

**BOND TERMS**

**FOR**

**Nordic Rutile AS 12.5 % senior secured USD 100,000,000 bonds 2022/2027**

**ISIN NO0012734112**

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<b>BOND TERMS between</b>	
<b>ISSUER:</b>	<b>Nordic Rutile AS</b> , a company existing under the laws of Norway with registration number 990 691 606 and LEI-code 894500EPNTDS521LSD07; and
<b>BOND TRUSTEE:</b>	<b>Nordic Trustee AS</b> , a company existing under the laws of Norway with registration number 963 342 624 and LEI-code 549300XAKTM2BMKIPT85.
<b>DATED:</b>	7 November 2022
These Bond Terms shall remain in effect for so long as any Bonds remain outstanding.	

## **1. INTERPRETATION**

### **1.1 Definitions**

The following terms will have the following meanings:

“**Acceptable Bank**” means:

- (a) any Norwegian banking institution;
- (b) a bank or financial institution which has a rating for its long-term unsecured and non-credit-enhanced debt obligations of BBB or higher by Standard & Poor’s Rating Services or Fitch Ratings Ltd or Baa2 or higher by Moody’s Investors Service Limited or a comparable rating from an internationally recognized credit rating agency; or
- (c) such other bank or financial institution reasonably acceptable to the Bond Trustee.

“**Accounting Standard**” means GAAP.

“**Account Bank**” means the Acceptable Bank with which the Accounts are maintained.

“**Accounts**” means Escrow Account and the Project Account(s).

“**Additional Escrow Account Funds**” means such amount as is necessary for the total deposited amount in the Escrow Account (after the transfer of the net proceeds from the Bond Issue) to equal the Issue Amount.

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

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

**“Annual Financial Statements”** means:

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

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

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

**“Available Funding”** means, at any time, the aggregate of the following amounts (without double counting):

- (a) the balance standing to the credit of each the Escrow Account, the Project Account(s) and any interest forecast to be earned on those accounts in the period up to Project Completion;
- (b) any tax credits, insurance proceeds, compensation amounts under the Finance Documents or other amounts (not being revenue) forecasted by the Master Control Budget to be received, and which the Independent Engineer is satisfied will be received, by the Issuer prior to Project Completion which will be available to meet Project Costs.

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

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

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

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

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

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

“**Book Equity**” means on any date the aggregate amount which in accordance with the Accounting Standard would be shown in the consolidated financial statements of the Parent Guarantor as the shareholders’ equity of the Group on a consolidated basis.

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

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

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

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

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

“**Capital Expenditure Budget**” means the capital expenditure budget in the amount of USD 209.2 million, including contingency of USD 20.7 million, for the Engebø Project being an integral and key part of the Master Control Budget.

“**Cashflow**” means, in respect of any financial quarter, the Issuer’s net cashflow for such period after:

- (a) deducting the proceeds of any share issue or new Financial Indebtedness; and
- (b) deducting the proceeds of any disposal of assets (other than disposal of product in the ordinary course of business); and
- (c) deducting the proceeds of any insurance claims.

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

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

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

“**Cost and Time to Complete Certificate**” means a certificate from the Independent Engineer (in the form set out in Attachment 4), confirming that:

- (a) the Cost-to-Complete Test is satisfied; and
- (b) the forecast date of Project Completion is prior to the Project Completion Sunset Date.

**“Cost-to-Complete”** means, at any time, the aggregate of Project Costs reasonably likely to be incurred in order to achieve Project Completion, not yet paid at that time.

**“Cost-to-Complete Test”** means the test intended to ensure that the Issuer has sufficient funds available to achieve Project Completion. The Cost-to-Complete Test shall be satisfied when, at the time the test is run, the Available Funding exceeds the Cost-to-Complete.

The Independent Engineer will be entitled to rely on:

- (a) a bank statement from the Account Banks certifying the amount of the funds available,
- (b) a statement from the Issuer certifying the remaining Project Costs, provided that such statement includes the calculations of the Issuer in support of the certifications made by the Issuer, and
- (c) a schedule provided by the Issuer which has been signed off as accurate by the CEO and CFO of the Parent Guarantor and the chairman of the board of directors of the Issuer, detailing the funds available on the Accounts and any other Available Funding, including supporting documentation such as bank statements and general ledger transactions.

Any sums included under Available Funding may not subsequently be employed towards any other purpose than as set forth under Clause 2.3 (*Use of proceeds*) and, after Project Completion, for a Permitted Distribution.

Any funds intended to remain on the Escrow Account following the Third Release shall not count as Available Funding in the Cost-to-Complete Test calculation for such Third Release.

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

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

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

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

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

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

**“Distribution Tender Offer”** means a one-time offer to the Bondholders generally to redeem Bonds in a maximum amount to be specified for such offer (and calculated in accordance with paragraph (c) under the definition of Permitted Distribution), at a price of 102% of the Nominal Amount (plus accrued interest on the redeemed amount) or such higher price as the Issuer in its discretion may decide, pursuant to which Bonds will be redeemed on a pro rata basis between the Bondholders who accept the Distribution Tender Offer (on the basis of number of Bonds tendered) and where the Issuer shall cancel any Bonds which are repurchased. The Distribution Tender Offer shall remain open for 10 Business Days after the launch of such offer, and the redemption date following the completion of the Distribution Tender Offer shall be no earlier than 10 Business Days and no later than 20 Business Days from completion of the Distribution Tender Offer.

To the extent the aggregate amount of Bonds tendered by the Bondholders is lower than the amount specified, the Issuer may use the unutilized amount from such Distribution Tender Offer (i.e. which is not used to redeem Bonds from the Bondholders who accepted the Distribution Tender Offer) for a Permitted Distribution.

**“Engerbø Project”** means development and construction of the Engebø rutile and garnet mine in Sunnfjord, Norway, including facilities and infrastructure related thereto.

**“Engineer Engagement Agreement”** means a separate agreement setting out the scope of work of the Independent Engineer, whereby the Independent Engineer shall, inter alia, evaluate the Project Construction Plan, the Master Control Budget, verify the Cost-to-Complete Test and forecast the date when Project Completion will occur, countersign the Project Completion certificate, and countersign the Issuer’s requests for drawdown from the Escrow Account, and the terms on which the Bond Trustee may replace the Independent Engineer. The executed agreement will also serve as evidence that the engagement of the Independent Engineer will last until immediately after Project Completion.

**“EPC Contracts”** means the engineering, procurement and construction contracts for the construction works at Engebø Project between the Issuer as employer and various contractors, attached hereto in (a)-(d) of Attachment 3 (Project Documents).

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

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

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

**“Exchange”** means:

- (a) Nordic ABM, a self-regulated marketplace organised and operated by Oslo Børs; or

- (b) any regulated market as such term is understood in accordance with the Markets in Financial Instruments Directive 2014/65/EU (MiFID II) and Regulation (EU) No. 600/2014 on markets in financial instruments (MiFIR).

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

**“Financial Indebtedness”** means:

- (a) moneys borrowed (and debit balances at banks or other financial institutions);
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialized equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument, including the Bonds;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the Accounting Standard, be capitalized as an asset and booked as a corresponding liability in the balance sheet;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis provided that the requirements for de-recognition under the Accounting Standard are met);
- (f) any derivative transaction entered into and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount shall be taken into account);
- (g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of an underlying liability of a person which is not a Group Company which liability would fall within one of the other paragraphs of this definition;
- (h) any amount raised by the issue of redeemable shares which are redeemable (other than at the option of the Issuer) before the Maturity Date or are otherwise classified as borrowings under the Accounting Standard;
- (i) any amount of any liability under an advance or deferred purchase agreement, if (i) the primary reason behind entering into the agreement is to raise finance or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 120 calendar days after the date of supply;
- (j) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing or otherwise being classified as a borrowing under the Accounting Standard; and



- (k) without double counting, the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (j) above.

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

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

“**First Call Date**” means the Interest Payment Date falling in November 2025.

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

“**Future Project Documents**” means the material future (i.e., at a date falling after the Issue Date) agreements, feasibility studies, environmental studies and assessments, environmental permits, authorizations and other material documents that are required for the completion of the Engebø Project, which are set out in Part II of Attachment 5. Upon the entering into by any Obligor of any Future Project Document, such Future Project Document shall be deemed to be a Project Document for the purposes herein. To the extent described in the Issuer’s Investor Presentation in respect of the Bond Issue, all Future Project Documents shall be in material conformity with such description.

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

“**Group**” means the Parent Guarantor with all its Subsidiaries from time to time.

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

“**Guarantee**” means the irrevocable and unconditional Norwegian law guarantee and indemnity (Norwegian: “*selvskyldnerkausjon*”) issued by the Parent Guarantor.

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

“**Independent Engineer**” means the independent engineer retained in connection with the Engebø Project, to be engaged by the Bond Trustee prior to the First Release, at the cost of the Issuer and in consultation with the Managers and its advisors, for the period until immediately after Project Completion. The Independent Engineer shall act solely for the Bond Trustee and shall not be engagement by any other party with regards to the Engebø Project.

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

“**Insolvent**” means that a person:

- (a) is unable or admits inability to pay its debts as they fall due;
- (b) suspends making payments on any of its debts generally; or

- (c) is otherwise considered insolvent or bankrupt within the meaning of the relevant bankruptcy legislation of the jurisdiction which can be regarded as its centre of main interest as such term is understood pursuant to Regulation (EU) 2015/848 on insolvency proceedings (as amended from time to time).

**“Intercreditor Agreement”** means an intercreditor agreement between, amongst others, the Issuer, the Parent Guarantor, the Bond Trustee and the Royalty Holder as the royalty holder and purchaser under the Royalty Facility, and any other royalty holders thereunder, or a collateral agent or trustee on its or their behalf, with such main intercreditor principles as set out in Attachment 3. The Bond Trustee shall be authorised to agree and execute the Intercreditor Agreement on behalf of the Bondholders.

**“Interest Payment Date”** means the last day of each Interest Period, the first Interest Payment Date being 9 February 2023 and the last Interest Payment Date being the Maturity Date.

**“Interest Period”** means, subject to adjustment in accordance with the Business Day Convention, the period between 9 February, 9 May, 9 August and 9 November each year, provided however that an Interest Period shall not extend beyond the Maturity Date.

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

**“Interim Accounts”** means:

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

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

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

**“Issue Date”** means 9 November 2022.

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

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

**“Liquidity”** means:

- (a) unencumbered and unrestricted cash and cash equivalents in accordance with the Accounting Standard; plus
- (b) without double counting, any cash standing to the credit on any Account, less
- (c) the amount of payments to suppliers which are overdue (if any).

**“Listing Failure Event”** means that:

- (a) the Bonds have not been admitted to listing on an Exchange within 6 months following the Issue Date, or
- (b) in the case of a successful admission to listing, the Bonds have ceased to be admitted to listing on an Exchange.

**“Long Stop Date”** means 9 March 2023.

**“Long Stop Event”** means if the conditions precedent for First Release from the Escrow Account set out in paragraphs (a) – (e) in Clause 6.1.2 (*Disbursement conditions precedent – First Release*) have not been fulfilled by the Long Stop Date.

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

- (a) 105.00% of the Nominal Amount of the redeemed Bonds as if such payment originally had taken place on the First Call Date; and
- (b) the remaining interest payments of the redeemed Bonds, less any accrued and unpaid interest on the redeemed Bonds as at the Call Option Repayment Date, to the First Call Date,

where the “present value” shall be calculated by using a discount rate of 4.89%.

**“Managers”** means Clarksons Securities AS and SpareBank1 Markets AS.

**“Mandatory Redemption Event”** means:

- (a) if the conditions precedent for First Release from the Escrow Account set out in Clause 6.1.2 (*Disbursement conditions precedent – First Release*) have not been fulfilled within 24 months from the Issue Date; or
- (b) if the conditions precedent for the Third Release from the Escrow Account set out in Clause 6.1.3 (*Disbursement conditions precedent – Second Release and Third Release*) have not been fulfilled within 39 months from the Issue Date.

**“Mandatory Redemption Repayment Date”** means the settlement date for the Mandatory Redemption Event pursuant to Clause 10.6 (*Mandatory early redemption due to a Mandatory Redemption Event*).

**“Master Control Budget”** means the total control budget of all costs associated with the Engebø Project until Project Completion, a copy of which shall be delivered by the Issuer to (i) the Bond Trustee on or prior to the Issue Date and (ii) once engaged, the Independent Engineer, as amended from time to time as set out in Clause 12.6 (*Changes to the Capital Expenditure Budget*).

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

- (a) the ability of any Obligor to perform and comply with its obligations under any of the Finance Documents; or
- (b) the validity or enforceability of any of the Finance Documents.

“**Maturity Date**” means 9 November 2027, adjusted according to the Business Day Convention.

“**Minerals Act Security**” means any guarantee, pledge of bank account or other Security over any Obligor’s assets granted to the Norwegian Directorate of Mining (or to such other party as required pursuant to the Norwegian Minerals Act or any related regulations and guidelines applicable from time to time) which is mandatory pursuant to the provisions of the Minerals Act and/or as a condition in the operating permit held by the Issuer, at such time and in such amount as required to be provided and perfected to meet the requirements for collateral for the Issuer’s liability for safety and clean-up measures in respect of the Engebø Project.

“**NDM Account**” means a bank account opened by the Issuer with an Acceptable Bank for the purpose of depositing money and establishing a first priority pledge over it to arrange for Minerals Act Security, provided that the amount deposited in such bank account does not exceed NOK 25,000,000 at any time.

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

“**Obligors**” means the Issuer and the Parent Guarantor, each an “Obligor”.

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

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

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

“**Parent Guarantor**” means Nordic Mining ASA, a company existing under the laws of Norway with registration number 989 796 739, owning 100% of the Issuer and being listed on the Oslo Stock Exchange with the ticker NOM.

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

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

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

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

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

- (a) product in the ordinary course of business, including under any Offtake Contracts;
- (b) cash as a result of making a payment under the Royalty Facility when due and in accordance with the Intercreditor Agreement;
- (c) cash deposited and blocked in the NDM Account or otherwise for purposes of satisfying the Minerals Act Security to satisfy any Obligor’s obligations under the Mineral Act and/or any condition in the operating permit held by the Issuer;
- (d) assets that are obsolete or worn out; and
- (e) assets that are not necessary in the ordinary course of business or for the operation of the Engebø Project.

**“Permitted Distribution”** means a Distribution by the Issuer to the Parent Guarantor of funds remaining in the Escrow Account, provided that:

- (a) Project Completion has been achieved prior to such Distribution;
- (b) the Issuer has delivered to the Bond Trustee a Compliance Certificate in which it confirms that the Issuer’s Cashflow for the two most recent financial quarters have been higher than zero;
- (c) a Distribution Tender Offer has been completed immediately prior to such Distribution, in an amount calculated pursuant to paragraph (d) below; and
- (d) the aggregate amount of such Distribution does not exceed (i) the amount which remained at the Escrow Account immediately following the Third Release (plus any interest earned thereon) less (ii) any amount that the Issuer have transferred from the Escrow Account to a Project Account after the Third Release and less (iii) any amount applied towards the Distribution Tender Offer.

**“Permitted Financial Indebtedness”** means:

- (a) any Financial Indebtedness incurred pursuant to the Finance Documents;
- (b) any Subordinated Loan;
- (c) until the Long Stop Date, the convertible loan raised from the local EPC investors;
- (d) Financial Indebtedness arising as a result of a contemplated refinancing of the Bonds in full provided that an irrevocable and unconditional call notice has been issued;
- (e) any Financial Indebtedness incurred under the Royalty Facility

- (f) payment of the contingent liability of NOK 40,000,000 to ConocoPhillips Skandinavia AS; and
- (g) Financial Indebtedness incurred by the Issuer or the Parent Guarantor (as the case may be):
  - (i) arising as a result of any purchase money security interest, lease or similar arrangement in respect of the right-of-use of assets for the business comprised in the Engebø Project, limited to an aggregate amount not exceeding USD 10,000,000 at any time;
  - (ii) related to hedging of currency, interest rate fluctuations or products in the ordinary course of business and on a non-speculative basis;
  - (iii) under any unsecured working capital facility provided by a commercial bank in an amount of no more than USD 15,000,000;
  - (iv) under any pension or tax liabilities in the ordinary course of business; and
  - (v) not permitted by the preceding paragraphs in an outstanding principal amount which does not exceed USD 5,000,000, in aggregate for the Issuer at any time.

**“Permitted Guarantees”** means:

- (a) any guarantee obligation arising under or out of the Finance Documents;
- (b) any guarantee granted by the Parent Guarantor;
- (c) any guarantee or counter-guarantee granted by the Issuer:
  - (i) related to any contract or transaction entered into in the ordinary course of business; and
  - (ii) not permitted by the preceding paragraphs and the outstanding principal amount of which, when aggregated with any Financial Indebtedness permitted pursuant to paragraph (g)(iv) of the definition of Permitted Financial Indebtedness does not exceed USD 5,000,000 (or its equivalent in other currencies) in aggregate for the Issuer at any time.

**“Permitted Loan”** means:

- (a) any Subordinated Loan;
- (b) any loan with the Parent Guarantor as lender and a Group Company (other than the Issuer) as borrower;
- (c) any loan arising out of any Permitted Guarantee or Permitted Security;
- (d) deposits of cash or cash equivalent investments with financial institutions for cash management purposes or in the ordinary course of business;

- (e) any Financial Indebtedness or loan made or credit extended by any Group Company to its customers in the ordinary course of business; and
- (f) any loan, line of credit or similar financing commitment that does not, together with other outstanding loans (not already excluded under the above) exceed in the aggregate USD 5,000,000 (or its equivalent in other currencies) in aggregate for the Issuer and the Parent Guarantor at any time.

**“Permitted Security”** means:

- (a) any Transaction Security, including cash collateral to secure obligations under the Finance Documents;
- (b) second priority Security for the Royalty Facility subject to the terms of the Intercreditor Agreement;
- (c) the existing Security granted over the Issuer’s extraction permits in favour of ConocoPhillips Skandinavia AS related to the Issuer’s conditional liability of NOK 40,000,000 to ConocoPhillips Skandinavia AS related to the acquisition of such extraction rights, provided that such Security is fully subordinated to the Transaction Security and ConocoPhillips Skandinavia AS will not have any right to enforce or seek to enforce such Security until all amounts outstanding under the Finance Documents have been finally and irrevocably settled in full;
- (d) the Minerals Act Security;
- (e) any encumbrance arising by operation of law and in the ordinary course of trading of the relevant Obligor and not being overdue;
- (f) any encumbrance arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of good supplied in the ordinary course of trading of the relevant Obligor and on the supplier’s standard or usual terms;
- (g) any netting, close-out netting or set-off arrangement entered into by any Obligor in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group (including any multi-account overdraft) or pursuant to any derivative transaction that constitutes Permitted Financial Indebtedness, provided that any Security under a credit support arrangement in respect of any such derivative transaction does not exceed USD 3,000,000 (or its equivalent in other currencies) at any time; and
- (h) any Security securing indebtedness of any Obligor with outstanding principal amount of which (when aggregated with the outstanding principal amount of any other indebtedness which has the benefit of Security given by the Obligor other than any permitted under the preceding paragraphs) does not exceed USD 5,000,000 (or its equivalent in other currencies) at any time.

**“Pre-Settlement Interest Pre-funding”** means an amount equal to 4 months interest on the Bonds;

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

**“Project Accounts Pledge”** means the first priority pledge over the Project Accounts, as security for the Secured Obligations.

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

- (a) The physical facilities and equipment of the Engebø Project have been installed and are operable substantially as contemplated by the EPC Contracts, the Project Construction Plan and the Master Control Budget.
- (b) The physical facilities and equipment of the Engebø Project as described in the EPC Contracts, the Project Construction Plan and the Master Control Budget have been paid for, unless and only to the extent that such payment is being contested in good faith and can be rightfully withheld.
- (c) The Obligors have delivered notification of their acceptance of delivery of, and their acceptance of substantially all work performed in connection with, the facilities under (a) above for which such notification is required, except for any work the acceptance of which would, individually or in the aggregate, have a Material Adverse Effect.
- (d) During a period of 90 consecutive days:
  - (i) the concentrator and associated infrastructure and facilities to be constructed in connection with the Engebø Project, and used to process minerals into concentrate, have produced at least 70% of the planned dry tonnes of rutile and garnet concentrate as set out in the original Master Control Budget and with production of at least 93% TiO<sub>2</sub> and 92% garnet; and
  - (ii) the levels of production and operation of the Engebø Project achieved during such 90-day period are expected to be sustainable.
- (e) No event of default shall have occurred and is continuing.
- (f) No breach of the Issuer’s discharge permit from the Norwegian Environment Agency has occurred and is continuing; and
- (g) The CEO and CFO of the Parent Guarantor and the chairman of the board of directors of the Issuer shall have executed a certificate, countersigned by the Independent Engineer, in form and substance satisfactory to the Bond Trustee (in consultation with its advisors), acting reasonably, addressed to the Bond Trustee, certifying that each of such completion criteria have been satisfied

**“Project Completion Sunset Date”** means 31 December 2025.



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

**“Project Costs”** means the following amounts paid, payable, or forecast to be paid by the Issuer in bringing the Engebø Project to Project Completion (in respect of any forecast, as set out in Master Control Budget), without double counting:

- (a) construction costs;
- (b) operating costs payable prior to Project Completion;
- (c) debt service falling due prior to Project Completion;
- (d) any costs, fees and expenses of the Issuer’s engineering, environmental, social, governmental, insurance and legal consultants under or in relation to the negotiation, preparation, execution and completion of the Finance Documents and Project Documents or otherwise in connection with the Engebø Project;
- (e) costs, fees and expenses of start-up, testing and commissioning of the Project, including costs, fees and expenses of the Independent Engineer incurred in attending any test or reviewing any test results;
- (f) insurance premiums payable prior to Project Completion;
- (g) any taxes payable prior to Project Completion; and
- (h) any other costs and expenses which are payable before Project Completion reflected in the Master Control Budget.

**“Project Documents”** means the material agreements, feasibility studies, environmental permits, environmental studies or assessments, authorizations and other material documents that are required for the completion of the Engebø Project and that are currently in force or in final form, or issued and in good standing, as the case may be, all of which are set out in Part I of Attachment 5.

**“Project Equity Contribution”** means the cash amount to be contributed to the Issuer, either in the form of equity or Subordinated Loans after 1 July 2022 in an aggregate amount of no less than USD 135 million.

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

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

**“Put Option Event”** means a Change of Control Event or a Stock De-Listing Event.

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

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

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

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

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

**“Royalty Facility”** means the royalty facility agreement to be entered into before the Long Stop Date between the Issuer and Orion Resource Partners (UK) LLP, or (as the case may be) prior to First Release between the Issuer and an alternative provider of the Royalty Facility Proceeds having acceded to the Intercreditor Agreement.

**“Royalty Facility Proceeds”** means USD 50,000,000 constituted by either (i) the up-front proceeds to the Issuer from the Royalty Facility provided by Orion Resource Partners (UK) LLP or, (ii) if there is no disbursement under the Royalty Facility provided by Orion Resource Partners (UK) LLP and this Royalty Facility expires prior to First Release, by (A) alternative external funding secured on terms no more favourable than the Royalty Facility entered into with Orion Resource Partners (UK) LLP or (B) equity.

**“Royalty Holder”** means either (i) a fund managed by Orion Resource Partners (UK) LLP or a designated affiliate, or, if the Royalty Facility is provided by alternative external funding source, (ii) any successor thereto (if any) appointed in accordance with the terms of the Intercreditor Agreement.

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

**“Secured Obligations”** means all present and future obligations and liabilities of the Obligors under the Finance Documents or the Second Finance Documents (as defined in the Intercreditor Agreement).

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

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

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

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

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

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

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

“**Subordinated Loan**” means any loan provided by the Parent Guarantor to the Issuer, provided that such loan is subordinated to the obligations of the Obligors under the Finance Documents pursuant to the terms of the Intercreditor Agreement and subject to a first priority assignment/pledge in favour of the Bond Trustee to secure all amounts outstanding under the Finance Documents.

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

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

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

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

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

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

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

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

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

## 1.2 Construction

In these Bond Terms, unless the context otherwise requires:

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

## 2. THE BONDS

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

- (a) The Issuer has resolved to issue a series of Bonds in the amount of USD 100,000,000.
- (b) The Bonds are denominated in US Dollars (USD), being the legal currency of the United States of America.
- (c) The Initial Nominal Amount of each Bond is USD 1.
- (d) The ISIN of the Bonds is set out on the front page. These Bond Terms apply with identical terms and conditions to (i) all Bonds issued under this ISIN and (ii) any

Overdue Amounts issued under one or more separate ISIN in accordance with the regulations of the CSD from time to time.

- (e) Holders of Overdue Amounts related to interest claims will not have any other rights under these Bond Terms than their claim for payment of such interest claim which claim shall be subject to paragraph (b) of Clause 15.1 (*Authority of the Bondholders' Meeting*).

## **2.2 Tenor of the Bonds**

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

## **2.3 Use of proceeds**

The Issuer will use the net proceeds from the issuance of the Bonds towards payment of Project Costs associated with the development of the Engebø Project.

## **2.4 Status of the Bonds**

The Bonds will constitute senior debt obligations of the Issuer. The Bonds will rank *pari passu* with each other and at least *pari passu* with all other obligations of the Issuer (save for such claims which are preferred by bankruptcy, insolvency, liquidation or other similar laws of general application) and shall rank ahead of subordinated debt.

The Bonds shall be secured by the Transaction Security on a first-priority basis, subject only to liens preferred by mandatory laws and the Intercreditor Agreement.

The Guarantee will constitute senior unsecured obligations of the Parent Guarantor and will rank at least *pari passu* with all other unsecured obligations of the Parent Guarantor (save for such claims which are preferred by bankruptcy, insolvency, liquidation or other similar laws of general application).

The Royalty Holder may be granted second ranking Security in the Pre-Release Security in accordance with the terms of the Intercreditor Agreement.

## **2.5 Transaction Security**

- (a) As Security for the due and punctual fulfilment of the Secured Obligations, the Obligors shall procure that the following Transaction Security is granted in favour of Bond Trustee (in case of the Pre-Settlement Security) and Nordic Trustee AS as security agent on behalf of itself, the Bondholders and the Royalty Holder (in case of the Pre-Release Security) within the times agreed in Clause 6 (*Conditions for disbursement*):

### Pre-settlement security (the “**Pre-Settlement Security**”)

- (i) the perfected Escrow Account Pledge;
- (ii) the duly executed Guarantee;

### Pre-release security (the “**Pre-Release Security**”)

- (iii) perfected first priority share pledge over 100% of the shares of the Issuer;
- (iv) perfected first priority pledge over all Subordinated Loans;

- (v) a perfected Project Accounts Pledge;
  - (vi) mortgages, and to the extent permitted other contractual encumbrances, over all real properties owned by the Issuer, property accession rights agreements (*Nw. utvinningsavtaler*) and any leases of real property held by the Issuer at or in connection with the site of the Engebø Project;
  - (vii) perfected first priority floating charge over all machinery and plant (including, to the extent legally permissible, intellectual property rights), vehicles, inventory and trade receivables of the Issuer; and
  - (viii) perfected first priority pledge over any government granted mining or extraction rights (*Nw. utvinningsrett*) held by the Issuer.
- (b) The Transaction Security and the Intercreditor Agreement shall be entered into on such terms and conditions as the Bond Trustee in its discretion deems appropriate in order to create the intended benefit for the Secured Parties under the relevant document.
  - (c) The Pre-Settlement Security shall be established in due time (as determined by the Bond Trustee) prior to the Issue Date in favour of the Bond Trustee (on behalf of the Bondholders) only.
  - (d) The Pre-Release Security shall be established prior to the First Release in favour of Nordic Trustee AS as security agent on behalf of itself, the Bondholders and the Royalty Holder, in accordance with the terms of the Intercreditor Agreement.
  - (e) The Security Agent shall be irrevocably authorised, subject to the terms of the Intercreditor Agreement, to release any Guarantees and Transaction Security over assets which are sold or otherwise disposed of (directly or indirectly) (A) in any merger, de-merger or disposal permitted in compliance with Clauses 13.5 (*Mergers*), 13.6 (*De-mergers*) or 13.10 (*Ownership/Disposals*) and (B) following an enforcement.

### **3. THE BONDHOLDERS**

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

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

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

- (a) No Bondholder is entitled to take any enforcement action, instigate any insolvency procedures, or take other legal action against the Issuer or any other party in relation to any of the liabilities of the Issuer or any other party under or in connection with the Finance Documents, other than through the Bond Trustee and in accordance with these Bond Terms, provided, however, that the Bondholders shall not be restricted from exercising any of their individual rights derived from these Bond Terms, including the right to exercise the Put Option.

- (b) Each Bondholder shall immediately upon request by the Bond Trustee provide the Bond Trustee with any such documents, including a written power of attorney (in form and substance satisfactory to the Bond Trustee), as the Bond Trustee deems necessary for the purpose of exercising its rights and/or carrying out its duties under the Finance Documents. The Bond Trustee is under no obligation to represent a Bondholder which does not comply with such request.

### **3.3 Bondholders' rights**

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

## **4. ADMISSION TO LISTING**

The Issuer shall use its reasonable endeavours to ensure that the Bonds are listed on an Exchange within 6 months of the Issue Date and thereafter remain listed on an Exchange until the Bonds have been redeemed in full.

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

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

The Bonds shall be registered in dematerialised form in the CSD according to the relevant securities registration legislation and the requirements of the CSD.

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

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

### **5.3 Country of issuance**

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

## **6. CONDITIONS FOR DISBURSEMENT**

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

#### **6.1.1 Pre-Settlement conditions precedent**

Payment of the net proceeds from the issuance of the Bonds to the Escrow Account shall be conditional on the Bond Trustee having received in due time (as determined by the Bond

Trustee) prior to the Issue Date each of the following documents, in form and substance satisfactory to the Bond Trustee (in consultation with its advisors):

- (a) evidence that the Escrow Account has been established on the terms and conditions set forth herein;
- (b) evidence that the Additional Escrow Account Funds have been paid by the Issuer into the Escrow Account;
- (c) evidence that the Pre-Settlement Interest Pre-funding amount has been paid by the Issuer into to the Escrow Account;
- (d) a copy of the Project Construction Plan;
- (e) a copy of the Master Control Budget;
- (f) confirmation that no potential or actual Event of Default exists;
- (g) the Bond Terms duly executed;
- (h) copies of all necessary corporate resolutions of the Issuer to issue the Bonds and execute the Finance Documents to which it is a party;
- (i) copies of all necessary corporate resolutions of the Parent Guarantor to execute the Finance Documents to which it is a party;
- (j) a certified copy of a power of attorney (unless included in the corporate resolutions) from each Obligor to relevant individuals for their execution of the Finance Documents to which it is a party, or extracts from the relevant register or similar documentation evidencing such individuals' authorisation to execute such Finance Documents on behalf of that Obligor;
- (k) certified copies of the Issuer's articles of association and of a full extract from the relevant company register in respect of the Issuer evidencing that the Issuer is validly existing;
- (l) the Transaction Security Documents for the Pre-Settlement Security, including the Escrow Account Pledge, duly executed by all parties thereto and perfected in accordance with applicable law;
- (m) copies of the Parent Guarantor's and the Issuer's latest Financial Reports (if any);
- (n) confirmation that the applicable prospectus requirements (ref. the EU prospectus regulation ((EU) 2017/1129)) concerning the issuance of the Bonds have been fulfilled;
- (o) copies of any necessary governmental approval, consent or waiver (as the case may be) required at such time to issue the Bonds;
- (p) confirmation that the Bonds are registered in the CSD (by obtaining an ISIN for the Bonds);



- (q) copies of any written documentation used in marketing the Bonds or made public by the Issuer or any Manager in connection with the issuance of the Bonds;
- (r) the Bond Trustee Fee Agreement duly executed by the parties thereto; and
- (s) legal opinions or other statements as may be required by the Bond Trustee (including in respect of corporate matters relating to the Issuer and the legality, validity and enforceability of these Bond Terms and the Finance Documents).

#### **6.1.2 Disbursement conditions precedent – First Release**

The net proceeds from the issuance of the Bonds in the Escrow Account (the “**First Release**”) will not be disbursed to the Issuer unless the Bond Trustee has received or is satisfied that it will receive in due time (as determined by the Bond Trustee) prior to the First Release, each of the following documents, in form and substance satisfactory to the Bond Trustee (in consultation with its advisors):

- (a) evidence that the Project Account(s) have been established and pledged on the terms and conditions set forth herein;
- (b) satisfactory evidence that the Parent Guarantor has raised gross cash proceeds from one or more equity issues of USD 90 million in aggregate after 1 July 2022;
- (c) satisfactory evidence that the Parent Guarantor has transferred the Project Equity Contribution to the Project Account(s);
- (d) satisfactory evidence that the Royalty Facility has been duly executed;
- (e) the Intercreditor Agreement duly executed by the relevant parties and in form, scope and substance acceptable to the Bond Trustee;
- (f) satisfactory evidence that the Royalty Facility Proceeds have been transferred to the Project Account(s);
- (g) satisfactory evidence that all the Project Equity Contribution and the Royalty Facility Proceeds have been spent or will be spent, through payment of invoices issued and due for payment within a period of 30 Business Days from the First Release, in accordance with Clause 13.21 (*Accounts*);
- (h) confirmation that the Independent Engineer has been engaged on terms satisfactory to the Bond Trustee (in consultation with its advisors and the Managers) by delivery of a copy of the executed Engineer Engagement Agreement;
- (i) the Transaction Security Documents for the Pre-Release Security duly executed by all parties thereto and evidence of the establishment and perfection of the Transaction Security;
- (j) executed take-or-pay Offtake Contracts for at least five years from commencement of rutile and garnet production with one or more bona fide third parties that are at arm’s length terms with the Issuer, amounting to at least 60% of all projected revenue as set out in the Master Control Budget in the form of realised sales price (net of all selling

costs) for that five-year period, which executed Offtake Contracts shall be delivered to the Bond Trustee together with a confirmation from the Issuer that the contracts satisfy the foregoing criteria and that no Obligor is aware of any circumstances that would lead to the termination of any such Offtake Contract and that such Offtake Contracts have been duly executed by all parties thereto and constitute enforceable obligations of such parties;

- (k) a duly executed release notice from the Issuer in the form set out in Attachment 2 to the Bond Terms, countersigned by the Independent Engineer as contemplated in Clause 13.21.2 (*Restrictions on withdrawals from the Escrow Account*);
- (l) copies of the Project Documents, and any amendments thereto (the obligation to deliver copies of amendments shall survive the First Release), duly executed by an Obligor and the counterparty thereto, together with a confirmation from the Issuer that no Obligor is aware of any circumstances that would lead to the termination of any such Project Documents and that such Project Documents are in good standing and in full force and effect;
- (m) a copy of any existing agreement for any Subordinated Loans;
- (n) copy of insurance policies together with an undertaking from the Issuer confirming that insurances have been obtained in accordance with the requirements set forth herein;
- (o) a report of an insurance consultant appointed by the Issuer, which shall confirm that the insurance policies of the Issuer are appropriate and sufficient for the Issuers business and conform with the requirements set forth herein;
- (p) confirmation of acceptance from any service of process agent; and
- (q) legal opinions or other statements as may be required by the Bond Trustee (including in respect of corporate matters relating to each Obligor and the legality, validity and enforceability of the Finance Documents (unless delivered under Clause 6.1.1 (*Pre-Settlement conditions precedent*))).

### **6.1.3 Disbursement conditions precedent – Second Release and Third Release**

The Second Release and the Third Release shall, in addition to the conditions precedent set out in Clause 6.1.2 (*Disbursement conditions precedent – First Release*) above, be subject to the Bond Trustee having received or is satisfied that it will receive in due time (as determined by the Bond Trustee) prior to the Second Release or Third Release, respectively, evidence in form and substance satisfactory to the Bond Trustee (in consultation with its advisors) that all the proceeds from the First Release or the Second Release, as the case may be, have been spent or will be spent, through payment of invoices issued and due for payment within a period of 30 Business Days from such release, in accordance with Clause 13.21 (*Accounts*).

### **6.1.4 Waivers**

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

## **6.2 Disbursement of the proceeds**

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

## **7. REPRESENTATIONS AND WARRANTIES**

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

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

### **7.1 Status**

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

### **7.2 Power and authority**

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

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

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

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

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

### **7.5 No Event of Default**

- (a) No Event of Default exists or is likely to result from the making of any drawdown under these Bond Terms or the entry into, the performance of, or any transaction contemplated by, any Finance Document.

- (b) No other event or circumstance has occurred which constitutes (or with the expiry of any grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (howsoever described) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which has or is likely to have a Material Adverse Effect.

#### **7.6 Authorizations and consents**

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

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

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

#### **7.7 Litigation**

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

#### **7.8 Financial Reports**

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

#### **7.9 No Material Adverse Effect**

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

#### **7.10 No misleading information**

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

#### **7.11 No withholdings**

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

#### **7.12 Pari passu ranking**

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

### **7.13 Security**

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

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

### **8.1 Covenant to pay**

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

### **8.2 Default interest**

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

### **8.3 Partial Payments**

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

### **8.4 Taxation**

- (a) Each Obligor is responsible for withholding any withholding tax imposed by applicable law on any payments to be made by it in relation to the Finance Documents.
- (b) The Obligors shall, if any tax is withheld in respect of the Bonds under the Finance Documents:
  - (i) gross up the amount of the payment due from it up to such amount which is necessary to ensure that the Bondholders or the Bond Trustee, as the case may be, receive a net amount which is (after making the required withholding) equal to the payment which would have been received if no withholding had been required; and
  - (ii) at the request of the Bond Trustee, deliver to the Bond Trustee evidence that the required tax deduction or withholding has been made.
- (c) Any public fees levied on the trade of Bonds in the secondary market shall be paid by the Bondholders, unless otherwise provided by law or regulation, and the Issuer shall not be responsible for reimbursing any such fees.

### **8.5 Currency**

- (a) All amounts payable under the Finance Documents shall be payable in the denomination of the Bonds set out in Clause 2.1 (*Amount, denomination and ISIN of the Bonds*). If, however, the denomination differs from the currency of the bank account connected to the Bondholder's account in the CSD, any cash settlement may be exchanged and credited to this bank account.

- (b) Any specific payment instructions, including foreign exchange bank account details, to be connected to the Bondholder's account in the CSD must be provided by the relevant Bondholder to the Paying Agent (either directly or through its account manager in the CSD) within 5 Business Days prior to a Payment Date. Depending on any currency exchange settlement agreements between each Bondholder's bank and the Paying Agent, and opening hours of the receiving bank, cash settlement may be delayed, and payment shall be deemed to have been made once the cash settlement has taken place, provided, however, that no default interest or other penalty shall accrue for the account of the Issuer for such delay.

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

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

## **9. INTEREST**

### **9.1 Calculation of interest**

- (a) Each Outstanding Bond will accrue interest at the Interest Rate on the Nominal Amount for each Interest Period, commencing on and including the first date of the Interest Period, and ending on but excluding the last date of the Interest Period.
- (b) Interest shall be calculated on the basis of a 360-day year comprised of 12 months of 30 days each (30/360-days basis), unless:
  - (i) the last day in the relevant Interest Period is the 31<sup>st</sup> calendar day but the first day of that Interest Period is a day other than the 30<sup>th</sup> or the 31<sup>st</sup> day of a month, in which case the month that includes that last day shall not be shortened to a 30-day month; or
  - (ii) the last day of the relevant Interest Period is the last calendar day in February, in which case February shall not be lengthened to a 30-day month.

### **9.2 Payment of interest**

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

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

### **10.1 Redemption of Bonds**

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

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

- (a) The Issuer may redeem all or part of the Outstanding Bonds (the "**Call Option**") on any Business Day from and including:
  - (i) the Issue Date to, but not including, the First Call Date at a price equal to the Make Whole Amount;

- (ii) the First Call Date to, but not including, the Interest Payment Date in May 2026 at a price equal to 105.00 per cent. of the Nominal Amount for each redeemed Bond;
  - (iii) the Interest Payment Date in May 2026 to, but not including, the Interest Payment Date in November 2026 at a price equal to 103.75 per cent. of the Nominal Amount for each redeemed Bond;
  - (iv) the Interest Payment Date in November 2026 to, but not including, the Interest Payment Date in May 2027 at a price equal to 102.50 per cent. of the Nominal Amount for each redeemed Bond and
  - (v) the Interest Payment Date in May 2027 to, but not including, the Maturity Date at a price equal to 100 per cent. of the Nominal Amount for each redeemed Bond.
- (b) Any redemption of Bonds pursuant to paragraph (a) above shall be determined based upon the redemption prices applicable on the Call Option Repayment Date (and not based on the date the Call Option was exercised (i.e. issue of call notice)).
  - (c) The Call Option may be exercised by the Issuer by written notice to the Bond Trustee at least 10 Business Days prior to the proposed Call Option Repayment Date. Unless the Make Whole Amount is set out in the written notice where the Issuer exercises the Call Option, the Issuer shall calculate the Make Whole Amount and provide such calculation by written notice to the Bond Trustee as soon as possible and at the latest within 3 Business Days from the date of the notice.
  - (d) Any call notice may, at the Issuer's discretion, be subject to the satisfaction of one or more conditions precedent, in which case the call notice will be automatically cancelled unless such conditions precedent have been satisfied or waived at least 3 Business Days prior to such Call Option Repayment Date.
  - (e) Any Call Option exercised in part will be used for pro rata payment to the Bondholders in accordance with the applicable regulations of the CSD.

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

- (a) Upon the occurrence of a Put Option Event, each Bondholder will have the right (the "**Put Option**") to require that the Issuer purchases all or some of the Bonds held by that Bondholder at a price equal to 101 per cent. of the Nominal Amount.
- (b) The Put Option must be exercised within 15 Business Days after the Issuer has given notice to the Bond Trustee and the Bondholders that a Put Option Event has occurred pursuant to Clause 12.3 (*Put Option Event*). Once notified, the Bondholders' right to exercise the Put Option is irrevocable.
- (c) Each Bondholder may exercise its Put Option by written notice to its account manager for the CSD, who will notify the Paying Agent of the exercise of the Put Option. The Put Option Repayment Date will be the 5<sup>th</sup> Business Day after the end of 15 Business Days exercise period referred to in paragraph (b) above. However, the settlement of the Put Option will be based on each Bondholders holding of Bonds at the Put Option Repayment Date.



- (d) If Bonds representing more than 90 per cent. of the Outstanding Bonds have been repurchased pursuant to this Clause 10.3 (*Mandatory repurchase due to a Put Option Event*), the Issuer is entitled to repurchase all the remaining Outstanding Bonds at the price stated in paragraph (a) above by notifying the remaining Bondholders of its intention to do so no later than 10 Business Days after the Put Option Repayment Date. Such notice sent by the Issuer is irrevocable and shall specify the Call Option Repayment Date.

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

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

#### **10.5 Mandatory early redemption due to a Long Stop Event**

- (a) Upon a Long Stop Event the Issuer shall within 5 Business Days after the Long Stop Date redeem all the Bonds at a price equal to 92.00% of the Nominal Amount (in each case together with accrued and unpaid interest thereon).
- (b) In the case of a Long Stop Event, the Bond Trustee shall be authorised to apply any amount credited to the Escrow Account towards any amount payable by the Issuer under any Finance Document until all obligations and liabilities under or in relation to the Finance Documents are repaid and discharged in full.

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

Upon a Mandatory Redemption Event, the Issuer shall within 5 Business Days after the Mandatory Redemption Event:

- (a) if occurring prior to the First Release, redeem all of the Outstanding Bonds at a price of 101.00% of the Nominal Amount plus accrued interest, by inter alia applying the funds deposited on the Escrow Account for such redemption; or
- (b) if occurring after the First Release but prior to the Third Release, apply all the funds standing to the credit of the Escrow Account to redeem Bonds at a price equal to 105.00% of the Nominal Amount for each redeemed Bond plus accrued interest on the redeemed Bonds.

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

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

The Issuer may purchase and hold Bonds and such Bonds may be retained, or sold, but not cancelled (other than as set out in the definition of Distribution Tender Offer), in the Issuer's sole discretion, including with respect to Bonds purchased pursuant to Clause 10.3 (*Mandatory*

*repurchase due to a Put Option Event*). For clarity, the Issuer may not use funds from the Escrow Account to repurchase Bonds.

## **11.2 Restrictions**

- (a) Certain purchase or selling restrictions may apply to Bondholders under applicable local laws and regulations from time to time. Neither the Issuer nor the Bond Trustee shall be responsible for ensuring compliance with such laws and regulations and each Bondholder is responsible for ensuring compliance with the relevant laws and regulations at its own cost and expense.
- (b) A Bondholder who has purchased Bonds in breach of applicable restrictions may, notwithstanding such breach, benefit from the rights attached to the Bonds pursuant to these Bond Terms (including, but not limited to, voting rights), provided that the Issuer shall not incur any additional liability by complying with its obligations to such Bondholder.

## **12. INFORMATION UNDERTAKINGS**

### **12.1 Financial Reports**

- (a) The Issuer shall prepare Annual Financial Statements in the English language and make them available on the Parent Guarantor's website (alternatively on another relevant information platform) as soon as they become available, and not later than four months after the end of the financial year.
- (b) The Issuer shall prepare Interim Accounts in the English language and make them available on the Parent Guarantor's website (alternatively on another relevant information platform) as soon as they become available, and not later than two months after the end of the relevant interim period.

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

- (a) The Issuer shall supply to the Bond Trustee, in connection with the publication of its Financial Reports pursuant to Clause 12.1 (*Financial Reports*), a Compliance Certificate with a copy of the Financial Reports attached thereto. The Compliance Certificate shall be duly signed by the chairman of the board of directors of the Issuer, certifying inter alia that the Financial Reports are fairly representing its financial condition as at the date of the relevant Financial Report and setting out (in reasonable detail) computations evidencing compliance with Clause 13.23 (*Financial covenants*) as at such date.
- (b) The Issuer shall procure that the Financial Reports delivered pursuant to Clause 12.1 (*Financial Reports*) are prepared using the Accounting Standard consistently applied.
- (c) For each financial quarter, management shall host quarterly investor calls.

### **12.3 Put Option Event**

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

## 12.4 Listing Failure Event

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

## 12.5 Changes to the Project Construction Plan

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

## 12.6 Changes to the Capital Expenditure Budget

- (a) In the period from the engagement of the Independent Engineer until Project Completion has occurred, the Issuer shall promptly notify the Bond Trustee and the Independent Engineer as soon as the trend-register in the Master Control Budget shows that the USD 20.7 million contingency in the Capital Expenditure Budget will be fully utilized or exceeded. The Issuer shall only be permitted to implement such a change in the Master Control Budget if:

- (i) the change relates to the Engebø Project; and
- (ii) the Cost-to-Complete Test will continue to be satisfied,

(the “**Permitted CapEx Increase**”).

- (b) If such Permitted CapEx Increase is made to the Master Control Budget, the Issuer shall provide to the Bond Trustee and the Independent Engineer a Company Certificate describing in reasonable detail:
  - (i) the nature of the budget increase;
  - (ii) the cost implication to the Master Control Budget of such change;
  - (iii) the time implication of the budget increase (if any); and
  - (iv) how the change will be financed (if applicable).
- (c) The Company Certificate shall also confirm that the Issuer will satisfy the Cost-to-Complete Test following such change.
- (d) The Independent Engineer will be required to countersign the Company Certificate to confirm that the requirements for such Company Certificate are satisfied. For the avoidance of doubt, the Bond Trustee shall not make any independent assessments of the Company Certificate.

## **12.7 Information: Miscellaneous**

The Issuer shall:

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

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

The Issuer undertakes to (and shall, where applicable, procure that the other Group Companies will) comply with the undertakings set forth in this Clause 13 (*General and financial undertakings*).

#### **13.1 Authorisations**

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

#### **13.2 Compliance with laws**

Each Obligor shall comply in all material respects with all laws and regulations to which it may be subject to from time to time.

#### **13.3 Continuation of business**

No Obligor shall cease to carry on its business or change the general nature of its business from that carried on by it at the Issue Date.

#### **13.4 Corporate status**

No Obligor shall change its current jurisdiction of incorporation or entity form.

#### **13.5 Mergers**

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

#### **13.6 De-mergers**

No Obligor shall carry out any demerger or other corporate reorganisation having the same or equivalent effect as a demerger.

#### **13.7 Financial Indebtedness**

No Obligor shall incur, allow to exist or prolong any Financial Indebtedness other than any Permitted Financial Indebtedness.

#### **13.8 Negative pledge**

No Obligor shall create or allow to subsist, retain, provide, prolong or renew any Security over any of its/their assets (whether present or future) other than any Permitted Security.

#### **13.9 Financial support**

No Obligor shall be a creditor in respect of any Financial Support to or for the benefit of any person other than any Permitted Loan, Permitted Guarantee or Permitted Security.

#### **13.10 Ownership/ disposals**

- (a) The Issuer shall remain the sole owners of all material assets related to the Engebø Project.

- (b) The Parent Guarantor shall maintain direct ownership over 100% of the shares, and control 100% of the voting rights, of the Issuer.
- (c) In relation to assets of or related to the Engebø Project, no Obligor shall transfer, abandon or otherwise dispose of any shares or other assets, or otherwise dilute their ownership in or to any shares or other assets, including without limitation mining tenements or other assets, other than a Permitted Disposal.

### **13.11 Distributions**

No Obligor shall make any Distributions to its shareholders other than a Permitted Distribution, and the Parent Guarantor shall not demand or vote in favour of any Distribution from the Issuer other than a Permitted Distribution.

### **13.12 Arm's length transactions**

No Obligor shall, engage in any transaction with any party (without limitation, the purchase, sale or exchange of assets or the rendering of any service) except on an arm's length terms.

### **13.13 Transaction Security**

The Obligors shall procure that the Transaction Security remains valid, first priority, binding and enforceable.

### **13.14 Investments and activity**

The Obligors shall procure that all investment related to the Engebø Project, including the acquisition of any assets relating thereto, shall be made in and remain with the Issuer. The Obligors shall furthermore procure that all material business operations and activities relating to the Engebø Project are conducted by the Issuer. The Issuer shall not invest or take part in any activity other than solely related to the Engebø Project.

### **13.15 Acquisitions**

The Issuer shall not:

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

### **13.16 Mining business**

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

### **13.17 Inspection**

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

### **13.18 Insurances**

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

### **13.19 Project Documents**

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

- (a) perform and observe all of its covenants and agreements contained in such Project Documents or Future Project Documents,
- (b) take all reasonably necessary action to prevent the termination of any such Project Documents and Future Project Documents, other than by expiration of the term of such Project Documents and Future Project Documents or if it constitutes a permitted substitution,
- (c) take any and all actions as may be reasonably necessary promptly to enforce its rights and to collect any and all sums due to it under the Project Documents and Future Project Documents, in each case to the extent that failure to do so is likely to either have a material adverse impact on the development, completion or operation of the Engebø Project or otherwise have a Material Adverse Effect;
- (d) not agree to the cancellation or termination thereof,
- (e) not dispose of any part of its interest,
- (f) not waive any default thereunder or any breach thereof,
- (g) not amend, supplement, modify or give any consent or exercise any option thereunder, and/or
- (h) not breach or otherwise default thereunder or take any action that would likely result in a breach or default thereunder; except if
  - (A) it constitutes a permitted substitution of the said Project Document or Future Project Document; or
  - (B) to the extent that any such action would not have a material adverse impact on the development, completion or operation of the Engebø Project or otherwise have a Material Adverse Effect. A permitted substitution of a Project Document or Future Project Document includes where a Project Document or Future Project Document is replaced within 90 days of its termination, with another document or agreement on terms not materially less favourable to the relevant

Obligor than the terms of the Project Document or Future Project Document being replaced.

### **13.20 Payments under the Royalty Facility**

The Issuer shall not prepay any amount that has not fallen due under, or repay or repurchase any part of, the Royalty Facility unless;

- (a) all obligations and liabilities under or in relation to the Finance Documents are repaid and discharged in full on or before such payment is made, or
- (b) if such repayment is financed by the Issuer in full by the issuance of new equity or Subordinated Loan.

### **13.21 Accounts**

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

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

In particular the Issuer shall:

- (a) prior to the Issue Date establish the Escrow Account and enter into the Escrow Account Pledge;
- (b) prior to the Issue Date fund the Escrow Account with (i) the Additional Escrow Account Funds and (ii) the Pre-Settlement Interest Pre-funding amount.
- (c) prior to the Issue Date establish (or designate) the Project Account(s), and ensure that after the Issue Date (i) no account is maintained that is not a Project Account (except for the Escrow Account, any tax deduction account (*Nw. skattetrekkkonto*) and the NDM Account) and (ii) any funds withdrawn from the Escrow Account is paid directly to a Project Account;
- (d) ensure that all revenues generated and amounts received by the Group derived from and associated with the Engebø Project shall be paid directly into a Project Account; and
- (e) ensure that all amounts in the Project Accounts shall be solely employed towards purposes related to the Engebø Project.

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

- (a) At any time after the Issue Date and subject to the satisfaction of the conditions precedent for First Release set out in Clause 6.1.2 (*Disbursement conditions precedent – First Release*), the Issuer may make the First Release from the Escrow Account and transfer such funds to a Project Account held by the Issuer. Any funds withdrawn from the Escrow Account shall be paid directly to a Project Account.
- (b) The Issuer shall make three withdrawals during the life of the Bond Issue, where the First Release and the second release (the “**Second Release**”) shall both be made in the



amount of USD 30 million each. The third release (the “**Third Release**”) shall be made in an amount determined by the Issuer at such time, provided that the amount (if any) remaining on the Escrow Account immediately after the Third Release does not exceed USD 30 million. Any funds intended to remain on the Escrow Account following the Third Release shall not count as Available Funding in the Cost-to-Complete test calculation for such Third Release.

- (c) All three releases shall be made by issuing a drawdown notice to the Bond Trustee and the Account Bank, counter-signed by the Independent Engineer, which drawdown notice shall:
  - (i) include a confirmation that (A) the use of funds comply with the Use of Proceeds provision and (B) no potential or actual Event of Default exists;
  - (ii) include a signed Cost and Time to Complete Certificate (in the form set out in Attachment 4) confirming that on the date of delivery of the notice the Cost-to-Complete Test has been satisfied and that the Project Completion is expected to occur prior to the Project Completion Sunset Date; and
  - (iii) be accompanied by the Project Construction Plan and the Master Control Budget, both as updated at such time on the basis of the Issuer’s reforecast of the Engebø Project, including an updated capital expenditure budget reconciled with actual expenditure.
- (d) Notwithstanding the above:
  - (i) The Issuer may pay scheduled interest on the Bonds directly from the Escrow Account in a total amount no greater than the 4 months of interest having been prefunded under the Pre-Settlement Interest Pre-funding. Such interest payments directly from the Escrow Account shall not be subject to the conditions precedent for First Release set out in Clause 6.1.2 (*Disbursement conditions precedent – First Release*).
  - (ii) In the event that there is a remaining balance on the Escrow Account following the Third Release, the Issuer may thereafter either (A) freely transfer such funds to a Project Account; or (B) withdraw such funds to make a Permitted Distribution.
- (e) The Bond Trustee will make no assessment or evaluations in respect of the instructions and confirmations set out in such drawdown notice.

### **13.22 Anti-corruption**

Each Obligor shall, and the Parent Guarantor shall ensure that each other Group Company will:

- (a) ensure that no proceeds from the Bond Issue are used directly or indirectly for any purpose which would breach any applicable acts, regulations or laws on bribery, corruption or similar; and

- (b) conduct its businesses and maintain policies and procedures in compliance with applicable anti-corruption laws.

No Obligor shall, and the Parent Guarantor shall ensure that no other Group Company will, engage in any conduct prohibited by any sanctions.

### **13.23 Financial covenants**

The Obligors undertakes to comply with the following financial covenants at all times:

- (a) **Minimum Issuer Liquidity:** The Issuer shall at all times maintain cash on the Accounts in an aggregate amount of no less than USD 15,000,000.
- (b) **Minimum Book Equity Ratio:** The Group shall maintain a Book Equity Ratio at each Quarter Date of no less than 25%.

Compliance with the above Financial Covenants shall be certified by the Issuer in a Compliance Certificate to be delivered to the Bond Trustee in connection with the publication of its Financial Reports. The Issuer shall further, in each Compliance Certificate, report the minimum Book Equity Ratio as per the relevant Quarter Date. Minimum Book Equity Ratio will be measured the first time on the relevant Quarter Date after the Long Stop Date.

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

### **14.1 Events of Default**

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

(a) *Non-payment*

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

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

(b) *Breach of other obligations*

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

(c) *Misrepresentation*

Any representation, warranty or statement (including statements in Compliance Certificates) made by any Obligor under or in connection with any Finance Documents

is or proves to have been incorrect, inaccurate or misleading in any material respect when made.

(d) *Cross default*

If for any Obligor:

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

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

(e) *Insolvency and insolvency proceedings*

Any Obligor:

- (i) is Insolvent; or
- (ii) is object of any corporate action or any legal proceedings is taken in relation to:
  - (A) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) other than a solvent liquidation or reorganization; or
  - (B) a composition, compromise, assignment or arrangement with any creditor which may materially impair its ability to perform its obligations under these Bond Terms; or
  - (C) the appointment of a liquidator (other than in respect of a solvent liquidation), receiver, administrative receiver, administrator, compulsory manager or other similar officer of any of its assets; or
  - (D) enforcement of any Security over any of its or their assets having an aggregate value exceeding the threshold amount set out in paragraph (d) (*Cross default*) above; or

- (E) for (A) - (D) above, any analogous procedure or step is taken in any jurisdiction in respect of any such company,

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

(f) *Creditor's process*

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of any Obligor having an aggregate value exceeding the threshold amount set out in paragraph (d) (*Cross default*) above of this Clause 14.1 (*Events of Default*) and is not discharged within 20 Business Days.

(g) *Unlawfulness*

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

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

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

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

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

in each case, subject to the provisions of the Intercreditor Agreement.

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

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

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

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

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

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

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

### **15. BONDHOLDERS' DECISIONS**

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

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

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

- (a) A Bondholders' Meeting shall be convened by the Bond Trustee upon the request in writing of:

- (i) the Issuer;
- (ii) Bondholders representing at least 1/10 of the Voting Bonds;
- (iii) the Exchange, if the Bonds are listed and the Exchange is entitled to do so pursuant to the general rules and regulations of the Exchange; or
- (iv) the Bond Trustee.

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

- (b) If the Bond Trustee has not convened a Bondholders' Meeting within 10 Business Days after having received a valid request for calling a Bondholders' Meeting pursuant to paragraph (a) above, then the requesting party may call the Bondholders' Meeting itself.
- (c) Summons to a Bondholders' Meeting must be sent no later than 10 Business Days prior to the proposed date of the Bondholders' Meeting. The Summons shall be sent to all Bondholders registered in the CSD at the time the Summons is sent from the CSD. If the Bonds are listed, the Issuer shall ensure that the Summons is published in accordance with the applicable regulations of the Exchange. The Summons shall also be published on the website of the Bond Trustee (alternatively by press release or other relevant information platform).
- (d) Any Summons for a Bondholders' Meeting must clearly state the agenda for the Bondholders' Meeting and the matters to be resolved. The Bond Trustee may include additional agenda items to those requested by the person calling for the Bondholders' Meeting in the Summons. If the Summons contains proposed amendments to these Bond Terms, a description of the proposed amendments must be set out in the Summons.
- (e) Items which have not been included in the Summons may not be put to a vote at the Bondholders' Meeting.
- (f) By written notice to the Issuer, the Bond Trustee may prohibit the Issuer from acquiring or dispose of Bonds during the period from the date of the Summons until the date of the Bondholders' Meeting, unless the acquisition of Bonds is made by the Issuer pursuant to Clause 10 (*Redemption and Repurchase of Bonds*).
- (g) A Bondholders' Meeting may be held on premises selected by the Bond Trustee, or if paragraph (b) above applies, by the person convening the Bondholders' Meeting (however to be held in the capital of the Relevant Jurisdiction). The Bondholders' Meeting will be opened and, unless otherwise decided by the Bondholders' Meeting, chaired by the Bond Trustee. If the Bond Trustee is not present, the Bondholders' Meeting will be opened by a Bondholder and be chaired by a representative elected by the Bondholders' Meeting (the Bond Trustee or such other representative, the "**Chairperson**").
- (h) Each Bondholder, the Bond Trustee and, if the Bonds are listed, representatives of the Exchange, or any person or persons acting under a power of attorney for a Bondholder, shall have the right to attend the Bondholders' Meeting (each a "**Representative**"). The Chairperson may grant access to the meeting to other persons not being Representatives,

unless the Bondholders' Meeting decides otherwise. In addition, each Representative has the right to be accompanied by an advisor. In case of dispute or doubt with regard to whether a person is a Representative or entitled to vote, the Chairperson will decide who may attend the Bondholders' Meeting and exercise voting rights.

- (i) Representatives of the Issuer have the right to attend the Bondholders' Meeting. The Bondholders Meeting may resolve to exclude the Issuer's representatives and/or any person holding only Issuer's Bonds (or any representative of such person) from participating in the meeting at certain times, however, the Issuer's representative and any such other person shall have the right to be present during the voting.
- (j) Minutes of the Bondholders' Meeting must be recorded by, or by someone acting at the instruction of, the Chairperson. The minutes must state the number of Voting Bonds represented at the Bondholders' Meeting, the resolutions passed at the meeting, and the results of the vote on the matters to be decided at the Bondholders' Meeting. The minutes shall be signed by the Chairperson and at least one other person. The minutes will be deposited with the Bond Trustee who shall make available a copy to the Bondholders and the Issuer upon request.
- (k) The Bond Trustee will ensure that the Issuer, the Bondholders and the Exchange are notified of resolutions passed at the Bondholders' Meeting and that the resolutions are published on the website of the Bond Trustee (or other relevant electronically platform or press release).
- (l) The Issuer shall bear the costs and expenses incurred in connection with convening a Bondholders' Meeting regardless of who has convened the Bondholders' Meeting, including any reasonable costs and fees incurred by the Bond Trustee.

### **15.3 Voting rules**

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

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

- (a) Even if the necessary quorum set out in paragraph (e) of Clause 15.1 (*Authority of the Bondholders' Meeting*) is not achieved, the Bondholders' Meeting shall be held and voting completed for the purpose of recording the voting results in the minutes of the Bondholders' Meeting. The Bond Trustee or the person who convened the initial Bondholders' Meeting may, within 10 Business Days of that Bondholders' Meeting, convene a repeated meeting with the same agenda as the first meeting.
- (b) The provisions and procedures regarding Bondholders' Meetings as set out in Clause 15.1 (*Authority of the Bondholders' Meeting*), Clause 15.2 (*Procedure for arranging a Bondholders' Meeting*) and Clause 15.3 (*Voting rules*) shall apply *mutatis mutandis* to a repeated Bondholders' Meeting, with the exception that the quorum requirements set out in paragraph (e) of Clause 15.1 (*Authority of the Bondholders' Meeting*) shall not apply to a repeated Bondholders' Meeting. A Summons for a repeated Bondholders' Meeting shall also contain the voting results obtained in the initial Bondholders' Meeting.
- (c) A repeated Bondholders' Meeting may only be convened once for each original Bondholders' Meeting. A repeated Bondholders' Meeting may be convened pursuant to the procedures of a Written Resolution in accordance with Clause 15.5 (*Written Resolutions*), even if the initial meeting was held pursuant to the procedures of a Bondholders' Meeting in accordance with Clause 15.2 (*Procedure for arranging a Bondholders' Meeting*) and vice versa.

#### **15.5 Written Resolutions**

- (a) Subject to these Bond Terms, anything which may be resolved by the Bondholders in a Bondholders' Meeting pursuant to Clause 15.1 (*Authority of the Bondholders' Meeting*) may also be resolved by way of a Written Resolution. A Written Resolution passed with the relevant majority is as valid as if it had been passed by the Bondholders in a Bondholders' Meeting, and any reference in any Finance Document to a Bondholders' Meeting shall be construed accordingly.
- (b) The person requesting a Bondholders' Meeting may instead request that the relevant matters are to be resolved by Written Resolution only, unless the Bond Trustee decides otherwise.
- (c) The Summons for the Written Resolution shall be sent to the Bondholders registered in the CSD at the time the Summons is sent from the CSD and published at the Bond Trustee's web site, or other relevant electronic platform or via press release.
- (d) The provisions set out in Clause 15.1 (*Authority of the Bondholders' Meeting*), 15.2 (*Procedure for arranging a Bondholders' Meeting*), Clause 15.3 (*Voting Rules*) and Clause 15.4 (*Repeated Bondholders' Meeting*) shall apply *mutatis mutandis* to a Written Resolution, except that:
  - (i) the provisions set out in paragraphs (g), (h) and (i) of Clause 15.2 (*Procedure for arranging Bondholders Meetings*); or
  - (ii) provisions which are otherwise in conflict with the requirements of this Clause 15.5 (*Written Resolution*),



shall not apply to a Written Resolution.

- (e) The Summons for a Written Resolution shall include:
  - (i) instructions as to how to vote to each separate item in the Summons (including instructions as to how voting can be done electronically if relevant); and
  - (ii) the time limit within which the Bond Trustee must have received all votes necessary in order for the Written Resolution to be passed with the requisite majority (the “**Voting Period**”), which shall be at least 10 Business Days but not more than 15 Business Days from the date of the Summons.
- (f) Only Bondholders of Voting Bonds registered with the CSD on the Relevant Record Date, or the beneficial owner thereof having presented relevant evidence to the Bond Trustee pursuant to Clause 3.3 (*Bondholders’ rights*), will be counted in the Written Resolution.
- (g) A Written Resolution is passed when the requisite majority set out in paragraph (e) or paragraph (f) of Clause 15.1 (*Authority of Bondholders’ Meeting*) has been obtained, based on a quorum of the total number of Voting Bonds, even if the Voting Period has not yet expired. A Written Resolution will also be resolved if the sufficient numbers of negative votes are received prior to the expiry of the Voting Period.
- (h) The effective date of a Written Resolution passed prior to the expiry of the Voting Period is the date when the resolution is approved by the last Bondholder that results in the necessary voting majority being obtained.
- (i) If no resolution is passed prior to the expiry of the Voting Period, the number of votes shall be calculated at the close of business on the last day of the Voting Period, and a decision will be made based on the quorum and majority requirements set out in paragraphs (e) to (g) of Clause 15.1 (*Authority of Bondholders’ Meeting*).

## **16. THE BOND TRUSTEE**

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

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

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

- (a) The Bond Trustee shall represent the Bondholders in accordance with the Finance Documents, including, inter alia, by following up on the delivery of any Compliance Certificates and such other documents which the Issuer is obliged to disclose or deliver

to the Bond Trustee pursuant to the Finance Documents and, when relevant, in relation to accelerating and enforcing the Bonds on behalf of the Bondholders.

- (b) The Bond Trustee is not obligated to assess or monitor the financial condition of the Issuer or any other Obligor unless to the extent expressly set out in these Bond Terms, or to take any steps to ascertain whether any Event of Default has occurred. Until it has actual knowledge to the contrary, the Bond Trustee is entitled to assume that no Event of Default has occurred. The Bond Trustee is not responsible for the valid execution or enforceability of the Finance Documents, or for any discrepancy between the indicative terms and conditions described in any marketing material presented to the Bondholders prior to issuance of the Bonds and the provisions of these Bond Terms.
- (c) The Bond Trustee is entitled to take such steps that it, in its sole discretion, considers necessary or advisable to protect the rights of the Bondholders in all matters pursuant to the terms of the Finance Documents. The Bond Trustee may submit any instructions received by it from the Bondholders to a Bondholders' Meeting before the Bond Trustee takes any action pursuant to the instruction.
- (d) The Bond Trustee is entitled to engage external experts when carrying out its duties under the Finance Documents.
- (e) The Bond Trustee shall hold all amounts recovered on behalf of the Bondholders on separated accounts.
- (f) The Bond Trustee will ensure that resolutions passed at the Bondholders' Meeting are properly implemented, provided, however, that the Bond Trustee may refuse to implement resolutions that may be in conflict with these Bond Terms, any other Finance Document, or any applicable law.
- (g) Notwithstanding any other provision of the Finance Documents to the contrary, the Bond Trustee is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation.
- (h) If the cost, loss or liability which the Bond Trustee may incur (including reasonable fees payable to the Bond Trustee itself) in:
  - (i) complying with instructions of the Bondholders; or
  - (ii) taking any action at its own initiative,

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

- (i) The Bond Trustee shall give a notice to the Bondholders before it ceases to perform its obligations under the Finance Documents by reason of the non-payment by the Issuer of any fee or indemnity due to the Bond Trustee under the Finance Documents.

- (j) The Bond Trustee may instruct the CSD to split the Bonds to a lower nominal value in order to facilitate partial redemptions, write-downs or restructurings of the Bonds or in other situations where such split is deemed necessary.

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

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

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

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

and for as long as any amounts are outstanding under or pursuant to the Finance Documents.

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

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

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

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

## **16.6 Security Agent**

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

## **17. AMENDMENTS AND WAIVERS**

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

- (a) The Issuer and the Bond Trustee (acting on behalf of the Bondholders) may agree to amend the Finance Documents or waive a past default or anticipated failure to comply with any provision in a Finance Document, provided that:

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

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

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

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

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

## **18. MISCELLANEOUS**

### **18.1 Limitation of claims**

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

### **18.2 Access to information**

- (a) These Bond Terms will be made available to the public and copies may be obtained from the Bond Trustee or the Issuer. The Bond Trustee will not have any obligation to distribute any other information to the Bondholders or any other person, and the Bondholders have no right to obtain information from the Bond Trustee, other than as explicitly stated in these Bond Terms or pursuant to statutory provisions of law.

- (b) In order to carry out its functions and obligations under these Bond Terms, the Bond Trustee will have access to the relevant information regarding ownership of the Bonds, as recorded and regulated with the CSD.
- (c) The information referred to in paragraph (b) above may only be used for the purposes of carrying out their duties and exercising their rights in accordance with the Finance Documents and shall not disclose such information to any Bondholder or third party unless necessary for such purposes.

### **18.3 Notices, contact information**

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

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

corresponds to the first day the deadline is in force. If such day is not a part of an actual month, the deadline will be the last day of such month; and

- (iii) if a deadline ends on a day which is not a Business Day, the deadline is postponed to the next Business Day.

#### 18.4 Defeasance

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

A defeasance established according to this Clause 18.4 (*Defeasance*) may not be reversed.



**19. GOVERNING LAW AND JURISDICTION**

**19.1 Governing law**

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

**19.2 Main jurisdiction**

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

**19.3 Alternative jurisdiction**

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

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

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

**SIGNATURES:**

<b>The Issuer:</b> NORDIC RUTILE AS  .....  By:  Position:	<b>As Bond Trustee and Security Agent:</b> NORDIC TRUSTEE AS  .....  By:  Position:
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**ATTACHMENT 1  
COMPLIANCE CERTIFICATE**

[date]

**Nordic Rutile AS 12.5% senior secured USD 100,000,000 bonds 2022/2027 with ISIN NO0012734112**

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

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

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

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

The financial covenants set out in Clause 13.23 (*Financial covenants*) are met, please see the calculations and figures below as per the most recent Quarter Date:

Minimum Issuer Liquidity is .....

Book Equity: .....

Total Assets: .....

Book Equity Ratio: .....

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

Yours faithfully,  
**Nordic Rutile AS**

\_\_\_\_\_  
Chairman of the board/Name of authorised person

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

**ATTACHMENT 2  
DRAWDOWN NOTICE – RELEASE FROM ESCROW ACCOUNT**

To: Nordic Trustee AS

[date]

Dear Sirs,

**Nordic Rutile AS 12.5% senior secured USD 100,000,000 bonds 2022/2027 with ISIN NO0012734112**

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

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

We hereby give you notice that we on [date] wish to draw an amount of [currency and amount] from the Escrow Account applied pursuant to the purpose set out in the Bond Terms, and request you to instruct NT Services AS to release the above mentioned amount from the Escrow Account to our bank account in DNB with account number: ..... which is our USD Project Account.

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

The Independent Engineer confirms that the Cost-to-Complete Test has been satisfied on the date hereof and that the Project Completion is expected to occur prior to the Project Completion Sunset Date.

Yours faithfully,  
**Nordic Rutile AS**

\_\_\_\_\_  
Name of authorized person

**[Independent Engineer]**

\_\_\_\_\_

[Name of authorized person]

Enclosure: The signed Cost and Time to Complete Certificate the Project Construction Plan, the Master Control Budget including an updated Capital Expenditure Budget reconciled with actual expenditure

### ATTACHMENT 3 INTERCREDITOR PRINCIPLES

This document is a high-level summary of the key intercreditor principles which will govern the priority and subordination arrangements, to be documented in the intercreditor agreement (the "**Intercreditor Agreement**") between:

- (1) Nordic Rutile AS (the "**Issuer**") and Nordic Mining ASA (the "**Parent Guarantor**", and together with the Issuer, the "**Obligors**");
- (2) Nordic Trustee AS (the "**Bond Trustee**"), acting on behalf of itself and the holders of the Issuer's senior secured bonds (the "**Bonds**") from time to time (the "**Bondholders**") pursuant to bond terms to be entered into between the Issuer and the Bond Trustee (the "**Bond Terms**");
- (3) A fund managed by Orion Resource Partners (UK) LLP or a designated affiliate, as buyer under a royalty facility agreement (the "**Royalty Facility Agreement**") to be entered into with the Issuer (the "**Second Creditor**"); and
- (4) Nordic Trustee AS, acting as security agent (the "**Security Agent**") for the First Creditors and the Second Creditor (together, the "**Creditors**"),

in connection with the Common Security granted in respect of the debt financing and royalty arrangements for the development, construction and operation of the Engebø rutile and garnet mine (the "**Mine**") in Sunnfjord, Norway (the "**Project**"). This summary is not intended to be exhaustive in nature, with the form and substance of the Intercreditor Agreement to be otherwise in form and substance satisfactory to the First Creditor and the Second Creditor.

**1 DEFINITIONS:** "**Common Security**" means the security to be granted by the Obligors in favour of the Security Agent as security for all of the Secured Liabilities.

"**Controlling Creditor**" means:

- (a) at all times whilst there is First Ranking Secured Liabilities outstanding, the Majority First Creditors; and
- (b) at all times whilst there is no First Ranking Secured Liabilities outstanding, the Second Creditor.

"**Distressed Disposal**" means a disposal of an asset of an Obligor which is subject to the Common Security effected following or at the same time as Substantive Enforcement Action taking place:

- (a) at the request of the Controlling Creditors in circumstances where the Common Security has become enforceable; or
- (b) by enforcement of the Common Security.

**"Enforcement Action"** means:

- (a) in relation to any Secured Liabilities:
  - (i) the acceleration of any Secured Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for any person to perform its obligations under any document or any voluntary or mandatory redemption);
  - (ii) the making of any declaration that any such Secured Liabilities are payable on demand or the making of a demand in relation to such a Liability that is payable on demand;
  - (iii) the exercise of any right of set-off, account combination or payment netting against any Obligor in respect of any Secured Liabilities; or
  - (iv) the suing for, commencing or joining or any legal or arbitration proceedings against any Obligor to recover any Secured Liabilities;
- (b) the taking of any steps to enforce or require the enforcement of any Common Security granted by an Obligor (including a Distressed Disposal);
- (c) the entering into of any composition, compromise, assignment or arrangement with any Obligor; or
- (d) the petitioning, applying or voting for, or the taking of any steps (including the appointment of a liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration, reorganisation, moratorium or suspension of payments of any Obligor, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action and shall not be restricted under the Intercreditor Agreement:

- (i) making demands for payments, and receiving payments in accordance with clause 4 and the pre-enforcement (to the extent applicable) and post-enforcement waterfalls;
- (ii) the termination of the Royalty Facility Agreement, provided that at any time prior to the Second Creditor being permitted to take Enforcement Action pursuant to clause 8 (Enforcement of

Common Security) the "termination sum" (as set out in the Royalty Facility Agreement) may become due upon termination but shall only become payable upon the earlier of (i) the end of the standstill period set out in clause 8 (Enforcement of Common Security) or (ii) an Insolvency Event in respect of the Issuer or the Parent Guarantor;

- (iii) the taking of any action falling within paragraphs (a)(iv) or (d) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Secured Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; and
- (iv) a Creditor bringing legal proceedings against any person solely for the purpose of:
  - (A) any demand for, and receipt of, Permitted Payments;
  - (B) obtaining injunctive relief to restrain any actual or putative breach of any Finance Document to which it is party;
  - (C) obtaining specific performance; or
  - (D) requesting judicial interpretation of any provision of any Finance Document to which it is party.

**"Escrow Account"** means any bank account held by an escrow manager as a client account for the Issuer for the deposit of net proceeds from the issue of the Bonds until such net proceeds are released to the Issuer's other accounts in accordance with the Bond Terms.

**"Escrow Account Pledge"** means: (i) a pledge over the Escrow Account in favour of the Bond Trustee (on behalf of itself and the Bondholders); or (ii) a pledge over an escrow account (or similar escrow arrangement) created in respect of any refinancing of the Bonds, which in each case is separate from and in addition to the Common Security and shall secure only the First Ranking Secured Liabilities.

**"Finance Document"** means any First Finance Document or Second Finance Document, or all of them.



**"First Creditors"** means the Bond Trustee (on behalf of itself and the Bondholders) and any creditor(s) under any Refinancing First Finance Documents.

**"First Finance Documents"** means the Bond Terms and each Finance Document (as defined therein) and any Refinancing First Finance Documents.

**"First Ranking Secured Liabilities"** means all monies owing to the First Creditors or the Security Agent under the First Finance Documents, including following any refinancing of amounts owing under the First Finance Documents and/or new borrowing up to a maximum principal amount in aggregate not exceeding USD 200,000,000 and (except to the extent incurred as a result of a breach of clause 15 (Amendments to First Finance Documents)), together with any prepayment premium, interest or fees owing in respect of that principal amount and any enforcement costs or indemnity amounts owing to the First Creditors under the First Finance Documents.

**"Group"** means the Parent Guarantor, the Issuer and any subsidiaries of the Issuer from time to time.

**"Insolvency Event"** means the appointment of a liquidator in respect of an Obligor, or the making of a winding up order or passing of a resolution for the winding up of an Obligor, any bankruptcy, insolvency proceedings, reconstruction, creditors' process or similar event.

**"Majority First Creditors"** means those First Creditors whose exposures are greater than 66 2/3% of the exposures of all of the First Creditors. The Bondholders will vote as a block via the Bond Trustee (i.e. if the required majority of Bondholders vote in favour of a decision, the exposures of all Bondholders will be counted in favour for the purpose of determining the Majority First Creditors).

**"Refinancing First Finance Documents"** means, in relation to a refinancing or new borrowing of any First Ranking Secured Liabilities, any documents relating to the indebtedness created by, or the terms of, that refinancing or new borrowing.

**"Second Finance Document"** means the Royalty Facility Agreement and each 'finance document' (howsoever defined) in respect of the Royalty Facility Agreement.

**"Second Ranking Secured Liabilities"** means all monies owing to the Second Creditor or the Security Agent under the Second Finance Documents, any interest or fees owing in respect of that principal amount and any enforcement costs or indemnity amounts owing to the Second Creditor under the Second Finance Documents.

"**Secured Liabilities**" means the First Ranking Secured Liabilities and the Second Ranking Secured Liabilities.

"**Substantive Enforcement Action**" means any Enforcement Action other than:

- (a) blocking or restricting payments (including distribution payments) to any Obligor or any shareholder of an Obligor;
- (b) blocking or restricting withdrawals from any bank account;
- (c) claiming under any indemnity set forth in the Finance Documents for an amount of less than USD 3,000,000; or
- (d) changing the receiving account for payments made to an Obligor under any sales or offtake agreement.

**2 RANKING AND PRIORITY:**

Subject to clauses 3, 4 and 13, the amounts outstanding to the Creditors will rank in right and priority of payment as follows:

- (a) first, the First Ranking Secured Liabilities; and
- (b) second, the Second Ranking Secured Liabilities.

The Creditors (and the Security Agent acting on behalf of the Creditors) may not claim or sue for any debt, enforce any security, bring claims in insolvency or begin insolvency/winding up proceedings except in accordance with (or otherwise not prohibited by) the Intercreditor Agreement.

**3 PRIORITY OF SECURITIES:**

Subject to clause 13, the Common Security shall rank as follows:

- (a) **first**, for the benefit of the First Creditors in satisfaction of the First Ranking Secured Liabilities; and
- (b) **second**, for the benefit of the Second Creditor in satisfaction of the Second Ranking Secured Liabilities.

No Creditor may take the benefit of additional security or guarantees from any member of the Group to secure the relevant Secured Liabilities unless equivalent additional security and/or guarantees are also granted to secure all of the Secured Liabilities (save for permitted exceptions in respect of the First Creditors, being the Escrow Account Pledge and the Parent Guarantee (as defined in the Bond Terms)).

**4 PERMITTED PAYMENTS:**

The Obligors may make payments of the First Ranking Secured Liabilities at any time in accordance with the First Ranking Finance Documents.

The Obligors may make payments to the Second Creditor in respect of the Second Ranking Secured Liabilities then due in accordance with the Second Ranking Finance Documents only if:

- (a) all amounts then due and payable in respect of the First Ranking Secured Liabilities have been paid; or
- (b) the payment is of ordinary course royalty payments (including any associated tax payments) falling due prior to the First Creditors taking Substantive Enforcement Action.

The Issuer may only make distributions to the Parent Guarantor, if all Royalty payments have been made in respect of quarters before the quarter in which such distribution is made.

**5 APPOINTMENT  
OF SECURITY  
AGENT AND  
POWER OF  
ATTORNEY:**

The Security Agent will hold the Common Security as security agent for the Creditors pursuant to the Intercreditor Agreement as security for all of the Secured Liabilities.

Any change of security agent shall require the consent of the Bond Trustee (the Bond Trustee shall be authorised (in its sole discretion) to grant such consent without any approval or consent from the Bondholders) and the Second Creditor (acting reasonably and provided that the Second Creditor shall not be entitled to withhold consent if such replacement security agent is a regulated financial institution). Before the change of security agent, the Issuer shall be given the opportunity to state its views on the proposed security agent, but the final decision as to appointment shall lie exclusively with the Bond Trustee and the Second Creditor.

Subject to the Intercreditor Agreement, the Security Agent will act on the instructions of:

- (a) the Controlling Creditors; or
- (b) to the extent permitted to enforce or to require the enforcement of the Common Security under clause 8 (Enforcement of Common Security), the Second Creditor.

**6 EFFECT OF  
INSOLVENCY  
EVENT:**

After the occurrence of an Insolvency Event in relation to an Obligor, any Creditor entitled to receive a distribution out of the assets of that Obligor in respect of Secured Liabilities owed to that Creditor shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of that Obligor to make that distribution to the Security Agent (or to such other person as the Security Agent shall direct) until the liabilities owing to the Creditors have been paid in full.

The Security Agent shall apply such distributions made to it in accordance with clause 13 (Application of proceeds).

**7 TURNOVER:**

Any monies received by a Creditor in breach of the Intercreditor Agreement (including under any guarantee or proceeds from the enforcement of third-party security and amounts received through the application of set-off) must be held on trust for (or as agent of) the Creditors entitled to such monies and immediately remitted to the Security Agent for application in accordance with the Intercreditor Agreement.

**8 ENFORCEMENT OF COMMON SECURITY:**

If the First Creditors wish to issue instructions as to enforcement of any Common Security ("**Enforcement Instructions**"), the First Creditors shall deliver a copy of those proposed Enforcement Instructions (an "**Initial Enforcement Notice**") to the Security Agent and the Security Agent shall promptly forward such Initial Enforcement Notice to the Second Creditor.

Subject to the exceptions set out below and in Clause 12 (Enforcement principles), the Security Agent will act in accordance with Enforcement Instructions received from the Majority First Creditors without consultation with or the consent of any other Creditor.

The Second Creditor shall only be permitted to take Enforcement Action if either:

- (a) the First Creditors have taken Enforcement Action under the acceleration provisions in respect of the First Ranking Secured Liabilities, in which case the Second Creditor shall be entitled to take the same Enforcement Action under the provisions of the Second Ranking Finance Documents;
- (b) the First Creditors have given their prior consent;
- (c) the Second Creditor has given (i) notice that an event of default has occurred and is continuing under the Second Ranking Finance Documents (other than a cross default as a result of an event of default due to a breach of any financial covenant under the First Ranking Finance Documents) or (ii) a termination notice under the Royalty Agreement, and in each case a 180 day standstill has elapsed from the date the notice becomes effective and in respect of (i) the relevant event of default is continuing at the end of that period; or
- (d) upon the occurrence of any Insolvency Event relating to an Obligor, in which case the Second Creditor may initiate enforcement against such Obligor.

**9 ENFORCEMENT ACTIONS:**

If the Second Creditor has not terminated the Royalty Facility Agreement:

- (a) to the extent that the First Creditors enforce on all or any material part of the Common Security for the purpose of continuing to mine or extract rutile, garnet or other products ("**Products**") from the Mine (or for the purpose of ultimately, directly or indirectly, selling, transferring or disposing of the material part of the Project assets to another person whose intention is to do so), the First Creditors shall be bound by and subject to the terms of the Royalty Facility Agreement and shall ensure that the sale, transfer or disposition of the Project assets complies with the transfer provisions under the Royalty Facility Agreement;
- (b) the First Creditors undertake that they will not request, approve, support consent to or vote in favour of (and shall be deemed to have voted to reject) any plan, arrangement, liquidation, reorganization, proposal, compromise or similar arrangement (an "**Insolvency Plan**") pursuant to or relating to any proceeding arising from an Insolvency Event with respect to an Obligor that involves:
  - (i) a sale, disposition or transfer of all or any material part of the Project assets to a transferee, unless such Insolvency Plan requires that any such transferee agrees in writing in favour of the Second Creditor to be bound by and subject to the terms of the Royalty Facility Agreement (or amended or replacement agreement which preserves the economic benefits and position of the Second Creditor under the Royalty Facility Agreement, including re-granting of second ranking security in the Common Security (a "**Replacement Agreement**")), to the extent that it takes possession of all or any material part of the Project assets and continues and plans to continue to mine or extract Products from the Mine; or
  - (ii) a restructuring or rearrangement of some or all of the obligations of an Obligor (including a sale, disposition or other transfer of the shares of the Issuer) where all or any material part of the Project assets continue to be the property of the Obligors and the Project continues to mine or extract Products from the Mine, unless such arrangement preserves the material rights of the Second Creditor under the Royalty Facility Agreement or a

Replacement Agreement, including by way of the survival of the Royalty Facility Agreement; and

- (c) the First Creditors undertake that they will use their rights as a creditor to create, support and vote in favour of any Insolvency Plan that meets (or exceeds from the perspective of the Second Creditor, acting reasonably) the conditions set out in clause (b) above, and will not request, approve or consent to or encourage or support any other person in approving (or vote in favour of or support any application, restructuring, refinancing, recapitalization, plan, proposal or other transaction which involves) the Royalty Facility Agreement not continuing as an ongoing obligation of the Issuer,

provided that nothing herein shall:

- (A) require the First Creditors to support or vote in favour of any Insolvency Plan which (y) does not indefeasibly repay, in full in immediately available funds, the First Ranking Secured Liabilities; or (z) compromises the First Ranking Secured Liabilities (including extending the time for payment of the First Ranking Secured Liabilities or amending the terms of the First Ranking Finance Documents) or the rights of the First Creditors, in any way, unless otherwise supported by the First Creditors in their sole discretion; or
- (B) prevent the First Creditors from pursuing or supporting a liquidation of the Project assets, including through Enforcement Action, which does not result in any person continuing to mine or extract Products from the Mine to the extent that the First Creditors reasonably view such liquidation (x) as necessary to ensure repayment in full of the First Ranking Secured Liabilities or (y) reasonably likely to result in materially superior recovery of proceeds versus other enforcement actions.

**10 NON-DISTRESSED DISPOSALS:** If a disposal of an asset of the Group that is not a Distressed Disposal, the Security Agent shall be irrevocably authorised to, among others, release the Common Security or any claim over the relevant asset or the relevant Obligor's other property.

**11 DISTRESSED DISPOSALS:** Subject to clause 9 (Enforcement actions), if a disposal of an asset of the Group is a Distressed Disposal, the Security Agent shall be irrevocably authorised:

- (a) to release the Common Security and any other claim over the relevant asset; and
- (b) if the relevant asset consists of shares or ownership interests in a Debtor or a holding company of an Obligor (each, a "**Disposed Entity**"):
  - (i) to release any Common Security granted by the Disposed Entity, or any subsidiary of the Disposed Entity, over any of its assets;
  - (ii) to release the Disposed Entity, or any subsidiary of the Disposed Entity, from all or any part of its liabilities;
  - (iii) to release any other claim of any Creditor or another Obligor over that Disposed Entity's assets or over the assets of any subsidiary of that Disposed Entity;
  - (iv) to release the Disposed Entity or any other member of the Group from all or any part of its liabilities arising out of or in connection with that Distressed Disposal, or dispose of (including by way of appropriation) all or any part of those liabilities;
  - (v) to dispose of (including by way of appropriation) all or any part of the liabilities owing by the Disposed Entity, or any subsidiary of the Disposed Entity; and/or
  - (vi) to dispose of (including by way of appropriation) all or any part of the liabilities owing to the Disposed Entity, or any subsidiary of the Disposed Entity,

in each case, (A) that may, in the discretion of the Security Agent, be considered necessary or desirable and (B) on behalf of the relevant Creditors and Obligors.

The net proceeds of each Distressed Disposal shall be paid, or distributed, to the Security Agent for application in accordance with clause 13 (Application of proceeds) below.

For the purposes of Distressed Disposals, the Security Agent (a) shall act on the instructions of the Controlling Creditors, or in the absence of any such instructions, as the Security Agent sees fit and (b) may engage, or approve the engagement of, pay for and rely on the services of a financial adviser in accordance with clause 12 (Enforcement principles) below.

In circumstances where the royalty survives the security will continue or be replicated after the disposal.

**12 ENFORCEMENT PRINCIPLES:**

The main enforcement principles are as follows (and subject at all times to clause 9 (Enforcement actions)):

- (a) it shall be the primary and over-riding aim of any enforcement of any Common Security to maximise, to the extent consistent with a prompt and expeditious realisation of value, the value realised from any such enforcement;
- (b) any enforcement of any security over shares shall be conducted with the advice of an independent financial adviser appointed by, or approved by, the Security Agent, but otherwise the Security Agent shall be under no obligation to appoint a financial adviser or to seek the advice of a financial adviser unless expressly required to do so by the Intercreditor Agreement;
- (c) if it is anticipated that the enforcement will result in realisation of value less than the debt outstanding to the Creditors, valuations from two independent (not therefore any 'manager' of the First Finance Documents), well reputed financial advisors with expertise in mining operations, shall be provided to the Second Creditor and enforcement generating proceeds substantially in line with or within the range of such valuations, will be conclusive evidence that the enforcement objective set out above has been met; and
- (d) the First Creditors and the Security Agent shall, so far as practicable in the circumstances, consult with the Second Creditor about the enforcement plan and before taking any formal steps to exercise any remedy against any Obligor or taking any Enforcement Action, but nothing in this paragraph (d) will invalidate or otherwise affect any action or step taken without such consultation.

**13 APPLICATION OF PROCEEDS:**

Any proceeds received by the Security Agent from the enforcement of the Common Security shall be allocated in the following order of priority:

- (a) **first**, for distribution to the Security Agent for payment of any amounts owing to the Security Agent;
- (b) **second**, for distribution to the Second Creditor in payment of the ordinary course royalty payments which fall due prior to the commencement of Substantive Enforcement Action in accordance with the Second Ranking Finance Documents;



- (c) **third**, for distribution pro rata to the First Creditors for payment or repayment of the First Ranking Secured Liabilities;
- (d) **fourth**, for distribution to the Second Creditor in payment of any remaining Second Ranking Secured Liabilities;
- (e) **fifth**, if the Issuer has no further actual or contingent liability towards the Creditors, towards payment to any person to whom the Security Agent is obliged to pay in priority to any Obligor; and
- (f) **sixth**, subject to the irrevocable discharge of all the Secured Liabilities having occurred, the balance, if any, shall be paid to the relevant Obligor.

**14 PURCHASE RIGHT:**

Following notice by the Security Agent to the Second Creditor of any intention to take an Enforcement Action, the Second Creditor shall have the right to purchase the obligations under the First Ranking Secured Liabilities for an amount equal to the principal amount of the First Ranking Secured Liabilities outstanding at the time of the purchase, together with any prepayment premium, interest or fees owing in respect of that principal amount and any enforcement costs or indemnity amounts owing to the First Creditors under the First Finance Documents. The Second Creditor's election to purchase the First Ranking Secured Liabilities shall be exercised in writing and shall be completed (with payment of the purchase price) within twenty (20) business days following such election being delivered, upon terms to be agreed upon and included in the Intercreditor Agreement. Unless and until the purchase right is completed, the granting of the purchase right and the delivery of an election to exercise the purchase right shall not in any way limit or restrict the First Creditors' rights under the Intercreditor Agreement, including the right to take or continue any Enforcement Action.

**15 AMENDMENTS TO FIRST FINANCE DOCUMENTS:**

Amendments to the First Finance Documents (other than the Intercreditor Agreement) are permitted without the prior consent of any Creditor, save for any change (however implemented or effected, including by entering into any new or supplemental Finance Document or refinancing or assigning any First Ranking Secured Liabilities (including any refinancing to which clause 21 of these principles applies)):

- (a) that would result in the total principal amount of the debt owing under the First Finance Documents exceeding USD 200,000,000 from time to time;
- (b) that would result in the coupon under the First Finance Documents exceeding 17.5% per annum;

- (c) to change any provisions imposing restrictions on payments of the Second Ranking Secured Liabilities; or
- (d) to change any defined term in the First Finance Documents (or enter into any additional First Finance Document or designate a document as a First Finance Document) to the extent that such action would, in substance, implement or effect a restricted matter set out in paragraphs (a) to (c) above (except to the extent permitted above),

in which case the consent of the Second Creditor is required in order for such amendment.

If the Obligors and the First Creditors agree a change or supplemental document to a First Finance Document in breach of this clause 15 any resulting increase to the debt owing to the First Creditors will not be First Ranking Secured Liabilities.

The above restrictions will not apply to an amendment that is an administrative change or correction which is not prejudicial to the Second Creditor or the Common Security.

**16 AMENDMENTS  
TO SECOND  
FINANCE  
DOCUMENTS:**

In respect of the Second Creditor, amendments to Second Finance Documents (other than the Intercreditor Agreement) are permitted without the prior consent of the Creditors, save for any change (however implemented or effected, including by entering into any new or supplemental Finance Document or assigning any Second Ranking Secured Liabilities) to:

- (a) increase the royalty rate, the default rate or fees;
- (b) adjust any provisions that would result in an increase in the amount payable by the Issuer upon the exercise of its royalty buy-back option;
- (c) bring forward the schedule or change the currency of payments of royalty, or change the basis of calculation of royalty, default interest, fees or the royalty buy-back option;
- (d) result in a conditional payment under the Second Finance Documents becoming a scheduled or unconditional payment;
- (e) affect the subordination and ranking principles;
- (f) effect an increase in, or addition of any fees or commission payable under the Second Finance Documents other than any amendment, waiver or consent fee provided that the aggregate amount of such fees shall not exceed an aggregate amount of

USD 500,000 in any financial year (except where such fees are funded by new equity contributions); or

- (g) change any defined term in the Second Finance Documents (or enter into any additional Second Finance Document or designate a document as a Second Finance Document) to the extent that such action would, in substance, implement or effect a restricted matter set out in paragraphs (a) to (f) above (except to the extent permitted above),

in which case, the consent of the First Creditors is required in order for the amendment to be permitted.

The above restrictions will not apply to an amendment that is an administrative change or correction which is not prejudicial to the First Creditors or the Common Security.

**17 CONFLICTS:**

In case of conflict between the Intercreditor Agreement and either the First Finance Documents or the Second Finance Documents, the terms of the Intercreditor Agreement shall prevail.

**18 REFINANCING OR ASSIGNMENT:**

Subject to clauses 15 (Amendments to First Finance Documents) and 16 (Amendments to Second Finance Documents) (which will apply to the terms of any refinancing) and compliance with sanctions:

- (a) the Issuer may refinance the First Ranking Secured Liabilities, may incur new Financial Indebtedness constituting First Ranking Secured Liabilities and the First Creditors may assign their interests under a First Finance Document or the Common Security without the consent of the other Creditors. The Issuer may refinance the First Ranking Secured Liabilities and/or incur such new Financial Indebtedness by way of financing at Issuer level and/or at Parent Guarantor level, together with a guarantee from Issuer, secured over the assets of the Issuer and the shares in the Issuer; and
- (b) the Second Creditor may assign or novate its interests under a Second Finance Document or the Common Security without the consent of the First Creditors,

in each case so long as any new Creditor or assignee agrees to be bound by the terms of the Intercreditor Agreement by acceding as a Creditor to the Intercreditor Agreement.

**19 ANTI-LAYERING:**

The Intercreditor Agreement will include standard anti-layering provisions preventing the Obligors from incurring financial indebtedness that compromises the priority between the Secured Liabilities as set out in the Intercreditor Agreement.

- 20 INFORMATION:** The Creditors (other than the Security Agent) agree to notify the Security Agent (who will notify each other Creditor) of the occurrence of (i) a non-payment event of default under their Finance Documents which they become aware of and if applicable, any waiver or remedy in respect of such event of default and (ii) any other event of default that they notify the company of, by copying the Security Agent on such notification.
- The Second Creditor shall have the right to receive valuations and other professional services reports commissioned by the Security Agent on behalf of the Creditors, but, subject to clause 12 (Enforcement principles), shall not have a right to receive any recommendations or advices which are specifically addressed to the Security Agent, the First Creditors or any information in relation to the First Creditors' potential enforcement strategy or any other matter that the First Creditors reasonably believe is, or is likely to, give rise to a conflict of interests between the First Creditors and the Second Creditor (which may be redacted).
- The Second Creditor has no right to receive information other than as expressly set out in the Intercreditor Agreement.
- 21 AMENDMENTS TO INTERCREDITOR AGREEMENT** Amendments to the Intercreditor Agreement will require consent of the Majority First Creditors and the Second Creditor save for certain provisions to be agreed which require all Creditors to consent.
- Upon a refinancing occurring at any time following the end of a period of steady state Royalty payments following Completion (as such terms shall be agreed in the Royalty Facility Agreement and aligned with the Bond documents), provided that no Event of Default or potential Event of Default is continuing under the Royalty Agreement (unless it would be remedied as a result of the refinancing), the Intercreditor Agreement shall be amended on the terms set out in the Annex hereto.
- 22 BOND TRUSTEE PROTECTION:** Customary Bond Trustee protection provisions will be included in the Intercreditor Agreement.
- 23 GOVERNING LAW AND JURISDICTION:** The Intercreditor Agreement shall be governed by English law and be subject to LCIA arbitration.

**Annex to the Intercreditor Principles  
Amendments to apply on a Refinancing**

1. **"FIRST RANKING SECURED LIABILITIES"** References to USD 200,000,000 shall increase to USD 220,000,000.

**Annex to the Intercreditor Principles  
Amendments to apply on a Refinancing**

2. **"SUBSTANTIVE ENFORCEMENT ACTION"** The definition of Substantive Enforcement Action shall be amended to read:

**"Substantive Enforcement Action"** means any Enforcement Action other than:

- (a) blocking or restricting bond issues or utilisations as a result of an event of default;
- (b) blocking or restricting payments (including distribution payments) to any Obligor or any shareholder of an Obligor;
- (c) blocking or restricting withdrawals from any bank account;
- (d) claiming under any indemnity set forth in the Finance Documents for an amount of less than USD 3,000,000;
- (e) changing the receiving account for payments made to an Obligor under any sales or offtake agreement; or
- (f) suspending a contractual counterparty's termination rights under a direct agreement (if any are in effect).

3. **PARA 4 (PERMITTED PAYMENTS) OF THE BOND INTERCREDITOR PRINCIPLES** Sub-paragraph (b) shall be amended to read as follows:

*"(b) the payment is of ordinary course royalty payments (including associated tax payments) falling due prior to the First Creditors or the Second Creditor taking Substantive Enforcement Action."*

4. **PARA 8 (ENFORCEMENT OF COMMON SECURITY) OF THE BOND INTERCREDITOR PRINCIPLES** The Second Creditor shall only be permitted to take Enforcement Action upon termination of the Second Ranking Finance Documents subject to a 180 day standstill period, provided that the Second Creditor shall be entitled to petition for the winding up of the Issuer if any amount is due and outstanding under the Second Ranking Finance Documents subject to a 180 day standstill period.

**5. PARA 9 (ENFORCEMENT ACTIONS) OF THE BOND INTERCREDITOR PRINCIPLES**

Paragraph 9 shall cease to apply and, amongst their enforcement rights, the First Creditors shall have the right to terminate the Royalty Agreement on enforcement, or it shall be deemed terminated if required, and all proceeds of enforcement shall be applied in accordance with the post-enforcement payment cascade.

**6. PARA 13 (APPLICATION OF PROCEEDS) OF THE BOND INTERCREDITOR PRINCIPLES**

Sub-paragraph (b) shall be amended to read as follows:

*"(b) second, for distribution to the Second Creditor in payment of the ordinary course royalty payments falling due prior to the First Creditors or the Second Creditor taking Substantive Enforcement Action, other than:*

*(i) the last ordinary course royalty payment which falls due prior to such action; and*

*(ii) ordinary course royalty payments falling due after the end of the 180 day standstill period set out in paragraph 8 (such 180 day period shall automatically commence upon delivery of the relevant notice under the Royalty Agreement);"*

**7. PARA 15 (AMENDMENTS TO FIRST FINANCE DOCUMENTS) OF THE BOND INTERCREDITOR PRINCIPLES**

In sub-paragraph (a) USD 200,000,000 shall increase to USD 220,000,000.

In sub-paragraph (b) 17.5% shall remain the same in relation to non-regulated entities such as PE houses and similar.

A new sub-paragraph (c) shall be inserted as follows (and the remaining sub-paragraphs shall be renumbered accordingly):

*"(c) that would result in any prepayment premium, prepayment fees and other fees under the First Finance Documents to any non-regulated entities such as PE houses and similar exceeding USD 10,000,000;"*

**8. COMMON SECURITY**

The Common Security may be transferred to the new security agent appointed by the refinancing creditors and/or released and new security granted on substantively similar terms to the Common Security granted in respect of the Bonds provided that such Common Security is also for the benefit of the Second Creditor as second priority creditor. If relevant, the

Second Creditor shall agree to waive any step up rights that would otherwise apply under Norwegian law in favour of the Second Creditor upon refinancing of the First Ranking Secured Liabilities.

**9. BOND TERMINOLOGY AND AGENCY PROVISIONS**

Other customary amendments shall be agreed to allow for the refinancing debt to take the form of a loan rather than a bond and for the relevant agency provisions to be amended in line with loan (rather than bond) market practice. Such amendments may not have any direct or indirect adverse impact on the Second Creditor.

**10. FURTHER ASSURANCES**

A further assurances obligation shall be included requiring the parties to enter into such further documentation as may reasonably be required to give effect to a refinancing which complies with the principles agreed.

**ATTACHMENT 4**  
**FORM OF COST AND TIME TO COMPLETE CERTIFICATE (“CERTIFICATE”).**

**ENGEBØ PROJECT– COST AND TIME TO COMPLETE CERTIFICATE**

To: Bond Trustee

From: Nordic Rutile AS (“**Issuer**”) and Nordic Mining ASA (“**Parent Guarantor**”)

Dated:

**Nordic Rutile AS 12.5% senior secured USD 100,000,000 bonds 2022/2027 with ISIN NO0012734112 (the “Bond Terms”)**

Terms defined in the Bond Terms have the same meaning when used in this Certificate unless given a different meaning in this Certificate.

The Issuer certifies as follows:

1. **Time-to-Complete Test**

The forecast date of “Project Completion” is **[insert date]**.

2. **Cost-to-Complete Test**

The aggregate amount in (A) below is [greater/less] than the aggregate amount in (B) below and, therefore the Cost-to-Complete Test is [satisfied/not satisfied].

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**(A) Available Funding, being comprised of:** USD *[insert amount]*

1 the balance standing to the credit of: USD *[insert amount]*

- the Project Accounts - *[insert amount]*
- the Escrow Account - *[insert amount]*;
- any interest forecast to be earned on those accounts in the period up to the Project Completion - *[insert amount]*; and

2 any tax credits, insurance proceeds, compensation amounts under the Finance Documents or other amounts (not being revenue) forecasted by the Master Control Budget to be received, and which the Independent Engineer is satisfied will be received, by the Issuer prior to Project Completion which will be available to meet Project Costs. USD *[insert amount]*

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**exceeds the aggregate of:**

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**(B) the amount of Project Costs not yet paid, being comprised of:** USD *[insert amount]*



1	Construction costs;	<b>USD [insert amount]</b>
2	Operating costs prior to Project Completion;	<b>USD [insert amount]</b>
3	Debt service falling due prior to Project Completion;	<b>USD [insert amount]</b>
4	any costs, fees and expenses of the Issuer's engineering, environmental, social, governmental, insurance and legal consultants under or in relation to the negotiation, preparation, execution and completion of the Finance Documents and Project Documents or otherwise in connection with the Engebø Project;	<b>USD [insert amount]</b>
5	costs, fees and expenses of start-up, testing and commissioning of the Engebø Project, including costs, fees and expenses of the Independent Engineer incurred in attending any test or reviewing any test results;	<b>USD [insert amount]</b>
6	insurance premiums payable prior to Project Completion;	<b>USD [insert amount]</b>
7	any taxes payable prior to Project Completion;	<b>USD [insert amount]</b>
8	any other costs and expenses which are payable before Project Completion reflected in the Master Control Budget.	<b>USD [insert amount]</b>
<hr/>		
	<b>(A) - (B)</b>	<b>USD [insert amount]</b>
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**ISSUER AND PARENT GUARANTOR CONFIRMATION**

I,....., for and on behalf of the Issuer and Parent Guarantor, certify the validity and completeness of the information stated in this certificate.

**INDEPENDENT TECHNICAL ENGINEER CONFIRMATION**

I,....., for and on behalf of the Independent Engineer, certify that I have made due enquiries to substantiate the validity and completeness of the information stated in this certificate.

Yours faithfully,

[INDEPENDENT TECHNICAL ENGINEER]

**ATTACHMENT 5**  
**PROJECT DOCUMENTS AND FUTURE PROJECT DOCUMENTS**

**Part I – Project Documents**

- (a) Contract with Sunnfjord Industripartner AS (“EPC1”)
- (b) Contract with Åsen & Øvrelid AS (“EPC2”)
- (c) Contract with Nordic Bulk AS (“EPC3”)
- (d) Contract with Normatic AS (“EPC4”)
- (e) Operating license for the Engebø Project granted by the Ministry of Trade, Industry and Fisheries
- (f) Offtake Contracts in place as of the Issue Date
- (g) Discharge permit from the Norwegian Environment Agency (Nw.: *Miljødirektoratet*).

**Part II – Future Project Documents**

- (a) The Royalty Facility
- (b) Any Offtake Contracts to be entered into after the Issue Date
- (c) Mining services agreement