

**BOND TERMS**

**FOR**

**Jervois Mining USA Limited 12.5 per cent. senior secured USD 100,000,000  
bonds 2021/2026**

**ISIN NO0011041568**

## Contents

Clause	Page
1. INTERPRETATION .....	3
2. THE BONDS .....	18
3. THE BONDHOLDERS.....	20
4. ADMISSION TO LISTING .....	21
5. REGISTRATION OF THE BONDS .....	21
6. CONDITIONS FOR DISBURSEMENT.....	21
7. REPRESENTATIONS AND WARRANTIES .....	25
8. PAYMENTS IN RESPECT OF THE BONDS .....	27
9. INTEREST.....	31
10. REDEMPTION AND REPURCHASE OF BONDS .....	31
11. PURCHASE AND TRANSFER OF BONDS.....	33
12. INFORMATION UNDERTAKINGS .....	34
13. GENERAL AND FINANCIAL UNDERTAKINGS .....	37
14. EVENTS OF DEFAULT AND ACCELERATION OF THE BONDS .....	43
15. BONDHOLDERS' DECISIONS .....	46
16. THE BOND TRUSTEE.....	50
17. AMENDMENTS AND WAIVERS .....	55
18. MISCELLANEOUS .....	55
19. GOVERNING LAW AND JURISDICTION.....	58

ATTACHMENT 1 COMPLIANCE CERTIFICATE

ATTACHMENT 2 RELEASE NOTICE – ESCROW ACCOUNT

ATTACHMENT 3 FUTURE PROJECT DOCUMENTS

ATTACHMENT 4 SMP COBALT CONCENTRATE OFFTAKE CONTRACT(S)

<b>BOND TERMS between</b>	
<b>ISSUER:</b>	Jervois Mining USA Limited, a company existing under the laws of the State of Nevada with registration number NV19881021843 and LEI-code 984500C03B945H4FO188; and
<b>BOND TRUSTEE:</b>	Nordic Trustee AS, a company existing under the laws of Norway with registration number 963 342 624 and LEI-code 549300XAKTM2BMKIPT85.
<b>DATED:</b>	16 July 2021
These Bond Terms shall remain in effect for so long as any Bonds remain outstanding.	

## 1. INTERPRETATION

### 1.1 Definitions

The following terms will have the following meanings:

“**Acceptable Bank**” means an international bank with at least BBB rating from Standard & Poor’s Rating Services or Fitch Ratings Ltd or Baa3 rating from Moody’s Investors Services Limited.

“**Accounting Standard**” means the generally accepted accounting practices and principles in the country in which the Issuer is incorporated including, if applicable, IFRS.

“**Accounts**” means the Escrow Account, the Debt Service Account and the Project Account(s), each established by the Issuer prior to the Issue Date and denominated in USD.

“**Additional Escrow Account Funds**” means such amount as is necessary for the total deposited amount in the Escrow Account (after the transfer of the net proceeds from the issue of the Bonds to the Escrow Account) to equal USD 101,000,000.

“**Affiliate**” means, in relation to any person:

- (a) any person which is a Subsidiary of that person;
- (b) any person who has Decisive Influence over that person (directly or indirectly); and
- (c) any person which is a Subsidiary of an entity who has Decisive Influence (directly or indirectly) over that person.

“**Annual Financial Statements**” means:

- (a) in respect of the Ultimate Parent, the audited consolidated annual financial statements of the Ultimate Parent for any financial year; and

(b) in respect of the Issuer, the audited annual financial statements of the Issuer for any financial year,

in each case prepared in accordance with the Accounting Standard, such financial statements to include a profit and loss account, balance sheet, cash flow statement and report of the board of directors.

“**Attachment**” means any schedule, appendix or other attachment to these Bond Terms.

“**Bond Terms**” means these terms and conditions, including all Attachments which form an integrated part of these Bond Terms, in each case as amended and/or supplemented from time to time.

“**Bond Trustee**” means the company designated as such in the preamble to these Bond Terms, or any successor, acting for and on behalf of the Bondholders in accordance with these Bond Terms.

“**Bond Trustee Fee Agreement**” means the agreement entered into between the Issuer and the Bond Trustee relating among other things to the fees to be paid by the Issuer to the Bond Trustee for the services provided by the Bond Trustee relating to the Bonds.

“**Bondholder**” means a person who is registered in the CSD as directly registered owner or nominee holder of a Bond, subject however to Clause 3.3 (*Bondholders' rights*).

“**Bondholders' Meeting**” means a meeting of Bondholders as set out in Clause 15 (*Bondholders' Decisions*).

“**Bonds**” means (a) the debt instruments issued by the Issuer pursuant to these Bond Terms and (b) any overdue and unpaid principal which has been issued under a separate ISIN in accordance with the regulations of the CSD from time to time.

“**Book Equity**” means on any date the aggregate amount which in accordance with IFRS would be shown in the Group's financial statements as the shareholders' equity of the Group on a consolidated basis.

“**Book Equity Ratio**” means the ratio of Book Equity to Total Assets.

“**Business Day**” means a day on which both the relevant CSD settlement system and the relevant currency of the Bonds settlement system are open.

“**Business Day Convention**” means that if the last day of any Interest Period originally falls on a day that is not a Business Day, no adjustment will be made to the Interest Period.

“**Call Option**” has the meaning given to it in Clause 10.2 (*Voluntary early redemption – Call Option*).

“**Call Option Repayment Date**” means the settlement date for the Call Option determined by the Issuer pursuant to Clause 10.2 (*Voluntary early redemption – Call Option*), paragraph (d) of Clause 10.3 or a date agreed upon between the Bond Trustee and the Issuer in connection with such redemption of Bonds.

**“Capital Expenditure Budget”** means the capital expenditure budget in the amount of USD 92.6 million, including contingency of USD 5.1 million, for the ICO Project, being an integral and key part of the Master Control Budget.

**“Change of Control Event”** means the occurrence of an event or series of events whereby a person or group of persons acting in concert not theretofore having Decisive Influence over the Ultimate Parent gains such Decisive Influence.

**“Cobalt Concentrate”** means cobalt mined at the ICO Project, which after processing has approximately 10 per cent. cobalt content.

**“Company Certificate”** has the meaning given to it in Clause 12.5 (*Changes to the Project Construction Plan*) and Clause 12.6 (*Changes to the Capital Expenditure Budget*) as appropriate.

**“Compliance Certificate”** means a statement substantially in the form as set out in Attachment 1 hereto.

**“Concentrate Sales Agreement”** means the concentrate sale and purchase agreement to be entered into between the Issuer, as seller, and in the Issuer’s sole discretion, either (a) the Parent, as purchaser or (b) SMP, as purchaser, in each case on terms substantially as set out in Attachment 4.

**“Cost-to-Complete Test”** means the test to ensure that the Issuer has sufficient funds available to achieve Project Completion, which test shall be satisfied when, on the relevant date of conducting such test, all sums:

- (a) available in the Accounts, together with any interest thereon earned or incurred but not credited to the relevant account, less
- (b) the balance of Current Liabilities (including accrued cost (whether invoiced or not)),

are equal to or greater than the sum of all remaining capital requirements, costs and expenses (including all financing costs and payable taxes) to be paid pursuant to the Master Control Budget to achieve Project Completion.

The Independent Engineer, when confirming that the Cost-to-Complete Test is satisfied, will be entitled to rely on:

- (i) a bank statement from the Escrow Agent and any bank operating the Debt Service Account or a Project Account, certifying the amount of the funds available under paragraph (a) above;
- (ii) a Company Certificate from the Issuer certifying the remaining expenditure items, provided that such Company Certificate includes the calculations of the Issuer in support of the certifications made by the Issuer under the Company Certificate; and
- (iii) a schedule provided by the Issuer which has been signed off as accurate by its CEO and CFO detailing the funds available on the Accounts under (a) above and

the balance of Current Liabilities under paragraph (b) above, including supporting documentation such as bank statements and general ledger transactions.

Any sums included under paragraph (a) above may not subsequently be employed towards any other purpose than as set forth in Clause 2.3 (*Use of proceeds*).

“**CSD**” means the central securities depository in which the Bonds are registered, being Verdipapirsentralen ASA (VPS).

“**Current Liabilities**” means on any date the aggregate book value of the consolidated liabilities of the Group which are treated as current liabilities in accordance with IFRS, excluding the current portion of long-term debt, and liabilities to non-controlling interests.

“**Debt Service Account**” means a client account with the Escrow Agent or in the name of the Issuer with an bank approved by the Bond Trustee, pledged in favour of the Bond Trustee pursuant to the Debt Service Account Pledge and restricted so that no withdrawals can be made from such account without the Bond Trustee’s prior written consent.

“**Debt Service Account Pledge**” the first priority pledge over the Debt Service Account, as security for the Issuer’s obligations under the Finance Documents, where the bank operating the account has waived any set-off rights.

“**Decisive Influence**” means a person having, as a result of an agreement or through the ownership of shares or interests in another person (directly or indirectly):

- (a) a majority of the voting rights in that other person; or
- (b) a right to elect or remove a majority of the members of the board of directors of that other person.

“**Default Notice**” means a written notice to the Issuer as described in Clause 14.2 (*Acceleration of the Bonds*).

“**Default Repayment Date**” means the settlement date set out by the Bond Trustee in a Default Notice requesting early redemption of the Bonds.

“**Distribution**” means any dividend payment, disbursement, repayment or service of any loan (including any Intercompany Loan), redemption of share capital or other restricted equity with repayment to shareholders, repurchase of shares or other distribution by a person to its shareholders (including but not limited to total return swaps involving any shares issued).

“**Engineer Engagement Agreement**” means a separate agreement setting out the scope of work of the Independent Engineer, whereby the Independent Engineer shall, inter alia, evaluate the Project Construction Plan, the Master Control Budget, verify the Cost-to-Complete Test and countersign the Issuer’s requests for drawdown from the Escrow Account, and the terms on which the Bond Trustee may replace the Independent Engineer.

“**Escrow Account**” means a client account with the Escrow Agent, pledged in favour of the Bond Trustee pursuant to the Escrow Account Pledge and restricted so that no withdrawals can be made from such account without the Bond Trustee’s prior written consent.

**“Escrow Account Pledge”** means the first priority pledge over the Escrow Account, as security for the Issuer’s obligations under the Finance Documents, where the Escrow Agent and the bank operating the account has waived any set-off rights on customary terms.

**“Escrow Agent”** means NT Services AS.

**“Euroclear”** means Euroclear Bank SA/NV.

**“Event of Default”** means any of the events or circumstances specified in Clause 14.1 (*Events of Default*).

**“Exchange”** means:

- (a) Nordic ABM, a self-regulated marketplace organised and operated by Oslo Børs; or
- (b) any regulated market as such term is understood in accordance with the Markets in Financial Instruments Directive 2014/65/EU (MiFID II) and Regulation (EU) No. 600/2014 on markets in financial instruments (MiFIR).

**“Finance Documents”** means these Bond Terms, the Bond Trustee Fee Agreement, the Transaction Security Document, the Perfection Certificates and any other document designated by the Issuer and the Bond Trustee as a Finance Document.

**“Financial Covenants”** means the financial undertakings set out in Clause 13.4 (*Financial Covenants*).

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

- (a) moneys borrowed (and debit balances at banks or other financial institutions);
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialized equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument, including the Bonds;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the Accounting Standard, be capitalized as an asset and booked as a corresponding liability in the balance sheet;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis provided that the requirements for de-recognition under the Accounting Standard are met);
- (f) any derivative transaction entered into 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);

- (g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of an underlying liability of a person which is not a Group Company which liability would fall within one of the other paragraphs of this definition;
- (h) any amount raised by the issue of redeemable shares which are redeemable (other than at the option of the Issuer) before the Maturity Date or are otherwise classified as borrowings under the Accounting Standard;
- (i) any amount of any liability under an advance or deferred purchase agreement, if (a) the primary reason behind entering into the agreement is to raise finance or (b) the agreement is in respect of the supply of assets or services and payment is due more than 120 calendar days after the date of supply;
- (j) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing or otherwise being classified as a borrowing under the Accounting Standard; and
- (k) without double counting, the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (j) above.

“**Financial Reports**” means the Annual Financial Statements and the Interim Accounts.

“**Financial Support**” means any loans, guarantees, Security securing obligations of another person or other financial assistance (whether actual or contingent).

“**First Call Date**” means the Interest Payment Date falling in July 2024.

“**First Release**” has the meaning ascribed to such term in Clause 6.1.2 (*Disbursement - First Release*).

“**Future Project Documents**” means the material future (i.e., at a date falling after the Issue Date) agreements, feasibility studies, environmental studies and assessments, environmental permits, authorizations and other material documents that are required for the completion of the ICO Project, all of which are set out in the definition of “Project Documents” and in Attachment 3. Upon the entering into by any Obligor of any Future Project Document, such Future Project Document shall be deemed to be a Project Document for the purposes herein. To the extent described in the Issuer’s investor presentation used in respect of the issue of the Bond, all Future Project Documents shall be in material conformity with such description.

“**Group**” means the Ultimate Parent and all its Subsidiaries from time to time.

“**Group Company**” means any person which is a member of the Group.

“**Guarantee**” means the unconditional Norwegian law guarantee and indemnity (Norwegian: “*selvskyldnerkausjon*”) issued by each of the Guarantors in respect of the Secured Obligations.

“**Guarantors**” means the Ultimate Parent and the Parent (each a “**Guarantor**”).

“**ICO**” means the Idaho cobalt operations of the Group.

“**ICO Project**” means development and construction of ICO’s cobalt-copper-gold mine in Idaho, including logistic facilities related thereto.

“**IFRS**” means the International Financial Reporting Standards and guidelines and interpretations issued by the International Accounting Standards Board (or any predecessor and successor thereof) in force from time to time and to the extent applicable to the relevant financial statement.

“**Independent Engineer**” means RPM Global as independent engineer in connection with the ICO Project, engaged by the Bond Trustee, at the cost of the Issuer and in consultation with the Manager and its advisors, for the period until immediately after the Second Release.

“**Initial Nominal Amount**” means the Nominal Amount of each Bond on the Issue Date as set out in Clause 2.1 (*Amount, denomination and ISIN of the Bonds*).

“**Insolvent**” means that a person:

- (a) is unable or admits inability to pay its debts as they fall due;
- (b) suspends making payments on any of its debts generally; or
- (c) is otherwise considered insolvent or bankrupt within the meaning of the relevant bankruptcy legislation of the jurisdiction which can be regarded as its centre of main interest as such term is understood pursuant to Regulation (EU) 2015/848 on insolvency proceedings (as amended from time to time).

“**Intercompany Loans**” means any loan provided by an Obligor to another Obligor, provided that such loan is subject to a first priority assignment/pledge in favour of the Bond Trustee to secure all amounts outstanding under the Finance Documents.

“**Interest Payment Date**” means the last day of each Interest Period, the first Interest Payment Date being 20 January 2022 and the last Interest Payment Date being the Maturity Date.

“**Interest Period**” means, subject to adjustment in accordance with the Business Day Convention, the period between 20 January and 20 July each year, provided however that an Interest Period shall not extend beyond the Maturity Date.

“**Interest Rate**” means 12.5 per cent. per annum.

“**Interim Accounts**” means:

- (a) in respect of the Ultimate Parent, the unaudited consolidated quarterly financial statements of the Ultimate Parent for the quarterly period ending on each Quarter Date; and
- (b) in respect of the Issuer, the unaudited quarterly financial statements of the Issuer for the quarterly period ending on each Quarter Date,

in each case prepared in accordance with the Accounting Standard.

“**ISIN**” means International Securities Identification Number.

“**Issue Date**” means 20 July 2021.

“**Issuer**” means the company designated as such in the preamble to these Bond Terms.

“**Issuer’s Bonds**” means any Bonds which are owned by the Issuer or any Affiliate of the Issuer.

“**Liquidity**” means:

- (a) unencumbered and unrestricted cash and cash equivalents in accordance with the Accounting Standard; plus
- (b) any cash standing to the credit on any Account; less
- (c) the amount of payments to suppliers which are overdue (if any).

“**Listing Failure Event**” means:

- (a) that the Bonds have not been admitted to listing on an Exchange within 9 months following the Issue Date; or
- (b) in the case of a successful admission to listing, the Bonds have ceased to be admitted to listing on an Exchange.

“**Make Whole Amount**” means an amount equal to the sum of the present value on the Call Option Repayment Date of:

- (a) 107.81 per cent. of the Nominal Amount of the redeemed Bonds as if such payment originally had taken place on the First Call Date; and
- (b) the remaining interest payments of the redeemed Bonds, less any accrued and unpaid interest on the redeemed Bonds as at the Call Option Repayment Date, to the First Call Date,

where the “present value” shall be calculated by using a discount rate of 0.97 per cent.

“**Manager**” means Clarksons Platou Securities AS.

“**Mandatory Redemption Event**” means:

- (a) in the event that the conditions precedent set out in Clause 6.1.2 (*Disbursement – First Release*) for the First Release have not been fulfilled within 8 months from the Issue Date; or
- (b) in the event that the conditions precedent set out in Clause 6.1.3 (*Disbursement – Second Release*) for the Second Release have not been fulfilled within 12 months from the Issue Date.

“**Mandatory Redemption Repayment Date**” means the settlement date for the Mandatory Redemption Event pursuant to Clause 10.5 (*Mandatory early redemption due to a Mandatory Redemption Event*).

“**Master Control Budget**” means the total control budget of costs associated with the ICO Project (including any principal or interest or other finance charges due and payable on any indebtedness of the Obligors and operating costs) until Project Completion, a copy of which shall be delivered by the Issuer to the Independent Engineer and the Bond Trustee on or prior to the Issue Date, as amended from time to time as set out in Clause 12.6 (*Changes to the Capital Expenditure Budget*).

“**Material Adverse Effect**” means a material adverse effect on:

- (a) the ability of any of the Obligors and/or any other relevant Group Company to perform and comply with its obligations under any of the Finance Documents; or
- (b) the validity or enforceability of any of the Finance Documents.

“**Maturity Date**” means 20 July 2026, adjusted according to the Business Day Convention.

“**Nominal Amount**” means the nominal value of each Bond at any time. The Nominal Amount may be amended pursuant to paragraph (j) of Clause 16.2 (*The duties and authority of the Bond Trustee*).

“**Non-Obligor**” means each Group Company that is not an Obligor.

“**Obligors**” means the Issuer and the Guarantors (each, an “**Obligor**”).

“**Offtake Contracts**” means any purchase or sale agreements, refining agreements, production payment agreements, operating agreements, participation agreements, security agreements or any other agreements or arrangements to make future deliveries of production attributable to the ICO Project.

“**Outstanding Bonds**” means any Bonds not redeemed or otherwise discharged.

“**Overdue Amount**” means any amount required to be paid by an Obligor under any of the Finance Documents but not made available to the Bondholders on the relevant Payment Date or otherwise not paid on its applicable due date.

“**Parent**” means Formation Holdings US, Inc., a company existing under the laws of State of Idaho with organizational identification number 542958.

“**Partial Payment**” means a payment that is insufficient to discharge all amounts then due and payable under the Finance Documents.

“**Paying Agent**” means the legal entity appointed by the Issuer to act as its paying agent with respect to the Bonds in the CSD.

“**Payment Date**” means any Interest Payment Date or any Repayment Date.

**“Perfection Certificates”** means in respect of each Obligor, the certificate of a senior officer of such person, addressed to the Bond Trustee, in form and substance satisfactory to the Bond Trustee (in consultation with its advisors) and pursuant to which certain factual matters relating to such person and the assets of such person are certified true and correct in all material respects, together with all schedules and exhibits attached thereto or referred to therein, as the same may be updated from time to time.

**“Permitted CapEx Increase”** has the meaning given to such term in Clause 12.6 (*Changes to the Capital Expenditure Budget*).

**“Permitted Disposal”** means a transfer, sale or other disposal of:

- (a) product in the ordinary course of business, including pursuant to the SMP Cobalt Concentrate Offtake Contract(s) or under any other Offtake Contracts;
- (b) assets that are obsolete or worn out; and
- (c) assets that are not necessary in the ordinary course of business or for the operation of the ICO Project.

**“Permitted Financial Indebtedness”** means:

- (a) any Financial Indebtedness incurred pursuant to the Finance Documents;
- (b) any Financial Indebtedness incurred by the Ultimate Parent or the Parent;
- (c) Financial Indebtedness arising out of paragraphs (a) and (b) of the definition of Permitted Loan;
- (d) Financial Indebtedness arising as a result of a contemplated refinancing of the Bonds in full provided that an irrevocable and unconditional call notice in respect of all the Bonds has been issued;
- (e) Financial Indebtedness incurred by the Issuer:
  - (i) arising as a result of any purchase money security interest, capital lease or similar arrangement in respect of the acquisition of mining and milling equipment and other assets required for the business comprised in the ICO Project, limited to an aggregate amount not exceeding USD 5,000,000 at any time;
  - (ii) under any reclamation or performance bond in the ordinary course of business in a maximum amount of USD 50,000,000 related to the ICO Project;
  - (iii) related to hedging of currency fluctuations or products in the ordinary course of business and on a non-speculative basis;
  - (iv) under any pension or tax liabilities in the ordinary course of business; and
  - (v) not permitted by the preceding paragraphs in an outstanding principal amount which does not exceed USD 5,000,000, in aggregate for the Issuer at any time.

**“Permitted Guarantee”** means:

- (a) any guarantee obligation arising under or out of the Finance Documents;
- (b) any guarantee granted by the Ultimate Parent or the Parent;
- (c) any guarantee granted by the Issuer:
  - (i) related to any contract or transaction entered into in the ordinary course of business; and
  - (ii) not permitted by the preceding paragraphs and the outstanding principal amount of which, when aggregated with any Financial Indebtedness permitted pursuant to paragraph (e)(v) of the definition of Permitted Financial Indebtedness does not exceed USD 10,000,000 (or its equivalent in other currencies) in aggregate for the Issuer at any time.

**“Permitted Loan”** means:

- (a) any Intercompany Loan;
- (b) any loan with the Ultimate Parent or the Parent as lender and a Non-Obligor as borrower;
- (c) any loan arising out of any Permitted Guarantee or Permitted Security;
- (d) deposits of cash or cash equivalent investments with financial institutions for cash management purposes or in the ordinary course of business; and
- (e) any Financial Indebtedness or loan made or credit extended by any Group Company to its customers in the ordinary course of business.

**“Permitted Security”** means:

- (a) any Transaction Security, including cash collateral to secure obligations under the Finance Documents;
- (b) Security granted by the Ultimate Parent over any of its assets that are not subject to (or required by the Bond Terms to be subject to) Transaction Security;
- (c) any encumbrance arising by operation of law and in the ordinary course of trading of the relevant Obligor and not being overdue;
- (d) any encumbrance arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied in the ordinary course of trading of the relevant Obligor and on the supplier’s standard or usual terms;
- (e) for any unpatented mining claims or mill sites included in the ICO Project, the paramount title of the United States;

- (f) any Security securing indebtedness of the Parent with outstanding principal amount of which (when aggregated with the outstanding principal amount of any other indebtedness which has the benefit of Security given by the Parent other than any permitted under the preceding paragraphs) does not exceed USD 5,000,0000 (or its equivalent in other currencies) at any time; and
- (g) any Security securing indebtedness of the Issuer with outstanding principal amount of which (when aggregated with the outstanding principal amount of any other indebtedness which has the benefit of Security given by the Issuer other than any permitted under the preceding paragraphs) does not exceed USD 5,000,0000 (or its equivalent in other currencies) at any time.

**“Pre-Release Security Documents”** has the meaning given to it in Clause 2.5 (*Transaction Security*).

**“Pre-Settlement Security Documents”** has the meaning given to it in Clause 2.5 (*Transaction Security*).

**“Project Account Pledge”** means the first priority pledge over the Project Accounts, as security for the Issuer’s obligations under the Finance Documents.

**“Project Accounts”** means one or more operating accounts denominated in USD established (or designated) by the Issuer (each a **“Project Account”**) with an Acceptable Bank, pledged in favour of the Bond Trustee pursuant to the Project Account Pledge, but not blocked unless an Event of Default has occurred and is continuing.

**“Project Completion”** means at such time when the following criteria and conditions are satisfied and true:

- (a) the physical facilities and equipment of the ICO Project have been installed and are operable substantially as contemplated by the Project Construction Plan and Master Control Budget;
- (b) the physical facilities and equipment of the ICO Project as described in the Project Construction Plan and the Master Control Budget have been paid for by the Group;
- (c) the Obligors have delivered notification of their acceptance of delivery of, and their acceptance of substantially all work performed in connection with, the facilities under (a) above for which such notification is required, except for any work the acceptance of which would, individually or in the aggregate, have a Material Adverse Effect;
- (d) during a period of 30 consecutive days:
  - (i) the concentrator and associated infrastructure and facilities to be constructed in connection with the ICO Project, and used to process minerals into concentrate, have produced at least (A) 100 dry tonnes of cobalt contained in cobalt concentrate, (B) 100 dry tonnes of copper contained in copper concentrate and (C) 250 ounces of gold contained in cobalt and copper concentrates; and

- (ii) the levels of production and operation of the ICO Project achieved during such 30-day period are sustainable;
- (e) no event of default shall have occurred and is continuing; and
- (f) the CEO and CFO of the Issuer shall have executed a certificate, in form and substance satisfactory to the Bond Trustee (in consultation with its advisors), acting reasonably, addressed to the Bond Trustee, certifying that each of such completion criteria have been satisfied.

**“Project Construction Plan”** means the detailed plan for the construction of the ICO Project, a copy of which shall be delivered by the Issuer to the Independent Engineer and the Bond Trustee on or prior to the Issue Date.

**“Project Documents”** means the material agreements, feasibility studies, environmental permits, environmental studies or assessments, authorizations and other material documents that are required for the completion of the ICO Project and that are currently in force or in final form, or issued and in good standing, as the case may be being the following documents:

- (a) the Engineering, Procurement and Construction Management Services for the Idaho Cobalt Operations Project between Jervois Mining USA Limited and M3 Engineering & Technology Corporation with effective date of 25 January 2021;
- (b) the Contract for the supply of SAG Mill between Jervois Mining USA Limited and Metso Outotec dated 11 January 2021; and
- (c) the Indemnity by Jervois Mining Limited and Jervois Mining USA Limited in favour of Trisura Guarantee Insurance Company for the issue of bonds related to the surface reclamation requirements at ICO dated April 13, 2017 and August 26, 2019 (Deed of Adhesion).

**“Project Equity Contribution”** means the cash amount to be contributed to the Issuer, either in the form of equity or Intercompany Loans, after the Issue Date and prior to the First Release in an aggregate amount of USD 35 million (to include the USD 12,500,000 paid to the Debt Service Account prior to the Issue Date, cf. Clause 6.1.1(c)).

**“Put Option”** has the meaning ascribed to such term in Clause 10.3 (*Mandatory repurchase due to a Put Option Event*).

**“Put Option Event”** means a Change of Control Event.

**“Put Option Repayment Date”** means the settlement date for the Put Option pursuant to Clause 10.3 (*Mandatory repurchase due to a Put Option Event*).

**“Quarter Date”** means 31 March, 30 June, 30 September and 31 December each year.

**“Relevant Jurisdiction”** means the country in which the Bonds are issued, being Norway.

**“Relevant Record Date”** means the date on which a Bondholder’s ownership of Bonds shall be recorded in the CSD as follows:

- (a) in relation to payments pursuant to these Bond Terms, the date designated as the Relevant Record Date in accordance with the rules of the CSD from time to time; or
- (b) for the purpose of casting a vote with regard to Clause 15 (Bondholders' Decisions), the date falling on the immediate preceding Business Day to the date of that Bondholders' decision being made, or another date as accepted by the Bond Trustee.

**“Repayment Date”** means any Call Option Repayment Date, the Default Repayment Date, the Put Option Repayment Date, the Tax Event Repayment Date, the Mandatory Redemption Repayment Date or the Maturity Date.

**“Second Release”** has the meaning ascribed to such term in Clause 6.1.3 (*Disbursement – Second Release*).

**“Secured Obligations”** means all present and future obligations and liabilities of the Obligor under the Finance Documents.

**“Secured Parties”** means the Security Agent and the Bond Trustee on behalf of itself and the Bondholders.

**“Securities Trading Act”** means the Securities Trading Act of 2007 no. 75 of the Relevant Jurisdiction.

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

**“Security Agent”** means the Bond Trustee or any successor Security Agent, acting for and on behalf of the Secured Parties in accordance with any Security Agent Agreement or any other Finance Document.

**“Security Agent Agreement”** means any agreement other than these Bond Terms whereby the Security Agent is appointed to act as such in the interest of the Bond Trustee (on behalf of itself and the Bondholders).

**“SMP”** means Jervois Brasil Participações Ltda or its Subsidiary that is the operator of the SMP Refinery.

**“SMP Cobalt Concentrate Offtake Contract(s)”** means (a) if the Concentrate Sales Agreement is entered into by the Issuer with SMP and not the Parent, then the Concentrate Sales Agreement alone and (b) if the Concentrate Sales Agreement is entered into by the Issuer with the Parent and not SMP then, collectively, the Concentrate Sales Agreement and the SMP Toll Refining Agreement.

**“SMP Refinery”** means São Miguel Paulista Nickel and Cobalt Refinery located in the Brazilian State of São Paulo.

**“SMP Toll Refining Agreement”** means toll refining agreement, if any, entered into between the Parent and SMP on terms substantially as set out in Attachment 4.

“**Stock De-Listing Event**” means if the common stock of the Ultimate Parent is no longer listed on either:

- (a) the Australian Securities Exchange; or
- (b) any regulated market as such term is understood in accordance with the Markets in Financial Instruments Directive 2014/65/EU (MiFID II) and Regulation (EU) No. 600/2014 on markets in financial instruments (MiFIR) or similar legislation in the United States and Australia.

“**Subsidiary**” means a company over which another company has Decisive Influence.

“**Summons**” means the call for a Bondholders’ Meeting or a Written Resolution as the case may be.

“**Tax Event Repayment Date**” means the date set out in a notice from the Issuer to the Bondholders pursuant to Clause 10.4 (*Early redemption option due to a tax event*).

“**Toll Refining Agreement**” means the cobalt concentrate toll refining agreement(s) reflecting an enforceable undertaking from a bona fide third party that is at arm’s length terms with the Parent for refining a minimum of 75 per cent. of budget metric tonnes of Cobalt Concentrate over a period of 36 months from commencement of Cobalt Concentrate production.

“**Total Assets**” means the aggregate book value of the Group’s total assets treated as assets in accordance with the Accounting Standard and as consistently reported by the Ultimate Parent in the Financial Report.

“**Total Debt**” means the aggregate carrying value of the Group’s total debt (including lease debt) in accordance with the Accounting Standard and as consistently reported by the Ultimate Parent in the Financial Report.

“**Transaction Security**” means the Guarantees and Security created or expressed to be created in favour of the Security Agent (on behalf of the Secured Parties) pursuant to the Transaction Security Documents.

“**Transaction Security Documents**” means, collectively, the Escrow Account Pledge and all of the documents which shall be executed or delivered pursuant to Clause 2.5 (*Transaction Security*).

“**Ultimate Parent**” means Jervois Mining Limited, a company existing under the laws of Australia with ACN 007 626 575 and owning 100 per cent. of the Parent.

“**Voting Bonds**” means the Outstanding Bonds less the Issuer’s Bonds.

“**Written Resolution**” means a written (or electronic) solution for a decision making among the Bondholders, as set out in Clause 15.5 (*Written Resolutions*).

## 1.2 Construction

In these Bond Terms, unless the context otherwise requires:

- (a) headings are for ease of reference only;
- (b) words denoting the singular number will include the plural and vice versa;
- (c) references to Clauses are references to the Clauses of these Bond Terms;
- (d) references to a time are references to Central European time unless otherwise stated;
- (e) references to a provision of “**law**” is a reference to that provision as amended or re-enacted, and to any regulations made by the appropriate authority pursuant to such law;
- (f) references to a “**regulation**” includes any regulation, rule, official directive, request or guideline by any official body;
- (g) references to a “**person**” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, unincorporated organization, government, or any agency or political subdivision thereof or any other entity, whether or not having a separate legal personality;
- (h) references to Bonds being “**redeemed**” means that such Bonds are cancelled and discharged in the CSD in a corresponding amount, and that any amounts so redeemed may not be subsequently re-issued under these Bond Terms;
- (i) references to Bonds being “**purchased**” or “**repurchased**” by the Issuer means that such Bonds may be dealt with by the Issuer as set out in Clause 11.1 (*Issuer’s purchase of Bonds*);
- (j) references to persons “**acting in concert**” shall be interpreted pursuant to the relevant provisions of the Securities Trading Act; and
- (k) an Event of Default is “**continuing**” if it has not been remedied or waived.

## **2. THE BONDS**

### **2.1 Amount, denomination and ISIN of the Bonds**

- (a) The Issuer has resolved to issue a series of Bonds in the amount of USD 100,000,000.
- (b) The Bonds are denominated in US Dollars (USD), being the legal currency of the United States of America.
- (c) The Initial Nominal Amount of each Bond is USD 1.
- (d) The ISIN of the Bonds is set out on the front page. These Bond Terms apply with identical terms and conditions to (i) all Bonds issued under this ISIN and (ii) any Overdue Amounts issued under one or more separate ISIN in accordance with the regulations of the CSD from time to time.
- (e) Holders of Overdue Amounts related to interest claims will not have any other rights under these Bond Terms than their claim for payment of such interest claim which claim shall be subject to paragraph (b) of Clause 15.1.

## 2.2 Tenor of the Bonds

The tenor of the Bonds is from and including the Issue Date to but excluding the Maturity Date.

## 2.3 Use of proceeds

The Issuer will use the net proceeds from the issuance of the Bonds for payment of capital expenditures, operating expenses and financing costs (including payment of interest on the Bonds) associated with the development of the ICO Project.

## 2.4 Status of the Bonds

- (a) The Bonds will constitute senior debt obligations of the Issuer. The Bonds shall be secured on (as relevant) a first priority basis by the Transaction Security. The Bonds will rank *pari passu* between themselves and will rank at least *pari passu* with all other obligations of the Issuer (save for such claims which are preferred by bankruptcy, insolvency, liquidation or other similar laws of general application).
- (b) The Guarantees will constitute senior unsecured debt obligations of each of the Guarantors and will rank at least *pari passu* with all other unsecured obligations of that Guarantor (save for such claims which are preferred by bankruptcy, insolvency, liquidation or other similar laws of general application).

## 2.5 Transaction Security

- (a) As Security for the due and punctual fulfilment of the Secured Obligations, the Obligors shall procure that the following Transaction Security is granted in favour of the Security Agent with (in respect of (i)-(ii) and (iv)-(vii) first priority within the times agreed in Clause 6 (*Conditions for disbursement*):

- (i) the Escrow Account Pledge;
- (ii) the Debt Service Account Pledge;
- (iii) the Guarantees from each of the Guarantors;
- (iv) a pledge over 100 per cent. of the shares in the Issuer;
- (v) a pledge over all Intercompany Loans;
- (vi) a pledge over each Project Account; and
- (vii) security, by way of, inter alia, a mortgage deed of trust and a security agreement, covering all material assets of the Issuer, including land and fixtures, as-extracted collateral, tangible and intangible personal property, permits, contracts and insurances,

(the Transaction Security Documents set out in paragraphs (i) through (iii) are together referred to as the “**Pre-Settlement Security Documents**”, and the Transaction Security Documents set out in paragraphs (iv) through (vii) are together referred to as the “**Pre-Release Security Documents**”).

- (b) The Transaction Security shall be entered into on such terms and conditions as the Bond Trustee in its discretion deems appropriate in order to create the intended benefit for the Secured Parties under the relevant document.
- (c) The Security Agent shall be irrevocably authorised to release any Guarantees and Transaction Security over assets which are sold or otherwise disposed of (directly or indirectly) (i) in any merger, de-merger or disposal permitted in compliance with of Clause 13.1.5 (*Mergers*), Clause 13.1.6 (*De-mergers*) or Clause 13.1.7 (*Disposals*) and (ii) following an enforcement.

### **3. THE BONDHOLDERS**

#### **3.1 Bond Terms binding on all Bondholders**

- (a) By virtue of being registered as a Bondholder (directly or indirectly) with the CSD, the Bondholders are bound by these Bond Terms and any other Finance Document, without any further action required to be taken or formalities to be complied with by the Bond Trustee, the Bondholders, the Issuer or any other party.
- (b) The Bond Trustee is always acting with binding effect on behalf of all the Bondholders.

#### **3.2 Limitation of rights of action**

- (a) No Bondholder is entitled to take any enforcement action, instigate any insolvency procedures, or take other legal action against the Issuer or any other party in relation to any of the liabilities of the Issuer or any other party under or in connection with the Finance Documents, other than through the Bond Trustee and in accordance with these Bond Terms, provided, however, that the Bondholders shall not be restricted from exercising any of their individual rights derived from these Bond Terms, including the right to exercise the Put Option.
- (b) Each Bondholder shall immediately upon request by the Bond Trustee provide the Bond Trustee with any such documents, including a written power of attorney (in form and substance satisfactory to the Bond Trustee), as the Bond Trustee deems necessary for the purpose of exercising its rights and/or carrying out its duties under the Finance Documents. The Bond Trustee is under no obligation to represent a Bondholder which does not comply with such request.

#### **3.3 Bondholders' rights**

- (a) If a beneficial owner of a Bond not being registered as a Bondholder wishes to exercise any rights under the Finance Documents, it must obtain proof of ownership of the Bonds, acceptable to the Bond Trustee.
- (b) A Bondholder (whether registered as such or proven to the Bond Trustee's satisfaction to be the beneficial owner of the Bond as set out in paragraph (a) above) may issue one or more powers of attorney to third parties to represent it in relation to some or all of the Bonds held or beneficially owned by such Bondholder. The Bond Trustee shall only have to examine the face of a power of attorney or similar evidence of authorisation that has been provided to it pursuant to this Clause 3.3 (*Bondholders' rights*) and may assume that it is in full force and effect, unless otherwise is apparent from its face or the Bond Trustee has actual knowledge to the contrary.

#### **4. ADMISSION TO LISTING**

The Issuer shall use its reasonable endeavours to ensure that the Bonds are listed on an Exchange within 9 months of the Issue Date and thereafter remain listed on an Exchange until the Bonds have been redeemed in full.

#### **5. REGISTRATION OF THE BONDS**

##### **5.1 Registration in the CSD**

The Bonds shall be registered in dematerialised form in the CSD according to the relevant securities registration legislation and the requirements of the CSD. The Bonds will be issued to and registered on Euroclear's custody account with the CSD as nominee. The Bonds will be blocked for further trading in the CSD and will only be available for trading and settlement through Euroclear.

##### **5.2 Obligation to ensure correct registration**

The Issuer will at all times ensure that the registration of the Bonds in the CSD is correct and shall immediately upon any amendment or variation of these Bond Terms give notice to the CSD of any such amendment or variation.

##### **5.3 Country of issuance**

The Bonds have not been issued under any other country's legislation than that of the Relevant Jurisdiction. Save for the registration of the Bonds in the CSD, the Issuer is under no obligation to register, or cause the registration of, the Bonds in any other registry or under any other legislation than that of the Relevant Jurisdiction.

#### **6. CONDITIONS FOR DISBURSEMENT**

##### **6.1 Conditions precedent for disbursement to the Issuer**

###### **6.1.1 *Payment to the Escrow Account***

Payment of the net proceeds from the issue of the Bonds to the Escrow Account shall be conditional on the Bond Trustee having received in due time (as determined by the Bond Trustee) prior to the Issue Date each of the following documents, in form and substance satisfactory to the Bond Trustee (in consultation with its advisors):

- (a) these Bond Terms duly executed by all parties hereto;
- (b) evidence that the Escrow Account and the Debt Service Account have been established;
- (c) evidence that USD 12,500,000 has been paid by the Issuer into the Debt Service Account;
- (d) evidence that the Additional Escrow Account Funds have been paid by the Issuer into the Escrow Account;
- (e) copies of all necessary corporate resolutions of the Issuer to issue the Bonds and execute the Finance Documents to which it is a party;
- (f) copies of all necessary corporate resolutions of each Guarantor to execute the Finance Documents to which it is a party;

- (g) a copy of a power of attorney (unless included in the corporate resolutions) from each Obligor to relevant individuals for their execution of the Finance Documents to which it is a party, or extracts from the relevant register or similar documentation evidencing such individuals' authorisation to execute such Finance Documents on behalf of that Obligor;
- (h) copies of each Obligor's articles of association, constitution or other governing documents and a certificate of good standing from the relevant authorities for the State of Nevada certifying that the Issuer is validly existing and in good standing in the State of Nevada, and a certificate of good standing from the relevant authorities in the jurisdictions where the Issuer operates, certifying that it is qualified to do business and is in good standing in such jurisdictions;
- (i) the Pre-Settlement Security Documents duly executed by all parties thereto and perfected in accordance with applicable law;
- (j) copies of the Ultimate Parent's latest Financial Reports;
- (k) confirmation that an Independent Engineer has been engaged on terms satisfactory to the Bond Trustee (in consultation with its advisors and the Manager), including evidence that the engagement of the Independent engineer will last until immediately after the Second Release, and a copy of the Engineer Engagement Agreement;
- (l) a copy of the Project Construction Plan;
- (m) a copy of the Master Control Budget;
- (n) confirmation that no potential default or actual Event of Default exists;
- (o) confirmation that the applicable prospectus requirements (ref the EU prospectus regulation ((EU) 2017/1129)) concerning the issuance of the Bonds have been fulfilled;
- (p) copies of any necessary governmental approval, consent or waiver (as the case may be) required at such time to issue the Bonds;
- (q) confirmation that the Bonds are registered in the CSD (by obtaining an ISIN for the Bonds);
- (r) confirmation of acceptance from any process agent;
- (s) copies of any written documentation used in marketing the Bonds or made public by the Issuer or any Manager in connection with the issuance of the Bonds;
- (t) the Bond Trustee Fee Agreement duly executed by the parties thereto; and
- (u) legal opinions or other statements as may be required by the Bond Trustee (including in respect of corporate matters relating to the Issuer and the legality, validity and enforceability of these Bond Terms and the Finance Documents).

### 6.1.2 *Disbursement - First Release*

USD 50,000,000 of the net proceeds from the issue of the Bonds will only be disbursed from the Escrow Account to the Issuer if the Bond Trustee has received, or is satisfied that it will receive, in due time (as determined by the Bond Trustee) prior to such disbursement to the Issuer each of the following documents, in form and substance satisfactory to the Bond Trustee (in consultation with its advisors) (such disbursement, the “**First Release**”):

- (a) a duly executed release notice from the Issuer, as set out in Attachment 2 countersigned by the Independent Engineer as contemplated by paragraph (b)(ii) of Clause 13.3.2 (*Restrictions on withdrawals from the Escrow Account*);
- (b) evidence that the pledge over each Project Account(s) have been established;
- (c) satisfactory evidence that the Ultimate Parent has transferred the Project Equity Contribution to a Project Account held by the Issuer;
- (d) satisfactory evidence that all the Project Equity Contribution have been spent or will be spent, through payment of invoices issued and due for payment within a period of 20 Business Days from the First Release, in accordance with Clause 13.3 (*Accounts*);
- (e) satisfactory evidence that the Ultimate Parent has raised USD 50,000,000 of gross cash proceeds from an equity issue after 30 June 2021;
- (f) the SMP Cobalt Concentrate Offtake Contract(s) duly executed;
- (g) copies of the Project Documents, and any amendments thereto (the obligation to deliver copies of amendments shall survive the First Release), duly executed by an Obligor and the counterparty thereto, together with a confirmation from the Issuer that no Obligor is aware of any circumstances that would lead to the termination of any such Project Documents and that such Project Documents are in good standing and in full force and effect;
- (h) a copy of any existing agreement for any Intercompany Loans of which any Obligor is party to;
- (i) the Pre-Release Security Documents duly executed by all parties thereto and perfected in accordance with applicable law;
- (j) the Perfection Certificates duly executed;
- (k) a copy of insurance policies together with an undertaking from the Issuer confirming that insurances have been obtained in accordance with the requirements set forth herein; and
- (l) a report of an insurance consultant appointed by the Issuer, which shall confirm that the insurance policies of the Issuer are appropriate and sufficient for the Issuers business and conform with the requirements set forth herein; and

- (m) legal opinions or other statements as may be required by the Bond Trustee (including in respect of corporate matters relating to the Obligors and the legality, validity and enforceability of the Finance Documents (unless delivered under Clause 6.1.1 (*Payment to the Escrow Account*) as pre-settlement conditions precedent)).

### **6.1.3 Disbursement – Second Release**

The remaining amount of the net proceeds from the issue of the Bonds (in the Escrow Account) will only be disbursed from the Escrow Account to the Issuer if, in addition to the conditions precedent delivered under Clause 6.1.2 (*Disbursement - First Release*) above, the Bond Trustee has received or is satisfied that it will receive in due time (as determined by the Bond Trustee) prior to such disbursement to the Issuer each of the following documents, in form and substance satisfactory to the Bond Trustee (in consultation with its advisors) (such disbursement, the “**Second Release**”):

- (a) satisfactory evidence that all the proceeds from the First Release have been spent or will be spent, through payment of invoices issued and due for payment within a period of 20 Business Days from the Second Release, in accordance with Clause 13.3 (*Accounts*); and
- (b) either;
  - (i) evidence that (A) the Ultimate Parent, directly or indirectly, holds 51 per cent. or greater of the shares, and controls 51 per cent. or greater of the voting rights, of SMP; (B) SMP owns 100 per cent. of the SMP Refinery and related assets; and (C) the SMP Cobalt Concentrate Offtake Contract(s) remain in effect and enforceable;
  - (ii) executed Offtake Contracts reflecting an enforceable undertaking from a bona fide third party that is at arm’s length terms with the Issuer to purchase from the Issuer a minimum of 75 per cent. of budget metric tonnes of Cobalt Concentrate over a period of 36 months from commencement of Cobalt Concentrate production, together with a confirmation from the Issuer that the contracts delivered to the Bond Trustee in satisfaction of this condition precedent satisfy the foregoing criteria and that no Group Company is aware of any circumstances that would lead to the termination of any such Offtake Contract and that such Offtake Contracts have been duly executed by all parties thereto and constitute enforceable obligations of such parties; or
  - (iii) (A) the Concentrate Sales Agreement remains effective and enforceable and (B) executed Toll Refining Agreement(s), together with a confirmation from the Issuer that the contracts delivered to the Bond Trustee in satisfaction of this condition precedent satisfy the foregoing criteria and that no Group Company is aware of any circumstances that would lead to the termination of any such Toll Refining Agreement(s) and that such Toll Refining Agreement(s) have been duly executed by all parties thereto and constitute enforceable obligations of such parties.

#### **6.1.4 Waivers**

The Bond Trustee, acting in its sole discretion, may, regarding this Clause 6.1 (*Conditions precedent for disbursement to the Issuer*), waive the requirements for documentation or decide that delivery of certain documents shall be made subject to an agreed closing procedure between the Bond Trustee and the Issuer.

#### **6.2 Disbursement of the proceeds**

Disbursement of the proceeds from the issuance of the Bonds is conditional on the Bond Trustee's confirmation to the Paying Agent that the conditions in Clause 6.1 (*Conditions precedent for disbursement to the Issuer*) have been either satisfied in the Bond Trustee's discretion or waived by the Bond Trustee pursuant to Clause 6.1.4 (*Waivers*) above.

### **7. REPRESENTATIONS AND WARRANTIES**

The Issuer makes the representations and warranties set out in this Clause 7 (*Representations and warranties*), in respect of itself and in respect of each Obligor to the Bond Trustee (on behalf of the Bondholders) at the following times and with reference to the facts and circumstances then existing:

- (a) at the date of these Bond Terms;
- (b) at the Issue Date; and
- (c) on each date of disbursement of proceeds from the Escrow Account.

#### **7.1 Status**

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

#### **7.2 Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, these Bond Terms and any other Finance Document to which it is a party and the transactions contemplated by those Finance Documents.

#### **7.3 Valid, binding and enforceable obligations**

These Bond Terms and each other Finance Document to which it is a party constitutes (or will constitute, when executed by the respective parties thereto) its legal, valid and binding obligations, enforceable in accordance with their respective terms, and (save as provided for therein) no further registration, filing, payment of tax or fees or other formalities are necessary or desirable to render the said documents enforceable against it.

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

The entry into and performance by it of these Bond Terms and any other Finance Document to which it is a party and the transactions contemplated thereby do not and will not conflict with (i) any law or regulation or judicial or official order; (ii) its constitutional documents; or (iii) any agreement or instrument which is binding upon it or any of its assets.

## **7.5 No Event of Default**

- (a) No Event of Default exists or is likely to result from the making of any drawdown under these Bond Terms or the entry into, the performance of, or any transaction contemplated by, any Finance Document.
- (b) No other event or circumstance has occurred which constitutes (or with the expiry of any grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (howsoever described) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which has or is likely to have a Material Adverse Effect.

## **7.6 Authorizations and consents**

All authorisations, consents, approvals, resolutions, licenses, exemptions, filings, notarizations or registrations required:

- (a) to enable it to enter into, exercise its rights and comply with its obligations under these Bond Terms or any other Finance Document to which it is a party; and
- (b) to carry on its business as presently conducted and as contemplated by these Bond Terms,

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

## **7.7 Litigation**

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

## **7.8 Financial Reports**

Its most recent Financial Reports fairly and accurately represent the assets and liabilities and financial condition as at their respective dates, and have been prepared in accordance with the Accounting Standard, consistently applied.

## **7.9 No Material Adverse Effect**

Since the date of the most recent Financial Reports, there has been no change in its business, assets or financial condition that is likely to have a Material Adverse Effect.

## **7.10 No misleading information**

Any factual information provided by it to the Bondholders or the Bond Trustee for the purposes of the issuance of the Bonds was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.

## **7.11 No withholdings**

The Issuer is not required to make any deduction or withholding from any payment which it may become obliged to make to the Bond Trustee or the Bondholders under these Bond Terms.

### **7.12 Pari passu ranking**

Its payment obligations under these Bond Terms or any other Finance Document to which it is a party ranks as set out in Clause 2.4 (*Status of the Bonds*).

### **7.13 Security**

No Security exists over any of the present assets of any Group Company in conflict with these Bond Terms.

## **8. PAYMENTS IN RESPECT OF THE BONDS**

### **8.1 Covenant to pay**

- (a) The Issuer will unconditionally make available to or to the order of the Bond Trustee and/or the Paying Agent all amounts due on each Payment Date pursuant to the terms of these Bond Terms at such times and to such accounts as specified by the Bond Trustee and/or the Paying Agent in advance of each Payment Date or when other payments are due and payable pursuant to these Bond Terms.
- (b) All payments to the Bondholders in relation to the Bonds shall be made to each Bondholder registered as such in the CSD at the Relevant Record Date, by, if no specific order is made by the Bond Trustee, crediting the relevant amount to the bank account nominated by such Bondholder in connection with its securities account in the CSD.
- (c) Payment constituting good discharge of the Issuer's payment obligations to the Bondholders under these Bond Terms will be deemed to have been made to each Bondholder once the amount has been credited to the bank holding the bank account nominated by the Bondholder in connection with its securities account in the CSD. If the paying bank and the receiving bank are the same, payment shall be deemed to have been made once the amount has been credited to the bank account nominated by the Bondholder in question.
- (d) If a Payment Date or a date for other payments to the Bondholders pursuant to the Finance Documents falls on a day on which either of the relevant CSD settlement system or the relevant currency settlement system for the Bonds are not open, the payment shall be made on the first following possible day on which both of the said systems are open, unless any provision to the contrary has been set out for such payment in the relevant Finance Document.

### **8.2 Default interest**

- (a) Default interest will accrue on any Overdue Amount from and including the Payment Date on which it was first due to and excluding the date on which the payment is made at the Interest Rate plus 3 percentage points per annum.
- (b) Default interest accrued on any Overdue Amount pursuant to this Clause 8.2 (*Default interest*) will be added to the Overdue Amount on each Interest Payment Date until the Overdue Amount and default interest accrued thereon have been repaid in full.
- (c) Upon the occurrence of a Listing Failure Event and for as long as such Listing Failure Event is continuing, the interest on any principal amount outstanding under these Bond Terms will accrue at the Interest Rate plus 1 percentage point per annum.

### **8.3 Partial Payments**

- (a) If the Paying Agent or the Bond Trustee receives a Partial Payment, such Partial Payment shall, in respect of the Issuer's debt under the Finance Documents be considered made for discharge of the debt of the Issuer in the following order of priority:
  - (i) firstly, towards any outstanding fees, liabilities and expenses of the Bond Trustee (and any Security Agent);
  - (ii) secondly, towards accrued interest due but unpaid; and
  - (iii) thirdly, towards any other outstanding amounts due but unpaid under the Finance Documents.
- (b) Notwithstanding paragraph (a) above, any Partial Payment which is distributed to the Bondholders, shall, after the above mentioned deduction of outstanding fees, liabilities and expenses, be applied (i) firstly towards any principal amount due but unpaid and (ii) secondly, towards accrued interest due but unpaid, in the following situations:
  - (i) the Bond Trustee has served a Default Notice in accordance with Clause 14.2 (*Acceleration of the Bonds*), or
  - (ii) as a result of a resolution according to Clause 15 (*Bondholders' decisions*).

### **8.4 Taxation**

- (a) Each Obligor shall make all payments to be made by it without any withholding or deduction in respect of tax (whether stated to be a tax, assessment, governmental charge or otherwise), unless that withholding or deduction is required by applicable law.
- (b) Each Obligor is responsible for withholding any withholding tax (whether stated to be a tax, assessment, governmental charge or otherwise) imposed by applicable law on any payments of interest to be made by or on behalf of it under or in relation to the Finance Documents.
- (c) If any tax (whether stated to be a tax, assessment, governmental charge or otherwise) is withheld or deducted in respect of payments under the Bonds by or on behalf of any Obligor under the Finance Documents, the relevant Obligor shall:
  - (i) subject to the exceptions and limitations set forth in paragraph (d) below, increase the amount of the payment due from it (or on behalf of it) to such amount which is necessary to ensure that the Bondholders or the Bond Trustee, as the case may be, receive a net amount which is (after making the required withholding or deduction) equal to the payment which would have been received by such person if no withholding had been required; and
  - (ii) at the request of the Bond Trustee or the Paying Agent, deliver to the Bond Trustee or the Paying Agent evidence that the required tax deduction or withholding has been made and any appropriate payment paid to the relevant taxing authority.
- (d) Paragraph (c) shall not apply:

- (i) to any US federal withholding tax imposed by reason of the Bondholder (or the beneficial owner for whose benefit such Bondholder holds one or more Bonds), or a fiduciary, settlor, beneficiary, member or shareholder of the Bondholder if the relevant Bondholder is an estate, trust, partnership or corporation, or a person holding a power over an estate or trust administered by a fiduciary Bondholder, being considered as:
  - (A) being or having been engaged in a trade or business in the United States or having or having had a permanent establishment in the United States;
  - (B) having a current or former connection with the United States (other than a connection arising solely as a result of the ownership of the Bonds, the receipt of any payment or the enforcement of any rights relating to the Bonds), including being or having been a citizen or resident of the United States or being or having been present in the United States;
  - (C) being or having been a personal holding company, a passive foreign investment company or a controlled foreign corporation for United States income tax purposes, a corporation that has accumulated earnings to avoid U.S. federal income tax, or a foreign tax-exempt organisation with respect to the United States;
  - (D) being or having been a “10-percent shareholder” of the Issuer as defined in section 871(h)(3) or 881(c)(3) of the United States Internal Revenue Code of 1986, as amended (the “Code”) or any successor provision;
  - (E) being a bank, including any entity regulated as a bank or conducting banking business, receiving a payment on an extension of credit in the ordinary course of its trade or business;
- (ii) to any tax that is payable otherwise than by withholding or deduction by the Issuer from payments made by it, a paying agent or Euroclear to the Bondholders; or
- (iii) to any tax or other withholding obligation imposed under Sections 1471 through 1474 of the Code (commonly referred to as FATCA) (or any amended or successor provisions), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such sections of the Code; or
- (iv) to any US federal withholding tax to the extent any such tax would not have been imposed but for the failure of the Bondholder or any other person:
  - (A) to provide a properly completed and executed Internal Revenue Service Form W-8BEN, Form W-8BEN-E, Form W-8ECI or Form W-8IMY (and related documentation), as applicable, or any subsequent version thereof or successor thereto; or

- (B) upon receiving a reasonable prior written notice, to otherwise comply with any applicable certification, identification or information reporting requirements concerning the nationality, residence, identity or connection with the United States of the Bondholder or beneficial owner of one or more Bonds, if compliance is required by any applicable law, regulation or tax treaty to which the United States is a party as a precondition to partial or complete exemption from such tax; or
- (v) to any Bondholder that is not the sole beneficial owner of the Bonds, or a portion of the Bonds, or that is a fiduciary, partnership or limited liability company, but only to the extent that a beneficial owner with respect to the Bondholder, a beneficiary or settlor with respect to the fiduciary, or a beneficial owner or member of the partnership or limited liability company would not have been entitled to the payment of an increased amount had the beneficiary, settlor, beneficial owner or member received directly its beneficial or distributive (or similar) share of the payment; or
- (vi) to any estate, inheritance, gift or personal property tax, or similar tax, assessment or governmental charge; or
- (vii) to any combinations of paragraph (d) (i)-(vi).
- (e) Any public fees or stamp sales, transfer or registration taxes levied on the trade of Bonds in the secondary market shall be paid by the Bondholders, unless otherwise provided by law or regulation, and the Issuer shall not be responsible for reimbursing any such fees or taxes.
- (f) The Bond Trustee shall not have any responsibility with respect to obtaining information about the Bondholders or any other information relevant for the tax obligations referred to herein or with respect to any tax payable by any party pursuant to these Bond Terms.

## **8.5 Currency**

- (a) All amounts payable under the Finance Documents shall be payable in the denomination of the Bonds set out in Clause 2.1 (*Amount, denomination and ISIN of the Bonds*). If, however, the denomination differs from the currency of the bank account connected to the Bondholder's account in the CSD, any cash settlement may be exchanged and credited to this bank account.
- (b) Any specific payment instructions, including foreign exchange bank account details, to be connected to the Bondholder's account in the CSD must be provided by the relevant Bondholder to the Paying Agent (either directly or through its account manager in the CSD) within 5 Business Days prior to a Payment Date. Depending on any currency exchange settlement agreements between each Bondholder's bank and the Paying Agent, and opening hours of the receiving bank, cash settlement may be delayed, and payment shall be deemed to have been made once the cash settlement has taken place, provided, however, that no default interest or other penalty shall accrue for the account of the Issuer for such delay.

## **8.6 Set-off and counterclaims**

No Obligor may apply or perform any counterclaims or set-off against any payment obligations pursuant to these Bond Terms or any other Finance Document.

## **9. INTEREST**

### **9.1 Calculation of interest**

- (a) Each Outstanding Bond will accrue interest at the Interest Rate on the Nominal Amount for each Interest Period, commencing on and including the first date of the Interest Period, and ending on but excluding the last date of the Interest Period.
- (b) Interest shall be calculated on the basis of a 360-day year comprised of twelve months of 30 days each (30/360-days basis), unless:
  - (i) the last day in the relevant Interest Period is the 31<sup>st</sup> calendar day but the first day of that Interest Period is a day other than the 30<sup>th</sup> or the 31<sup>st</sup> day of a month, in which case the month that includes that last day shall not be shortened to a 30-day month; or
  - (ii) the last day of the relevant Interest Period is the last calendar day in February, in which case February shall not be lengthened to a 30-day month.

### **9.2 Payment of interest**

Interest shall fall due on each Interest Payment Date for the corresponding preceding Interest Period and, with respect to accrued interest on the principal amount then due and payable, on each Repayment Date.

## **10. REDEMPTION AND REPURCHASE OF BONDS**

### **10.1 Redemption of Bonds**

The Outstanding Bonds will mature in full on the Maturity Date and shall be redeemed by the Issuer on the Maturity Date at a price equal to 100 per cent. of the Nominal Amount.

### **10.2 Voluntary early redemption - Call Option**

- (a) The Issuer may redeem all or some of the Outstanding Bonds (the “**Call Option**”) on any Business Day from and including:
  - (i) the Issue Date to, but not including, the First Call Date at a price equal to the Make Whole Amount;
  - (ii) the First Call Date to, but not including, the Interest Payment Date in January 2025 at a price equal to 107.81 per cent. of the Nominal Amount for each redeemed Bond;
  - (iii) the Interest Payment Date in January 2025 to, but not including, the Interest Payment Date in July 2025 at a price equal to 104.69 per cent. of the Nominal Amount for each redeemed Bond;

- (iv) the Interest Payment Date in July 2025 to, but not including, the Interest Payment Date in January 2026 at a price equal to 101.56 per cent. of the Nominal Amount for each redeemed Bond; and
  - (v) the Interest Payment Date in January 2026 to, but not including, the Maturity Date at a price equal to 100 per cent. of the Nominal Amount for each redeemed Bond.
- (b) Any redemption of Bonds pursuant to Clause 10.2 (a) above shall be determined based upon the redemption prices applicable on the Call Option Repayment Date.
  - (c) The Call Option may be exercised by the Issuer by written notice (a “**Call Notice**”) to the Bond Trustee at least 10 Business Days prior to the proposed Call Option Repayment Date. Such notice sent by the Issuer is irrevocable and shall specify the Call Option Repayment Date. Unless the Make Whole Amount is set out in the written notice where the Issuer exercises the Call Option, the Issuer shall calculate the Make Whole Amount and provide such calculation by written notice to the Bond Trustee as soon as possible and at the latest within 3 Business Days from the date of the notice.
  - (d) Any Call Option exercised in part will be used for pro rata payment to the Bondholders in accordance with the applicable regulations of the CSD.
  - (e) Any Call Notice may, at the Issuer’s discretion, be subject to the satisfaction of one or more conditions precedent, in which case the call notice will be automatically cancelled unless such conditions precedent have been satisfied or waived at least 3 Business Days prior to such Call Option Repayment Date.

### **10.3 Mandatory repurchase due to a Put Option Event**

- (a) Upon the occurrence of a Put Option Event or a Stock De-Listing Event, each Bondholder will have the right (the “**Put Option**”) to require that the Issuer purchases all or some of the Bonds held by that Bondholder at a price equal to 101 per cent. of the Nominal Amount.
- (b) The Put Option must be exercised within 15 Business Days after the Issuer has given notice to the Bond Trustee and the Bondholders that a Put Option Event or a Stock De-Listing Event (as applicable) has occurred pursuant to Clause 12.3 (*Put Option Event*). Once notified, the Bondholders’ right to exercise the Put Option is irrevocable.
- (c) Each Bondholder may exercise its Put Option by written notice to its account manager for the CSD, who will notify the Paying Agent of the exercise of the Put Option. The Put Option Repayment Date will be the 5<sup>th</sup> Business Day after the end of 15 Business Days exercise period referred to in paragraph (b) above. However, the settlement of the Put Option will be based on each Bondholders holding of Bonds at the Put Option Repayment Date.
- (d) If Bonds representing more than 90 per cent. of the Outstanding Bonds have been repurchased pursuant to this Clause 10.3 (*Mandatory repurchase due to a Put Option Event*), the Issuer is entitled to repurchase all the remaining Outstanding Bonds at the price stated in paragraph (a) above by notifying the remaining Bondholders of its intention to do so no later than 10 Business Days after the Put Option Repayment Date.

Such notice sent by the Issuer is irrevocable and shall specify the Call Option Repayment Date.

#### **10.4 Early redemption option due to a tax event**

If the Issuer is or will be required to gross up any withheld tax imposed by law from any payment in respect of the Bonds under the Finance Documents pursuant to Clause 8.4 (*Taxation*) as a result of a change in applicable law implemented after the date of these Bond Terms, the Issuer will have the right to redeem all, but not only some, of the Outstanding Bonds at a price equal to 100 per cent. of the Nominal Amount. The Issuer shall give written notice of such redemption to the Bond Trustee and the Bondholders at least 20 Business Days prior to the Tax Event Repayment Date, provided that no such notice shall be given earlier than 40 Business Days prior to the earliest date on which the Issuer would be obliged to withhold such tax were a payment in respect of the Bonds then due.

#### **10.5 Mandatory early redemption due to a Mandatory Redemption Event**

- (a) Upon a Mandatory Redemption Event, the Issuer shall, within 10 Business Days after the Mandatory Redemption Event:
  - (i) if occurring prior to the First Release, redeem all of the Outstanding Bonds at a price of 101 per cent. of the Nominal Amount plus accrued interest, by inter alia applying the funds deposited on the Escrow Account and the Debt Service Account for such redemption; or
  - (ii) if occurring after the First Release but prior to the Second Release, apply all the funds standing to the credit of the Escrow Account to redeem Bonds at a price equal to 107.81 per cent. of the Nominal Amount for each redeemed Bond plus accrued interest on the redeemed Bonds.
- (b) Any redemption in part will be used for pro rata payment to the Bondholders in accordance with the applicable regulations of the CSD.

### **11. PURCHASE AND TRANSFER OF BONDS**

#### **11.1 Issuer's purchase of Bonds**

- (a) The Issuer may purchase and hold Bonds and such Bonds, including with respect to Bonds purchased pursuant to Clause 10.3 (*Mandatory repurchase due to a Put Option Event*) may in the Issuer's sole discretion be retained or sold, but not cancelled.
- (b) The Issuer may not use funds from the Debt Service Account to repurchase Bonds.

#### **11.2 Restrictions**

- (a) Certain purchase or selling restrictions may apply to Bondholders under applicable local laws and regulations from time to time. Neither the Issuer nor the Bond Trustee shall be responsible for ensuring compliance with such laws and regulations and each Bondholder is responsible for ensuring compliance with the relevant laws and regulations at its own cost and expense.
- (b) A Bondholder who has purchased Bonds in breach of applicable restrictions may, notwithstanding such breach, benefit from the rights attached to the Bonds pursuant to

these Bond Terms (including, but not limited to, voting rights), provided that the Issuer shall not incur any additional liability by complying with its obligations to such Bondholder.

### **11.3 Trading in the Bonds**

The Bonds will be blocked for all trading in the CSD and all trading in the Bonds will be made through Euroclear. All buyers and sellers of Bonds must therefore have, or open, a securities account with Euroclear, or have an agreement with an authorized nominee in Euroclear holding the Bonds on behalf of the subscriber, or become a direct or sponsored member of Euroclear. No other international central securities depository or other nominee can hold the Bonds in the CSD and may therefore not be a substitute to Euroclear.

## **12. INFORMATION UNDERTAKINGS**

### **12.1 Financial Reports**

- (a) The Issuer shall prepare Annual Financial Statements in the English language and make them available on the Ultimate Parent's website (alternatively on another relevant information platform) as soon as they become available, and not later than four months after the end of the financial year.
- (b) The Issuer shall prepare Interim Accounts in the English language and make them available on Ultimate Parent's website (alternatively on another relevant information platform) as soon as they become available, and not later than two months after the end of the relevant interim period (save for the Interim Account for the financial quarter ending on each 31 December, which will be delivered together with the Annual Financial Statements).

### **12.2 Requirements as to Financial Reports**

- (a) The Issuer shall supply to the Bond Trustee, in connection with the publication of its Financial Reports pursuant to Clause 12.1 (*Financial Reports*), a Compliance Certificate with a copy of the Financial Reports attached thereto. The Compliance Certificate shall be duly signed by the chief executive officer or the chief financial officer of the Issuer, certifying inter alia that the Financial Reports are fairly representing its financial condition as at the date of those Financial Reports and setting out (in reasonable detail) computations evidencing compliance with Clause 13.4 (*Financial Covenants*) as at such date.
- (b) The Issuer shall procure that the Financial Reports delivered pursuant to Clause 12.1 (*Financial Reports*) are prepared using the Accounting Standard consistently applied and include a profit and loss account, balance sheet and cash flow statement together with any management discussion and analysis related thereto.

### **12.3 Put Option Event**

The Issuer shall promptly inform the Bond Trustee in writing after becoming aware that a Put Option Event has occurred.

#### **12.4 Listing Failure Event**

The Issuer shall promptly inform the Bond Trustee in writing if a Listing Failure Event has occurred. However, no Event of Default shall occur if the Issuer fails (i) to list the Bonds in accordance with Clause 4 (*Admission to listing*) or (ii) to inform of such Listing Failure Event, only default interest in accordance with paragraph (c) of Clause 8.2 will accrue as long as such Listing Failure Event is continuing.

#### **12.5 Changes to the Project Construction Plan**

- (a) In the period from the Issue Date until the date of the Second Release, the Issuer shall promptly notify the Bond Trustee and the Independent Engineer of any material changes to the Project Construction Plan which will result in a delay in the achievement of Project Completion as set out in the Project Construction Plan. Such material change means a change that will, when including all other changes to the Project Construction Plan, cause or would reasonably be expected to cause a delay in the achievement of Project Completion in accordance with the Project Construction Plan of more than 45 days. The Issuer may implement such a material change in the Project Construction Plan, provided that the implementation of such material change will not result in the ICO Project failing to satisfy the Cost-to-Complete Test.
- (b) Prior to any such material changes to the Project Construction Plan as set out in (a) above, the Issuer shall deliver to the Bond Trustee and the Independent Engineer a company certificate (the “**Company Certificate**”) describing in reasonable detail:
  - (i) the proposed material change to the Project Construction Plan;
  - (ii) the cost implication to the Master Control Budget of such change;
  - (iii) the time implication of the change; and
  - (iv) how the change will be financed (if applicable).
- (c) The Company Certificate shall also confirm that the Issuer will satisfy the Cost-to-Complete Test following such material change.
- (d) The Independent Engineer will be required to countersign the Company Certificate to confirm that the requirements for such Company Certificate are satisfied.

#### **12.6 Changes to the Capital Expenditure Budget**

- (a) In the period from the Issue Date until the date of the Second Release, the Issuer shall promptly notify the Bond Trustee and the Independent Engineer as soon as the trend-register in the Master Control Budget shows that the USD 5.1 million contingency in the Capital Expenditure Budget will be fully utilized or exceeded. The Issuer shall only be permitted to implement such a change in the Master Control Budget if:
  - (i) the change relates to the ICO Project; and
  - (ii) the Cost-to-Complete Test will continue to be satisfied,(together, the “**Permitted CapEx Increase**”).

- (b) If such Permitted CapEx Increase is made to the Master Control Budget, the Issuer shall provide to the Bond Trustee and the Independent Engineer a Company Certificate describing in reasonable detail:
  - (i) the nature of the budget increase;
  - (ii) the cost implication to the Master Control Budget of such change;
  - (iii) the time implication of the budget increase (if any); and
  - (iv) how the change will be financed (if applicable).
- (c) The Company Certificate shall also confirm that the Issuer will satisfy the Cost-to-Complete Test following such change.
- (d) The Independent Engineer will be required to countersign the Company Certificate to confirm that the requirements for such Company Certificate are satisfied.

#### **12.7 Information: Miscellaneous**

The Issuer shall:

- (a) share with the Bond Trustee any information shared with the Issuer's shareholders promptly after such information has been shared with its shareholders;
- (b) promptly inform the Bond Trustee in writing of any Event of Default or any event or circumstance which the Issuer understands or could reasonably be expected to understand may lead to an Event of Default and the steps, if any, being taken to remedy it;
- (c) at the request of the Bond Trustee, report the balance of the Issuer's Bonds (to the best of its knowledge, having made due and appropriate enquiries);
- (d) send the Bond Trustee copies of any statutory notifications of the Issuer, including but not limited to in connection with mergers, de-mergers and reduction of the Issuer's share capital or equity;
- (e) if the Bonds are listed on an Exchange, send a copy to the Bond Trustee of its notices to the Exchange;
- (f) if the Issuer and/or the Bonds are rated, inform the Bond Trustee of its and/or the rating of the Bonds, and any changes to such rating;
- (g) inform the Bond Trustee of changes in the registration of the Bonds in the CSD; and
- (h) within a reasonable time, provide such information about the Issuer's business, assets and financial condition as the Bond Trustee may reasonably request.

## **13. GENERAL AND FINANCIAL UNDERTAKINGS**

### **13.1 Undertakings by the Ultimate Parent**

The Ultimate Parent shall (and shall, where applicable, procure that the other Group Companies will) undertake in the Guarantee to comply with the undertakings set forth in this Clause 13.1.

#### ***13.1.1 Continuation of business***

The Ultimate Parent shall procure that no material change is made to the general nature of the business from that carried on by the Group at the Issue Date.

#### ***13.1.2 Related party transactions***

The Ultimate Parent shall, and shall procure that each other Group Company will, conduct all business transactions with any Affiliate on an arm's length basis.

#### ***13.1.3 Authorisations***

The Ultimate Parent shall procure that each Non-Obligor will, in all material respects obtain, maintain and comply with the terms of any authorisation, approval, license and consent required for the conduct of its business as carried out at the date of these Bond Terms if a failure to do so would have a Material Adverse Effect.

#### ***13.1.4 Compliance with laws***

The Ultimate Parent shall procure that each Non-Obligor will comply in all material respects with all laws and regulations to which it may be subject to from time to time if a failure to do so would have a Material Adverse Effect.

#### ***13.1.5 Mergers***

The Ultimate Parent shall procure that no Non-Obligor will carry out any merger or other business combination or corporate reorganisation involving the consolidation of any of their assets and obligations, if such merger or combination would have a Material Adverse Effect.

#### ***13.1.6 De-mergers***

The Ultimate Parent shall procure that no Non-Obligor will carry out any demerger or other corporate reorganisation having the same or equivalent effect as a demerger, if such demerger or reorganisation would have a Material Adverse Effect.

#### ***13.1.7 Disposals***

The Ultimate Parent shall procure that no Non-Obligor will sell, transfer or otherwise dispose of any of its assets (including shares or other securities in any person) or operations, if such sale, transfer or disposal would have a Material Adverse Effect.

### **13.2 Undertakings by the Issuer and each of the Obligors**

The Issuer undertakes to, and each other Obligor will in its respective Guarantee undertake to, comply with the undertakings set forth in this Clause 13.2.

### **13.2.1 Authorisations**

The Issuer shall, and shall procure that each other Obligor will, in all material respects obtain, maintain and comply with the terms of any authorisation, approval, license and consent required for the conduct of its business as carried out at the date of these Bond Terms.

### **13.2.2 Compliance with laws**

The Issuer shall, and shall procure that each other Obligor will, comply in all material respects with all laws and regulations to which it may be subject from time to time.

### **13.2.3 Corporate status**

The Issuer shall not, and shall procure that no other Obligor will, change its current jurisdiction of incorporation or entity form.

### **13.2.4 Mergers**

The Issuer shall not, and shall procure that no other Obligor will, carry out any merger or other business combination or corporate reorganisation involving the consolidation of any of their assets and obligations, other than a merger or combination involving the Ultimate Parent where (i) the Ultimate Parent shall be the surviving entity, and (ii) such merger or combination has no Material Adverse Effect.

### **13.2.5 De-mergers**

The Issuer shall not, and shall procure that no other Obligor will, carry out any demerger or other corporate reorganisation having the same or equivalent effect as a demerger.

### **13.2.6 Ownership and disposals**

- (i) The Issuer shall remain the sole owners of all material assets related to the ICO Project.
- (ii) The Ultimate Parent shall maintain direct ownership over 100 per cent. of the shares, and control 100 per cent. of the voting rights, of the Parent. The Parent shall maintain direct ownership over 100 per cent. of the shares, and control 100 per cent. of the voting rights, of the Issuer.
- (iii) In relation to assets of or related to the ICO Project, no Obligor shall transfer, abandon or otherwise dispose of any shares or other assets, or otherwise dilute their ownership in or to any shares or other assets, including without limitation mining tenements or other assets, other than a Permitted Disposal.

### **13.2.7 Transaction Security**

The Issuer shall, and shall procure that each other Obligor will, procure that the Transaction Security remains valid, (as relevant) first priority, binding and enforceable.

### **13.2.8 Investments and activities**

The Issuer shall, and shall procure that each other Obligor will, procure that all investment related to the ICO Project, including the acquisition of any assets relating thereto, shall be made in and remain with the Issuer. The Issuer shall, and shall procure that each other Obligor will, furthermore procure that all material business operations and activities relating to the ICO

Project are conducted by the Issuer. The Issuer shall not invest or take part in any activity other than solely related to the ICO Project.

### **13.2.9 Mining business**

The Issuer shall, and shall procure that each other Obligor will, ensure that all mineral claims and mining leases related to the ownership and operations of the ICO Project and all related assets are held by the Issuer in good standing, all fees and other expenses are paid on or before the due date, and shall not render any mineral claims and mining leases liable to forfeiture, abandonment or revocation, and not surrender, relinquish or amalgamate any part of any such mineral claims and mining leases other than those that are not necessary in the ordinary course of business or for the operation of the ICO Project, and that the business of the Issuer and the Parent are conducted in material compliance with all applicable laws and good industry practices. The Issuer shall conduct its operations in accordance with the Project Construction Plan.

### **13.2.10 Inspection**

The Issuer shall, and shall procure that each other Obligor will, following an Event of Default, allow the Bond Trustee or its representatives to have access at reasonable times on customary terms to all premises of the Obligors (at the Issuer's cost) to inspect the assets and activities related to the ICO Project.

### **13.2.11 Insurances**

The Issuer shall, and shall procure that each other Obligor will, maintain insurances on and in relation to its material business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business. All insurances must be with reputable independent insurance companies or underwriters.

### **13.2.12 Project Documents**

In respect of any Project Documents or any Future Project Documents to which it is or becomes a party (as may be relevant), each Obligor shall:

- (a) perform and observe all of its covenants and agreements contained in such Project Documents or Future Project Documents;
- (b) take all reasonably necessary action to prevent the termination of any such Project Documents and Future Project Documents, other than by expiration of the term of such Project Documents and Future Project Documents or if it constitutes a permitted substitution;
- (c) take any and all actions as may be reasonably necessary promptly to enforce its rights and to collect any and all sums due to it under the Project Documents and Future Project Documents, in each case to the extent that failure to do so is likely to either have a material adverse impact on the development, completion or operation of the ICO Project or otherwise have a Material Adverse Effect;
- (d) not agree to the cancellation or termination thereof;
- (e) not dispose of any part of its interest;

- (f) not waive any default thereunder or any breach thereof;
- (g) not amend, supplement, modify or give any consent or exercise any option thereunder, and/or
- (h) not breach or otherwise default thereunder or take any action that would likely result in a breach or default thereunder,

except if:

- (i) it constitutes a permitted substitution of the said Project Document or Future Project Document; or
- (ii) to the extent that any such action would not have a material adverse impact on the development, completion or operation of the ICO Project or otherwise have a Material Adverse Effect.

A permitted substitution of a Project Document or Future Project Document includes where a Project Document or Future Project Document is replaced within 90 days of its termination, with another document or agreement on terms not materially less favourable to the relevant Obligor than the terms of the Project Document or Future Project Document being replaced.

### **13.2.13 Distribution**

- (a) The Ultimate Parent shall not make any Distributions to its shareholders.
- (b) The Issuer and the Parent shall not make any Distributions other than:
  - (i) any Distribution from the Parent to the Ultimate Parent; and
  - (ii) Distribution from the Issuer to another Obligor, provided that such Distribution takes place no earlier than 1 year after Project Completion and the Issuer immediately after such Distribution will have aggregate cash of no less than an amount (pro forma for such Distribution) equal to:
    - (A) USD 33,333,333; or
    - (B) USD 16,666,667 provided that the Ultimate Parent has raised cash equity of USD 150,000,000 or more in aggregate after 30 June 2021 and the 12 month trailing consolidated EBITDA of the Ultimate Parent as reported in the Financial Statements exceeds USD 40,000,000 at the time of such Distribution,

and in each case provided that no Event of Default has occurred and is continuing or will occur as a result of such Distribution.

### **13.2.14 Financial Indebtedness**

The Issuer shall not, and shall procure that no other Obligor will, incur, allow to exist or prolong any Financial Indebtedness other than any Permitted Financial Indebtedness.

#### **13.2.15 Negative pledge**

The Issuer shall not, and shall procure that no other Obligor will, create or allow to subsist, retain, provide, prolong or renew any Security over any of its/their assets (whether present or future) other than any Permitted Security.

#### **13.2.16 Financial support**

The Issuer shall not, and shall procure that no other Obligor will, be a creditor in respect of any Financial Support to or for the benefit of any person other than any Permitted Loan, Permitted Guarantee or Permitted Security.

#### **13.2.17 Related party transactions**

The Issuer shall, and shall procure that each other Obligor will, conduct all business transactions with any Affiliate on an arm's length basis.

### **13.3 Accounts**

#### **13.3.1 General undertakings in respect of the Accounts**

The Issuer shall establish and maintain, the Accounts, each of which shall be subject to the Transaction Security and in respect of each of which all necessary agreements shall have been entered into by all relevant parties such that the Transaction Security constitutes a perfected first priority security on the Accounts and on all funds on deposits therein.

In particular the Issuer shall:

- (a) prior to the Issue Date establish the Escrow Account and enter into the Escrow Account Pledge;
- (b) Fund the Escrow Account with the Additional Escrow Account Funds;
- (c) prior to the Issue Date establish the Debt Service Account and enter into the Debt Service Account Pledge;
- (d) have the right to use funds deposited on the Debt Service Account solely for the purpose of debt service in favour of the Bonds, including for repayments of the Bonds in full upon a Mandatory Redemption Event;
- (e) prior to the Issue Date establish (or designate) the Project Account(s), and ensure that after the Issue Date (i) no account is maintained that is not a Project Account and (ii) any funds withdrawn from the Escrow Account is paid directly to a Project Account;
- (f) prior to the First Release enter into the Project Account Pledge;
- (g) ensure that the amounts deposited on a Project Account shall exclusively be applied towards (i) funding capital expenditures, working capital and operating costs, in each case in connection with the ICO Project, and (ii) service of all Permitted Financial Indebtedness of the Issuer as and when they fall due (including in favour of the Bonds); and

- (h) ensure that all revenues of the Obligors derived in connection with the ICO Project shall be paid directly to a Project Account.

### **13.3.2 Restrictions on withdrawals from the Escrow Account**

- (a) At any time after the Issue Date and subject to the satisfaction of the conditions precedent set out in paragraph (b) of Clause 6.1, the Issuer may make the First Release from the Escrow Account and transfer such funds to a Project Account held by the Issuer to fund the ICO Project.
- (b) The Issuer shall make two withdrawals during the life of the Bonds, the First Release and the Second Release. The First Release and the Second Release, respectively, shall be made by issuing a drawdown notice to the Escrow Agent, and shall furthermore:
  - (i) include a confirmation that (A) the use of funds comply with Clause 2.3 (*Use of proceeds*); and (B) no potential or actual Event of Default exists;
  - (ii) be countersigned by the Independent Engineer confirming that the Cost-to-Complete Test has been satisfied on the date of delivery of the notice; and
  - (iii) be accompanied by the Project Construction Plan and Master Control Budget, both as updated at such time on the basis of the Issuer's reforecast of the ICO Project, including an updated Capital Expenditure Budget reconciled with actual expenditure.
- (c) For the avoidance of doubt, the Bond Trustee may not release any amount from the Escrow Account unless:
  - (i) the relevant drawdown notice is countersigned by the Independent Engineer and accompanied with the evidence as aforesaid; or
  - (ii) the released funds are used in full to repay the Bonds upon a Mandatory Redemption Event. The Bond Trustee will make no assessment or evaluations in respect of the instructions and confirmations set out in such drawdown notice.

### **13.4 Financial covenants**

- (a) The Issuer shall, and shall procure that each other Obligor will, comply with the following financial covenant at all times:
  - (i) **Minimum Issuer Liquidity:** The Issuer shall maintain cash on the Accounts in an aggregate amount of no less than USD 5,000,000.
  - (ii) **Minimum Group Liquidity:** The Group shall maintain Liquidity of no less than 10 per cent. of Total Debt.
  - (iii) **Minimum Book Equity Ratio:** The Group shall maintain a Book Equity Ratio of no less than 35 per cent.
- (b) The Financial Covenants shall be measured as at each Quarter Date, such compliance to be certified by the Issuer in a Compliance Certificate to be delivered to the Bond Trustee

in connection with the publication of its Financial Reports. The Issuer shall further, in each Compliance Certificate, report the Minimum Book Equity Ratio as per the relevant Quarter Date.

## **14. EVENTS OF DEFAULT AND ACCELERATION OF THE BONDS**

### **14.1 Events of Default**

Each of the events or circumstances set out in this Clause 14.1 shall constitute an Event of Default:

*(a) Non-payment*

An Obligor fails to pay any amount payable by it under the Finance Documents when such amount is due for payment, unless:

- (i) its failure to pay is caused by administrative or technical error in payment systems or the CSD and payment is made within 5 Business Days following the original due date; or
- (ii) in the discretion of the Bond Trustee, the Issuer has substantiated that it is likely that such payment will be made in full within 5 Business Days following the original due date.

*(b) Breach of other obligations*

An Obligor does not comply with any provision of the Finance Documents other than set out under paragraph (a) (*Non-payment*) above, unless such failure is capable of being remedied and is remedied within 20 Business Days after the earlier of the Issuer's actual knowledge thereof, or notice thereof is given to the Issuer by the Bond Trustee.

*(c) Misrepresentation*

Any representation, warranty or statement (including statements in Compliance Certificates) made by any Obligor under or in connection with any Finance Documents is or proves to have been incorrect, inaccurate or misleading in any material respect when made.

*(d) Cross default*

If for any Obligor:

- (i) any Financial Indebtedness is not paid when due nor within any applicable grace period; or
- (ii) any Financial Indebtedness is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described); or
- (iii) any commitment for any Financial Indebtedness is cancelled or suspended by a creditor as a result of an event of default (however described), or

- (iv) any creditor becomes entitled to declare any Financial Indebtedness due and payable prior to its specified maturity as a result of an event of default (however described),

provided however that the aggregate amount of such Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (i) to (iv) above exceeds a total of USD 10,000,000 (or the equivalent thereof in any other currency).

(e) *Insolvency and insolvency proceedings*

Any Obligor:

- (i) is Insolvent; or
- (ii) is object of any corporate action or any legal proceedings is taken in relation to:
  - (A) 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) other than a solvent liquidation or reorganization; or
  - (B) a composition, compromise, assignment or arrangement with any creditor which may materially impair the Issuer's ability to perform its obligations under these Bond Terms; or
  - (C) the appointment of a liquidator (other than in respect of a solvent liquidation), receiver, administrative receiver, administrator, compulsory manager or other similar officer of any of its assets; or
  - (D) enforcement of any Security over any of its or their assets having an aggregate value exceeding USD 5,000,000 (or the equivalent thereof in any other currency); or
  - (E) for (A) - (D) above, any analogous procedure or step is taken in any jurisdiction in respect of any such company,

however this shall not apply to any petition which is frivolous or vexatious and is discharged, stayed or dismissed within 20 Business Days of commencement.

(f) *Creditor's process*

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of any Obligor having an aggregate value exceeding the threshold amount set out in paragraph (d) (*Cross default*) above and is not discharged within 20 Business Days.

(g) *Unlawfulness*

It is or becomes unlawful for an Obligor to perform or comply with any of its obligations under the Finance Documents to the extent this may materially impair:

- (i) the ability of such Obligor to perform its obligations under these Bond Terms; or
- (ii) the ability of the Bond Trustee or any Security Agent to exercise any material right or power vested to it under the Finance Documents.

#### **14.2 Acceleration of the Bonds**

If an Event of Default has occurred and is continuing, the Bond Trustee may, in its discretion in order to protect the interests of the Bondholders, or upon instruction received from the Bondholders pursuant to Clause 14.3 (*Bondholders' instructions*) below, by serving a Default Notice:

- (a) declare that the Outstanding Bonds, together with accrued interest and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable; and/or
- (b) exercise (or direct the Security Agent to exercise) any or all of its rights, remedies, powers or discretions under the Finance Documents or take such further measures as are necessary to recover the amounts outstanding under the Finance Documents.

#### **14.3 Bondholders' instructions**

The Bond Trustee shall serve a Default Notice pursuant to Clause 14.2 (*Acceleration of the Bonds*) if:

- (a) the Bond Trustee receives a demand in writing from Bondholders representing a simple majority of the Voting Bonds, that an Event of Default shall be declared, and a Bondholders' Meeting has not made a resolution to the contrary; or
- (b) the Bondholders' Meeting, by a simple majority decision, has approved the declaration of an Event of Default.

#### **14.4 Calculation of claim**

The claim derived from the Outstanding Bonds due for payment as a result of the serving of a Default Notice will be calculated at the call prices set out in Clause 10.2 (*Voluntary early redemption – Call Option*), as applicable at the following dates (and regardless of the Default Repayment Date);

- (a) for any Event of Default arising out of a breach of Clause 14.1 (*Events of Default*) paragraph (a) (*Non-payment*), the claim will be calculated at the call price applicable at the date when such Event of Default occurred; and
- (b) for any other Event of Default, the claim will be calculated at the call price applicable at the date when the Default Notice was served by the Bond Trustee.

However, if the situations described in (a) or (b) above takes place prior to the First Call Date, the calculation shall be based on the call price applicable on the First Call Date.

## **15. BONDHOLDERS' DECISIONS**

### **15.1 Authority of the Bondholders' Meeting**

- (a) A Bondholders' Meeting may, on behalf of the Bondholders, resolve to alter any of these Bond Terms, including, but not limited to, any reduction of principal or interest and any conversion of the Bonds into other capital classes.
- (b) The Bondholders' Meeting cannot resolve that any overdue payment of any instalment shall be reduced unless there is a pro rata reduction of the principal that has not fallen due, but may resolve that accrued interest (whether overdue or not) shall be reduced without a corresponding reduction of principal.
- (c) The Bondholders' Meeting may not adopt resolutions which will give certain Bondholders an unreasonable advantage at the expense of other Bondholders.
- (d) Subject to the power of the Bond Trustee to take certain action as set out in Clause 16.1 (*Power to represent the Bondholders*), if a resolution by, or an approval of, the Bondholders is required, such resolution may be passed at a Bondholders' Meeting. Resolutions passed at any Bondholders' Meeting will be binding upon all Bondholders.
- (e) At least 50 per cent. of the Voting Bonds must be represented at a Bondholders' Meeting for a quorum to be present.
- (f) Resolutions will be passed by simple majority of the Voting Bonds represented at the Bondholders' Meeting, unless otherwise set out in paragraph (g) below.
- (g) Save for any amendments or waivers which can be made without resolution pursuant to Clause 17.1 (*Procedure for amendments and waivers*) paragraph (a), section (i) and (ii), a majority of at least 2/3 of the Voting Bonds represented at the Bondholders' Meeting is required for approval of any waiver or amendment of these Bond Terms.

### **15.2 Procedure for arranging a Bondholders' Meeting**

- (a) A Bondholders' Meeting shall be convened by the Bond Trustee upon the request in writing of:
  - (i) the Issuer;
  - (ii) Bondholders representing at least 1/10 of the Voting Bonds;
  - (iii) the Exchange, if the Bonds are listed and the Exchange is entitled to do so pursuant to the general rules and regulations of the Exchange; or
  - (iv) the Bond Trustee.

The request shall clearly state the matters to be discussed and resolved.

- (b) If the Bond Trustee has not convened a Bondholders' Meeting within 10 Business Days after having received a valid request for calling a Bondholders' Meeting pursuant to paragraph (a) above, then the requesting party may call the Bondholders' Meeting itself.

- (c) Summons to a Bondholders' Meeting must be sent no later than 10 Business Days prior to the proposed date of the Bondholders' Meeting. The Summons shall be sent to all Bondholders registered in the CSD at the time the Summons is sent from the CSD. If the Bonds are listed, the Issuer shall ensure that the Summons is published in accordance with the applicable regulations of the Exchange. The Summons shall also be published on the website of the Bond Trustee (alternatively by press release or other relevant information platform).
- (d) Any Summons for a Bondholders' Meeting must clearly state the agenda for the Bondholders' Meeting and the matters to be resolved. The Bond Trustee may include additional agenda items to those requested by the person calling for the Bondholders' Meeting in the Summons. If the Summons contains proposed amendments to these Bond Terms, a description of the proposed amendments must be set out in the Summons.
- (e) Items which have not been included in the Summons may not be put to a vote at the Bondholders' Meeting.
- (f) By written notice to the Issuer, the Bond Trustee may prohibit the Issuer from acquiring or dispose of Bonds during the period from the date of the Summons until the date of the Bondholders' Meeting, unless the acquisition of Bonds is made by the Issuer pursuant to Clause 10 (*Redemption and Repurchase of Bonds*).
- (g) A Bondholders' Meeting may be held on premises selected by the Bond Trustee, or if paragraph (b) above applies, by the person convening the Bondholders' Meeting (however to be held in the capital of the Relevant Jurisdiction). The Bondholders' Meeting will be opened and, unless otherwise decided by the Bondholders' Meeting, chaired by the Bond Trustee. If the Bond Trustee is not present, the Bondholders' Meeting will be opened by a Bondholder and be chaired by a representative elected by the Bondholders' Meeting (the Bond Trustee or such other representative, the "**Chairperson**").
- (h) Each Bondholder, the Bond Trustee and, if the Bonds are listed, representatives of the Exchange, or any person or persons acting under a power of attorney for a Bondholder, shall have the right to attend the Bondholders' Meeting (each a "**Representative**"). The Chairperson may grant access to the meeting to other persons not being Representatives, unless the Bondholders' Meeting decides otherwise. In addition, each Representative has the right to be accompanied by an advisor. In case of dispute or doubt with regard to whether a person is a Representative or entitled to vote, the Chairperson will decide who may attend the Bondholders' Meeting and exercise voting rights.
- (i) Representatives of the Issuer have the right to attend the Bondholders' Meeting. The Bondholders Meeting may resolve to exclude the Issuer's representatives and/or any person holding only Issuer's Bonds (or any representative of such person) from participating in the meeting at certain times, however, the Issuer's representative and any such other person shall have the right to be present during the voting.
- (j) Minutes of the Bondholders' Meeting must be recorded by, or by someone acting at the instruction of, the Chairperson. The minutes must state the number of Voting Bonds represented at the Bondholders' Meeting, the resolutions passed at the meeting, and the

results of the vote on the matters to be decided at the Bondholders' Meeting. The minutes shall be signed by the Chairperson and at least one other person. The minutes will be deposited with the Bond Trustee who shall make available a copy to the Bondholders and the Issuer upon request.

- (k) The Bond Trustee will ensure that the Issuer, the Bondholders and the Exchange are notified of resolutions passed at the Bondholders' Meeting and that the resolutions are published on the website of the Bond Trustee (or other relevant electronically platform or press release).
- (l) The Issuer shall bear the costs and expenses incurred in connection with convening a Bondholders' Meeting regardless of who has convened the Bondholders' Meeting, including any reasonable costs and fees incurred by the Bond Trustee.

### **15.3 Voting rules**

- (a) Each Bondholder (or person acting for a Bondholder under a power of attorney) may cast one vote for each Voting Bond owned on the Relevant Record Date, ref. Clause 3.3 (*Bondholders' rights*). The Chairperson may, in its sole discretion, decide on accepted evidence of ownership of Voting Bonds.
- (b) Issuer's Bonds shall not carry any voting rights. The Chairperson shall determine any question concerning whether any Bonds will be considered Issuer's Bonds.
- (c) For the purposes of this Clause 15 (*Bondholders' decisions*), a Bondholder that has a Bond registered in the name of a nominee will, in accordance with Clause 3.3 (*Bondholders' rights*), be deemed to be the owner of the Bond rather than the nominee. No vote may be cast by any nominee if the Bondholder has presented relevant evidence to the Bond Trustee pursuant to Clause 3.3 (*Bondholders' rights*) stating that it is the owner of the Bonds voted for. If the Bondholder has voted directly for any of its nominee registered Bonds, the Bondholder's votes shall take precedence over votes submitted by the nominee for the same Bonds.
- (d) Any of the Issuer, the Bond Trustee and any Bondholder has the right to demand a vote by ballot. In case of parity of votes, the Chairperson will have the deciding vote.

### **15.4 Repeated Bondholders' Meeting**

- (a) Even if the necessary quorum set out in paragraph (e) of Clause 15.1 (*Authority of the Bondholders' Meeting*) is not achieved, the Bondholders' Meeting shall be held and voting completed for the purpose of recording the voting results in the minutes of the Bondholders' Meeting. The Bond Trustee or the person who convened the initial Bondholders' Meeting may, within 10 Business Days of that Bondholders' Meeting, convene a repeated meeting with the same agenda as the first meeting.
- (b) The provisions and procedures regarding Bondholders' Meetings as set out in Clause 15.1 (*Authority of the Bondholders' Meeting*), Clause 15.2 (*Procedure for arranging a Bondholders' Meeting*) and Clause 15.3 (*Voting rules*) shall apply *mutatis mutandis* to a repeated Bondholders' Meeting, with the exception that the quorum requirements set out in paragraph (d) of Clause 15.1 (*Authority of the Bondholders' Meeting*) shall not apply

to a repeated Bondholders' Meeting. A Summons for a repeated Bondholders' Meeting shall also contain the voting results obtained in the initial Bondholders' Meeting.

- (c) A repeated Bondholders' Meeting may only be convened once for each original Bondholders' Meeting. A repeated Bondholders' Meeting may be convened pursuant to the procedures of a Written Resolution in accordance with Clause 15.5 (*Written Resolutions*), even if the initial meeting was held pursuant to the procedures of a Bondholders' Meeting in accordance with Clause 15.2 (*Procedure for arranging a Bondholders' Meeting*) and vice versa.

## 15.5 Written Resolutions

- (a) Subject to these Bond Terms, anything which may be resolved by the Bondholders in a Bondholders' Meeting pursuant to Clause 15.1 (*Authority of the Bondholders' Meeting*) may also be resolved by way of a Written Resolution. A Written Resolution passed with the relevant majority is as valid as if it had been passed by the Bondholders in a Bondholders' Meeting, and any reference in any Finance Document to a Bondholders' Meeting shall be construed accordingly.
- (b) The person requesting a Bondholders' Meeting may instead request that the relevant matters are to be resolved by Written Resolution only, unless the Bond Trustee decides otherwise.
- (c) The Summons for the Written Resolution shall be sent to the Bondholders registered in the CSD at the time the Summons is sent from the CSD and published at the Bond Trustee's web site, or other relevant electronic platform or via press release.
- (d) The provisions set out in Clause 15.1 (*Authority of the Bondholders' Meeting*), 15.2 (*Procedure for arranging a Bondholders' Meeting*), Clause 15.3 (*Voting Rules*) and Clause 15.4 (*Repeated Bondholders' Meeting*) shall apply *mutatis mutandis* to a Written Resolution, except that:
  - (i) the provisions set out in paragraphs (g), (h) and (i) of Clause 15.2 (*Procedure for arranging Bondholders Meetings*); or
  - (ii) provisions which are otherwise in conflict with the requirements of this Clause 15.5 (*Written Resolution*),shall not apply to a Written Resolution.
- (e) The Summons for a Written Resolution shall include:
  - (i) instructions as to how to vote to each separate item in the Summons (including instructions as to how voting can be done electronically if relevant); and
  - (ii) the time limit within which the Bond Trustee must have received all votes necessary in order for the Written Resolution to be passed with the requisite majority (the "**Voting Period**"), which shall be at least 10 Business Days but not more than 15 Business Days from the date of the Summons.

- (f) Only Bondholders of Voting Bonds registered with the CSD on the Relevant Record Date, or the beneficial owner thereof having presented relevant evidence to the Bond Trustee pursuant to Clause 3.3 (*Bondholders' rights*), will be counted in the Written Resolution.
- (g) A Written Resolution is passed when the requisite majority set out in paragraph (e) or paragraph (f) of Clause 15.1 (*Authority of Bondholders' Meeting*) has been obtained, based on a quorum of the total number of Voting Bonds, even if the Voting Period has not yet expired. A Written Resolution will also be resolved if the sufficient numbers of negative votes are received prior to the expiry of the Voting Period.
- (h) 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 obtained.
- (i) If no resolution is passed prior to the expiry of the Voting Period, the number of votes shall be calculated at the close of business on the last day of the Voting Period, and a decision will be made based on the quorum and majority requirements set out in paragraphs (e) to (g) of Clause 15.1 (*Authority of Bondholders' Meeting*).

## **16. THE BOND TRUSTEE**

### **16.1 Power to represent the Bondholders**

- (a) The Bond Trustee has power and authority to act on behalf of, and/or represent, the Bondholders in all matters, including but not limited to taking any legal or other action, including enforcement of these Bond Terms, and the commencement of bankruptcy or other insolvency proceedings against the Issuer, or others.
- (b) The Issuer shall promptly upon request provide the Bond Trustee with any such documents, information and other assistance (in form and substance satisfactory to the Bond Trustee), that the Bond Trustee deems necessary for the purpose of exercising its and the Bondholders' rights and/or carrying out its duties under the Finance Documents.

### **16.2 The duties and authority of the Bond Trustee**

- (a) The Bond Trustee shall represent the Bondholders in accordance with the Finance Documents, including, inter alia, by following up on the delivery of any Compliance Certificates and such other documents which the Issuer is obliged to disclose or deliver to the Bond Trustee pursuant to the Finance Documents and, when relevant, in relation to accelerating and enforcing the Bonds on behalf of the Bondholders.
- (b) The Bond Trustee is not obligated to assess or monitor the financial condition of the Issuer or any other Obligor unless to the extent expressly set out in these Bond Terms, or to take any steps to ascertain whether any Event of Default has occurred. Until it has actual knowledge to the contrary, the Bond Trustee is entitled to assume that no Event of Default has occurred. The Bond Trustee is not responsible for the valid execution or enforceability of the Finance Documents, or for any discrepancy between the indicative terms and conditions described in any marketing material presented to the Bondholders prior to issuance of the Bonds and the provisions of these Bond Terms.

- (c) The Bond Trustee is entitled to take such steps that it, in its sole discretion, considers necessary or advisable to protect the rights of the Bondholders in all matters pursuant to the terms of the Finance Documents. The Bond Trustee may submit any instructions received by it from the Bondholders to a Bondholders' Meeting before the Bond Trustee takes any action pursuant to the instruction.
- (d) The Bond Trustee is entitled to engage external experts when carrying out its duties under the Finance Documents.
- (e) The Bond Trustee shall hold all amounts recovered on behalf of the Bondholders on separated accounts.
- (f) The Bond Trustee will ensure that resolutions passed at the Bondholders' Meeting are properly implemented, provided, however, that the Bond Trustee may refuse to implement resolutions that may be in conflict with these Bond Terms, any other Finance Document, or any applicable law.
- (g) Notwithstanding any other provision of the Finance Documents to the contrary, the Bond Trustee is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation.
- (h) If the cost, loss or liability which the Bond Trustee may incur (including reasonable fees payable to the Bond Trustee itself) in:
  - (i) complying with instructions of the Bondholders; or
  - (ii) taking any action at its own initiative,

will not, in the reasonable opinion of the Bond Trustee, be covered by the Issuer or the relevant Bondholders pursuant to paragraphs (e) and (g) of Clause 16.4 (*Expenses, liability and indemnity*), the Bond Trustee may refrain from acting in accordance with such instructions, or refrain from taking such action, until it has received such funding or indemnities (or adequate security has been provided therefore) as it may reasonably require.

- (i) The Bond Trustee shall give a notice to the Bondholders before it ceases to perform its obligations under the Finance Documents by reason of the non-payment by the Issuer of any fee or indemnity due to the Bond Trustee under the Finance Documents.
- (j) The Bond Trustee may instruct the CSD to split the Bonds to a lower nominal value in order to facilitate partial redemptions, write-downs or restructurings of the Bonds or in other situations where such split is deemed necessary.
- (k) The Bond Trustee will make no assessments or evaluations in respect of any confirmations set out in the Company Certificate or other certificates executed by the Issuer pursuant to these Bond Terms.

### **16.3 Equality and conflicts of interest**

- (a) The Bond Trustee shall not make decisions which will give certain Bondholders an unreasonable advantage at the expense of other Bondholders. The Bond Trustee shall, when acting pursuant to the Finance Documents, act with regard only to the interests of the Bondholders and shall not be required to have regard to the interests or to act upon or comply with any direction or request of any other person, other than as explicitly stated in the Finance Documents.
- (b) The Bond Trustee may act as agent, trustee, representative and/or security agent for several bond issues relating to the Issuer notwithstanding potential conflicts of interest. The Bond Trustee is entitled to delegate its duties to other professional parties.

### **16.4 Expenses, liability and indemnity**

- (a) The Bond Trustee will not be liable to the Bondholders for damage or loss caused by any action taken or omitted by it under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct. The Bond Trustee shall not be responsible for any indirect or consequential loss. Irrespective of the foregoing, the Bond Trustee shall have no liability to the Bondholders for damage caused by the Bond Trustee acting in accordance with instructions given by the Bondholders in accordance with these Bond Terms.
- (b) The Bond Trustee will not be liable to the Issuer for damage or loss caused by any action taken or omitted by it under or in connection with any Finance Document, unless caused by its gross negligence or wilful misconduct. The Bond Trustee shall not be responsible for any indirect or consequential loss.
- (c) Any liability for the Bond Trustee for damage or loss is limited to the amount of the Outstanding Bonds. The Bond Trustee is not liable for the content of information provided to the Bondholders by or on behalf of the Issuer or any other person.
- (d) The Bond Trustee shall not be considered to have acted negligently in:
  - (i) acting in accordance with advice from or opinions of reputable external experts;  
or
  - (ii) taking, delaying or omitting any action if acting with reasonable care and provided the Bond Trustee considers that such action is in the interests of the Bondholders.
- (e) The Issuer is liable for, and will indemnify the Bond Trustee fully in respect of, all losses, expenses and liabilities incurred by the Bond Trustee as a result of negligence by the Issuer (including its directors, management, officers, employees and agents) in connection with the performance of the Bond Trustee's obligations under the Finance Documents, including losses incurred by the Bond Trustee as a result of the Bond Trustee's actions based on misrepresentations made by the Issuer in connection with the issuance of the Bonds, the entering into or performance under the Finance Documents, and for as long as any amounts are outstanding under or pursuant to the Finance Documents.

- (f) The Issuer shall cover all costs and expenses incurred by the Bond Trustee in connection with it fulfilling its obligations under the Finance Documents. The Bond Trustee is entitled to fees for its work and to be indemnified for costs, losses and liabilities on the terms set out in the Finance Documents. The Bond Trustee's obligations under the Finance Documents are conditioned upon the due payment of such fees and indemnifications. The fees of the Bond Trustee will be further set out in the Bond Trustee Fee Agreement.
- (g) The Issuer shall on demand by the Bond Trustee pay all costs incurred for external experts engaged after the occurrence of an Event of Default, or for the purpose of investigating or considering (i) an event or circumstance which the Bond Trustee reasonably believes is or may lead to an Event of Default or (ii) a matter relating to the Issuer or any of the Finance Documents which the Bond Trustee reasonably believes may constitute or lead to a breach of any of the Finance Documents or otherwise be detrimental to the interests of the Bondholders under the Finance Documents.
- (h) Fees, costs and expenses payable to the Bond Trustee which are not reimbursed in any other way due to an Event of Default, the Issuer being Insolvent or similar circumstances pertaining to any Obligor, may be covered by making an equal reduction in the proceeds to the Bondholders hereunder of any costs and expenses incurred by the Bond Trustee or the Security Agent in connection therewith. The Bond Trustee may withhold funds from any escrow account (or similar arrangement) or from other funds received from the Issuer or any other person, irrespective of such funds being subject to Transaction Security, and to set-off and cover any such costs and expenses from those funds.
- (i) As a condition to effecting any instruction from the Bondholders (including, but not limited to, instructions set out in Clause 14.3 (*Bondholders' instructions*) or Clause 15.2 (*Procedure for arranging a Bondholders' Meeting*)), the Bond Trustee may require satisfactory Security, guarantees and/or indemnities for any possible liability and anticipated costs and expenses from those Bondholders who have given that instruction and/or who voted in favour of the decision to instruct the Bond Trustee.

## **16.5 Replacement of the Bond Trustee**

- (a) The Bond Trustee may be replaced by a majority of 2/3 of Voting Bonds in accordance with the procedures set out in Clause 15 (*Bondholders' Decisions*), and the Bondholders may resolve to replace the Bond Trustee without the Issuer's approval.
- (b) The Bond Trustee may resign by giving notice to the Issuer and the Bondholders, in which case a successor Bond Trustee shall be elected pursuant to this Clause 16.5 (*Replacement of the Bond Trustee*), initiated by the retiring Bond Trustee.
- (c) If the Bond Trustee is Insolvent, or otherwise is permanently unable to fulfil its obligations under these Bond Terms, the Bond Trustee shall be deemed to have resigned and a successor Bond Trustee shall be appointed in accordance with this Clause 16.5 (*Replacement of the Bond Trustee*). The Issuer may appoint a temporary Bond Trustee until a new Bond Trustee is elected in accordance with paragraph (a) above.

- (d) The change of Bond Trustee shall only take effect upon execution of all necessary actions to effectively substitute the retiring Bond Trustee, and the retiring Bond Trustee undertakes to co-operate in all reasonable manners without delay to such effect. The retiring Bond Trustee shall be discharged from any further obligation in respect of the Finance Documents from the change takes effect, but shall remain liable under the Finance Documents in respect of any action which it took or failed to take whilst acting as Bond Trustee. The retiring Bond Trustee remains entitled to any benefits and any unpaid fees or expenses under the Finance Documents before the change has taken place.
- (e) Upon change of Bond Trustee, the Issuer shall co-operate in all reasonable manners without delay to replace the retiring Bond Trustee with the successor Bond Trustee and release the retiring Bond Trustee from any future obligations under the Finance Documents and any other documents.

## **16.6 Security Agent**

- (a) The Bond Trustee is appointed to act as Security Agent for the Bonds, unless any other person is appointed. The main functions of the Security Agent may include holding Transaction Security on behalf of the Secured Parties and monitoring compliance by the Issuer and other relevant parties of their respective obligations under the Transaction Security Documents with respect to the Transaction Security on the basis of information made available to it pursuant to the Finance Documents.
- (b) The Bond Trustee shall, when acting as Security Agent for the Bonds, at all times maintain and keep all certificates and other documents received by it, that are bearers of right relating to the Transaction Security in safe custody on behalf of the Bondholders. The Bond Trustee shall not be responsible for or required to insure against any loss incurred in connection with such safe custody.
- (c) Before the appointment of a Security Agent other than the Bond Trustee, the Issuer shall be given the opportunity to state its views on the proposed Security Agent, but the final decision as to appointment shall lie exclusively with the Bond Trustee.
- (d) The functions, rights and obligations of the Security Agent may be determined by a Security Agent Agreement to be entered into between the Bond Trustee and the Security Agent, which the Bond Trustee shall have the right to require each Obligor and any other party to a Finance Document to sign as a party, or, at the discretion of the Bond Trustee, to acknowledge. The Bond Trustee shall at all times retain the right to instruct the Security Agent in all matters, whether or not a separate Security Agent Agreement has been entered into.
- (e) The provisions set out in Clause 16.4 (*Expenses, liability and indemnity*) shall apply *mutatis mutandis* to any expenses and liabilities of the Security Agent in connection with the Finance Documents.

## **17. AMENDMENTS AND WAIVERS**

### **17.1 Procedure for amendments and waivers**

- (a) The Issuer and the Bond Trustee (acting on behalf of the Bondholders) may agree to amend the Finance Documents or waive a past default or anticipated failure to comply with any provision in a Finance Document, provided that:
  - (i) such amendment or waiver is not detrimental to the rights and benefits of the Bondholders in any material respect, or is made solely for the purpose of rectifying obvious errors and mistakes;
  - (ii) such amendment or waiver is required by applicable law, a court ruling or a decision by a relevant authority; or
  - (iii) such amendment or waiver has been duly approved by the Bondholders in accordance with Clause 15 (*Bondholders' Decisions*).
- (b) Any changes to these Bond Terms necessary or appropriate in connection with the appointment of a Security Agent other than the Bond Trustee shall be documented in an amendment to these Bond Terms, signed by the Bond Trustee (in its discretion). If so desired by the Bond Trustee, any or all of the Transaction Security Documents shall be amended, assigned or re-issued, so that the Security Agent is the holder of the relevant Security (on behalf of the Bondholders). The costs incurred in connection with such amendment, assignment or re-issue shall be for the account of the Issuer.

### **17.2 Authority with respect to documentation**

If the Bondholders have resolved the substance of an amendment to any Finance Document, without resolving on the specific or final form of such amendment, the Bond Trustee shall be considered authorised to draft, approve and/or finalise (as applicable) any required documentation or any outstanding matters in such documentation without any further approvals or involvement from the Bondholders being required.

### **17.3 Notification of amendments or waivers**

- (a) The Bond Trustee shall as soon as possible notify the Bondholders of any amendments or waivers made in accordance with this Clause 17 (*Amendments and waivers*), setting out the date from which the amendment or waiver will be effective, unless such notice according to the Bond Trustee's sole discretion is unnecessary. The Issuer shall ensure that any amendment to these Bond Terms is duly registered with the CSD.
- (b) Prior to agreeing to an amendment or granting a waiver in accordance with Clause 17.1(a)(i) (*Procedure for amendments and waivers*), the Bond Trustee may inform the Bondholders of such waiver or amendment at a relevant information platform.

## **18. MISCELLANEOUS**

### **18.1 Limitation of claims**

All claims under the Finance Documents for payment, including interest and principal, will be subject to the legislation regarding time-bar provisions of the Relevant Jurisdiction.

## **18.2 Access to information**

- (a) These Bond Terms will be made available to the public and copies may be obtained from the Bond Trustee or the Issuer. The Bond Trustee will not have any obligation to distribute any other information to the Bondholders or any other person, and the Bondholders have no right to obtain information from the Bond Trustee, other than as explicitly stated in these Bond Terms or pursuant to statutory provisions of law.
- (b) In order to carry out its functions and obligations under these Bond Terms, the Bond Trustee will have access to the relevant information regarding ownership of the Bonds, as recorded and regulated with the CSD.
- (c) The information referred to in paragraph (b) above may only be used for the purposes of carrying out their duties and exercising their rights in accordance with the Finance Documents and shall not disclose such information to any Bondholder or third party unless necessary for such purposes.

## **18.3 Notices, contact information**

Written notices to the Bondholders made by the Bond Trustee will be sent to the Bondholders via the CSD with a copy to the Issuer and the Exchange (if the Bonds are listed). Any such notice or communication will be deemed to be given or made via the CSD, when sent from the CSD.

- (a) The Issuer's written notifications to the Bondholders will be sent to the Bondholders via the Bond Trustee or through the CSD with a copy to the Bond Trustee and the Exchange (if the Bonds are listed).
- (b) Notwithstanding paragraph (a) above and provided that such written notification does not require the Bondholders to take any action under the Finance Documents, the Issuer's written notifications to the Bondholders may be published by the Bond Trustee on a relevant information platform only.
- (c) Unless otherwise specifically provided, all notices or other communications under or in connection with these Bond Terms between the Bond Trustee and the Issuer will be given or made in writing, by letter, e-mail or fax. Any such notice or communication will be deemed to be given or made as follows:
  - (i) if by letter, when delivered at the address of the relevant party;
  - (ii) if by e-mail, when received;
  - (iii) if by fax, when received; and
  - (iv) if by publication on a relevant information platform, when published.
- (d) The Issuer and the Bond Trustee shall each ensure that the other party is kept informed of changes in postal address, e-mail address, telephone and fax numbers and contact persons.

- (e) When determining deadlines set out in these Bond Terms, the following will apply (unless otherwise stated):
  - (i) if the deadline is set out in days, the first day of the relevant period will not be included and the last day of the relevant period will be included;
  - (ii) if the deadline is set out in weeks, months or years, the deadline will end on the day in the last week or the last month which, according to its name or number, corresponds to the first day the deadline is in force. If such day is not a part of an actual month, the deadline will be the last day of such month; and
  - (iii) if a deadline ends on a day which is not a Business Day, the deadline is postponed to the next Business Day.

#### **18.4 Defeasance**

- (a) Subject to paragraph (b) below and provided that:
  - (i) an amount sufficient for the payment of principal and interest on the Outstanding Bonds to the relevant Repayment Date (including, to the extent applicable, any premium payable upon exercise of a Call Option), and always subject to paragraph (c) below (the “**Defeasance Amount**”) is credited by the Issuer to an account in a financial institution acceptable to the Bond Trustee (the “**Defeasance Account**”);
  - (ii) the Defeasance Account is irrevocably pledged and blocked in favour of the Bond Trustee on such terms as the Bond Trustee shall request (the “**Defeasance Pledge**”); and
  - (iii) the Bond Trustee has received such legal opinions and statements reasonably required by it, including (but not necessarily limited to) with respect to the validity and enforceability of the Defeasance Pledge,then;
  - (A) the Issuer will be relieved from its obligations under paragraph (a) of Clause 12.2 (*Requirements as to Financial Reports*), Clause 12.3 (*Put Option Event*), Clause 12.7 (*Information: Miscellaneous*) and Clause 13 (*General and financial undertakings*);
  - (B) any Transaction Security shall be released and the Defeasance Pledge shall be considered replacement of the Transaction Security; and
  - (C) any Obligor shall be released from any Guarantee or other obligation applicable to it under any Finance Document.
- (b) The Bond Trustee shall be authorised to apply any amount credited to the Defeasance Account towards any amount payable by the Issuer under any Finance Document on the due date for the relevant payment until all obligations of the Issuer and all amounts outstanding under the Finance Documents are repaid and discharged in full.

- (c) The Bond Trustee may, if the Defeasance Amount cannot be finally and conclusively determined, decide the amount to be deposited to the Defeasance Account in its discretion, applying such buffer amount as it deems necessary.

A defeasance established according to this Clause 18.4 may not be reversed.

## **19. GOVERNING LAW AND JURISDICTION**

### **19.1 Governing law**

These Bond Terms are governed by the laws of the Relevant Jurisdiction, without regard to its conflict of law provisions.

### **19.2 Main jurisdiction**

The Bond Trustee and the Issuer agree for the benefit of the Bond Trustee and the Bondholders that the City Court of the capital of the Relevant Jurisdiction shall have jurisdiction with respect to any dispute arising out of or in connection with these Bond Terms. The Issuer agrees for the benefit of the Bond Trustee and the Bondholders that any legal action or proceedings arising out of or in connection with these Bond Terms against the Issuer or any of its assets may be brought in such court.

### **19.3 Alternative jurisdiction**

Clause 19 (*Governing law and jurisdiction*) is for the exclusive benefit of the Bond Trustee and the Bondholders and the Bond Trustee have the right:

- (a) to commence proceedings against the Issuer or any other Obligor or any of their respective assets in any court in any jurisdiction; and
- (b) to commence such proceedings, including enforcement proceedings, in any competent jurisdiction concurrently.

### **19.4 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, the Issuer:
  - (i) irrevocably appoints Advokatfirmaet Schjødt AS as its agent for service of process in relation to any proceedings in connection with these Bond Terms; and
  - (ii) agrees that failure by an agent for service of process to notify the Issuer of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Issuer must immediately (and in any event within 10 Business Days of such event taking place) appoint another agent on terms acceptable to the Bond Trustee. Failing this, the Bond Trustee may appoint another agent for this purpose.

-----000-----

These Bond Terms have been executed in two originals, of which the Issuer and the Bond Trustee shall retain one each.

**SIGNATURES:**

<p><b>The Issuer:</b></p> <p>JERVOIS MINING USA LIMITED</p>  <p>.....</p> <p>By: Bryce Crocker</p> <p>Position: Director</p>	<p><b>As Bond Trustee and Security Agent:</b></p> <p>NORDIC TRUSTEE AS</p> <p>.....</p> <p>By:</p> <p>Position:</p>
---	---

These Bond Terms have been executed in two originals, of which the Issuer and the Bond Trustee shall retain one each.

**SIGNATURES:**

<p><b>The Issuer:</b></p> <p>JERVOIS MINING USA LIMITED</p> <p>.....</p> <p>By:</p> <p>Position:</p>	<p><b>As Bond Trustee and Security Agent:</b></p> <p>NORDIC TRUSTEE AS</p> <p></p> <p>.....</p> <p>By: <b>Olav Slagsvold</b></p> <p>Position: <b>Authorised signatory</b></p>
--	---

**ATTACHMENT 1  
COMPLIANCE CERTIFICATE**

[date]

**Jervois Mining USA Limited 12.5 per cent. bonds 2021/2026 ISIN NO0011041568**

We refer to the Bond Terms for the above captioned Bonds made between Nordic Trustee AS as Bond Trustee on behalf of the Bondholders and the undersigned as Issuer. Pursuant to Clause 12.2 (*Requirements as to Financial Reports*) of the Bond Terms a Compliance Certificate shall be issued in connection with each delivery of Financial Reports to the Bond Trustee.

This letter constitutes the Compliance Certificate for the period [•].

Capitalised terms used herein will have the same meaning as in the Bond Terms.

With reference to Clause 12.2 (*Requirements as to Financial Reports*), we hereby certify that all information delivered under cover of this Compliance Certificate is true and accurate. Copies of our latest consolidated [Annual Financial Statements] / [Interim Accounts] are enclosed.

[The Financial Covenants set out in Clause 13.4 (*Financial Covenants*) are met, please see the calculations and figures in respect of the ratios attached hereto, including but not limited to, the Book Equity as per *[the relevant Quarter Date]*.]

We confirm that, to the best of our knowledge, no Event of Default has occurred or is likely to occur.

Yours faithfully,

**Jervois Mining USA Limited**

\_\_\_\_\_

Name of authorised person

Enclosure: Annual Financial Statements / Interim Accounts; [and any other written documentation]

**ATTACHMENT 2  
RELEASE NOTICE – ESCROW ACCOUNT**

[date]

Dear Sirs,

**Jervois Mining USA Limited 12.5 per cent. bonds 2021/2026 ISIN NO0011041568**

We refer to the Bond Terms for the above captioned Bonds made between Nordic Trustee AS as Bond Trustee on behalf of the Bondholders and the undersigned as Issuer.

Capitalised terms used herein will have the same meaning as in the Bond Terms.

We hereby give you notice that we on [date] wish to draw an amount of [currency and amount] from the Escrow Account applied pursuant to the purpose set out in the Bond Terms, and request you to instruct the bank to release the above mentioned amount.

We hereby represent and warrant that (i) no Event of Default has occurred and is continuing or is likely to occur as a result of the release from the Escrow Account, and (ii) we repeat the representations and warranties set out in the Bond Terms as being still true and accurate in all material respects at the date hereof.

We also confirm that:

- (a) the use of funds comply with the use of proceeds provision in Clause 2.3 of the Bond Terms; and
- (b) no potential or actual Event of Default exists.

The Independent Engineer confirms that the Cost-to-Complete Test has been satisfied on the date hereof.

Yours faithfully,

**Jervois Mining USA Limited**

\_\_\_\_\_

Name of authorized person

***[Independent Engineer]***

---

[Name of authorized person]

Enclosure: [Copy of any written documentation evidencing the use of funds (e.g. flow of funds and payment instructions to the Escrow Agent)] [the Project Construction Plan, the Master Control Budget including an updated Capital Expenditure Budget reconciled with actual expenditure]

**ATTACHMENT 3**  
**FUTURE PROJECT DOCUMENTS**

- (a) The SMP Cobalt Concentrate Offtake Contract(s).
- (b) Agreement for mining contractor services between Jervois Mining USA Limited and Small Mine Development LLC.
- (c) Contract for the civil earthworks and concrete works between Jervois Mining USA Limited and Capra Group.
- (d) Contract for supply, installation and operation of Accommodation Camp.
- (e) Contract for Structural, Mechanical, Plate Work And Piping Installation.

**ATTACHMENT 4**  
**SMP COBALT CONCENTRATE OFFTAKE CONTRACT(S)**

Each of the SMP Cobalt Concentrate Offtake Contract(s) shall be entered into on substantially the terms and conditions as set out in this Attachment 4, and delivered to the Bond Trustee, together with a certificate executed by the Issuer, in form and substance confirming, *inter alia*, that the SMP Cobalt Concentrate Offtake Contract(s) contain and is consistent with the key terms and conditions set out in this Attachment 4. The Bond Trustee shall accept each of the SMP Cobalt Concentrate Offtake Contract(s), together with the related Issuer certificate, in full reliance on the Issuer certificate and without any further obligation.

**Concentrate Sales Agreement**

Parties: the Issuer and, in the Issuer’s sole discretion, either the Parent or SMP.

Tenor: not less than 54 months from commencement of cobalt concentrate production by the Issuer.

Concentrate Sale and Purchase: Issuer will sell and Parent or SMP will purchase 100 per cent. of the Cobalt Concentrate produced by the ICO Project. The annual delivery quantity will be approximately 1,900MT of cobalt contained in ICO cobalt sulphide concentrate (the “**Concentrate**”) per annum for the duration of the contract term.

Payability:

<b>Metal</b>	<b>% Payable</b>
Cobalt	75.0% CIF
Copper	80.0% CIF over 1.0%
Gold	70.0% CIF over 3ppm

Reference Prices:

**Cobalt:**Fastmarkets Cobalt standard grade (MB-CO-0005) Monthly Average Low quotation averaged over the Quotational period.

**Copper:** Official London Metal Exchange cash settlement quotation for ‘A’ Grade Copper in US\$ averaged over the Quotational period.

**Gold:** Official London Bullion Market Association average monthly price for the Quotational period.

If any reference price ceases to be published the parties shall meet and agree an alternative reference price.

Concentrate Delivery Basis: CIF Incoterms

**SMP Toll Refining Agreement (if any)**

Applicable only if the Concentrate Sales Agreement is between the Issuer and the Parent and, if not,

there shall be no SMP Toll Refining Agreement.

Parties: the Parent and SMP.

Tenor: not less than 48 months from commencement of cobalt concentrate production by the Issuer.

Refining Commitment: SMP shall receive from and refine Concentrate and shall deliver to the Parent cobalt metal in form and specification customary for the cobalt market.

Quantity Refined: up to 100% of the Cobalt Concentrate production of the ICO Project, as determined by the Parent.

Refining Charge: an amount equal to the average, audited, arm's length refining cost per unit of recovered cobalt at SMP Refinery plus 5%.

Concentrate Delivery Basis: as nominated by the Parent.