

Form 603
Corporations Act 2001
Section 671B

Notice of initial substantial holder

To Company Name/Scheme Kaboko Mining, Ltd.

ACN/ARSN 107 316 683

1. Details of substantial holder (1)

Name YA Global Master SPV, Ltd.

ACN/ARSN (if applicable) _____

The holder became a substantial holder on December 12, 2013

2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Common	67,352,941	67,352,941	7.1%

3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
YA Global Master SPV, Ltd	Convertible Security Agreement ("Agreement")	67,352,941 Common Shares

4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
YA Global Master SPV, Ltd.	YA Global Master SPV, Ltd.	YA Global Master SPV, Ltd.	67,352,941 Common Shares

5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)	Class and number of securities
YA Global Master SPV, Ltd.	12/03/13	Services – Pursuant to Clause 3.1 of the Agreement.	12,353,2941 Common Shares
YA Global Master SPV, Ltd.	12/03/13	Collateral Shares – Pursuant to Clause 3.3 of the Agreement	50,000,000 Common Shares
YA Global Master SPV, Ltd.	12/12/13	Advance Shares – Pursuant to Dec 12, '13 conversion notice delivered to the Company	5,000,000 Common Shares

6. Associates

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association

7. Addresses

The addresses of persons named in this form are as follows:

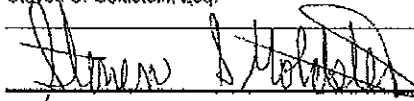
Name	Address
YA Global Master SPV, Ltd.	1012 Springfield Ave., Mountainside, NJ 07092 USA

Signature

print name Steven S. Goldstein, Esq.

capacity CCO

sign here



date 12/17/2013

DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:
 - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
 - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown."
- (9) Details of the consideration must include any and all benefits, moneys and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.

Convertible Securities Agreement

Kaboko Mining Limited
YA Global Master SPV, Ltd.

Agreement for the issue of convertible securities with an aggregate face
value of up to A\$700,000

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Date	December 2013
Parties	
1.	Kaboko Mining Limited ACN 107 316 683 of 1 Havelock Street, West Perth WA 6005 (the <i>Company</i>)
2.	YA Global Master SPV, Ltd. , of 1012 Springfield Avenue, Mountainside, NJ 07092 USA, USA (the <i>Investor</i>)
Recital	The Investor has agreed to invest up to an aggregate amount of A\$600,000 in the Company, and the Company has agreed to issue 2 convertible securities with an aggregate face value of up to A\$700,000 to the Investor, in accordance with this Agreement.

It is agreed as follows.

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply.

Actual Trading Day means a Trading Day on which trading actually takes place in the Shares on the ASX.

Affiliate means, with respect to any person, any other person who, directly or indirectly, Controls, is under common Control with, or is Controlled by, the person.

Agreement means this agreement.

Amount Outstanding means, at any time in relation to a Convertible Security, the total of that part of the Face Value of the Convertible Security and all other amounts paid to the Company by the Investor in respect of which Investor's Shares have not yet been duly issued in accordance with this Agreement (including clauses 5 and 6) or which have not yet been duly repaid by the Company, as may be adjusted pursuant to clause 13.5.

Appendix 3B has the meaning given to that term in the Listing Rules.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited and the market operated by it, the Australian Securities Exchange, as applicable.

ASX Settlement Operating Rules means the settlement rules of ASX Settlement Pty Ltd.

A\$ means Australian dollars.

Business Day has the meaning given to that term in the Listing Rules.

CHESS has the meaning given to that term in the ASX Settlement Operating Rules.

Cleansing Statement means a written notice by the Company to ASX pursuant to section 708A(5) of the Corporations Act meeting the requirements of section 708A(6) of the Corporations Act, in a form, and containing the information, that is sufficient to permit secondary trading on the ASX of the Shares to which it relates.

Closing means each of the First Closing and the Subsequent Closing.

Closing Date means the date of a Closing.

Collateral Shareholding Number means the number of Collateral Shares issued to the Investor as may be adjusted pursuant to clause 11.11.

Collateral Shares means the 50,000,000 Shares, issued to the Investor in accordance with clause 3.3(a).

Commitment Shares has the meaning given to that term in clause 3.1.

Commitment Share Number means A\$42,000 divided by the average of the daily VWAPs for each of the 5 Actual Trading Days immediately prior to the Execution Date, with any fraction being rounded upwards to the next highest whole number.

Contemplated Transactions means the transactions contemplated in this Agreement, including each Closing, each Conversion and each issuance of Securities.

Control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

Conversion has the meaning given to that term in clause 4.1(a).

Conversion Amount has the meaning given to that term in clause 4.1(a). **Conversion Date** has the meaning given to that term in clause 4.1(a). **Conversion Notice** has the meaning given to that term in clause 4.1(a).

Conversion Notice Date has the meaning given to that term in clause 4.1(a).

Conversion Price, in relation to a Conversion, means, 80% of the average of the daily VWAPs per Share for the 10 consecutive Actual Trading Days immediately prior to the Conversion Date, rounded down to the nearest 1/10th of a cent.

Conversion Shares has the meaning given to that term in clause 4.1(a).

Convertible Securities means the convertible securities issued by the Company in accordance with clause 2.1 or clause 2.2 (as applicable) and **Convertible Security** means any one of them.

Corporations Act means the *Corporations Act 2001* (Cth).

Event of Default means an event of default as set out in clause 13.1.

Exchange Act means the United States Securities Exchange Act of 1934, as amended, together with the rules and regulations of the Securities and Exchange Commission thereunder, all as the same shall be in effect at the time, and any successor statute, rules and regulations.

Excluded Tax means a Tax imposed by any jurisdiction on the Investor, or assessed against the Investor, as a consequence of the Investor being a resident of or organised or doing business in that jurisdiction, but not any Tax:

- (a) calculated on or by reference to the gross amount of a payment provided for under this Agreement or made pursuant to a Contemplated Transaction (without the allowance of a deduction); or
- (b) imposed as a result of the Investor being considered a resident of or organised or doing business in Australia as a result of the Investor being a party to this Agreement or entering into a Contemplated Transaction.

Execution Date means the date of mutual execution of this Agreement.

Exercise Form has the meaning given to that term in clause 8.2(a).

Face Value means, in relation to each convertible security, \$350,000.

Final Date means the date as of which (a) all of (i) this Agreement has been terminated, (ii) there is no Amount Outstanding, and (iii) the Company has satisfied all of its obligations to the Investor under this Agreement, or (b) all of (i) all the Closings under this Agreement have occurred, (ii) there is no Amount Outstanding, and (iii) the Company has satisfied all of its obligations to the Investor under this Agreement.

First Closing has the meaning given to that term in clause 2.1.

First Closing Date has the meaning given to that term in clause 2.1.

Governmental Authorisation means any authorisation, consent, license, permit or registration issued or granted by any Governmental Authority.

Governmental Authority means any United States, Australian or other national, federal, state, territorial or local governmental, legislative, regulatory or administrative authority, agency or commission, any court, tribunal or judicial or arbitral body, or the ASX.

Group Company means each of the Company and its Subsidiaries and **Group** means all of them.

GST means the goods and services tax levied under the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth).

Indemnified Person has the meaning given to that term in clause 16.3.

Investor's CHESS Account means the Investor's or its nominee's or designee's brokerage or prime brokerage account the details of which may from time to time be notified by the Investor to the Company.

Investor's Shares means the Commitment Shares, the Collateral Shares, the Conversion Shares and the Shares issued or issuable on exercise of the Options.

Law means a Listing Rule or regulation of ASX, a law, a regulation, a judicial, governmental or administrative order or determination in any jurisdiction, and a Governmental Authority regulation, order, interpretation, guideline, policy or directive.

Listing Rules means the listing rules of the ASX, as amended from time to time.

Losses means all losses, claims, damages, liabilities, awards, fines, penalties, demands and expenses, whether actual or contingent and whether existing or threatened (including all judgments, amounts paid in settlements, legal fees, costs and disbursements and other expenses incurred in connection with investigating, preparing or defending any action, claim, proceeding, suit or investigation, existing or threatened, and the costs of enforcement).

Market Capitalisation Amount means the amount (in A\$) equal to (a) 1.00%, multiplied by (b) the number of Shares on issue immediately prior to the Closing Date in connection with which the Market Capitalisation Amount is being calculated, multiplied by (c) the average of the VWAPs per Share during the three Trading Days immediately preceding that Closing Date.

Material Adverse Effect means a material adverse effect on:

- (a) the assets, liabilities, results of operations, condition (financial or otherwise), business, or prospects of the Company;
- (b) the ability of the Company to perform its obligations under the Agreement;
- (c) the validity or enforceability against the Company of any material provision of any Transaction Document; or
- (d) the likely price or value of any Investor's Shares.

Materials means any materials delivered, or statements made, by the Company or any of its agents, officers, directors, employees or representatives in connection with, in, or pursuant to, any Transaction Document at any time (including, for clarity, the representations and warranties set out in Schedule 1), and any announcements made by the Company to the ASX at any time.

Maturity Date means, in relation to each Convertible Security, the date that is (12) months after the relevant Closing Date.

New York Business Day means a day, other than a Saturday or Sunday, on which banks in New York City are open for the general transaction of business.

Option Exercise Price means a per option exercise price of A\$0.01, subject to all adjustments pursuant to this Agreement.

Options means 50,000,000 options to purchase Shares at the Option Exercise Price.

Party means a party to this Agreement.

Potential Event of Default means an event or circumstance which, with notice or passage or lapse of time or both, would constitute an Event of Default.

Prohibited Transaction is defined in clause 9.2.

Prospectus has the meaning given to that term in clause 5.5(d).

Purchase Price means, in relation to each Convertible Security, \$300,000.

Securities means each of the Convertible Securities, the Investor's Shares and the Options, and all of the foregoing collectively.

Securities Act means the United States Securities Act of 1933, as amended, together with the rules and regulations of the Securities and Exchange Commission thereunder, all as the same shall be in effect at the time, and any successor statute, rules and regulations.

Security Interest means a charge, mortgage, security interest, encumbrance, pledge, right of first refusal, pre-emptive right, title retention, trust arrangement, contractual right, right of call or set off or any other security arrangement.

Security Structure Event means any consolidation, subdivision or pro-rata cancellation of the Company's issued capital, or any payment of a dividend on ordinary shares of the Company or distribution of ordinary shares of the Company to holders of its outstanding ordinary shares; which for the avoidance of doubt, does not include a rights offering or a bonus issue.

Share means an ordinary fully paid share in the capital of the Company and includes Investor's Shares.

Subsequent Closing has the meaning given to that term in clause 2.2.

Subsequent Closing Date means the earliest of:

- (a) the date which is 90 calendar days after the First Closing Date; and
- (b) the date on which the Investor notifies the Company that the Investor has fully monetised the Convertible Security issued on the First Closing Date.

Subsidiary has the meaning given to that term in the Corporations Act.

Tax means any tax, including any GST, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding, and any income, stamp or transaction duty, tax or charge, which is assessed, levied, imposed or collected by any Governmental Authority and includes any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of such items.

Trading Day has the meaning given to that term in the Listing Rules.

Transaction Documents means this Agreement, all amendments thereto, and all Option certificates, Exercise Forms and Cleansing Statements.

VWAP means, in relation to a period of one or more Trading Days, the volume weighted average price (in A\$), of the Shares on the ASX for that period, as reported by Bloomberg, LP or, at the Investor's election, another internationally recognised market data provider.

1.2 Interpretation

The following rules of interpretation apply unless the context requires otherwise.

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The singular includes the plural and vice versa.
- (c) A gender includes all genders.
- (d) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (e) Mentioning anything after "includes", "including", "for example", or similar expressions, does not limit what else might be included.

- (f) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented or novated.
- (g) A reference to a person includes an individual, corporation, partnership, trust, incorporated or unincorporated association or body, joint venture, limited liability company, joint stock company, Governmental Authority and other entity of any kind.
- (h) A reference to a Party includes a reference to its successors and permitted assigns and, as the case may be, its liquidator(s).
- (i) References to the Recital, clauses, Schedules and Annexures are to the Recital to, clauses of, Schedules to, and Annexures to, this Agreement.
- (j) The Schedules and the Annexures are incorporated in this Agreement.
- (k) This Agreement must be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting or causing any instrument to be drafted.
- (l) Any choice, permission, election, discretion or consent of the Investor may be exercised or given by the Investor in the Investor's absolute discretion.

1.3 Payments

Any payments required under this Agreement to be made by a Party to any other person must be made in immediately available funds, that is, by telegraphic transfer of cleared funds to the account specified to the Party by that other person from time to time.

1.4 Investor nomination

If any payment is to be made or Security issued by the Company to the Investor, the Investor may by notice to the Company specify a nominee or designee to receive the payment or the Security, and the obligation of the Company to make the payment or issue the Security is satisfied if it is made or issued to the specified nominee or designee.

2. Convertible Securities

2.1 First Closing

Subject to this Agreement (including clause 6), on the first New York Business Day following the Execution Date (the *First Closing Date*), the Investor must pay to the Company the Purchase Price in consideration of which the Company must issue (and, upon such payment shall be deemed to have issued) to the Investor an uncertified, unsecured convertible security with a face value equal to the Face Value (the *First Closing*).

2.2 Subsequent Closings

Subject to this Agreement (including clause 6), on the Subsequent Closing Date, the Investor must pay to the Company the Purchase Price in consideration of which the Company must issue (and, upon such payment shall be deemed to have issued) to the Investor an uncertified, unsecured convertible security with a face value equal to the Face Value (the *Subsequent Closing*).

2.3 Adjustment to Closing Dates

Where a Closing Date falls on a day that is not a New York Business Day, the Closing must occur on the next day that is a New York Business Day.

2.4 Aggregate payments for Convertible Securities

Unless the Investor and Company agree otherwise, the Investor must not pay an aggregate amount exceeding A\$600,000 for the purchase of Convertible Securities under this Agreement.

2.5 Adjustments to payments

All amounts payable by the Investor pursuant to clauses 2.1 and 2.2 are subject to all set-offs and adjustments set out in this Agreement.

2.6 Interest

No interest is payable by the Company to the Investor in connection with the Convertible Securities, except as provided in clause 13.6.

3. Commitment Fee, Options and Collateral Shares

3.1 Commitment Fee

On the Execution Date, the Company must pay the Investor a non-refundable commitment fee of A\$42,000 to be satisfied by way of issuance to the Investor of the Commitment Share Number of Shares (the *Commitment Shares*).

3.2 Options

Immediately before the First Closing, the Company must issue to the Investor the Options.

3.3 Collateral Shares

- (a) Immediately before the First Closing, the Company must issue to the Investor the Collateral Shares in consideration of the Investor entering into this Agreement and agreeing to purchase the Convertible Securities.
- (b) Subject to clause 3.3(c), the Investor may at any time in its sole discretion, and, in any event no later than five (5) Business Days after the Final Date will, pay to the Company an amount (in full and final settlement of all liabilities of the Investor in connection with the Collateral Shares) equal to the Collateral Share Holding Number, multiplied by 90% of the average of five daily VWAPs per Share (selected by the Investor in its sole discretion) during the period:
 - (i) commencing on the date that is twenty (20) Trading Days prior to the date on which such payment is made by the Investor; and
 - (ii) ending on the date that is immediately prior to the date on which such payment is made by the Investor,rounded down to the next 1/10th of a cent.
- (c) Where:

- (i) an Investor would otherwise be required to make a payment to the Company in accordance with clause 3.3(e); and
 - (ii) the Shares are suspended or halted from trading on the ASX for a period that has exceeded or is reasonably expected to exceed five (5) Trading Days; or
 - (iii) the Company has ceased to be listed on the ASX,
- then:
- (iv) where the Company has ceased to be listed on the ASX, the Investor will not be required to pay any amount to the Company under clause 3.3(b) in connection with the Collateral Shares; and
 - (v) where the Shares are suspended or halted from trading on the ASX for a period that has exceeded or is reasonably expected to exceed five (5) Trading Days from the Execution Date, the Investor will not be required to make any payment under clause 3.3(b) until the Shares have recommenced trading on the ASX and have continuously traded for twenty (20) Trading Days (at which time the Investor must comply with clause 3.3(b), save that if this requirement is not met within 40 Trading Days of the Final Date, the Investor will not be required to pay any amount to the Company under clause 3.3(b) in connection with the Collateral Shares.

4. Conversions and Redemptions

4.1 Conversions at election of Investor

- (a) Subject to this Agreement, while there is an Amount Outstanding, the Investor may in its discretion elect to convert a Convertible Security, or part thereof (each, a *Conversion*), by providing the Company notice (each, a *Conversion Notice* and each date of such notice, a *Conversion Notice Date*) specifying:
 - (i) the Convertible Security to be converted;
 - (ii) the amount, determined by the Investor in its discretion, of the Face Value or part thereof of that Convertible Security to be converted (the *Conversion Amount*);
 - (iii) the Conversion Price applicable to the Conversion and the manner in which such Conversion Price was calculated by the Investor;
 - (iv) the number of Shares (the *Conversion Shares*) that the Company must issue to the Investor in respect of the Conversion. That number must be determined by dividing the Australian dollar amount of the Conversion Amount (before giving effect to any set-offs set out in this Agreement) by the Conversion Price referred to in clause 4.1(a)(iii), provided that if the resultant number contains a fraction, the number must be rounded up to the next highest whole number; and
 - (v) the date, determined by the Investor in its discretion, on which the Company must issue the Conversion Shares to the Investor (the

Conversion Date), provided that the Conversion Date must not be earlier than the Business Day immediately following the Conversion Notice Date, and, following the receipt of a Conversion Notice, the Company must effect the conversion of the Conversion Amount specified in that Conversion Notice by issuing to the Investor in accordance with this Agreement (including clauses 5 and 6) the number of Conversion Shares specified in that Conversion Notice on the Conversion Date specified in that Conversion Notice.

4.2 Repayment at Maturity

To the extent that as of the Maturity Date there is an Amount Outstanding in relation to a Convertible Security, the Company must by no later than the first Business Day following the Maturity Date pay the whole of the Amount Outstanding in respect of the Convertible Security to the Investor.

4.3 No other Redemption

Except as otherwise expressly stated in this Agreement, the Company may not redeem an Amount Outstanding prior to the Maturity Date.

4.4 Preservation of Conversion Price

If the Company is unable to issue Conversion Shares to the Investor on a Conversion Date in compliance with this Agreement for any reason, then without limiting any other rights of the Investor under this Agreement, the Investor may (but is not required to):

- (a) hold over the Conversion Price that would have applied to the Conversion (the *Applicable Price*); and
- (b) once the Company's inability to issue the Investor's Shares is overcome, apply the *Applicable Price* to determine the number of Conversion Shares that are then issuable and require such number of Conversion Shares to be issued by the Company.

4.5 Ranking of Amount Outstanding

An Amount Outstanding constitutes a direct, unsecured and unconditional obligation of the Company and ranks *pari passu* with the other unsecured unsubordinated obligations of the Company.

5. Requirements for the issue of Securities

5.1 ASX filings

No later than immediately upon the issue of any Securities, the Company must duly execute and lodge with the ASX in accordance with all applicable Laws:

- (a) in respect of an issue of Investor's Shares, a Cleansing Statement in accordance with regulatory requirements or a disclosure document in accordance with clause 5.5 below; and
- (b) an Appendix 3B.

5.2 Electronic Delivery

The Company must ensure that all Investor's Shares when issued are received by the Investor (or its designee or nominee) by electronic registration to the Investor's CHES Account (or such other electronic system which provides for the recording, delivery and transfer of title by way of electronic entries, as may be required by the Investor by notice to the Company) in accordance with the ASX Settlement Operating Rules and procedures of CHES.

5.3 Quotation

The Company must apply to the ASX for unconditional admission to trading of each parcel of Investor's Shares immediately upon their issue and use its best endeavours to obtain quotation of each parcel of the Investor's Shares on the ASX by no later than on the Trading Day immediately after the date of the issuance of such parcel. If requested by the Investor, the Company must provide documentary evidence of the ASX's grant of quotation immediately upon quotation being granted.

5.4 Cleansing Statements

- (a) Subject to clause 5.4(b), the Company must use its best endeavours to ensure that it is able to issue Cleansing Statements at all times while it remains liable under this Agreement to issue any Investor's Shares, including by ensuring that the Shares remain continuously quoted on the ASX without suspension for more than five Trading Days in any 12 month period. If the Company is unable to issue a Cleansing Statement due to an inability to satisfy the conditions set out in section 708A of the Corporations Act, it must apply to ASIC for the grant of relief from the relevant conditions on terms satisfactory to the Investor, unless this requirement is waived by the Investor.
- (b) The Investor acknowledges that the Company is currently unable to issue Cleansing Statements and that the Company will issue a Prospectus as required in accordance with clause 5.5. For avoidance of doubt the parties acknowledge and agree that the Company being unable to issue Cleansing Statements is not a default pursuant to the terms of this Agreement.

5.5 Disclosure document

If the issue of a Cleansing Statement in respect of any issue of Investor's Shares would, in the Investor's reasonable opinion:

- (a) not be permitted under applicable Law;
- (b) be delayed or impeded in any way by a requirement for ASIC to grant relief, or ASIC has granted relief on terms which make it likely that the issue of future Cleansing Statements in connection with the issue of Investor's Shares to the Investor will be delayed or impeded; or
- (c) not result in Investor's Shares to which such Cleansing Statement would relate being eligible to be freely and immediately traded on the ASX by the Investor;

then, the Company must:

- (d) as soon as practicable, but in any event no later than 20 Business Days after the date on which the Company was required to issue the relevant Investor's Shares, lodge with ASIC a disclosure document complying with Chapter 6D of the Corporations Act covering the Investor's Shares to which the Cleansing Statement would have related (*Prospectus*); and
- (e) while it remains liable under this Agreement to issue any Investor's Shares, at all times until it again becomes able to issue Cleansing Statements under applicable Law:
 - (i) ensure that offers of Shares that have been made under the Prospectus are and remain open for acceptance; and
 - (ii) lodge with ASIC a supplementary or replacement Prospectus in each circumstance contemplated by section 719(1) or section 719(1A) of the Corporations Act; and
- (f) ensure that the Prospectus (as supplemented or replaced (if applicable)) is not the subject of an order by ASIC under section 739 of the Corporations Act (that is, a stop order).

Where a lodgement of the Prospectus with ASIC is pending or before the period referred to in section 727(3) of the Corporations Act (that is, the exposure period) has expired, the Company must not issue, and the Investor is not required to accept the issue, of the Investor's Shares.

5.6 Listing Rule approval

Where the issue of a Convertible Security at a Closing or the issue of any other Securities would result in the Company breaching Listing Rule 7.1, prior to the scheduled date for the Closing or the issue of the Securities, the Company must use its best endeavours to obtain approval by the requisite majority of the shareholders of the Company:

- (a) for previous issues of securities during the previous 12 months (including for any Securities already issued to the Investor) for the purposes of Listing Rule 7.4; and
- (b) to the extent allowable under the Listing Rules, future issuances of Securities for the purposes of Listing Rule 7.1,

so that the Closing and/or the issue of the Securities may proceed without causing a breach of Listing Rule 7.1; and the obligations of the Parties to consummate the Closing or the issue of the Securities are conditional on such approval being obtained.

5.7 Where Listing Rule approval required but not obtained

Where the Company has not obtained the approval required under clause 5.7 in connection with an issuance of Securities by the date on which the issuance would be due to occur if such approval was obtained, instead of the issuance of such Securities the Company must repay that part of the Amount Outstanding that would have otherwise been the subject of such issuance, with a 10% premium, unless this obligation is waived or postponed by the Investor in its discretion.

5.8 Takeover threshold

Notwithstanding anything in clauses 2 and 4, where an issuance of Conversion Shares would result in the voting power (as defined in Chapter 6 of the Corporations Act) of the Investor or any other person in the Company exceeding 19.99%:

- (a) the Investor must make reasonable efforts for such issuance not to have that result;
- (b) the Investor may postpone a Closing for a period of up to 40 Trading Days; and
- (c) the Company must not effect such Conversion by way of issuance of Conversion Shares but must instead repay to the Investor the amount equal to the Face Value of the Convertible Security (or part thereof) being converted.

5.9 Ranking of the Investor's Shares

The Company must ensure that the Investor's Shares:

- (a) rank equally in all respects with the existing Shares on the date of issue of the Investor's Shares;
- (b) are issued fully paid, free and clear of any Security Interests; and
- (c) are issued in full compliance with applicable Law and all rights of third parties.

5.10 Requirements for all issues

If any of the requirements of this clause 5 are not satisfied in any respect in connection with any issuance of any Securities, then those Securities are not issued by the Company in accordance with or for the purposes of this Agreement, the Company's obligation to issue the Securities is not discharged, and any amount paid by the Investor in respect of such Securities (or, in the case of Conversion Shares, the relevant Conversion Amount in respect of which such Conversion Shares were purported to have been issued) remains an Amount Outstanding.

6. Conditions Precedent to Contemplated Transactions

6.1 Specific conditions precedent to First Closing - Investor

The Investor has no obligation under clause 2.1 unless and until the following conditions are fulfilled, or waived in writing by the Investor, by no later than immediately before the First Closing:

- (a) the Company has delivered to the Investor:
 - (i) a copy of resolutions duly passed by the Board of Directors of the Company, substantially in the form of Annexure B;
 - (ii) a certificate substantially in the form of Annexure C executed on behalf of the Company by its Chief Executive Officer, Managing Director or Chairman dated as of the First Closing Date; and
 - (iii) the flow of funds request, substantially in the form of Annexure D; and
- (b) the Company has duly issued the Commitment Shares, the Collateral Shares and the Options in accordance with this Agreement.

6.2 Specific conditions precedent to each Subsequent Closing – Investor

The Investor has no obligation under clause 2.2 unless and until the following conditions are fulfilled, or waived in writing by the Investor, by no later than one Business Day before the Subsequent Closing:

- (a) the Company has delivered to the Investor the flow of funds request, substantially in the form of Annexure D;
- (b) the Company has duly issued all Securities which are required by this Agreement to be issued before the Subsequent Closing, in accordance with this Agreement; and
- (c) quotation on ASX of all Investor's Shares issued before the Subsequent Closing has been granted by the ASX and commenced.

6.3 General conditions precedent to each Contemplated Transaction - Investor

The Investor has no obligation to effect any Closing, accept any issue of Securities or consummate any other Contemplated Transaction unless and until the following conditions are fulfilled (in the opinion of the Investor acting reasonably), or waived in writing by the Investor, by no later than immediately before the time the Contemplated Transaction is due to be consummated.

- (a) The Company has performed, or complied in all material respects with, all obligations required by this Agreement to be performed or complied with by the Company as at, or prior to, the Contemplated Transaction (including the obligations under clauses 5.1 to 5.3 in relation to all prior issuances of Securities to the Investor).
- (b) Where the Contemplated Transaction is a Conversion or another issue of Securities, the Company is ready, willing and able to perform (in accordance with all applicable Laws) and comply in all respects with, those requirements of clauses 5.1 to 5.3 which apply in respect of any issue of Securities.
- (c) The Board of Directors of the Company has passed resolutions approving the Transaction Documents and the Contemplated Transactions, to the extent to which such approvals are, in the reasonable opinion of the Investor, or pursuant to any Law, required for the consummation of the Contemplated Transaction.
- (d) All consents, permits, approvals, registrations, waivers and documents, in the reasonable opinion of the Investor necessary or appropriate for the consummation of the Contemplated Transaction have been issued and received by the Investor, and remain in full force and effect.
- (e) No Event of Default or Potential Event of Default would occur as a consequence of the Contemplated Transaction or has occurred (irrespective of whether it has been remedied or any grace period has expired).
- (f) The consummation of the Contemplated Transaction would not result in the Company or the Investor being in breach of any Law.
- (g) The Investor has received copies of such additional documents as the Investor may reasonably request or as are customary in Australia to effect the Contemplated Transaction.

- (h) The Investor has received such documents and evidence as the Investor may reasonably require to satisfy itself that the conditions in this clause 6.3 and as the case may be clauses 6.1 and 6.2 have been satisfied.

6.4 Failure to meet conditions – Issue of Securities

The Company must not issue any Securities without the prior consent of the Investor if on the issue of the Securities any of the conditions in the foregoing provisions of this clause 6 have not been fulfilled or waived by the Investor. Any such issuance is deemed not to have been undertaken in accordance with or for the purposes of this Agreement, the Company's obligation to issue the Securities is not discharged, and any amount paid by the Investor in respect of such Securities (or, in the case of Conversion Shares, the relevant Conversion Amount in respect of which such Conversion Shares were purported to have been issued) remains an Amount Outstanding.

6.5 Requirement to fulfil conditions

The Company must cause the conditions set out in clauses 6.1, 6.2 and 6.3 to be fulfilled by the times required by those clauses.

6.6 Conditions precedent to each Contemplated Transaction - Company

The Company has no obligation to consummate a Contemplated Transaction unless and until the following conditions are fulfilled, or (except as to clause 6.6(a)) waived in writing by the Company, by no later than immediately before the time the Contemplated Transaction is due to be effected.

- (a) The Company has obtained any shareholder approval to the extent required for the purposes of Listing Rule 7.4 so that the Contemplated Transaction may proceed without breaching Listing Rule 7.1.
- (b) The Investor has performed, or complied in all material respects with, all obligations required by this Agreement to be performed or complied with by the Investor as at, or prior to, the Contemplated Transaction.
- (c) The representations and warranties of the Investor contained in this Agreement are true and correct in all material respects as of the date or dates as of which they are made or deemed to be made or repeated under this Agreement.

7. Representations and Warranties

7.1 Representations and warranties by the Company

The Company represents and warrants to the Investor that each of the statements set out in Schedule 1 is true and correct and not misleading, including by omission.

7.2 Representations and warranties by the Investor

The Investor represents and warrants to the Company that each of the statements set out in Schedule 2 is true and correct and not misleading, including by omission.

7.3 Deemed repetition

Each of the representations and warranties made pursuant to this clause 7 is deemed to be made on the Execution Date and (except where it is expressly qualified as having been made only as of a particular date) repeated at each Closing and on each Conversion Date, by reference to the facts and circumstances subsisting at each such time.

7.4 Party's reliance

Each Party (first Party) acknowledges that the other Party has entered into this Agreement in reliance on the representations and warranties of the first Party in this Agreement.

7.5 Construction of representation and warranties

Each representation and warranty of a Party is to be construed independently of the others and is not limited by reference to any other representation or warranty.

7.6 Disclosures and limitations

The representations and warranties of the Company under clause 7.1 set out in Schedule 1:

- (a) are not limited in any way by any knowledge of, or information obtained by, the Investor or its advisers or representatives; and
- (b) are qualified only to the extent expressly set out in Schedule 3.

7.7 Notice

A Party (first Party) must immediately notify the other Party upon becoming aware of any breach of any representation or warranty given by the first Party under this Agreement.

7.8 Breach of representation or warranty

A Party is in breach of this Agreement if any of the statements it represents and warrants pursuant to this clause 7 is untrue, incorrect or misleading, including by omission.

8. Terms of the Options

8.1 Nature of Options

Each Option grants the holder the right but not the obligation to be issued by the Company one Share at the Option Exercise Price.

8.2 Exercise of Options

An Option holder may exercise any of its Options at any time after their grant and prior to the date that is thirty six (36) months after First Closing by delivery of:

- (a) a copy of a duly executed Option exercise form substantially in the form of Annexure A (the *Exercise Form*), to the Company on any Business Day; and
- (b) payment of an amount equal to the Option Exercise Price multiplied by the number of Shares in respect of which the Options are being exercised at the time.

8.3 Issue of Shares on exercise of Options

As soon as reasonably practicable, but no later than on the third Business Day following the date of the receipt of a duly completed Exercise Form and the payment referred to in clause 8.2(b), the Company must issue the Shares in respect of which the Options are so exercised by the Option holder and provide to the Option holder holding statements evidencing that such Shares have been recorded on the Company's Share register.

8.4 Bonus issues

If prior to an exercise of an Option, there is a bonus issue (as referred to in Listing Rule 6.22.3) the number of Shares over which an Option is exercisable shall be increased as specified in Listing Rule 6.22.3.

8.5 Rights issues

If prior to an exercise of an Option, there is a pro rata issue (except a bonus issue) as referred to in Listing Rule 6.22.2, the Option Exercise Price shall be reduced according to the formula in Listing Rule 6.22.2.

8.6 Reconstruction of capital

In the event of a consolidation, subdivision or similar reconstruction of the issued capital of the Company, the rights of an Option holder will be changed to comply with the Listing Rules (currently Listing Rule 7.22) applying to a reorganisation of capital at the time of the reorganisation.

8.7 Cumulative adjustments

Full effect must be given to the provisions of clauses 8.4 to 8.6, as and when occasions for their application arise and in such manner that the effects of the successive applications of them are cumulative, the intention being that the adjustments they progressively effect will be such as to reflect, in relation to the Shares issuable on exercise of the Options outstanding, the adjustments which on the occasions in question are progressively effected in relation to Shares already on issue.

8.8 Notice of adjustments

Whenever the number of Shares over which an Option is exercisable, or the Option Exercise Price, is adjusted pursuant to this Agreement, the Company must give written notice of the adjustment to all the Option holders, within one Business Day.

8.9 No right to participate in new issues

An Option holder cannot participate in new issues of Securities without exercising the Option.

8.10 Assignability and transferability

The Options are freely assignable and transferable, subject to the provisions of Chapter 6D of the Corporations Act and all other applicable Laws.

8.11 Applicable provisions of this Agreement incorporated in terms of Options

Without limiting the generality or the applicability of any of the terms of this Agreement to the Options and all Shares issued or issuable on their exercise, the Parties acknowledge that, for clarity, the provisions of clause 5 constitute part of the terms of the Options.

9. Conduct of affairs

9.1 Conduct of business

The Company must, and must cause each of the Group Companies to, conduct its business in a proper and efficient manner in accordance with good commercial practice, and ensure that while there is any Amount Outstanding the voting and other rights attached to the Shares (or any other securities of a Group Company) are not altered in a manner which, in the reasonable opinion of the Investor, is materially prejudicial to the Investor.

9.2 Prohibited Transactions

From the Execution Date until the date that is 30 calendar days after the Final Date, the Company shall not, without prior consent of the Investor (such consent not to be unreasonably withheld), effect, or enter into an agreement to effect, any Prohibited Transaction, that is a transaction with a third party in which the Company issues or sells:

- (a) any debt, equity or equity-linked securities that are convertible into, exchangeable or exercisable for, or include the right to receive Shares:
 - (i) at a conversion, exercise or exchange rate, or other price that is based on, and/or varies with, the trading prices of, or quotations for, the Shares; or
 - (ii) at a conversion, exercise or exchange rate, or other price, that is subject to being reset at some future date after the initial issuance of such debt, equity or equity-linked security or upon the occurrence of specified or contingent events; or
- (b) any securities in a capital or debt raising transaction or series of related transactions which grant to an investor the right to receive additional securities based upon future transactions of the Company on terms more favourable than those granted to such investor in such first transaction or series of related transactions,

which is deemed to include a transaction generally referred to as an equity line of credit or stand-by equity distribution agreement, and a convertible security or loan having a similar effect. For the avoidance of doubt, none of rights issuances, shareholder purchase plans, convertible securities, or equity issuances, each at a fixed price per Share, is a Prohibited Transaction.

9.3 Other negative covenants

For so long as there is any Amount Outstanding, the Company must not, and must ensure that each Group Company does not, directly or indirectly, without the Investor's written approval (not to be unreasonably withheld):

- (a) dispose, in a single transaction or in a series of transactions, of all or any part of its assets unless:

- (i) such disposal is in the ordinary course of business and for fair market value, and
 - (ii) where the value of the asset(s) the subject of the disposal is greater than AU\$2,000,000, at least 50% of the net proceeds of the disposal are, if required by the Investor, applied in or towards repayment of the aggregate Amount Outstanding;
- (b) reduce its issued share capital or any uncalled liability in respect of its issued capital, except by means of a purchase or redemption of the share capital that is permitted under Australian Law;
 - (c) undertake any consolidation of its share capital;
 - (d) change the nature of its business;
 - (e) make an application under section 411 of the Corporations Act;
 - (f) grant or allow to come into existence any Security Interest over any asset of a Group Company;
 - (g) borrow any money from any person unless the lender and the Group Company enter into an agreement with the Investor to subordinate payment of that new debt to the Company complying with its obligations to the Investor, on terms acceptable to the Investor;
 - (h) transfer the jurisdiction of its incorporation; or
 - (i) enter into any agreement with respect to any of the matters referred to in paragraphs (a) - (f) above.

9.4 Use of proceeds

The Company must use the funds received from the Investor under this Agreement for general corporate and working capital purposes that are reasonable in light of the nature of the Company's business as of the Execution Date, and not, among other things, for dividend payments.

9.5 Integration

The Company must not, and must ensure that its Affiliates do not, and all persons acting on its or their behalf do not, directly or indirectly, sell, offer for sale or solicit offers to buy, or otherwise negotiate in respect of, any security, in a manner, or under circumstances, that:

- (a) will adversely affect reliance by the Company on the exemption from registration for the Contemplated Transactions including, without limitation, the offer and sale of the Securities to the Investor;
- (b) will require registration of the sale of the Securities under the Securities Act; or
- (c) will cause such offer or solicitation to be deemed integrated with the offering of the Securities to the Investor under the Securities Act.

9.6 Miscellaneous

- (a) The Company must not permit the Company or any of its securities to be listed or quoted on any financial market, quotation system, or stock exchange, other than the ASX, without the Investor's prior written consent.
- (b) For a period of two years from the Closing Date, the Company must not register a class of equity securities under the Exchange Act and shall not, by the taking of any action or by omission to take action, be required to file reports pursuant to Section 13 or Section 15 of the Exchange Act.

9.7 Maintenance of Share registry

Unless so required by applicable Law, the Company must not close its Share register or take any other action which prevents the transfer of its Shares or options generally.

9.8 Publicity and confidentiality

- (a) This Agreement, its subject matter and content, the Contemplated Transactions, and any non-public information provided by the Investor to the Company (including the terms of any Transaction Documents) is confidential information of the Investor. The Company must not, and must cause its Affiliates and all persons acting on behalf of the Company and any of its Affiliates not to, issue any public release or announcement concerning any such confidential information without the prior written consent of the Investor, which consent must not be unreasonably withheld or delayed where the public release or announcement is proposed to be made pursuant to the Listing Rules or is otherwise required by Law.
- (b) The Company must not refer to the Investor in any public release or announcement without the Investor's prior written consent, which consent must not be unreasonably withheld or delayed where the public release or announcement is proposed to be made pursuant to the Listing Rules or is otherwise required by Law.
- (c) The Investor has the right to review, approve and amend all press releases and public disclosure documents concerning the Investor, or any Transaction Documents or Contemplated Transactions, which are required to be issued by the Company under applicable Laws.
- (d) The Investor and its Affiliates and/or advisors may describe the Investor's relationship with the Company under this Agreement and include the name and corporate logo of the Company in its publicly available materials.
- (e) Notwithstanding anything herein to the contrary, to comply with United States Treasury Regulations Section 1.6011-4(b)(3)(i), each Party to this Agreement, and each employee, representative or other agent of such Party, may disclose to any and all persons, without limitation of any kind, the U.S. federal and state income tax treatment, and the U.S. federal and state income tax structure, of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to such Party relating to such tax treatment and tax structure insofar as such treatment and/or structure relates to a U.S. federal or state income tax strategy provided to such recipient.

9.9 Non-public information

- (a) The Company must not, directly or indirectly, and must ensure that its Affiliates and agents and representatives do not, at any time after the date of this Agreement, without the prior consent of the Investor, disclose inside information or material non-public information to an Indemnified Person.
- (b) Where the Investor has consented to such disclosure, the Company must identify all inside information and material non-public information as such, and provide the Investor with the opportunity to accept or refuse to accept such information.

10. Investor's activities

10.1 Investor's dealings in Securities

Subject to clause 10.2:

- (a) the Investor may purchase and/or sell or otherwise dispose of any Securities, at any time (in compliance with applicable Australian securities Laws and United States federal and state securities Laws) and hold or not hold any Securities for any term; and
- (b) nothing in this Agreement is or may be deemed to be a representation or warranty by the Investor which has the effect that:
 - (i) the Investor's right to sell or otherwise dispose of any of the Securities at any time (in compliance with applicable Australian securities Laws and United States federal and state securities Laws) is limited; or
 - (ii) the Investor is required to hold any Securities for any period of time, except as required by any applicable Laws.

10.2 No shorting

The Investor may only sell Investor's Shares if, at the time of such sale, it has a presently exercisable and unconditional right to vest the Shares in the buyer and otherwise complies with the requirements of the Corporations Act.

10.3 Acknowledgment

The Company acknowledges and agrees that transactions in its securities by the Investor may impact the market prices of the Company's publicly-traded securities, including during periods when the prices at which the Company may be required to issue Investor's Shares are determined.

10.4 Register of Convertible Securities

For so long as the Investor holds any Convertible Securities, the Investor must, on behalf of the Company, as the Company's attorney, maintain a register of the Convertible Securities during the term of this Agreement showing the dates of issue, the Face Value and Amount Outstanding of the Convertible Securities, details of all Conversions and redemptions of the Convertible Securities, and (without limiting clause 17.5) all transfers and changes of ownership thereof and the names and addresses of the holder of the Convertible Security and any person deriving title under the Investor.

10.5 AFSL

The Company acknowledges that the Investor does not hold an Australian Financial Services Licence (and nor does any other person that may have been involved in discussions or any communications in connection with the Transaction Documents) and agrees that it is not entitled to give a notice under section 925A of the Corporations Act.

10.6 Prime broker and share custodian

The Investor must notify the Company of any change of its prime brokers or share custodians to that set out in paragraph (h) of Schedule 2 within 3 Business Days of such change having taken effect.

11. Additional obligations and agreements

11.1 No conflicting actions

No Party may take or omit to take any action, enter into any agreement, or make any commitment that would conflict or interfere in any material respect with its obligations to the other Party under this Agreement.

11.2 Compliance with Laws

The Company and the Investor must each comply with all applicable Laws.

11.3 Further assurances

Each Party must:

- (a) take, or cause to be taken, all such further actions;
- (b) execute and deliver all such other agreements, certificates, instruments and documents; and
- (c) use its best endeavours to obtain (and refrain from taking any wilful action that would impede or delay obtaining) all third party consents, waivers, approvals (including all shareholder approvals referred to in this Agreement), authorisations and orders needed;

as may reasonably be required in order to consummate the Contemplated Transactions and to preserve and protect the rights of the Investor against impairment.

11.4 Anti-dilution protection

Notwithstanding anything to the contrary in this Agreement, the Purchase Price for a Convertible Security must not exceed the Market Capitalisation Amount, unless the foregoing limitation is waived by the Investor.

11.5 Set-off

- (a) The Investor may set off any of its obligations to the Company (whether or not due for payment), against any of the Company's obligations to the Investor (whether or not due for payment) under this Agreement and/or any Transaction Document.

- (b) The Investor may do anything necessary to effect any set-off undertaken in accordance with this clause 11.5 (including varying the date for payment of any amount payable by the Investor to the Company).

11.6 Set-off exclusion

All payments which are required to be made by the Company to the Investor must be made without:

- (a) any set-off, counterclaim or condition; or
- (b) any deduction or withholding for Tax or any other reason, unless a deduction or withholding is required by Law (in which case clause 12.4 applies),

except as may otherwise be consented to by the Investor in writing.

11.7 Rescission and withdrawal right

Whenever the Investor provides a notice, or exercises a right, election, demand or Option under this Agreement, and the Company does not perform its related obligations within the time periods provided in this Agreement, then the Investor may by notice to the Company rescind or withdraw the relevant notice, right, election, demand or exercise of an Option in whole or in part, without prejudice to its future actions and rights.

11.8 Adjustments

- (a) Each time a Security Structure Event occurs, the Collateral Shareholding Number is reduced or, as the case may be, increased, in the same proportion as the issued capital of the Company is, as the case may be, consolidated, subdivided or cancelled. For clarity, a change in the Collateral Shareholding Number will not affect the number of the Collateral Shares issued under the Agreement.
- (b) The intent of this clause 11.8 is to maintain the relative benefit and burden to the Investor and the Company of their respective economic bargains.
- (c) When the Company becomes aware of a fact that may give rise to an adjustment under clause 11.8(a), the Company must promptly notify the Investor of the specifics of the fact that may give rise to such adjustment.

11.9 Other redeemable convertible bonds

The Company must not agree to any amendment, waiver, extension or modification of the redeemable convertible bonds issued by the Company to Ascan Capital and Platinum Partners on or about 29 November 2013 without first giving the Investor five Business Days' notice of the proposed amendment, waiver, extension or modification and offering the Investor the right to amend, waive, extend or modify this Agreement to the same effect.

12. Taxes, stamp duty and withholdings

12.1 Taxes generally

The Company must:

- (a) pay any Tax (other than Excluded Tax) required to be paid to any Governmental Authority which is payable in respect of any Transaction Document or any Contemplated Transaction, including in respect of:
 - (i) the execution, delivery, performance, release, discharge, amendment or enforcement of any Transaction Document or any Contemplated Transaction; and
 - (ii) any payment received by the Investor from the Company (including pursuant to any indemnity by the Company);
- (b) pay any fine, penalty or other cost in respect of a failure to pay any Tax as required by this clause 12.1; and
- (c) indemnify the Investor against all Losses which the Investor pays, suffers, incurs, or is liable for, in connection with:
 - (i) the delay or failure by the Company to pay any Tax, fine, penalty or other cost as required by this clause 12.1; and/or
 - (ii) any enquiry, litigation or administrative proceedings taken against or involving the Investor in connection with any claim or assessment for Tax in relation to any of the documents or transactions referred to in this clause 12.1.

12.2 GST

If the Investor is or becomes liable to pay any GST in respect of any supply it makes under, in accordance with, or pursuant to an enforcement of, this Agreement or any Contemplated Transaction, whether or not that supply is made to or for the benefit of the Company (*GST Liability*) then:

- (a) to the extent that an amount is payable by the Company to the Investor under this Agreement or in any Contemplated Transaction for that supply, that amount will be increased by the full amount of the GST Liability; and
- (b) otherwise, the Company must indemnify the Investor for the full amount of the GST Liability and any interest or penalties in relation to that GST Liability.

12.3 Tax compliance by Company

The Company must comply in all material respects with all applicable Laws relating to Tax and promptly file, or cause to be filed, all Tax returns, business activity statements, and other Tax filings, required under all applicable Laws.

12.4 General withholding gross-up

If the Company is required by Law to withhold or deduct Tax or any other amount from any amount payable to the Investor:

- (a) the Company must pay the amount required to be withheld or deducted to the relevant Governmental Authority within the time allowed for such payment; and
- (b) the Company must pay such additional amounts as are necessary to ensure that after making the deduction or withholding, the Investor receives the full amount which it would have received if such withholding or deduction was not required.

13. Default

13.1 Events of Default

Each of the following constitutes an Event of Default.

- (a) The Company breaches or otherwise fails to comply in full with any of its obligations under any Transaction Document.
- (b) Any of the Materials is inaccurate, false or misleading in any material respect (including by omission), as of the date on which it is made, repeated or delivered, or deemed to be made, repeated or delivered.
- (c) A Group Company is, admits that it is, is declared by a court of competent jurisdiction to be, or is deemed under any applicable Law to be, insolvent or unable to pay its debts as and when they become due.
- (d) A Group Company is served with a statutory demand (in accordance with Division 2 of Part 5.4 of the Corporations Act) or a foreign equivalent thereof that is not set aside within 10 Business Days.
- (e) A controller within the meaning of section 9 of the Corporations Act, administrator or similar officer is appointed over all or any of the assets or undertaking of any Group Company or any formal step preliminary to such appointment is taken.
- (f) An application or order is made, a proceeding is commenced, a resolution is passed or proposed in a notice of meeting, or an application to a court or other steps are taken, for the winding up or dissolution of any Group Company, or for any Group Company to enter an arrangement, compromise or composition with, or assignment for the benefit of, any of its creditors.
- (g) A Group Company ceases, suspends, or indicates that it may cease or suspend, the conduct of all or a substantial part of its business; or disposes, or indicates that it may dispose, of a substantial part of its assets.
- (h) A Group Company takes action to reduce its capital or pass a resolution referred to in section 254N(1) of the Corporations Act.
- (i) Any Investor's Shares are not issued to the Investor by the Company by the third Business Day after the date they are required to be issued under this Agreement.
- (j) Any Investor's Shares are not quoted on ASX by the second Business Day immediately following the date of their issue.
- (k) A stop order, suspension of trading exceeding a total of 5 trading days after the Execution Date, cessation of quotation, or removal of the Company or the Shares from the ASX Official List is requested by the Company or requested or imposed by any Governmental Authority after the Execution Date.
- (l) A Transaction Document or a Contemplated Transaction has become, or is claimed (other than in a vexatious or frivolous proceeding) by any person other than the Investor or any of its Affiliates to be, wholly or partly void, voidable or unenforceable.
- (m) Any third person commences any action, investigation or proceeding against any person or otherwise asserts any claim which seeks to restrain, challenge, limit,

modify or delay the right of the Investor or the Company to enter into any Transaction Documents or to undertake any of the Contemplated Transactions (other than in a vexatious or frivolous proceeding).

- (n) A Security Interest over an asset of a Group Company is enforced.
- (o) Any present or future liabilities, including contingent liabilities, of any Group Company for an amount or amounts totalling more than A\$1,000,000 are not satisfied on time, or become prematurely payable.
- (p) A Group Company is in default under a document or agreement (including a Governmental Authorisation) binding on it or its assets which relates to financial indebtedness or is otherwise material.
- (q) A Material Adverse Effect occurs.
- (r) The Company does not obtain a shareholder approval to the extent required for the purposes of Listing Rule 7.4 so that a Contemplated Transaction may proceed without breaching Listing Rule 7.1.
- (s) Any Group Company grants any Security Interest over any of its assets, or a Security Interest comes into existence over any assets of any Group Company, without the prior written consent of the Investor.
- (t) Any event of default (however described) occurs under or in respect of the redeemable convertible bonds issued by the Company to Ascend Capital and Platinum Partners on or about 29 November 2013.

13.2 Investor's right to investigate

If in the Investor's reasonable opinion, an Event of Default or Potential Event of Default has occurred:

- (a) the Investor may investigate such purported Event of Default or Potential Event of Default;
- (b) the Company must co-operate with the Investor in such investigation;
- (c) the Company must comply with all reasonable requests made by the Investor of the Company in connection with any investigation by the investor; and
- (d) the Company must pay all reasonable costs in connection with any investigation by the Investor.

13.3 Notification by Company

The Company must notify the Investor immediately, giving full details, upon the occurrence or likely occurrence of any Event of Default or Potential Event of Default.

13.4 Certification by Company

At the Investor's request, the Company must provide the Investor with a certificate signed by two of its directors stating whether:

- (a) any event or circumstance that has or is likely to have a Material Adverse Effect; or
- (b) any other Event of Default or Potential Event of Default;

has occurred and/or is continuing.

13.5 Rights of the Investor upon default

- (a) If any Event of Default occurs and
- (i) either:
 - (A) is not capable of being remedied; or
 - (B) is capable of being remedied but has not been remedied to the satisfaction of the Investor within two Business Days of its occurrence; and
 - (ii) in each case, has not been expressly waived by the Investor in writing; then the Amount Outstanding of each Convertible Security will automatically be increased to 125% of its then-current value and the Investor may:
 - (iii) declare, by notice to the Company, the Amount Outstanding and all other amounts payable by the Company under any Transaction Document to be, whereupon they shall become, immediately due and payable by the Company to the Investor; and/or
 - (iv) terminate this Agreement, by notice to the Company, effective as of the date set out in the Investor's notice; and/or
 - (v) exercise any other right, power or remedy granted to it by the Transaction Documents and/or otherwise permitted to it by Law, including by suit in equity and/or by action at Law (and such termination does not prejudice any accrued right, power or remedy of the Investor under this Agreement as at the date of termination, including its right for specific performance and/or to recover damages from the Company in relation to any breach of this Agreement).
- (b) For the avoidance of doubt, an Event of Default which consists of the failure to do or not do something within a period or by a particular time (including any applicable grace period under this Agreement) is not remedied by doing (or not doing) the relevant thing after the expiry of the relevant period or after the relevant time, unless the Investor otherwise agrees.

13.6 Interest

If an Event of Default occurs, interest shall be payable on the Amount Outstanding of each Convertible Security at a rate of 12% per annum, which interest will be payable by the Company to the Investor on demand and shall accrue and shall be compounded monthly, from the date of the Event of Default until the Company discharges the Amount Outstanding in full.

13.7 Postponement

Upon the occurrence of an Event of Default or Potential Event of Default, the Investor may, by notice to the Company, postpone any subsequent Conversion or Closing, for such time as it continues (or a shorter period of time, in the Investor's discretion).

14. Change of Law

14.1 Law and change in Law

If at any time during the term of this Agreement:

- (a) any applicable Law, any proposed applicable Law, the interpretation or administration of any applicable Law by any Governmental Authority, or a change or proposed change in the interpretation or administration of any applicable Law by any Governmental Authority, does or, if it comes into force, will:
 - (i) render (directly or indirectly) compliance by the Investor or the Company with the Transaction Documents or the undertaking of the Contemplated Transactions or transactions of similar kind (including the acquisition and/or disposition, at a time of the Investor's choosing, of any Securities) by either of them illegal, unlawful, void, voidable, contrary to or in breach of any Law, impossible or impracticable;
 - (ii) materially vary the duties, obligations or liabilities of the Company or the Investor in connection with any Transaction Document or Contemplated Transaction so that the Investor's rights, powers, benefits, remedies or economic burden (including any tax treatment in the hands of the Investor but disregarding any Excluded Tax) are materially adversely affected (including by way of material delay or postponement);
 - (iii) otherwise materially adversely affect the rights, powers, benefits, remedies or the economic burden of the Investor (including by way of material delay or postponement); or
 - (iv) otherwise make it materially impracticable for the Investor to undertake any of the Contemplated Transactions; or
- (b) any of the following has occurred:
 - (i) trading in securities generally in Australia or the United States has been suspended or limited for a period exceeding two consecutive Business Days;
 - (ii) a banking moratorium has been declared by an Australian or a United States Governmental Authority; or
 - (iii) there is a material outbreak or escalation of hostilities or another national or international calamity of such magnitude in its effect on, or adverse change in, the United States or the Australian financial market, which makes it impracticable for the Investor, acting reasonably, to effect a Closing or accept a Conversion,

then the Investor may, by notice to the Company, suspend its unperformed obligations under this Agreement and/or terminate this Agreement and require the Company to repay to the Investor the Amount Outstanding in respect of the Convertible Security (without any penalty) in full on the date specified by the Investor in its notice, which must not be earlier than 30 days after the date on which the Investor gives the notice, or any earlier date required by the applicable Law.

14.2 Payment of Amount Outstanding

If the Investor gives a notice under clause 14.1, the Company must on the date determined under clause 14.1 pay to the Investor the Amount Outstanding in full (without penalty).

15. Termination

15.1 Events of Termination

This Agreement may be terminated by agreement of the Parties at any time and otherwise:

- (a) by either Party by notice to the other, effective immediately, if the First Closing has not occurred within three Business Days of the Execution Date or such later date as the Parties agree in writing, however this right is not available to any Party that is in material breach of or default under this Agreement;
- (b) by the Investor under any of clauses 13.5 and 14.1.

15.2 Effect of Termination

- (a) A Party's right of termination under clause 15.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination is not an election of remedies.
- (b) Nothing in this Agreement releases any Party from any liability for any breach by such Party of this Agreement or impairs the right of any Party to compel specific performance by the other Party of its obligations under this Agreement.

16. Survival and Indemnification

16.1 Survival

Each of:

- (a) the Company's representations and warranties given pursuant to clause 7; and
- (b) the provisions of clauses 1 and 3 to 17 of this Agreement;

survive (notwithstanding that they do not expressly provide for this), and continue in full force and effect, notwithstanding the execution of this Agreement, the consummation of any of the Contemplated Transactions, and the termination of this Agreement or another Transaction Document or any related provision. No term of this Agreement merges on completion of any Contemplated Transaction.

16.2 Revival

To the extent that any Conversion or any payment by the Company is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to any person, then to such extent, any Amount Outstanding satisfied by such Conversion or payment is immediately revived and continues, and the Company must take such action as may be reasonably requested by the Investor to effect such reinstatement; unless such revival and continuation are waived by the Investor.

16.3 Indemnification

- (a) No Indemnified Person is liable to the Company, and the Company must indemnify and hold harmless each of the Investor, Yorkville Advisors Global, L.P., Yorkville Advisors Global, LLC, YA Global Investments LP, Yorkville Advisors LLC, YA Global Investments II Ltd, and Affiliates of any of those persons, and the respective directors, officers, members, shareholders, partners, employees, attorneys, agents and permitted successors and assigns of each of the foregoing and Affiliates of any of those persons (each, an *Indemnified Person*), from and against:
- (i) any and all Losses that arise out of, are based on, relate to, or are incurred in connection with any Event of Default or Potential Event of Default (including, for clarity, a delay in the Investor's receipt of any parcel of Investor's Shares or a delay in the Investor's ability to, or the Investor's inability to, dispose of any of the Investor's Shares, in each case due to any Event of Default or Potential Event of Default (including as to the issuance and quotation on ASX of any Investor's Shares and the lodgement of any Cleansing Statement)); and/or
 - (ii) without limiting the indemnity in clause 16.3(a)(i), any and all Losses that arise out of, are based on, relate to, or are incurred directly in connection with the enforcement of any of the Transaction Documents or any of the Contemplated Transactions, or any other instruments, documents or agreements executed pursuant to, or in connection with, any of those items referred to in sub-paragraphs (i) – (ii);
- provided, however, that the Company is not liable to indemnify the Investor from, or hold the Investor harmless against, any Losses that result solely from:
- (iii) the Investor's breach of any representation or warranty contained in this Agreement, or
 - (iv) the Investor's fraud, gross negligence or default in performing its obligations under this Agreement.
- (b) To the extent that the Company's undertaking in this clause 16.3 may be unenforceable for any reason, the Company must make the maximum contribution to the payment and satisfaction of all Losses that is permissible under applicable Law.
- (c) The Investor or any other Indemnified Person is not required to incur any expense or make any payment before enforcing any indemnity under this Agreement.
- (d) The Company acknowledges that the indemnity given under this clause 16.3 is directly enforceable against it by any Indemnified Person. The Investor holds the benefit of this clause 16.3 on trust for each Indemnified Person.

16.4 Indemnities generally

Each indemnity in this Agreement:

- (a) is a continuing obligation, independent of the Company's other obligations under this Agreement;
- (b) continues notwithstanding any termination of this Agreement;

- (c) constitutes a liability of the Company separate and independent from any other liability under this Agreement and under any other agreement; and
- (d) survives, and continues in full force and effect, in accordance with clause 16.1.

17. Miscellaneous

17.1 Time of the essence

With regard to all dates and time periods set out or referred to in any Transaction Document, time is of the essence.

17.2 No partnership or advisory or fiduciary relationship

Nothing in this Agreement creates a partnership between the Parties, or a fiduciary or an advisory relationship between the Investor or any of its Affiliates and the Company.

17.3 Certificates

Each certificate or notice given by the Investor to the Company, including each certificate as to the occurrence of a Closing, is sufficient evidence of an amount or matter in connection with any Transaction Document or Contemplated Transaction, unless the content of such certificate or notice is proven to be incorrect.

17.4 Remedies and injunctive relief

- (a) The rights and remedies of the Investor set out in this Agreement and the other Transaction Documents are in addition to all other rights and remedies given to the Investor by Law or otherwise.
- (b) The Company acknowledges that:
 - (i) monetary damages alone would not be adequate compensation to the Investor for a breach by the Company of a Transaction Document; and
 - (ii) the Investor may seek an injunction or an order for specific performance from a court of competent jurisdiction if:
 - (A) the Company fails to comply or threatens not to comply with a Transaction Document; or
 - (B) the Investor has reason to believe that the Company will not comply with a Transaction Document.
- (c) In the event that the Investor seeks an order for specific performance in connection with a failure by the Company to issue Securities in accordance with this Agreement (including clauses 5 and 6), the Company:
 - (i) agrees that it will not oppose the order on the basis that monetary damages are adequate compensation to the Investor;
 - (ii) acknowledges that even where specific performance is ordered in respect of the obligation on the Company to issue Securities in accordance with this Agreement (including clauses 5 and 6) that the Investor may suffer additional losses by reason of the Company's failure to issue Securities in accordance with this Agreement (including clauses 5 and 6); and

- (iii) agrees that it will not oppose any additional order for monetary compensation in respect of the losses referred to in clause 17.4(c)(ii) on the basis that the Investor has sought an order for specific performance of the Company's obligation to issue Securities in accordance with this Agreement (including clauses 5 and 6).

17.5 Successors, assigns and third party beneficiaries

- (a) The rights and obligations of the Parties under this Agreement are personal and may not be assigned to any other person or assumed by any other person, except as expressly provided in this clause 17.5.
- (b) Neither this Agreement nor any of the Company's rights and obligations under this Agreement may be assigned by the Company without the prior written consent of the Investor.
- (c) The Investor may assign this Agreement and/or any of its rights and/or obligations under this Agreement to any Affiliate of the Investor, bank or financial institution, successor entity in connection with a merger or consolidation of the Investor with another entity, and/or acquirer of a substantial portion of the Investor's business and/or assets, on 10 Business Days' prior notice to the Company.
- (d) Nothing in this clause 17.5 prevents the Investor from assigning, transferring, encumbering or otherwise dealing with its rights under, or in connection with, the Securities without the consent of any person provided that the Investor may only assign a Convertible Security if the assignee executes a deed of covenant in favour of the Company agreeing to be bound by the terms of this Agreement to the extent of the assignment.
- (e) The provisions of this Agreement inure to the benefit of, and are binding upon, the respective permitted successors and assignees, of the Parties.
- (f) Except as set out in clause 16.3, this Agreement is intended for the benefit of the Parties and their respective successors and permitted assignees only, and does not benefit or create any right, obligation to, or cause of action in or on behalf of, any other person, and no other person may enforce any provision of this Agreement.

17.6 Counterparts and faxes

- (a) This Agreement may be executed in any number of counterparts, each of which is deemed an original, and all of which together constitute one and the same instrument.
- (b) Such counterparts may be delivered by one party to the other by facsimile or other electronic transmission, and such counterparts are valid for all purposes.

17.7 Notices

- (a) Except as otherwise expressly agreed, all communications in connection with any Transaction Document must be by notice in writing and must be delivered by a courier or hand, or sent by facsimile transmission or by e-mail, to a Party at the address, facsimile number or e-mail address of the Party specified in paragraph (f) or as otherwise specified by the Party by notice to the other Party.

- (b) When delivered by a courier or hand in Australia, a notice is deemed given:
 - (i) when delivered, if received during business hours in the place of delivery;
or
 - (ii) otherwise, at 9.00 am Perth time on the Business Day immediately following the date of such delivery.
- (c) When delivered by a courier or hand-delivery outside of Australia, a notice is deemed given:
 - (i) when delivered, if received during business hours in the place of delivery;
or
 - (ii) otherwise, at 9.00 am United States Eastern Standard Time on the New York Business Day immediately following the date of such delivery.
- (d) When sent by facsimile transmission, a notice is deemed given:
 - (i) at the time shown in the transmission report in connection with such transmission as the time that the whole facsimile transmission was sent, if such time is within business hours in the place of delivery; or
 - (ii) otherwise, if sent to an Australian facsimile number, at 9.00 am Perth time on the Business Day immediately following such date of transmission; or
 - (iii) otherwise, if sent to a facsimile number outside of Australia, at 9.00 am United States Eastern Standard Time on the New York Business Day immediately following such date of transmission.
- (e) When sent by e-mail transmission, a notice is deemed given:
 - (i) one hour after the time at which such transmission was sent (the *E-mail Time*), if such time falls within business hours in the place of delivery;
 - (ii) otherwise, if sent to the Company and the E-mail Time is outside of business hours in Perth, at 9.00 am Perth time on the Business Day immediately following the date of the E-mail Time; or
 - (iii) otherwise, if sent to the Investor and the E-mail Time is outside of business hours in the City of New York, at 9.00 am United States Eastern Standard Time on the New York Business Day immediately following the date of the E-mail Time;

unless the sender receives an automated message that the email has not been delivered.

- (f) Each Party's address, facsimile number or e-mail address is as follows:

- (i) Company:
 - Attention: Jane Flegg and Shannon Robinson Company Secretary
 - Kaboko Mining
 - Ground Floor, 1 Havelock Street, West Perth WA 6005
 - Australia
 - Facsimile: +61 8 9234 2400

E-mail address: janc@kabokomining.com; shannon@kabokomining.com

(ii) Investor:

Attention: David Gonzalez and Gerald Eicke

YA Global Master SPV, Ltd.

1012 Springfield Avenue

Mountainside, NJ 07092

United States of America

Facsimile: +1 (201) 985-8266

Email address: jeicke@yorkvilleadvisors.com

dgonzalez@yorkvilleadvisors.com

17.8 Amendments and waivers

- (a) Any term of this Agreement may be amended, supplemented, or modified, only by an instrument in writing signed by each Party.
- (b) Any obligation of a Party under this Agreement may be extended or waived only by an instrument in writing signed by the other Party.
- (c) No waiver of any default with respect to any provision of this Agreement is deemed to be a continuing waiver in the future or a waiver of any subsequent default, or a waiver of any other provision nor does any delay or omission of any Party to exercise any right under this Agreement in any manner impair the subsequent exercise of any such right.

17.9 Legal Costs

- (a) Except as set out in this clause 17.9, each Party must bear its own legal costs in connection with the preparation of this Agreement.
- (b) The Company will make a payment of A\$15,000 (plus any GST) towards the Investor's legal costs in connection with this Agreement and the Contemplated Transactions, to be deducted from the Purchase Price at First Closing.

17.10 Additional expenses

The Company must reimburse the Investor upon demand for all reasonable out-of-pocket expenses incurred by the Investor in connection with any amendment, modification or waiver of this Agreement, including, without limitation, reimbursement of reasonable legal fees and disbursements.

17.11 Severability and supervening legislation

- (a) Every provision of this Agreement is intended to be severable, and any provision of this Agreement that is illegal, invalid, prohibited or unenforceable in any relevant jurisdiction (each, a *Deficiency*) is, as to such jurisdiction, ineffective to the extent of such Deficiency, but the provision must be interpreted as if it were written so as to be enforceable to the maximum extent permitted by applicable Law, and any such Deficiency does not affect the legality, validity, permissibility or

enforceability of the remainder of this Agreement in that jurisdiction, or render Deficient such or any other provision of this Agreement in any other jurisdiction.

- (b) To the extent not prohibited by applicable Law, the Parties waive and exclude any provision of Law, current or future, which renders any provision of this Agreement Deficient in any respect.
- (c) Paragraphs (a) and (b) of this clause 17.11 are of no force or effect to the extent that the consequence of enforcing the remainder of this Agreement without the Deficient provision would be to cause either Party to lose the material benefit of its economic bargain.
- (d) To the extent not prohibited by applicable Law, the Parties waive and exclude any provision of Law, current or future, which operates to vary the duties, obligations or liabilities of the Company or the Investor in connection with any Transaction Document so that the Investor's rights, powers, benefits, economic benefit, economic burden or remedies are adversely affected (including by way of delay or postponement).

17.12 Entire Agreement

- (a) This Agreement supersedes all prior agreements, understandings, negotiations and discussions, both oral and written, between the Parties, their Affiliates and persons acting on their behalf with respect to the subject matter of this Agreement and constitutes the entire agreement among the Parties with respect to the subject matter of this Agreement.
- (b) Except as specifically set out in this Agreement, neither the Company nor the Investor makes any representation, warranty, covenant or undertaking with respect to the subject matter of this Agreement.

17.13 GOVERNING LAW AND SUBMISSION TO JURISDICTION


- (a) This Agreement is governed by and must be construed according to the law applying in the State of Western Australia, Australia.
- (b) Each party irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of Western Australia and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to, arising out of, or in connection with, any Transaction Documents and/or Contemplated Transactions;
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 17.13(b)(i); and
 - (iii) agrees that a judgment in any such proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law, and for purposes of this provision, submits to the jurisdiction of the courts of such jurisdiction in which the judgment is being enforced.

- (C) Service of process in connection with any proceedings in Australia relating to any matter arising out of this Agreement may be served on each party anywhere in the world by the same methods as are specified for the giving of notices under this agreement.

[Remainder of this page left intentionally blank]

Executed as an agreement.

Executed in accordance with section 127 of the
Corporations Act 2001 by Kaboko Mining
Limited:



Director Signature

Director/Secretary Signature

Andries (Takkas) van Heerden

Shannon Robinson

Print Name

Print Name

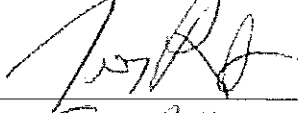
Executed by YA Global Master SPV, Ltd.

By: Yorkville Advisors Global, LP

Its: Investment Manager

By: Yorkville Advisors Global, LLC

Its: General Partner



Gerald Eicko

Managing Member

Troy Rillo
Sr. Managing Director

Schedule 1 – Company Representations and Warranties

- (a) **(Organisation, good standing and qualification)**
- (i) Each Group Company is an entity duly organised and validly existing under the laws of the jurisdiction of its place of incorporation and has all requisite corporate power and authority to carry on its business as now conducted and to own its properties.
 - (ii) Each Group Company is duly qualified and authorised to do business and is in good standing in each jurisdiction in which the conduct of its business or its ownership of property makes such qualification necessary.
 - (iii) No Group Company is in breach of any of the provisions of its respective constitution, shareholders' agreement, certificate or articles of incorporation, bylaws or other organisational or charter documents.
- (b) **(Authorisation)** The Company has all power and authority, has taken all action necessary, and has caused its officers, directors and security holders, to take all action necessary to:
- (i) enter into, authorise, execute and deliver the Transaction Documents, including obtaining any shareholder approval required for the issue of the Securities at the First Closing; and
 - (ii) enter into, and authorise the performance of, all obligations of the Company as and when required under the Transaction Documents and the Contemplated Transactions;
- and no further action is required by the Company, its officers, its board of directors, or its security holders, in connection with the Transaction Documents or the Contemplated Transactions.
- (c) **(Securities)** As at the Execution Date:
- (i) the Company's Appendix 3B dated and released to the ASX on 1 November 2013 accurately describes the number and type of securities on issue by the Company; and
 - (ii) for the purposes of the Listing Rules, the Company has capacity to issue up to 231,908,132 (being 25% of the Company's current issued Shares) additional Equity Securities.
- (d) **(Capitalisation)** All of the issued Shares:
- (i) have been duly and validly issued;
 - (ii) were issued fully paid and free and clear of any Security Interests; and
 - (iii) were issued in full compliance with applicable Law and all rights of third parties.
- (e) **(Valid issuance)** When issued pursuant to this Agreement, all Investor's Shares will be validly issued and fully paid, and will be free and clear of all Security

Interests and restrictions, except for restrictions on transfer imposed by applicable Laws.

- (f) **(Binding obligations)** Each Transaction Document constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganisation, moratorium and similar laws of general applicability, relating to or affecting creditors' rights generally.
- (g) **(Security structure)**
 - (i) Except as set out in Part D of Schedule 3, no person is entitled, or purports to be entitled, to any right of first refusal, pre-emptive right, right of participation, or any similar right, to participate in the Contemplated Transactions or otherwise with respect to any securities of a Group Company.
 - (ii) The issuance and sale of any of the Securities will not obligate any Group Company to issue other securities to any other person and will not result in the adjustment of the exercise, conversion, exchange, or reset price of any outstanding security.
 - (iii) Except as described in Part A of Schedule 3:
 - (A) there are no outstanding warrants, options, convertible securities or other rights, agreements or arrangements of any character under which any Group Company is, or may be, obligated to issue any equity or equity-linked securities of any kind;
 - (B) there are no voting, buy-sell, outstanding or authorised stock appreciation, right of first purchase, phantom stock, profit participation or equity-based compensation agreements, options or arrangements, or like rights relating to the securities of any Group Company or agreements of any such kind between any Group Company and any person; and
 - (C) there is no indebtedness or other equity of the Company that would be senior to, or *pari passu* with, the Convertible Securities in right of payment, whether with respect to interest or upon liquidation or dissolution or otherwise;
 - (D) no Group Company has granted any Security Interest over any of its assets; and
 - (E) no Group Company has in effect or outstanding any shareholder purchase rights, "poison pills" or any similar arrangements giving any person the right to purchase any equity interest in a Group Company upon the occurrence of certain events.
- (h) **(Consents)** The execution, delivery and performance by the Company of the Transaction Documents and the offer, issuance and sale of the Securities (except as expressly stipulated in this Agreement as required in the future under the circumstances under which they are expressly stipulated under the Agreement to be

required), require no consent of, action by or in respect of, waiver by, or filing with, any Governmental Authority, or any other person other than:

- (i) lodgement of a Cleansing Statement with the ASX, where applicable;
 - (ii) disclosure of the entry into the Agreement to the ASX; and
 - (iii) applications to the ASX for the listing of the Investor's Shares for trading in the time and manner required.
- (l) **(Regulatory issues)** No stop order, suspension of trading, cessation of quotation, or removal of the Company or the Shares from ASX's Official List has been requested by the Company or requested or imposed by any Governmental Authority and there exists no fact or circumstance which may have any such result; except for a suspension of trading not exceeding five Trading Days in a rolling twelve month period or as agreed to by the Investor, which suspension of trading has been terminated.
- (j) **(No Material Adverse Effect)** Since the effective date of the last Annual Report of the Company (being 30 June 2013), except as announced by the Company to the ASX prior to the Execution Date, there has been no event or condition that has had or is likely to have, a Material Adverse Effect.
- (k) **(No conflict, breach, violation or default)** The execution and delivery of, and the performance of the terms of, the Transaction Documents by the Company will not:
- (i) result in the creation of any Security Interest in respect of any property of any Group Company except as expressly provided by the Transaction Documents; or
 - (ii) violate, conflict with, result in a breach of any provision of, require any notice or consent under, constitute a default under, result in the termination of, or in a right of termination or cancellation of, accelerate the performance required by, or result in the triggering of any payment or other material obligations pursuant to, any of the terms, conditions or provisions of:
 - (A) any Group Company's constitution or other organizational document;
 - (B) any Law; or
 - (C) any agreement or instrument to which any Group Company is a party or by which any Group Company is bound or to which any of their respective assets or properties is subject (or render any such agreement or instrument voidable or without further effect).
- (l) **(Prohibited Transactions)** The Company has not entered or agreed to enter into a Prohibited Transaction.
- (m) **(Litigation)**
- (i) Except as set out in Part B of Schedule 3, there are no pending actions, suits or proceedings against or affecting any Group Company, and to the Company's knowledge, no such actions, suits or proceedings are threatened or contemplated.

- (ii) No Group Company, nor any of their respective directors or officers, is or has been the subject of any action, suit, proceeding, or investigation involving a claim of violation of or liability under securities Laws or a claim of breach of fiduciary duty.
 - (iii) There has not been, and to the knowledge of the Company there is no, pending or contemplated investigation by any Governmental Authority involving any Group Company or any of their respective current or former directors or officers.
 - (iv) ASIC has not issued any stop order or other order suspending the effectiveness of any prospectus filed or lodged by any Group Company.
- (n) **(Compliance)** Except as set out in Part C of Schedule 3, no Group Company:
- (i) is in material default under, or in material violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by any Group Company under), nor has any Group Company received notice of a claim that it is in default under or that it is in violation of, any document, agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived);
 - (ii) is in violation of any order of any court, arbitrator or Governmental Authority; or
 - (iii) is or has been in violation of any Law.
- (o) **(Tax returns)** Without limiting anything else in this Agreement, each Group Company has filed, or caused to be filed, in a timely manner, all tax returns, business activity statements and other tax filings which are required to be filed under applicable Tax law, and has paid all Taxes that became due and payable by it when those Taxes became due and payable.
- (p) **(Disclosures)**
- (i) The Materials do not:
 - (A) contain any untrue statement of a material fact or misleading statement; or
 - (B) omit to state a material fact necessary in order to make the statements contained in those Materials, in light of the circumstances under which they were made, not misleading.
 - (ii) Subject to subclause (w) below, the Company has disclosed to the Investor in writing all facts relating to the Group, its business, the Transaction Documents, the Contemplated Transactions, and all other matters which are material to the assessment of the nature and amount of the risk inherent in an investment in the Company.
 - (iii) No Group Company has incurred any actual or contingent indebtedness or other obligation for the payment or repayment of money (whether as principal, surety, guarantor or otherwise) that remains outstanding, except trade payables and accrued expenses incurred in the ordinary course of

business consistent with past practice or as disclosed in the Company's announcements to the ASX.

- (iv) No Group Company has made any agreement, offer, tender or quotation which remains outstanding and currently capable of acceptance relating to the purchase or sale of any business or assets of the Group.
- (q) **(Solvency)** Each Group Company is able to pay all its debts as and when they become due and payable.
- (r) **(No Event of Default)** No Event of Default or Potential Event of Default has occurred.
- (s) **(Intellectual property)**
 - (i) Each Group Company owns or possesses adequate rights or licenses to use all material trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, inventions, licenses, approvals, Governmental Authorisations, trade secrets and rights necessary to conduct its respective businesses as now conducted.
 - (ii) The Company has no knowledge of any infringement by any Group Company of any trademarks, trade name rights, patents, patent rights, copyrights, inventions, licenses, service names, service marks, service mark registrations, trade secrets or other similar rights of others.
 - (iii) To the knowledge of the Company, there is no claim, action or proceeding made, brought, or threatened, against any Group Company regarding any trademark, trade name, patents, patent rights, invention, copyright, license, service names, service marks, service mark registrations, trade secret or other infringement, and no Group Company is unaware of any facts or circumstances which might give rise to such a claim, action or proceeding.
- (t) **(Entitlement to rely on disclosure exemption)** As of the Execution Date, each Closing Date, and each date on which the Company issues a Cleansing Statement under this Agreement, the Company and the Investor are entitled to rely on the safe offer exemption under section 708A(5) of the Corporations Act in respect of the Investor's Shares, including that, in particular:
 - (i) the Shares were quoted on the ASX at all times for the preceding 12 months, without suspension for more than five Trading Days;
 - (ii) the Shares have been quoted securities at all times in the three months before the day on which they have been, or are to be, issued;
 - (iii) no exemption under section 111AS or section 111AT of the Corporations Act applied to the Company, or any director or auditor of the Company, during the preceding 12 months; and
 - (iv) no order under section 340 or section 341 of the Corporations Act applied to the Company, or any director or auditor of the Company, during the preceding 12 months, and there exist no circumstances that would cause ASIC to make a determination under section 708A(2) of the Corporations Act, and no such determination has been made.

- (u) **(Section 713(6) of the Corporations Act)** ASIC has not made a determination in relation to the Company under section 713(6) of the Corporations Act.
- (v) **(Miscellaneous regulatory issues)** As at the Execution Date, the Company has no information that has not been told to the ASX in accordance with Listing Rule 3.1A.
- (w) **(Self-reliance)** The Company's decision to enter into this Agreement has been based solely on its own evaluation of the Contemplated Transactions. The Company has been represented and advised by advisors of its own choice, including financial advisors, tax advisors and legal counsel, who have assisted the Company in understanding and evaluating the risks and merits associated with the Contemplated Transactions.
- (x) **(Non-public information)** Neither the Company nor any person acting on its behalf has provided the Investor or its agents, representatives or counsel with any inside information (as defined in the Corporations Act) or any material non-public information, and to the Company's knowledge, the Investor does not possess any inside information or material non-public information (and, to the extent this warranty is breached, the Company agrees to immediately release the relevant information to the market).
- (y) **(Brokers and finders)** No person will have, as a result of the Contemplated Transactions, any valid right, interest or claim against or upon any Group Company or the Investor for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of any Group Company.
- (z) **(U.S. compliance)**
 - (i) *(No general solicitation)* Neither the Company nor to its knowledge, any person acting on its behalf, has conducted any general solicitation or general advertising (as those terms are used in Regulation D under the Securities Act)), in connection with the offer or sale of any of the Securities.
 - (ii) *(No integrated offering)* Neither the Company nor any of its Affiliates, nor any person acting on its or their behalf has, directly or indirectly, sold, offered for sale or solicited offers to buy any security which could be integrated with the sale of the Securities in a manner that would require the offer or sale of the Securities to be registered under the Securities Act or would adversely affect reliance by the Company on the provisions of Rule 506 of Regulation D under the Securities Act for the exemption from registration for the Contemplated Transactions.
 - (iii) *(Private placement)* Assuming the accuracy of the Investor's representations set forth in Schedule 2, subparagraphs (c) and (d), the offer and sale of the Securities to the Investor, as contemplated by this Agreement, is exempt from the registration requirements of the Securities Act.

- (iv) *(Foreign private issuer)* Less than fifty per cent (50%) of the outstanding voting securities of the Company are directly or indirectly owned of record by residents of the United States. The Company is a “foreign private issuer” as that term is defined in Rule 405 under the Securities Act.
- (v) *(Category 1 securities)* The Securities are eligible for Category 1 under Rule 903 of Regulation S under the Securities Act.
- (vi) *(No registration required under the Exchange Act)* The Company is not required to register a class of equity securities under the Exchange Act or the rules and regulations thereunder or to otherwise become a reporting issuer under the Exchange Act.

Schedule 2 – Investor representations and warranties

- (a) **(Organisation, good standing and qualification)**
- (i) The Investor is a validly existing limited partnership and has all requisite power and authority to enter into and consummate the Contemplated Transactions and otherwise to carry out its obligations under this Agreement.
 - (ii) The Investor is in good standing under the laws of the jurisdiction of its place of incorporation and has all requisite power and authority to carry on its business as now conducted and to own its properties.
 - (iii) The Investor is not in violation or default of any of the provisions of its limited partnership agreement, certificate of formation, or other organisational or charter documents.
- (b) **(Authorisation)** The execution, delivery and performance by the Investor of the Agreement have been duly authorised and will each constitute a valid and legally binding obligation of the Investor, enforceable against the Investor in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganisation, moratorium and similar laws of general applicability, relating to or affecting creditors' rights generally.
- (c) **(U.S. Compliance - investment intent)** The Investor understands that the Securities are "restricted securities" under the Securities Act and have not been registered under the Securities Act or any applicable state securities law, and accordingly, may not be offered or sold except pursuant to an effective registration statement under the Securities Act or pursuant to an available exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and in accordance with applicable state securities laws. For purposes of assuring that the Investor is not an underwriter within the meaning of Section 2(a)(11) of the Securities Act for purposes of Rule 502(d) under the Securities Act, the Investor represents that it:
- (i) is acquiring the Securities as principal for its own account for investment purposes only (as contemplated by the Securities Act and the rules and regulations thereunder) and not with a present view to or for distributing or reselling such Securities or any part of the Securities in violation of the Securities Act;
 - (ii) has no present intention of distributing any of such Securities in violation of the Securities Act; and
 - (iii) has no arrangement or understanding with any other person or persons regarding the distribution of such Securities in violation of the Securities Act.

The representations and warranties set out in this clause are to be interpreted having regard to clauses 10.1 and 10.3 of this Agreement.

- (d) **(Investor status)** At the time the Investor was offered the Securities, it was, and at the Execution Date it is, an "accredited investor" as defined in Rule 501(a) under the Securities Act. The Investor is not, and is not required to be, registered as a broker or dealer under Section 15 of the Exchange Act.
- (e) **(Experience of the Investor)**
- (i) The Investor has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment.
 - (ii) The Investor has been represented and advised by advisors of its own choice, including financial advisors, tax advisors and legal counsel, who have assisted the Investor in understanding and evaluating the risks and merits associated with the Contemplated Transactions.
 - (iii) The Investor is able to bear the economic risk of an investment in the Securities and is able to afford a complete loss of such investment.
- (f) **(Adequate information)** The Investor has had an opportunity to receive all information related to the Company requested by it and to ask questions of and receive answers from the Company regarding the Company, its business and the terms and conditions of the offering of the Securities, and has reviewed such information as the Investor considers necessary or appropriate to evaluate the risks and merits of an investment in, and make an informed investment decision with respect to, the Securities.
- (g) **(General solicitation)** The Investor is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar, or in any filing with the United States Securities and Exchange Commission, or any other general solicitation or general advertisement.
- (h) **(Prime broker and share custodian)** As at the Execution Date, the Investor's:
- (i) prime broker;
 - (ii) relevant brokers; and
 - (iii) share custodian,
- are as separately notified by the Investor to the Company on or about the date of this Agreement.

Schedule 3 – Disclosure Schedule

Part A

Number	Class of security
81,953,000	Fully paid ordinary shares to be issued following shareholder approval at AGM
10,500,000	Fully paid ordinary shares to be issued following shareholder approval at AGM
700,000	Convertible Notes (face value \$1.00; 12 months) to be issued following shareholder approval at AGM
45,000,000	Warrants (\$0.012; 30 months) as approved by shareholders

Part B

None

Part C

None

Part D

None

Annexure A – Option Exercise Form

To Kaboko Mining Limited:

We irrevocably elect to exercise the right of purchase represented by _____ Options (*Options*) granted to us pursuant to the Convertible Securities Agreement dated _____, 2013, between Kaboko Mining Limited and YA Global Master SPV, Ltd. (the *Agreement*) for, and to purchase, under the Agreement, _____ fully paid ordinary shares in Kaboko Mining Limited (the *Shares to Be Issued*), provided for in the Agreement, and request that the above number of the Shares to Be Issued be entered onto Kaboko Mining Limited's share register against our name or the name of our nominee and Electronically Delivered, as defined in the Agreement, to us or our nominee.

We tender _____ in payment of the exercise price for the exercise of the Options determined in accordance with the Agreement.

We represent and warrant to the Company that we:

- (a) are not acquiring the Shares To Be Issued with a view to transferring the Shares To Be Issued in violation of the Securities Act of 1933, as amended (the *Securities Act*);
- (b) acknowledge that the issuance of the Shares To Be Issued has not been registered under the Securities Act and that the Shares To Be Issued may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from that Act is available; and
- (c) reaffirm all of the representations and warranties contained in Schedule 2 of the Agreement as of the date of this notice, including, without limitation, that we are an "accredited investor" as that term is defined in Rule 501 promulgated pursuant to the Securities Act.

Capitalised terms used in this form have the meanings given to them in the Agreement, unless otherwise defined in this form.

Name: _____

Address: _____

Dated: _____, _____

Annexure B – Form of Board Resolution

Minutes of a circulating resolution of the Directors

Kaboko Mining Limited (ACN 107 316 683)

2. Documents

Kaboko Mining Limited (the *Company*) proposes to enter into an agreement with YA Global Master SPV, Ltd. on or about _____ 2013 (the *Agreement*).

3. Approval of Transaction

The directors acknowledge the accuracy of the Company's representations and warranties contained in the Agreement and note that:

- (a) the entry into the transactions evidenced by the Agreement is:
 - (i) in the best interests of the Company and for its commercial benefit; and
 - (ii) in accordance with the constitution of the Company;
- (b) at the time of deciding to commit the Company to the Agreement, the Company is solvent and there are reasonable grounds to expect that if the Company executes the Agreement the Company would continue to be able to pay all its debts as they become due; and
- (c) the Company's execution of the Agreement and the carrying out of the transactions contemplated in the Agreement would not cause the Company to contravene:
 - (i) Section 260A of the Corporations Act (relating to the provision by the Company of financial assistance for acquiring the Company's shares);
 - (ii) Chapter 2B of the Corporations Act (relating to the provision of financial benefits to related parties of a public company); or
 - (iii) any provision of the Corporations Act or of any other statute by which the Company is bound.

Resolved that:

The Agreement, the transactions contemplated in the Agreement and the Transaction Documents (as defined in the Agreement) (the Agreement and the Transaction Documents together the *Documents*) are each approved.

4. Approval of Execution

Resolved that:

The Company execute and deliver the Agreement in a form and with any changes (whether or not material and whether or not involving changes to the parties) as any director or secretary of the Company who executes the Agreement may, as conclusively evidenced by his or her execution, approve.

5. Authorised Officers

Resolved:

that the following persons:

[]

be severally authorised to execute and deliver for and on behalf of the Company all documents, notices, instruments, certificates and communications necessary or desirable to be executed and delivered by and on behalf of the Company under and in accordance with the Documents.

6. Further Assurances

Resolved:

Each director, secretary and Authorised Officer (appointed pursuant to resolution 4) of the Company be severally authorised to do any act, matter or thing and to execute and deliver any other document as he or she may deem necessary, advisable or incidental in connection with the preceding resolutions or any Document and to perform the obligations of the Company under the Documents.

7. Statement

The directors of the Company are in favour of the resolutions set out in this document.

Signed by the directors

Signature

Print Name:

Dated:

Signed by the directors

Signature

Print Name:

Dated:

Signed by the directors

Signature

Print Name:

Dated:

Signed by the directors

Signature

Print Name:

Dated:

Signed by the directors

Signature

Print Name:

Dated:

Annexure C – Form of CEO Certificate

[Print on letterhead of Kaboko Mining Limited]

To: YA Global Master SPV, Ltd.
1012 Springfield Avenue,
Mountainside, NJ 07092 USA

Attention: David Gonzalez and Gerald Eicke

Date: *[Execution Date]*

I certify, on behalf of Kaboko Mining Limited (the *Company*) that, as at the date of this certificate:

- (a) the Company has performed or complied in all material respects with all agreements and covenants required, prior to the First Closing, to be performed or complied with by the agreement between the Company and YA Global Master SPV, Ltd. dated as of the date of this letter (the *Agreement*);
- (b) no Event of Default or Potential Event of Default would occur as a consequence of the First Closing being effected or has occurred (irrespective of whether the same has been remedied or any relevant grace period has expired); and
- (c) all conditions to the First Closing under clauses 6.1 and 6.3 have been satisfied.

For the purposes of this certificate, *First Closing* has the meaning given to that term in the Agreement.

Signed for and on behalf of Kaboko Mining Limited:

.....
Signature

.....
Name

.....
Position

Annexure D – Flow of funds request

[Print on letterhead of Kaboko Mining Limited]

FLOW OF FUNDS REQUEST

Kaboko Mining Limited – Convertible Securities Agreement – Closing

In connection with a Convertible Securities Agreement, dated _____ 2013 (the *Agreement*) between Kaboko Mining Limited (*Company*) and YA Global Master SPV, Ltd. (*Investor*), the Company irrevocably authorises the Investor to distribute such funds as set out below, in the manner set out below, at the Closing. Capitalised terms used but not otherwise defined in this letter shall have the meaning given to such terms in the Agreement.

<i>Item</i>	<i>Amount</i>
Tranche Number []	[AS]
Total	[AS]

Please kindly transfer the net amount of A\$[insert], due at the Closing, to the following bank account:

Name: []

BSB: []

Account #: []

Bank: []

Address: []

Swift Code: []

Yours sincerely,

Kaboko Mining Limited

By: _____

Name

Title

Annexure E – Cleansing Statement

[Print on Kaboko Mining Limited Letterhead]

[insert date]

Company Announcements Office
Australian Securities Exchange

Notice under Section 708A(5)(e) Corporations Act

On [insert date], Kaboko Mining Limited ("the Company") issued [insert number] fully paid ordinary shares in accordance with the terms of its convertible securities agreement with YA Global Master SPV, Ltd., which was announced to the market on [insert date of announcement].

Accordingly the Company gives notice under section 708A(5)(e) of the *Corporations Act 2001* (Cth) (the "Corporations Act") that:

2. the abovementioned ordinary shares were issued without disclosure to investors under Part 6D.2 of the *Corporations Act*;
3. as at the date of this notice the Company has complied with:
 - (a) the provisions of Chapter 2M *Corporations Act* as they apply to the Company; and
 - (b) section 674 *Corporations Act*; and
4. [as at the date of this notice there is no "excluded information" (as defined in subsection 708A(7) of the *Corporations Act*) which is required to be disclosed by the Company.] [OR if there is "excluded information" as defined in the *Corporations Act*, which must be disclosed at the time of this notice, insert details accordingly.]

Yours faithfully

Kaboko Mining Limited

[Insert Signature]

[Insert Name]

[Position]