



**AMENDMENT AND RESTATEMENT AGREEMENT**

This Agreement is made on the 26 September 2023 between:

**K92 MINING LTD.**  
**Level 6, PwC Haus**  
**Harbour City Precinct**  
**Port Moresby, National Capital District 121**  
**Papua New Guinea**

(hereinafter called the “Seller”), and

**TRAFIGURA PTE LTD**  
**10 Collyer Quay, #29-00 Ocean Financial Centre**  
**Singapore 049315**

(hereinafter called the “Buyer”)

The Seller and the Buyer shall be referred to collectively hereafter as the “**Parties**” or individually as a “**Party**”.

**IT IS AGREED** as follows:

**1. Definitions and Interpretation**

1.1 In this Agreement:

**Agreement** means this Amendment and Restatement Agreement.

**Loan Agreement** means the Loan Agreement as entered into between the Seller, Buyer and K92 Mining Inc and dated on or about the date of this Agreement.

**Effective Date** means the date on which the Buyer has informed the Seller that it has received all of the documents and other evidence specified in clause 2 (*Conditions precedent*) in form and substance satisfactory to the Buyer.

**Export Approval** means the Gold Export Approval dated 5 May 2016 from the Governor of the Bank of Papua New Guinea acting as Controller pursuant to the Central Banking (Foreign Exchange & Gold) Regulation.

**Original Commercial Contract** means the sale contract dated 1 July 2019 entered into between the Seller as the seller and the Buyer as the buyer bearing the reference: 303-19-45318-P.

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**TRAFIGURA PTE LTD**

REGISTERED OFFICE: 10 COLLYER QUAY, #29-00 OCEAN FINANCIAL CENTRE, SINGAPORE 049315

[WWW.TRAFIGURA.COM](http://WWW.TRAFIGURA.COM)

REGISTERED NUMBER: 199601595D

**Amended and Restated Commercial Contract** means the Original Commercial Contract as amended and restated by this Agreement.

- 1.2 Unless a contrary indication appears, a term defined in the Original Commercial Contract has the same meaning as in this Agreement.
- 1.3 This Agreement may be executed in any number of counterparts and this shall have the same effect as if the signature on the counterparts were on a single copy of this Agreement.

## **2. Conditions precedent**

- 2.1 Approval of the terms of the Amended and Restated Commercial Contract by the Controller pursuant to the *Central Banking (Foreign Exchange & Gold Regulation (PNG))* and the conditions attaching to the Seller's existing Export Approval.
- 2.2 Satisfaction of the conditions precedent in Schedule 1 (*Conditions Precedent*) of the Loan Agreement.

## **3. Amendment and restatement**

### **Amendment and restatement**

- 3.1 With effect on and from the Effective Date, the Original Commercial Contract will be amended and restated as set out in Schedule 1 (*Amended and Restated Commercial Contract*) to this Agreement so that the rights and obligations of the Parties to the Amendment and Restatement Agreement shall, on and from that date, be governed by and construed in accordance with the provisions of the Amended and Restated Commercial Agreement.

### **Continuing obligations**

- 3.2 The provisions of the Original Commercial Contract will, except as amended by this Agreement, continue in full force and effect. In the event the Conditions Precedent are not satisfied in accordance with clause 2 (*Conditions precedent*), the Original Commercial Contract will remain in full force and effect.

## **4. Incorporation of terms**

- 4.1 The provisions of clause 18 (*Arbitration*) of the Original Commercial Contract shall be incorporated into this Agreement as if set out in full in this Agreement and as if references in those clauses to "this Contract" are references to this Agreement.

## **5. Governing law**

- 5.1 The construction, validity and performance of this Agreement shall be governed by the laws of England.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

## SCHEDULE 1

### Amended and Restated Commercial Contract

#### Buyer Contract No.: 45318

This Contract is entered into on the 1<sup>st</sup> of July 2019 as amended and restated pursuant to an Amendment and Restatement Agreement made on 26 of September, 2023 between the Seller and the Buyer (as defined herein).

#### BETWEEN:

**K92 MINING LTD.**  
Level 6, PwC Haus  
Harbour City Precinct  
Port Moresby, National Capital District 121  
Papua New Guinea

(hereinafter called the “**Seller**”), and

**TRAFIGURA PTE LTD**  
10 Collyer Quay, #29-00 Ocean Financial Centre,  
Singapore 049315

(hereinafter called the “**Buyer**”)

The Seller and the Buyer shall be referred to collectively hereafter as the “**Parties**” or individually as a “**Party**”.

#### 1. BACKGROUND

1.1 The Seller and Buyer have entered into contract 303-17-41429-P dated 23 October 2017 for the sale and purchase of copper concentrate (“Contract 41429”). The Parties agree that any quantity of Concentrate to be invoiced under Contract 41429, from 12 February 2019 onwards, should be subject to the terms of this contract (“Contract 45318”). With effect from 12 February 2019, the terms and conditions of Contract 41429, including all addendums and amendments thereto, are hereby terminated and replaced in full by the terms and conditions set out below, provided that, any claims or rights whatsoever which the Buyer and/or Seller may have relating to Contract 41429 arising prior to 12 February 2019 will survive such termination.

#### 2. SCOPE OF CONTRACT

2.1 The Seller agrees to sell Concentrate and the Buyer agrees to buy Concentrate on the terms and conditions set out in this Contract.

#### 3. DEFINITIONS

3.1 1 ounce means: 1 troy ounce of 31.1035 grams;

3.2 1 pound means: 453.593 grams;

3.3 1 ton means: 1 metric ton of 1,000 kilograms or 2204.62 lbs;

3.4 1 unit means: 1% of the dry net weight;

3.5 [Redacted] TERM SOFR means: the forward-looking term rate based on the SOFR for [Redacted] as published on the CME Group page “CME TERM SOFR” (or any successor page) on the date of the Seller’s invoice; [Redacted: Term]

3.6 Affected Party: has the meaning set out in Clause 16 (*FORCE MAJEURE*);

- 3.7 Affiliates means: in relation to any company or corporation, a Subsidiary or Holding Company of that company or corporation or any other Subsidiary of that company or corporation or of that Holding Company;
- 3.8 Anti-Corruption Controls: has the meaning set out in Clause 34 (*ANTI-BRIBERY AND ANTI-CORRUPTION*);
- 3.9 Assessed Initial Averaged Freight: has the meaning set out in Clause 10.5.4;
- 3.10 Business Day means: a day (other than a Saturday or Sunday) on which commercial banks are open for general business in Papua New Guinea and Singapore and (a) in relation to any date for the payment or purchase of US dollars, the city of New York, USA and (b) in relation to determining SOFR (or any replacement rate notified by the Buyer to the Seller), New York, USA;
- 3.11 Contract 41429: has the meaning set out in Clause 1.1(*BACKGROUND*);
- 3.12 Contract 45318: has the meaning set out in Clause 1.1(*BACKGROUND*);
- 3.13 Concentrate means: all copper-gold concentrates produced during the term of this Contract, whether from the ML150 or otherwise, and including any stockpiles or processed concentrates existing as at the date hereof, and any other concentrates materials or production as agreed between the Parties in writing from time to time;
- 3.14 Contract Termination Date: has the meaning set out in Clause 35 (*DEFAULT*);
- 3.15 Credit Support Provider: has the meaning set out in Clause 35 (*DEFAULT*);
- 3.16 Customs means: the official department of a country that administers and collects the duties levied by a government on imported goods;
- 3.17 Defaulting Party: has the meaning set out in Clause 35 (*DEFAULT*);
- 3.18 Delivery Termination Date: has the meaning set out in Clause 35 (*DEFAULT*);
- 3.19 Difference: has the meaning set out in Clause 12 (*PAYMENT*);
- 3.20 DMT means: dry metric ton;
- 3.21 ETA means: estimated time of arrival;
- 3.22 Event of Default: has the meaning set out in Clause 35 (*DEFAULT*);
- 3.23 Extended Term: has the meaning set out in Clause 4 (*TERM*);
- 3.24 First Provisional Payment has the meaning set out in Clause 12 (*PAYMENT*);
- 3.25 Force Majeure Notice: has the meaning set out in Clause 16 (*FORCE MAJEURE*);
- 3.26 Force Majeure Suspension: has the meaning set out in Clause 16 (*FORCE MAJEURE*);
- 3.27 Freight Rollback: has the meaning set out in Clause 10.5.4;
- 3.28 g means: grams;
- 3.29 Holding Company: has the meaning given to it in the definition of Subsidiary;
- 3.30 IMSBC Code: has the meaning set out in Clause 6.3.7;
- 3.31 INCOTERMS 2020 means: the 2020 edition of the standard trade definitions published by the International Chamber of Commerce;
- 3.32 K92 Parent means: K92 Mining Inc.;
- 3.33 LBMA means: London Bullion Market Association;
- 3.34 LME means: London Metals Exchange;
- 3.35 Loan Agreement: has the meaning set out in Clause 3839 (*LOAN AGREEMENT*);
- 3.36 ML 150: means the Papua New Guinean mining lease ML-150, which comprises both the Irumafimpa property and the Kora property, with the portions of ML-150 associated with the Irumafimpa and Kora properties being separated by a demarcation line within ML 150, being 59,350 metres north mine grid, with the Irumafimpa portion being north and the Kora portion being south of the demarcation line;
- 3.37 Non-Defaulting Party: has the meaning set out in Clause 35 (*DEFAULT*);
- 3.38 Owed Party: has the meaning set out in Clause 12 (*PAYMENT*);
- 3.39 Owing Party: has the meaning set out in Clause 12 (*PAYMENT*);
- 3.40 Parties: means the Parties to this agreement being the Seller and the Buyer and Party means either one of them;
- 3.41 ppm means: parts per million;
- 3.42 Quotational Period: has the meaning set out in Clause 11 (*QUOTATIONAL PERIOD*);
- 3.43 Referee: has the meaning set out in Clause 38 (*REFEREES*);
- 3.44 Relevant Event: has the meaning set out in Clause 35 (*DEFAULT*);
- 3.45 Sanctioned Entity: has the meaning set out in Clause 33 (*SANCTIONS*);

- 3.46 Sanctions: has the meaning set out in Clause 33 (*SANCTIONS*);
- 3.47 SDS: has the meaning set out in Clause 6 (*QUALITY*);
- 3.48 Second Provisional Payment: has the meaning set out in Clause 12 (*PAYMENT*);
- 3.49 SOFR means: “SOFR” means the secured overnight financing rate administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate);
- 3.50 Submission Period: has the meaning set out in Clause 38.2;
- 3.51 Subsidiary means: a company or corporation which, in relation to another company or corporation (a “**Holding Company**”): (a) is controlled, directly or indirectly, by the Holding Company; (b) more than half the issued share capital of which is beneficially owned, directly or indirectly by the Holding Company; or (c) which is a Subsidiary of another Subsidiary of the Holding Company; and for this purpose, a company or corporation shall be treated as being controlled by a Holding Company if the Holding Company is able to direct its affairs and/or to control the composition of its board of directors or equivalent body;
- 3.52 Term: has the meaning set out in Clause 4 (*TERM*);
- 3.53 Termination Date: has the meaning set out in Clause 35 (*DEFAULT*);
- 3.54 USD means: the lawful currency of the United States of America; and
- 3.55 WMT means: wet metric tons.

#### **4. TERM**

- 4.1 This Contract shall be effective from February 12<sup>th</sup> 2019 and shall continue until [REDACTED] (the “**Term**”). [Redacted: Term]
- 4.2 Effective on the later of 1<sup>st</sup> January 2026, the Term of the Contract shall be extended and continue for [REDACTED] years or until a minimum quantity of [REDACTED] of Concentrate has been delivered to the Buyer from the Seller (the “**Extended Term**”). [Redacted: Term of agreement and minimum quantity of concentrate]

#### **5. QUANTITY**

- 5.1 During the Term, the quantity of Concentrate deliverable under this Contract shall be [REDACTED] of the production of Concentrate, estimated to be [REDACTED] in 2019 and gradually increasing thereafter. The Seller shall provide to the Buyer its reasonable best estimate of the anticipated annual production of Concentrate for the following calendar year no later than 30 (thirty) calendar days prior the start of such calendar year and shall keep the Buyer updated in a timely manner of any revisions to the last estimate. [Redacted: Quantity of concentrate]
- 5.2 During the Extended Term, the quantity of Concentrate deliverable under this Contract shall be [REDACTED] of the production of Concentrate. During the Extended Term, production is estimated to be [REDACTED] per calendar year. The Seller shall provide to the Buyer its reasonable best estimate of the anticipated annual production of Concentrate for the following calendar year no later than 30 (thirty) calendar days prior the start of such calendar year and shall keep the Buyer updated in a timely manner of any revisions to the last estimate. [Redacted: Quantity of concentrate]

#### **6. QUALITY**

- 6.1 During the Term, the Concentrate shall assay as follows:



[Redacted]

**[Redacted: Assay specification]**

6.2 During the Extended Term, the Concentrate shall assay as follows:

[Redacted]

**[Redacted: Assay specification]**

6.3 During both the Term and the Extended Term the Parties agree that:

6.3.1 The Concentrate shall be primarily of fresh production, free flowing in nature with no visible agglomerations or discoloration and shall be homogeneous in nature in the reasonable opinion of the co-jointly appointed independent surveyor.

- 6.3.2 The Concentrate's quality, size, moisture, and impurity contents and radioactivity level shall conform to the regulations of China Customs or other country of the final destination Customs for this type of Concentrate imported into China or other country of the final destination in effect at the time of shipment.
- 6.3.3 Moisture should not be greater than [REDACTED] of the shipped quantity, for which Seller shall present a valid moisture report issued by a recognized inspection company. Should the moisture of the Concentrate not conform to these specifications, all relevant costs shall be for Seller's account. **[Redacted: Assay specification]**
- 6.3.4 Particles with size [REDACTED] should not be less than [REDACTED] of the monthly shipped quantity, for which Seller shall present a valid sizing report issued by a recognized inspection company upon Buyer's request. **[Redacted: Assay specification]**
- 6.3.5 Seller shall present a valid sizing report issued by a recognized inspection company upon Buyer's written request. Should the granulometry of the Concentrate in Buyer's reasonable opinion not conform to industry standards and/or to the regulations of the final country of destination, all reasonable costs of grinding and crushing so that the Concentrate conforms to industry standards shall be for Seller's account.
- 6.3.6 The Seller shall provide Buyer with the current safety data sheet ("SDS"), as well as a production process description flow chart, and any other information relating to health, safety and environmental data in connection with the Concentrate in compliance with the requirements of any applicable law(s), rules or regulations. These documents shall be made available to the Buyer within 5 (five) Business Days of Buyer's request and in any event prior to the delivery of the Concentrate. The SDS must be in English. If the SDS is revised at any time thereafter during the Term or Extended Term, the Seller shall promptly provide the updated SDS to the Buyer.
- 6.3.7 [REDACTED] The Seller shall comply with all obligations imposed on it by the IMSBC Code and shall provide all documents and certificates in a form that complies with and meets the requirements of the IMSBC Code (including the requirement that any such certificates or documents, including declarations, are issued by an entity recognised by a Competent Authority as defined in the IMSBC Code) and promptly present valid signed Transportable Moisture Limit, Flow Moisture Point, moisture certificates and approval documents issued by the Competent Authority if so requested by Buyer. **[Redacted: Representations and warranties]**
- 6.3.8 Should the Concentrate not conform to any of the above specifications set forth in this Clause 6, then the Buyer may at its sole option either (i) within 14 (fourteen) Business Days of receipt of such Concentrate, reject in writing the Concentrate and, upon Buyer's rejection, Seller shall forthwith repay to the Buyer all sums of money expended by the Buyer in respect of the rejected Concentrate and shall remove the Concentrate or any part thereof which has been delivered to the Buyer's vessel forthwith; or (ii) accept the Concentrate subject to price adjustment to be mutually agreed between Buyer and Seller. Should the Buyer not provide the rejection notice contemplated by subclause (i) within the time period specified in subclause (i), it will be deemed to have accepted such Concentrate. The Seller will indemnify the Buyer in respect of any reasonable out-of-pocket loss or damage directly sustained by the Buyer arising out of or in connection with the Buyer's rejection of the Concentrate pursuant to this paragraph. Buyer will take commercially reasonable steps to mitigate any loss or damage incurred.

## 7. SHIPMENT

7.1 During the Term:

7.1.1 Subject to Clause 7.1.2, the Concentrate shall be shipped in plastic-lined containers.

7.1.2 Once annual production reaches [REDACTED], Buyer shall have the option to request that the Concentrate be shipped in bulk subject to Lae port facilities allowing bulk shipments and subject to Seller's acceptance. **[Redacted: Quantity of concentrate]**

7.2 During the Extended Term:

7.2.1 Concentrate shall be shipped in [REDACTED] parcels if shipped in bulk or, if elected by the Buyer, in [REDACTED] parcels if shipped in containers, approximately evenly spread over the respective calendar year. **[Redacted: Quantity of concentrate]**

7.2.2 In case of container shipment, the Concentrate will be shipped in plastic-lined containers.

7.3 During both the Term and Extended Term, the exact shipping schedule shall be mutually agreed between Buyer and Seller acting reasonably, and shipments shall be arranged as per standard operational procedure agreed between Buyer and Seller upon Contract signature in Appendix 2.

## 8. WARRANTY DISCLAIMER

8.1 Buyer agrees that Seller makes no representations or warranties, expressed or implied, as to the merchantability, fitness for any particular purpose or any other matters other than the express warranties set out in this Contract. No representation, warranty or statement made by the Seller or its agents, employees, representatives or any other person on its behalf not expressly contained in this Contract shall be binding upon Seller as a representation or warranty or otherwise.

## 9. DELIVERY

9.1 During the Term and Extended Term:

9.1.1 Seller shall provide Buyer with the completed customs export documentation within 3 (three) Business Days after Buyer's declaration of discharge port.

9.1.2 Seller shall provide at the port of loading a safe berth reachable on arrival always accessible always afloat.

9.2 During the Term:

9.2.1 Delivery shall be free carrier ("FCA") (Incoterms 2020) Lae Port, Papua New Guinea with terminal charges and vessel loading charges at port of loading for Seller's account, customs cleared for export. Buyer shall declare the discharge port within 1 (one) Business Day of Seller's receipt of a provisional invoice. Seller shall take all reasonable steps to ensure that shipments are arranged to maintain the value of Concentrate stored in Lae below the maximum aggregate exposure of [REDACTED] provided in Clause 12 (PAYMENT). **[Redacted: Maximum value of aggregate exposure]**

9.2.2 [REDACTED] The present terms are made on the basis of a freight of [REDACTED] per 20' container from FCA Lae Port to CIF CY [REDACTED] with [REDACTED] days at discharge port. Buyer and Seller shall agree on a freight adjustment at the beginning of each calendar year equal to the prevailing market rate for shipments from FCA Lae Port to CIF CY [REDACTED] minus [REDACTED] per 20' container. This freight adjustment shall be incorporated in the final invoice as a credit in favor of

the Buyer in case freights to [REDACTED] are above [REDACTED] per 20' container, or as a debit in favor of the Seller in case freights are below [REDACTED] per 20' container. [**Redacted: Freight costs**]

9.2.3 In addition to Clauses 9.2.1 and 9.2.2, should Buyer choose to ship to other destinations in [REDACTED], Buyer shall pay a freight rollback of [REDACTED] per DMT in Seller's favor (all other terms to remain unchanged). [**Redacted: Price of freight rollback**]

9.3 During the Extended Term:

9.3.1 Delivery shall be as free on board ("FOB") (Incoterms 2020) ST Lae Port, Papua New Guinea, customs cleared for export for bulk shipments and FCA (Incoterms 2020) Lae Port, Papua New Guinea with terminal charges and vessel loading charges at port of loading for Seller's account, customs cleared for export for all container shipments.

9.3.2 [REDACTED]  
[REDACTED] [**Redacted: Freight Costs**]

9.4 In the event that shipment is by bulk delivery, the following terms shall apply:

9.4.1 *Laycan*

Buyer shall give written notice to Seller of the proposed 15 day laycan for each shipment at least 30 calendar days prior to the first day of the laycan. Seller shall confirm the proposed laycan within 2 (two) Business Days, otherwise Seller shall be deemed to have accepted such proposed laycan.

9.4.2 *Vessel Nomination*

9.4.2.1 Buyer shall nominate the vessel no less than 10 calendar days prior to the vessel's ETA at loadport. Buyer shall notify the Seller of the following details in writing:

- a. the name (or IMO number) of the vessel that the Buyer nominates including the age, flag, class, deadweight tonnage, beam, length overall and draft of the vessel; and
- b. the ETA of the vessel at the port of loading.

9.4.2.2 The Buyer shall give written notice to the Seller of the progress of the vessel 10 days, 5 days, 2 days and 24 hours before the ETA of the vessel at the port of loading. The Buyer shall inform the Seller of any deviation in excess of 24 hours to the aforementioned ETA.

9.4.2.3 The Buyer may substitute any vessel nominated under this Contract by another vessel by giving a notice of substitution to the Seller at any time up to 7 days prior to ETA of the original vessel.

9.4.3 *Loading Rate*

9.4.3.1 Seller shall guarantee a minimum load rate of [REDACTED] per weather working day, Sundays and holidays excluded unless used, if used actual times used to count (PWWD SHEX UU IUATUTC). [**Redacted: Quantity of concentrate**]

9.4.4 *Loading*

9.4.4.1 The Seller shall load, stow, and trim the vessel in compliance with the IMO Code of Safe Practice for Solid Bulk Cargoes and all applicable laws, regulations and standards from time to time issued and amended by any relevant governmental or other statutory body or authority.

9.4.4.2 The stevedores shall be appointed by the Seller. The stevedores and anyone employed by the stevedores shall be under the supervision of the Master. Loss or damage caused by stevedore act or omission, if any, to be settled directly between stevedores / Seller and Master / owners.

9.4.4.3 The Buyer and/or the Master of the vessel shall have the right (exercisable at their sole and absolute discretion) to refuse to accept for loading all or any Concentrate which, in the reasonable opinion of the Buyer or the Master of the vessel, does not comply with this Contract or constitutes any risk to the safety of the vessel.

#### 9.4.5 *Notice of Readiness and Laytime*

9.4.5.1 After arrival at the port of loading, Notice of Readiness or NOR (being the notice provided when the vessels are in all respects ready to discharge) may be tendered in writing or by radio from Monday through Friday during office hours (08:00 to 17:00), and Saturday (09:00 to 13:00) excluding holidays, whether in port or not, whether in berth or not, whether in free pratique or not, whether customs cleared or not.

9.4.5.2 If Notice of Readiness is tendered within the laycan, laytime shall commence at the earlier of:

- a. 13:00 hrs same working day if NOR is tendered within office hours prior and up to 12:00 hrs; or
- b. Next working day 08:00 hrs if NOR is tendered within office hours after 12:00 hrs.

If the Notice of Readiness is tendered before the laycan, laytime shall begin from the commencement of loading or at 00:00 hrs on the first day of the laycan, whichever occurs first. If Seller is able to arrange for loading to commence before laytime starts, the vessel's master shall allow such work to be done and all time actually used shall count as laytime.

9.4.5.3 In the event of weather conditions which, in the opinion of either the port authority or the Master make loading perilous, and all loading operations are suspended then all such time lost shall not count as laytime, unless vessel is already on demurrage, and the Master may close hatches in case of heavy rain, heavy snow, or hail. In case of rain, all holds which have not been fully loaded should be closed in order to avoid wetting the Concentrate.

9.4.5.4 The following shifting time, stoppages and/or interruptions to loading shall not count as laytime, but if the vessel is on demurrage, then demurrage will continue to accrue:

- a. The time taken from shifting from anchor aweigh until vessel is all fast alongside the designated berth;
- b. Any time lost if loading is interrupted by the vessel in order to conduct business on behalf of the owner;
- c. Any time lost as a result of breakdown, inefficiency, repairs or any other inability of the vessel to load the Concentrate;
- d. Any time lost due to compliance with statutory and class requirements for the vessel;
- e. Any time lost due to Force Majeure;

9.4.5.5 The following shifting time, stoppages and/or interruptions to loading shall count as laytime or time on demurrage:

- a. Any time lost due to the Seller or any governmental authority or port authority preventing, impeding or prohibiting loading;

- b. Any time lost due to a labour dispute, strike, go slow, work to rule, lock out, stoppage or restraint of labour involving the Master, officers or crew of the vessel or tug boats or pilots;
- c. Any time lost for shifting of the vessel as per Sellers or port authority request, for reason which cannot be attributable to the vessel or the Buyer.

9.4.5.6 Laytime shall cease counting upon completion of final draft survey and completion of all necessary documentation related to the cargo loaded required for the sailing of the vessel.

9.4.6 *Demurrage and Despatch*

9.4.6.1 The demurrage rate shall be as per the governing Charter Party.

9.4.6.2 If the total laytime used exceeds the total laytime allowed, the Seller shall pay demurrage to the Buyer for the excess time at the demurrage rate per day or pro rata part thereof. If the total laytime used is less than the total laytime allowed, the Buyer shall pay despatch to the Seller for the time saved at the rate equal to [Redacted] of the demurrage rate per day or pro rata part thereof. **[Redacted : Penalty]**

9.4.6.3 Laytime calculations shall be presented by the Seller within [Redacted] calendar days of the completion of loading. Demurrage / despatch shall be paid by the Party so owing within [Redacted] Business Days of agreement of laytime calculations against presentation of the owed Party's invoice. **[Redacted: Number of days]**

**10. PRICE**

10.1 The price per DMT of the Concentrate shall be the sum of the payments specified in Clauses 10.2 and 10.3, as applicable, less the deductions specified in Clause 10.4.

10.2 During the Term, the payments shall be as follows:

10.2.1 *Copper*

If the final copper content is:

- [Redacted]

**[Redacted: Percentage of copper content, payments and deductions]**

at the official London Metal Exchange cash settlement quotation for Grade 'A' copper, as published in the Metal Bulletin in USD and averaged over the Quotational Period, but corrected to the official quotations of the London Metal Exchange in the event of printing errors.

10.2.2 *Silver*

[Redacted] of the Concentrate, at the official LBMA Silver Price, as published on [www.lbma.org.uk](http://www.lbma.org.uk) and averaged over the Quotational Period, but corrected to the official quotations of the London Bullion Exchange in the event of printing errors. **[Redacted: Percentage of silver content and deduction]**

10.2.3 *Gold*

No gold payment shall apply if the gold content is below [REDACTED] per DMT. **[Redacted: Percentage of gold content]**

[REDACTED], at the LBMA “Final” quotation for Gold, as published in US-Cents in the London “Metal Bulletin”, and averaged over the Quotational Period, but corrected to the official quotations of the London Bullion Exchange in the event of printing errors. **[Redacted: Percentage of gold content]**

[REDACTED], at the LBMA “Final” quotation for Gold, as published in US- Cents in the London “Metal Bulletin”, and averaged over the [REDACTED] event of printing errors. **[Redacted: Percentage of gold content]**

[REDACTED], at the LBMA “Final” quotation for Gold, as published in US-Cents in the London “Metal Bulletin”, and averaged over the Quotational Period, but corrected to the official quotations of the London Bullion Exchange in the event of printing errors. **[Redacted: Percentage of gold content]**

10.3 During the Extended Term, the payments shall be as follows:

10.3.1 *Copper*

If the final copper content is:

- [REDACTED]

**[Redacted: Percentage of copper content, payments and deductions]**

at the official London Metal Exchange cash settlement quotation for Grade ‘A’ copper, as published in the Metal Bulletin in USD and averaged over the Quotational Period, but corrected to the official quotations of the London Metal Exchange in the event of printing errors.

10.3.2 *Silver*

[REDACTED] of the Concentrate, at the official LBMA Silver Price, as published on [www.lbma.org.uk](http://www.lbma.org.uk) and averaged over the Quotational Period, but corrected to the official quotations of the London Bullion Exchange in the event of printing errors. **[Redacted: Percentage of silver content and deduction]**

### 10.3.3 *Gold*

If the gold content is:

[Redacted]

[Redacted: Percentage of gold content, payments and deductions]

at the mean of the official AM/PM LBMA Gold Price, as published on www.lbma.org.uk in USD and averaged over the Quotational Period.

10.4 The deductions to be deducted from payments set out in Clauses 10.2 and 10.3 shall be as follows, as applicable:

#### 10.4.1 *Treatment Charge*

The treatment charge shall be:

[Redacted] [Redacted: Treatment charge]

[Redacted] [Redacted: Treatment charge]

#### 10.4.2 *Copper Refining Charge*

a. During the Term:

(i) [Redacted] [Redacted: Percentage of copper content and refining charge]

(ii) [Redacted] [Redacted: Percentage of copper content and refining charge]

(iii) [Redacted] [Redacted: Percentage of copper content and refining charge]

b. During the Extended Term the copper refining charge shall be [Redacted] per payable pound of copper. [Redacted: Refining Charge]

#### 10.4.3 *Silver Refining Charge*

The silver refining charge shall be:

a. [Redacted] per payable ounce of silver during the Term; and [Redacted: Refining charge]

b. [Redacted] per payable ounce of silver during the Extended Term. [Redacted: Refining charge]

10.4.4 *Gold Refining Charge*

- a. During the Term:
  - (i) [REDACTED] per payable ounce of gold if the final gold content of the material is equal to or above [REDACTED] per DMT; and **[Redacted: Information relating to refining charge]**
  - (ii) [REDACTED] per payable ounce of gold if the final gold content of the material is below [REDACTED] per DMT. **[Redacted: Information relating to refining charge]**
- b. During the Extended Term [REDACTED] per payable ounce of gold. **[Redacted: Information relating to refining Charge]**

10.5 The following penalties shall be applicable to the payments set out in Clauses 10.2 and 10.3:

[REDACTED]

- [REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]

**[Redacted: Information relating to penalties]**

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted: Information relating to penalties]

10.5.3 The sum of the applicable penalties as listed in Clauses 10.5.1 and 10.5.2 shall be capped to a maximum of [Redacted] per DMT, as long as the Concentrate is delivered as per contractual specifications. Should the Concentrate delivered fall outside of specifications agreed in Clause 6 (*QUALITY*), then Buyer shall have the right but not the obligation to reject the Concentrate or to accept it subject to a mutually agreed adjustment to commercial terms. [Redacted: Information relating to penalties]

10.5.4 During the Extended Term:

10.5.4.1 [Redacted] [Redacted: Freight cost]

10.5.4.2 [Redacted] [Redacted: Freight rollback]

10.5.4.3 The Freight Rollback calculations will be based on:

a. For bulk shipments: The official freight rates for a [Redacted] parcel and/or [Redacted] parcel (when used), between Lae Port, Papua New Guinea and the final port of destination elected by the Buyer [Redacted] [Redacted: Information concerning quantity of concentrate]

b. For container shipments: The official freight rates for 20' containers, between Lae Port, Papua New Guinea and the final port of destination elected by the Buyer [Redacted] [Redacted: Information relating to calculating freight cost]

10.5.4.4 [Redacted] [Redacted: Information relating to calculation of freight cost]

10.5.4.5 [Redacted] [Redacted: Information relating to calculation of freight cost]

## 11. QUOTATIONAL PERIOD

11.1 When used in this Contract, "Quotational Period" shall mean:

11.1.1 During the Term, the average of the [REDACTED]  
[REDACTED], as evidenced by the [REDACTED] [Redacted: Quotational period]

11.1.2 During the Extended Term:

a.

b.

11.2 [REDACTED] shall be as evidenced by the [REDACTED] [Redacted: Quotational period]

[Redacted:  
Quotational period]

## 12. PAYMENT

12.1 All payments shall be made in USD by telegraphic transfer. Bank charges, if any, levied by Buyer's bank or due to Buyer's fault in respect of payments hereunder shall be for the account of Buyer. Bank charges, if any, levied by Seller's bank or due to Seller's fault in respect of payments hereunder shall be for the account of Seller.

### 12.2 *Provisional Payment Option 1*

Subject to Clause 12.3, [REDACTED] of the provisional value of the Concentrate, based on the bill of lading wet weight, provisional moisture, provisional assays and the applicable metal quotations published on the bill of lading date (or on the last LME market day prior to the bill of lading date if the bill of lading date does not fall on an LME market day), shall be paid [REDACTED] calendar days after bill of lading date and against Buyer's receipt of the following original documents: **[Redacted: Percentage of provisional value]**

- a. 3/3 original 'clean on board' Charter Party bills of lading, made out to order, blank endorsed and marked freight payable as per Charter Party for bulk shipments or 3/3 original liner bills of lading, made out to order and blank endorsed for container shipments. Alternatively, upon mutual agreement 3/3 original bills of lading can be replaced with 1/1 electronic bill of lading (and issued through essDOCS platform) for the purposes of this clause. All costs and responsibility for issuance of the electronic bill of lading through the platform is for the Seller's account.;
- b. Seller's provisional invoice;
- c. Seller's provisional weight and moisture certificate;
- d. Seller's provisional assay certificate; and
- e. Original certificate of origin issued by PNG Customs or any other authority of PNG which customarily issues certificates of origin.

### 12.3 *Advance Provisional Payment Option 2*

In lieu of the provisional payment set forth in Clause 12.2, the Seller may elect to receive the provisional payment for the Concentrate stored in the warehouse at the port of loading. Each

advance provisional payment shall be subject to completion of a due diligence by the Buyer on the Seller's financials and Seller's nominated 3<sup>rd</sup> Party warehouse, and Seller shall remain responsible to cover all costs up to FOB / FCA Lae as defined in Clause 9 (*DELIVERY*).

- 12.4 [REDACTED] of the provisional value of the Concentrate, based on the holding certificate wet weight, provisional moisture, provisional assays and the applicable metal quotations on the holding certificate date (the "**First Provisional Payment**"), shall be paid within 3 (three) Business Days after Buyer's receipt of the following original documents: **[Redacted: Percentage of provisional value]**
- a. Holding/Storage Certificate issued substantially in Buyer's format as per Appendix 1;
  - b. Truck manifests for all Concentrate arriving at the Seller's nominated warehouse under the relevant Holding/Storage Certificate;
  - c. Seller's provisional invoice;
  - d. Seller's provisional weight and moisture certificate;
  - e. Seller's provisional assay certificate;
  - f. Insurance certificate (assigned to the Buyer) covering max cargo value to be stored at Seller's nominated warehouse in Lae at any given time up to FOB Lae; and
  - g. Original Certificate of Origin.
- 12.5 A further [REDACTED] of the provisional value of the Concentrate calculated on the same basis as for the [REDACTED] in the preceding paragraph (the "**Second Provisional Payment**"), shall be paid upon receipt of the 3/3 original bill of lading date or if the Seller provides the Buyer with a power of attorney to endorse the bill of lading in Singapore, upon confirmation from the shipping line that the Concentrate has been shipped on board the vessel. **[Redacted: Percentage of provisional value]**
- 12.6 The First Provisional Payment and the Second Provisional Payment are subject to the following adjustment and conditions:
- a. Upon the irrevocable and unconditional discharge of all amounts payable (including principal and interests) under the Loan Agreement, the First Provisional Payment shall be increased to [REDACTED] and the Second Provisional Payment shall no longer apply; and **[Redacted: Percentage of provisional value]**
  - b. If the Seller and/or K92 Parent fails to make any payment that is due and payable under the Loan Agreement, the Buyer may suspend the First Provisional Payment and the Second Provisional Payment until such failure has been remedied, and if such failure is not remedied within 72 hours, the Buyer may declare an Event of Default and exercise other rights and powers pursuant to the Loan Agreement.
- 12.7 The Seller shall pay Buyer interest on each advance provisional payment for the days from the value date of advance provisional payment to [REDACTED] days after bill of lading date at a rate of [REDACTED]-month CME Term SOFR on the provisional invoice date plus [REDACTED] per annum. **[Redacted: Percentage redacted]**
- 12.8 Advance provisional payments pursuant to Clause 12.3 "Advance Provisional Payment Option 2" shall be subject to a maximum aggregate exposure of [REDACTED] (or any other amount as notified by the Buyer to the Seller) at any time, and shall be calculated as [REDACTED], or as the case may be [REDACTED], of the sum of the provisional value of all material paid for but not shipped on board. Should the aggregate exposure exceed [REDACTED] at any given time, any additional provisional value exceeding the maximum aggregate exposure shall be paid for provisionally in accordance with Provisional Payment Option 1. **[Redacted: Dollar amount of maximum aggregate exposure and percentage of provisional value]**

12.9 In any event, the Seller guarantees to customs clear the Concentrate as mentioned in Clause 9 (*DELIVERY*), while Buyer and Seller agree to take reasonable efforts to arrange documentation and logistics in order to avoid exceeding 15 days storage of the cargo in containers at the warehouse at the port of loading.

12.10 The Buyer reserves its rights to revise the maximum aggregate exposure amount applicable to the advance provisional payments referred to in this clause should there be in the Buyer's opinion any significant adverse change in the financial situation or creditworthiness of the Seller.

12.11 *Payment Adjustments*

12.11.1 If at any time following the Buyer's prepayment or provisional payment in accordance with the paragraphs above in this Clause 12, and prior to presentation of any final invoice or credit note, the difference between the provisional payment(s) made and the value of shipment based on the metal prices averaged over the previous two calendar weeks (or – if the Quotational Period for any metal is already finished – then, for such metal, over such Quotational Period), is greater than [REDACTED] of the provisional payment or [REDACTED] (whichever is lower) (the "**Difference**"), then the Seller (if the value of such shipment has increased) or the Buyer (if the value of such shipment has decreased) (the "**Owed Party**") shall have the right to request the other Party (the "**Owing Party**") to pay such difference and the other Party shall pay such amount within 3 (three) Business Days of the date of receipt by the Owing Party from the Owed Party of an additional provisional invoice (debit or credit note). [**Redacted: Percentage and dollar amount of provisional payment**]

12.11.2 For this purpose, Seller will deliver an additional provisional invoice (debit or credit note) based on latest known information and the metal prices averaged over the two previous calendar weeks (or final prices if known).

12.12 *Final Payment*

12.12.1 The Seller shall issue a final invoice within 5 (five) Business Days of final assays, weights and prices being known and final payment shall be made within 5 (five) Business Days of receipt of the final invoice.

12.12.2 If Seller is indebted to Buyer by reason of having received provisional payment in excess of the amount of the final invoice, this difference shall be re-paid by Seller to Buyer by telegraphic transfer within 5 (five) Business Days of final weights, final assays and final prices being known.

12.12.3 If Seller does not issue a final invoice within 5 (five) Business Days of final weights, assays and prices being known, Buyer may issue an invoice in respect of the sums payable to it and Seller shall pay such amount within 5 (five) Business Days. Final payments owed to Buyer may (with the consent of the Buyer) be offset against sums payable by Buyer to Seller under this Contract.

**13. TITLE AND RISK**

13.1 Title shall pass from the Seller to the Buyer upon the earlier of (a) the Buyer's advance provisional payment and (b) the receipt by the Buyer of the original bills of lading or the electronic bills of lading (as applicable to the relevant shipment) referred to in item 1 of sub-section "Provisional Payment Option 1" of Clause 12 (*PAYMENT*).

13.2 Risk shall pass from Seller to Buyer in accordance with the applicable Incoterm. In the case of container shipments, all risks of loss shall pass to the Buyer at the wharf where containers are taken prior to loading onto the vessel.

**14. WEIGHING, SAMPLING AND MOISTURE DETERMINATION**

14.1 The operations of weighing, sampling and moisture determination shall be carried out at the port of discharge or/and receiving smelter in the usual technical manner in accordance with standard international practices and by means of calibrated equipment. Buyer shall ensure that all reasonable precautions are taken to prevent handling or other losses of Concentrate between the ship's rail and the point of weighing, sampling and moisture determination. Standard operational procedure shall be discussed and mutually agreed between Parties per each destination on a case by case basis prior to the start of operations and reconfirmed prior to each shipment. This procedure shall become a part of the co-joint supervision appointment. The moisture and the wet weight thus determined shall be final and binding, save for fraud or manifest error.

14.2 Seller and Buyer shall appoint an internationally recognized supervision company to conduct or to represent them during such operations. The costs of the co-joint appointment shall be shared equally between Buyer and Seller.

14.3 The size of the lots for sampling purposes shall be determined on a shipment by shipment basis.

14.3.1 [Redacted: Information relating to the operations of weighing, sampling and moisture determination]

14.3.2 [Redacted: Information relating to the operations of weighing, sampling and moisture determination]

14.4 All samples shall be duly sealed and stamped by an internationally recognised supervision company and China Customs for deliveries to China.

14.5 [Redacted: Information relating to the operations of weighing, sampling and moisture determination]

**15. ASSAYS**

15.1 [Redacted: Information relating to the operations of weighing, sampling and moisture determination]

**16. FORCE MAJEURE**

16.1 If either Party is prevented, hindered or delayed from performing in whole or in part any obligation or condition of the Contract by reason of Force Majeure (the "**Affected Party**"), the Affected Party shall give written notice to the other Party promptly and in any event within 3 (three) Business Days after receiving notice of the occurrence of a Force Majeure event giving, to the extent reasonably practicable, the details and expected duration of the Force Majeure event and the quantity of Concentrate affected (the "**Force Majeure Notice**").

16.2 Provided that a Force Majeure Notice has been given, for so long as the event of Force Majeure exists and to the extent that performance is prevented, hindered or delayed by the event of Force Majeure, neither Party shall be liable to the other and the Affected Party may suspend performance of its obligations under the Contract (a "**Force Majeure Suspension**"). During the period of a Force Majeure Suspension, the other Party may suspend the performance of all or a part of its obligations to the extent that such suspension is commercially reasonable.

16.3 The Affected Party shall use commercially reasonable efforts to avoid or remove the event of Force Majeure and shall promptly notify the other Party when the event of Force Majeure is terminated.

16.4 If a Force Majeure Suspension occurs, the time for performance of the affected obligations and, if applicable, the term of the Contract shall be extended for a period equal to the period of suspension.

16.5



[Redacted: Information relating to termination of deliveries]

16.6



[Redacted: Information relating to termination of deliveries]

16.7 For the purposes of this Clause 16 “**Force Majeure**” means any cause or event reasonably beyond the control of a Party or Buyer’s receiving smelter, including, but not limited to fires, earthquakes, lightning, floods, explosions, storms, adverse weather, landslides and other acts of natural calamity or acts of god; navigational accidents or maritime peril; vessel damage or loss; strikes, grievances, actions by or among workers or lock-outs (whether or not such labour difficulty could be settled by acceding to any demands of any such labour group of individuals); accidents at, closing of, or restrictions upon the use of mooring facilities, docks, ports, harbours, railroads or other navigational or transportation mechanisms; disruption or breakdown of, storage plants, terminals, machinery or other facilities; acts of war, hostilities (whether declared or undeclared), civil commotion, arrest and/or detention of the Concentrate and/or vessel, embargoes, blockades, terrorism, sabotage or acts of the public enemy; any act or omission of any governmental authority; good faith compliance with any order, request or directive of any governmental authority; curtailment, interference; or any other cause reasonably beyond the control of a Party, whether similar or dissimilar to those above and whether foreseeable or unforeseeable, which, by the exercise of due diligence, such Party could not have been able to avoid or overcome. A Party’s inability economically to perform its obligations under the Contract shall not constitute an event of Force Majeure.

16.8 Notwithstanding any other provisions in this Contract, in the event of regulations issued by the Chinese government prohibiting Buyer’s receiving smelter to process the Concentrate, then this event shall be taken as a Force Majeure Event.

This clause 16 shall not apply to any obligations to pay, indemnify or provide security or to any Concentrate for which vessel has been booked, pricing has been established, the Quotational Period has commenced and payment has been made unless the Buyer has expressly consented in writing.

## 17. TOTAL OR PARTIAL LOSS

17.1 In the event of a partial loss of a shipment after risk passes from Seller to Buyer as defined in Clause 13 (*TITLE AND RISK*) and before the completion of the operations described in Clause 14 (*WEIGHING, SAMPLING AND MOISTURE DETERMINATION*), provisional payments shall be made as set out in Clause 12 (*PAYMENT*). Final settlement shall be made as soon as all necessary details are available based on the bill of lading wet weight, the shipped moisture as per Seller’s provisional moisture certificate, the assays as provided in Clause 15 (*ASSAYS*) on that part of the cargo which has been safely delivered and otherwise in accordance with the terms of this Contract. The insurance settlement shall accrue to Buyer.

- 17.2 In the event of a partial loss of a shipment before risk passes from Seller to Buyer and after title passed from Seller to Buyer as defined in Clause 13 (*TITLE AND RISK*) Seller will repay back to the Buyer overpaid amount for lost cargo and final settlement shall be made as soon as all necessary details are available as per Clause 14 (*WEIGHING, SAMPLING AND MOISTURE DETERMINATION*). Weighing sampling and moisture determination and Clause 15 (*ASSAYS*) on that part of the cargo which has been safely delivered to the discharge port or receiving smelter.
- 17.3 In case of total loss or destruction of any Parcel of Concentrates any time prior to weighing, sampling and moisture determination, the final invoice shall be based upon the full weights and provisional assays as determined at the port of loading. In the case of total loss or destruction prior to delivery at the port of discharge, the Date of Arrival of such shipment shall be deemed to have occurred 35 days after the bill of lading date for purposes of determining Quotational Periods and payment dates.
- 17.4 In the event of a total or partial loss of a shipment after the provisional payment or advance provisional payment has been made by the Buyer to the Seller as set out in Clause 12 (*PAYMENT*), but before the risk passes from Seller to Buyer as defined in Clause 13 (*TITLE AND RISK*), the Buyer shall have the right to request the Seller to repay such provisional payment or advance provisional payment and the Seller shall pay such amount within 3 (three) Business Days or replace the lost Concentrate, at Buyer's convenience. If the provisional payment or advance provisional payment is repaid in cash, the Buyer shall promptly issue to the Seller an additional provisional payment or advance provisional payment invoice based on latest known information.
- 17.5 The Seller shall procure and pay for insurance in respect of the Concentrate from the time of Buyer's provisional payment or advance provisional payment through to loading port for the full provisional FOB value, subject to later adjustment to final FOB value, calculated in accordance with the terms of this Contract against full risks in accordance with current Institute Cargo Clauses A (all risks), plus [REDACTED]. **[Redacted: Percentage insured over full risk]**
- 17.6 Seller shall procure for insurance for [REDACTED] of the value of Concentrate based on Seller's provisional payment or advance provisional payment invoice and shall share the copy of insurance certificate with the Buyer upon Buyer's request. **[Redacted: Total percentage of concentrate insured]**
- 17.7 Buyer to pay for the cost of marine freight, transport, insurance, unloading at discharge port and transportation from the arrival port to the final destination.

## **18. ARBITRATION**

- 18.1 Any dispute arising out of or in connection with this Contract (including any dispute regarding its existence, validity or termination, or any non-contractual obligation arising out of or in connection with this Contract) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration prevailing at the time of commencement of any claim. The tribunal shall consist of three arbitrators, one to be nominated by Buyer, one by Seller and the third by the two so appointed. The seat of the arbitration shall be London, England and the language shall be English. The arbitrators shall have experience of trading matters.

## **19. GOVERNING LAW**

- 19.1 The construction, validity and performance of this Contract shall be governed by the laws of England.
- 19.2 A person who is not a party to this Agreement has no rights (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce a provision of this Contract.

**20. TAXES, TARIFFS AND DUTIES**

20.1 Any import taxes and duties in the country of final destination shall be borne by Buyer. All such charges at the port of origin or country of origin shall be borne by the Seller.

**21. SUSPENSION OF QUOTATIONS**

21.1 The metal price quotations specified under this Contract are currently the quotations in general use for the pricing of the metal contents of precious metal concentrates.

21.2 In the event any of these price quotations ceases to exist or ceases to be published or should no longer be internationally recognized as the basis for the settlement of precious metal concentrate contracts, then upon the request of either Party, Buyer and Seller shall promptly consult together with a view to agreeing on a new pricing basis and on the date for bringing it into effect. The basic objective shall be to secure the continuity of fair pricing.

21.3 In the event that within 60 days after the date of any notice for consultation, Seller and Buyer shall not have agreed on an alternate basis for determining the price of the copper, gold and/or silver content of the Concentrates to be sold hereunder, as the case may be, either Seller or Buyer shall have the right to refer the matter to the Referee(s) for resolution in accordance with Clause 38 (*REFEREES*).

**22. LICENCES**

22.1 Seller guarantees that any and all necessary:

- a. export licenses required for the production, transport, and loading aboard the vessel at the port of origin applicable to a shipment will be applied for and obtained by the Seller in relation to each the shipment; and
- b. other authorisations, consents, approvals and licences required under any law or regulation to enable it to perform its obligations under this Contract have been obtained and will remain in compliance and current at all times.

22.2 The Seller guarantees that it shall have at all times the right to sell the Concentrate to the Buyer under this Contract.

**23. CONFIDENTIALITY CLAUSE**

23.1 Each Party shall use its best efforts to ensure that the provisions of this Contract and all information disclosed to it concerning the other Party and its assets and businesses and not otherwise publicly available and the determination of any matter hereunder by any Referee or arbitrator shall be kept confidential and shall, unless otherwise required by law or the rules and regulations of any stock exchange, not be disclosed without the consent of the other Party to anyone other than (a) to the directors, officers, employees, accountants, insurers, consultants, counsel and representatives of each Party, (b) to any proposed assignee or transferee, (c) to any other person or entity providing financing to the Seller or to any Party to which the Buyer is entitled to make an assignment pursuant to Clause 25 (*ASSIGNMENT*), (d) to the shareholders of the Seller, (e) to any underwriter of securities to be issued by the Buyer or Seller, or a rating agency, (f) in connection with legal proceedings or required filings with government agencies, courts, stock exchanges or other regulatory agencies, or (g) to any Referee or arbitrator appointed hereunder. If such information is so disclosed to any such person or entity, the disclosing Party agrees to use its best efforts to obtain from such person or entity a covenant for the benefit of both Parties hereto to keep such information confidential.

**24. INCOTERMS**

24.1 Unless otherwise specified herein, INCOTERMS 2020 will be applicable for the term of this Contract.

**25. ASSIGNMENT**

25.1 This Contract and all its provisions shall be binding upon both Parties contracting hereto. Neither Party may assign or transfer all or any of its rights, benefits and obligations herein except with the written consent of the other Party. Buyer, however, may without the consent of the Seller, assign and/or transfer its rights, benefits and obligations under this Contract to any Party providing financing or insurance in connection with this Contract for the purpose of security and/or any bank, financial institution, trust, fund or other entity which is engaged in or established for the purpose of making, purchasing or investment in any form of financing, including any loan or advance payment. Buyer will at all times remain liable for the contract performance of its assignee.

**26. SPECIAL CLAUSE**

26.1 Any and all addenda and/or alterations to this Contract are only valid if affected in written form and signed by authorized persons. All previous negotiations and correspondence are considered void after this Contract has been signed.

**27. NOTICES**

27.1 Any notice required to be given hereunder shall be in writing and delivered by registered airmail, email, or by hand, and shall be affected on delivery addressed to the Party concerned as follows:

**To Seller: K92 MINING LTD.**  
Level 6, PwC Haus  
Harbour City Precinct  
Port Moresby, National Capital District 121  
Papua New Guinea

Phone: [Redacted: Phone number]  
Email: [Redacted: Email address]

**To Buyer : TRAFIGURA PTE LTD**  
c/o Trafigura PTE LTD, Singapore, Branch Office Geneva  
1, Rue de Jargonnant  
1207 Geneva  
Switzerland

Phone: [Redacted: Phone number]  
Email: [Redacted: Email address]

or at such other address as may be specified by one Party to the other in a notice given in the manner provided in this clause.

**28. LIMITATION OF LIABILITY**

28.1 Neither the Seller nor the Buyer shall be liable, whether in contract, tort or otherwise, for any indirect, punitive, consequential or special losses, damages or expenses of any kind directly or indirectly arising out of or in any way connected with the performance of this Contract, and shall have no liability for any loss of profit, wasted overheads or loss resulting from the shut-down or reduction in throughput of refinery or process plant (whether direct or indirect).

28.2 Under no circumstances whatsoever shall a Party's liability exceed the value of the minimum quantity of Concentrates to be delivered to the Buyer (i.e., [REDACTED] of Concentrate) [REDACTED] prior to when the liability arises. [Redacted: Quantity of concentrate]

28.3 Notwithstanding the foregoing, nothing in this Contract shall exclude liability which is not permitted by any applicable law, including liability for:

- a. death or personal injury caused by the negligence of a Party in performing its obligations under this Contract; and
- b. fraud or fraudulent misrepresentation by a Party in performing its obligations under this Contract.

## **29. INSOLVENCY**

29.1 In the event that a liquidator, trustee in bankruptcy, receiver or other similar appointee is appointed in respect of any part or whole of the assets of a Party or a Party enters into an arrangement or composition with its creditors or any similar appointment, arrangement or composition is made under any applicable law or a Party becomes insolvent or unable to pay its debts as they become due (howsoever evidenced) or a Party enters into a moratorium, then, notwithstanding anything to the contrary elsewhere herein, whether express or implied, the other Party (without prejudice to its other rights herein) may at its sole discretion either terminate this Contract forthwith or forthwith suspend performance under this Contract on written notice until further notice in writing to the affected Party.

## **30. ENTIRE AGREEMENT**

30.1 This Contract contains the entire agreement between the Parties and supersedes all previous negotiations, representations, agreements or commitments with regard to its subject matter. Each Party acknowledges that in entering into this Contract it has not relied on any representations, warranties, statements or undertakings except those which are expressly set out herein. Each Party further acknowledges that it will only be entitled to remedies in respect of breach of the express terms of the contract and will not be liable in tort or under any collateral contract or warranty in respect of any representations, warranties, statements or undertakings which may have been made prior to this Contract being entered into.

## **31. WAIVER**

31.1 The Parties agree that a Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

## **32. SEVERABILITY**

32.1 If anything in this Contract is unenforceable, illegal or void then it is severed and the rest of this Contract remains in force. Where a provision of this Contract is prohibited or unenforceable, the Parties shall negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable law and which shall be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to this Contract.

### **33. SANCTIONS**

- 33.1 It is agreed that all activities contemplated by the Parties pursuant to this Contract will be performed in conformity with and shall not be prohibited by Sanctions and/or laws if and to the extent applicable.
- 33.2 Notwithstanding any other provision of this clause or any other clause or provision to the contrary in this Contract, neither Party shall be required to do anything under this Contract which constitutes a violation of, or would be in contravention of, or would expose it to the risk of designation pursuant to any Sanction applicable to it.
- 33.3 If, at any time during the term of this Contract any Sanctions are changed, or new Sanctions are imposed or become effective, or there is a change in the interpretation of Sanctions, which would:
- a. expose a Party to the risk of designation or to other punitive measures by a Sanctions authority; or
  - b. materially affect a Party's performance of this contract including but not limited to:
    - (i) its ability to take or make delivery or make or receive any payments as may be required in the performance of this Contract or to insure or transport the goods to be delivered by the seller to the buyer; or
    - (ii) importing the goods into the country of destination; or
  - c. cause either:
    - (i) a curtailment, reduction in, interference with, failure or cessation of supply of goods from any of the Seller's or Seller's suppliers' sources of supply; or
    - (ii) a refusal to supply such goods by any such supplier,

then notwithstanding any clause or provision to the contrary in this Contract, such Party may, by written notice to the other Party, (i) suspend performance until such time as the notifying Party may lawfully perform this Contract and/or (ii) terminate this Contract, in each event, without any further obligation or liability by either Party, save for any accrued rights and remedies including but not limited to Seller's obligation to refund the outstanding balance of any prepayment amount.

- 33.4 Obligations to make or receive payment which arose before, or as a consequence of termination shall remain in effect but shall be subject to suspension to the extent required by a Party.
- 33.5 "**Sanctions**" means economic or financial sanctions or trade embargoes or trade restrictions or similar or equivalent restrictive measures imposed, administered, enacted or enforced from time to time by the UN, EU or US or other applicable sanctions authority.

### **34. ANTI-BRIBERY AND ANTI-CORRUPTION**

- 34.1 Seller and Buyer respectively warrant and undertake to the other that in connection with this Contract:



[Redacted]

**[Redacted: Representations and warranties]**

In the event of any breach of the warranties and undertakings in clauses a. and b. above,

[Redacted]

**[Redacted: Information related to breaches of representations and warranties]**

**35. DEFAULT**

35.1 Strictly without prejudice to the rights and remedies of the Parties in law, the Parties shall have the following additional rights and remedies upon the occurrence of an event of default.

35.2 For the purposes of this clause, an event of default (“**Event of Default**”) shall mean any of the following:

- a. The failure of a Party to comply with any material terms under this Contract and such failure remains uncured for 3 (three) Business Days following written notice thereof;
- b. Subject to Clause 35.3.b.(i) below, the inability or admitted inability or declared inability of a Party to pay its debts as they fall due or declaration under any applicable law or if the value of a Party’s assets is at any time less than the amount of its liabilities (taking into account contingent and prospective liabilities);
- c. The institution or commencement or the threat of commencement of any corporate action or legal proceedings in respect of a Party in relation to the suspension of payments, any moratorium of any indebtedness, dissolution, administration, reorganisation, composition, compromise, arrangement with creditors, winding up, liquidation, receivership, compulsory management or bankruptcy or any analogous procedure in any jurisdiction; and
- d. Subject to Clause 35.3.b.(i) below, the occurrence of a material adverse change in the financial standing or creditworthiness of the Seller, or of any Party supporting or purporting to support, guarantee and/or fulfil any of the obligations of the Seller whether by means of a credit support instrument or otherwise (the “**Credit Support Provider**”) when compared to the Seller’s or a Credit Support Provider’s financial standing as at the date of this Contract, which change, in the sole opinion of the Buyer, affects the Seller’s or the Credit Support Provider’s ability to perform its financial obligations in respect of this Contract.

35.3 Upon the occurrence of an Event of Default with respect to a Party (the “**Defaulting Party**”) and irrespective of whether or not an Event of Default is continuing, the other Party (the “**Non-Defaulting Party**”) may in its sole and absolute discretion and notwithstanding any implied terms arising by virtue of prior contrary course of dealing or rule of law or doctrine to the contrary:

- a. Notify the Defaulting Party of a delivery termination date (which shall be no earlier than the date of such Notice and no later than 20 days after the date of such Notice) on which the delivery in respect of which the Event of Default has occurred shall terminate (the “**Delivery Termination Date**”); and/or
- b. (i) in case of an Event of Default under Clauses 35.2a. or b., notify the Defaulting Party of a contract termination date (which shall be no earlier than the date of such notice and no later than 20 days after the date of such notice) on which this Contract

and the transactions contemplated hereunder shall terminate (the “**Contract Termination Date**”); or

(ii) Notwithstanding anything to the contrary in this Contract, in case of an Event of Default under Clauses 35.2a. or d., (each, a “**Relevant Event**”) provided that the Defaulting Party has provided a written explanation to the Non-Defaulting Party within 3 days as to the reason why the Relevant Event has occurred, the Defaulting Party shall have 15 days from the occurrence of the Relevant Event to remedy such event (the “**Extension Period**”) and should the Defaulting Party fail to remedy the Relevant Event by the expiry of the Extension Period, the Non-Defaulting Party may, by written notice to the Defaulting Party, either renew the Extension Period by a further 15 days or notify the Defaulting Party of a Contract Termination Date on which this Contract and the transactions contemplated hereunder shall terminate; and/or

c. Withhold any payments due to the Defaulting Party until such Event of Default is cured; and/or

d. Suspend performance of its obligations under this Contract until such Event of Default is cured.

35.4 If a notice of a Delivery Termination Date or a Contract Termination Date (a “**Termination Date**”) is given under this clause: (i) the Termination Date will occur on the designated date whether or not the relevant Event of Default is then continuing; and (ii) any accrued rights or obligations that have arisen prior to the Termination Date shall not be affected.

35.5 If an Event of Default occurs and/or a Termination Date is established, the Non-Defaulting Party may (in its absolute discretion) set off any or all amounts whether present or future, actual or contingent which the Defaulting Party owes to the Non-Defaulting Party (whether under this or any other contract and/or on any other account whatsoever) against any or all amounts which the Non-Defaulting Party owes to the Defaulting Party (whether under this or any other contract and/or on any other account whatsoever). Notwithstanding any rule or provision in this Contract to the contrary, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any net amount due to a delivery termination or a contract termination until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion that (i) all amounts due and payable as of the Termination Date by the Defaulting Party under this Contract and/or on any account whatsoever with the Non-Defaulting Party have been fully and finally paid, and (ii) all other obligations of any kind whatsoever of the Defaulting Party to make any payments (including but not limited to payments of damages) to the Non-Defaulting Party under this Contract and/or on any account whatsoever which are due and payable as of or as a consequence of the Termination Date have been fully and finally performed.

35.6 Notwithstanding any other provision of this Contract, if the Buyer (in its capacity as lender under the Loan Agreement) becomes entitled to terminate this Contract pursuant to the provisions of the Loan Agreement, the Buyer may in its discretion notify the Seller of a Contract Termination Date.

## **36. CHANGE OF CONTROL**

36.1 In the event of any actual or prospective change in the organisation, control or management of the Buyer or the Seller, including without limitation, a change to the majority shareholding or privatisation or equivalent process, subject always to Clause 35 (*DEFAULT*), this Contract will not be changed or in any way modified and shall continue in full force and effect.

### **37. TRADE CONTROL**

37.1 Notwithstanding anything to the contrary herein, nothing in this Contract is intended or shall be interpreted to require either Party to the Contract to act in any manner which is inconsistent with, penalized or prohibited under any laws, regulations, rules or requirements applicable to such Party which relate to foreign trade controls, export controls, embargoes, sanctions or international boycotts of any type.

### **38. REFEREES**

38.1 In the event that a matter is to be submitted to Referees pursuant to this Contract, Seller and Buyer shall appoint an independent industry expert to act as a single Referee to determine the matter. Any person appointed as a Referee shall be a person of sound commercial background and with knowledge of the base metals and concentrates market (a “**Referee**”). No person who has been an employee, consultant or otherwise provided services (other than as a Referee hereunder) to either Party hereto or any of their respective affiliates during the five years preceding the reference shall be eligible to act as a Referee. If the parties are unable to agree on the appointment of the single Referee within 10 Business Days then each shall appoint one Referee and a third Referee shall be appointed by agreement of the first two Referees. If the two Referees fail to agree on the third Referee within 15 Business Days after the appointment of the second Referee, such third Referee shall be appointed by the President of the London Court of International Arbitration and the costs of such appointment shall be paid equally by Seller and Buyer.

38.2 Seller and Buyer shall each submit in writing in English its respective position to the Referee(s) and to the other Party within 15 Business Days after the Referee(s) has (have) been appointed. The parties shall then have a further 10 Business Days to review the other’s submission and to submit a written rebuttal in English to the Referee(s) (the “**Submission Period**”).

38.3 Promptly after expiry of the Submission Period, the Referee(s) shall offer such guidance to the Buyer and Seller, if any, that the Referee(s) consider(s) appropriate with a view toward progressing the negotiations between Seller and Buyer. If Seller and Buyer fail to agree within 30 Business Days after both parties have submitted their respective positions to the Referees, the Referee(s) shall, within 15 Business Days thereafter, finally determine any such matter by selecting one of such two positions. In making such selection, the Referees shall take account of any basis of negotiations between the parties set forth in this Contract with respect to the matter in question. If either Seller or Buyer fails to submit its respective position to the Referee(s) prior to the expiry of the Submission Period, the Referee(s) shall promptly following expiry of such period finally determine that the sole position submitted to him(them) shall prevail.

38.4 Any decision of the single Referee, or a majority of the three Referees, as applicable, made in accordance with this Contract shall be final and binding on the parties and shall apply retroactively to the period for which the parties were to have reached agreement.

38.5 Any costs associated with the services of a Referee shall be borne equally by Buyer and Seller in the event that agreement is reached by them on a particular issue. If an issue is decided by the Referee(s), the Party whose position was not selected shall bear all such costs, provided that, if the single Referee, or a majority of the three Referees, as applicable, finds that the other Party acted unreasonably in connection with the matter the Referee(s) may, in his (their) discretion, order that other Party to pay all or any portion of such costs.

### **39. LOAN AGREEMENT**

The Buyer, the Seller and the Seller’s parent company, K92 Parent, will be entering into a loan agreement (the “**Loan Agreement**”), pursuant to which the Buyer will advance to K92 Parent certain sums which shall be applied in accordance with the terms of the Loan Agreement. For the

avoidance of doubt, the occurrence of a “Default” or “Event of Default” under (and as defined in) the Loan Agreement (or the lender thereunder exercising (or electing not to exercise) any rights in respect thereof) will not prejudice any rights which the Buyer may have under this Contract or at law in respect of any breach by the Seller of this Contract.

**40. COUNTERPARTS**

40.1 This Contract may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Contract.

**41. EFFECT OF AGREEMENT**

41.1 The provisions of this Contract shall be binding upon the Parties hereto and their respective successors and permitted assigns and remain in force until both Parties have completed their contractual obligations as stated herein but within the contractual time limits as stated herein.

**EXECUTION:**

Each person signing this Contract as an authorized officer of a Party hereby represents and warrants that he or she is duly authorized to sign this Contract for that Party and that this Contract will, upon having been so executed, be binding on that Party in accordance with its terms.

IN WITNESS WHEREOF the Buyer and Seller have duly executed this Contract.

**ACCEPTED:**

John Lewins (signed)  
\_\_\_\_\_  
**Date:** 26 September 2023  
**Name:** K92 MINING LTD.

\_\_\_\_\_  
[Redacted: Name]  
**Date:** 26 September 2023  
**Name:** TRAFIGURA PTE LTD

**Appendix 1**

**HOLDING CERTIFICATE**

**\*\*\*\*\* TO BE ISSUED ON HEADED PAPER OF THE LOGISTICS OPERATOR \*\*\*\*\***

**STORAGE CERTIFICATE - DD APPENDIX 1  
TO BE ISSUED ON HEADED PAPER OF THE LOGISTICS OPERATOR**

*This Storage Certificate contains terms and conditions upon which Mapai Logistics International Limited of Rigel Street, Lae, Morobe Province (the "Logistics Operator") shall hold or continue to hold all concentrate shipments per the cargo wise documentation, [insert full details of the goods including tonnage, description and markings if applicable], as detailed below (the "Goods") at the irrevocable and unconditional disposal of XXXX (the "Bank") for the account of Trafigura Pte Ltd, (the "Depositor"). This Storage Certificate forms part of our Logistics contract with K92 Mining Ltd.*

The Logistics Operator shall hold the Goods at The Mapai Logistics Freight Container Depot ("FCD") located at [REDACTED] (the "Location"). [Redacted: Address]

1. The Goods shall be kept safely and securely at all times at the Location, segregated from all other items and clearly marked in the name of the Bank for the account of the Depositor.
2. The Depositor and/or any inspector nominated by the Depositor shall have the right at any time or times to inspect the Goods and to take samples thereof and the Logistics Operator shall grant access to the Goods for any such purpose immediately upon request.
3. The Logistics Operator shall not move, release for production or make any disposition of any of the Goods without the written authority of the Depositor acting as agent for the Bank in relation to the Goods. The depositor is authorised to act as agent for the bank in relation to the Goods until such time that the Bank revokes such authority.
4. The Logistics Operator shall not permit the Goods to be subject to any mortgage, pledge, sale or lien or encumbrance of whatsoever nature without the written authority of the Buyer.
5. The Logistics Operator undertakes to obtain or assist the Depositor and/or the Buyer in obtaining any permits, licenses or authorisations which may be or become necessary for the Depositor and/or the Bank to enjoy possession of the Goods and in particular to export the Goods to any destination in the world.
6. The Logistics Operator shall remain fully responsible to the Bank and the Depositor for the proper maintenance, upkeep and control of the Goods.
7. The contract contained in or evidenced by this Storage Certificate is governed by and construed in accordance with English law and the Logistics Operator hereby agrees that any dispute arising under or in connection with it shall, at the option of Trafigura Pte Ltd, the Depositor, or the Bank be referred to the English High Court or the Courts of Papua New Guinea.

Details of Goods:

*[insert table summarizing full details of the goods including tonnage, description and markings if applicable]*

This Holding Storage Certificate is sent on [insert date] by email to [insert email address] at Trafigura Pte Ltd  
The original has been handed to K92 Mining Ltd.

Signed by fully authorised signatory

For and on behalf of the Logistics Operator

Name :

Title :

## Appendix 2

### STANDARD OPERATING PROCEDURE FOR CONTAINERIZED FOB/FCA SHIPMENTS

1. Seller shall inform Buyer the date of expected cargo readiness latest 5 (five) Business Days before the schedule date of container stuffing at mine site.
2. Buyer shall book space on the vessel accordingly and shall provide instructions to the shipping line to release empty containers to the Seller from the port of loading.
3. Seller shall stuff and seal the containers at mine site and deliver the containers to the agreed warehouse at the port of loading least 10 calendar days prior to stacks opening for the booked vessel.
4. Seller shall create the export entry once the shipping invoice has been generated. K92 shall be the exporters on record and shall file all documentation for export. Customs documentation to be completed within 3 working days of Buyer's declaration of discharge port. In case the customs documentation is not filed on time, any costs arising from these delays including but not limited to demurrage/detention costs shall be borne by the Seller.
5. Seller shall be the shipper on record on the Bill of Lading and shall be responsible for the relevant declarations and documentation that Shipper must provide including but not limited to:
  - a. Packing List
  - b. Shipper's Declaration

All the documents including packing lists must be provided by the Seller with correct details. Any costs arising from wrong or delayed documentation issued by the Shipper or freight forwarder /container line due to the wrong Shipper information will be to the Seller's account.
6. Seller shall give Power of Attorney to the Buyer if requested and required to endorse 3/3 Original Bills of Lading on behalf of the Seller.
7. Costs will be borne by the Seller and Buyer in accordance with FOB Incoterms.
8. Seller and Buyer shall take reasonable efforts in arranging documentation and logistics in order to avoid exceeding 15 days storage of the cargo in containers at the warehouse at the port of loading.