

EXECUTION VERSION

**FACILITY AGREEMENT**

**entered into between**

**TEICHMANN SOUTH AFRICA PROPRIETARY LIMITED**

**And**

**KAREEVLEI MINING PROPRIETARY LIMITED**

## EXECUTION VERSION

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Annexure "A": Advance Conditions

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

1.2 In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them –

1.2.1 “**Acceptable Bank**” means –

1.2.1.1 any one of the Reference Banks; or

1.2.1.2 any other bank or financial institution approved by the Lender;

1.2.2 “**Accounting Principles**” means generally accepted accounting principles in South Africa but including IFRS;

1.2.3 “**Advance Conditions**” means the advance conditions specified in Annexure “A”;

1.2.4 “**Advance Date**” means the date of a draw down or a deemed draw down, being the date on which the relevant Loan is, or is deemed to be made;

1.2.5 “**Advanced Amount**” has the meaning specified in Clause 3.3;

1.2.6 “**Affiliate**” means, in relation to any person, a subsidiary of that person or a holding company of that person or any other subsidiary of that holding company;

1.2.7 “**Agreement**” means the agreement contained in this document, including all Annexures hereto;

1.2.8 “**AIM**” means the AIM market of the London Stock Exchange;

1.2.9 “**AIM Rules**” means the rules governing the admission to, and operation of, AIM as set out in the AIM Rules for Companies published by the London Stock Exchange from time to time;

1.2.10 “**Auditor**” means the auditor of the Borrower from time to time and any replacement of such auditor with any other firm in accordance with this Agreement;

1.2.11 “**Authorisation**” means an authorisation, consent, approval, resolution, licence, permit, exemption, filing, notarisation, lodgement, registration or the like;

1.2.12 “**Availability Period**” means the period commencing on the Effective Date and terminating on the first anniversary of the Effective Date;

1.2.13 “**Bank Account**” means such bank account of the Borrower as it may advise the Lender in writing on or about the Signature Date;

1.2.14 “**Bond Attorneys**” means Shepstone Wylie or such other attorneys as the Lender may advise the Borrower in writing following the Signature Date;

- 1.2.15 “**Borrower**” means Kareevlei Mining Proprietary Limited (registration number 2013/077678/07), a limited liability private company incorporated in South Africa;
- 1.2.16 “**Borrower Parent**” means BlueRock Diamonds PLC, Company number 08248437, a public company incorporated in England and Wales, listed on AIM;
- 1.2.17 “**Business Day**” means:
- 1.2.17.1 in relation to any payments under this Agreement, a day other than a Saturday or a Sunday and on which banks are open for business generally in the principal financial centre of the country of the person that is obliged to make such payment;
- 1.2.17.2 in relation to a notice or other communication served under this Agreement, any day other than a Saturday or a Sunday and which banks are open for business generally in the place designated for delivery of the notice concerned; and
- 1.2.17.3 in any other case, a day other than a Saturday or a Sunday and which banks are open for business generally in the place of incorporation of the Lender and the Borrower;
- 1.2.18 “**Calendar Month**” means each month of the Gregorian Calendar;
- 1.2.19 “**Cession in Security**” means the written cession in security entered into or about to be entered into on or about the Signature Date between the Borrower and the Lender pursuant to which the Borrower cedes in security to the Lender as security for the obligations of the Borrower to Lender, in connection with, and/or arising from this Agreement and the Mining Services Agreement all its rights, title and interest in and to –
- 1.2.19.1 all the Borrower’s bank accounts maintained in South Africa (including all cash balances standing to the credit of those bank accounts) from time to time; and
- 1.2.19.2 the Claims of the Borrower.
- 1.2.20 “**Change of Control**” means the occurrence of any one or more of the following events without the prior written consent of the Lender:
- 1.2.20.1 the Borrower Parent (a) does not, or ceases to, hold, directly, legally and beneficially, at least 70% of the issued share capital of the Borrower or (b) does not, or ceases to, hold, directly, legally and beneficially, the right to vote as it sees fit, directly, at least 70% of the issued share capital of the Borrower;
- 1.2.20.2 any person or group of persons acting in concert (other than the Lender Parent and its concert parties) gains direct or indirect control of the Borrower Parent;
- 1.2.21 “**Claims**” means all the present and future claims of whatsoever nature which the Borrower now has and/or may at any time hereafter obtain against any Debtor;
- 1.2.22 “**Companies Act**” means the Companies Act (No 71 of 2008), and shall include the provisions of the Companies Act (No 61 of 1973) that have not been repealed;

- 1.2.23 “**Confidential Information**” means all information relating to the Obligors or the Finance Documents which the Lender has received from the Borrower, or its advisers, in relation to, or for the purpose of becoming the Lender under the Finance Documents in whatever form, and includes any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that –
- 1.2.23.1 is or becomes public information; or
- 1.2.23.2 is identified in writing at the time of delivery as non-confidential by the Borrower or any of its advisers; or
- 1.2.23.3 is known by the Lender before the date the information is disclosed to it for purposes of this Agreement or is lawfully obtained by the Lender after that date, from a source which is, as far as the Lender is aware, unconnected with the Obligors and which, in either case, as far as the Lender is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality;
- 1.2.24 “**CP Notice**” means the notice delivered by the Lender to the Borrower confirming whether all the Advance Conditions have been fulfilled or, if applicable, waived or deferred by the Lender;
- 1.2.25 “**Cut-off Date**” means 5 Business Days after the Signature Date or such later date as the Lender may advise the Borrower in writing;
- 1.2.26 “**Debtor**” means any person who is indebted to the Borrower, for whatsoever reason and howsoever arising;
- 1.2.27 “**Default**” means –
- 1.2.27.1 any Event of Default; and
- 1.2.27.2 the occurrence of any event which, if the applicable grace period expires or if notice is given and the applicable notice period expires, will constitute an Event of Default;
- 1.2.28 “**Discharge Date**” means the day on which the Borrower has paid all amounts, whether in respect of interest, principal or otherwise, which becomes payable by it in terms of this Agreement and the Lender is satisfied and has confirmed to the Borrower in writing that there are no further liabilities due and payable by the Borrower to the Lender on such date (which satisfaction and confirmation shall not be unreasonably withheld or delayed);
- 1.2.29 “**Disposal**” means a sale, lease, licence, transfer, loan or other disposal by a person of any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions), and “Dispose” and “Disposed” shall have a corresponding meaning;
- 1.2.30 “**Distribution**” means a distribution as defined in section 1 of the Companies Act (which includes dividends);
- 1.2.31 “**Draw Down Notice**” has the meaning in clause 5.1.1.4;

- 1.2.32        **"Effective Date"** means the date (specifically, the moment on such date) on which the Lender delivers the CP Notice to the Borrower, as envisaged in this Agreement (or, if applicable, the date envisaged in clause 3.3.2);
- 1.2.33        **"Environment"** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media –
- 1.2.33.1       air (including air within natural or man-made structures, whether above or below ground);
- 1.2.33.2       water (including territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- 1.2.33.3       land (including land under water);
- 1.2.34        **"Environmental Claim"** means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law;
- 1.2.35        **"Environmental Law"** means any applicable law or regulation which relates to –
- 1.2.35.1       the pollution or protection of the Environment;
- 1.2.35.2       harm to or the protection of human health;
- 1.2.35.3       the conditions of the workplace; or
- 1.2.35.4       the generation, handling, storage, use, release, emission or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including any waste;
- 1.2.36        **"Environmental Permits"** means any permit or other Authorisation or the filing of any notification, report or assessment required under any Environmental Law for the operation of any business of the Borrower;
- 1.2.37        **"Existing CL Notes"** or **"Existing CLNs"** has the meaning in the Subscription Agreement;
- 1.2.38        **"Existing CLNI"** means the Existing CLNI, as defined in the Subscription Agreement;
- 1.2.39        **"Existing Outstanding Mining Fees"** means the fees payable to the Lender outstanding under the Mining Services Agreement as at the Signature Date and the Effective Date;
- 1.2.40        **"Event of Default"** means any event of default envisaged in Clause 13 (other than Clause 14.16);
- 1.2.41        **"Facility"** means the revolving credit facility in a maximum amount equal to the Facility Limit made available by the Lender to the Borrower in terms of Clause 4.1.1;
- 1.2.42        **"Facility Limit"** means, at any time, the maximum limit of the Facility as determined in accordance with Clause 4.1.2;
- 1.2.43        **"Finance Documents"** means –

- 1.2.43.1 this Agreement;
- 1.2.43.2 the Kareevlei Governance Agreement;
- 1.2.43.3 the Mining Services Agreement;
- 1.2.43.4 each Security Document;
- 1.2.43.5 the Subordination Agreement;
- 1.2.43.6 any document amending any Finance Document referred to in paragraphs 1.2.43.1 to 1.2.43.5 (both inclusive); and
- 1.2.43.7 any other document designated as a Finance Document by written agreement between the Parties from time to time;
- 1.2.44 **“Financial Indebtedness”** means any indebtedness for or in respect of –
  - 1.2.44.1 moneys borrowed or credit provided;
  - 1.2.44.2 any acceptance credit facility (including any dematerialised equivalent);
  - 1.2.44.3 any note purchase facility, bond, note, debenture, loan stock or other similar instrument;
  - 1.2.44.4 any suspensive sale or instalment credit transaction;
  - 1.2.44.5 any agreement treated as a finance or capital lease in accordance with IFRS;
  - 1.2.44.6 receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
  - 1.2.44.7 any derivative transaction protecting against or benefiting from fluctuations in any rate or price (and, except for non-payment of an amount, the then mark to market value of the derivative transaction will be used to calculate its amount);
  - 1.2.44.8 any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by any third person;
  - 1.2.44.9 all outstanding obligations in respect of any redeemable shares;
  - 1.2.44.10 any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing; and/or
  - 1.2.44.11 any guarantee or indemnity for any of the types of Financial Indebtedness envisaged in Clauses 1.2.44.1 to 1.2.44.10,
- 1.2.45 **“Financial Year”** means the financial year of the Borrower ending on the last day of February in each calendar year;

- 1.2.46 “**General Notarial Bond**” means the general notarial bond over all of the Borrower’s movable assets in favour of the Lender as security for the obligations of the Borrower to Lender, in connection with, and/or arising from this Agreement and the Mining Services Agreement securing a principal sum of at least ZAR85,000,000 and an additional sum equal to at least 20% of such principal sum, or such other amounts as agreed to by the Lender, together with a power of attorney in favour of the Bond Attorneys to pass and register the bond at the applicable Deeds Registry;
- 1.2.47 “**IFRS**” means International Financial Reporting Standards (formerly International Accounting Standards) as issued by the International Accounting Standards Board (“IASB”) from time to time and interpretations issued by the International Financial Reporting Interpretations Committee of IASB (as amended, supplemented or re-issued from time to time);
- 1.2.48 “**Initial Paydown**” means an amount equal to the funds received by the Borrower Parent pursuant to the SLNI, net of such amount as may be agreed in writing by the Parties as being required to remain with the Borrower Parent for the purposes of its working capital requirements, and net of all bank charges and currency conversion costs;
- 1.2.49 “**Interest Payment Dates**” means the last day of each Calendar Month;
- 1.2.50 “**Interest Period**” means, –
- 1.2.50.1 in relation to the Loan, the period commencing an Interest Payment Date and ending on the immediately following Interest Payment Date, provided that –
- 1.2.50.1.1 the first Interest Period shall commence on the 1<sup>st</sup> Advance Date of that Loan and end the next Interest Payment Date thereafter; and
- 1.2.50.1.2 the last Interest Period shall commence on the Interest Payment Date occurring immediately prior to the Maturity Date and end on the Maturity Date; and
- 1.2.50.2 in relation to an Unpaid Sum, a period determined in accordance with Clause 6.2;
- 1.2.51 “**Interest Rate**” means in respect of each Loan and for each Interest Period a rate that is the aggregate of the Prime Rate plus 3% per annum, nominal annual compounded monthly in arrears;
- 1.2.52 “**Joint Venture**” means any joint venture entity, partnership or similar person, comprising an association of two or more persons to undertake a business enterprise through a combination of assets and/or expertise;
- 1.2.53 “**Kareevlei Governance Agreement**” means the written agreement entered into or about to be entered into on or about the Signature Date between the Borrower, the Borrower Parent, the Lender and the Lender Parent, pursuant to which those parties agree upon certain governance arrangements as regards the Borrower;



- 1.2.54 “**Lender**” means Teichmann South Africa Proprietary Limited, registration number: 1999/005673/07 a limited liability private company incorporated in South Africa; and each person to whom the Lender Transfers the whole or any portion of its participation in the Facility in terms of Clause 22;
- 1.2.55 “**Lender Parent**” means Teichmann Company Limited, registration number: 103528, a private company incorporated in Mauritius;
- 1.2.56 “**Lender’s Account**” means such bank account held and administered at a South African financial institution as the Lender may notify the Borrower in writing not less than 5 Business Days prior to the date of payment of an amount;
- 1.2.57 “**Licence**” means any licence, permit, approval, consent, authorisation, order, licence application, and licence amendment application of or to a governmental body and all governmental or third party product registrations or approvals;
- 1.2.58 “**Loan**” means the loan to be made by the Lender to the Borrower pursuant to this Agreement or (as the context may require) the principal amount outstanding for the time being of such loan;
- 1.2.59 “**Loan Note Holders**” means the holders of the SLNs, Existing CLNs or New CLNs;
- 1.2.60 “**Material Adverse Event**” means the occurrence of any facts and/or circumstances which have, or which are reasonably likely to have, in the opinion of the Lender, a material adverse effect on –
- 1.2.60.1 an Obligor’s business, operations, property, condition (financial or otherwise), performance and/or prospects; or
- 1.2.60.2 an Obligor’s ability to comply with its obligations in terms of the Finance Documents; and/or
- 1.2.60.3 the validity or enforceability of any Finance Document and/or the rights or remedies enjoyed by the Lender under or in terms of the Finance Documents or the ranking of the rights enjoyed by the Lender under or in terms of the Finance Documents;
- 1.2.61 “**Maturity Date**” means the date that is the last day of the 18<sup>th</sup> Month following the Effective Date;
- 1.2.62 “**Mining Right**” means the mining right held by the Borrower and granted with DMRE pursuant to the MPRDA in relation to the “Kareevlei Project” in the Northern Cape province of South Africa, approximately 100 kilometres North West of Kimberley, ;
- 1.2.63 “**Mining Services Agreement**” means the written agreement entered into between the Lender and the Borrower prior to the Signature Date pursuant to which, inter alia, the Lender provides contract mining and other related services to the Borrower;
- 1.2.64 “**Month**” means each period which commences on one day (the “**First Day**”) in one Calendar Month and which ends on the same day but one in the next Calendar Month (the “**Second**

**Calendar Month**”) provided that if (i) the First Day is the first day of a Calendar Month the applicable Month shall end on the last day of that Calendar Month, and if (ii) there is no day in the Second Calendar Month which corresponds numerically to the First Day, the applicable Month shall end on the last day of the Second Calendar Month;

- 1.2.65 **“Monthly Mining Fees”** means the fees owing to the Lender under the Mining Services Agreement each Month after the Effective Date as set out in each Monthly Mining Invoice;
- 1.2.66 **“Monthly Mining Invoice”** means an invoice issued by the Lender pursuant to the Mining Services Agreement each Month after the Effective Date;
- 1.2.67 **“MPRDA”** means the Mineral and Petroleum Resources Development Act, 2002;
- 1.2.68 **“New CL Notes”** or **“New CLNs”** means the CL Notes or “CLNs”, as defined in the Subscription Agreement;
- 1.2.69 **“New CLNI”** means the CLNI, as defined in the Subscription Agreement;
- 1.2.70 **“Obligors”** means the Borrower, the Borrower Parent and any other person who provides Security Interests to the Lender for the obligations of the Borrower hereunder, from time to time, and **“Obligor”** shall refer to either one of them, as the context may indicate;
- 1.2.71 **“Other Existing Lenders”** means –
- 1.2.71.1 Mark Poole;
- 1.2.71.2 Tim Leslie;
- 1.2.72 **“Other Existing Financial Indebtedness”** means the Financial Indebtedness incurred by the Borrower Parent and owing to the Other Existing Lenders in the form of a convertible loan note in an amount of approximately £460,000 (including accrued interest) as at the Signature Date;
- 1.2.73 **“Outstandings”** means at any time the aggregate of all amounts of loan principal, accrued interest, prepayment penalties, fees and all other amounts outstanding under the Finance Documents (including, without limitation, any claim for damages or restitution, any claim as a result of any recovery by an Obligor, or another person of a payment or discharge under the Finance Documents on the grounds of preference, and each amount which would be included in any of the above but for any discharge, non-provability or unenforceability of a claim in any insolvency or other proceedings);
- 1.2.74 **“Parties”** means the Lender and the Borrower, and **“Party”** shall refer to any one of them, as the context may require;
- 1.2.75 **“Permitted Disposal”** means Disposals of assets approved in advance in writing by the Lender;
- 1.2.76 **“Permitted Distribution”** means any Distribution made with the prior written approval of the Lender;

- 1.2.77        **“Permitted Guarantees”** means any guarantee, indemnity or similar undertaking –
- 1.2.77.1       issued by the Borrower under any Finance Document;
- 1.2.77.2       issued by the Borrower in respect of any Permitted Indebtedness; and/or
- 1.2.77.3       issued by the Borrower with the prior written consent of the Lender;
- 1.2.78        **“Permitted Indebtedness”** means –
- 1.2.78.1       any Financial Indebtedness arising under any netting or set-off arrangement entered into by the Borrower in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of the Borrower;
- 1.2.78.2       any Financial Indebtedness arising under any of the Finance Documents and subject always to the terms of this Agreement;
- 1.2.78.3       any Financial Indebtedness which is Subordinated Debt;
- 1.2.78.4       any Permitted Trade Credit; and/or
- 1.2.78.5       any other Financial Indebtedness which the Borrower incurs with the prior written consent of the Lender;
- 1.2.79        **“Permitted Loans”** means –
- 1.2.79.1       loans and credit extended by the Borrower to Debtors in the ordinary course of its business; and/or
- 1.2.79.2       any other loans made by the Borrower with the prior written approval of the Lender;
- 1.2.80        **“Permitted Security”** means –
- 1.2.80.1       any Security Interest which comes about by virtue of the operation of law;
- 1.2.80.2       any netting or set-off arrangement entered into by the Borrower in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of the Borrower;
- 1.2.80.3       any Security Interest over bank accounts or retention rights in respect of deposits granted in favour of the account bank as part of that bank’s standard terms and conditions;
- 1.2.80.4       any Security Interest which arises under the Finance Documents; and/or
- 1.2.80.5       any Security Interest which the Borrower creates over any of its assets in favour of any person with the prior written consent of the Lender;
- 1.2.81        **“Permitted Share Issue”** means an issue of shares by the Borrower made with the prior consent of the Lender;

- 1.2.82        **“Permitted Trade Credit”** means trade credit which –
- 1.2.82.1        is:
- 1.2.82.1.1        payable within 90 days;
- 1.2.82.1.2        entered into in the ordinary course of the day-to-day business of the Borrower; and
- 1.2.82.1.3        on the relevant supplier’s standard terms; **or**
- 1.2.82.2        is incurred under the Mining Services Agreement;
- 1.2.83        **“Post Paydown Outstandings”** means the amount outstanding under the Mining Services Agreement, after the Borrower has applied the Initial Paydown towards discharging a portion of the Existing Outstanding Mining Fees;
- 1.2.84        **“Pound”** or **“£”** or **“GBP”** means the lawful currency of the United Kingdom, being the Pound, or any successor currency;
- 1.2.85        **“Prime Rate”** means, at any relevant time, the publicly quoted prime overdraft rate of interest of The Standard Bank of South Africa Limited, being the nominal rate of interest per annum (compounded monthly in arrears) at which that bank lends money on unsecured overdraft to corporate borrowers (a certificate from any manager of that bank, whose appointment or authority need not be proved, as to the prime rate at any time and the usual way in which it is calculated and compounded at such time will be *prima facie* proof of that rate).
- 1.2.86        **“R”** or **“ZAR”** or **“Rand”** means the lawful currency of South Africa, being South African Rand, or any successor currency;
- 1.2.87        **“Sanctioned Entity”** means (a) a person, country or territory which is listed on a Sanctions List or is subject to Sanctions; or (b) a person which is ordinarily located, organised or resident in a country or territory which is listed on a Sanctions List or is subject to Sanctions;
- 1.2.88        **“Sanctioned Transaction”** means the use of the proceeds of any Advance for the purpose of financing or any way in connection with military arms, prohibited narcotics, terrorist activities or in support of any person which intends to use the proceeds for any such activities, or providing any credit, directly or indirectly, to:
- 1.2.88.1        a Sanctioned Entity;
- 1.2.88.2        any other person or entity, if the Borrower has actual knowledge that the person or entity proposes to use the proceeds of any Advance for the purpose of financing or providing any credit, directly or indirectly, to a Sanctioned Entity,
- 1.2.88.3        in each case to the extent that to do so is prohibited by, or would cause any breach of, Sanctions;

- 1.2.89 **"Sanctions"** means trade, economic or financial sanctions, laws, regulations, embargoes or restrictive measures imposed, administered or enforced from time to time by any Sanctions Authority;
- 1.2.90 **"Sanctions Authority"** means the United Nations, the European Union; the Council of Europe (founded under the Treaty of London, 1946); the government of the United States of America; the government of the United Kingdom; the government of the Republic of France; and in each case any of their governmental authorities, including, without limitation, the Office of Foreign Assets Control for the US Department of Treasury (OFAC), the US Department of Commerce, the US State Department or the US Department of the Treasury, Her Majesty's Treasury (HMT) and the French Ministry of Finance (MINEFI);
- 1.2.91 **"Sanctions List"** means the SDN List; the Consolidated List of Financial Sanctions Targets and the Investments Ban List maintained by HMT and any similar list maintained, or a public announcement of a Sanctions designation made, by any Sanctions Authority, in each case as amended, supplemented or substituted from time to time;
- 1.2.92 **"SDN List"** means the Specially Designated Nationals and Blocked Persons List, as published by the United States Department of the Treasury Office of Foreign Asset Control from time to time, and available on the world-wide internet at the following website - <http://www.treas.gov/offices/enforcement/ofac/sdn/index.html> or any official successor website, which identifies terrorist organisations, individual terrorists and states which sponsor terrorism that are, in each instance, restricted from doing business with the United States of America and/or American companies and/or Americans;
- 1.2.93 **"Security"** means the Security Interests created by the Security Documents;
- 1.2.94 **"Security Documents"** means –
- 1.2.94.1 the Cession in Security;
- 1.2.94.2 the General Notarial Bond;
- 1.2.94.3 the Special Notarial Bond; and
- 1.2.94.4 any other document evidencing or creating any guarantee or Security Interest over any asset of any Obligor to secure any obligation of any Obligor to the Lender under the Finance Documents;
- and **"Security Document"** means, as the context requires, any of them;
- 1.2.95 **"Security Interest"** means any mortgage, pledge, security cession, hypothec, lien, any arrangement under which money or claims may be applied, set off or made subject to a combination of accounts so as to effect discharge of any sum owed or payable to any person and any other type of preferential agreement or arrangement (including title retention) having an effect similar to the creation of a security interest;

- 1.2.96 “**Signature Date**” means the date of signature of this Agreement by the Party last signing;
- 1.2.97 “**SLNI**” means has the meaning given to it in the Subscription Agreement;
- 1.2.98 “**SL Notes**” or “**SLNs**” has the meaning given to it in the Subscription Agreement;
- 1.2.99 “**Special Notarial Bond**” means the special notarial bond granted by the Borrower over specified plant, machinery and equipment in favour of the Lender as security for the obligations of the Borrower to Lender, in connection with, and/or arising from this Agreement and the Mining Services Agreement for a principal sum of at least ZAR85,000,000 and an additional sum equal to at least 20% of such principal sum, or such other amounts as agreed to by the Lender, together with a power of attorney in favour of the Bond Attorneys to pass and register the bond at the applicable Deeds Registry;
- 1.2.100 “**South Africa**” means the Republic of South Africa;
- 1.2.101 “**Subordinated Debt**” means any shareholders’ loans, debt, loans and any other claims against the Borrower on loan account by shareholders or other parties that have been subordinated to the Facility substantially in accordance with the terms of the Subordination Agreement *mutatis mutandis*;
- 1.2.102 “**Subordination Agreement**” means the written subordination agreement entered into or about to be entered into on or about the Signature Date between the Borrower Parent, the Lender and the Borrower pursuant to which the Borrower Parent subordinates repayment of any and all claims any nature whatsoever (including by way of loan account or otherwise, in contract or in delict, actual or contingent, and including any interest accrued thereon) it has or may have in its capacity as shareholder or otherwise against the Borrower in favour of the Lender;
- 1.2.103 “**Subscription Agreement**” means the written subscription agreement entered into on or about the Signature Date between the Borrower Parent, the Lender Parent and others;
- 1.2.104 “**Taxes**” means all taxes, charges, imposts, levies, deductions, withholdings, or any amount payable on account of or as security for any of the foregoing by whomsoever and on whomsoever imposed, levied, collected, withheld or assessed, together with any penalties, additions, fines, surcharges or interest relating thereto in terms of any tax legislation, and “Tax” and “Taxation” shall be construed accordingly;
- 1.2.105 “**Transfer**” means the Lender –
- 1.2.105.1 cedes the whole or a portion of its rights under this Agreement to a Transferee; or
- 1.2.105.2 cedes and delegates the whole or any portion of its rights and obligations under this Agreement to a Transferee,  
as more fully envisaged in Clause 22;
- 1.2.106 “**Transferee**” means any person that is not a Sanctioned Entity;

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

1.2.108 “**VAT**” means value added tax payable in terms of the Value Added Tax Act (No. 89 of 1991).

### 1.3 **Construction**

1.3.1 Unless the context indicates otherwise, –

1.3.1.1 an expression which denotes –

1.3.1.1.1 any gender includes the other genders;

1.3.1.1.2 a natural person includes a juristic person and *vice versa*;

1.3.1.1.3 the singular includes the plural and *vice versa*; and

1.3.1.2 Clause headings are for convenience only and are not to be used in its interpretation;

1.3.1.3 a reference to a consecutive series of two or more Clauses is deemed to be inclusive of both the first and last mentioned Clauses;

1.3.1.4 any reference to time shall be construed to the time and date prevailing in South Africa;

1.3.1.5 any reference in this Agreement to –

1.3.1.5.1 “**this Agreement**” or to any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time;

1.3.1.5.2 any “**Party**”, “**Borrower**”, “**Obligor**”, “**Lender**”, or any other person shall be construed so as to include its successors in title, permitted cessionaries and permitted transferees;

1.3.1.5.3 an “**amendment**” includes an amendment, supplement, novation, re-enactment, replacement, restatement or variation and amend will be construed accordingly;

1.3.1.5.4 the words “**Annexure**” or “**Annexures**” refer to and annexures to this Agreement;

1.3.1.5.5 “**assets**” includes businesses, undertakings, securities, properties, revenues or rights of every description and whether present or future, actual or contingent;

1.3.1.5.6 “**authority**” includes any court or any governmental, intergovernmental or supranational body, agency, department or any regulatory, self-regulatory or other authority;

1.3.1.5.7 “**business hours**” shall be construed as being the hours between 08h30 and 17h00 on any Business Day. Any reference to time shall be based upon South African Standard Time;

1.3.1.5.8 “**capitalised**” means, in relation to any applicable amount that will, in terms of this Agreement be capitalised, that such amount shall be added to the Outstandings to then

form part of the Outstandings for all purposes under this Agreement, including that interest then accrues on the Outstandings from that point on as increased by such capitalised interest;

- 1.3.1.5.9 the words “**Clause**” or “**Clauses**” refer to clauses of this Agreement;
- 1.3.1.5.10 “**control**” means in relation to any company or similar organisation or person:
- 1.3.1.5.10.1 the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
- 1.3.1.5.10.1.1 cast, or control the casting of, more than 50.00 per cent. of the maximum number of votes that might be cast at a general meeting of that person;
- 1.3.1.5.10.1.2 appoint or remove all, or the majority, of the directors or other equivalent officers of that person; or
- 1.3.1.5.10.1.3 give directions with respect to the operating and financial policies of that person with which the directors or other equivalent officers of that person are obliged to comply; and/or
- 1.3.1.5.10.2 the power to direct the management and policies of an entity, whether through the ownership of voting capital, or through the right to appoint directors, or by contract or otherwise; and/or
- 1.3.1.5.10.3 the holding (beneficially or legally) of more than 50.00 per cent. of the issued share capital of that person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital);
- 1.3.1.5.11 a “**Finance Document**” or any other agreement or instrument includes (without prejudice to any prohibition on amendments) all amendments (however fundamental) to that Finance Document or other agreement or instrument, including any amendment providing for any increase in the amount of a loan or any additional loan or replacement loan;
- 1.3.1.5.12 “**holding company**” means a holding company, as defined in section 1 of the Companies Act; and
- 1.3.1.5.13 “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.3.1.5.14 a Party being required to “**indemnify**” any person against or in respect of any event, act, omission, fact or circumstance (the “**Indemnified Event**”) shall be construed as an obligation on that Party to pay to such person on demand an amount equal to all liabilities, damages, costs, charges, expenses and losses of any nature incurred or



suffered, directly or indirectly, by that person as a consequence of or otherwise arising out of, attributable to or in connection with the Indemnified Event;

- 1.3.1.5.15 “**laws**” means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any Governmental Body; and the common law, and “law” shall have a similar meaning;
- 1.3.1.5.16 “**person**” means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality;
- 1.3.1.5.17 a “**refinancing**” means an unscheduled repayment of the Loan and other amounts outstanding under the Finance Documents which is funded, directly or indirectly, by way of Financial Indebtedness incurred or shares issued by the Borrower, any subsidiary of the Borrower, or the Borrower Parent, and “refinance” will be construed accordingly;
- 1.3.1.5.18 “**subsidiary**” means a subsidiary, as defined in section 1 of the Companies Act; and
- 1.3.1.5.19 “**writing**” means legible writing and in English and includes email, and “written” shall have a corresponding meaning.
- 1.3.2 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in an interpretation Clause, effect shall be given to it as if it were a substantive provision of the Agreement.
- 1.3.3 A Default (other than an Event of Default) is “**continuing**” if it has not been waived by the Lender in writing or remedied by the Borrower, and an Event of Default is “continuing” if it has not been waived by the Lender in writing or remedied by the Borrower.
- 1.3.4 The words “**include**” and “**including**” mean “include without limitation” and “including without limitation”. The use of the words “**include**” and “**including**” followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.3.5 Words and expressions defined in any Clause shall, unless the application of any such word or expression is specifically limited to that Clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 1.3.6 Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall (unless otherwise defined in this Clause 1.3) be interpreted in accordance with their plain English meaning.
- 1.3.7 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.

- 1.3.8 A reference to any law shall be construed as a reference to that law as at the Signature Date and as extended, applied, amended or re-enacted from time to time.
- 1.3.9 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person who is not a Party to this Agreement.
- 1.3.10 Unless a contrary indication appears, where any number of days is to be calculated from a particular day, such number shall be calculated as excluding that particular day and including the last day of such period.
- 1.3.11 Except to the extent that any provision of this Agreement expressly provides otherwise, if the only day or the last day for the exercise of any right, performance of any obligation or taking (or procuring the taking of) any action in terms of any provision of this Agreement falls on a day which is not a Business Day, such right shall be capable of being exercised, or such obligation performed or action taken on the immediately succeeding Business Day.
- 1.3.12 This Agreement shall to the extent permitted by applicable laws be binding on and enforceable by the administrators, trustees, permitted cessionaries, business rescue practitioners or liquidators of the Parties as fully and effectually as if they had signed the Agreement in the first instance and reference to any Party shall be deemed to include such Party's administrators, trustees, permitted cessionaries, business rescue practitioners or liquidators, as the case may be.
- 1.3.13 The expiry or termination of this Agreement shall not affect those provisions of this Agreement that expressly provide that they will operate after any such expiry or termination or which of necessity must continue to have effect after such expiry or termination, notwithstanding that the Clauses themselves do not expressly provide for this.
- 1.3.14 The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if either of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.

## **2 INTRODUCTION**

- 2.1 The Borrower requires finance for purposes of financing its payment obligations under the Mining Services Agreement and its other working capital requirements from time to time.
- 2.2 The Lender is willing to provide such funding to the Borrower in the form of the Facility on the terms and conditions set out in this Agreement.
- 2.3 The Parties wish to record in writing their agreement in respect of the above and matters ancillary thereto.

### 3 ADVANCE CONDITIONS

#### 3.1 General

The Lender's obligations to make available and advance any amount under the Facility to the Borrower and to perform any of its other obligations in terms of this Agreement are subject to the fulfilment of the Advance Conditions in form and substance satisfactory to the Lender by no later than the Cut-off Date.

#### 3.2 Waiver and deferral

3.2.1 Fulfilment of any of the Advance Conditions may, unless required in law, be waived or deferred by the Lender, on such conditions as the Lender may agree in writing. Any deferred Advance Condition shall then automatically cease to be an Advance Condition and shall become a condition subsequent requiring fulfilment after the Effective Date in accordance with the terms agreed by the Lender (a "**Condition Subsequent**"). Notwithstanding the use of such an expression in this Agreement, the consequence for a failure to timeously fulfil a Condition Subsequent shall be regulated in terms of clause 14.15 and shall not result in the lapsing or termination of this Agreement.

3.2.2 If the Advance Conditions are not fulfilled, waived and/or deferred, as applicable, by the Cut-Off Date, this Agreement shall automatically terminate on and with effect from the Cut-Off Date and neither Party will have any claim against the other in terms of or arising from the non-fulfilment of the Advance Conditions.

#### 3.3 CP Notice

3.3.1 The Advance Conditions shall only be considered fulfilled, deferred and/or waived, as applicable, if and once the Lender delivers the CP Notice to the Borrower. The Lender shall deliver the CP Notice to the Borrower as soon as reasonably possible once it is satisfied that the Advance Conditions have been fulfilled, deferred and/or waived, as applicable. The Lender shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

3.3.2 If the Lender considers the Advance Conditions to have been fulfilled, deferred and/or waived, as applicable, and the Lender then advances any amount under the Facility without the Lender first, by oversight or otherwise, having delivered the CP Notice, then notwithstanding any other provision of a Finance Document, the Effective Date shall be deemed to have occurred on the date of such advance.

3.3.3 If, acting in the mistaken belief that the Advance Conditions have all been fulfilled, the Lender advances any amount (the "**Advanced Amount**") to the Borrower on account of the Facility –

3.3.3.1 the terms and conditions of this Agreement shall, notwithstanding the non-fulfilment, non-extension or non-waiver of the Advance Conditions but subject to Clause 3.3.3.2, apply to the Advanced Amount; and

3.3.3.2 the Lender shall not be obliged to make any further advances on account of that Facility to the Borrower.

#### 3.4 **Designated Condition Subsequent**

3.4.1 Without limitation to the generality of clause 3.3, the following are designated as Conditions Subsequent to be fulfilled as follows -

3.4.1.1 All documents required to procure the registration of the General Notarial Bond and the Special Notarial Bond including a duly executed power of attorney in favour of the Bond Attorneys to execute and register such General Notarial Bond and Special Notarial Bond at the applicable Deeds Registries have been entered into by the Borrower within 20 (twenty) Business Days after the Effective Date;

3.4.1.2 The General Notarial Bond to be entered into by the Borrower is registered with the appropriate authority within 45 days after the Effective Date (as such period may be extended in the circumstances contemplated in Clause 3.5);

3.4.1.3 The Special Notarial Bond to be entered into by the Borrower is registered with the appropriate authority within 45 days after the Effective Date (as such period may be extended in the circumstances contemplated in Clause 3.5);

3.4.1.4 The application for consent from the South African Minister of Mineral Resources and Energy in terms of section 11 of the MPRDA as contemplated in Clause 3.4.1.4 has been submitted to the appropriate authority within 20 (twenty) Business Days after the Effective Date (as such period may be extended in the circumstances contemplated in Clause 3.6).

3.5 If registration of the General Notarial Bond or the Special Notarial Bond has not occurred within the relevant period set out in Clause 3.4.1.2 or 3.4.1.3, as the case may be, notwithstanding the Borrower having taken all such steps and signed all such documents as may have been required of it and within the time period set out in Clause 3.4.1.1 and/or registration has not occurred within the such time period as a result of delays in registration at the appropriate authority, then such time period shall be extended by such period as may be agreed by the Lender and the Borrower and, failing agreement between them, such time period as the Bond Attorneys (acting as experts and not as mediators) may think is reasonable for such registration to occur.

3.6 If submission of application for consent from the South African Minister of Mineral Resources and Energy as contemplated under section 11 of the MPRDA as contemplated in Clause 3.4.1.4 has not occurred within the time period contemplated in Clause 3.4.1.4 as a result of delays and/or inoperability of the on-line or physical application submission portals, then such time period shall be extended by such period as may be agreed by the Lender and the Borrower and, failing agreement between them, a period of not less than 5 (five) Business Days after the on-line or physical application submission portals have been continuously operable for at least 5 (five) successive Business Days.

- 3.7 Without limiting Clause 3.5 or 3.6, the Lender may, on written notice to the Borrower, extend the period for the fulfilment of these designed Conditions Subsequent if the Lender is reasonably satisfied that the Borrower is using its reasonable commercial endeavours to comply with such requirements and/or if any delay in fulfilling the Conditions Subsequent has not been caused by the Borrower.

## 4 FACILITY

### 4.1 Availability

- 4.1.1 The Lender hereby agrees to make the Facility in a maximum amount equal to the Facility Limit available to the Borrower on the terms and conditions set out in this Agreement.

- 4.1.2 During the Availability Period, the Facility Limit shall be as follows:

- 4.1.2.1 for the first 180 days after the Effective Date: an aggregate amount of R30,000,000;
- 4.1.2.2 for the period from 180 days after the Effective Date: an aggregate (and reduced) amount of R20,000,000,

which shall in each case include all capital amounts and accrued and unpaid interest, if any.

### 4.2 Purpose

- 4.2.1 The Borrower undertakes to apply the Initial Paydown received from the Borrower Parent towards a partial discharge of the Existing Outstanding Mining Fees.
- 4.2.2 In addition, the Borrower shall apply all amounts borrowed by it under the Facility strictly to settle the Borrower's payment obligations under the Mining Services Agreement and other working capital requirements as approved by the Lender from time to time.
- 4.2.3 The provisions set out in Clause 4.2.1 shall (in the absence of the Initial Paydown being applied and paid by the Borrower in the manner contemplated in Clause 4.2.1) not in any manner whatsoever qualify or prejudice the duty and obligation of the Borrower to pay the Outstandings to the Lender.

## 5 UTILISATION

### 5.1 Draw Down

- 5.1.1 Subject to clause 5.2, during the Availability Period, the Lender will lend to the Borrower and the Borrower will borrow the following amounts on the following dates (each an "**Advance Date**"):
- 5.1.1.1 on the Effective Date, the Lender will automatically advance to the Borrower an amount equal to the Post Paydown Outstandings ("**Initial Loan**") with the obligation of the Lender to advance the Loan amount equal to the Post Paydown Outstandings being set-off against the obligation of the Borrower to settle Post Paydown Outstandings (as a result of which

the Borrower shall cease to have any claim pertaining to the advance of the relevant amount of the Loan and the Lender shall cease to have any claim pertaining to the Post Paydown Outstandings);

5.1.1.2 on the Effective Date, the Lender will automatically advance to the Borrower amount of the transaction costs and expenses owing to the Lender under clause 26.2.1, (“**Transaction Expenses Loan**”), with the obligation of the Lender to advance the Loan Amount equal to the Transaction Expenses Loan being set-off against the obligation of the Borrower to pay the transaction costs and expenses owing to the Lender under clause 26.2.1 (as a result of which the Borrower shall cease to have any claim pertaining to the advance of the relevant amount of the Loan and the Lender shall cease to have any claim pertaining to the transaction costs and expenses owing to the Lender under clause 26.2.1);

5.1.1.3 subject to the remaining provisions of this Clause 5, the Lender will automatically advance to the Borrower on each date the Lender issues the Monthly Mining Invoice, an amount equal to the Monthly Mining Fees (each a “**Monthly Loan**”) with the obligation of the Lender to advance the Loan Amount equal to the Monthly Loan being set-off against the obligation of the Borrower to pay the Monthly Mining Fees owing to the Lender (as a result of which the Borrower shall cease to have any claim pertaining to the advance of the relevant amount of the Loan and the Lender shall cease to have any claim pertaining to the relevant Monthly Mining Fee owing to the Lender);

5.1.1.4 on any other date, the Borrower shall, subject to the remaining provisions of this Clause 5, be entitled to make drawdowns against the Facility, by delivering an irrevocable written notice (“**Draw Down Notice**”) to the Lender, on not less than 5 Business Days notice.

5.1.2 Each Monthly Loan shall be applied by the Borrower to discharge its obligations to pay the Monthly Mining Fee whether in full or a portion thereof, as applicable.

5.1.3 It is recorded and agreed that:

5.1.3.1 the Lender is obligated to advance the Initial Loan, the Transaction Expenses Loan and the Monthly Loans to the Borrower under this Agreement on each applicable Advance Date;

5.1.3.2 the Borrower is obligated to pay the Post Paydown Outstandings, the amount of the transaction costs and expenses contemplated under clause 26.2.1 and the Monthly Mining Fees to the Lender pursuant to the Mining Services Agreement;

5.1.3.3 the amounts of the Initial Loan, the Transaction Expenses Loan and each Monthly Loan will be equal to the Post Paydown Outstandings, the amount of the transaction costs and expenses contemplated under clause 26.2.1 and the Monthly Mining Fee, respectively; and

5.1.3.4 for the sake of convenience, no physical cash will be advanced between the Lender and the Borrower for the Initial Loan and Monthly Loan and thus, a Loan will be deemed to have been drawn down and advanced to the Borrower on each applicable Advance Date.

## 5.2 **Conditions to Draw Down**

5.2.1 Notwithstanding anything to the contrary contained herein the Lender shall not be obliged to advance a Loan to the Borrower –

5.2.1.1 other than during the Availability Period;

5.2.1.2 if the Outstandings exceed the Facility Limit or will exceed the Facility Limit as a result of advancing the Loan;

5.2.1.3 if a Default is continuing or would result from the advance of that Loan;

5.2.1.4 if, in the reasonably exercised opinion of the Lender, a Material Adverse Event has occurred ;

5.2.1.5 if the Lender has not approved any Draw Down Notice for any other Loans (which are not the Monthly Loan, the “Transaction Expenses Loan” (as defined in clause 5.1.1.2) or the Initial Loan) to the extent that such Loan is not in accordance with the board approved business plan and budget.

## 5.3 **Draw Down Representations**

On the date of each proposed Advance Date for any Loan, the Borrower represents and warrants in favour of the Lender that (a) no Default has occurred and is continuing or would result from the making of the proposed Loan; (b) all the representations and warranties contained in this Agreement are true and correct; (c) no Material Adverse Event has occurred;

## 5.4 **End of the Availability Period**

Any portions of the Facility not drawn down in full by the end of the Availability Period shall no longer be available for draw down by the Borrower in terms of this Agreement.

## 5.5 **Redraw**

Save in respect of any repayment made pursuant to Clause 8 (*Mandatory Prepayment*), the Borrower may re-borrow any part of the Facility which is repaid during the Availability Period.

## 6 **INTEREST**

### 6.1 **Calculation and Payment**

6.1.1 The Outstandings shall accrue interest at a rate of interest equal to the Interest Rate with effect from the relevant Advance Date.

6.1.2 The interest envisaged in Clause 6.1.1 shall –

6.1.2.1 accrue on a nominal annual compounded Monthly in arrears basis; and

6.1.2.2 be calculated on a daily basis and based on the number of days elapsed during the relevant Calendar Month.

- 6.1.3 The Borrower shall only be required to pay interest on an Interest Payment Date if the accrued interest together with all other Outstandings (without double counting) exceeds the Facility Limit in clause 4.1.2.2 on any Interest Payment Date or will exceed the Facility Limit in clause 4.1.2.2 at any time prior to the next Interest Payment Date, the Borrower shall pay on such Interest Payment Date such portion of the accrued and unpaid interest so as to ensure that the accrued interest together with all other Outstandings (without double counting) does not exceed the Facility Limit in clause 4.1.2.2.
- 6.1.4 All accrued interest on each Loan shall, to the extent not paid, be capitalised and added to the outstanding principal amount of that Loan on the last day of each Interest Period.
- 6.1.5 After capitalised interest will:
- 6.1.5.1 be treated as part of the principal amount of that Loan as described in Clause 6.1.2.1;
  - 6.1.5.2 accrue interest in accordance with this Clause 6; and
  - 6.1.5.3 be subject to the repayment and prepayment provisions of this Agreement.

## 6.2 **Default Interest**

- 6.2.1 If an Event of Default occurs, all amounts owing by the Borrower to the Lender on account of the Facility (whether in respect of interest, principal or otherwise) shall, without prejudice to any other rights which the Lender may have against the Borrower as a result of such occurrence, accrue interest at a rate equal to the Interest Rate plus 3% (with effect from the date on which the Event of Default and for so long as it is continuing). Any interest due in terms of this Clause 6.2 shall be compounded Monthly on the first day of such Calendar Month and shall be payable by the Borrower to the Lender on demand.
- 6.2.2 If any Unpaid Sum consists of all or part of the Loan which became due on a day which was not the last day of an Interest Period relating to that Loan, the first Interest Period for that Unpaid Sum shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan, and the succeeding Interest Period shall be such period as the Lender may select.

## 7 **REPAYMENT**

- 7.1 The Borrower shall repay the Outstandings as follows:
- 7.1.1 In respect of the 1<sup>st</sup> Loan advanced, an amount equal to R10,000,000 in 6 equal instalments at the end of each Calendar Month after the Effective Date;
  - 7.1.2 In respect of the Outstandings as at the 1<sup>st</sup> anniversary of the Effective Date, 6 equal instalments at the end of each Calendar Month after the 1<sup>st</sup> anniversary of the Effective Date;
  - 7.1.3 Thereafter, the Borrower shall repay all Outstandings under the Facility (including accrued and unpaid interest thereon) in full by no later than the Maturity Date.



7.2 If pursuant to draw down of less than the Facility or an unscheduled payment, repayment or prepayment made in respect of the Loans, the number of the outstanding instalments at that time are to be reduced (with the relevant repayment amounts remaining the same), the Lender shall recalculate the number and amount of the instalments and deliver a schedule of revised instalments.

7.3 Notwithstanding the aforesaid, at any prior to the registration of the Special Notarial Bond and the General Notarial Bond in the applicable Deeds Registry, whichever is registered later, the Lender may cancel the Facility with immediate effect on written notice to the Borrower. Upon such notice being given, the Outstandings owing to the Lender shall become immediately due and payable to the Lender and the Borrower shall repay all Outstandings to the Lender.

#### 7.4 **Voluntary prepayments**

7.4.1 Subject to clause 7.4.2, the Borrower shall, in respect of each Loan, be entitled to prepay all or portions of the Outstandings at any time before the Maturity Date, provided that the Borrower has given the Lender not less than 5 Business Days prior written notice of its intention to make the prepayment.

7.4.2 Any prepayment made in terms of clause 7.4.1 shall be applied in descending order from the oldest to the newest Loans determined by their Advance Dates (the oldest Loan being the Loan with the oldest Advance Date), being applied in the first instance to the payment of any costs incurred by the Lender in connection with the Loan, thereafter to interest then due and payable and thereafter, in reduction of the Loan principal.

### 8 **MANDATORY PREPAYMENTS**

8.1 **Illegality:** If it becomes unlawful in any applicable jurisdiction for the Lender to fund or maintain any Loan then the Lender may, without prejudice to any other rights or remedies which may be available to it at law or otherwise, declare all the Outstandings to be immediately due and payable, whereupon all such amounts shall become immediately due and payable.

8.2 **Sanctions:** If the Borrower or any other Obligor is or becomes a Sanctioned Entity, participates in any manner in any Sanctioned Transaction and/or is found by a Sanctions Authority to have acted in breach of any Sanctions, whether pursuant to this Agreement or otherwise, the Lender may without prejudice to any other rights or remedies which may be available to it at law or otherwise, declare the Outstandings to be immediately due and payable, whereupon all such amounts shall become immediately due and payable.

8.3 **Change of Control:** Upon the occurrence of a Change of Control (except as may arise from the Lender, or any of its Affiliates assuming control of the Borrower Parent); or the sale of all or substantially all of the assets of the Borrower whether in a single transaction or a series of related transactions (a) the Borrower shall promptly notify the Lender upon becoming aware of that event; and (b) if the Lender so requires, cancels the Facility and the Outstandings, together with accrued

and unpaid interest, and all other amounts accrued under the Facility Documents shall become immediately due and payable on first written demand.

- 8.4 **Refinancing:** If the Borrower raises any funds, whether through the issuance of shares, notes, debentures, or any other securities, or the entering into of any other debt arrangements or any other Refinancing, if the Borrower is the party raising the funds it must, or if the Borrower Parent is the party raising the funds, the Borrower must procure that it receives such proceeds from the Borrower Parent (whether by way of an inter-group loan or otherwise), and prepay such proceeds that it receives, to the Lender in reduction of the Outstandings on the last day of the Calendar Month in which such event occurs, save to the extent of any funds raised by the Borrower Parent and required by it for its own working capital needs in accordance with its adopted business plan and budget.

## 9 PAYMENT MECHANICS

### 9.1 General

The Borrower shall make payment of all amounts payable by it to the Lender pursuant to this Agreement in Rands on the due date for payment, free of exchange, set-off or any other deduction or counterclaim and by electronic transfer into the Lender's Account.

### 9.2 No deduction

9.2.1 The Borrower shall have no right to –

9.2.1.1 defer, withhold or adjust any payment due to the Lender arising out of this Agreement;

9.2.1.2 obtain the deferment of any judgment for any such payment or part thereof; or

9.2.1.3 obtain deferment of any execution of any judgment,

by reason of any set-off or counterclaim of whatsoever nature and howsoever arising, except as may be otherwise permitted in this Agreement.

### 9.3 Business days

If the date for payment of any amount which becomes payable pursuant to this Agreement (whether in respect of interest, principal or otherwise) is not a Business Day, the due date for payment shall be the next succeeding Business Day.

### 9.4 Payments pending prepayments

If the Borrower is entitled to make any prepayment in terms of this Agreement, the Borrower shall remain liable to pay any amounts as and when they fall due for payment in terms of this Agreement.

## 9.5 **Partial Payments**

9.5.1 If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under this Agreements or the other Finance Documents, as the case may be, (the “Relevant Finance Documents”) the Lender shall apply that payment as soon as reasonably practical in reduction of the payment obligations of the Borrower under the Relevant Finance Documents in such order of appropriation as the Lender deems fit and has notified the Borrower.

9.5.2 Clause 9.5.1 will override any appropriation made by the Borrower.

## 10 **REPRESENTATIONS AND WARRANTIES**

### 10.1 **General**

10.1.1 Unless stated to be provided on specified dates only, the Borrower gives the representations and warranties set out in this Clause 10 to the Lender on the Signature Date and on each date thereafter until the Discharge Date with reference to the facts and circumstances existing on such date.

10.1.2 A reference in this Clause 10 to “it” or “its” means, unless the context otherwise requires, the Borrower. The Lender enters into the Finance Documents to which it is a party on the strength of and relying on the representations and warranties set out in this Clause 10, each of which shall be deemed to be material, separate and given without prejudice to any other warranty in any other Finance Document and insofar as it is promissory or relates to a future event, is given as at the due date for fulfilment.

### 10.2 **Status**

10.2.1 The Borrower is a limited liability company, duly incorporated and validly existing under the laws of South Africa.

10.2.2 The Borrower has the power to own its assets and carry on its business as it is being conducted.

### 10.3 **Power and authority**

The Borrower has the legal capacity and power to conclude the Finance Documents to which it is a party, and to perform its obligations under the Finance Documents to which it is a party.

### 10.4 **Validity and Admissibility into Evidence**

10.4.1 Subject to the documents contemplated in paragraph 1.1 and 1.2 of Annexure “A” having been delivered, all authorisations required or desirable –

10.4.1.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations under the Finance Documents to which it is a party and to ensure that the obligations expressed

to be assumed by it the Finance Documents to which it is a party are legal, valid, binding and enforceable; and

10.4.1.2 to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation,

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

10.4.2 All Authorisations necessary for the conduct of the business, trade and ordinary activities of the Borrower have been obtained or effected and are in full force and effect.

#### 10.5 **Binding obligations**

10.5.1 The Finance Documents to which it is a party constitute agreements valid and binding on it and enforceable against it in accordance with their terms.

10.5.2 Without limiting the generality of Clause 10.5.1, each Security Document to which it is a party creates the security interests which that Security Document purports to create and those security interests are valid and effective.

#### 10.6 **Borrowing Powers**

No limit on its powers will be exceeded as a result of the borrowing, giving of guarantees or indemnities contemplated by the Finance Documents to which it is a party.

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

The execution of the Finance Documents to which it is a party and the performance of its obligations thereunder does not and shall not contravene any law or regulation to which it is subject, or any provision of its constitutional documents or conflict with, or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it.

#### 10.8 **Governing Law and Enforcement**

10.8.1 The choice of governing law of the Finance Documents will be recognised and enforced in South Africa, subject to the laws of general application regarding the recognition and enforceability of such foreign laws.

10.8.2 Any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in South Africa, subject to the laws of general application regarding the recognition and enforceability of such foreign judgment.

#### 10.9 **No Filing or Stamp Taxes**

Except as may be required in terms of South African foreign exchange laws, it is not necessary that the Finance Documents be filed, recorded or enrolled with any South African court or other

authority in that jurisdiction or that any South African stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

**10.10 No other impairments**

As at the Signature Date, the Effective Date and each Advance Date, to the best of its knowledge and belief, the Borrower is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of its obligations in terms of the Finance Documents to which it is a party.

**10.11 No Default**

No Default has occurred and is continuing or might result from the entry into of, or the performance of any transaction contemplated by, the Finance Documents to which it is a party, and no other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its assets are subject.

**10.12 No misleading information**

10.12.1 All factual, written and material information contained in or provided by the Borrower or by any other person on its behalf in fulfilment of the Advance Conditions or otherwise provided to the Lender in relation to the execution of the Finance Documents was true, accurate and complete in all material respects as at the date it was provided or as at the date (if any) at which it is stated, and no information has been given or withheld in relation to the execution of the Finance Documents that results in such information being untrue or misleading in any material respect, and neither has the Borrower knowingly withheld any information in relation to the execution of the Finance Documents which, if disclosed, would reasonably be expected to materially and adversely affect the decision of the Lender to enter into the Finance Documents.

10.12.2 All expressions of opinion, expectation, intention or policy provided to the Lender in relation to the Borrower in the context of the execution of the Finance Documents were made after careful consideration and were fair and reasonable as at the date at which they are stated to be given and can be properly supported.

10.12.3 All forecasts and projections contained in documents submitted pursuant to the Advance Conditions were prepared on the basis of recent historical information and assumptions which were fair and reasonable at the Signature Date and were not misleading in any material respect.

**10.13 No proceedings pending or threatened**

Save as disclosed to the Lender in writing before the Signature Date, as at the Signature Date, the Effective Date and each Advance Date, there are no litigation proceedings, arbitration proceedings, administrative proceedings, liquidation applications, winding up applications or business rescue applications instituted or, to the best of its knowledge and belief, threatened

against it, which, if adversely determined, might reasonably be expected to be a Material Adverse Event.

**10.14 Insolvency and financial distress**

As at the Signature Date, the Effective Date and each Advance Date, no event or circumstance described in Clause 14.4.6 has occurred or exists in relation to it.

**10.15 No breach of laws**

It has not breached any law or regulation which breach has or might reasonably be expected to be a Material Adverse Event.

**10.16 Tax**

10.16.1 The Borrower has duly and punctually paid and discharged all amounts of Taxes imposed upon it or its assets within a time period allowed without incurring penalties except to the extent that payment is being contested in good faith (and the details thereof were provided in writing to the Lender), it has maintained adequate provisions for those Taxes in accordance with Accounting Principles and payment can be lawfully withheld.

10.16.2 No claims or investigations by any Tax authority are, to the best of its knowledge and belief, being made or conducted or are reasonably likely to be made or conducted against the Borrower.

10.16.3 It is resident for Tax purposes only in the jurisdiction of its incorporation.

**10.17 Pari Passu Ranking**

The Borrower's payment obligations under the Finance Documents to which it is a party rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law.

**10.18 No Indebtedness**

The Borrower has no Financial Indebtedness other than Permitted Indebtedness or which has been disclosed to the Lender in writing before the Signature Date.

**10.19 No Security**

10.19.1 No Security Interest exists over all or any of the present or future assets of the Borrower, other than Permitted Security.

10.19.2 No Security Interest will arise solely as a result of the execution and performance of the Borrower's rights and obligations under the Finance Documents to which it is a party (except as contemplated in the Finance Documents).

10.20 **Good Title to Other Assets**

The Borrower has good and valid title to or validly leases or Licences, and has all appropriate Authorisations, to use, all of the assets necessary to carry on its business.

10.21 **Insurance**

The Borrower maintains insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on a substantially similar business in the jurisdiction in which it conducts its business.

10.22 **Licences**

10.22.1 Subject to clause 10.22.2, the Borrower has all such Licences as are prescribed by law for the conduct of its business and is in material compliance with such Licences, and the Borrower is not aware of any fact or circumstance which may result in the cancellation, withdrawal or non-renewal of any of them.

10.22.2 As at the Signature Date, the Mining Right has expired, however, the Borrower has applied for the renewal thereof with the applicable authority.

10.23 **Environmental laws**

10.23.1 All Environmental Permits required for it to carry on its respective businesses in the ordinary course have been obtained or effected and are in full force and effect.

10.23.2 No Environmental Claim has been commenced or is threatened against the Borrower where that claim has or is reasonably likely, if determined against the Borrower, to have a Material Adverse Effect or is reasonably likely to result in any liability for the Lender.

10.24 **Ownership and control**

No Change of Control has occurred (except as may arise from the Lender, or any of its Affiliates assuming control of the Borrower Parent).

10.25 **No Immunity**

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

10.26 **Transaction Security**

The Security has the ranking in priority which it is expressed to have in the applicable Security Document and is not subject to any prior ranking or *pari passu* ranking Security Interest, except to the extent stated therein or envisaged in this Agreement.

## 11 INFORMATION UNDERTAKINGS

### 11.1 Financial statements and management accounts

11.1.1 The Borrower shall supply to the Lender –

11.1.1.1 as soon as the same become available, but in any event within 120 days after the end of each of its Financial Year, the audited financial statements of the Borrower for that Financial Year;

11.1.1.2 as soon as the same become available, but in any event within 15 Business Days after the end of each Calendar Month, the management accounts (which shall include at least a cash flow statement, income statement and balance sheet on a year-to-date basis) of the Borrower for that Calendar Month. In addition, such monthly management accounts shall include a summary of the following information in respect of the debtors (all in Microsoft Excel format) –

11.1.1.3 detailed list of transactions, including –

11.1.1.3.1 date of credit;

11.1.1.3.2 Debtor name;

11.1.1.3.3 amount of credit;

11.1.1.4 detailed list of transactions receipted – each receipt linked to a copy of banking statement of the Borrower;

11.1.1.4.1 age analysis per Debtor;

11.1.1.4.2 age analysis per matter; and

11.1.1.4.3 list of all bad debt provisions or bad debt written off.

### 11.2 Requirements as to financial statements

11.2.1 Each set of financial statements and management accounts delivered by the Borrower pursuant to Clause 11.1 shall be certified by at least 2 directors of the Borrower (of which one shall be the financial director or chief executive officer) as a true and accurate representation of its financial condition as at the date as at which those financial statements or management accounts (as applicable) were drawn up.

11.2.2 The Borrower shall procure that each set of financial statements delivered pursuant to Clause 11.1 is prepared using the Accounting Principles, and each set of financial statements and management accounts delivered pursuant to Clause 11.1 is prepared using accounting practices and financial reference periods consistent with those applied in the preparation of the most recently delivered financial statements or management accounts (as applicable) delivered to the Lender.



### 11.3 **Litigation**

The Borrower shall supply to the Lender, promptly but within 5 Business Days upon becoming aware thereof, the details of any litigation or arbitration proceedings which are instituted or threatened against the Borrower.

### 11.4 **Default under this Agreement**

The Borrower shall supply to the Lender, promptly but within 2 Business Days upon becoming aware thereof, the details of any Default (and the steps, if any, being taken to remedy such Default). The Borrower shall, promptly but within 2 Business Days upon request by the Lender, supply to the Lender a certificate signed by a director of the Borrower certifying that, to the best of its knowledge and belief (and after making reasonable enquiry) no Default has occurred and is continuing.

### 11.5 **Default under any other agreement**

The Borrower shall supply to the Lender, promptly but within 5 Business Days upon becoming aware thereof, the details of any event or circumstance which constitutes an event of default or breach (howsoever described) under any other agreement which is binding on it or to which its assets are subject (and the steps, if any, being taken to remedy such event of default or breach).

### 11.6 **Corporate action**

The Borrower shall supply to the Lender, promptly but within 5 Business Days upon becoming aware thereof, the details of any corporate action event occurring in the Borrower (and before such corporate action event occurs).

### 11.7 **Shareholding event**

The Borrower shall supply to the Lender, promptly but within 5 Business Days upon becoming aware thereof, the details of any changes in the shareholding of the Borrower Parent that require announcement in terms of the AIM Rules by the Borrower Parent (other than where relating to changes in shareholdings in the Borrower Parent of the Lender Parent or any of its concert parties).

### 11.8 **No misleading information**

The Borrower shall ensure that all information generated and supplied by the Borrower to the Lender under or in connection with the Finance Documents is true, complete and accurate in all material respects as at the date it was given, and is not misleading in any respect.

### 11.9 **Further information**

The Borrower shall, promptly but within 5 Business Days of receipt of written request from the Lender, provide the Lender with such further information regarding the financial condition, business and operations of the Borrower as the Lender may reasonably request given its exposure to the Borrower in terms of the Finance Documents.

#### 11.10 **Impairments**

The Borrower shall supply to the Lender, promptly but within 5 Business Days upon becoming aware thereof, the details of any fact or circumstance that the Borrower reasonably believes may impair the Borrower' ability to comply with all of its obligations in terms of the Finance Documents to which it is a party and the steps, if any, which the Borrower is taking to address such circumstances.

#### 11.11 **Director changes**

The Borrower shall, promptly but within 5 Business Days upon becoming aware thereof, supply to the Lender the details of any changes to the board of directors of the Borrower and the Borrower Parent and any subsequent replacements occupying such and/or equivalent positions in the Borrower and the Borrower Parent .

#### 11.12 **Licences**

11.12.1 The Borrower shall, immediately upon becoming aware thereof, supply to the Lender the details of:

11.12.1.1 any termination and/or lapsing of any Licences held by the Borrower and that are prescribed by law for the conduct of its business; and

11.12.1.2 the status of any application for renewal of the Mining Right.

#### 11.13 **Security Documents**

The Borrower shall supply to the Lender, promptly upon becoming aware of them, the details of any material, relevant information regarding any assets which are subject to any of the Security Documents.

### 12 **GENERAL UNDERTAKINGS**

#### 12.1 **Status**

The Borrower shall maintain its status as a limited liability company, duly incorporated and validly existing under the laws of South Africa, and shall otherwise maintain and preserve its corporate existence, accounting policies, procedures and records, in accordance with applicable laws.

#### 12.2 **Authorisation**

12.3 Subject to what is disclosed in Clause 10.22.2, the Borrower shall promptly –

12.3.1 obtain, comply with and do all that is necessary to maintain in full force and effect; and

12.3.2 supply certified copies to the Lender of,

12.3.3 any Authorisation required under any law or regulation to –

12.3.3.1 enable it to perform its obligations under the Finance Documents to which it is a party; and

12.3.3.2 ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document to which it is a Party.

12.4 The Borrower shall obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required under any law or regulation to carry on its business.

12.5 **Compliance with Laws**

Subject to what is disclosed in Clause 10.22.2, the Borrower shall comply in all material respects with all laws and regulations to which it may be subject, and obtain and comply with all permits and licenses and which laws, permits and licenses are material to the conduct of its business.

12.6 **Tax**

The Borrower shall duly and punctually pay and discharge all Taxes imposed upon it or its assets within the time period allowed, without incurring penalties, unless and only to the extent that such payment is being contested in good faith (and the Borrower shall provide the Lender with written details thereof), adequate reserves are being maintained for those Taxes in accordance with the Accounting Principles, such payment can be lawfully withheld and failure to pay those Taxes does not adversely affect the conduct of its business or its assets.

12.7 **Change of business**

The Borrower shall not make any change to the general nature of its business without the prior written consent of the Lender.

12.8 **Arm's length basis**

The Borrower shall not enter into any transaction with any person except on arm's length terms and for full market value.

12.9 **Joint ventures**

12.10 The Borrower shall not:

12.10.1 enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or

12.10.2 transfer any assets or lend to or guarantee or give an indemnity for or grant any security interest for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).

12.11 **Merger**

The Borrower shall not enter into any amalgamation, demerger, merger, unbundling or corporate reconstruction without the prior written consent of the Lender which shall not be unreasonably withheld.

## 12.12 **Financial Indebtedness and Security**

12.12.1 Other than Permitted Indebtedness and Permitted Security, the Borrower shall not –

12.12.1.1 incur any other Financial Indebtedness;

12.12.1.2 create any Security Interest in favour of any person.

## 12.13 **Preservation of Assets**

The Borrower shall maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the conduct of its business.

## 12.14 **Pari Passu Ranking**

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

## 12.15 **Acquisitions**

12.15.1 The Borrower shall not –

12.15.1.1 acquire any business or undertaking;

12.15.1.2 acquire a company or any shares or securities in a company of business or undertaking (or, in each case, any interest in any of them); or

12.15.1.3 incorporate a company,

without the prior written approval of the Lender.

## 12.16 **Disposals**

The Borrower shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to Dispose of any asset, unless made in the ordinary course of trading of the Borrower.

## 12.17 **Loans**

Other than Permitted Loans, the Borrower shall not make any loans to any person.

## 12.18 **Guarantees**

Other than Permitted Guarantees, the Borrower shall not provide any guarantees, indemnities or the like to any person, whether for its own obligations or the obligations of another person.

## 12.19 **Distributions**

Other than Permitted Distributions, the Borrower shall not make any Distributions.

## 12.20 **Insurance**

The Borrower shall maintain insurances with reputable independent insurance companies or underwriters on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.

## 12.21 **Licences**

12.21.1 The Borrower shall obtain, preserve and maintain (including by timeously obtaining any renewals thereof, if applicable) and comply with all such Licences as are prescribed by law for the conduct of its business.

12.21.2 The Borrower will use its reasonable commercial endeavours to receive the renewal of its Mining Right by no later than 30 June 2023, or such later date that the Lender may agree in writing.

## 12.22 **Auditor**

The Borrower shall not replace its Auditor without the prior written consent of the Lender.

## 12.23 **Preservation of Security**

The Borrower shall take all steps required or desirable to maintain and preserve (1) all of the Security in accordance with the Security Documents, and (2) and all security arrangements contemplated thereunder.

## 12.24 **Financial Assistance**

The Borrower shall comply in all respects with section 44, section 45 and section 46 of the Companies Act (to the extent applicable) including in relation to the payment of amounts due under the Finance Documents to which it is a party.

## 12.25 **Compliance with laws**

The Borrower shall comply in all respects with all laws to which it may be subject.

## 12.26 **Environmental compliance**

12.26.1 The Borrower shall:

12.26.1.1 comply with all Environmental Law;

12.26.1.2 obtain, maintain and ensure compliance with all requisite Environmental Permits;

12.26.1.3 implement and maintain procedures to monitor compliance with and to prevent liability under any Environmental Law.

## 12.27 **Environmental claims**

12.27.1 The Borrower, promptly upon becoming aware of the same, inform the Lender in writing of:

- 12.27.1.1 any Environmental Claim against it which is current, pending or threatened; and
- 12.27.1.2 any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against it.

**12.28 Anti-corruption law and sanctions**

- 12.28.1 The Borrower shall:
  - 12.28.1.1 contravene any Sanctions;
  - 12.28.1.2 be a party to or participate in a Sanctioned Transaction in any manner; or
  - 12.28.1.3 directly or indirectly use the proceeds of the Facility for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.
- 12.28.2 The Borrower shall:
  - 12.28.2.1 take all reasonable steps to ensure that appropriate controls and safeguards are in place, designed to prevent it from being or becoming involved in a Sanctioned Transaction; and
  - 12.28.2.2 conduct its businesses in compliance with applicable anti-corruption laws and maintain policies and procedures designed to promote and achieve compliance with such laws.

**12.29 Share Capital**

- 12.29.1 The Borrower shall not –
  - 12.29.1.1 redeem, purchase, defease, retire or repay any of its shares or share capital (or any instrument convertible into shares or share capital) or resolve to do so;
  - 12.29.1.2 issue any shares (or any instrument convertible into shares) which by their terms are redeemable or carry any right to a return prior to the date on which all amounts owing under the Finance Documents have been irrevocably and unconditionally discharged in full; or
  - 12.29.1.3 issue any shares or share capital (or any instrument convertible into shares or share capital) to any person other than its holding company,  
  
without the prior written consent of the Lender.

**12.30 Access**

The Borrower shall permit the Lender and/or accountants or other professional advisers and contractors of the Lender free access at all reasonable times and on reasonable notice at the risk and cost of the Borrower to (a) the premises, assets, books, accounts and records of the Borrower and (b) meet and discuss matters with the senior management of the Borrower.

**12.31 Business Rescue**

Except to the extent required under the Companies Act, the Borrower shall not adopt a resolution for the implementation of any business rescue proceedings in relation to it, without the prior written consent of the Lender.

**12.32 Further Assurance**

12.32.1 The Borrower shall as soon as reasonably possible do all such acts or execute all such documents (including cessions, assignments, transfers, mortgages, charges, notices and instructions) as the Lender may specify (and in such form as the Lender may require in favour of the Lender or its nominee(s)) for the exercise of any rights, powers and remedies of the Lender provided by or pursuant to the Finance Documents to which it is a party or by law.

12.32.2 The Borrower shall take all such reasonable steps as are available to them (including making all filings and registrations) and as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security.

**12.33 Memorandum of incorporation**

The Borrower shall procure that no change is made to its Memorandum of Incorporation, without the prior written consent of the Lender.

**12.34 Other Existing Financial Indebtedness**

The Borrower shall not, and the Borrower shall procure that the Borrower Parent shall not amend, vary or novate any one of the Other Existing Financial Indebtedness without the Lender's prior written consent.

**13 SECURITY**

The obligations of the Borrower to the Lender in terms of this Agreement are secured by the arrangements provided for in the Security Documents, which are to remain in place until the Discharge Date.

**14 EVENTS OF DEFAULT**

**14.1 Non-payment**

Any Obligor does not pay on the due date any amount due and payable pursuant to the Finance Document unless its failure to pay is caused by an administrative or technical error and payment is made within 3 Business Days of its due date.

**14.2 Other obligations**

An Obligor does not comply with any undertaking and/or any other provision of the Finance Documents (other than those referred to in Clause 14.1), except if that non-compliance is capable

of remedy and is remedied within 5 Business Days of the earlier of the Lender giving notice to the Obligor or the Obligor becoming aware of the failure to comply.

#### 14.3 **Misrepresentation**

Any representation or statement made by an Obligor in the Finance Documents is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

#### 14.4 **Cross default**

14.4.1 Any Financial Indebtedness of an Obligor is not paid when due nor within any originally applicable grace period.

14.4.2 Any Financial Indebtedness of an Obligor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).

14.4.3 Any commitment for any Financial Indebtedness of an Obligor is cancelled or suspended by a creditor of such Obligor as a result of an event of default (howsoever described).

14.4.4 Any creditor of an Obligor becomes entitled to declare any Financial Indebtedness of such Obligor due and payable prior to its specified maturity as a result of an event of default (however described).

14.4.5 The Borrower or the Borrower Parent breaches any provision of the Kareevlei Governance Agreement and such breach is not remedied within the originally applicable grace period.

14.4.6 The Borrower Parent breaches any provision of the Subscription Agreement, Relationship Agreement (as defined in the Subscription Agreement), the SLNI, Existing CLNI and/or the New CLNI and such breach is not remedied within the originally applicable grace period.

#### 14.5 **Insolvency and financial distress**

14.5.1 An Obligor is or is deemed by any authority or legislation to be unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

14.5.2 An Obligor is or is deemed by any authority or legislation to be financially distressed (as defined in the Companies Act).

14.5.3 The value of the assets of an Obligor is less than its liabilities (taking into account contingent and prospective liabilities).

14.5.4 A moratorium is declared in respect of any indebtedness of an Obligor.

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



- 14.5.5.1 the suspension of payments or a moratorium of any indebtedness, liquidation, winding-up, dissolution, administration, business rescue or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of an Obligor;
- 14.5.5.2 a composition, compromise, assignment or arrangement with any creditor of an Obligor;
- 14.5.5.3 the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, judicial manager, business rescue practitioner or other similar officer in respect of an Obligor or any of its assets; or
- 14.5.5.4 enforcement of any Security Interest over any assets of an Obligor,
- 14.5.5.5 or any analogous procedure or step is taken in any jurisdiction;
- 14.5.6 A meeting is proposed or convened by the directors of an Obligor, a resolution is proposed or passed, application is made or an order is applied for or granted, to authorise the entry into or implementation of any business rescue proceedings (or any similar proceedings) in respect of an Obligor or any analogous procedure or step is taken in any jurisdiction.
- 14.5.7 Any expropriation, attachment, sequestration, implementation of any business rescue plan, distress or execution or any analogous process in any jurisdiction affects assets, and is contested in good faith and with due diligence and is not discharged either within 15 Business Days or within such other period as the Lender may agree in writing on or before the lapse of such 15 Business Day period.

#### 14.6 **Final Judgment**

- 14.6.1 An Obligor fails to comply with or pay any sum due from it under any final judgment or any final order made or given by any court or competent jurisdiction.
- 14.6.2 No Event of Default under Clause 14.6.1 will occur if the failure to comply or pay is capable of remedy and is remedied within 5 Business Days of the date of the failure to comply or pay.
- 14.6.3 For the purposes of Clause 14.6.1, a “final judgment” or “final order” means a judgment or order (1) which is not appealable, or (2) which is appealable but in respect of which the period for the lodging of an appeal has lapsed and an Obligor has failed to institute appeal proceedings, or (3) which is not capable of rescission, or (4) which is capable of rescission but in respect of which the period for applying for rescission has lapsed and an Obligor has failed to apply for rescission or an Obligor has applied for rescission of such judgment or order and the application for rescission has been denied.

#### 14.7 **Unlawfulness**

- 14.7.1 It is or becomes unlawful for an Obligor to perform any of its obligations under any Finance Documents.
- 14.7.2 Any obligation or obligations of an Obligor under any Finance Documents to which it is a party are not or cease to be legal, valid, binding or enforceable and the same is not remedied within

5 Business Days of the earlier of (a) the Lender giving notice to such Obligor and (b) an Obligor becoming aware of the failure to comply and such remedy places the Lender in the same position as they would have been in but for such circumstances.

14.7.3 Any Finance Document ceases to be in full force and effect other than by agreement between the Parties.

#### 14.8 **Expropriation**

14.8.1 The authority or ability of an Obligor to conduct its business is wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person.

14.8.2 By the authority of any governmental, regulatory or other authority or other person –

14.8.2.1 the management of an Obligor is wholly or substantially replaced; or

14.8.2.2 all or a majority of the shares of an Obligor or the whole or any part of its assets or revenues is seized, expropriated or compulsorily acquired.

#### 14.9 **Cessation of business**

An Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

#### 14.10 **Audit qualification**

The Auditor qualifies the audited annual financial statements of an Obligor in any way.

#### 14.11 **Repudiation**

14.11.1 An Obligor rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document to which it is a party.

14.11.2 Any party to any Finance Documents (other than the Lender) rescinds or purports to rescind or repudiates or purports to repudiate any of those agreements or instruments in whole or in part.

#### 14.12 **Material Adverse Event**

Any fact, circumstance, happening or event (or a combination thereof) occurs which constitutes a Material Adverse Event.

#### 14.13 **Authorisation**

Subject to what is disclosed in Clause 10.22.2, any Licence or other Authorisation required by an Obligor for the conduct of its business is revoked, lapses or otherwise ceases to be valid and effective and such Obligor fails to remedy the position within 5 Business Days of receiving notice from the Lender to do so or becoming aware thereof.

**14.14 Litigation**

Any litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency are commenced against an Obligor which, if adversely determined, might, in the opinion of Lender, constitute a Material Adverse Event.

**14.15 Conditions Subsequent**

Any Condition Subsequent is not duly and timeously fulfilled and/or waived by the Lender, except if that non-fulfilment is capable of remedy and is remedied within 10 business days of the earlier of the Lender giving notice to the Obligor or the Obligor becoming aware of the failure to comply.

**14.16 Lender's rights on the occurrence of an Event of Default**

14.16.1 On and at any time after the occurrence of an Event of Default, the Lender shall be entitled, in its sole discretion and without prejudice to any other rights or remedies which the Lender may have under this Agreement, any other Finance Document or otherwise in terms of any applicable law, by written notice to the Borrower to –

14.16.1.1 declare that all or part of the Outstandings be immediately due and payable, whereupon they shall become immediately due and payable; and/or

14.16.1.2 declare that all or part of the Outstandings be payable on demand, whereupon it shall immediately become payable on demand by the Lender;

14.16.1.3 demand and be entitled to receive specific performance of the relevant obligation of the Finance Documents (if any) breached by the Borrower or any other Obligor (as applicable); and/or

14.16.1.4 cancel the whole or part of the Facility; and/or

14.16.1.5 exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

**15 TAXES**

15.1 Any payment whatsoever to be made by the Borrower to the Lender under this Agreement shall be made free and clear of and without deduction for or on account of any Tax whatsoever, unless the Borrower is, under applicable law, required to make such payment subject to the deduction or withholding of Tax, in which case the amount payable by the Borrower in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of the required deduction or withholding, the Lender receives and retains (free from any liability in respect of any such deduction or withholding) a net amount equal to the amount which they would have received and so retained had no such deduction or withholding been required to be made.

15.2 If at any time the Borrower is required under any applicable law to make any deduction or withholding as contemplated in Clause 15.1 (or if thereafter there is any change in the rates at

which or the manner in which such deductions or withholdings are calculated), then the Borrower shall promptly notify the Lender.

- 15.3 If the Borrower makes any payment under this Agreement in respect of which it is required to make any deduction or withholding, it shall pay the full amount required to be deducted or withheld to the relevant Taxation or other authority within the time allowed for such payment under applicable law and shall deliver to the Lender, within 30 days after it has made such payment to the applicable authority, an original receipt (or a certified copy) issued by such authority evidencing the payment to such authority of all amounts so required to be deducted or withheld.
- 15.4 Notwithstanding anything to the contrary contained herein, the provisions of this Clause 15 shall not apply in respect of any deductions which the Borrower becomes obliged to make from any amounts payable by it to the Lender as a result of the fact that the Commissioner: South African Revenue Services has declared the Borrower to be the Lender's agent in terms of section 179 of the Tax Administration Act (No 28 of 2011), provided that the Borrower shall, to the extent permitted in law, notify the Lender of such declaration.
- 15.5 If (1) the Borrower becomes obliged to pay any additional amounts to the Lender in terms of this Clause 15, and (2) the Lender receives and utilises a credit (against Taxes payable by it) or receives a refund of any Taxes in respect of the corresponding amount paid, as envisaged in Clause 15.3, by the Borrower to the relevant Taxation authority, the Lender shall repay the amount of such payment (up to, but not exceeding, the credit utilised and/or refund received, as the case may be) to the Borrower within 5 Business Days of the date on which the Lender utilises the applicable credit or the Lender receives payment of the refund from such taxation authority.

## 16 OTHER INDEMNITIES

- 16.1 The Borrower hereby indemnifies the Lender against, and shall pay to the Lender on written demand, any cost, loss or liability incurred by the Lender as a result of –
- 16.1.1 the occurrence of any Default;
- 16.1.2 any information produced or approved by the Borrower under or in connection with the Finance Documents being misleading and/or deceptive in any material respect;
- 16.1.3 a failure by the Borrower to pay any amount due under a Finance Document on its due date;
- 16.1.4 the Outstandings (or any part thereof) not being paid in accordance with the terms of this Agreement;
- 16.1.5 investigating or taking any other action in connection with any event which it reasonably believes is a Default; or
- 16.1.6 acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

16.2 The Borrower's liability in each case includes any loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under any Finance Document or the Facility.

## 17 MINING SERVICES AGREEMENT

17.1 Notwithstanding anything else in this Agreement, the Borrower shall not be in breach of any provision of this Agreement (including any warranty, representation or undertaking) where such breach is materially attributable to an act or omission of the Lender (or its permitted successor in title) under the Mining Services Agreement.

## 18 CERTIFICATE OF INDEBTEDNESS

18.1 A certificate signed by any director or manager (whose appointment, authority or qualification need not be proved) for the time being of the Lender shall be –

18.1.1 *prima facie* proof of the quantum of any amount payable by the Borrower to the Lender in terms of this Agreement; and

18.1.2 valid, together herewith, for any purpose and as a liquid document (alternatively as proof of a liquidated amount) in any court of competent jurisdiction for the purpose of obtaining provisional sentence, summary judgment or any other judgment against the Borrower,

and the Borrower acknowledges its indebtedness in respect of any amount so certified.

## 19 RENUNCIATION OF BENEFITS

The Borrower hereby renounces the benefits of the exceptions of no no cause of debt (*non causa debiti*), no value received (*non numeratae pecuniae*), simultaneous citation and division of debt (*de duobus vel pluribus reis debendi*), error in calculation (*errore calculi*) and revision of accounts, insofar as they or any of them may be applicable, and all other legal benefits and exceptions (to the extent applicable) with the full force, meaning and effect whereof the Borrower declares itself to be acquainted.

## 20 SUPPORT

The Borrower undertakes to the Lender that it shall forthwith on receipt of written request by the Lender do all such things, perform all such actions and take all such steps and procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to it and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Agreement as the Lender may reasonably request

## 21 CONFIDENTIALITY

No Party will disclose this Agreement or any part thereof, or any of the provisions of this Agreement, or any information exchanged between the Parties pursuant to this Agreement, to any third party without obtaining the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), unless it is required to do so by law or by any regulatory body in which case the Parties will consult with each other (including as to the terms of any such announcement), if in law

entitled to do so, before complying with such requirement. This does not apply to the disclosure of this Agreement to any party to a Finance Document which is not a Party to this Agreement and so requires a copy of this Agreement for purposes of the definitions section of that Finance Document, or to the disclosure of any such confidential information to the shareholders of Parties, or to a director, officer, trustee, employee, adviser or representative of the Parties whose function requires them to have the confidential information provided that all such persons shall be instructed to treat the same as confidential, or to confidential information which becomes publicly known, or publicly accessible or in the public domain. The provisions of this clause 21 shall survive the failure or termination of this Agreement for whatever reason

## 22 TRANSFERS

- 22.1 The Lender shall be entitled to Transfer the whole or any portion of its rights and/or obligations in terms of this Agreement to any person without the prior written consent of the Borrower, provided that any such transferee is not a Sanctioned Entity.
- 22.2 The Borrower hereby consents to any splitting of claims against it which may arise out of a partial Transfer by the Lender of its rights and obligations (or relevant portion thereof).
- 22.3 The Borrower shall not cede and/or delegate any of its rights and/or obligations under this Agreement.

## 23 NOTICES

- 23.1 The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following email addresses –
- 23.1.1 the Lender:
- 23.1.1.1 Address: 1 Flamboyant Close, Glen Anil, Kwa-Zulu Natal, 4051
- 23.1.1.2 Email: [claudenh@teichmanngrp.com](mailto:claudenh@teichmanngrp.com); and [james.teriele@teichmanngrp.com](mailto:james.teriele@teichmanngrp.com)
- 23.1.1.3 For Attention: The Directors;
- 23.1.2 the Borrower:
- 23.1.2.1 Address: Building 6 De Beers Geology Complex, Hull Street R64, Kimberley  
Northern Cape, 8301
- 23.1.2.2 Email: [dfacey@bluerockdiamonds.co.uk](mailto:dfacey@bluerockdiamonds.co.uk)
- 23.1.2.3 For Attention: Managing Director/CEO
- 23.2 A Party may change its *domicilium* to another physical address (provided that such physical address is not a post office box or *poste restante*), or may change its address for the purposes of notices to any other physical address or email address by written notice to the other Parties to

that effect. Such change of address will be effective 5 Business Days after receipt of the notice of the change.

- 23.3 All notices to be given in terms of this Agreement will be given in writing and will –
- 23.3.1 be delivered by hand or sent by email;
- 23.3.2 if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a Business Day will be presumed to have been received on the following Business Day; and
- 23.3.3 if sent by email during business hours, be presumed to have been received on the date of successful transmission of the email. Any email sent after business hours or on a day which is not a Business Day will be presumed to have been received on the following Business Day.
- 23.4 Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this Clause 23.
- 23.5 The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice, legal processes nor any amendment or variation to this Agreement may be given or concluded via email.

## 24 INDEPENDENT ADVICE

- 24.1 The Borrower hereby acknowledges and agrees that –
- 24.1.1 it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent advice or has dispensed with the necessity of doing so;
- 24.1.2 all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are in accordance with the Party's intentions; and
- 24.1.3 it has not relied in any way upon any information and/or advice given by the Lender and/or its legal advisors in the preparation, negotiation and/or implementation of this Agreement and has taken all reasonable actions to satisfy itself as to the consequences of entering into this Agreement.

## 25 APPLICABLE LAW AND JURISDICTION

- 25.1 This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.
- 25.2 The Parties irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg, South Africa (or any successor to that division) in regard to all matters arising from this Agreement or any other Finance Document

(including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement (a Dispute).

25.3 The Parties agree that the courts of South Africa are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

25.4 This clause is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

## 26 COSTS AND EXPENSES

### 26.1 Commitment fee

26.1.1 The Borrower shall pay to the Lender a fee computed at the rate of 1.00% of the Facility for the Availability Period (Commitment Fee).

26.1.2 The accrued Commitment Fee shall be payable:

26.1.2.1 on the last day of each successive period of three Months which ends during the Availability Period;

26.1.2.2 on the last day of the Availability Period; and

26.1.2.3 on the cancelled amount of a Lender's Facility commitment, at the time the cancellation is effective.

### 26.2 Transaction Expenses

26.2.1 The Borrower shall pay to the Lender, the amount of all costs and expenses (including legal fees) incurred by the Lender in connection with the negotiation, preparation, and execution of –

26.2.1.1 this Agreement and any other documents referred to in this Agreement and the Security created pursuant to the Security Documents; and

26.2.1.2 any other Finance Documents executed after the Signature Date,

26.2.2 by way of the draw down contemplated under clause 5.1.1.2.

### 26.3 Amendment Costs

26.3.1 If the Borrower requests an amendment, waiver or consent the Borrower shall, within 3 Business Days (or such later date as the Lender may agree in writing) of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) incurred by the Lender in responding to, evaluating, negotiating or complying with that request or requirement.

26.3.2 If there is any change in law or any regulation which requires an amendment, waiver or consent under any Finance Document, the Borrower shall, within 3 Business Days (or such later date



as the Lender may agree in writing) of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) incurred by the Lender in connection with valuating, negotiating or complying with any such requirement.

#### 26.4 **Enforcement Costs**

The Borrower shall on demand, pay to the Lender the amount of all costs and expenses (including legal fees on the scale as between attorney and own client whether incurred before or after judgment) incurred by the Lender in connection with the enforcement of, or preservation of any rights under any Finance Document at any time and any proceedings instituted by or against the Lender as a consequence enforcing these rights.

### 27 **GENERAL**

#### 27.1 **Whole agreement, no amendment**

27.1.1 This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof.

27.1.2 No –

27.1.2.1 amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement; or

27.1.2.2 settlement of any disputes arising under this Agreement; or

27.1.2.3 extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement;

27.1.2.4 shall be binding unless recorded in a document signed by the Parties (or in the case of an extension of time, waiver, relaxation or suspension, a document signed by the Party granting such extension, waiver, relaxation or suspension). For the purposes of this Clause 27.1, "signed" shall include an electronic signature, as defined in the Electronic Communications and Transactions Act (No 25 of 2002), applied to the document by the signatory.

27.1.3 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement shall operate as an estoppel against a Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party (save as to any extension, waiver or relaxation actually given) thereafter from exercising its rights strictly in accordance with this Agreement.

27.1.4 To the extent permissible by law a Party shall not be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded in this Agreement, whether it induced the Agreement and/or whether it was negligent or not.

27.2 **Supersession**

This Agreement cancels and supersedes all prior discussions, agreements and/or understandings regarding the subject matter hereof.

27.3 **Severability**

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction shall, with respect to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

27.4 **Continuing Effectiveness of Certain Provisions**

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the Clauses themselves do not expressly provide for this.

28 **SIGNATURE**

28.1 This Agreement –


28.1.1 may be executed in separate counterparts, none of which need contain the signatures of all of the Parties, each of which shall be deemed to be an original and all of which taken together constitute one agreement; and

28.1.2 shall be valid and binding upon the Parties thereto, notwithstanding that one or more of the Parties may sign an email copy thereof and whether or not such email copy contains the signature of any other Party.

*[Remainder of this page intentionally blank. Signature pages follow thereafter.]*

**TEICHMANN SOUTH AFRICA PROPRIETARY LIMITED**

Signature:

DocuSigned by:  
  
CBFC5992E8E5463

Name:

James te Riele

(who warrants his/her authority)

Designation:

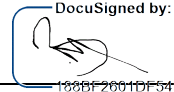
Director

Date:

4 July 2022

**KAREEVLEI MINING PROPRIETARY LIMITED**

Signature:

DocuSigned by:  


Name:

Albert Meiring Burger

(who warrants his/her authority)

Designation:

CEO

Date:

4 July 2022

## Annexure "A"

### 1 ADVANCE CONDITIONS

- 1.1 The Borrower has delivered to the Lender copies of resolutions by the board of directors of the Borrower resolving that the Borrower concludes each Finance Document to which it is a party, approving the terms and conditions of the Finance Documents and appointing a named person to execute such Finance Documents on behalf of the Borrower.
- 1.2 The Borrower has delivered to the Lender copies of resolutions by the board of directors or shareholders of the Borrower, as the case may be, authorising Gary Teichmann to be a director to the board of directors of the Borrower.
- 1.3 The Borrower has delivered to the Lender –
  - 1.3.1 a copy of the constitutional documents of the Borrower; and
  - 1.3.2 a copy of the constitutional documents of the Borrower Parent.
- 1.4 The Borrower has delivered to the Lender –
  - 1.4.1 duly executed originals of :
    - 1.4.1.1 this Agreement;
    - 1.4.1.2 the Cession in Security;
    - 1.4.1.3 the Subordination Agreement;
    - 1.4.1.4 the Kareevlei Governance Agreement;
    - 1.4.1.5 the Subscription Agreement;
    - 1.4.1.6 the Relationship Agreement;
    - 1.4.1.7 the SLNI;
    - 1.4.1.8 the New CLNI; and
    - 1.4.1.9 all documents required to be delivered under and in terms of each Security Document on or prior to the Effective Date having been duly delivered to the Lender, other than the General Notarial Bond, the Special Notarial Bond.
- 1.5 The subscription of the SLNs has become unconditional, save for any conditionality relating to this Agreement becoming unconditional.
- 1.6 The Lender has received from the Borrower, the Initial Paydown.