliged to review or check the adequacy, accuracy or completeness of any document or notice it forwards to another party to this deed.

5.6 Exoneration

- (a) Neither the Intercreditor Agent nor any of its directors, officers, employees, agents, attorneys or related bodies corporate is responsible or liable to any Beneficiary or any Obligor for:
 - (i) any loss or damage occurring as a result of any of them exercising, failing to exercise or purporting to exercise any power, right or remedy under this deed or in relation to a Finance Document;
 - (ii) any Event of Default, negligence or fault of any of them whether or not their employment or appointment was necessary or expedient;
 - (iii) a mistake or omission made by any of them;
 - (iv) any other matter or thing done, or not done, by any of them in relation to any Finance Document;
 - (v) an absence of, or defect in, title or for the inability of any of them to exercise any of the Intercreditor Agent's powers, rights or remedies arising from an absence of, or defect in, title;
 - (vi) because an Obligor does not perform its obligations under the Finance Documents;
 - (vii) any recital, statement, representation or warranty contained in any Finance Document, in any information memorandum or in any document or agreement referred to or provided for in, or received by it under, any Finance Document;
 - (viii) for the financial condition or solvency of an Obligor;
 - (ix) the acts or omissions of a Controller;

- (x) for the effectiveness, genuineness, validity, enforceability, admissibility in evidence or sufficiency of the Finance Documents or any document signed or delivered in connection with the Finance Documents; or
 - (xi) any action taken or not taken by the Intercreditor Agent under the Finance Documents:
 - (A) in accordance with the instructions of the appropriate Finance Parties (as provided for in the Finance Documents);
 - (B) pursuant to clause 5.6(e) (*Exoneration*); or
 - (C) in any manner, where the Finance Documents do not require instructions to be given to the Intercreditor Agent;
 - (xii) the taking, or failing to take, any action for the purposes of the PPSA whether for the benefit of all Finance Parties or any particular Finance Party unless it has been expressly instructed to do so by the Simple Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts. The Intercreditor Agent is not responsible for identifying or perfecting under the PPSA any security interest which may be constituted by, or contained in, any Finance Document or any other agreement, arrangement or document including arising under an assignment under clause 17 (*Change in Beneficiaries*).
- (b) This clause 5.6 (*Exoneration*) does not exempt the Intercreditor Agent from liability to a Finance Party or an Obligor to the extent that the Intercreditor Agent has been guilty of fraud, gross negligence or wilful misconduct. The Intercreditor Agent is not negligent solely because it has not identified or has failed to perfect under the PPSA, any security interest which may be constituted by, or be contained in, any Finance Document or any other agreement, arrangement or document relating to the Finance Documents unless it has been expressly instructed to do so by the Simple Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts.
 - (c) Failure by the Intercreditor Agent to act due to lack of instructions or lack of proper or clear instructions from the appropriate Finance Parties required to be given under a Finance Document does not amount to fraud, wilful misconduct or gross negligence of or on the part of the Intercreditor Agent.
 - (d) The Intercreditor Agent is not bound by any waiver, amendment, supplement or modification under any Finance Document unless if it gives its consent as Intercreditor Agent under the Finance Document.
 - (e) The Intercreditor Agent is not liable to an Obligor if a Finance Party fails to perform its obligations under a Finance Document.

5.7 **Delegation by Intercreditor Agent**

The Intercreditor Agent may employ agents and attorneys and may delegate any of its rights or obligations under this deed, without notifying any person of the delegation.

5.8 **Intercreditor Agent in capacity of a Beneficiary**

If the Intercreditor Agent is also a Beneficiary then in its capacity as a Beneficiary it:

- (a) has the same rights and obligations under the Finance Documents as the other Beneficiaries; and
- (b) may exercise those rights and agrees to comply with those obligations independently from its role as Intercreditor Agent as if it were not the Intercreditor Agent.

5.9 **Dealing in different capacities**

The Intercreditor Agent may:

- (a) engage in any kind of banking, trust or other business with any Obligor or any Beneficiary or any of their related bodies corporate; and
- (b) accept fees and other consideration from any Obligor or any of the Obligor's related bodies corporate for services in connection with the Finance Documents or any other arrangement,

as if it were not the Intercreditor Agent and without having to account to the Beneficiaries for any income it derives in doing so.

The Beneficiaries release the Intercreditor Agent from any obligation they might otherwise have to the Beneficiaries in relation to these matters.

5.10 **Responsibility for documentation**

The Intercreditor Agent is not responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Intercreditor Agent (where this is based on information supplied by others), an Obligor or any other person given in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document.

5.11 **Restriction on Beneficiaries exercising rights**

A Beneficiary may exercise a right (including enforcing rights) against an Obligor under any Finance Document independently of the Intercreditor Agent only if the Intercreditor Agent is not acting in accordance with this deed and the Beneficiaries' instructions within a reasonable time, if relevant, after being put in funds under clause 7.1 (*Funds before acting*).

5.12 **Notice of transfer**

The Intercreditor Agent may treat each Beneficiary as the holder or obligor of the rights and obligations of that Beneficiary for all purposes under the Finance Documents until a Beneficiary Accession Deed signed by, among others, the Security Trustee is given to the Intercreditor Agent.

6. **HOW AND WHEN THE SECURITY TRUSTEE ACTS**

6.1 **After consultation and instructions**

- (a) Subject to paragraph (b), if the Security Trustee proposes to act on any matter, it agrees to:
 - (i) consult the Intercreditor Agent on the proposal; and
 - (ii) take action if, and only if, it receives instructions from the Intercreditor Agent to do so in accordance with this deed.
- (b) Despite paragraph (a) and anything else in this deed, to the extent that the Security Trustee has the ability to exercise any rights or take any action in respect of the Bond Escrow Account or the Bond Refinancing Reserve Account (or, in each case,

any equivalent account in connection with any Bond Refinancing), the Security Trustee acknowledges and agrees that it shall exercise those rights and take action if, and only if, it receives instructions from:

- (i) the Bond Trustee (provided at all times that to do so is not contrary to law); or
- (ii) once the Secured Obligations owing to the Bondholders or Bond Refinancing Providers (as applicable) are Finally Paid, the Intercreditor Agent.

6.2 Security Trustee's actions

Whenever the Security Trustee:

- (a) consults the Intercreditor Agent to seek instructions, it agrees to specify a reasonable period (consistent with any corresponding time period relating to such instructions imposed under this deed) within which those instructions are to be given; and
- (b) receives instructions from the Intercreditor Agent, it agrees to follow them but only in so far as they are in accordance with the Finance Documents and not contrary to law; and
- (c) exercises its rights as Security Trustee or takes any other action it agrees to take into account the interests of the Beneficiaries under this deed and the other Finance Documents provided that in doing so it is not acting inconsistently with the instructions of the Intercreditor Agent.

6.3 Intercreditor Agent instructions

- (a) Whenever the Intercreditor Agent gives instructions:
 - (i) it must do so in accordance with this deed and the Security Trust Deed and within any time period specified by the Security Trustee for giving instructions; and
 - (ii) it authorises the Security Trustee to give any consent or do any other thing appropriate to carry out the instructions.
- (b) The Security Trustee does not need to enquire whether the Intercreditor Agent is authorised to provide its instructions and may conclusively rely on information and instructions provided by the Intercreditor Agent.

6.4 Exoneration

- (a) The liability of the Security Trustee and its related bodies corporate, and their officers, personnel, agents, attorneys and delegates of any kind is limited in accordance with the Security Trust Deed (including, without limitation, as set out in clauses 3.13 (*Limitations of liability of Security Trustee to Beneficiaries*) and 3.14 (*Security Trustee limitation of liability to non-Beneficiaries*) and 3.18 (*Credit appraisal by the Beneficiaries*) of the Security Trust Deed).
- (b) Without limitation, the Security Trustee and its related bodies corporate, and their officers, personnel, agents, attorneys and delegates of any kind shall not be liable to any Beneficiary or any Obligor for any action taken or not taken by the Intercreditor Agent under the Finance Documents:
 - (i) in accordance with the instructions of the appropriate Beneficiaries (as provided for in the Finance Documents); or

- (ii) in any manner, where the Finance Documents do not require instructions to be given to the Security Trustee.

6.5 Security Trustee in capacity of a Beneficiary

If the Security Trustee is also a Beneficiary then in its capacity as a Beneficiary it:

- (a) has the same rights and obligations under the Finance Documents as the other Beneficiaries; and
- (b) may exercise those rights and agrees to comply with those obligations independently from its role as Security Trustee as if it were not the Security Trustee.

6.6 Restriction on Beneficiaries exercising rights

A Beneficiary may exercise a right (including enforcing rights) against an Obligor under any Finance Document independently of the Security Trustee only if the Security Trustee is not acting in accordance with this deed and the Beneficiaries' instructions within a reasonable time, if relevant, after being put in funds under clause 7.1 (*Funds before acting*).

7. FUNDING OF INTERCREDITOR AGENT AND SECURITY TRUSTEE

7.1 Funds before acting

- (a) This clause 7.1 (*Funds before acting*) applies if the Intercreditor Agent proposes to exercise a right arising in its capacity as agent of the Finance Parties (other than the Security Trustee) or take any other action (whether or not at the instruction of a Beneficiary) or the Security Trustee is directed to exercise a right or take any action in its capacity as security trustee in connection with the Finance Documents, and the Intercreditor Agent or the Security Trustee reasonably considers this could result in the Beneficiaries becoming obliged to pay an amount under clause 7.3 (*Indemnity*). In that case, the Intercreditor Agent or the Security Trustee (as applicable):
 - (i) may request the Beneficiaries to pay to the Intercreditor Agent or the Security Trustee (as applicable) an amount (the **Relevant Sum**) at least equal to the amount the Intercreditor Agent or, as the case may be, the Security Trustee reasonably determines would be the Beneficiaries' liability; and
 - (ii) need not act until the Beneficiaries do so.
- (b) Subject to clause 7.2 (*If a Beneficiary does not fund*), each Beneficiary agrees to fund each Relevant Sum under this clause 7.1 (*Funds before acting*) rateably and in the proportion which its Eligible Voting Amount at the relevant time bears to the total Eligible Voting Amounts of all Beneficiaries. Each Beneficiary agrees to pay amounts due under this clause 7.1 (*Funds before acting*) within three Business Days of demand from the Intercreditor Agent or the Security Trustee (as applicable).
- (c) The Borrower shall indemnify each Beneficiary (which, in the case of the WA Lender, shall include NAIF and the Commonwealth) against any amount paid under this clause 7.1. This does not limit the Borrower's liability under any other provision of this deed, the Security Trust Deed or any other Finance Document.

7.2 If a Beneficiary does not fund

- (a) If a Beneficiary (the **Defaulting Beneficiary**) does not fund the Intercreditor Agent or Security Trustee as required under clause 7.1 (*Funds before acting*) within three Business Days of demand from the Intercreditor Agent or the Security Trustee (as applicable), then the Intercreditor Agent or the Security Trustee (as applicable) agrees to promptly request each other Beneficiary to fund the Defaulting

Beneficiary's share. If one or more other Beneficiary (a **Paying Beneficiary**) agrees to fund the Defaulting Beneficiary's share, then the obligations of the Beneficiaries under clause 7.1 (*Funds before acting*) are taken to be satisfied.

- (b) Each Beneficiary agrees that the amount of a payment by a Paying Beneficiary to the Intercreditor Agent or Security Trustee under this clause 7.2 (*If a Beneficiary does not fund*) shall accrue interest at the rate and in the manner notified by the Paying Beneficiary to the Defaulting Beneficiary, the Intercreditor Agent and the Security Trustee, and the payment of that amount shall have priority over amounts owing to the Beneficiaries in respect of the Secured Obligations, as set out in clause 16.1 (*Enforcement waterfall - general*).

7.3 **Indemnity**

Each Beneficiary, rateably in accordance with its Eligible Voting Amount, will indemnify the Intercreditor Agent or the Security Trustee (as applicable), on demand, against any loss or liability suffered or incurred by the Intercreditor Agent or the Security Trustee (as applicable) in acting as Intercreditor Agent or Security Trustee (as applicable), including but not limited to:

- (a) in the case of the Security Trustee, the stamping and registration of the Securities;
- (b) the exercise or non-exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any of its rights, powers, authorities or discretions as Intercreditor Agent or Security Trustee (as applicable);
- (c) in the case of the Security Trustee, the performance or purported performance of its duties under the Securities;
- (d) in the case of the Security Trustee, any action or omission by the Security Trustee under (or purportedly under) any Transaction Security Interest;
- (e) anything done or not done by the Intercreditor Agent or the Security Trustee (as applicable) pursuant to any direction or authorisation of the Beneficiaries; or
- (f) all actions, proceedings, costs, claims and demands arising in relation to this deed or any other Finance Document.

This includes, in each case, the fees and expenses on a full indemnity basis of legal and other professional advisers.

This clause 7.3 (*Indemnity*) does not apply to the extent that:

- (a) the Intercreditor Agent or the Security Trustee (as applicable) is reimbursed on demand by any Obligor for any loss or liability, cost or expense suffered, incurred or payable by the Intercreditor Agent or the Security Trustee (as applicable) and the Obligors acknowledge that they must reimburse the Security Trustee and the Intercreditor Agent on demand against any loss, liability, cost or expense referred to in this clause 7.3 (*Indemnity*); or
- (b) the relevant loss or liability, cost or expense was suffered or incurred as a direct result of the Intercreditor Agent's or the Security Trustee's (as applicable) fraud, gross negligence or wilful misconduct.

Each authorised officer, agent, employee, adviser or consultant of the Intercreditor Agent or the Security Trustee (as applicable) is entitled to the benefit of this clause 7.3 (*Indemnity*). The Intercreditor Agent or the Security Trustee (as applicable) holds that benefit on their behalf.

8. **RESIGNATION OR REMOVAL OF THE INTERCREDITOR AGENT**

Clause 5 (*Resignation or Removal of the Security Trustee*) of the Security Trust Deed shall apply to the resignation or removal of the Intercreditor Agent as if set out in full in this deed, and as though references in that clause to the "Security Trustee" were references to the Intercreditor Agent, references in that clause to "this Deed" were references to this deed, and with any other necessary changes.

9. **RANKING AND SHARING ON ENFORCEMENT OF TRANSACTION SECURITY INTEREST**

9.1 **Ranking under Transaction Security Interests**

- (a) Each of the parties acknowledges and agrees that:
 - (i) the Secured Obligations shall constitute senior secured debt obligations of the Obligors and shall rank at least pari passu with the claims of the Obligors' other senior creditors, except for obligations which are mandatorily preferred by law; and
 - (ii) for the purposes of the priority under the Transaction Security Interests the Beneficiaries rank pari passu as between themselves in respect of Secured Obligations due to them up to the Secured Obligations Limits, subject to clause 16 (*Distribution of Recovered Money*).
- (b) All moneys received by the Intercreditor Agent, Security Trustee or any other Beneficiary or any Controller or attorney on enforcement of this deed and any Transaction Security Interest shall be applied in accordance with clause 16 (*Distribution of Recovered Money*).

9.2 **Overriding provisions**

The priorities set out in this deed are not affected by any act or omission by a Beneficiary or any other person. For example, these priorities are not affected by:

- (a) any act or omission:
 - (i) by which amounts comprising the Secured Obligations is not yet payable; or
 - (ii) varying or releasing any Transaction Security Interest or monetary obligation; or
- (b) a payment which may be received, or a credit which may be allowed, by a Beneficiary from an Obligor or any other person in respect of the Secured Obligations; or
- (c) a fluctuation in the amount secured by a Transaction Security Interest from time to time; or
- (d) a notice received by a Beneficiary under a Transaction Security Interest; or
- (e) a notice received by a Beneficiary of a Transaction Security Interest; or
- (f) the order of execution or registration of a Transaction Security Interest or anything in a Transaction Security Interest; or
- (g) the order in which financial accommodation is provided or liabilities (whether actual or contingent) are incurred; or
- (h) any failure to enforce a Transaction Security Interest, chose in action or judgment.

9.3 **No prejudice on other Transaction Security Interests**

- (a) Nothing contained in this deed, merges, discharges, extinguishes, postpones, lessens or prejudices any Security now held or which may subsequently be held or taken by a Beneficiary for payment of any of the Secured Obligations.
- (b) Nothing in any Transaction Security Interest and no other right or remedy which the Security Trustee, Intercreditor Agent or a Beneficiary has or subsequently may have apart from this deed discharges, extinguishes, postpones, lessens or otherwise prejudices this deed.

10. **PERMITTED ACCELERATION ACTION**

- (a) If Enforcement Action is permitted to be taken in accordance with this deed, a Beneficiary may exercise a right to take Permitted Acceleration Action or direct the Intercreditor Agent to instruct the Security Trustee to take any Permitted Acceleration Action in accordance with the terms of its Finance Documents.
- (b) Notwithstanding paragraph (a) above, if at any time after the expiry of the Applicable Standstill Period with respect to any Event of Default:
 - (i) Enforcement Action has not been taken by the Required Majority in respect of that Event of Default; or
 - (ii) that Event of Default has not been waived in accordance with this deed,then any Beneficiary may take Permitted Acceleration Action (or direct the Intercreditor Agent to instruct the Security Trustee to take Permitted Acceleration Action) with respect to that Event of Default.
- (c) Each Beneficiary acknowledges that it is not entitled to take Permitted Acceleration Action (or direct the Intercreditor Agent to instruct the Security Trustee to take any Permitted Acceleration Action) if it would not otherwise be entitled to do so under the terms of its Finance Documents.
- (d) The Super Senior SLNSA Facility Agent must not make any demand on the guarantee contained in the Super Senior SLNSA or any other guarantee given in connection with the Super Senior SLNSA and not contained in a Finance Document unless it would be permitted to take Permitted Acceleration Action under this deed, and the Super Senior SLNSA Facility Agent acknowledges and agrees (and confirms that each "Lender" under the Super Senior SLNSA acknowledges and agrees) that any proceeds of any demand received in connection with any demand under any such guarantee shall constitute Recovered Money for all purposes under this deed and must be applied in accordance with this deed.
- (e) Nothing in this document shall be taken to limit a Super Senior Beneficiary's right to take Permitted Acceleration Action under its Super Senior Facility while an Event of Default is continuing under its Super Senior Facility, provided that that Super Senior Beneficiary has given a Default Notice to the Intercreditor Agent.

11. **SERVICING OF SECURED OBLIGATIONS, STANDSTILL AND ENFORCEMENT**

11.1 **No Enforcement Action**

- (a) Each Beneficiary agrees that it will not take any Enforcement Action against an Obligor or instruct the Intercreditor Agent or the Security Trustee to take any Enforcement Action against an Obligor except as expressly permitted by and otherwise in accordance with this deed or the Security Trust Deed.

- (b) Nothing in paragraph (a) prevents a Beneficiary or the requisite majority of Beneficiaries under the relevant Finance Document from:
 - (i) voting and giving instructions or directions to the Intercreditor Agent as contemplated in this deed;
 - (ii) exercising any right to prepayment and/or cancellation pursuant to any illegality event (however described) or any cancellation of commitment which occurs as a result of such event, and only to the extent of any repayment or prepayment of principal outstanding under the relevant Secured Creditor Agreement, and for the avoidance of doubt, any amounts received by a Beneficiary as repayment or redemption (in each case, however described) in connection with such illegality event:
 - (A) which occurs at any time while the Bonds remain outstanding (which for the avoidance of doubt shall not include any Bond Refinancing), shall be subject to the turnover and distribution provisions in clauses 15 (*Treatment of Recovered Monies*) and 16 (*Distribution of Recovered Money*);
 - (B) which occurs at any time while there is any Bond Refinancing and which occurs prior to the taking of Enforcement Action, shall not be subject to the turnover and distribution provisions in clauses 15 (*Treatment of Recovered Monies*) and 16 (*Distribution of Recovered Money*); or
 - (C) which occurs at any time while there is any Bond Refinancing and which occurs after the taking of Enforcement Action, shall be subject to the turnover and distribution provisions in clauses 15 (*Treatment of Recovered Monies*) and 16 (*Distribution of Recovered Money*);
 - (iii) exercising any right to prevent, or decline to make available, further drawings or further payments or to cancel undrawn commitment under any relevant Finance Document (except in respect of Hedge Transactions which have not been terminated in accordance with this deed);
 - (iv) subject to this deed, receiving amounts it would otherwise be entitled to receive under the other provisions of the Finance Documents; or
 - (v) otherwise exercising any rights it may have against an Obligor.
- (c) Each Beneficiary acknowledges that it is not entitled to take action under clause 11.9 (*Decisions in relation to Enforcement Action*) (or direct the Intercreditor Agent to instruct the Security Trustee to take action) if it would not otherwise be entitled to do so under the terms of its Finance Documents.

11.2 Urgent action

- (a) The Intercreditor Agent may (and if so instructed by the Super Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts, must) direct the Security Trustee to take any action which would otherwise require the instructions of the Required Majority which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of rights or claims in respect of the Finance Documents (including giving notice under any Finance Document, filing claims before a court or Governmental Agency and bringing proceedings to prevent any loss of rights by reason of applicable limitation periods).
- (b) The Intercreditor Agent must, if so instructed by the Simple Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts, direct the Security Trustee to take any action which such Simple Majority Beneficiaries reasonably consider is necessary

or prudent to protect their rights in respect of the Secured Property, including where any Obligor breaches or attempts to breach any restriction contained in a Secured Lender Agreement on the disposal of, grant of security over, or other dealing with, the Secured Property.

- (c) Without limiting paragraphs (a) and (b) above, the Intercreditor Agent may (and if so instructed by the Simple Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts, must) direct the Security Trustee to exercise any step-in rights (however described) available to it under any Tripartite Deed if, on the day that is not less than 5 Business Days prior to the end of any grace or notice period provided under the Tripartite Deed, the Required Majority Beneficiaries have not directed the Intercreditor Agent to instruct the Security Trustee to take Enforcement Action under that Tripartite Deed in accordance with this deed.

11.3 **Enforcement Action in respect of the Bond Escrow Account and Bond Refinancing Reserve Account**

- (a) Notwithstanding clause 11.9 (*Decisions in relation to Enforcement Action*) the Bond Trustee or the Bond Refinancing Representative (as applicable) is permitted to take Enforcement Action against:
 - (i) the Bond Escrow Account (or any equivalent account in connection with any Bond Refinancing) if the WA Lender cancels or terminates the undrawn commitments under the NAIF Facility Agreement as a result of an Event of Default; and
 - (ii) the Bond Refinancing Reserve Account (or any equivalent account in connection with any Bond Refinancing) at any time, provided that the Bond Trustee or the Bond Refinancing Representative (as applicable) acknowledges and agrees that such Enforcement Action must not be taken in respect of any make-whole, early redemption or other premium (however described) payable in connection with any voluntary or mandatory prepayments or repayments under the Bond Terms or any Bond Refinancing Agreement (as applicable).

11.4 **Conflicting instructions**

The Super Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts are not entitled to override any instructions or directions given by a Required Majority in accordance with this clause 10 (*Servicing of Secured Obligations, standstill and enforcement*) to the Intercreditor Agent to commence Enforcement Action and any such direction or instruction to override is of no force or effect and must be disregarded by the Intercreditor Agent and the Security Trustee.

11.5 **Notice of Event of Default and appointment of administrator**

- (a) Each Beneficiary and each Obligor agrees to notify:
 - (i) the Intercreditor Agent in writing upon:
 - (A) the Beneficiary (other than the Security Trustee) becoming aware of the occurrence of an Event of Default under its Finance Documents; or
 - (B) the Obligor becoming aware of the occurrence of an Event of Default under any Finance Document,

in each case which has not been cured within any applicable grace period or waived in accordance with this deed (a **Default Notice**) and must set out in the Default Notice the Event of Default that has occurred and if the Event of

Default relates to breach of undertaking or warranty, the relevant undertaking or warranty; and

- (ii) the Intercreditor Agent if it is notified by an Obligor or under the Corporations Act that an administrator (other than an administrator appointed by the Security Trustee) is appointed to an Obligor.

If the Intercreditor Agent becomes actually aware of the occurrence of an Event of Default which is subsisting or that an administrator is appointed to an Obligor, then it will be deemed to have received a notice under this paragraph (a) on the date it becomes so aware.

- (b) Subject to paragraph (c) below but notwithstanding clause 11.9 (*Decision in relation to Enforcement Action*), the Intercreditor Agent agrees that if it becomes aware that an administrator has been appointed to an Obligor, it will request instructions from the Super Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts on whether it should instruct the Security Trustee to appoint a Receiver under any Transaction Security Interest within the Decision Period (in this context as defined in the Corporations Act) and shall act upon instructions given by the Super Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts to appoint a Receiver. The Security Trustee shall, in turn, act on the instructions of the Intercreditor Agent. When specifying what is, in its opinion, a reasonable period the Intercreditor Agent will take into account the matters referred to in clause 1.18 (*Meaning of 'reasonable period'*).
- (c) If an administrator is appointed to an Obligor and either:
 - (i) the Intercreditor Agent has determined (in its sole discretion) that it is not possible to obtain the instructions of any Beneficiary by the date ending 5 Business Days before the end of the "decision period" (as defined in the Corporations Act); or
 - (ii) notwithstanding the Intercreditor Agent having sought instructions from the Super Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts in accordance with clause 11.5(b) (*Notice of Event of Default and appointment of administrator*), the Security Trustee has not received instructions in accordance with that clause (*Notice of Event of Default and appointment of Administrator*) within 10 Business Days after the commencement of the "decision period" (as defined in the Corporations Act),

in either case, so as to enable the Security Trustee to appoint a Receiver under the relevant Transaction Security Interest granted by the Obligor in administration then despite any other provision of this deed, the Security Trustee must appoint a Receiver under that Transaction Security Interest within that Decision Period unless prior to the expiry of the period under clause 11.5(c)(ii) (*Notice of Event of Default and appointment of administrator*):

- (iii) an EoD Waiver Decision has been made by Super Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts to waive all Events of Default arising under the Finance Documents in connection with the appointment of the administrator to the Obligor; or
- (iv) the Security Trustee has been instructed by the Super Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts not to appoint a Receiver in accordance with this clause 11.5(c).

11.6 **Intercreditor Agent to advise – Default Notice**

Except where clause 11.5(b) or 11.5(c) (*Notice of Event of Default and appointment of administrator*) applies and subject to clause 11.9 (*Decisions in relation to Enforcement Action*), upon receipt of any Default Notice, the Intercreditor Agent will as soon as practicable (but, in any event, within two Business Days):

- (a) deliver a copy of that Default Notice to each Beneficiary together with a request (**Security Enforcement Request**) for instructions by the Beneficiary in respect of the subject matter of the Default Notice and the Decision proposed to be made;
- (b) specify the Applicable Standstill Period applying to the Event of Default, and the rights and restrictions of the Obligors to continue to service their payment obligations under the Secured Obligations during the Applicable Standstill Period; and
- (c) specify the Decision Period within which the instructions of Beneficiaries to the Security Enforcement Request need to be received in order for the Intercreditor Agent to determine what, if any, Enforcement Action will be taken.

In this clause 11.6 (*Intercreditor Agent to advise – Default Notice*), the Intercreditor Agent may take such actions and make such enquiries as it deems appropriate in order to determine if any requisite instructions or authorisations have been given by any applicable Beneficiaries including by convening meetings of the Beneficiaries and their respective advisers to discuss any proposed Enforcement Action.

11.7 **Servicing of payments under Secured Obligations prior to Default Notice**

At any time before a Default Notice is given in relation to an Event of Default, the Obligors shall be permitted to perform all payment obligations in respect of the Finance Documents in accordance with the terms of the Finance Documents (which, for the avoidance of doubt, shall include the payment of principal, coupon, interest, fees and premiums).

11.8 **Servicing of payments under Finance Documents after Default Notice**

- (a) Notwithstanding clause 11.6 (*Intercreditor Agent to advise – Default Notice*) and subject to paragraph (b) below and clause 11.16 (*Restrictions on Hedge Counterparties terminating or closing out Hedge Transactions*), at any time from the Standstill Commencement in relation to:
 - (i) (**Insolvency Event of Default**) an Insolvency Event of Default under a Secured Lender Agreement, the Obligors shall not perform any payment obligations in respect of the Finance Documents for a period of 7 business days as defined in the Corporations Act for the purposes the "decision period" (as defined in the Corporations Act);
 - (ii) (**Payment Event of Default**) a Payment Event of Default under a Secured Lender Agreement, the Obligors shall not perform any payment obligations in respect of the Finance Documents for a period of 15 Business Days;
 - (iii) (**Material Event of Default**) a Material Event of Default under a Secured Lender Agreement, the Obligors shall not perform any payment obligations in respect of the Finance Documents other than scheduled payments of principal and interest in accordance with the Secured Lender Agreements and all scheduled pre-agreed amounts falling due under any Hedge Agreements, for a period of 20 Business Days;
 - (iv) (**Other Event of Default**) an Other Event of Default under a Secured Lender Agreement, the Obligors shall not perform any payment obligations in respect of the Finance Documents other than scheduled payments of principal and

interest in accordance with the Secured Lender Agreements and all scheduled pre-agreed amounts falling due under any Hedge Agreements, for a period of 30 Business Days; and

- (v) **(NAIF Specific Event of Default)** a NAIF Specific Event of Default, unless and until the WA Lender has notified the Intercreditor Agent and each other Beneficiary under clause 11.9(d)(ii) (*Decisions in relation to Enforcement Action*) the Obligors may pay all scheduled payments of principal and interest in accordance with the Secured Lender Agreements and all schedule pre-agreed amounts falling due under any Hedge Agreements.
- (b) At any time while an Event of Default is subsisting after the end of the Applicable Standstill Period, the Obligors may make payments of interest in accordance with the Working Capital Facility Agreement, however no payments of principal in accordance with the Working Capital Facility Agreement (including as a result of a rollover or a clean down (however described)) may be made.

11.9 **Decisions in relation to Enforcement Action**

- (a) **(General Event of Default during Applicable Standstill Period)**
 - (i) Notwithstanding clause 11.6 (*Intercreditor Agent to advise – Default Notice*), at any time after a Default Notice is given in relation to a General Event of Default and during the Applicable Standstill Period for the General Event of Default then subsisting, the Super Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts may, if the Event of Default is subsisting, direct the Intercreditor Agent to instruct the Security Trustee to take Enforcement Action under the Transaction Security Interests.
 - (b) **(General Event of Default after Applicable Standstill Period)** Notwithstanding paragraph (a) above and clause 11.6 (*Intercreditor Agent to advise – Default Notice*), at any time after a Default Notice is given in relation to a General Event of Default and either:
 - (i) the Super Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts have not directed the Intercreditor Agent to instruct the Security Trustee to take Enforcement Action under the Transaction Security Interests prior to the end of the Applicable Standstill Period; or
 - (ii) the Required Majority has not granted the applicable Obligors a waiver of the General Event of Default in accordance with clause 4.4 (*EoD Waiver Decisions*) prior to the end of the Applicable Standstill Period,

then if that General Event of Default is subsisting, the Simple Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts may direct the Intercreditor Agent to instruct the Security Trustee to take Enforcement Action.

- (c) **(Payment Event of Default)**
 - (i) Notwithstanding clause 11.6 (*Intercreditor Agent to advise – Default Notice*), after a Default Notice is given in relation to an Event of Default that is a Payment Event of Default:
 - (A) the Super Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts may, if the Payment Event of Default is subsisting, direct the Intercreditor Agent to instruct the Security Trustee to take Enforcement Action under the Transaction Security Interests prior to the end of the First Payment EoD Decision Period;

- (B) the Simple Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts may, if the Payment Event of Default is subsisting, direct the Intercreditor Agent to instruct the Security Trustee to take Enforcement Action under the Transaction Security Interests on the Second Payment EoD Decision Period; and
 - (C) the relevant Secured Lender suffering the Payment Event of Default may, if the Payment Event of Default is subsisting, direct the Intercreditor Agent to instruct the Security Trustee to take Enforcement Action under the Transaction Security Interests at any time after the end of the Second Payment EoD Decision Period subject to the Second Payment EoD Standstill Period.
- (d) **(NAIF Specific Events of Default)**
- (i) Notwithstanding clause 11.6 (*Intercreditor Agent to advise – Default Notice*), at any time after a Default Notice is given in relation to an Event of Default that is a NAIF Specific Event of Default, the WA Lender may, at any time while the NAIF Specific Event of Default is continuing, take Permitted Acceleration Action and may unilaterally direct the Intercreditor Agent to instruct the Security Trustee to take Enforcement Action under the Transaction Security Interests.
 - (ii) For the avoidance of doubt:
 - (A) the WA Lender is solely entitled to take any action described in paragraph (i) above, or whether to take no action or taken any other action (in any case with or without conditions) in respect of any NAIF Specific Event of Default and any time periods within which to do any of these things; and
 - (B) a NAIF Specific Event of Default shall not trigger any cross-default Event of Default under any other Finance Document unless and until the WA Lender takes Permitted Acceleration Action or directs the Intercreditor Agent to instruct the Security Trustee to take Enforcement Action under the Transaction Security Interests.
 - (iii) If the WA Lender:
 - (A) takes Permitted Acceleration Action in accordance with this paragraph (d); or
 - (B) directs the Intercreditor Agent to instruct the Security Trustee to take Enforcement Action under the Transaction Security Interests,

it must promptly notify the Intercreditor Agent and each other Beneficiary of that matter.
 - (iv) The Intercreditor Agent will instruct the Security Trustee to take such Enforcement Action under the Transaction Security Interests upon so being instructed by the WA Lender under paragraph (d)(i) above.
 - (e) Once the Intercreditor Agent has been instructed by the Required Majority or the relevant Beneficiaries to instruct the Security Trustee to take Enforcement Action in accordance with this deed, the Intercreditor Agent must instruct the Security Trustee accordingly.
 - (f) The Security Trustee must act on the instructions of the Intercreditor Agent given in accordance with paragraph (e) (above).

- (g) The Super Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts cannot override or prevent any directions or instructions given by the relevant Beneficiaries to the Intercreditor Agent in accordance with paragraphs (a), (b), (c) and (d) above or clause 11.5(b) (*Notice of Event of Default and appointment of administrator*) to commence the relevant Enforcement Action (**Enforcement Direction**) and any directions or instructions given by the Super Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts whether pursuant to a Security Enforcement Request or a General Decision Request or otherwise which purport to override the Enforcement Direction are of no force or effect and must be disregarded by the Intercreditor Agent and the Security Trustee. The parties acknowledge that clause 11.15 (*Process after Enforcement Date*) governs the making of decisions in relation to Enforcement Action by the Beneficiaries after the Enforcement Date.

11.10 **Decision Period for Enforcement Action**

- (a) Except where clause 11.2 (*Urgent action*), 11.5(b) or 11.5(c) (*Notice of Event of Default and appointment of administrator*) applies or for the purposes of the Second Payment EoD Decision Period, a Decision Period will start on the date of delivery of the relevant Security Enforcement Request by the Intercreditor Agent to each Beneficiary.
- (b) The Decision Period will be:
- (i) in respect of a Payment Event of Default:
- (A) the period until the end of the First Payment EoD Standstill Period (the **First Payment EoD Decision Period**); and
- (B) if no Decision is made within the First Payment EoD Decision Period, the calendar day that is immediately after the end of the First Payment EoD Standstill Period (the **Second Payment EoD Decision Period**); or
- (ii) in respect of any General Event of Default, the period determined by the Intercreditor Agent as is specified in the relevant Security Enforcement Request which shall be as follows:
- (A) 7 business days (as defined in the Corporations Act) after the commencement of the Decision Period (as defined in the Corporations Act) for an Insolvency Event; and
- (B) in all other cases, the Applicable Standstill Period for the General Event of Default then subsisting.

11.11 **Standstill Periods for the benefit of Beneficiaries**

For the avoidance of any doubt, clause 11.8 (*Servicing of payments under Secured Lender Agreements after Default Notice*) does not:

- (a) affect the ability of the Secured Lenders to charge default interest in accordance with the Secured Lender Agreements;
- (b) displace or prevent any Secured Lender from relying on any drawstop provisions (however described) under the Secured Lender Agreements;
- (c) prevent the Security Trustee from taking control of any bank account held by any Obligor in accordance with the Transaction Security Interests; or

- (d) relieve the Obligors from their payment obligations under any Secured Creditor Agreement, so that:
 - (i) any amount that becomes due and payable under any Secured Creditor Agreement during a Standstill Period (including, but not limited to, scheduled payments as well as mandatory prepayments or mandatory redemptions (however described) will, if not paid immediately after the end of that Standstill Period, constitute an Event of Default; and
 - (ii) interest will continue to accrue on all amounts that are postponed under clause 11.8 (*Servicing of payments under Finance Documents after Default Notice*) (including any amount that becomes due and payable under any Secured Creditor Agreement during a Standstill Period) at the normal rate of interest under the applicable Secured Creditor Agreement.

11.12 **Beneficiary entitlement to take Enforcement Action**

A Beneficiary must not take any Enforcement Action against an Obligor without the consent of the Intercreditor Agent:

- (a) unless the Enforcement Action is limited to terminating any Hedging Agreement in accordance with this deed;
- (b) except if permitted under clause 5.10 (*Restriction on Beneficiaries exercising rights*) or clause 6.6 (*Restriction on Beneficiaries exercising rights*); or
- (c) except as expressly permitted by and otherwise in accordance with this deed.

11.13 **Enforcement Action by Security Trustee**

If the Intercreditor Agent is directed to instruct the Security Trustee to issue an Acceleration Notice or take any other Enforcement Action, it will do so and the Security Trustee will take that action in accordance with those instructions (and, unless specified in those instructions, in such form and manner as determined by the Security Trustee in its discretion).

11.14 **Beneficiaries to comply with Acceleration Notices**

Each Beneficiary agrees to comply with the terms of any Acceleration Notice and to exercise all rights and powers available to it (if any) under each Finance Document and otherwise at law in order to comply with, or procure compliance with, the direction given by the Intercreditor Agent in that notice, unless to do so would breach the terms of a Finance Document.

11.15 **Process after Enforcement Date**

After Enforcement Action has commenced:

- (a) the Security Trustee will as soon as practicable, notify the Beneficiaries that such Enforcement Action has commenced and the Intercreditor Agent shall convene meetings of Beneficiaries or request written instructions from Beneficiaries for the purpose of obtaining further instructions in accordance with this clause 11.15 (*Process after Enforcement Date*); and
- (b) the Intercreditor Agent will only take further action, and instruct the Security Trustee to take further action, in relation to Enforcement Action on the instructions or directions of the Simple Majority Beneficiaries with Post-Enforcement Eligible Voting Amounts regardless of whether the direction to commence Enforcement Action was given by one Beneficiary rather than the Simple Majority Beneficiaries with Post-Enforcement Eligible Voting Amounts,

provided that the Simple Majority Beneficiaries with Post-Enforcement Eligible Voting Amounts cannot override or prevent any directions or instructions given by the WA Lender or the relevant Beneficiaries (as applicable) to the Intercreditor Agent in accordance with clauses 11.9(a), 11.9(b), 11.9(c) or 11.9(d) (*Decisions in relation to Enforcement Action*) or clause 11.5(b) (*Notice of Event of Default and appointment of administrator*) to commence the relevant Enforcement Action (**Enforcement Direction**) and any directions or instructions given by the Simple Majority Beneficiaries with Post-Enforcement Eligible Voting Amounts which purport to override the Enforcement Direction are of no force or effect and must be disregarded by the Intercreditor Agent and the Security Trustee.

11.16 Restrictions on Hedge Counterparties terminating or closing out Hedge Transactions and entering into new Hedge Transactions

- (a) Notwithstanding any other provision in this deed, a Hedge Counterparty may only exercise its right to terminate and/or close-out any one or more Hedge Transactions under the Hedging Agreements to which it is a party or withhold payment or delivery in accordance with Section 2(a)(i) of those Hedging Agreements in the following circumstances:
- (i) Enforcement Action is taken by Beneficiaries (other than any Hedge Counterparty) in accordance with clause 11.9 (*Decisions in relation to Enforcement Action*);
 - (ii) an "Event of Default" described in Section 5(a)(i) of the ISDA Master Agreement comprised in the Hedging Agreement (the **Master Agreement**) to which the Hedge Counterparty is a party occurs and a period of not less than 60 days following notice of that Event of Default to the Intercreditor Agent has expired and the applicable Beneficiaries (other than any Hedge Counterparty) have not taken Enforcement Action in accordance with clause 11.9 (*Decisions in relation to Enforcement Action*);
 - (iii) an "Illegality", "Tax Event" or "Tax Event Upon Merger" Termination Event described in Sections 5(b)(i), 5(b)(iii) or 5(b)(iv) of the ISDA Master Agreement (which forms part of the Hedging Agreement) to which the Hedge Counterparty is a party occurs;
 - (iv) an Additional Termination Event described in the ISDA Master Agreement (which forms part of the Hedging Agreement) to which the Hedge Counterparty is a party occurs and a period of not less than 180 days following notice of that Event of Default to the Intercreditor Agent has expired and the applicable Beneficiaries (other than any Hedge Counterparty) have not taken Enforcement Action in accordance with clause 11.9 (*Decisions in relation to Enforcement Action*); and
 - (v) where it has been instructed to terminate and/or close-out in accordance with this deed.
- (b) Notwithstanding any other provision in this deed, an Obligor and a Hedge Counterparty may only enter into a new Hedge Transaction at any time while an Event of Default is continuing with the prior approval of:
- (i) if the relevant Event of Default is a Material Event of Default, the Super Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts; or
 - (ii) otherwise, the Simple Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts,

in each case where such approval shall be given in accordance with the voting provisions in clause 4 (*Voting*) of this deed.

11.17 **Super Senior SLNSA Escrow Accounts**

Notwithstanding clause 11.9 (*Decisions in relation to Enforcement Action*), if:

- (a) the WA Lender cancels or terminates the undrawn commitments under the NAIF Facility Agreement;
- (b) the WA Lender does not fund, or indicates that it will not fund, the balance of the NAIF Facility C2 (being A\$5,000,000) in circumstances where the Super Senior SLNSA Finance Parties have agreed (subject only to the WA Lender funding the balance of the NAIF Facility C2) to disburse funds from the Super Senior SLNSA Escrow Account corresponding to "Facility C" under the Super Senior SLNSA;
- (c) an Event of Default occurs and is subsisting under the Super Senior SLNSA;
- (d) any Enforcement Action occurs in respect of an Obligor;
- (e) the Tanzanian Disposal is completed;
- (f) the Parent completes an equity capital raise or an Obligor undertakes any other fundraising or monetisation event as contemplated in clause 7.5 (*Super Senior Facilities mandatory prepayment - equity / other capital raise*) of the Super Senior SLNSA; or
- (g) if the Super Senior SLNSA Facility Agent has demanded repayment of the Secured Obligations pursuant to, and in accordance with, clause 7.7 (*Mandatory prepayment - Senior Facility maturity*) of the Super Senior SLNSA,

then the Super Senior SLNSA Facility Agent may apply (or direct any escrow agent to apply) any amounts standing to the credit of a Super Senior SLNSA Escrow Account towards repayment of the Secured Obligations outstanding under the Super Senior SLNSA Finance Documents in such manner as the Super Senior SLNSA Facility Agent is directed by the relevant Super Senior SLNSA Finance Parties in accordance with the SLNSA.

12. **REVIEW EVENTS**

12.1 **Notice of Review Event**

Each Beneficiary and each Obligor agrees to notify the Intercreditor Agent in writing upon:

- (a) the Beneficiary (other than the Security Trustee) becoming aware of the occurrence of a Review Event under its Finance Documents; or
- (b) the Obligor becoming aware of the occurrence of a Review Event under any Finance Document,

(a **Review Event Notice**) and must set out in the Review Event Notice the Review Event that has occurred.

If the Intercreditor Agent becomes actually aware of the occurrence of a Review Event which is subsisting, then it will be deemed to have received a notice under this clause 12.1 on the date it becomes so aware.

12.2 **Intercreditor Agent to advise – Review Event Notice**

Upon receipt of any Review Event Notice, the Intercreditor Agent will as soon as practicable (but, in any event, within two Business Days):

- (a) deliver a copy of that Review Event Notice to each Beneficiary together with a request (**Review Event Request**) for instructions by the Beneficiary in respect of the subject matter of the Review Event Notice;
- (b) specify the Decision Period within which the instructions of Beneficiaries to the Review Event Request need to be received in order for the Intercreditor Agent to determine whether a waiver will be given for the applicable Review Event, which period shall be 15 Business Days after the occurrence of the applicable Review Event.

In this clause 12.2, the Intercreditor Agent may take such actions and make such enquiries as it deems appropriate in order to determine if any requisite instructions or authorisations have been given by any applicable Beneficiaries including by convening meetings of the Beneficiaries and their respective advisers to discuss any proposed Review Event Waiver Decision.

12.3 **Review Event Waiver Decisions**

- (a) Notwithstanding clause 12.2 (*Intercreditor Agent to advise – Review Event Notice*), at any time after a Review Event Notice is given in relation to a Review Event, a Review Event Waiver Decision shall (and may only) be taken if the Intercreditor Agent has received instructions to take such action from the Simple Majority Beneficiaries with Pre-Enforcement Eligible Voting Amounts.
- (b) Any Review Event Waiver Decision taken in accordance with this clause 12.3 (*Review Event Waiver Decision*) shall be deemed to apply to any equivalent provision under any other Finance Document (with the effect that a Review Event Waiver Decision of any such Finance Document will automatically occur once the Review Event Waiver Decision in accordance with this clause 12.3 (*Review Event Waiver Decision*) has been taken).
- (c) For the avoidance of any doubt and notwithstanding any other provision in a Finance Document, this clause 12.3 (*Review Event Waiver Decisions*) shall not apply to any NAIF Specific Decision.

13. **BOND REFINANCING CONDITIONS AND WORKING CAPITAL FACILITY AGREEMENT CONDITIONS**

13.1 **Bond Refinancing Conditions**

The Borrower and the Bond Trustee agree that the Bonds will not be refinanced or replaced (however described) except where each of the following conditions are satisfied:

- (a) the total principal amount under the Bond Refinancing must not exceed the total principal amount (plus accrued and/or capitalised interest) under the Bonds at the time of the refinancing or replacement (after deducting any amount in the Bond Escrow Account and the Bond Refinancing Reserve Account, and any such amounts shall be applied in redemption of the Bonds on or prior to the Bond Refinancing);
- (b) the Bonds are refinanced or replaced in full and not only in part;
- (c) no Bond Refinancing occurs before the date of Project Completion (as that term is defined in the NAIF Facility Agreement);
- (d) the Bond Refinancing must not have any higher ranking in priority than the NAIF Facility Agreement in an enforcement scenario under this deed;
- (e) any accession conditions under this deed and the Security Trust Deed are satisfied;

- (f) where any proposed Bond Refinancing is by way of an amendment to the existing Bond Terms (rather than a new Bond Refinancing Agreement or terms), the amendment would not breach the restrictions on amendments under this deed (including but not limited to, under clause 4.3 (*Other Amendment Decisions*)); and
- (g) the terms of repayment under the Bond Refinancing fall within the following debt sizing parameters:
 - (i) the 'Debt Service Cover Ratio' with respect to the NAIF Facility Agreement and the Bond Refinancing is greater than 1.70:1, measured on a forward-looking basis as at each quarter end date after Project Completion (as that term is defined in the NAIF Facility Agreement until the final maturity date under the NAIF Facility Agreement, based on the financial model assumptions agreed with the WA Lender;
 - (ii) the 'Loan Life Cover Ratio' with respect to the NAIF Facility Agreement and the Bond Refinancing is greater than 1.70:1, measured on a forward-looking basis as at each quarter end date until the final maturity date under the NAIF Facility Agreement, based on the financial model assumptions agreed with the WA Lender; and
 - (iii) amortisation of the Bond Refinancing in full by its stated maturity date.

13.2 Working Capital Facility Agreement Conditions

The Borrower acknowledges and agrees that it shall not enter into any Working Capital Facility Agreement (alone or with any other Obligor) except where each of the following conditions are satisfied:

- (a) the aggregate principal amount available under the Working Capital Facility Agreement does not exceed A\$15,000,000 (plus accrued and/or capitalised interest) (or its equivalent in any other currency or currencies);
- (b) the WCF Lender is a financial institution with a long term credit rating of A or higher by Standard & Poor's or a comparable rating from an internationally recognised credit rating agency;
- (c) the Working Capital Facility Agreement does not have an obligation to "clean down" (however described) the outstanding amounts under the Working Capital Facility Agreement that is more onerous than a clean down to zero once every 12 months, with a "clean down period" of no more than 5 Business Days;
- (d) the WCF Lender accedes to this the Deed and the Security Trust Deed as a Beneficiary under and in accordance with the terms of this deed and the Security Trust Deed; and
- (e) the WCF Lender does not benefit from any Security or guarantee other than the Transaction Security Interests.

14. PREPAYMENTS AND CANCELLATIONS UNDER SECURED LENDER AGREEMENTS

14.1 General

- (a) Each Party (including, if applicable, any Bond Refinancing Representative) acknowledges and agrees that any reference in this clause 14 (*Application of prepayments*) to a prepayment to the Bond Refinancing Reserve Account (or any equivalent account in connection with any Bond Refinancing) shall no longer be applicable as soon as the amount standing to the credit of the Bond Refinancing

Reserve Account (or any equivalent account in connection with any Bond Refinancing) is at least equal to:

- (i) the Bond Issue Amount including amounts standing to the credit of the Bond Escrow Account (or any equivalent account in connection with any Bond Refinancing) plus any accrued but unpaid interest, call option premiums and costs and expenses; less
- (ii) amounts repaid, prepaid or cancelled under the Bond Terms or Bond Refinancing Agreement (as applicable),

(the **Bond Repayment Amount**).

- (b) Promptly, and in any event with 2 Business Days after the amount standing to the credit of the Bond Refinancing Reserve Account (or any equivalent account in connection with any Bond Refinancing) equals the Bond Repayment Amount, the Borrower must exercise the call option provisions in the Bond Terms and apply those amounts in full and final redemption or prepayment (however described) of the outstanding Bonds or all amounts outstanding under any Bond Refinancing Agreement (as applicable) in accordance with the call option provisions of the Bond Terms.
- (c) Subject to clause 15.9 (*Super senior treatment of Super Senior Facilities*), and provided that all amounts outstanding under the Super Senior Facilities have been repaid in full, any excess amount standing to the credit of the Bond Refinancing Reserve Account (or any equivalent account in connection with any Bond Refinancing) immediately after redemption or repayment (as applicable) under paragraph (b) above shall promptly be applied in voluntary prepayment of amounts outstanding under or in connection with the NAIF Facility Agreement in accordance with the NAIF Facility Agreement.

14.2 **Application of voluntary prepayments**

Each Party (including, if applicable, any Bond Refinancing Representative) acknowledges and agrees that:

- (a) any voluntary prepayments (however described) to be made by the Borrower in accordance with the Bond Terms or Bond Refinancing Agreement (as applicable) or the NAIF Facility Agreement must be applied:
 - (i) first in prepayment of the Bond Debt in inverse order of maturity; and
 - (ii) once the Bond Debt has been fully repaid, in prepayment of the Secured Obligations owing to the WA Lender in accordance with the NAIF Facility Agreement; and
- (b) no voluntary prepayments (however described) may be made by the Borrower under the Working Capital Facility Agreement at any time, or under any other Secured Lender Agreement at any time while an Event of Default is subsisting.

This does not limit the application of clause 15.9 (*Super senior treatment of Super Senior Facilities*).

14.3 **Application of mandatory prepayments - general**

- (a) This clause 14.3 applies to any mandatory prepayment or mandatory redemption (in each case, however described) under the NAIF Facility Agreement or the Bond Terms or any Bond Refinancing Agreement (as applicable) that is not the subject of clause

14.4 (*Application of cash share mandatory prepayment*) or clause 14.5 (*Application of mandatory prepayments and voluntary prepayments*).

- (b) Subject to paragraph (a), the Parties acknowledge and agree that any mandatory prepayment or mandatory redemption (in each case, however described) under the NAIF Facility Agreement or the Bond Terms or any Bond Refinancing Agreement (as applicable) shall be applied against the Secured Obligations owing to the WA Lender and the Bonds or any Bond Refinancing (as applicable) on a pro-rata basis equal to the proportion borne by the total principal outstanding amount under the NAIF Facility Agreement and the Bond Terms or any Bond Refinancing Agreement (as applicable) to the total amount being prepaid, where, in the case of the Bonds or any Bond Refinancing (as applicable), the total principal outstanding amount shall be calculated to be net of any amount standing to the credit of the Bond Refinancing Reserve Account (or any equivalent account in connection with any Bond Refinancing).
- (c) Subject to clause 14.6 (*Meaning of application for the purposes of the Bonds or any Bond Refinancing*), each mandatory prepayment applied against the Secured Obligations owing to the WA Lender and the Bonds or any Bond Refinancing (as applicable) under paragraph (b) shall be paid in accordance with the terms of the NAIF Facility Agreement or the Bond Terms or any Bond Refinancing Agreement (as applicable).

This does not limit the application of clause 15.9 (*Super senior treatment of Super Senior Facilities*).

14.4 **Application of cash share mandatory prepayment**

The Parties acknowledge and agree that any mandatory prepayment or mandatory redemption (in each case, however described) under clause 7.4 (*Cash sharing*) of the NAIF Facility Agreement or clause 10.2(g) (*Bond Refinancing Reserves Account*) of the Bond Terms or any equivalent provision under any Bond Refinancing Agreement (as applicable) shall be applied against the Secured Obligations owing to the WA Lender and the Bonds or any Bond Refinancing (as applicable) as follows:

- (a) until paragraph (b) applies, 15% of any Cash Share Excess Cash (as that term is defined in the NAIF Facility Agreement) shall be applied against the Bonds or any Bond Refinancing:
 - (i) 15% of any Cash Share Excess Cash on each Cash Share or Lock Up Cash Sweep Date (as those terms are defined in the NAIF Facility Agreement) shall be applied against the Bonds or any Bond Refinancing; and
 - (ii) 15% of any Cash Share Excess Cash on each Cash Share or Lock Up Cash Sweep Date (as those terms are defined in the NAIF Facility Agreement) shall be applied against the Secured Obligations owing to the WA Lender; and
- (b) on and from the date that is the earlier of (i) repayment in full of the Bonds; and (ii) the First Facility B Repayment Date (as that term is defined in the NAIF Facility Agreement), 50% of any Cash Share Excess Cash on each Cash Share or Lock Up Cash Sweep Date (as those terms are defined in the NAIF Facility Agreement) shall be applied against the Secured Obligations owing to the WA Lender (and for the avoidance of doubt, no part of the Cash Share Excess Cash shall be applied against the Bonds or any Bond Refinancing or otherwise received by the Bond Trustee or the Bond Refinancing Representative (in each case, as applicable)).

This does not limit the application of clause 15.9 (*Super senior treatment of Super Senior Facilities*).

14.5 Application of mandatory prepayments

- (a) Subject to paragraphs (b), (e) and (f), the Parties acknowledge and agree that any prepayment under:
- (i) clause 7.2 (*Insurance mandatory prepayment*) of the NAIF Facility Agreement and clause 7.2 (*Insurance mandatory prepayment*) of the Super Senior SLNSA;
 - (ii) clause 7.3 (*Project Asset sales mandatory prepayment*) of the NAIF Facility Agreement and clause 7.3 (*Project Asset sales mandatory prepayment*) of the Super Senior SLNSA;
 - (iii) clause 7.5 (*Facility C2 mandatory prepayment*) of the NAIF Facility Agreement and clause 7.4 (*Super Senior Facilities mandatory prepayment - Tanzanian Disposal*) of the Super Senior SLNSA;
 - (iv) clause 7.8 (*Mandatory prepayment – equity / other capital raise*) of the NAIF Facility Agreement and clause 7.5 (*Super Senior Facilities mandatory prepayment - equity / other capital raise*) of the Super Senior SLNSA;
 - (v) clause 7.6 (*Equity Cure Amount mandatory prepayment*) of the NAIF Facility Agreement and clause 7.6 (*Equity Cure Amount mandatory prepayment*) of the Super Senior SLNSA; and
 - (vi) clause 7.9 (*Mandatory prepayment – Senior Facilities and WCF Facility maturity*) of the NAIF Facility Agreement and clause 7.7 (*Mandatory prepayment – Senior Facility maturity*),

(Mandatory Prepayment Provisions) shall be applied 100% against the Secured Obligations owing to the Super Senior Beneficiaries on a pari passu and pro rata basis (in each case, to be applied in accordance with the relevant Super Senior Beneficiary's Secured Lender Agreement) and for the avoidance of any doubt, no amount payable by the Borrower under any Mandatory Prepayment Provision shall be applied against any Other Senior Debt or received by any Secured Lender in respect of any Other Senior Debt for so long as any Super Senior Facilities remain outstanding.

- (b) For the purposes of determining the Secured Obligations owing to the Super Senior SLNSA Finance Parties under paragraph (a), the Super Senior SLNSA Facility Agent, the Intercreditor Agent and the Security Trustee acknowledge and agree that the amount standing to the credit balance of the Super Senior SLNSA Escrow Accounts shall be deducted from the Secured Obligations of the Super Senior SLNSA Finance Parties (to the extent not already deducted pursuant to clauses clause 7.2 (*Insurance mandatory prepayment*), 7.3 (*Project Asset sales mandatory prepayment*), 7.4 (*Super Senior Facilities mandatory prepayment - Tanzanian Disposal*) of the Super Senior SLNSA), 7.5 (*Super Senior Facilities mandatory prepayment - equity / other capital raise*), 7.6 (*Equity Cure Amount mandatory prepayment*) of the Super Senior SLNSA, or 7.7 (*Mandatory prepayment - Senior Facility maturity*) of the Super Senior SLNSA).
- (c) For the purposes of determining the Secured Obligations owing to the WA Lender under paragraph (a), the WA Lender, the Intercreditor Agent and the Security Trustee acknowledge and agree that the amount standing to the credit balance of the NAIF Facility C2 Suspense Account shall be deducted from the Secured Obligations of the WA Lender (to the extent not already deducted under the NAIF Facility Agreement).

- (d) Without prejudice to clause 15.9 (*Super senior treatment of Super Senior Facilities*), the Parties acknowledge and agree that:
- (i) for so long as any Super Senior Facilities remain outstanding, the Obligors are not permitted to prepay, and no Beneficiary is permitted to accept, the principal amount outstanding in respect of any Secured Creditor Agreement that is not a Super Senior Facility (other than a repayment which is simultaneously redrawn under an existing rollover provision in the Working Capital Facility Agreement); and
 - (ii) if a Beneficiary receives any repayment or prepayment (other than, in the case of the WCF Lender, a repayment which is simultaneously redrawn under an existing rollover provision in the Working Capital Facility Agreement) of any Other Senior Debt before the Super Senior Facilities have been repaid or prepaid in full (including by way of set-off), that amount will be treated as Recovered Money for the purposes of clauses 15 (*Treatment of Recovered Money*) and 16 (*Distribution of Recovered Money*) regardless of whether or not the Recovered Money Distribution Date has occurred.
- (e) Subject to paragraph (f), the Obligors must ensure that the net sale proceeds of the Tanzanian Disposal are paid directly to the Security Trustee by the purchaser of the Tanzanian Disposal to be distributed in accordance with paragraph (a).
- (f) Each Party acknowledges and agrees that:
- (i) any amount to be received by the WA Lender under paragraph (a) in respect of the Tanzanian Disposal will be paid by the Security Trustee to the NAIF Facility C2 Suspense Account, and will not be immediately applied in repayment or prepayment (however described) of the NAIF Facility C2, and such amounts may be subject to:
 - (A) subsequent disbursement to the Borrower; or
 - (B) other application in repayment or prepayment of the NAIF Facility C2 or other amounts outstanding under the NAIF Facility Agreement,
 in each case in accordance with the terms of the NAIF Facility Agreement;
 - (ii) any amount disbursed (however described or effected) from the NAIF Facility C2 Suspense Account to the Borrower shall constitute Secured Obligations owing to the WA Lender under the NAIF Facility C2, and accordingly shall comprise part of the Super Senior Facilities and be repaid or prepaid (however described) in full prior to any Other Senior Debt in accordance with this Deed (including, without limitation, in accordance with paragraph (a) of this clause 14.5, clause 15.9 (*Super senior treatment of Super Senior Facilities*), clause 16.1(f) (*Enforcement waterfall – general*) and clause 16.2(b) (*Enforcement waterfall – Bond Escrow Account and Bond Refinancing Reserve Account*)); and

[Note: Amounts standing to the credit of Facility C2 Suspense Account should not be counted for these purposes - consistent with the Escrow arrangements - until disbursed]
 - (iii) all amounts in the NAIF Facility C2 Suspense Account are held for the benefit of the WA Lender and the Security Trustee will act in accordance with any instructions of the WA Lender (or NAIF or a NAIF Representative) only in respect of the NAIF Facility C2 Suspense Account.

14.6 **Meaning of application for the purposes of the Bonds or any Bond Refinancing**

The Parties acknowledge and agree that any mandatory prepayment or mandatory redemption (however described) to be applied against the Bonds or any Bond Refinancing (as applicable) shall mean:

- (a) in the case of any mandatory prepayment or mandatory redemption (however described) in connection with any Cash Sharing or Lock Up Cash Sweep and Mandatory Prepayment (as each of those terms are defined in the Bond Terms) under clause 10.2 (*Bond Refinancing Reserves Account*) of the Bond Terms, a payment to the Bond Refinancing Reserve Account (or any equivalent account in connection with any Bond Refinancing) in an amount equal to that mandatory prepayment against the Bonds or any Bond Refinancing (as applicable); and
- (b) in the case of any other mandatory prepayment or mandatory redemption (however described), a redemption, repurchase or permanent repayment (however described) of the Bonds or any Bond Refinancing (as applicable) in an amount equal to the mandatory prepayment against the Bonds or any Bond Refinancing (as applicable).

14.7 **Voluntary cancellation**

The Parties acknowledge and agree that any proposed voluntary cancellation by the Borrower of loans or issue amounts (however described) under any Secured Lender Agreement shall be made on a pro rata basis between all Secured Lender Agreements.

15. **TREATMENT OF RECOVERED MONEYS**

15.1 **Moneys not forming part of Recovered Moneys**

Where a Finance Document permits or requires moneys to be placed to the credit of a suspense account held by the Security Trustee or otherwise for the purpose of redistribution to the Borrower under the NAIF Facility C2 in order to preserve the rights to prove in the bankruptcy or liquidation of a person, those moneys will not, unless otherwise determined by all the Beneficiaries, be treated as Recovered Moneys until the time as, in accordance with the terms of the relevant Finance Document, those moneys are no longer held in suspense.

15.2 **Interest from suspense account**

Where moneys are placed in a suspense account referred to in clause 15.1 (*Moneys not forming part of Recovered Moneys*) other than the NAIF Facility C2 Suspense Account, interest earned and credited to the account is Recovered Moneys.

15.3 **Receipt not through Security Trustee**

Each Beneficiary agrees to notify the Security Trustee promptly of its receipt of amounts in respect of the Secured Obligations on or after the Enforcement Date (including without limitation, a recovery by set-off or banker's lien and (subject to clause 15.8 (*Close-out netting under Hedging Agreements not to constitute Recovered Money*)) any net amounts owed by a Hedge Counterparty to an Obligor following termination and/or close-out of Hedging Transactions). The parties acknowledge that a receipt by way of set-off occurs at the time the Beneficiary applies the set-off in its books of account, irrespective of the time when the amount set-off was deposited with that party.

15.4 **Accounting to Security Trustee**

Subject to clause 15.8 (*Close-out netting under Hedging Agreements not to constitute Recovered Money*), if the receipt required to be notified by the Beneficiary under clause 15.3 (*Receipt not through Security Trustee*) represents an amount which, had it been

received by the Security Trustee, would have been distributable not only to the Beneficiary who receives it but also to the other Beneficiaries, then the Beneficiary agrees to pay to the Security Trustee an amount equivalent to the amount received within two Business Days of receiving it. The amount paid to the Security Trustee is to be:

- (a) taken to have been received by the Security Trustee and not by the Beneficiary who receives it (and the Secured Obligations of that Beneficiary is to continue to include that amount); and
- (b) distributed by the Security Trustee in accordance with this deed.

15.5 **Refund to Beneficiary**

If a Beneficiary who receives a payment referred to in clause 15.3 (*Receipt not through Security Trustee*) is obliged to refund any part of it under laws relating to insolvency then, on request from the Beneficiary, each party to which any part of the payment was distributed must repay to the Beneficiary the proportion of the amount received by that party equal to the proportion of the payment received by the Beneficiary which the Beneficiary is obliged to refund.

15.6 **Deemed Payment**

An amount paid under clause 15.5 (*Refund to Beneficiary*) or clause 15.9(b)(ii) (*Super senior treatment of Super Senior Facilities*) will be deemed to have been a payment for the account of the Security Trustee and not to the relevant Beneficiary for its own account and to that extent the liability to the relevant Beneficiary will not be reduced by the amount received, other than to the extent of any distribution received by the relevant Beneficiary under clause 15.4(b) (*Accounting to Security Trustee*).

15.7 **Indemnity by Obligor**

The relevant Obligor must immediately on the relevant Beneficiary making or becoming liable to make a payment under clause 15.4 (*Accounting to Security Trustee*) indemnify the relevant Beneficiary (which, for the purposes of the WA Lender in this clause 15.7 (*Indemnity by Obligor*) shall also include NAIF and the Commonwealth) against that payment to the extent that that Obligor's liability had been discharged by the amount received by the relevant Beneficiary but would remain undischarged after sharing of the relevant payment by the Security Trustee after payment under clause 15.4 (*Accounting to Security Trustee*) is made.

15.8 **Close-out netting under Hedging Agreements not to constitute Recovered Money**

Despite anything to the contrary in this deed:

- (a) the operation of netting provisions under a Hedging Agreement is permitted; and
- (b) any amount which so netted which would otherwise reduce the gross exposure of a Hedge Counterparty under the Hedging Agreement but for the operation of the netting provisions thereunder will not constitute Recovered Money for the purposes of this deed.

15.9 **Super senior treatment of Super Senior Facilities**

- (a) Subject to paragraph (b), the Borrower agrees it will prepay, repay or redeem (however described) the Super Senior Facilities in full before prepaying, repaying or redeeming (including any scheduled principal repayment or interest payment) any Other Senior Debt.
- (b) Each Beneficiary:

- (i) acknowledges that it is intended that the Super Senior Facilities are repaid, prepaid or redeemed in full (on a pari passu and pro rata basis) prior to any Other Senior Debt;
- (ii) agrees that if it receives any repayment or prepayment (other than, in the case of the WCF Lender, a repayment which is simultaneously redrawn under an existing rollover provision in the Working Capital Facility Agreement) of any Other Senior Debt before the Super Senior Facilities have been repaid, prepaid or redeemed in full (including by way of set-off), that amount will be treated as Recovered Money for the purposes of clauses 15 (*Treatment of Recovered Money*) and 16 (*Distribution of Recovered Money*) regardless of whether or not the Recovered Money Distribution Date has occurred; and
- (iii) acknowledges and agrees that any amounts paid by the Security Trustee to the NAIF Facility C2 Suspense Account shall not, at any time while they remain standing to the credit of the NAIF Facility C2 Suspense Account constitute repayment or prepayment (however described) of the NAIF Facility C2.

16. DISTRIBUTION OF RECOVERED MONEY

16.1 Enforcement waterfall - general

Subject to clause 16.2 (*Enforcement waterfall – Bond Escrow Account and Bond Refinancing Reserve Account*) and clause 11.17 (*Super Senior SLNSA Escrow Accounts*), the Security Trustee agrees to distribute Recovered Money and all money received by the Security Trustee, Receiver, Controller or Attorney or any other person acting on their behalf on or after the Recovered Money Distribution Date as follows (in each case, only if and to the extent that payments of a higher priority have been made in full and then pro rata to the recipients at each level of priority):

- (a) first, in payment of all amounts which, to the extent required by law, have priority over the payments specified in the balance of this clause 16.1 (*Enforcement waterfall - general*);
- (b) second, on a full indemnity basis, to the Security Trustee and the Intercreditor Agent (and each of their delegates) for its costs, fees, charges and expenses and other amounts due to it in its capacity as Security Trustee or Intercreditor Agent (as applicable), in payment of any other outgoings due and payable in respect of the Secured Obligations that the Security Trustee, Receiver, Controller, Attorney or Intercreditor Agent thinks fit to pay and to any Controller appointed under a Finance Document for its Costs and remuneration in connection with exercising, enforcing or preserving rights (or considering doing so) in connection with the Finance Documents;
- (c) third, to the extent it represents the proceeds of enforcement of a Security, to the holder of any prior ranking Security of which the Security Trustee, Receiver, Controller or Attorney has actual knowledge to the extent the holder is entitled to those proceeds in priority to any other person in this clause 16.1 (*Enforcement waterfall - general*);
- (d) fourth, to the Beneficiaries (other than the Intercreditor Agent and the Security Trustee) pari passu and rateably for amounts payable by them on account of costs and expenses pertaining to their legal advisors, financial advisors and technical advisors, in each case, whose appointment has been approved in writing by the Borrower (including those costs the subject of the Costs Indemnity Letter between the Parent, the Borrower and certain Beneficiaries set out therein dated 15 November 2023, and subsequent amendments to that letter);

- (e) fifth, to each Beneficiary towards payment pro rata of any amount (and interest in connection with those amounts) the subject of clause 7.2 (*If a Beneficiary does not fund*) where **pro rata** means in the proportion that the total amount for a particular Beneficiary the subject of that clause at that time bears to the total of all amounts the subject of that clause at that time;
- (f) sixth, to the Super Senior Beneficiaries (other than the Intercreditor Agent and the Security Trustee) pari passu and rateably for all amounts owing to them in respect of the Super Senior Facilities (which is to be determined by the Security Trustee no later than the Business Day before each applicable date that each distribution is to be made, and for the purposes of which calculation all amounts standing to the credit of any Super Senior SLNSA Escrow Account at any time will be taken to have been repaid to the Super Senior SLNSA Finance Parties at that time and all amounts standing to the credit of the NAIF Facility C2 Suspense Account at any time will be taken to have been repaid to the WA Lender at that time);
- (g) seventh, after all amounts owing to the Super Senior Beneficiaries (other than the Intercreditor Agent and the Security Trustee) in respect of the Super Senior Facilities have been Finally Paid, to the Beneficiaries (other than the Intercreditor Agent and the Security Trustee) pari passu and rateably for amounts owing to them in respect of the Secured Obligations (which is to be determined by the Security Trustee no later than the Business Day before each applicable date that each distribution is to be made) up to the Secured Obligations Limits (in respect of the Super Senior Beneficiaries, minus any amount received by that Super Senior Beneficiary under paragraph (f));
- (h) eighth, to the Beneficiaries (other than the Intercreditor Agent and the Security Trustee) pari passu and rateably for amounts owing to them in respect of the Secured Obligations (which is to be determined by the Security Trustee no later than the Business Day before each applicable date that each distribution is to be made, and for the purposes of which calculation all amounts standing to the credit of any Super Senior SLNSA Escrow Account at any time will be taken to have been repaid to the Super Senior SLNSA Finance Parties at that time and all amounts standing to the credit of the NAIF Facility C2 Suspense Account at any time will be taken to have been repaid to the WA Lender at that time) which exceed the Secured Obligations Limits. For the purposes of this paragraph (h), the Bond Trustee or the Bond Refinancing Representative (as applicable) acknowledges and agrees that amounts standing to the credit of the Bond Escrow Account and Bond Refinancing Reserve Account (or any equivalent accounts in connection with any Bond Refinancing) shall not count as "Secured Obligations";
- (i) ninth, if none of the Obligors are under any further actual or contingent liability in respect of a Beneficiary, in payment only to the extent required by law, in order of their priority, of other Security of which the Security Trustee, Receiver, Controller or Attorney has actual knowledge and which are due and payable in accordance with their terms; and
- (j) tenth, the surplus (if any) after the Secured Obligations owing to all Beneficiaries is Finally Paid, to the Obligors. The Security Trustee, Receiver, Controller or Attorney may pay the surplus to the credit of an account in the name of the relevant Obligor in the books of any Beneficiary carrying on business within Australia and having done so is under no further liability in respect of that surplus to the Obligors.

16.2 **Enforcement waterfall – Bond Escrow Account and Bond Refinancing Reserve Account**

The Security Trustee agrees to distribute amounts standing to the credit of the Bond Escrow Account and the Bond Refinancing Account as follows (in each case, only if and to the extent

that payments of a higher priority have been made in full and then pro rata to the recipients at each level of priority):

- (a) first, to the Bond Trustee or Bond Refinancing Representative (as applicable) for the account of the Bondholders or the Bond Refinancing Providers (as applicable) for amounts owing to them in respect of the Secured Obligations (which is to be determined by the Security Trustee no later than the Business Day before each applicable date that each distribution is to be made);
- (b) second, after the Secured Obligations owing to the Bond Trustee or Bond Refinancing Representative (as applicable) are Finally Paid, to the Super Senior Beneficiaries (other than the Intercreditor Agent and the Security Trustee) for all amounts owing to the Super Senior Beneficiaries (other than the Intercreditor Agent and the Security Trustee) in respect of the Super Senior Facilities (on a pari passu and pro rata basis) (which is to be determined by the Security Trustee no later than the Business Day before each applicable date that each distribution is to be made, and for the purposes of which calculation all amounts standing to the credit of any Super Senior SLNSA Escrow Account at any time will be taken to have been repaid to the Super Senior SLNSA Finance Parties at that time and all amounts standing to the credit of the NAIF Facility C2 Suspense Account at any time will be taken to have been repaid to the WA Lender at that time);
- (c) third, after all amounts owing to the Super Senior Beneficiaries (other than the Intercreditor Agent and the Security Trustee) for amounts owing to the Super Senior Beneficiaries (other than the Intercreditor Agent and the Security Trustee) in respect of the Super Senior Facilities is Finally Paid, to the Beneficiaries (other than the Intercreditor Agent and the Security Trustee) pari passu and rateably for amounts owing to them in respect of the Secured Obligations (which is to be determined by the Security Trustee no later than the Business Day before each applicable date that each distribution is to be made);
- (d) fourth, if none of the Obligors are under any further actual or contingent liability in respect of a Beneficiary, in payment only to the extent required by law, in order of their priority, of other Security of which the Security Trustee, Receiver, Controller or Attorney has actual knowledge and which are due and payable in accordance with their terms; and
- (e) fifth, the surplus (if any) after the Secured Obligations owing to all Beneficiaries is Finally Paid, to the Obligors. The Security Trustee, Receiver, Controller or Attorney may pay the surplus to the credit of an account in the name of the relevant Obligor in the books of any Beneficiary carrying on business within Australia and having done so is under no further liability in respect of that surplus to the Obligors.

17. CHANGE IN BENEFICIARIES

17.1 Change in Beneficiaries

A person will become a Beneficiary under this deed, and a document will become a Finance Document under this deed in accordance with clause 6 (*Becoming and Ceasing to be a Beneficiary*) (other than clause 6.10 (*Ceasing to be a Beneficiary*)) of the Security Trust Deed.

17.2 Intercreditor Agent to sign Beneficiary Accession Deed

- (a) The Intercreditor Agent must execute any Beneficiary Accession Deed in accordance with clause 6.4 (*Beneficiary Accession Deed*) of the Security Trust Deed.
- (b) With effect on and from the "Effective Date" specified in the Beneficiary Accession Deed:

- (i) the relevant person assumes the rights and obligations of a "Beneficiary" in the relevant capacity or capacities and is bound by the terms of this deed as a "Beneficiary" and in the relevant capacity or capacities (as applicable); and
 - (ii) the transferring Beneficiary continues to be bound by this deed unless it has transferred all of its rights and obligations under all Finance Documents in respect of which it has rights and obligations, to one or more New Providers, in which case it must cease to become a Beneficiary in accordance with clause 6.10 (*Ceasing to be a Beneficiary*) under the Security Trust Deed;
 - (iii) the New Provider acquires such rights from the transferring Beneficiary and is bound by all directions, consents and waivers given by the Intercreditor Agent and the Security Trustee and the transferring Beneficiary, as if it has given them; and
 - (iv) each other party continues to be bound by this deed on the basis that the New Provider is a Beneficiary.
- (c) The relevant New Finance Document becomes a Finance Document and, where applicable, will be covered under an identified definition as referred to in the definition of "Finance Documents" with effect on and from the "Effective Date" specified in the Beneficiary Accession Deed.

17.3 Intercreditor Agent authorised to execute Beneficiary Accession Deeds for other parties

Each Obligor and each Beneficiary irrevocably and unconditionally authorises the Intercreditor Agent its authorised officers and any delegates and attorneys of them, for valuable consideration received, to execute any Beneficiary Accession Deed on its behalf which is presented to it in accordance with clause 6.4 (*Beneficiary Accession Deed*) of the Security Trust Deed.

17.4 When effective

Upon the "Effective Date" specified under a duly completed Beneficiary Accession Deed:

- (a) the New Provider is taken to be a Beneficiary for the purposes of the Security Trust Deed and this deed; and
- (b) the New Provider is bound by the terms of this deed.

18. CEASING TO BE A BENEFICIARY

A Beneficiary will cease to be a Beneficiary in accordance with clause 6.10 (*Ceasing to be a Beneficiary*) of the Security Trust Deed. At that time, the Beneficiary will also cease to have any rights and obligations under this deed.

19. INTERCREDITOR AGENT TO KEEP RECORDS

The Intercreditor Agent must keep a record of the Beneficiaries from time to time.

20. CHANGES TO OBLIGORS

20.1 Additional Obligors

- (a) The Borrower must ensure that any person who is required pursuant to the terms of the Security Trust Deed to become an Obligor under this deed does so by executing an Obligor and Guarantor Accession Deed as an Obligor.

- (b) With the effect on and from the 'Effective Date' (as that term is defined in the relevant Obligor and Guarantor Accession Deed executed by the person referred to in clause 20.1(a) (*Additional Obligors*) above, the Borrower and the Security Trustee) the person is taken to be a party to this deed as an Obligor.

20.2 **Release of Obligors**

An Obligor (other than a Borrower or the Parent) will cease to be a party to this deed upon receipt by that Obligor of an Obligor and Guarantor Release Deed duly executed by the Security Trustee in accordance with clause 24.3 (*Release of Guarantor*) of the Security Trust Deed, and that deed taking effect.

21. **DEALING WITH INTERESTS**

21.1 **No dealing by Obligor**

No Obligor may assign or otherwise deal with its rights under this deed, except in accordance with clause 20 (*Changes to Obligors*) of this deed and clause 24 (*Changes to the Obligors*) of the Security Trust Deed.

21.2 **Dealings**

- (a) The Intercreditor Agent may assign or otherwise deal with its rights under the Finance Documents in accordance with a change of Intercreditor Agent under clause 8 (*Resignation or removal of the Intercreditor Agent*) of this deed.
- (b) The Security Trustee may assign or otherwise deal with its rights under the Finance Documents in accordance with the Security Trust Deed.

21.3 **Security Trustee's powers under applicable law**

Any rights or powers granted to the Security Trustee under this deed, the Security Trust Deed or any other Finance Document are in addition to any rights and powers which the Security Trustee has under any applicable law.

22. **FATCA INFORMATION**

- (a) Subject to paragraph (c), each party must, within ten Business Days of a reasonable request by another party:
 - (i) confirm to that other party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party; and
 - (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;
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other party reasonably requests for the purposes of that other party's compliance with any other law, regulation or exchange of information regime.
- (b) If a party confirms to another party pursuant to paragraph (a)(i) 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 must notify that other party reasonably promptly.

- (c) Paragraph (a) above shall not oblige any Beneficiary to do anything, and paragraph (a)(iii) above shall not oblige any other party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the party in question provides the requested confirmation, forms, documentation or other information.

23. **CONTRACTUAL RECOGNITION OF BAIL IN**

- (a) 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:
 - (i) any Bail-In Action in relation to any such liability, including (without limitation):
 - (A) 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;
 - (B) 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
 - (C) a cancellation of any such liability; and
 - (ii) 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.
- (b) In this clause:

"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.

"Bail-In Legislation" means:

- (i) 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
- (ii) in relation to any state other than such an EEA Member Country or (to the extent that the United Kingdom is not such an EEA Member Country) 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.

"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.

"UK Bail-In Legislation" means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) 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).

"Write-down and Conversion Powers" means:

- (i) 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;
- (ii) in relation to any other applicable Bail-In Legislation:
 - (A) 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
 - (B) any similar or analogous powers under that Bail-In Legislation; and
- (iii) in relation to any UK Bail-In Legislation:
 - (A) 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
 - (B) any similar or analogous powers under that UK Bail-In Legislation.

24. **NOTICES AND OTHER COMMUNICATIONS**

Each notice, certificate, consent, approval, waiver or other communication under this deed may only be given or sent, and is only effective, if it is given or sent and received in the manner contemplated by clause 26 (*Notices*) of the Security Trust Deed.

25. **NAIF REQUIREMENTS**

25.1 **Conflict of interest**

Each of the WA Lender, NAIF and the Commonwealth may exercise its rights, powers and remedies in connection with a Finance Document even if this involves a conflict of interest or the WA Lender, NAIF or the Commonwealth has a personal interest in their exercise.

25.2 **Liability for loss**

None of the WA Lender, NAIF and the Commonwealth is liable for any loss that an Obligor or another Beneficiary suffers as a direct or indirect result of the exercise or attempted exercise of, or failure to exercise, any of its rights, powers or remedies in any Finance Document to which it is a party.

25.3 **Publicity**

- (a) If requested by NAIF or the WA Lender, each Obligor must cooperate and provide reasonable assistance to NAIF and the WA Lender to:
 - (i) meet any publication or reporting requirements either or both of them may have in respect of the Project or otherwise, including but not limited to, under the NAIF Act or any other law or regulation that may be applicable to NAIF or the WA Lender from time to time; and
 - (ii) more broadly cooperate with NAIF and the WA Lender in publicising the Project or any aspect of it including NAIF's or the WA Lender's involvement in the Project.
- (b) Each Obligor must obtain NAIF's prior written consent prior to issuing or authorising the issuance of any public communication that refers to NAIF or the WA Lender or NAIF's or the WA Lender's involvement in the Project (except to the extent that it is required by any law or stock exchange to issue the communication or make that disclosure, in which case it must use reasonable endeavours to obtain NAIF's prior written consent to the wording of that communication).
- (c) In addition to paragraph (b), each Obligor must obtain the WA Lender's prior written consent prior to issuing or authorising the issuance of any public communication that refers to the WA Lender or the WA Lender's involvement in the Project (except to the extent that it is required by any law or stock exchange to issue the communication or make that disclosure, in which case it must use reasonable endeavours to obtain the WA Lender's prior written consent to the wording of that communication).

25.4 **Trust**

Where an Obligor is required under this deed to indemnify, reimburse, or make any payment to or for the benefit of NAIF or the Commonwealth, then the obligation to do so will be owed to the Lender and the right to such indemnity, reimbursement or payment, and any proceeds received by the WA Lender, will be held on trust for NAIF or the Commonwealth (as appropriate). The WA Lender will promptly account to NAIF or the Commonwealth (as appropriate) for any such proceeds.

26. GENERAL

26.1 Application of Finance Documents

If anything in this clause 25 (*General*) is inconsistent with a provision in another Finance Document, then the provision in the other Finance Document prevails for the purposes of that Finance Document only.

26.2 Prompt performance

Subject to clause 26.20 (*Time of the essence*):

- (a) if this deed specifies when an Obligor agrees to perform an obligation, the Obligor agrees to perform it by the time specified; and
- (b) the Obligor agrees to perform all other obligations promptly.

26.3 Release

Upon request by an Obligor and receipt of confirmation from the Borrower that the relevant Secured Property is to be disposed of pursuant to a Permitted Disposal, the Security Trustee will release from the Transaction Security Interest promptly following receipt of the request and confirmation any Secured Property that is the subject of a Permitted Disposal. The Security Trustee must sign all documents and take other action necessary to give effect to a release in accordance with this clause.

26.4 Consents

Each Obligor agrees to comply with all conditions in any consent given by a Finance Party in connection with a Finance Document.

26.5 Certificates

A Finance Party may give to an Obligor a certificate about an amount payable or other matter in connection with a Finance Document. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect or is manifestly incorrect.

26.6 Set-off

Unless restricted or prohibited by this deed, if an Event of Default is continuing, a Finance Party (which, in the case of the WA Lender, shall include NAIF and the Commonwealth) may set off any amount owing by it (including, in the case of the WA Lender, any amount owed by any office of the WA Lender, NAIF or the Commonwealth) to an Obligor (whether or not due for payment) against any amount due for payment by the Obligor to the Finance Party under a Finance Document.

A Finance Party may do anything necessary to effect any set-off under this clause 26.6 (*Set-off*) (including varying the date for payment of any amount owing by the Finance Party to an Obligor and making currency exchanges).

26.7 Discretion in exercising rights

A Finance Party may exercise a right or remedy or give or refuse its consent under a Finance Document in any way it considers appropriate (including by imposing conditions) unless expressly required to act otherwise (including by virtue of a binding intercreditor decision made in accordance with this deed).

26.8 **Partial exercising of rights**

If a Finance Party or a Receiver does not exercise a right or remedy under a Finance Document fully or at a given time, the Finance Party or Receiver may still exercise it later (except to the extent that the Finance Party or Receiver has waived that right or remedy).

26.9 **No liability for loss**

None of the Finance Parties or any Receiver is liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a Power under a Finance Document.

26.10 **Security Trustee or Receiver in possession**

If the Security Trustee exercises any right under a Transaction Security Interest or at law to enter or take possession of the Secured Property it:

- (a) has complete and unfettered discretion as to how the Secured Property is managed; and
- (b) is liable to account only for rents and profits actually received by it.

The same applies to any Receiver when acting as agent of the Security Trustee.

26.11 **Other Security or judgments**

A Transaction Security Interest does not merge with or adversely affect, and is not adversely affected by, any of the following:

- (a) any Security or other right or remedy to which the Security Trustee is entitled; or
- (b) a judgment which the Security Trustee obtains against any Obligor in connection with the Secured Obligations.

The Security Trustee may still exercise its rights under a Transaction Security Interest as well as under the judgment, other Security or the right or remedy.

26.12 **Conflict of interest**

The Powers of a Finance Party under a Finance Document may be exercised even if this involves a conflict of duty or the Finance Party has a personal interest in their exercise.

26.13 **Remedies cumulative**

The Powers of a Finance Party under any Finance Document are in addition to other rights and remedies given by law independently of the Finance Document.

26.14 **Continuing security**

Each Transaction Security Interest is a continuing security despite any intervening payment, settlement or other thing until the Security Trustee releases the Secured Property from the Transaction Security Interest.

26.15 **Indemnities**

- (a) Any indemnity in this deed is a continuing obligation, independent of the Obligor's other obligations under this deed and continues after this deed ends. It is not necessary for a Finance Party (which, in the case of the WA Lender, shall include

NAIF and the Commonwealth) to incur expense or make payment before enforcing a right of indemnity under this deed.

- (b) Each indemnity in this deed is an additional, separate and independent obligation and no one indemnity limits the general application of any other indemnity.

26.16 Rights and obligations are unaffected

Rights given to a Finance Party under a Finance Document and the Obligor's liabilities under it are not affected by anything which might otherwise affect them at law.

26.17 Inconsistent law

To the extent permitted by law, each Finance Document prevails to the extent it is inconsistent with any law.

26.18 Severability

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause 26.18 (*Severability*) has no effect if the severance alters the basic nature of this deed or is contrary to public policy.

26.19 Supervening legislation

Any present or future legislation which operates to vary the obligations of an Obligor in connection with a Finance Document with the result that a Finance Party's Powers are adversely affected (by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

26.20 Time of the essence

Time is of the essence in this deed in respect of an obligation of an Obligor to pay money.

26.21 Variation

The provisions of clause 4 (*Voting*) govern the approvals and Decisions required to make variations and amendments to this deed.

26.22 Confidentiality

Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence or contents of any Finance Document) except:

- (a) in connection with any person exercising rights or dealing with rights or obligations under a Finance Document (including in connection with preparatory steps such as negotiating with any potential assignee or potential sub-participant or other person who is considering contracting with the Security Trustee or a Beneficiary in connection with a Finance Document); or
- (b) to a person considering entering into (or who enters into) a credit swap with a Finance Party involving credit events relating to an Obligor or any of its related bodies corporate; or
- (c) to officers, employees, legal and other advisers and auditors of the Borrower or a Finance Party; or
- (d) to a ratings agency, regulatory agency, reinsurer or potential reinsurer; or

- (e) to any party to this deed or any related bodies corporate of any party to this deed, provided the recipient agrees to act consistently with this clause 26.22 (*Confidentiality*); or
- (f) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- (g) as required by any law including any applicable anti money laundering or counter terrorism financing laws (except this paragraph (g) does not permit the relevant Finance Party to disclose any information of the kind referred to in section 275(1) of the PPSA unless section 275(7) of that Act applies) or stock exchange;
- (h) as otherwise permitted by a Finance Document;
- (i) in relation to a disclosure by the WA Lender or NAIF, any information where:
 - (i) the disclosure is necessary to comply with a directive or request of any Governmental Agency (whether or not having the force of law);
 - (ii) the disclosure is necessary or desirable to obtain an Authorisation from any Governmental Agency;
 - (iii) the disclosure is necessary or desirable in relation to any discovery of documents, or any proceedings before a court, tribunal or other Governmental Agency;
 - (iv) disclosure is made to the Commonwealth, NAIF, any agent or attorney appointed by the WA Lender to act on its behalf under this deed, or in accordance with paragraph (j); or
 - (v) the disclosure is made:
 - (A) in response to any request by a Commonwealth Minister; or a House or Committee of the Parliament of the Commonwealth; or
 - (B) by the Commonwealth (including with other Commonwealth agencies) where this serves the Commonwealth's legitimate interests; or
- (j) in relation to a disclosure by the WA Lender, the WA Lender may at any time disclose any information provided by any other party that is not publicly available (including the existence of or contents of any Finance Document):
 - (i) to any State department or Minister;
 - (ii) in accordance with all laws;
 - (iii) in the course of official duties by the Minister for State Development of Western Australia, the Premier of Western Australia, the Treasurer of Western Australia, the Under Treasurer of Western Australia, the Director General of the Western Australia Department of Jobs, Tourism, Science and Innovations, the Department of Treasury of Western Australia or the Department of Finance of Western Australia;
 - (iv) to satisfy the requirements of parliamentary accountability and parliamentary disclosure obligations;
 - (v) to the Western Australian Auditor-General for the purposes of satisfying its statutory duties;

- (vi) in accordance with practice, convention or policies of the Western Australian government;
- (vii) in annual reports of the Western Australia Department of Jobs, Tourism, Science and Innovation and the Western Australia Department of Treasury and the Western Australia Department of Finance;
- (viii) in accordance with the *Freedom of Information Act 1992* (WA), the *Ombudsman Act 1976* (Cth) or the *Parliamentary Commissioner Act 1971* (WA); and
- (ix) to the extent the WA Lender believes it is necessary to disclose the information in a value for money analysis of the Project.

Each party consents to disclosures made in accordance with this clause 26.22 (*Confidentiality*) and releases each other party from any liability in respect of any disclosures made in accordance with this clause 26.22 (*Confidentiality*).

26.23 **Waivers**

- (a) This deed is for the benefit of the Beneficiaries, and may only be waived by the Beneficiaries in accordance with this deed. This deed is not for the benefit of the Obligors.
- (b) No failure to exercise, nor any delay in exercising, on the part of the Security Trustee, the Intercreditor Agent or any Beneficiary (which, in the case of the WA Lender, shall include NAIF and the Commonwealth), any right or remedy under the Transaction Security Interests shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy.
- (c) The rights and remedies provided in this deed and each Transaction Security Interest are cumulative and not exclusive of any rights or remedies provided by law.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right or Power by that other party.

26.24 **Each signatory bound**

Each Transaction Security Interest and this deed binds each person who signs as Obligor even if another person who was intended to sign does not sign it or is not bound by it.

26.25 **Counterparts**

Each Finance Document may consist of a number of copies, each signed by one or more parties to the document. If so, the signed copies are treated as making up the one document.

26.26 **Governing law**

This deed is governed by the law in force in Western Australia. Each party submits to the exclusive jurisdiction of the courts of that place.

26.27 **Serving documents**

Without preventing any other method of service, any document in a court action may be served on a party by being delivered to or left at that party's address for service of notice set out in the Security Trust Deed or in an Accession Deed.

SCHEDULE 1

Original Obligors

Name	ACN
Coburn Resources Pty Ltd	ACN 165 036 537
Strandline Resources Limited	ACN 090 603 642

Additional Obligors

Name	Company number
Strandline Resources UK Limited, a company incorporated in England and Wales	UK company number 11841019

SCHEDULE 2

Initial Secured Lenders

	Name
1.	The Ministerial body corporate preserved and continued pursuant to Section 5 of the <i>Industry and Technology Development Act 1998</i> (WA)
2.	Nordic Trustee AS

SCHEDULE 3

Material Events of Default

Any Event of Default:

1. that is a breach of any financial covenant (however described) by an Obligor under a Finance Document and the applicable grace period under the Finance Document (before such breach becomes an Event of Default under the relevant Finance Document) has expired;
2. under the following clauses of the Bond Terms (or any equivalent Event of Default under any Bond Refinancing Agreement):
 - (a) 16.3 (*Financial covenants*);
 - (b) 16.6 (*Transaction Document*);
 - (c) 16.7 (*Default under Secured Creditor Agreement*);
 - (d) 16.8 (*Governmental Agency intervention*);
 - (e) 16.9 (*Cross default*);
 - (f) 16.10 (*Insolvency*);
 - (g) 16.11 (*Insolvency proceedings*);
 - (h) 16.12 (*Creditors' process*);
 - (i) 16.15 (*Repudiation*);
 - (j) 16.16 (*Cessation of business*);
 - (k) 16.18(a)(i) (*Revocation of Authorisation*), but only to the extent that it relates to "Transaction Documents" (and not, for the avoidance of doubt, Project Documents);
 - (l) 16.18(a)(ii) (*Revocation of Authorisation*);
 - (m) 16.20 (*Abandonment*);
 - (n) 16.21 (*Destruction of Project Assets*); and
 - (o) 16.24 (*Failure in respect of Project Completion*); and
3. under any cross default or cross acceleration clause in a Secured Lender Agreement which is triggered by the relevant Beneficiaries under another Secured Lender Agreement declaring the amounts owing under that other Secured Lender Agreement due and payable prior to the scheduled date for payment as a consequence of the occurrence of a Material Event of Default of the kind referred to above.

SCHEDULE 4

Material Provisions

Any provision:

1. that is a financial covenant (however described) under a Finance Document; and
2. under the following clauses of the Bond Terms (or any equivalent Event of Default under any Bond Refinancing Agreement):
 - (a) 15.5 (*Pari passu ranking*);
 - (b) 15.6 (*Negative pledge*);
 - (c) 15.11 (*Existence, Conduct of Business etc.*);
 - (d) 15.12 (*Change of business*);
 - (e) 15.13 (*No new bank accounts*);
 - (f) 15.17 (*Loans or credit*);
 - (g) 15.29 (*Dividends and share redemption*); and
 - (h) 15.30 (*Financial Indebtedness*).

EXECUTED and delivered as a deed.

[Signature blocks intentionally omitted.]

Schedule 3: Form of Deed of Release

DRAFT



Deed of Release

Global Loan Agency Services Australia Nominees Pty Limited (the **Secured Party**)
The entities listed at Schedule 1 (the **Grantors**)

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Parties

- 1 Global Loan Agency Services Australia Nominees Pty Limited ACN 608 945 008 (the **Secured Party**)
 - 2 The entities listed at Schedule 1 (the **Grantors**)
-

Background

- A Each Grantor has granted Security in favour of the Secured Party under the Security Documents.
- B The Secured Party has agreed to release Strandline UK from its obligations and liabilities under the Secured Documents, and the Released Property from any Security created under the Security Documents, on the terms set out in this deed.

The parties agree

1 Defined terms and interpretation

1.1 Definitions

In this deed, a term or expression which is defined in the Security Trust Deed but not in this deed has the meaning given to it in the Security Trust Deed and:

Business Day has the meaning given in the Security Trust Deed.

Effective Date means the date of receipt of the Consideration and Loan Amount (as those terms are defined in the Share Purchase Agreement), being a total of A\$43,000,000, by the Secured Party in the Secured Party's Account in immediately available funds (free and clear of any deduction, set-off or withholding, however described).

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

Released Property means:

- (a) with respect to Strandline UK, all of its property that is subject to Security created under or pursuant to the Security Documents; and
- (b) with respect to Strandline Resources, its interest in the Share (as defined in the Share Purchase Agreement) only that is subject to Security created under or pursuant to the Security Documents.

Secured Document has the meaning given in the Security Trust Deed, which include:

- (a) a facility agreement relating to a term facility in the amount of A\$15,000,000 entered into on 7 December 2022 (as amended from time to time) between (i) Coburn Resources Pty Ltd as borrower, (ii) the Strandline Resources (as guarantor) and (iii) National Australia Bank Limited (as original lender);
- (b) a facility agreement relating to a term facility in the amount of A\$150,000,000 dated 31 May 2021 (and amended on 27 October 2022) between Coburn Resources Pty Ltd, Strandline Resources and the ministerial body corporate preserved and

continued pursuant to section 5 of the Industry and Technology Development Act 1998 (WA);

- (c) an amortising term facility in the amount of US\$60,000,000, provided to Coburn Resources Pty Ltd by way of a Norwegian bond issue pursuant to bond terms dated 25 March 2021 (as amended from time to time) to which, among others, Coburn Resources Pty Ltd, Strandline Resources and Nordic Trustee AS are a party;
- (d) a super senior loan note facility agreement dated 6 March 2024 between, among others, Strandline UK and the Secured Party and the entities listed therein as lenders relating to loan notes in the amount of up to A\$30,000,000;
- (e) the Security Trust Deed;
- (f) an intercreditor deed dated 31 May 2021 (as amended from time to time including on 15 December 2023) between, among others, Coburn Resources Pty Ltd, Strandline Resources and the Secured Party;
- (g) a debenture dated 19 January 2024 between Strandline UK (as chargor) and the Secured Party;
- (h) a featherweight general security deed dated 30 July 2021 (as amended on 15 December 2023) between Strandline Resources and the Secured Party;
- (i) each other 'Secured Document' under and as defined in the Security Trust Deed.

Secured Obligations has the meaning given in the Security Trust Deed.

Secured Party's Account means the bank account with the following details:

- (a) Bank: JPMorgan Chase Bank, Sydney Branch;
- (b) SWIFT Code: [●];
- (c) BSB: [●];
- (d) Account Name: Global Loan Agency Services Australia Nominees Pty Ltd;
- (e) Account Number: [●]
- (f) Beneficiary Address: Level 23, 1 Farrer Place, Sydney NSW 2000, Australia. **[Note – GLAS has advised that they need to set up a new account for the SPA proceeds. Details TBC but it will be in the name of the Security Trustee]**

Security Document means:

- (a) each document described in OSchedule 2; and
- (b) any other security agreement under which Strandline UK has granted Security in favour of the Secured Party.

Security has the meaning given in the Security Trust Deed.

Security Trust Deed means the deed entitled "*Security Trust Deed*" dated 31 May 2021 and made between, among others, Coburn Resources Pty Ltd ACN 165 036 537 as

company, Global Loan Agency Services Australia Pty Ltd ACN 608 829 303 in its capacity as intercreditor agent and the Secured Party.

Share Purchase Agreement means the document entitled "*Share Purchase Agreement relating to the sale and purchase of the entire issued share capital of Strandline Resources UK Limited*" dated 8 May 2024 and made between Strandline Resources as seller and Ganzhou Chenguang Rare Earths New Material Co., Ltd as buyer.

Strandline Resources means Strandline Resources Limited incorporated and registered in Western Australia with ACN090 603 642, whose registered office is at Level 9, 216 St Georges Terrace, Perth, WA, 6000.

Strandline UK means Strandline Resources UK Limited a company incorporated in England and Wales with company number 11841019 whose registered office is at 1 Princeton Mews, 167-169 London Road, Kingston Upon Thames, KT2 6PT.

1.2 PPSA definitions

In this deed the following terms have the meanings given to them in the PPSA:

- (a) collateral;
- (b) financing change statement; and
- (c) security agreement.

1.3 Interpretation

In this deed the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this deed;

- (vi) this deed includes all schedules and attachments to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a rule of an applicable financial market and is a reference to that law as amended, consolidated or replaced;
 - (viii) an agreement other than this deed includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing; and
 - (ix) a monetary amount is in Australian dollars;
 - (g) an agreement on the part of two or more persons binds them jointly and severally;
 - (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
 - (i) in determining the time of day where relevant to this deed, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) for any other purpose under this deed, the time of day in the place where the party required to perform an obligation is located; and
 - (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it.
-

2 Release

2.1 Release

- (a) On and from the Effective Date:
 - (i) the Secured Party unconditionally and irrevocably releases and discharges the Released Property from any Security created under or pursuant to the Security Documents but without otherwise affecting the rights of the Secured Party in respect of all other Secured Property; and
 - (ii) Strandline UK is unconditionally and irrevocably, released and discharged from all its present and future obligations, covenants, guarantees, indemnities and liabilities under or in connection with any Secured Document but without otherwise affecting the rights of each party under or in connection with any Secured Document.
- (b) Without limiting paragraph (a), if any Released Property is the subject of a mortgage or assignment by way of security in favour of the Secured Party, the Secured Party, on and from the Effective Date, unconditionally and irrevocably transfers, reassigns and reconveys (as applicable) any interest the Secured Party has in that Released Property to the relevant Grantor free of any Security.
- (c) The Secured Party confirms that it has received confirmation from each Beneficiary with Exposures to execute this deed.

3 Further assurances

- (a) Except as expressly provided in this deed, each party must do all things reasonably necessary to give effect to this deed and the matters contemplated by it.
- (b) Without limiting its obligations under paragraph (a), the Secured Party agrees to on or before the Effective Date return to the Grantors all title documents held by the Secured Party in relation to the Released Property, being each document set out in Schedule 3.

4 Costs and expenses

- (a) Without limiting the terms of any other Secured Document, the Grantors must promptly on demand pay the Secured Party the amount of all reasonable legal fees incurred by the Secured Party in connection with the negotiation, preparation and execution of this deed and any other documents referred to in this deed.
- (b) The costs and expenses payable under paragraph (a) will be payable by the Grantors whether or not the release and other matters contemplated by this deed become effective.

5 General

5.1 Governing law

This deed is governed by the laws of Western Australia.

5.2 Jurisdiction

- (a) The courts having jurisdiction in Western Australia have exclusive jurisdiction to settle any dispute arising out of or in connection with this document (including a dispute regarding the existence, validity or termination of this document) (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) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within paragraph (a).
- (d) Each Grantor irrevocably waives any immunity in respect of its obligations under this document that it may acquire from the jurisdiction of any court or any legal process for any reason.
- (e) This clause 5.2 (*Jurisdiction*) is for the benefit of the Secured Party only. As a result, the Secured Party will not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Party may take concurrent proceedings in any number of jurisdictions.

5.3 Entire agreement

- (a) This deed is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.
- (b) Without limiting this clause 5.3 (*Entire agreement*), if this deed is inconsistent with any other document, agreement or arrangement, this deed prevails to the extent of that inconsistency.

5.4 Counterparts

- (a) The parties acknowledge and agree that:
 - (i) a party may sign this deed electronically and bind itself to this deed by executing in that manner; and
 - (ii) a party's signature (whether affixed to this deed electronically or in handwriting) may be witnessed remotely in accordance with any applicable laws.
- (b) A party whose signature appears in this deed (whether affixed electronically or in handwriting) acknowledges that it is their signature and that such party affixed (or expressly authorised the affixing of) their signature to this deed.
- (c) This deed may be executed in any number of counterparts, each of which:
 - (i) may be executed electronically or in handwriting; and
 - (ii) will be deemed an original whether kept in electronic or paper form, and all of which taken together will constitute one and the same document.

Without limiting the foregoing, if the signatures of, or on behalf of, one party are on more than one copy of this deed, this shall be taken to be the same as, and have the same effect as, if all of those signatures were on the same counterpart of this deed and the parties acknowledge that each such copy executed by a company registered under the Corporations Act will have been executed in a manner consistent with section 127 of the Corporations Act.

- (d) If this deed is signed electronically, the parties' intention is to print this deed 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 deed.

5.5 Severability

Any term of this deed which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this deed is not affected.

5.6 Attorneys

Each of the attorneys executing this deed states that the attorney has no notice of the revocation or suspension of the power of attorney appointing that attorney.

Schedule 1 Grantors

Grantor	ACN / Company number	Address
Strandline Resources Limited	ACN 090 603 642	Level 9, 216 St Georges Terrace, Perth, WA, 6000
Strandline Resources UK Limited	Registered Number: 11841019	1 Princeton Mews, 167-169 London Road, Kingston Upon Thames, KT2 6PT

Schedule 2 Security Documents

- a) The debenture dated 19 January 2024 between Strandline UK as chargor and the Secured Party; and
- b) the featherweight general security deed dated 30 July 2021 (as amended on 15 December 2023) between Strandline Resources and the Secured Party.

Schedule 3 Title documents

No.	Title document	Entity	Registered holder	Type of shares	Number of shares
1	Share certificate (certificate no. 1)	Nyati Mineral Sands Limited	Strandline Resources UK Limited	Class A	840,000
2	Blank share transfer form	Nyati Mineral Sands Limited	Strandline Resources UK Limited		

Execution page

Executed as a deed.

Signed, sealed and delivered by **Strandline Resources Limited ACN 090 603 642** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

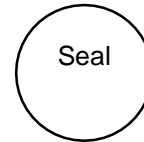
Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Signed sealed and delivered by **Strandline Resources UK Limited** in the presence of



Signature of authorised signatory

Signature of witness

Name of authorised signatory

Name of witness

Secured Party

SIGNED, SEALED AND DELIVERED by **GLOBAL LOAN AGENCY SERVICES AUSTRALIA NOMINEES PTY LTD** acting by its attorney under power of attorney dated 2 February 2022 in the presence of:

Attorney

Signature :

Name :

By executing this deed the attorney states that the attorney has received no notice of revocation of the power of attorney

Witness

Signature :

Name :

Schedule 4: Form of Guarantor Resignation Letter

DRAFT

RESIGNATION LETTER

To: **Nordic Trustee AS, a company existing under the laws of Norway with registration number 963 342 624 and LEI-code 549300XAKTM2BMKIPT85 (the "Bond Trustee")**

From: **Strandline Resources UK Limited** a UK company number 11841019, a company incorporated in England and Wales and Coburn Resources Pty Ltd

Dated:

Coburn Resources Pty Ltd – Bond Terms originally dated 25 March 2021 as amended and restated from time to time (the "Agreement")

1. We refer to the Agreement. Terms defined in the Agreement have the same meaning in this letter unless given a different meaning in this letter.
2. We request that Strandline Resources UK Limited be released from its obligations as a Guarantor for the purposes of the Agreement on the 'Effective Date' as defined in the deed of release entered into on or about the date of this letter between Strandline Resources Limited, Strandline Resources UK Limited and Global Loan Agency Services Australia Nominees Pty Limited (**Deed of Release**).
3. We confirm that:
 - (a) no Default is continuing or would result from the acceptance of this request; and
 - (b) the Bond Trustee has consented to the Issuer's request.
4. This letter is governed by the laws of Western Australia.

Coburn Resources Pty Ltd

Strandline Resources UK Limited

By:

By:

DRAFT

This letter is accepted by the Bond Trustee and the resignation date is confirmed as the 'Effective Date' as that term is defined in the Deed of Release.

Signed for and on behalf of **Nordic Trustee AS**
by its authorised signatory in the presence of:

Signature of witness

Full name of witness

Signature of authorised signatory

Full name of authorised signatory

Schedule 5: Form of Obligor and Guarantor Release Deed

OBLIGOR AND GUARANTOR RELEASE DEED

To: Global Loan Agency Services Australia Nominees Pty Limited ACN 608 945 008
(**Security Trustee**)

From: Coburn Resources Pty Ltd ACN 165 036 537 (**Company**)

Strandline Resources UK Limited, a company incorporated in England and Wales with company number 11841019 whose registered office is at 1 Princeton Mews, 167-169 London

Road, Kingston Upon Thames, KT2 6PT (**Released Guarantor**)

Dated: [___] 2024

Dear Sirs

Coburn Resources Pty Ltd - Coburn Security Trust Deed

dated 31 May 2021 (the Security Trust Deed)

1. We refer to the Security Trust Deed. This is an Obligor and Guarantor Release Deed. Terms used in the Security Trust Deed shall have the same meaning in this Obligor and Guarantor Release Deed unless given a different meaning in this Obligor and Guarantor Release Deed.
2. Pursuant to Clause 24.3 (*Release of a Guarantor*) of the Security Trust Deed, we request that the Released Guarantor be released from its obligations as a Guarantor and Obligor under the Security Trust Deed and the Intercreditor Deed on and from the Effective Date (as that term is defined in the Deed of Release dated on or about the date of this Obligor and Guarantor Release Deed between the Company, Strandline Resources Limited ACN 090 603 642 and the Security Trustee (**Deed of Release**)). In the event that the Effective Date does not occur, the Company and the Released Guarantor acknowledge and agree that this Obligor and Guarantor Release Deed shall have no effect.
3. We confirm that the Released Guarantor has ceased or is ceasing to be a borrower, guarantor, issuer or obligor (however so defined) under a Secured Document in accordance with its terms and the release is not otherwise prohibited under any Secured Document.
4. This Obligor and Guarantor Release Deed may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Obligor and Guarantor Release Deed.
5. This Obligor and Guarantor Release Deed is governed by the laws of Western Australia.

Executed as a deed.

Signed, sealed and delivered by **Coburn Resources
Pty Ltd ACN 165 036 537** in accordance with
section 127 of the *Corporations Act 2001* (Cth) by:

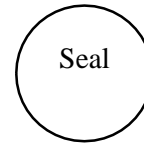
Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Signed sealed and delivered by Strandline Resources UK Limited in the presence of



Signature of authorised signatory

Signature of witness

Name of authorised signatory

Name of witness

This Obligor and Guarantor Release Deed is accepted by the Security Trustee and the resignation date is confirmed as the 'Effective Date' as that term is defined in the Deed of Release.

The Security Trustee confirms that it has received confirmation from each Beneficiary with Exposures to execute this deed.

SIGNED, SEALED AND DELIVERED by **GLOBAL LOAN AGENCY SERVICES AUSTRALIA NOMINEES PTY LTD** acting by its attorney under power of attorney dated 2 February 2022 in the presence of:

Attorney

Signature :

Name :

By executing this deed the attorney states that the attorney has received no notice of revocation of the power of attorney

Witness

Signature :

Name :