



**THE GOVERNMENT OF THE REPUBLIC OF MALAWI**

**AND**

**GLOBE METALS AND MINING (AFRICA) LIMITED**

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**MINING DEVELOPMENT AGREEMENT**

**FOR**

**KANYIKA NIOBIUM PROJECT**

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**MARCH, 2023.**

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**DEVELOPMENT AGREEMENT  
KANYIKA NIOBIUM PROJECT**

**THIS AGREEMENT IS MADE** on the 27<sup>th</sup> day of **March, 2023**,

**BETWEEN:**

**THE GOVERNMENT OF THE REPUBLIC OF MALAWI**, acting through the Ministry of Mining at Capital City, Lilongwe, Republic of Malawi and Ministry of Finance and Economic Affairs at Capital Hill, Republic of Malawi ("**Government**"); and

**GLOBE METALS AND MINING (AFRICA) LIMITED** Company Registration Number 8431, a company incorporated in the Republic of Malawi and whose registered office is situated at Plot 43/02/90, Off Mphonongo Road, Area 43, Lilongwe, Republic of Malawi ("**Company**").

**RECITALS:**

- A.** The entire property in, and control over, minerals in land in Malawi are vested in the Republic of Malawi.
- B.** The Government desires to encourage the further exploration and development of minerals in Malawi through the operation of mining companies in a manner which is consistent with needs of the people of Malawi, the protection of the environment, and the development of the country.
- C.** The Government also desires, through the operation of mining companies:
- to benefit regions in which minerals are developed, including facilitating growth centres and education for sustainable regional development;
  - to create more employment opportunities, to encourage and develop local business and ensure that skills, know-how and technology are transferred to citizens of Malawi;
  - to acquire basic data regarding and related to the country's mineral resources; and
  - to preserve and rehabilitate the natural environment for the further development of Malawi.
- D.** The Company was incorporated in Malawi on 24<sup>th</sup> July, 2007 and is beneficially wholly owned by Globe UK, which in turn is wholly owned by GMLL (Australia).
- E.** The Company is the sole registered holder of the Kanyika Mineral Right.

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- F. The Company prepared a Feasibility Study and since then has conducted and is continuing to conduct a range of optimisation studies on the Project in an endeavour to improve the economics of the Project.
- G. In July 2012, the Company submitted an environmental impact assessment report with respect to the Kanyika Mineral Right and wishes to engage in mining and operations on the Kanyika Mineral Right, once finance is obtained, but otherwise in accordance with the Environmental Impact Assessment and such other conditions as the Government may require.
- H. The Parties acknowledge that the Company has previously undertaken significant expenditure in exploration over the license area, and has complied with all license conditions, through technical, environmental, social and community programs, has complied with all licence conditions and undertaken rehabilitation of the relevant area without environmental or social detriment whatsoever.
- I. Pursuant to section 318(a) of the Mines and Minerals Act, the Government has granted Mining Licence No. LML 0216/21 to the Company on 13<sup>th</sup> August 2021 and the Company wishes to develop the Project in accordance with the requirements of the Mines and Minerals Act and on the terms and conditions in this Agreement.

NOW THEREFORE, in accordance with the authority provided under section 147 of the Mines and Minerals Act, the Parties hereby agree as follows:

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement, unless the context otherwise requires:

“**Affiliate**” has the meaning given to that term in the Mines and Minerals Act;

“**Affiliate Contract**” means any transaction or group of related transactions (including without limitation the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with an Affiliate of the Company or a Related Person;

“**Agreement**” means the agreement constituted by this document as well as all schedules and exhibits annexed to it, as varied from time to time in accordance with the terms of this document;

“**Agreement Date**” means the date that this Agreement has been executed by the Parties;

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“**AML0026**” means the application for a mining licence over part of EPL0188, which application was recommended on 12 December 2014 by the Mineral Licensing Committee for grant by the Minister of Mines, and effected as ML No. LML 0216/21 on 13<sup>th</sup> August 2021;

“**Anti-Corruption Laws**” means the US Foreign Corrupt Practices Act 1977, the UK Bribery Act 2010, Corrupt Practices Act 2004 of Malawi and the rules and regulations promulgated thereunder, and all other laws, rules and regulations of any jurisdiction applicable to the Company as relevant (including, in respect of the Company, the Republic of Malawi and Commonwealth of Australia) concerning or relating to bribery or corruption;

“**Anti-Money Laundering and Counter-Terrorism Laws**” means the US Patriot Act 2001, the UK Money Laundering Control Act of 1986, the US Bank Secrecy Act of 1970, Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act 2006 of Malawi and the rules and regulations promulgated thereunder, and all other laws, rules, and regulations of any jurisdiction applicable to the Company or an Affiliate (as relevant) in which the proceeds of the sale of the Mine Product will be used (including, in respect of the Company, the Republic of Malawi and the Commonwealth of Australia) concerning or relating to anti-money laundering or anti-terrorism or counter-terrorism financing;

“**Arbitration Rules**” means the Rules of Arbitration of the International Chamber of Commerce;

“**Arm’s Length Terms**” means a transaction where:

- (a) the parties in negotiating the transaction have sought to promote their own best interests in accordance with fair and honest business methods;
- (b) the consideration expressed in the agreement for the transaction entered into is the only consideration for the transaction; and
- (c) the price and other terms of the transaction have not been affected by, nor determined as a consequence of, any other agreement or any direct or indirect relationship (other than the relationship created by the transaction agreement between the contracting parties);

“**Best Endeavours**” means the taking by the relevant Party of all lawful, reasonable steps in such Party’s power but nothing requires the relevant Party to pay money or incur expenses which are not required to be paid or incurred in the ordinary course;

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“**Business Development Assistance Plan**” means the business development and assistance plan consistent with section 165 of the Mines and Minerals Act as may be updated or revised in accordance with the Mines and Minerals Act;

“**Business**” means the business that may be carried on by the Company from time to time, including:

- (a) prospecting, exploration and development;
- (b) Mining of ore and waste;
- (c) treatment of ore to produce Mine Product;
- (d) Processing of Mine Product;
- (e) sale of Mine Product;
- (f) storage of radioactive material in the Hazardous Waste Facility; and
- (g) other activities relating to the production of reagents, consumables, electricity and transport and trading of Mine Product, which may be incidental and/or conducive to the foregoing and which may be approved by the Company from time to time;

“**Business Day**” means any day (other than a Saturday, a Sunday or a public holiday declared by the Government);

“**Change of Control**” means any assignment, sale, or transfer of interest of any type that results directly or indirectly in a change of possession of the power to Control a Person. A Change of Control of a shareholder, member, partner or joint venturer of a Person will constitute a Change of Control of the Person if such shareholder, member, partner or joint venturer can Control the Person;

“**Commissioner**” has the meaning given to that term in the Mines and Minerals Act;

“**Commissioner General**” means Commissioner General of the Malawi Revenue Authority;

“**Commissioning Date**” means the date on which the Operations are commissioned for the purposes of the Taxation Act;

“**Common Control**” means the circumstances where two or more Persons are Controlled by the same Person;

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**“Community Development Agreement”** means a community development agreement entered into between the Company and a qualified community in accordance with section 169 of the Mines and Minerals Act;

**“Community Engagement Plan”** means the community engagement plan that satisfies the requirements of sections 150(q)(i) and 300 of the Mines and Minerals Act, to be developed in accordance with clause 13.2 and approved by the Mineral Resources Committee, as may be updated or revised in accordance with the Mines and Minerals Act;

**“Companies Act”** means the Companies Act (Cap. 46:03 of the Laws of Malawi);

**“Control”** means:

- (a) the power (directly or indirectly) whether by the ownership of share capital, the possession of voting power, contract or otherwise to appoint and/or remove all or such of the board of directors or other governing body of a Person as are able to cast a majority of the votes capable of being cast by the members of that board or body, or otherwise to control or have power to control the policies and affairs of that Person; or
  - (b) the holding or the ownership of the beneficial interests in or the ability to exercise the voting rights applicable to shares or other securities in any Person which confer in aggregate on the holders, whether directly or by means of holding such interests in one or more other Persons (directly or indirectly), more than five per cent (5%) of the voting rights exercisable at general meetings of that Person; and
- “Controlled”** or **“Controlled by”** shall be construed accordingly;

**“Decision to Mine”** means a decision by the board of the Company, based upon the Feasibility Study, the terms of the Mining Licence and the Company having a credit approved term sheet, to commence Mining;

**“Dispute”** means any dispute, disagreement, controversy or claim arising out of or relating to this Agreement, or the interpretation or performance of provisions of this Agreement or the breach, termination or validity of this Agreement or the claim by a Party that it is experiencing hardship but does not include a matter which by operation of this Agreement is referred to an Independent Expert (except as provided for in clause 29.4(m);

**“District”** includes Kasungu and Mzimba Districts located in Malawi;

**“Eligible Applicant”** means a Person eligible to apply for a mineral tenement under the Mines and Minerals Act;

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**“Employment and Safety Laws”** means the Mines and Minerals Act, the Occupational Safety, Health and Welfare Act (Cap. 55:07 of the Laws of Malawi), the Workers Compensation Act (No. 74 of 2000), the Employment Act (Cap. 55:02 of the Laws of Malawi) and the Labour Relations Act (Cap. 54:01 of the Laws of Malawi) or any other Law dealing with employment, or occupational safety or health;

**“Employment and Training Plan”** means the employment and training plan for those citizens and permanent residents of Malawi who are to work at the Project, which is to be submitted by the Company in accordance with sections 150(q)(viii) and 163 of the Mines and Minerals Act and approved by the Mineral Resources Committee, as may be updated or revised in accordance with the Mines and Minerals Act;

**“End Date”** means the first day of the Decision to Mine or such other date as agreed between the Parties;

**“Enforcing Party”** has the meaning given to that term under clause 28.3(a);

**“Environment”** shall have the meaning set out in the Environmental Laws or any statutory amendment or re-enactment of them;

**“Environmental Laws”** means the Environment Management Act and any other Law (including the common and relevant customary law) which promotes sustainable management and use of the Environment and natural resources, prevention of harm to the Environment or to human health or the provision of remedies for harm or damage to the Environment or to human health, which Laws include but are not limited to the Mines and Minerals Act, the Forestry Act (Cap. 63:01 of the Laws of Malawi), the Water Resources Act (Cap. 72:03 of the Laws of Malawi), the Fisheries Conservation and Management Act (Cap. 66:05 of the Laws of Malawi), the National Parks and Wildlife Act (Cap. 66:07 of the Laws of Malawi) and the Land Legislation;

**“Environmental Impact Assessment”** means an environmental impact assessment (including a social impact study) submitted to Department of Environmental Affairs of the Government by the Company in July 2012 in respect of the Kanyika Mineral Right under applicable Environmental Laws and the Environmental Impact Assessment Guidelines for Mining Projects 2002;

**“Environment Management Act”** means the Environment Management Act of Malawi (No 19 of 2017);

**“Environmental Management Plan”** means a plan that identifies and describes the measures proposed for eliminating, reducing or mitigating any anticipated adverse effects

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of the Project on the Environment, as set out in the Environmental Impact Assessment and as amended or varied in accordance with applicable Environmental Laws;

“**EPL0188**” means exclusive prospecting licence EPL0188 issued to the Company pursuant to the Old Mines Act;

“**Equity Option**” has the meaning given in clause 4.2(a);

“**ESCOM**” means the Electricity Supply Corporation of Malawi Limited;

“**Exchange Control Act**” means the Exchange Control Act (Cap.45:01 of the Laws of Malawi);

“**Expatriate Employees**” means those employees of the Company that are not nationals of Malawi;

“**Expropriation Date**” has the meaning given in clause 27.1(d) ;

“**Fair Market Value**” means the fair market value agreed between the Parties or as determined by an Independent Expert in accordance with clause 29;

“**Feasibility Study**” means a study of an area of the Kanyika Mineral Right prepared by an expert to determine the commercial feasibility and viability of exploiting a Minerals deposit including a mining operations plan and shall include:

- (a) a description of how the site will be developed;
- (b) a description of how the mine will be constructed;
- (c) a description of infrastructure;
- (d) a description of the mining method to be used;
- (e) a production schedule;
- (f) other information that documents that the Mining Operation constitutes good mining practice;
- (g) a description, as necessary, of the area of land over which the licence is granted and any other information required to make judgment on the mining operation;
- (h) reference materials regarding the Processing and sale of Mine Product; and

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- (i) such other information as is required to ensure that on the grant of the Mining Licence, the additional documentation referred to in clause 3.2 is capable of being reviewed and where required, approved;

**“Force Majeure”** means an event which is beyond the reasonable control of a Party which substantially impairs a Party and makes it practically impossible for that Party to perform its part of this Agreement and includes act of war (whether declared or undeclared), invasion, armed conflict, act of foreign enemy, act of terrorism, martial law, military or usurped power, insurrection, revolution, civil disturbances, blockades, riot, embargoes, strikes, lock-outs and other labour conflicts (except where such strikes, lock-outs and other labour conflicts are within the power of the Party invoking clause 33), sabotage, criminal damage, land disputes, epidemics, plague, earthquakes, subsidence, heave, landslip, collapse, mudslide, rock falls, storms, cyclones, floods, unseasonal heavy weather, water bursts, explosions, fires, lightning or other adverse weather conditions, radioactive or chemical contamination or ionising radiation, non-availability of suitable shipping or transport facilities or corridors, fuel, electrical power, gas, water or other utilities, destruction of, damage to or unavailability of materials, equipment or supplies, the result of any customer of the Company failing to take delivery of the Mine Product or confiscation or any other restriction or action by the Government or an agency of any foreign government but does not include:

- (a) any event which is caused by the negligence or intentional action of a Party claiming Force Majeure or such Party’s subcontractor, agent or employee;
- (b) any event the possibility of which was reasonably foreseeable by a Party claiming Force Majeure and which could have been avoided or reasonably mitigated by acting on such foresight;
- (c) any event which a diligent Party could reasonably have expected to:
  - (i) take into account at the Agreement Date; or
  - (ii) avoid or overcome in the carrying out of its obligations under this Agreement;  
or
- (d) insufficiency of funds or failure to make payment required under this Agreement;

**“Foreign Currency”** means any currency other than Malawi kwacha;

**“Fully Paid Shares”** means ordinary fully paid shares in the capital of the Company;

**“Globe UK”** means Globe Metals & Mining UK Ltd Company Number 11390571;

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“**GMML**” means Globe Metals and Mining Limited (ABN 33 114 400 609);

“**Goods and Services Procurement Plan**” means the procurement plan to be developed in accordance with sections 150(q)(ix) and 164 of the Mines and Minerals Act and approved by the Mineral Resources Committee for the procurement of goods and services from suppliers in Malawi, as may be updated or revised in accordance with the Mines and Minerals Act;

“**Government**” includes:

- (a) the Government;
- (b) any governmental or semi-governmental entity, agency, bureau, board, commission, court, department, ministry, governmental authority or instrumentality; and
- (c) any other entity or Party exercising executive, legislative, judicial, regulatory or administrative functions, of Malawi, whether national or local, that has or exercises jurisdiction over the Project;

“**Hazardous Waste Facility**” means the hazardous waste facility which must be established in the Mining Area to receive and store radioactive material, which facility must be in compliance with the requirements of the Atomic Energy Act of Malawi (Cap 16:11 of the Laws of Malawi) and Atomic Energy Regulations 2012 of Malawi within the area of the Kanyika Mineral Right;

“**IAEA**” means the International Atomic Energy Agency;

“**ICC ADR Rules**” means the International Chamber of Commerce Alternative Dispute Resolution Rules;

“**IFRS**” means the International Finance Reporting Standards;

“**Indebtedness**” means, at any time, without duplication:

- (a) the liabilities of the Company for borrowed money and the redemption obligations of the Company in respect of mandatorily redeemable shares or other securities of the Company that are entitled to preference or priority over any other shares of the capital stock of such corporation in respect of payment of dividends or distribution of assets upon liquidation;
- (b) the liabilities of the Company for the deferred purchase price of property acquired by the Company (excluding accounts payable arising in the ordinary course of

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business but including all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property);

- (c) all liabilities appearing on the Company's balance sheet in accordance with IFRS in respect of leases with respect to which the Company is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with IFRS;
- (d) all liabilities for borrowed money secured by any Security (whether or not the Company has assumed or otherwise become liable for such liabilities), excluding any Security arising in the ordinary course of business or by operation of law;
- (e) all liabilities of the Company in respect of letters of credit or instruments serving a similar function issued or accepted for its account by banks and other financial institutions representing or supporting the payment of obligations referred to in paragraphs (a) through (d) of this definition;
- (f) any guarantee or similar undertaking of the Company appearing on the Company's balance sheet or noted in its accounts in accordance with IFRS with respect to liabilities of a type described in any of paragraphs (a) through (e) of this definition; and
- (g) all obligations of the Company of the character described in paragraphs (a) through (f) of this definition to the extent that the Company remains legally liable in respect of such obligations notwithstanding that any such obligation is deemed to be extinguished under IFRS;

**"Independent Expert"** means such independent person as is agreed between the Parties or, failing agreement within 20 Business Days, as is appointed at the request of any Party by the International Centre for Expertise in accordance with the provisions for the appointment of experts under the Rules of Expertise of the International Chamber of Commerce;

**"International Financial Reporting Standards"** and **"IFRS"** means the international accounting standards issued by the International Accounting Standards Board, an independent, privately-funded accounting standard-setter based in London, England;

**"International Standards"** means such practices, methods and acts as are in accordance with the good standards of skill, diligence, judgment, prudence and foresight practiced by prudent professionals of leading international firms in the international mining industry (for example, firms that are members of the International Council on Mining and Metals or the American Association of Cost Engineers), taking into account the relevant

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circumstances under which Operations are conducted, and, where relevant, the performance standards of the International Finance Corporation's Policy on Environmental and Social Sustainability;

**"Investor"** means the Person who has direct Control of the Company;

**"Investment Commitment"** means the aggregate of capital expenditure by the Company in the amounts set out in the Scheduled Plans;

**"JORC Code"** means the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves;

**"Kanyika Community"** means the community identified by any census undertaken as part of the Environmental Impact Assessment which the Company submitted to the Government and as it may change from time to time after submission;

**"Kanyika Mineral Right"** means:

- (a) exclusive prospecting licence EPL0188 which is subject to mining licence LML0216/21 issued over the area;
- (b) any mineral tenement which may be in force or issued in lieu of or in relation to the same or part of the ground as the mineral tenement referred to in paragraph (a) of this definition, including a mining licence LML0216/21 as granted pursuant to Part VIII of the Mines and Minerals Act;
- (c) if agreed between the Parties in the circumstances provided for in clause 3.4 any other mineral tenement, concession or other right in Malawi that is applied for, granted to or acquired by the Company and included in this Agreement; and
- (d) includes all rights to mine and other privileges granted pursuant to the mineral tenement referred to in paragraphs (a), (b) or (c) of this definition;

**"Land Legislation"** means the Land Act (Cap. 58:01 of the Laws of Malawi), Land Acquisition (Amendment) Act (Cap. 58.04 of the Laws of Malawi) and the Registered Land Act (Cap. 58:01 of the Laws of Malawi) and such subsequent Acts as have application;

**"Law"** means the Constitution of the Republic of Malawi, any statute, regulation, directive, rule, judicial decision, order, proclamation, Treaty obligation of the Government, or other sovereign act of the Government, excluding licences, Permits,

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mineral development agreements (including this Agreement) and similar acts of the Government;

“**Life of Mine**” means the period commencing on the Commissioning Date and ending on the permanent cessation of Mining or Processing, whichever is the later;

“**LML 0216/21**” means the large-scale mining license over part of EPL0188, granted by the Mines Minister on the 13<sup>th</sup> August 2021;

“**Malawi**” means the Republic of Malawi;

“**Malawi kwacha**” or “**K**” means the legal tender in Malawi;

“**Mine**” means that part of the Kanyika Mining Licence on which the Company establishes and conducts Operations;

“**Mine Product**” means any product produced from any Mining and Processing of ore from the Kanyika Mineral Right or from areas outside of the Kanyika Mineral Right in the circumstances referred to in clause 5.5(b);

“**Mine Site Plan**” means the mine site plan submitted by the Company in accordance with sections 150(q)(iv) and 166 of the Mines and Minerals Act and approved by the Mineral Resources Committee, as may be updated or revised in accordance with the Mines and Minerals Act;

“**Mine Waste Management Plan**” means the mine waste management plan to be submitted by the Company in accordance with sections 150(q)(v) and 167 of the Mines and Minerals Act and approved by the Mineral Resources Committee, as may be updated or revised in accordance with the Mines and Minerals Act;

“**Mineral Resources Committee**” means the committee established pursuant to section 5 of the Mines and Minerals Act;

“**Minerals**” means the minerals listed in the Kanyika Mineral Right from time to time;

“**Mines and Minerals Act**” means the Mines and Minerals Act 2018 of Malawi (No. 8 of 2019);

“**Mines Minister**” means the Minister in charge of the Ministry responsible for mining and mineral resources in Malawi and the “**Ministry**” shall be construed accordingly;

“**Mining**” has the meaning given in the Mines and Minerals Act;

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“**Mining Area**” means the area of the Mining Licence granted under clause 3.1;

“**Mining Licence**” means LML0216/21;

“**Mining Operations Plan**” means the plan of proposed Operations submitted by the Company in accordance with sections 150(q)(iii) and 162 of the Mines and Minerals Act and approved by the Mineral Resources Committee, as may be updated or revised in accordance with the Mines and Minerals Act;

“**Mining Water Requirements**” has the meaning given to that term in clause 12.1(a);

“**Mortgage**” has the meaning given to that term in clause 28.3(a);

“**Mortgaged Property**” has the meaning given to that term in clause 28.3(a);

“**Net Worth**” means, as to any Person at any time:

- (a) the total assets of such Person which would be shown as assets on a balance sheet of such Person as of such time prepared in accordance with IFRS; minus
- (b) the total liabilities of such Person which would be shown as liabilities on a balance sheet of such Person as of such time prepared in accordance with IFRS;

“**Notice of Dispute**” has the meaning given to that term in clause 29.2;

“**Official**” has the meaning given to that term in clause 25.1(i);

“**Old Mines Act**” means the Mines and Minerals Act of Malawi (Cap 61:01) of the Laws of Malawi;

“**Operations**” means the undertaking of exploration, design, development, construction, commissioning, maintenance, Mining, Processing, transportation and rehabilitation operations on the Kanyika Mineral Right and in connection with the winning and sale of Mine Product, including:

- (a) exploration for and development of a Mineral resource;
- (b) commercial operations of the Project carried on in accordance with the Scheduled Plans and all related activities of the Company carried on in Malawi and in accordance with applicable Laws;
- (c) operation of Mining fleets whether at the Mine or for transit to or from the Mine;
- (d) management of Mineral exploration activities, Mining and Processing;

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- (e) operation of the Hazardous Waste Facility; and
- (f) any other activity ancillary to the activities set out at paragraphs (a), (b), (c), (d) or (e) of this definition;

“**Option Date**” has the meaning given in clause 4.2(b);

“**Parties**” means the parties who are for the time being original parties to this Agreement and parties added or substituted pursuant to clause 28 and “**Party**” means any one of them;

“**Permit**” includes any lease, licence, right, easement, right of way, wayleave, consent, permit, authorisation, approval, certificate or visa;

“**Permitted Transferee**” is a Person permitted to enter into this Agreement pursuant to the Mines and Minerals Act who:

- (a) is not a Prohibited Person;
- (b) does not have an officer or director who is a Prohibited Person; and
- (c) is not Controlled by a Prohibited Person;

“**Person**” means any natural person and any partnership, joint venture, corporation, limited liability company, trust, estate or other organization or entity, and any branch, division, political sub-division, instrumentality, authority or agency of any government or state;

“**Processing**” means any process by which Mine Product or third-party product as contemplated in clause 3.6 is produced from ore, which process may include without limitation, crushing, grinding, sizing, milling, gravity and magnetic separation, flotation and other similar treatment processes;

“**Processing Facility**” means the plant and associated infrastructure to be constructed on the Mining Area for the purposes of carrying out the Processing;

“**Production Commencement Date**” means the date of the first commercial sale of Mine Product (excluding any trial sales or exports for testing purposes);

“**Prohibited Person**” means a Person:

- (a) who is identified on a Sanctions List;
- (b) who is identified on the Interpol Red Notice List;

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- (c) who is the subject of an arrest warrant issued by the International Criminal Court;
- (d) who is identified on the World Bank ineligible firms list;
- (e) who is identified on the European Union Sanctions list; or
- (f) who is identified on any of the following lists maintained by the United States government:
  - (i) the United States Department of Commerce Denied Persons list;
  - (ii) the United States Department of the Treasury Specially Designated Nationals and Blocked Persons lists;
  - (iii) United States Department of State Foreign Terrorist Organizations list; or
  - (iv) the Financial Action Task Force on Money Laundering list of non-cooperative countries or territories;
- (g) any Person Controlling, Controlled by or under Common Control by any Person listed in paragraphs (a) to (e) of this definition; or
- (h) any Person that issues bearer shares or other instruments to evidence ownership of such Person that do not permit the identification of the owners of such Person;

**“Project”** means:

- (a) the Kanyika Mineral Right prior to commencing work on, or during the preparation of, the Feasibility Study;
- (b) preparation of the Feasibility Study and any optimising work associated with the Feasibility Study;
- (c) preparation of the Environmental Impact Assessment;
- (d) the construction of the Mine and Processing Facility; and
- (e) such other activities as are necessary to ensure the Company can commercialise the Mining Area;

**“Project Lenders”** means third party international or domestic project financiers who lend money to the Company or its Related Persons for the purposes of the Company developing the Project and, for the avoidance of doubt, excluding loans from Shareholders;

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“**Qualifying Mine Closure Fund**” has the meaning given to that term in clause 21.4(c);

“**Quarter**” means:

- (a) January, February and March;
- (b) April, May and June;
- (c) July, August and September; or
- (d) October, November and December,

and “**Quarterly**” has a corresponding meaning;

“**Registrar**” means the official specified as the “Registrar of Mineral Tenements” in section 14 of the Mines and Minerals Act;

“**Rehabilitation and Mine Closure Plan**” means the rehabilitation and mine closure plan to be submitted by the Company in accordance with sections 150(q)(vi) and 272 of the Mines and Minerals Act and approved by the Mineral Resources Committee, as may be updated or revised in accordance with the Mines and Minerals Act;

“**Related Person**” means with respect to a Person:

- (a) any Person:
  - (v) Controlled by such Person;
  - (vi) Controlling such Person;
  - (vii) associated with such Person through business or company;
  - (viii) under Common Control with such Person; or
  - (ix) a subsidiary and parent company; and
- (b) any natural Person who is a:
  - (i) a director or officer of either the Company, a Shareholder of the Company, or any Related Person to the Company; or
  - (ii) an immediate family member of a director or officer of either the Company, a Shareholder, or a Related Person to the Company;

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“**Reserve Bank**” means the Reserve Bank of Malawi or any successor of it or any assignee of any of its functions;

“**Resettlement Management Plan**” means a plan to be developed in accordance with sections 150(q)(vii) and 168 of the Mines and Minerals Act for the relocation of residents that reside or have assets in the Mining Area and for the compensation of those residents for any losses incurred, as may be updated or revised in accordance with the Mines and Minerals Act;

“**Royalty**” has the meaning given to that term in clause 22.1(a);

“**Sanctioned Jurisdiction**” means, at any time, a country or territory that is, or whose government is, the subject of Sanctions Laws;

“**Sanctions Authority**” means each of:

- (a) the Republic of Malawi;
- (b) the United Nations;
- (c) the United Kingdom;
- (d) the European Union;
- (e) the Commonwealth of Australia; and
- (f) the United States of America;

“**Sanctions Laws**” means the economic, trade or financial sanctions, laws, regulations, requirements, embargoes, or restrictive measures imposed, administered, enacted, or enforced from time to time by any Sanctions Authority;

“**Sanctions List**” means any list of persons or entities published in connection with Sanctions Laws by or on behalf of any Sanctions Authority;

“**Scheduled Plans**” means the Mining Operations Plan, Environmental Management Plan, Employment and Training Plan, Goods and Services Procurement Plan, Mine Site Plan, Mine Waste Management Plan, Resettlement Management Plan, Rehabilitation and Mine Closure Plan, Community Engagement Plan and Business Development Assistance Plan;

“**Security**” means any mortgage, lien, pledge, charge, security interest or other encumbrance on any property or asset of the Company, or any interest or title of any

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vendor, lessor, lender or other secured party in or to any property or asset of the Company under any conditional sale or other title retention agreement;

“**Shareholders’ Deed**” means the deed to be substantially in the form attached as a schedule to this Agreement entered into between the Shareholders and the Company from time to time;

“**Shareholder**” means any Person holding shares of any class in the Company from time to time;

“**Speculative Currency Transaction**” means a transaction involving the purchase or sale of Malawi kwacha, the primary object of which is the making of a profit on the exchange of currency, but does not include the taking out of forward cover against reasonably predictable inflows or outflows;

“**Stability Commencement Date**” means the earlier of:

- (a) the date on which the Company formally notifies the Government in writing that the Stability Term has commenced; or
- (b) the Commissioning Date;

“**Stability Term**” means the period commencing from the Stability Commencement Date and ending on the earlier of:

- (a) the 10<sup>th</sup> anniversary of the Stability Commencement Date; or
- (b) the date that Operations permanently cease;

“**Subsidiary**” has the meaning given to the term in the Corporations Act;

“**Surplus Electricity**” means any proportion of electricity generated by the Company which it may not require for the purposes of supplying electricity to the Project as required for the Operations;

“**TA Senior Chief**” means Traditional Authority Senior Chief Mabulabo, Mzimba District;

“**Tax**” means any tax, duty, levy, excise, impost, charge, fee or rate levied, imposed, assessed or collected under any Law or by Government, together with any associated interest, penalty, fine, charge or other amount; “**Taxation**” and “**Taxes**” have a corresponding meaning;

“**Taxation Act**” means the Taxation Act (Cap 41:01) of the Laws of Malawi;

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“**Term**” has the meaning given to that term in clause 32.1;

“**Term Contract**” is an agreement to sell Mine Product in which the volume and delivery periods are fixed in advance, but the delivery price is calculated at the time of each delivery by reference to a price formula specified in the contract, which may comprise a combination of published market price indices and sometimes include an escalating base or floor price component;

“**Transfer**” means and includes a sale, assignment, pledge or other transfer of property, by operation of law or otherwise;

“**Treaty**” means a binding formal agreement, contract, or other written instrument that establishes obligations between two or more subjects of international law (primarily states and international organizations);

“**US\$**” or “**US Dollars**” means the lawful currency of the United States of America;

“**VAT**” means value added tax as imposed in Malawi;

“**Voluntary Principles on Security and Human Rights**” means the voluntary principles on security and human rights in the energy and extractive sectors as set forth on, and as adhered to by the governments, companies and non-governmental organisations set forth on, the following website: <https://www.voluntaryprinciples.org/>; and

“**Waste**” is any material left over from Operations for which Globe cannot find a productive use on a commercial basis.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) references to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this Agreement;
- (b) a reference to this Agreement or another instrument includes any variation or replacement of any of them;
- (c) a reference to any statute shall include any amendment, replacement or re-enactment of such statute for the time being in force and any bylaws, statutory instruments, rules, regulations, notices, orders, directions, consents or permissions made under such statute whether by gazetting or by notification to selected parties and any conditions attaching to them;

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- (d) words importing the singular include the plural and vice versa;
- (e) a reference to any gender includes all genders;
- (f) a reference to a person includes a reference to the person's executors, administrators, substitutes, successors and permitted assigns;
- (g) a reference to a person further includes an individual, partnership, company, corporation, trust, society, organisation, authority and association;
- (h) a covenant, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (i) a covenant, representation or warranty on the part of two or more persons binds them jointly and severally;
- (j) the headings in this Agreement shall not affect its interpretation;
- (k) without derogating from the effect and operation of clauses 28, 34 and 39, if there is any inconsistency between the terms of this Agreement and a Law then this Agreement or the relevant provision of it shall be read down to the extent of the inconsistency to ensure that this Agreement is not otherwise rendered void or unenforceable; and
- (l) in the interpretation of this Agreement, no rules of construction shall apply to the disadvantage of one Party on the basis that that Party put forward this Agreement or any part of this Agreement.

## 2 CONDITIONS PRECEDENT

### 2.1 Conditions

- (a) This Agreement, other than clauses 1, 2, 3.1, 5.1(a), 21.10, 27, 28, 29, 30, 32, 35, 38, 39, 40 and 41, is subject to and conditional upon the following conditions being satisfied or waived on or before the End Date:
  - (i) the execution of a Shareholders' Deed, on terms acceptable to all parties;
  - (ii) the Company obtaining from the Commissioner General a determination on how, for the purposes of determining the gross revenue of the Mine Product, the Commissioner General will apply the principles in the Seventeenth Schedule of the Taxation Act and this determination being satisfactory to the Company in its sole discretion; and

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- (iii) the Mineral Resources Committee, in accordance with section 174(7) of the Mines and Minerals Act, granting the Company an extension to the time limits prescribed by subsections 174(2)(a) and (b) of the Mines and Minerals Act to ensure those time limits are consistent with the timeline contemplated in this Agreement.
- (b) Clauses 1, 2, 3.1, 5.1(a); 21.10, 27, 28, 29, 30, 32, 35, 38, 39, 40 and 41 take effect from the Agreement Date.

## **2.2 Conduct of the Parties**

- (a) The Parties must use Best Endeavours to ensure that the conditions at clause 2.1(a) are satisfied on or before the End Date.
- (b) As soon as practicable after becoming aware that a condition at clause 2.1(a) is satisfied or is incapable of being satisfied, a Party must notify the other Party.
- (c) For the purposes of clause 2.2(a) the Government will provide the Company with all reasonable assistance in its submission to the Commissioner General and without limitation, the Company will seek to have the Commissioner General agree that for the purposes of determining the gross revenue of the Mine Product:
  - (i) the reference price will be the price which the Company can get for the Minerals within the Mine Product which are being sold, which price is to be determined by reference to Arm's Length Terms; and
  - (ii) the Arm's Length Terms in circumstances where the Company has an obligation to either retain title or have title transferred to it and thereupon, have responsibility for receiving and storing in the Company's Hazardous Waste Facility, any radioactive materials and waste contained in the Mine Product, shall take account of a cost penalty for the Mine Product which contains such radioactive material and waste.

## **2.3 Waiver of Conditions**

The conditions in clauses 2.1(a)(i), (ii) and (iii) are for the benefit of the Company and may be waived by the Company.

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## **2.4 Failure to Satisfy or Waive Conditions**

If any condition in clause 2.1(a) is not satisfied or waived on or before the End Date, either Party may terminate this Agreement in accordance with clause 32.3 and on termination no Party shall have any claim against the other (subject to clause 32.6(e)).

## **3 MINING LICENCE**

### **3.1 Mining Licence**

As at the Agreement Date, it is noted that the Government has granted LML0126/21 to the Company.

### **3.2 Terms of the Mining Licence**

The Mining Licence, as approved, includes:

- (a) a licence signed by the Minister;
- (b) the date of the grant of the licence and the period it is granted;
- (c) an Environmental Impact Assessment Certificate;
- (d) a Mine Site Plan in accordance with section 166;
- (e) a Mining Operations Plan in accordance with section 162;
- (f) a Community Engagement Plan in accordance with section 300;
- (g) an Employment and Training Plan in accordance with section 163;
- (h) a Goods and Services Procurement Plan in accordance with section 164;
- (i) a Resettlement Management Plan in accordance with section 168;
- (j) a Mine Waste Management Plan in accordance with section 167;
- (k) a Rehabilitation and Mine Closure Plan in accordance with section 272 and 273;
- (l) a Business Development Assistance Plan in accordance with section 165; and
- (m) a Community Development Agreement in accordance with section 169.

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### 3.3 Proceeding with the Project

- (a) The Company must within twenty-four (24) months of:
  - (i) the granting of the Mining Licence; and
  - (ii) obtaining a credit approved term sheet from a Project Lender with respect to the provision of debt funds to develop the Project either:
    - (A) make a Decision to Mine; or
    - (B) surrender the Mining Licence.
- (b) On making a Decision to Mine, the draft plans are subject to such reasonable modification as the responsible Minister or other relevant responsible Ministry shall require and the Scheduled Plans as provided for in this Agreement shall be attached as schedules hereto.

### 3.4 Inclusion of Additional Minerals

The Government will in good faith and in a timely manner consider any application made by the Company for inclusion of minerals other than the Minerals in the Kanyika Mineral Right found within the area of the Kanyika Mineral Right in accordance with the Mines and Minerals Act, and such minerals shall become Minerals upon the grant of the application.

### 3.5 Other Mineral Rights

- (a) The Government acknowledges the Company may carry out exploration outside the area of the Kanyika Mineral Right and that any mineral tenement, concession or other right in Malawi applied for, granted to or acquired by the Company outside the area of the Kanyika Mineral Right will not be subject to this Agreement.
- (b) If during the course of the exploration referred to in clause 3.5(a), the Company:
  - (i) makes a discovery of any minerals outside the area of the Kanyika Mineral Right; and
  - (ii) makes application for a mining licence in respect of that discovery in accordance with section 150 of the Mines and Minerals Act,then following on the grant of that mining licence, such mining licence shall be subject to the Mines and Minerals Act and the Parties will consider in good faith

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whether, and on what basis, the mining licence may become subject to this Agreement and unless the Parties so agree, this Agreement shall not apply to that mining licence.

### **3.6 Processing and Use Rights**

- (a) The Company may enter into a contract to process minerals discovered by a third party outside the area of the Kanyika Mineral Right using the Processing Facility and the provisions of this Agreement shall apply to the extent appropriate to that part of the Operations being conducted by the Company in respect of such minerals, but the third party shall not be directly entitled to the benefits of this Agreement.
- (b) Prior to commencing Processing pursuant to clause 3.6(a), the Company shall comply with section 180 of the Mines and Minerals Act and the Government shall give it support to such arrangements.

## **4 GOVERNMENT EQUITY**

### **4.1 Statutory 10% equity interest**

- (a) On the grant of the Mining Licence the Government was deemed to have exercised its option under section 269(3) of the Mines and Minerals Act and the Company shall forthwith issue to the Government Fully Paid Shares representing ten per cent (10%) of the capital of the Company consistent with section 269 of the Mines and Minerals Act.
- (b) If the Company issues Fully Paid Shares in the capital of the Company to any party during the Term, the Company shall at no additional cost to the Government, issue additional Fully Paid Shares in the capital of the Company to the Government in order to ensure the Government maintains its percentage equity interest in the capital of the Company as it was immediately before the issue of Fully Paid Shares to that party.

### **4.2 Further 10% equity option**

- (a) In addition to the issue of Fully Paid Shares in accordance with clause 4.1(a), the Company will procure that the Shareholders (other than the Government as a Shareholder) grant the Government an option to purchase from those Shareholders for Fair Market Value up to a further ten percent (10%) of the capital of the Company (in aggregate) ("**Equity Option**"), the terms and conditions of which shall be further documented in the Shareholders' Deed consistent with the remainder of this clause 4.2. For the avoidance of doubt, the equity acquired by the

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Government upon exercise of the Equity Option is a fully contributory interest and is capable of being diluted in the event the Government does not meet any call by the Company for additional equity funding.

- (b) The Equity Option can only be exercised by the Government after the Company has notified the Government in writing that the construction, commissioning and operation of the Project has satisfied the completion test imposed by the Project Lenders on the Project as a condition of providing project funding (“**Option Date**”).
- (c) Where there is more than one non-Government Shareholder in the Company, the equity interest to be acquired by the Government shall be acquired proportionately from the Shareholders provided each such non-Government Shareholder has at least a 20% equity interest in the Company otherwise the selldown of an equity interest to the Government shall come from those Shareholders who hold at least a 20% equity interest in the Company.
- (d) To exercise the Equity Option, the Government must, after the Option Date, give the Company and the other Shareholders a notice in writing advising that it wishes to exercise the Equity Option and stating the percentage equity in the Company it wishes to acquire up to a maximum of 10%.
- (e) The acquisition shall not complete until the Fair Market Value is determined in accordance with clause 4.2(f) and that Fair Market Value is paid for the equity interest being acquired.
- (f) For the purposes of this clause only, such Fair Market Value (based on the value of resources, reserves and assets) shall be determined as follows:
  - (i) a value agreed upon by the Parties; or
  - (ii) if an agreement cannot be reached within ninety (90) days of the date of the exercise of the Equity Option in accordance with clause 4.2(b), then within thirty (30) Business Days thereafter, each Party shall select a reputable, qualified appraisal firm having an office in a common law jurisdiction, and each such appraiser having no less than ten (10) years' experience in the valuation of natural resources companies and each being familiar with the prices then being customarily paid for equity in comparable companies. If either Party fails to designate its appraiser within such thirty (30) Business Day period and thereafter shall fail to do so within ten (10) Business Days after written notice by the other Party requesting such designation, then the appraiser for such Party shall be appointed by the International Centre for

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Expertise in accordance with the provisions for the appointment of experts under the Rules of Expertise of the International Chamber of Commerce. If the appraisers do not reach agreement as to the Fair Market Value within thirty (30) days after the date that the later of them is designated, then:

- (A) the appraisers shall meet together with the Parties or their representatives, and at such meeting each appraiser shall present to the other a sealed letter setting forth the appraiser's judgment as to the aggregate fair market value of the Fully Paid Shares. If the higher amount set forth in either such letter shall not exceed 120% of the lower amount, then the aggregate value for the equity interest shall be the average of the amount set forth in the two letters. If the higher amount set forth in either of the two letters shall exceed 120% of the lower amount, then within twenty (20) Business Days thereafter the two appraisers shall designate a third appraiser having the same minimum qualifications as the first two. If the first two appraisers shall fail to agree upon the designation of the third appraiser, then the third appraiser shall be appointed by the International Centre for Expertise in accordance with the provisions for the appointment of experts under the Rules of Expertise of the International Chamber of Commerce;
  - (B) the third appraiser shall conduct such investigations and hearings as they shall deem appropriate and within thirty (30) days after their date of designation shall choose one of the appraiser's valuations, and no other amount, as the aggregate fair market value of the equity interest. The decision of the third appraiser shall be in writing and shall be binding upon the Parties, for the purposes of determining the Fair Market Value pursuant to clause 4.2(f); and
  - (C) the expenses of that determination shall be shared by the Parties in equal proportion.
- (g) If the selling Shareholder has provided any shareholder loans to the Company then on the Government exercising its Equity Option it must not only pay the Fair Market Value of the additional equity interest it is acquiring, but also it must provide to the Company a pro-rata proportion of any shareholder loan which the selling Shareholder had made to the Company so as to enable the Company to pay out a corresponding portion of the shareholder loan provided by the selling Shareholder to the Company.

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- (h) Whereas part of any financing by the Company, the holders of Fully Paid Shares are required to give a guarantee in favour of a Project Lender then on the acquisition of the Fully Paid Shares by the Government pursuant to the exercise of the Equity Option, the Government must give the same guarantee in favour of the Project Lender in proportion to the percentage interest in the Company acquired by the Government.

#### **4.3 Government right to alienate**

If the Government acquires a further equity interest in the Company pursuant to clause 4.2, it has the right to sell or otherwise dispose of such equity interest in its sole discretion including, without limitation, to Malawian companies, individuals, a state-owned entity or trust, but subject to the terms and conditions of the Shareholders' Deed.

### **5 OPERATIONS AND INVESTMENT COMMITMENT**

#### **5.1 Operations**

- (a) The Company shall, subject to the terms of the Mines and Minerals Act, any other applicable Law, the Kanyika Mineral Right and this Agreement, implement the Mining Operations Plan in accordance with the timetable contained in the Mining Operations Plan and, in the event, either:
  - (i) the Mining Operations Plan; or
  - (ii) events beyond the control of the Company,
  - (iii) results in the Company not being in a position to commence:
  - (iv) substantial onsite mine development within 18 months of the date the Mining Licence is granted; or
  - (v) substantial mineral production within 60 months from the date the Mining Licence is granted,

as required by section 174(1) of the Mines and Minerals Act or such later date as approved by the Mineral Resources Committee under clause 2.1(a)(iii) or the Commissioner in the case section 174(6) of the Mines and Minerals Act applies, then the Government will provide all reasonable support to the Company to enable the Company to make an application to the Mineral Resources Committee or the Commissioner as the case may be, to extend the period for commencing substantial

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onsite mine development and/or substantial mineral production as contemplated by sections 174(6) or 174(7) of the Mines and Minerals Act as the case may be.

- (b) The Company shall conduct all Operations in accordance with International Standards.
- (c) The Government acknowledges that without limitation, compliance with the Scheduled Plans will be deemed to constitute compliance with section 171(1)(a) of the Mines and Minerals Act provided that the Company is otherwise in compliance with the requirements of this Agreement.
- (d) Any Operations which the Company shall undertake in accordance with the Scheduled Plans and applicable International Standards are prima facie deemed not to constitute poor or wasteful mining or treatment practices for the purposes of section 181 of the Mines and Minerals Act, provided that the Company is otherwise in compliance with the requirements of this Agreement.

## 5.2 Investment Commitment

- (a) The Company shall expend the Investment Commitment substantially in the manner and on the terms set out in the Scheduled Plans.
- (b) If the Company does not commence expenditure of the Investment Commitment within six months of the Decision to Mine in accordance with the Scheduled Plans, then the Government may exercise its right to terminate this Agreement in accordance with clause 32.4(d).
- (c) The Company's obligation to expend the Investment Commitment in accordance with clause 5.2(a) shall be suspended where an event of Force Majeure has occurred and for so long as such event of Force Majeure is continuing and in such circumstances, the period of time referred to in clause 5.2(b) shall be extended by the length of the event of Force Majeure.
- (d) Any disagreement in relation to the manner, terms, timing or amount of expenditure of the Investment Commitment may be referred by either Party to the Independent Expert in accordance with clause 29.
- (e) Any failure by the Company to expend the Investment Commitment does not give the Government a right in damages against the Company but gives to the Government a right to terminate this Agreement in accordance with clause 32.4(d).

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### 5.3 Variation to Scheduled Plans

- (a) The Scheduled Plans may be updated or revised from time to time in accordance with section 170 of the Mines and Minerals Act, provided that such amended Scheduled Plans are otherwise consistent with the requirements of this Agreement.
- (b) The Parties shall make public any proposed changes to the Scheduled Plans for comment by interested Parties before the changes are adopted.
- (c) Once adopted the amended Scheduled Plans shall become a part of this Agreement and shall be appended hereto.
- (d) In the case of a conflict between any Scheduled Plans and the applicable Law, the applicable Law shall prevail.
- (e) Without limiting the rights of the Company under this Agreement, if the Company makes an application to update or vary any of the Scheduled Plans, the Government will provide the Company with all reasonable assistance in connection with the application and will do all within its power to procure the approval of the application by the relevant decision maker, provided that the Company is making the application on the basis of sound mining and economic practices.

### 5.4 Inspections

- (a) The Government shall have full rights under the Mines and Minerals Act, the Environment Management Act, the Atomic Energy Act, (Act No 16 of 2011), the Occupational Safety, Health and Welfare Act (Cap. 55:07) of the Laws of Malawi and any other applicable Law to carry out inspections of the Company's activities on the Mining Area in order to ensure the Company is discharging its obligations under this Agreement provided that:
  - (i) if required under applicable Law, the Government gives notice in accordance with such Law; and
  - (ii) the representatives of the Government who are to carry out such inspections follow the directions of the Company's mine manager or authorised representative as to health and safety issues unless such directions are inconsistent with the purpose of the inspection.
- (b) Nothing in this Agreement shall limit the right of authorised Government security agencies from accessing or inspect facilities and Operations of the Company in order to investigate criminal or other security matters.

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## **5.5 Processing Facility**

- (a) The Company shall, in conjunction with the Mine, establish a Processing Facility located on the Mining Area in order to process the ore into the Mine Product.
- (b) The Company may use the Processing Facility to process ore sourced from outside the Kanyika Mineral Right in order to produce concentrate in accordance with the laws of Malawi.
- (c) The Company may, in conjunction with the Mine, establish a refinery located on the Mining Area in order to process mineral concentrate into individual metal oxides.

## **6 SUSPENSION AND CURTAILMENT OF PRODUCTION**

The Company's right to cease, suspend or curtail production is governed by section 174 of the Mines and Minerals Act and it is recognised that a fall in Mineral prices resulting in the Operations becoming uneconomic is an event beyond the control of the Company. In the event of any such suspension or curtailment, the Commissioner may exercise powers under section 171(2) of the Mines and Minerals Act but the Parties acknowledge that in the event the suspension of the Operations is due to events beyond the control of the Company then the Parties will do all within their power to dissuade the Commissioner from commencing the process to cancel any mineral tenement comprising part of the Kanyika Mineral Right as provided for in section 171(3) of the Mines and Minerals Act.

## **7 IMPORT, SALE AND EXPORT**

### **7.1 Imports and Exports**

In respect of any import made pursuant to a Permit issued under clause 8.3(b), the Government shall undertake pre-shipment inspection as may be required by any applicable Law.

### **7.2 Mine Product**

- (a) The Company may market and either sell and export the Mine Product or sell the Mine Product to another party for further Processing in Malawi before the export of minerals refined from the Mine Product.
- (b) The Company will have sole control and management of the sale and if applicable, export of Mine Product, including by Term Contract, provided that:
  - (i) the sale and if applicable, export are on Arm's Length Terms;

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- (ii) the Company complies with clause 7.3 and if applicable clause 7.5;
  - (iii) the Government has not notified the Company that the sale or if applicable, export would breach an obligation of the Government arising under international law (including Sanctions Laws) or result in dealing or contracting with nationals of a state with which the Government is in a state of declared war; and
  - (iv) the Company has obtained the Permits including without limitation, those identified in the Feasibility Study.
- (c) The Parties acknowledge that depending on to whom the Mine Product is sold, the invoice for what is sold may or may not reflect a value for any minerals other than niobium contained within the Mine Product as not all potential purchasers of the Mine Product will have the capacity to extract minerals other than niobium from the Mine Product.
- (d) The Parties currently anticipate that a purchaser will only pay the Company for the value of the niobium within the Mine Product, in which case the Company shall only pay the Royalty on the niobium value in the Mine Product. If a purchaser pays the Company an additional amount for any other mineral in the Mine Product, then the Company will pay an additional Royalty based on the value of the additional mineral of that Mine Product.

### **7.3 Sales Contracts**

The Company covenants in favour of the Government that each sales contract for the Mine Product will:

- (a) for the purposes of identifying the Minerals on which the Royalty is payable, identify the Minerals within the Mine Product to which a commercial value is being attached and what that commercial value is; and
- (b) identify any obligation on the Company to either retain or have transferred to it, and then to receive and store radioactive materials and waste resulting from the further processing of Mine Product within Malawi if that was to occur.

### **7.4 Affiliate Contracts**

The Company may enter into any Affiliate Contract subject to approval by the Board.

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## 7.5 Transportation Procedure

- (a) The Company shall keep all Mine Product and any radioactive materials and waste under adequate security having regard to the type of Mine Product or radioactive materials and waste, as the case may be, both on the Mining Area or when being transported.
- (b) The Company shall record accurate weights of and details of the form of:
  - (i) the Mine Product; and
  - (ii) radioactive materials and waste product as part of the Processing or otherwise received at the Hazardous Waste Facility,with copies to be supplied to the Commissioner at the time of consignment or as otherwise agreed between the Parties.
- (c) The Company shall submit a procedure for safeguarding the Mine Product and any radioactive materials and waste to the Government for approval.

## 7.6 Crossing Borders

- a) The Government may, in addition to discharging its obligation under clause 7.5(c), use its Best Endeavours to assist the Company if it requests to obtain transit or export Permits from other countries to export Mine Product from Malawi through Government negotiated transport corridors across Mozambique, Namibia, Tanzania or Zambia to ports in those countries or by agreement through other countries to a port or to a purchaser.
- b) Provided the Government is not required to do anything more than what is required in relation to dealing with the issues at a diplomatic level and in this regard, the Government is not required to incur any costs other than those ordinarily incurred when participating in diplomatic exchanges.

## 7.7 Radioactive Materials – Current Intention

The Parties acknowledge:

- (a) it is the intention of the Company that:
  - (i) title to any radioactive materials produced during the Operations will pass to the purchaser of the Mine Product to the extent the radioactive materials are commingled with the Mine Product as a result of Processing; or

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- (ii) to the extent any radioactive material and waste is separated from the Mine Product during Processing or is separated from the Mine Product as a result of further processing within Malawi as contemplated in clause 7.2(a) then that radioactive material and waste is to be stored as waste or residue in the Hazardous Waste Facility; and
- (b) it is not the current intention of the Company to sell or export any radioactive materials or waste which is stored in the Hazardous Waste Facility.

#### **7.8 Radioactive Materials – Change of Intention**

- (a) The Company shall notify the Government if it changes its intention as described in clause 7.7(b) and decides to sell or export any radioactive materials and waste or minerals contained therein which are stored in the Hazardous Waste Facility whereupon at the time of the sale, the Government may impose a Royalty on the sale of the radioactive minerals as and when they are sold.
- (b) Within thirty (30) Business Days after the Company has notified the Government, the Parties shall negotiate in good faith to either:
  - (i) vary this Agreement to the extent reasonably necessary or appropriate to address the implications of the Company's decision to remove from storage in the Hazardous Waste Facility any radioactive materials and waste and then either sell or further process such material before selling any minerals which are recovered from the radioactive materials and waste; or
  - (ii) enter into an additional agreement for that purpose.
- (c) The provisions of this Agreement remain in full force and effect during any negotiations conducted under this clause 7.8 until commencement of an agreement replacing or varying this Agreement.
- (d) If the Parties are unable to reach a mutually agreeable solution within forty-five Business Days of the commencement of negotiations, either Party may commence the dispute resolution process set out in clause 30 by notice to the other Party.

#### **7.9 Storage of Radioactive Materials and Waste**

- (a) Where the Company sells the Mine Product to either an Affiliate or a third party for value addition within Malawi then that sale will be subject to the purchaser transporting any radioactive materials and waste that may be recovered from the

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Mine Product through the value addition process, back to the Mining Area for storage in the Hazardous Waste Facility.

- (b) The Company may offer as a paid service to either an Affiliate or third party, the storage of radioactive materials and waste (which has not been sourced from the value addition of the Mine Product) in the Hazardous Waste Facility.
- (c) Where the Company agreed to store radioactive materials and waste pursuant to clauses 7.9(a) or 7.9(b) then:
  - (i) the Company will not take title to and responsibility for the radioactive material and waste until it is off loaded from the vehicle transporting the radioactive material and waste, into the Hazardous Waste Facility; and
  - (ii) the Company will only agree to take delivery of radioactive material and waste for storage within the Hazardous Waste Facility where:
    - (A) the Government issues whatever Permits are required to transport and store radioactive materials and waste in the Hazardous Waste Facility;
    - (B) the radioactive material and waste is within the specification of what is permitted to be stored within the Hazardous Waste Facility;
    - (C) the Company and the Government agree on the procedure for the Company receiving, storing and monitoring the radioactive material and waste in the Hazardous Waste Facility; and
    - (D) where the Company can agree on the commercial terms for it to acquire and store the radioactive material and waste within the Hazardous Waste Facility.

#### **7.10 Radioactive Materials – Codes and Legislation**

- (a) In relation to any radioactive material, the Company shall comply with the Atomic Energy Act of Malawi (Cap. 16:11 of the Laws of Malawi) and Atomic Energy Regulations 2012.
- (b) Notwithstanding any other provision of this Agreement, to the extent not inconsistent with the Atomic Energy Act of Malawi (Cap. 16:11 of the Laws of Malawi), the Company in relation to any radioactive material shall, to the extent applicable, observe and shall cause its contractors and agents to observe the following codes and any amendments thereof and any codes substituted therefore:

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- (i) “Occupational Radiation Protection in the Mining and Processing of Raw Materials”, IAEA Safety Guide No. RS-G-1.6 published by the International Atomic Energy Agency Vienna 2004;
  - (ii) “Regulations for the Safe Transport of Radioactive Material”, IAEA Safety
  - (iii) Guide No TS-R-1 published by the International Atomic Energy Agency Vienna 2005;
  - (iv) “Management of Radioactive Waste from the Mining and Milling of Ores”,
  - (v) IAEA Safety Guide WS-G-1.2 published by the International Atomic Energy Agency Vienna 2002;
  - (vi) the Malawi Bureau of Standards on transportation of hazardous materials and the Occupational Safety, Health and Welfare Act (Cap. 55:07 of the Laws of Malawi), provided these standards do not compromise the IAEA Safety Guide WS-G-1.2; and
  - (vii) the Code of Practice on Radiation Protection in the Mining of Radioactive Ores which was drawn up by the Commonwealth in accordance with the recommendations of the International Commission on Radiological Protection.
- (c) Where Malawi is a signatory to a Treaty that deals with radioactive materials the Government covenants with the Company that it will, to the extent applicable:
- (i) do all appropriate to ensure it has in place the appropriate administrative procedures to satisfy the Government obligations under the Treaty; and
  - (ii) promptly enter into whatever agreements and pass whatever Laws are necessary to give effect to any international Treaty or protocol which has or may have impact on the mining, treatment, storage or sale of radioactive material or the minerals contained therein.

## 8 LAND AND INFRASTRUCTURE

### 8.1 Access

- (a) The Company shall allow the public and the Government to use, free of charge, any roads within the Mining Area constructed and/or maintained by the Company which by custom and practice have been freely available for public use, provided, that:

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- (i) such use does not unduly prejudice the security of the Project;
  - (ii) such use does not unduly prejudice or interfere with the Operations;
  - (iii) the Company may restrict access or limit the use of such roads in the interest of public health and safety; and
  - (iv) the Company shall use reasonable efforts to minimise restrictions and provide alternative access roads every time it restricts or limits the use of roads pursuant to sub-paragraph (iii) above.
- (b) The Company may in its sole discretion allow the public to have access over the Mining Area, provided that:
- (i) such access does not unduly prejudice the security of the Project; and
  - (ii) such access does not unduly prejudice or interfere with the Operations,
- the Company may restrict or limit such access, in the interest of public health and safety.

## 8.2 Communications

- (a) If requested by the Government, the Company shall allow the Government to place, or permit placement on behalf of the Government, for a reasonable charge and at the Government's expense, telephone wires on the poles of any lines of the Company, provided that such installation is carried out with prior notice to the Company, and in cooperation with the Company and does not unduly interfere with the Company's efficient use of such poles and lines.
- (b) The Government shall facilitate the granting of a Permit to the Company by the Malawi Communications Regulatory Authority to establish and operate satellite and other wireless communications both within Malawi and internationally.

## 8.3 Permits

- (a) The Government will use its Best Endeavours to assist the Company in obtaining any Permits required under the Mines and Minerals Act, and any other applicable Law.
- (b) The Company may from time to time make application to the Government for the grant to it of any Permit under the applicable Laws necessary to:

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- (i) permit the Company to perform any of its obligations under this Agreement;
  - (ii) export Mine Product from Malawi;
  - (iii) import into Malawi geological samples or products arising from the testing of geological samples where the Company previously exported such geological samples from Malawi;
  - (iv) transport Mine Product and radioactive material and waste; and
  - (v) store radioactive material and waste in the Hazardous Waste Facility.
- (c) The Parties acknowledge that this Agreement does not deal with every Permit which shall be required to establish the Project and undertake the Business and to the extent any such Permit is required the Government shall consider any application for such Permit in good faith and in a timely manner.

#### **8.4 Zoning**

The Government shall ensure after consultation with the relevant District council and Commissioner for Lands that the area and part thereof under the Kanyika Mineral Right, shall to the extent required be and remain zoned for use or otherwise protected during the time that the Company holds the Kanyika Mineral Right so that the Operations may be carried out on such land in conformity with existing legislation and that any interference or interruption by the Government or any other Party be done in conformity with existing legislation.

#### **8.5 Resettlement**

- (a) If work to be carried out by Company requires the resettlement of any bona fide Malawian citizen to some alternative location within or outside the area of the Kanyika Mineral Right, then:
- (i) before mobilising to the mining site, the Company shall first prepare and submit a Resettlement Management Plan for approval by the Mineral Resources Committee. Once the Resettlement Management Plan is approved, the Company may proceed with resettlement activities in accordance with such approved Resettlement Management Plan;
  - (ii) the Company shall:
    - (A) meet the appropriate costs of such resettlement, as provided for in accordance with the relevant Government policy, determined by

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Minister responsible for land matters or local government authority as the case may be; and

- (B) any compensation which must otherwise be payable pursuant to the Land Legislation; and
- (iii) the Company in consultation with Government shall do all that is reasonably necessary to expand existing townships or establish new townships for such resettlement.
- (b) Subject to clause 8.5(a), if the Company causes disturbance to any village infrastructure, the Company shall replace such infrastructure, and pay compensation to the affected people in accordance with applicable Law.
- (c) Each Party shall render whatever assistance it is able to, to give effect to this clause and to enable the other to obtain a determination of compensation and, if required, the resettlement of any affected owners or occupiers in a timely manner.

#### **8.6 Project Protection**

Following the resettlement of the affected people as provided for in clause 8.5(a) until the expiry of the Mining Licence, the Government shall not without consent of the Company, which consent shall not be unreasonably withheld or delayed:

- (a) re-occupy or permit to be re-occupied any of the Project, including without limitation works, installations, plant, equipment or other property located on the area of the Kanyika Mineral Right, whether owned, leased or licensed by the Company; or
- (b) create or grant or permit to be created or granted any Permit of any nature or kind whatsoever over or in respect of any lands which would unduly prejudice or interfere with the Operations.

#### **8.7 Disturbance**

Following the resettlement of the affected people as provided for in clause 8.5(a) until the expiry of the Mining Licence:

- (a) the Government shall at the request of the Company facilitate the removal of any unauthorised person from the area of the Kanyika Mineral Right, including any unauthorised structure, the contents of that structure and any materials or fixtures in

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the area of the structure. The Company shall not be responsible for the costs in respect of such removal;

- (b) if the Company causes damage to any crops, trees, buildings, stock or works outside the area of the Kanyika Mineral Right, then the Company shall be liable to that Party in accordance with section 225 of the Mines and Minerals Act; and
- (c) if the disturbance or damage is caused to land the Company shall pay compensation in accordance with Environmental Laws and any other applicable Law.

### **8.8 General**

- (a) In accordance with the Scheduled Plans, the Government shall permit the use of the land by the Company for such periods and on such terms and conditions (including price, rent and renewal) as are reasonable having regard to the requirements of the Company and as are consistent with the terms of this Agreement and approved proposals. Such permission shall be for the Operations, including but not limited to those required for accommodation areas, conveyors, private roads, tailings areas, water pipelines, pumping installations and reservoirs, power transmission lines, radio and communication sites, plant site areas and borrow pits for stone, sand, clay and gravel.
- (b) Without limitation to clause 8.8(a), the Government agrees to declare the Land as public land and grant a licence to the Company, subject to applicable Laws.

## **9 ROADS**

### **9.1 Public Roads**

- (a) If the Company requires the whole or any part of the Chatoloma – Kanyika access road from the M1 to be upgraded to a higher standard than a tertiary road as contemplated under section 3(1)(a) of the Public Roads Act (Cap. 69:02 of the Laws of Malawi), the Company may negotiate a separate contract with the Government's contractor or a third party contractor to carry out such additional work and such additional work shall be at no cost to the Government.
- (b) The Government may use its Best Endeavours to maintain or cause to be maintained those public roads under the control of the Government which the Company wishes to use in its Operations and such maintenance shall be to a standard of a main road contemplated under section 3(1)(a) of the Public Roads Act (Cap. 69:02 of the Laws of Malawi).

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- (c) The Government may support initiatives to improve supporting infrastructure and essential services.
- (d) If the Company uses or wishes to use a public road (other than the Chatoloma – Kanyika access road from the M1), which is not to the standard required by the Company, or use by the Company of a public road results in excessive damage to or deterioration of that road (other than fair wear and tear):
  - (i) the Company shall pay to the Government the whole or an equitable part of the total cost of any required upgrading or making good the damage or deterioration as may be reasonably required by the Government, where the Government or the Government's contractor undertakes the upgrade or the making good works; or
  - (ii) the Company may (at its own cost) undertake (or engage a sub-contractor to undertake) the upgrade or the making good works and in doing so, may be considered a contractor to the Government at no cost to the Government.
- (e) If the Company is unable to procure wayleaves, easements or other rights over land required for the purposes of designing, constructing, commissioning, operating and/or maintaining any public road on reasonable terms, the Government shall use Best Endeavours to enable the Company to procure the said wayleaves, easements or other rights over land.

## 9.2 Private Roads

- (a) The Company may at its own cost design, construct, commission, operate and maintain all private roads used in its Operations and the standard of such roads shall be equivalent to that applying to similar private roads in Malawi.
- (b) The Company shall at its own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles from using its private roads.
- (c) The Company shall, at any place where its private roads cross any public railways or public roads, at its own cost erect signposts and take other steps reasonably required by the Government.

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- (d) Where a private road is used in the Operations and is reasonably required for public use, the Government may, after consultation with the Company, resume and gazette such road as a public road, provided that:
  - (i) clause 9.1 applies to such public road;
  - (ii) resumption and gazetting is carried out in cooperation with the Company;
  - (iii) resumption and gazetting does not unduly prejudice or interfere with the Operations;
  - (iv) resumption and gazetting does not unduly degrade security of any part of the Project; and
  - (v) in the interest of public health and safety, the Company may restrict access to or limit the use of such road.

## **10 AERODROME**

If the Company requires for its Operations any aerodrome facilities or services in the District, the Company shall confer with the Government and the Government shall use its reasonable endeavours to assist the Company in securing rights to obtain the facilities and services it requires. Nothing in this clause 10 shall be construed to require the abrogation or modification of any contractual obligation of the Government to any Person holding aerodrome rights.

## **11 ELECTRICITY**

### **11.1 Electricity Supply**

- (a) For the purposes of supplying electricity to the Project as required for the Operations, the Company may do one or more of the following:
  - (i) secure electricity from the distribution licensee;
  - (ii) purchase electricity from any distribution or generation licensee at tariffs and on terms and conditions to be agreed between that distribution or generation licensee and the Company in accordance with the Electricity Act (Cap. 73:01 of the Laws of Malawi) and the Energy Regulation Act (Act No. 20 of 2004 of the Laws of Malawi); and/or

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- (iii) generate its own electricity for its own consumption from a facility constructed by or on behalf of the Company under the Energy Regulation Act (Act No. 20 of 2004 of the Laws of Malawi).
- (b) If the Company generates its own electricity in accordance with clause 11.1(a)(iii), it:
  - (i) is entitled to consume electricity it generates without first having to sell it to the single buyer licensee; and
  - (ii) may sell Surplus Electricity to the single buyer licensee, at a tariff and on terms and conditions to be agreed between that transmission licensee and the Company in accordance with the Electricity Act (Cap. 73:01 of the Laws of Malawi) and the Energy Regulation Act (Act No. 20 of 2004 of the Laws of Malawi).

## 11.2 Government Obligations

- (a) The Government shall use its Best Endeavours to assist the Company to procure the supply of electricity it requires under this clause 11, including, subject to Company's compliance with the requirements of applicable Law, grant any Permit which the Company or the Person referred to in clause 11.1(a) requires under the Electricity Act (Cap. 73:01 of the Laws of Malawi) or the Energy Regulation Act (Act No. 20 of 2004 of the Laws of Malawi).
- (b) The Government shall use its Best Endeavours to assist the Company to procure any wayleaves, easements or other rights over land required for the purposes of transmitting electricity on reasonable terms.

## 12 WATER

### 12.1 Water Requirements

- (a) The Parties shall agree upon the amounts (and qualities) of the Company's annual and maximum daily water requirements for use in the Operations ("**Mining Water Requirements**").
- (b) To meet the Mining Water Requirements, and to the fullest extent reasonably practical and economically viable, the Company shall take and use water obtained from the following sources according to the following priority:

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- (i) first, water obtained from pit dewatering in the area of the Kanyika Mineral Right;
  - (ii) second, water obtained from the Milenje and Kanyika water courses and other surface water courses, in accordance with clauses 12.1(c), 12.1(d), 12.1(e) and 12.1(f); and
  - (iii) third, water obtained from groundwater sources other than in the pit dewatering referred to in subparagraph (i) in accordance with clauses 12.1(c), 12.1(d), 12.1(e) and 12.1(f), and the Government shall grant or ensure the grant to the Company all Permits necessary for the drawing and usage of water contemplated in this clause 12.1(b).
- (c) If the Company draws and uses water from the Milenje and Kanyika water courses or other surface water courses or groundwater sources other than the pit dewatering referred to in clause 12.1(b)(i), the Company shall:
- (i) pay a fee to be agreed with the Government for that water, such fee to comply with the Water Resources Act (Cap. 72:03 of the Laws of Malawi) or other applicable Law;
  - (ii) draw and use that water in cooperation with the Government to ensure good water resource management as the Government may from time to time require;
  - (iii) employ and retain experienced hydrological consultants to investigate on the sustainability of taking such water;
  - (iv) furnish to the Minister responsible for the administration of the Water Resources Act (Cap. 72:03 of the Laws of Malawi) details of the results of those investigations; and
  - (v) cease to draw or use that water if it no longer holds the relevant Permit.
- (d) If the investigations referred to in clause 12.1(c) demonstrate to the satisfaction of the Minister responsible for the administration of the Water Resources Act (Cap. 72:03 of the Laws of Malawi), acting reasonably, that water from the Milenje and Kanyika water courses or other surface water courses or the groundwater sources other than the pit dewatering referred to in clause 12.1(b)(i) can continue to be drawn and used by the Company without seriously affecting the sustainability, quality or availability (to the extent utilised by local villagers) or quality of water in the adjacent areas, but that the Milenje and Kanyika water courses or other surface

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water courses or the groundwater sources other than pit dewatering referred to in clause 12.1(b)(i) are hydrologically inadequate to meet the Mining Water Requirements, the Minister responsible for the administration of the Water Resources Act (Cap. 72:03 of the Laws of Malawi) may on at least six (6) months prior notice to the Company (or on at least forty-eight (48) hours' notice if in his reasonable opinion an emergency situation exists) limit the amount of water which may be taken from that source at any one time or from time to time to the maximum which that source is hydrologically capable of meeting.

- (e) If the investigations referred to in clause 12.1(c) demonstrate to the satisfaction of the Minister responsible for the administration of the Water Resources Act (Cap. 72:03 of the Laws of Malawi), acting reasonably, that water from the Milenje and Kanyika water courses or other water courses or the groundwater sources other than the pit dewatering referred to in clause 12.1(b)(i) cannot continue to be drawn by the Company without seriously affecting the sustainability, quality or availability (to the extent utilised by local villagers) of water in the Milenje and Kanyika water courses or other surface water courses or in the groundwater sources other than the pit dewatering referred to in clause 12.1(b)(i) or quality of water in the adjacent areas, the Minister responsible for the administration of the Water Resources Act (Cap. 72:03 of the Laws of Malawi) may revoke or refuse to renew the relevant Permit.
- (f) The Company may at its cost design, construct, commission, operate and maintain dams, bores, valves, distribution pipelines, reticulation, meters, tanks, equipment and appurtenances to draw, transport, use, reticulate and dispose of water obtained by the Company pursuant to this clause 12.
- (g) If the water sources contemplated by this clause 12 are insufficient to meet the Mining Water Requirements, the Company shall cooperate with the Government in an investigation of other water supply sources, including but not limited to ground water, surface water, water catchments and storage dams.

## 12.2 Government Obligations

- (a) The Government shall use Best Endeavours to assist the Company to develop, access, use and draw water to meet the Mining Water Requirements, including without limitation the grant of any Permit which the Company requires under the Water Resources Act (Cap. 72:03 of the Laws of Malawi).
- (b) The Government shall in granting rights to third parties for any purpose, including rights to minerals, petroleum or other substances, over the area of any water sources

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from which the Company is drawing or using water from time to time, impose conditions on the third parties to minimise any material prejudice, pollution or interference with the Operations or the Company's drawing or use of water from the water source, to the extent consistent with applicable Law.

## 13 COMMUNITY DEVELOPMENT

### 13.1 Community Development Agreements

- (a) When applying for the Kanyika Mining Right, the Company lodged under the Mines and Minerals Act a description of plans and initiatives for planned, sustained economic and social development in the region and local communities affected by the Operations and any Community Development Agreements that have already been approved (if any), in accordance with section 150(p) of the Mines and Minerals Act.
- (b) The Company shall implement as many Community Development Agreements as are required under section 169 of the Mines and Minerals Act, subject to the relief afforded to the Company under section 169(5) of the Mines and Minerals Act.
- (c) The Government agrees to do all within its power to procure the approval of the Mineral Resources Committee to all Community Development Agreements that have been ratified and endorsed by the Company and the relevant qualified community in accordance with section 169(3) of the Mines and Minerals Act.
- (d) The Company will expend on community development under its Community Development Agreements the rate prescribed under section 169(11)(a) of the Mines and Minerals Act, in accordance with section 169(17)(a) of the Mines and Minerals Act.
- (e) Where the Company in its sole discretion expends additional discretionary amounts on community development above the money determined by the rate prescribed in section 169 (11) of the Mines and Minerals Act, such additional discretionary expenditure on community development shall be considered expenditure under section 169 (11) of the Mines and Minerals Act. Any additional discretionary amounts expended by the Company on community development in excess of the amount required under section 169(11) of the Mines and Minerals Act in a given year will be credited towards the Company's expenditure under section 169(11) of the Mines and Minerals Act in the next year.
- (f) The Government agrees that third parties may contribute money to the Company or the separate legal entity or trust established by the Company under clause 13.1(g)

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and the Company's activities under its Community Development Agreements. Where money from third parties is contributed to the Company or the separate legal entity or trust established by the Company in accordance with clause 13.1(g) to fund the Company's activities under its Community Development Agreements, such contributions shall not be considered expenditure incurred by the Company under section 169 (11) of the Mines and Minerals Act.

- (g) The Company may facilitate the establishment of a Trust registered under the Laws into which the community development funds, whether the funds are those which the Company must expend in accordance with section 169 of the Mines and Minerals Act or discretionary expenditure as contemplated in clause 13.1(e), can be directed such that this Trust then controls, manages and implements the Company's Community Development Agreements and in doing so satisfies the Company's obligations in respect of community development under both this Agreement and the Mines and Minerals Act. The Parties agree that such contributions to this Trust by the Company and the amount of expenditure incurred by the entity will be consistent with section 169 (11) of the Mines and Minerals Act.
- (h) The money that is required to be expended by the Company on community development under section 169 of the Mines and Minerals Act or is contributed towards community development at the Company's discretion in accordance with clause 13.1(e) of this Agreement may be considered allowable deductions for the purposes of clause 21.5.

### **13.2 Community Engagement Plan**

- (a) The Company shall prepare the Community Engagement Plan as contemplated in section 300 of the Mines and Minerals Act, which once prepared, shall be lodged with the Registrar for verification and registration.
- (b) The Government agrees to do all within its power to procure the registration of the initial Community Engagement Plan prepared in accordance with clause 13.2(a) of this Agreement and any Community Engagement Plan updated in accordance with section 300(3) of the Mines and Minerals Act as soon as possible after the initial Community Engagement Plan or any updated Community Engagement Plan is submitted to the Registrar.

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### 13.3 Corporate Social Responsibility

- (a) The Company shall contribute to the sustainable development of Malawi and the local community, through the adoption of a high degree of socially responsible practices, based on the voluntary principles and standards set out in this clause.
- (b) The Company shall use its Best Endeavours to comply with the following voluntary principles and standards for a responsible business conduct and consistent with the Laws:
  - (i) stimulate the economic, social and environmental progress, aiming at achieving sustainable development;
  - (ii) respect the human rights of those involved in the Company's activities, consistent with the international obligations and commitments of Malawi;
  - (iii) encourage the strengthening of local capacity building through close cooperation with the local community;
  - (iv) encourage the development of human capital, especially by creating employment opportunities and facilitating access of workers to professional training;
  - (v) refrain from seeking or accepting exemptions that are not established in the Laws, relating to environment, health, security, work or financial incentives, or other issues;
  - (vi) support and maintain good corporate governance principles, and develop and apply good practices of corporate governance; and
  - (vii) develop and apply effective self-regulatory practices and management systems that foster a relationship of mutual trust between the Company and the community surrounding the Project;
- (c) promote the knowledge of workers about the corporate policy, through appropriate dissemination of the obligations under this clause, including programs for professional training;
- (d) refrain from discriminatory or disciplinary action against the employees who submit grave reports to the Company or, whenever appropriate, to the competent public authorities, about practices that violate the Law or violate the standards of corporate governance that the Company is subject to;

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- (e) encourage, whenever possible, the business associates, including service providers and outsources, to apply the principles of business conduct consistent with the principles provided in this clause; and
- (f) respect local political activities and processes.

#### **14 BUSINESS DEVELOPMENT ASSISTANCE PLAN**

- (a) The Company shall develop a Business Assistance Development Plan that is consistent with section 165 of the Mines and Minerals Act.
- (b) In preparing the Business Assistance Development Plan the Company will take account of:
  - (i) the lawful occupiers or owners of land in the Mining Area;
  - (ii) persons in neighbouring communities;
  - (iii) women resident in the vicinity of the Operations;
  - (iv) other Malawian residents; and
  - (v) the objective of building the capacity for people to own and operate sustainable businesses.

#### **15 TRAINING AND HUMAN RESOURCES DEVELOPMENT AND MANAGEMENT**

##### **15.1 Employment of Malawian Citizens**

- (a) The Company shall prepare and submit to the Mineral Resources Committee for its approval, an Employment and Training Plan as required in section 163 of the Mines and Minerals Act and the Government shall do all within its power to procure that the Mineral Resources Committee considers and approves the Employment and Training Plan in a timely manner.
- (b) The Company will comply with the approved Employment and Training Plan and will oblige any contractors and subcontractors to comply with the approved Employment and Training Plan with respect to their own employment practices.
- (c) The Company shall, and shall also cause its contractors and subcontracts to, employ and give preference to the employment of qualified Malawian citizens for financial, accounting, technical, administrative, supervisory, managerial and executive

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positions and other skilled positions as and when such positions become available unless:

- (i) that candidate does not have the skills and experience required for that post, provided that the Company has used reasonable endeavours to advertise the post to the Malawian labour market; or
  - (ii) that candidate is not a fit and proper person to be employed by the Company.
- (d) In furtherance of the obligations under clause 15.1(c), the Company shall employ at its Operations in Malawi no more than a “reasonable number of non-Malawian workers” (as defined in section 163(10) of the Mines and Minerals Act) in connection with the Project.
- (e) If the Company is not required under clause 15.1(c) to employ a Malawian citizen for a post referred to in clause 15.1(c):
- (i) the Company and its contractors and subcontractors may employ a non-Malawian citizen for that post; and
  - (ii) subject to the Company’s compliance with requirements under applicable Law, the Commissioner must promptly grant, or procure the prompt grant, of any Permit that is required for the employment of a non-Malawian citizen for that post.
- (f) If in the reasonable opinion of the Government, which opinion the Government shall detail in writing to the Company, the Company has, in breach of its undertaking under clause 15.1 employed a non-Malawian citizen, it may in addition to any other remedy for breach call upon the Company to show cause why the employment of that non-Malawian citizen should not be discontinued and that such person be replaced by a Malawian citizen that has the requisite skills and experience and is a fit and proper person to be employed by the Company.

## 15.2 Training of Malawians

- (a) The Company shall implement the Employment and Training Plan on a continuing basis for the training of citizens of Malawi in order to qualify them for financial, accounting, supervisory, managerial, executive positions and all other skilled positions, and as required by Operations, provide on the job training, operate vocational training facilities, and utilize whatever other measures are necessary and reasonable to transfer to other citizen employees the ability to work in skilled trades and to supervise other tradesmen and labourers.

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- (b) Notwithstanding anything in this clause 15, the Company shall be solely responsible for all reasonable costs and expenses in connection with the training of Malawian citizen employees where the Company requires the Malawian citizen employees to be trained outside Malawi.
- (c) The Company may seek to obtain from foreign governments, fellowships or scholarships for Malawian citizens who satisfy the required prior established standards to be trained in foreign tertiary institutions in areas which may be of assistance to the Company or its Business.

### **15.3 Expatriate Employees**

The Government may use its Best Endeavours to assist the Company to obtain the permits applied for.

## **16 EMPLOYMENT, OCCUPATIONAL, SAFETY AND HEALTH MATTERS**

### **16.1 Compliance**

- (a) The Company shall conduct its Operations in compliance with the Employment and Safety Laws and International Standards, and shall install, maintain and use modern health and safety devices, work gears and equipment, and shall practice such modern health and safety procedures and precautions (including regular safety training instruction for its employees) as are in accordance with the Employment and Safety Laws and International Standards.
- (b) The Company, with the cooperation and participation of the Government, shall conduct its Operations in compliance with the Voluntary Principles on Security and Human Rights, and shall cause any of its contractors and subcontractors, including any private security provider who provides services to the Company in Malawi, to comply with the Voluntary Principles on Security and Human Rights.
- (c) Nothing in this clause 16 shall be deemed to limit the right of the Government to take such other reasonable actions within its power, such as those rights under the Mining (Safety) Regulations of the Mines and Minerals Act and Environmental Laws to protect employee health and safety.
- (d) Subject to the provisions of this clause 16, the Company shall comply with the Employment and Training Plan, which is part of the Feasibility Study and shall take into account the provisions of the Occupational Safety, Health and Welfare Act (Cap. 55.07, 1997) of the Laws of Malawi) and International Labour Organization Convention No 155: Occupational Safety and Health, 1981.

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- (e) Notwithstanding the provisions of this clause 16, the Company shall, at the invitation of the Mines Minister, participate either individually or on an industry-wide basis, in discussions relating to the impact and effectiveness of the Employment and Safety Laws or on any prospective changes to the Employment and Safety Laws.

### **16.2 Notification**

The Company shall promptly notify the Commissioner for Workers Compensation in the Ministry of Labour of any death or serious injury to an employee of the Company or any of its contractors or subcontractors that occurs as a result of Operations (which for the avoidance of doubt shall not include the contraction of infectious disease not related to Operations). For the purposes of this clause 16.2, a serious injury means an injury that is likely to cause the injured Person to lose five or more working days.

### **16.3 Compensation**

The Company shall to the extent that it fails to meet employment and safety standards pursuant to the Employment and Safety Laws, the Voluntary Principles on Security and Human Rights and International Standards, at its own cost, compensate those Malawian citizens or permanent residents adversely affected if and to the extent required by, and in accordance with, the applicable Employment and Safety Laws.

## **17 PROCUREMENT**

### **17.1 Local Procurement**

- (a) The Company shall prepare and submit to the Mineral Resources Committee for approval the Goods and Services Procurement Plan at the times required or permitted by section 164 of the Mines and Minerals Act and the Government shall do all within its power to procure that the Mineral Resources Committee considers the request for and approval of the Goods and Services Procurement Plan in a timely manner.
- (b) The Company shall comply with the approved Goods and Services Procurement Plan and shall oblige its contractors and subcontractors to comply with the Goods and Services Procurement Plan with respect to their own procurement practices.

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- (c) The Company in consultation with Government shall at all times designate a responsible Person to:
  - (i) assist Malawi citizens who wish to or have set up businesses to service the Company and the Project;
  - (ii) liaise with the appropriate officials from the Government; and
  - (iii) provide advice and technical assistance in the development and implementation of long-term business enterprises which can continue after the Mining Operations Plan is completed.
- (d) The Company shall submit reports to the Commissioner as required by section 164 of the Mines and Minerals Act.
- (e) For purposes of this Agreement, “businesses” which are “owned by Malawian citizens” means:
  - (i) services provided by resident Malawian citizens; or
  - (ii) entities incorporated or formed in Malawi where citizens of Malawi are entitled to receive 60% or more of all profits from such entities.

## **17.2 International Procurement**

Subject to clause 17.1 and the Company’s compliance thereto, the Company and its major contractors may tender for and procure goods and services to be used in operations similar to the Operations, internationally.

## **18 ENVIRONMENTAL MATTERS**

### **18.1 Compliance with Environmental Management Plan and Environmental Laws**

- (a) Subject to the provisions of this clause 18, the Company shall comply with:
  - (i) the applicable Environmental Laws, and Atomic Energy Act (Act No. 16 of 2011) and Atomic Energy Regulations 2012;
  - (ii) the Environmental Management Plan; and
  - (iii) International Standards.
- (b) The Company shall in any event and consistent with applicable Malawian Environmental Laws, Atomic Energy Act (Act No. 16 of 2011) and Atomic Energy

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Regulations 2012 and the - requirements of International Standards take appropriate preventive measures to protect all streams and water bodies within or bordering Malawi, all dry land surfaces, and the atmosphere from pollution, contamination or damage resulting from Operations.

- (c) If Operations violate any requirement referred to in clause 18.1(a) or otherwise have a material adverse impact on the Environment, the Company shall proceed diligently to restore the Environment as much as possible to its original and natural state (or to remediate the negative impact where restoration is impractical) and shall take appropriate measures to avoid further material adverse impacts on the Environment.
- (d) Any question regarding non-compliance with the Environmental Management Plan, any applicable Environmental Laws Atomic Energy Act (Act No. 16 of 2011) and Atomic Energy Regulations 2012 or International Standards may be referred by either Party to the Independent Expert for determination in accordance with clause 29.
- (e) The Government may take action in enforcing any applicable Environmental Laws, Atomic Energy Act (Act No. 16 of 2011) and Atomic Energy Regulations 2012 to:
  - (i) secure the Company's earliest compliance with such Environmental Laws Atomic Energy Act (Act No. 16 of 2011) and Atomic Energy Regulations 2012; and
  - (ii) impose fines or penalties upon the Company payable under Environmental Laws, Atomic Energy Act (Act No. 16 of 2011) and Atomic Energy Regulations 2012 which are payable in respect of the Company's non-compliance with such Environmental Laws Atomic Energy Act (Act No. 16 of 2011) and Atomic Energy Regulations 2012.
- (f) The Government shall not take any action, or permit any action to be taken, under or in enforcing any applicable Environmental Laws, Atomic Energy Act (Act No. 16 of 2011) and Atomic Energy Regulations 2012 with the intent of adversely discriminating against the Company or its Affiliates.

## 18.2 Compensation

The Company shall, to the extent that it fails to meet environmental management and monitoring standards pursuant to the applicable Environmental Laws Atomic Energy Act (Act No. 16 of 2011) and Atomic Energy Regulations 2012 applicable Malawian and IAEA standards, and International Standards, at its own cost, compensate those adversely

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affected, if and to the extent required by, and in accordance with, the applicable Environmental Laws, Atomic Energy Act (Act No. 16 of 2011) and Atomic Energy Regulations 2012 or standards.

### **18.3 Government Monitoring**

The Government is empowered to undertake regular monitoring of the Project after the Production Commencement Date to:

- (a) review the effectiveness of mitigation measures in the Environmental Management Plan; and
- (b) review any proposed variations to the Environmental Management Plan in accordance with clause 5.3(a).

### **18.4 Environmental Performance Bond**

- (a) The Company shall establish prior to commencing construction of the Project an environmental performance bond, in the initial amount of US\$1 million, which will be placed with the Reserve Bank of Malawi.
- (b) The environmental performance bond shall be in the form provided for in section 274(6) of the Mines and Minerals Act and is to be in favour of the Director of Environmental Affairs.
- (c) If:
  - (i) the Company breaches any obligation under the Mines and Minerals Act, Atomic Energy Act (Act No. 16 of 2011) and Atomic Energy Regulations 2012 and Environmental Laws, or the Rehabilitation and Mine Closure Plan to rehabilitate the Environment of the Kanyika Mineral Right;
  - (ii) the Government notifies the Company of the breach referred to in clause 18.4(c)(i) in accordance with section 274(7) of the Mines and Minerals Act; and
  - (iii) the Company does not commence remedying the breach referred to in clause 18.4(c)(i) within thirty (30) days of the notice referred to in clause 18.4(c)(ii) or fails to diligently pursue such remedy thereafter,

the Government, upon written notice to the Company, may draw down on the whole or any part of the environmental performance bond to fund the costs of remedying such breach.

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- (d) The environmental performance bond shall be reviewed by the Parties every three (3) years over the Life of Mine, in order to ensure the amount of the environmental performance bond is equivalent to the projections in the Environmental Impact Assessment and the Rehabilitation and Mine Closure Plan for the costs referred to in clause 18.4(c) for the relevant three (3) year period. If there is any Dispute regarding the amount of the environmental performance bond, this shall be determined in accordance with clause 29.
- (e) The environmental performance bond shall be released:
  - (i) progressively, where it is being replaced by a substitute environmental performance bond in accordance with clause 18.4(d);
  - (ii) in the circumstances contemplated in clause 18.4(c); and
  - (iii) at the end of the Life of Mine, provided that the Company has met the requirements of the Rehabilitation and Mine Closure Plan under section 272 of the Mines and Minerals Act, which plan may include permanent funding for protection against safety or environmental hazards remaining after closure, before or at the time of the Company making an application to surrender the Kanyika Mineral Right pursuant to section 72 of the Mines and Minerals Act.

### **18.5 Climate Change**

- (a) The Parties acknowledge that during or after the preparation of the Feasibility Study and Environmental Impact Assessment, the Government may develop a policy on climate change.
- (b) Notwithstanding the provisions of this clause 18, the Company shall conform to the Government's policy on climate change as it stands at the time of it completing the Feasibility Study and Environmental Impact Assessment or any changes thereafter provided that such changes apply to all similarly situated entities.

### **18.6 Rehabilitation and Mine Closure**

The Company shall, in accordance with section 272 of the Mines and Minerals Act, prepare and submit to the Commissioner for approval a Rehabilitation and Mine Closure Plan and shall periodically submit updates of that plan for approval. The Parties shall each do all things within their respective power to procure the Commissioner to consider and approve the Rehabilitation and Mine Closure Plan in a timely manner.

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## 19 INSURANCE

- (a) At all times during the Term (including during the construction period) the Company will maintain, with financially sound and reputable insurers, insurance with respect to its properties, including:
- (i) any properties leased or deemed to be leased from the Government or a third party;
  - (ii) any property used in Operations where title is retained by the Government or shall automatically revert to the Government upon termination of the Agreement; and
  - (iii) any property which constitutes social infrastructure (e.g. schools or medical facilities) which is constructed by, or on behalf of, the Company against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles and co-insurance) as would be the case for an internationally reputable and prudent operator according to International Standards.

Such insurance shall include protection against loss or damage to such property, third-party liability insurance (as to which the Government shall be an additional named insured) and, to the extent commercially available on reasonable terms, business interruption insurance.

- (b) The Company shall use its Best Endeavours to obtain any required insurance coverages from Malawian insurers.
- (c) If Malawian insurers are not able to provide such coverages, the Company may, subject to prior approval by the Registrar of Financial Institutions, obtain through a broker authorised to operate in Malawi any other insurance in respect of the Operations (including but not limited to political risk insurance) where it is commercially appropriate to do so and from insurers in any jurisdiction and the Government undertakes to permit the Company to secure such insurance.
- (d) The Company shall forward copies of all insurance policies to the Government at least annually and when requested (including in respect of any cover obtained outside of Malawi by or on behalf of the Company).
- (e) Where an event occurs which gives rise to an ability to make a claim against the insurance maintained by the Company pursuant to clause 19(a), unless the Government consents otherwise, the Company shall promptly file a claim with the

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relevant insurance company and, in the case of third party liability insurance, the Government shall be entitled to file a claim. Unless the Government consents otherwise, the Company shall be obligated to re-invest the proceeds of insurance covering loss or damage to any property the title to which is retained by the Government or shall automatically revert to the Government upon termination of this Agreement for the restoration or replacement of such property.

## **20 MINING REPORTS AND RECORDS**

### **20.1 Reports**

In accordance with the terms and conditions of the Kanyika Mineral Right and section 173 the Mines and Minerals Act, the Company shall submit such reports to the Registrar as are required to satisfy the Company's obligations.

### **20.2 Public Information**

This Agreement and any amendment to it shall be made public and shall under no circumstances be considered confidential information. The Government may make public information relating to the timing and amount of Royalties and other payments specifically due or paid under the terms of this Agreement or of Taxes payable or paid by the Company or the rates at which Royalties, Taxes or other payments become due or are assessed.

## **21 FISCAL REGIME**

### **21.1 Enjoyment of Fiscal Regime**

Except as otherwise provided in this Agreement, the Company shall be subject to the provisions of the Taxation Act, the Value Added Tax Act (Cap. 42:02 of the Laws of Malawi), the Customs & Excise Act (Cap. 42:01 of the Laws of Malawi) and any other applicable Tax Laws.

### **21.2 Resource Rent Tax**

The resource rent tax shall be computed in accordance with provisions of the Taxation Act.

### **21.3 Ring Fencing**

The Company shall be subject to ring fencing provisions as provided for under the Taxation Act.

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#### 21.4 Payments to Fund Closure Costs

- (a) Any payments by the Project into a Qualifying Mine Closure Fund shall be deducted as expenditure directly in carrying on or providing the activities of the Project, provided that it is in line with the provisions of the Sixteenth Schedule of the Taxation Act.
- (b) Any payments out of a Qualifying Mine Closure Fund shall be included in the assessable income of the Project in line with the Sixteenth Schedule of the Taxation Act.
- (c) For the purposes of this clause 21.4, a **Qualifying Mine Closure Fund** is:
  - (i) a fund which is not controlled by the Project and which cannot become controlled by the Project, which is able to pay to the Project only in relation to closing down expenditure for the Project and for no other purpose, and which is otherwise able to pay only for closing down expenditure of mining projects and for environmental rehabilitation and environmental management, and which cannot be enabled to make any other payments to or for the benefit of the contributor; and
  - (ii) able to pay only to reimburse closing down expenditure of mining projects which has already been paid, or to pay directly closing down expenditure of mining projects, or to pay for environmental rehabilitation and environmental management which is part of the conduct of a mining project.
- (d) A contribution is paid to a Qualifying Mine Closure Fund only if it is received by the Qualifying Mine Closure Fund and cannot be returned by the Qualifying Mine Closure Fund or recovered by or on behalf of the Project other than as provided for in this Agreement or in the Sixteenth Schedule of the Taxation Act.
- (e) Any deduction for a contribution is limited to the current total contributions endorsed by the Minister responsible for the Environment as reasonable in relation to the Project, reduced by any contributions already made to the Qualifying Mine Closure Fund.

#### 21.5 Costs of Implementing any of the Scheduled Plans

The costs of implementing any of the Scheduled Plans may be deducted in the determination of taxable income to the extent allowable under the Taxation Act.

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## 21.6 Limitation on Deduction of Interest

Any interest due and payable on Indebtedness in excess of the maximum 3:1 ratio as provided for under the Taxation Act shall not be deductible from assessable income in the determination of taxable income.

## 21.7 Transactions with Affiliates

Any payments for goods including any Mine Product or services acquired from or provided to an Affiliate or a Related Person shall, subject to clause 7.4, be priced as if the transaction was made on Arm's Length Terms and shall be subject to adjustment by the Commissioner General in accordance with the Taxation Act. The onus shall be on the Company to establish that it has used Arm's Length Terms.

- (a) The Company shall in its Tax filings:
  - (i) identify all transactions with Affiliates or Related Persons and the amounts paid or received pursuant to such transactions; and
  - (ii) provide contemporaneous documentation regarding the basis for determining price on Arm's Length Terms.

Such report shall be certified by the Chief Executive Officer and the Chief Financial Officer as to its accuracy and completeness.

- (b) If the Commissioner General makes an adjustment then it will be upon the Company to challenge that adjustment if it so wishes and if established pursuant to the proposed Revenue Appeals Tribunal Act or similar legislation, the challenge shall be through the Revenue Appeals Tribunal or similar body and not pursuant to the dispute resolution mechanisms referred to in clause 30.
- (c) The Company may deduct from assessable income reasonable amounts paid to Affiliates as a management fee for:
  - (i) corporate, administrative, technical, or other services; or
  - (ii) the provision of technology,provided that such deduction is in line with the provisions of the Taxation Act.

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## **21.8 Withholding on Payments to Non-Resident Persons**

- (a) The Company shall, where required by applicable Laws, withhold the Tax payable on income and dividends, payable to non-resident Persons and pay such withheld amounts to the Government in accordance with the provisions of the Taxation Act.
- (b) In consideration for the benefits of this Agreement, the Company agrees to withhold payments to non-residents and make payments to the Government as provided for in this clause without regard to any otherwise applicable Treaty or agreement which would provide for a lower rate of withholding. If generally applicable withholding rates to non-residents are reduced below the rates set by this clause, the Company may avail itself of those lower rates so long as they are in effect.

## **21.9 Import Duty, Import Excise and Import VAT Exemptions**

Without limitation to its rights at Law, the Company shall be exempt from import duty and import excise and shall be zero rated for VAT on imports of capital goods, consumables and services to the extent already provided for by Customs and Excise Act (Cap 42 : 01 of the Laws of Malawi) and the Government shall issue to the Company in a timely manner any Permit, advice or direction the Company may require in order to gain the benefit of such exemption.

## **21.10 Stability**

The Parties acknowledge and agree that during the Stability Term, the provisions stipulated in the Sixteenth Schedule of the Taxation Act as at the date of this Agreement shall apply to the Company and the Project.

## **22 ROYALTY**

### **22.1 Gross Royalty Payable**

- (a) The Company shall pay to the Government, in respect of revenue from the Mine Product produced by the Project and disposed, a gross royalty at the rates from time to time prescribed for Minerals under the Taxation Act (“**Royalty**”). This rate shall be stabilized during the Stability Term.
- (b) The Royalty or a reasonable estimate of the Royalty shall be paid within the period specified under the Taxation Act and where the Royalty which is paid is based on a reasonable estimate then there shall be a true-up calculation of what the actual Royalty should be once all of the relevant information is available and the

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adjustment arising from the true-up calculation shall be incorporated into the next Royalty payment that becomes due to the Government.

## **22.2 Calculation**

For the purposes of determining the gross value of Mine Product, the gross value of the Mine Product will be calculated in accordance to the Taxation Act.

## **22.3 Calculation Records**

- (a) For the purpose of determining the gross value payable in respect of any sale of Mine Product under this Agreement, the Company shall take reasonable steps (either by the certificate of a competent independent party acceptable to the Commissioner General's or otherwise to the Commissioner General's satisfaction) to satisfy the Government as to the correctness of all relevant weights, assays and analyses for the purposes of the Royalty calculation in accordance with clause 22.2 and shall give due regard to any objection or representation made by the Commissioner General as to any weight, assay or analysis affecting the Royalty calculation.
- (b) The gross sum realized and any claimed deduction with respect to the calculation of the gross value shall be supported by such information as the Commissioner General may reasonably require and in the absence of such supporting documentation may be disallowed by the Commissioner General. Any claimed deduction may be subject to audit by the Commissioner General.

## **23 MAXIMUM DEBT EQUITY RATIO**

The Company shall maintain a ratio of Indebtedness to Net Worth that is equal to or lower than 3:1 at all times.

## **24 FOREIGN EXCHANGE**

### **24.1 Foreign Currency Accounts**

- (a) Subject to the Company making such applications required under applicable Laws, including obtaining the approval of the Reserve Bank and registering with the Reserve Bank the facility agreements between the Project Lenders and the Company, the Company may:
  - (i) remit Foreign Currency into Malawi in accordance with the Exchange Control Act;

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- (ii) repatriate Foreign Currency from Malawi in accordance with the Exchange Control Act;
- (iii) Subject to clauses 24.1(b), 24.1(c) and 24.1(d), and full disclosure to the Government of all documents entered into with the Project Lenders and full disclosure to the Reserve Bank of account details, maintain one or more Foreign Currency accounts outside of Malawi to meet the Company's Foreign Currency obligations to the initial Project Lenders for a period ending on the later of seven (7) years after the establishment of the relevant account or the date on which the Company has discharged all obligations in favour of the initial Project Lenders (excluding, for the avoidance of doubt, any refinancing); and
- (iv) retain a Foreign Currency account within Malawi which has been established, for the Project, and maintain in such account amounts arising from all verifiable sources associated with the Business, including the following:
  - (A) that portion of the sale proceeds which are not permitted to be held in the account referred to in clause 24.1(a)(iii);
  - (B) payments made by insurers or reinsurers not resident in Malawi under contracts of insurance in the Company's favour;
  - (C) Foreign Currency proceeds of any disposal of capital assets;
  - (D) foreign loan proceeds and intercompany loans;
  - (E) proceeds of the issue of share capital (payable by non-residents of Malawi);
  - (F) Foreign Currency proceeds of swaps and hedges (payable by non-residents of Malawi); and
  - (G) maintain one or more Foreign Currency accounts within Malawi to:
    - (I) make Foreign Currency payments due to foreign suppliers for the supply of goods (including without limitation equipment, spare parts and materials) and services to the Company;
    - (II) repatriate profits and capital (in Foreign Currency or otherwise) from Malawi (which right shall be extended to the Shareholders

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in respect of the proceeds of the disposal or liquidation of all or part of the assets of the Company);

- (III) if permitted by applicable Law, pay to Expatriate Employees of the Company whose contracts of employment specify that the whole or any part of their salary or any other entitlement be paid in a Malawi Kwacha, that portion of their salary or other entitlement which it is permissible under any applicable Law or otherwise permitted by Government to be paid in a Malawi Kwacha;
  - (IV) the extent permitted by applicable Law, effect any payments in Foreign Currency to Persons for foreign exchange purposes as may be necessary or desirable in the ordinary course of Business;
  - (V) effect any payments in Foreign Currency as may be required from time to time in the ordinary course of Business;
  - (VI) make payments in Foreign Currency of swaps and hedges; and
  - (VII) any other payments required to be made in Foreign Currency.
- (b) The obligations of the Company to meet its obligations to Project Lenders, referred to in clause 24.1(a)(iii), may include without limitation:
- (i) the payment of interest and the principal to the Project Lenders;
  - (ii) the payment of mandatory pre-payments to the Project Lenders; and
  - (iii) the establishment and maintenance of reserves as required by the Project Lenders.
- (c) All Foreign Currency which is held in Foreign Currency accounts outside of Malawi and which is not required to meet the Company's obligations to the Project Lenders, shall be remitted into Malawi in accordance with applicable Laws.
- (d) The Company shall register with and seek approval from the Reserve Bank under the Exchange Control Act through authorised dealer banks in Malawi, all facility agreements between the Project Lenders and other third-party lenders and the Company or an Affiliate prior to such facility agreement becoming unconditional.
- (e) Other than the Foreign Currency account specified in clause 24.1 above, the Company may not hold Foreign Currency accounts outside of Malawi.

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- (f) The Company shall have the right, and the Government shall do all that is necessary to ensure that the Company continue to have the right, to enter into a tripartite agreement with the Government on usual or industry terms and the Project Lenders and other third party lenders in order to give effect to the arrangements referred to in this clause 24.

#### **24.2 Invoicing in Foreign Currency**

Subject to the Company making an application to the Reserve Bank where the Company is selling Mine Product to an Affiliate or third party for value addition in Malawi for approval to render an invoice in Foreign Currency to meet its Foreign Currency expenditure and the Reserve Bank granting that approval, then the Company may invoice in the approved Foreign Currency and all receipts shall be in Malawi kwacha and paid into the Company's local currency account.

Where the Company makes the application contemplated in this clause 24.2, the Government will use its reasonable efforts to support that application.

#### **24.3 Reporting**

The Company shall, submit to the Reserve Bank:

- (a) within thirty (30) days of the end of each Quarter:
- (i) a statement of Foreign Currency amounts remitted into Malawi within the previous Quarter from Foreign Currency accounts outside of Malawi; and
  - (ii) a statement of the balance of the Company's Foreign Currency accounts at the end of the previous Quarter both within and outside of Malawi and itemised transactions through its Foreign Currency accounts outside of Malawi in connection with any facility with Project Lenders;
- (b) audited financial statements of the Company within three (3) months following the financial period to which such audited financial statements relate which comply with applicable International Financial Reporting Standards; and
- (c) any other information or reports as may reasonably be requested by the Reserve Bank.

The Company shall provide the Reserve Bank with all authorisations and consents and take all other actions necessary to permit the Reserve Bank, Reserve Bank affiliates, or

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agents of the Reserve Bank to audit any Foreign Currency account held outside of Malawi by the Company in conjunction with any facility with Project Lenders.

#### 24.4 General

- (a) Subject to the approval of the Reserve Bank, the Company shall have the same rights to buy and sell currencies from authorised dealers as other commercial concerns in Malawi and enter into swaps and hedging agreements (which agreements will include arrangements for taking out forward cover against fluctuations in Malawi kwacha or Foreign Currency or other fluctuations in outflows or inflows incurred as part of the management operations and solely for the purposes of the Company covering such fluctuations as they may affect the Company or the Operations but shall not include Speculative Currency Transactions).
- (b) If additional exchange controls are to be imposed from those that exist as at the Agreement Date, then without prejudice to the Company's rights under clause 24.1(f) the Government is to assist the Company in making representations to the Reserve Bank in an endeavour to minimise any material impacts of those proposed exchange controls on the Company.
- (c) Subject to the terms of this Agreement and any applicable Law, the Company shall remit into Malawi all Foreign Currency proceeds from the sale of Mine Product.
- (d) The Company shall not engage in or use any provisions of this clause or any Permit given by the Reserve Bank to engage in Speculative Currency Transactions, but for the avoidance of doubt, this clause shall not prohibit or prevent the Company from undertaking the transactions referred to in clause 24.4(a) or 24.4(b) or as contemplated under the Taxation Act.
- (e) If the Company is in breach of clause 24.4(d) it shall pay to the Government as liquidated damages an amount equal to the amount of the value of the Speculative Currency Transaction and any reasonable costs incurred by the Government in establishing that the transaction was a Speculative Currency Transaction.
- (f) The Company shall, upon application in writing to the Reserve Bank through the Company's authorised dealer bank, be entitled to export capital goods originally purchased and brought into Malawi by the Company with Foreign Currency,

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provided that the Government shall first be given the option to purchase the said capital goods at Fair Market Value.

- (g) The Company agrees to establish separate bank accounts for Malawi kwacha and Foreign Currency within Malawi for the Operations.
- (h) No provision of this Agreement shall be interpreted in a way that prevents the adoption or execution of any measure aimed at ensuring the equitable or effective imposition or collection of taxes or the control and monitoring of foreign currency movement as provided in Malawi legislation.

#### **24.5 Currency Transfers**

Subject to the Company complying with the Exchange Control Act, the Government shall ensure the free transfer of funds related to the Company's investment, namely:

- (a) the initial contribution to capital or any addition thereof related to the maintenance or expansion of the Project;
- (b) the income directly related to the Project;
- (c) the proceeds of sale or total or partial liquidation of the investment;
- (d) the repayments of any loan, including interest thereon, relating directly to the Project; and
- (e) the amount of compensation, in the case of expropriation or temporary use of the investment of the Company by the Government or an agent of the Government. Should such compensation be paid in bonds of the public debt, the Company will be able to transfer the value of the proceeds from the sale of such bonds in the market.

### **25 REPRESENTATIONS AND WARRANTIES**

#### **25.1 Representations and Warranties of the Company**

The Company represents and warrants to the Government on the Agreement Date as follows:

- (a) The Company is a corporation duly organized, validly existing and in good standing under the Laws of Malawi, and has the corporate power and authority to execute, deliver and perform its obligations under this Agreement.

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- (b) This Agreement has been duly authorised by all necessary corporate action on the part of the Company, and this Agreement constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by:
- (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally; and
  - (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at Law).
- (c) The schedule appended to this Agreement shall contain (except as otherwise noted) the complete and correct lists or tables setting forth:
- (i) the Shareholders;
  - (ii) the Company's Affiliates showing forth, in each case, its relationship to the
  - (iii) the Company and the jurisdiction in which it is organized;
  - (iv) the directors and senior officers of the Company, and each Person deemed to Control the Company; and
  - (v) each Person that is the ultimate beneficial owner of 5% or more of:
    - (A) the voting rights ordinarily empowered to control the management of the Company; or
    - (B) the rights to share in the profits of the Company, and the chain through which such rights are exercised,
- as at the Agreement Date.
- (d) None of the Affiliates, directors, officers or other Persons identified in the schedule is a Prohibited Person. The Company is an Eligible Applicant under the Mines and Minerals Act.
- (e) The execution, delivery and performance by the Company of this Agreement will not:
- (i) contravene, result in any breach of, or constitute a default under, any agreement or instrument to which the Company is a Party or by which it or any of its properties are bound or affected;

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- (ii) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or governmental authority, applicable to the Company; or
  - (iii) violate any provision of any statute or other rule or regulation of any governmental authority applicable to the Company.
- (f) There are no actions, suits, investigations or proceedings pending or, to the knowledge of the Company, threatened, against or affecting the Company or any property of the Company in any court or before any arbitrator of any kind or before or by any governmental authority that call into question the right of the Company to enter into and perform its obligations under this Agreement or that, if resolved against the Company, would materially adversely affect its ability to perform its obligations under this Agreement.
- (g) Except as set out in the schedule:
  - (i) neither the Company; nor
  - (ii) any of the Company's Affiliates,has been determined under any order, judgment, decree or ruling of any court, arbitrator or governmental authority to be in material violation of:
  - (iii) any applicable Law relating to the protection of the Environment of any governmental authority; or
  - (iv) any agreement pursuant to which it is entitled to extract minerals or hydrocarbons under the laws of any jurisdiction.
- (h) The Company has, or has the means to access, the experience, finance, expertise, technical know-how and systems required for the conduct of the activities contemplated by this Agreement.
- (i) None of the Company, any Affiliate of the Company or any Person acting on behalf of the Company or any Affiliate of the Company has made or promised to make any payment or transfer of anything of value, directly or indirectly, to or for the benefit of an Official or an Official's family member or to an intermediary for payment to or for the benefit of an Official or an Official's family member in connection with this Agreement or the transactions contemplated hereby. For the purposes of this paragraph, "Official" means:

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- (i) any employee or officer of the Government, including any regional or local department or agency or instrumentality thereof;
- (ii) any employee or officer of any enterprise owned or controlled by the Government;
- (iii) any official of a political party in Malawi;
- (iv) any official or employee of a public international organization;
- (v) any other person acting in an official capacity for, or on behalf of, any of the entities described in paragraphs (i) through (iv); or
- (vi) any candidate for political office in Malawi.

## 25.2 Other Undertakings of the Company

- (a) The Company shall notify the Government of any Transfer of any ownership interest in the Company or in any Person which Controls the Company (other than in any Person whose shares are publicly listed on a stock exchange having reporting and disclosure requirements substantially similar to those imposed in any of the leading international stock exchanges) within 30 days following such Transfer unless such Transfer otherwise requires notice to, or approval by, the Government pursuant to clause 28.1. Such notice shall be accompanied by the certification of the chief executive officer of the Company that, immediately after giving effect to such Transfer, the representations and warranties of the Company as set forth in clause 25.1 are true and correct as of a time immediately after giving effect to such Transfer and updating the information required by clause 25.1(c).
- (b) At all times during the Term:
  - (i) the Company shall be a corporation organized under the Laws of Malawi;
  - (ii) none of the Affiliates, directors, officers or other Persons described in clause 25.1(c) (whether or not listed in the schedule) may be a Prohibited Person;
  - (iii) the Company shall be an Eligible Applicant under section 149 of the Mines and Minerals Act; and
  - (iv) the representations made in clause 25.1(a) shall be true and correct. On each annual anniversary of the Agreement Date, the chief executive officer of the Company shall provide to the Government a certification that the Company is in compliance with the requirements of this clause 25.2(a).

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### **25.3 Representations and Warranties of the Government**

- (a) The Government represents and warrants to the Company that on the Agreement Date, the execution, delivery and performance of this Agreement will have received all necessary governmental approvals and authorisations and will constitute the legal, valid and binding obligation of the Government.
- (b) The Government warrants to the Company during the Term that the Company will enjoy title to, possession and peaceful enjoyment of, all rights granted to it by the Government under this Agreement, including its rights to land and property in Malawi in accordance with applicable Law, provided that the Government shall have no obligations with respect to any claims that may arise out of rights of third parties with respect to land which the Company has acquired rights to, from parties other than the Government.
- (c) The Government hereby warrants and defends the Company's title to, possession and peaceful enjoyment of, all rights granted to it by the Government under this Agreement, including its right to all Land and property in Malawi in accordance with applicable Law, provided, that the Government shall have no obligations with respect to any claims that may arise out of rights of third parties with respect to Land as to which the Company has acquired rights pursuant to clause 8.

## **26 INDEMNIFICATION OF THE GOVERNMENT BY THE COMPANY**

The Company shall indemnify and hold harmless the Government and its officers and agents from all losses and liabilities incurred as a direct consequence of death or injury to Persons or damage to property directly resulting from the conduct of the Company, provided that:

- (a) the Government shall notify the Company promptly of any suit, action, proceedings, claims, investigations and negotiations made against the Government or its officers or agents in respect of this clause 26; and
- (b) the Company shall have the right to conduct all suits, actions, proceedings, claims, investigations and negotiations relating to any matter referred to in this clause 26.

## **27 EXPROPRIATION AND NON-DISCRIMINATION**

### **27.1 Expropriation**

Subject to section 44 of the Constitution of the Republic of Malawi, the Government undertakes that it shall not, by direct or indirect means, nationalize or expropriate, except:

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- (a) pursuant to a public purpose and under the process of Law;
- (b) on a non-discriminatory basis; and

upon prompt payment of just and adequate compensation, and for the purposes of this clause, the compensation shall:

- (c) be paid without undue delay, in accordance with the Laws of Malawi;
- (d) be equivalent to the fair market value of the expropriated investment, immediately before the effective expropriation (“**Expropriation Date**”);
- (e) not reflect a negative change in the market value due to the knowledge of the intention to expropriate, before the expropriation date; and
- (f) be completely payable and freely transferable, according to the clause about transfers.

## **27.2 Non- Discrimination**

The Government undertakes not to adopt any provision of Law that imposes a material financial or other burden solely on the Company or any of its Affiliates, whether or not such provision specifically identifies the Company or any of its Affiliates as the target thereof, provided that this provision shall not apply to any Law reasonably intended to protect the safety, health, welfare or security of the Government or citizens of Malawi or to fulfil the Government’s international obligations.

## **27.3 Additional benefits**

If the Government enters into a mining development agreement with a third party and pursuant to that agreement grants to the holder of the large scale mining licence reductions in Tax, Tax holidays or other favourable Tax treatments or provides financial concessions or incentives which are more beneficial to the third party than are or have been enjoyed by the Company under this Agreement, then the Company is entitled to enjoy those similar benefits.

## **28 TRANSFERS, MORTGAGE AND CHANGE OF CONTROL**

### **28.1 Transfer of Interest in Kanyika Mineral Right**

- (a) The Company may, with the prior written consent in accordance with section 59 of the Mines and Minerals Act, which consent must not be unreasonably withheld or delayed, Transfer all of its interest under this Agreement and in the Kanyika Mineral Right, so long as:

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- (i) at the time of the consummation of such transaction the Company has not been notified by the Government that it is in material default in the performance of its obligations or the discharge of its liabilities under this Agreement (other than any obligations that have been waived by the Government or defaults that have been cured by the Company to the reasonable satisfaction of the Government) and the Government has not cancelled or suspended the Kanyika Mineral Right in accordance with the Mines and Minerals Act;
- (ii) such transaction is not otherwise in violation of applicable Law;
- (iii) the transferee is:
  - (A) a corporation organized and validly existing under the Laws of Malawi;
  - (B) a Permitted Transferee; and
  - (C) qualified under the Mines and Minerals Act,

the transferee has demonstrated to the reasonable satisfaction of the Government that it has directly or indirectly the technical skills, experience, and financial resources necessary (or could be reasonably expected to obtain the financial resources necessary as evidenced by a viable financing plan, which is supported by an appropriate commitment letter from any provider of finance) to carry out its obligations under this Agreement;

- (iv) any Taxes or fees due in connection with such Transfer have been paid;
- (v) prior to the consummation of such Transfer, the transferee delivers to the Minister:
  - (A) its agreement, in the form of a deed of adherence to this Agreement or a novation of this Agreement, to assume and perform or discharge all of the obligations and liabilities of the Company under this Agreement;
  - (B) its written representations and warranties to the effect set forth in clause 25 stated to be true and correct as of a time immediately after giving effect to such Transfer;
  - (C) the confirmation of the Company that it remains liable for the performance and discharge of its obligations and liabilities under this Agreement and each such Mining Licence incurred prior to the date of Transfer, unless otherwise agreed by the Mines Minister; and

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(D) evidence that any Taxes or fees due in connection with such Transfer have been paid.

(b) No assignment of the interest in the Kanyika Mineral Right may be made without the assignment of the entire interest in this Agreement and vice versa.

## 28.2 Change of Control

No Change of Control of the Company, other than a Change of Control effected by the acquisition of shares listed on an internationally recognized stock exchange, is permitted unless:

- (a) any Taxes or fees due in connection with such Change of Control have been paid; and
- (b) the Company has received the prior written consent of the Government.

For the avoidance of doubt, the granting of any pledge, mortgage, charge or other encumbrance, which, if exercised would result in a Change of Control, will not be treated as a Change of Control until exercised.

A creditor in whose favour a pledge, mortgage, charge or other encumbrance has been created on the Project shall not be entitled to possession of the Project or to buy the Project. Such creditor shall only be entitled to exercise the power of sale of the Project to obtain any outstanding payment.

## 28.3 Mortgage or Charge

- (a) The Company may with the consent of the Mines Minister, which consent must not be unreasonably withheld or delayed, mortgage, charge, pledge or otherwise encumber, including by way of fixed or floating charge, the whole or any part of its interest under this Agreement and the Kanyika Mineral Right (including any whole or part of the Project, wherever located, any Mine Product and uncalled capital and premiums) solely as security for the repayment of any principal, interest and other fees, costs and expenses relating to any loans made by any Person (including the Project Lenders) to the Company to finance or refinance Operations (the “**Mortgaged Property**”), so long as the holder (the “**Enforcing Party**”) of such mortgage, charge, pledge or encumbrance (collectively, a “**Mortgage**”) agrees in writing with the Mines Minister prior to the granting of such Mortgage that it will cause an exercise of remedies under such Mortgage against the rights of the Company in the Mortgaged Property to occur only if:

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- (i) the exercise of remedies results in a Transfer of 100% of the interest of the Company in the Kanyika Mineral Right and this Agreement;
- (ii) the Enforcing Party provides the Mines Minister with written notice of its intention to Transfer the Mortgaged Property at least twenty (20) Business Days in advance;
- (iii) the transferee delivers to the Mines Minister prior to such Transfer:
  - (A) its agreement to assume and perform or discharge the obligations and liabilities of the Company under this Agreement;
  - (B) its written representations and warranties to the effect set forth in clause 25 are stated to be true and correct as of a time immediately after giving effect to such Transfer;
  - (C) the transferee has demonstrated prior to such Transfer to the satisfaction of the Government, acting reasonably, that it has directly or indirectly the technical skills, experience, and financial resources necessary to carry out its obligations under this Agreement;
  - (D) the transferee is a Permitted Transferee; and
  - (E) any Taxes or fees due in connection with such Transfer have been paid by the Enforcing Party or the transferee, as applicable.
- (b) The Government may exercise all of its rights under the Mines and Minerals Act in the event of a default by the Company under the Mines and Minerals Act, provided that it gives at least twenty (20) Business Days' notice of its intention to do so to the Person to whom an interest is mortgaged, charged, pledged or encumbered pursuant to clause 28.3(a).
- (c) If requested, the Mines Minister, acting on behalf of the Government, will enter into whatever documents are necessary with the Person to whom an interest is mortgaged, charged, pledged or encumbered pursuant to clause 28.3(a) to give effect to the intention of this clause 28.3.
- (d) The rights of any Person to whom an interest is mortgaged, charged, pledged or encumbered pursuant to this clause 28.3 shall be subject to and limited by the rights of the Company under this Agreement and to the Government's right to terminate those rights under clause 32.4.

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#### **28.4 Ministerial Consent**

If the Company considers that the Mines Minister unreasonably withheld or delayed their consent to a Transfer, Change of Control or Mortgage, the Company may refer the issue to arbitration to be determined in accordance with clause 32.2.

### **29 SETTLEMENT OF DISPUTES – (TECHNICAL DISPUTES)**

#### **29.1 Disputes**

A Dispute shall be deemed to arise when one Party serves on the other Party a Notice of Dispute notice stating the nature of the Dispute, although if the Company refers a matter to the Revenue Appeals Tribunal or similar body if established, it shall not be a Dispute for the purposes of this clause.

#### **29.2 Notice of Dispute**

If a Dispute, controversy or claim arising out of or relating to this Agreement or its subject matter, existence, negotiation, interpretation, validity, termination or enforceability (including any non-contractual dispute or claim) arises, either Party shall serve on the other Party a written notice identifying the disputed issue (the “**Notice of Dispute**”).

#### **29.3 Negotiations**

Following the receipt by one Party of a Notice of Dispute, the Parties shall, with in good faith and using their best endeavours take all steps as may be necessary or desirable to settle any Dispute through negotiations.

#### **29.4 Independent Expert Determination**

If any Dispute is not resolved by negotiations and the Dispute is of a technical nature, the Dispute may be referred to an Independent Expert pursuant to this Agreement:

- (a) the Parties shall ensure that the Independent Expert is appointed as soon as is reasonably practicable;
- (b) the Independent Expert shall have access to all information relating to that matter;
- (c) each Party shall provide every reasonable assistance at its own cost to ensure that the Independent Expert is fully informed (as required by the Independent Expert) of that matter;
- (d) the Independent Expert may travel to and view the Project;

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- (e) each Party may (expeditiously) make written submissions to the Independent Expert with respect to that matter and shall promptly copy all submissions to the other Party;
- (f) all costs of the Independent Expert's determination shall be borne as determined by the Independent Expert;
- (g) the Independent Expert may seek the opinion of:
  - (i) a chartered accountant from one of the international accounting firms practising in Malawi in respect of financial matters; and
  - (ii) a legal practitioner admitted to practice in Malawi and practising in the area of commercial law for at least ten (10) years, in respect of legal matters, and shall be entitled but not obliged to rely upon any such opinion or opinions in making his determination;
- (h) the Parties shall indemnify the Independent Expert from and against any payment, expense, loss or damage incurred by the Independent Expert as a result of any act or omission by the Independent Expert in the course of performance, or attempted performance of his appointment, howsoever arising;
- (i) the Independent Expert shall be requested to deliver their determination in writing to the Parties within forty-five (45) days of the date of their acceptance of appointment or within such time as agreed between the Parties;
- (j) the Independent Expert shall not be obliged to have regard to any particular information or evidence in reaching their determination and may in his discretion procure and consider such information and evidence and, in such form as he sees fit;
- (k) each Party shall comply promptly with any request of the Independent Expert for information in such form as the Independent Expert requires;
- (l) the Independent Expert may in their sole discretion decide upon the procedure they will adopt in reaching their determination and each Party shall comply with any requirement of the Independent Expert in connection with such procedures; and
- (m) the Independent Expert shall be acting as an expert, not an arbitrator, and their decision shall be final and binding on the Parties except in the case of fraud or manifest error in which case, the affected Party may submit a Dispute to arbitration

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in accordance with clause 30.1(b) within sixty (60) days of the final decision by the Independent Expert.

### 30 SETTLEMENT OF DISPUTES – (NON-TECHNICAL DISPUTES)

#### 30.1 Mediation

If the Dispute is not resolved by negotiations under clause 29.3 within fifteen (15) Business Days of the date of receipt of the Notice of Dispute and the Dispute is not a technical Dispute, either Party may request that the matter be submitted for settlement proceedings under the International Chamber of Commerce Alternative Dispute Resolution Rules (“**ICC ADR Rules**”) and in accordance with the following:

- (a) such mediation, unless the Parties otherwise agree, shall take place in Lilongwe, Malawi;
- (b) as far as practicable, the Parties shall continue to implement this Agreement during the period while the mediation is pending and during the mediation;
- (c) notwithstanding paragraph (d), neither Party shall be entitled to exercise any rights of election arising in consequence of any alleged default by the other arising out of the subject matter of the dispute until the Dispute has been resolved by mediation; and
- (d) if the Dispute has not been settled pursuant to the said ICC ADR Rules within thirty (30) days following the filing of the request for mediation or within such other period as the Parties may agree in writing, the Parties shall have no further obligations under this paragraph and may submit the Dispute to arbitration in accordance with clause 30.1(b).

#### 30.2 Arbitration

- (a) Submission to Arbitration:

Any Dispute that is not resolved pursuant to the provisions of clause 30.1(a) shall be finally settled in accordance with the Rules of Arbitration of the International Chamber of Commerce (the “**Arbitration Rules**”).

- (b) Appointment of an Arbitrator:

The Parties shall, by agreement, promptly appoint such an arbitrator. In the absence of agreement, the appointment shall be made in accordance with the Arbitration Rules.

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(c) Seat of Arbitration:

The seat of any arbitration conducted pursuant to this Agreement shall be Johannesburg, South Africa and the proceedings shall be conducted in the English language.

(d) Special Provisions:

The decision of the arbitrators shall be made public. The arbitrators may not award specific performance or similar equitable remedies against the Government. Neither Party shall have liability for consequential, exemplary or punitive damages but this does not preclude an amount of damages for loss of profits.

(e) Shareholder Benefit and Appointment and Government Acknowledgement:

The Investor shall benefit from the rights conferred on the Company under this Agreement, including but not limited to under this clause, and shall be entitled to be a Party and to make claims in its own name in any arbitration under this Agreement and to all the remedies that would be available to the Company, and the Government hereby acknowledges and consents to the Investor having such rights. Whether advanced in the name of the Investor or the Company, only a single claim may be made with respect to any dispute under this Agreement and any award shall be limited by the amount that the Company could claim for breach of this Agreement.

The Company may appoint the Investor to act on its behalf with respect to all matters pursuant to this clause. Such appointment shall include the right to initiate, conduct, manage, and settle any and all aspect of any arbitration pursuant to such clause, and the Government hereby acknowledges and consents to such appointment. The Government as a shareholder of the Company shall not use its vote at a shareholders meeting of the Company to block this appointment.

(f) Waiver of Sovereign Immunity:

The Government hereby irrevocably waives, in relation to any Dispute arising out of, in relation to, or in connection with, this Agreement, whether relating to acts of a sovereign or governmental nature or otherwise, all claims of immunity from the jurisdiction of, and from the enforcement of any arbitral award rendered by, an arbitral tribunal constituted pursuant to this Agreement as well as all claims of immunity from the service of process or the jurisdiction of any court situated in any state, country or nation in aid of the jurisdiction of such arbitral tribunal or in connection with the enforcement of any such award.

(g) Exclusive Remedy:

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Clauses 29 and 30 of this Agreement shall be the exclusive means for resolving any Dispute between the Government, the Company or Investor and the Parties waive any rights that they might have to alternative resolution pursuant to Law or otherwise and the Parties agree that notwithstanding the termination of this Agreement, the rights of a Party under clause 30.2 shall continue to apply.

### 31 EXTENSIONS TO TIME

- (a) Notwithstanding any provision of this Agreement, the Parties by agreement in writing may from time to time extend any period referred to in this Agreement, or substitute for any date referred to in this Agreement such later date.
- (b) If the Company is prevented or hindered by:
  - (i) Force Majeure; or
  - (ii) reference to an Independent Expert, mediation or arbitration; or
  - (iii) an inability to obtain project finance from a Project Lender for the reasons referred to in clause **Error! Reference source not found.**,

from complying with any of its obligations under this Agreement or exercising any of its rights under this Agreement, the period of time allowed for the performance of that obligation or exercise of that right and all periods of time after then allowed for the performance of obligations or exercise of rights which are dependent upon the first mentioned obligation or right, including the Stability Term, shall be extended by a period equal to the period during which such prevention or hindrance continues.

- (c) Where any period is, or is deemed to be, extended or any later date substituted for an earlier date under this clause, that extended or substituted period or date shall be deemed to constitute the period or date referred to in this Agreement (notwithstanding that at the time of such extension or substitution such period may have expired, or such date may have passed).

### 32 TERM AND TERMINATION

#### 32.1 Term

Subject to clause 2.1, the term of this Agreement (“**Term**”) commences on the Agreement Date and, unless earlier terminated in accordance with this Agreement, shall end on the later of:

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- (a) the twenty-fifth 25<sup>th</sup> anniversary of such date;
- (b) the expiration date of the Mining Licence as such may be extended from time to time; or
- (c) the date the Mining Licence is cancelled in accordance with the Mines and Minerals Act or this Agreement.

### **32.2 Termination by Surrender**

- (a) This Agreement shall automatically terminate in the event that the Commissioner issues a certificate of surrender of the entire area of the Kanyika Mineral Right in accordance with Division 6 of the Mines and Minerals Act.
- (b) In exercising its powers under Division 6 of the Mines and Minerals Act, when considering an application to surrender the Kanyika Mineral Right, the Commissioner shall act in good faith and in a timely manner.
- (c) This Agreement remains in force where the Company surrenders a portion only of the area of the Kanyika Mineral Right.

### **32.3 Termination for failure to satisfy or waive conditions precedent**

A Party may terminate this Agreement by notice in writing to the other Party if any condition at clause 2.1(a) is not satisfied or waived on or before the End Date.

### **32.4 Termination by Government**

The Government may terminate this Agreement by notice in writing to the Company if:

- (a) the last mineral tenement within the area of the Kanyika Mineral Right has expired by effluxion of time and has not been renewed or is not the subject of an application for renewal or an application for a mining licence;
- (b) the Government cancels all mineral tenements within the area of the Kanyika Mineral Right in accordance with the Mines and Minerals Act;
- (c) all mineral tenements within the area of the Kanyika Mineral Right are abandoned and for the avoidance of doubt any suspension or curtailment referred to in clause 6 does not constitute abandonment; or
- (d) subject to clause 5.2(c), the Company fails to meet its obligations under clauses 5.2(a) or 5.2(e).

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### 32.5 Termination by Default

- (a) Except as otherwise provided in this Agreement, if:
  - (i) a Party is in default of the performance of its obligations set forth in this Agreement; or
  - (ii) a Party defaults in complying with any determination by the Independent Expert (except in circumstances in which it has challenged that determination within the time limit specified in clause 29.4(m) or award made in any arbitration and the defaulting Party has not remedied or commenced remedying such default, or paid compensation where compensation is adequate recompense, within sixty (60) days of receiving a notice in writing from the non-defaulting Party to do so, which notice is to detail the circumstances of the default, the Party may give notice in writing to the defaulting Party of the termination of this Agreement, subject to clause 32.5(a).
- (b) If the defaulting Party is the Company, the notices referred to in clause 32.5(a) shall be copied to any security agent appointed by the Project Lenders (contact details of which shall be provided by the Company to the Government).
- (c) A Party shall not serve a termination notice under clause 32.5(a) in respect of any matter that is the subject of a pending Independent Expert determination, mediation or arbitration initiated in good faith.

### 32.6 Consequences of Termination

- (a) If this Agreement is terminated by the Government, then:
  - (i) the Company shall surrender to the Government all the mineral tenements within the Kanyika Mineral Right, without prejudice to the liability of any of the Parties in respect of any antecedent liabilities and without prejudice to the rights of the Company to remove and recover any of the remaining assets of the Company for the purposes of clause 32.6(a)(iv);
  - (ii) each Party shall forthwith pay to the other Party all monies that may be owing to the other Party under this Agreement;
  - (iii) the Government has the option to purchase the remaining assets at the lesser of Fair Market Value or the value for Tax purposes of the assets of the Company, exercisable by notice to the Company within thirty (30) days

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following termination of this Agreement, which amount shall be paid in US Dollars; and

- (iv) the Company has the right, where the Government does not exercise its option under clause 32.6(a)(iii), within one (1) year period following the notice period referred to in clause 32.6(a)(iii), to assign, dispose of or export from Malawi the whole or any part of the remaining assets not acquired by the Government under clause 32.6(a)(iii).
- (b) If this Agreement is terminated by the Company, the Company shall have the right, within a one (1) year period following the termination notice to assign, dispose of (to any Person, including the Government for Fair Market Value) or export from Malawi the whole or any part of the Company's assets.
- (c) Where this Agreement is terminated for any reason the Company shall leave the Mining Area in a safe and stable condition as required by the Mines and Minerals Act having regard to natural conditions in the Mining Area and applying the International Standards of good mining practice and in accordance with the Environmental Management Plan as applicable from time to time.
- (d) Following completion of the assignment, disposal or export of assets under this clause 32.6, all assets which remain on the Mining Area shall become the property of the Government without any cost to the Government or any liability for the Government to pay compensation therefore provided that the Government may in the alternative require the removal by the Company of such assets from Malawi subject to the exceptions in this clause 32.6(d).
- (e) Clauses 30, 32.5, 33 and 34 shall continue in force notwithstanding the termination of the rest of this Agreement and termination under this Agreement shall not otherwise in any way affect a Party's accrued rights and obligations at the date of termination.

### 33 FORCE MAJEURE

- (a) Any failure on the part of a Party to comply with any of the terms, conditions and provisions of this Agreement (except any obligation of a Party to make payment of money to the other Party) shall not be grounds for termination or give the other Party to this Agreement any claim for damages insofar as such arises from Force Majeure, if the first-mentioned Party:

W.C.

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- (i) has taken all appropriate precautions, due care and reasonable alternative measures (with the minimum of delay) with the objective of avoiding such failure and of carrying out its obligations under this Agreement; and
  - (ii) has promptly given notice to the other Party of the event of Force Majeure, on becoming aware of such an event; and
  - (iii) has taken all reasonable steps to mitigate any disability due to Force Majeure with all reasonable dispatch.
- (b) The first-mentioned Party shall give notice to the other Party as soon as practicable after the Force Majeure ceases to continue.

#### **34 LIMITATION ON LIABILITY**

Neither Party shall have any liability under this Agreement for loss of profit, loss of use, consequential damages or any form of exemplary or punitive damages.

#### **35 APPLICABLE LAW**

This Agreement shall be governed by the Laws of Malawi and for the avoidance of doubt, to the extent that the Company has any dispute, disagreement, controversy or, claim with a party in Malawi other than the Government, then that matter shall be subject to the jurisdiction of the courts of Malawi unless otherwise expressly provided in this Agreement.

#### **36 VARIATION AND AMENDMENTS**

##### **36.1 Review and Amendment**

- (a) In entering into this Agreement, the Parties recognise that the framework of, and principles underpinning, this Agreement (including, without limitation, determination of the amount of the Royalty, the structuring of the flow of foreign exchange and the setting of the fiscal regime under clauses 21, 22 and 24) have been set by the Government and agreed to by the Company in the full knowledge of the potential impact of a rise or fall in the pricing of the Mine Product.
- (b) If required by one Party, the Parties shall hold discussions in good faith to review the Agreement by taking into account the following:
  - (i) new advances in the scientific and technological fields of mineral exploration, Mining and Processing;

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- (ii) new financial circumstances which would in any material respect adversely affect the viability of the Project or increase the expected benefits to the Company;
- (iii) matters for which it was impractical to make provisions on the Agreement Date; or
- (iv) hardship or unexpected benefit which is experienced during the Term,

it being the intention of the Parties that this Agreement operate between them with fairness and without prejudice to the interests of the other Party. Where it is shown that the Agreement should be amended to take account of the matters referred to in this clause 36.1(b), then the Parties will use their Best Endeavours to agree on the appropriate amendments to this Agreement.

### **36.2 Amendment to be in Writing**

This Agreement shall not be amended or modified except by a written agreement between the Parties to this Agreement.

## **37 LIAISON COMMITTEE**

### **37.1 Establishment of Committee**

The Mines Minister shall establish a committee which shall consist of:

- (a) the permanent or principal secretaries or their representatives from the Ministries responsible for natural resources, energy and environment, labour and vocational training, industry trade and private sector development, finance, justice and home affairs or the ministries that may replace any of the functions of these from time to time;
- (b) a representative of each of the office of the President and Cabinet, the Reserve Bank, the relevant District Commissioner's office and the District Council respectively; and
- (c) two (2) representatives of the Company.

### **37.2 Functions of Committee**

- (a) The committee referred to in clause 37.1 shall, whenever it deems appropriate invite representatives from such other Ministries or affected parties to attend any of its meetings.

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- (b) The Company can invite specialist consultants, whenever it deems appropriate, to attend any of the meetings of the committee referred to in clause 37.1.
- (c) The chairperson of the committee referred to in clause 37.1 shall be the representative from the Ministry responsible for the administration of the Mines and Minerals Act.
- (d) The committee referred to in clause 37.1 shall operate during the Term and the Company shall furnish the committee with Quarterly reports outlining:
  - (i) its activities;
  - (ii) the problems encountered;
  - (iii) its plans;
  - (iv) the number of Malawians and other nationalities employed;
  - (v) a list of successful tenderers for procurements which shall include the items supplied, residence of tenderers and the reasons for awarding the tender; and
  - (vi) a list of unsuccessful Malawian or foreign based tenderers for procurements which shall include reasons for not awarding the tender.
- (e) The committee referred to in clause 37.1 shall monitor the Company's activities and adherence to the Mining Operations Plan and any other issues related to it.
- (f) The committee referred to in clause 37.1 shall:
  - (i) formulate its own rules of procedure;
  - (ii) not make decisions and recommendations that are binding on the Company;
  - (iii) monitor the implementation of their respective plans where such have been approved and accepted by the Government; and
  - (iv) ensure that the institutions nominating members will be responsible for the costs and expenses incurred by the members in the execution of their duties.

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## 38 NOTICES

### 38.1 Form

Any notice, consent, demand, approval, request or other communication required or permitted to be given under this Agreement shall be in writing in the English language and shall be:

- (a) in the case of a notice, consent, demand, approval, request or other communication given by the Government, signed on behalf of the Government by either the Minister or permanent or principal secretary to the Ministry as their respective responsibilities require; or
- (b) in the case of a notice, consent, demand, approval, request or other communication to be given by the Company, signed by a director or by the secretary of the Company.

### 38.2 Delivery

Each such notice, consent, demand, approval, request or other communication shall, as elected by the Party giving such notice, be personally delivered or emailed to the other Party as follows:

#### Government

If by hand delivery      Principal Secretary  
Ministry of Mining  
Capital City, Lilongwe, Malawi

If by email                      mkandawiremsl@yahoo.com

#### Company

If by hand delivery      Company Secretary,  
Plot 43/02/90,  
Off Mphonongo Road,  
Area 43, Lilongwe, Malawi.

W.C.

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If by email

lisungu.chirwa@globemm.com

### **38.3 Receipt**

Except as otherwise specified in this Agreement, all notices, consents, demands, approvals, requests or other communication shall be deemed to have been duly given:

- (a) if delivered by email, upon production of a read receipt; and
- (b) if delivered personally, on the date of receipt.

### **38.4 Other**

Either Party may change its address by notice, consent, demand, approval, request or other communication to the other Party in accordance with the provisions of this clause.

## **39 WAIVER**

The failure of any Party to enforce, at any time, any of the provisions of this Agreement may in no way be construed to be a waiver of the provision of any part of this Agreement or the right of any Party to enforce each and every part of the provision in respect of any subsequent default or breach.

## **40 SEVERABILITY**

The provisions of this Agreement shall be separate and severable each from the other to the extent that if any portion or any one provision or portion is deemed to be inoperative, unenforceable or contrary to any provision of any Law, then that provision will be of no force or effect and the remainder of this Agreement shall remain binding upon and enforceable by the Parties, and nothing in this Agreement shall preclude one Party from requesting the other Party to renegotiate any provision in this Agreement.

## **41 FURTHER ACTS**

The Parties shall execute such documents and do and perform such acts that lie within their power and are necessary to give full effect to this Agreement.

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#### **42 GOOD GOVERNANCE**

- (a) In line with the principles of this Agreement, each Party shall ensure that all measures that affect investment are administered in a reasonable, objective and impartial manner, in accordance with the Laws of Malawi.
- (b) The Government shall ensure that its Laws related to any matter covered by this Agreement, in particular regarding qualification, licensing and certification, are published without delay and, when possible, in electronic format.

#### **43 FREEDOM OF OPINION**

Each Party shall endeavour to allow reasonable opportunity to those interested stakeholders in the private sector and civil society in expressing their opinions on the Project but this is to be in accordance with the Laws of Malawi.

#### **44 PUBLICATION**

The Government shall make public this Agreement and any amendments or written interpretations of this Agreement.

#### **45 ANTI-CORRUPTION, ANTI-MONEY LAUNDERING AND COUNTER TERRORISM**

- (a) The Company represents to the Government that:
  - (i) no Conflict Minerals are necessary for the functionality or processing of the Mine Product;
  - (ii) it is conducting and will continue to conduct its business in compliance with Anti-Corruption Laws and Anti-Money Laundering and Counter-Terrorism Laws; and
  - (iii) it has implemented and maintained, and will continue to maintain in effect policies and procedures to ensure compliance by it and its respective directors, officers, employees, and agents, with Anti-Corruption Laws and Counter-Terrorism Laws.
- (b) Each Party:
  - (i) must exercise its rights and perform its obligations under this Agreement and comply with and conduct its business in compliance in all material respects with Anti-Corruption Laws, Anti-Money Laundering and Counter-Terrorism Laws and Sanctions Laws applicable to it and shall not knowingly (acting with due care and enquiry) engage in any transaction, activity or conduct that

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would violate any Anti-Corruption Laws or Anti-Money Laundering and Counter-Terrorism and Sanctions Laws applicable to it; and

- (ii) will not knowingly use the proceeds of the sale of Mine Product to fund any activities of, or business with, any person on a Sanctions List.

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**EXECUTION PAGES**

EXECUTED as a Deed by the Parties  
SIGNED by **MINISTER OF MINING, HON. MONICA CHANG'ANAMUNO, MP**  
for and on behalf of  
**THE GOVERNMENT OF THE REPUBLIC OF MALAWI**



---

Minister's Signature



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Witness Signature

*Dr. Joseph C. N. Mkandawire*

**Witness Name**

*Ministry of Mining, Private Bag  
350, Capital City, Lilongwe 3*

**Witness Address**

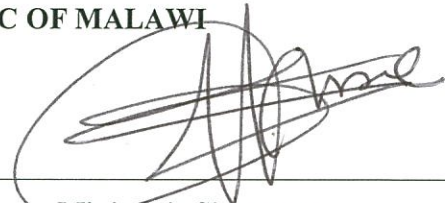
*Secretary for Mining*

**Witness Occupation**

W.C.

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**SIGNED by MINISTER OF FINANCE AND ECONOMIC AFFAIRS, HON.  
SOSTEN ALFRED GWENGWE, MP**  
for and on behalf of  
**THE GOVERNMENT OF THE REPUBLIC OF MALAWI**



Minister's Signature



Witness Signature

*Dr. Macdonald Mafuta Mwale*

Witness Name

*Ministry of Finance, P. O. Box  
30035, Capital City, Lilongwe 3.*

Witness Address

*Secretary to the Treasury*

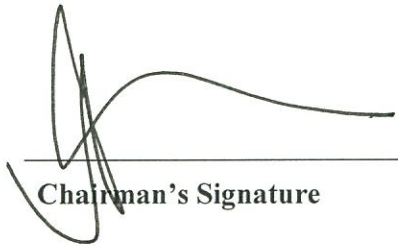
Witness Occupation

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The common seal of  
**GLOBE METALS AND MINING (AFRICA) LIMITED**  
is affixed in accordance with its Constitution  
in the presence of



\_\_\_\_\_

**Chairman's Signature**

*Mr. Neville Huxham*

**Chairman's Name**



\_\_\_\_\_

**Director's Signature**

*Ms. Lisungu Chirwa*

**Director's Name**

M.C.

