

26 May 2014

Company Announcements Office  
Australian Securities Exchange Limited  
20 Bridge Street  
SYDNEY NSW 2000

**by electronic lodgement**

**Mirabela Nickel Limited (subject to deed of company arrangement)  
(Mirabela or Company)**

Dear Sir/Madam

**PROSPECTUS – ISSUE OF CERTAIN CONVERTIBLE NOTES AND SHARES**

The Company is offering:

- Eligible Existing Noteholders a total of 115,000 secured Convertible Notes each with a face value of US\$1,000 to raise up to US\$115 million of which at least US\$55 million comprises new cash (see section 1.1 of the Prospectus) (**Secured Offer**);
- Fee Shares to the New Capital Parties on a Pro Rata basis (**Fee Offer**); and
- Rollover Shares to each Lender on a Pro Rata basis (**Rollover Offer**),

(collectively, the **Offers**, and where “Convertible Notes”, “Eligible Existing Noteholders”, “Fee Shares”, “New Capital Parties”, “Pro Rata”, “Rollover Shares” and “Lenders” are each as defined in the Prospectus).

The Prospectus and Appendix 3B in relation to the Offers are attached.

**Key Dates**

An indicative timetable for the Offers is set out below.

Key date	Offers		
	Secured Offer	Fee Offer	Rollover Offer
<b>Prospectus lodged at ASIC</b>	26 May 2014	26 May 2014	26 May 2014
<b>Opening Date</b>	9 June 2014	9 June 2014	9 June 2014
<b>Closing Date</b>	13 June 2014	13 June 2014	13 June 2014
<b>Allotment**</b>	20 June 2014	20 June 2014	20 June 2014
<b>Despatch of holding statement/certificate/evidence of issue**</b>	20 June 2014	20 June 2014	20 June 2014

\* These dates are indicative only. The Company reserves the right to vary the key dates without prior notice, subject to the Listing Rules.

\*\* Allotment and despatch will occur as soon as possible after the conditions in Section 1.2 of the Prospectus are satisfied or waived.

For the purposes of ASX Listing Rule 3.10.3, Mirabela provides the following information in relation to the Offers:

Class of securities to be issued	Convertible Notes, and ordinary shares described as Fee Shares and Rollover Shares
Number of securities to be issued or maximum number which may be issued	Up to 115,000 Convertible Notes Up to 52,909,069 shares (excluding shares issued on conversion of a Convertible Note)
Principle terms of the securities to be issued	Fee Shares and Rollover Shares will rank equally with the existing ordinary shares in Mirabela, as will Shares issued on conversion of Convertible Notes Please see the Annexure for a summary of the principle terms of the Convertible Notes
Issue price	US\$1,000 per Convertible Note No subscription monies are payable in respect of the issue of Fee Shares or Rollover Shares – see Prospectus
Purpose of the issue	<p>It is envisaged that the first US\$55 million raised from the issue of Convertible Notes will be used for:</p> <ul style="list-style-type: none"> <li>- <i>expenses of the issue, including the Deed Administrators' remuneration and disbursements;</i></li> <li>- <i>payment of all costs and expenses incurred during the deed administration of the Company, to this extent, it is envisaged that the Deed Administrators will retain approximately US\$5 million to meet such costs and expenses, with any surplus funds returned to the Company;</i></li> <li>- <i>working capital, including funding any losses;</i></li> <li>- <i>capital expenditures;</i></li> <li>- <i>expenses of the issue;</i></li> <li>- <i>payment of debts; and</i></li> <li>- <i>general corporate purposes.</i></li> </ul> <p>The use of funds will ultimately be largely determined by the board of the Company after the Implementation Date (as defined in the Prospectus) rather than the Deed Administrators as the Deed Administrators will not be in control of the Company once the conditions in Section 1.2 of the Prospectus are met or waived and the DOCA (as defined in the Prospectus) effectuated. The board has a duty to act in the best interests of shareholders.</p> <p>To the extent that more than US\$55 million new cash is raised from the issue of Convertible Notes, the</p>

	amount of such excess will be applied to repay in cash the debt obligations under the Interim Loan (as defined in the Prospectus) (including fees and interest) and will therefore not contribute to Mirabela's cash reserves.
Whether the Company will seek security holder approval for the proposed issue	Mirabela will not seek securityholder approval for the issue of Convertible Notes, Fee Shares and Rollover Shares under the Prospectus but the Convertible Notes will only be issued if ASX grants certain relief from ASX Listing Rule 7.1 that has been requested from it.
Whether the issue will be to a class of security holders	The issue is limited to certain Eligible Existing Noteholders (as defined in the Prospectus)

#### Capacity as Deed Administrators (Administrators)

1. The Administrators provide this announcement only in their capacity as Administrators of the Deed of Company Arrangement entered into by the Company on 13 May 2014, and in their capacity as agent of the Company pursuant to that Deed of Company Arrangement.
2. Any liability of the Administrators arising under or in connection with this letter or any transaction entered into under or in connection with this announcement is limited to the extent to which it can be satisfied out of the Company's property and only to the extent that the Administrators are indemnified for that liability under their deed of appointment.

Yours faithfully,



Martin Madden  
in his capacity as joint and several deed administrator of  
**Mirabela Nickel Limited (subject to deed of company arrangement)**

For further information, please contact:

Mirabela Nickel Limited (subject to deed of company arrangement)

Tel: +61 8 9324 1177

Fax: +61 8 9324 2171

Email: [info@mirabela.com.au](mailto:info@mirabela.com.au)

or visit our website: [www.mirabela.com.au](http://www.mirabela.com.au)

## Annexure

Terms which are used but not defined have the meaning given to them in the attached Prospectus.

Issuer	Company
<b>Issue Price</b>	US\$1,000 per Convertible Note
<b>Minimum Subscription</b>	US\$250,000 and integral multiples of US\$1,000 in excess thereof, provided that any Convertible Notes issued as Interest may be added in denominations of US\$1.00
<b>Maximum amount on issue</b>	With the consent of holders of a majority of Convertible Notes outstanding at the time and after providing the Trustee with a Company order, officers' certificate and opinion of Counsel, the Company may issue additional Convertible Notes with an aggregate Face Value of US\$20 million for a total amount on issue of US\$135 million (+ any Convertible Notes issued as Interest)
<b>Face Value</b>	US\$1,000 per Convertible Note
<b>Maturity Date</b>	5 years after the Implementation Date
<b>Book Entry; Form and Denominations</b>	The Convertible Notes in minimum denominations of US\$250,000 and integral multiples of US\$1,000 in excess thereof and the Convertible Notes will, once issued, be initially represented by one or more global notes. The global notes representing the Convertible Notes will be delivered by the Trustee to the common depositary and registered in the name of the nominee for the common depositary.
<b>Transfer Restrictions</b>	The offering of the Convertible Notes is being made in accordance with Rule 144A and Regulation S under the U.S. Securities Act. The Convertible Notes have not been and will not be registered under the U.S. Securities Act or with any securities regulatory authority of any U.S. state and, accordingly, may not be offered, sold, pledged or otherwise transferred or delivered within the United States or to, or for the account or benefit of, U.S. persons (as defined in Regulation S) except as set forth in Section 2.10 "Transfer and Exchange" of the New Indenture and summarised in Schedule 4 of this Prospectus. As a result of these restrictions, investors are advised to consult legal counsel prior to making any reoffering, resale, pledge or transfer of the Convertible Notes.
<b>Collateral</b>	<p>The Convertible Notes are secured by the Collateral. The Collateral will be released with respect to any outstanding Convertible Notes on the earlier to occur of:</p> <p>(A) <i>THE CONVERTIBLE NOTES HAVING AN OUTSTANDING PRINCIPAL AMOUNT OF LESS THAN US\$28,750,000;;</i></p> <p>(B) <i>THE TRUSTEE RECEIVING CONSENTS TO SUCH RELEASE FROM HOLDERS OF AT LEAST 75% OF THE</i></p>



Issuer	Company
	<p><i>OUTSTANDING PRINCIPAL AMOUNT OF THE CONVERTIBLE NOTES; OR</i></p> <p><i>(C) THE COMPANY DELIVERS TO A COLLATERAL AGENT, IN FORM AND SUBSTANCE REASONABLY ACCEPTABLE TO IT, AN OFFICER'S CERTIFICATE CERTIFYING THAT ALL THE OBLIGATIONS UNDER THE NEW INDENTURE, THE CONVERTIBLE NOTES AND THE COLLATERAL DOCUMENTS HAVE BEEN SATISFIED AND DISCHARGED BY THE PAYMENT IN FULL OF THE COMPANY'S OBLIGATIONS UNDER THE CONVERTIBLE NOTES, THE NEW INDENTURE AND THE COLLATERAL DOCUMENTS.</i></p>
<b>Guarantee</b> (Article 12)	<p>Each of Mirabela Investments and Mirabela Brasil, jointly and severally, (in their capacity as Subsidiary Guarantors) fully, unconditionally and irrevocably guarantee, jointly and severally with each other, to each Convertible Note holder and the Trustee and their successors and assigns, in each case as primary obligors and not merely as surety and with respect to all such obligations howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, due or to become due:</p> <p>(a) the full and punctual payment of principal of and interest on the Convertible Notes when due (whether at maturity, by acceleration, by redemption or otherwise) and all other monetary obligations of the Company under the New Indenture and Convertible Notes;</p> <p>(b) the full and punctual performance of all obligations of the Company under the New Indenture and Convertible Notes.</p> <p>(c) Each of Mirabela Investments and Mirabela Brasil (in their capacity as Subsidiary Guarantors) agree that the guarantee constitutes an absolute and unconditional and continuing guarantee. The guarantee prevails to the fullest extent permitted by law (with such waivers as required).</p>
<b>Interest</b>	<p>9.5% per annum based on a 360-day year of twelve 30-day months. Interest on the Convertible Notes for each Interest Payment Date shall be capitalized by the Company and added to the principal amount of the Convertible Notes semi-annually in arrears. Notwithstanding the foregoing, the payment of accrued and unpaid Interest on Redemption is paid in cash.</p>
<b>Conversion</b> (Article 13)	<p>From the Implementation Date (other than on a Redemption date), each Convertible Note is convertible at the election of the holder into Shares at the conversion price of US\$0.1688 per share.</p> <p>The Conversion date is determined by the provision by the holder of the information required by Section 13.03 of the New Indenture. Evidence of the allocation of the relevant Shares must be provided and cash in lieu of any fractional entitlement to</p>

Issuer	Company
	<p>a Share in aggregate (based on the fractional entitlement to the last reported Share sale price).</p> <p>The Company will ensure, while it is listed on ASX that any Shares issued on Conversion are freely tradeable.</p>
<p><b>Conversion adjustments</b> (Article 13.07 – 13.10)</p>	<p>Subject to the Listing Rules, the Conversion ratio may be adjusted for:</p> <p>(A) <i>A DISTRIBUTION OF SHARES TO SHAREHOLDERS, AS IF THE CONVERTIBLE NOTES HAD CONVERTED BEFORE THE DISTRIBUTION;</i></p> <p>(B) <i>A SHARE SPLIT OR CONSOLIDATION OF SHARES, AS IF THE CONVERTIBLE NOTES HAD CONVERTED BEFORE THE DISTRIBUTION;</i></p> <p>(C) <i>A RIGHTS ISSUE AT A DISCOUNT, TO ADJUST FOR THE DILUTION AND BENEFIT OF THE DISCOUNT;</i></p> <p>(D) <i>ANY DISTRIBUTION TO SHAREHOLDERS OTHER THAN A CASH DISTRIBUTION OR ON A WINDING UP OR LIQUIDATION, ADJUSTED FOR THE DIFFERENCE BETWEEN THE TRADING PRICE BEFORE THE DISTRIBUTION AND THE FAIR MARKET VALUE AT THE TIME OF DISTRIBUTION OR AN ADJUSTMENT AS IF THE HOLDERS HAD CONVERTED AND PARTICIPATED;</i></p> <p>(E) <i>A CASH DISTRIBUTION TO SHAREHOLDERS, SUCH THAT HOLDERS RECEIVE THE SUM ON CONVERSION AS IF THEY HAD CONVERTED AND PARTICIPATED OR THE CONVERSION RATIO IS ADJUSTED ACCORDINGLY;</i></p> <p>(F) <i>A BUY-BACK, FOR THE CHANGE IN SHARES ON ISSUE WITH REFERENCE TO THE CONSIDERATION PAID BY THE COMPANY</i></p>
<p><b>Company Redemption</b></p>	<p>The Company can redeem:</p> <p>(A) <i>ALL THE CONVERTIBLE NOTES, IN THE FIRST THREE YEARS AFTER THE IMPLEMENTATION DATE, FOR THE FINAL REDEMPTION PRICE, IF THE COMPANY IS OR BECOMES OBLIGED TO PAY ADDITIONAL AMOUNTS RELATING TO TAXES; (S3.10)</i></p> <p>(B) <i>ANY OR ALL CONVERTIBLE NOTES, AFTER THE THIRD ANNIVERSARY OF THE IMPLEMENTATION DATE, FOR THE INTERIM REDEMPTION PRICE; AND</i></p> <p>(C) <i>ANY OR ALL CONVERTIBLE NOTES, AFTER THE FOURTH ANNIVERSARY OF THE IMPLEMENTATION DATE (AND AT ANY TIME THEREAFTER BEFORE THE</i></p>

Issuer	Company
	<p>MATURITY DATE), FOR THE FINAL REDEMPTION PRICE,</p> <p>by:</p> <p>(D) MAILING NOTICE (S3.05 OF THE INDENTURE) AND PROVIDING THE TRUSTEE WITH AN OFFICERS' CERTIFICATE (AND AN OPINION OF COUNSEL IF REDEEMED UNDER (I) ABOVE) NOT LESS THAN 30 AND NOT MORE THAN 60 DAYS PRIOR TO THE DATE NOMINATED FOR REDEMPTION; AND</p> <p>(E) DEPOSITING WITH THE PAYING AGENT WITH THE RELEVANT AMOUNT IN IMMEDIATELY AVAILABLE FUNDS PRIOR TO THE DATE NOMINATED FOR REDEMPTION.</p> <p>If less than all the Convertible Notes are the subject of a Redemption notice, the relevant Convertible Notes are elected by the Trustee on a pro rata basis or any other method the Trustee deems appropriate.</p>
<b>Holder Redemption</b> (s3.09)	<p>On a Change of Control (as defined in the Indenture), holders can require Redemption of some or all of their Convertible Notes in accordance with a Change of Control Offer from the Company, unless:</p> <p>(A) A THIRD PARTY HAS OFFERED TO REDEEM, PURCHASE OR CANCEL THE CONVERTIBLE NOTES IN COMPLIANCE WITH THE REQUIREMENTS IN THE NEW INDENTURE APPLICABLE TO A CHANGE OF CONTROL OFFER MADE BY THE COMPANY; OR</p> <p>(B) A REDEMPTION NOTICE HAS BEEN GIVEN BY THE COMPANY FOR ALL OUTSTANDING CONVERTIBLE NOTES.</p>
<b>Successors</b> (Article 5)	<p>There are restrictions on consolidating, merging, conveying, transferring or leasing all or a substantial portion of the Company's assets, undertaking a scheme of arrangement or recommending a takeover bid which will result in all of the Shares being owned by one Person, unless certain steps are taken relating to the Convertible Notes and the related Company and Guarantor obligations</p>
<b>Voting rights</b>	<p>No rights to receive notice of, attend or vote at a general meeting of the Company</p>
<b>Event of Default</b> (Article 6)	<p>The Indenture contains standard events of default, including the following (some events of default are subject to cure periods):</p>

	<p>(A) <i>FAILURE TO MAKE PAYMENTS ON A CONVERTIBLE NOTE WHEN DUE;</i></p> <p>(B) <i>FAILURE TO COMPLY WITH REQUIREMENTS FOR SUCCESSOR CORPORATIONS IN SECTION 5.01 OF THE NEW INDENTURE;</i></p> <p>(C) <i>OTHER NON-COMPLIANCE WITH COVENANTS OR GENERAL BREACH AFTER WRITTEN NOTICE;</i></p> <p>(D) <i>DEFAULT UNDER ANY INDEBTEDNESS OR GUARANTEE BY A MIRABELA GROUP COMPANY INVOLVING AN AGGREGATE OF US\$10 MILLION OR MORE OR SECURED BY A LIEN ON THE COLLATERAL, DEFAULT BEING A FAILURE TO PAY BEFORE THE EXPIRATION OF THE RELEVANT GRACE PERIOD OR WHICH ACCELERATES PAYMENT;</i></p> <p>(E) <i>A PROCEEDING IS COMMENCED OR AN ORDER CONSENTED TO IN RESPECT OF A COMPANY OR GUARANTOR INSOLVENCY PROCEEDING, OR A GENERAL ASSIGNMENT OCCURS FOR THE BENEFIT OF CREDITORS (PROVIDED THAT THE EXTRAJUDICIAL PROCEEDING IN BRAZIL WILL NOT CONSTITUTE AN EVENT OF DEFAULT);</i></p> <p>(F) <i>FAILURE TO PAY JUDGEMENTS IN EXCESS OF US\$10 MILLION IN AGGREGATE (NET ANY INSURED SUM);</i></p> <p>(G) <i>FAILURE TO CONVERT OR REDEEM;</i></p> <p>(H) <i>FAILURE TO MAKE A CHANGE-OF-CONTROL OFFER TO ACCEPT AND PAY FOR CONVERTIBLE NOTES AS REQUIRED PURSUANT TO SECTION 3.09 OF THE NEW INDENTURE;</i></p> <p>(I) <i>A GUARANTEE CEASES TO BE IN FULL EFFECT OR IS DENIED;</i></p> <p>(J) <i>LIENS IN EXCESS OF US\$10 MILLION IN FAVOUR OF THE COLLATERAL AGENT FOR THE CONVERTIBLE NOTEHOLDERS CEASE TO BE OR ARE ASSERTED TO BE INVALID;</i></p> <p>(K) <i>FAILURE BY THE COMPANY OR A GUARANTOR TO COMPLY WITH THE COLLATERAL DOCUMENTS; OR</i></p> <p>(L) <i>ANY STEPS ARE TAKEN TO TERMINATE OR ASSIGN ANY MATERIAL MINING CONCESSIONS.</i></p> <p>If an Event of Default occurs and is continuing, the Trustee may, at its discretion or acting on the instructions of 25% of the holders of Convertible Notes, give notice to the Company declaring all amounts owing under the Indenture due and</p>
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Issuer	Company
	<p>payable (this includes the Face Value, any accrued and unpaid Interest and the acceleration premium (see below)). Should the Event of Default relate to an insolvency proceeding (either voluntarily or involuntarily) then no notice from the Trustee is required, and such amounts are automatically due and payable.</p> <p>The acceleration premium is the aggregate present value of unpaid interests as at the date of acceleration (excluding accrued Interest but including amounts that would have been payable) that would have been payable in respect of the Face Value of the Convertible Notes (including accrued Interest). The present value is determined by applying a discount from the date such Interest payments would have been payable if such accelerated payment had not been made.</p>
<b>Covenants</b> (Article 4)	<p>The Company makes customary covenants including:</p> <p>(A) <i>PAYMENT OF AMOUNTS RELATING TO CONVERTIBLE NOTES;</i></p> <p>(B) <i>MAINTENANCE OF OFFICE OR AGENCY;</i></p> <p>(C) <i>DELIVERY OF COMPLIANCE CERTIFICATES;</i></p> <p>(D) <i>COMPLIANCE WITH STAY, EXTENSION AND USURY LAWS;</i></p> <p>(E) <i>MAINTENANCE OF GOOD STANDING;</i></p> <p>(F) <i>MAINTENANCE OF INSURANCE;</i></p> <p>(G) <i>COMPLIANCE WITH APPLICABLE LAWS;</i></p> <p>(H) <i>MAINTENANCE OF LICENSES AND CONCESSIONS;</i></p> <p>(I) <i>LIMITATIONS ON LIENS, LINES OF BUSINESS AND GUARANTEES;</i></p> <p>(J) <i>TAXES;</i></p> <p>(K) <i>PAYMENT OF ADDITIONAL AMOUNTS; AND</i></p> <p>(L) <i>FURTHER INSTRUMENTS AND ACTS.</i></p>
<b>Collateral Permitted Liens</b>	<p>With the approval by written resolution of Convertible Noteholders holding Convertible Notes with an aggregate Face Value of at least 66.67% of the Convertible Notes then on issue, the Company may issue up to US\$60 million of debt secured by a first lien on the Collateral assets.</p>
<b>Scheme, takeover or sale of assets</b> (Article 5)	<p><i>THE COMPANY SHALL NOT CONSOLIDATE WITH OR MERGE WITH OR INTO, OR CONVEY, TRANSFER OR LEASE ALL OR SUBSTANTIALLY ALL ITS ASSETS TO, ANY PERSON, OR UNDERTAKE A SCHEME OF ARRANGEMENT OR RECOMMEND A TAKEOVER BID WHICH WILL RESULT</i></p>

	<p>IN ALL OF THE SHARES OF THE COMPANY BEING OWNED BY ONE PERSON, OR CONVEY, TRANSFER OR LEASE ALL OR SUBSTANTIALLY ALL ITS ASSETS TO, ANY PERSON, UNLESS:</p> <p>(A) THE NEW SOLE SHAREHOLDER OF THE COMPANY IS A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF AUSTRALIA, THE FEDERATIVE REPUBLIC OF BRAZIL, THE UNITED STATES OF AMERICA OR CANADA AND THE SUCCESSOR COMPANY (IF NOT THE COMPANY) EXPRESSLY ASSUMES ALL THE OBLIGATIONS OF THE COMPANY UNDER THE CONVERTIBLE NOTES, THE INDENTURE AND THE COLLATERAL DOCUMENTS;</p> <p>(B) THE NEW SOLE SHAREHOLDER UNDERTAKES TO PAY SUCH ADDITIONAL AMOUNTS AS MAY BE NECESSARY IN ORDER THAT EVERY NET PAYMENT MADE IN RESPECT OF THE GUARANTEES RELATED TO THE CONVERTIBLE NOTES AFTER DEDUCTION OR WITHHOLDING FOR OR ON ACCOUNT OF ANY TAXES IMPOSED WILL NOT BE LESS THAN THE AMOUNT OF FACE VALUE (AND PREMIUM, IF ANY) AND INTEREST THEN DUE AND PAYABLE ON THE GUARANTEES RELATED TO THE CONVERTIBLES NOTES;</p> <p>(C) IMMEDIATELY AFTER GIVING EFFECT TO SUCH TRANSACTION, NO DEFAULT OR EVENT OF DEFAULT SHALL HAVE OCCURRED AND BE CONTINUING;</p> <p>(D) EACH SUBSIDIARY GUARANTOR HAS CONFIRMED THAT ITS GUARANTEE SHALL APPLY TO THE OBLIGATIONS IN RESPECT OF THE INDENTURE AND THE CONVERTIBLE NOTES.</p> <p>THE COMPANY SHALL NOT PERMIT THE TRANSFER OF A MAJORITY OF SHARES IN A SUBSIDIARY GUARANTOR OR THE CONVEYANCE, TRANSFER OR LEASE OF ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF ANY SUBSIDIARY GUARANTOR (OTHER THAN TO ANOTHER SUBSIDIARY GUARANTOR) UNLESS:</p> <p>(A) IF SUCH ENTITY REMAINS A SUBSIDIARY GUARANTOR, THE TRANSFEREE PERSON WILL BE A CORPORATION, PARTNERSHIP, TRUST OR LIMITED LIABILITY COMPANY ORGANIZED AND EXISTING UNDER THE LAWS OF AUSTRALIA, THE FEDERATIVE REPUBLIC OF BRAZIL OR THE UNITED STATES OF AMERICA, ANY STATE OF THE UNITED STATES OR THE DISTRICT OF COLUMBIA AND WILL EXPRESSLY ASSUME ALL OF THE OBLIGATIONS OF SUCH</p>
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Issuer	Company
	<p><i>SUBSIDIARY GUARANTOR UNDER ITS GUARANTEE; OR</i></p> <p><i>(B) IMMEDIATELY AFTER GIVING EFFECT TO SUCH TRANSACTION, NO DEFAULT OR EVENT OF DEFAULT SHALL HAVE OCCURRED AND BE CONTINUING</i></p>
<b>Agents</b>	<p><b>Trustee:</b> The Bank of New York Mellon, London Branch, is the Trustee, transfer agent, conversion agent and paying agent under the New Indenture.</p> <p><b>Note Registrar:</b> The Bank of New York Mellon (Luxembourg) S.A. is the initial note registrar. In addition, the Company must maintain an office or agency in Luxembourg, where Convertible Notes may be presented or surrendered for registration for transfer or by exchange.</p> <p><b>Transfer Agent:</b> The Bank of New York Mellon, London Branch is the Transfer Agent under the New Indenture. In addition, the Company must maintain an office or agency in London, United Kingdom, where certificated Convertible Notes may be exchanged or transferred in whole or in part in the principal amount of authorized denominations by surrendering such certificated Convertible Notes at the office of the transfer agent.</p> <p><b>Conversion Agent:</b> The Bank of New York Mellon, London Branch is the Conversion Agent under the New Indenture. In addition, the Company must maintain an office or agency in London, United Kingdom, where Convertible Notes may be presented for conversion.</p> <p><b>Paying Agent:</b> The Bank of New York Mellon, London Branch is the Paying Agent under the New Indenture. In addition, the Company must maintain an office or agency in the London, United Kingdom, where Convertible Notes may be presented for payment.</p> <p><b>Security Trustee:</b> AET Structured Finance Services Pty Limited, in its capacity as security trustee, holds the benefit of the Australian security for the Convertible Notes.</p> <p><b>Brazilian Collateral Agent:</b> Deutsche Bank S.A. – Banco Alemão, in its capacity as Brazilian collateral agent, for the Brazilian Security in favour of the holders of the Convertible Notes and certain other secured parties, and represented by the Brazilian Collateral Agent.</p>
<b>Amendments</b> (Article 9)	<p>Indenture amendments can be made by the Company, Guarantors, Collateral Agent and the Trustee:</p> <p><i>(A) WITHOUT THE CONSENT OF HOLDERS TO CURE A DEFECT IN THE INDENTURE, PROVIDE FOR A SUCCESSOR, PROVIDE FOR UNCERTIFICATED CONVERTIBLE NOTES, ADD GUARANTEES OR RELEASE A GUARANTOR WHERE CONTEMPLATED</i></p>

Issuer	Company
	<p>BY THE INDENTURE; ADD TO COLLATERAL, ADD COVENANTS FOR THE BENEFIT OF HOLDERS, SURRENDER A COMPANY RIGHT, APPOINT A QUALIFIED SUCCESSOR TRUSTEE, CONFIRM LIENS ON COLLATERAL OR RELEASE THEM WHERE PERMITTED OR REQUIRED OR ADJUST THRESHOLDS;</p> <p>(B) WITH THE WRITTEN CONSENT OF HOLDERS OF A MAJORITY OF CONVERTIBLE NOTES, ALTHOUGH THE DEFINITION OF COLLATERAL PERMITTED LIENS AND AMENDMENTS OF CERTAIN THRESHOLDS REQUIRE THE WRITTEN CONSENT OF HOLDERS OF AT LEAST 66.67% OF CONVERTIBLE NOTES.</p> <p>HOLDERS OF A MAJORITY OF CONVERTIBLE NOTES CAN WAIVE COMPLIANCE IN SOME CIRCUMSTANCES.</p>
<b>Governing law</b>	New York





**MIRABELA NICKEL**

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# **Mirabela Nickel Limited**

**(subject to a deed of company arrangement)**

**ACN 108 161 593**

Martin Madden, Clifford Rocke and David Winterbottom were appointed voluntary administrators of the Company on 25 February 2014 pursuant to Section 436A of the Corporations Act. On 13 May 2014, the creditors of Mirabela Nickel Limited (subject to deed of company arrangement) resolved to enter into a deed of company arrangement to give effect to a restructure and recapitalisation of the Mirabela Group. Martin Madden, Clifford Rocke and David Winterbottom were appointed joint and several deed administrators.

## **Prospectus**

For the offer of:

- a total of 115,000 secured convertible notes (**Convertible Notes**) each with a face value of US\$1,000 to the Existing Noteholders to raise up to US\$115 million of which approximately US\$55 million comprises new cash (see Section 1 of the Prospectus) (**Secured Offer**);
- Fee Shares to the New Capital Parties on a Pro Rata basis (**Fee Offer**); and
- Rollover Shares to the Lenders on a Pro Rata basis (**Rollover Offer**).

**ONLY:**

**EXISTING NOTEHOLDERS MAY MAKE APPLICATIONS FOR CONVERTIBLE NOTES UNDER THE SECURED OFFER;**

**NEW CAPITAL PARTIES MAY MAKE APPLICATIONS FOR FEE SHARES UNDER THE FEE OFFER;  
AND**

**LENDERS MAY MAKE APPLICATIONS FOR ROLLOVER SHARES UNDER THE ROLLOVER OFFER**

**PURSUANT TO THIS PROSPECTUS**

The Offers are conditional upon certain events occurring. Please refer to Section 1.2 of this Prospectus for further details.

This document is only being distributed to and is only directed at (i) persons who are outside the United Kingdom or (ii) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the **Order**) or (iii) high net worth entities, and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as "relevant persons"). Any Offer Securities will only be available to, and any invitation, offer or agreement to subscribe, purchase or otherwise acquire such Offer Securities



## MIRABELA NICKEL

will be engaged in only with, relevant persons. Any person who is not a relevant person should not act or rely on this document or any of its contents.

The Convertible Notes will be ready for delivery in book-entry form only through the facilities of Euroclear Bank S.A./N.V., as operator of the Euroclear System (**Euroclear**), and Clearstream Banking, *société anonyme*, Luxembourg (**Clearstream**), on or about 20 June 2014, 2014\*\*.

*\*\* Allotment and despatch will occur as soon as possible after the conditions in Section 1.2 are satisfied or, where possible, waived.*

### IMPORTANT NOTICE

This document is important and requires your immediate attention. It should be read in its entirety. The Offers do not take into account the individual investment objectives, financial situation or particular needs of each potential Applicant, or any other person. If you do not understand this document's contents, or are in doubt as to the course you should follow, you should consult your stockbroker, accountant or professional adviser.

The Convertible Notes and Shares (including Shares issued on conversion of the Convertible Notes offered by this Prospectus) should be considered speculative and you are advised to exercise caution in relation to an investment in the Company.

### LIMITATION OF LIABILITY

To the maximum extent permitted by law and subject to applicable laws:

- (a) the Deed Administrators are a party to this document in their capacity as joint and several deed administrators of the Company and not in their personal capacity;
- (b) the Deed Administrators and the BNYM Parties disclaim any liability from any claim, demand or action arising against the Deed Administrators and the BNYM Parties and from any loss suffered or incurred, whether known or unknown, that is in any way connected with this document;
- (c) the Deed Administrators confirm that any information or material that may be provided by the Deed Administrators in connection with this document is provided on behalf of the Company, and the Deed Administrators do not, and will not in the future, give any representation or warranty as to the completeness, accuracy or relevance of any such information or material; and
- (d) the Deed Administrators disclose that they have not (and their directors, officers and employees have not) attended any site visits to the Santa Rita mine or any premises on which a member of the Mirabela Group conducts business, and do not, and will not in the future, give any representation or warranty as to the condition or operability of the Santa Rita mine, the mine site, any plant or equipment on the mine site or any premises on which a member of the Mirabela Group conducts business.



# MIRABELA NICKEL

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# MIRABELA NICKEL

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## Corporate Directory

**Deed Administrators**

Mr Martin Madden  
Mr Clifford Rocke  
Mr David Winterbottom

**Registered and  
principal office**

Level 21, Allendale Square  
77 St Georges Terrace  
Perth, Western Australia 6000

Telephone: +61 8 9324 1177  
Facsimile: +61 8 9324 2171

Email: [info@mirabela.com.au](mailto:info@mirabela.com.au)

Website: [www.mirabela.com.au](http://www.mirabela.com.au)

**ASX Code**

MBN

**Registry**

Advanced Share Registry Services  
110 Stirling Highway, Nedlands  
WA, AUSTRALIA, 6009



## MIRABELA NICKEL

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### Important Dates\*

Key date	Offers		
	Secured Offer	Fee Offer	Rollover Offer
Prospectus lodged at ASIC	26 May 2014	26 May 2014	26 May 2014
Opening Date	9 June 2014	9 June 2014	9 June 2014
Closing Date	13 June 2014	13 June 2014	13 June 2014
Allotment**	20 June 2014	20 June 2014	20 June 2014
Despatch of holding statement/certificate/evidence of issue**	20 June 2014	20 June 2014	20 June 2014

\* These dates are indicative only. The Company reserves the right to vary the key dates without prior notice, subject to the Listing Rules.

\*\* Allotment and despatch will occur as soon as possible after the conditions in Section 1.2 are satisfied or, where possible, waived.

See Section 3 for a summary of the impact of the Offers on the Company's existing debt and equity structure.



## MIRABELA NICKEL

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### Important Notes

**Applicants should be aware of the uncertainties regarding the Company's financial condition and future operations and significant risks associated with their decision to participate in the Offers. See Section 4 "Risk Factors".**

This Prospectus is dated 26 May 2014 and was lodged with ASIC on that date. Neither ASIC, ASX or any of their respective officers take any responsibility for the contents of this Prospectus or the merits of an investment to which this Prospectus relates.

No Convertible Notes or Shares will be issued on the basis of this Prospectus later than 13 months after the date of issue of this Prospectus. Convertible Notes and Shares (including Shares issued on Conversion of the Convertible Notes) issued pursuant to this Prospectus will be issued on the terms and conditions set out in this Prospectus.

Potential Applicants should read this Prospectus in its entirety and seek professional legal, business and tax advice where necessary. Investment in the Convertible Notes and Shares (including any Shares issued on Conversion of the Convertible Notes) offered by this Prospectus should be considered speculative. Applicants should not consider any information contained in this Prospectus to be legal, business or tax advice.

An application for Convertible Notes by Existing Noteholders pursuant to the Secured Offer and an application for Shares under the Fee Offer or Rollover Offer will only be accepted by following the instructions on the Application Form contained in this Prospectus.

No person is authorised to give any information or to make any representation in connection with the Offers described in this Prospectus. Any information or representation which is not contained in this Prospectus may not be relied upon as having been authorised by the Company in connection with the issue of this Prospectus. By receiving this Prospectus, you represent that your investment decision is based solely on this Prospectus and that you are not relying on any other information you may have received from the Company.

In preparing this Prospectus, regard has been had to the fact that certain matters may reasonably be expected to be known to investors and professional advisers with whom investors may consult. If you would like more information on the Company, general information and announcements to ASX are available at the Company's website <http://www.mirabela.com.au>.

In accordance with Chapter 6D of the Corporations Act, this Prospectus is subject to an exposure period of 7 days from the date of lodgement with ASIC. This period may be extended by ASIC for a further period of up to 7 days. The purpose of this exposure period is to enable this Prospectus to be examined by market participants prior to the raising of funds. If this Prospectus is found to be deficient, Applications received during the exposure period will be dealt with in accordance with Section 724 of the Corporations Act. Applications received prior to the expiration of the exposure period will not be processed until after the exposure period. No preference will be conferred on Application Forms received in the exposure period.



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As Shares have been suspended from quotation for more than 5 days in the 12 months prior to the date of this Prospectus, the Company is unable to issue the Convertible Notes without disclosure and then "cleanse" the Shares to be issued on conversion of the Convertible Notes using a notice issued pursuant to Section 708A(5) of the Corporations Act. As such, Existing Noteholders will apply for the Convertible Notes pursuant to this Prospectus so that the Shares issued on conversion of the Convertible Notes will be freely tradeable.

### **Conditional offer**

The Offers are conditional on the conditions set out in Section 1.2 occurring.

### **Responsibility**

The Company has prepared this Prospectus and is solely responsible for its contents. This Prospectus has been prepared solely for use in connection with the Offers. This Prospectus is based on information provided by the Company and by other sources that the Company believes is reliable. The Company and the Deed Administrators cannot assure you that this information is accurate or complete. This Prospectus summarizes certain documents and other information and you are referred to such documents and other information for a more complete understanding of what is discussed in this Prospectus. In making an investment decision, you must rely on your own examination of the Company and the terms of the Prospectus, including the merits and risks involved.

The Company is not making any representation regarding the legality of participation in the Offers under any legal investment or similar laws or regulations.

None of the BNYM Parties have independently verified the information contained in this Prospectus. No representation or warranty, express or implied, is made by any BNYM Party as to the accuracy or completeness of such information, and nothing contained in this Prospectus (including its schedules) is, or shall be relied upon as, a promise or representation by any BNYM Party regarding, and no responsibility or liability is accepted by any of them as to, the accuracy or completeness of the information contained in this Prospectus or any other information provided by the Company in connection with the issue of the Convertible Notes or Shares. None of the BNYM Parties accepts any liability in relation to the information contained in this Prospectus or any other information provided by the Company in connection with the issue of the Convertible Notes or Shares. This Prospectus should not be considered as a recommendation by any BNYM Party that any recipient of this Prospectus should purchase the Convertible Notes or Shares.

### **International offer restrictions**

This document does not constitute an offer of Offer Securities of the Company in any jurisdiction in which it would be unlawful. Australian Applicants must be professional or sophisticated investors for the purposes of the Corporations Act. The Offer Securities may not be offered or sold in any country outside Australia except to the extent permitted below.

Accordingly, subject to certain exceptions, the Offer Securities the subject of the Offers may not, directly or indirectly, be offered or sold within a country or jurisdiction outside of Australia or to or for the account or benefit of any national resident or citizen of, or any person located in a country or jurisdiction outside of Australia.

On application for any Offer Securities of the Company, each Applicant will be required to give the confirmations, acknowledgements, representations and warranties set out in the Application Form.



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### ***British Virgin Islands***

No invitation will be offered or sold to the public in the British Virgin Islands.

### ***Canada***

The distribution of the Offer Securities in Canada will be exempt from the prospectus requirements of the securities legislation in all provinces and territories of Canada pursuant to the prospectus exemption under Section 2.11 of National Instrument 45-106 – *Prospectus and Registration Exemptions* which provides that the prospectus requirements do not apply to a distribution of a security in connection with a reorganisation or arrangement that is under a statutory procedure.

The Company is a designated foreign issuer under relevant Canadian securities laws in all of the provinces of Canada (except Québec), however its securities are not listed on any stock exchange in Canada and there is currently no public market for its securities in Canada. The Company currently has no intention of filing a prospectus with any securities regulatory authority in Canada to qualify the resale of the Offer Securities to the public, or listing the Offer Securities on any stock exchange in Canada. Accordingly, to be made in accordance with securities laws, any resale of the Offer Securities in Canada must be made under available statutory exemptions from registration and prospectus requirements or under a discretionary exemption granted by the applicable Canadian securities regulatory authority. Pursuant to National Instrument 45-102 – *Resale of Securities*, any resale of the Offer Securities will be exempt from the prospectus requirements if the following conditions are satisfied: (i) the Company is and has been a designated foreign issuer under relevant Canadian securities laws in a jurisdiction of Canada for the four months immediately preceding the trade, (ii) the trade is not a control distribution, (iii) no unusual effort is made to prepare the market or to create a demand for the security that is the subject of the trade, (iv) no extraordinary commission or consideration is paid to a person or company in respect of the trade, and (v) if the selling security holder is an insider or officer of the Company, the selling security holder has no reasonable grounds to believe that the Company is in default of securities legislation. **Canadian purchasers are advised to seek legal advice prior to any resale of the Offer Securities.**

### ***Cayman Islands***

No invitation will be offered or sold to the public in the Cayman Islands.

### ***European Economic Area***

In relation to each member state of the European Economic Area (each, a **Member State**) which has implemented the Prospectus Directive (each, a **Relevant Member State**), with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the **Relevant Implementation Date**), an offer to the public of the Offer Securities may not be made in that Relevant Member State, except that it may be made at any time with effect from and including the Relevant Implementation Date:

- to any legal entity which is a “qualified investor” as defined in the Prospectus Directive or the 2010 PD Amending Directive if the relevant provision has been implemented;
- to fewer than (i) 100 natural or legal persons per Relevant Member State (other than “qualified investors” as defined in the Prospectus Directive or the 2010 PD Amending Directive if the relevant provision has been implemented) or (ii) if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150 natural or legal persons per Relevant Member State (other than “qualified investors” as defined in the Prospectus Directive or the 2010 PD Amending Directive if the relevant provision has been implemented) as permitted under the Prospectus Directive subject to obtaining the prior consent of the relevant





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- "Dealer" or "Dealers" (as defined in the Prospectus Directive) nominated by the Issuer for any such offer; or
- in any other circumstances falling within Article 3(2) of the Prospectus Directive or Article 3(2) of the 2010 PD Amending Directive to the extent implemented,

provided that no such offer of the Offer Securities shall require the Company to publish a prospectus pursuant to Article 3 of the Prospectus Directive.

Each person in a Relevant Member State who initially acquires any Offer Securities as a "financial intermediary," as that term is used in Article 3(2) of the Prospectus Directive, will be deemed to have represented, acknowledged and agreed that (i) the Offer Securities acquired by it in the offering have not been acquired on behalf of, nor have they been acquired with a view to their offer or resale to, persons in any Relevant Member State other than "qualified investors" as defined in the Prospectus Directive, or in circumstances in which the prior consent of the subscribers has been given to the offer or resale, or (ii) where Offer Securities have been acquired by it on behalf of persons in any Relevant Member State other than "qualified investors" as defined in the Prospectus Directive, the offer of those Offer Securities to it is not treated under the Prospectus Directive as having been made to such persons.

For the purposes of the foregoing, the expression "**offer of Convertible Notes to the public**," or "**offer of Offer Securities to the public**" in relation to any Offer Securities in any Relevant Member State, means the communication in any form and by any means of sufficient information on the terms of the offer and the Offer Securities to be offered so as to enable an investor to decide to purchase or subscribe for the Offer Securities, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State; "**Prospectus Directive**" means Directive 2003/71/EC, and includes any relevant implementing measure in the Relevant Member State; and "**2010 PD Amending Directive**" means Directive 2010/73/EC. The foregoing is in addition to any other selling restrictions set out in this Prospectus.

### ***Federative Republic of Brazil***

The Offer Securities have not been, and will not be, registered with the Brazilian Securities Commission, or the Securities and Exchange Commission of Brazil. The Offer Securities may not be offered or sold in Brazil, except in circumstances that do not constitute a public offering or unauthorized distribution under Brazilian laws and regulations. The Offer Securities are not being offered into Brazil. Documents relating to the offering of the Offer Securities, as well as information contained therein, may not be supplied to the public in Brazil, nor be used in connection with any offer for subscription or sale of the Offer Securities nor be used in connection with any offer for subscription or sale of the Offer Securities to the general public in Brazil.

### ***Guernsey***

This Prospectus may only be distributed or circulated directly or indirectly in or from within the Bailiwick of Guernsey (i) by persons licensed to do so by the Guernsey Financial Services Commission under the Protection of Investors (POI) Law or (ii) to persons licensed under the POI Law, the Banking Supervision (Bailiwick of Guernsey) Law, 1994, the Insurance Business (Bailiwick of Guernsey) Law, 2002 or the Regulation of Fiduciaries, Administration Business and Company Directors etc. (Bailiwick of Guernsey) Law, 2000.

### ***Hong Kong***

The Offer Securities may not be offered or sold in the Hong Kong Special Administrative Region of the People's Republic of China ("**Hong Kong**") by means of any document other than to (1) professional



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investors within the meaning of the Securities and Futures Ordinance (Cap. 571) of the laws of Hong Kong (SFO) and any rules made thereunder, or (2) in circumstances that do not result in the document being, or otherwise require, a "prospectus" as defined in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of the laws of Hong Kong or that do not constitute an offer to the public within the meaning of that Ordinance. No invitation, advertisement or document relating to the Offer Securities may be issued, whether in Hong Kong or elsewhere, that is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to the Offer Securities that are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors", as defined under the SFO and any rules made thereunder.

The contents of this document have not been reviewed by any regulatory authority in Hong Kong. You are advised to exercise caution in relation to this offering. If you are in any doubt about any of the contents of this document, you should obtain independent professional advice.

### ***United Arab Emirates***

This Prospectus, and the information contained herein, does not constitute, and is not intended to constitute, a public offer of securities in the United Arab Emirates and accordingly should not be construed as such. The Offer Securities are only being offered to a limited number of sophisticated investors in the United Arab Emirates (1) who are willing and able to conduct an independent investigation of the risks involved in an investment in the Offer Securities and (2) upon their specific request. The Offer Securities have not been approved by or licensed or registered with the United Arab Emirates Central Bank, the Securities and Commodities Authority or any other relevant licensing authorities or governmental agencies in the United Arab Emirates. This Prospectus is for the use of the named addressee only and should not be given or shown to any other person (other than employees, agents or consultants in connection with the addressee's consideration thereof). No transaction will be concluded in the United Arab Emirates and any enquiries regarding the Offer Securities should be made to the Company.

### ***United Kingdom***

The Company:

- has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the United Kingdom Financial Services and Markets Act of 2000 (FSMA)) in circumstances in which Section 21(1) of the FSMA does not, or would not, apply to it; and
- has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to any Offer Securities in, from or otherwise involving the United Kingdom.

### ***United States***

The Offer Securities have not been and will not be registered under the U.S. Securities Act with any securities regulatory authority of any state or other jurisdiction of the United States and may not be offered, sold, exercised, resold, transferred or delivered, directly or indirectly, in or into the United States or to or for the account or benefit of any U.S. Person, except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the U.S. Securities Act and in compliance with any applicable securities laws of any state or other jurisdiction in the United States. Offer Securities are being offered and sold: (i) to U.S. Persons or to Applicants within the United States or persons who are acting for the account or benefit of U.S. Persons, in either case who are reasonably believed to be "Qualified Institutional Buyers" (as defined in Rule 144A under the U.S.



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Securities Act) that are also "qualified purchasers" (as defined in Section 2(a)(51) of the U.S. Investment Company Act of 1940, as amended (the **U.S. Investment Company Act**)) pursuant to a transaction that is exempt from, or not subject to, the registration requirements of the U.S. Securities Act; and (ii) to investors who are not U.S. Persons or persons acquiring for the account or benefit of U.S. Persons outside the United States in "offshore transactions" within the meaning of and in reliance on Regulation S under the U.S. Securities Act (**Regulation S**).

Subject to such limited exceptions as may be determined within its sole discretion, the Company does not intend to permit Offer Securities to be acquired by investors subject to Title I of U.S. Employee Retirement Income Security Act of 1974, as amended (**ERISA**), or to the prohibited transaction provisions of Section 4975 of the U.S. Internal Revenue Code of 1986, as amended (the **U.S. Internal Revenue Code**), or by others holding the assets of such investors as defined in Section 3(42) of ERISA, and applicable regulations.

The Offer Securities have not been approved or disapproved by the U.S. Securities and Exchange Commission (the **SEC**) or any state securities commission, nor has any such regulatory authority passed upon or endorsed the merits of this offering or the accuracy or adequacy of this Prospectus. Any representation to the contrary is unlawful.

Any Offer Securities (to the extent they are in certificated form), initially sold to investors located in the United States or to U.S. Persons unless otherwise determined by the Company in accordance with applicable law, will bear a legend substantially to the following effect:

THE OFFER SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "U.S. SECURITIES ACT"), OR ANY STATE SECURITIES LAWS AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (A) (1) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE U.S. SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR RULE 904 OF REGULATION S UNDER THE U.S. SECURITIES ACT, (3) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE U.S. SECURITIES ACT (IF AVAILABLE) OR (4) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE U.S. SECURITIES ACT AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION" AND "UNITED STATES" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE U.S. SECURITIES ACT.

Prospective U.S. Applicants must rely on their own examination of the U.S. tax consequences of an investment in the Offer Securities. Prospective U.S. Applicants should not treat the contents of this Prospectus as advice relating to U.S. tax matters and are advised to consult their own professional U.S. tax advisers concerning the acquisition, holding or disposal of any Offer Securities.

### NOTICE TO NEW HAMPSHIRE RESIDENTS

NEITHER THE FACT THAT A REGISTRATION STATEMENT OR AN APPLICATION FOR A LICENSE HAS BEEN FILED UNDER CHAPTER 421-B OF THE NEW HAMPSHIRE REVISED STATUTES WITH THE STATE OF NEW HAMPSHIRE NOR THE FACT THAT A SECURITY IS EFFECTIVELY REGISTERED OR A PERSON IS LICENSED IN THE STATE OF NEW HAMPSHIRE CONSTITUTES A FINDING BY THE SECRETARY OF STATE THAT ANY DOCUMENT FILED UNDER CHAPTER 421-B IS TRUE, COMPLETE AND NOT MISLEADING. NEITHER ANY SUCH FACT NOR THE FACT THAT AN EXEMPTION OR EXCEPTION IS AVAILABLE FOR A SECURITY OR A TRANSACTION MEANS THAT THE SECRETARY OF STATE HAS PASSED IN ANY WAY



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UPON THE MERITS OR QUALIFICATIONS OF, OR RECOMMENDED OR GIVEN APPROVAL TO, ANY PERSON, SECURITY, OR TRANSACTION. IT IS UNLAWFUL TO MAKE, OR CAUSE TO BE MADE, TO ANY PROSPECTIVE PURCHASER, CUSTOMER, OR CLIENT ANY REPRESENTATION INCONSISTENT WITH THE PROVISIONS OF THIS PARAGRAPH.

### **Electronic Prospectus**

The Corporations Act prohibits any person from passing to another person an Application Form unless it is attached to, or accompanied by, the complete and unaltered version of this Prospectus.

If you have received an electronic version of this Prospectus, please ensure that you have received the entire Prospectus including the Application Form. If you have not, please telephone Aaron Swaffield on +61 2 8257 3032 and the Company will send to you, for free, either a hard copy or a further electronic copy of the Prospectus, or both.

The Company reserves the right not to accept an Application Form from a person if it has reason to believe that when that person was given access to the electronic Application Form, it was not provided together with the electronic Prospectus and any relevant supplementary or replacement prospectus or any of those documents were incomplete or altered.

### **No filing in United States of America**

No federal or state agency has passed upon the merits or risks of an investment in the Offer Securities or made any finding or determination concerning the fairness or advisability of this investment. The Prospectus has not been filed with the U.S. Securities and Exchange Commission or with any securities administrator under U.S. state securities laws.

### **Risk factors**

Potential Applicants should be aware that subscribing for Offer Securities under the Offers involves a number of risks. Some of the more significant risks which affect an investment in the Company are set out in Section 4 and include:

#### ***Assumptions and estimates in this Prospectus may prove to be inaccurate and the Company and Guarantors may be unable to pay interest or principal on the Convertible Notes***

The Mirabela Group continues to operate in an unstable and uncertain political, economic and regulatory environment. These factors, including, among others nickel prices, have already materially and adversely affected the Mirabela Group's results of operations and financial condition, and may continue to place significant strains on results of operations and liquidity. The Company made certain assumptions and determinations based on current information and estimates with respect to nickel prices, the Brazilian economy and the Mirabela Group's future financial condition and cash flow. These assumptions and determinations, however, involve significant risks and uncertainties that the Company cannot foresee. As a result, the Company's assumptions and determinations may prove to be wrong. The Company and Guarantors' future ability to service debt obligations under the Convertible Notes will depend upon the accuracy of certain assumptions about macro-economic, commercial and regulatory factors (most of which are beyond the control of the Company and the Guarantors) that will affect the Mirabela Group's business, including, without limitation: (i) nickel prices; (ii) the Company's ability to continue as a going concern; (iii) the exchange rate of Brazilian reais for U.S. dollars during the term of the Convertible Notes; (iv) rates of inflation for the term of the Convertible Notes; and (v) prevailing interest rates in Brazil.



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### ***Commodity price risks***

The price of nickel fluctuates widely and is affected by numerous factors beyond the Company's control, such as the supply and demand for nickel products, exchange rates, inflation rate fluctuations, changes in global economies, confidence in the global monetary system, as well as other global or regional political, social or economic events. Prices can also be affected by the amount of new and expanded nickel production around the world.

### ***Financial condition***

There can be no assurance that the Mirabela Group will not continue to incur losses. Numerous factors, including declining nickel prices, adverse currency exchange rate movements (in particular the Brazilian reais and United States dollar), lower than expected ore grades and/or ore recovery or higher than expected operating costs (including increased commodity prices and equipment costs), and impairment write-offs of mine property and/or exploration property costs, could cause the Mirabela Group to continue to be unprofitable in the future.

The Mirabela Group's general operating risks also continue to apply (see Section 4 for further information) including risks relating to funding, offtake agreements and production estimates.

### ***Additional funding may be required***

The funds raised under the Offers will be applied to the purposes set out in Section 1.4.

The Company may need to raise further capital or debt financing in order to fund working capital, capital expenditures (including capital expenditures related to lifting the height of the tailings dam facility at the Santa Rita mine and rebuilding or acquiring new equipment - both fixed and mobile), future losses, adverse litigation outcomes and service debt. The success and the pricing of any such capital raising and/or debt financing will be dependent upon a number of factors including the prevailing market and industry conditions at that time, the availability of significant amounts of debt and equity financing to the Company, the Mirabela Group's historical and projected performance and the outcome of any relevant feasibility studies and/or exploration programs.

### ***Tailings dam capital works***

The tailings dam facility at the Santa Rita mine is near its current capacity and material capital expenditure is required to lift the height of the dam wall to comply with operating license requirements. Work is behind schedule. Lifting the dam wall may involve costs and further delays, and any failure, delay or significant rainfall may impact production and/or result in a risk of environmental damage. The Mirabela Group is currently operating at a loss and absent significant funding, would be unable to complete the required work to lift the height of the tailings dam. This could result in mining operations being suspended or ceasing. See Sections 2.1(d) and 4.3 for further detail.

Other risk factors of which potential Applicants should be aware are set out in Section 4 of this Prospectus. It should be noted that these risks are in addition to the risks commonly faced by businesses, including financial, economic, counterparty, credit and regulatory risks, which may have adverse financial implications for the Company.

These risks, together with other general risks applicable to all investments in securities not specifically referred to, may affect the value of the Offer Securities in the future. Accordingly, an investment in the Company should be considered speculative. Potential Applicants should consider consulting their professional advisers before deciding whether to apply for Offer Securities pursuant to this Prospectus.



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### *Forward-looking statements*

The Deed Administrators have considered the matters set out in ASIC Regulatory Guide 170 and believe that they do not have a reasonable basis to forecast future earnings on the basis that the operations of the Mirabela Group are inherently uncertain. Accordingly, any forecast or financial projection would contain such a broad range of potential outcomes and possibilities that it is not possible to prepare a reliable best estimate forecast or projection.

However, this Prospectus contains forward-looking statements which are identified by words such as (but not limited to) "may", "could", "believes", "estimates", "targets", "expects", "envisages", "intends" and such other similar words that involve risks and uncertainties.

These statements are based on an assessment of present economic and operating conditions, and on a number of assumptions regarding future events and actions that, as at the date of this Prospectus, are expected to take place.

Such forward-looking statements are not guarantees of future performance and involve known and unknown risks, uncertainties, assumptions and other important factors, many of which are beyond the control of the Company, the Deed Administrators and officers. Some of the risks, uncertainties and other important factors that could cause results to differ, or that otherwise could have an impact on the Mirabela Group, include:

- the accuracy of the Company's financial assumptions and estimates;
- fluctuation of commodity prices;
- the Company's access to funding sources and the cost of such funding;
- the status of the tailings dam;
- the accuracy of the Mirabela Group's production estimates;
- the lack of recent audited financial statements;
- production and other operational risks;
- the Mirabela Group's ability to maintain licenses required for its operation;
- fluctuation in the availability or affordability of transportation;
- dependency on adequate infrastructure and equipment;
- labour relations;
- environmental risks;
- resource and reserve risks;
- exploration and development risks;
- nickel concentrate specifications;
- competition for resources from Brazilian mining operations and competition from other nickel producers;



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- counterparties' performance of offtake agreements;
- the regulatory regimes to which the Mirabela Group is subject;
- foreign currency risks;
- global economic conditions;
- emerging market risks;
- litigation risks;
- collateral risks;
- social, economic and political risks; and
- other risks and uncertainties described in Section 4 (risk factors) and elsewhere in this Prospectus.

The Company cannot and does not give any assurance that the results, performance or achievements expressed or implied by the forward-looking statements contained in this Prospectus will actually occur and investors are cautioned not to rely on these forward-looking statements.

The Company has no intention to update or revise forward-looking statements, or to publish prospective financial information in the future, regardless of whether new information, future events or any other factors affect the information contained in this Prospectus, except where required by law.

These forward-looking statements are subject to various risk factors that could cause actual results to differ materially from the results expressed or anticipated in these statements. These risk factors include those set out in Section 4 of this Prospectus.

This Prospectus includes information regarding the past performance of the Company. Potential investors should be aware that past performance is not indicative of future performance.

### Key definitions

Throughout this Prospectus, for ease of reading, various words and phrases have been defined rather than used in full on each occasion. Please refer to Section 7 of this Prospectus for a list of defined terms.

### Available information

The New Indenture is in Schedule 5 of this Prospectus. To permit compliance with Rule 144A under the U.S. Securities Act in connection with resales of the Offer Securities, the Company will be required under the New Indenture under which the Convertible Notes are issued, upon the request of a holder of Convertible Notes issued pursuant to Rule 144A or Regulation S (during the restricted period, as defined in the legend included under "Notice to Investors"), to furnish to such holder and any prospective purchaser designated by such holder the information required to be delivered under Rule 144A(d)(4) under the U.S. Securities Act if at the time of the request the Company is neither a reporting company under Section 13 or Section 15(d) of the U.S. Securities Exchange Act of 1934, as amended (the **Exchange Act**), nor exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act (**Rule 12g3-2(b)**). If the Company is exempt from reporting pursuant to Rule 12g3-2b, the Company will not be required under the indenture for the Convertible Notes to deliver information otherwise required to be delivered under Rule 144A(d)(4) under the U.S. Securities Act. The Company



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has also disclosed, and may be required periodically disclose, certain information, including quarterly, half-year and annual reports, to the ASX.

The New Indenture for the Convertible Notes will further require that the Company furnish to the Trustee all notices of meetings of the holders of Convertible Notes, and other reports and communications that are generally made available to holders of Convertible Notes, as applicable. On request, the Trustee will be required under the New Indenture for the Convertible Notes to mail these notices, reports and communications received by it from the Company to all record holders of the Convertible Notes, promptly upon receipt. See "Terms and Conditions of the Convertible Notes" in Schedule 1.

The Company will make available to the Existing Noteholders at the corporate trust office of the applicable trustee at no cost, copies of the New Indenture as well as this Prospectus, and the announcements set out in Section 5.3.

### Competent person's statement

The information in this Prospectus that relates to Santa Rita pre-mining Ore Reserves, mining production and cost estimation for the Santa Rita mine is in accordance with the 2004 Edition of the 'Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves' (JORC Code), and is based on information compiled by Mr Carlos Guzmán who is a Member of The Australasian Institute of Mining and Metallurgy and Registered Member of the Chilean Mining Commission. Mr Guzmán is a Mining Engineer, Principal and Project Director with NCL Brasil Ltda. and is a consultant to the Mirabela Group. Mr Guzmán qualifies as a Competent Person as defined in the 2012 JORC Code and is a Qualified Person in accordance with NI 43-101. Mr Guzmán approves and consents to the inclusion in the presentation of the matters based on his information in the form and context which it appears.

The information in this Prospectus that relates to the updated October 2012 Mineral Resources for the Santa Rita mine (**Mineral Resources**) was estimated in accordance with the 2004 Edition of the JORC Code. There have been no material changes to the Mineral Resources, apart from mining depletion, since the public report titled "Significant Increase in Santa Rita Open-Pit Resources" was issued by the Company on 19 October 2012. The estimate was based on information compiled by Mr Lauritz Barnes and reviewed by Mr Doug Corley. Mr Barnes is a Member of the Australian Institute of Geoscientists, and is a Consultant to the Mirabela Group. Mr Corley is a Member of the Australian Institute of Geoscientists and is a Registered Professional Geoscientist in the field of Mining, and is a Principal Resource Geologist at GHD Pty Ltd. Messrs Barnes and Corley qualify as both a Competent Person as defined in the 2012 JORC Code and as a Qualified Person in accordance with NI 43-101. Messrs Barnes and Corley have verified the data underlying the disclosure in this report relating to Mineral Resources. Messrs Barnes and Corley approve and consent to the inclusion in the presentation of the matters and defined Mineral Resources information in the form and context in which it appears.

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## Investment overview

Mirabela Nickel Limited (subject to a Deed of Company Arrangement) (**Mirabela or Company**) is an ASX listed (ASX code: MBN) company which together with its subsidiary Mirabela Investments, holds 100% of the quotas in Mirabela Brasil, a limited liability company entity registered in Bahia State, Brazil.

Mirabela Brasil owns and operates an open pit nickel sulphide mine (Santa Rita mine) located in Bahia State, Brazil.





## MIRABELA NICKEL

The background to the Mirabela Group and an update on certain areas of the Mirabela Group's business is set out in Section 2.1.

On 25 February 2014 the previous directors of the Company resolved under Section 436A of the Corporations Act to appoint voluntary administrators to Mirabela. As at the date of this Prospectus, the Company and Mirabela Investments are without directors and a company secretary. The Deed Administrators are only appointed to the Mirabela and Mirabela Investments and are not appointed to, or in control of Mirabela Brasil. The Deed Administrators have not visited the Santa Rita mine nor have they undertaken any review, audit or otherwise of the internal controls or financial accounts of Mirabela Brasil.

On 24 February 2014, several creditors submitted the Plan Support Agreement to the Company which has developed into the Proposed Recapitalisation Plan (see Section 2.3). The Company is making the Offers as part of the Proposed Recapitalisation Plan. The background to, and details of the Proposed Recapitalisation Plan are set out in Sections 2.2 to 2.4 (inclusive). A significant amount of information in relation to the Proposed Recapitalisation Plan has been released by the Company to ASX and a copy of ASX announcements have also been published on its website <http://www.mirabela.com.au>.

The Offers include the Secured Offer, of Convertible Notes. The key terms of the Convertible Notes are summarised in Schedule 1 (**Terms and Conditions of the Convertible Notes**) and set out in full in the New Indenture in Schedule 5 (**New Indenture**).

The Offers are only open to certain Applicants, who have become entitled or obliged to subscribe as a result of arrangements entered into as part of the Proposed Recapitalisation Plan.

The key details of the Offers are set out in Section 1.1, including how to apply. **The Offers are expected to close on 13 June 2014.** The minimum value of the Convertible Notes that may be applied for under the Secured offer is US\$250,000.

Only Eligible Existing Noteholders may subscribe under the Offers by completing and returning the Application Form attached to or accompanying this Prospectus to:

By email: [mirabela@kordamentha.com](mailto:mirabela@kordamentha.com)

By Post:  
Mirabela Applications  
C/- KordaMentha  
GPO Box 2523  
Sydney NSW 2001  
Australia

and providing any applicable Subscription Monies in immediately available funds to the following account on or **before the Closing Date for the Secured Offer**:

**Beneficiary:** Mirabela Nickel Ltd - Convertible Notes Prospectus Application Monies Trust Account  
**Account No.** 3000484  
**Bank:** Bank of Western Australia Ltd  
**Bank address:** 300 Murray Street  
Perth Western Australia 6000  
**Swift Address:** BKWAAU6P

**Bank of Western Australia's USD Correspondent Bank:** Bank of New York



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**Swift Address:** IRVTUS3N

Please include beneficiary narration of "Please do not convert" to ensure that funds will reach BankWest in USD.

**The Offers are conditional on the conditions in Section 1.2 being met.** Essentially, these relate to the conditions to the Mirabela DOCA being met or, where possible, waived, which allow the Mirabela DOCA to be fully effectuated, and include the Court granting leave to the transfer of approximately 98.2% of Shares pursuant to Section 444GA of the Corporations Act.

Section 3 contains a summary of the impact of the Offers on the Company's existing debt and equity structure.

The investment profile of the Company is high risk. This Prospectus, particularly but not limited to Section 4, sets out the key risk factors.

The funds raised under the Offers will be applied to the purposes set out in Section 1.4.

The Company may need to raise further capital or debt financing in order to fund working capital, capital expenditures (including capital expenditures related to lifting the height of the tailings dam facility at the Santa Rita mine and rebuilding or acquiring new equipment - both fixed and mobile), future losses, adverse litigation outcomes and service debt. The success and the pricing of any such capital raising and/or debt financing will be dependent upon a number of factors including the prevailing market and industry conditions at that time, the availability of significant amounts of debt and equity financing to the Company, the Mirabela Group's historical and projected performance and the outcome of any relevant feasibility studies and/or exploration programs.

If you have any queries in relation to this Prospectus, or would like another Application Form, please contact Aaron Swaffield on +61 2 8257 3032 or [aswaffield@kordamentha.com](mailto:aswaffield@kordamentha.com).



# MIRABELA NICKEL

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## 1 Details of the Offers

### 1.1 Offers

The Offers are being made as part of the Proposed Recapitalisation Plan (as defined in Section 2.3).

This Section sets out the following details regarding the Secured Offer, Fee Offer and Rollover Offer:

- the terms of the Offer Securities to be issued pursuant to each Offer;
- who can apply;
- how to apply;
- the conditions to the Offer; and
- opening, closing, lodgement, allotment and despatchment dates.

The Company reserves the right to reject any Application or allocate any Applicant fewer Offer Securities than the Applicant applied for.

The Offers are not underwritten. However, the Company expects to raise at least US\$55 million in cash subscriptions from the Offers.

#### (a) Secured Offer: Convertible Notes

##### (i) Terms

The Company wishes to raise up to US\$115 million of which at least US\$55 million comprises new cash (see below) (the **Initial Principal Amount**).

Each Convertible Note will be deposited upon issuance with a common depository for Euroclear and Clearstream, in each case for credit to the account of a direct or indirect participant of Euroclear and/or Clearstream. Investors in the Convertible Notes who are participants in Euroclear and/or Clearstream may hold their interests in the Convertible Notes directly through Euroclear and/or Clearstream. Investors in the Convertible Notes who are not participants in Euroclear and/or Clearstream may hold their interests indirectly through organizations that are participants in Euroclear and/or Clearstream. Interests in the Convertible Notes will be shown on, and transfers thereof will be effected only through, records maintained by Euroclear and/or Clearstream and indirect participants (with respect to other owners of beneficial interests in the Convertible Notes) and any such interest may not be exchanged for Shares, except in limited circumstances. See Schedule 3 (Book-Entry: Delivery and Form).

The Convertible Notes representing the Initial Principal Amount will be convertible into Shares that will represent 42.3% of the Company's issued capital on a fully diluted basis (taking into account the Rollover Shares and Fee Shares, as defined below), assuming Conversion of all Convertible Notes as at the Implementation Date and 53.8% of the Company's issued capital on a fully diluted basis (taking into account the Rollover Shares and Fee Shares), assuming conversion of all



## MIRABELA NICKEL

Convertible Notes as at the last date on which the Convertible Notes may be converted, and no conversion adjustments (see Part 1 of Schedule 1 (**Terms and Conditions of the Convertible Notes**) and Articles 13.07-13.10 of the New Indenture) having been made on or before that date.

Following the Implementation Date, with the consent of Convertible Noteholders holding Convertible Notes with an aggregate face value of more than 50% of the Convertible Notes then on issue, the Company may elect to issue additional Convertible Notes to raise up to a further US\$20 million (**the Additional Principal Amount**).

The Convertible Notes:

- can be converted into Shares, at the election of the holder, based on an initial conversion price of US\$0.1688;
- have an interest rate of 9.5% per annum, payable in kind on a semi-annual basis;
- have a term of 5 years, but can be redeemed by the Company after the 3rd anniversary of issue (at a premium of 106.75% of Face Value) or after the 4th anniversary of issue at Face Value; and
- are guaranteed by Mirabela Investments and Mirabela Brasil.

The Convertible Notes will be secured by: security granted by the Company and Mirabela Investments to AET Structured Finance Services Pty Limited as security trustee under the General Security Deed, being a first ranking charge on a material part of the assets of the Mirabela Group (including shares in Mirabela Investments and Mirabela Brasil and a material part of the assets of Mirabela Brasil). Each holder of a Convertible Note will be a beneficiary under the terms of the security trust (**Security Trust**), and will have the benefit of the security. The General Security Deed is first ranking and is perfected by registration on the PPSR.

Summary terms of the Convertible Notes are set out in Part 1 of Schedule 1 (**Terms and Conditions of the Convertible Notes**). The New Indenture instrument for the Convertible Notes is included in Schedule 5 (**New Indenture**).

The representations and warranties given by the Company in connection with the Convertible Notes are set out in Part 2 of Schedule 1 (**Terms and Conditions of the Convertible Notes**).

(ii) **Who can apply**

The Eligible Existing Noteholders may apply for Convertible Notes as set out below.

The maximum number or value of Convertible Notes that may be applied for under the Secured Offer is US\$115 million. However the Company reserves the right to reject or scale back any applications to participate in the Secured Offer.

The minimum value of Convertible Notes that may be applied for under the Secured Offer is US\$250,000.



## MIRABELA NICKEL

In order to apply for Convertible Notes, an Eligible Existing Noteholder must first deliver its Existing Notes into The Depository Trust Company's Automated Tender offer Program (ATOP) following the instructions included in the Letter of Transmittal, which will be released on ASX before the Offers open. This will result in the Eligible Existing Noteholder receiving a voluntary offer instruction (VOI) number. Each Applicant must include its VOI number on its Application Form or provide other evidence satisfactory to the Company that it is an Existing Noteholder.

In allocating the issue of Convertible Notes, the Company will give priority to Applicants in the following order of priority:

**(A) Existing Noteholders**

Each Eligible Existing Noteholder may apply for Convertible Notes by delivering the Application Form and providing the Subscription Monies in immediately available funds.

**(B) Lenders**

Each eligible Lender may elect to pay the Subscription Monies in respect of the Convertible Notes applied for by electing on the Application Form to offset some or all of the Subscription Monies against its Pro Rata share of the outstanding debt obligations under the Interim Loan.

In this way the issue of the Convertible Notes will refinance a portion of the Company's current debt obligations, comprising amounts owing under the SNSD. Under the terms of the proposed Deed of Acknowledgement and Amendment, the Lenders acknowledge and agree that any amounts owing under the Interim Loan are extinguished upon the issuance of Convertible Notes to the Lenders. The Lenders also release Mirabela (as borrower) and Mirabela Investments and Mirabela Brasil (as guarantors) from any claims or liability with respect to the Interim Loan (including all costs and accrued interest).

**(C) New Capital Parties**

Each of the eligible New Capital Parties has agreed under the PSA to subscribe for their Pro Rata share of up to US\$55 million worth of Convertible Notes.

**(iii) How to apply**

Only Eligible Existing Noteholders may subscribe for the Convertible Notes under the Secured Offer by completing and returning the Application Form attached to or accompanying this Prospectus to:

**By email:**  
mirabela@kordamentha.com

**By Post:**  
Mirabela Applications  
C/- KordaMentha  
GPO Box 2523



## MIRABELA NICKEL

Sydney NSW 2001  
Australia

and providing any applicable Subscription Monies in immediately available funds to the following account on or **before the Closing Date for the Secured Offer**:

**Beneficiary:** Mirabela Nickel Ltd - Convertible Notes Prospectus Application  
Monies Trust Account

**Account No.** 3000484

**Bank:** Bank of Western Australia Ltd

**Bank address:** 300 Murray Street

Perth Western Australia 6000

**Swift Address:** BKWAAU6P

**Bank of Western Australia's USD Correspondent Bank:**

Bank of New York

**Swift Address:** IRVTUS3N

Please include beneficiary narration of "Please do not convert" to ensure that funds will reach BankWest in USD.

(b) **Fee Offer: Fee Shares**

(i) **Terms**

Each New Capital Party is entitled to a fee equal to its Pro Rata share of the Fee Shares. The entitlement to this fee means it is not necessary for them to provide Subscription Monies in respect of Fee Shares subscribed for under the Fee Offer.

The Fee Shares to be issued under the Fee Offer will rank equally in all respects with Shares currently on issue and will represent approximately 3.7% of Mirabela's issued capital as at the Implementation Date (taking into account the Fee Shares, as defined below and assuming no Convertible Notes have Converted).

(ii) **Who can apply**

Only New Capital Parties can apply for Fee Shares in accordance with Section 1.1(b)(i) above.

(iii) **How to apply**

The New Capital Parties can apply for Fee Shares by completing and returning the Application Form attached to or accompanying this Prospectus to:

**By email:**

mirabela@kordamentha.com

**By Post:**

Mirabela Applications

C/- KordaMentha

GPO Box 2523

Sydney NSW 2001

Australia



## MIRABELA NICKEL

### (c) Rollover Offer: Rollover Shares

#### (i) Terms

Each Lender is entitled to a fee equal to its Pro Rata share of the Rollover Shares. The entitlement to this fee means it is not necessary for them to provide Subscription Monies in respect of Rollover Shares subscribed for under the Rollover Offer.

The Rollover Shares to be issued under the Rollover Offer will rank equally in all respects with Shares currently on issue and will represent approximately 2% of the Company's issued capital as at the Implementation Date (taking into account the Fee Shares, as defined above and assuming no Convertible Notes have Converted).

#### (ii) Who can apply

Only the Lenders can apply for Rollover Shares in accordance with Section 1.1(c)(i) above.

#### (iii) How to apply

The Lenders can apply for Rollover Shares by completing and returning the Application Form attached to or accompanying this Prospectus to:

**By email:**

mirabela@kordamentha.com

**By Post:**

Mirabela Applications  
C/- KordaMentha  
GPO Box 2523  
Sydney NSW 2001  
Australia

### 1.2 Conditional Offers

The Offers under this Prospectus are conditional upon:

- (a) the Court granting leave to transfer of approximately 98.2% of Shares pursuant to Section 444GA of the Corporations Act;
- (b) an amendment of the Bradesco Facility is effected to the satisfaction of the Deed Administrators;
- (c) the waiver of any enforcement under the Caterpillar Facility granted on 28 February 2014 continues in effect to the satisfaction of the Deed Administrators;
- (d) the Deed of Amendment and Acknowledgement is entered into to the satisfaction of the Deed Administrators;
- (e) either:
  - (i) the Majority Existing Noteholders have received a written notice under FATA and/or the Foreign Investment Policy from the Treasurer (or his delegate) stating



## MIRABELA NICKEL

that, or to the effect that, the Commonwealth Government does not object to the transfer of the Transfer Shares, the issue of Convertible Notes and the issue of Rollover Shares, Fee Shares and shares to be issued on conversion of the Convertible Notes (**FIRB Transaction**), either without condition or on terms acceptable to the Deed Administrators; or

- (ii) following notice of the FIRB Transaction having been given by or on behalf of the Majority Existing Noteholders to the Treasurer under FATA, the Treasurer ceases to be empowered to make any order under Part II of FATA because of the expiry of the applicable statutory waiting period; and
- (f) Relief has been obtained in a form satisfactory to the Deed Administrators; and
- (g) the Company receives funds in respect of the Convertible Notes to the satisfaction of the Deed Administrators.

If the conditions are not satisfied or where possible, waived by 31 July 2014, no Offer Securities will be issued, and Subscription Monies will be refunded in full without interest as soon as practicable thereafter in accordance with the Corporations Act. The conditions under Sections 1.2(a) and 1.2(f) may not be waived. The Deed Administrators will also call a meeting of creditors at this time to consider the winding up of the Company.

### 1.3 Subscription Monies and key dates

Key date	Offers		
	Secured Offer	Fee Offer	Rollover Offer
Prospectus lodged at ASIC	26 May 2014	26 May 2014	26 May 2014
Opening Date	9 June 2014	9 June 2014	9 June 2014
Closing Date	13 June 2014	13 June 2014	13 June 2014
Allotment**	20 June 2014	20 June 2014	20 June 2014
Despatch of holding statement/certificate/evidence of issue**	20 June 2014	20 June 2014	20 June 2014

Until issue and allotment of the Offer Securities under the Offers and subject to the conditions set out in Section 1.2 being met or, where possible, waived, the Subscription Monies will be held in trust in a separate bank account opened and maintained for that purpose only. Any interest earned on Subscription Monies will be for the benefit of the Company and will be retained by it irrespective of whether allotment of the Offer Securities takes place.





## MIRABELA NICKEL

### 1.4 Purpose of the Offers and use of proceeds

It is envisaged that the US\$55 million raised from the issue of Convertible Notes will be used for:

- (a) expenses of the issue, including the Deed Administrators' remuneration and disbursements;
- (b) payment of all costs and expenses incurred during the deed administration of the Company, to this extent, it is envisaged that the Deed Administrators will retain approximately US\$5 million to meet such costs and expenses, with any surplus fund returned to the Company;
- (c) working capital, including funding any losses;
- (d) capital expenditures;
- (e) expenses of the issue;
- (f) payment of debts; and
- (g) general corporate purposes.

The use of funds will ultimately be largely determined by the board of the Company after the Implementation Date rather than the Deed Administrators as the Deed Administrators will not be in control of the Company once the conditions in Section 1.2 are met or, where possible, waived and the DOCA effectuated. The board has a duty to act in the best interests of shareholders.

To the extent that more than US\$55 million new cash is raised from the issue of Convertible Notes, the amount of such excess will be applied to repay in cash the debt obligations under the Interim Loan (including fees and interest) and will therefore not contribute to Mirabela's cash reserves.

### 1.5 ASX listing

The Company will not apply to ASX for Official Quotation of the Convertible Notes offered under this Prospectus. However, the Company will apply to ASX for Official Quotation of Shares offered under this Prospectus, including Shares issued on conversion of Convertible Notes.

Application for Official Quotation of any Share offered and allocated under the Fee Offer or Rollover Offer will be made to ASX within seven days following the date of this Prospectus.

If ASX does not grant Official Quotation of the Share offered under the Fee Offer or the Rollover Offer within three months after the date of this Prospectus (or such period as varied by ASIC), the Company will not allot the relevant Shares.



## MIRABELA NICKEL

A decision by ASX to grant Official Quotation of Shares is not to be taken in any way as an indication of ASX's view as to the merits of the Company, or the securities now offered for subscription.

### Market prices of Shares on ASX

Shares have been suspended from quotation since 9 October 2013, accordingly there is no sale price history for the Shares since that date. The last trading price of Mirabela Shares on ASX was \$0.016 but as disclosed to ASX and in this Prospectus, much has occurred since that date.

### 1.6 Taxation implications

Potential Applicants should obtain independent advice on the taxation implications arising out of their application for Offer Securities.

### 1.7 Privacy

The Company collects information about each Applicant provided on an Application Form for the purposes of processing the application and, if the application is successful, to administer the Applicant's security holding in the Company.

By submitting an Application Form, each Applicant agrees that the Company may use the information in the Application Form for the purposes set out in this privacy disclosure statement and may disclose it for those purposes to the share registry, the Company's related bodies corporate, agents, contractors and third party service providers (including mailing houses), the ASX, ASIC and other regulatory authorities.

Collection, maintenance and disclosure of certain personal information is governed by legislation including the *Privacy Act 1988* (Cth) (as amended), the Corporations Act and certain rules such as the ASX Settlement Operating Rules.

If an Applicant becomes a security holder of the Company, the Corporations Act requires the Company to include information about the security holder (including name, address and details of the securities held) in its public register. This information must remain in the register even if that person ceases to be a security holder of the Company. Information contained in the Company's registers is also used to facilitate distribution payments and corporate communications (including the Company's financial results, annual reports and other information that the Company may wish to communicate to its security holders) and compliance by the Company with legal and regulatory requirements.

If you do not provide the information required on the Application Form, the Company may not be able to accept or process your application.

An Applicant has a right to gain access to the information that the Company holds about that person subject to certain exemptions under law. A fee may be charged for access. Access requests must be made in writing to the Company's registered office.



# MIRABELA NICKEL

## 2 Background

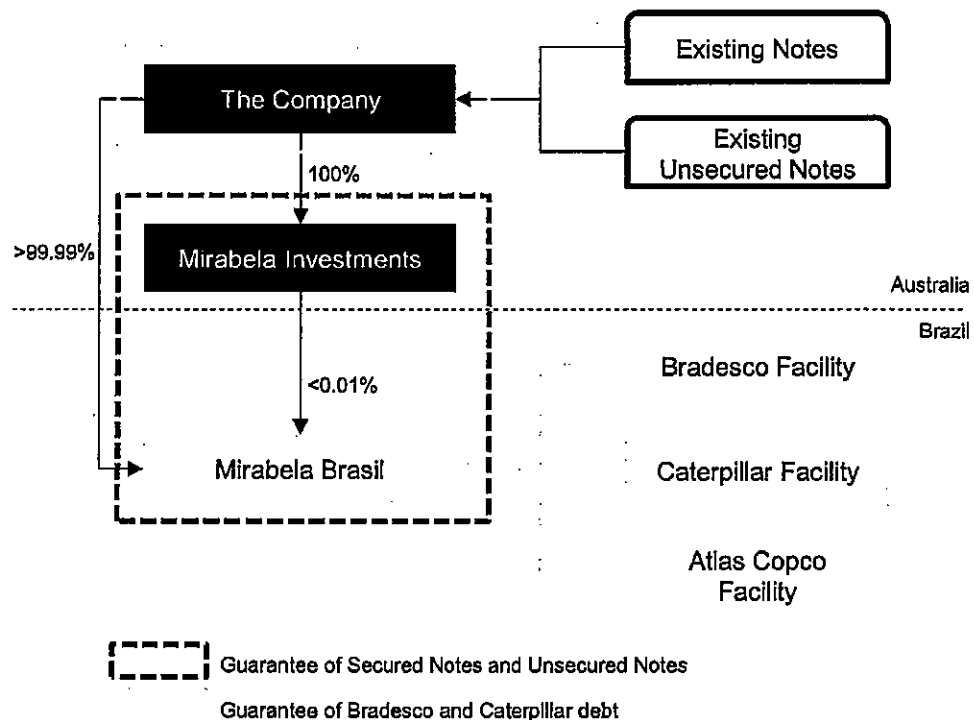
### 2.1 Company overview and update

#### (a) Overview

The Company is an ASX listed (ASX code: MBN) company which together with its wholly-owned subsidiary Mirabela Investments, holds 100% of the quotas in Mirabela Brasil, a limited liability company entity registered in Bahia State, Brazil.

To adhere to this rule, Mirabela Investments holds a nominal interest in Mirabela Brasil. Mirabela Investments does not have any other assets, nor does it have any employees or trade creditors. Mirabela Investments does however guarantee the Interim Loan and the Existing Notes.

The diagram below shows a simplified chart depicting the current equity and debt structure of the Mirabela Group.



Mirabela Brasil owns and operates a nickel sulphide mine (Santa Rita mine) located in Bahia State, Brazil. The Santa Rita mine is located approximately 340km southwest of Salvador, the capital of Bahia State, Brazil via road and is within close proximity to road and port infrastructure. The mine is 140 kilometres from the port of Ilhéus, from where it ships nickel concentrate to Norilsk.

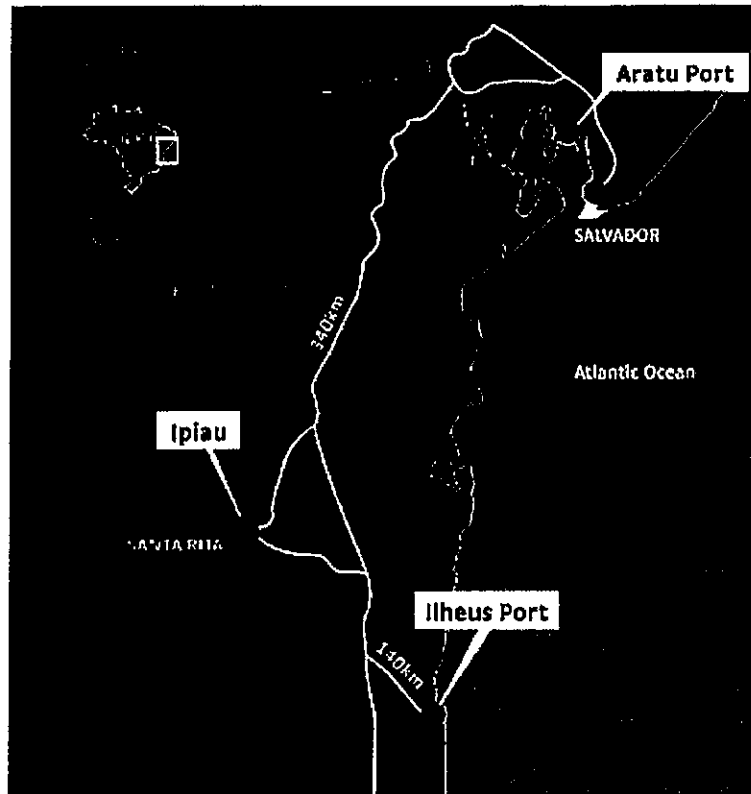
The Santa Rita mine covers the Fazenda Mirabela intrusion which has an ovoid exposed area of approximately 7km<sup>2</sup>. The mineralisation zone extends from one side of the Fazenda Mirabela



## MIRABELA NICKEL

Intrusion to the other, with widths up to 140 metres and averaging 40 metres over a strike length of 2 kilometres.

### Location of Santa Rita mine



### Reserves and resources

The Company's annual review date of its Mineral Resources and Ore Reserve statements for the purposes of clause 15 of the 2012 edition of The JORC Code is 31 December 2013.

#### Ore Reserves

The total Ore Reserve for the Santa Rita mine is summarised in the below table:

#### Santa Rita Proven and Probable Ore Reserves – Open Pit (as at 31 December 2010)

Category	Mt	Ni (%)	Cu (%)	Co (%)	Pt(ppb)
Proven	16.7	0.57%	0.14%	0.016%	101
Probable	142.6	0.52%	0.13%	0.015%	85
<b>Total Ore Reserves</b>	<b>159.3</b>	<b>0.52%</b>	<b>0.13%</b>	<b>0.015%</b>	<b>86</b>



## MIRABELA NICKEL

(Contained Ni – 829,800t; Ni price - US\$8.00/lb; Strip ratio – 5.0 to 1; Weighted average recovery – 68.7%Ni)

### Santa Rita Proven and Probable Ore Reserves – Open Pit (Comparison)

Category	Mt	Ni (%)	Cu (%)	Co (%)	Pt(ppb)
Total Ore Reserves mined up to 31 December 2012	12.8	0.49%	0.13%	0.015%	186 <sup>(1)</sup>
Total Ore Reserves (as at 31 December 2012)	146.5	0.52%	0.13%	0.015%	86
Total Ore Reserves mined in 2013	6.3	0.46%	0.10%	0.015%	234 <sup>(1)</sup>
Total Ore Reserves (as at 31 December 2013)	140.2	0.52%	0.13%	0.015%	86

(1) Based on simple average of the quantity sold to Norilsk Nickel Harjavalta and Votorantim Metals Niquel S.A during the relevant period.

Between 1 January 2013 and 31 December 2013 a total of 6.3 Mt of ore was mined from the Ore Reserves at an average nickel grade of 0.46%. As at 31 December 2013, a total of 19.1 Mt of ore has been mined from the Ore Reserves at an average nickel grade of 0.48%.

### Mineral Resources

The total remaining Mineral Resources for the Santa Rita mine as of 31 December 2013 are summarised in the table below and compared with the total remaining Mineral Resources as at 30 September 2012. From 1 October 2012 to 31 December 2013 a total of 10.7 Mt of Measured and Indicated material was mined from the Open Pit Mineral Resources. No Inferred material was mined from either the Open Pit or Underground Mineral Resources during this period.



## MIRABELA NICKEL

### Santa Rita Mineral Resources Table – Comparison

Mineral Resource as at 30 September 2012				
Open Pit <sup>(1,2)</sup> as at 30 September 2012	Measured	16.0	0.50	0.10
	Indicated	188.0	0.49	0.13
	<b>Meas. &amp; Ind.</b>	<b>204.0</b>	<b>0.49</b>	<b>0.12</b>
	Inferred	79.6	0.56	0.15
Underground <sup>(3,4)</sup> as at 30 September 2012	Inferred	77.0	0.78	0.22
Mineral Resource remaining As at 31 December 2013				
Open Pit <sup>(5,6)</sup> as at 31 December 2013	Measured	13.6	0.51	0.10
	Indicated	179.7	0.50	0.13
	<b>Meas. &amp; Ind.</b>	<b>193.3</b>	<b>0.50</b>	<b>0.13</b>
	Inferred	79.6	0.56	0.15
Underground <sup>(7,8)</sup> as at 31 December 2013	Inferred	77.0	0.78	0.22
Mineral Resource mined between 1 October 2012 and 31 December 2013				
Open Pit	Measured	2.4	0.46	0.10
	Indicated	8.3	0.45	0.10
	<b>Meas. &amp; Ind.</b>	<b>10.7</b>	<b>0.45</b>	<b>0.10</b>
	Inferred	Nil	-	-
Underground	Inferred	Nil	-	-

(1) Based on a cut-off grade of 0.13% recoverable nickel.

(2) Remaining as of end of September 2012.

(3) Based on an average cut-off grade of 0.50% nickel.

(4) As of February 2009, re-reported using base of pit from end of September 2012.

(5) Based on a cut-off grade of 0.13% recoverable nickel.

(6) Remaining as of end of December 2013.

(7) Based on an average cut-off grade of 0.50% nickel.

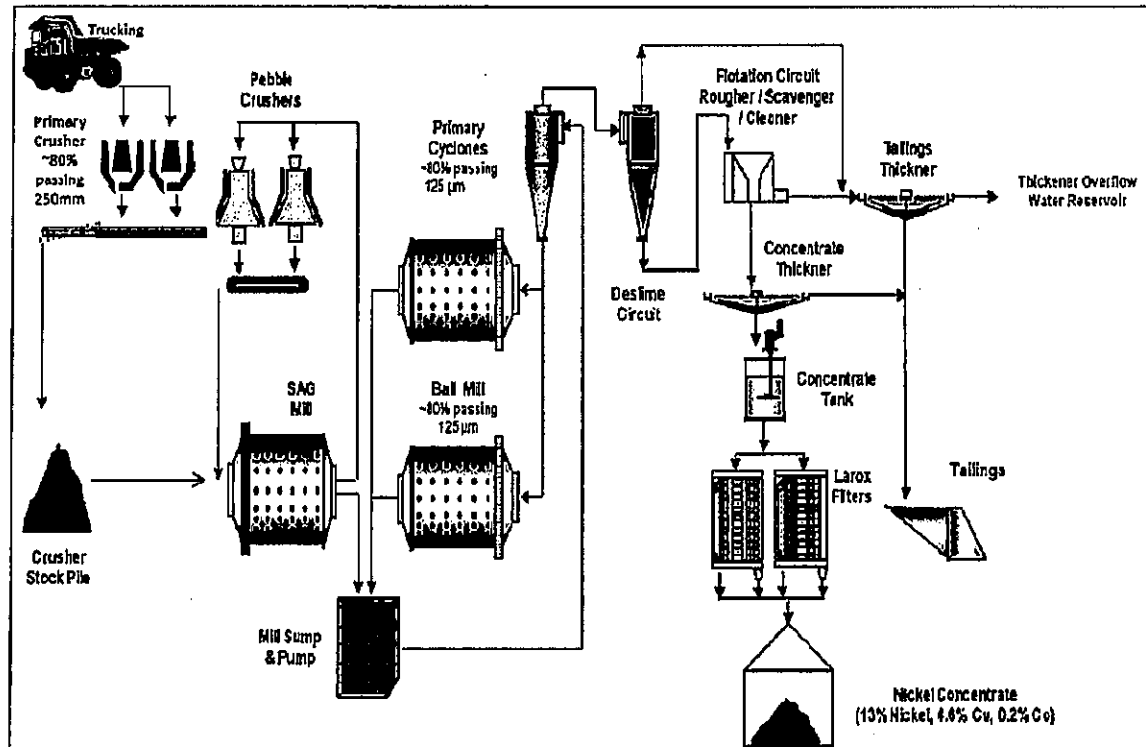
(8) As of February 2009, re-reported using base of pit from end of December 2013.

The Santa Rita mine employs a traditional flotation system to concentrate nickel recoveries. The mining and concentration process is set out below.



## MIRABELA NICKEL

### Production process map



#### (b) Financial performance

The Mirabela Group recorded a material loss in the first quarter of 2014 and required significant funding to continue mining operations and fund necessary capital expenditure. As at 31 December 2013, accumulated losses totalled \$1,047.470 million.

#### (c) Current mine plan

In order to cut costs, Mirabela Brasil implemented a new optimised mine plan in December 2013. The current plan is based on total material movements (i.e. including waste) of approximately 25 MT p.a. for the financial years ending 31 December 2014 and 31 December 2015 (before ramping up to approximately 50MT p.a. for the financial year ending 31 December 2016) and has focused drilling and blasting activity on those areas of the mine that have lower strip ratios and higher ore content.

The current Santa Rita mine plan assumes a mine life of approximately 20 years. The current mine plan may change in the future.

#### (d) Material capital works – tailings dam

The Santa Rita mine's tailings dam is near its current capacity and material capital expenditure works are underway to lift the height of the dam wall to accommodate additional solids and waste water from the processing plant.

It is expected that 3 stages of works will be required. Stage 1 of the works is currently behind schedule by approximately 9 months and Stages 2/3 are delayed by 7 months due to a delayed start in works. The processing plant is also currently lacking appropriate levels of reclaimed tailing dam water in part due to a lack of space, time and depth for process water to settle suspended solids.



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If there is significant rainfall, Mirabela Brasil holds a licence to discharge excess water at a designated control discharge point. However, the excess water is not clean and the discharge of such excess water may potentially pose environmental risks and damages may potentially apply.

The Mirabela Group is currently operating at a loss and absent significant funding, would be unable to complete the required work to lift the height of the tailings dam which could pose a risk to continued operations and compliance with environmental and Mirabela Brasil's operating license conditions.

### (e) Mining tenements

The mining concession for the Santa Rita mine is held by Companhia Baiana de Pesquisa Mineral (CBPM), a Brazilian state owned entity. Mirabela Brasil's mining rights are subject to a 20 year mining lease agreement with CBPM which commenced on March 2008.

The mining lease agreement can be extended through agreement with CBPM.

### (f) Operating licence

Mirabela Brasil holds an operating licence for the Santa Rita mine, issued by the Bahia State Environmental Board. This operating licence was issued in September 2009 for a period of four years. Mirabela Brasil has applied for a renewal of the licence. We understand that the current licence has been automatically extended for such period of time as is required to assess Mirabela Brasil's renewal application.

Mirabela Brasil is working with the Bahia State Environmental Board in relation to the renewal. The Company has no reason to consider the renewal will not be granted, but there is no guarantee of renewal and new or different conditions may apply to any renewed operating licence.

### (g) Additional tenements and exploration rights

Mirabela Brasil has two primary exploration projects near the Santa Rita mine site, being the Peri-Peri and Palestina intrusions, which are approximately 2km and 25km from the Santa Rita mine respectively. In addition, Mirabela Brasil has filed applications for or has been granted exploration rights for an additional 114 exploration rights. There is no guarantee that the applications for exploration rights will be granted to Mirabela Brasil.

Mirabela Brasil does not attribute any value to the additional tenements or exploration rights. The primary exploration strategy currently consists of maintaining certain existing tenements in good standing and compliance by spending the minimum amounts on capital expenditure, and the release of tenement areas that management believe have a low perspective.

### (h) Taxes

Mirabela Brasil entered into a short-term offtake agreement with an international trading house (ITH) which is not domiciled in Brazil. As a result of 100% of the Company's production being exported, certain Brazilian state and federal tax credits that were previously considered available to Mirabela Brasil are not available going forward. These tax credits can only be claimed where there are corresponding domestic sales. Mirabela Brasil has obtained Brazilian tax advice in relation to this issue. The unavailability of the tax credits will have an ongoing material negative impact on the cash flow of Mirabela Brasil and the underlying value of Mirabela's assets.

Mirabela Brasil currently holds input tax credits in respect of the Tax on Circulation of Goods (ICMS) (a tax levied by the State of Bahia in respect of services and merchandise) of approximately of 17,000,000 reais as of April 2014. It is the intention of Mirabela Brasil to try to set-off part of such





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credits against a tax debt described in the first bullet point below, and to offer part of such tax credits as a guarantee for the judicial lawsuit it intends to file against the unfavourable decision described in the second bullet point below. Alternatively, should the above-mentioned set-off and/or guarantee strategies not be feasible, Mirabela Brasil would consider selling its current input tax credits and future input tax credits (if any) to third parties, subject to approval by the Bahia state tax authority. These courses of action may or may not be pursued, or successful. The financial information provided in this Prospectus assumes that none of those tax credits will be realised, sold or otherwise recovered. Mirabela Brasil is awaiting a decision in relation to tax assessments for the following material tax assessment notices relating to the underpayment of Tax on the Circulation of Goods (ICMS):

- A claim initiated against Mirabela Brasil on 22 December 2010 in the amount of 8,783,896.39 reais. Mirabela Brasil obtained a partially favourable decision by the relevant administrative review body. Mirabela Brasil is currently seeking to defend the claim in the relevant Court. Mirabela Brasil's external legal counsel has indicated that there is a possibility that it may lose its appeal;
- A claim initiated against Mirabela Brasil on 26 September 2012 in the amount of 4,833,635 reais. On 20 November 2013, Mirabela Brasil received an adverse judgement in the relevant administrative review body. Mirabela Brasil is seeking to have the matter heard in the relevant Court. Mirabela Brasil's external legal counsel has indicated that there is a possibility that it may lose its appeal;
- A claim initiated against Mirabela Brasil on 30 September 2013 in the amount of 5,612,441 reais. Mirabela Brasil is currently waiting for a decision on its appeal from the relevant administrative body. Mirabela Brasil's external legal counsel has indicated that there is a possibility that it may lose its appeal.
- A claim initiated against Mirabela Brasil on 19 November 2012 in the amount of 5,398,926 reais. Mirabela Brasil is currently waiting for a decision on its appeal from the relevant administrative body. Mirabela Brasil's external legal counsel has indicated that there is a possibility that it may lose its appeal.

### (i) Australian Income tax, Withholding Tax (WHT) and Goods and Services Tax (GST)

The Proposed Recapitalisation Plan outlined in Section 2.3 of this Prospectus gives rise to certain current and potential future Australian income tax, WHT and GST implications for the Company. The key considerations are discussed below and have been included in advice from Ernst & Young. The Company is currently working with Ernst & Young to conclude on certain aspects of these matters.

#### *Income tax*

- The key Australian income tax implication for the Company will be the operation of the Commercial Debt Forgiveness (CDF) provisions in the Income Tax Assessment Act 1997 in relation to the extinguishment of the claims of the Existing Noteholders.
- Prima facie the operation of the CDF rules will likely result in an Australian cash tax liability to the Company of approximately AU\$ 3 million in the income tax year ending 31 December 2014. Current calculations indicate the Company may be able to shelter and reduce a portion of this tax liability. However any potential shelter is yet to be fully determined, as it is subject to the income and expenditure profile of the Company over the course of the remainder of the current income year.
- There is a risk that the assumptions and estimates taken into account in these calculations may prove to be inaccurate. There is also a risk that there is a retrospective change in the tax law or



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a change in interpretation or application of an existing tax law as it applies to the Proposed Recapitalisation Plan or other circumstances of the Company. In either of these circumstances, there is a risk that a material Australian income tax liability could arise to the Company as a result of the Proposed Recapitalisation Plan.

- As a result of the CDF rules applying, the Company will also have certain material opening tax attributes eliminated (such as carried forward Australian tax losses). As a result of this, there is a risk that the Company may pay higher Australian income tax in future years.
- Certain aspects of the Proposed Recapitalisation Plan have the potential for other transaction costs (including potential for WHT and GST input tax credit denial), as discussed below.

### *WHT*

The satisfaction of the SNSD obligations under the Proposed Recapitalisation Plan may trigger the imposition of WHT on the non-principal components of the SNSD liability if the conditions of the interest WHT exemption within Section 128F of the Income Tax Assessment Act 1936 are not met.

### *GST*

Where expenses incurred by the Company in relation to the Proposed Recapitalisation Plan relate to the making of input taxed financial supplies, there can be restriction on claiming input tax credits due to the Financial Acquisitions Threshold.

### **(j) Mining lease with CBPM**

The Mirabela Group has the right to mine on two adjoining mining concessions (Santa Rita and Serra Azul) through a contractual arrangement between Mirabela Brasil and CBPM (a Brazilian state owned entity who is the registered holder of the two mining concessions).

The Santa Rita mining concession encompasses the Santa Rita deposit currently being mined. The Serra Azul mining concession encompasses a portion of the Santa Rita deposit as well as a lateritic nickel and separate clay deposit. The grant of the Serra Azul mining concession will allow access to the stage 7 mining plan and to the clay which is required for the current tailings dam lift.

Granting of the Serra Azul mining concession was published in the Brazilian Official Diary on 11 March 2014. Under the terms of the agreement with CBPM in respect of Serra Azul, Mirabela Brasil is required to pay to CBPM a payment of approximately 1 million reais. The parties have agreed that the payment will be made over a 9 month period. Payment of the initial 30% of the premium (298,048.59 reais) occurred on 21 May 2014.

Mirabela Brasil is also required to pay royalty over the sale of production to CBPM under the lease agreement in respect of these two mining concessions.

CBPM has a right to terminate the mining leases if Mirabela Brasil experiences insufficiency of funds to finance its mining operations or is declared bankrupt and liquidated. The filing for EJ and the EJ Process per se would not give CBPM the right to terminate the mining leases.

If CBPM exercises its rights to terminate, it would need to organise a new tender for the mining lease which is expected to be long and costly. If the mining lease is terminated, Mirabela Brasil would retain:

- its ownership and/or occupation rights (as applicable) to the underlying land holding at the Santa Rita mine site; and



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- the obligation to rehabilitate the land.

Furthermore, in this scenario, as owner of the land in which the Santa Rita mine is located, Mirabela Brasil would be entitled to receive a landowner's royalty from the new operator of the Santa Rita mine. Mirabela Brasil is seeking advice as to whether plant and equipment at the Santa Rita mine would be transferred to the holders of the new mining concession. However, Mirabela Brasil would not have the right to oppose the occupation of the land by the new operator of the mine, in view of the existing mining servitude in favour of the mine operation.

### (k) Environmental issues

All phases of Mirabela Brasil's operations are subject to environmental regulation in the jurisdiction in which it operates. These regulations mandate, among other things, the maintenance of air and water quality standards and land reclamation. They also set limitations on the generation, transportation, storage and disposal of solid and hazardous waste.

The state of the tailings dam currently poses an environmental risk, should the dam fail, leak or overflow, which may result in damage to the environment.

In late 2013, Mirabela Brasil received a fine of 100,000 reais which was issued by the Institute of the Environment and Water Resources for alleged "failure to comply with the legal or regular requirements when properly notified by the competent environmental authority, in due time, aiming to stabilize, fix or adoption of measures". The fine relates to Mirabela Brasil's alleged failure to respond to a notification issued by the Institute of the Environment and Water Resources requesting clarifications and the submission of monitoring reports. Mirabela Brasil filed an administrative defence on 14 November 2013. It has also held a meeting with the Inspection Department to discuss the fine on 15 May 2014 and is awaiting its decision (Mirabela Brasil does not know the timing for the decision to be taken nor has any anticipation as to the outcome of the matter).

On 10 April 2014 there were two potential environmental breaches in relation to water discharge from the return water pipeline from the tailings dam to the plant and tailings dam water discharged via the spillway.

The Mirabela Group is currently assessing the impact of the environmental breaches and anticipate at a minimum a fine will need to be paid to INEMA.

Other general environmental risks to the operations of Mirabela Brasil include soil, water and/or air contamination, pollution, deterioration of the land, spills (including hydrocarbon or other chemical spills) and degradation of flora or fauna.

### (l) Employees

On 15 April 2014, as a result of uncertainty regarding further funding to support the ongoing operations of the Santa Rita mine and in order to preserve cash reserves, Mirabela Brasil advised its workforce and relevant Brazilian authorities that it intended to impose forced leave on approximately 320 staff from 30 April 2014. The forced leave was cancelled on 25 April 2014 following the commitment of the Ad-hoc Group to provide additional funding support.

The Mirabela Group is experiencing a higher level of staff turnover, and currently has critical staff vacancies across the Mirabela Group. Replacements will be difficult to secure and train quickly, and if a key officer of Mirabela Brasil were to leave, it might significantly impact the day to day running of the Santa Rita mine and the financial function of the Mirabela Group. Staff shortages, especially at senior levels, can impact internal controls.



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Mirabela Brasil is in discussions to negotiate certain terms of collective bargaining agreement (collective bargaining agreements are re-negotiated in full every two years) that is applicable to all employees of Mirabela Brasil. Negotiations typically centre on a claim for salary increases at least commensurate with inflation. There are also negotiations on health care entitlements, working hours and workplace entitlements. Collective bargaining negotiations between Mirabela Brasil and the employees' union have been suspended until 30 June 2014. There is no guarantee on the outcome of negotiations. A meeting of representatives of the employees was held on 15 May 2014 in which the employees agreed to the suspension of negotiations until 30 June 2014.

Mirabela Brasil has an outstanding fine of 1,000,000 reais issued by the Labour Court Ministry for failing to have the statutory minimum percentage of disabled employees. Mirabela Brasil currently employs disabled workers above the minimum statutory level and is discussing the fine with the Labour Ministry.

### **(m) Credit restrictions**

The recent financial position of the Company affects the bargaining power of the Mirabela Group in contract negotiations, and counterparties have sought to restrict credit terms. For example, purchase of diesel fuel under the diesel supply contract between Mirabela Brasil and supplier Ipiranga Produtos de Petróleo S.A. is now being prepaid. This limits the Mirabela Group's flexibility and means several contracts are regularly coming up for discussion or confirmation, which increases risk and requires management time and focus.

### **(n) Offtake tender process**

In November 2013, Votorantim, one of Mirabela Brasil's two offtake partners at the time, claimed that owing to a force majeure event it is not obligated to purchase nickel concentrate pursuant to the offtake agreement between Votorantim and Mirabela Brasil.

During the fourth quarter of 2013, Mirabela Brasil secured a short-term offtake agreement with ITH. The terms of this short-term offtake agreement are unfavourable relative to the Votorantim offtake agreement. The short-term offtake agreement with ITH has been extended to 30 June 2014. Due to ongoing operational issues, the shipping schedule to ITH is behind schedule and is expected to be shipped in August 2014.

The Company has been in preliminary discussions with other potential offtake parties for the 50% of production Votorantim was buying as part of a longer term offtake agreement. The Company and Mirabela Brasil's participation in a tender processes for long-term nickel concentrate offtake agreements has been placed on hold.

Mirabela Brasil's other offtake partner at the time, Norilsk, continues to take 50% of the nickel concentrate produced by Mirabela Brasil in accordance with their offtake agreement. The Norilsk offtake agreement expires on the earlier of 31 December 2014 or the date on which 66,500 tonnes of contained nickel has been delivered to Norilsk. Current expectation is that the Norilsk offtake agreement will continue until the third quarter of 2017.

If the Mirabela Group is unsuccessful in negotiating a continuation of its short-term offtake, or a long-term offtake, on appropriate terms, there is significant risk that the Mirabela Group will not be economically viable.

### **(o) Outsourcing**

Mirabela Brasil has a contract with U&M Mineração e Construção S.A. (U&M) for mine excavation services and haulage equipment. This may be followed by further outsourcing of ancillary mine



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services including: dozing, grading and secondary rock breaking. Drilling and blasting activities remain with Mirabela Brasil. U&M are also under agreement with Mirabela Brasil to undertake the second phase of the tailings dam lift. See Section 4.3 for further details.

### (p) Property

Mirabela Brasil is the registered title owner of a number of rural land comprising and surrounding the Santa Rita nickel deposit and three residential properties in the nearby towns of Ipiaú and Itagibá. In addition, Mirabela Brasil has possessory or hereditary rights but does not have registered title over a number of properties due to a number of outstanding issues, including probate issues relating to certain parcels of land and issues with locating certificates of title.

Mirabela Brasil is taking steps to regularize the ownership of rights and related boundary and survey issues. Under Brazilian law title to a real estate property is only acquired upon registration of the ownership title (i.e. public deeds, judicial decisions, etc.) with the real estate registry. Given the current restrictions imposed by Brazilian law applicable to the acquisition of ownership of rural properties by companies controlled by foreigners, Mirabela Brasil may not be able to register the ownership titles over those properties in respect of which it holds a right to acquire ownership in the future.

There is one civil litigation property claim against Mirabela Brasil where the claimants (former landholders of one of the farms purchased by Mirabela Brasil) are alleging that Mirabela Brasil did not pay fair value for the relevant land the subject of the claim. Mirabela Brasil is defending the claim in full and has filed its defence with the court. The parties are waiting for the claim to be processed by the court.

One local resident commenced an action claiming property damage as a result of the mining operations at the Santa Rita mine. This plaintiff has since formally submitted a petition to the court withdrawing the claim and all future claims in full. Mirabela Brasil is waiting for the petition to withdraw to be processed and finalised by the court.

In 2012 Mirabela Brasil was served with notices of provisional right of possession (**Injunction**) and writ of summons and notification order (**Notification Order**) in respect of the compulsory acquisition of 8.35ha of land from Fazenda Boa Esperança, 4.10ha of land from Fazenda Massaranduba and 0.42ha of land from Fazenda Bela Flor. Fazenda Boa Esperança and Fazenda Massaranduba and Fazenda Bela Flor are three farms owned by Mirabela at the Santa Rita mine site, Brazil. The Injunctions and Notification Orders were served by Valec-Engenharia, Construções e Ferrovias S/A (**Valec**), a Brazilian federal public company.

The land the subject of the compulsory acquisition will be used to construct a rail line as part of the larger government east-west rail project currently being constructed between Ilhéus, in the State of Bahia, and Figueirópolis, in the State of Tocantins. Valec is responsible for building the east-west rail line. The three Injunctions give Valec the provisional right to enter onto the compulsory acquired land and to modify that land. Valec does not yet own the land, it is still owned by Mirabela Brasil. However, all of Mirabela Brasil's rights on the land, the subject of the compulsory acquisition, are now provisionally removed.

Mirabela Brasil has a number of concerns with the location of the proposed rail line. Key concerns are mine site access and whether there will be a level crossing at the mine gate or an over/under pass and, significantly, overlap of the proposed rail line with the planned future tailings dam perimeter. The later will place limitations on any eastward expansion of the tailings dam as mine production progresses.

Mirabela Brasil has responded judicially to the Injunctions and Notification Orders. In addition to contesting the value of the compensation, Mirabela Brasil appealed the Injunction submitting that it



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should be suspended. Mirabela Brasil's request for suspension against the Injunction was denied. This means that Valec can undertake the construction works while the court process is proceeding. The judicial defence does not prevent Valec from constructing the rail line.

Valec has now commenced construction works for the rail line on the land which is subject to the Injunctions. Mirabela Brasil is experiencing interference issues from the works and consequently has filed a petition with the court requesting that Valec be ordered to address a number of important safety and construction issues with Mirabela Brasil. Also, representatives from Mirabela Brasil are currently seeking a meeting with key Valec representatives. It is possible that the rail project will impact operations at the Santa Rita mine in both the near and distant future.

There are also two easements over Mirabela Brasil's rural land, namely:

- a north-south trending easement for a gas pipeline owned by Petróleo Brasileiro S.A. (Petrobrás) in the eastern portion of Mirabela Brasil's rural land holding. This gas pipeline interferes with future eastward planned expansion of the tailings dam; and
- a north-south trending utility easement owned by Petrobrás in the western land area with no impact on current or future planned mining operations.

### (q) Exports

Mirabela Brasil is currently upgrading its bagging procedures for exports to ITH and Norilsk in order to comply with applicable standards (including international shipping standards and/or Brazilian navy standards) at the Ilhéus, Salvador and Aratu ports. A storage shed at the Ilhéus port was an issue but is no longer being used. The Labour Ministry may yet inspect bagging and storage arrangements at the Santa Rita mine and the Ilhéus port. The new bags have been positively assessed by private risk management assessors and are expected to be available to Mirabela Brasil in June 2014.

While there is limited shipping anticipated prior to the new bags becoming available, there is a risk that stevedores will refuse to load the existing bags. It is possible to partially mitigate that risk with the use of container shipping.

There are some delays in deliveries to ITH and Norilsk (and therefore delays in expected revenues) as a result of reduced production due to ongoing operational issues.

### (r) Litigation

As mentioned in Section 2.1(n) above, in November 2013, Votorantim claimed that owing to a force majeure event it is not obligated to purchase nickel concentrate pursuant to the offtake agreement between Votorantim and the Mirabela Group.

Mirabela Brasil is currently in arbitration proceedings with Votorantim in relation to the validity of the alleged force majeure and is requesting compensation for loss.

There is an extrajudicial dispute between Mirabela Brasil and Terrafácil Serviços de Terraplanagem Ltda. (Terrafácil) in relation to payment of a demobilisation fee to Terrafácil pursuant to a services agreement for stage one of the tailings dam lift. In addition, Terrafácil alleges that further payments are due by Mirabela Brasil for additional works conducted (and associated liabilities) in relation to that work. The parties have not been able to settle the dispute amicably so far and there is no guarantee that the dispute with Terrafácil will be settled on favourable terms or at all.

There is a risk that Terrafácil may take action against Mirabela Brasil in court by requesting an injunction blocking access to the relevant area of the tailings dam in order to ensure that Mirabela



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Brasil keeps the stage one construction area of the tailings dam free of any intervention by third parties, so that Terrafácil may judicially prove the extent of work it completed. While the risk of a judge granting a request of this kind to Terrafácil is considered remote, particularly without hearing Mirabela Brasil's point of view, should Terrafácil take such action this could place additional pressure on the capacity of the tailings dam at the Santa Rita mine which will in turn affect the operations and nickel production.

Mirabela Brasil is also currently a party to disputes which are not considered material in the context of the Offers, including:

- negotiations with Construtora Barbosa Mello S.A. to finalise a dispute over issues related to construction of the mine;
- civil litigation claims totalling approximately 231,000 reais (as of the end of March 2014);
- subsidiary liability to third party labour claims against contractors who have, or are, working on Mirabela Brasil's mine site totalling approximately 2,000,000 reais;
- a number of labour claims against Mirabela Brasil by former employees totalling approximately 3,500,000 reais (as of the end of March 2014);
- administrative labour processes totalling approximately 1,000,000 reais (as of the end of March 2014);
- administrative environmental processes totalling approximately 150,000 reais (as of the end of March 2014);
- administrative tax claims totalling approximately 27,500,000 reais (as of the end of March 2014);
- general administrative proceedings totalling approximately 50,000 reais (as of the end of March 2014); and
- two appeal processes in relation to a writ of mandamus filed by Mirabela Brasil for the grant of certain exploration applications.

Mirabela Brasil may also become party to some small probate matters in relation to outstanding property title matters, as discussed in Section 2.1(n) above.

There is a hotline for reporting fraud issues and occasionally allegations arise which involve the Mirabela Group or third parties relevant to the business of the Mirabela Group. The alleged fraudulent activities by two previous senior employees of Mirabela Brasil have been investigated by an international accounting firm, but no evidence was ever produced to support the allegations. Allegations have been made against existing Mirabela Brasil directors, but no claims have been substantiated.

As previously referred to, a group of existing shareholders were reportedly considering commencing class action proceedings against the Company. However, the Company has not been served with any notices in relation to this mooted action.

The Company may be at risk of a heightened level of future litigation claims, particularly civil and labour, due to the impact of the ongoing operational and corporate distress.



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### 2.2 Background to the Offers

During 2013, the Mirabela Group experienced difficult trading conditions, including Votorantim calling a force majeure event and ceasing to purchase nickel under its concentrate sales agreement with the Mirabela Group in respect of approximately 50% of the Mirabela Group's nickel concentrate production, and a reduction in global nickel prices.

On 15 October 2013, the Company failed to make an interest payment required under the Existing Indenture. Non-payment of interest for a period exceeding 30 days is an event of default under the Indenture. Subsequent to the failure to pay interest, the Mirabela Group agreed arrangements with a group of Existing Noteholders, Caterpillar and Bradesco, which had the effect of preventing any enforcement action in relation to the current debt facilities, while negotiations between the Company and the creditors progressed.

On 12 November 2013, the Company and Mirabela Brasil entered into a standstill agreement with Caterpillar in respect of the Company's and Mirabela Brasil's obligations under the Caterpillar Facility (**Caterpillar Standstill Agreement**). Pursuant to the terms of the Caterpillar Standstill Agreement, Caterpillar agreed, among other things, not to enforce certain rights under the Caterpillar Facility arising as a result of the Company entering into restructuring discussions with its major creditors. The Caterpillar Standstill Agreement terminates on the earliest to occur of an event of default under the Caterpillar Facility (other than as expressly waived in the Caterpillar Standstill Agreement) or 23 July 2014 (which may be extended up to thirty days with consent of the parties).

On 30 December 2013, the Company announced that certain Existing Noteholders had provided the Interim Loan to give the Company sufficient liquidity to operate its business as discussions progressed with stakeholders regarding the Proposed Recapitalisation Plan.

On 25 February 2014, the Company announced the appointment of the Deed Administrators as voluntary administrators and an agreement among the Ad-hoc Group setting out a framework for the recapitalisation of the Mirabela Group in the form of a plan support agreement dated 24 February 2014 (**PSA**) in relation to the Proposed Recapitalisation Plan for the Company. The PSA is available in the "Investors" Section of the Company's website. Since then, the Deed Administrators have been in negotiations with the Ad-hoc Group, Bradesco and Caterpillar to agree terms on which the business of the Company can continue, and so avoid liquidation of the Company.

On 15 April 2014, as a result of uncertainty regarding further funding to support the ongoing operations of the Santa Rita mine and in order to preserve cash reserves, Mirabela Brasil advised its workforce and relevant Brazilian authorities that it intended to impose forced leave on approximately 320 staff from 30 April 2014. The forced leave was cancelled on 25 April 2014 following the commitment of the Ad-hoc Group to provide additional funding support.

On 15 April 2014, the Company announced to the ASX that it is relying on ASIC Class Order 03/392 which allows externally administered companies to delay lodging their financial report, and in the case of Mirabela, the permitted delay for its 31 December 2013 financial report is 25 August 2014.

On 24 April 2014, Standard & Poor's Rating Services withdrew the Company corporate credit rating at the request of the voluntary administrators.

On 6 May 2014, the Company announced that it had entered into an agreement with Bradesco in respect of the Mirabela Group's obligations under the Bradesco Facility, to extend the date for repayment to March 2018 (**Bradesco Extension Agreement**). Pursuant to the Bradesco





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Extension Agreement, Bradesco agreed, amongst other things, not to take any adverse action as a result of the Recapitalisation Proposal, and to provide in principle support for it.

Mirabela Brasil, as borrower, will grant a security in favour of Bradesco over the receivables under the existing short term offtake agreement with ITH. The security interest is to be released on the earlier of 23 July 2014 and the date that Mirabela Brasil executes an offtake agreement with a third party for 50% of sales of nickel concentrate (provided the nickel concentrate is not the subject of the Norilsk offtake agreement).

On 13 May 2014, the Company announced that it had executed the Mirabela DOCA (see Schedule 7). The Deed Administrators have received informal correspondence from a small group of existing shareholders and have been made aware of a potential class action against the Company. At the time of the Offers there has been no formal court applications or claims filed in respect of any potential claim against the Company nor any formal correspondence with the Deed Administrators in relation to this. It should be noted that the basis of any shareholder claim (which claims are subordinated to the claims of all other creditors in a winding up pursuant to the Corporations Act) will be extinguished on the Mirabela DOCA becoming effective. See the conditions to the Offers made under this Prospectus. Accordingly, if the conditions set out in Section 1.2 of this Prospectus are satisfied or waived, any shareholder class action against the Company will be extinguished. The Offers form part of the framework for the Proposed Recapitalisation Plan.

### 2.3 Proposed Recapitalisation Plan

The Ad-hoc Group is a group of certain institutional investors in Existing Notes. Since the Company's announcement of the appointment of the Deed Administrators as voluntary administrators pursuant to Section 436A of the Corporations Act on 25 February 2014, the Ad-hoc Group has been in discussions with the Deed Administrators in relation to achieving the Proposed Recapitalisation Plan

The Ad-hoc Group put forward the Proposed Recapitalisation Plan to the Deed Administrators for consideration, which included the following features:

- (a) The claims of Existing Noteholders, as well as the subordinated claims of shareholders of the Company, would be fully satisfied and completely discharged pursuant to, and in accordance with, the Mirabela DOCA. The claims of Existing Noteholders against Mirabela Investments (in its capacity as guarantor) would also be fully satisfied and completely discharged pursuant to, and in accordance with, the Mirabela Investments DOCA. There will also be an extrajudicial proceeding in Brazil (to be filed by Mirabela Brasil) in respect of the claims of the Existing Noteholders against Mirabela Brasil (in its capacity as guarantor), but the Proposed Recapitalisation Plan is not conditional on this proceeding being determined. Such proceeding would be filed in the form of a recuperação extrajudicial, which is essentially a pre-packaged restructuring of one or more classes of claims, subscribed by creditors holding more than 60% of the claims of each such class and subsequently submitted to a local court for ratification. An extrajudicial reorganisation plan may cover all of company's debt, or specific groups of claims, except for certain kinds of credits such as taxes, labour claims, loans secured by fiduciary liens (alienação fiduciária), financial leaseings (arrendamento mercantil), or specific types of export financing. Under the Proposed Recapitalization Plan, the extrajudicial reorganisation proceeding in Brazil aims to affect only the Existing Noteholders. Unlike an Australian voluntary administration, there is no moratorium period but when the extrajudicial reorganisation plan is ratified by the court the minority creditors within the affected class(es) are bound thereby. Ratification of the plan may take from 90



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to 500 days, depending on the level of opposition by minority creditors and other legal aspects or procedural events.

- (b) Under the terms of the Mirabela DOCA, each Eligible Existing Noteholder (as defined below) would be entitled to receive its pro rata share of approximately 98.2% of the Shares that are currently issued (**Transfer Shares**), leaving existing holders of Shares (**Existing Mirabela Shareholders**) with a collective equity interest of approximately 1.8% of the Shares that are currently issued. It was proposed that the Transfer Shares would be transferred pursuant to Section 444GA(1)(b) of the Corporations Act. This Section empowers the deed administrator of a deed of company arrangement to transfer shares in a company with the leave of the Court in accordance with Mirabela DOCA. For the purposes of the Mirabela DOCA, **Eligible Existing Noteholder** is a holder of Existing Notes on the date a Court grants leave to transfer of the Transfer Shares under Section 444GA(1)(b) of the Corporations Act (as contemplated by Section 1.2 of this Prospectus).
- (c) Following and conditional on completion of the extrajudicial proceeding in Brazil (**EJ Process**), each Eligible Existing Noteholder will receive its pro rata share of subordinated unsecured notes to be issued by Mirabela (**New Unsecured Notes**) in consideration for cancellation of the guarantee provided by Mirabela Brasil. The New Unsecured Notes will have an aggregate face value of US\$5 million. The completion of the EJ Process is not a condition to the issuance of the Convertible Notes nor to the effectuation of the Mirabela DOCA.
- (d) Each New Capital Party (each of whom is also a member of the Ad-hoc Group) has agreed to subscribe for its Pro Rata share of US\$55 million worth of Convertible Notes subject to subscriptions of other Existing Noteholders.
- (e) Each New Capital Party is entitled to a fee, being its Pro Rata share of the Fee Shares. The entitlement to this fee means it is not necessary for them to provide Subscription Monies in respect of Fee Shares subscribed for under the Fee Offer.
- (f) Each Lender has agreed to the compromise and extinguishment of the approximately US\$60million owing under the SNSD in exchange for subscription for Convertible Notes and cash, to the extent more than US\$55 million is raised from the issue of Convertible Notes. As consideration for agreeing to this compromise, each Lender will be entitled to a fee equal to its Pro Rata share of Rollover Shares.
- (g) To the extent that more than US\$55 million is raised from the issue of Convertible Notes as a result of subscriptions by the Existing Noteholders, the amount of such excess will be applied to repay (fully or partially) in cash the debt obligations under the SNSD of approximately US\$60 million (including fees and interest).
- (h) The Company will seek to have its Shares reinstated for quotation on ASX following implementation of the Proposed Recapitalisation Plan.

### 2.4 Current debt structures

The Mirabela Group currently has the following significant debt structures in place:

- (a) **The Existing Notes.** Mirabela Investments and Mirabela Brasil have guaranteed the obligations of the Company under the Existing Indenture. It is anticipated that on effectuation of the Mirabela DOCA the claims of any Existing Noteholders will be extinguished and compromised in exchange for the transfer of approximately 98.2% of the existing equity in the Company. A summary of the Mirabela DOCA is set out in Schedule 7 (**Material Contracts**). As at 30 April 2014, the Existing Notes had a balance



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of approximately US\$435 million, including approximately US\$35 million of accrued and default interest which will be reduced to zero upon implementation of the Mirabela DOCA.

- (b) **The Interim Loan.** Mirabela Investments and Mirabela Brasil have guaranteed the obligations of the Company under the Interim Loan. The Company and Mirabela Investments have each executed general security arrangements in favour of the security trustee, which grants a security interest in all and after acquired property of the Company and Mirabela Investments respectively. Mirabela Brasil also granted a security interest over certain of its unencumbered assets including but not limited to inventory, movable plant and equipment and interests in land. As at 30 April 2014, the Interim Loan had a balance of approximately US\$60 million including fees and accrued interest of approximately US\$15 million. The Interim Loan has been fully utilised to fund operating losses and capital expenditure. Under the terms of the proposed Deed of Amendment and Acknowledgement the Lenders agree that they will compromise the outstanding debt owing under the SNSD in exchange for subscription of Convertible Notes and cash, to the extent more than US\$55 million is raised from the issue of Convertible Notes.
- (c) **The Caterpillar Facility.** Approximately US\$5 million of the Caterpillar Facility is currently outstanding. The Company has guaranteed the obligations of Mirabela Brasil under the Caterpillar Facility.
- (d) **The Bradesco Facility.** Approximately US\$47.5 million of the Bradesco Facility is currently outstanding. The Bradesco Facility is secured by receivables due from Norilsk and Votorantim and from certain sales agreements between the Mirabela Group and ITH. The Company has guaranteed the obligations of Mirabela Brasil under the Bradesco Facility.
- (e) **The Atlas Copco Facility.** Approximately US\$1.5 million of the Atlas Copco Facility is outstanding. The Company has guaranteed the obligations of Mirabela Brasil under the Atlas Copco Facility.



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### 3 Effect of the Offers on the Mirabela Group

A summary of the expected debt and equity structure of the Mirabela Group following completion of the Offers and implementation of the Proposed Recapitalisation Plan is set out as follows:

Debt	Principal Amount (In millions of US\$)	Maturity	Interest rate per annum
Convertible Notes	115.0	June 2019	9.50% paid-in-kind, compounded semi-annually
Bradesco Facility	47.5	March 2018	LIBOR + 6.00% paid semi-annually
New Unsecured Notes*	5.0	June 2044	1.00% paid-in-kind, compounded annually
Caterpillar Facility	5.0	5 years from the date the Caterpillar Facility is fully utilised	LIBOR + COF + 2.75% paid quarterly
Atlas Copco Facility	1.5	January 2015	6.00% paid semi-annually
Total	174.0		

\*New Unsecured Notes will only be issued upon completion of the EJ Process.

Company Shareholder	Pre-Implementation Date	On Implementation Date, assuming no Convertible Notes Converted	On Implementation Date, assuming all Convertible Notes Converted	Assuming all Convertible Notes Convert on last possible date <sup>(a)</sup>
Existing Shareholders	100.0%	1.7%	1.0%	0.8%
Existing Noteholders	0.0%	92.6%	53.4%	42.8%
Lenders	0.0%	2.0%	1.1%	0.9%
New Capital Parties	0.0%	3.7%	2.1%	1.7%
Convertible Noteholders	0.0%	0.0%	42.3%	53.8%
Total	100.0%	100.0%	100.0%	100.0%

(a) Assumes no Conversion adjustments (see Part 1 of Schedule 1 (Terms and Conditions of the Convertible Notes) and Articles 13.07-13.10 of the New Indenture) having been made on or before that date.



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Note: Capital structure is estimated as at 30 June 2014 pro forma to completion of the Offers and the extrajudicial process date. Figures exclude accrued interest. The information in this Prospectus does not include the impact of any future management equity plan that may be implemented by the Board of directors after the Implementation Date. Any issues of securities under any such incentive plan will dilute other shareholders of the Company.

### 3.1 Effect of the Offers

The principal effects of the Offers on the Company are as follows:

- (a) the Company will issue the Convertible Notes to certain Existing Noteholders;
- (b) the Company will issue the Fee Shares to the New Capital Parties;
- (c) the Company will issue the Rollover Shares to the Lenders; and
- (d) the cash reserves of the Company will increase by approximately US\$55 million immediately after completion of the Implementation Date.

### 3.2 Securities currently on issue

As at the date of this Prospectus, the Company has 876,801,147 Shares, 400,000 unlisted options to subscribe for Shares at \$3.00 per Share (expiring 30 June 2014) and 482,263 performance rights. The Company also has approximately US\$435 million worth of Existing Notes on issue, including accrued and default interest. The Existing Notes do not have the same terms as the Convertible Notes offered under this Prospectus, are not convertible into Shares and will be compromised upon effectuation of the Mirabela DOCA.

All of the Shares issued on conversion of the Convertible Notes will rank equally with the Shares then on issue except as to rights accrued on existing Shares prior to the date of issue of Shares on conversion of the Convertible Notes. Please refer to Section 5.6 of this Prospectus for further information regarding the rights and liabilities attaching to the Shares.



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### 3.3 Consolidated Statement of Financial Position

It is considered that the inclusion of historical financial information relating to periods ended before the year ended 31 December 2013 would be inappropriate in the present financial circumstances of the Mirabela Group as described in this Prospectus.

Set out below is the summary audited consolidated statement of financial position (the "Historical Statement of Financial Position") and the summary pro forma consolidated statement of the financial position (the "Pro Forma Statement of Financial Position") of the Mirabela Group as at 31 December 2013.

The Historical Statement of Financial Position has been extracted from the 31 December 2013 Financial Report which was prepared on a non-going concern basis.

The Pro Forma Statement of Financial Position has been prepared by the Company and sets out the Historical Statement of Financial Position as at 31 December 2013 after adjusting for certain pro forma adjustments identified by the Company to reflect the effect of the Offers and related transactions as if they had occurred on that date (the **Pro Forma Adjustments**). The Pro Forma Adjustments are set out below.

The Pro Forma Statement of Financial Position is not intended to show the latest financial position of the Mirabela Group or the Company. Your attention is drawn to the material movements since 31 December 2013 set out below.

The Historical Statement of Financial Position and the Pro Forma Statement of Financial Position have been prepared on the basis of the accounting policies normally adopted by the Company (however, the 31 December 2013 Financial Report was prepared on a non-going concern basis). They have been prepared to provide potential Applicants with information on the assets and liabilities of the Mirabela Group and pro forma assets and liabilities of the Mirabela Group as noted below. The historical and pro forma financial information is presented in an abbreviated form, insofar as it does not include all of the disclosures, statements or comparative information required by the Australian Accounting Standards applicable to annual financial reports. The audited 31 December 2013 Historical Statement of Financial Position has been prepared on a non-going concern basis.

The Pro Forma Statement of Financial Position and any other financial information should be read in conjunction with the assumptions underlying its preparation as detailed in Pro Forma Adjustments, the material movements since 31 December 2013, the subsequent events, the accounting policies, all set out below, the risks contained in Section 4 of this Prospectus, and other information contained in this Prospectus.

The Investigating Accountant has reviewed the Pro Forma Statement of Financial Position of the Mirabela Group contained in this Section.



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### Pro Forma Statement of Financial Position USD millions

Item	Notes	31-Dec-13 Audited	Pro forma adjustments	Pro-forma post issue
Cash and cash equivalents <sup>(a)</sup>	1	30.7	93.5	124.2
Trade and other receivables		25.2	-	25.2
Inventories		68.0	-	68.0
<b>Total current assets</b>		<b>123.9</b>	<b>93.5</b>	<b>217.4</b>
Trade and other receivables		32.0	-	32.0
Property, plant and equipment		-	-	-
Exploration and evaluation assets		2.7	-	2.7
<b>Total non-current assets</b>		<b>34.6</b>	<b>-</b>	<b>34.6</b>
<b>Total assets</b>		<b>158.5</b>	<b>93.5</b>	<b>252.0</b>
Trade and other payables	2	(64.5)	26.1	(38.4)
Provisions		(3.4)	-	(3.4)
Borrowings	3	(456.2)	443.9	(12.3)
<b>Total current liabilities</b>		<b>(524.1)</b>	<b>470.0</b>	<b>(54.2)</b>
Provisions		(10.2)	-	(10.2)
Borrowings	3	-	(140.3)	(140.3)
Deferred tax liability	4	-	(14.8)	(14.8)
<b>Total non-current liabilities</b>		<b>(10.2)</b>	<b>(155.0)</b>	<b>(165.3)</b>
<b>Total liabilities</b>		<b>(534.4)</b>	<b>314.9</b>	<b>(219.4)</b>
<b>Net assets</b>		<b>(375.8)</b>	<b>408.4</b>	<b>32.6</b>
<b>Equity</b>				
Contributed equity	5	796.5	8.9	805.4
Reserves		(124.9)	-	(124.9)
Accumulated losses	6	(1,047.5)	399.5	(648.0)
<b>Total equity</b>		<b>(375.8)</b>	<b>408.4</b>	<b>32.6</b>

Note a: Cash and cash equivalents upon implementation will be materially lower than the pro forma position. Refer to Note 1 on cash and cash equivalents below for further detail.

### Pro Forma Adjustments

The Pro Forma Statement of Financial Position set out above is based on the following key assumptions (the "Pro Forma Adjustments"):

- the issue of US\$55 million of the Convertible Notes to the New Capital Parties (before expenses and assuming no conversion into equity upon implementation);
- the issue of US\$60 million of the Convertible Notes through the assumed rollover of the c.US\$60 million of Secured Notes (consisting of the US\$45 million advanced and utilised under this facility since 31 December 2013 and the issue of this Prospectus, and c.US\$15 million of fees and accrued interest) into the Convertible Notes (before expenses and assuming no conversion into equity upon implementation);
- the issue of the Fee Shares (34.5 million) and the Rollover Shares (18.4 million) for no cash consideration;
- extinguishment of the principal and accrued interest of the Existing Notes (amounting to US\$421.1 million as at 31 December 2013) in exchange for the transfer of approximately 98.2% of the existing issued Mirabela shares and the issue of a US\$5 million subordinated unsecured



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note from Mirabela at the conclusion of the Brazilian extra judicial proceeding (estimated fair value of US\$0.3 million);

- successful negotiation of the Atlas Copco, Caterpillar and Bradesco waivers and extensions prior to implementation of the Proposed Recapitalisation Plan such that certain amounts of the Bradesco, Caterpillar and Atlas Copco debt are reclassified from current liabilities to non-current liabilities;
- a deferred tax liability of US\$14.8 million being raised for interest income on certain intercompany loans immediately following implementation as a result of certain deferred tax assets no longer being available to set off the deferred tax liability; and
- the payment of the estimated expenses in preparation of this Prospectus of approximately US\$500,000 and the estimated transaction success fees of up to approximately US\$6.0 million (note, costs and liabilities of the Deed Administrators of up to approximately US\$4 million have not been taken into account in the Pro Forma Adjustments. This will reduce cash on hand immediately following the Implementation Date. Refer to Note 1 below).

### **Material Movements since 31 December 2013 Audited Statement of Financial Position**

The Pro Forma Statement of Financial Position is illustrative only and is not reflective of what the financial position of the Mirabela Group will be post issue. This is because since 31 December 2013:

- The Company has drawn down and utilised the full US\$45 million under the Secured Notes facility; therefore this amount will not increase the cash and cash equivalents balance as indicated in the Pro Forma Adjustments set out in Note 1 below.
- The US\$45 million has been fully utilised to fund operating losses and capital expenditure since 31 December 2013.
- Including fees and accrued interest of c.US\$15 million, the drawn facility balance will be US\$60 million. The US\$60 million drawn amount will rollover into the Convertible Notes for nil cash consideration on the Implementation Date.
- The cash position as at 9 May 2014 was c.US\$21.3 million and will be materially lower than the 31 December 2013 balance immediately prior to the Issue. This will further reduce the cash position post implementation (versus the Pro Forma Statement of Financial Position).
- The Mirabela Group continues to be materially loss making (c.US\$30.0 million unaudited loss in Q1 of FY14) and cash flow negative from operations (c.US\$35.5 million unaudited outflow in Q1 of FY14). The Mirabela Group is forecast to continue to be loss making and cash flow negative for the remainder of FY14. This will further reduce cash and cash equivalents immediately following implementation (versus the Pro Forma Statement of Financial Position).
- There has been approximately US\$4.1 million of cash outflows relating to capital expenditure in Q1 of FY14 with further material outflows expected for the remainder of FY14 and going forward.
- The costs and liabilities of the Deed Administrators of c.US\$4 million have not been taken into account in the Pro Forma Adjustments. This will further reduce cash and cash equivalents immediately following implementation (versus the Pro Forma Statement of Financial Position).





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- Working capital at 31 March 2014 was also materially lower than at 31 December 2013. Trade and other receivables plus Inventories less Trade and Other Payables was c.US\$36.2 million at 31 March 2014.

### Notes to the Pro Forma Statement of Financial Position

#### 1. CASH AND CASH EQUIVALENTS

	31 December 2013	Pro Forma post issue
	US\$ millions	US\$ millions
Cash and cash equivalents	30.7	124.2
Adjustments arising in the preparation of the pro forma cash balance are summarized as follows:		
Audited balance as at 31 December 2013		30.7
Rollover of funds drawn under the SNSD into the Convertible Notes		45.0
Proceeds from the issue of the Convertible Notes to the New Capital Parties		55.0
Payment of estimated expenses of the Offers		(0.5)
Payment of estimated advisor success fees		(6.0)
<b>Pro Forma balance</b>		<b>124.2</b>

The pro forma cash and cash equivalents position set out above is materially overstated versus the likely cash position immediately following implementation. This is because since 31 December 2013:

- The Company has drawn down and spent the full US\$45 million under the SNSD; therefore this amount included in the table above will not increase the cash and cash equivalents balance as indicated.
- The US\$45 million has been fully utilised to fund operating losses and capital expenditure since 31 December 2013.
- Including fees and accrued interest of c.US\$15 million, the drawn facility balance will be US\$60 million. The US\$60 million drawn amount will rollover into the Convertible Notes for nil cash consideration on implementation.
- The cash position as at 9 May 2014 was c.US\$21.3 million; the cash position immediately prior to implementation will be materially lower than the 31 December 2013 balance immediately prior to the issue. This will further reduce the cash position post implementation (versus the Pro Forma Statement of Financial Position).
- The Mirabela Group continues to be materially loss making (c.US\$30.0 million unaudited loss in Q1 of FY14) and cash flow negative from operations (c.US\$35.5 million unaudited outflow in Q1 of FY14). The Mirabela Group is forecast to continue to be loss making and cash flow negative for the remainder of FY14. This will further reduce cash and cash equivalents immediately following implementation (versus the Pro Forma Statement of Financial Position).



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- There has been approximately US\$4.1 million of cash outflows relating to capital expenditure in Q1 of FY14 with further material outflows expected for the remainder of FY14 and going forward.
- The costs and liabilities of the Deed Administrators of c.US\$4 million have not been taken into account in the Pro Forma Adjustments. This will further reduce cash and cash equivalents immediately following Implementation (versus the Pro Forma Statement of Financial Position).

### 2. TRADE AND OTHER PAYABLES

	31 December 2013	Pro Forma post issue
	US\$ millions	US\$ millions
Trade and other payables	64.5	38.4
Adjustments arising in the preparation of the pro forma trade and other payables balance are summarized as follows:		
Audited balance as at 31 December 2013		64.5
Adjustment for accrued interest on the Existing Notes extinguished in exchange for 98.2% of the existing issue equity		(26.1)
<b>Pro Forma balance</b>		<b>38.4</b>

### 3. BORROWINGS

Current portion	31 December 2013	Pro Forma post issue
	US\$ millions	US\$ millions
Borrowings	456.2	12.3
Adjustments arising in the preparation of the pro forma borrowings balance are summarized as follows:		
Audited balance as at 31 December 2013		456.2
Adjustment for principal amount of the Existing Notes extinguished in exchange for 98.2% of the existing issue equity		(395.0)
Reclassification of amounts due to Bradesco to non-current liabilities		(47.0)
Reclassification of amounts due to Caterpillar to non-current liabilities		(1.2)
Reclassification of amounts due to Atlas Copco to non-current liabilities		(0.7)
<b>Pro Forma balance</b>		<b>12.3</b>



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Non-current portion	31 December 2013	Pro Forma post issue
	US\$ millions	US\$ millions
Borrowings	Nil	140.3
Adjustments arising in the preparation of the pro forma borrowings balance are summarized as follows:		
Audited balance as at 31 December 2013		Nil
Issue of the Convertible Notes to the New Capital Parties		55.0
Issue of the Convertible Notes in accordance with the Rollover Offer (US\$60 million less fees and accrued interest of US\$15 million)		45.0
Fee Shares issued		(5.8)
Rollover Shares issued		(3.1)
Issue of the subordinated US\$5 million note following completion of the Brazilian extra judicial process (estimated fair value at inception of US\$0.3 million)		0.3
Reclassification of amounts due to Bradesco from current liabilities		47.0
Reclassification of amounts due to Caterpillar from current liabilities		1.2
Reclassification of amounts due to Atlas Copco from current liabilities		0.7
<b>Pro Forma balance</b>		<b>140.3</b>

#### 4.DEFERRED TAX LIABILITY

	31 December 2013	Pro Forma post issue
	US\$ millions	US\$ millions
Deferred tax liability	Nil	14.8
Adjustments arising in the preparation of the pro forma deferred tax liability balance are summarized as follows:		
Audited balance as at 31 December 2013		Nil
Adjustment for the recognition of a deferred tax liability in relation to interest income on certain intercompany loans immediately following implementation		14.8
<b>Pro Forma balance</b>		<b>14.8</b>



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### 5.CONTRIBUTED EQUITY

	31 December 2013	Pro Forma post issue	31 December 2013	Pro Forma post issue
	Millions	Millions	US\$ millions	US\$ millions
Net ordinary shares	876.8	929.7	796.5	805.4

### MOVEMENT IN SHARE CAPITAL FOR THE PROSPECTUS AND ASSUMING NO CONVERSION OF THE CONVERTIBLE NOTES

	Ordinary shares	Number of shares millions	US\$ millions
31 December 2013 (audited)	Closing balance	876.8	796.5
Fee Shares issued		34.5	5.8
Rollover Shares issued		18.4	3.1
Pro Forma post issue		929.7	805.4

### 6.ACCUMULATED LOSSES

	31 December 2013	Pro Forma post issue
	US\$ millions	US\$ millions
Accumulated losses	1,047.5	648.0
Audited balance as at 31 December 2013		1,047.5
Adjustments arising in the preparation of the pro forma accumulated losses balance are summarized as follows:		
Adjustment for principal amount of the Existing Notes extinguished in exchange for 98.2% of the existing issue equity		(395.0)
Adjustment for accrued interest on the Existing Notes extinguished in exchange for 98.2% of the existing issue equity		(26.1)
Recognition of a deferred tax liability		14.8
Issue of the subordinated US\$5 million note following completion of the Brazilian extra judicial process (estimated fair value at inception of US\$0.3 million)		0.3
Adjustment for expenses associated with this Prospectus		0.5
Payment of estimated advisor success fees		6.0
		648.0



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### Subsequent Events

Set out below is a condensed summary of the key events since 31 December 2013. These should be read in conjunction with the 31 December 2013 Financial Report disclosures.

#### *Secured Note facility*

On 30 December 2013, the Company announced that it had secured a US\$45.0 million loan from the Ad-hoc Group. The intention of the loan was to provide the Company with sufficient liquidity to operate its business (i.e. the business remains materially loss making) as discussions progressed with all of Mirabela Group's key stakeholders regarding a comprehensive restructuring. The first draw down under the loan occurred during January 2014. As at the date of this Prospectus, the facility was fully drawn and the funds have been fully utilised to fund operating losses and capital expenditure since 31 December 2013. Including fees and accrued interest, approximately US\$60 million is due and payable on 30 June 2014 (the revised maturity date of the loan).

#### **Appointment of Voluntary Administrators and Deed Administrators**

##### *Background*

On 25 February 2014, the Company notified the ASX that the Ad-hoc Group had entered into the PSA which formalised an agreement to provide continued support (both funding and standstill support) whilst a proposed plan to recapitalise the Mirabela Group was implemented. The ASX announcement included a redacted copy of the legally binding PSA which outlined the terms on which the Ad-hoc Group would continue to support the Mirabela Group.

Following receipt of the signed PSA, Messrs Martin Madden, Cliff Rocke and David Winterbottom from KordaMentha were appointed as voluntary administrators of Mirabela Nickel Ltd and Mirabela Investments Pty Ltd on 25 February 2014 pursuant to Section 436A of the Corporation Act.

##### *Reasons for voluntary administration*

The key factors which lead to the appointment of voluntary administrators are summarised as follows:

- A substantial decline in the spot price of nickel over the period March 2011 to July 2013, which saw the LME nickel price fall from c.USD13.0/lb to c.USD6.3/lb.
  - Note, the operations are still below cash flow break-even at the current prices of c.USD8.5/lb.
- The loss of receipts following Votorantim's actions in September 2013 (notification of intent to terminate the offtake contract early) and in November 2013 (force majeure event), and an inability to procure an offtake contract on similar terms served to exacerbate the deterioration of cash reserves.
- A material increase in capital expenditure required to increase the storage capacity of the tailings dam (these works are still ongoing and should they not be completed, it is highly probable that the operations will cease).
- A significant portion of historic losses have been funded via debt which resulted in the Mirabela Group being over leveraged.



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- An inability to raise additional equity as a result of a significant decline in the share price and market capitalisation.

### *Voting of creditors at the second meetings of creditors*

On 13 May 2014, the second meetings of the creditors were held and the creditors resolved that the deeds of company arrangement be executed (the "Mirabela DOCA") and that Messrs Martin Madden, Cliff Rocke and David Winterbottom from KordaMentha be appointed as Deed Administrators.

### **Mirabela DOCA**

The purpose of the Mirabela DOCA is to give effect to a recapitalisation of the Mirabela Group by the execution of the following key steps:

1. The extinguishment of claims of Existing Noteholders in return for an entitlement to approximately 98.2% of the existing ordinary equity in Mirabela. If Existing Noteholders so elect or if they are not permitted at law to hold equity in Mirabela, the shares which would have been transferred to them will be sold and the net proceeds of sale will be paid to them. Existing Noteholders will also receive a pro-rata share of a US\$5.0 million subordinated unsecured note from Mirabela at the conclusion of the Brazilian extra judicial proceeding, which will have a term of 30 years and attract an interest rate of 1.0% p.a., payable in kind.
2. Mirabela offering convertible notes with an initial face value of US\$115.0 million to the Existing Noteholders.
3. The issuance of new shares in Mirabela to the New Capital Parties as consideration for the New Capital Parties having agreed to subscribe for convertible notes not subscribed for by other Existing Noteholders with a face value of US\$55.0 million. Separately, new shares will be issued to holders of the Secured Notes for agreeing to roll over their debt into the new issuance.
4. The convertible notes being convertible into new ordinary shares in Mirabela.

On 16 May 2014, the Deed Administrators lodged a court application in the Supreme Court of New South Wales (Court) under the Mirabela DOCA. The application seeks the leave of the Court under Section 444GA of the Corporations to a transfer of approximately 98.2% of the existing ordinary shares in the Company in accordance with the terms of the Mirabela DOCA and as part of the Proposed Recapitalisation Plan of the Company (refer to the ASX announcement dated 25 February 2014). The hearing is currently scheduled for 12 June 2014.

Steps three to four set out above will only proceed once step one is completed.

### **Standstill Arrangements**

#### *Existing Notes*

The Company entered into a standstill agreement with the Ad-hoc Group dated 12 November 2013 (as amended). Pursuant to the terms of the standstill agreement, the Ad-hoc Group agreed not to request, instruct or direct the trustee to take any action under the indenture in respect of the Existing Notes in relation to Mirabela's failure to make the interest payment on 15 October 2014. The standstill agreement terminated on 31 March 2014, however the undertakings provided by the Ad-hoc Group in the PSA operate to continue the agreement subject to the terms and conditions of the PSA.

#### *Secured Notes*



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The Company entered into a waiver agreement dated 27 March 2014 with Australian Executor Trustees Limited, the Administrative Agent under the SNSD. Pursuant to the SNSD Extension Agreement the Administrative Agent agreed, amongst other things, to extend the termination date under the SNSD to the earliest of 30 June 2014, the date for termination of the SNSD, or the date the notes issued under the SNSD are accelerated or the commitments are terminated, and to waive the event of default constituted by the appointment of voluntary administrators to Mirabela and Mirabela Investments.

### *Bradesco*

The Mirabela Group entered into a waiver agreement with Bradesco dated 13 November 2013 (as amended) in respect of its obligations under the Bradesco Facility. Pursuant to the Bradesco Waiver Agreement, Bradesco agreed, amongst other things, to waive any event of default which may arise under the Bradesco Facility. The Bradesco Waiver Agreement terminated on 31 March 2014. However a fourth amendment to the Bradesco Facility was executed on 5 May 2014 extending the term of the Bradesco Facility to 29 March 2018 and stated the restructure steps to be undertaken (including the entry into the deed of company arrangement) would not constitute an event of default under that facility.

### *Caterpillar*

The Mirabela Group entered into a standstill agreement with Caterpillar dated 12 November 2013 (as amended) in respect of its obligations under the Caterpillar Facility. Pursuant to the terms of the Caterpillar Standstill Agreement, Caterpillar agreed, among other things, not to enforce its rights under the Caterpillar Facility or declare a default or take any enforcement action in respect of a default caused by Mirabela entering into restructuring discussions with its major creditors. The Caterpillar Standstill Agreement terminates on the earliest occurrence of an event of default under the Caterpillar Facility (other than as expressly waived in the Caterpillar Standstill Agreement) or 23 July 2014 (which may be extended up to thirty days with consent of the parties).

### *Atlas Copco Facility*

There is no standstill or waiver in relation to the Atlas Copco Facility. At this stage Atlas Copco has not taken any action against the Group to recover outstanding amounts and remains supportive.

### **FY13 Accounts**

On 15 April 2014, the Company announced to the ASX that it is relying on Australian Securities and Investment Commission (ASIC) Class Order 03/392 which allows externally administered companies to delay lodging financial reports in Australia. In the case of Mirabela, the permitted delay for its 31 December 2013 annual financial statements is until 25 August 2014. The annual accounts for FY13 have subsequently been released to the ASX on 26 May 2014.

### **Notification to Employees**

On 15 April 2014, as a result of uncertainty regarding further funding to support the ongoing operations of the Santa Rita mine and in order to preserve cash reserves, Mirabela Brasil advised its workforce and relevant Brazilian authorities that it intended to impose forced leave on approximately 320 staff from 30 April 2014. The forced leave was cancelled on 25 April 2014 following the commitment of the Ad-hoc Group to provide additional funding support.



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### **Standard & Poor's Credit Rating**

On 24 April 2014, Standard & Poor's Rating Services withdrew the Company corporate credit rating at the request of the Deed Administrators.

### **Tailings Dam**

The tailings dam is near its current capacity and material capital works are underway to lift the height of the dam wall to accommodate additional solids and waste water from the processing plant.

Should these operations not be completed in the near term, it is highly probable operations will cease.

### **Operating Licence**

Mirabela Brasil holds an operating licence for the Santa Rita mine, issued by the Bahia State Environmental Board (INEMA). This licence was issued in September 2009 for a period of four years. Mirabela Brasil has applied for a renewal of the licence.

The current licence has been automatically extended until 5 June 2014 whilst Mirabela Brasil finalises a number of works requested by INEMA. The Company has no reason to consider the renewal will not be granted, but there is no guarantee the operating licence will be granted and what new conditions may apply.

Should the operating licence not be granted, mining operations will cease and the Company will likely be liquidated.

### **Environmental Issue**

On 10 April 2014 there were two environmental breaches in relation to water discharge from the return water pipeline from the tailings dam to the plant and tailings dam water discharged via the spillway.

The Mirabela Group is currently assessing the impact of the environmental breaches and anticipate at a minimum a fine will need to be paid to INEMA. The impact could be far more material than currently expected.

### **Operational**

#### *ITH offtake agreement and impact on taxation*

In December 2013, Mirabela Brasil secured a short-term offtake agreement with an international and foreign domiciled trading house (ITH). The terms of this short-term offtake agreement are unfavourable relative to the Votorantim offtake agreement that it replaces. This short-term offtake agreement has been extended to 30 June 2014.

The Mirabela Group has been advised that, as a result of the shift of offtake agreements from Votorantim to ITH, certain Brazilian state and federal input tax credits that were previously available to Mirabela Brasil are not available going forward. These tax credits can only be claimed where there are corresponding domestic sales. The unavailability of the tax credits will have a material negative impact on the cash flow of Mirabela Brasil and the underlying value of the Mirabela Group assets. Advice from the Mirabela Group Brazilian tax accountants confirms the tax credits are unavailable. The Mirabela Group is not aware of any alternate in-country potential offtake parties

#### *Tax audit*





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In January 2011 the tax authority of the State of Bahia, Brazil conducted an indirect tax audit of Mirabela Brasil. Following the audit, the Bahia tax authority notified Mirabela Brasil alleging that it incorrectly claimed tax credits from July 2008 to May 2010 and that Mirabela Brasil was liable for the unpaid taxes together with interest and penalties.

Mirabela Brasil challenged the assessment in February 2011 in the Council of State Revenue. The administrative review proceedings concluded in February 2014 resulting in partial success for Mirabela Brasil. This decision formally closed the administrative stage of the proceedings and any challenges to the final administrative decision require commencement of judicial proceedings to the Court. To appeal the case in the Court Mirabela Brasil is required to either provide a bank guarantee or make a full payment into a trust with the Court for the full amount of the disputed portion of the claim (US\$3.4 million). Due to the liquidity pressures in the business, and to preserve cash, Mirabela Brasil has decided not to appeal the final administrative decision.

### Corporate

Mr Geoffrey Handley, Mr Colin Steyn and Mr Peter Nicholson resigned from the Board effective 11 January 2014.

Mr Ian McCubbing and Mr Nicholas Sheard resigned from the Board effective 7 April 2014.

Mr Ian Purdy resigned from the Board effective 5 May 2014 and resigned as Chief Executive Officer of the Group effective 31 May 2014.

Mr Christiaan Els resigned as the Company Secretary and Public Officer effective 19 May 2014.

On 18 March 2013, the Board suspended and subsequently cancelled the remaining performance rights of its previous performance rights plan (being the "*Mirabela Nickel Limited Performance Rights Plan*" originally approved at a Shareholders meeting held on 13 September 2010). The performance rights pertaining to the previous plan that were in a holding lock were to be allowed to vest at the completion of the vesting period, however, on 10 January 2014, the Committee suspended these performance rights.

As a result of the Company's current restructuring process, on 10 January 2014 the Committee also suspended the "*2013 Mirabela Nickel Limited Long Term Incentive Plan*" – which was originally approved at a Shareholders meeting held on 30 May 2013 – and cancelled the performance rights issued under that plan.

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## Status of operations and Proposed Recapitalisation Plan

The Mirabela Group is engaged in the mining, production and sale of nickel concentrate. Its principal asset is the 100% owned Santa Rita nickel sulphide, open pit mine in Bahia State, Brazil. The Santa Rita operation produces nickel concentrate via a nickel flotation processing plant and is supported by an open pit with a current life of mine of approximately 20 years based on remaining reserves (including 2014). The Mirabela Group also has a number of near-mine and regional exploration prospects.

The Company notes the challenging nickel market conditions with LME nickel prices continuing to trade below the Mirabela Group cash flow break-even position after overheads, financing and capital costs.

As announced on 26 September 2013, Votorantim (one of the Mirabela Group's two offtake partners) provided notice that its concentrate sales agreement with the Mirabela Group would terminate at the



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end of November 2013, in conjunction with Votorantim's announcement of its intention to close its Fortaleza smelting facilities due to adverse nickel market conditions. As required, the Mirabela Group provided notice of this purported termination of the sales agreement to Bradesco. Following receipt of legal advice in respect of the purported termination of the sales agreement by Votorantim, discussions were held with Votorantim and Votorantim subsequently confirmed to the Mirabela Group in writing that its purported termination of the sales agreement was invalid, that the sales agreement remained on foot, and that it intended to comply with its obligations under the sales agreement until the end of 2014.

However, on 4 November 2013 the Mirabela Group received notification from Votorantim that the main transformer at its Fortaleza smelter had malfunctioned and as such the electric furnace was not able to operate. Votorantim claimed that these circumstances were an event of force majeure and that as a result it was not currently obligated to purchase nickel concentrate pursuant to the sales agreement. The Mirabela Group took preliminary advice from its legal counsel and was of the view that the notice received from Votorantim may constitute an event of default under the Mirabela Group's Bradesco Facility – as such, Bradesco was advised of this fact. The Mirabela Group also took legal advice on its position regarding the claimed force majeure by Votorantim.

The Mirabela Group secured a short term contract for sales for November and December 2013 and this short term contract has been extended for the first six months of 2014, but is still in ongoing negotiations to replace the Votorantim offtake longer term. The Mirabela Group's other offtake partner, Norilsk, continues to take product in accordance with its offtake agreement.

On 22 October 2013, the Company announced that it did not make payment of interest on 15 October 2013, pursuant to the terms of the indenture relating to the US\$395.0 million of 8.75% Existing Notes due 2018. The non-payment of interest pursuant to the indenture would constitute an event of default if it continued for 30 days (cure period). A default under the indenture would also create cross defaults under the Bradesco Facility and the Caterpillar Facility.

In order to provide the Mirabela Group time to find a successful strategic solution to its financial difficulties, standstill arrangements were entered into with the Mirabela Group's financiers the Ad-hoc Group.

On 30 December 2013, the Company announced that it had secured a US\$45.0 million interim financing facility under the SNSD from certain members of the Ad-hoc Group. The full amount of the interim facility has been received and utilised as at the date of this report. The SNSD will terminate on the earliest of:

- 30 June 2014;
- The date the proposed recapitalisation of the Mirabela Group is effectuated; or
- An event of default under the SNSD resulting in the loan notes payment being accelerated.

Furthermore, on 25 February 2014, the Company notified the ASX that the Ad-hoc Group had entered into a PSA which formalised an agreement to provide continued support (both funding and standstill support), incorporating the interim facility, whilst a proposed plan to recapitalise the Company was being implemented. The ASX announcement included a redacted copy of the legally binding PSA which outlined the terms on which the Ad-hoc Group would continue to support the Company.

In conjunction with the execution of the PSA, the Proposed Recapitalisation Plan was outlined, with the key terms including the following:



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- The claims of the Existing Notes, including any guarantees thereof, shall be extinguished in exchange for their pro rata share of (i) 98.2% of the undiluted ordinary shares of the reorganized Company and (ii) a US\$5.0 million subordinated unsecured note with a 30-year maturity and a payable-in-kind interest rate of 1.0% per annum issued on a pro-rata basis to Existing Noteholders;
- Existing Company shareholders shall not receive any consideration in the Proposed Recapitalisation Plan (other than retaining a nominal percentage of the Company's ordinary shares following the consummation of the Proposed Recapitalisation Plan); and
- The Company shall raise up to US\$115.0 million through the issuance of the Convertible Notes convertible into the Company's ordinary shares. The US\$115.0 million consists of US\$55.0 million to be received in cash and US\$60.0 million to replace the US\$45.0 million (which has already been received in cash post 31 December 2013) plus US\$15.0 million interest and fees under the SNSD. All Existing Noteholders shall be given the opportunity to subscribe for the Convertible Notes. The Interim Lenders will be paid a fee of 5.0% (payable in the Company's ordinary shares – Rollover Shares) of their pro rata share of the US\$60.0 million for converting their commitment under the SNSD into the Convertible Notes. If the Convertible Notes were to convert immediately following implementation of the Proposed Recapitalisation Plan, they would convert into 42.3% of new ordinary shares in the Company on a fully-diluted basis. The conversion into ordinary shares is at the option of the holder of the Convertible Notes subsequent to the recapitalisation.

Additionally, pursuant to the PSA, certain members of the Ad-hoc Group (New Capital Parties) agreed under the PSA to subscribe for their pro rata share of up to US\$55.0 million worth of Convertible Notes, subject to subscriptions of other Existing Noteholders. A new capital fee of 10.25% (New Capital Shares) (also payable in the Company's ordinary shares) will be payable to the New Capital Parties based on their commitments. The obligations under the PSA, including the New Capital Parties' obligation to subscribe, cease upon the occurrence of a termination event. Termination events under the PSA include the following:

- Occurrence of a material breach of the PSA;
- A Court declaring any part of the PSA, Australian or Brazilian restructure elements illegal, invalid or unenforceable;
- Members of the Ad-hoc Group ceasing to hold more than 60% of the principal amount of the Notes;
- The Mirabela DOCA (refer below), is not terminated by 31 July 2014; or
- Occurrence of a material adverse change in the condition (financial or otherwise), prospects, earnings, business or properties of the Mirabela Group.

Following receipt of the signed PSA, Messrs Martin Madden, Cliff Rocke and David Winterbottom of KordaMentha Restructuring were appointed as voluntary administrators of the Company and Mirabela Investments on 25 February 2014 pursuant to Section 436A of the Corporations Act.

Key factors which lead to the appointment of the voluntary administrators are summarised as follows:

- A substantial decline in the spot price of nickel over the period March 2011 to July 2013, which saw the LME nickel price fall from c.USD13.00/lb to c.USD6.30/lb;



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- The loss of receipts following Votorantim's actions in September 2013 (notification of intent to terminate the offtake contract early) and in November 2013 (force majeure event), and an inability to procure an offtake contract on similar terms served to exacerbate the deterioration of cash reserves;
- A material increase in capital expenditure required to increase the storage capacity of the tailings dam (these works are still ongoing and should they not be completed, it is highly probable the operations will cease);
- A significant portion of historic losses have been funded via debt which resulted in the Mirabela Group being over leveraged; and
- An inability to raise additional equity as a result of a significant decline in the share price and market capitalisation.

The voluntary administrators held a meeting of creditors on 13 May 2014 at which the Company's creditors resolved that the proposed DOCA be entered into. Upon execution of the DOCA, the voluntary administrators became the Deed Administrators. The Mirabela DOCA will become fully effectuated and control will revert to the Company's directors (whose identities are currently not known) upon the following occurring:

- The Bradesco facility is amended/extended to the satisfaction of the Deed Administrators;
- Caterpillar agrees to extend a waiver granted 28 February 2014 in respect of its rights to enforce immediate payment under its facility document to the satisfaction of the Deed Administrators, and the rest of the facility is extended to the satisfaction of the Deed Administrators;
- The Court grants leave under Section 444GA of the Corporations Act, to transfer approximately 98.2% of the ordinary shares held by existing shareholders to Existing Noteholders;
- The Deed Administrators transfer the shares pursuant to the leave of the Court to Mirabela Investments Pty Ltd (subject to deed of company arrangement), which will hold the shares on trust as bare trustee for the benefit of the Existing Noteholders;
- Requisite relevant Foreign Investment Review Board (FIRB) approvals are obtained to enable foreign investors to acquire ordinary shares in the Company;
- ASIC and ASX providing certain relief required to enable the shares to be transferred to the Existing Noteholders and for the Company to issue the new ordinary shares if the Convertible Notes are redeemed;
- The Convertible Notes obtaining the benefit of the security provided by the Mirabela Group under that agreement; and
- The Company receives the funds from the Issuance of the Convertible Notes.

Based on the financial modelling and sensitivities prepared, the Deed Administrators have determined that absent alternative interim liquidity, the Company's ability to continue as a going concern is subject to the successful completion of the proposed recapitalisation (Incorporating the DOCA) referred to above. The ability of the Company to continue as a going concern is also subject to the Ad-hoc Group, Secured Noteholders and New Capital Parties not withdrawing support under their various agreements. While a number of implementation steps remain to be completed, and there is no guarantee that they will be completed, the Deed Administrators believe that those steps will likely be



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implemented in a timely manner but note that the recapitalisation remains subject to whether or not the Court is inclined to grant leave under Section 444GA of the Corporations Act.

In the meantime, the Company's operations at the Santa Rita mine continue to operate as usual during the administration process. As previously disclosed by the Company to the ASX, the Company has initiated a reduced mining volume in 2014 and 2015 of 25Mt of waste and ore per annum.

Should the Proposed Recapitalisation Plan (incorporating the DOCA) not be successful the Company will likely be placed into liquidation.

As there remains multiple material uncertainties on the outcome of the proposed recapitalisation, including the successful effectuation of the DOCA, the regulatory approvals as outlined above, and hence the ability of the Company to continue to operate, the Deed Administrators have concluded that due to these multiple material uncertainties the consolidated financial statements should be prepared on a non-going concern.



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### Basis of Preparation

#### Financial position and non-going concern

The Mirabela Group held cash on hand and on deposit as at 31 December 2013 of US\$30.7 million.

The Mirabela Group incurred a loss of US\$493.9 million for the twelve months ended 31 December 2013, including a non-cash impairment charge of US\$331.2 million (twelve months ended 31 December 2012; loss of US\$452.9 million, including a non-cash impairment charge of US\$380.0 million). This has resulted in the Mirabela Group being in a net liability position of US\$375.8 million as at 31 December 2013. Net cash outflows from operating and investing activities for the twelve months ended 31 December 2013 were US\$69.6 million.

Based on the financial modelling and sensitivities prepared, the Deed Administrators have determined that the Company's ability to continue as a going concern is subject to the successful completion of the Proposed Recapitalisation Plan and meeting its forecast cash flows. While a number of implementation steps of the Proposed Recapitalisation Plan remain to be completed, and there is no guarantee that they will be completed, the Deed Administrators believe that those steps will likely be implemented in a timely manner but note that the Proposed Recapitalisation Plan remains subject to whether or not the Court is inclined to grant leave under Section 444GA of the Corporations Act.

The meeting of cash flow forecasts depends on the successful operation of mining and production activities in accordance with the budget and achievement of nickel price, foreign exchange and cost assumptions.

There remains multiple material uncertainties to achieve the Proposed Recapitalisation Plan, including the successful effectuation of the Mirabela DOCA and the regulatory Relief, and hence significant concerns over the ability of the Company to continue to operate. The Deed Administrators have concluded that due to these multiple material uncertainties and as the Company will likely be placed into liquidation should the proposed recapitalisation (incorporating the Approved DOCA) not be successful, the consolidated financial statements should be prepared on a non-going concern basis.

The Deed Administrators have applied the requirements of paragraph 23 of AASB 101 "Presentation of Financial Statements" which states that "when the financial report is not prepared on going concern basis, the fact shall be disclosed, together with the basis on which the financial report is prepared and the reason why the entity is not regarded as a going concern."

In adopting the non-going concern basis the Deed Administrators have continued to apply the requirements of Australian Accounting Standards. Accordingly as the non-current assets do not meet the requirements for held for sale or discontinued operations under AASB 5, they continue to be recognised as non-current assets at cost, which have been subject to impairment testing. In relation to borrowings, as debt covenants were subject to waivers and standstill arrangements with debt holders at 31 December 2013 for a period not past 31 December 2014, all non-current debt has been reclassified as current. No additional provisions or liabilities have been recognised as a result of a possible orderly winding up scenario as the Deed Administrators have not incurred any additional legal or contractual obligations.

These factors, along with the other matters as set out in the 31 December 2013 Financial Accounts, indicate the existence of multiple material uncertainties casting significant doubt about the ability of the Mirabela Group to realise its assets and settle its obligations in an orderly manner over the period required and at the amounts stated in the financial report.



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## Significant Accounting Policies

The accounting policies adopted in the preparation of the historical information included in this Prospectus have been set out below.

### **Basis of consolidation**

#### *Subsidiaries*

Subsidiaries are entities controlled by the Mirabela Group. Control exists when the Mirabela Group has the power, directly or indirectly, to govern the financial and operating policies of an entity so as to obtain benefits from its activities. In assessing control, potential voting rights that presently are exercisable or convertible are taken into account. The historical financial information of subsidiaries is included in the historical consolidated statement of financial position set out above.

#### *Transactions eliminated on consolidation*

Intra-group balances, and any unrealised gains and losses or income and expenses arising from intra-group transactions, are eliminated in preparing the historical statement of financial position.

### **Foreign currency**

#### *Foreign currency transactions*

Transactions denominated in foreign currencies are recorded using the exchange rate ruling at the date of the underlying transaction. Monetary assets and liabilities denominated in foreign currencies are translated using the rate of exchange ruling at year end and the gains or losses on retranslation are included in the consolidated statement of profit and loss. Non-monetary assets and liabilities that are measured in terms of historical cost in a foreign currency are translated using the exchange rate at the date of the transaction. Non-monetary assets and liabilities denominated in foreign currencies that are stated at fair value are translated at foreign exchange rates ruling at the dates the fair value was determined.

#### *Foreign operations*

Foreign operations' statement of profit and loss and other comprehensive income items are translated at the approximate average exchange rate for the month. Assets and liabilities are translated at exchange rates prevailing at the reporting date. Exchange variations resulting from the retranslation at closing rate of the net investment in a foreign operation, together with differences between their statement of profit and loss and other comprehensive income items translated at actual and closing rates, are disclosed in the foreign currency translation reserve and recognised in other comprehensive income and expense.

### **Financial instruments**

#### *Non-derivative financial instruments*

Non-derivative financial instruments comprise investments in equity and debt securities, trade and other receivables, cash and cash equivalents, loans and borrowings, and trade and other payables.

Non-derivative financial instruments are recognised initially at fair value. For instruments not valued at fair value any directly attributable transaction costs will go through profit or loss, except as described



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below. Subsequent to initial recognition, non-derivative financial instruments are measured as described below.

A financial instrument is recognised if the Mirabela Group becomes a party to the contractual provisions of the instrument. Financial assets are derecognised if the Mirabela Group's contractual rights to the cash flows from the financial assets expire or if the Mirabela Group transfers the financial asset to another party without retaining control or substantially all risks and rewards of the asset. Regular way purchases and sales of financial assets are accounted for at trade date, i.e., the date that the Mirabela Group commits itself to purchase or sell the asset. Financial liabilities are derecognised if the Mirabela Group's obligations specified in the contract expire, are discharged or cancelled.

### *Derivative financial instruments*

The Mirabela Group holds derivative financial instruments to manage its foreign currency, metals price risk and interest rate risk exposures. Embedded derivatives are separated from the host contract and accounted for separately if the economic characteristics and risks of the host contract and the embedded derivative are not closely related, a separate instrument with the same terms as the embedded derivative would meet the definition of a derivative, and the combined instrument is not measured at fair value through profit or loss.

Derivatives are recognised initially at fair value; attributable transaction costs are recognised in profit or loss when incurred. Subsequent to initial recognition, derivatives are measured at fair value, and changes therein are accounted for as described below.

### *Cash flow hedges*

Changes in the fair value of the derivative hedging instrument designated as a cash flow hedge are recognised directly in other comprehensive income and expense to the extent that the hedge is effective. To the extent that the hedge is ineffective, changes in fair value are recognised in profit or loss.

If the hedging instrument no longer meets the criteria for hedge accounting, expires or is sold, terminated or exercised, then the hedge accounting is discontinued prospectively. The cumulative gain or loss previously recognised in other comprehensive income and expense remains there until the forecast transaction occurs. When the hedged item is a non-financial asset, the amount recognised in other comprehensive income and expense is transferred to the carrying amount of the asset when it is recognised. In other cases the amount recognised in other comprehensive income and expense is transferred to profit and loss in the same period that the hedged item affects profit or loss.

### *Separable embedded derivatives*

Changes in the fair value of separable embedded derivatives are recognised immediately in profit or loss.

### *Other non-trading derivatives*

When a derivative financial instrument is not held for trading, and is not designated in a qualifying hedge relationship, all changes in its fair value are recognised immediately in profit or loss.

### *Cash and cash equivalents*

Cash and cash equivalents comprise cash balances and deposits with maturities of three months or less from the acquisition date that are subject to insignificant risk of change in the fair value and are used by the Mirabela Group in the management of its short-term commitments.





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### **Share capital**

#### *Ordinary shares*

Ordinary shares are classified as equity. Incremental costs directly attributable to the issue of ordinary shares and share options are recognised as a deduction from equity, net of any related income tax benefit.

### **Property, plant and equipment**

#### *Recognition and measurement*

Items of property, plant and equipment are stated at cost less accumulated depreciation and impairment losses. Cost includes expenditure that is directly attributable to the acquisition of the asset. The cost of self-constructed assets and acquired assets includes the cost of materials, direct labour, any other costs directly attributable to bringing the asset to working condition for its intended use and the costs of dismantling and removing the items and restoring the site on which they are located.

Mining development assets include costs transferred from exploration and evaluation assets, once technical feasibility and commercial viability of an area of interest are demonstrable, and the subsequent costs required to develop the Santa Rita mine to the production phase.

Cost may also include transfers from other comprehensive income and expense of any gain or loss on qualifying cash flow hedges of foreign currency purchases of property, plant and equipment. Purchased software that is integral to the functionality of the related equipment is capitalised as part of that equipment. When parts of an item of property, plant and equipment have different useful lives they are accounted for as separate items (major components) of property, plant and equipment.

#### *Subsequent costs*

The Mirabela Group recognises in the carrying amount of an item of property, plant and equipment the cost of replacing part of such an item when that cost is incurred, if it is probable that the future economic benefits embodied within the item will flow to the Mirabela Group and the cost of the item can be measured reliably. All other costs are recognised in profit or loss as incurred.

#### *Depreciation*

The carrying amounts of property, plant and equipment (including initial and subsequent capital expenditure) are depreciated to their estimated residual value over the estimated useful lives of the specific assets concerned or the estimated life to the associated mine, if shorter. Depreciation is calculated using a straight line method over the estimated useful lives of each part of an item of property, plant and equipment or are depreciated on the units of production basis over the life of the economically recoverable reserves. Items of property, plant and equipment are depreciated from the date that they are installed and are ready for use, or in respect of internally constructed assets from the date that the assets are completed and ready for use. Depreciation is not charged on plant and equipment under construction.

The estimated useful lives are as follows:

- Plant and equipment 2.5 to 23 years or based on reserves on units of production basis;
- Mine properties based on reserves on units of production basis; and
- Leased assets based on lower of useful life and lease term.



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The residual value, the useful life and the depreciation method applied to an asset are reassessed at least annually.

### *Disposal*

Gains and losses on disposal of an item of property, plant and equipment are determined by comparing the proceeds from disposal with the carrying amount of property, plant and equipment and are recognised net within "other income and expense" in profit or loss. When re-valued assets are sold, the amounts included in the revaluation reserve are transferred to retained earnings.

### *Nickel reserves*

Reserves are estimates of the amount of nickel that can be economically extracted from the Mirabela Group's mine properties. In order to calculate reserves, estimates and assumptions are required about a range of geological, technical and economic factors, including quantities, grade, production techniques, recovery rates, production costs, future capital requirements, short and long term nickel prices and exchange rates.

Estimating the quantity and/or grade of reserves requires the size, shape and depth of ore bodies to be determined by analysing geological data. This process may require complex and difficult geological judgements and calculations to interpret data.

The Mirabela Group determines and reports ore reserves under the Australian Code for Reporting of Mineral Resource and Ore Reserves December 2004, known as the JORC Code. The JORC Code requires the use of reasonable investment assumptions to calculate reserves. Due to the fact that economic assumptions used to estimate reserves change from period to period, and geological data is generated during the course of operations, estimates of reserves may change from period to period. Changes in reported reserves may affect the Mirabela Group's financial results and position in a number of ways including:

- Asset carrying values may be impacted due to changes in the estimated future cash flows;
- Depreciation and amortisation charged in the income statement may change where such changes are calculated using the units of production basis; and
- Decommissioning, site restoration and environmental provisions may change where changes in estimated reserves alter expectations about the timing or cost of these activities. Changes in estimates are capitalised to the underlying assets.
- If changes in estimates occur, depreciation and amortisation of mining assets are adjusted prospectively.

### **Mine Properties**

Once the technical feasibility and commercial viability of the extraction of mineral resources in a particular area of interest become demonstrable, the exploration and evaluation assets attributable to that area of interest are reclassified as mine properties and disclosed as a component of property, plant and equipment. All development costs subsequently incurred within that area of interest are capitalised and carried at cost.

Amortisation of capitalised mine properties is provided on the unit-of-production method resulting in an amortisation charge proportional to the depletion of the economically recoverable mineral resources. Costs are amortised from the commencement of commercial production.



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### *Overburden removal costs*

Overburden and other mine waste material are often removed during the initial development of a mine site in order to access the mineral deposit. The directly attributable costs, inclusive of an allocation of relevant overhead expenditure, are capitalised as mine properties within property, plant and equipment. Capitalisation ceases and depreciation of those costs commences at the time that commercial levels of saleable material are being extracted from the mine. Depreciation is determined on a unit of production basis for each area of interest.

### **Deferred stripping costs**

IFRIC 20, Stripping Costs in the Production Phase of a Surface Mine, outlines how costs associated with waste removal (stripping) during the production phase of a surface mine are to be accounted for. Where the stripping activity gives rise to a benefit in the current period, stripping costs are to be accounted for as the cost of inventory. Where the activity results in improved access to ore in future periods, the costs are recognised as a non-current asset, providing certain criteria are met. In determining an appropriate allocation basis between inventory and non-current asset, IFRIC 20 provides guidance on possible metrics to use. After recognition, the stripping activity asset is then amortised on a systematic basis (unit of production method) over the expected useful life of the identified component of the ore body that becomes more accessible as a result of the stripping activity.

The Mirabela Group has identified two separate components within its surface mine. One of these components is immaterial in terms of effective life, volume of ore to be mined and cost of such mining, in comparison to the total mine. As such, the Mirabela Group has determined that due to the immateriality of this specific component it may be combined with the core component when determining the allocation between inventory and non-current asset. Also, the Mirabela Group's current allocation methodology is in line with IFRIC 20's suggested metrics, that being 'the volume of waste extracted compared with expected volume, for a given volume of ore production'.

The adoption of IFRIC 20 in the period has resulted in no material change to the Mirabela Group's accounting for stripping costs.

As deferred stripping costs are included in mine properties, within property, plant & equipment, these will form part of the relevant cash generating units which are reviewed for impairment if events or changes of circumstances indicate that the carrying value may not be recoverable.

### **Exploration and evaluation expenditure**

Exploration and evaluation costs, which are intangible costs, including the costs of acquiring licences, are capitalised as exploration and evaluation assets on an area of interest basis. Costs incurred before the Mirabela Group has obtained the legal rights to explore an area are recognised in the consolidated statement of profit and loss and other comprehensive income.

Exploration and evaluation assets are only recognised if the rights of the area of interest are current and either:

The expenditures are expected to be recouped through successful development and exploitation of the area of interest; or

Activities in the area of interest have not at the reporting date reached a stage which permits a reasonable assessment of the existence or otherwise of economically recoverable reserves and active and significant operations in, or in relation to, the area of interest are continuing.



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Exploration and evaluation assets are assessed for impairment if (i) sufficient data exists to determine technical feasibility and commercial viability, and (ii) facts and circumstances suggest that the carrying amount exceeds the recoverable amount. For the purposes of impairment testing, exploration and evaluation assets are allocated to cash-generating units to which the exploration activity relates. The cash generating unit shall not be larger than the area of interest.

Once the technical feasibility and commercial viability of the extraction of mineral resources in an area of interest are demonstrable, exploration and evaluation assets attributable to that area of interest are first tested for impairment and then transferred to mine properties within property, plant and equipment.

### **Leased assets**

Leases in terms of which the Mirabela Group assumes substantially all the risks and rewards of ownership are classified as finance leases. Upon initial recognition the leased asset is measured at an amount equal to the lower of its fair value and the present value of the minimum lease payments. Subsequent to initial recognition, the asset is accounted for in accordance with the accounting policy applicable to that asset.

Other leases are operating leases and are not recognised on the Mirabela Group's consolidated statement of financial position.

### *Lease payments*

Payments made under operating leases are recognised in profit or loss on a straight-line basis over the term of the lease. Lease incentives received are recognised as an integral part of the total lease expense, over the term of the lease.

Minimum lease payments made under finance leases are apportioned between the finance expense and the reduction of the outstanding liability. The finance expense is allocated to each period during the lease term so as to produce a constant periodic rate of interest on the remaining balance of the liability.

Contingent lease payments are accounted for by revising the minimum lease payments over the remaining term of the lease when the lease adjustment is confirmed.

### **Trade receivables**

Trade receivables are initially recognised on a provisional basis at the time of sale and subsequently adjusted based on the movements in the quoted market prices and assay results up to the date of final pricing. The mark to market of trade receivables is recorded as an adjustment to the sales revenue.

Trade receivables settlement terms are as follows:

- 90% of the invoice value is settled within 7-70 days from the month of sale or date of Bill of Lading; and
- 10% of the invoice value is settled within 15 days of presentation of the final invoice at the end of the quotation period (normally two to four months following the month of sale).

Collectability of trade receivables is reviewed on an ongoing basis. An allowance for doubtful debts is established when there is objective evidence that the Company may not be able to collect all amounts due according to the original terms of receivables. Debts which are known to be uncollectible are written off.



## MIRABELA NICKEL

### **Other receivables**

Other receivables are recorded at amounts due less any allowance for doubtful debts.

### **Inventories**

Inventories are stated at the lower of cost and net realisable value. Net realisable value represents estimated selling price in the ordinary course of business less any further costs expected to be incurred to completion and disposal. Cost is determined on a weighted-average basis and includes all costs incurred in the normal course of business including direct material and direct labour costs and an allocation of production overheads, depreciation and amortisation and other costs incurred in bringing each product to its present location and condition.

Quantities of broken ore and concentrate stocks are assessed primarily through surveys and assays.

Inventories are categorised as follows:

- Broken ore: ore stored in an intermediate state that has not yet passed through all the stages of production;
- Concentrate: products and materials that have passed through all stages of the production process; and
- Stores, spares and consumables: materials, goods or supplies (including energy sources) to be either directly or indirectly consumed in the production process.

### **Impairment**

#### *Financial assets*

A financial asset is assessed at each reporting date to determine whether there is any objective evidence that it is impaired. A financial asset is considered to be impaired if objective evidence indicates that one or more events have had a negative effect on the estimated future cash flows of that asset.

An impairment charge in respect of a financial asset measured at amortised cost is calculated as the difference between its carrying amount, and the present value of the estimated future cash flows discounted at the original effective interest rate.

Individually significant financial assets are tested for impairment on an individual basis. The remaining financial assets are assessed collectively in groups that share similar credit risk characteristics.

All impairment charges are recognised in profit or loss. Any cumulative loss in respect of an available-for-sale financial asset recognised previously in other comprehensive income and expense is transferred to profit or loss.

An impairment charge is reversed if the reversal can be related objectively to an event occurring after the impairment charge was recognised. For financial assets measured at amortised cost and available-for-sale financial assets that are debt securities, the reversal is recognised in profit or loss. For available-for-sale financial assets that are equity securities, the reversal is recognised directly in other comprehensive income and expense.

#### **Non-financial assets**



## MIRABELA NICKEL

The carrying amounts of the Mirabela Group's non-financial assets, other than deferred tax assets, are reviewed at each reporting date to determine whether there is any indication of impairment. If any such indication exists then the asset's recoverable amount is estimated.

The recoverable amount of an asset or cash-generating unit is the greater of its value in use and its fair value less cost to sell. Fair value less cost to sell is determined as a present value of the estimated real future cash flows expected to arise from the continued use of the asset using assumptions that an independent market participant may consider. These cashflows are discounted using a real after tax discount rate that reflects current market assessments of the time value of money and the risks specific to the cash-generating unit. For the purpose of impairment testing, assets are grouped together into the smallest group of assets that generates cash inflows from continuing use that are largely independent of the cash inflows of other assets or groups of assets (the cash-generating unit).

An impairment charge is recognised if the carrying amount of an asset or its cash-generating unit exceeds its recoverable amount. Impairment charges are recognised in profit or loss. Impairment charges recognised in respect of cash-generating units are allocated first to reduce the carrying amount of any goodwill allocated to the units and then to reduce the carrying amount of the other assets in the unit (group of units) on a pro rata basis.

In respect of other assets, impairment charges recognised in prior periods are assessed at each reporting date for any indications that the loss has decreased or no longer exists. An impairment charge is reversed if there has been a change in the estimates used to determine the recoverable amount. An impairment charge is reversed only to the extent that the asset's carrying amount does not exceed the carrying amount that would have been determined, net of depreciation or amortisation, if no impairment charge had been recognised.

Refer to the 2013 Annual Report for further details on impairment as at 31 December 2013.

### **Provisions**

A provision is recognised in the consolidated statement of financial position when the Mirabela Group has a present legal or constructive obligation as a result of a past event, and it is probable that an outflow of economic benefits will be required to settle the obligation. Provisions are determined by discounting the expected future cash flows at a pre-tax rate that reflects current market assessments of the time value of money and, when appropriate, the risks specific to the liability.

### ***Rehabilitation***

Rehabilitation includes mine closure and restoration costs which include the costs of dismantling and demolition of infrastructure or decommissioning, the removal of residual material and the remediation of disturbed areas specific to the site. Provisions are recognised at the time that the environmental disturbance occurs.

The provision is the best estimate of the present value of the future cash flows required to settle the restoration obligation at the reporting date, based on current legal requirements and technology. Future restoration costs are reviewed annually and any changes are reflected in the present value of the restoration provision at the end of the financial year.

The amount of the provision for future rehabilitation costs is capitalised as an asset and recognised in property, plant and equipment and is depreciated over the useful life of the mineral resource. The unwinding of the effect of discounting on the provision is recognised as a finance cost.



## MIRABELA NICKEL

### **Trade and other payables**

Trade and other payables are non-interest bearing liabilities stated at cost and with a settlement period of less than twelve months.

### **Borrowings**

Borrowings are initially recognised at fair value, net of transaction costs incurred. Borrowings are subsequently measured at amortised cost. Any difference between the proceeds (net of transaction costs) and the redemption amount is recognised in profit or loss over the period of the borrowings using the effective interest method. Fees paid on the establishment of loan facilities, which are not an incremental cost relating to the actual draw-down of the facility, are recognised as prepayments and amortised on a straight-line basis over the term of the facility.

Borrowings are removed from the statement of financial position when the obligation specified in the contract is discharged, cancelled or expired. The difference between the carrying amount of a financial liability that has been extinguished or transferred to another party and the consideration paid, including any non-cash assets transferred or liabilities assumed, is recognised in other income or other expenses.

Borrowings are classified as current liabilities unless the Mirabela Group has an unconditional right to defer settlement of the liability for at least twelve months after the reporting date.

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## **Investigating Accountant's Report**



**KPMG Transaction Services**

A division of KPMG Financial Advisory Services  
(Australia) Pty Ltd  
Australian Financial Services Licence No. 246901  
235 St Georges Terrace  
Perth WA 6000

Telephone: +61 8 9263 7171  
Facsimile: +61 8 9263 7129  
www.kpmg.com.au

GPO Box A29  
Perth WA 6837  
Australia

The Deed Administrators  
Mirabela Nickel Limited (subject to deed of  
company arrangement)  
Level 21, Allendale Square  
77 St Georges Terrace  
Perth WA 6000

26 May 2014

Dear Sirs

**Limited Assurance Investigating Accountant's Report and Financial Services  
Guide**

**Introduction**

KPMG Financial Advisory Services (Australia) Pty Ltd (of which KPMG Transaction Services is a division) ("KPMG Transaction Services") has been engaged by Mirabela Nickel Limited (subject to deed of company arrangement) ("Mirabela") to prepare this report for inclusion in the Prospectus to be dated 26 May 2014 ("Prospectus"), and to be issued by Mirabela, in respect of the proposed recapitalisation transaction, including the related capital raising of Mirabela (collectively, the "Transaction").

Expressions defined in the Prospectus have the same meaning in this report.

**Scope**

You have requested KPMG Transaction Services to perform a limited assurance engagement in relation to the pro forma statement of financial position described below and disclosed in the Prospectus.

The pro forma statement of financial position is presented in the Prospectus in an abbreviated form, insofar as it does not include all of the presentation and disclosures required by Australian Accounting Standards and other mandatory professional reporting requirements applicable to general purpose financial reports prepared in accordance with the *Corporations Act 2001*.

Our limited assurance engagement has not been carried out in accordance with auditing or other standards and practices generally accepted in Australia and accordingly should not be relied upon as if it had been carried out in accordance with those standards and practices.

KPMG Financial Advisory Services (Australia) Pty Ltd is affiliated with KPMG.

KPMG is an Australian partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity.



### ***Pro Forma Statement of Financial Position***

You have requested KPMG Transaction Services to perform limited assurance procedures in relation to the pro forma statement of financial position of Mirabela (the responsible party) included in the Prospectus.

The pro forma statement of financial position has been derived from the historical financial information of Mirabela, after adjusting for the effects of pro forma adjustments described in section 3.3 of the public document. The pro forma statement of financial position consists of Mirabela's pro forma Statement of Financial Position as at 31 December 2013, as detailed in the table titled "Pro Forma Statement of Financial Position" in section 3.3 of the Prospectus and related notes as set out in section 3.3 titled "Notes to the Pro Forma Statement of Financial Position" of the Prospectus issued by Mirabela (collectively the "Pro Forma Statement of Financial Position"). The stated basis of preparation is the recognition and measurement principles contained in Australian Accounting Standards applied to the historical financial information and the event(s) or transaction(s) to which the pro forma adjustments relate, as described in section 3.3 of the Prospectus. Due to its nature, the Pro Forma Statement of Financial Position does not represent the company's actual or prospective financial position.

The Pro Forma Statement of Financial Position has been compiled by Mirabela to illustrate the impact of the event(s) or transaction(s) described in section 3.3 on Mirabela's financial position as at 31 December 2013. As part of this process, information about Mirabela's financial position has been extracted by Mirabela from Mirabela's financial statements for the year ended 31 December 2013.

The financial statements of Mirabela for the year ended 31 December 2013 were audited by KPMG in accordance with Australian Auditing Standards. The audit opinions issued to the members of Mirabela relating to those financial statements were unqualified but included an emphasis of matter.

For the purposes of preparing this report we have performed limited assurance procedures in relation to Pro Forma Statement of Financial Position in order to state whether, on the basis of the procedures described, anything comes to our attention that would cause us to believe that the Pro Forma Statement of Financial Position is not prepared, in all material respects, by Mirabela in accordance with the stated basis of preparation. As stated in section 3.3 of the Prospectus, the stated basis of preparation is:

- the extraction of Historical Financial Information, being the Historical Statement of Financial Position as at 31 December 2013, from the audited financial statements of Mirabela for the year ended 31 December 2013; and
- the application of pro forma adjustments, determined in accordance with Australian Accounting Standards and Mirabela's accounting policies, to the Historical Financial Information of Mirabela to illustrate the effects of the Transaction on Mirabela described in section 3.3 of the Prospectus.

We have conducted our engagement in accordance with the Standard on Assurance Engagements ASAE 3450 *Assurance Engagements involving Corporate Fundraisings and/or Prospective Financial Information*.

The procedures we performed were based on our professional judgement and included:

*Historical financial information*

- consideration of work papers, accounting records and other documents, including those dealing with the extraction of the Historical Financial Information of Mirabela from its audited financial statements for the year ended 31 December 2013;

*Pro forma adjustments:*

- consideration of the pro forma adjustments described in the Prospectus;
- enquiry of management, personnel and advisors;
- the performance of analytical procedures applied to the Pro Forma Statement of Financial Position; and
- a review of accounting policies for consistency of application.

The procedures performed in a limited assurance engagement vary in nature from, and are less in extent than for, an audit. As a result, the level of assurance obtained in a limited assurance engagement is substantially lower than the assurance that would have been obtained had we performed an audit. Accordingly, we do not express an audit opinion about whether the Pro Forma Statement of Financial Position is prepared, in all material respects, by Mirabela in accordance with the stated basis of preparation.

**Deed Administrators' responsibilities**

The Deed Administrators of Mirabela are responsible for the preparation of the Pro Forma Statement of Financial Position, including the selection and determination of the pro forma transactions and/or adjustments made to the historical financial information and included in the Pro Forma Statement of Financial Position.

The Deed Administrators' responsibility includes establishing and maintaining such internal controls as the Deed Administrators determines are necessary to enable the preparation of financial information that is free from material misstatement, whether due to fraud or error.

**Conclusions**

***Review statement on the Pro Forma Statement of Financial Position***

Based on our procedures, which are not an audit, nothing has come to our attention that causes us to believe that the Pro Forma Statement of Financial Position, as set out in section 3.3 of the Prospectus, comprising the pro forma historical statement of financial position of Mirabela as at 31 December 2013 is not prepared or presented fairly, in all material respects, on the basis of the pro forma transactions and/or adjustments described in section 3.3 of the Prospectus, and in accordance with the recognition and measurement principles prescribed in Australian Accounting Standards, and Mirabela's accounting policies.

Without modifying our opinion, we draw attention to the Basis of Preparation Note in section 3.3 and Note 2 and 3 of the 2013 Annual Report which outlines that the Company is currently subject to deed of company arrangement (DOCA) and that the financial report of the Group for

the year ended 31 December 2013 (from which the Historical Statement of Financial Position has been extracted) has not been prepared on a going concern basis, and note the potential consequences should one of multiple material uncertainties occur.

#### **Independence**

KPMG Transaction Services does not have any interest in the outcome of the proposed Transaction, other than in connection with the preparation of this report and participation in due diligence procedures for which normal professional fees will be received. KPMG is the auditor of Mirabela and from time to time, KPMG also provides Mirabela with certain other professional services for which normal professional fees are received.

#### **General advice warning**

This report has been prepared, and included in the Prospectus, to provide investors with general information only and does not take into account the objectives, financial situation or needs of any specific investor. It is not intended to take the place of professional advice and investors should not make specific investment decisions in reliance on the information contained in this report. Before acting or relying on any information, an investor should consider whether it is appropriate for their circumstances having regard to their objectives, financial situation or needs.

#### **Restriction on use**

Without modifying our conclusions, we draw attention to section 3.3 of the Prospectus, which describes the purpose of the financial information, being for inclusion in the Prospectus. As a result, the financial information may not be suitable for use for another purpose. We disclaim any assumption of responsibility for any reliance on this report, or on the financial information to which it relates, for any purpose other than that for which it was prepared.

KPMG Transaction Services has consented to the inclusion of this Investigating Accountant's Report in the Prospectus in the form and context in which it is so included, but has not authorised the issue of the Prospectus. Accordingly, KPMG Transaction Services makes no representation regarding, and takes no responsibility for, any other statements, or material in, or omissions from, the Prospectus.

Yours faithfully



Matthew Kelly  
Authorised Representative



**KPMG Transaction Services**

A division of KPMG Financial Advisory Services  
(Australia) Pty Ltd  
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Australia

***What is a Financial Services Guide (FSG)?***

This FSG is designed to help you to decide whether to use any of the general financial product advice provided by **KPMG Financial Advisory Services (Australia) Pty Ltd ABN 43 007 363 215**, Australian Financial Services Licence Number 246901 (of which KPMG Transaction Services is a division) (**'KPMG Transaction Services'**), and Matthew Kelly as an authorised representative of KPMG Transaction Services, authorised representative number 404260 (**Authorised Representative**).

This FSG includes information about:

- KPMG Transaction Services and its Authorised Representative and how they can be contacted
- the services KPMG Transaction Services and its Authorised Representative are authorised to provide
- how KPMG Transaction Services and its Authorised Representative are paid
- any relevant associations or relationships of KPMG Transaction Services and its Authorised Representative
- how complaints are dealt with as well as information about internal and external dispute resolution systems and how you can access them; and
- the compensation arrangements that KPMG Transaction Services has in place.

The distribution of this FSG by the Authorised Representative has been authorised by KPMG Transaction Services. This FSG forms part of an Investigating Accountant's Report (Report) which has been prepared for inclusion in a disclosure document or, if you are offered a financial product for issue or sale, a Product Disclosure Statement (PDS). The purpose of the disclosure document or PDS is to help you make an informed decision in relation to a financial product. The contents of the disclosure document or PDS, as relevant, will include details such as the risks, benefits and costs of acquiring the particular financial product.

**Financial services that KPMG Transaction Services and the Authorised Representative are authorised to provide**

KPMG Transaction Services holds an Australian Financial Services Licence, which authorises it to provide, amongst other services, financial product advice for the following classes of financial products:

- deposit and non-cash payment products;
- derivatives;
- foreign exchange contracts;
- government debentures, stocks or bonds;
- interests in managed investments schemes including investor directed portfolio services;
- securities;
- superannuation;
- carbon units;
- Australian carbon credit units; and
- eligible international emissions units,

KPMG Financial Advisory Services (Australia) Pty Ltd is affiliated with KPMG.

KPMG is an Australian partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity.

to retail and wholesale clients. We provide financial product advice when engaged to prepare a report in relation to a transaction relating to one of these types of financial products. The Authorised Representative is authorised by KPMG Transaction Services to provide financial product advice on KPMG Transaction Services' behalf.

#### **KPMG Transaction Services and the Authorised Representative's responsibility to you**

KPMG Transaction Services has been engaged by Mirabela Nickel Limited (subject to deed of company arrangement) (Client) to provide general financial product advice in the form of a Report to be included in the Prospectus (Document) prepared by Mirabela Nickel Limited in relation to the proposed recapitalisation (Transaction).

You have not engaged KPMG Transaction Services or the Authorised Representative directly but have received a copy of the Report because you have been provided with a copy of the Document. Neither KPMG Transaction Services nor the Authorised Representative are acting for any person other than the Client.

KPMG Transaction Services and the Authorised Representative are responsible and accountable to you for ensuring that there is a reasonable basis for the conclusions in the Report.

#### **General Advice**

As KPMG Transaction Services has been engaged by the Client, the Report only contains general advice as it has been prepared without taking into account your personal objectives, financial situation or needs.

You should consider the appropriateness of the general advice in the Report having regard to your circumstances before you act on the general advice contained in the Report.

You should also consider the other parts of the Document before making any decision in relation to the Transaction.

#### **Fees KPMG Transaction Services may receive and remuneration or other benefits received by our representatives**

KPMG Transaction Services charges fees for preparing reports. These fees will usually be agreed with, and paid by, the Client. Fees are agreed on either a fixed fee or a time cost basis. In this instance, the Client has agreed to pay KPMG Transaction Services between \$35,000 and \$40,000 for preparing the Report. KPMG Transaction Services and its officers, representatives, related entities and associates will not receive any other fee or benefit in connection with the provision of the Report.

KPMG Transaction Services officers and representatives (including the Authorised Representative) receive a salary or a partnership distribution from KPMG's Australian professional advisory and accounting practice (the KPMG Partnership). KPMG Transaction Services' representatives (including the Authorised Representative) are eligible for bonuses based on overall productivity. Bonuses and other remuneration and benefits are not provided directly in connection with any engagement for the provision of general financial product advice in the Report.

Further details may be provided on request.

#### **Referrals**

Neither KPMG Transaction Services nor the Authorised Representative pay commissions or provide any other benefits to any person for referring customers to them in connection with a Report.

#### **Associations and relationships**

Through a variety of corporate and trust structures KPMG Transaction Services is controlled by and operates as part of the KPMG Partnership. KPMG Transaction Services' directors and Authorised Representatives may be partners in the KPMG Partnership. The Authorised Representative is a partner in the KPMG Partnership. The financial product advice in the Report is provided by KPMG Transaction Services and the Authorised Representative and not by the KPMG Partnership.

From time to time KPMG Transaction Services, the KPMG Partnership and related entities (KPMG entities) may

provide professional services, including audit, tax and financial advisory services, to companies and issuers of financial products in the ordinary course of their businesses.

KPMG entities have provided, and continue to provide, a range of audit and advisory services to the Client for which professional fees are received. Over the past two years professional fees of \$0.9 million have been received from the Client. None of those services have related to the transaction or alternatives to the transaction.

No individual involved in the preparation of this Report holds a substantial interest in, or is a substantial creditor of, the Client or has other material financial interests in the transaction.

#### **Complaints resolution**

##### **Internal complaints resolution process**

If you have a complaint, please let either KPMG Transaction Services or the Authorised Representative know. Formal complaints should be sent in writing to The Complaints Officer, KPMG, PO Box H67, Australia Square, Sydney NSW 1213. If you have difficulty in putting your complaint in writing, please telephone the Complaints Officer on 02 9335 7000 and they will assist you in documenting your complaint.

Written complaints are recorded, acknowledged within 5 days and investigated. As soon as practical, and not more than 45 days after receiving the written complaint, the response to your complaint will be advised in writing.

##### **External complaints resolution process**

If KPMG Transaction Services or the Authorised Representative cannot resolve your complaint to your satisfaction within 45 days, you can refer the matter to the Financial Ombudsman Service (FOS). FOS is an independent company that has been established to provide free advice and assistance to consumers to help in resolving complaints relating to the financial services industry.

Further details about FOS are available at the FOS website [www.fos.org.au](http://www.fos.org.au) or by contacting them directly at:

Address: Financial Ombudsman Service Limited, GPO  
Box 3, Melbourne Victoria 3001

Telephone: 1300 78 08 08

Facsimile: (03) 9613 6399

Email: [info@fos.org.au](mailto:info@fos.org.au).

The Australian Securities and Investments Commission also has a freecall infoline on 1300 300 630 which you may use to obtain information about your rights.

#### **Compensation arrangements**

KPMG Transaction Services has professional indemnity insurance cover as required by the Corporations Act 2001(Cth).

#### **Contact Details**

You may contact KPMG Transaction Services or the Authorised Representative using the contact details:

KPMG Transaction Services  
A division of KPMG Financial Advisory  
Services (Australia) Pty Ltd  
10 Shelley St  
Sydney NSW 2000  
PO Box H67  
Australia Square  
NSW 1213  
Telephone: (02) 9335 7000  
Facsimile: (02) 9335 7200

Matthew Kelly  
C/O KPMG  
PO Box H67  
Australia Square  
NSW 1213  
Telephone: (02) 9335 7000  
Facsimile: (02) 9335 7200



## MIRABELA NICKEL

### 3.4 Effect on capital structure

The effect of the Offers on the capital structure of the Company is set out below, assuming that the maximum possible number of Offer Securities is subscribed for pursuant to the Offers.

#### *Shares*

Shares	Number
Shares currently on issue	876,801,147
Shares to be issued pursuant to the Fee Offer and Rollover Offer	52,909,069
Shares on issue after completion of the Offers	929,710,216

#### *Notes (unquoted)*

Notes (unquoted)	Number
Existing Notes currently on issue (excluding accrued and default interest), to be extinguished upon implementation of the Mirabela DOCA	US\$395,000,000
Convertible Notes to be issued pursuant to the Secured Offer (not including Convertible Notes representing the Additional Principal Amount or Interest – see Schedule 1)	US\$115,000,000

#### *Options (unquoted)*

Exercise Price	Expiry Date	Number
A\$3.00	30 June 2014	400,000

#### *Performance Rights*

Performance Hurdle	Vesting Date	Number
Satisfied	31 December 2013	482,263

#### *Fully diluted share capital*

If, immediately following implementation of the Proposed Recapitalisation Plan, all of the convertible securities on issue were converted and/or exercised and/or vested after the issue of the maximum number of Offer Securities, the following Shares would be issued:

Fully diluted share capital	Number
Shares currently on issue	876,801,147
Shares to be issued pursuant to the Fee Offer and Rollover Offer	52,909,069
Shares issued on conversion of the Convertible Notes (assuming a conversion price of US\$0.1688)	681,279,615
Shares issued on exercise of all options on issue as at the date of this Prospectus	400,000
Share issued assuming all performance rights vest	482,263
<b>TOTAL</b>	<b>1,611,872,094</b>



## MIRABELA NICKEL

No securities of the Company are subject to escrow restrictions, either voluntary or ASX imposed.

### 3.5 Effect on control of the Company

#### (a) Shareholding

Based on the information available to Mirabela as at the date of this Prospectus, the following entities would have voting power of more than 5% of the shares in Mirabela immediately following implementation of the Proposed Recapitalisation Plan assuming no Convertible Notes have Converted

Shareholder	Estimated Voting Power
Certain funds or managed accounts managed or advised by Guggenheim Partners Investment Management, LLC	14.4%
Certain funds or managed accounts managed or advised by Pioneer Institutional Asset Management, Inc.	10.7%
Certain funds or managed accounts managed or advised by ID-Sparinvest A/S	10.1%
Certain funds or managed accounts managed or advised by Lord Abbett & Co. LLC	7.9%
Certain funds or managed accounts managed or advised by Western Asset Management Company	7.3%
Certain funds or managed accounts managed or advised by Capital Research and Management Company	7.0%
Certain funds or managed accounts managed or advised by Deans Knight Capital Management Ltd.	5.8%

The actual shareholdings immediately following the Implementation Date cannot be calculated as they will be affected by matters which include:

- (i) the timing of the Implementation Date; and
- (ii) acquisitions or disposals of the debt which will occur before the Implementation Date.

As the members of the Ad-hoc Group are currently "associates" of each other, for the purposes of the Corporations Act, each of them would have voting power of approximately 69% at the time of implementation. However, it is expected that their association will end at the time of implementation, as they have only become associates for the purposes of securing implementation of the Proposed Recapitalisation Plan.





## MIRABELA NICKEL

If all of the Convertible Notes are Converted into Shares immediately following the Implementation Date, a further 681,279,615 Shares would be issued. This would represent 42.3% of the issued capital of the Company after Conversion of the Convertible Notes.

However, additional Convertible Notes will be issued during the term of the Convertible Notes as payment in kind for interest which accrues on the Convertible Notes (see Schedule 1 (**Terms and Conditions of the Convertible Notes**)). If all of the Convertible Notes (including those issued as payment in kind interest) were converted into Shares on the last possible date for Conversion, and no other Shares are issued after the Proposed Recapitalisation Plan is implemented, a further 1,083,591,802 Shares would be issued. This would represent approximately 53.8% of the issued capital of the Company after Conversion of the Convertible Notes.

If each of the persons listed above were to subscribe for that number of Convertible Notes set out below, and then Converted them on the last date on which the Convertible Notes could be Converted, the effect on their shareholding and voting power in the Company would be as set out in the table below, in the scenarios where:

- (i) all other holders of Convertible Notes Convert on the same date; or
- (ii) only the named holder of Convertible Notes Converts them. This scenario shows the maximum voting power which the named persons listed may acquire, as a result of implementation of the Proposed Recapitalisation Plan.

### Maximum voting power of potential substantial shareholders

Name of holder	No. of Shares acquired on Implementation Date	No. of New Convertible Notes	No. of Shares after Conversion	Voting power if all Convertible Noteholders Convert	Voting power if only the named holder Converts
Certain funds or managed accounts managed or advised by Guggenheim Partners Investment Management, LLC	134,203,151	27,541,000	393,709,254	19.6%	33.1%
Certain funds or managed accounts managed or advised by Pioneer Investment Management, Inc. and Pioneer Institutional Asset Management, Inc.	99,617,758	12,500,000	217,399,476	10.8%	20.8%
Certain funds or managed accounts managed or advised by ID-Sparinvest A/S	93,681,046	19,333,000	275,846,962	13.7%	24.8%



## MIRABELA NICKEL

Name of holder	No. of Shares acquired on Implementation Date	No. of New Convertible Notes	No. of Shares after Conversion	Voting power if all Convertible Noteholders Convert	Voting power if only the named holder Converts
Certain funds or managed accounts managed or advised by Lord Abbett & Co. LLC	73,834,219	Nil	73,834,219	3.7%	N/A
Certain funds or managed accounts managed or advised by Western Asset Management Company	67,425,243	25,640,000	309,019,103	15.3%	26.4%
Certain funds or managed accounts managed or advised by Capital Research and Management Company	64,629,322	13,082,000	187,894,958	9.3%	17.8%
Certain funds or managed accounts managed or advised by Deans Knight Capital Management Ltd.	53,478,654	1,000,000	62,901,190	3.1%	6.7%

### (b) Intentions

Except as set out in this Prospectus, the Company is not aware of any intentions that the potential new substantial shareholders in the Company have:

- (i) to change the business of the Mirabela Group;
- (ii) to inject further capital into the Mirabela Group;
- (iii) for the future employment of Mirabela Group employees;
- (iv) for the transfer of assets between the Mirabela Group and any shareholder; or
- (v) to otherwise redeploy the assets of the Mirabela Group.

Under the PSA, the composition and the size of the board of directors of the Company on or immediately after the Implementation Date will need to be acceptable to the Ad-hoc Group.



## **MIRABELA NICKEL**

The Company is not aware of any reasons why members of the Ad-hoc Group would continue to be associates for the purposes of the Corporations Act after the Implementation Date.

Decisions in respect of the future operation of the Mirabela Group post implementation of the Proposed Recapitalisation Plan will be subject to the usual board and shareholder voting procedures applicable to a publicly listed Australian company.



# MIRABELA NICKEL

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## 4 Risk Factors

### 4.1 Introduction

This Section identifies the areas the Company regards as the key risks associated with an investment in the Company. Potential Applicants should be aware that an investment in the Company involves many risks, which may be higher than the risks associated with an investment in other companies. Potential Applicants should read the whole of this Prospectus in order to fully appreciate such matters before any decision is made to apply for securities under this Prospectus.

There are numerous widespread risks associated with investing in any form of business and with investing in the share market generally. There is also a range of specific risks associated with the Mirabela Group business. These risk factors are largely beyond the control of the Company and its Deed Administrators because of the nature of the business of the Mirabela Group.

The following summary in addition to the risk factors disclosed in the "Important Notes", which is not exhaustive, represents some of the major risk factors which potential Applicants need to be aware of.

### 4.2 Risks specific to the Offers

#### *Potential for dilution*

On Conversion of any of the Convertible Notes, Shares may be issued.

This means that if Shares are issued on conversion of a Convertible Note, Shares in existence prior to the Conversion of the Convertible Notes will represent a lower proportion of the ownership of the Company following Conversion. It is not possible to predict what the value of the Company or a Share will be following the Conversion of any of the Convertible Notes and the Deed Administrators do not make any representation or warranty in relation to any such matters. The number of Shares to be issued on conversion of a Convertible Note is subject to adjustments – please refer to Part 1 of Schedule 1 for summary terms of the Convertible Notes, and Schedule 5 for the New Indenture. In addition, if Shares are issued on Conversion of a Convertible Note the composition of the Company's major Shareholders may change, depending on: the number of Convertible Notes converted; and the other major Shareholders' shareholdings at the date of Conversion.

#### *Restrictions on certain actions*

The Convertible Notes contain a number of restrictive covenants that will impose operating and financial restrictions on the Company and may limit the Company's ability to engage in acts that may be in its long-term best interest. For a summary of these restrictive covenants, see Schedule 1 (**Terms and Conditions of the Convertible Notes**).

A breach of the covenants under the Convertible Notes could result in an event of default under the Convertible Notes. Such a default may allow the holders of Convertible Notes to accelerate payment on the Convertible Notes and may result in the acceleration of any other debt to which a cross-acceleration or cross-default provision applies.

The Company may also enter into further financing arrangements in the future, which may contain similar or more extensive restrictions to those outlined above. In the event our lenders



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or holders of Convertible Notes accelerate the repayment of our borrowings, the Company may not have sufficient assets to repay that indebtedness.

### ***No trading market for the Convertible Notes***

The Convertible Notes are only transferrable in certain circumstances as set out in Schedules 1, 3, 4 and 5.

There is no existing trading market for the Convertible Notes. The Convertible Notes will not be listed on any securities exchange. There can be no assurance that a trading market for the Convertible Notes will ever develop or be maintained. Further, there can be no assurance as to the liquidity of any market that may develop for the Convertible Notes, ability to sell Convertible Notes or the price at which a holder will be able to sell the Convertible Notes. Any trading market that develops would be affected by many factors independent of and in addition to the foregoing, including the:

- time remaining to the maturity of the Convertible Notes;
- outstanding amount of the Convertible Notes; and
- terms related to optional redemption of the Convertible Notes.

If a trading market does not develop or is not maintained, the market price and liquidity of the Convertible Notes may be adversely affected.

### ***Withholding tax may be imposed if conditions of the Section 128F interest withholding tax exemption are not met***

The Company advises that its Offshore Associates (as defined in the New Indenture) must not participate in the Convertible Notes issuance. In circumstances where the Convertible Notes offered by this Prospectus would otherwise qualify for the exemption from Australian interest withholding tax in Section 128F of the Income Tax Assessment Act 1936 (Cth), such participation would result in the entire issue failing to qualify. The rate of Australian interest withholding tax is 10% (unless revised down by a relevant and applicable double tax treaty).

Offshore Associates of the Company are not eligible for the Section 128F withholding tax exemption (even if other holders of Convertible Notes (who are not Offshore Associates) may be eligible for such exemption). Further, an Offshore Associate is not entitled to a gross up in respect of any Australian interest withholding tax which is imposed on it.

### **4.3 Risks specific to the Company and to the Guarantors**

Loss of the mining lease with CBPM and therefore the mining tenements.

CBPM has a right to terminate the mining leases if Mirabela Brasil experiences insufficiency of funds to finance its mining operations or is declared bankrupt and liquidated. The filing for EJ and the EJ Process per se would not give CBPM the right to terminate the mining leases.

If the CBPM mining leases are terminated, Mirabela Brasil would retain:

- its ownership and/or occupation rights (as applicable) to the underlying land holding at the Santa Rita mine site; and
- the obligation to rehabilitate the land.



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The loss of the mining lease with CBPM will have a material negative impact on mining operations and the profitability and cash flows of the Mirabela Group and may result in liquidations.

### ***The Company and Guarantors may be unable to pay interest or principal on the Convertible Notes***

The Mirabela Group operates in an unstable and uncertain political, economic and regulatory environment. These factors, including, among other things nickel prices, have already materially and adversely affected the Mirabela Group's results of operations and financial condition and may continue to place significant strains on the results of operations and liquidity. The Company has made certain assumptions and determinations based on current information and estimates with respect to nickel prices, the Brazilian economy and the Mirabela Group's future financial condition and cash flow. These assumptions and determinations, however, involve significant risks and uncertainties that the Company and Guarantors cannot foresee. As a result, the Company's assumptions and determinations may prove to be wrong. The Company and Guarantors' future ability to service debt obligations under the Convertible Notes will depend upon the accuracy of certain assumptions about macroeconomic, commercial, production and regulatory factors (most of which are beyond the control of the Company and the Guarantors) that will affect the Mirabela Group's business, including, without limitation: (i) nickel prices; (ii) the Company's ability to continue as a going concern; (iii) the exchange rate of Brazilian reais for U.S. dollars during the term of the Convertible Notes; (iv) rates of inflation during the term of the Convertible Notes; and (v) prevailing interest rates in Brazil.

### ***Commodity price risks***

The price of nickel fluctuates widely and is affected by numerous factors beyond the Company's control such as the supply and demand for nickel products, exchange rates, inflation rate fluctuations, changes in global economies, confidence in the global monetary system, as well as other global or regional political, social or economic events. Prices can also be affected by the amount of new and expanded nickel production around the world.

### ***Financial condition***

The Mirabela Group is operating at a loss and no assurances can be provided that the Mirabela Group will not continue to incur losses. Numerous factors, including declining metal prices, adverse currency exchange rate movements (in particular the Brazilian reais and United States dollar), lower than expected ore grades and/or ore recovery or higher than expected operating costs (including increased commodity prices and equipment costs), and impairment write-offs of mine property and/or exploration property costs, could cause the Mirabela Group to continue to be unprofitable in the future.

The Mirabela Group general operating risks also continue to apply (see Section 3 and this Section 4 for further information) including risks relating to funding, offtake agreements and production estimates.

### ***Tailings dam works***

The tailings dam at the Santa Rita mine is near its current capacity and material capital expenditure is required to lift the height of the tailing dam wall. Work is behind schedule. Lifting the dam wall may involve costs and delays, and any failure, delay or significant rainfall may impact production and/or result in a risk of environmental damage. Capacity and maintenance issues can result in leaks and discharge of dirty water, which may pose an environmental, safety and production risk.



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The estimated cost of the capital expenditure to complete the tailings dam works may be materially underestimated which will result in a need for further capital or debt financing.

The Mirabela Group is currently operating at a loss and absent significant funding, would be unable to complete the required work to lift the height of the tailings dam. This would result in mining operations ceasing. See Section 2.1(d) for further detail.

### ***The Company does not expect to pay dividends for the foreseeable future***

The Company has not paid dividends in the recent past, and it does not expect to pay dividends in the foreseeable future. The Company's ability to pay dividends or make other distributions on Shares is also restricted by the terms of certain debt agreements.

### ***Additional funding may be required***

The funds raised under the Offers will be applied to the purposes set out in Section 1.4.

The Company may need to raise further capital or debt financing in order to fund working capital, operating expenses, capital expenditures (including capital expenditures related to the tailings dam and equipment – both fixed and mobile), future losses, adverse litigation outcomes and debt service. The success and the pricing of any such capital raising and/or debt financing will be dependent upon the prevailing market and industry conditions at that time, the availability of significant amounts of debt and equity financing to the Company, the Company's historical and projected performance and the outcome of any relevant feasibility studies and/or exploration programs.

If the Company and the Guarantors incur additional debt or guarantees that rank on an equal and rateable basis with the Convertible Notes, the holders of that debt (and beneficiaries of those guarantees) would be entitled to share rateably with the holders of any unsecured portion of Convertible Notes in any proceeds that may be distributed upon the insolvency, liquidation, reorganisation, dissolution or other winding up of the Company or of the Guarantors. This would likely reduce the amount of any liquidation proceeds that may be available to be paid to the holders of any unsecured portion of the Convertible Notes. It is expected that liquidation proceeds will not be sufficient to repay the principal amount owing on the Convertible Notes.

### ***Production estimates***

The failure of the Mirabela Group to achieve its production estimates could have a material adverse effect on any or all of its future cash flows, profitability, results of operations and financial condition. The realisation of production estimates is dependent on, among other things, the accuracy of mineral reserve and resource estimates, the accuracy of assumptions regarding ore grades and recovery rates, ground conditions (including hydrology), the physical characteristics of ores, the presence or absence of particular metallurgical characteristics, and the accuracy of the estimated rates and costs of mining, ore haulage and processing.

Actual production may vary from estimates for a variety of reasons, including the availability of certain types of ores; the actual ore mined varying from estimates of grade or tonnage; dilution and metallurgical and other characteristics (whether based on representative samples of ore or not); short-term operating factors such as the need for sequential development of ore bodies and the processing of new or adjacent ore grades from those planned; mine failures, slope failures or equipment failures; industrial accidents; natural phenomena such as inclement weather conditions, floods, droughts, rock slides and earthquakes; encountering unusual or unexpected geological conditions; changes in power costs and potential power shortages; shortages of principal supplies needed for mining operations, including explosives, fuels,



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chemical reagents, water, equipment parts and lubricants; plant and equipment failure; the inability to process certain types of ores; labour shortages or strikes; lack of required labour; civil disobedience and protests; and restrictions or regulations imposed by government agencies or other changes in the regulatory environment.

Such occurrences could also result in damage to mineral properties or mines, interruptions in production, injury or death to persons, damage to property of the Mirabela Group or others, monetary losses and legal liabilities in addition to adversely affecting mineral production. These factors may cause a mineral deposit that has been mined profitably in the past to become unprofitable forcing the Mirabela Group to cease production.

### ***Lack of recent financial statements***

The Company has not prepared audited accounts in respect of a period since 31 December 2013, and its financial condition has changed since that date.

Neither the previous directors of the Company or its officers have verified or provided any representations in relation to the audited financial statements of the Mirabela Group for the period ended 31 December 2013. The Deed Administrators were appointed after the Company's balance date of 31 December 2013.

### ***Production and other operational risks***

The Mirabela Group's future operations will be subject to a number of factors that can cause material delays or changes in operating costs for varying lengths of time. These factors include weather conditions and natural disasters, disruption of fuel supply, unexpected technical problems, unanticipated geological conditions, equipment failures, disruptions of rail infrastructure and ship loading facilities, unanticipated changes in the grade and tonnage of ore to be mined and processed, lower than expected nickel recoveries, incorrect data on which engineering assumptions are made, labour negotiations, changes in government regulation (including regulations regarding prices, cost of consumables, royalties, duties, taxes, permitting and restrictions on production quotas on exportation of minerals) and title claims. The Mirabela Group's financial performance may also be adversely affected by long lead times, delay and price escalations in respect of required equipment (including excavators, shovels and haul trucks), railway locomotives and rolling stock and stackers and reclaimers, consumables (including explosives and other materials) and mining support services. Industrial disruptions may also result in lower than planned production or delays in delivery of nickel.

In addition, new mining operations often experience unexpected problems and delays during development, construction and mine start-ups which delay the commencement of production and may impact the Mirabela Group's growth.

The Mirabela Group also faces significant risks to business continuity, relating to factors including but not limited to:

- power – a significant portion of power in Brazil is hydropower, and low rainfall could affect the regularity and sufficiency of power supply;
- ore quality – lower than expected ore quality may adversely affect the processing plant operations resulting in lower than expected nickel production levels and lower quality nickel concentrate;
- water – a lack of clean reclaim water from the tailings dam can restrict processing plant operations including the de-sliming process;





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- nitrate – supply disruption may restrict the supply of explosives, severely limiting material movement and ore production;
- equipment – maintenance or failure issues can occur, and equipment can be expensive and time consuming to replace; and
- major contractors experience operational or financial issues (such as liquidity shortage) affecting the companies' performance,

which would in turn affect production and revenue.

Material increases in operating cost estimates and actual costs at the Mirabela Group's Santa Rita nickel mine and concentration plant could result in the Company's operations being uneconomic indefinitely and could cause the Mirabela Group to suspend operations as currently planned, either temporarily or permanently. In the event that the Mirabela Group suspends operations, its financial condition and operating results would be adversely affected, which could impact payment on the Convertible Notes.

### ***Tenure and operating licence risk***

There are a number of conditions that the Mirabela Group must satisfy in order to maintain its mining license. These include but are not limited to license fee payments, annual reporting requirements (mining, safety and environmental), annual plan filing requirements (mining and environmental), the establishment and maintenance of an environmental reclamation fund, and various other permits, approvals and consents including the procurement of appropriate land and water use agreements.

Mirabela Brasil's operating licence was issued in September 2009 for a period of 4 years. Mirabela Brasil has applied to renew the operating licence and is able to continue to operate whilst the application is assessed. The renewal process is well progressed, but there is no guarantee that the operating licence will be renewed or what conditions might be imposed on such renewal. As at the date of this Prospectus, Mirabela Brasil is not aware of any reasons why the operating licence would not be renewed.

### ***The successful operation of the Company's business depends on its ability to maintain its rights and title interests***

There can be no assurances that the Mirabela Group's interest in the Santa Rita mine site is free from defects or that its material contracts with entities owned or controlled by foreign governments will not be unilaterally altered or revoked. While the Mirabela Group has investigated its rights and believes that these rights are in good standing, there can be no assurance that such rights and title interests will not be revoked or significantly altered to the Mirabela Group's detriment, or that such rights and title interests will not be challenged or impugned by third parties, including entities owned or controlled by foreign governments.

### ***Fluctuations in the availability or affordability of transportation could reduce the Mirabela Group's revenue***

Pursuant to the Mirabela Group's offtake agreement with Norilsk, the Mirabela Group is responsible for the transportation and shipping of nickel concentrate on a cost, insurance and freight (CIF) basis to Rotterdam, Holland, or, subject to payment by Norilsk of any additional freight costs, another port designated by Norilsk. The Mirabela Group has entered into an agreement pursuant to which 50% of the nickel concentrate produced by the Mirabela Group will be sold to Norilsk until the later of 31 December 2014 and when 66,500 tonnes of contained



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nickel has been delivered to Norilsk. The Mirabela Group depends on trucking and ocean-going vessels to deliver its nickel concentrate to Rotterdam, or such other port as specified by Norilsk pursuant to the terms of its offtake agreement. Disruption of transportation services due to weather-related problems, infrastructure damage, strikes, equipment failures, regulatory changes, decreased availability of transportation services due to competition from other exporters or other events could delay shipments of nickel concentrate to Norilsk or cause the Mirabela Group to reduce the amount of nickel concentrate in a given shipment. Additionally, if the Mirabela Group experiences difficulties in securing access to its preferred load ports in Brazil, the Ilhéus port and the Aratu port, its transportation costs could increase substantially and it may experience shipment delays as a result of the need to transport nickel concentrate a longer distance to an accessible port. Any such disruptions in transportation services could increase the costs of transportation and may adversely affect the profitability of the affected shipment, which could materially and adversely affect the Mirabela Group's financial and operating results.

The Mirabela Group is in the process of upgrading bags for the shipment of nickel concentrate to comply with applicable regulatory standards such as international shipping standards. If the bags for exporting nickel to ITH and Norilsk do not comply with the requisite regulatory standard, stevedoring companies may refuse to load the bags at the Ilhéus or Aratu ports. This would affect export sales to ITH and Norilsk and therefore affect revenue. It may be possible to partially mitigate that risk with the use of container shipping. The Ministry of Works has yet to inspect bagging and storage arrangements at the Santa Rita mine and may impose additional export licence conditions.

### ***Higher energy and fuel costs may have a material adverse effect on operating results***

The Mirabela Group's operations consume significant amounts of energy and fuel, the costs of which have significantly increased in recent years. Energy and fuel prices have recently increased and may continue to increase as a result of the political turbulence in Iran, Iraq, Egypt, Syria, Libya and other countries in Africa and the Middle East. The Company provides no assurance that operations would not be materially adversely affected in the future if energy and fuel costs increase.

### ***The Company's operations depend on adequate infrastructure***

Mining, processing, development and exploration activities depend on adequate infrastructure, including reliable roads, bridges, power sources and water supply. Unusual or infrequent weather phenomena, sabotage, supply shortages and resultant price increases, government or other interference in the maintenance or provision of such infrastructure could adversely affect the Company's operations, financial condition and results of operations.

### ***The Mirabela Group could be negatively affected if it fails to maintain satisfactory labour relations***

As of May 2014, the Mirabela Group had approximately 600 employees, all of whom are represented by a commission of employees. Relations with its employees and organized labour are important to the Mirabela Group's success. The Mirabela Group could experience strikes and higher labour costs if labour negotiations are not completed on mutually acceptable terms, which could have a material adverse effect on the Mirabela Group financial and operating results.

The Mirabela Group is experiencing a higher level of staff turnover and currently has critical staff vacancies across the Mirabela Group. The vacancies are impacting the day-to-day operation of the Santa Rita mine and the financial function of the Mirabela Group. Recruitment processes



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are underway to recruit suitable candidates. If the Mirabela Group is unable to attract suitable candidates the staff vacancies will continue to have a detrimental impact on the running of the Mirabela Group.

The success of the Mirabela Group is dependent on the services of key engineering, managerial, financial, commercial, marketing, safety and processing personnel. Loss or diminution in the services of key employees, particularly as a result of an inability to attract and retain staff, could have an adverse effect on the Mirabela Group's business, financial condition, results of operations and prospects.

Mirabela Brasil is in discussions to negotiate certain terms of a new collective bargaining agreement applicable to all employees of Mirabela Brasil. Negotiations typically centre on a claim for salary increases at a rate above the inflation index. There are also negotiations on health care entitlements, working hours and workplace entitlements. Collective bargaining negotiations between Mirabela Brasil and the employees' union have been suspended until 30 June 2014 and shall resume in the first week of July 2014. There is no guarantee on the outcome of negotiations.

The Company is without directors and the current CEO is scheduled to end his employment on 31 May 2014. The departure of the current CEO will diminish the number of senior personnel with a historical understanding of the Mirabela Group.

### ***Activities in the Mirabela Group's business can be dangerous and can cause injury to people or property in certain circumstances***

The Santa Rita mine site requires individuals to work with chemicals, equipment and other materials that have the potential to cause harm and injury when used without due care. An accident or injury could result in disruptions to the business and have legal and regulatory consequences and the Mirabela Group may be required to compensate such individuals or incur other costs and liabilities, any and all of which could adversely affect the Mirabela Group's reputation, business, financial condition, results of operations and prospects.

### ***Outsourcing risk***

Mirabela Brasil is considering further outsourcing its mobile equipment in the open pit mine to U&M. U&M currently performs excavation work and provides some haulage equipment utilising a mixture of U&M and Mirabela Brasil employees. This may be followed by further outsourcing of ancillary activities including: dozing, grading and secondary rock breaking. The structure under discussion is that existing Mirabela Brasil employees will remain Mirabela Brasil employees and will be supervised with Mirabela Brasil supervisors. The additional equipment will be in effect dry hired from U&M. This possible restructure of Mirabela Brasil's activities may raise issues under Brazilian labour law. If the possible restructure is considered to be an "irregular" outsourcing of core activities, there is a risk that:

- Mirabela Brasil will not be considered to be mining pursuant to its articles;
- individual labour claims may be brought against Mirabela Brasil;
- the Public Prosecutor Office for Labour Affairs (**MPT**) may restrain Mirabela Brasil from outsourcing core activities to the extent such outsourcing does not comply with Precedent No. 331 of the Tribunal Superior do Trabalho (**TST**) (the Brazilian Superior Labour Court);
- MPT or a union may file a public civil action requiring Mirabela Brasil to recognise the outsourced workers as employees of Mirabela Brasil;



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- the Ministry of Labour and Employment may impose a fine on Mirabela Brasil for irregular outsourcing of core activities;
- the National Social Security Institute and the Brazilian Federal Revenue Office may issue an infraction notice and claim payment from Mirabela Brasil for differences in social security contributions and other charges on the compensation paid to the contractor;
- if an infraction notice is issued and Mirabela Brasil is found liable, Mirabela Brasil may face difficulties in obtaining debt clearance certificates which are necessary for matters including participating in public bidding procedures, being awarded tax benefits, applying for loans with financial institutions, requesting registration of public deeds of purchase and sale of real properties and registering corporate documents with the Commercial Registry in Brazil; and
- the Federal Public Attorney's Office may be asked to open an investigation into fraudulent conduct on the part of Mirabela Brasil's managers to deprive or otherwise limit the labour rights of the outsourced workers.

Mirabela Brasil has sought legal advice in relation to the above risks and taken steps to mitigate those risks.

### ***Environmental***

All phases of Mirabela Brasil's operations are subject to environmental regulation in the jurisdictions in Brazil. These regulations mandate, among other things, the maintenance of air and water quality standards and land reclamation. They also set limitations on the generation, transportation, storage and disposal of solid and hazardous waste. Environmental legislation is evolving in a manner which will require stricter standards and enforcement, increased fines and penalties for non-compliance, more stringent environmental assessments of proposed projects, and a heightened degree of responsibility for companies and their officers, directors and employees. There is no assurance that future changes in environmental regulation, if any, will not adversely affect Mirabela Brasil's operations. Environmental hazards may exist on the properties on which the Mirabela Group holds interests which are unknown to Mirabela Brasil at present and which have been caused by previous or existing owners or operators of the properties.

Government approvals and permits currently and may in the future be required in connection with the operations of Mirabela Brasil. To the extent such approvals are required and not obtained, Mirabela Brasil may be curtailed or prohibited from continuing its mining operations or from proceeding with planned exploration or development of mineral properties or sale of concentrate.

Failure to comply with applicable laws, regulations and permitting requirements may result in enforcement actions, including orders issued by regulatory or judicial authorities causing operations to cease or be curtailed, and may include corrective measures requiring capital expenditures, installation of additional equipment, or remedial actions. Parties engaged in mining operations or in the exploration or development of mineral properties or the sale of concentrate may be required to compensate those suffering loss or damage by reason of the mining activities and may have civil or criminal fines or penalties imposed for violations of applicable laws or regulations.

Amendments to current laws, regulations and permits governing operations and activities of mining and exploration companies, or more stringent implementation of such laws, regulations and permits, could have a material adverse impact on the Mirabela Group and cause increases



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in exploration expenses, capital expenditures or production costs, or reduction in levels of production, or require abandonment or delays in development of new mining properties.

There have been complaints by local neighbours that the mine detonations have caused damage to some property. The state environmental agency has requested that Mirabela Brasil contract an independent study on the effects of the mine detonations on the neighbours' property. The report concluded that there are no current issues with vibrations from the mine detonations and that all current and historical mine detonations fall below international and Brazilian acceptable threshold limits. However, there is a risk that additional constraints could be imposed by the authorities on mine detonations which could negatively affect mining and production operations.

### ***Resource and reserve estimates***

Resource and reserve estimates are expressions of judgement based on knowledge, experience and industry practice. These estimates were appropriate when made, but may change significantly when new information becomes available.

There are risks associated with such estimates, including that the nickel deposits may be of a different quality from the resource estimates, or that the nickel price may increase or decrease. Resource and reserve estimates are imprecise and depend to some extent on interpretations, which may ultimately prove to be inaccurate and require adjustment. Adjustments to resource and reserve estimates could affect the Mirabela Group's future plans and ultimately its financial performance and value.

### ***Exploration and development risks***

Exploration and development involves inherent risks. Exploration risks include the uncertainties associated with projected continuity of ore deposits, fluctuations in grades and values of the product being mined, and unforeseen operational and technical problems. Exploration may also be adversely affected by a variety of non-technical issues such as limitations on activities due to seasonal changes, industrial disputes, land claims, heritage, environmental legislation and mining legislation.

Many of these inherent exploration and development risks are outside the control of the Company.

### ***Concentrate specifications***

The Mirabela Group's concentrate is subject to risks of process upsets and equipment malfunctions. Head grade, mill throughput recovery rates, or anticipated metallurgical recoveries may ultimately be lower than expected. Concentrate produced by the Mirabela Group is subject to offtake agreements and must meet certain specifications. Failure to meet such specifications could entitle customers to refuse delivery or seek price adjustments, which in either case, could have a material adverse effect on the Mirabela Group revenue, cash flows and financial condition.

### ***Competition***

The Mirabela Group competes with other companies, some of which have higher quality ore and greater financial and other resources than the Mirabela Group and, as a result, may be in a better position to compete for future business opportunities. The Mirabela Group competes with other mining companies for the acquisition of mineral claims, leases and other mineral interests as well as for the recruitment and retention of qualified employees and other personnel.



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### ***Offtake agreements***

The Mirabela Group is exposed to risk of default by offtake counterparties. In November 2013, Votorantim, one of the Mirabela Group's two offtake partners at the time, claimed that owing to a force majeure event it was not obligated to purchase nickel concentrate pursuant to the offtake agreement between Votorantim and the Mirabela Group. Mirabela Brasil has recently commenced arbitration proceedings with Votorantim in relation to the validity of the alleged force majeure event.

The risk regarding default under the offtake agreement includes default by the offtake counterparty through no default of their own (for example due to sanctions).

If the Mirabela Group is unsuccessful in negotiating a continuation of its short-term offtake, or a long term offtake agreement, on appropriate terms there is a significant risk that the Mirabela Group will not be economically viable.

Currently, 100% of the Mirabela Group's nickel concentrate production is exported to the Mirabela Group's two international customers. An extended disruption to export operations would be a significant risk to the economic viability of the Mirabela Group.

### ***Changes in the terms of the Caterpillar Facility could have a material adverse impact on the Company's financial condition***

In March 2009, Mirabela Brasil, as lessee, and the Company, as guarantor, entered into a master funding and lease agreement with Caterpillar Financial SARL, as arranger, and Caterpillar Financial Services Corporation (**Caterpillar Financial Services**), as lender (together with the arranger, **Caterpillar Financial**) pursuant to which Caterpillar Financial agreed to extend a master funding and lease facility in the principal amount of not more than US\$55 million for the purpose of lease financing up to 90% of the purchase price of Caterpillar mobile equipment from Marcosa SA and Sotreq SA, Brazil.

On the terms of the Caterpillar Facility, Caterpillar Financial may syndicate up to US\$30 million of the Caterpillar Facility and is entitled to make changes to the pricing and structure of the Caterpillar Facility (subject to limitations to be determined by the parties), in order to achieve a successful syndication (such changes applying only to the syndicated portion of the Caterpillar Facility). These changes may include changes that impose additional restrictions on the Company, or that adversely impact the interest rate that the Company is required to pay under the Caterpillar Facility. There can be no assurance that such changes to the pricing and structure of the Caterpillar Facility will not have an adverse effect on the Company and its financial condition.

On 18 December 2013, Caterpillar Financial Services and Mirabela Brasil entered into an Amended and Restated Standstill and Forbearance Agreement whereby Caterpillar Financial Services agreed to forbear from exercising its enforcement rights under the Caterpillar Facility until the earliest to occur of (a) a termination event under the Amended and Restated Standstill and Forbearance Agreement and (b) 23 July 2014, provided that such expiration may be extended by up to thirty (30) days at the election of either party to the extent no termination event has occurred.

### ***Government regulation***

The mining, processing, development, export and mineral exploration activities of the Company are subject to various laws governing prospecting, development, production, taxes, labour standards and occupational health, mine safety, toxic substances, land use, water use, land



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claims of local people, and other matters. No assurance can be given that new rules and regulations will not be enacted or that existing rules and regulations will not be applied in a manner which could limit or curtail production or development. Amendments to current laws and regulations governing operations and activities of mining and milling or more stringent implementation thereof could have a material adverse impact on the Company. Further, legislation relating to mining exploration in Brazil is currently subject to review by the Brazilian government. It is expected that legislative changes would affect tenement holdings and require companies to spend a minimum amount in a given timeframe or otherwise face penalties. There is a risk that any legislative changes may affect the Mirabela Group's expenses, exploration activities, operations at the Santa Rita mine, export operations and business generally.

### ***In-country/political risks***

The Company's operations in Brazil are exposed to political, economic and other risks and uncertainties associated with operating in foreign jurisdictions. These risks and uncertainties include, but are not limited to, terrorism; hostage taking; military repression; extreme fluctuations in currency exchange rates; high rates of inflation; labour unrest; expropriation and nationalisation; renegotiation or nullification of existing concessions, licences, permits and contracts; failure to enter into various agreements with the Brazilian government; changes in taxation policies; restrictions on foreign exchange; changing political conditions; illegal mining and currency controls; and governmental regulations that favour or require foreign contractors to employ citizens of, or purchase supplies from, a particular jurisdiction.

Changes, if any, in mining or investments policies or shifts in political attitude in Brazil may adversely affect the Company's operations or profitability. Operations may be affected in varying degrees by government regulations with respect to, but not limited to, restrictions on production; price controls; export controls; currency remittance; income taxes; foreign investment; expropriation of property; maintenance of claims; environmental legislation; land use; land claims of local people; water use; mine safety; and Brazilian government and local participation.

Failure to comply strictly with applicable laws, regulations and local practices relating to mineral tenure and production could result in loss, reduction or expropriation of entitlements. The occurrence of these various factors and uncertainties cannot be accurately predicted and could have an adverse effect on the Company's operations or profitability.

### ***Repatriation of earnings***

There is no assurance that the government or other regulatory authority of Brazil or any other foreign country in which the Mirabela Group may operate in the future will not impose restrictions on the repatriation of earnings to foreign entities.

Under existing regulations, Brazilian companies are not required to obtain authorisation from the Brazilian Central Bank in order to remit funds abroad in order to make payments in foreign currency under guarantees to creditors domiciled abroad, such as to the holders of the Convertible Notes. We cannot assure that these regulations will continue to be in force at the time Mirabela Brasil may be required to perform payment obligations under the guarantee. If these regulations or their interpretation are modified and an authorisation from the Brazilian Central Bank is required, Mirabela Brasil would be obligated to seek an authorisation from the Brazilian Central Bank to transfer the amounts under the guarantee out of Brazil or, alternatively, make such payments with funds held by Mirabela Brasil outside Brazil. Mirabela Brasil cannot assure the Convertible Noteholders that such an authorisation will be obtained or that such funds will be available.



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### ***Foreign currency risk***

The Company may be subject to foreign currency fluctuations. The Company's mine site is located in Brazil, most of the Company's liabilities are denominated in U.S. dollars and the Company's financial results are reported in U.S. dollars. The Company's currency fluctuation exposure is primarily to the U.S. dollar, the Australian dollar and the Brazilian reais. If the Company's Brazilian reais-denominated asset base is devalued in comparison to its U.S. dollar-denominated payment obligations on the Convertible Notes and other U.S. dollar-denominated liabilities, the Company's ability to make such payments could be adversely affected. In addition, severe devaluation or depreciation of the Brazilian reais, or government imposition of foreign exchange controls, may also result in the disruption of the international foreign exchange markets and may limit the Company's ability to transfer or to convert Brazilian reais into U.S. dollars and other currencies.

### ***Global economic conditions***

Recent global economic conditions have been characterised by volatility. Access to financing has been negatively impacted by many factors as a result of the global financial crisis and general economic conditions. This may impact the Company's ability to obtain financing on favourable terms in the future. Factors such as inflation, currency fluctuations, interest rates, supply and demand and industrial disruption have an impact on operating costs, commodity prices and stock market processes. The Company's future possible revenues and share price can be affected by these global economic conditions which are beyond the control of the Company, its Deed Administrators and officers.

### ***Investment in emerging market economies generally poses a greater degree of risk than investment in more mature market economies***

Investment in emerging market economies generally poses a greater degree of risk than investment in more mature market economies because emerging market economies are more susceptible to destabilisation resulting from international and domestic developments. The economy of Brazil remains vulnerable to external shocks, including those relative to, or similar to, the global financial crisis that began in 2008. Brazil's economy is also vulnerable to adverse developments affecting their principal trading partners. A significant decline in the economic growth of any of Brazil's major trading partners could have a material adverse impact on its balance of trade and adversely affect its economic growth. Furthermore, because reactions of "international investors" to events occurring in one market, particularly emerging markets, frequently appear to demonstrate a "contagion" effect, in which an entire region or class is disfavoured by international investors, the economy of Brazil could be adversely affected by negative economic or financial developments in other markets.

### ***Litigation***

The Company and Mirabela Brasil may be exposed to risks of litigation which may have a material adverse effect on the financial position of the relevant entity. The Company and Mirabela Brasil could become exposed to claims or litigation by persons alleging they are owed fees for services, employees, regulators, competitors or other third parties. To the extent that such claims or litigation are not covered by insurance, an adverse outcome in litigation or the cost of initiating or responding to potential or actual claims or litigation may have an adverse impact on financial performance.

The Company may be at risk to a heightened level of future litigation claims, particularly civil and labour, due to the impact of ongoing operational and corporate distress.





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As at the date of this Prospectus, the only litigation matters considered material to the Mirabela Group's business are set out in this Prospectus (see Section 2.1(r) in particular).

### ***Structural subordination of Shares***

In the event of a bankruptcy, liquidation or reorganisation of the Company, secured and unsecured creditors will be entitled to payment of their claims from the assets of the Company before any assets are made available for distribution to the Shareholders. The Shares will be subordinated to all of the other indebtedness and liabilities of the Company. Under Section 563A of the Corporations Act claims of a person for a debt owed by the Company to that person (in the person's capacity as a member are subordinated to all other claims as against the Company on a winding up. The Company will be limited in its ability to incur secured or unsecured indebtedness.

### ***Future sales or issue of Shares***

The Company may issue further Shares or other securities in subsequent fundraising. The Company may also issue additional securities to finance future activities. The Company cannot predict the size of future issues or the effect, if any, that future issues of securities will have on the market price of the Shares or Convertible Notes. Issues of substantial numbers of Shares, or the perception that such sales could occur, may adversely affect prevailing market prices of the Shares or Convertible Notes. With any additional sale or issue of Shares, investors will suffer dilution to their voting power and the Company may experience dilution in its earnings per share.

### ***Upon conversion of the Convertible Notes into Shares by certain investors, a significant portion of the Company's Shares will be controlled by such investors***

Section 3.4 sets out the effect of the issue of Convertible Notes on the capital structure of the Company. Concentrated holdings of Convertible Notes and/or Shares can result in certain holders being in a position to exert significant influence over operations and outcomes of the Mirabela Group, including election of directors and approval of major transactions. It is possible these holders' interests would be different from those of other investors. Further, any significant sell down may have a negative impact on pricing of securities of the Company, and there may be relatively few buyers or a relatively high number of sellers at any given time.

### ***The Company is subject to different corporate disclosure and accounting standards to U.S. companies.***

A principal objective of the securities laws of the United States, Australia and Brazil is to promote full and fair disclosure in all material corporate information, including accounting information. However, there may be different publicly available information about the Company than is regularly published by or about U.S. issuers of securities.

## **4.4 Enforcement Rights**

### **Australian enforcement risks**

#### ***Overview of enforceability of security interests in Australia***

Under Australian law, different statutory regimes apply to a security interest depending on whether it relates to land or assets other than land (referred to as personal property). To the extent that the security documents affect personal property, they will generally be governed by



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Commonwealth legislation and the PPSA provided that the property is located in Australia or the grantor of the security interest is an Australian entity.

### ***Security over personal property under Australian law***

In order to attain the best possible priority under the PPSA and to prevent the security interest from vesting in the grantor on insolvency, a security interest must be perfected. Perfection can only be achieved once the security interest is enforceable against the grantor (known as attachment) and against third parties (including by execution of a security agreement). The most common method of perfection is by registration of the security interest on the PPSR. Where the grantor is a company, there are time limits for registration. If those time limits are not complied with, the security interest may vest in the grantor on insolvency (meaning the secured party loses all rights in relation to the collateral). Other methods of perfection include taking possession or control of the collateral (in each case in accordance with the PPSA). Those methods of perfection are only available in relation to specific types of property, the most common example being financial property such as shares, units, bonds and certain bank accounts. Perfection can be lost if, for example, a secured party ceases to have control of collateral (and did not also have a registration in respect of the interest). The security interest created under the General Security Deed is registered on the PPSR and was registered within the statutory timeframe. The General Security Deed is therefore said to have been perfected for the purposes of priority and enforcement under the PPSA.

Secured property subject to the PPSA can be transferred despite a prohibition in the relevant security agreement. However, such action can still constitute a default under the security agreement. In addition, the security interest will continue in the transferred collateral (subject to the application of the taking free rules) and will attach to any proceeds of the sale unless the security agreement provides otherwise. If a taking free rule does apply, the secured party will also be entitled to exercise the rights of the transferor as against the transferee (such as recovering unpaid purchase money).

### ***Nature of the General Security Deed***

The security created under the General Security Deed takes effect as a security transfer of certain classes of assets and as a charge over all other secured property. To the extent that the secured property is personal property which is the subject of the PPSA, the effect of the charge is governed by that PPSA. The charge is expressed to operate as a floating charge under common law over all revolving assets and as a fixed charge over all other secured property. The floating charge becomes fixed upon the occurrence of an insolvency type event or upon notice being given by the Security Trustee following a default. Since it is likely that all of the Collateral subject to security granted under General Security Deed will constitute personal property under the PPSA, the fixed and floating aspects of the General Security Deed will have very limited practical application.

### ***Priority of Security under the PPSA***

A failure to perfect a security interest can have serious ramifications for a secured party's priority position (as discussed below), particularly with respect to potential recoveries in an enforcement scenario. Priority of security over other kinds of property will be governed by general law principles or by statutory regimes applying to the particular property. The General Security Deed is perfected and is first ranking.

The PPSA includes general default priority rules as well as specific rules in relation to certain types of security interests. Under those rules:



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- perfected security interests take priority over unperfected security interests;
- priority as between perfected interests is determined by the time of perfection (subject to other specific rules including those listed below) and priority as between unperfected interests is determined by the time of attachment;
- certain security interests held by lessors and inventory financiers (such as suppliers on retention of title terms and consignors) will take priority over other kinds of security interests (except those perfected by control) if registered within the applicable time period (but only to the extent that it secures obligations referable to the acquisition such as the purchase price or lease payments);
- a security interest perfected by control (for example, over financial assets like bank accounts, purchase money security interests, lease of goods and retention of title arrangements registered as such) will take priority over all other security interests (regardless of the time of creation or perfection of those other interests, but with an exception related to certain transitional security interests); and
- the priority afforded to a security interest will apply to all advances secured by that interest and secured parties may enter into agreements with each other to regulate the priority of their security interests which will override the position which would otherwise apply under the PPSA.

Other interests may take priority over PPSA security interests, such as liens arising by operation of the law, certain statutory charges and claims preferred on insolvency such as those discussed below in relation to circulating security interests and floating charges. In addition, priority may be affected by the laws of another jurisdiction if collateral is located outside of Australia.

There are also a number of circumstances in which a purchaser or lessee of collateral can take it free of a perfected security interest. These include (subject to exceptions) where the sale or lease is in the ordinary course of the grantor's business (unless the buyer or lessee actually knew it would breach the security agreement) and where a purchaser of shares or other investment instruments buys those instruments in the ordinary course of trading on a prescribed financial market.

In some circumstances, buyers and lessees can take free of security interests even where it is not in the ordinary course of the seller or lessor's business and the purchaser or lessee knows a security interest prohibiting the sale or lease exists. This will be the case where collateral which can be registered by serial number under the PPSA (such as motor vehicles, watercraft, aircraft assets and certain intellectual property, including trademarks and patents) is not registered by reference to that serial number (even if otherwise perfected).

### ***Enforcement of the General Security Deed***

Enforcement of security interests in Australia can generally be carried out by the holder of the security interest (or a person appointed by it) without Court process. The General Security Deed can be enforced following a declared default. Enforcement action may include taking possession of the secured property, exercising a power to sell the secured property or appointing a receiver or receiver and manager to manage and/or sell the secured property.

A receiver or receiver and manager appointed by a secured creditor would have the powers set out in the applicable security document, in this case the General Security Deed, as well as statutory powers. Those powers would include a power to manage and to sell the secured



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property. A receiver would pay the net proceeds of sale to the appointing creditor (after paying prior security holders, other priority creditors, expenses and costs of the receivership).

A receiver is the agent of the grantor company and controls the secured property to the exclusion of other lower ranking creditors. A receiver's main responsibility is to preserve the value of secured property pending its sale and to sell sufficient secured assets to satisfy the appointing creditor's outstanding debt. A receiver has statutory and general law duties intended to, among other things, protect unsecured creditors. These include a duty to take reasonable care to sell secured property for at least market value (or if the property does not have a market value, the best price that is reasonably obtainable). This duty also applies to a secured creditor exercising a power of sale.

### ***Stamp Duty***

If the collateral the subject of the security documents is located in the State of New South Wales in Australia or taken to be located in the State of New South Wales in Australia for the purposes of applicable stamp duty legislation, an amount of mortgage duty will be payable on the relevant Security Documents on a proportional basis. To the extent that such stamp duty has not been paid (including any applicable penalties and interest), the Security Documents may not be admissible in an Australian Court and this may adversely affect the ability of the Security Trustee to enforce the security. There is at the date of this document no property of Mirabela or Mirabela Investments subject to the General Security Deed located in the State of New South Wales in Australia.

### ***Effect of Insolvency on enforcement***

Insolvency of the grantor of a security interest could adversely affect enforcement of a security interest in the circumstances set out below.

### ***Restrictions on enforcement of security interests during administration***

Where a grantor company is insolvent or likely to become insolvent, an administrator can be appointed to the company by a secured creditor who holds a security interest over the whole or substantially the whole of the company's property, a liquidator or any directors of the company. Usually it is the directors who appoint the administrator in order to protect themselves from claims that they allowed the company to trade while insolvent. The administrator's role is to investigate the affairs of the company and put forward a plan for the company's creditors to consider. There are three possible outcomes:

- winding up the company where there is no prospect of continued trading;
- returning the company to the directors if the company is solvent; and
- entering into a deed of company arrangement allowing for the company to continue to trade on the basis of creditors agreeing to compromise their debts.

On appointment of an administrator, the company obtains the benefit of a statutory moratorium preventing creditors from winding up or otherwise commencing proceedings or enforcing their claims against the company during the administration period without the administrator's consent or leave of the Court (in order to facilitate the administrator's investigation of its affairs).

There is an exception for secured creditors with security over the whole or substantially the whole of the company's property who have not enforced prior to the administration. A creditor in that position will have 13 business days to enforce its security from the date of notice of the



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appointment of the administrator (or will be bound by the moratorium). Holders of security over less than the whole of the property of the company may have rights to enforce during the administration period in some limited circumstances (such as where secured property is perishable, where the administrator consents or leave of the Court is granted). If a secured creditor does appoint a receiver prior to or during the administration, that appointment takes priority, with respect to the assets subject to the relevant security, as against the administrator.

With the introduction of the PPSA, property which is not owned by the grantor company but which is the subject of a PPSA security interest (for example, a security interest arising under a lease or retention of title arrangement) is treated as property of the grantor company in certain circumstances, including for the purposes of determining whether a secured creditor has security over the whole or substantially the whole of the assets of a company in the context of administration. Such property is referred to as PPSA retention of title property.

### ***Voidable transactions***

Only liquidators (as opposed to administrators and/or receivers) are empowered to set aside certain transactions that were entered into by insolvent companies preceding their winding up. The types of transactions which may be challenged include unfair preferences, uncommercial transactions, unfair loans and unreasonable director-related transactions which took place during the six months prior to the order or resolution for the winding up. Any one of these transactions will be voidable if the relevant company was insolvent at the time of the transaction or became insolvent as a result of the transaction.

### ***PPSA Security Interests which are unregistered or were registered out of time***

Under the PPSA, subject to very limited exceptions, security interests which are unperfected at the time of the grantor's winding up or administration will vest in the grantor. In addition, for companies, a security interest must be registered within 20 business days after the relevant security agreement is signed or at least six months prior to the commencement of the winding up or administration of the company. Failure to comply will result in the security interest vesting in the grantor company (again, with very limited exceptions).

In practical terms the property which is the subject of a security interest which has vested in the grantor will be added to the pool of assets available to creditors generally.

### ***Transfers of Shares***

A transfer of shares which are the subject of a security interest will be void as against the grantor company in which the shares are issued after the commencement of a winding up of that company by the Court, during an administration and after the passing of a resolution for voluntary winding up, unless the Court makes an order authorizing the transfer or the liquidator or administrator (as applicable) gives written consent.

### ***Circulating security interests and floating charges***

Circulating security interests and floating charges are terms used to describe security interests over property of the grantor which the grantor generally needs to deal with in the ordinary course of its business (provided that the security agreement permits those dealings). Under the PPSA, inventory, accounts receivable, bank accounts (other than term deposits), negotiable instruments and currency are defined as circulating assets (unless the secured party takes control of the relevant asset in accordance with the requirements of the PPSA, which would, among other things, prevent the grantor from dealing freely with the asset). Other property may



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constitute a circulating asset if the secured party has permitted the grantor to deal with that property without further reference to the secured party.

Circulating security interest is the term used by the PPSA while the same interests governed by general law are known as floating charges.

Circulating security interests and floating charges are vulnerable on insolvency because:

- they can be void against a liquidator appointed to the grantor company if granted within the six months prior to liquidation or administration (but only to the extent that the interest secures advances made to the grantor company prior to the grant of the circulating security interest and only where the grantor company was insolvent immediately after the time of granting the circulating security interest); and
- property subject to such interests can be used to pay certain unsecured creditors in priority to the holder of the circulating security interest where the amount otherwise available to unsecured creditors would be insufficient to meet those claims. The claims include employee entitlements such as superannuation, injury compensation, long service leave and certain termination payments as well as the administrator's right of indemnity (except where the secured party enforced prior to the administration and is limited to pre-enforcement costs where enforcement occurs during the administration).

### ***Limitations on validity and enforceability of guarantees provided by Australian Guarantors***

In Australia, a guarantee may be set aside or held not to be enforceable on a number of grounds, including grounds that relate to corporate benefit, fraudulent conveyance or transfer, voidable preference or similar laws and regulations or defences affecting the rights of creditors generally. Under Australian law, if a liquidator were to be appointed to any Australian Guarantor, the liquidator has the power to investigate past transactions entered into by that entity and may seek various Court orders, including orders to void certain transactions entered into prior to the winding up of such Australian Guarantor and for the repayment of money. These transactions are known as "voidable transactions" and include transactions that are regarded as:

- unfair preferences: a transaction which resulted in a creditor receiving more from the company in respect of an unsecured debt that the company owes to the creditor than it would have received in respect of the debt if the transaction were set aside and the creditor were to prove for the debt in a winding up of the company;
- uncommercial transactions: a transaction a reasonable person in the company's circumstances would not have entered into having regard to the respective benefits and detriments to the company and the respective benefits to the counterparty;
- insolvent transactions: a transaction that is either an unfair preference or an uncommercial transaction and the company was insolvent at the time of entering into the transaction or became insolvent as a result of entering into such a transaction. Under Australian law, a company is insolvent when that company is unable to pay all its debts as and when they become due and payable; or
- transactions that otherwise defeat, delay or interfere with the rights of creditors (for example, unfair loans to a company and unreasonable director-related transactions).



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Transaction for the purposes of the voidable transaction legislation is given a wide meaning and includes a guarantee given by a body. See also “—Effect of Insolvency on Enforcement” above in relation to when security interests may be voidable.

There are various time periods within which a liquidator can take such action depending on the nature of the transaction being challenged and the parties involved.

Under Australian law, a guarantee given by a company may also be set aside on a number of other grounds. For example, a guarantee may be unenforceable against a guarantor if the directors of the guarantor did not comply with their duties to act in good faith for the benefit of the guarantor and for a proper purpose in giving the guarantee. The issue is particularly relevant where a company provides a guarantee in relation to the obligations of another member in its corporate group, as is the case for the guarantees given by the Australian Guarantors with respect to the Convertible Notes. In determining whether there is sufficient benefit, all relevant facts and circumstances of the transaction need to be considered by the directors, including the benefits and detriments to the Australian Guarantor in giving the guarantee, and the respective benefits to the other parties involved in the transaction.

Whether a guarantee entered into in breach of directors' duties can be avoided against a party relying on the guarantee depends on certain factors, including the state of knowledge of that party, and whether the party knew of or suspected the breach. Under Australian law, a person is entitled to assume that the directors have properly performed their duties to the company unless that person knows or suspects that the assumption is incorrect.

In addition, other debts and liabilities of the Australian guarantor, such as certain employee entitlements, may rank ahead of claims under the guarantees in the event of insolvency, administration or similar proceedings.

If any of the guarantees from an Australian guarantor is avoided, it is possible that Convertible Noteholders would be left with a claim solely against Mirabela and the other guarantors.

### **Other enforcement risks**

***As the Company has no operations of its own, holders of the Convertible Notes must depend on the Guarantor to provide the issuer with sufficient funds to make payments on the Convertible Notes when due***

The Company has no operations other than the issuing of and making payments on the Convertible Notes and other indebtedness ranking equally with the Convertible Notes and using the proceeds therefrom as permitted by the documents governing these issuances, including lending the net proceeds of the Convertible Notes and other indebtedness incurred by the Company to the Guarantor. Accordingly, the ability of the Company to make payments of amounts due on the Convertible Notes and other indebtedness will depend upon the financial condition and results of operations of the Guarantor. In the event of an adverse change in the financial condition or results of operations of the Guarantor, these entities may be unable to service their indebtedness to the Company, which would result in the failure of the Company to have sufficient funds to repay all amounts due on or with respect to the Convertible Notes.

***Judgments of Brazilian Courts enforcing Mirabela Brasil's obligations under the Convertible Notes are payable only in Brazilian reais***

If proceedings were brought in the Courts of Brazil seeking to enforce Mirabela Brasil's obligations under its guarantee of the Convertible Notes, Mirabela Brasil would not be required to discharge its obligations in a currency other than reais. Any judgment obtained in Brazilian



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Courts against Mirabela Brasil in respect of any payment obligations under the Convertible Notes will be expressed in reais equivalent to the U.S. dollar amount of such payment at the exchange rate published by the Brazilian Central Bank (i) on the date on which such judgment is rendered or (ii) on the date on which the judicial proceeding was filed, in which case the amount due in reais would be subject to a monetary adjustment as determined by the relevant Court.

***Brazilian bankruptcy and insolvency laws may be less favourable to investors than bankruptcy and insolvency laws in other jurisdictions***

If Mirabela Brasil is unable to pay its indebtedness, including its obligations under its guarantee of the Convertible Notes, Mirabela Brasil may become subject to bankruptcy and insolvency proceedings in Brazil. The bankruptcy and insolvency laws of Brazil currently in effect are significantly different from, and may be less favourable to creditors than, those of certain other jurisdictions.

Convertible Noteholders may have limited voting rights at creditors' meetings in the context of a court order of a bankruptcy and/or insolvency proceeding. In addition, any judgment obtained against the Company and the Guarantors in Brazilian courts in respect of any payment obligations under the Convertible Notes normally would be expressed in the reais equivalent of the U.S. dollar amount of such sum at the exchange rate in effect (i) on the date of actual payment, (ii) on the date on which such judgment is rendered or (iii) on the date on which collection or enforcement proceedings are started against Mirabela Brasil. In the event of Mirabela Brasil's liquidation, all of Mirabela Brasil's debt obligations which are denominated in foreign currency will be converted into reais at the prevailing exchange rate on the date of declaration of Mirabela Brasil's liquidation by the Court. The Company and the Guarantors cannot assure investors that such rate of exchange will afford full compensation of the amount invested in the Convertible Notes plus accrued interest.

***Rights of holders of Convertible Notes in the collateral under the Brazilian security documents may be materially adversely affected by bankruptcy proceedings***

The right of the Convertible Noteholders to repossess and dispose of the collateral securing the Convertible Notes upon acceleration is likely to be significantly impaired by bankruptcy and insolvency law if insolvency proceedings are commenced by or against the Guarantor prior to or possibly even after a Convertible Noteholder has repossessed and disposed of the collateral under the Brazilian security documents. A creditor secured by fiduciary assignment, such as any of the Convertible Noteholders, may be prohibited from repossessing its security from a debtor in a bankruptcy case, or from disposing of security repossessed from a debtor, by the bankruptcy judge. Moreover, the bankruptcy judge may permit the debtor to continue to retain and to use collateral and the proceeds, products, rents or profits of the collateral, even though the debtor is in default under the applicable debt instruments. In view of the broad discretionary powers of a bankruptcy court, it is impossible to predict how long payments under the Convertible Notes could be delayed following commencement of a bankruptcy case, whether or when the Convertible Noteholders would repossess or dispose of the collateral under the Brazilian security documents, and whether or to what extent holders of the Convertible Notes would be compensated for any delay in payment or loss of value of the collateral. Furthermore, in the event that the value of the collateral under the Brazilian security documents is not sufficient to repay, purchase, transfer or assign all amounts due on the Convertible Notes, the holders of the Convertible Notes would have "unsecured claims" as to the difference.





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### ***Any unsecured obligations of Mirabela Brasil are subordinated to certain statutory preferences***

Under Brazilian law, any unsecured obligations and certain secured obligations of Mirabela Brasil are subordinated to certain statutory preferences. In the event of the liquidation, bankruptcy or judicial reorganisation of Mirabela Brasil, such statutory preferences, including post-petition claims, claims for salaries, wages, social security, taxes and court fees and expenses and claims secured by collateral, among others, will have preference over any unsecured claims. In such a scenario, enforcement of the unsecured obligations under the Convertible Notes may be unsuccessful, and Convertible Noteholders may be unable to collect amounts that are due under the Convertible Notes.

### ***The initiation of an extrajudicial reorganisation proceeding may have a negative impact on Mirabela Brasil's image, which may negatively impact Mirabela Brasil's business going forward***

As part of the Proposed Recapitalisation Plan, it is expected that Mirabela Brasil will initiate the EJ Proceeding. As a result, Mirabela Brasil may be the subject of negative publicity which may have an impact on its image and the image of its operations and its reputation, stature and relationship within the community. This negative publicity may have an effect on the terms under which some customers, advertisers and suppliers are willing to continue to do business with Mirabela Brasil and could materially adversely affect Mirabela Brasil's business, financial condition and results of operations.

### ***Approval and confirmation of an extrajudicial plan of reorganisation is subjected to certain requirements provided by Brazilian law***

The approval of an extrajudicial reorganisation plan is subjected to the consent of creditors representing a certain amount of the credits of each group of creditors subjected to the extrajudicial proceeding. Further to the approval by the requisite majority of creditors provided in Brazilian law, the extrajudicial reorganisation plan has to be confirmed by the bankruptcy judge to bind dissident creditors. The bankruptcy judge may refuse to confirm the plan if it does not fulfill certain requirements provided in Brazilian Law.

### ***Rights of holders of Convertible Notes in the collateral under the Brazilian security documents may be materially adversely affected by the failure to perfect liens on the collateral under the Brazilian security documents***

Pursuant to the New Indenture and the Brazilian security documents, the Company and the Guarantors have the obligation to ensure that all security interests in the Brazilian security documents are duly created and enforceable and perfected, to the extent required by the Brazilian security documents. The failure to properly perfect liens on the collateral under the Brazilian security documents could materially adversely affect the Collateral Agents' ability to enforce their rights with respect to the Brazilian security documents for the benefit of the holders of the Convertible Notes. In addition, applicable law requires that certain property and rights acquired after the grant of a general security interest or lien can only be perfected at the time such property and rights are acquired and identified. There can be no assurance that the Guarantor will inform the Trustee or the Collateral Agents of the future acquisition of property and rights that constitute collateral under Brazilian security documents and that the necessary action will be taken to properly perfect the lien on the collateral under Brazilian security documents. Neither the Trustee nor the Brazilian Collateral Agent for the Convertible Notes has any obligation to monitor the acquisition of additional property or rights that constitute collateral or the perfection of any security interests therein. Accordingly there exists the risk of a loss of



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the practical benefits of the liens thereon or of the priority of the liens securing the Convertible Notes

***There is no certainty that the foreclosure on the Brazilian security documents will be successful or that the proceeds of such foreclosure will be sufficient to fully repay all obligations under the Convertible Notes***

Foreclosure is directly related to the fair market value of collateral under the Brazilian security documents and the existence of buyers interested in acquiring them at the time of foreclosure. In addition, the procedure of foreclosure on the Brazilian collateral can last months and might not be achieved within the term desired by the Convertible Noteholders. Furthermore, the foreclosure on the mortgage is required by Brazilian law to be conducted through a judicial proceeding filed before the Brazilian Court in which the property given as collateral is located.

The fair market value of the collateral under the Brazilian security documents is subject to fluctuations based on factors that include, among others, the condition of the nickel industry, the ability to sell the Brazilian collateral in an orderly sale, general economic conditions, the availability of buyers and similar factors. The amount to be received upon a sale of the collateral under the Brazilian security documents would also be dependent on numerous factors, including, but not limited to, the actual fair market value of the collateral under the Brazilian security documents at such time and the timing and the manner of the sale. By their nature, portions of the collateral under the Brazilian security documents may be illiquid and may have no readily ascertainable market value. In addition, Courts could limit recoverability if they apply non-New York law to a proceeding and deem a portion of the interest claim usurious in violation of public policy.

Upon occurrence of an acceleration event under the Convertible Notes, there is no guarantee that the foreclosure on the Brazilian collateral will be successful or that the proceeds of such foreclosure will be sufficient to fully repay all obligations under the Convertible Notes

In addition, in the event of a bankruptcy, the ability of the holders of the Convertible Notes to realise upon any of the Brazilian collateral may be subject to certain bankruptcy law limitations as described above.

### 4.5 General Risks

#### ***Share market risk***

The market price of the Company's Shares could fluctuate significantly based on a number of factors including nickel prices, the Company's operating performance and the performance of competitors and other similar companies, the public's reaction to the Company's press releases, other public announcements and the Company's filings with the various securities regulatory authorities, changes in earnings estimates or recommendations by research analysts who track the Company's Shares or the shares of other companies in the resource sector, changes in general economic conditions, the number of the Company's Shares publicly traded and the arrival or departure of key personnel, acquisitions, strategic alliances or joint ventures involving the Company or its competitors.

In addition, the market price of the Company's Shares is affected by many variables not directly related to the Company's success and therefore not within the Company's control, including other developments that affect the market for all resource sector shares, the breadth of the public market for the Company's Shares, and the attractiveness of alternative investments.



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### ***Economic risks***

General economic conditions, movements in interest and inflation rates and currency exchange rates may have an adverse effect on the Company's exploration, development and production activities, as well as on its ability to fund those activities

Further, share market conditions may affect the value of the Company's quoted securities regardless of the Company's operating performance. Share market conditions are affected by many factors such as:

- general economic outlook;
- interest rates and inflation rates;
- currency fluctuations;
- changes in investor sentiment toward particular market sectors;
- the demand for, and supply of, capital; and
- terrorism or other hostilities.

### ***Insurance risks***

The Company has potential insurance risk associated with its operations.

The Company's insurance may not fully cover its liability or the consequences of any business interruptions nor does it cover political risk.

The occurrence of a significant adverse event not covered or only partially covered by insurance could have a material adverse effect on the Company's business, results of operations, financial condition and prospects.

Insurance of risks associated with minerals exploration and mining operations is not always available and, when available, the costs can be prohibitive. There is a risk that insurance premiums may increase to a level where the Company considers it is unreasonable or not in its interests to maintain insurance cover or a level of coverage which is in accordance with industry practice. The Company will use reasonable endeavours to insure against the risks it considers appropriate for the Company's needs and circumstances. However, no assurance can be given that the Company will be able to obtain such insurance coverage in the future at reasonable rates or that any coverage it arranges will be adequate and available to cover claims.

### ***Unforeseen expenses***

The Company may be subject to significant unforeseen expenses or actions.

This may include unplanned operating expenses, capital expenditure, future legal actions or expenses in relation to future unforeseen events. There is the risk that additional funds may be required to fund the Company's future objectives.

### ***Securities price fluctuation***

The market price of a publicly traded stock is affected by many variables not directly related to the success of the Company. In recent years, the securities markets have experienced a high



## MIRABELA NICKEL

level of price and volume volatility, and the market price of securities of many companies has experienced wide fluctuations which have not necessarily been related to the operating performance, underlying asset values or prospects of such companies. There can be no assurance that such fluctuations will not affect the price of the Company's securities.

### **4.6 Speculative nature of investment**

The above list of risk factors ought not to be taken as exhaustive of the risks faced by the Company or by investors in the Company. The above factors, and others not specifically referred to above, may in the future materially affect the financial performance of the Company and the value of the Offer Securities offered under this Prospectus and the Shares issued on conversion of the Convertibles.



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## 5 Additional information

### 5.1 Continuous disclosure obligations

The Company is a "disclosing entity" (as defined in Section 111AC of the Corporations Act) and is subject to the regime of continuous disclosure and periodic reporting requirements. Specifically as a listed company, the Company is subject to the Listing Rules which require continuous disclosure to the market of any information possessed by the Company which a reasonable person would expect to have a material effect on the price or value of its Shares.

The Company had relied on ASIC Class Order 03/392 which permitted the Company to delay the lodgement of its annual financial report for the year ended 31 December 2013 until 25 August 2014. The annual report for the year ended 31 December 2013 was released on 26 May 2014.

The Company has a policy on compliance with the Listing Rules which sets out the obligations of its officers and employees to ensure the Company satisfies the continuous disclosure obligations imposed by the Listing Rules and the Corporations Act. The policy provides information as to what a person should do when they become aware of information which could have a material effect on the Company's securities and the consequences of non-compliance.

In terms of procedure, the Deed Administrators have maintained the reporting lines of the Mirabela Group below Board level which existed prior to their appointment as voluntary administrators on 25 February 2014. There has also been very regular email/telephone correspondence with key personnel (including with officers) in Brazil.

Information has been and will continue to be communicated to Shareholders through the lodgement of relevant information with the ASX and the Company's website at [www.mirabela.com.au](http://www.mirabela.com.au).

The Company is a designated foreign issuer as defined by the Canadian Securities Administrators' National Instrument 71-102 – Continuous Disclosure Requirements and Other Exemptions Relating to Foreign Issuers. The Company is subject to the regulatory requirements of the ASX and ASIC.

### 5.2 Regulatory Relief

As the Company has been suspended for more than 5 days in the 12 months prior to the date of this Prospectus, the Company is unable to issue the Offer Securities without disclosure and then "cleanse" the Shares to be issued (including on conversion of the Convertible Notes) using a notice issued pursuant to Section 708A(5) of the Corporations Act. As such, the Applicants may apply for the Offer Securities pursuant to this Prospectus so that the Shares issued (including on conversion of the Convertible Notes) will be freely tradeable (subject to their terms).

To facilitate the Proposed Recapitalisation Plan, Mirabela has applied to ASIC and ASX for certain Relief, as set out below. The Offers under this Prospectus are conditional upon Relief having been obtained in a form satisfactory to the Deed Administrators.

#### ASIC Relief

To facilitate the Proposed Recapitalisation Plan, Mirabela has applied to ASIC for the following exemptions from certain provisions of the Corporations Act:



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- (a) an exemption from Section 606, to allow the transfer of the Transfer Shares, which was required because of the association between certain of the Existing Noteholders, which association is expected to end immediately upon implementation of the Proposed Recapitalisation Plan;
- (b) an exemption from Section 606, to allow the issue of Rollover Shares and Fee Shares to certain of the Existing Noteholders, as described in Section 1.1; and
- (c) an exemption from Section 606 to allow specified Existing Noteholders to acquire Shares on exercise of the Convertible Notes, in circumstances where their voting power may increase above 20% or, if already above 20%, further increase.

### ASX Walvers

To facilitate the Proposed Recapitalisation Plan, Mirabela has applied to ASX for the following waivers of the Listing Rules:

- (a) a waiver of Listing Rule 7.1 to permit the issue of the Convertible Notes offered under this Prospectus without Shareholder approval, even though the number of Convertible Notes and/or Shares will exceed 15% of the Company's issued capital; and
- (b) a waiver of Listing Rule 10.1, to permit any holder of Convertible Notes to obtain the benefit of the security which will be granted over all the assets of the Mirabela Group.

### 5.3 Information available to Shareholders

The Company will provide a copy of each of the following documents, free of charge, to any investor who so requests during the application period under this Prospectus:

- (a) the annual report (including the annual financial report) for the Company for the year ending 31 December 2013; and
- (b) ASX announcements of Mirabela from 31 December 2013 to 26 May 2014:

Date	Announcement
13 January 2014	New Non-Executive Chairman and Board Resignations
13 January 2014	Appendix 3Z – Final Director's Interest Notice
13 January 2014	Appendix 3Z – Final Director's Interest Notice
13 January 2014	Appendix 3Z – Final Director's Interest Notice
31 January 2014	Form 605 – Notice of ceasing to be a substantial holder
31 January 2014	Quarterly Activity Report for the period ended 31 December 2013
10 February 2014	Interim Financing and Restructuring Update
13 February 2014	Interim Financing and Restructuring Update



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Date	Announcement
21 February 2014	Interim Financing and Restructuring Update
25 February 2014	Appointment of Administrator and Restructuring Update
26 February 2014	Appointment of Voluntary Administrators
24 March 2014	Extension of convening period
25 March 2014	Extension of convening period
31 March 2014	Interim Financing Update
2 April 2014	Bradesco Credit Agreement
7 April 2014	Director Resignations
7 April 2014	Appendix 3Z – Final Director's Interest Notice
7 April 2014	Appendix 3Z – Final Director's Interest Notice
7 April 2014	Director Resignations
15 April 2014	Extension of Filing Deadline for Annual Financial Statements
16 April 2014	Company Update
16 April 2014	Company Update
17 April 2014	Change of Share Registry Address
17 April 2014	Change of Share Registry Address
23 April 2014	Company Update
28 April 2014	Company Update
30 April 2014	Quarterly Activity Report for the period ended 31 March 2014
2 May 2014	Company Update
5 May 2014	Cancellation of performance rights
5 May 2014	Appendix 3Y – Change of Director's Interest Notice
5 May 2014	Appendix 3Z – Final Director's Interest Notice
5 May 2014	Cancellation of performance rights
6 May 2014	Bradesco Credit Agreement



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Date	Announcement
13 May 2014	Execution of Deed of Company Arrangement
14 May 2014	Response to Query
16 May 2014	Filing of Court Application
19 May 2014	Resignation of Company Secretary

### 5.4 Corporate Governance

The Company currently has no directors. Accordingly, the Company's previous Board was not able to perform a formal review of its processes and procedures for 2013 and it is not possible for the Company to produce a Corporate Governance Statement relating to that period. However, to the extent that they are applicable to the Company and subject to limitation as a result of the Company being subject to deed administration, the Company has adopted the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations.

The Company has the following policies in place:

- Securities Trading Policy;
- Disclosure Policy;
- Equal Employment Opportunity and Diversity Policy;
- Board Charter;
- MBN Remuneration and Nomination Committee;
- Audit Committee Charter;
- Code of Conduct;
- Shareholder Communications Policy;
- Risk Management Policy.

These are available on the Company's website at [www.mirabela.com.au](http://www.mirabela.com.au) and incorporated by reference in this Prospectus; copies are also available, free of charge, to any investor who so requests during the application period under this Prospectus.

### 5.5 Dividend policy

The Board, when appointed, may set, and vary, any policy relating to the amount of dividends or distributions to be paid to Shareholders. The Company has never paid a dividend and no dividend is expected to be paid in the short to medium term.





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### 5.6 Rights attaching to Shares

The Shares to be issued upon conversion of the Convertible Notes will rank equally in all respects with existing Shares in the Company.

Full details of the rights attaching to the Company's Shares are set out in its Constitution, a copy of which can be inspected at the Company's registered office.

The following is a summary of the principal rights which attach to the Company's shares:

(a) Voting rights

Subject to the Constitution and the rights or restrictions attached to a class of shares, at a general meeting of the Company, every shareholder present in person or by proxy, representative or attorney has one vote on a show of hands and, on a poll, one vote for each share held (with adjusted voting rights for partly paid shares).

(b) Dividend right

Subject to the Corporations Act, the Listing Rules and any rights or restrictions attached to a class of shares, the Board may pay any interim and final dividend out of the profits of the Company, and fix a record date for a dividend and the timing and method of payment.

(c) Rights on winding up

Subject to the Corporations Act, the Listing Rules and any rights or restrictions attached to a class of shares, each shareholder will be entitled on a winding up of the Company, to such proportion of any surplus assets of the Company as the amount paid (including amounts credited) on the shares of that shareholder bears to the total amount paid and payable (including amounts credited) on the Shares of all the Shareholders.

If the Company is wound up, the liquidator may with the sanction of a special resolution, divide the whole or part of the Company's property among shareholders, decide how the division is to be carried out as between shareholders or different classes of shareholders and settle any dispute concerning such distribution.

(d) Transfer of Shares

Subject to the Constitution, shareholders may transfer any Shares held by them by:

- (i) a proper ASTC transfer (or any other method of transferring or dealing in shares introduced by ASX or operated in accordance with the ASX Settlement Operating Rules or the Listing Rules and, in such case, recognised under the Corporations Act); or
- (ii) an instrument in writing in any usual or common form or in any other form that the directors of the Company, in their absolute discretion, approve from time to time.

The Board may refuse to register a transfer of Shares (other than a proper ASTC transfer) where:

- (i) permitted to do so under the Corporations Act, the Listing Rules or the ASX Settlement Operating Rules;



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- (ii) required to do so under the Corporations Act, the ASX Listing Rules or the ASX Settlement Operating Rules or any law relating to stamp duty; or
- (iii) the transfer is a transfer of restricted securities (as defined in the Listing Rules) which is, or might be, in breach of the Listing Rules or any escrow agreement entered into by the Company in respect of the restricted securities.

If the Board declines to register a transfer, the Board must give the party or its lodging broker (if any) written notice of the refusal and the reason for refusal, in accordance with the Corporations Act, the Listing Rules or the ASX Settlement Operating Rules.

(e) Creation and issue of further Shares

Subject to the Corporations Act, the Listing Rules, the ASX Settlement Operating Rules and any rights attached to a class of shares, the Company may allot, issue, and grant options over unissued shares, on any terms, at any time and for any consideration, as the Board thinks fit.

(f) Variation of rights

At present, the Company's only class of shares on issue is ordinary shares. Subject to the Corporations Act and the terms of issue of a class of shares, the rights attaching to any class of shares may be varied or cancelled:

- (i) with the written consent of the holders of 75% of the votes in that class; or
- (ii) by a special resolution passed at a separate meeting of the holders of that class.

In either case, in accordance with the Corporations Act, the holders of not less than 10% of the votes in the class of shares, the rights of which have been varied or cancelled, may apply to a Court of competent jurisdiction to exercise its discretion to set aside such a variation or cancellation.

At a meeting of the shareholders of a class of shares convened for the purposes of considering a variation or cancellation of any rights attaching to that class of shares, a quorum for such meeting is two members who together hold, or represent by proxy, one-third of the issued shares of the relevant class and if a person holds all of the issued shares of the relevant class, a quorum is constituted by that person.

(g) General meeting

Each shareholder is entitled to receive written notice of, and except in certain circumstances to attend and vote at, general meetings of the Company and to receive all notices, accounts and other documents required to be sent to shareholders under the Constitution, the Corporations Act or the Listing Rules.

Shareholders may requisition meetings in accordance with the Corporations Act.

(h) Sale of non-marketable parcels

Subject to the Corporations Act, the Listing Rules and ASX Settlement Operating Rules, the Company may sell the shares of a shareholder who holds less than a marketable parcel (as defined in the Listing Rules) of shares of a particular class.



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### 5.7 Management equity plan

The Company may implement a management equity plan to incentivise and retain certain key managers of the Company after the Implementation Date. Any issues of securities under any such plan will dilute other shareholders of the Company.

### 5.8 Litigation

As at the date of this Prospectus, the Company is not involved in any legal proceedings and the Company is not aware of any material legal proceedings pending or threatened against the Company other than as set out in this Prospectus (see Section 2.1(r) in particular). The Company notes that it is aware of a potential class action by shareholders; however, the alleged claim would not survive issue of the Offer Securities.

### 5.9 Material contracts

See Schedule 7 (Material Contracts).

### 5.10 Directors

Mirabela has no directors at the date of this Prospectus. The Deed Administrators are going through a process to identify and appoint new directors to the Board of the Company and a new company secretary. Under the PSA, the composition and size of the Board will need to be acceptable to the Ad-hoc Group. The Deed Administrators, with the approval of the Ad-hoc Group, anticipate appointing a new chief executive officer for the Mirabela Group by 31 July 2014. There is no guarantee appropriate candidates will be identified and secured quickly or at all.

### 5.11 Interests of Directors

#### (a) Directors' holdings

At the date of this Prospectus Mirabela has no directors. Voluntary administrators were appointed to the Company on 25 February 2014 and the Deed Administrators were appointed to the Company on 13 May 2014 (as described in Section 2.2 of this Prospectus).

#### (b) Remuneration of directors

The Constitution of the Company provides that the non-executive directors may collectively be paid as remuneration for their services a fixed sum not exceeding the aggregate maximum sum per annum from time to time determined by the Company in general meeting (which is currently \$1,050,838 per annum approved by Shareholders at the 30 May 2013 annual general meeting).

A director may be paid fees or other amounts as the directors determine where a director performs special duties or otherwise performs services outside the scope of the ordinary duties of a director. A director may also be reimbursed for out of pocket expenses incurred as a result of their directorship or any special duties.

Details of cash remuneration provided to past directors and their associated entities during each of the financial years ended 31 December 2012 and 31 December 2013 and for the financial year ending 31 December 2014 on a per annum basis are set out in the table below. These figures have been prepared in accordance with International



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Financial Reporting Standards. Please note that while some figures have been disclosed on a per annum basis they have been affected by the resignation of the relevant directors.

### Annual Cash Remuneration<sup>(a)</sup>

Past Director	FY2012 USD	FY2013 USD	FY2014 <sup>(b)</sup> USD	FY2014 <sup>(b)</sup> AUD
Ian Purdy <sup>(c)</sup>	1,459,647	1,256,115		818,317
Geoffrey Handley <sup>(d)</sup>	203,223	190,132	190,132	
Ian McCubbing <sup>(e)</sup>	145,008	135,670	190,132	
Peter Nicholson <sup>(f)</sup>	56,948	96,802	96,802	
Nicholas Sheard <sup>(g)</sup>	103,580	96,802	135,670	
Colin Steyn <sup>(g)</sup>	103,580	96,802	96,802	

#### Notes:

(a) This table includes salaries, fees, cash bonuses, annual leave expenses, superannuation contributions. Some of the directors were also granted performance rights as disclosed in the annual report of the Company for the years ended 31 December 2011, 2012 and 2013. The disclosure of those performance rights is incorporated into this Prospectus by reference and a copy of the annual reports of the Company for those years will be provided upon request.

(b) Approximate figures.

(c) Mr Purdy resigned from the Board on 5 May 2014 and will leave his current role as CEO on 31 May 2014. At that time, Mr Purdy will be entitled to a payment of 9 months of his annual salary (plus associated entitlements). This payment has not been included in this table.

(d) Mr Handley resigned from the Board effective 11 January 2014.

(e) Mr McCubbing assumed the role of Chairman effective 11 January 2014 with an increase in remuneration payable. Mr McCubbing resigned from the Board on 7 April 2014.

(f) Mr Nicholson resigned from the Board on 11 January 2014.

(g) Mr Sheard's remuneration was increased effective 11 January 2014. Mr Sheard subsequently resigned from the Board on 7 April 2014.

(h) Colin Steyn resigned from the Board effective 11 January 2014.

### (c) Directors' Interests

Except as disclosed in this Prospectus or disclosed through announcements to ASX, no director (whether individually or in consequence of a director's association with any company or firm or in any material contract entered into by the Company) has had, in the 2 year period ending on the date of this Prospectus, any interest in:

- (i) the formation or promotion of the Company; or



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- (ii) property acquired or proposed to be acquired by the Company in connection with its formation or promotion or the Offers; or
- (iii) the Offers.

Pursuant to the Company's continuous disclosure obligations the Company has, as and when required, made announcements to ASX disclosing any notifiable Interests (under Section 205G of the Corporations Act) of its directors.

Except as disclosed in this Prospectus or disclosed through announcements to ASX, no amounts of any kind (whether in cash, Shares or otherwise) have been paid or agreed to be paid to any director or to any company or firm with which a director is associated to induce him to become, or to qualify as, a director, or otherwise for services rendered by him or his company or firm with which the director is associated in connection with the formation or promotion of the Company or the Offers.

The Company has paid insurance premiums to insure each of the directors against liabilities for costs and expenses incurred by them in defending any legal proceedings while acting in the capacity of a director.

Except as otherwise disclosed in this Prospectus, the Company is not currently a party to any related party arrangements.

### 5.12 Interests of Deed Administrators

The Deed Administrators have disclosed the existence of retainers and other interests set out in the minutes of the creditors meeting held on 13 May 2014 and lodged with ASIC on 21 May 2014. The information included in the minutes is incorporated by reference into this Prospectus. The Company will provide a copy of the minutes, free of charge, to any investor who so requests during the application period under this Prospectus.

### 5.13 Interests of Named Persons

Except as disclosed in this Prospectus, no promoter or other person named in this Prospectus as performing a function in a professional, advisory or other capacity in connection with the preparation or distribution of this Prospectus, holds, or during the last two years has held, any interest in:

- (a) the formation or promotion of the Company;
- (b) property acquired or proposed to be acquired by the Company in connection with its formation or promotion of the Offers; or
- (c) the Offers,

and no amounts of any kind (whether in cash, Shares or otherwise) have been paid or agreed to be paid to a promoter or any person named in this Prospectus as performing a function in a professional, advisory or other capacity in connection with the preparation or distribution of this Prospectus for services rendered by that person in connection with the formation or promotion of the Company or the Offers.



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### 5.14 Interests of Advisors

KPMG Financial Advisory Services (Australia) Pty Ltd, the Investigating Accountant, has prepared the Investigating Accountant's Report and Mirabela has paid, or agreed to pay, approximately \$40,000 for these services. In the last 12 months KPMG (Australia) has provided audit services and other assurance and advisory services to the Mirabela Group and the Company has paid, or agreed to pay, approximately US\$399,000 and US\$43,000 respectively for each of these services. In the last 12 months KPMG (Brazil) has provided audit services and other assurance and advisory services to the Mirabela Group and the Company has paid, or agreed to pay, approximately US\$103,000 and US\$38,000 respectively for each of these services.

Ernst & Young which has assisted in the preparation of the Company's Australian tax return and, has given Australian taxation advice to the Company, and the Company has paid, or agreed to pay, approximately \$120,000 in total for those services.

### 5.15 Consents to be named

With the exception of the consents stated below, each of the parties referred to below has not authorised the issue of this Prospectus. Accordingly, it takes no responsibility for any other statements, or material in, or omissions from, the Prospectus. KPMG Financial Advisory Services (Australia) Pty Ltd has given and has not withdrawn its consent to being named as Investigating Accountant in Section 5.14 of this Prospectus in the form and context in which it is so named and to the inclusion of its Investigating Accountant's Report in Section 3.3 of the Prospectus in the form and context in which it is so included.

KPMG consents to being named as Auditor in the Prospectus in the form and context in which it is so named.

Ernst & Young has given and has not withdrawn its consent to being named as tax adviser to the Company in the form and context in which it is named.

Mr Carlos Guzmán has given and has not withdrawn his consent to the inclusion in this Prospectus of information that relates to Santa Rita pre-mining Ore Reserves, mining production and cost estimation for the Santa Rita Nickel Deposit.

Messrs Lauritz Barnes and Doug Corley have given and have not withdrawn their consent to the inclusion in this Prospectus of information that relates to the updated October 2012 Mineral Resources for the Santa Rita Nickel Deposit.



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### **6 Authorisation**

This Prospectus is issued by the Company and its issue has been authorised by the Deed Administrators.

The Deed Administrators have consented to the lodgement of this Prospectus with ASIC.

Dated: 26 May 2014

*Martin Madden*

Martin Madden  
in his capacity as joint and several deed administrator of  
Mirabela Nickel Limited (subject to deed of company arrangement)





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### 7 Defined terms

**A\$ and \$** means Australian dollars, unless otherwise stated.

**Additional Principal Amount** means US\$20 million.

**Ad-hoc Group** means the group of institutional investors who are currently lenders to the Company who are certain funds or managed accounts managed or advised by:

- (a) Benefit Street Partners LLC;
- (b) Canyon Capital Advisors LLC;
- (c) Capital Research and Management Company;
- (d) Deans Knight Capital Management Ltd;
- (e) Guggenheim Partners Investment Management, LLC;
- (f) ICE Canyon LLC;
- (g) ID Sparinvest AS;
- (h) Logan Circle Partners, L.P.
- (i) Lord Abbett & Co. LLC;
- (j) Marathon Asset Management LP;
- (k) Pioneer Investment Management, Inc. and Pioneer Institutional Asset Management, Inc.; and
- (l) Western Asset Management Company.

**Administrative Agent** means Australian Executor Trustees Limited (ABN 84 007 869 794) in its capacity as administrative agent under the SNSD.

**Applicant** means a person who submits an Application Form.

**Application Form** means the Application Form attached to or accompanying this Prospectus at the back or otherwise.

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means ASX Limited (ABN 98 008 624 691) or the financial market operated by it, as the context requires.

**ASX Settlement** or **ASTC** means ASX Settlement Pty Ltd (ABN 49 008 504 532).

**ASX Settlement Operating Rules** means the operating rules of the settlement facility provided by ASX Settlement as amended from time to time.

**Atlas Copco Facility** means the US\$4,420,000 supplier credit agreement between Mirabela Brasil and Atlas Copco Customer Finance AB.



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**BNYM Parties** means each of:

- (a) The Bank of New York Mellon, London Branch as Trustee, Paying Agent, Transfer Agent and Conversion Agent; and
- (b) The Bank of New York Mellon (Luxembourg) S.A. as Note Registrar,

in respect of the Convertible Notes.

**Board** means the board of directors of the Company.

**Bradesco** means Banco Bradesco S.A.

**Bradesco Facility** means a US\$50 million credit facility between Bradesco and the Mirabela Group.

**Brazilian Collateral Agent** means Deutsche Bank S.A. – Banco Alemão.

**Business Day** means every day other than a Saturday, Sunday, New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day and any other day that ASX declares is not a business day.

**Caterpillar** means Caterpillar Financial Services Corporation.

**Caterpillar Facility** means a US\$55 million master funding and lease agreement between Caterpillar and the Mirabela Group.

**Closing Date for the Secured Offer** means 13 June 2014 (unless extended).

**Collateral** means a first-priority lien on all of the collateral securing the SNSD and any additional unencumbered assets held by the Company, Mirabela Brasil and Mirabela Investments.

**Collateral Agent** means the Australian Security Trustee or the Brazilian Collateral Agent, as applicable, depending on the specific Collateral at issue, whenever such consideration is relevant.

**Company** or Mirabela means Mirabela Nickel Limited (subject to deed of company arrangement) (ACN 108 161 593).

**Constitution** means the constitution of the Company as at the date of this Prospectus.

**Conversion** has the meaning given to it in Schedule 1 (**Terms and Conditions of Convertible Notes**) and Schedule 5 (**New Indentures**).

**Convertible Notes** means the convertible notes the subject of the Secured Offer, on the terms of the New Indenture.

**Convertible Noteholder** means a holder of Convertible Notes.

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

**Deed Administrators** means Martin Madden, Clifford Rocke and David Winterbottom in their capacity as joint and several deed administrators of Mirabela and Mirabela Investments.



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**Deed of Amendment and Acknowledgement** means the proposed agreement between Mirabela, the Administrative Agent and the Security Trustee compromising the liabilities under the Interim Loan amongst other things, summarised in Schedule 7 (**Material Contracts**).

**Deed Period** means the period commencing on the commencement date of the DOCA and ending on the date the Mirabela DOCA is terminated in accordance with its terms.

**Eligible Existing Noteholders** means Existing Noteholders who are:

- (a) qualified institutional buyers within the meaning of Rule 144A (**Rule 144A**) under the U.S. Securities Act, as amended, in reliance on the exemption from the registration requirements of the U.S. Securities Act provided by Rule 144A, and
- (b) outside the United States non-U.S. persons in compliance with Regulation S.

**EJ Process** has the meaning given to it in Section 2.3(c).

**Existing Indenture** means the indenture dated 14 April 2011 by and among the Company, Mirabela Investments (subject to deed of company arrangement), Mirabela Brasil and the Bank of New York Mellon as Trustee, constituting the Existing Notes.

**Existing Noteholders** means each holder of Existing Notes including New Capital Parties, Lenders and Eligible Existing Noteholders.

**Existing Notes** means the Company's US\$395,000,000 8.75 per cent unsecured senior notes due 2018 issued under the Existing Indenture.

**Event of Default** has the meaning given to it in Schedule 1 (**Terms and Conditions of the Convertible Notes**) and Schedule 5 (**New Indenture**).

**Face Value** has the meaning given to it in Schedule 1 (**Terms and Conditions of the Convertible Notes**) and Schedule 5 (**New Indenture**).

**FATA** means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

**Fee Offer** has the meaning given to it in Section 1.1.

**Fee Shares** means 34,532,547 Shares issued under the Fee Offer.

**Final Redemption Price** means Issue Price plus accrued and unpaid Interest.

**FIRB Transaction** has the meaning given to it in Section 1.2.

**Foreign Investment Policy** means the document entitled "Australia's Foreign Investment Policy" published by the Treasurer on [www.firb.gov.au](http://www.firb.gov.au) (as amended from time to time).

**General Security Deed** means all the present and after acquired property security interest granted by Mirabela and Mirabela Investments to the Security Trustee on or about 24 December 2013.

**Guarantors** means Mirabela Investments and Mirabela Brasil.

**Implementation** means the implementation of the Proposed Recapitalisation Plan.

**Implementation Date** means the date on which Implementation occurs.



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**Initial Principal Amount** means US\$115 million.

**Interest** has the meaning given to it in Schedule 1 (**Terms and Conditions of the Convertible Notes**) and Schedule 5 (**New Indenture**).

**Interim Lenders** means members of the Ad-hoc Group who provided the Interim Loan.

**Interim Loan** means an approximately US\$60 million secured loan (including fees and interest) provided to the Mirabela Group by the Lenders pursuant to the SNSD.

**Issue Price** has the meaning given to it in Schedule 1 (**Terms and Conditions of the Convertible Notes**) and Schedule 5 (**New Indenture**).

**ITH** means an international trading house.

**Lenders** means those individuals who subscribed for loan notes under the SNSD.

**Letter of Transmittal** means the letter of transmittal to be released by the Company on ASX after the date of this Prospectus and before the Opening Date of the Secured Offer.

**Listing Rules** means the Listing Rules of ASX.

**Majority Existing Noteholders** means those Existing Noteholders who hold over 50% of the aggregate total number of outstanding Existing Notes at the time of determination.

**Maturity Date** has the meaning given to it in Schedule 1 (**Terms and Conditions of the Convertible Notes**) and Schedule 5 (**New Indenture**).

**Mirabela Brasil** means Mirabela Mineração do Brasil Ltda.

**Mirabela DOCA** means the deed of company arrangement entered into on 13 May 2014 between the Deed Administrators, Mirabela and Mirabela Investments.

**Mirabela Group** means the Company and its subsidiaries.

**Mirabela Investments** means Mirabela Investments Pty Limited (subject to deed of company arrangement).

**Mirabela Investments DOCA** means the deed of company arrangement entered into on 13 May 2014 between the Deed Administrators and Mirabela Investments.

**New Capital Parties** means the members of the Mirabela Group listed in Schedule 2 (**New Capital Partners**).

**New Indenture** means the Indenture in respect of the Convertible Notes included in Schedule 5 (**New Indenture**).

**New Unsecured Notes** has the meaning given to it in clause 2.3(c).

**Norilsk** means Norilsk Nickel Harjavalta Oy.

**Offer Securities** means the Convertible Notes, Fee Shares, Rollover Shares and any Shares to be issued on conversion of the Convertible Notes.



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**Offers** means the Secured Offer, Fee Offer and Rollover Offer.

**Official List** means the Official List of the ASX.

**Official Quotation** means quotation on the Official List.

**Opening Date of the Secured Offer** means 9 June 2014.

**Pro Rata** means in respect of:

- (a) the New Capital Parties, in the case of the:
  - (i) Fee Offer, pro rata with respect to their commitments as set forth under the PSA; and
  - (ii) Secured Offer, pro rata with respect to their commitments as set forth under the PSA (as adjusted to deduct from such commitments any voluntary subscription of Convertible Notes that any New Capital Party makes in its capacity as an Existing Noteholders).
- (b) the Lenders, pro rata with respect to the Lender Applicant's relative share of the Interim Loan.

**Proposed Recapitalisation Plan** has the meaning given to it in Section 2.3 of this Prospectus.

**Prospectus** means this prospectus.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**PPSR** means the Personal Properties Securities Register.

**PSA** means the plan support agreement dated 24 February 2014 between each member of the Ad-hoc Group summarised in Schedule 7 (**Material Contracts**).

**Qualified Institutional Buyer or QIB** means:

- (a) (i) any of the following entities, acting for its own account or the accounts of other Qualified Institutional Buyers, that in the aggregate owns and invests on a discretionary basis at least US\$100 million in securities of issuers that are not affiliated with the entity:
  - (A) any insurance company as defined in Section 2(13) of the U.S. Securities Act;  
  
Note: A purchase by an insurance company for one or more of its separate accounts, as defined by Section 2(a)(37) of the U.S. Investment Company Act, which are neither registered under Section 8 of the U.S. Investment Company Act nor required to be so registered, shall be deemed to be a purchase for the account of such insurance company.
  - (B) any investment company registered under the U.S. Investment Company Act or any business development company as defined in Section 2(a)(48) of the U.S. Investment Company Act;
  - (C) any small business investment company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the U.S. Small Business Investment Act of 1958;



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- (D) any plan established and maintained by a U.S. state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees;
  - (E) any employee benefit plan within the meaning of Title I of ERISA;
  - (F) any trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in subparagraph (1)(i)(D) or (E) above, except trust funds that include as participants individual retirement accounts or H.R. 10 plans;
  - (G) any business development company as defined in Section 202(a)(222) of the U.S. Investment Advisers Act of 1940, as amended;
  - (H) any organization described in Section 501(c)(3) of the U.S. Internal Revenue Code, corporation (other than a bank as defined in Section 3(a)(2) of the U.S. Securities Act or a savings and loan association or other institution referenced in Section 3(a)(5)(A) of the U.S. Securities Act or a foreign bank or savings and loan association or equivalent institution), partnership, or Massachusetts or similar business trust; and
  - (I) any investment adviser registered under the U.S. Investment Advisers Act.
- (ii) any dealer registered pursuant to Section 15 of the U.S. Securities Exchange Act of 1934, as amended (the **U.S. Exchange Act**), acting for its own account or the accounts of other Qualified Institutional Buyers, that in the aggregate owns and invests on a discretionary basis at least US\$10 million of securities of issuers that are not affiliated with the dealer, provided that securities constituting the whole or a part of an unsold allotment to or subscription by a dealer as a participant in a public offering shall not be deemed to be owned by such dealer;
- (iii) any dealer registered pursuant to Section 15 of the U.S. Exchange Act acting in a riskless principal transaction (as defined below) on behalf of a Qualified Institutional Buyer;
- Note: A registered dealer may act as agent, on a non-discretionary basis, in a transaction with a Qualified Institutional Buyer without itself having to be a Qualified Institutional Buyer.
- (i) any investment company registered under the U.S. Investment Company Act, acting for its own account or for the accounts of other Qualified Institutional Buyers, that is part of a family of investment companies which own in aggregate at least US\$100 million in securities of issuers, other than issuers that are affiliated with the investment company or are part of such family of investment companies. "Family of investment companies" means any two or more investment companies registered under the U.S. Investment Company Act, except for a unit investment trust whose assets consist solely of shares of one or more registered investment companies, that have the same investment adviser (or, in the case of unit investment trusts, the same depositor), provided that:
- (A) each series of a series company (as defined in Rule 18f-2 under the U.S. Investment Company Act) shall be deemed to be a separate investment company; and
  - (B) investment companies shall be deemed to have the same adviser (or depositor) if their advisers (or depositors) are majority-owned subsidiaries of the same parent,



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or if one investment company's adviser (or depositor) is a majority-owned subsidiary of the other investment company's adviser (or depositor);

- (ii) any entity, all of the equity owners of which are Qualified Institutional Buyers, acting for its own account or the accounts of other Qualified Institutional Buyers; and
- (iii) any bank as defined in Section 3(a)(2) of the U.S. Securities Act, any savings and loan association or other institution as referenced in Section 3(a)(5)(A) of the U.S. Securities Act, or any foreign bank or savings and loan association or equivalent institution, acting for its own account or the accounts of other Qualified Institutional Buyers, that in the aggregate owns and invests on a discretionary basis at least US\$100 million in securities of issuers that are not affiliated with it and that has an audited net worth at least US\$25 million as demonstrated in its latest annual financial statements, as of a date not more than 16 months preceding the date of sale under the rule in the case of a U.S. bank or savings and loan association, and not more than 18 months preceding such date of sale for a foreign bank or savings and loan association or equivalent institution.
- (iv) In determining the aggregate amount of securities owned and invested on a discretionary basis by an entity, the following instruments and interests shall be excluded: bank deposit notes and certificates of deposit; loan participations; repurchase agreements; securities owned but subject to a repurchase agreement; and currency, interest rate and commodity swaps.
- (v) The aggregate value of securities owned and invested on a discretionary basis by an entity shall be the cost of such securities, except where the entity reports its securities holdings in its financial statements on the basis of their market value, and no current information with respect to the cost of those securities has been published. In the latter event, the securities may be valued at market for purposes of this Section.
- (vi) In determining the aggregate amount of securities owned by an entity and invested on a discretionary basis, securities owned by subsidiaries of the entity that are consolidated with the entity in its financial statements prepared in accordance with generally accepted accounting principles may be included if the investments of such subsidiaries are managed under the direction of the entity, except that, unless the entity is a reporting company under Section 13 or 15(d) of the U.S. Exchange Act, securities owned by such subsidiaries may not be included if the entity itself is a majority-owned subsidiary that would be included in the consolidated financial statements of another enterprise.
- (vii) For the purposes of paragraph (a)(iii), "riskless principal transaction" means a transaction in which a dealer buys a security from any person and makes a simultaneous offsetting sale of such security to a Qualified Institutional Buyer, including another dealer acting as riskless principal for a Qualified Institutional Buyer.

**Redemption** has the meaning given to it in Schedule 1 (Terms and Conditions of the Convertible Notes) and Schedule 5 (New Indenture).

**Relief** means the relief referred to in Section 5.2 of this Prospectus

**Rollover Offer** has the meaning given to it in Section 1.1.

**Rollover Shares** means 18,376,522 Shares issued under the Rollover Offer.

**Section 444GA Order** means an order of the Court made pursuant to Section 444GA of the Corporations Act.



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**Secured Offer** means the offer of a total of 115,000 Convertible Notes each with a face value of US\$1,000 per Convertible Note to Existing Noteholders to raise up to US\$115 million of which approximately US\$55 million comprises new cash (see Section 1 of the Prospectus).

**Security Trust** has the meaning given to it in Schedule 6 (**Security**).

**Security Trustee** means AET Structured Finance Services Pty Limited (ABN 12 106 424 088) in its capacity as security trustee under the SNSD.

**Share** means an ordinary fully paid share in the capital of the Company at the relevant times and for the avoidance of doubt includes Fee Shares, Rollover Shares and shares issued on conversion of the Convertible Notes where referring to the relevant period, unless the contrary intention is expressed.

**Shareholder** means the registered holder of a Share.

**Shareholder Claimants** means persons who would have had a subordinate claim under Section 563A of the Corporations Act in a winding up of Mirabela had it been wound up on 25 February 2014 (the date the Deed Administrators were appointed as voluntary administrators).

**SNSD** means the Syndicated Note Subscription Deed dated 24 December 2013

**Subsidiary Guarantors** means Mirabela Brasil and Mirabela Investments.

**Subscription Monies** means in respect of:

- (a) Convertible Notes, the Issue Price multiplied by the number of Convertible Notes applied for under the Secured Offer;
- (b) Fee Shares, nil; and
- (c) Rollover Shares, nil.

**Transfer Shares** means shares transferred pursuant to Section 444GA of the Corporations Act as contemplated by Section 1.2.

**Treasurer** means the Treasurer of the Commonwealth of Australia.

**Trustee** means The Bank of New York Mellon, London Branch as trustee for the holders of the Convertible Notes.

**United States** or **U.S.** means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

**U.S. Person** means:

- (a) any natural person resident in the United States;
- (b) any partnership or corporation organized or incorporated under the laws of the United States;
- (c) any estate of which any executor or administrator is a U.S. Person;
- (d) any trust of which any trustee is a U.S. Person;
- (e) any agency or branch of a foreign entity located in the United States;





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- (f) any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. Person;
- (g) any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the United States; and
- (h) any partnership or corporation if:
  - (i) organized or incorporated under the laws of any foreign jurisdiction; and
  - (ii) formed by a U.S. Person principally for the purpose of investing in securities not registered under the U.S. Securities Act, unless it is organized or incorporated, and owned, by accredited investors (as defined in Rule 501(a)) who are not natural persons, estates or trusts.
- (i) The following are not "U.S. Persons":
  - (j) any discretionary account or similar account (other than an estate or trust) held for the benefit or account of a non-U.S. Person by a dealer or other professional fiduciary organized, incorporated, or (if an individual) resident in the United States;
  - (k) any estate of which any professional fiduciary acting as executor or administrator is a U.S. Person if:
    - (i) an executor or administrator of the estate who is not a U.S. Person has sole or shared investment discretion with respect to the assets of the estate; and
    - (ii) the estate is governed by foreign law;
  - (l) any trust of which any professional fiduciary acting as trustee is a U.S. Person, if a trustee who is not a U.S. Person has sole or shared investment discretion with respect to the trust assets, and no beneficiary of the trust (and no settlor if the trust is revocable) is a U.S. Person;
- (m) an employee benefit plan established and administered in accordance with the law of a country other than the United States and customary practices and documentation of such country;
- (n) any agency or branch of a U.S. Person located outside the United States if:
  - (i) the agency or branch operates for valid business reasons; and
  - (ii) the agency or branch is engaged in the business of insurance or banking and is subject to substantive insurance or banking regulation, respectively, in the jurisdiction where located; and
- (o) the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies, affiliates and pension plans, and any other similar international organizations, their agencies, affiliates and pension plans.

**Votorantim** means Votorantim Metais Niquel S.A.



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### Schedule 1 Terms and Conditions of the Convertible Notes

#### PART 1 Convertible Notes terms

The full terms of the Convertible Notes are set out in the New Indenture, which applies to the extent of any inconsistency; this is a summary only and does not take the place of the New Indenture. The Convertible Note terms are subject to the Listing Rules. Capitalised terms not otherwise defined herein shall have the definition ascribed to them in the New Indenture.

<b>Issuer</b>	<b>Company</b>
<b>Issuance</b>	Up to 115,000 Convertible Notes
<b>Issue Price</b>	US\$1,000 per Convertible Note.
<b>Minimum Subscription</b>	US\$250,000 and integral multiples of US\$1,000 in excess thereof, provided that any Convertible Notes issued as Interest may be added in denominations of US\$1.00.
<b>Maximum amount on issue</b>	With the consent of holders of a majority of Convertible Notes outstanding at the time and after providing the Trustee with a Company order, officer's certificate and opinion of Counsel, the Company may issue additional Convertible Notes with an aggregate Face Value of US\$20 million for a total amount on issue of US\$135 million (plus any Convertible Notes issued as Interest).
<b>Face Value</b>	US\$1,000 per Convertible Note.
<b>Maturity Date</b>	5 years after the Implementation Date.
<b>Book Entry; Form and Denominations</b>	The Convertible Notes in minimum denominations of US\$250,000 and integral multiples of US\$1,000 in excess thereof and the Convertible Notes will, once issued, be initially represented by one or more global notes. The global notes representing the Convertible Notes will be delivered by the Trustee to the common Depository and registered in the name of the nominee for the common Depository.
<b>Transfer Restrictions</b>	The offering of the Convertible Notes is being made in accordance with Rule 144A and Regulation S under the U.S. Securities Act. The Convertible Notes have not been and will not be registered under the U.S. Securities Act or with any securities regulatory authority of any U.S. state and, accordingly, may not be offered, sold, pledged or otherwise transferred or delivered within the United States or to, or for the account or benefit of, U.S. persons (as defined in Regulation S) except as set forth in Section 2.10 "Transfer and Exchange" of the New Indenture and summarised in Schedule 5 of this Prospectus. As a result of these restrictions, investors are advised to consult legal counsel prior to making any reoffering, resale, pledge or transfer of the Convertible Notes.



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Issuer	Company
<b>Collateral</b>	<p>The Convertible Notes are secured by the Collateral. The Collateral will be released with respect to any outstanding Convertible Notes on the earlier to occur of:</p> <ul style="list-style-type: none"> <li>(a) the Convertible Notes having an outstanding principal amount of less than US\$28,750,000;</li> <li>(b) the Trustee receiving consents to such release from holders of at least 75% of the outstanding principal amount of the Convertible Notes; or</li> <li>(c) the Company delivers to a Collateral Agent, in a form and substance reasonably acceptable to it, an officer's certificate certifying that all the obligations under the New Indenture, the Convertible Notes and the Collateral Documents have been satisfied and discharged by the payment in full of the Company's obligations under the Convertible Notes, the New Indenture and the Collateral Documents.</li> </ul>
<b>Guarantee (Article 12)</b>	<p>Each of Mirabela Investments and Mirabela Brasil, or waived, (in their capacity as Subsidiary Guarantors) fully, unconditionally and irrevocably guarantee, jointly and severally with each other, to each Convertible Noteholder and the Trustee and their successors and assigns, in each case as primary obligors and not merely as surety and with respect to all such obligations howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, due or to become due:</p> <ul style="list-style-type: none"> <li>(a) the full and punctual payment of principal of and interest on the Convertible Notes when due (whether at maturity, by acceleration, by redemption or otherwise) and all other monetary obligations of the Company under the New Indenture and Convertible Notes;</li> <li>(b) the full and punctual performance of all obligations of the Company under the New Indenture and Convertible Notes.</li> <li>(c) Each of Mirabela Investments and Mirabela Brasil (in their capacity as Subsidiary Guarantors) agree that the guarantee constitutes an absolute, unconditional and continuing guarantee. The guarantee prevails to the fullest extent permitted by law (with such waivers as required).</li> </ul>
<b>Interest</b>	<p>9.5% per annum based on a 360-day year of twelve 30-day months. Interest on the Convertible Notes for each Interest Payment Date (as defined in the New Indenture) shall be capitalised by the Company and added to the principal amount of the Convertible Notes semi-annually in arrears. Notwithstanding the foregoing, the payment of accrued and unpaid Interest on Redemption is paid in cash.</p>



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Issuer	Company
<b>Conversion (Article 13)</b>	<p>From the Implementation Date (other than on a Redemption date), each Convertible Note is convertible at the election of the holder into Shares at the conversion price of US\$0.1688 per share.</p> <p>The Conversion date is determined by the provision by the holder of the information required by Section 13.03 of the New Indenture. Evidence of the allocation of the relevant Shares must be provided and cash in lieu of any fractional entitlement to a Share in aggregate (based on the fractional entitlement to the last reported Share sale price).</p> <p>The Company will ensure, while it is listed on ASX that any Shares issued on Conversion are freely tradeable.</p>
<b>Conversion adjustments (Article 13.07 – 13.10)</b>	<p>Subject to the Listing Rules, the Conversion ratio may be adjusted for:</p> <ul style="list-style-type: none"> <li>(a) a distribution of Shares to Shareholders, as if the Convertible Notes had Converted before the distribution;</li> <li>(b) a share split or consolidation of Shares, as if the Convertible Notes had Converted before the distribution;</li> <li>(c) a rights issue at a discount, to adjust for the dilution and benefit of the discount;</li> <li>(d) any distribution to Shareholders other than a cash distribution or on a winding up or liquidation, adjusted for the difference between the trading price before the distribution and the fair market value at the time of distribution or an adjustment as if the holders had Converted and participated;</li> <li>(e) a cash distribution to Shareholders, such that holders receive the sum on Conversion as if they had Converted and participated or the Conversion ratio is adjusted accordingly;</li> <li>(f) a buy-back, for the change in Shares on issue with reference to the consideration paid by the Company.</li> </ul>
<b>Company Redemption</b>	<p>The Company can redeem:</p> <ul style="list-style-type: none"> <li>(a) all the Convertible Notes, in the first three years after the Implementation Date, for the Final Redemption Price, if the Company is or becomes obliged to pay additional amounts relating to taxes; (s3.10)</li> <li>(b) any or all Convertible Notes, after the third anniversary of the Implementation Date, for the Interim Redemption Price; and</li> <li>(c) any or all Convertible Notes, after the fourth anniversary of the Implementation Date (and at any time thereafter before</li> </ul>



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Issuer	Company
	<p>the Maturity Date), for the Final Redemption Price,</p> <p>by:</p> <p>(d) mailing notice (s3.05 of the Indenture) and providing the Trustee with an officer's certificate (and an opinion of counsel if redeemed under (i) above) not less than 30 and not more than 60 days prior to the date nominated for Redemption; and</p> <p>(e) depositing with the Paying Agent with the relevant amount in immediately available funds prior to the date nominated for Redemption.</p> <p>If less than all the Convertible Notes are the subject of a Redemption notice, the relevant Convertible Notes are elected by the Trustee on a pro rata basis or any other method the Trustee deems appropriate.</p>
<b>Holder Redemption (s3.09)</b>	<p>On a Change of Control (as defined in the Indenture), holders can require Redemption of some or all of their Convertible Notes in accordance with a Change of Control Offer from the Company, unless:</p> <p>(a) a third party has offered to redeem, purchase or cancel the Convertible Notes in compliance with the requirements in the New Indenture applicable to a Change of Control Offer made by the Company; or</p> <p>(b) a Redemption notice has been given by the Company for all outstanding Convertible Notes.</p>
<b>Successors (Article 5)</b>	<p>There are restrictions on consolidating, merging, conveying, transferring or leasing all or a substantial portion of the Company's assets, undertaking a scheme of arrangement or recommending a takeover bid which will result in all of the Shares being owned by one Person, unless certain steps are taken relating to the Convertible Notes and the related Company and Guarantor obligations</p>
<b>Voting rights</b>	<p>No rights to receive notice of, attend or vote at a general meeting of the Company</p>
<b>Event of Default (Article 6)</b>	<p>The Indenture contains standard events of default, including the following (some events of default are subject to cure periods):</p> <p>(a) failure to make payments on a Convertible Note when due;</p> <p>(b) failure to comply with requirements for successor corporations in Section 5.01 of the New Indenture;</p>



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Issuer	Company
	<p>(c) other non-compliance with covenants or general breach after written notice;</p> <p>(d) default under any indebtedness or guarantee by a Mirabela Group company involving an aggregate of US\$10 million or more or secured by a lien on the Collateral, default being a failure to pay before the expiration of the relevant grace period or which accelerates payment;</p> <p>(e) a proceeding is commenced or an order consented to in respect of a Company or Guarantor insolvency proceeding, or a general assignment occurs for the benefit of creditors (provided that the extrajudicial proceeding in Brazil will not constitute an event of default);</p> <p>(f) failure to pay judgements in excess of US\$10 million in aggregate (net any Insured sum);</p> <p>(g) failure to convert or redeem;</p> <p>(h) failure to make a change of control offer to accept and pay for Convertible Notes as required pursuant to Section 3.09 of the New Indenture;</p> <p>(i) a Guarantee ceases to be in full effect or is denied;</p> <p>(j) liens in excess of US\$10 million in favour of the Collateral Agent for the Convertible Noteholders cease to be or are asserted to be invalid;</p> <p>(k) failure by the Company or a Guarantor to comply with the Collateral Documents; or</p> <p>(l) any steps are taken to terminate or assign any material mining concessions.</p> <p>If an Event of Default occurs and is continuing, the Trustee may, at its discretion or acting on the instructions of 25% of the holders of Convertible Notes, give notice to the Company declaring all amounts owing under the Indenture due and payable (this includes the Face Value, any accrued and unpaid interest and the acceleration premium (see below)). Should the Event of Default relate to an insolvency proceeding (either voluntarily or involuntarily) then no notice from the Trustee is required, and such amounts are automatically due and payable.</p> <p>The acceleration premium is the aggregate present value of unpaid interests as at the date of acceleration (excluding accrued interest but including amounts that would have been payable) that would have been payable in respect of the Face Value of the Convertible Notes (including accrued interest). The present value is determined by applying a discount from the date such interest payments would</p>



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Issuer	Company
	have been payable if such accelerated payment had not been made.
<b>Covenants (Article 4)</b>	<p>The Company makes customary covenants including:</p> <ul style="list-style-type: none"> <li>(a) payment of amounts relating to Convertible Notes;</li> <li>(b) maintenance of office or agency;</li> <li>(c) delivery of compliance certificates;</li> <li>(d) compliance with stay, extension and usury laws;</li> <li>(e) maintenance of good standing;</li> <li>(f) maintenance of insurance;</li> <li>(g) compliance with applicable laws;</li> <li>(h) maintenance of licenses and concessions;</li> <li>(i) limitations on liens, lines of business and guarantees;</li> <li>(j) taxes;</li> <li>(k) payment of additional amounts; and</li> <li>(l) further instruments and acts.</li> </ul>
<b>Collateral Permitted Liens</b>	With the approval by written resolution of Convertible Noteholders holding Convertible Notes with an aggregate Face Value of at least 66.67% of the Convertible Notes then on issue, the Company may issue up to US\$60 million of debt secured by a first lien on the Collateral assets.
<b>Scheme, takeover or sale of assets (Article 5)</b>	<p>The Company shall not consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person, or undertake a scheme of arrangement or recommend a takeover bid which will result in all of the shares of the Company being owned by one person, or convey, transfer or lease all or substantially all its assets to, any person, unless:</p> <ul style="list-style-type: none"> <li>(a) the new sole shareholder of the Company is a corporation organized and existing under the laws of Australia, the Federative Republic of Brazil, the United States of America or Canada and the Successor Company (if not the Company) expressly assumes all the obligations of the Company under the Convertible Notes, the Indenture and the Collateral Documents;</li> <li>(b) the new sole shareholder undertakes to pay such additional amounts as may be necessary in order that every net</li> </ul>



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Issuer	Company
	<p>payment made in respect of the guarantees related to the Convertible Notes after deduction or withholding for or on account of any taxes imposed will not be less than the amount of Face Value (and premium, if any) and Interest then due and payable on the guarantees related to the Convertibles Notes;</p> <p>(c) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing;</p> <p>(d) each Subsidiary Guarantor has confirmed that its guarantee shall apply to the obligations in respect of the Indenture and the Convertible Notes.</p> <p>The Company shall not permit the transfer of a majority of shares in a Subsidiary Guarantor or the conveyance, transfer or lease of all or substantially all of the assets of any Subsidiary Guarantor (other than to another Subsidiary Guarantor) unless:</p> <p>(a) if such entity remains a Subsidiary Guarantor, the transferee person will be a corporation, partnership, trust or limited liability company organized and existing under the laws of Australia, the Federative Republic of Brazil or the United States of America, any State of the United States or the District of Columbia and will expressly assume all of the obligations of such Subsidiary Guarantor under its guarantee; or</p> <p>(b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing</p>
<b>Agents</b>	<p><b>Trustee:</b> The Bank of New York Mellon, London Branch, is the Trustee, transfer agent, conversion agent and paying agent under the New Indenture.</p> <p><b>Note Registrar:</b> The Bank of New York Mellon (Luxembourg) S.A. is the initial note registrar. In addition, the Company must maintain an office or agency in Luxembourg, where Convertible Notes may be presented or surrendered for registration for transfer or by exchange.</p> <p><b>Transfer Agent:</b> The Bank of New York Mellon, London Branch is the Transfer Agent under the New Indenture. In addition, the Company must maintain an office or agency in London, United Kingdom, where certificated Convertible Notes may be exchanged or transferred in whole or in part in the principal amount of authorized denominations by surrendering such certificated Convertible Notes at the office of the transfer agent.</p> <p><b>Conversion Agent:</b> The Bank of New York Mellon, London Branch</p>





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Issuer	Company
	<p>is the Conversion Agent under the New Indenture. In addition, the Company must maintain an office or agency in London, United Kingdom, where Convertible Notes may be presented for conversion.</p> <p><b>Paying Agent:</b> The Bank of New York Mellon, London Branch is the Paying Agent under the New Indenture. In addition, the Company must maintain an office or agency in London, United Kingdom, where Convertible Notes may be presented for payment.</p> <p><b>Security Trustee:</b> AET Structured Finance Services Pty Limited, in its capacity as security trustee, holds the benefit of the Australian security for the Convertible Notes.</p> <p><b>Brazilian Collateral Agent:</b> Deutsche Bank S.A. – Banco Alemão, in its capacity as Brazilian collateral agent for the Brazilian security in favour of the holders of the Convertible Notes and certain other secured parties, and represented by the Brazilian collateral agent.</p>
<b>Amendments (Article 9)</b>	<p>Indenture amendments can be made by the Company, Guarantors, Collateral Agent and the Trustee:</p> <p>(a) without the consent of holders to cure a defect in the Indenture, provide for a successor, provide for uncertificated Convertible Notes, add guarantees or release a Guarantor where contemplated by the Indenture; add to Collateral, add covenants for the benefit of holders, surrender a Company right, appoint a qualified successor trustee, confirm liens on Collateral or release them where permitted or required or adjust thresholds;</p> <p>(b) with the written consent of holders of a majority of Convertible Notes, although the definition of Collateral Permitted Liens and amendments of certain thresholds require the written consent of holders of at least 66.67% of Convertible Notes.</p> <p>Holders of a majority of Convertible Notes can waive compliance in some circumstances.</p>
<b>Governing law</b>	New York

### PART 2: Representations and warranties

The Company represents and warrants on the date the Mirabela DOCA comes into effect that:

- (a) **Organisation:** The Company and each of the Guarantors have been duly organised and are validly existing, in each jurisdiction where applicable, under the laws of their respective jurisdictions of organisation, are duly qualified to do business in each



## MIRABELA NICKEL

jurisdiction, where applicable, in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification, and have all power and authority necessary to own or hold their respective properties and to conduct the businesses in which they are engaged, except where the failure to be so qualified or have such power or authority would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the business, properties, management, financial position or results of operations of the Company and each of the Guarantors on a consolidated basis or on the performance by the Company and the Guarantors of their obligations under the Convertible Notes and the Guarantees (a **Material Adverse Effect**). The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the Guarantors.

- (b) **The Convertible Notes and the Guarantees:** The Convertible Notes have been duly authorized by the Company and, when duly executed, authenticated, issued and delivered as provided in the New Indenture and paid for as provided herein, will be duly and validly issued and outstanding and will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability (collectively, the **Enforceability Exceptions**), and will be entitled to the benefits of the New Indenture; and the Guarantees have been duly authorized by each of the Guarantors and, when the Convertible Notes have been duly executed, authenticated, issued and delivered as provided in the New Indenture and paid for as provided herein, will be valid and legally binding obligations of each of the Guarantors, enforceable against each of the Guarantors in accordance with their terms, subject to the Enforceability Exceptions, and will be entitled to the benefits of the New Indenture.
- (c) **The New Indenture:** The New Indenture has been duly authorized by the Company and each of the Guarantors and, when duly executed and delivered in accordance with its terms by each of the parties thereto, will constitute a valid and legally binding agreement of the Company and each of the Guarantors enforceable against the Company and each of the Guarantors in accordance with its terms, subject to the Enforceability Exceptions.
- (d) **No Conflicts:** The execution, delivery and performance by the Company and each of the Guarantors of this Prospectus to which each is a party, the issuance and sale of the Convertible Notes (including the Guarantees) and compliance by the Company and each of the Guarantors with the terms thereof and the consummation of the transactions contemplated by this Prospectus will not (i) result in any violation of the provisions of the constitution or similar organizational documents of the Company or any of its subsidiaries or (ii) result in the violation of any law or statute or any judgment, order, rule or regulation of any Court or arbitrator or governmental or regulatory authority, except, in the case of clause (ii) above, for any such conflict, breach, violation or default that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.
- (e) **U.S. Investment Company Act:** Neither the Company nor any of the Guarantors is, and after giving effect to the offering and sale of the Convertible Notes and the application of the proceeds thereof as described in this Prospectus none of them will be, required to register as an "investment company" within the meaning of the U.S. Investment Company Act, and the rules and regulations of the Commission thereunder.
- (f) **Rule 144A Eligibility:** On the date the Convertible Notes are issued, the Convertible Notes will not be of the same class (within the meaning of Rule 144A under the U.S. Securities Act) as securities listed on a national securities exchange registered under



## MIRABELA NICKEL

Section 6 of the Exchange Act or quoted in an automated inter-dealer quotation system; and this Prospectus, as of its respective date, contains or will contain all the information that, if requested by a prospective Applicant of the Convertible Notes, would be required to be provided to such prospective Applicant pursuant to Rule 144A(d)(4) under the U.S. Securities Act.

- (g) **No Integration:** Neither the Company nor any of its affiliates (as defined in Rule 501(b) of Regulation D) has, directly or through any agent, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the U.S. Securities Act), that is or will be integrated with the sale of the Convertible Notes in a manner that would require registration of the Convertible Notes under the U.S. Securities Act.



## MIRABELA NICKEL

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### **Schedule 2    New Capital Parties**

- (a) Certain funds or managed accounts managed or advised by Benefit Street Partners LLC:
- (b) Certain funds or managed accounts managed or advised by Canyon Capital Advisors LLC:
- (c) Certain funds or managed accounts managed or advised by Capital Research and Management Company:
- (d) Certain funds or managed accounts managed or advised by Deans Knight Capital Management Ltd.:
- (e) Certain funds or managed accounts managed or advised by Guggenheim Partners Investment Management, LLC:
- (f) Certain funds or managed accounts managed or advised by ID-Sparinvest A/S:
- (g) Certain funds or managed accounts managed or advised by Logan Circle Partners, L.P.:
- (h) Certain funds or managed accounts managed or advised by Pioneer Institutional Asset Management, Inc.
- (i) Certain funds or managed accounts managed or advised by Pioneer Investment Management, Inc.: and
- (j) Certain funds or managed accounts managed or advised by Western Asset Management Company.



## MIRABELA NICKEL

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### Schedule 3 Book Entry: Delivery and Form

#### General

The Convertible Notes are being offered and sold only:

- (a) to Qualified Institutional Buyers in reliance on Rule 144A under the U.S. Securities Act (**Rule 144A Convertible Notes**), or
- (b) to persons other than U.S. Persons (as defined in Regulation S) in offshore transactions in reliance on Regulation S (**Regulation S Convertible Notes**).

Convertible Notes will be issued in fully registered form only in minimum denominations of US\$250,000 and integral multiples of US\$1,000 in excess thereof and may be issued in global form. Convertible Notes will be issued on the issue date therefor only against payment in immediately available funds.

Rule 144A Convertible Notes initially will be represented by a single permanent global certificate (which may be subdivided in denominations of US\$250,000 and integral multiples of US\$1,000 in excess thereof) without interest coupons (the **Rule 144A Convertible Note**). Regulation S Convertible Notes initially will be represented by a single permanent global certificate (which may be subdivided in denominations of US\$250,000 and integral multiples of US\$1,000 in excess thereof) without interest coupons (the **Regulation S Convertible Note** and together with the Rule 144A Convertible Note, the **Convertible Notes**).

The Convertible Notes will be deposited upon issuance with a common depository for Euroclear and Clearstream and registered in the name of the common depository for credit to the accounts of Euroclear and Clearstream, who will credit the accounts of direct or indirect participants in Euroclear or Clearstream, as described below under “—Depository Procedures.”

Beneficial interests in the Convertible Notes may not be exchanged for Convertible Notes in certificated form except in the limited circumstances described below under “—Exchange of Book-Entry Notes for Certificated Notes.”

The Convertible Notes will be subject to certain restrictions on transfer and will bear restrictive legends as described under Schedule 4 (Transfer restrictions and Applicant representations and warranties). In addition, transfers of beneficial interests in the Convertible Notes will be subject to the applicable rules and procedures of Euroclear and/or Clearstream and their direct or indirect participants, which may change from time to time.

#### Depository Procedures

The following description of the operations and procedures of Euroclear and Clearstream are provided solely as a matter of convenience. These operations and procedures are solely within the control of the respective settlement systems and are subject to changes by them. Neither the Company nor any BNYM Party takes any responsibility for these operations and procedures and urges investors to contact the systems or their participants directly to discuss these matters.

#### Information Concerning Euroclear and Clearstream

All book-entry interests will be subject to the operations and procedures of Euroclear and/or Clearstream. The Company provides the following summaries of those operations and procedures solely for the convenience of investors. The operations and procedures of each settlement system are



## MIRABELA NICKEL

controlled by that settlement system and may be changed at any time. Neither the Company nor any BNYM Party is responsible for those operations or procedures.

Euroclear and Clearstream hold securities for participating organizations. They also facilitate the clearance and settlement of securities transactions between their respective participants through electronic book-entry changes in the accounts of such participants. Euroclear and Clearstream provide various services to their participants, including the safekeeping, administration, clearance, settlement, lending and borrowing of internationally traded securities. Euroclear and Clearstream interface with domestic securities markets. Euroclear and Clearstream participants are financial institutions such as underwriters, securities brokers and dealers, banks, trust companies and certain other organizations. Indirect access to Euroclear and Clearstream is also available to others such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Euroclear and Clearstream participant, either directly or indirectly.

Because Euroclear and Clearstream can only act on behalf of participants, who in turn act on behalf of indirect participants and certain banks, the ability of an owner of a beneficial interest to pledge such interest to persons or entities that do not participate in the Euroclear or Clearstream systems, or otherwise take actions in respect of such interest, may be limited by the lack of a definitive certificate for that interest. The laws of some jurisdictions require that certain persons take physical delivery of securities in definitive form. Consequently, the ability to transfer beneficial interests to such person may be limited. In addition, owners of beneficial interests through the Euroclear or Clearstream systems will receive distributions only through Euroclear or Clearstream participants.

**Except as described below, owners of interests in the Convertible Notes will not have Convertible Notes registered in their names, will not receive physical delivery of Convertible Notes in certificated form and will not be considered the registered owners or holders thereof under the New Indenture for any purpose.**

Payments in respect of the principal of and premium, if any, and interest on a Convertible Note registered in the name of the nominee for the common depository will be payable by the Trustee (or the paying agent if other than the Trustee) to the common depository in its capacity as the registered holder under the New Indenture. The Trustee will treat the persons whose names the Convertible Notes are registered as the owners thereof for the purpose of receiving such payments and for any and all other purposes whatsoever. Consequently, none of the Company, the Trustee or any agent of the Company or the Trustee or any BNYM Party has or will have any responsibility or liability for:

- (a) any aspect of Euroclear and/or Clearstream's records or any participant's or indirect participant's records relating to or payments made on account of beneficial ownership interests in the Convertible Notes, or for maintaining, supervising or reviewing any of Euroclear and/or Clearstream's records or any participant's or indirect participant's records relating to the beneficial ownership interests in the Convertible Notes; or
- (b) any other matter relating to the actions and practices of Euroclear and/or Clearstream or any of its participants or indirect participants.

Subject to the transfer restrictions described under Schedule 4 (Transfer Restrictions; Notice to Investors), transfers between participants in Euroclear and Clearstream will be effected in accordance with their respective rules and operating procedures.

Each of Euroclear and Clearstream has advised the Company that it will take any action permitted to be taken by a holder of Convertible Notes only at the direction of one or more participants to whose account with Euroclear and/or Clearstream interests in the Convertible Notes are credited and only in respect of such portion of the aggregate principal amount of the Convertible Notes as to which such participant or participants has or have given such direction.



## MIRABELA NICKEL

The information in this Section concerning Euroclear and Clearstream and their book-entry systems has been obtained from sources that the Company believes to be reliable, but neither the Company nor any BNYM Party takes any responsibility for the accuracy thereof.

### **Exchange of Book-Entry Notes for Certificated Notes**

A Convertible Note is exchangeable for certificated Convertible Notes in fully registered form without interest coupons (**Certificated Notes**) only in the following limited circumstances:

- (a) the common Depository notifies the Company that it is unwilling or unable to continue as Depository for the Convertible Note, and the Company fails to appoint a successor Depository within 90 days of such notice,
- (b) upon the request of a holder thereof, if there shall have occurred and be continuing an event of default with respect to the Convertible Notes.

In all cases, Certificated Notes delivered in exchange will be registered in the names, and issued in any approved denominations, requested by or on behalf of Euroclear and Clearstream (in accordance with its customary procedures) and will bear the applicable restrictive legend referred to in Schedule 4 (Transfer Restrictions; Notice to Investors), unless the Company determines otherwise in accordance with the New Indenture and in compliance with applicable law.

### **Transfers Within and Between Convertible Notes**

Beneficial interests in a Regulation S Convertible Note may be transferred to a person who takes delivery in the form of a beneficial interest in the Rule 144A Convertible Note only if the transfer is made pursuant to Rule 144A and the transferor first delivers to the Trustee a certificate (in the form provided in the New Indenture) to the effect that such transfer is being made to a person who the transferor reasonably believes is a Qualified Institutional Buyer within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and in accordance with all applicable securities laws of the states of the United States and other jurisdictions.

Beneficial interests in a Rule 144A Convertible Note may be transferred to a person who takes delivery in the form of a beneficial interest in a Regulation S Convertible Note only upon receipt by the Trustee of a written certification (in the form provided in the New Indenture) from the transferor to the effect that such transfer is being made in accordance with Regulation S under the U.S. Securities Act.

Transfers of beneficial interests within a Convertible Note may be made without delivery of any written certification or other documentation from the transferor or the transferee.

Transfers of beneficial interests in a Regulation S Convertible Note for beneficial interests in the Rule 144A Convertible Note or vice versa will be effected by Euroclear and Clearstream by means of an instruction originated by the Trustee. Accordingly, in connection with any transfer, appropriate adjustments will be made to reflect a decrease in the principal amount of the Regulation S Convertible Note and a corresponding increase in the principal amount of the Rule 144A Convertible Note or vice versa, as applicable. Any beneficial interest in one of the Convertible Notes that is transferred to a person who takes delivery in the form of an interest in another Convertible Note will, upon transfer, cease to be an interest in such Convertible Note and will become an interest in the other Convertible Note and, accordingly, will thereafter be subject to all transfer restrictions and other procedures applicable to beneficial interests in such other Convertible Note for so long as it remains such an interest. Such transfer shall be made on a delivery free of payment basis, and the buyer and seller will not need to arrange for payment outside the clearing system.



## MIRABELA NICKEL

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### **Schedule 4    Transfer restrictions**

The following is a summary of certain important legal matters relating to restrictions on transfer of your Convertible Notes. This summary does not purport to be complete and may not contain all the information that is important or relevant to you. You are advised to contact your own legal counsel prior to making any offer, sale, pledge or other transfer of the Convertible Notes.

The Company has not registered the Convertible Notes under the U.S. Securities Act. Accordingly, this offering is being made in reliance upon an exemption from the registration requirements under the U.S. Securities Act; no registration statement has been filed with the SEC. This offering is only being made to persons (i) in the United States that are "Qualified Institutional Buyers" (as defined in Rule 144A under the U.S. Securities Act) in compliance with Rule 144A or (ii) outside the United States that are persons other than U.S. Persons, in offshore transactions meeting the requirements of Rule 903 or Rule 904 of Regulation S. As used herein, the terms "offshore transaction" and "U.S. Person" have the respective meanings given to them in Regulation S.

If you are unable to certify that you are either (a) a Qualified Institutional Buyer or (b) not a U.S. Person, as that term is defined in Rule 902 of Regulation S, you may not participate in this offering.

The Convertible Notes may not be offered or sold in the United States except pursuant to an effective registration statement under the U.S. Securities Act, in a transaction not subject to the registration requirements of the U.S. Securities Act or in accordance with an applicable exemption from the registration requirements of the U.S. Securities Act. We make no representation with respect to, and we assume no responsibility for, (i) the availability of an exemption from the registration requirements of the U.S. Securities Act with respect to offers and sales of the Convertible Notes or (ii) the circumstances under which the Convertible Notes may be lawfully offered or sold in the United States or to U.S. Persons.





## MIRABELA NICKEL

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### Schedule 5    New Indenture

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MIRABELA NICKEL LIMITED (subject to deed of company arrangement)  
as Company

MIRABELA MINERAÇÃO DO BRASIL LTDA.,  
MIRABELA INVESTMENTS PTY LIMITED (subject to deed of company arrangement)  
as Subsidiary Guarantors

9.5% Senior Convertible Secured Notes due 2019

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**INDENTURE**

Dated as of                      , 2014

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THE BANK OF NEW YORK MELLON, LONDON BRANCH,  
as Trustee

THE BANK OF NEW YORK MELLON, LONDON BRANCH,  
As Paying Agent, Transfer Agent and Conversion Agent,

THE BANK OF NEW YORK MELLON (LUXEMBOURG) S.A.,  
As Note Registrar

AET STRUCTURED FINANCE SERVICES PTY LIMITED,  
as Australian Security Trustee

DEUTSCHE BANK S.A. – BANCO ALEMÃO,  
As Brazilian Collateral Agent

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INDENTURE, dated as of \_\_\_\_\_, 2014, among Mirabela Nickel Limited (subject to deed of company arrangement), as issuer (the "Company"), (ABN 23 108 161 593), a company organized in Australia, Mirabela Mineração do Brasil Ltda., a Brazilian limited liability company, Mirabela Investments Pty Limited (subject to deed of company arrangement), (ABN 70 124 449 716), a company organized in Australia (the "Subsidiary Guarantors"), The Bank of New York Mellon, acting through its London Branch, as indenture trustee, paying agent, transfer agent and conversion agent (the "Trustee," "Paying Agent," "Transfer Agent," and "Conversion Agent," respectively), The Bank of New York Mellon (Luxembourg) S.A. (the "Note Registrar"), AET Structured Finance Services Pty Limited (ABN 12 106 424 088), as Australian Security Trustee (the "Australian Security Trustee") and Deutsche Bank S.A. – Banco Alemão, as Brazilian Collateral Agent (the "Brazilian Collateral Agent"). The Company has duly authorized the creation of its 9.5% Senior Convertible Secured Notes due 2019 (the "Notes") and to provide therefor the Company, the Subsidiary Guarantors and the Trustee have duly authorized the execution and delivery of this Indenture. Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders (as defined herein) of the Notes:

## ARTICLE 1 DEFINITIONS

Section 1.01. Definitions. The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. The words "herein," "hereof," "hereunder," and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

"Acceleration Premium" shall mean, in connection with any accelerated payment of any of the Notes pursuant to Article VI of this Indenture or the Notes, the aggregate present value as of the date of such accelerated payment of the amount of unpaid interest (exclusive of interest that has been accrued to the date of such accelerated payment, but inclusive of any interest that would have become payable on any increased principal amount of Notes as a result of the payment of Additional PIK Principal if such accelerated payment had not been made) that would have been payable in respect of the principal amount of the Notes (including any PIK Notes or any increase in the principal amount of the Notes as a result of the payment of Additional PIK Principal), then outstanding, with the present value determined by discounting, on a semi-annual basis, such interest at the Reinvestment Rate (determined on the third Business Day preceding the date such declaration of acceleration is made) from the respective dates on which such interest payments would have been payable if such accelerated payment had not been made.

"Additional Amounts" has the meaning specified in Section 4.14.

"Additional PIK Principal" shall have the meaning specified in Section 2.02.

"Additional Subsidiary Guarantor" shall have the meaning specified in Section 12.09.

"Additional Subsidiary Guarantee" shall have the meaning specified in Section 12.09.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person; *provided* that no Holder will be considered an Affiliate of the Company solely by virtue of acquiring shares as a result of the Section 444GA Order contemplated by the DOCA and restructure of the Company and the Subsidiary Guarantors, as a result of being issued shares as contemplated by the DOCA, or as a result of holding the Notes. For the purposes of this definition, "control," when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agent" means each of the Trustee, the Paying Agent, the Transfer Agent, the Conversion Agent, the Note Registrar, the Brazilian Collateral Agent and the Australian Security Trustee.



**"Agent Members"** shall have the meaning set forth in Section 2.08(b).

**"Amended and Restated Syndicated Note Subscription Deed"** means the revised Syndicated Note Subscription Deed as amended under the terms of the Deed of Acknowledgement and Amendment.

**"Associate"** means an associate as defined in section 128F(9) of the Australian Tax Act.

**"Australian Security Trustee"** means AET Structured Finance Services Pty Limited.

**"Australian Tax Act"** means the Income Tax Assessment Act 1936 (Cth) of Australia.

**"Australian Withholding Tax"** means any Australian Tax required to be withheld or deducted from any interest or other payment under Division 11A of Part III of the Australian Tax Act or Subdivision 12-F of Schedule 1 to the Taxation Administration Act 1953 (Cth) of Australia.

**"Authenticating Agent"** shall have the meaning set forth in Section 2.03(d).

**"Authorized Agent"** shall have the meaning set forth in Section 14.06(c).

**"Bankruptcy Law"** means (a) the external administration laws contained in Chapter 5 of the Corporations Act 2001 (Cth) of Australia, as amended, (b) the United States Bankruptcy Code of 1978, as amended, or any similar U.S. federal or state law for the relief of debtors, (c) Brazilian bankruptcy law or (e) or any other bankruptcy, insolvency liquidation or similar laws of general application.

**"Board of Directors"** means, as to any Person, the board of directors or managers, as applicable, of such Person (or, if such Person is a partnership, the board of directors or other governing body of the general partner of such Person) or any duly authorized committee thereof.

**"Board Resolution"** means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors, and to be in full force and effect on the date of such certification, and delivered to the Trustee.

**"Brazil"** means the Federative Republic of Brazil.

**"Brazilian Collateral Agent"** means Deutsche Bank S.A. – Banco Alemão.

**"Brazilian reais"** "Real", "Reais" or "RS" means the lawful currency of Brazil.

**"Business Day"** means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which the banking institutions in Perth, Australia, New York City or London, United Kingdom are authorized or obligated by law or executive order to close or be closed.

**"Capital Stock"** of any Person means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock and limited liability or partnership interests (whether general or limited), but excluding any debt securities convertible into such equity.

**"Cash Equivalents"** means:

- (1) U.S. Dollars, Australian Dollars, Canadian dollars, Euros and Brazilian reais;
- (2) securities issued or directly and fully guaranteed or insured by the government of the United States, Brazil or Australia (collectively, the "**Specified Countries**") or any agency or instrumentality thereof having maturities of not more than two years from the date of acquisition;

- (3) readily marketable direct obligations issued by any state of the United States or any political subdivision thereof, any state of Australia or Brazil, having one of the two highest rating categories obtainable from either Moody's or S&P;
- (4) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case, with any bank organized under the laws of any Specified Country or any state, province or territory thereof (or, in the case of the United States, the District of Columbia) or a branch of a foreign bank located in a Specified Country, in each case, having at the date of acquisition thereof combined net capital and surplus in excess of US\$500.0 million;
- (5) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (2), (3) and (4) above entered into with any financial institution meeting the qualifications specified in clause (4) above;
- (6) commercial paper having one of the two highest ratings obtainable from Moody's or S&P and in each case maturing within one year after the date of acquisition; and
- (7) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (1) through (6) of this definition.

"**Certificated Notes**" means any Note issued in fully-registered certificated form (other than a Global Note), which shall be substantially in the form of Exhibit A, with appropriate legends as specified in Section 2.09 and Exhibit A.

"**Change of Control**" means the occurrence after the original issuance of the Notes of any of the following events:

- (a) voting power (as defined in the Corporations Act 2001 (Cth)) of fifty percent (50%) or more in the Company is acquired by any Person;
- (b) consummation of any takeover bid under Chapter 6 of the Corporations Act 2001 (Cth) or implementation of any scheme of arrangement under Part 5.1 of the Corporations Act 2001 (Cth) or any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one or more of the Company's Subsidiaries, in each case, pursuant to which the Common Stock will be converted into cash, securities or other property (any such bid, scheme, transaction or series of transactions being referred to herein as an "event"); *provided, however*, that any such event where the holders of the Company's Common Equity immediately prior to such event, own, directly or indirectly, more than 50% of the voting power of all classes of Common Equity of the continuing or surviving person or transferee or the parent of the Company immediately after such event with such holders' proportional voting power immediately after such event being in substantially the same proportions as their respective voting power before such event shall not be a Change of Control;
- (c) during any consecutive two-year period, individuals who at the beginning of that two-year period constituted the Board of Directors of the Company, together with any new directors whose election to the Board of Directors of the Company, or whose nomination for election by the Company's stockholders, was approved by a vote of a majority of the Company's stockholders, cease for any reason to constitute a majority of the Board of Directors of the Company then in office, *provided* that the appointment of new directors to the Board of Directors by the Deed Administrators will not constitute a Change of Control; or
- (d) the stockholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company;

*provided, however, (x) the event that would constitute a Change of Control under clause (a) above will not constitute a Change of Control if (i) the event occurs in connection with a transaction in which the Common Stock is replaced by the securities of another corporation, partnership, limited liability company or similar entity, and (ii) the holders of the Company's Common Equity immediately prior to such event, own, directly or indirectly, more than 50% of the voting power of such securities immediately after such event with such holders' proportional voting power immediately after such event being in substantially the same proportions as their respective voting power before such event.*

For purposes of this definition, whether a "person" is a "beneficial owner" shall be determined in accordance with Rule 13d-3 under the Exchange Act and "person" includes any syndicate or group that would be deemed to be a "person" under Section 13(d)(3) of the Exchange Act.

After any transaction in which the Common Stock is replaced by the securities of another entity pursuant to Section 13.14, should one occur, following completion of any related Change of Control Payment Date, references to the Company in the definition of "Change of Control" above will apply to such other entity instead.

"Change of Control Notice" means notice of a Change of Control Offer made pursuant to Section 3.09, which shall be given in accordance with Section 14.01 to each record Holder no earlier than 30 days nor later than 60 days following the date upon which a Change of Control occurred, with a copy to the Trustee, which notice shall govern the terms of the Change of Control Offer and shall state (except to the extent inapplicable):

- (1) that a Change of Control has occurred, the circumstances or events causing such Change of Control and that a Change of Control Offer is being made pursuant to Section 3.09, and that all Notes that are timely tendered will be accepted for payment;
- (2) the Change of Control Payment, and the Change of Control Payment Date;
- (3) that any Notes or portions thereof not tendered or accepted for payment will continue to accrue interest;
- (4) that, unless the Company defaults in the payment of the Change of Control Payment with respect thereto, all Notes or portions thereof accepted for payment pursuant to the Change of Control Offer shall cease to accrue interest from and after the Change of Control Payment Date;
- (5) that any Holder electing to have any Notes or portions thereof purchased pursuant to a Change of Control Offer will be required to tender such Notes, along with the fully completed form entitled "Option of Holder to Elect Purchase," on the reverse of such Notes, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;
- (6) that any Holder shall be entitled to withdraw such election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a notice setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing such Holder's election to have such Notes or portions thereof purchased pursuant to the Change of Control Offer;
- (7) that any Holder electing to have Notes purchased pursuant to the Change of Control Offer must specify the principal amount that is being tendered for purchase, which principal amount must be US\$1,000 or an integral multiple thereof; provided, that the remaining portion of such Holder's Note shall not be less than US\$1,000;
- (8) that any Holder of Certificated Notes whose Certificated Notes are being purchased only in part will be issued new Certificated Notes equal in principal amount to the unpurchased portion of the Certificated Note or Notes surrendered, which unpurchased portion will be equal in principal amount to US\$1,000 or an integral multiple thereof;

(9) that the Trustee will return to the Holder of a Global Note that is being purchased in part, such Global Note with a notation on Schedule A thereof adjusting the principal amount thereof to be equal to the unpurchased portion of such Global Note; and

(10) any other information necessary to enable any Holder to tender Notes and to have such Notes purchased pursuant to Section 3.09.

**"Change of Control Offer"** shall have the meaning specified in Section 3.09.

**"Change of Control Payment"** shall have the meaning specified in Section 3.09.

**"Change of Control Payment Date"** shall be a Business Day no earlier than 30 days nor later than 60 days subsequent to the date on which the Change of Control Notice is given to the Holders (other than as may be required by law).

**"Clearstream Luxembourg"** means Clearstream Banking S.A., société anonyme, as operator of Clearstream, Luxembourg, or its successor in such capacity.

**"close of business"** means 5:00 p.m. (London time).

**"Collateral"** means the property that, in accordance with the Collateral Documents, from time to time, is subject to any Lien in favor of any of the Collateral Agents, and in the case of the Brazilian Collateral Agent, any Lien in favor of Secured Parties, represented by the Brazilian Collateral Agent.

**"Collateral Agents"** means both the Australian Security Trustee and the Brazilian Collateral Agent.

**"Collateral Agent Convertible Amount"** has the meaning specified in Section 10.04.

**"Collateral Agent Fees"** means all reasonable fees, costs and expenses (including counsel fees and expenses) of, and other amounts owing from any Grantor, to the Collateral Agent under this Indenture or any Collateral Document.

**"Collateral Documents"** means pledge agreements, mortgages and other documents to be entered into from time to time in accordance with this Indenture by the Grantors and the Collateral Agents for the benefit of the Holders and the creditors under the Priming Loan Basket, if any, from time to time, including the Amended and Restated Syndicated Note Subscription Deed, the General Security Deed and the Brazilian Collateral Documents listed in Exhibit E.

**"Collateral Permitted Liens"** means, with respect to any Person:

- (1) Liens securing Indebtedness (other than Subordinated Obligations and Guarantor Subordinated Obligations) in an aggregate principal amount not to exceed, at any time outstanding, US\$60.0 million (the **"Priming Loan Basket"**); *provided* that the Company has received the written consent of the Lien Amendment Threshold to permit the incurrence of such Liens.
- (2) the following Liens, to the extent incurred without the consent of the Company or any of its Subsidiaries:
  - (a) pledges or deposits by such Person under workers' compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or United States government bonds to secure surety or appeal

bonds to which such Person is a party, or deposits as security for contested taxes or import or customs duties or for the payment of rent, in each case Incurred in the ordinary course of business;

(b) Liens imposed by law, including carriers', warehousemen's, landlords, mechanics', materialmen's and repairmen's Liens, in each case for sums not yet due or being contested in good faith by appropriate proceedings if a reserve or other appropriate provisions, if any, as shall be required by IFRS shall have been made in respect thereof;

(c) Liens for taxes, assessments or other governmental charges not yet subject to penalties for non-payment or which are being contested in good faith by appropriate proceedings provided appropriate reserves required pursuant to IFRS have been made in respect thereof;

(d) judgment Liens not giving rise to an Event of Default so long as such Lien is adequately bonded and any appropriate legal proceedings which may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;

(e) Liens arising solely by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depository institution; provided that:

(i) such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by the Company in excess of those set forth by regulations promulgated by the Federal Reserve Board; and

(ii) such deposit account is not intended by the Company or any Subsidiary to provide collateral to the depository institution;

(f) Liens upon specific items of inventory or other goods and proceeds of the Company or its Subsidiaries securing the Company's or any Subsidiary Guarantor's obligations in respect of bankers' acceptance issued or created for the account of such Person to facilitate the purchase, shipments or storage of such inventory or other goods;

(g) Liens arising under a contract over goods, documents of title to goods and related documents and insurances and their proceeds, in each case in respect of documentary credit transactions entered into in the ordinary course of business;

(h) Liens arising under any retention of title, hire, purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied in the ordinary course of business;

(i) contract mining agreements, leases, licenses, subleases, and sublicenses of assets, (including, without limitation, intellectual property and real property) which do not interfere with the business of the Company and the Subsidiary Guarantors in any material respect; and

(3) Liens created pursuant to the Collateral Documents to secure the Notes and the Guaranteed Obligations.

(4) Liens that (i) are existing on the Issue Date under the General Security Deed and (ii) were created pursuant to the Syndicated Note Subscription Deed, and in each case, will be amended to secure Collateral under this Indenture.

**"Commodity Agreement"** means any commodity futures contract, commodity swap, commodity option or other similar agreement or arrangement entered into by the Company or any Subsidiary designed to protect the Company or any of its Subsidiaries against fluctuations in the price of commodities actually used in the ordinary course of business of the Company and its Subsidiaries.

**"Common Depositary"** means The Bank of New York Mellon, London Branch, acting as common depositary appointed by Euroclear and Clearstream, Luxembourg to hold a global certificate on behalf of both Euroclear and Clearstream, Luxembourg.

**"Common Equity"** of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

**"Common Stock"** means any stock of any class of the Company which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which is not subject to redemption by the Company. Subject to the provisions of Section 13.14, however, shares issuable on conversion of the Notes shall include only shares of Common Stock, of the Company as it exists on the date of this Indenture or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which are not subject to redemption by the Company; *provided* that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

**"Company"** means the party named as the "Company" in the first paragraph of this Indenture until a successor corporation shall have become such pursuant to the applicable provisions of this Indenture and, thereafter, "Company" shall mean such successor corporation. The foregoing sentence shall likewise apply to any subsequent successor or successors.

**"Company Order"** means a written request or order signed in the name of the Company (for so long as the Company is subject to a deed of company arrangement) by the Deed Administrators or, otherwise (i) by its Chairman, Chief Executive Officer and (ii) by its Chief Financial Officer, Treasurer or its Company Secretary and delivered to the Trustee.

**"Conversion Agent"** shall have the meaning specified in Section 2.04.

**"Conversion Price"** shall have the meaning specified in Section 13.01.

**"Conversion Shares"** shall have the meaning specified in Section 13.01.

**"Conversion Date"** shall have the meaning specified in Section 13.03.

**"Corporate Trust Office"** means the office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at:

The Bank of New York Mellon, London Branch  
40th Floor, One Canada Square  
London E14 5AL  
United Kingdom  
Fax: +44 207 964 4637  
Attention: Corporate Trust Administration

or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

**"Corporate Note Registrar Office"** means the office of the Note Registrar at which at any time its corporate registry or agency business shall be administered, which office at the date hereof is located at:

The Bank of New York Mellon (Luxembourg) S.A.  
Vertigo Building, Polaris  
2-4 rue Eugène Ruppert  
L-2453 Luxembourg  
Fax: +352 24524204  
Attention: Mirabela Nickel Limited

or such other address as the Note Registrar may designate from time to time by notice to the Holders and the Company, or the principal corporate registry or agency office of any successor Note Registrar (or such other address as such successor Note Registrar may designate from time to time by notice to the Holders and the Company).

**"Currency Agreement"** means in respect of a Person any foreign exchange contract, currency swap agreement, futures contract, option contract or other similar agreement as to which such Person is a party or a beneficiary.

**"Current EJ Proceeding"** means the extrajudicial reorganization proceeding (the "EJ Proceeding"), filed by Mirabela Mineração do Brasil Ltda. On , 2014 with the Lower Court of Itagibá, State of Bahia, Brazil (the "Brazilian Court"), under Chapter VI of the Brazilian Bankruptcy Code (Federal Law No. 11,101/2005), requesting the ratification of a restructuring plan providing for the extinguishment of Mirabela Brazil's obligations under its guarantee of the Existing Notes and the issuance by the Company of subordinated unsecured notes to certain creditors at the conclusion of the current EJ proceeding and subject to ratification of the EJ Plan by the Brazilian Court.

**"Current Market Price"** per share of Common Stock at any date shall be the average of the last reported sale prices for the ten consecutive Trading Days preceding the day before the record date with respect to any distribution, issuance or other event requiring such computation. The last reported sale price for each day shall be (i) the last reported sale price of Common Stock on the Australian Securities Exchange, or, if such security is not listed or admitted to trading on such exchange, on the principal national securities exchange on which such security is listed, or on any system of automated dissemination of quotations of securities prices then in common use, if so quoted, or (ii) if not quoted as described in clause (i), the mean between the high bid and low asked quotations for Common Stock as reported by the National Quotation Bureau Incorporated if at least two securities dealers have inserted both bid and asked quotations for the Common Stock on at least 5 of the 10 preceding days. If the Common Stock is quoted on a national securities or central market system, in lieu of a market or quotation system described above, the last reported sale price shall be determined in the manner set forth in clause (ii) of the preceding sentence if bid and asked quotations are reported but actual transactions are not. If none of the conditions set forth above is met, the last reported sale price of Common Stock on any day or the average of such last reported sale prices for any period shall be the fair market value of the Common Stock as determined by a member firm of the Australian Securities Exchange selected by the Company.

**"Deed Administrators"** means Martin Madden, Clifford Rocke and David Winterbottom in their capacity as joint and several deed administrators appointed under the DOCA.

**"Deed of Acknowledgement and Amendment"** means the agreement between Mirabela, Mirabela Investments, the Australian Security Trustee, the Brazilian Collateral Agent and others dated on or about the date of this Indenture.

**"Default"** means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

**"Distributed Notes"** shall have the meaning specified in Section 13.09.

**"Distribution Compliance Period"** means, in respect of any Regulation S Global Note, the 40 consecutive days beginning on and including the later of (a) the day on which any Notes represented thereby are offered to persons other than distributors (as defined in Regulation S under the Securities Act) pursuant to Regulation S and (b) the issue date for such Notes, as notified by the Company to the Trustee in writing.

**"DOCA"** means the deed of company agreement among the Company and its creditors, dated as of May 13, 2014.

**"Euroclear"** means Euroclear Bank S.A./N.V., as operator of the Euroclear System, or its successor in such capacity.

**"Event of Default"** shall have the meaning specified in Section 6.01.

**"Event of Loss"** means (i) the loss of, destruction of, or damage to any Collateral, (ii) the condemnation, seizure, confiscation, requisition of the use or taking by exercise of the power of eminent domain or otherwise of any Collateral or (iii) any consensual settlement in lieu of any event listed in clause (ii), in each case whether in a single event or a series of related events, that results in net cash proceeds from all sources in excess of US\$2.0 million.

**"Exchange Act"** means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

**"Expiration Time"** shall have the meaning specified in Section 13.09.

**"General Security Deed"** means the document titled '*General Security Deed*' dated December 24, 2013, creating the security interest granted in favor of the Australian Security Trustee by the Company and Mirabela Investments, dated 24 December 2013.

**"Global Note"** means, individually and collectively, each of the Global Notes, substantially in the form of Exhibit A.

**"Government Agency"** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity: it includes any self-regulatory organization established under statute and any stock exchange.

**"Grantors"** means the Company and the Subsidiary Guarantors, collectively.

**"Guarantee"** means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

- (1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, to maintain financial statement conditions or otherwise); or
- (2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); *provided, however*, that the term "Guarantee" will not include endorsements for collection or deposit in the ordinary course of business. The term "Guarantee" used as a verb has a corresponding meaning.

**"Guaranteed Obligations"** has the meaning specified in Section 12.01.



**“Guarantor Subordinated Obligation”** means, with respect to a Subsidiary Guarantor, any Indebtedness of such Subsidiary Guarantor which is expressly subordinated in right of payment to the obligations of such Subsidiary Guarantor under its Subsidiary Guarantee pursuant to a written agreement.

**“Hedging Obligations”** of any Person means the obligations of such Person pursuant to any Interest Rate Agreement, Currency Agreement or Commodity Agreement.

**“Holder”** or **“holder,”** as applied to any Note, or other similar terms (but excluding the term “beneficial holder”), shall mean any person in whose name at the time a particular Note is registered on the Note Register.

**“IFRS”** means the International Financial Reporting Standards as in effect from time to time.

**“Incur”** means issue, create, assume, Guarantee, incur or otherwise become liable for; *provided, however,* that any Indebtedness or Capital Stock of a Person existing at the time such person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) will be deemed to be Incurred by such Subsidiary at the time it becomes a Subsidiary; and the terms “Incurred” and “Incurrence” have meanings correlative to the foregoing.

**“Indebtedness”** means, with respect to any Person on any date of determination (without duplication):

- (1) the principal of and premium (if any) in respect of indebtedness of such Person for borrowed money;
- (2) the principal of and premium (if any) in respect of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (3) the principal component of all obligations of such Person in respect of letters of credit, bankers’ acceptances or other similar instruments (including reimbursement obligations with respect thereto except to the extent such reimbursement obligation relates to a trade payable and such obligation is satisfied within 30 days);
- (4) the principal component of all obligations of such Person to pay the deferred and unpaid purchase price of property (except trade payables), which purchase price is due more than six months after the date of placing such property in service or taking delivery and title thereto;
- (5) Capitalized Lease Obligations and all Attributable Indebtedness of such Person;
- (6) the principal component or liquidation preference of all obligations of such Person with respect to any Subsidiary that is not a Subsidiary Guarantor, any Preferred Stock (but excluding, in each case, any accrued dividends);
- (7) the principal component of all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; *provided, however,* that the amount of such Indebtedness will be the lesser of (a) the fair market value of such asset at such date of determination and (b) the amount of such Indebtedness of such other Persons;
- (8) the principal component of Indebtedness of other Persons to the extent Guaranteed by such Person;
- (9) to the extent not otherwise included in this definition, net obligations of such Person under Hedging Obligations (the amount of any such obligations to be equal at any time to

the termination value of such agreement or arrangement giving rise to such obligation that would be payable by such Person at such time); and

- (10) to the extent not otherwise included in this definition, the amount of obligations outstanding under the legal documents entered into as part of a securitization transaction or series of transactions that would be characterized as principal if such transaction were structured as a secured lending transaction rather than as a purchase outstanding relating to a securitization transaction or series of transactions.

The amount of Indebtedness of any Person at any date will be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date. Notwithstanding the foregoing, money borrowed and set aside at the time of the Incurrence of any Indebtedness in order to pre-fund the payment of interest on such Indebtedness shall not be deemed to be "Indebtedness" provided that such money is held to secure the payment of such interest.

In addition, "Indebtedness" of any Person shall include Indebtedness described in the preceding paragraph that would not appear as a liability on the balance sheet of such Person if:

- (1) such Indebtedness is the obligation of a partnership or joint venture that is not a Subsidiary (a "Joint Venture");
- (2) such Person or a Subsidiary of such Person is a general partner of the Joint Venture (a "General Partner"); and
- (3) there is recourse, by contract or operation of law, with respect to the payment of such Indebtedness to property or assets of such Person or a Subsidiary of such Person; and then such Indebtedness shall be included in an amount not to exceed:
  - (a) the lesser of (i) the net assets of the General Partner and (ii) the amount of such obligations to the extent that there is recourse, by contract or operation of law, to the property or assets of such Person or a Subsidiary of such Person; or
  - (b) if less than the amount determined pursuant to clause (a) immediately above, the actual amount of such Indebtedness that is recourse to such Person or a Subsidiary of such Person, if the Indebtedness is evidenced by a writing and is for a determinable amount.

"**Indenture**" means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

"**Interest Rate Agreement**" means with respect to any Person any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement as to which such Person is party or a beneficiary.

"**Interest Payment Date**" means the Stated Maturity of an installment of interest on the Notes.

"**Interest Period**" shall have the meaning set forth in Section 13.03.

"**Insolvency Proceeding**" means any action, legal proceeding or other step in respect of the Company or any of its Subsidiaries in connection with (i) the winding up, dissolution, bankruptcy, *recuperação judicial*, *recuperação extrajudicial*, *falência*, administration, or liquidation or reorganization (by way of voluntary arrangement, scheme of arrangement or similar arrangement), (ii) the appointment of an administrator, liquidator,

receiver, *administrador judicial*, compulsory manager, scheme manager or similar officer in respect of the Company or any of its Subsidiaries or any of its assets or (iii) any analogous procedure or step in any jurisdiction.

**"Issue Date"** means , 2014

**"Lien"** means any mortgage, pledge, security interest, encumbrance, Lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

**"Lien Amendment Threshold"** means Holders of at least 66.67% of the principal amount of the Notes then outstanding.

**"Listing Rules"** means the Listing Rules of the Australian Securities Exchange as amended from time to time.

**"Maturity Date"** when used with respect to any Note, means the date on which the principal of such Note becomes due and payable as therein or herein provided, whether at the Stated Maturity, or by declaration of acceleration, call for redemption, redemption upon a Change of Control or otherwise.

**"Mirabela Investments"** means Mirabela Investments Pty Ltd (subject to deed of company arrangement).

**"Note" or "Notes"** shall mean any note or notes, as the case may be, authenticated and delivered under this Indenture.

**"Note Register"** shall have the meaning specified in Section 2.04.

**"Note Registrar"** shall have the meaning specified in Section 2.04.

**"Obligations"** means with respect to any Indebtedness, all obligations for principal, premium, interest (including without limitation post-petition interest), penalties, fees, Additional Amounts, indemnifications, reimbursements and other amounts payable pursuant to the documentation governing such Indebtedness.

**"Officer"** means the Chairman of the Board, the Chief Executive Officer, a Director, the Chief Financial Officer, the Deed Administrators (for so long as the Company is subject to a deed of company arrangement), the Treasurer or the Secretary of the Company or, in the event that the Company is a partnership or a limited liability company that has no such officers, a person duly authorized under applicable law by the general partner, managers, members or a similar body to act on behalf of the Company. Officer of any Subsidiary Guarantor has a correlative meaning.

**"Officers' Certificate"** means a certificate signed by two Officers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of the Company.

**"Offshore Associate"** means an Associate:

(1) which is a non-resident of Australia and does not become a registered holder of a Note or receive a payment in carrying on a business in Australia at or through a permanent establishment of the Associate in Australia; or

(2) which is a resident of Australia and which becomes a registered holder of a Note or receives a payment in carrying on a business in a country outside Australia at or through a permanent establishment of the Associate in that country; and

which, in either case, does not become a registered holder of a Note and receive payment in the capacity of a clearing house, custodian, funds manager or responsible entity of a registered scheme.

**"opening of business"** means 9:00 a.m. (London time).

**"Opinion of Counsel"** means a written opinion from legal counsel who is acceptable to the Trustee. Such counsel may be an employee of or counsel to the Company or the Trustee.

**"outstanding"** or **"Outstanding"** when used with reference to Notes, shall mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

- (1) Notes theretofore cancelled by the Trustee or accepted by the Trustee for cancellation;
- (2) Notes that have been paid pursuant to Article 3 or Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.10 and Section 2.11 unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in due course;
- (3) Notes that have become due and payable, whether at the Maturity Date, a Change of Control Payment Date, upon conversion or otherwise, for which the Company has deposited with the Trustee or delivered to Holders, as applicable, cash or cash and shares of Common Stock, if any, sufficient to pay all of the outstanding Notes and all other sums due payable under this Indenture by the Company; and
- (4) Notes converted pursuant to Article 13;

provided, however, that in determining whether the Holders of the requisite aggregate principal amount of the Outstanding Notes have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Notes owned by the Company or a Subsidiary Guarantor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Notes so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Notes and that the pledgee is not the Company or any other obligor upon the Notes.

**"Paying Agent"** shall have the meaning specified in Section 2.04.

**"Payment Default"** has the meaning specified in Section 6.01.

**"Person"** means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

**"Pollutant"** means a pollutant, contaminant, dangerous, toxic or hazardous substance, petroleum or petroleum product, chemical, solid, special liquid, industrial or other waste.

**"Preferred Stock,"** as applied to the Capital Stock of any corporation, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, over shares of Capital Stock of any other class of such corporation.

**"Private Placement Global Note"** shall have the meaning specified in Section 2.01(d).

**"Private Placement Legend"** shall have the meaning specified Section 2.09(b).

**"Prospectus"** means the prospectus dated \_\_\_\_\_, 2014 relating to the offering of the Notes.

**"Purchased Shares"** shall have the meaning specified in Section 13.09.

**"Redemption Date"** means a date specified for redemption of the Notes (other than redemption upon Change of Control at option of the Note holder or an Asset Disposition Offer) in accordance with the terms of the Notes and Article 3 of this Indenture.

**"Regular Record Date"** for the interest payable on any Interest Payment Date means the or (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date.

**"Reinvestment Rate"** shall mean with respect to the Notes, 0.50% plus the arithmetic mean of the yields under the heading "Week Ending" published in the most recent Statistical Release under the caption "Treasury Constant Maturities" for the maturity (rounded to the nearest month) corresponding to the remaining life to maturity, as of the accelerated payment date of the Notes. If no maturity exactly corresponds to such maturity, yields for the two published maturities most closely corresponding to such maturity shall be calculated pursuant to the immediately preceding sentence and the Reinvestment Rate shall be interpolated or extrapolated from such yields on a straight-line basis, rounding in each of such relevant periods to the nearest month. For the purposes of calculating the Reinvestment Rate, the most recent Statistical Release published prior to the date of determination of the Acceleration Premium shall be used.

**"Related Business"** means any business which is the same as or related, ancillary or complementary to any of the businesses of the Company and its Subsidiaries on the Issue Date (including, for the avoidance of doubt, the exploration, mining, production, processing, sale and/or transportation of metals, minerals, energy or other natural resource products and contract mining activities).

**"Regulation S"** means Regulation S under the Securities Act or any successor regulation.

**"Regulation S Global Note"** has the meaning assigned to it in Section 2.01(e).

**"Relevant Taxing Jurisdiction"** has the meaning specified in Section 4.14.

**"Resale Restriction Termination Date"** means the date on which the restrictions imposed by the Private Placement Legend upon the transferability of any Global Note shall cease and terminate, which shall occur upon the date that is (a) one year (or such other period specified in Rule 144(d)) from the Issue Date or, if any additional Global Notes have been issued before the Resale Restriction Termination Date for any Global Notes, from the latest such original issue date of such Additional Notes or (b) such later date, if any, as may be required by applicable law.

**"Responsible Officer"** means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, who shall have direct responsibility for the administration of this Indenture.

**"Restricted Note"** means any Note (or beneficial interest therein) not originally issued and sold pursuant to an effective registration statement under the Securities Act, until such time as:

- (i) such Note is a Private Placement Global Note and the Resale Restriction Termination Date therefor has passed;
- (ii) such Note is a Regulation S Global Note and the Distribution Compliance Period therefor has terminated; or
- (iii) the Private Placement Legend therefor has otherwise been removed pursuant to Section 2.10(e) or, in the case of a beneficial interest in a Global Note, such beneficial interest has been exchanged for an interest in a Global Note not bearing a Private Placement Legend.

**"Rights"** shall have the meaning specified in Section 13.19.

**"Rights Agreement"** shall have the meaning specified in Section 13.19.

**"Section 444GA Order"** means the order of New South Wales Supreme Court, Australia on , 2014, pursuant to section 444GA of the Corporations Act 2001 (Cth), to allow the Deed Administrators of the Company to transfer the existing shares of the Company to certain of its creditors.

**"Secured Parties"** means the Holders and the Agents, other than the Brazilian Collateral Agent.

**"Securities Act"** means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

**"Stated Maturity"** when used with respect to any security, including the Notes, or any installment of interest thereon, means the date specified in such security as the fixed date on which the principal of such security or such installment of interest is due and payable, and when used with respect to any other indebtedness or any installment of interest thereon, the date specified as the fixed date on which the principal of such debt or such installment of interest is due and payable as set forth in the documentation governing that debt, not including any contingent obligation to repay, redeem or repurchase prior to the regularly scheduled date for payment.

**"Subsidiary"** of any Person means (a) any corporation, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total ordinary voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof (or persons performing similar functions) or (b) any partnership, joint venture, limited liability company or similar entity of which more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, is, in the case of clauses (a) and (b), at the time owned or controlled, directly or indirectly, by (1) such Person, (2) such Person and one or more Subsidiaries of such Person or (3) one or more Subsidiaries of such Person. Unless otherwise specified herein, each reference to a Subsidiary will refer to a Subsidiary of the Company.

**"Subsidiary Guarantee"** means, individually, any Guarantee of payment of the Notes by a Subsidiary Guarantor pursuant to the terms of this Indenture and any supplemental indenture hereto, and, collectively, all such Guarantees. Each such Subsidiary Guarantee will be in the form attached hereto as Exhibit F.

**"Subsidiary Guarantor"** means each Subsidiary in existence on the Issue Date that provides a Subsidiary Guarantee on the Issue Date (and any other Subsidiary that provides a Subsidiary Guarantee in accordance with the indenture); provided that upon release or discharge of such Subsidiary from its Subsidiary Guarantee in accordance with this Indenture, such Subsidiary ceases to be a Subsidiary Guarantor.

**"Subordinated Obligation"** means any Indebtedness of the Company which is subordinated or junior in right of payment to the Notes pursuant to a written agreement.

**"Successor Company"** shall have the meaning specified in Section 5.01(a).

**"Syndicated Note Subscription Deed"** means the US\$45,000,000 syndicated note subscription deed dated December 24, 2013 by and among the Company, the Subsidiary Guarantors, Australian Executor Trustees Limited and the financiers named therein, as amended from time to time.

**"Tax Redemption Date"** has the meaning specified in Section 3.10(a).

**"Taxes"** has the meaning specified in Section 4.14.

**"Trading Day"** means a day during which trading in securities generally occurs on the Australian Securities Exchange or, if the applicable security is not listed on the Australian Securities Exchange, on the principal other national or regional securities exchange on which the applicable security is then listed or, if the applicable security is not listed on a national or regional securities exchange, on the principal other market on which the applicable security is then traded.

“Transfer Agent” shall have the meaning specified in Section 2.04.

“Trigger Event” shall have the meaning specified in Section 13.19.

“Trustee” means the Person named as the “Trustee” in the first paragraph of this Indenture until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each Person who is then a Trustee hereunder.

“Trustee Convertible Amount” has the meaning specified in Section 7.13.

ARTICLE 2  
ISSUE, DESCRIPTION, EXECUTION, REGISTRATION  
AND EXCHANGE OF NOTES

Section 2.01. Form and Dating.

The Notes shall be designated as 9.5% Senior Convertible Secured Notes due 2019. The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to an amount equal to US\$135,000,000 plus any Additional PIK Principal capitalized thereon, authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes pursuant to Section 2.10, Section 2.12 and Section 13.03 hereof. The initial principal amount of Notes issued and delivered on the Issue Date is US\$115,000,000. The Notes will be issued in fully-registered definitive global form without coupons, and in minimum denominations of US\$250,000 and integral multiples of US\$1,000 in excess thereof; *provided* that Additional PIK Principal may be added in denominations of US\$1.00 in accordance with Section 2.02.

(a) The Notes and the Trustee’s certificate of authentication shall be substantially in the form of Exhibit A.

(b) The terms and provisions of the Notes, the form of which is in Exhibit A, shall constitute, and are hereby expressly made, a part of this Indenture, and, to the extent applicable, the Company, the Subsidiary Guarantors and the Trustee, by their execution and delivery of this Indenture expressly agree to such terms and provisions and to be bound thereby. Except as otherwise expressly permitted in this Indenture, all Notes shall be identical in all respects. Notwithstanding any differences among them, all Notes issued under this Indenture shall vote and consent together on all matters as one class.

(c) The Notes may have notations, legends or endorsements as specified in Section 2.09 or as otherwise required by law, stock exchange rule or Euroclear or Clearstream Luxembourg rule or usage. The Company shall approve the form of the Notes and any notation, legend or endorsement on them. Each Note shall be dated the date of its authentication.

(d) Notes originally offered and sold to Qualified Institutional Investors (“QIBs”) in reliance on Section 4(a)(2) of the Securities Act will be issued in the form of one or more permanent Global Notes bearing the Private Placement Legend without interest coupons (each, a “Private Placement Global Note”).

(e) Notes originally offered and sold outside the United States of America will be issued in the form of one or more permanent Global Notes without interest coupons (each, a “Regulation S Global Note”).

Section 2.02. Interest.

(a) The Notes shall bear interest from the date of issuance of each Note (including such date) at a rate of 9.5% per annum. The Company shall capitalize interest accrued and payable for each Interest Payment Date. Capitalized interest shall be added to the outstanding principal amount (the “Additional PIK Principal”) of the Notes, and will be considered principal for all purposes, and without limiting the foregoing, the Additional PIK Principal of the Notes will bear interest at the rate then applicable to the Notes, beginning on the date such interest is paid in kind and added to the principal amount thereof.

(b) Notwithstanding the foregoing, the payment of accrued interest in connection with redemption of the Notes at any time shall be made solely in cash.

(c) Interest on each Note shall accrue from the most recent date to which interest has been paid or capitalized on such Note or, if no interest has been paid, from the Issue Date. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

(d) Interest shall be paid to the Persons that are Holders on the Regular Record Date immediately preceding the applicable Interest Payment Date, whether or not such day is a Business Day. If the due date for payment of any amount in respect of principal or interest on any of the Notes is not a Business Day, the Holder thereof shall not be entitled to payment of the amount due until the next succeeding Business Day and shall not be entitled to any further interest or other payment as a result of any such delay.

(e) Upon the capitalization of any interest, the Holder of a Note may, in accordance with Section 2.11(d), exchange this Note for a Note in a principal amount equal to the prior principal amount plus the amount of Additional PIK Principal; *provided* that the failure of a Holder to exchange a Note or of the Company to deliver a new Note shall not impair the Company's obligation in respect of such Additional PIK Principal.

#### Section 2.03. Execution and Authentication.

(a) A Deed Administrator or, if no Deed Administrator is appointed at the relevant time, one Officer, who shall be the Chief Executive Officer or the Chief Financial Officer of the Company, shall sign the Notes for the Company by manual or facsimile signature. If an Officer whose signature is on a Note no longer holds that office or is no longer a representative with full power and authority to represent and act on behalf of the Company at the time the Trustee authenticates the Note, the Note shall be valid nevertheless.

(b) A Note shall not be valid until an authorized signatory of the Trustee manually authenticates the Note. The signature of the Trustee on the certificate of authentication on a Note shall be conclusive evidence that such Note has been duly and validly authenticated and issued under this Indenture.

(c) At any time and from time to time after the execution and delivery of this Indenture, the Trustee shall authenticate and make available for delivery Notes upon a written order of the Company signed by two Officers or by one Officer and either an Assistant Treasurer or an Assistant Secretary of the Company (the "Company Order"). A Company Order shall specify the amount of the Notes to be authenticated and the date on which the original issue of Notes is to be authenticated.

(d) The Trustee may appoint an agent (the "Authenticating Agent") reasonably acceptable to the Company to authenticate the Notes. Unless limited by the terms of such appointment, any such Authenticating Agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by the Authenticating Agent.

(e) In case a Successor Company has executed an indenture supplemental hereto with the Trustee pursuant to Article 5, any of the Notes authenticated or delivered prior to such transaction may, from time to time, at the request of the Successor Company, be exchanged for other Notes executed in the name of the Successor Company with such changes in phraseology and form as may be appropriate, but otherwise identical to the Notes surrendered for such exchange and of like principal amount; and the Trustee, upon Company Order of the Successor Company, shall authenticate and deliver Notes as specified in such order for the purpose of such exchange. If Notes shall at any time be authenticated and delivered in any new name of a Successor Company pursuant to this Section 2.03 in exchange or substitution for or upon registration of transfer of any Notes, such Successor Company, at the option of the Holders but without expense to them, shall provide for the exchange of all Notes at the time Outstanding for Notes authenticated and delivered in such new name.

#### Section 2.04. Note Registrar, Paying Agent and Conversion Agent.



(a) The Company shall maintain an office or agency in London, United Kingdom, where Notes may be presented or surrendered for registration of transfer or for exchange (the "Transfer Agent"), where Notes may be presented for payment (the "Paying Agent") and an office or agency where Notes may be presented for conversion ("Conversion Agent"). The Company shall also maintain an office or agency in Luxembourg, where notes may be presented or surrendered for registration of transfer or exchange (the "Note Registrar"). The Note Registrar shall keep a register of the Notes and of their transfer and exchange (the "Note Register"). The Company may have one or more co-Note Registrars and one or more additional paying agents or transfer agents. The term Paying Agent includes any additional paying agent, the term "Transfer Agent" includes any additional transfer agent and term "Conversion Agent" includes any additional conversion agent, in each case, including any paying agent, transfer agent or conversion agent named pursuant to Section 4.02.

(b) The Company shall enter into an appropriate agency agreement with each Note Registrar, Transfer Agent, Conversion Agent or Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall notify the Trustee of the name and address of each such Agent. If the Company fails to maintain a Paying Agent, Transfer Agent or Conversion Agent in London, United Kingdom or a Note Registrar in Luxembourg, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.06.

(c) The Company or any Subsidiary Guarantor may act as Paying Agent, Note Registrar, co-Note Registrar or Transfer Agent; *provided, however*, that none of the Company, its subsidiaries or the Affiliates of the foregoing shall act:

(i) as Paying Agent in connection with redemptions, offers to purchase and discharges, as otherwise specified in this Indenture, and

(ii) as Paying Agent or Note Registrar if a Default or Event of Default has occurred and is continuing.

(d) The Company initially appoints the Corporate Trust Office of the Trustee as Note Registrar, Paying Agent, Transfer Agent and Conversion Agent, and The Bank of New York Mellon (Luxembourg) S.A. as Note Registrar until such time as another Person is appointed as such.

Section 2.05. Paying Agent to Hold Money in Trust. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that such Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by such Paying Agent for the payment of principal of or interest on the Notes (whether such money has been distributed to it by the Company or any other obligor under the Notes) and shall notify the Trustee in writing of any Default by the Company or any Subsidiary Guarantor in making any such payment. If the Company or any Subsidiary Guarantor or an Affiliate of the Company or any Subsidiary Guarantor acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent (other than the Trustee) to pay all money held by it to the Trustee, and to account for any funds disbursed by such Paying Agent. Upon complying with this Section 2.05, the Paying Agent (if other than the Company or a Subsidiary Guarantor) shall have no further liability for the money delivered to the Trustee. Upon any Insolvency Proceeding with respect to the Company or any Subsidiary Guarantor or any Affiliate of the Company or any Subsidiary Guarantor, if the Company, a Subsidiary Guarantor or such Affiliate is then acting as Paying Agent, the Trustee shall, upon receipt of notice of such proceeding, replace the Company, such Subsidiary Guarantor or such Affiliate as Paying Agent.

Section 2.06. ISIN and Common Code Numbers. In issuing the Notes, the Company may use ISIN or Common Code numbers (if then generally in use) and, if so, the Trustee shall use ISIN or Common Code numbers in notices of redemption as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee in writing of any initial ISIN or Common Code numbers and any change in the ISIN or Common Code numbers.

Section 2.07. Holder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. At any time that the Bank of New York Mellon (Luxembourg) S.A. is not the Note Registrar, the Company shall furnish, or cause the Note Registrar to furnish, to the Trustee, in writing at least seven Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders.

Section 2.08. Global Note Provisions.

(a) Each Global Note initially shall: (i) be delivered by the Trustee to the Common Depositary, (ii) be registered in the name of the nominee for the Common Depositary, and (iii) bear the appropriate legend, as set forth in Section 2.09 and Exhibit A. Any Global Note may be represented by more than one certificate. The aggregate principal amount of each Global Note may from time to time be increased or decreased by adjustments made on the records of the Common Depositary or its nominee, as provided in this Indenture.

(b) Members of, or participants in, Euroclear or Clearstream Luxembourg ("Agent Members") shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Common Depositary or its nominee under such Global Note, and the Common Depositary or its nominee may be treated by the Company, any Subsidiary Guarantor, the Trustee, the Paying Agent, and the Conversion Agent as the absolute owner of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee, the Note Registrar, the Paying Agent, or the Conversion Agent from giving effect to any written certification, proxy or other authorization furnished by the Common Depositary or its nominee or impair, as between Euroclear or Clearstream Luxembourg and its Agent Members, the operation of customary practices of such clearing system governing the exercise of the rights of an owner of a beneficial interest in any Global Note. The Holder of a Global Note may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interests through Agent Members, to take any action that a Holder is entitled to take under this Indenture or the Notes.

(c) Except as provided below, owners of beneficial interests in Global Notes will not be entitled to receive Certificated Notes. Certificated Notes shall be issued to all owners of beneficial interests in a Global Note in exchange for such interests if:

(i) the Company has been notified that each of Euroclear and Clearstream Luxembourg have been closed for business for a continuous period of 14 days (other than by reason of holiday, statutory or otherwise) or have announced an intention permanently to cease business or have in fact done so and no successor clearing system is appointed by the Company within 90 days of such notice, or

(ii) an Event of Default with respect to the Notes has occurred and is continuing and a majority of the Holders of the Outstanding Notes so request to the Note Registrar;

In connection with the exchange of an entire Global Note for Certificated Notes pursuant to this paragraph (c), such Global Note shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and upon Company Order the Trustee shall authenticate and deliver, to each beneficial owner identified by Euroclear or Clearstream Luxembourg in exchange for its beneficial interest in such Global Note, an equal aggregate principal amount of Certificated Notes of authorized denominations.

(d) Each of the Company, any other obligor upon the Notes or the Trustee, in its discretion, may treat as the act of a Holder any instrument or writing of any Person that is identified by Euroclear as the owner of a beneficial interest in the Global Note.

Section 2.09. Legends.

(a) Each Global Note shall bear the legend specified therefor in Exhibit A on the face thereof.

(b) Each Restricted Note shall bear the applicable private placement legend specified therefor in Exhibit A on the face thereof (the “Private Placement Legend”).

(c) The applicable restrictive legend (including any Private Placement Legend) on any Restricted Note may be removed by the Company (i) after the Resale Restriction Termination Date or termination of the Distribution Compliance Period, as applicable, and (ii) subject to compliance with the requirements of applicable securities laws. Subject to clause (ii) of the preceding sentence of this Section 2.8(c), the Company shall use commercially reasonable efforts to remove the Private Placement Legend on any Restricted Note at the request of the Holder thereof after the Resale Restriction Termination Date.

**Section 2.10. Transfer and Exchange.**

(a) The following provisions shall apply with respect to any proposed transfer of an interest in a Private Placement Global Note that is a Restricted Note: If (1) the owner of a beneficial interest in a Private Placement Global Note wishes to transfer such interest (or portion thereof) to a Non-U.S. Person pursuant to Regulation S and (2) such Non-U.S. Person wishes to hold its interest in the Notes through a beneficial interest in the Regulation S Global Note, (x) upon receipt by the Transfer Agent of:

- (1) instructions from the Holder of the Private Placement Global Note directing the Transfer Agent to credit or cause to be credited a beneficial interest in the Regulation S Global Note equal to the principal amount of the beneficial interest in the Private Placement Global Note to be transferred,, and
- (2) a certificate in the form of Exhibit C from the transferor,

and (y) subject to the rules and procedures of Euroclear or Clearstream Luxembourg, the Note Registrar shall increase the principal amount of the Regulation S Global Note and decrease the principal amount of the Private Placement Global Note by such amount in accordance with the foregoing.

(b) If the owner of an interest in a Regulation S Global Note wishes to transfer such interest (or any portion thereof) to a QIB pursuant to Rule 144A prior to the expiration of the Distribution Compliance Period therefor, (x) upon receipt by the Transfer Agent of:

- (1) instructions from the Holder of the Regulation S Global Note directing the Transfer Agent to credit or cause to be credited a beneficial interest in the Private Placement Global Note equal to the principal amount of the beneficial interest in the Regulation S Global Note to be transferred, and
- (2) a certificate in the form of Exhibit B duly executed by the transferor,

and (y) in accordance with the rules and procedures of Euroclear or Clearstream Luxembourg, the Note Registrar shall increase the principal amount of the Private Placement Global Note and decrease the principal amount of the Regulation S Global Note by such amount in accordance with the foregoing.

(c) Other Transfers. Any transfer of Restricted Notes not described above (other than a transfer of a beneficial interest in a Global Note that does not involve an exchange of such interest for a Certificated Note or a beneficial interest in another Global Note, which must be effected in accordance with applicable law and the rules and procedures of Euroclear or Clearstream Luxembourg, but is not subject to any procedure required by this Indenture) shall be made only upon receipt by the Transfer Agent of such opinions of counsel, certificates and/or other information reasonably required by and satisfactory to the Company in order to ensure compliance with the Securities Act or in accordance with paragraph (e) of this Section 2.10.

(d) Certificated Notes Transfers. Certificated Notes may be exchanged or transferred in whole or in part in the principal amount of authorized denominations by surrendering such Certificated Notes at the Corporate Trust Office, the office of the Trustee or the office of any Transfer Agent with a written instrument of

transfer as provided in the assignment form attached to the form of Notes in Exhibit A hereto duly executed by the Holder thereof or his attorney duly authorized in writing. The provisions of Section 2.9(a) for transfer of an interest in a Private Placement Global Note to an interest in a Regulation S Global Note and the provisions of Section 2.9(b) for transfer of an interest in a Regulation S Global Note to an interest in a Private Placement Global Note shall also apply for the same types of transfers with respect to Certificated Notes.

In exchange for any Certificated Note properly presented for transfer, the Trustee shall promptly authenticate and deliver or cause to be authenticated and delivered at the Corporate Trust Office, to the transferee, or send by mail, within three Business Days of the receipt of a form of the documentation required under this Section 2.9, (at the risk of the transferee) to such address as the transferee may request, a Certificated Note or Notes, as the case may require, registered in the name of such transferee, for the same aggregate principal amount as was transferred. In the case of the transfer of any Certificated Note in part, the Trustee shall also promptly authenticate and deliver or cause to be authenticated and delivered at the Corporate Trust Office, to the transferor, or send by mail, within three Business Days of the receipt of a form of the documentation required under this Section 2.9, (at the risk of the transferor) to such address as the transferor may request, a Certificated Note or Notes, as the case may require, registered in the name of such transferor, for the aggregate principal amount that was not transferred. No transfer of any Notes shall be made unless the request for such transfer is made by the registered Holder or his attorney duly authorized in writing at the Corporate Trust Office and is accompanied by a completed instrument of transfer in the form of assignment form attached to the form of Notes in Exhibit A hereto and any certificates and/or opinions or other information required by the provisions of this Section.

(e) Use and Removal of Private Placement Legends. Upon the transfer, exchange or replacement of Notes (or beneficial interests in a Global Note) not bearing (or not required to bear upon such transfer, exchange or replacement) a Private Placement Legend, the Transfer Agent shall exchange such Notes (or beneficial interests) for beneficial interests in a Global Note (or Certificated Notes if they have been issued pursuant to Section 2.08(c)) that does not bear a Private Placement Legend. Upon the transfer, exchange or replacement of Notes (or beneficial interests in a Global Note) bearing a Private Placement Legend, the Note Registrar shall deliver only Notes (or beneficial interests in a Global Note) that bear a Private Placement Legend unless:

- (i) such Notes (or beneficial interests) are transferred pursuant to Rule 144 upon delivery to the Note Registrar of a certificate of the transferor in the form of Exhibit D and an Opinion of Counsel reasonably satisfactory to the Company;
- (ii) such Notes (or beneficial interests) are Private Placement Global Notes and transferred, replaced or exchanged after the Resale Restriction Termination Date therefor or such Notes (or beneficial interests) are Regulation S Global Notes and are transferred, replaced or exchanged after the termination of the Distribution Compliance period therefor; or
- (iii) in connection with such transfer, exchange or replacement the Transfer Agent shall have received an Opinion of Counsel and other evidence as may be reasonably satisfactory to the Company to the effect that neither such Private Placement Legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act.

The owner of an interest in a Global Note may exchange an interest therein for an equivalent interest in a Global Note not bearing a Private Placement Legend (other than a Regulation S Global Note) upon transfer of such interest pursuant to any of clauses (i) through (iii) of this paragraph (e).

(f) Consolidation of Global Notes and Exchange of Certificated Notes for Beneficial Interests in Global Notes. Nothing in this Indenture shall provide for the consolidation of any Notes with any other Notes to the extent that they constitute, as determined pursuant to an Opinion of Counsel, different classes of securities for U.S. federal income tax purposes.

(g) Retention of Documents. The Note Registrar shall retain copies of all letters, notices, certificates, opinions and other written communications received pursuant to this Article II. The Company shall have the right to inspect and make copies of all such letters, notices, certificates, opinions or other written communications at any reasonable time upon the giving of reasonable written notice to the Note Registrar.

(h) Execution, Authentication of Notes, etc.

(i) Subject to the other provisions of this Section 2.10, when Notes are presented to the Note Registrar or a co-Note Registrar with a request to register the transfer of such Notes or to exchange such Notes for an equal principal amount of Notes of other authorized denominations, the Note Registrar or co-Note Registrar shall register the transfer or make the exchange as requested if its requirements for such transaction are met; *provided* that any Notes presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Note Registrar or co-Note Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

To permit registrations of transfers and exchanges and subject to the other terms and conditions of this Article II, the Company will execute and upon Company Order the Trustee will authenticate Certificated Notes and Global Notes at the Note Registrar's or co-Note Registrar's request.

(ii) No service charge shall be made to a Holder for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or similar governmental charges payable upon exchange or transfer pursuant to Section 5.01, Section 9.05 and Section 3.09).

(iii) The Note Registrar or co-Note Registrar shall not be required to register the transfer of or exchange of any Note for a period beginning: (1) 15 days before the giving of a notice of an offer to repurchase or redeem Notes and ending at the close of business on the day of such notice or (2) 15 days before an Interest Payment Date and ending on such Interest Payment Date.

(iv) Prior to the due presentation for registration of transfer of any Note, the Company, the Trustee, the Paying Agent or the Conversion Agent may (subject to the right of the Holders as of any Regular Record Date to receive payments of interest on the related Interest Payment Date) deem and treat the person in whose name a Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Note and for all other purposes whatsoever, whether or not such Note is overdue, and (subject to Section 2.13) none of the Company, the Trustee, the Paying Agent or the Conversion Agent shall be affected by notice to the contrary.

(v) All Notes issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Notes surrendered upon such transfer or exchange.

(i) No Obligation of the Trustee.

(i) Neither the Trustee nor any Agent shall have any responsibility or obligation to any beneficial owner of an interest in a Global Note, a member of, or a participant in, Euroclear, or Clearstream Luxembourg or other Person with respect to the accuracy of the records of Euroclear, or Clearstream Luxembourg or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Common Depositary or its nominee, Euroclear or Clearstream Luxembourg) of any notice (including any notice of redemption) or the payment of any amount or delivery of any Notes (or other security or property) under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders in respect of the Notes shall be given or made only to or upon the order of the registered Holders (which shall be the Common Depositary or its nominee, Euroclear or Clearstream Luxembourg in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through Euroclear or Clearstream Luxembourg subject to the applicable rules and procedures of Euroclear or Clearstream Luxembourg. The Trustee and the Agents may conclusively rely and shall be fully protected in relying upon information furnished by Euroclear or Clearstream Luxembourg with respect to its members, participants and any beneficial owners of the Global Notes.

(ii) Neither the Trustee nor any Agent shall have any obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer or exchange imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Euroclear or Clearstream Luxembourg participants, members or beneficial owners in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

**Section 2.11. Mutilated, Destroyed, Lost or Stolen Notes.**

(a) If a mutilated Note is surrendered to the Note Registrar or if the Holder of a Note claims that the Note has been lost, destroyed or wrongfully taken, the Company shall execute and upon Company Order the Trustee shall authenticate a replacement Note if the Company shall certify in an Officers' Certificate that the requirements of Section 8-405 of the Uniform Commercial Code of the State of New York are met and the Holder satisfies any other reasonable requirements of the Trustee. If required by the Transfer Agent or the Company, such Holder shall furnish an affidavit of loss and, if required by the Trustee or the Company, an indemnity bond sufficient in the judgment of the Company and the Trustee to protect the Company, the Trustee, the Paying Agent, the Conversion Agent, the Note Registrar or any Co-Note Registrar from any loss that any of them may suffer if a Note is replaced, and, in the absence of notice to the Company or the Trustee that such Note has been acquired by a protected purchaser (as defined in Section 8-303 of the Uniform Commercial Code of the State of New York), the Company shall execute and upon Company Order the Trustee shall authenticate and make available for delivery, in exchange for any such mutilated Note or in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount, bearing a number not contemporaneously Outstanding.

(b) In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, or is about to be redeemed by the Company pursuant to Article 3 hereof, the Company in its discretion, but subject to any conversion rights, may, instead of issuing a new Note, pay or redeem such Note, as the case may be, upon satisfaction of the condition set forth in the preceding paragraph.

(c) Upon the issuance of any new Note under this Section 2.11, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee and its counsel) in connection therewith.

(d) Upon the capitalization of Additional PIK Principal, a Holder may surrender their Note to the Company for exchange, and the Company shall cancel the Note surrendered for exchange and issue a replacement Note of like tenor and with a principal amount equal to the principal amount prior to such capitalization plus any Additional PIK Principal.

(e) Every new Note issued pursuant to this Section 2.11 in exchange for any mutilated Note, or in lieu of any destroyed, lost or stolen Note, shall constitute an original additional contractual obligation of the Company, any Subsidiary Guarantor and any other obligor upon the Notes, whether or not the mutilated, destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

**Section 2.12. Temporary Notes.** Until definitive Notes are ready for delivery, the Company may execute and upon Company Order the Trustee will authenticate temporary Notes. Temporary Notes will be substantially in the form of definitive Notes but may have variations that the Company considers appropriate for temporary Notes. Without unreasonable delay, the Company will prepare and execute and upon Company Order the Trustee will authenticate definitive Notes. After the preparation of definitive Notes, the temporary Notes will be exchangeable for definitive Notes upon surrender of the temporary Notes at any office or agency maintained by the Company for that purpose and such exchange shall be without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes, the Company will execute and upon Company Order the Trustee will authenticate and make available for delivery in exchange therefor one or more definitive Notes representing an

equal principal amount of Notes. Until so exchanged, the Holder of temporary Notes shall in all respects be entitled to the same benefits under this Indenture as a Holder of definitive Notes.

Section 2.13. Cancellation. All Notes surrendered for the purpose of payment, repurchase, conversion, exchange or registration of transfer, shall, if surrendered to the Company or any Paying Agent or any Note Registrar or any Conversion Agent, be surrendered to the Trustee and promptly canceled by it, or, if surrendered to the Trustee, shall be promptly canceled by it, and no Notes shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee shall dispose of canceled Notes in accordance with its customary procedures and, after such disposition, shall deliver a certificate of such disposition to the Company, at the Company's written request. The Company may not issue new Notes to replace Notes that it has paid or repurchased or that have been delivered to the Trustee for cancellation or that any Holder has converted pursuant to Section 13.03 hereof, except as otherwise permitted by this Indenture. No Notes shall be authenticated in lieu of or in exchange for any Notes cancelled as provided in this Section, except as expressly permitted by this Indenture. If the Company shall acquire any of the Notes, such acquisition shall not operate as satisfaction of the indebtedness represented by such Notes unless and until the same are delivered to the Trustee for cancellation.

Section 2.14. Additional Notes. The Company may elect, with the consent of the Holders holding a majority in principal amount of the Notes outstanding at the time of such election, to issue additional Notes pursuant to this Indenture after the Issue Date with the same terms and with the same ISIN number as the Notes initially issued hereunder, up to an additional US\$20,000,000 in aggregate principal amount, which will form the same series with the Notes initially issued hereunder, *provided* that no such additional Notes may be issued unless they will be fungible with the original Notes for U.S. federal income tax and securities law purposes. Prior to the issuance of any such additional Notes, the Company shall deliver to the Trustee a Company Order, an Officers' Certificate and an Opinion of Counsel.

Section 2.15. Currency Indemnity.

(a) The U.S. Dollar is the sole currency of account and payment for all sums payable by the Company and the Subsidiary Guarantors under or in connection with the Notes, this Indenture or any Subsidiary Guarantee. Any amount received or recovered in currency other than U.S. Dollars (whether as a result of, or of the enforcement of, a judgment or order of a court of any jurisdiction, in the winding-up or dissolution of the Company, any Subsidiary or otherwise) by any recipient in respect of any sum expressed to be due to it from the Company and the Subsidiary Guarantors shall constitute a discharge of the Company and the Subsidiary Guarantors only to the extent of the U.S. Dollar amount which the recipient is able to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so). If that U.S. Dollar amount is less than the U.S. Dollar amount expressed to be due to the recipient under the Notes, this Indenture, or any Subsidiary Guarantee, the Company and the Subsidiary Guarantors shall indemnify the recipient against any loss sustained by it in making any such purchase. In any event, the Company shall indemnify the recipient against the cost of making any purchase of U.S. Dollars. For the purposes of this Section 2.15, it shall be sufficient for the recipient to certify in a manner reasonably satisfactory to the Company that it would have suffered a loss had an actual purchase of U.S. Dollars been made with the amount received in that other currency on the date of receipt or recovery (or, if a purchase of U.S. Dollars on such date had not been practicable, on the first date on which it would have been practicable) and that the change of the purchase date was needed.

(b) The indemnities of the Company and the Subsidiary Guarantors contained in this Section 2.15, to the extent permitted by law: (i) constitute a separate and independent obligation from the other obligations of the Company and the Subsidiary Guarantors under this Indenture, the Notes and the Subsidiary Guarantee; (ii) shall give rise to a separate and independent cause of action against the Company and the Subsidiary Guarantors; (iii) shall survive termination or discharge of this Indenture, (iv) shall apply irrespective of any indulgence granted by any Holder of the Notes from time to time; and (v) shall continue in full force and effect notwithstanding any other judgment, order, claim or proof for a liquidated amount in respect of any sum due under the Notes.

ARTICLE 3  
REDEMPTION

Section 3.01. Redemption at the Option of the Company.

(a) The Notes shall not be redeemable other than pursuant to Section 3.10 prior to \_\_\_\_\_, 2017,

(b) On or after \_\_\_\_\_, 2017, the Company may redeem all or, from time to time, a part of the Notes at the following redemption prices (expressed as a percentage of principal amount of the Notes to be redeemed), plus accrued and unpaid interest on the Notes, if any, up to but excluding the applicable Redemption Date if redeemed during the twelve-month period beginning on \_\_\_\_\_ of the years indicated below:

<u>Year</u>	<u>Percentage</u>
2017.....	106.75%
2018 and thereafter.....	100.00%

No sinking fund is provided for the Notes.

Notice of redemption of the Notes pursuant to this Section 3.01 shall be mailed to the Holders of the Notes not less than 30 nor more than 60 days prior to the Redemption Date, which notice shall state the Redemption Date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed). If money sufficient to pay the redemption price, together with accrued interest to, but excluding, the Redemption Date, of all Notes (or portions thereof) to be redeemed on the Redemption Date is deposited with the Paying Agent prior to or on the Redemption Date, on and after such date interest ceases to accrue on such Notes or portions thereof. Notes in denominations larger than US\$1,000 of principal amount may be redeemed in part but only in multiples of US\$1,000 of principal amount in excess thereof.

(c) Any redemption pursuant to this Section shall be made pursuant to the provisions of this Article 3.

(d) The Company may acquire Notes by means other than a redemption, whether by tender offer, open market purchases, negotiated transactions or otherwise, in accordance with applicable securities laws, so long as such acquisition does not otherwise violate the terms of this Indenture.

Section 3.02. Applicability of Article. Redemption of Notes, as permitted or required by any provision of this Indenture, shall be made in accordance with such provision and this Article.

Section 3.03. Notices to Trustee. If the Company elects to redeem Notes pursuant to the optional redemption provisions of Section 3.01 hereof, it must furnish to the Trustee, at least 30 days but not more than 60 days before a Redemption Date unless a shorter period is acceptable to the Trustee, an Officers' Certificate setting forth:

- shall occur;
- (a) the paragraph of the Notes/Section of this Indenture pursuant to which the redemption
  - (b) the Redemption Date;
  - (c) the aggregate principal amount of Notes to be redeemed; and
  - (d) the redemption price.



Section 3.04. Selection of Notes to Be Redeemed or Purchased. If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, election of the Notes for redemption shall be made by the Trustee on a pro rata basis, by lot or by such other method as the Trustee in its sole discretion will deem to be fair and appropriate. Any such determination by the Trustee shall be final and binding. In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased shall be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the redemption or purchase date by the Trustee from the outstanding Notes not previously called for redemption or purchase. Any such determination by the Trustee shall be conclusive and binding.

The Trustee shall promptly notify the Company and the Note Registrar (if not the Company) in writing of the Notes selected for redemption or purchase and, in the case of any Notes selected for partial redemption or purchase, the aggregate principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected shall be in amounts of a minimum denomination of US\$250,000 and whole multiples of US\$1,000 in excess thereof. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

If any Note selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Note so selected, the converted portion of such Note shall be deemed (so far as may be) to count towards the portion selected for redemption. Notes which have been converted during the selection of Notes to be redeemed may be treated by the Trustee as outstanding for the purpose of such selection.

Section 3.05. Notice of Redemption. At least 30 days but not more than 60 days before a Redemption Date, the Company shall mail or cause to be mailed, by first class mail, a notice of redemption to each holder whose Notes are to be redeemed at its registered address.

The notice shall be prepared by the Company and shall identify the Notes to be redeemed and shall state:

- (a) the Redemption Date;
- (b) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed;
- (c) the redemption price, together with the amount of accrued interest up to, but excluding, the Redemption Date;
- (d) the Conversion Price;
- (e) the name and address of the Paying Agent and Conversion Agent;
- (f) that Notes called for redemption may be converted at any time before the close of business on the last Trading Day prior to the Redemption Date;
- (g) that Holders who want to convert Notes must satisfy the requirements set forth in paragraph 8 of the Notes;
- (h) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price and accrued interest to, but excluding, the Redemption Date, if any;
- (i) that unless the Company defaults in making such redemption payment or the relevant Paying Agent is prohibited from making such payment pursuant to the terms of this Indenture, interest on Notes called for redemption will cease to accrue on and after the Redemption Date; and

(j) if fewer than all the outstanding Notes are to be redeemed, the certificate numbers and principal amounts of the particular Notes to be redeemed, the aggregate principal amount of Notes to be redeemed and the aggregate principal amount of Notes to be outstanding after such partial redemption.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at the Company's expense. In such event, the Company shall provide the Trustee with an Officers' Certificate requesting that the Trustee give such notice and including the notice required by this Section at least three Business Days prior to the date such notice is to be provided to holders in the final form such notice is to be delivered to holders and such notice may not be canceled.

**Section 3.06. Effect of Notice of Redemption.** Once notice of redemption is given in accordance with Section 3.05 hereof, Notes called for redemption become due and payable on the Redemption Date and at the redemption price, together with accrued interest to, but excluding, the Redemption Date stated in the notice, except for Notes which are converted in accordance with the terms of this Indenture.

Upon the later of the Redemption Date or the date such Notes are surrendered to the Paying Agent, such Notes shall be paid at the redemption price, together with accrued interest to, but excluding, the Redemption Date, stated in the notice; *provided, however*, that if a Note is redeemed or purchased on or after an Regular Record Date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest shall be paid to the Person in whose name such Note was registered at the close of business on such Regular Record Date. If any Note called for redemption or purchase is not so paid upon surrender for redemption or purchase because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

**Section 3.07. Deposit of Redemption or Price.** By 10:00 a.m. (London time) at least one Business Day prior to the Redemption Date, the Company shall deposit with the Paying Agent (or if the Company or a Subsidiary or an Affiliate of either of them is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the redemption price and accrued interest to, but excluding, the Redemption Date of all Notes to be redeemed on that date other than Notes or portions of Notes called for redemption which prior thereto have been delivered by the Company to the Trustee for cancellation or have been converted. The Paying Agent shall as promptly as practicable return to the Company any money (subject to the provisions Section 7.01), not required for that purpose because of conversion of Notes. If such money is then held by the Company in trust and is not required for such purpose it shall be discharged from such trust.

**Section 3.08. Notes Redeemed in Part.** Upon surrender of a Note that is redeemed in part, the Company shall execute and the Trustee shall authenticate and deliver to the holder a new Note in an authorized denomination equal in principal amount to the unredeemed portion of the Note surrendered.

**Section 3.09. Repurchase Upon a Change of Control at the Option of the Holders.** Upon the occurrence of a Change of Control, the Company shall be required, if requested by the Holders, to purchase all or a portion (in integral multiples of US\$1,000; *provided* that the remaining portion of such Holder's Note will not be less than US\$1,000) of such Holder's Notes (a "Change of Control Offer") at a purchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest thereon to the Change of Control Payment Date (the "Change of Control Payment") in accordance with the Change of Control Notice.

(a) By 10:00 a.m. (London Time) on the Business Day prior to the Change of Control Payment Date, the Company shall, to the extent lawful, deposit with the Paying Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.05) funds in an amount equal to the Change of Control Payment in respect of all Notes or portions thereof to be tendered. On the Change of Control Payment Date, the Company shall, to the extent lawful:

(i) accept for payment all Notes or portions thereof properly tendered and not withdrawn pursuant to the Change of Control Offer; and

(ii) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officers' Certificate stating the aggregate principal amount of Notes or portions thereof being purchased by the Company.

(b) Any Note that is to be redeemed upon a Change of Control only in part shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and, upon the Company's written direction to the Trustee, the Trustee shall authenticate and deliver to the Holder of such Note, without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Note so surrendered which is not redeemed.

(c) The Company shall not be required to make a Change of Control Offer upon a Change of Control if:

(i) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer, or

(ii) Notice of redemption for all outstanding Notes has been given pursuant to Section 3.01 hereof, unless and until there is a default in payment of the applicable redemption price.

(d) In connection with the purchase of Notes in connection with a Change of Control Offer under this Section 3.09 hereof the Company shall comply with all Federal and state securities laws so as to permit the rights and obligations under this Section 3.09 to be exercised in the time and in the manner specified in Section 3.09. To the extent that the provisions of any securities laws or regulations conflict with this Section 3.09, the Company shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Indenture by doing so.

(e) The Trustee and the Paying Agent shall return to the Company any cash that remains unclaimed as provided in paragraph 12 of the Notes, (subject to the provisions of Section 7.01(f)), thereon, held by them for the payment of a Change of Control Payment, together with accrued interest to, but excluding, the Change of Control Payment Date; *provided, however* that to the extent that the aggregate amount of cash deposited by the Company pursuant to this Section 3.09 exceeds the aggregate Change of Control Payment, together with accrued interest to, but excluding, the Change of Control Payment Date, of the Notes or portions thereof which the Company is obligated to purchase as of the Change of Control Payment Date then promptly after the Business Day following the Change of Control Payment Date the Trustee and the Paying Agent shall return any such excess to the Company thereon.

#### Section 3.10. Redemption of Notes for Changes in Withholding Taxes.

(a) The Company may, at its option, redeem all, but not less than all, of the then outstanding Notes at any time upon giving prior written notice to the Trustee and giving not less than 30 nor more than 60 days' notice to the Holders (which notice shall be irrevocable), at a redemption price equal to 100% of the aggregate principal amount thereof, plus accrued and unpaid interest and premium, if any, thereon to the date fixed by the Company for redemption (a "Tax Redemption Date") and all Additional Amounts, if any, that will become due on the Tax Redemption Date as a result of such redemption or otherwise (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date), if the Board of Directors of the Company determines in good faith that (a) the Company or a Subsidiary Guarantor has become obligated or on the occasion of the next interest payment date in respect of the Notes, will be obligated to pay Additional Amounts and (b) the payment obligation cannot be avoided by the Company or a Subsidiary Guarantor taking reasonable measures available to it (including making payment through a paying agent located in another jurisdiction), as a result of:

(i) any change in, repeal of or amendment to, the laws (or any regulations or rulings promulgated thereunder) of Australia, Brazil or any other Relevant Taxing Jurisdiction affecting taxation, which change or amendment becomes effective on or after the date hereof (or, if the Relevant Taxing Jurisdiction has changed since the date hereof, the date on which the then current Relevant Taxing Jurisdiction became the applicable Relevant Taxing Jurisdiction under Section 4.14), or

(ii) any change in the existing official position regarding the application, administration or interpretation of such laws, regulations or rulings (including a holding, judgment or order by a court of competent jurisdiction), which change, amendment, application or interpretation becomes effective on or after the date hereof (or, if the Relevant Taxing Jurisdiction has changed since the date hereof, the date on which the then current Relevant Taxing Jurisdiction became the applicable Relevant Taxing Jurisdiction under Section 4.14).

(b) The notice of redemption may not be given earlier than 60 days prior to the earliest date on which the Company or any Subsidiary Guarantor, as the case may be, would be obligated to pay Additional Amounts if a payment in respect of the Notes were then due. Prior to the publication or, where relevant, mailing of any notice of redemption of the Notes pursuant to the foregoing, the Company will deliver to the Trustee (1) an Officers' Certificate stating that the Company is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the right of the Company to so redeem have occurred and (2) an Opinion of Counsel or written advice of a qualified tax expert, such counsel or tax expert being from an internationally recognized law or accounting firm, that the Company has or will become obliged to pay Additional Amounts as a result of the circumstances referred to in clause (1) or (2) in the preceding paragraph.

Such Officers' Certificate and Opinion of Counsel or advice shall be made available by the Trustee for inspection by Holders upon request during ordinary business hours and upon reasonable prior notice.

The Trustee shall accept the Officers' Certificate and opinion or written advice as sufficient evidence of the satisfaction of the conditions precedent described above

#### ARTICLE 4 COVENANTS

##### Section 4.01. Payment of Notes.

(a) The Company shall promptly make all payments in respect of the Notes on the dates and in the manner provided in the Notes or pursuant to this Indenture. Any cash payments to be given to the Paying Agent, shall be deposited with the Paying Agent in immediately available funds by 10:00 a.m. (London time) on the Business Day prior to the due date for the relevant payment by the Company. Principal Amount, premium, if any, and interest, if any, due on overdue amounts shall be considered paid on the applicable date due if at 10:00 a.m. (London time) on such date the Trustee or the Paying Agent, as the case may be, holds, in accordance with this Indenture, money in immediately available funds sufficient to pay all such amounts then due.

(b) An installment of interest will be considered paid on the date so long as the Note Registrar has reflected an increase in the principal amount of each Note in the Register in an amount equal to the interest paid-in-kind due.

(c) The Company shall, to the extent permitted by law, pay interest on overdue amounts in cash at the rate per annum set forth in the Notes, compounded semiannually, which interest shall accrue from the date such overdue amount was originally due to the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand. The accrual of such interest on overdue amounts shall be in addition to the continued accrual of interest on the Notes.

Section 4.02. Maintenance of Office or Agency. The Company will maintain an office or agency of the Trustee, Note Registrar, Paying Agent, Transfer Agent and Conversion Agent where Notes may be presented or surrendered for payment, where Notes may be surrendered for registration of transfer, exchange,

purchase, redemption or conversion and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Corporate Trust Office of the Trustee shall initially be such office or agency for all of the aforesaid purposes, except that the Corporate Registrar Office of the Note Registrar shall initially be the office of the Note Registrar. The Company shall give prompt written notice to the Trustee or the Note Registrar of the location, and of any change in the location, of any such office or agency (other than a change in the location of the office of the Trustee or of the Note Registrar, as the case may be). If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee or Note Registrar with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Corporate Trust Office of the Trustee or the Corporate Registrar Office of the Note Registrar (as the case may be).

The Company may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations.

**Section 4.03. Reports.** (a) The Company shall provide to the Trustee and each holder of Notes or will provide to the Trustee for forwarding to each holder of Notes upon request, at the cost of the Company:

(i) as soon as available after the end of each fiscal year (and, in any event, within 120 days after the close of such fiscal year), annual reports in English, including audited financial statements (containing a consolidated balance sheet as of the end of such fiscal year and immediately preceding fiscal year and consolidated statements of income, retained earnings and cash flows for such fiscal year and the immediately preceding fiscal year) prepared in accordance with IFRS with a report thereon by an internationally-recognized independent firm of chartered accountants; and

(ii) as soon as available (and, in any event, within 90 days after the close of each quarter in each fiscal year) interim quarterly reports in English, containing a condensed consolidated balance sheet as of the end of each interim period covered thereby and as of the end of the immediately preceding fiscal year and condensed consolidated statements of earnings and cash flows for each interim period covered thereby and for the comparable period of the immediately preceding fiscal year.

For purposes of this Section 4.03, the Company and the Subsidiary Guarantors shall also be deemed to have furnished the reports to the Trustee and the holders of Notes as required by this Section 4.03 if it has filed such reports with the Australian Stock Exchange and such reports are publicly available within the time periods referred to in clauses (i) and (ii) above.

(b) The Company shall also, for so long as any Notes remain “restricted” securities, furnish or cause to be furnished to the holders of the Notes, beneficial owners of the Notes, securities analysts and prospective investors upon request the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

**Section 4.04. Compliance Certificates.** The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ended December 31, 2014), or within 14 days of a request by the Trustee, an Officers’ Certificate, stating whether or not, to the best knowledge of the signers thereof, the Company, as of the date of such Officers’ Certificate, is in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and if the Company shall be in default, specifying all such Defaults or Events of Defaults, the nature and status thereof of which they may have knowledge and what action the Company is taking or proposes to take with respect thereto.

The Company shall deliver to the Trustee promptly (and in any event within 10 Business Days) after an Officer becomes aware of the occurrence thereof, written notice of any Event of Default, Default or any event which with the giving of notice or the lapse of time, or both, would become an Event of Default in the form of an Officers’ Certificate specifying such Default or Event of Default, its status and what action the Company is taking or proposes to take with respect thereto.

Section 4.05. Stay, Extension and Usury Laws. The Company and each Subsidiary Guarantor covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company and each Subsidiary Guarantor (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall permit the execution of every such power as though no such law has been enacted.

Section 4.06. Maintenance of Good Standing. The Company and each Subsidiary Guarantor shall do all things necessary to maintain: (i) its corporate existence in its jurisdiction of organization and (ii) the power and authority (corporate and otherwise) necessary under the laws of Australia and the Federative Republic of Brazil (as applicable), to own its properties and to carry on the business of the Company, including applicable environmental and labor laws, except to the extent such failure to comply would not individually or in the aggregate have a material adverse effect on the general affairs, business, prospects, management, financial position, stockholder's equity or results of operations of the Company. The Company and each Subsidiary Guarantor shall not dissolve, liquidate, and shall not take any action to make amendments or modifications to its corporate constituent or governing documents or change its fiscal year where such amendment would be materially prejudicial to the Holders.

Section 4.07. Maintenance of Insurance. The Company and each Subsidiary Guarantor shall maintain insurance on its property and liability insurance with financially sound, responsible and reputable insurance companies and in such amounts and covering such risks as are usually carried by companies of good repute engaged in similar businesses and owning and/or operating properties or facilities similar to those owned and/or operated by such Company and all workers' compensation, employer's liability insurance or similar insurance as may be required under the laws of any state or jurisdiction in which it may be engaged in business.

Section 4.08. Compliance with laws. The Company and each Subsidiary Guarantor shall comply with laws and legal requirements, including each judgment, award, decision, finding or any other determination of a Government Agency, which applies to it or any of its assets, where failure to do so will have or be likely to have a material adverse effect on the Company and the Subsidiary Guarantors.

Section 4.09. Maintenance of Licenses and Concessions. The Company and each Subsidiary Guarantor shall obtain, maintain and comply with all consents, registrations, filings, agreements, notices of non-objection, notarizations, certificates, licenses, approvals, permits authority or exemptions required in relation to it and any of its assets where failure to do so will have or be likely to have a material adverse effect on the Company and the Subsidiary Guarantors.

Section 4.10. Limitation on Liens.

The Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur or suffer to exist any Lien (other than Collateral Permitted Liens) upon any of its property or assets (including Capital Stock of Subsidiaries).

Section 4.11. Limitation on Lines of Business.

The Company shall not, and shall not permit any Subsidiary to, engage in any business other than a Related Business.

Section 4.12. Limitation on Guarantees.

The Company shall not permit any Subsidiary of the Company (other than a Subsidiary Guarantor) to Guarantee any Indebtedness of the Company or any Subsidiary Guarantor or to secure any Indebtedness of the Company or any Subsidiary Guarantor with a Lien other than Collateral Permitted Liens on the assets of such Subsidiary, unless contemporaneously therewith (or prior thereto) effective provision is made to

Guarantee or secure the Notes on an equal and ratable basis with such Guarantee or Lien for so long as such Guarantee or Lien remains effective, and in an amount equal to the amount of Indebtedness so Guaranteed or secured. Any Guarantee by any such Subsidiary of Subordinated Obligations of the Company or any Subsidiary Guarantor shall be subordinated and junior in right of payment to the contemporaneous Guarantee of the Notes by such Subsidiary.

Section 4.13. Taxes.

The Company shall (i) file or cause to be filed all tax returns required to be filed by it, and (ii) pay and discharge, before the same shall become delinquent, after giving effect to any applicable extensions, all taxes imposed on it or its property (including interest and penalties) unless (x) such taxes are being contested in good faith and by appropriate proceedings, appropriate reserves are maintained with respect thereto in accordance with IFRS or (y) such proceedings, if adversely determined, could not reasonably be expected to have an adverse effect in any material respect to the Holders.

Section 4.14. Payment of Additional Amounts.

All payments (including amounts taken to be paid for the purposes of any law relating to a Tax) made with respect to the Notes or a Subsidiary Guarantee shall be made free and clear of, and without withholding or deduction for or on account of, any present or future taxes, duties, assessments, levy, impost or withholding or other governmental charges of whatever nature and however imposed, collected or recovered (including related penalties, interest and other liabilities) ("Taxes") imposed, levied or recovered by or on behalf of the government of Australia or any political subdivision or any authority or agency therein or thereof having power to tax, or any other jurisdiction in which the Company or any Subsidiary Guarantor is organized or is otherwise resident for tax purposes, or any jurisdiction from or through which payment is made (each, a "Relevant Taxing Jurisdiction"), unless the Company or any Subsidiary Guarantor is required to withhold or deduct Taxes by law or by the interpretation or administration thereof.

If the Company or a Subsidiary Guarantor is so required by law or by regulation or governmental policy having the force of law to withhold or deduct any amount for or on account of Taxes imposed, collected, levied or recovered by a Relevant Taxing Jurisdiction from any payment (including amounts taken to be paid for the purposes of any law relating to a Tax) made under or with respect to the Notes or a Subsidiary Guarantee, the Company or the applicable Subsidiary Guarantor shall pay such additional amounts ("Additional Amounts") as may be necessary so that the net amount received by the Holders and beneficial owners of the Notes or Subsidiary Guarantee (including Additional Amounts) after such withholding or deduction (including on any Additional Amounts) will not be less than the amount the holders and beneficial owners would have received if such Taxes had not been levied, imposed, withheld or deducted; provided, however, that the foregoing obligation to pay Additional Amounts does not apply to:

(1) any Taxes that would not have been so imposed but for:

(A) the existence of any present or former connection between the Holder or beneficial owner of such Note or Subsidiary Guarantee (or between trustee, fiduciary, settlor, member or shareholder of such Holder, if such Holder is an estate, a trust, a partnership or a corporation) and the Relevant Taxing Jurisdiction other than merely holding such Note or Subsidiary Guarantee, including such Holder or beneficial owner (or such trustee, fiduciary, settlor, member or shareholder) being or having been a national, domiciliary or resident of or treated as a resident thereof or being or having been physically present or engaged in a trade or business therein or having or having had a permanent establishment therein;

(B) the presentation of such Note (in cases in which presentation is required) more than 30 days after the later of the date on which the payment (including amounts taken to be paid for the purposes of any law relating to a Tax) of the principal of, or interest or premium, if any, on, such Note became due and payable pursuant to the terms thereof or was made or duly provided for, except to the extent that the Holder or

beneficial owner thereof would have been entitled to such Additional Amounts if it had presented such Note for payment on any date within such 30-day period; or

(C) the failure of the Holder or beneficial owner to comply with any certification, identification or other reporting requirement concerning nationality, residence, identity or connection with the Relevant Taxing Jurisdiction of the Holder or beneficial owner of such Note if (a) compliance is required by law or regulation and (b) the Company has given the Holders at least 30 days' notice that Holders will be required to comply with such certification, identification or other requirements;

- (2) any Taxes which are Australian Withholding Tax in respect of any payment made (or taken to be made) to an Offshore Associate of the Company or the Subsidiary Guarantor, as the case may be, in circumstances where the sole reason for Australian Withholding Tax being imposed is because of the operation of section 128F(6) of the Australian Tax Act;
- (3) any estate, inheritance, gift, sales, excise, transfer, personal property Tax or similar Tax;
- (4) any Taxes imposed on or calculated by reference to the net income received or receivable by a Holder or beneficial owner of the Notes or a Subsidiary Guarantee;
- (5) any combination of items (1) through (4) above.

If the Company or any Subsidiary Guarantor will be obligated to pay Additional Amounts with respect to any payment (including amounts taken to be paid for the purposes of any relevant law relating to a Tax) under or with respect to the Notes or the relevant Subsidiary Guarantee, as applicable, the Company or such Subsidiary Guarantor, as applicable, will deliver to the Trustee at least 30 days prior to the date of that payment (unless the obligation to pay Additional Amounts arises after the 30th day prior to that payment date, in which case the Company or the Subsidiary Guarantor, as applicable, shall notify the Trustee promptly thereafter but in no event later than two Business Days prior to the date of payment) written notice of payment in the form of an Officers' Certificate. In either circumstance, the Officers' Certificate shall state that Additional Amounts will be payable and the amount so payable. The Officers' Certificate shall also set forth any other information necessary to enable the paying agent to pay Additional Amounts to Holders and beneficial owners on the relevant payment date.

The Company shall provide the Trustee with official receipts or other documentation evidencing the payment of the Taxes with respect to which Additional Amounts are paid within 60 days of such payment. Copies of such documentation will be made available to the Holders of the Notes, beneficial owners of the Notes or the Paying Agent, as applicable, upon request therefor.

Whenever there is mentioned, in any context, the payment of (or in respect of) principal, interest, premium, if any, Additional Amounts, if any, or any other amount payable on or with respect to any of the Notes or Subsidiary Guarantee, that reference shall be deemed to include payment of Additional Amounts provided for in this Section 4.14 to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof.

The Company or a Subsidiary Guarantor shall pay any present or future stamp, court or documentary taxes or any other excise or property taxes, charges or similar levies that arise in any jurisdiction from the execution, delivery, enforcement or registration of the Notes, the Subsidiary Guarantees, this Indenture or any other related document or instrument, or the receipt of any payments with respect to the Notes or the Subsidiary Guarantees, excluding taxes, charges or similar levies imposed by any jurisdiction outside of Australia, the United States, the jurisdiction of incorporation of any successor of the Company or any jurisdiction in which a Paying Agent is located, and the Company shall indemnify the Holders and the Trustee for any such taxes paid by the Holders or the Trustee.



Section 4.15. Further Instruments and Acts.

Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

ARTICLE 5  
SUCCESSORS

Section 5.01. Merger, Consolidation, or Sale of Assets.

(a) The Company shall not consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person, or undertake a scheme of arrangement or recommend a takeover bid which will result in all of the Common Stock of the Company being owned by one Person, unless:

- (1) the resulting, surviving or transferee Person or new sole shareholder of the Company (the "Successor Company") will be a corporation organized and existing under the laws of Australia, the Federative Republic of Brazil, the United States of America, Canada or any State of the United States or the District of Columbia and the Successor Company (if not the Company) will expressly assume, by supplemental indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, all the obligations of the Company under the Notes, this Indenture and the Collateral Documents;
- (2) the Successor Company, if not organized and existing under the laws of Australia, undertakes, in such supplemental indenture, to pay such Additional Amounts as may be necessary in order that every net payment made in respect of the guarantees related to the Notes after deduction or withholding for or on account of any Taxes imposed by its country of organization or any political subdivision or taxing authority thereof or therein will not be less than the amount of principal (and premium, if any) and interest then due and payable on the Guarantees related to the Notes;
- (3) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing;
- (4) each Subsidiary Guarantor (unless it is the other party to the transactions above, in which case clause (1) shall apply) shall have by supplemental indenture confirmed that its Subsidiary Guarantee shall apply to such Person's obligations in respect of this Indenture and the Notes; and
- (5) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with this Indenture.

The predecessor Company shall be released from its obligations under this Indenture and the Successor Company shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture, but, in the case of a lease of all or substantially all its assets, the predecessor Company shall not be released from the obligation to pay the principal of and interest on the Notes.

(b) The Company shall not permit any Subsidiary Guarantor to consolidate with, merge with or into any Person (other than another Subsidiary Guarantor) and shall not permit the transfer of a majority of shares in a Subsidiary Guarantor or the conveyance, transfer or lease of all or substantially all of the assets of any Subsidiary Guarantor (other than to another Subsidiary Guarantor) unless:

- (1) (a) if such entity remains a Subsidiary Guarantor, the resulting, surviving or transferee Person will be a corporation, partnership, trust or limited liability company organized and existing under the laws of Australia, the Federative Republic of Brazil or the United States of America, any State of the United States or the District of Columbia and such Person (if not already a Subsidiary Guarantor) will expressly assume, by supplemental indenture, executed and delivered to the Trustee, all of the obligations of such Subsidiary Guarantor under its Subsidiary Guarantee;
- (b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing; and (c) the Company will have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with this Indenture; and
- (c) For purposes of this Article 5, the sale, lease, conveyance, assignment, transfer, or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of the Company, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

## ARTICLE 6 DEFAULTS AND REMEDIES

### Section 6.01. Events of Default.

- (a) Each of the following is an "Event of Default":
  - (1) default in any payment of interest or Additional Amounts on any Note when due, if any, and such default continues for a period of 30 days;
  - (2) default in the payment of principal of or premium, if any, on any Note when due at its Stated Maturity, upon redemption, upon repurchase, upon declaration of acceleration, or otherwise;
  - (3) failure by the Company or any Subsidiary Guarantor to comply with its obligations under Section 5.01;
  - (4) failure by the Company to comply with any of its obligations under Article 4 or its other agreements under this Indenture (in each case, other than (a) a failure to purchase Notes which constitutes an Event of Default under clause (2) above, or (b) a failure to comply with Article 5 which constitutes an Event of Default under clause (3) above for 30 days or more after written notice to the Company from either the Holders of at least 25% in aggregate principal amount of the outstanding Notes or the Trustee acting on direction from the Holders of at least 25% in aggregate principal amount of the outstanding Notes;
  - (5) default under any Indebtedness by the Company or any of its Subsidiaries (or the payment of which is guaranteed by the Company or any of its Subsidiaries), which default:
    - (A) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the grace period provided in such Indebtedness ("Payment Default"); or

(B) results in the acceleration of such Indebtedness prior to its maturity;

and, in each case, either (x) the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates US\$10.0 million or more or (y) such Indebtedness is secured by a Lien on any of the Collateral;

- (6) a proceeding is commenced after the Issue Date seeking a decree or order for relief in respect of the Company or a Subsidiary Guarantor in an involuntary Insolvency Proceeding;
- (7) the Company or a Subsidiary Guarantor commences or consents to the entry of an order for relief in a voluntary Insolvency Proceeding or effects any general assignment for the benefit of creditors, *provided* that the Current EJ Proceeding will not constitute an Event of Default;
- (8) failure by the Company or a Subsidiary Guarantor to pay final judgments aggregating in excess of US\$10.0 million (net of any amounts that a reputable and creditworthy insurance company has acknowledged liability for in writing), which judgments are not paid, discharged or stayed for a period of 60 days;
- (9) failure by the Company to comply with the obligation to convert any Notes into Common Stock, cash or a combination of cash and Common Stock, as applicable, upon the exercise of any Holder's conversion right;
- (10) failure of the Company to make a Change of Control Offer and thereafter to accept and pay for Notes tendered when and as required pursuant to Section 3.09;
- (11) the Company or any of its Subsidiaries take any affirmative steps to terminate or assign any material mining concessions;
- (12) any Subsidiary Guarantee ceases to be in full force and effect (except as contemplated by the terms of this Indenture) or is declared null and void in a judicial proceeding or any Subsidiary Guarantor denies or disaffirms its obligations under this Indenture or its Subsidiary Guarantee;
- (13) unless such Liens have been released in accordance with the provisions of this Indenture and the Collateral Documents, Liens in favor of the Collateral Agent for the benefit of the Secured Parties with a value in excess of US \$10.0 million or more cease to be valid, enforceable or perfected Liens (subject only to Collateral Permitted Liens) after the period for perfection set forth in Section 11.01, or the Company or any Subsidiary Guarantor shall assert, in any pleading in any court of competent jurisdiction, that any such security interest is invalid or unenforceable; or
- (14) the Company or any Subsidiary Guarantor fails to comply with any of its agreements contained in the Collateral Documents, and such failure continues for 30 days after notice by the Trustee (acting on direction from the Holders of at least 25% in aggregate principal amount of the outstanding Notes), Collateral Agent or the Holders of at least 25% in aggregate Principal Amount of the Notes at the time outstanding.

(b) A default under clause (4) of Section 6.01(a) will not constitute an Event of Default until the Trustee, if a Responsible Officer of the Trustee has written notice of such default, and acting on direction from the Holders of at least 25% in aggregate principal amount of the outstanding Notes, or the holders of 25% in principal amount of the outstanding Notes, notifies the Company of the default and the Company does not cure such default within the time specified in clause (4) of Section 6.01(a) after receipt of such notice.

(c) The Company will deliver to the Trustee, as soon as possible, and in any event within 30 days after becoming aware thereof, written notice in the form of an Officer's Certificate of any event which is, or with the giving of notice or lapse of time or both would become, an Event of Default, its status and what action the Company is taking or proposes to take in respect thereof.

(d) If a Default occurs and is continuing and is notified in writing to a Responsible Officer of the Trustee, the Trustee shall mail to each Holder and each Collateral Agent notice of the Default within the earlier of 60 days after it occurs or 30 days after a Responsible Officer of the Trustee is so notified.

#### Section 6.02. Acceleration.

If an Event of Default (other than an Event of Default described in Section 6.01(a)(6) or Section 6.01(a)(7)) occurs and is continuing, the Trustee, if a Responsible Officer of the Trustee has written notice of such default, by notice to the Company, or the Holders of at least 25% in principal amount of the outstanding Notes by notice to the Company and the Trustee, may, and the Trustee at the request of such Holders shall, declare the principal of, Acceleration Premium, if any, and accrued and unpaid interest, if any, on all the Notes to be due and payable. Upon such a declaration, such principal, Acceleration Premium, if any, and accrued and unpaid interest will be due and payable immediately. If an Event of Default described in Section 6.01(a)(6) or Section 6.01(a)(7) occurs and is continuing, the principal of, Acceleration Premium, if any, and accrued and unpaid interest on all the Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders. The Holders of a majority in principal amount of the outstanding Notes may waive all past defaults (except with respect to nonpayment of principal, premium or interest) and rescind any such acceleration with respect to the Notes and its consequences if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction; (2) all existing Events of Default, other than the nonpayment of the principal of, Additional Amounts, if any, and interest on the Notes that have become due solely by such declaration of acceleration, have been cured or waived; (3) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due and payable under this Indenture otherwise than by such declaration of acceleration, has been paid and (4) the Company has paid the Trustee its reasonable compensation and reimbursed the Trustee for its reasonable expenses (including the fees and expenses of its counsel), disbursements and advances.

#### Section 6.03. Acceleration Premium.

If an Event of Default occurs prior to \_\_\_\_\_, 2017, and a declaration of acceleration has been made by the Holders or the Trustee pursuant to Section 6.02, in view of the impracticality and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Holder's lost profits as a result thereof, the Company agrees to pay in respect of the Notes, upon the effective date of acceleration, a repayment fee in the amount equal to the Acceleration Premium. Such Acceleration Premium shall be presumed to be the amount of liquidated damages sustained by Holders as a result of such acceleration and each of the Company and the Subsidiary Guarantors agrees that it is reasonable under the circumstances currently existing; *provided* that such liquidated damages shall not be deemed to include the costs and expenses of any Holder in enforcing its rights hereunder or obtaining payment of amounts due hereunder.

The Company and each Subsidiary Guarantor acknowledges, and, by accepting a Note, each Holder agrees, that each Holder of a Note has the right to maintain its investment in such Notes free from repayment by the Company (except as herein specifically provided for) and that the provision for payment of an Acceleration Premium by the Company in the event that the Notes are accelerated as a result of an Event of Default is intended to provide compensation for the deprivation of such right under such circumstances.

#### Section 6.04. Other Remedies.

If an Event of Default occurs and is continuing, the Trustee, if a Responsible Officer of the Trustee has written notice of such event, may pursue any available remedy by proceeding at law or in equity to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes, this Indenture or to direct either or both of the Collateral Agents to take enforcement action under the Collateral Documents (subject to the terms and conditions of those Collateral Documents).

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All remedies are cumulative to the extent permitted by law or to direct either or both of the Collateral Agents to take enforcement action under the Collateral Documents (subject to the terms and conditions of those Collateral Documents).

**Section 6.05. Waiver of Past Defaults.**

Subject to Section 6.08 and Section 9.02 hereof, the Holders, through the written consent of not less than a majority in aggregate principal amount of the then Outstanding Notes, may waive an existing Default or Event of Default and its consequences, except a Default or Event of Default:

(1) in the payment of the principal of or premium, if any, or interest (including Acceleration Premium, if any) on any Note (provided, however, that subject to Section 6.08 hereof, the Holders of a majority in aggregate principal amount of the outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration);

(2) in respect of the right to convert any Note in accordance with Article 12; or

(3) in respect of a covenant or provision hereof which, under Section 9.02 hereof, cannot be modified or amended without the consent of the Holders of each outstanding Note affected.

Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; *provided, however*, that no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

**Section 6.06. Control by Majority.**

Subject to all provisions of this Indenture and applicable law, the Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or, for the purposes of Section 11.05, a Collateral Agent, or of exercising any trust or power conferred on the Trustee or, for the purposes of Section 11.05, a Collateral Agent.

**Section 6.07. Limitation on Suits.**

Except to enforce the right to receive payment of principal, premium, if any, or interest when due, no Holder may pursue any remedy with respect to this Indenture or the Notes (including, instituting any proceeding, judicial or otherwise, with respect to this Indenture or for the appointment of a receiver or trustee) unless:

- (1) such Holder has previously given the Trustee written notice that an Event of Default is continuing;
- (2) Holders of at least 25% in principal amount of the outstanding Notes have made written request to the Trustee to pursue the remedy;
- (3) such Holder or Holders offer to the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;

- (4) the Trustee has not complied with such request within 60 days after the receipt of the request and the offer of security or indemnity; and
- (5) during such 60-day period, no direction inconsistent with such written request has been given to the Trustee by the Holders of a majority in aggregate principal amount of the Outstanding Notes (or such amount as shall have acted at a meeting pursuant to the provisions of this Indenture).

A Holder may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder.

**Section 6.08. Rights of Holders to Receive Payment.**

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal, premium, if any, and interest on the Note held by such Holder, on or after the respective due dates expressed in the Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, or to bring suit for the enforcement of the right to convert the Note in accordance with the terms of this Indenture shall not be impaired or affected without the consent of such Holder.

**Section 6.09. Collection Suit by Trustee.**

If an Event of Default specified in Section 6.01(a)(1) or (2) occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company or any other obligor on the Notes for the whole amount then due and owing and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

**Section 6.10. Trustee May File Proofs of Claim.**

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Company, any other obligor upon the Notes, their creditors or their property and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.06 hereof. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

**Section 6.11. Priorities.**

If the Trustee collects any money pursuant to this Article 6, it shall pay out the money in the following order:

*First:* to the Trustee, Note Registrar, Paying Agent, Transfer Agent, Conversion Agent and Collateral Agents, their respective agents and attorneys for amounts due under Section 7.06, Section 7.13, Section 10.03, Section 10.04, Section 11.02 and Section 11.03 hereof, including without limitation payment of all compensation, expense and liabilities incurred, all indemnities and all advances made, by the Trustee, Note Registrar, Paying Agent, Transfer Agent, Conversion Agent and Collateral Agents and the costs and expenses of collection;

*Second:* to Holders for amounts due and unpaid on the Notes for principal, any premium, including but not limited to any Acceleration Premium, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any and interest, respectively; and

*Third:* to the Company or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.11. At least 15 days before such record date, the Trustee shall mail to each Holder and the Company, notice that states the record date, the payment date and amount to be paid.

Section 6.12. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.12 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.08 hereof, or a suit by Holders of more than 10% in aggregate principal amount of the then outstanding Notes.

Section 6.13. Waiver of Stay or Extension Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim to take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

## ARTICLE 7 CONCERNING THE TRUSTEE

### Section 7.01. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

- (1) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and
- (2) the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon the statements, certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, with respect to certificates or opinions specifically required to be furnished to it hereunder, the Trustee shall examine the certificates and opinions to determine whether or not, on their face, they conform to the form required by this Indenture. The Trustee has no duty to recalculate or verify the information stated therein.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

- (1) This clause (c) does not limit the effect of Section 7.01(b);
- (2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and
- (3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with any direction contemplated by this Indenture, including but not limited to any direction received by it pursuant to Section 6.02, Section 6.05 or Section 6.06 hereof.

(d) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(e) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), and (c) of this Section 7.01.

(f) The Trustee (acting in any capacity hereunder) shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

#### Section 7.02. Rights of Trustee.

(a) The Trustee may conclusively rely upon any document (whether in original or facsimile form) believed by it to be genuine and to have been signed or presented by the proper Person.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel and other professional advisors and the advice of such counsel or advisors or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys, delegates and agents and shall not be responsible for the misconduct or negligence of any attorney, delegate or agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Any demand, request, direction or notice from the Company shall be sufficient if signed by two Officers of the Company.

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee security, prefunding and/or indemnity satisfactory to it against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(g) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, direction, order, approval, bond, debenture, Note, other evidence of Indebtedness or other paper or document but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books,



records and premises of the Company, personally or by agent or attorney at the sole expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation.

(h) The Trustee shall have no duty to inquire as to the performance by the Company and the Subsidiary Guarantors of the covenants in Article 4 hereof, as to compliance by the Company and the Subsidiary Guarantors with Article 5 hereof or any other provision of this Indenture. In addition, the Trustee shall not be deemed to have knowledge of any Default or Event of Default except any Default or Event of Default of which a Responsible Officer of the Trustee has received written notification identifying the Notes or Indenture or a Responsible Officer of the Trustee shall have obtained actual knowledge.

(i) Neither the Trustee nor any clearing system through which the Notes are traded shall have any obligation or duty to monitor, determine or inquire as to compliance, and shall not be responsible or liable for compliance, with restrictions on transfer, exchange, redemption, purchase or repurchase, as applicable, of minimum denominations imposed under this indenture or under applicable law or regulation with respect of any transfer, exchange, redemption, purchase or repurchase, as applicable, of interest in any Note.

(j) The Trustee is not required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Indenture.

(k) In the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of Holders, each representing less than a majority in aggregate principal amount of the Notes then outstanding, pursuant to the provisions of this Indenture, the Trustee, in its sole discretion, may determine what action, if any, shall be taken.

(l) The permissive right of the Trustee to take the actions permitted by this Indenture shall not be construed as an obligation or duty to do so.

(m) Delivery of reports, information and documents to the Trustee under Section 4.03 is for informational purposes only and the Trustee's receipt of the foregoing shall not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of their covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates or Opinions of Counsel, as applicable).

(n) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, the Note Registrar and each agent, custodian and other Person employed to act hereunder.

(o) The Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

(p) In connection with the exercise of its functions (including but not limited to those in relation to any proposed modification, authorization, waiver or substitution), the Trustee shall have regard to the interests of the Holders as a class, or where the exercise of such functions relates only to a particular series of Notes only, to the interests of the Holders of such series of Notes as a class, and shall not have regard to the consequences of such exercise for individual Holders.

(q) The Trustee may refrain from taking any action in any jurisdiction if the taking of such action in that jurisdiction would, in its opinion based upon legal advice in the relevant jurisdiction, be contrary to any law of that jurisdiction or, to the extent applicable, of the State of New York. Furthermore, the Trustee may also refrain from taking such action if it would otherwise render it liable to any person in that jurisdiction or the State of New York or if, in its opinion based upon such legal advice, it would not have the power to do the relevant thing in that jurisdiction by virtue of any applicable law in that jurisdiction or in the State of New York or if it is determined

by any court or other competent authority in that jurisdiction or in the State of New York that it does not have such power.

(r) Any request or direction of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate, and any resolution of Board of Directors shall be sufficiently evidenced by a Board Resolution.

(s) Whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may rely upon an Officer's Certificate.

(t) Notwithstanding anything in this Indenture to the contrary, in no event shall the Trustee be liable under or in connection with this Indenture for indirect, special, incidental, punitive or consequential losses or damages of any kind whatsoever, including but not limited to lost profits, whether or not foreseeable, even if the Trustee has been advised of the possibility thereof and regardless of the form of action in which such damages are sought.

(u) The Trustee shall have no duty to see to any recording, filing or depositing of this Indenture or any agreement referred to herein or any financing statement or continuation statement evidencing a perfection of a security interest, or to see to the maintenance of any such recording or filing or depositing or to any re-recording, refiling or re-depositing of any thereof.

**Section 7.03. Trustee, Paying Agents, Conversion Agents or Note Registrar May Own Notes.**

The Trustee, any Paying Agent, any Conversion Agent or Note Registrar, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not the Trustee, Paying Agent, Conversion Agent or Note Registrar.

**Section 7.04. Trustee's Disclaimer.**

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture, the Notes or any Guarantee and it shall not be accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

**Section 7.05. Notice of Defaults.**

If a Default or Event of Default occurs and is continuing and if it is notified in writing to a Responsible Officer of the Trustee, the Trustee shall mail to Holders (with a copy to the Collateral Agents) a notice of the Default or Event of Default within the earlier of 60 days after it occurs or 30 days after a Responsible Officer of the Trustee is so notified. Any such notice shall refer to this Indenture and state the relevant Default or Event of Default that has occurred and describe the event giving rise to the relevant Default or Event of Default.

Except in the case of a Default or Event of Default in payment of principal of, premium, if any, or interest on any Note, the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Holders.

**Section 7.06. Compensation and Indemnity.**

(a) The Company and each Subsidiary Guarantor, jointly and severally, shall pay to the Trustee from time to time such compensation for its acceptance of this Indenture and services hereunder as the Company and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited

by any law on compensation of a trustee of an express trust. The Company and each Subsidiary Guarantor, jointly and severally, shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it, including costs of collection, in addition to the compensation for its services. Such expenses will include the reasonable compensation, disbursements, expenses and advances of the Trustee's agents, counsel, accountants and experts.

(b) The Company and each Subsidiary Guarantor, jointly and severally, shall indemnify the Trustee, its officers, directors and employees and hold them harmless, against any and all losses, claims, damages, liabilities or expenses (including reasonable attorney's fees) incurred by them arising out of or in connection with the acceptance or administration of its duties under this Indenture, including but not limited to liability for any stamp duty or similar or other tax, the costs and expenses of enforcing this Indenture against the Company or any Subsidiary Guarantor (including this Section 7.06) and defending itself against any claim (whether asserted by the Company, or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. At the Trustee's sole discretion, the Company shall defend the claim and the Trustee shall provide reasonable cooperation and may participate at the Company's expense in the defense. Alternatively, the Trustee may at its option have separate counsel of its own choosing and the Company shall pay the reasonable fees and expenses of such counsel; *provided* that the Company shall not be required to pay such fees and expenses if it assumes the Trustee's defense, there is, in the reasonable opinion of the Trustee, no conflict of interest between the Company and the Trustee in connection with such defense and no Default or Event of Default has occurred and is continuing. The Company need not pay for any settlement made without its written consent, which consent shall not be unreasonably withheld or delayed. The Company need not reimburse any expense or indemnify against any loss or liability to the extent incurred by the Trustee through its negligence, bad faith or willful misconduct.

(c) The obligations of the Company under this Section 7.06 and any Lien arising hereunder will survive the resignation or removal of the Trustee, the discharge of the Company's obligations pursuant to Section 11.06 or Section 11.07 or the termination of this Indenture.

(d) To secure the Company's and Subsidiary Guarantors' payment obligations in this Section 7.06, the Trustee will have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Notes. Such Lien will survive the satisfaction and discharge of this Indenture.

(e) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(a)(6) or Section 6.01(a)(7) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

#### **Section 7.07. Compliance with Applicable FATCA Laws**

In the event that, in connection with any payment of the principal of and premium, if any, and interest on the Notes, any Holder or beneficial owner thereof has not furnished to the Paying Agent the certifications or information statements required under Sections 1471 through 1474 of the United States Internal Revenue Code of 1986, as amended, as in effect on the date hereof (or any current and future regulations or official interpretations thereof) ("FATCA"); any treaty, law, regulation or other official guidance enacted by the United States of America, Australia or Brazil implementing FATCA; or any agreement between any of the Company, any Guarantor, the Trustee or any Agent entered into for FATCA purposes ("Applicable FATCA Laws") that would relieve the Paying Agent from any withholding obligation, the Company and each Subsidiary Guarantor agrees, upon reasonable request, to the extent known to it and as permitted under applicable privacy or if expressly authorized by any agreement between it and such Holder or beneficial owner or by the terms of any tax certification, (i) to use commercially reasonable efforts to provide to each of the Trustee and the Note Registrar any tax certification held by the Company or any other information the Company identifies, in its sole discretion, as relevant for withholding tax purposes about such holders or beneficial owners so the Trustee or the Note Registrar can determine whether it has tax related obligations under Applicable FATCA Laws, and (ii) that the Trustee or the Note Registrar shall, subject to Section 4.14 hereof,

be entitled to make any withholding or deduction from payments under the Notes or this Indenture to the extent necessary to comply with Applicable FATCA Laws.

**Section 7.08. Replacement of Trustee.**

(a) A resignation or removal of the Trustee and appointment of a successor Trustee will become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.07.

(b) The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Company. The Holders of a majority in aggregate principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

- (1) the Trustee fails to comply with Section 7.10 hereof;
- (2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (3) a custodian or public officer takes charge of the Trustee or its property; or
- (4) the Trustee otherwise becomes incapable of acting.

(c) If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in aggregate principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

(d) If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company, or the Holders of at least 10% in aggregate principal amount of the then outstanding Notes may petition at the expense of the Company any court of competent jurisdiction for the appointment of a successor Trustee.

(e) If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.10, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee will become effective, and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will mail a notice of its succession to Holders within 10 days of its succession to the position as Trustee under this Indenture. The retiring Trustee will promptly transfer all property held by it as Trustee to the successor Trustee, *provided* all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.06 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.07, the Company's obligations under Section 7.06 hereof will continue for the benefit of the retiring Trustee.

**Section 7.09. Successor Trustee by Merger, etc.**

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business or assets (including the administration of the trust created by this Indenture) to, another corporation or banking association, the successor corporation or banking association without any further act will be the successor Trustee, provided such corporation shall be otherwise qualified and eligible under Section 7.10.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trust created by this Indenture any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee,

and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor to the Trustee.

Section 7.10. Eligibility; Disqualification.

There shall at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by U.S. federal or state authorities and that has a combined capital and surplus of at least US\$100 million as set forth in its most recent published annual report of condition.

Section 7.11. Access to Documents.

So long as any Notes shall remain outstanding hereunder, the Trustee shall retain at an office of the Trustee in London, United Kingdom copies of (i) this Indenture, the Notes and the Guarantees and (ii) any other documents relating to the Company or any Subsidiary Guarantor that may be provided to the Trustee from time to time by the Company or any Subsidiary Guarantor. The Trustee shall make all such documentation available for viewing at the Corporate Trust Office of the Trustee in London, United Kingdom during ordinary business hours and upon reasonable prior notice, following a request made to the Trustee at its Corporate Trust Office, to Holders and prospective Holders of Notes, beneficial owners and prospective purchasers of beneficial interests in Notes eligible to acquire Notes in accordance with the transfer restrictions set forth in the Notes; provided that the Trustee shall not permit any such Persons access to the documents identified in subsection (ii) above unless such Persons shall have (i) entered into a confidentiality agreement in form and substance satisfactory to the Company and any Subsidiary Guarantor providing for confidentiality obligations for the benefit of the Company and any Subsidiary Guarantor; (ii) provided documentation reasonably satisfactory to the Trustee that they are entitled to access such information; and (iii) such Persons agree not to retain or make copies of any such documents.

Section 7.12. Force Majeure.

In no event shall the Trustee or any Paying Agent be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of god, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services.

Section 7.13. Currency Indemnity to the Trustee.

If an amount in connection with this indenture is received by the trustee in a currency other than the currency in which the amount is due for any reason under the Notes (the "**Trustee Convertible Amount**"), then the Company and Subsidiary Guarantors shall indemnify the Trustee against:

- (a) any difference arising from converting the Trustee Convertible Amount into the currency in which it is due for any reason under the Notes; and
- (b) the costs, fees, taxes, charges, levies, liabilities and expenses (including without limitation those incurred in connection with advisers) of conversion.
- (c) The Company and Subsidiary Guarantors agree to pay amounts under this indemnity on demand from the Trustee. The Trustee will have no obligation to investigate whether the conversion rate offered to it at the time of conversion of the Trustee Convertible Amount is the best market rate and will have no liability whatsoever in connection with the conversion.

Section 7.14. USA Patriot Act Compliance.

The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act of 2001, The Bank of New York Mellon, London Branch is required to obtain, verify and record information that identifies each person or legal entity that establishes a relationship or opens an account. The Company and each Subsidiary Guarantor agree that it will provide The Bank of New York Mellon, London Branch with such information as it may request in order for The Bank of New York Mellon, London Branch to satisfy the applicable requirements of the USA PATRIOT Act of 2001.

## ARTICLE 8 SATISFACTION AND DISCHARGE

Section 8.01. Discharge of Liability on Notes. When (i) the Company delivers to the Trustee for cancellation all outstanding Notes (other than Notes replaced pursuant to Section 2.11) and not therefore canceled or (ii) all outstanding Notes not theretofore canceled or delivered to the Trustee for cancellation have become due and payable, and the Company deposits with the Trustee cash and/or securities, as permitted by the terms hereof, sufficient to pay at Stated Maturity, on any Tax Redemption Date, Change of Control Payment Date, upon conversion or otherwise all of the Notes (other than Notes replaced pursuant to Section 2.11) not theretofore canceled or delivered to the Trustee for cancellation, including principal and interest, if any, due or to become due to such date, and if in either case the Company pays all other sums payable hereunder by the Company, then this Indenture shall, subject to Section 7.06, cease to be of further effect as to all outstanding Notes issued hereunder. The Trustee shall join in the execution of a document prepared by the Company acknowledging satisfaction and discharge of this Indenture on demand of the Company accompanied by an Officers' Certificate and Opinion of Counsel and at the cost and expense of the Company and the Company shall promptly provide written notice of such satisfaction and discharge to the Collateral Agent in accordance with the Collateral Documents.

### Section 8.02. Repayment to the Company.

The Trustee and the Paying Agent shall return to the Company upon written request any money or securities held by them for the payment of any amount with respect to the Notes that remains unclaimed for two years after the date upon which such payment shall have become due, provided, however, that the Trustee or such Paying Agent, before being required to make any such return, shall at the expense of the Company cause to be published once in a newspaper of general circulation in London, United Kingdom or mail to each such Holder notice that such money or securities remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication or mailing, any unclaimed money or securities then remaining will be returned to the Company. After return to the Company, Holders entitled to the money or securities must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person and all liability of the Trustee and such Paying Agent with respect to such money shall cease.

## ARTICLE 9 AMENDMENT, SUPPLEMENT AND WAIVER

### Section 9.01. Without Consent of Holders.

(a) Notwithstanding Section 9.02, without the consent of any Holder, the Company, the Subsidiary Guarantors, the Collateral Agents and the Trustee at any time may amend this Indenture or the Notes to:

- (1) cure any ambiguity, omission, defect or inconsistency in this Indenture or the Notes;
- (2) provide for the assumption by a successor corporation of the obligations of the Company or any Subsidiary Guarantor under this Indenture;
- (3) provide for uncertificated Notes in addition to or in place of certificated Notes (*provided* that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Internal Revenue Code, or in a manner such that the

uncertificated Notes are described in Section 163(f) (2) (B) of the Internal Revenue Code);

- (4) [RESERVED]
- (5) add Guarantees with respect to the Notes or release a Subsidiary Guarantor from its obligations under its Subsidiary Guarantee or this Indenture in accordance with Section 12.01;
- (6) add any additional assets as Collateral;
- (7) add to the covenants of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company;
- (8) provide for the appointment of a successor trustee; *provided* that the successor trustee is otherwise qualified and eligible to act as such under Section 7.07 and Section 7.09;
- (9) to make, complete or confirm any grant of Liens on the Collateral permitted or required by this Indenture or any of the Collateral; or
- (10) to release Collateral from the Lien of this Indenture and the Collateral Documents when permitted or required by this Indenture and the Collateral Documents.

Section 9.02. With Consent of Holders.

(a) The Company, the Subsidiary Guarantors, the Collateral Agents and the Trustee may amend or supplement this Indenture or the Notes without notice to any Holder but with the written consent of the Holders of at least a majority in principal amount of Notes then outstanding, duly confirmed by the Trustee to the Collateral Agents (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes); *provided* that an amendment to the Collateral Permitted Liens definition and the Lien Amendment Threshold requires the written consent of the Lien Amendment Threshold. Subject to Section 6.05, the Holder or Holders of a majority in aggregate principal amount of the outstanding Notes may waive compliance by the Company and the Subsidiary Guarantors with any provision of this Indenture or the Notes. However, without the consent of each Holder affected, an amendment, supplement or waiver may not:

- (1) reduce the aggregate principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;
- (2) reduce the stated rate of or extend or have the effect of extending the stated time for payment of interest on any Note or change in any adverse respect the obligation of the Company and the Subsidiary Guarantors to pay Additional Amounts;
- (3) reduce the principal of or change or have the effect of changing the Stated Maturity of any Note, or change the date on which any Notes may be subject to redemption, or reduce the redemption price therefor;
- (4) make any Note payable in money other than that stated in the Notes;
- (5) impair the right of any Holder to receive payment of principal, premium, if any, and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such

Holder's Notes, or permitting Holders of a majority in principal amount of Notes to waive Defaults or Events of Default;

- (6) reduce the Change of Control Payment of any Note or amend or modify in any manner adverse to the Holders, the Company's obligation to make payment of such Change of Control Payment, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;
- (7) make any change in the amendment or waiver provisions which require each Holder's consent;
- (8) make any change to the provisions of this Indenture or the Notes that adversely effect the ranking of the Notes;
- (9) make any change that impairs or adversely affects the conversion rights of any Notes; or
- (10) modify the Subsidiary Guarantees in any manner adverse to the Holders of the Notes.

(b) An amendment, supplement or waiver may not terminate, or deprive the Holders of the benefit of, the Liens of the Collateral Documents on Collateral with an aggregate fair market value of (i) more than US\$10.0 million without the written consent of the Lien Amendment Threshold and (ii) more than US\$50.0 million without the unanimous written consent of the Holders of the outstanding Notes, in each case except as provided in the Collateral Documents and Section 10.04(c).

(c) It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver but it shall be sufficient if such consent approves the substance thereof.

(d) After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company shall mail to Holders a notice briefly describing such amendment, supplement or waiver. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment, supplement or waiver under this Section 9.02.

#### Section 9.03. Revocation and Effect of Consents.

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder or subsequent Holder may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder, except as otherwise provided in this Article 9.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 90 days after such record date.

#### Section 9.04. Notation on or Exchange of Notes.



If an amendment or supplement changes the terms of a Note, the Trustee may require the Holder of the Note to deliver it to the Trustee. The Trustee may place an appropriate notation on the Note regarding the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Note will execute and upon Company Order the Trustee will authenticate and make available for delivery a new Note that reflects the changed terms. Failure to make the appropriate notation or to issue a new Note shall not affect the validity of such amendment or supplement.

Section 9.05. Trustee to Sign Amendments, etc.

The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In executing any amendment, supplement or waiver, the Trustee shall be entitled to receive indemnity satisfactory to it and to receive, and (subject to Section 7.01 and Section 7.02) shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel stating that such amendment, supplement or waiver is authorized or permitted by this Indenture and that all conditions precedent to the execution of such amendment, supplement or waiver have been complied with.

ARTICLE 10  
COLLATERAL AGENTS

Section 10.01. General Authority of the Collateral Agents over the Collateral.

(a) The Holders, upon the Issue Date, hereby irrevocably appoint, designate and authorize each Collateral Agent to take such action under the provisions of this Indenture and the Collateral Documents and to exercise such powers and perform such duties as are delegated to it by the terms of this Indenture or the Collateral Documents, together with such powers as are reasonably incidental thereto, subject to Section 10.02. It is understood by all parties hereto that references to the Collateral Agent in this Indenture shall be to the Australian Security Trustee or to the Brazilian Collateral Agent, as applicable, depending on the specific Collateral at issue, whenever such consideration is relevant and shall be subject to the terms and conditions of the Collateral Documents. By acceptance of the benefits of this Indenture and the Collateral Documents, each Holder from time to time irrevocably (to the extent applicable):

- (1) consents to the appointment of each of the Collateral Agents as its agent or to serving as collateral trustee hereunder and under the Collateral Documents;
- (2) confirms that, except as expressly provided in this Indenture, each Collateral Agent shall have the authority to act as the exclusive agent of such Holder for executing and delivering any amendments to the Collateral Documents and protecting and perfecting the Liens granted thereunder and enforcement of any provisions of this Indenture and the Collateral Documents against any Grantors or the exercise of remedies hereunder or thereunder, in accordance with and to the extent consistent with this Indenture and the Collateral Documents;
- (3) agrees that, except as expressly provided in this Indenture, each Holder shall not take any action on its own or request that a Collateral Agent take any action to perfect or protect the Liens granted hereunder or under the other Collateral Documents or to enforce or exercise any provisions of this Indenture or the Collateral Documents against any Grantors;
- (4) subject to Section 11.05 hereof, consents and agrees that the Holders of a majority in principal amount of the Notes outstanding or the Trustee (acting on the direction of the Holders holding a majority in principal amount of the Notes outstanding) shall have the sole and exclusive right to instruct the Collateral Agents to take or refrain from taking any action, whether in respect of any Event of Default or otherwise; and

- (5) agrees to be bound by the terms of this Indenture and the Collateral Documents, and to comply, in connection with any action taken under any Collateral Documents.

(b) The Trustee shall not be liable for any act or failure to act by a Collateral Agent under this Indenture, and for the avoidance of doubt, no Collateral Agent shall be an agent of the Trustee.

(c) With the exception of Section 10.01(d), each Grantor hereby irrevocably constitutes and appoints each Collateral Agent and any duly authorized officer or agent of the Collateral Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Person, or in the Collateral Agent's own name, from time to time in the Collateral Agent's discretion, for the purpose of carrying out the terms of this Indenture and the Collateral Documents, to take any and all appropriate action and to execute and deliver in the name of and on behalf of, or individually, as the case may be, any and all documents or instruments required to be executed by such Grantors in connection therewith and to do, take and perform all and every act whatsoever requisite, proper or necessary to be done, in the exercise of any of the rights and powers granted herein or in the other Collateral Documents to the Collateral Agents (including, without limitation, to receive, endorse and collect any drafts or other instruments, documents and chattel paper representing any payment, dividend or other distribution in respect of the Collateral or any part thereof and to give full discharge for the same).

(d) Each Grantor hereby irrevocably constitutes and appoints the Holders of a majority in principal amount of the Notes outstanding or the Trustee (acting on the direction of the Holders holding a majority in principal amount of the Notes outstanding) with sole and absolute discretion to direct the activities and conduct of the Collateral Agents and any duly authorized officer or agent of the Collateral Agents, for the purpose of carrying out the terms of this Indenture and the Collateral Documents upon the occurrence and during the continuance of any Event of Default any and all appropriate action and to execute and deliver in the name of and on behalf of, or individually, as the case may be, any and all documents or instruments required to be executed by such Grantors in connection therewith and to do, take and perform all and every act whatsoever requisite, proper or necessary to be done, in the exercise of any of the rights and powers granted herein or in the other Collateral Documents to the Collateral Agents (including, without limitation to file any claims or take any action or institute any proceedings that a Collateral Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce compliance with the terms and conditions of any Collateral Documents), as fully to all intents and purposes as each Grantors might or could do.

(e) Each Holder agrees that each Collateral Agent and any duly authorized officer or agent of the Collateral Agent, for the purpose of carrying out the terms of this Indenture or the Collateral Documents, may take any and all appropriate action and may execute and deliver on behalf of, as the case may be, any and all documents or instruments required to be executed by such Holder, from time to time, and may do, take and perform all and every act whatsoever requisite, proper or necessary to be done, in the exercise of any of the rights and powers granted herein or in the other Collateral Documents to the Collateral Agents, including, without limitation:

- (1) to receive, endorse and collect any drafts or other instruments, documents and chattel paper representing any payment, dividend or other distribution in respect of the Collateral or any part thereof and to give full discharge for the same; and
- (2) to file any claims or take any action or institute any proceedings, as it may be instructed by the Trustee (acting on the direction of the Holders holding a majority in principal amount of the Notes outstanding) to do, for the collection of any of the Collateral or otherwise to enforce compliance with the terms and conditions of any Collateral Documents or the rights of the Holders, from time to time, with respect to any of the Collateral.

(f) The Australian Security Trustee hereby accepts its appointment, designation and authorization hereunder and agrees that it holds and will hold all of its right, title and interest in, to and under the Collateral Documents and the Collateral granted to it thereunder, under and subject to the terms and conditions set forth in this Indenture and the Collateral Documents; and the Australian Security Trustee further agrees that it will

hold such Collateral in trust for the benefit of, amongst others, the relevant Holders, from time to time, pursuant to the terms of this Indenture and the Collateral Documents, in each case upon the terms and subject to the conditions set forth herein.

(g) The Brazilian Collateral Agent hereby accepts its appointment, designation and authorization hereunder and agrees that it will act as agent for the Holders, who hold and will hold all of their right, title and interest in, to and under the Collateral Documents and the Collateral granted to the Secured Parties thereunder, under and subject to the terms and conditions set forth in this Indenture and the Collateral Documents.

(h) Each of the parties to this Indenture, including each Holder, acknowledges and agrees that the rights, protections, immunities, limits on liability and indemnities granted to each Collateral Agent under the Collateral Documents to which it is a party shall be incorporated by reference herein (including all relevant definitions) as to such Collateral Agent and shall apply *mutatis mutandis* to its duties, powers and obligations hereunder. Each of the parties to this Indenture, including each Holder, acknowledges and agrees without limitation to the foregoing, that the Australian Security Trustee shall enjoy all of the rights and benefits of the Amended and Restated Syndicated Note Subscription Deed, including without limitation, Clause 7 and Clause 10, with respect to the performance of any function by it under this Indenture.

(i) Notwithstanding anything else to the contrary herein, whenever reference is made in this Indenture to any discretionary action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by each of the Collateral Agents or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction, reasonable satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by each of the Collateral Agents, it is understood that in all cases each Collateral Agent shall be fully justified in failing or refusing to take any such action under this Indenture if it shall not have received such written instruction, advice or concurrence of the Company or the Trustee (acting on the direction of the Holders holding a majority in principal amount of the Notes outstanding), as it deems appropriate, and it shall not be liable to any Grantors or Holders for failing to take any such action. This provision is intended solely for the benefit of the Collateral Agents and their successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any party hereto.

#### Section 10.02. The Collateral Agents.

(a) Each Collateral Agent may take such actions and exercise such powers as are delegated to the Collateral Agent by the terms of this Indenture and the Collateral Documents, together with such actions and powers as are reasonably incidental thereto. It is understood by all parties hereto that references to the Collateral Agent in this Indenture shall be to the Australian Security Trustee or to the Brazilian Collateral Agent, as applicable, depending on the specific Collateral at issue, whenever such consideration is relevant. The Collateral Agents shall not be responsible for and make no representation as to the existence, genuineness, value, validity or protection of the Collateral referred to herein, the legality, effectiveness or sufficiency of any Collateral Document, or the creation, perfection, priority, sufficiency or protection of any Liens securing the Notes.

(b) Each entity serving as a Collateral Agent, and its Affiliates, hereunder may accept deposits from, lend money to and generally engage in any kind of business with any Grantor, the Holders, the Trustee or the other Collateral Agent or any of their respective Affiliates as if it were not the Collateral Agent hereunder.

(c) Each Collateral Agent shall not have any duties, responsibilities or obligations except those expressly set forth in this Indenture and the Collateral Documents to which the Collateral Agent is a party and no duties, responsibilities or obligations shall be inferred or implied against either Collateral Agent.

(d) Each Collateral Agent shall make available for inspection by any Holder, upon request of the Trustee, as may be requested by any Holder (subject to compliance with applicable "know your customer" rules and regulations), each certificate or other documents furnished to the Collateral Agent by any Grantor under or in respect of this Indenture, any Collateral Document or any portion of the Collateral.

(e) Upon receipt of any written notice of the occurrence and continuance of an Event of Default or upon its determination that an Event of Default, has occurred and is continuing, each Collateral Agent shall promptly provide notice of such Event of Default to (i) each Grantor and (ii) the Trustee and (iii) the other Collateral Agent.

(f) Each Grantor shall promptly notify the relevant Collateral Agent of the occurrence of an Event of Loss. Upon receipt of such notice, the relevant Collateral Agent shall promptly notify the Trustee, Holders and the other Collateral Agent of such Event of Loss.

(g) Whenever in the performance of its duties under this Indenture, a Collateral Agent shall deem it necessary or desirable that a matter be proved or established with respect to any Grantor or any other Person in connection with the taking, suffering or omitting of any action hereunder by the Collateral Agent or under the Collateral Documents, such matter may be conclusively deemed to be proved or established by a certificate purporting to be executed by an officer of such Person or an Opinion of Counsel. Each Collateral Agent shall be entitled to rely upon, and shall not incur any liability with respect to any action taken, suffered or omitted in reliance upon any such certificate or an Opinion of Counsel, or any notice, request, certificate, consent, statement, instrument, document or other writing reasonably believed by it to be genuine and to have been signed or sent by the proper Person. Each Collateral Agent also may rely upon any statement made to it orally or by telephone and reasonably believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. Each Collateral Agent may consult with legal counsel, independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. Each Collateral Agent shall be entitled to request instructions from the Trustee (acting on the direction of the Holders of a majority in principal amount of the then outstanding Notes) in connection with the performance of any of its duties hereunder or under the Collateral Documents and shall not be liable for any action taken or not taken by it in accordance with such instructions of the Trustee. Each Collateral Agent may refuse to act on any notice, consent, direction or instruction that is contrary to applicable law, or that subjects it to undue risk, or for which it is not indemnified to its satisfaction.

(h) In accordance with the terms of this Indenture the Collateral Agents may perform any and all of their duties and exercise their rights and powers by or through any one or more sub-agents appointed by the Collateral Agents. In accordance with the terms of this Indenture each of the Collateral Agents shall take action under this Indenture only as it shall be directed in writing by the Trustee (acting on the direction of the Holders holding a majority in principal amount of the Notes Outstanding). Each Collateral Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Affiliates. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Affiliates of a Collateral Agent and any such sub-agent.

(i) A Collateral Agent may resign at any time, subject to the following sentence, by notifying the Trustee, the other Collateral Agent and the Grantors. Upon receipt of any such notice of resignation, the Trustee (acting on behalf of the Holders), shall have the right, in consultation with the Grantors and with the assistance of the retiring Collateral Agent, to the degree requested by the Trustee, provided that all costs related to such request are borne by the Company, to appoint a successor, and if no successor shall have been so appointed and shall have accepted such appointment within 45 days after the retiring Collateral Agent gives notice of its resignation, then the Trustee (acting at the direction of the Holders of a majority of the outstanding principal amount of the Notes) may, to the extent applicable, petition a court of competent jurisdiction to appoint a successor Collateral Agent, which shall be a bank having a combined capital and surplus of at least US\$50,000,000 with an office in Australia (in the case of the Australian Security Trustee) or in Brazil (in the case of the Brazilian Collateral Agent), or an Affiliate of any such bank, and, with respect to either Collateral Agent, if no successor shall have been so appointed and shall have accepted such appointment within 180 days after the retiring Collateral Agent gives notice of its resignation, then the retiring Collateral Agent may resign with no further duties or obligations (and the Grantors shall have no further duties or obligations to such retiring Collateral Agent, other than in respect of accrued fees or indemnification obligations); and upon such resignation Holders representing a majority in principal amount of the Notes shall substitute such Collateral Agent. For the avoidance of doubt, nothing in this paragraph shall affect the rights and procedures set forth in any Collateral Document.

(j) Upon its appointment as a Collateral Agent hereunder, a successor Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties and obligations hereunder. Any successor Collateral Agent shall execute and deliver an appropriate supplement or amendment to this Indenture and other necessary amendments or supplements to the Collateral Documents to effect such appointment. The fees payable by the Grantors to a successor Collateral Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Grantors and such successor. After any Collateral Agent's resignation hereunder, the provisions of this Section 10.02 and of Section 10.03 shall continue in effect for the benefit of such retiring Collateral Agent, its sub-agents and their respective Affiliates in respect of any actions taken or omitted to be taken by any of them while it was acting as Collateral Agent.

(k) None of the provisions contained in this Indenture shall require a Collateral Agent to expend, advance or risk its own funds or otherwise incur personal financial liability in the performance of its duties or in the exercise of any of its rights or powers hereunder or in any Collateral Document. A Collateral Agent shall be under no obligation to exercise any of the powers vested in it by this Indenture at the request, order or direction of any of the Holders whether acting through the Trustee or otherwise, from time to time, pursuant to the provisions of this Indenture unless such Holders from time to time, shall have offered to a Collateral Agent security or indemnity satisfactory to it against the costs, expenses and liabilities that might be incurred thereby.

(l) Neither of the Collateral Agents shall be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any security interest and such responsibility shall be solely that of the Company.

(m) Notwithstanding any other term of this Indenture or any other Collateral Document, each of the Collateral Agents is hereby authorized to obey and comply with all writs, orders, judgments or decrees issued by any court or administrative agency affecting any money, documents or things held by the Collateral Agents, as the case may be.

(n) Neither Collateral Agent shall incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of such Collateral Agent (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, civil unrest, local or national disturbance or disaster, any act of terrorism).

#### Section 10.03. Collateral Agents' Fees; Indemnification.

(a) Without limitation to any obligation of any Grantor to pay any fees and expenses as required under any Collateral Document, including the Amended and Restated Syndicated Note Subscription Deed, each Grantor jointly and severally agrees to pay upon written demand by a Collateral Agent the Collateral Agent Fees and the amount of any and all reasonable and documented expenses, including the reasonable and documented fees, disbursements and other charges of its counsel and of any experts or agents, provided that any amount charged will be net of taxes, which the Collateral Agent may otherwise incur in connection with this Indenture or the other Collateral Documents.

(b) Without limitation of its indemnification obligations under any Collateral Document, including the Amended and Restated Syndicated Note Subscription Deed, each Grantor jointly and severally agrees to indemnify each Collateral Agent (which for purposes of this subsection shall include its officers, directors, employees and agents) against, and hold each of them harmless from:

- (1) any and all losses, claims, damages, liabilities and related expenses, including reasonable and documented fees, disbursements and other charges of counsel, incurred by or asserted against it arising out of, in any way connected with, or as a result of, the execution, delivery or performance of this Indenture or the Collateral Documents or any claim, litigation, investigation or proceeding relating hereto or thereto or to the Collateral, whether or not the Person seeking such indemnification is a party to such Collateral Document; *provided* that such

indemnity shall not, as to the Collateral Agent, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction to have resulted from the gross negligence, willful misconduct or bad faith of any such Person;

- (2) any and all present or future claims or liability for any recording, stamp, documentary, excise, transfer, sales, property or similar taxes, charges or levies incurred in connection with this Indenture.

(c) When either Collateral Agent incurs expenses or renders services after an Event of Default specified in Section 6.01(a)(6) or Section 6.01(a)(7) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

(d) This indemnity shall survive the termination of this Indenture and the resignation or removal of a Collateral Agent.

(e) Notwithstanding anything in this Indenture to the contrary, in no event shall the Collateral Agents be liable under or in connection with this Indenture for indirect, special, incidental, punitive or consequential losses or damages of any kind whatsoever, including but not limited to lost profits, whether or not foreseeable, even if the Collateral Agents have been advised of the possibility thereof and regardless of the form of action in which such damages are sought.

#### Section 10.04. Currency Indemnity to the Collateral Agents.

If an amount in connection with this indenture is received by either Collateral Agent in a currency other than the currency in which the amount is due for any reason (the “Collateral Agent Convertible Amount”), then the Company and Subsidiary Guarantors shall indemnify the relevant Collateral Agent against:

- (a) any difference arising from converting the Collateral Agent Convertible Amount into the currency in which it is due for any reason; and
- (b) the costs, fees, taxes, charges, levies, liabilities and expenses (including without limitation those incurred in connection with advisers) of conversion.
- (c) The Company and Subsidiary Guarantors agree to pay amounts under this indemnity on demand from the relevant Collateral Agent. The Collateral Agents will have no obligation to investigate whether the conversion rate offered to it at the time of conversion of the Collateral Agent Convertible Amount is the best market rate and will have no liability whatsoever in connection with the conversion

### ARTICLE 11 COLLATERAL ARRANGEMENTS

Section 11.01. Collateral Documents. The Company will cause, as promptly as commercially reasonably possible but in no event later than 180 days after the Issue Date, the due and punctual payment of the principal, premium (including any Acceleration Premium), interest and Additional Amounts with respect to the Notes when and as the same shall be due and payable, whether at maturity, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal, premium (including any Acceleration Premium), interest and Additional Amounts with respect to the Notes and performance of all other Obligations of the Company and the Subsidiary Guarantors to the Holders, the Collateral Agent or the Trustee under this Indenture, the Notes and the Collateral Documents, according to the terms hereunder or thereunder, to be secured by a first-priority perfected Lien on substantially all of the Collateral (subject to Collateral Permitted Liens). Each Holder, by its acceptance of a Note, consents and agrees to all of the terms of the Collateral Documents (including the provisions providing for the exercise of remedies and release of the Collateral) as the same may be in effect or may be amended from time to

time in accordance with their terms. To the extent permitted by, and subject to the terms of the Collateral Documents, the Company shall do or cause to be done all such acts and things as may be required by the next sentence of this Section 11.01, to assure and confirm to the Trustee and Collateral Agent the Lien upon the Collateral subject to Collateral Permitted Liens) contemplated by the Collateral Documents or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Obligations secured hereby, according to the intent and purposes herein expressed. The Company shall take, and shall cause the Subsidiary Guarantors to take, any and all actions required under the Collateral Documents to cause the Collateral Documents to create and maintain, as security for the Obligations of the Company and the Subsidiary Guarantors hereunder, a valid and enforceable perfected Lien (subject to Collateral Permitted Liens) on the Collateral, in favor of the Collateral Agent for the ratable benefit of the Holders, first in priority to any and all Liens at any time granted upon the Collateral. The Trustee, the Company and the Subsidiary Guarantors hereby acknowledge and agree that the Collateral Agent shall hold the Collateral for the ratable benefit of the Holders and the Trustee pursuant and subject to the terms of the Collateral Documents.

Section 11.02. Suits to Protect the Collateral. Subject in all respects to the terms and conditions of the Collateral Documents, the Collateral Agent shall have power to institute and to maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Collateral by any acts which may be unlawful or in violation of this Indenture or the Collateral Documents, and such suits and proceedings as the Collateral Agent may deem expedient to preserve or protect its interests and the interests of the Holders in the Collateral and in the principal, interest, issues, profits, rents, revenues and other income arising therefrom, including power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of, or compliance with, such enactment, rule or order would impair the security hereunder or under the Collateral Documents, or be prejudicial to the interests of the Holders or the Trustee.

Section 11.03. Actions by the Collateral Agents. Each Collateral Agent shall have the power to institute and maintain such suits and proceedings as it may deem expedient in order to prevent any impairment of the Collateral by any act that may be unlawful or in violation of this Indenture or the Collateral Documents, and such suits and proceedings as the Collateral Agent may deem expedient to preserve or protect its interests and those of the Holders in the Collateral. No duty beyond that set forth in Section 7.01 is imposed on the Trustee pursuant to this Section 11.03 and notwithstanding any other provision hereof, each Grantor jointly and severally agrees to pay upon written demand by a Collateral Agent all fees, costs and expenses (including usual fees and expenses and of any experts or agents) which a Collateral Agent may incur pursuant to this Section 11.03.

Section 11.04. Authorization of Receipt and Distribution of Funds by the Trustee. Each Collateral Agent, as per their internal procedures and applicable law, is authorized to receive any funds for the benefit of the Holders distributed under the Collateral Documents, and to pay such funds to the Trustee or Paying Agent, who may then make further distributions of such funds to the Holders according to the provisions of this Indenture.

Section 11.05. Determinations Relating to Collateral. In the event (a) a Collateral Agent shall receive any written request from the Company for consent or approval with respect to any matter or thing relating to the Collateral or the Company's obligations with respect thereto or (b) there shall be due to or from a Collateral Agent under the provisions of the Collateral Documents any material performance or the delivery of any material instrument or (c) a Collateral Agent shall become aware of any material nonperformance by the Company of any covenant or any material breach of any representation or warranty of the Company set forth in the Collateral Documents, then, in each such event, a Collateral Agent shall be entitled to hire, at the sole reasonable cost and expense of the Company, experts, consultants, agents and attorneys to advise the Collateral Agent on the manner in which the Collateral Agent should respond to such request or render any requested performance or response to such nonperformance or breach. Each Collateral Agent shall be fully protected in accordance with Article 10 hereof in the taking of any action recommended or approved by any such expert, consultant, agent or attorney and by indemnification provided in accordance with Section 6.06 and other sections of this Indenture if such action is agreed to by Holders of a majority in principal amount of the Notes pursuant to Section 6.06, and each Collateral Agent may, in its sole discretion, prior to taking such action if such action could subject it to liabilities or taxation, require (1) direction from the Holders of a majority in principal amount of the Notes in accordance with Section 6.06 hereof and (2) indemnification in accordance with Section 6.06.

Section 11.06. Release of Collateral. The Collateral shall be released with respect to any outstanding Notes upon the earlier to occur of (i) the Notes having an outstanding principal amount of less than US\$28,750,000 or (ii) the Trustee has received consents to such release from Holders of at least 75% of the outstanding principal amount of the Notes and notified each Collateral Agent of the same. The Company shall deliver to the applicable Collateral Agent an Officer's Certificate or such other evidence, in form and substance reasonably acceptable to the Collateral Agent, certifying that the requirements in (i) or (ii) above have been met. The Collateral Agent, after receiving such Officer's Certificate or such other evidence of the Company, shall deliver to the Company a notice stating that the Trustee, on behalf of the Holders, disclaims and gives up any and all rights it has in or to the Collateral which is the subject of the Collateral Documents to which it is a party (other than with respect to funds held by the Trustee pursuant to Article 8), and any rights it has under the Collateral Documents (other than in respect of any indemnities which are expressed to survive the termination of any Collateral Documents), and upon delivery to the Company of such notice, the Trustee shall be deemed not to hold a Lien in the Collateral and each Collateral Agent shall release the Collateral (other than funds held by the Trustee pursuant to Article 8) from such Liens at the Company's sole cost and expense and, upon written request by the Company, shall promptly execute and deliver such documents as the Company shall reasonably request to effectuate the release of such Liens.

Section 11.07. Release upon Termination of the Company's Obligations. In the event that the Company delivers to a Collateral Agent, in form and substance reasonably acceptable to it, an Officer's Certificate certifying that all the obligations under this Indenture, the Notes and the Collateral Documents have been satisfied and discharged by the payment in full of the Company's obligations under the Notes, this Indenture and the Collateral Documents, and all such obligations have been so satisfied, upon receipt of a written instruction from the Trustee (acting on the direction of the Holders holding a majority in principal amount of the Notes outstanding) to do so, that Collateral Agent shall deliver to the Company a notice stating that the Collateral Agent, on behalf of the Holders, disclaims and gives up any and all rights it has in or to the Collateral held by it (other than with respect to funds held by the Trustee pursuant to Article 8), and any rights it has under the Collateral Documents applicable to it (other than in respect of any indemnities which are expressed to survive the termination of any Collateral Documents), and upon delivery to the Company of such notice, the Trustee shall be deemed not to hold a Lien in that Collateral and such Collateral Agent shall release such Collateral (other than funds held by the Trustee pursuant to Article 8) from such Liens at the Company's sole cost and expense and, upon written request by the Company, shall promptly execute and deliver such documents as the Company shall reasonably request to effectuate the release of such Liens.

Section 11.08. Amendments and Modifications to the Collateral Documents. Each Collateral Agent may agree without notice to any Holder but with the written consent of the Holders of at least a majority in aggregate principal amount of the outstanding Notes to amend, modify or waive any term or provision under any of the Collateral Documents; *provided* that except as set forth in Section 9.02(b) the consent of each Holder affected thereby shall be required to the extent any such modification, amendment or waiver would terminate, or deprive any Holder of the benefit of, the Lien of the Collateral Documents on Collateral with an aggregate fair market value as described in Section 9.02(b).

## ARTICLE 12 GUARANTEES

Section 12.01. Subsidiary Guarantees. Subject to the provisions of this Article 12, each Subsidiary Guarantor hereby fully, unconditionally and irrevocably Guarantees, jointly and severally with each other Subsidiary Guarantor, to each Holder and to the Trustee and its successors and assigns, in each case as primary obligors and not merely as surety and with respect to all such obligations howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, due or to become due, (a) the full and punctual payment of principal of and interest on the Notes when due, whether at maturity, by acceleration, by redemption or otherwise, and all other monetary obligations of the Company under this Indenture and the Notes and (b) the full and punctual performance within applicable grace periods of all other obligations of the Company under this Indenture and the Notes (all the foregoing being hereinafter collectively called the "Guaranteed Obligations"). Each Subsidiary Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from such Subsidiary Guarantor and that such Subsidiary Guarantor will remain bound under this Article 12 notwithstanding any extension or renewal of any Guaranteed Obligation.



Each Subsidiary Guarantor further, jointly and severally, agrees that its Subsidiary Guarantee constitutes an absolute and unconditional and continuing guarantee. Each Subsidiary Guarantor hereby waives, to the extent permitted by law:

- (i) any claim as to the legality, validity, regularity or enforceability of this Indenture, the Notes or any other agreement;
- (ii) any claim as to the lack of authority of the Company to execute or deliver this Indenture, the Notes or any other agreement;
- (iii) diligence, presentation to, demand of payment from and protest to the Company of any of the Obligations and notice of protest for nonpayment;
- (iv) the occurrence of any default or event of default under this Indenture, the Notes or any other agreement;
- (v) notice of any default or event of default under this Indenture, the Notes or any other agreement;
- (vi) the failure of the Trustee or any Holder to assert any claim or demand or to enforce any right or remedy against the Company or any other Person under this Indenture, the Notes or any other agreement;
- (vii) any extension or renewal of the Guaranteed Obligations, this Indenture, the Notes or any other agreement;
- (viii) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Notes or any other agreement;
- (x) the existence of any bankruptcy, insolvency, reorganization or similar proceedings involving the Company;
- (xi) any setoff, counterclaim, recoupment, termination or defense of any kind or nature which may be available to or asserted by any Subsidiary Guarantor or the Company against the Holders or the Trustee;
- (xii) any impairment, taking, furnishing, exchange or release of, or failure to perfect or obtain protection of any security interest in, any collateral securing this Indenture and the Notes and any right to require that any resort be had by the Trustee or any Holder to any such collateral;
- (xiii) the failure of the Trustee or any Holder to exercise any right or remedy against any other Subsidiary Guarantor;
- (xiv) any change in the ownership of the Company;
- (xv) any change in the laws, rules or regulations of any jurisdiction;
- (xvi) any present or future action of any governmental authority or court amending, varying, reducing or otherwise affecting, or purporting to amend, vary, reduce or otherwise affect, any of the obligations of the Company under this Indenture or the Notes or of any Subsidiary Guarantor under its Subsidiary Guarantee; and
- (xvii) any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of each Subsidiary Guarantor or would otherwise operate as a discharge of such Subsidiary Guarantor as a matter of law or equity.

The Subsidiary Guarantors unconditionally and irrevocably waive any and all rights provided under Articles 333, sole paragraph, 366, 368, 821, 827, 830, 834, 835, 837, 838 and 839 of the Brazilian Civil Code and Articles 77 and 595 of the Brazilian Civil Procedure Code.

Each Subsidiary Guarantor further agrees that its Subsidiary Guarantee herein constitutes a guarantee of payment, performance and compliance when due (and not a guarantee of collection) and waives any right to require that any resort be had by any Holder or the Trustee to any security held for payment of the Guaranteed Obligations. Each Subsidiary Guarantor hereby acknowledges that this Indenture and each Subsidiary Guaranty shall be governed by the laws of the State of New York. Except as expressly set forth in Section 12.06, the obligations of each Subsidiary Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise.

Each Subsidiary Guarantor further agrees that its Subsidiary Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest on any Guaranteed Obligation is rescinded or must otherwise be restored by any Holder or the Trustee upon the bankruptcy or reorganization of the Company or otherwise. In furtherance of the foregoing and not in limitation of any other right which any Holder or the Trustee has at law or in equity against any Subsidiary Guarantor by virtue hereof, upon the failure of the Company to pay the principal of or interest on any Guaranteed Obligation when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, or to perform or comply with any other Guaranteed Obligation, each Subsidiary Guarantor hereby promises to and shall, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Holders or the Trustee an amount equal to the sum of (A) the unpaid amount of such Guaranteed Obligations then due and owing, (B) accrued and unpaid interest on such Guaranteed Obligations then due and owing (but only to the extent not prohibited by law) and (C) all other monetary Obligations of the Company to the Holders and the Trustee. Any delay by the Trustee in giving such written demand shall in no event affect any Subsidiary Guarantor's obligations under its Note Guarantee.

Each Subsidiary Guarantor agrees that, as between it, on the one hand, and the Holders and the Trustee, on the other hand, (i) the maturity of the Guaranteed Obligations Guaranteed hereby may be accelerated as provided in Article 6 for the purposes of such Subsidiary Guarantor's Subsidiary Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such Guaranteed Obligations as provided in Article 6, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by such Subsidiary Guarantor for the purposes of this Section 12.01. Each Subsidiary Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees) incurred by the Trustee, Collateral Agent or any Holder in enforcing any rights under this Section 12.01.

Section 12.02. Limitation on Liability. Any term or provision of this Indenture to the contrary notwithstanding, the obligations of each Subsidiary Guarantor hereunder will be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Subsidiary Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Subsidiary Guarantor in respect of the obligations of such other Subsidiary Guarantor under its Subsidiary Guarantee or pursuant to its contribution obligations under this Indenture, result in the obligations of such Subsidiary Guarantor under its Subsidiary Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal or state law.

Section 12.03. Successors and Assigns. This Article 12 shall be binding upon each Subsidiary Guarantor and its successors and assigns and shall enure to the benefit of the successors and assigns of the Trustee and the Holders and, in the event of any transfer or assignment of rights by any Holder or the Trustee, the rights and privileges conferred upon that party in this Indenture and in the Notes shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions of this Indenture.

Section 12.04. No Waiver. Neither a failure nor a delay on the part of either the Trustee or the Holders in exercising any right, power or privilege under this Article 12 shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights,

remedies and benefits of the Trustee and the Holders herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits which either may have under this Article 12 at law, in equity, by statute or otherwise.

Section 12.05. Modification. No modification, amendment or waiver of any provision of this Article 12, nor the consent to any departure by any Subsidiary Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Trustee, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on any Subsidiary Guarantor in any case shall entitle such Subsidiary Guarantor to any other or further notice or demand in the same, similar or other circumstances.

Section 12.06. Release of Subsidiary Guarantors. A Subsidiary Guarantor shall be deemed automatically and unconditionally released and discharged from all obligations under this Indenture without any further action required on the part of the Trustee or any Holder upon:

- (a) the sale (including any sale pursuant to any exercise of remedies by a holder of Indebtedness of the Company or of such Subsidiary Guarantor) or other disposition (including by way of consolidation or merger) of the Capital Stock of such Subsidiary Guarantor following which such Subsidiary Guarantor is no longer a direct or indirect Subsidiary of the Company;
- (b) the sale or disposition of all or substantially all the assets of such Subsidiary Guarantor (including by way of consolidation or merger); or
- (c) discharge of the Notes in accordance with Article 8;

*provided, however*, that in the case of clauses (a) and (b) above, (i) such sale or other disposition is made to a Person other than the Company or an Affiliate, (ii) such sale or disposition is otherwise permitted by this Indenture and (iii) such transaction does not result in a Default or Event of Default being in existence and continuing immediately thereafter. The Trustee shall execute and deliver at the sole expense of the Company an appropriate instrument or instruments, prepared by the Company, evidencing such release upon receipt of a written request of the Company accompanied by an Officers' Certificate and Opinion of Counsel certifying as to the compliance with this Section 12.06 and the other applicable provisions of this Indenture.

Section 12.07. Contribution. Each Subsidiary Guarantor that makes a payment under its Subsidiary Guarantee shall be entitled upon payment in full of all guaranteed obligations under this Indenture to a contribution from each other Subsidiary Guarantor in an amount equal to such other Subsidiary Guarantor's pro rata portion of such payment based on the respective net assets of all the Subsidiary Guarantors at the time of such payment determined in accordance with IFRS. The provisions of this Section 12.07 shall in no respect limit the obligations and liabilities of each Subsidiary Guarantor to the Trustee and the Holders and each Subsidiary Guarantor shall remain liable to the Trustee and the Holders for the full amount guaranteed by such Subsidiary Guarantor hereunder.

Section 12.08. No Subrogation. Each Subsidiary Guarantor agrees that it shall not be entitled to any right of subrogation in respect of any Guaranteed Obligations until payment in full in cash or Cash Equivalents of all Obligations. If any amount shall be paid to any Subsidiary Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid in full in cash or Cash Equivalents, such amount shall be held by such Subsidiary Guarantor in trust for the Trustee and the Holders, segregated from other funds of such Subsidiary Guarantor, and shall, forthwith upon receipt by such Subsidiary Guarantor, be turned over to the Trustee in the exact form received by such Subsidiary Guarantor (duly endorsed by such Subsidiary Guarantor to the Trustee, if required), to be applied against the Obligations.

Section 12.09. Additional Note Guarantees. The Company will cause any Person that shall become a Subsidiary (an "Additional Subsidiary Guarantor") to concurrently grant a guarantee (an "Additional Subsidiary Guarantee") of the Company's obligations under this Indenture and the Notes to the same extent that the Subsidiary Guarantors have guaranteed the Company's obligations under this Indenture and the Notes by

executing a Supplemental Indenture substantially in the form of Exhibit F; *provided, however*, that each Additional Subsidiary Guarantor will be automatically and unconditionally released and discharged from its obligations under such Additional Note Guarantee only in accordance with Section 12.06.

### ARTICLE 13 CONVERSION OF NOTES

Section 13.01. Conversion Privilege. Subject to the limitations on conversion set forth in paragraph 8 of the Notes, a Holder of a Note may convert the principal amount of such Note into shares of Common Stock issuable upon such conversion, (the “Conversion Shares”) at any time at a price of US\$0.1688 per Conversion Share, as may be adjusted in accordance with this Article 13 (the “Conversion Price”); *provided, however*, in case a Note or portion thereof is called for redemption, such conversion right in respect of the Note or portion so called shall expire at the close of business on the Business Day immediately prior to the redemption date, unless the Company defaults in making payment due upon redemption. The number of shares of Common Stock issuable upon conversion of a Note shall be determined by the Company by dividing the principal amount of the Note or portion thereof surrendered for conversion by the Conversion Price in effect on the Conversion Date.

A Holder may convert a portion of the principal amount of a Note if the portion is US\$1,000 or a multiple of US\$1,000. Provisions of this Indenture that apply to conversion of all of a Note also apply to conversion of a portion of a Note.

Section 13.02. Conversion Agent. The Company hereby appoints The Bank of New York Mellon, London Branch as Conversion Agent (the “Conversion Agent”), and the Conversion Agent agrees to be bound by the terms applicable to the Conversion Agent in this Indenture. In the event that the Conversion Agent resigns or is removed by the Holders of a majority of the outstanding principal amount of the Notes, the Company shall appoint a nationally recognized banking institution in Australia as a successor Conversion Agent.

Section 13.03. Conversion Procedure. To convert a Note a Holder must satisfy the requirements in paragraph 8 of the Notes and (i) complete and manually sign the conversion notice on the back of the Note and deliver such notice to the Conversion Agent, (ii) surrender the Note to the Conversion Agent, (iii) furnish appropriate endorsements and transfer documents if required by the Note Registrar or the Conversion Agent, (iv) pay any transfer or other tax, if required by Section 13.05 and (v) if the Note is held in book-entry form, complete and deliver to the Common Depositary appropriate instructions pursuant to the Common Depositary’s book-entry conversion programs. The date on which the Holder satisfies all those requirements is the conversion date (the “Conversion Date”). Notes surrendered for conversion during the period from the close of business on any Regular Record Date to the close of business on the Trading Day immediately prior to the next succeeding Interest Payment Date (the “Interest Period”) shall (except in the case of Notes or portions thereof which have been called for redemption on a Redemption Date within such Interest Period) be accompanied by payment in funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount of Notes being surrendered for conversion. The interest payment with respect to a Note surrendered for conversion during the Interest Period (except in the case of Notes or portions thereof which have been called for redemption on a Redemption Date within the Interest Period) shall be payable in cash on such Interest Payment Date to the Holder of such Notes at the close of business on such Regular Record Date notwithstanding the conversion of such Notes during such Interest Period.

As soon as practicable, but in no event more than five (5) Business Days, after the Conversion Date, the Company shall deliver to the Holder, through the Conversion Agent, confirmation from the Company’s share registry of the number of full shares of Common Stock issuable upon the conversion and cash in lieu of any fractional share determined pursuant to Section 13.04. The person in whose name the Common Stock is registered shall be treated as a stockholder of record on and after the Conversion Date; *provided, however*, that no surrender of a Note on any date when the stock transfer books of the Company shall be closed shall be effective to constitute the person or persons entitled to receive the shares of Common Stock upon such conversion as the record holder or holders of such shares of Common Stock on such date, but such surrender shall be effective to constitute the person or persons entitled to receive such shares of Common Stock as the record holder or holders thereof for all purposes at the close of business on the next succeeding day on which such stock transfer books are open; such conversion shall be at the Conversion Price in effect on the date that such Note shall have been surrendered for conversion, as if

the stock transfer books of the Company had not been closed. Upon conversion of a Note, such person shall no longer be a Holder of such Note.

No payment or adjustment will be made for dividends on or other distribution with respect to any Common Stock except as provided in this Article 13.

If the Holder converts more than one Note at the same time, the number of shares of Common Stock issuable upon the conversion shall be based on the total principal amount of the Notes converted.

Upon surrender of a Note that is converted in part, the Company shall execute, and the Trustee shall authenticate and deliver to the Holder, a new Note in an authorized denomination equal in principal amount to the unconverted portion of the Note surrendered.

If the last day on which a Note may be converted is a Legal Holiday in a place where a Conversion Agent is located, the Note may be surrendered to that Conversion Agent on the next succeeding day that it is not a Legal Holiday.

Notwithstanding anything to the contrary in this Indenture, a conversion notice, once submitted, shall be irrevocable unless the Company has consented in writing to a withdrawal and such consent is issued to the relevant holder with a copy to the Trustee and Conversion Agent.

Section 13.04. Fractional Shares. The Company will not issue a fractional share of Common Stock upon conversion of a Note. Instead, the Company will deliver cash for the current market value of the fractional share. The current market value of a fractional share shall be determined to the nearest 1/10,000th of a share by multiplying the last reported sale price (determined as set forth in the definition of Current Market Price), on the last Business Day prior to the Conversion Date, of a full share by the fractional amount and rounding the product to the nearest whole cent.

Section 13.05. Taxes on Conversion. If a Holder converts a Note, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of Common Stock upon the conversion. However, the Holder shall pay any such tax which is due because the Holder requests the shares to be issued in a name other than the Holder's name. The Conversion Agent may refuse to deliver evidence of the issue of the Common Stock in a name other than the Holder's name until the Conversion Agent receives a sum sufficient to pay any tax which will be due because the shares are to be issued in a name other than the Holder's name. Nothing herein shall preclude any tax withholding required by law or regulations.

Section 13.06. Company to Provide Stock. All shares of Common Stock delivered upon conversion of the Notes shall be newly issued shares, shall be duly and validly issued and fully paid and shall be free from preemptive rights and free of any Lien or adverse claim.

The Company will endeavor promptly to comply with all applicable Securities laws regulating the offer and delivery of shares of Common Stock upon conversion of Notes, if any, and if such Common Stock is then listed on a stock exchange, over-the-counter market or other market will endeavor promptly, if permitted by the rules of such exchange, over-the-counter market or other market, to list or cause to have quoted such shares of Common Stock on such exchange or in the over-the-counter market or such other market on which the Common Stock is then listed or quoted. The Company will ensure, while it is listed on ASX, that any Common Stock issued on conversion of Notes is freely tradeable.

Section 13.07. Adjustment for Change in Capital Stock. In case the Company shall (i) pay a dividend, or make a distribution, in shares of its Common Stock, on its Common Stock, (ii) subdivide its outstanding Common Stock into a greater number of shares, or (iii) combine its outstanding Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior thereto shall be adjusted so that the holder of any Note thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock of the Company which he would have owned or have been entitled to receive after the happening of any of the events described above had such Note been converted immediately prior to the happening of such event. If any dividend or

distribution of the type described in clause (i) above is not so paid or made, the Conversion Price shall again be adjusted to the Conversion Price which would then be in effect if such dividend or distribution had not been declared. An adjustment made pursuant to this Section 13.07 shall become effective immediately after the record date in the case of a dividend and shall become effective immediately after the effective date in the case of subdivision or combination.

Section 13.08. Adjustment for Rights Issue. In case the Company shall issue rights or warrants to all holders of its Common Stock entitling them (for a period expiring within 45 days after the record date mentioned below) to subscribe for Common Stock at a price per share less than the Current Market Price per share of Common Stock at the record date for the determination of stockholders entitled to receive such rights or warrants, the Conversion Price in effect immediately prior thereto shall be adjusted so that the same shall equal the Conversion Price determined by multiplying the Conversion Price in effect immediately prior to the date of issuance of such rights or warrants by a fraction of which the numerator shall be the number of shares of Common Stock outstanding on the date of issuance of such rights or warrants plus the number of shares which the aggregate offering price of the total number of shares so offered would purchase at such Current Market Price, and of which the denominator shall be the number of shares of Common Stock outstanding on the date of issuance of such rights or warrants plus the number of additional shares of Common Stock offered for subscription. Such adjustment shall be made successively whenever any such rights or warrants are issued, and shall become effective immediately after the opening of business on the day following the record date for the determination of the stockholders entitled to receive such rights or warrants. To the extent that shares of Common Stock are not issued after the expiration of such rights or warrants, the Conversion Price shall be readjusted to the Conversion Price which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights or warrants are not so issued, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such record date for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for shares of Common Stock at less than such Current Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights or warrants, the value of such consideration, if other than cash, to be determined by the Board of Directors.

Section 13.09. Adjustment for Other Distributions. (a) In case the Company shall distribute to all holders of its Common Stock (excluding any distribution in connection with the liquidation, dissolution or winding up of the Company, whether voluntary or involuntary) any shares of any class of capital stock of the Company (other than Common Stock) or evidences of its indebtedness or assets (other than cash) or rights or warrants to subscribe for any of its securities (excluding those referred to in Section 13.08 hereof) (any of the foregoing hereinafter in this Section 13.09(a) called the "Distributed Notes"), then, in each case, the Conversion Price shall be adjusted so that the same shall equal the Conversion Price determined by multiplying the Conversion Price in effect immediately prior to the date of such distribution by a fraction of which the numerator shall be the Current Market Price per share of the Common Stock on the record date mentioned below less the fair market value on such record date (as determined by the Board of Directors of the Company, whose determination shall be conclusive, and described in a certificate furnished to the Trustee) of the Distributed Notes so distributed applicable to one share of Common Stock, and the denominator shall be the Current Market Price per share of the Common Stock on such record date. Such adjustment shall become effective immediately after the record date for the determination of stockholders entitled to receive such distribution. Notwithstanding the foregoing, in the event the then fair market value (as so determined) of the portion of the Distributed Notes so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price of the Common Stock on the relevant record date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion the amount of Distributed Notes such Holder would have received had such Holder converted each Note on such record date. In the event that such distribution is not so paid or made, the Conversion Price shall again be adjusted to the Conversion Price which would then be in effect if such distribution had not been declared. If the Board of Director determines the fair market value of any distribution for purposes of this Section 13.09(a) by reference to the actual or when issued trading market for any Notes, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price of the Common Stock.

Notwithstanding the foregoing provisions of this Section 13.09(a), no adjustment shall be made thereunder for any distribution of Distributed Notes if the Company makes proper provision so that each Holder of a

Note who converts such Note (or any portion thereof) after the record date for such distribution shall be entitled to receive upon such conversion, in addition to the shares of Common Stock issuable upon such conversion, the amount and kind of Distributed Notes that such Holder would have been entitled to receive if such Holder had, immediately prior to such record date, converted such Note into Common Stock, *provided* that, with respect to any Distributed Notes that are convertible, exchangeable or exercisable, the foregoing provision shall only apply to the extent (and so long as) the Distributed Notes receivable upon conversion of such Note would be convertible, exchangeable or exercisable, as applicable, without any loss of rights or privileges for a period of at least 60 days following conversion of such Note.

(b) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock cash, then, in such case, unless the Company elects to reserve such cash for distribution to the holders of the Notes upon the conversion of the Notes so that any such holder converting Notes will receive upon such conversion, in addition to the shares of Common Stock to which such holder is entitled, the amount of cash which such holder would have received if such holder had, immediately prior to the record date for such distribution of cash, converted its Notes into Common Stock, the Conversion Price shall be decreased so that the same shall equal the Conversion Price determined by multiplying the Conversion Price in effect immediately prior to the record date by a fraction of which the numerator shall be the Current Market Price of the Common Stock on the record date less the amount of cash so distributed applicable to one share of Common Stock, and the denominator shall be such Current Market Price of the Common Stock, such decrease to be effective immediately prior to the opening of business on, the day following the record date; *provided, however*, that in the event the portion of the cash so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price of the Common Stock on the record date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion the amount of cash such holder would have received had such Holder converted each Note on the record date. If such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(c) In case a tender, exchange or buy-back offer made by the Company or any Subsidiary of the Company for all or any portion of the Common Stock shall expire and such tender, exchange or buyback offer shall involve the payment by the Company or such Subsidiary of consideration per share of Common Stock having a fair market value (as determined by the Board of Directors or, to the extent permitted by applicable law, a duly authorized committee thereof, whose determination shall be conclusive, and described in a resolution of the Board of Directors or such duly authorized committee thereof, as the case may be, at the last time (the "Expiration Time") acceptances may be given pursuant to such tender, exchange or buyback offer (as it shall have been amended)) that exceeds the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time, the Conversion Price shall be decreased so that the same shall equal the Conversion Price determined by multiplying the Conversion Price in effect immediately prior to the Expiration Time by a fraction of which the numerator shall be the number of shares of Common Stock outstanding (including any tendered, exchanged or bought back shares) on the Expiration Time multiplied by the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time, and the denominator shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender, exchange or buyback offer) of all shares validly tendered, exchanged or accepted into the buy-back and not withdrawn as of the Expiration Time (the shares deemed so accepted up to any such maximum, being referred to as the "Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) on the Expiration Time and the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time, such decrease to become effective immediately prior to the opening of business on the day following the Expiration Time. In the event that the Company is obligated to purchase shares pursuant to any such tender, exchange or buyback offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would then be effect if such tender, exchange or buyback offer had not been made.

Section 13.10. When Adjustment May be Deferred. No adjustment in the Conversion Price need be made unless the adjustment (taken together with any other adjustments deferred pursuant to this Section 13.10 and that have not yet been implemented) would require an increase or decrease of at least 1.0% in the Conversion

Price. Any adjustments that are not made shall be carried forward and taken into account in any subsequent adjustment.

All calculations under this Article 13 shall be made to the nearest cent or to the nearest 1/10,000th of a share, as the case may be.

Section 13.11. When no Adjustment Required. No adjustment need be made for rights to purchase Common Stock pursuant to a Company plan for reinvestment of dividends or interest.

To the extent the Notes become convertible into cash, assets, property or Notes (other than capital stock of the Company), no adjustment need be made thereafter as to the cash, assets, property or such Notes. Interest will not accrue on the cash.

Section 13.12. Notice of Adjustment.

Whenever the Conversion Price is adjusted, the Company shall promptly mail to Holders a notice of the adjustment. The Company shall file with the Trustee and the Conversion Agent such notice. The certificate shall, absent manifest error, be conclusive evidence that the adjustment is correct. Neither the Trustee nor any Conversion Agent shall be under any duty or responsibility with respect to any such certificate except to exhibit the same to any Holder desiring inspection thereof.

Section 13.13. Voluntary Decrease.

The Company may make such decreases in the Conversion Price, in addition to those required by Section 13.07, Section 13.08 or Section 13.09, as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes. Also, to the extent permitted by applicable law, the Company from time to time may decrease the Conversion Price by any amount for any period of time if the period is at least 20 business days, the decrease is irrevocable during the period and the Board of Directors shall have made a determination that such decrease would be in the best interests of the Company, which determination shall be conclusive. Whenever the Conversion Price is so decreased, the Company shall mail to Holders and file with the Trustee and the Conversion Agent a notice of the decrease. The Company shall mail the notice at least 15 days before the date the decreased Conversion Price takes effect. The notice shall state the decreased Conversion Price and the period it will be in effect.

Section 13.14. Effect of Reclassification, Consolidation, Merger, Takeover Bid or Scheme of Arrangement or Sale.

If any of the following events occur, namely (i) any reclassification or change of outstanding shares of Common Stock (other than a change as a result of a subdivision or combination), (ii) any takeover bid or scheme of arrangement, consolidation, merger or combination of the Company with another corporation, as a result of which holders of Common Stock shall be entitled to receive stock, Notes or other property or assets (including cash) with respect to or in exchange for such Common Stock, or (iii) any sale or conveyance of the properties and assets of the Company as, or substantially as, an entirety to any other corporation as a result of which holders of Common Stock shall be entitled to receive stock, Notes or other property or assets (including cash) with respect to or in exchange for such Common Stock, then the Company or the successor or purchasing corporation, as the case may be, shall execute with the Trustee a supplemental indenture providing that each Note shall be convertible into the kind and amount of shares of stock and other Notes or property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance by a holder of a number of shares of Common Stock issuable upon conversion of such Notes immediately prior to such takeover bid or scheme of arrangement, reclassification, change, consolidation, merger, combination, sale or conveyance. Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article.



The Company shall cause notice of the execution of such supplemental indenture to be mailed to each holder of Notes at his address appearing on the Note register provided for in Section 2.04 of this Indenture.

The above provisions of this Section shall similarly apply to successive reclassifications, consolidations, mergers, combinations, and sales.

If this Section applies, neither Section 13.08 nor Section 13.09 applies.

**Section 13.15. Company Determination Final.**

Any determination that the Company or the Board of Directors must make pursuant to Section 13.04, Section 13.08, Section 13.09, Section 13.10, Section 13.11, and Section 13.17 is conclusive.

**Section 13.16. Trustee's Adjustment Disclaimer.**

The Trustee has no duty to determine when an adjustment under this Article 13 should be made, how it should be made or what it should be. The Trustee shall not be accountable for and makes no representation as to the validity or value of any Notes or assets issued upon conversion of Notes. The Trustee shall not be responsible for the Company's failure to comply with this Article 13. Each Conversion Agent shall have the same protection under this Section 13.16 as the Trustee.

**Section 13.17. Simultaneous Adjustment.**

In the event that this Article 13 requires adjustments to the Conversion Price under more than one of Section 13.07, Section 13.08, Section 13.09(a) or Section 13.09(b), and the record dates for the distributions giving rise to such adjustments shall occur on the same date, then such adjustments shall be made by applying, first, the provisions of Section 13.09(a), second, the provisions of Section 13.09(b), third the provisions of Section 13.07 and, fourth, the provisions of Section 13.08.

**Section 13.18. Successive Adjustments.**

After an adjustment to the Conversion Price under this Article 13, any subsequent event requiring an adjustment under this Article 13 shall cause an adjustment to the Conversion Price as so adjusted.

**Section 13.19. Rights Issued in Respect of Common Stock Issued Upon Conversion.**

Each share of Common Stock issued upon conversion of Notes pursuant to this Article 13 shall be entitled to receive the appropriate number of Rights (as defined below), if any, as provided by and subject to the terms of the agreement governing such Rights (the "**Rights Agreement**") as in effect at the time of such conversion. If the Rights are separated from the Common Stock in accordance with the provisions of the Rights Agreement such that the Holders of Notes would thereafter not be entitled to receive any such Rights in respect to the Common Stock issuable upon conversion of such Notes, the Conversion Price will be adjusted as provided in Section 13.09(a) on the separation date; *provided* that if such Rights expire, terminate or are redeemed by the Company, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such separation had not occurred. In lieu of any such adjustment, the Company may amend the Rights Agreement to provide that upon conversion of the Notes the Holders will receive, in addition to the Common Stock issuable upon such conversion, the Rights which would have attached to such shares of Common Stock if the Rights had not become separated from the Common Stock pursuant to the provisions of the Rights Agreement.

Rights or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for shares of the Company's capital stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("**Trigger Event**"):

- (a) are deemed to be transferred with such shares of Common Stock,

- (b) are not exercisable, and
- (c) are also issued in respect of future issuances of Common Stock,

("Rights") shall not be deemed distributed for the purposes of Section 13.09(a) until the occurrence of the earliest Trigger Event. In addition, in the event of any distribution of rights or warrants, or any Trigger Event with respect thereto, that shall have resulted in an adjustment to the Conversion Price under Section 13.09(a), (1) in the case of any such rights or warrants which shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Price shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of any such rights or warrants all of which shall have expired without exercise by any holder thereof, the Conversion Price shall be readjusted as if such issuance had not occurred.

#### Section 13.20. General Considerations.

(a) Whenever successive adjustments to the Conversion Price are called for pursuant to this Article 13, such adjustments shall be made to the Current Market Price as may be necessary or appropriate to effectuate the intent of this Article and to avoid unjust or inequitable results as determined in good faith by the Board of Directors.

(b) The Company may make such variations to this Indenture as are required to ensure that the Notes can be treated in accordance with the ASX Listing Rules and otherwise comply with the requirements of the ASX Listing Rules; *provided* that the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such variation to this Indenture is required to ensure that the Notes can be treated in accordance with the ASX Listing Rules and otherwise comply with the requirements of the ASX Listing Rules.

### ARTICLE 14 MISCELLANEOUS PROVISIONS

#### Section 14.01. Notices.

Any notice or communication by the Company or the Trustee to the others is duly given if in writing and delivered in Person to the others' address:

If to the Company or any Subsidiary Guarantor:

Mirabela Nickel Limited  
Level 21, Allendale Square  
77 St. Georges Terrace  
Perth, Western Australia, 6000  
Australia  
Attention: Mr. Christiaan Els  
Facsimile: +61 8 9324 2171  
Email: ChrisE@mirabela.com.au

If to the Trustee:

The Bank of New York Mellon, London Branch  
40th Floor, One Canada Square  
London E14 5AL  
United Kingdom

Fax: +44 207 964 4637  
Attention: Corporate Trust Administration  
Email:

With a copy to:  
Level 2, 35 Clarence Street  
Sydney NSW 2000  
Australia  
Attn: Relationship Management Group Global Client Services

If to the Note Registrar:

The Bank of New York Mellon (Luxembourg) S.A.  
Vertigo Building, Polaris  
2-4 rue Eugène Ruppert  
L-2453 Luxembourg  
Fax: +352 24524204  
Attention: Mirabela Nickel Limited  
Email:

If to the Australian Security Trustee:

AET Structured finance Services Pty Limited  
Level 22, 207 Kent Street, Sydney NSW 2000 Australia  
Attention: Corporate Trust  
Facsimile: +61 2 9028 5942  
Email: sfas@aetlimited.com.au

If to the Brazilian Collateral Agent:

Deutsche Bank S.A. - Banco Alemão  
Avenida Brigadeiro Faria Lima, 3900, 9º, 13º,  
14º e 15º andares  
04538 132, São Paulo, SP, Brazil  
Attn: Trust and Agency Services –Client Services  
Facsimile: +55 11 2113 5122  
Email: TAS.Brasil@list.db.com

Any notice or communication may be delivered via email (if, with respect to the Brazilian Collateral Agent, by attaching a scanned copy of such notice or communication duly signed), or via first class mail (registered or certified, return receipt requested), facsimile or overnight air courier guaranteeing next day delivery (or next most expedient delivery if overnight delivery is not possible). The Company, any Subsidiary Guarantor or the Trustee, by notice to the others may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail or with a courier, postage prepaid, if mailed or if sent by air courier not guaranteeing overnight delivery; when receipt acknowledged, if sent by facsimile transmission; the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery; and (if by email) when the relevant receipt of such communication being read is given, or where no read receipt is requested by the sender, at the time of sending, provided that no delivery failure notification is received by the sender within 24 hours of sending such communication.

Any notice or communication to a Holder will be mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery (or next most expedient delivery if overnight delivery is not possible) to its address shown on the register kept by the Note Registrar or will be delivered in accordance with the applicable rules and procedures of Euroclear or Clearstream, Luxembourg, as the case may be. Any such notice or communication will be deemed to have been duly given when so mailed or, if delivered in accordance with the applicable rules and procedures of Euroclear or Clearstream, Luxembourg, as the case may be, on the day such notice is so delivered. Failure to mail a notice or communication to a Holder or any defect in it will not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Company mails a notice or communication to Holders, it will mail a copy to the Trustee and each Agent at the same time.

For so long as any of the Notes are represented by Global Notes, notices required to be published may be given by delivery of the relevant notice to Euroclear or Clearstream, Luxembourg (as the case may be).

Each of the Trustee and the Note Registrar may rely upon and comply with instructions and directions sent by email, facsimile and other similar unsecured electronic methods ("Electronic Methods") by persons reasonably believed by it to be authorized to give instructions and directions on behalf of any other party to this Indenture. Except with respect to funds transfers, each of the Trustee and the Note Registrar shall have no duty or obligation to verify or confirm that the person who sent such instructions or directions is, in fact, a person authorized to give instructions or directions on behalf of such party (other than to verify that the signature on a facsimile is the signature of a person authorized to give instructions and directions on behalf of such party) and shall have no liability for any losses, liabilities, costs or expenses incurred or sustained by such party as a result of such reliance upon or compliance with such instructions or directions. Each other party agrees to assume all risks arising out of the use of Electronic Methods to submit instructions and directions to the Trustee or the Note Registrar, including without limitation the risk of the Trustee or the Note Registrar acting on unauthorized instructions, and the risk of interception and misuse by third parties. Each other party agrees that each indemnity set out in Section 7.06 (Compensation and Indemnity) shall apply in respect of any loss or liability suffered by the Trustee or the Note Registrar as a result of acting upon instructions and directions sent by Electronic Methods.

#### Section 14.02. Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

- (1) an Officers' Certificate (which must include the statements set forth in Section 14.03 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and
- (2) except with respect to the authentication and delivery of the Notes on the Issue Date, an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 14.03 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied; *provided* that such Opinion of Counsel shall be furnished to the Trustee with respect to the authentication and delivery of any Additional Notes.

#### Section 14.03. Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture must include:

- (1) a statement that the Person making such certificate or opinion has read such covenant or condition;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been satisfied;
- (4) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

**Section 14.04. Rules by Trustee and Agents.**

The Trustee may make reasonable rules for action by, or at a meeting of, Holders. The Note Registrar, Conversion Agent, Collateral Agent or Paying Agent may make reasonable rules and set reasonable requirements for their functions.

**Section 14.05. No Personal Liability of Directors, Officers, Employees and Stockholders.**

No Deed Administrator, director, officer, employee, incorporator or stockholder of the Company or the Subsidiary Guarantors, as such, will have any liability for any obligations of the Company under the Notes, this Indenture or any Subsidiary Guarantee or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. This waiver and release is part of the consideration for issuance of the Notes.

**Section 14.06. Governing Law, Etc.**

(a) THIS INDENTURE (INCLUDING EACH NOTE GUARANTEE) AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR EACH NOTE GUARANTEE OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

(b) Each of the Company and the Subsidiary Guarantors hereby:

- (i) agrees that any suit, action or proceeding against it arising out of or relating to this Indenture (including the Note Guarantees) or the Notes, as the case may be, may be instituted in any Federal or state court sitting in The City of New York and in the courts of its own corporate domicile, in respect of actions brought against the relevant party as a defendant,
- (ii) waives to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding, and any claim that any suit, action or proceeding in such a court has been brought in an inconvenient forum,
- (iii) irrevocably submits to the non-exclusive jurisdiction of such courts in any suit, action or proceeding and waives the right to challenge such submission in any other jurisdiction that it may be entitled by reason of its present or future domicile or other reason,
- (iv) agrees that final judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding may be enforced in the courts of the jurisdiction of which it is subject by a suit upon judgment, and

(v) agrees that service of process by mail to the addresses specified herein shall constitute personal service of such process on it in any such suit, action or proceeding.

(c) The Company and the Subsidiary Guarantors have appointed CT Corporation System as their authorized agent (the "Authorized Agent") upon whom all writs, process and summonses may be served in any suit, action or proceeding arising out of or based upon this Indenture or the Notes which may be instituted in any state or federal court in The City of New York, New York. The Company and the Subsidiary Guarantors hereby represent and warrant that the Authorized Agent has accepted such appointment and has agreed to act as said agent for service of process, and the Company and the Subsidiary Guarantors agree to take any and all action, including the filing of any and all documents, that may be necessary to continue each such appointment in full force and effect as aforesaid so long as the Notes remain outstanding. The Company and the Subsidiary Guarantors agree that the appointment of the Authorized Agent shall be irrevocable so long as any of the Notes remain outstanding or until the irrevocable appointment by the Company and the Subsidiary Guarantors of a successor agent in The City of New York, New York as each of their authorized agent for such purpose and the acceptance of such appointment by such successor. Service of process upon the Authorized Agent shall be deemed, in every respect, effective service of process upon the Company and the Subsidiary Guarantors.

(d) To the extent that any of the Company and the Subsidiary Guarantors have or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service or notice, attachment in aid or otherwise) with respect to itself or any of its property, the Company and the Subsidiary Guarantors hereby irrevocably waive and agree not to plead or claim such immunity in respect of their obligations under this Indenture, the Collateral Documents or the Notes.

(e) Nothing in this Section 14.06 shall affect the right of the Trustee or any Holder of the Notes to serve process in any other manner permitted by law.

**Section 14.07. No Adverse Interpretation of Other Agreements.**

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

**Section 14.08. Successors.**

All agreements of the Company and each Subsidiary Guarantor in this Indenture and the Notes shall bind their respective successors. All agreements of the Trustee in this Indenture shall bind its successors.

**Section 14.09. Severability.**

In case any provision in this Indenture or in the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Section 14.10. Counterpart Originals.**

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

**Section 14.11. Table of Contents, Headings, etc.**

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

[Signatures on following pages]



IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first written above.

**MIRABELA NICKEL LIMITED** (subject to deed of company arrangement)

By: \_\_\_\_\_  
Name:  
Title: In his capacity as joint and several deed administrator



**MIRABELA MINERAÇÃO DO BRASIL LTDA., as  
Subsidiary Guarantor**

By: \_\_\_\_\_  
Name:  
Title:

[CONVERTIBLE NOTES INDENTURE]

**MIRABELA INVESTMENTS PTY LIMITED, as  
Subsidiary Guarantor**

By: \_\_\_\_\_  
Name:  
Title:

[CONVERTIBLE NOTES INDENTURE]

**THE BANK OF NEW YORK MELLON, LONDON  
BRANCH as Trustee, Paying Agent, Transfer Agent and  
Conversion Agent**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**THE BANK OF NEW YORK MELLON  
(LUXEMBOURG) S.A., as Note Registrar**

By: \_\_\_\_\_  
Name:  
Title:

[CONVERTIBLE NOTES INDENTURE]

**AET STRUCTURED FINANCE SERVICES PTY  
LIMITED, as Australian Security Trustee**

By: \_\_\_\_\_  
Name:  
Title:

[CONVERTIBLE NOTES INDENTURE]

**DEUTSCHE BANK S.A. – BANCO ALEMÃO, as  
Brazilian Collateral Agent**

By: \_\_\_\_\_  
Name:  
Title:

Witness:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

[CONVERTIBLE NOTES INDENTURE]

## EXHIBIT A

### FORM OF NOTE

*Include the following legend on all Global Notes:*

"THIS IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE REFERRED TO HEREINAFTER AND IS REGISTERED IN THE NAME OF THE COMMON DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR A NOMINEE THEREOF. THIS GLOBAL NOTE MAY NOT BE EXCHANGEABLE IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS GLOBAL NOTE IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN THE COMMON DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE COMMON DEPOSITARY TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF THE NOMINEE FOR THE COMMON DEPOSITARY OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE COMMON DEPOSITARY (AND ANY PAYMENT IS MADE TO THE COMMON DEPOSITARY OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE COMMON DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, THE NOMINEE FOR THE COMMON DEPOSITARY, HAS AN INTEREST HEREIN.

*Include the following Private Placement Legend on all Notes that are Private Placement Global Notes:*

"THE NOTES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (A) (1) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (3) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT (IF AVAILABLE) OR (4) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION" AND "UNITED STATES" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT.

THE FOREGOING LEGEND WILL ONLY BE REMOVED AT THE OPTION OF THE ISSUER."

*Include the following legend on all Regulation S Global Notes:*

"THE NOTES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, ANY U.S. PERSON (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT) IN THE ABSENCE OF SUCH REGISTRATION UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION AND IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY OTHER APPLICABLE JURISDICTION.

THE FOREGOING LEGEND MAY BE REMOVED FROM THIS NOTE AFTER 40 DAYS BEGINNING ON AND INCLUDING THE LATER OF (A) THE DATE ON WHICH THE NOTES ARE OFFERED TO PERSONS OTHER THAN DISTRIBUTORS (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT) AND (B) THE ORIGINAL ISSUE DATE OF THE NOTES.

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE NOTE REGISTRAR SUCH OPINIONS OF COUNSEL, CERTIFICATES AND/OR OTHER INFORMATION AS IT MAY REASONABLY REQUIRE IN FORM REASONABLY SATISFACTORY TO IT AS PROVIDED FOR IN THE INDENTURE TO CONFIRM THAT THE TRANSFER COMPLIED WITH THE FOREGOING RESTRICTIONS AS PROVIDED FOR IN THE INDENTURE."

**FORM OF FACE OF NOTE**

*[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]*

*[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]*

*[Insert the Regulation S Global Note Legend, if applicable pursuant to the provisions of the Indenture]*

**[REGULATION S/RULE 144A]**

ISIN NO.	Rule 144A Global Notes: [_____]
	Regulation S Global Notes: [_____]
Common Code NO.	Rule 144A Global Notes: [_____]
	Regulation S Global Notes: [_____]

*[If the Note is a Global Note include the following two lines:  
as revised by the Schedule of Increases and  
Decreases in Global Note attached hereto]*

**9.5% Senior Convertible Secured Notes due 2019**

No. \_\_\_\_\_

U.S. \$ \_\_\_\_\_

**MIRABELA NICKEL LIMITED**

Mirabela Nickel Limited (the "Company") promises to pay to [\_\_\_\_\_] or its registered assigns, the principal sum of [\_\_\_\_\_] U.S. Dollars on [•], 2019.

Interest Payment Dates: \_\_\_\_\_ and \_\_\_\_\_

Regular Record Dates: \_\_\_\_\_ and \_\_\_\_\_

Dated: \_\_\_\_\_



IN WITNESS WHEREOF, the Company has caused this Note to be signed by its duly authorized signatories.

**SIGNED** for and on behalf of )  
**MIRABELA NICKEL LIMITED** )  
**(ABN 23 108 161 593)** )  
by authority of its directors in accordance )  
with section 127(1) of the Corporations )  
Act

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Print Name of Director

\_\_\_\_\_  
Print Name of Director/Secretary

**Certificate of Authentication**

This is one of the 9.5% Senior Secured Convertible Notes due 2019 referred to in the within-mentioned Indenture.

Dated:

THE BANK OF NEW YORK MELLON, LONDON  
BRANCH as Trustee

By: \_\_\_\_\_  
Authorized Signatory

## FORM OF REVERSE OF NOTE

### 9.5% Senior Convertible Secured Notes due 2019

#### 1. Indenture

Mirabela Nickel Limited (the “Company”), (ABN 23 108 161 593), a company organized in Australia, issued the Notes under an Indenture dated as of \_\_\_\_\_, 2014 (the “Indenture”), between the Company, the Subsidiary Guarantors, the Trustee, the Note Registrar and the Collateral Agents. Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of those terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture will govern and be controlling. The Notes are senior obligations of the Company.

#### 2. Interest

The Company promises to pay interest on the aggregate principal amount of this Note at a rate of 9.5% per annum in the manner set forth in the Indenture and the face of this Note. Interest on the Notes for each Interest Payment Date shall be capitalized by the Company and added to the principal amount of the Notes (the “Additional PIK Principal”) semi-annually in arrears.

Additional PIK Principal will be considered principal for all purposes, and without limiting the foregoing, the Additional PIK Principal of the Notes will bear interest at the rate then applicable to the Notes, beginning on the date such interest is paid in kind and added to the principal amount thereof.

Notwithstanding the foregoing, the payment of accrued interest in connection with any redemption of Notes shall be made solely in cash.

Interest will be payable in arrears semi-annually (to the Holders of record of the Notes on the Regular Record Date (whether or not a Business Day) immediately preceding the applicable Interest Payment Date) each Interest Payment Date, commencing on \_\_\_\_\_, 2014.

Interest on this Note will accrue from the most recent date to which interest has been paid on this Note (or, if there is no existing default in the payment of interest and if this Note is authenticated between a Regular Record Date and the next Interest Payment Date, from such Interest Payment Date) or, if no interest has been paid, from \_\_\_\_\_, 2014. Interest will be computed on the basis of a 360-day year of twelve 30-day months. If the due date for payment of any amount in respect of principal or interest on any of the Notes is not a Business Day, the Holder thereof shall not be entitled to payment of the amount due until the next succeeding Business Day and shall not be entitled to any further interest or other payment as a result of any such delay.

#### 3. Method of Payment

Subject to the terms and conditions of the Indenture, the Company will pay interest on the Notes, if any, to the Persons who are registered Holders at the close of business on the Redemption Date, Tax Redemption Date, Change of Control Payment Date or Stated Maturity, as the case may be. Holders must surrender Notes to a Paying Agent to collect such payments in respect of the Notes. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts. However, the Company may make such cash payments by check mailed to the address of, or by wire transfer to the account of, the person entitled to such payment.

#### 4. Paying Agent, Conversion Agent and Note Registrar

Initially, the Trustee will act as Paying Agent, Transfer Agent and Conversion Agent. The Bank of New York Mellon (Luxembourg) S.A. will act as Note Registrar. The Company may appoint and change any Paying Agent, Conversion Agent, Transfer Agent, Note Registrar or co-Note Registrar without notice, other than

notice to the Trustee. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Conversion Agent, Transfer Agent, Note Registrar or co-Note Registrar.

#### 5. Redemption at the Option of the Company

Prior to the second anniversary of the original issuance of the Notes, the Notes will not be redeemable at the option of the Company. On or after \_\_\_\_\_, 2017, the Company may redeem all or, from time to time, a part of the Notes upon not less than 30 nor more than 60 days' notice to the registered holders at the following redemption prices (expressed as a percentage of principal amount of the Notes to be redeemed), plus accrued and unpaid interest on the Notes, if any, up to but excluding the applicable Redemption Date, if redeemed during the twelve-month period beginning on \_\_\_\_\_ of the years indicated below:

Year	Percentage
2017.....	106.75%
2018 and thereafter.....	100.00%

No sinking fund is provided for the Notes.

Notice of redemption at the option of the Company will be mailed at least 30 days but not more than 60 days before the Redemption Date to each Holder of Notes to be redeemed at the Holder's registered address. If money sufficient to pay the Redemption Price, together with accrued interest to, but excluding, the Redemption Date, of all Notes (or portions thereof) to be redeemed on the Redemption Date is deposited with the Paying Agent prior to or on the Redemption Date, on and after such date interest ceases to accrue on such Notes or portions thereof. Notes in denominations larger than US\$250,000 of principal amount may be redeemed in part but only in multiples of US\$1,000 of principal amount in excess thereof.

#### 6. Redemption for Changes in Withholding Taxes

If the Board of Directors of the Company determines in good faith that the Company or a Subsidiary Guarantor has become obligated or on the occasion of the next Interest Payment Date in respect of the Notes, will be obligated to pay Additional Amounts and the payment obligation cannot be avoided by the Company or a Subsidiary Guarantor taking reasonable measures available to it (including making payment through a paying agent located in another jurisdiction), as a result of any change in the laws of Australia or any other Relevant Taxing Jurisdiction affecting taxation, or any change in the existing official position regarding the application, administration or interpretation of such laws, regulations or rulings (including a holding, judgment or order by a court of competent jurisdiction) as of \_\_\_\_\_, 2014, The Company may, at its option, redeem all, but not less than all, of the then outstanding Notes at any time upon giving prior written notice to the Trustee and giving not less than 30 nor more than 60 days' notice to the Holders (which notice shall be irrevocable), at a redemption price equal to 100% of the aggregate principal amount thereof, plus accrued and unpaid interest and premium, if any, thereon to the date fixed by the Company for redemption (a "Tax Redemption Date") and all Additional Amounts, if any, that will become due on the Tax Redemption Date as a result of such redemption or otherwise (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date).

The notice of redemption may not be given earlier than 60 days prior to the earliest date on which the Company or any Subsidiary Guarantor, as the case may be, would be obligated to pay Additional Amounts if a payment in respect of the Notes were then due. Prior to the publication or, where relevant, mailing of any notice of redemption of the Notes pursuant to the foregoing, the Company will deliver to the Trustee (1) an Officers' Certificate stating that the Company is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the right of the Company to so redeem have occurred and (2) an Opinion of Counsel or written advice of a qualified tax expert, such counsel or tax expert being from an internationally recognized law or accounting firm, that the Company has or will become obliged to pay Additional Amounts as a result of the circumstances referred to in clause (1) or (2) in the preceding paragraph.

## 7. Repurchase Upon a Change of Control at the Option of the Holders

Upon the occurrence of a Change of Control, each Holder of Notes will have the right to require that the Company purchase all or a portion (in integral multiples of US\$1,000, *provided* that the remaining portion of such Holder's Note will not be less than US\$1,000) of such Holder's Notes at a purchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest through the Change of Control Payment Date including any Additional Amounts payable with respect thereto. Within 60 days following the date upon which the Change of Control occurred, the Company must make a Change of Control Offer pursuant to a Change of Control Notice, which shall be given in accordance with Section 3.09 of the Indenture to each record Holder as shown on the Note Register, with a copy to the Trustee. As more fully described in the Indenture, the Change of Control Notice shall state, among other things, the Change of Control Payment Date, which must be no earlier than 30 days nor later than 60 days from the date the notice is given, other than as may be required by applicable law.

## 8. Conversion

Subject to the next two succeeding sentences, a Holder of a Note may convert the principal amount of such Note into Common Stock of the Company issuable upon conversion (the "Conversion Shares") at any time after issuance and before the close of business on \_\_\_\_\_, 2019. If the Note is called for redemption, the Holder may convert it at any time before the close of the last Business Day immediately prior to the Redemption Date. In the event the Note is surrendered for conversion during the period from the close of business on any Regular Record Date to the close of business on the Trading Day immediately prior to the next succeeding Interest Payment Date (the "Interest Period") must (except in the case of Notes or portions thereof which have been called for redemption on a Redemption Date within such Interest Period) be accompanied by payment in funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount of Notes being surrendered for conversion. The interest payment with respect to a Note surrendered for conversion during the Interest Period (except in the case of Notes or portions thereof which have been called for redemption on a Redemption Date within the Interest Period) must be payable in cash on such Interest Payment Date to the Holder of such Notes at the close of business on such Regular Record Date notwithstanding the conversion of such Notes during such Interest Period. Subject to the aforesaid requirement for payment and, in the case of a conversion after the Regular Record Date immediately prior to any Interest Payment Date and on or before such Interest Payment Date, to the right of the Holder of this Note of record at such Regular Record Date to receive an installment of interest payable on such Interest Payment Date (except in the case of Notes whose Maturity is prior to such Interest Payment Date), no payment or adjustment is to be made on conversion for interest accrued hereon or for dividends on the Common Stock issued on conversion, except as provided in the Indenture. A Note in respect of which a Holder has delivered a notice of exercise of the option to redeem such Note in the event of a Change of Control may be converted only if the notice of exercise is withdrawn in accordance with the terms of the Indenture.

The initial conversion price is US\$0.1688 per share, subject to adjustment under certain circumstances as described in Article 13 of the Indenture (the "Conversion Price"). The Company will deliver cash or a check in lieu of any fractional share of Common Stock.

The Conversion Price is subject to adjustment as provided in the Indenture. In addition, in the case of (i) any reclassification of the Common Stock, or (ii) a consolidation, merger, takeover bid or scheme of arrangement involving the Company or a sale or conveyance to another corporation of the property and assets of the Company as an entirety (or substantially as an entirety), in each case as a result of which holders of Common Stock shall be entitled to receive stock, Notes, other property or assets (including cash) with respect to or in exchange for such Common Stock, as set forth in the Indenture, or upon certain distributions described in the Indenture, a supplemental indenture must be signed providing that each Note shall be convertible into the kind and amount of stock, Notes, other property or assets receivable by a holder of Common Stock as a result of that transaction.

To convert a Note a Holder must (1) complete and manually sign the conversion notice on the back of the Note (or complete and manually sign a facsimile of such notice) and deliver such notice to the Conversion Agent, (2) surrender the Note to a Conversion Agent, (3) furnish appropriate endorsements and transfer documents if required by the Note Registrar or the Conversion Agent, (4) pay any transfer or other tax, if required by Section 13.05 and (5) if the Note is held in book-entry form, complete and deliver to the Common Depository

appropriate instructions pursuant to the Common Depositary's book-entry conversion programs. Notwithstanding anything to the contrary in this Indenture, a conversion notice, once submitted, shall be irrevocable unless the Company has consented in writing to a withdrawal and such consent is issued to the relevant holder with a copy to the Trustee and Conversion Agent.

A Holder may convert a portion of a Note if the principal amount of such portion is \$1,000 or a multiple of \$1,000. No payment or adjustment will be made for dividends on the Common Stock except as provided in the indenture. Upon surrender of a Note that is converted in part, the Company will execute, and the Trustee will authenticate and deliver to the Holder, a new Note in an authorized denomination equal in principal amount to the unconverted portion of the Note surrendered.

As soon as practicable, but in no event more than five (5) Business Days, after the Conversion Date, the Company will deliver to the Holder, through the Conversion Agent, confirmation from the Company's share registry that of the number of full shares of Common Stock issuable upon the conversion and cash in lieu of any fractional share of Common Stock. The person in whose name the Common Stock is registered shall be treated as a stockholder of record on and after the Conversion Date. No surrender of a Note on any date when the stock transfer books of the Company are closed will be effective to constitute the person or persons entitled to receive the shares of Common Stock upon such conversion as the record holder or holders of such shares of Common Stock on such date, but such surrender shall be effective to constitute the person or persons entitled to receive such shares of Common Stock as the record holder or holders thereof for all purposes at the close of business on the next succeeding day on which such stock transfer books are open; such conversion shall be at the Conversion Price in effect on the date that such Note will have been surrendered for conversion, as if the stock transfer books of the Company had not been closed. Upon conversion of a Note, such person will no longer be a Holder of such Note.

#### **9. Conversion Arrangement on Call for Redemption**

Any Notes called for redemption, unless surrendered for conversion before the close of business on the last Business Day prior to the Redemption Date, may be deemed to be purchased from the Holders of such Notes at an amount not less than the Redemption Price, together with accrued interest to, but excluding the Redemption Date, by one or more investment bankers or other purchasers who may agree with the Company to purchase such Notes from the Holders, to convert them into Common Stock of the Company and to make payment for such Notes to the Trustee in trust for such Holders.

#### **10. Collateral**

The Company shall cause to be created, as promptly as commercially reasonably possible but in no event later than 180 days after \_\_\_\_\_, 2014, a first-priority perfected Lien on substantially all the Collateral (subject to Collateral Permitted Liens).

#### **11. Guarantees**

The payment by the Company of principal of and interest on the Notes when due, whether at maturity, by acceleration, by redemption or otherwise, and all other monetary obligations of the Company under this Indenture and the Notes, and the full and punctual performance within applicable grace periods of all other obligations of the Company under the Indenture and the Notes are fully, unconditionally and irrevocably Guaranteed, jointly and severally with each other Subsidiary Guarantor, in each case as primary obligors and not merely as surety and with respect to all such obligations howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, due or to become due, all as set forth in the Indenture.

#### **12. Denominations; Transfer; Exchange**

The Notes are in registered form, without coupons, in denominations of US\$250,000 of principal amount and multiples of US\$1. A Holder may transfer or exchange Notes in accordance with the Indenture. The Note Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Note Registrar need

not transfer or exchange any Notes selected for redemption (except, in the case of a Note to be redeemed in part, the portion of the Note not to be redeemed) or any Notes in respect of which a Change of Control Notice has been given and not withdrawn (except, in the case of a Note to be purchased in part, the portion of the Note not to be purchased) or any Notes for a period of 15 days before a selection of Notes to be redeemed.

### **13. Unclaimed Money or Notes**

The Trustee and the Paying Agent shall return to the Company upon written request any money or Notes held by them for the payment of any amount with respect to the Notes that remains unclaimed for two years, provided, however, that the Trustee or such Paying Agent, before being required to make any such return, shall at the expense of the Company cause to be published once in a newspaper of general circulation in London, United Kingdom or mail to each such Holder notice that such money or Notes remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication or mailing, any unclaimed money or Notes then remaining will be returned to the Company. After return to the Company, Holders entitled to the money or Notes must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

### **14. Persons Deemed Owners**

The registered Holder of a Note may be treated as its owner for all purposes, except as otherwise ordered by a court of competent jurisdiction.

### **15. Amendment, Supplement and Waiver**

Subject to certain exceptions, the Indenture or the Notes may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the then outstanding Notes (Collateral Permitted Liens definition and the Lien Amendment Threshold require the written consent of the Lien Amendment Threshold), and any existing default or compliance with any provision of the Indenture or the Notes may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes. Without the consent of any Holder, the Indenture or the Notes may be amended or supplemented to cure any ambiguity, omission, defect or inconsistency; provide for the assumption by a successor corporation of the obligations of the Company or any Subsidiary Guarantor under the Indenture; provide for uncertificated Notes in addition to or in place of certificated Notes (*provided* that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f) (2) (B) of the Code); add Guarantees with respect to the Notes or release a Subsidiary Guarantor from its obligations under its Subsidiary Guarantee or the Indenture in accordance with Section 12.06 of the Indenture; add any additional assets as Collateral; add to the covenants of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company; make any change that does not adversely affect the rights of any Holder; provide for the appointment of a successor trustee, *provided* that the successor trustee is otherwise qualified and eligible to act as such under Section 7.07 and Section 7.09 of the Indenture; provide for the issuance of exchange securities which shall have terms substantially identical in all respects to the Notes (except that the transfer restrictions contained in the Notes shall be modified or eliminated as appropriate) and which shall be treated, together with any outstanding Notes, as a single class of securities; or conform the text of the Indenture, the Notes or the Subsidiary Guarantees to any provision of the section "Description of notes" in the Prospectus to the extent that such provision in such "Description of notes" is intended to be a verbatim recitation of a provision of the Indenture, the Notes or the Subsidiary Guarantees.

### **16. Defaults and Remedies**

Events of Default are set forth in the Indenture. If an Event of Default (other than an Event of Default under the bankruptcy provisions described in clauses (6) or (7) of Section 6.01(a)) occurs and is continuing, the principal of and accrued but unpaid interest on all Notes may be declared due and payable by (i) the Trustee, if it has notice or knowledge of such Event of Default, or (ii) the Holders of at least 25% in aggregate principal amount of the outstanding Notes by notice to the Company and the Trustee. If an Event of Default under the bankruptcy provisions described in Section 6.01(a)(6) or Section 6.01(a)(7) of the Indenture with respect to the Company or its

Subsidiaries occurs, all outstanding Notes will become immediately due and payable without further action or notice. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Holders of a majority in aggregate principal amount of the Notes then outstanding by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default or Event of Default and its consequences under the Indenture except a continuing Default or Event of Default in the payment of interest or premium on, or the principal of, the Notes. The Company is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Company is required upon becoming aware of any Default or Event of Default, to deliver to the Trustee a statement specifying such Default or Event of Default.

**17. Trustee Dealings with Company**

The Trustee, in its individual or any other capacity, may make loans to, accept deposits from and perform services for the Company or its Affiliates, and may otherwise deal with the Company or its Affiliates, as if it were not the Trustee.

**18. No Recourse Against Others**

A director, officer, employee, incorporator or stockholder of the Company, as such, will not have any liability for any obligations of the Company under the Notes or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting a Note, each Holder waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes.

**19. Authentication**

This Note will not be valid until authenticated by the manual or facsimile signature of the Trustee or an authenticating agent.

**20. Abbreviations**

Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian) and U/G/M/A (= Uniform Gifts to Minors Act).

**21. ISIN and Common Code Numbers**

The Company has caused ISIN or Common Code numbers to be printed on the Notes and the Trustee may use ISIN or Common Code numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

**22. Governing Law**

THE NOTES WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.



### ASSIGNMENT FORM

To assign this Note, fill in the form below:

I or we assign and transfer this Note to

(Print or type assignee's name, address and zip code)

(Insert assignee's Social Security or Tax I.D. Number)

and irrevocably appoint agent to transfer this Note on the books of the Registrar. The agent may substitute another to act for him.

Date: \_\_\_\_\_

Your Signature: \_\_\_\_\_

Signature Guarantee: \_\_\_\_\_  
(Signature must be guaranteed)

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Sign exactly as your name appears on the other side of this Note.

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15.

*[To be attached to Global Notes only:]*

**SCHEDULE OF INCREASES OR DECREASES IN GLOBAL NOTE**

The following increases or decreases in this Global Note have been made:

<b>Date of Increase or Decrease</b>	<b>Amount of decrease in Principal Amount of this Global Note</b>	<b>Amount of increase in Principal Amount of this Global Note</b>	<b>Principal Amount of this Global Note following such decrease or increase</b>	<b>Signature of authorized signatory of Trustee</b>
_____	_____	_____	_____	_____

## FORM OF CONVERSION NOTICE

To: MIRABELA NICKEL LIMITED.

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (that is US\$1,000 principal amount or integral multiples of US\$1,000 in excess thereof) below designated, shares of Common Stock, in accordance with the terms of the Indenture referred to in this Note, and directs that any shares of Common Stock issuable and deliverable upon such conversion, together with any cash in lieu of any fractional shares and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If any shares of Common Stock or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. Any amount required to be paid to the undersigned on account of interest accompanies this Note.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature(s)

\_\_\_\_\_  
Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if shares of Common Stock are to be issued, or Notes to be delivered, other than to and in the name of the registered holder.

Fill in for registration of shares if  
to be issued, and Notes if to  
be delivered, other than to and in the  
name of the registered holder:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State and Zip Code)

Please print name and address

Principal amount to be converted (if less than all):

US\$\_\_\_\_\_,000

NOTICE: The above signature(s) of the holder(s) hereof must  
correspond with the name as written upon the face of the Note  
in every particular without alteration or enlargement or any  
change whatever.

\_\_\_\_\_  
Social Security or Other Taxpayer Identification Number

FORM OF REVERSE OF NOTE

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM -as tenants in common

UNIF GIFT MIN ACT

\_\_\_\_\_  
(Cust) Custodian

TEN ENT -as tenants by the entirety

\_\_\_\_\_  
(Minor)

JT TEN -as joint tenants with right of  
survivorship and not as tenants in common

Uniform Gifts to Minors Act  
\_\_\_\_\_  
(State)

Additional abbreviations may also be used  
though not in the above list.

FORM OF OPTION OF HOLDER TO ELECT PURCHASE

To: MIRABELA NICKEL LIMITED

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Mirabela Nickel Limited (the "Company") as to the occurrence of a Change of Control with respect to the Company and specifying the Change of Control Payment Date and requests and instructs the Company to repay to the registered holder hereof in accordance with the applicable provisions of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is US\$1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Change of Control Payment Date does not fall during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Change of Control Payment Date and does not result in the undersigned's ownership of Notes in other than a US\$1,000 in principal amount or an integral multiple thereof.

In the case of certificated Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature(s)

\_\_\_\_\_  
Social Security or Other Taxpayer Identification Number

Principal amount to be repaid (if less than all):  
US\$\_\_\_\_\_,000

NOTICE: The above signature(s) of the holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

**EXHIBIT B**

**FORM OF CERTIFICATE FOR TRANSFER TO OIB**

[Date]

The Bank of New York Mellon, London Branch  
40th Floor, One Canada Square  
London E14 5AL  
United Kingdom  
Fax: +44 207 964 4637  
Attention: Corporate Trust Administration

Re: 9.5% Senior Convertible Secured Notes due 2019  
of Mirabela Nickel Limited (subject to deed of company arrangement) (the "Company")

Ladies and Gentlemen:

Reference is hereby made to the Indenture, dated as of \_\_\_\_\_, 2014 (as amended and supplemented from time to time, the "Indenture"), the Company, the Subsidiary Guarantors, the Trustee, the Note Registrar, the Australian Security Trustee and the Brazilian Collateral Agent. Capitalized terms used but not defined herein shall have the meanings given them in the Indenture.

This letter relates to U.S.\$ \_\_\_\_\_ aggregate principal amount of the 9.5% Senior Convertible Secured Notes due 2019 (the "Notes") [*in the case of a transfer of an interest in a Regulation S Global Note: which represents an interest in a Regulation S Global Note (ISIN: \_\_\_\_\_, Common Code: \_\_\_\_\_)*] beneficially owned by the undersigned (the "Transferor") in connection with the proposed transfer of such Notes in exchange for an equivalent beneficial interest in the Rule 144A Global Note (ISIN: \_\_\_\_\_, Common Code: \_\_\_\_\_).

In connection with such request, and with respect to such Notes, the Transferor does hereby certify that such Notes are being transferred in accordance with Rule 144A under the Securities Act of 1933, as amended ("Rule 144A"), to a transferee that the Transferor reasonably believes is purchasing the Notes for its own account or an account with respect to which the transferee exercises sole investment discretion, and the transferee, as well as any such account, is a "qualified institutional buyer" within the meaning of Rule 144A, in a transaction meeting the requirements of Rule 144A and in accordance with applicable securities laws of any state of the United States or any other jurisdiction.

You and the Company are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Name of Transferor]

By: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature



FORM OF CERTIFICATE FOR TRANSFER  
PURSUANT TO REGULATION S

[Date]

The Bank of New York Mellon, London Branch  
 40th Floor, One Canada Square,  
 London E14 5AL  
 United Kingdom  
 Fax: +44 207 964 4637  
 Attention: Corporate Trust Administration

Re: 9.5% Senior Convertible Secured Notes due 2019  
 of Mirabela Nickel Limited (subject to deed of company arrangement) (the "Company")

Ladies and Gentlemen:

Reference is hereby made to the Indenture, dated as of [•], 2014 (as amended and supplemented from time to time, the "Indenture"), the Company, the Subsidiary Guarantors, the Trustee, the Note Registrar, the Australian Security Trustee and the Brazilian Collateral Agent. Capitalized terms used but not defined herein shall have the meanings given them in the Indenture.

This letter relates to U.S.\$\_\_\_\_\_ aggregate principal amount of the Company's 9.5% Senior Convertible Secured Notes due 2019 (the "Notes") *[in the case of a transfer of an interest in a Rule 144A Global Note: which represents an interest in a Rule 144A Global Note (ISIN: \_\_\_\_\_, Common Code: \_\_\_\_\_)]* beneficially owned by the undersigned (the "Transferor") in connection with the transfer of such Notes in exchange for an equivalent beneficial interest in the Regulation S Global Note (ISIN: \_\_\_\_\_, Common Code: \_\_\_\_\_). In connection with such request, the Transferor confirms that such sale has been effected pursuant to and in accordance with Regulation S under the Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, the Transferor represents that:

- (a) the offer of the Notes was not made to a person in the United States;
- (b) either (i) at the time the buy order was originated, the transferee was outside the United States or the Transferor and any person acting on the Transferor's behalf reasonably believed that the transferee was outside the United States or (ii) the transaction was executed in, on or through the facilities of a designated off-shore securities market and neither the Transferor nor any person acting on the Transferor's behalf knows that the transaction has been pre-arranged with a buyer in the United States;
- (c) no directed selling efforts have been made in the United States in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S, as applicable;
- (d) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act; and
- (e) the Transferor is the beneficial owner of the principal amount of Notes being transferred.

In addition, if the sale is made during a Distribution Compliance Period and the provisions of Rule 904(b)(1) or Rule 904(b)(2) of Regulation S are applicable thereto, the Transferor confirms that such sale has been made in accordance with the applicable provisions of Rule 904(b)(1) or Rule 904(b)(2), as the case may be.

You and the Company are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Name of Transferor]

By: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature

**EXHIBIT D**

**FORM OF CERTIFICATE FOR TRANSFER**  
**PURSUANT TO RULE 144**

[Date]

The Bank of New York Mellon, London Branch  
40th Floor, One Canada Square  
London E14 5AL  
United Kingdom  
Fax: +44 207 964 4637  
Attention: Corporate Trust Administration

Re: 9.5% Senior Convertible Secured Notes due 2019  
of Mirabela Nickel Limited (subject to deed of company arrangement) (the "Company")

Ladies and Gentlemen:

Reference is hereby made to the Indenture, dated as of \_\_\_\_\_, 2014 (as amended and supplemented from time to time, the "Indenture"), the Company, the Subsidiary Guarantors, the Trustee, the Note Registrar, the Australian Security Trustee and the Brazilian Collateral Agent. Capitalized terms used but not defined herein shall have the meanings given them in the Indenture.

This letter relates to U.S.\$\_\_\_\_\_ aggregate principal amount of the Company's 9.5% Senior Convertible Secured Notes due 2019 (the "Notes") [*in the case of a transfer of an interest in a Rule 144A Global Note: which represent an interest in a Rule 144A Global Note (ISIN: \_\_\_\_\_ Common Code: \_\_\_\_\_)*] beneficially owned by the undersigned (the "Transferor"), the Transferor confirms that such sale has been effected pursuant to and in accordance with Rule 144 under the Securities Act.

You and the Company are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Name of Transferor]

By: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature

## EXHIBIT E

### BRAZILIAN COLLATERAL DOCUMENTS

The Convertible Notes are fully secured by the following documents, which are governed by Brazilian Law:

- (i) Quotas Pledge Agreement (*Instrumento Particular de Constituição de Penhor de Quotas*), dated on or about the date of this Prospectus by and among the Company and Mirabela Investments, as grantors, the Convertible Noteholders, represented by the Brazilian Collateral Agent, as grantees, and Mirabela Brasil, as intervening party;
- (ii) Fiduciary Sale of Movable Assets Agreement (*Instrumento Particular de Constituição de Alienação Fiduciária de Bens Móveis em Garantia*), dated on or about the date of this Prospectus by and between Mirabela Brasil, as grantor, and the Convertible Noteholders, represented by the Brazilian Collateral Agent, as grantees;
- (iii) Fiduciary Sale of Inventory Agreement (*Instrumento Particular de Constituição de Alienação Fiduciária de Bens em Garantia*), dated on or about the date of this Prospectus by and between Mirabela Brasil, as grantor, and the Convertible Noteholders, represented by the Brazilian Collateral Agent, as grantees;
- (iv) Fiduciary Assignment of Credit Rights Agreement (*Instrumento Particular de Constituição de Cessão Fiduciária de Direitos Creditórios em Garantia*), dated on or about the date of this Prospectus by and between Mirabela Brasil, as grantor, the Convertible Noteholders, represented by the Brazilian Collateral Agent, as grantees, and [•], as depositary (banco centralizador);
- (v) Fiduciary Assignment of Credit Rights Agreement – Loans (*Instrumento Particular de Constituição de Cessão Fiduciária de Direitos Creditórios em Garantia – Empréstimos*), dated on or about the date of this Prospectus by and between the Company, as grantor, the Convertible Noteholders, represented by the Brazilian Collateral Agent, as grantees, and Mirabela Brasil, as intervening party;
- (vi) Fiduciary Assignment of Credit Rights Agreement (*Instrumento Particular de Constituição de Cessão Fiduciária de Direitos Creditórios em Garantia*), dated on or about the date of this Prospectus by and between Mirabela Brasil, as grantor, the Convertible Noteholders, represented by the Brazilian Collateral Agent, as grantees;
- (vii) Mortgage Deed (*Escritura Pública de Constituição de Garantia Hipotecária*), dated on or about the date of this Prospectus by and between Mirabela Brasil, as grantor, and the Convertible Noteholders, represented by the Brazilian Collateral Agent, as grantees; and
- (viii) Warranty Deed (*Escritura Pública de Constituição de Caução*), dated on or about the date of this Prospectus by and between Mirabela Brasil, as grantor, and the Convertible Noteholders, represented by the Brazilian Collateral Agent, as grantees.

**FORM OF SUPPLEMENTAL INDENTURE  
TO BE DELIVERED BY SUBSEQUENT SUBSIDIARY GUARANTORS**

Supplemental Indenture (this “**Supplemental Indenture**”), dated as of [\_\_\_\_\_] [\_\_\_\_], 20[\_\_\_\_], among \_\_\_\_\_ (the “**Guaranteeing Subsidiary**”), a subsidiary of Mirabela Nickel Limited (ABN 23 108 161 593), a company organized in Australia (the “**Company**”), the Subsidiary Guarantors (as defined in the Indenture referred to below), The Bank of New York Mellon, acting through its London Branch, as indenture trustee, paying agent, transfer agent and conversion agent (the “**Trustee**,” “**Paying Agent**,” “**Transfer Agent**,” and “**Conversion Agent**,” respectively), The Bank of New York Mellon (Luxembourg) S.A. (the “**Note Registrar**”), AET Structured Finance Services Pty Limited, as Australian Security Trustee and Deutsche Bank S.A. – Banco Alemão, as Brazilian Collateral Agent.

**WITNESSETH**

WHEREAS, each of the Company and the Subsidiary Guarantors has heretofore executed and delivered to the Trustee an indenture (the “**Indenture**”), dated as of \_\_\_\_\_, 2014, providing for the issuance of an unlimited aggregate principal amount of 9.5% Senior Convertible Secured Notes due 2019 (the “**Notes**”);

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Company’s obligations under the Notes and the Indenture on the terms and conditions set forth herein and under the Indenture (the “**Guarantee**”);

WHEREAS, all things necessary have been done to make this Supplemental Indenture, when executed and delivered by the Company and the new Guaranteeing Subsidiary, the legal, valid and binding agreement of the Company and the new Guaranteeing Subsidiary; and

WHEREAS, pursuant to Section 12.09 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. **Capitalized Terms**. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.
2. **Guarantor**. The Guaranteeing Subsidiary hereby agrees to be a Subsidiary Guarantor under the Indenture and to be bound by the terms of the Indenture applicable to Subsidiary Guarantors, including Article 11 thereof.
3. **Governing Law**. THIS SUPPLEMENTAL INDENTURE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.
4. **Waiver of Jury Trial**. EACH OF THE GUARANTEEING SUBSIDIARY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SUPPLEMENTAL INDENTURE, THE INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

5. Ratification. Except as otherwise modified hereby, the Indenture is hereby ratified in all respects.

6. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. Except as modified by the provisions of this Supplemental Indenture, the provisions of the Indenture are hereby ratified and remain in full force and effect.

7. Headings. The headings of the Sections of this Supplemental Indenture have been inserted for convenience of reference only, are not to be considered a part of this Supplemental Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

*[Remainder of page left intentionally blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

[NAME OF GUARANTEEING SUBSIDIARY]

By: \_\_\_\_\_

Name:

Title:

SIGNED for and on behalf of )  
MIRABELA NICKEL LIMITED )  
(ABN 23 108 161 593) )  
by authority of its directors in accordance )  
with section 127(1) of the Corporations )  
Act )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Print Name of Director

\_\_\_\_\_  
Print Name of Director/Secretary

[SUBSIDIARY GUARANTORS]

By: \_\_\_\_\_

Name:

Title:

THE BANK OF NEW YORK MELLON, LONDON BRANCH  
as Trustee, Paying Agent, Transfer Agent and Conversion Agent.

By: \_\_\_\_\_

Name:

Title:



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### Schedule 6 Security

#### Part A - Australian security

The Convertible Notes are fully secured by security granted by Mirabela and Mirabela Investments to AET Structured Finance Services Pty Limited as security trustee under the General Security Deed. Each holder of a Convertible Note will be a beneficiary under the terms of the security trust (**Security Trust**), and will have the benefit of the security. The General Security Deed is first ranking and is perfected by registration on the PPSR.

#### *Terms of the Security Trust*

The Security Trust is established under the SNSD. The Security Trust commenced on 24 December 2012 and, unless otherwise terminated at an earlier date, terminates on the earlier of:

- (a) the eightieth anniversary of the date of the SNSD; and
- (b) the date on which all the Security Documents have been fully and finally discharged according to their terms (or, if discharged at different times, the date on which the last is fully and finally discharged) and all Recovered Moneys (as defined in the SNSD) have been distributed in accordance with the SNSD.

The Security Trustee holds the benefit of the trust assets (including the security provided under the General Security Deed) for the benefit of the beneficiaries (including the holders of the Convertible Notes).

The Security Trustee:

- (a) is entitled to exercise all powers including those rights, powers, authorities, discretions and remedies conferred on trustees generally by statute, and generally by law or equity
- (b) is not responsible for, or liable to any person in respect of, any absence of, or defect in, title or for its inability to exercise any of its powers under the General Security Deed arising from any absence of, or defect in, title; and
- (c) may rely conclusively on any advice or statements of solicitors, independent accountants or other experts selected by it with reasonable care,

in any such case without being responsible, or liable, to any person for any loss occasioned by doing so.

The Security Trustee may, in its absolute discretion determine whether or not to take any steps to enforce the General Security Deed or to otherwise seek to recover money payable to the beneficiaries and the manner of the enforcement.

The Security Trustee must act only on the instructions or directions of the majority beneficiaries and is not required to take any action in the absence of such instructions or directions.

Mirabela is obliged to pay the Security Trustee by way of remuneration for its services as trustee in accordance with the agreed fee letter. If the Security Trustee is required at any time to:

- (a) undertake duties which relate to enforcement action upon a default or purported default by any other party; or





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- (b) undertake duties which are agreed by the Issuer (as defined in the SNSD) to be of an exceptional nature or otherwise outside the scope of the normal duties of the Security Trustee,

the Issuer (as defined in the SNSD) agrees to pay to the Security Trustee on demand, such additional remuneration as shall be commensurate with any additional duties and responsibilities performed or undertaken by the Security Trustee in consequence of taking such action.

The Security Trustee and each of its officers, directors, employees, attorneys and affiliates are entitled to be indemnified out of any money received by, or available to, the Security Trustee under a finance document or otherwise forming part of the Security Trust for and in respect of:

- (a) all liabilities and expenses (including any money paid or to be paid for the employment or appointment of any agent or delegate) incurred by the Security Trustee in the exercise or purported exercise of the powers under the SNSD or under or in relation to the other finance document (including the General Security Deed); and
- (b) all other losses arising in relation to the SNSD or in relation to the other finance document (including the General Security Deed),

and the Security Trustee may from time to time retain and pay out of any money recovered or otherwise forming part of the Security Trust an amount to satisfy that indemnity. The beneficiaries severally indemnify the Security Trustee (to the extent not reimbursed by Mirabela, Mirabela Investments or the Security Trust) in their share against any loss which the Security Trustee pays, suffers, incurs or is liable for in acting in that capacity, except to the extent attributable to the fraud, wilful misconduct or negligence of the Security Trustee.

### ***Terms of General Security Deed***

As noted Mirabela and Mirabela Investments have granted full security to the Security Trustee as the secured party for the benefit of the beneficiaries (including the holders of Convertible Notes) under the terms of the General Security Deed.

The property charged includes all present and after-acquired property. It includes anything in respect of which a grantor has at any time sufficient right, interest or power to grant a security interest.

Each of Mirabela and Mirabela Investments grants security over all of its present and after acquired assets to the Security Trustee to secure payment of the secured moneys (including amounts owing in respect of the Convertible Notes). This security interest is a transfer by way of security of secured property, consisting of accounts which are not, or cease to be, revolving assets. To the extent any secured property is not transferred, this security interest is a charge. If for any reason it is necessary to determine the nature of this charge, it is a floating charge over revolving assets and a fixed charge over all other secured property.

An event of default under the General Security Deed includes but is not limited to any of the following occurring in relation to Mirabela or Mirabela Investments:

- (a) an event of default as defined under the New Indenture;
- (b) failure to pay the secured moneys;
- (c) a controller is appointed, a winding up order is made or an administrator is appointed;
- (d) insolvency;



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- (e) cessation of business; or
- (f) deregistration.

Upon the occurrence of an event of default and while it is continuing, the security is immediately enforceable, the secured moneys are immediately due and payable by both Mirabela and Mirabela Investments without the need for any demand or notice to be given to Mirabela and Mirabela Investments or any other person and the Secured Trustee may appoint any person or any 2 or more persons jointly, or severally, or jointly and severally to be a receiver or a receiver and manager of any of the secured property.

The Security Trustee will act upon the instructions of the majority beneficiaries when taking action under the General Security Deed.

A receiver appointed will be the agent of Mirabela and Mirabela Investments. Each entity is responsible for the acts, defaults and remuneration of the receiver. Upon appointment the receiver's powers include, but are not limited to, the ability to:

- (a) manage, enter into possession or assume control of any of the Secured Property (as defined in the General Security Deed);
- (b) sell or concur in selling any of the Secured Property to any person:
  - (i) by auction, private treaty or tender;
  - (ii) on such terms and special conditions as the Secured Party or the Receiver thinks fit;
  - (iii) for cash or for a deferred payment of the purchase price, in whole or in part, with or without interest or security;
  - (iv) in conjunction with the sale of any property by any other person; and
  - (v) in one lot or in separate parcels;
- (c) carry on or concur in carrying on any business of a Grantor (as defined term in the General Security Deed) in respect of the Secured Property (as defined in the General Security Deed);
- (d) raise or borrow any money, in its name or the name or on behalf of a Mirabela or Mirabela Investments;
- (e) do anything to maintain, protect or improve any of the secured property including completing, repairing, erecting a new improvement on, demolishing or altering any of the Secured Property;
- (f) do anything to manage or obtain income or revenue from any of the Secured Property including operating any bank account which forms part of the Secured Property or opening and operating a new bank account;
- (g) have access to any of the secured property, the premises at which the business of the Company is conducted and any of the administrative services of the business;
- (h) employ or discharge any person as an employee, contractor, agent, professional advisor or auctioneer for any of the purposes of this deed;



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- (l) commence, discontinue, prosecute, defend, settle or compromise in its name or the name or on behalf of a Grantor, any proceedings including proceedings in relation to any insurance in respect of any of the Secured Property;
- (j) enter into and execute any document or agreement in the name of the Receiver (as defined in the General Security Deed) or the name or on behalf of any Grantor including bills of exchange, cheques or promissory notes for any of the purposes of this deed; and
- (k) do anything necessary or incidental to the exercise of any power of the receiver.

Whether or not a receiver is appointed, the Security Trustee (on behalf of the beneficiaries) may, on or after the occurrence of an event of default and while it is continuing and without giving notice to any person.

- (a) exercise any power that could be conferred on a receiver in addition to any other power of a secured party;
- (b) enter the premises, seize any property and/or dispose of any property in such manner and generally on such terms and conditions as the Security Trustee thinks desirable; and
- (c) otherwise do anything that Mirabela or Mirabela Investments could do in relation to its secured property.

At any time after the security becomes enforceable, all moneys received by the Security Trustee or a receiver (if appointed), or any other person acting on their behalf under the General Security Deed must be appropriated and applied in the following manner and order:

- (d) first, in payment of all costs, charges and expenses (including any GST) of the Security Trustee or a receiver (if appointed), incurred in or incidental to the exercise or performance or attempted exercise or performance of any Power;
- (e) second, in payment of any other outgoings the Security Trustee or a receiver (if appointed) thinks fit to pay;
- (f) third, in payment of the receiver's remuneration (if appointed);
- (g) fourth, in payment and discharge, in order of their priority, of any security interests of which the Security Trustee or a receiver (if appointed) is aware and which have priority to the Security;
- (h) fifth, in payment to the Security Trustee towards satisfaction of the secured moneys (including amounts owing under the Convertible Notes) and applied against interest, principal or any other amount the Security Trustee or a receiver (if appointed) thinks fit;
- (i) sixth, in payment only to the extent required by law, in order of their priority, of other security interests in respect of secured property of the Security Trustee or a receiver (if appointed) is aware and which are due and payable in accordance with their terms; and
- (j) seventh, in payment of the surplus, if any, without interest to Mirabela and Mirabela Investments. The Security Trustee or a receiver (if appointed) may pay the surplus to the credit of an account in the name of that Grantor in the books of any bank carrying on business within Australia and having done so is under no further liability in respect of that surplus.
- (k) The security may be discharged at the request of either Mirabela or Mirabela Investments if all of the secured moneys have been repaid in full and each party has fully observed and



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performed its obligations. The Security Trustee is not obliged to discharge the security until it is of the opinion (acting reasonably) that further secured moneys (owing either contingently or otherwise) is not owed or will become owing within a reasonable time after the date that Mirabela or Mirabela Investments requests the discharge of security.



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### Part B - Brazilian Security

Under the Brazilian collateral package, the Convertible Notes will be fully secured by Mirabela Brasil, Mirabela Investments and the Company, pursuant to the Brazilian security documents, as described below:

- (a) Quotas Pledge Agreement (*Instrumento Particular de Constituição de Penhor de Quotas*), dated on or about the date of this Prospectus by and among the Company and Mirabela Investments, as grantors, the Convertible Noteholders, represented by the Brazilian Collateral Agent, as grantees, and Mirabela Brasil, as intervening party; pursuant to which the Company and Mirabela Investments shall pledge to the Convertible Noteholders quotas issued by Mirabela Brasil owned by them;
- (b) Fiduciary Assignment of Movable Assets Agreement (*Instrumento Particular de Constituição de Alienação Fiduciária de Bens Móveis em Garantia*), dated on or about the date of this Prospectus by and between Mirabela Brasil, as grantor, and the Convertible Noteholders, represented by the Brazilian Collateral Agent, as grantees; pursuant to which Mirabela Brasil shall assign as collateral to the Convertible Noteholders movable assets listed in an attachment thereto;
- (c) Fiduciary Assignment of Inventory Agreement (*Instrumento Particular de Constituição de Alienação Fiduciária de Bens em Garantia*), dated on or about the date of this Prospectus by and between Mirabela Brasil, as grantor, and the Convertible Noteholders, represented by the Brazilian Collateral Agent, as grantees; pursuant to which Mirabela Brasil shall assign as collateral to the Convertible Noteholders all its production of nickel;
- (d) Fiduciary Assignment of Credit Rights Agreement (*Instrumento Particular de Constituição de Cessão Fiduciária de Direitos Creditórios em Garantia*), dated on or about the date of this Prospectus by and between Mirabela Brasil, as grantor, the Convertible Noteholders, represented by the Brazilian Collateral Agent, as grantees and as depository (*banco centralizador*); pursuant to which Mirabela Brasil shall assign as collateral to the Convertible Noteholders all current and future credit rights held by Mirabela Brasil arising from the sale of any products and services by Mirabela Brasil to any third parties, including all credit rights arising from the dispute with Votorantim and Votorantim Metais Ltda. related to the nickel supply agreement executed between such parties and Mirabela Brasil;
- (e) Fiduciary Assignment of Credit Rights Agreement – Loans (*Instrumento Particular de Constituição de Cessão Fiduciária de Direitos Creditórios em Garantia – Empréstimos*), dated on or about the date of this Prospectus by and between the Company, as grantor, the Convertible Noteholders, represented by the Brazilian Collateral Agent, as grantees, and Mirabela Brasil, as intervening party; pursuant to which the Company shall assign as collateral to the Convertible Noteholders all current and future credit rights of the Company arising from any loan agreements executed between the Company, as creditor, and Mirabela Brasil, as debtor;
- (f) Fiduciary Assignment of Credit Rights Agreement (*Instrumento Particular de Constituição de Cessão Fiduciária de Direitos Creditórios em Garantia*), dated on or about the date of this Prospectus by and between Mirabela Brasil, as grantor, the Convertible Noteholders, represented by the Brazilian Collateral Agent, as grantees; pursuant to which Mirabela Brasil shall assign as collateral to the Convertible Noteholders certain credit rights held by Mirabela Brasil arising from its position as a party of certain agreements to be listed in an attachment thereto;



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- (g) Mortgage Deed (*Escritura Pública de Constituição de Garantia Hipotecária*), dated on or about the date of this Prospectus by and between Mirabela Brasil, as grantor, and the Convertible Noteholders, represented by the Brazilian Collateral Agent, as grantees; pursuant to which Mirabela Brasil shall grant to the Convertible Noteholders a mortgage over its owned rural properties; and
- (h) Warranty Deed (*Escritura Pública de Constituição de Caução*), dated on or about the date of this Prospectus by and between Mirabela Brasil, as grantor, and the Convertible Noteholders, represented by the Brazilian Collateral Agent, as grantees; pursuant to which Mirabela Brasil shall grant to the Convertible Noteholders a pledge over all rights arising from the ownership or possession on the rural properties to be listed therein.

The assets comprising the proposed security package are currently encumbered for the benefit of the creditors of the Interim Loan and will be released concurrently with the execution and filing (with the competent Registries of Titles and Deeds and/or Registries of Real Properties) of the Brazilian security documents comprising the collateral package securing the Convertible Notes.

As a general rule, on occurrence of an Event of Default under the New Indenture, the Brazilian collateral agent as authorised by the Trustee under the New Indenture may directly, in good faith, for the price and with the conditions that it may deem appropriate, in whole or in part, publicly or privately, judicially or extra-judicially, at its exclusive discretion, independently of any auction, execution sale, judicial or extrajudicial notice, or any other procedure, foreclose on the collateral under the Brazilian security documents (except for the foreclosure on rural properties under the Mortgage Deed, which is required by Brazilian law to be conducted through a judicial proceeding filed in the venue where the property is located).

Additionally, the property of the inventory, assets, goods and credits under the Brazilian security documents may be consolidated in the name of the Brazilian Collateral Agent on behalf of the Convertible Noteholders, irrespective of prior notice from the Brazilian Collateral Agent, or any other Convertible Noteholders to the guarantor or to Mirabela Brasil.

The Brazilian Collateral Agent shall be indemnified and compensated in accordance with the terms of its engagement letter, by the Company. Under the Brazilian security documents the respective grantor and Mirabela Brasil are jointly liable for indemnifying Convertible Noteholders and the Brazilian Collateral Agent for each and every damage, loss, cost and/or expense (including judicial costs and attorney's fees) incurred by the Convertible Noteholders and/or the Brazilian Collateral Agent, due to false and/or incorrect representation provided under the Brazilian security documents.

Furthermore, any cost or expense incurred by the Brazilian Collateral Agent and/or Convertible Noteholders, due to registrations, approvals, proceedings and/or any other judicial or extrajudicial measures necessary to constitute, maintain and/or release the collateral under the Brazilian security documents, including costs, taxes, expenses, emoluments, attorney's and expert fees, or any other cost or expense that may be incurred in relation to such proceedings or measures, shall be reimbursed by the respective grantor and Mirabela Brasil to the Brazilian Collateral Agent and/or Convertible Noteholders, as the case may be.

As mentioned in Section 4.3 above the level of recovery in a potential foreclosure is directly related to the forced sale value of the collateral and the availability of buyers at the time of foreclosure. In addition, the foreclosure procedure under the Brazilian security documents may last for a considerable period of time and not be achieved within the term expected or desired by the Convertible Noteholders.



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### **Schedule 7     Material contracts**

This schedule sets out the material terms of material contracts of the Mirabela Group which have not been summarised in other parts of this Prospectus.

- (a) Mirabela DOCA;
- (b) Proposed Deed of Amendment and Acknowledgement;
- (c) Summary of Existing Notes;
- (d) Summary of Interim Notes;
- (e) Summary of Caterpillar Facility;
- (f) Summary of Bradesco Facility;
- (g) Summary of Atlas Copco Facility;
- (h) Excavation of Ore and Waste Services Agreement with U&M;
- (i) Transport and Excavation of Ore and Waste Services Agreement with U&M;
- (j) Port Services Operation Agreement with Companhia Columbia Portuária ("CCP") (formerly Consórcio EADI Salvador Logística e Distribuição);
- (k) Services Agreement for the Production, Supply and Application of Explosives with IBQ – Indústrias Químicas Ltda. ("IBQ");
- (l) Fuel Supply Services Agreement with Ipiranga Produtos de Petróleo S.A. ("Ipiranga");
- (m) Power Supply Services Agreement with CPFL Comercialização Brasil S.A. ("CPFL");
- (n) Tailings Dam Uplift Agreement with Terrafácil ("Terrafácil");
- (o) Sand Supply Agreement with Xavier S. & Silva Ltda. ("Xavier");
- (p) Catering Services Agreement with Massa Alimentação e Serviços S/A ("Massa");
- (q) Uplift of tailings Dam Services Agreement with U&M. ("U&M");
- (r) Santa Rita Project Concentrate Sales Agreement with Votorantim;
- (s) Santa Rita Project Concentrate Sales Agreement with Norilsk;
- (t) Purchase Contract No. 686-14-32061-P with ITH; and
- (u) Purchase Contract No. 686-13-31687-P with ITH.

#### **(a) Summary of the Mirabela DOCA**

The Mirabela DOCA, as part of the Proposed Recapitalisation Plan, was put before the second creditors meeting held on 13 May 2014 to consider and vote upon. The Deed Administrators in



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the Section 439A Report, despatched to creditors on 2 May 2014, and at the meeting recommended that the creditors vote in favour of the Mirabela DOCA proposal as it would see a better return to creditors than a liquidation scenario. The resolution in favour of the Mirabela DOCA was carried by the statutory majority by those creditors present and voting at the meeting.

The purpose of the Mirabela DOCA is to give effect to certain elements of the Proposed Recapitalisation Plan involving the following elements:

- (a) the transfer of approximately 98.2% of the shares in the Company with leave of the Court pursuant to Section 444GA of the Corporations Act and in accordance with the terms of the Mirabela DOCA; and
- (b) the compromise of the Existing Notes and the Shareholder Claimants' claims; and
- (c) the satisfaction and discharge of the Interim Loan pursuant to the proposed Deed of Amendment and Acknowledgement; and
- (d) the issuance of the Convertible Notes and the Rollover Shares and the Fee Shares.

At the same meeting, the creditors of Mirabela Investments were asked to consider and vote upon the Mirabela Investments DOCA. The Deed Administrators recommended that the creditors vote in favour of the Mirabela Investments DOCA proposal as it was an integral part of the Proposed Recapitalisation Proposal which would ultimately see a better return to creditors than a liquidation scenario. Under the Mirabela Investments DOCA all claims of Existing Noteholders against Mirabela Investments are compromised and extinguished. The resolution in favour of the Mirabela Investments DOCA was carried by the statutory majority by those creditors present and voting at the meeting. The Mirabela DOCA and Mirabela Investments DOCA are interdependent.

The Mirabela DOCA does not impact employee or trade creditors, with the claims of such creditors remaining whole and payable in the ordinary course of business. The Mirabela DOCA binds all members, unsecured creditors and directors.

The Deed Administrators act as agents of the Company, and act jointly and severally in their capacity as deed administrators. During the Deed Period the Deed Administrators maintain day to day management and control of Mirabela to the exclusion of the directors. Under the terms of the Mirabela DOCA the Deed Administrators are granted the power to do the following things:

- (a) to remove from office a director;
- (b) to appoint a person as a director of the Company, whether to fill a casual vacancy or not;
- (c) to enter upon or take possession of the property of the Company;
- (d) to lease or let on hire property of the Company;
- (e) to insure property of the Company;
- (f) to insure the Deed Administrators for actions taken during the Deed Period;
- (g) to repair or renew property of the Company;
- (h) to call in, collect or convert into money the property of the Company;





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- (i) to administer the assets available for the payment of claims in accordance with the provisions of the Mirabela DOCA;
- (j) to borrow and grant security;
- (k) to bring, prosecute and defend in the name and on behalf of the Company or in the name of the Deed Administrators any actions, suits or proceedings;
- (l) to refer to arbitration any question affecting the Company;
- (m) to resolve any dispute of any nature commercially;
- (n) to make payments to any secured creditor of the Company and any person who is an owner or lessor;
- (o) to convene and hold meetings of the members or creditors of the Company for any purposes the Deed Administrators think fit;
- (p) to appoint agents to do any business or to attend to any matter or affairs of the Company that the Deed Administrators are unable to do, or that it is unreasonable to expect the Deed Administrators to do, in person;
- (q) to engage or discharge employees on behalf of the Company;
- (r) to appoint a solicitor, accountant or other professionally qualified person to assist the Deed Administrators;
- (s) to permit any person authorised by the Deed Administrators to operate any account in the name of the Company;
- (t) to do all acts and execute in the name and on behalf of Mirabela all deeds, receipts and other documents, using the Company's common or official seal when necessary;
- (u) subject to the Bankruptcy Act 1966, to prove in the bankruptcy of any contributory or debtor of the Company or under any deed executed under that act;
- (v) subject to the Act, to prove in the winding up of any contributory or debtor of the Company or under any scheme of arrangement entered into, or deed of company arrangement executed, under the Act;
- (w) to draw, accept, make or endorse any bill of exchange or promissory note in the name and on behalf of the Company;
- (x) to take out letters of administration of the estate of a deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor, or the estate of a contributory or debtor, that cannot be conveniently done in the name of the Company;
- (y) to bring or defend an application for the winding up of the Company;
- (z) to control the Company's business, property and affairs;



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- (aa) to carry on the business of the Company on such terms and conditions and for such purposes and times and in such manner as the Deed Administrators think fit subject only to the limitations imposed by the Mirabela DOCA;
- (bb) to perform any function and exercise any power that Mirabela or any of its officers could perform or exercise if the Company's was not subject to Mirabela DOCA;
- (cc) to compromise any claims brought by or against the Company on such terms as the Deed Administrators think fit and to take security for the discharge of any debt forming part of the property of the Company; and
- (dd) to enter into and complete any contract for the sale of shares in the Company;
- (ee) in accordance with Section 444GA of the Corporations Act, to transfer shares in the Company;
- (ff) to do anything that is incidental to exercising a power set out in this clause; and
- (gg) to do anything else that is necessary or convenient for the purpose of administering the Mirabela DOCA.

During the Deed Period, the Deed Administrators are acting as the agent of the Company and accept no personal liability for any acts, matters or omissions relating to things done or not done in that capacity, including, without limitation, any liability relating to any amounts payable by the Deed Administrators for services rendered, goods bought or property hired, leased, used or occupied by or on behalf of the Company. The Deed Administrators are entitled to be indemnified for:

- (a) their remuneration and costs;
- (b) all debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments arising out of or in the course of the administration of the Company during the Deed Period; and
- (c) any amount for which the Deed Administrators are entitled to exercise a lien at law in equity on the property of the Company,

except in the case of fraud or breach of duty by the Deed Administrators. The Deed Administrators are entitled to exercise a lien over the Company's assets for all amounts in respect of which they are entitled to an indemnity from the Company. The rights of the Deed Administrators to an indemnity and lien conferred by Mirabela DOCA shall have the same priority as that conferred by Section 443E of the Corporations Act in respect of rights conferred by Section 443D of the Corporations Act (modified as applicable).

The Mirabela DOCA creates a moratorium in relation to all creditors. Relevantly during or after the Deed Period no creditor shall in relation to his, her or its claim:

- (a) make or proceed with an application for an order to wind up the Company;
- (b) institute, revive or continue any action, suit, arbitration, mediation or proceeding against the Company or in relation to the property of the Company;
- (c) institute, revive or continue with any enforcement process against the property of the Company;



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- (d) take any action whatsoever to seek to recover any part of its claim;
- (e) exercise any right of set off or defence, cross claim or cross action to which that creditor would not have been entitled had the Company been wound up;
- (f) commence or take any further step in any arbitration against the Company or to which the Company is a party; or
- (g) otherwise enforce any right it may have or acquire,

except with the consent of the Deed Administrators or with the leave of the Court.

As contemplated under the Mirabela DOCA, the Deed Administrators applied under Section 444GA of the Corporations Act for leave of the Court to transfer approximately 98.2% of the existing shares of the Company. This application is set down for hearing on 12 June 2014.

The Mirabela DOCA will be fully effectuated after each of the following occurs:

- (a) an amendment of the Bradesco Facility is effected to the satisfaction of the Deed Administrators;
- (b) the waiver of any enforcement under the Caterpillar Facility granted on 28 February 2014 continues in effect to the satisfaction of the Deed Administrators;
- (c) a Court makes the Section 444GA Order;
- (d) the Deed of Amendment and Acknowledgement is entered into to the satisfaction of the Deed Administrators;
- (e) either:
  - (i) the Majority Existing Noteholders have received a written notice under FATA and/or the Foreign Investment Policy from the Treasurer (or his delegate) stating that, or to the effect that, the Commonwealth Government does not object to the transfer of the Transfer Shares, the issue of Convertible Notes and the issue of the Rollover Shares, Fee Shares and shares to be issued on conversion of the Convertible Notes (**FIRB Transaction**), either without condition or on terms acceptable to the Deed Administrators; or
  - (ii) following notice of the FIRB Transaction having been given by or on behalf of the Majority Existing Noteholders to the Treasurer under FATA, the Treasurer ceases to be empowered to make any order under Part II of FATA because of the expiry of the applicable statutory waiting period;
- (f) Relief has been obtained in a form satisfactory to the Deed Administrators; and thereafter contemporaneously
- (g) the Convertible Notes become "Finance Documents" for the purposes of the SNSD and have the benefit of the General Security as defined; and
- (h) the Company receives funds under the New Indenture to the satisfaction of the Deed Administrators.



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Upon effectuation, and assuming the Court grants leave to transfer the shares under Section 444GA of the Corporations Act, the Deed Administrators will transfer the shares. Approximately 98.2% of the ordinary shares in the Company will first be transferred to a bare trustee to hold such ordinary shares on trust for Existing Noteholders. The bare trustee will in turn transfer such ordinary shares to the Existing Noteholders, or as they direct, following receipt of instructions from the individual Existing Noteholder. The remaining 1.8% of shares is retained by existing shareholders of the Company.

The Mirabela DOCA will terminate on effectuation (as discussed above) or if the Mirabela DOCA is not fully effectuated by 31 July 2014 (or such later date as the Deed Administrators and the Majority Existing Noteholders agree) the Deed Administrators will convene a meeting of Mirabela's creditors to consider terminating the Mirabela DOCA and winding up Mirabela.

Upon termination as a result of effectuation, the Company and Mirabela Investments will return to the control of management and continue as going concerns.

### **(b) Summary of the Proposed Deed of Amendment and Acknowledgement**

The proposed Deed of Amendment and Acknowledgement is a simple form document and provides for the:

- (i) compromise of the debt under the Interim Loan; and
- (j) make amendments such that the Convertible Notes have the benefit of the Australia security package, and in particular the General Security.

The Deed of Amendment and Acknowledgement will be between the Company, the Administrative Agent and Security Trustee (the latter two both acting on the instructions of all the Interim Lenders).

Under the terms of the Deed of Amendment and Acknowledgement each of the Interim Lenders agrees that amounts owing in respect of the Interim Loan made pursuant to the SNSD will be comprised and extinguished upon the Issuance of:

- (k) Convertible Notes; and
- (l) provision of cash should an amount above US\$55million be raised by the New Capital Parties.

Further under the terms of the Deed of Amendment and Acknowledgement the Company, Administrative Agent and Security Trustee (the latter two both acting on the instructions of all the Interim Lenders) will amend the SNSD to provide for the Convertible Notes to obtain the benefit of the General Security. This will include the following steps:

- (a) to deem the Convertible Notes as "Finance Documents" for the purposes of the SNSD;
- (b) to include each holder of Convertibles Notes as a "Financier" for the purpose of the SNSD;
- (c) to delete Sections of the SNSD that are no longer applicable, and in particular those relating solely to the provision of the Interim Funding; and
- (d) provide for the continuation of the Security Trust as established under the SNSD.



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The Deed of Amendment and Acknowledgement is also considered a "Finance Document" for the purposes of the SNSD.

### **(c) Summary of Existing Notes**

Under an indenture dated 14 April 2011 by and among the Company, Mirabela Investments (subject to deed of company arrangement), Mirabela Brasil and the Bank of New York Mellon as Note Trustee, the Company raised approximately US\$395 million by issuing unsecured notes to institutional investors. Mirabela Investments and Mirabela Brasil guaranteed the obligations under the notes.

Interest under the notes is payable in April and October. The interest payments are approximately US\$17.3 million.

Default under the Indenture includes non-payment of any amount owing, non-compliance with a material term by the Company or its subsidiaries, the occurrence of an insolvency event and undertaking a restricted sale or grant of security.

As at 30 April 2014, the Existing Notes had a balance of approximately US\$430 million, including approximately US\$35 million of accrued and default interest which will be reduced to zero upon implementation of the Mirabela DOCA

See Sections 1.2, 2.2, 2.4, 3 and 4.3 for further information.

### **(d) Summary of Interim Notes**

Under a syndicated note subscription deed dated 24 December 2014 certain members of the Ad-hoc Group agreed to fund US\$45 million in interim financing to ensure the Mirabela Group could continue to operate. The facility was secured by an all asset security interest granted by the Company and Mirabela Investments, and security over certain unencumbered assets of Mirabela Brasil.

Default under the interim funding including non-payment of any amount owing, non-compliance with a material term by the Company or its subsidiary guarantors, the occurrence of an insolvency event and undertaking a restricted sale or grant of security.

As at 30 April 2014 the facility was fully drawn and the outstanding amount owing was approximately US\$60 million (including interest and fees).

See Sections 1.2, 2.2, 2.4, 3 and 4.3 for further information.

### **(e) Summary of Caterpillar Facility**

In March 2009, Mirabela Brasil, as lessee, and the Company, as guarantor, entered into a master funding and lease agreement with Caterpillar Financial SARL, as arranger, and Caterpillar Financial Services Corporation (**Caterpillar Financial Services**), as lender (together with the arranger, **Caterpillar Financial**) pursuant to which Caterpillar Financial agreed to extend a master funding and lease facility in the principal amount of not more than US\$55 million for the purpose of lease financing up to 90% of the purchase price of Caterpillar mobile equipment from Marcosa SA and Sotreq SA, Brazil. The Company has guaranteed the obligations of Mirabela Brasil under the Caterpillar Facility.

The Caterpillar Facility may be terminated for non-payment, breach of a material term, an insolvency event or if a representation or warranty is untrue (and not capable of remedy).

Approximately US\$5 million of the Caterpillar Facility is currently outstanding.



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See Sections 1.2, 2.2, 2.4, 3 and 4.3 for further information.

### **(f) Summary of Bradesco Facility**

In January 2012 Banco Bradesco S.A. extended a US\$50 million credit facility to Mirabela Brasil. The Bradesco Facility is secured by receivables due from Norilsk and Votorantim and from certain sales agreements between the Company and ITH. The Company has guaranteed the obligations of Mirabela Brasil.

The Bradesco Facility may be terminated for non-payment, breach of a material term, an insolvency event or if a representation or warranty is untrue (and not capable of remedy).

On 6 May 2014 an amendment agreement was entered into extending the termination date of the Bradesco Facility to 29 March 2018.

Approximately US\$47 million of the Bradesco Facility is currently outstanding.

See Sections 1.2, 2.2, 2.4, 3 and 4.3 for further information.

### **(g) Summary of Atlas Copco Facility**

In December 2011 Atlas Copco Customer Finance AB provided equipment finance funding to Mirabela Brasil for approximately US\$4.4 million. The Company guaranteed the facility.

The Atlas Copco Facility may be terminated for non-payment, breach of a material term, an insolvency event or if a representation or warranty is untrue (and not capable of remedy).

Approximately US\$1.5 million of the Atlas Copco Facility is outstanding.

See Sections 2.4 and 3 for further information.

### **(h) Excavation of Ore and Waste Services Agreement with U&M**

This contract was executed by U&M on 21 June 2013, and amended on 10 July 2013, with a term of 1,095 days as from the date of the execution. The price agreed is R\$66,633,141.54, subject to monetary readjustment against inflation variation by the IGPM index

#### **Scope of the contract**

The scope of this contract is the provision of excavation of ore and waste services.

#### **Termination and penalty clauses**

- (i) Termination without cause: (a) by mutual agreement; or (b) either party may terminate the contract without cause with 12 months prior notice to the other part. Excepting termination by mutual agreement, the party seeking termination of the contract will be subject to the payment of 10% of the outstanding amount due under the contract (plus inflation adjustment adopting the IGPM index) plus loss and damages incurred by the other party. Also, Mirabela Brasil or U&M, as the case may be, shall be entitled to exercise, within 60 days as from the notice of termination, the Call Option or the Put Option (described below) against the party who seeks to terminate the contract.
- (ii) Termination with cause:



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(1) Either party may terminate the contract with cause: (i) if execution of the contract is suspended for more than 60 days by virtue of force majeure or act of God; and (ii) in the event of filing for judicial/out-of-court reorganisation of the other party and/or decree of insolvency, bankruptcy or liquidation of the other party.

(2) Mirabela Brasil may terminate the contract: (i) if after notified, U&M does not comply with the terms and conditions set forth in the contract; (ii) if by reason of economic and/or market conditions, the mining operations are suspended; (iii) in case any judicial and/or administrative decision, or agreement with public entities, prevents or impairs the execution of the contract; (iv) if, in the mining area, U&M carries out any other activity not related to the contract; and (v) if U&M carries out its services with negligence, lack of skill and/or willful misconduct.

(3) U&M may terminate the contract: (i) if Mirabela Brasil fails to pay the amounts due under the contract for more than 30 days; (ii) reduction of the volume of production for a period exceeding 6 months by fault of Mirabela Brasil.

**Fine/penalty - termination with cause:** (a) no fine/penalty will be due in connection with the termination of the contract by the occurrence of the events described in items 1(i) and 2(iii) above; (b) the parties will be subject to the exercise of the Call Option or the Put Option in the occurrence of item 1(ii) above; (c) the defaulting party shall be subject to a fine in the amount of 10% of the outstanding amount due under the contract (plus inflation adjustment by IGPM) plus any losses incurred by the other party in the occurrence of the events described in items 2(i), 2(iv), 2(v), 3(i) and 3(ii) above; (d) Mirabela Brasil shall have to pay 10% of the outstanding amount due under the contract (plus inflation adjustment by IGPM) to U&M in the occurrence of the described in item 2 (ii) above, but in this case U&M shall not be entitled to exercise the Put Option against Mirabela Brasil.

**Call/Put Option:** Under certain terms and conditions, a party may exercise a Call/Put Option against the other party. In this regard, Mirabela Brasil shall have an option to buy the equipment and machinery related to the services performed under the contract, and U&M shall have an option to sell such machinery and equipment to Mirabela Brasil at a price determined using agreed methods.

### Event of early termination

The judicial and/or the out-of-court reorganisation of either party are events of early termination by the non-filing party. In this case, unless the machinery/equipment has been seized, Mirabela Brasil may be entitled to exercise its Call Option.

### Minimum volume commitments

The contract states as a principle that the volume of services set forth in the contract is an estimate, and that Mirabela Brasil will only pay the amounts related to services effectively rendered by U&M. However, it establishes a formula for calculating surplus and shortfall of production and penalties (i) to U&M in case of shortfall under 80% of the estimated production, and (ii) to Mirabela Brasil in case the shortfall of production is due to Mirabela Brasil not clearing work fronts.

### Change of control

**Assignment or transfer:** U&M shall not assign or transfer – totally or partially – the contract without the prior approval of Mirabela Brasil. The parties, however, are authorised to assign or transfer – totally or partially – the rights and obligations arising from the contract to companies belonging to the same economic group, or due to corporate restructuring, spin-off or merger.

### Other warranties and indemnification



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In case of late payment by Mirabela Brasil, it will be subject to a late payment fine (0.5% per month) and monetary readjustment (based on IGPM-FGV index), as well as interest in arrears (1% per month).

U&M provides a full warranty during the warranty period, which corresponds to the contractual term.

### **(I) Transport and Excavation of Ore and Waste Services Agreement with U&M ("U&M")**

This contract was executed by U&M on 21 June 2013, and amended on 10 July 2013, with a term of 730 days as from the date of the execution. The price agreed is R\$45,751,988.67, subject to monetary readjustment against inflation variation by the IGPM index.

#### **Scope of the contract**

The scope of this contract is the provision of excavation of ore and waste services.

#### **Termination and penalty clauses**

- (i) Termination without cause: (a) by mutual agreement; or (b) either party may terminate the contract without cause upon giving 12 months prior notice to the other party. Excepting termination by mutual agreement, the party seeking termination of the contract without cause will be subject to the payment of 10% of the outstanding amount due under the contract (plus inflation adjustment by adopting the IGPM index) plus losses and damages eventually incurred by the other party. Also, Mirabela Brasil or U&M, as the case may be, shall be entitled to exercise, within 60 days as from the notice of termination, the Call Option or the Put Option (described below) against the party who seeks to terminate the contract.
- (ii) Termination with cause:
  - (1) Either party may terminate the contract with cause: (i) if execution of the contract is suspended for more than 60 days by virtue of force majeure or act of God; and (ii) in the event of filing for judicial/out-of-court reorganisation of the other party and/or decree of insolvency, bankruptcy or liquidation of the other party.
  - (2) Mirabela Brasil may terminate the contract: (i) if after notified, U&M does not comply with the terms and conditions set forth in the contract; (ii) if by reason of economic and/or market conditions, the mining operations are suspended; (iii) in case any judicial and/or administrative decision, or agreement with public entities, prevents the execution of the contract; (iv) if, in the mining area, U&M carries out any other activity not related to the contract; and (v) if U&M carries out its services with negligence, lack of skill and/or willful misconduct.
  - (3) U&M may terminate the contract: (i) if Mirabela Brasil fails to pay the amounts due under the contract for more than 30 days; (ii) reduction of the volume of production for a period exceeding 6 months by fault of Mirabela Brasil.

**Fine/penalty - termination with cause:** (a) no fine/penalty will be due in connection with the termination of the contract by the occurrence of the events described in items 1(i) and 2(iii) above; (b) the parties will be subject to the exercise of the Call Option or the Put Option in the occurrence of item 1(ii) above; (c) the defaulting party shall be subject to a fine in the amount of 10% of the outstanding amount due under the contract (plus inflation adjustment by IGPM) plus any losses incurred by the other party in the occurrence of the events described in items 2(i), 2(iv), 2(v), 3(i) and 3(ii) above; (d) Mirabela Brasil shall have to pay 10% of the outstanding amount due under the contract (plus inflation adjustment by IGPM) to U&M in the occurrence of the described in item 2(ii) above, but in this case U&M shall not be entitled to exercise the Put Option against Mirabela Brasil.





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**Call/Put Option:** Under certain terms and conditions of the contract, a party may exercise a Call/Put Option against the other party. In this regard, Mirabela Brasil shall have an option to buy the equipment and machinery related to the services performed under the contract and U&M shall have an option to sell such machinery and equipment to Mirabela Brasil.

### **Event of early termination**

The judicial and/or the out-of-court reorganisation of either party are events of early termination. In this case, unless the machinery/equipment have been seized, Mirabela Brasil may be entitled to exercise its Call Option.

### **Minimum volume commitments**

The contract states, as a principle, that the volume of services set forth in the contract is an estimate, and that Mirabela Brasil will only pay the amounts related to services effectively rendered by U&M. However, it establishes a formula for calculating surplus and shortfall of production and penalties (i) to U&M in case of shortfall under 80% of the estimated production, and (ii) to Mirabela Brasil in case the shortfall of production is due to Mirabela Brasil not clearing work fronts.

### **Change of control**

**Assignment or transfer:** U&M shall not assign or transfer – totally or partially – the contract without prior approval of Mirabela Brasil.

The parties, however, are authorized to assign or transfer – totally or partially – the rights and obligations arising from the contract to companies belonging to the same economic group, or due to corporate restructuring, spin-off and merger.

### **Other warranties and indemnification**

In case of late payment by Mirabela Brasil, it shall be subject to a late payment fine (0.5% per month) and monetary readjustment (based on IGPM-FGV index), as well as interest in arrears (1% per month).

U&M provides a full warranty during the warranty period, which corresponds to the contractual term.

### **(j) Port Services Operation Agreement with Companhia Columbia Portuária (“CCP”) (formerly Consórcio EADI Salvador Logística e Distribuição)**

This contract was executed by the parties on 27 December 2010, and amended on 4 December 2012, with a term until 31 December 2014. The price agreed is R\$ 15,127,622.00, subject to monetary readjustment against inflation variation on a yearly basis by the IGPM index.

### **Scope of the contract**

The scope of this contract is the provision of port operation services.

### **Termination and penalty clauses**

- (i) Termination without cause: Mirabela Brasil may terminate the contract without cause upon 30 days prior notice.
- (ii) Termination with cause: Either party may terminate the contract: (a) in the event of filing for judicial/out-of-court reorganisation of the other party and/or decree of insolvency, bankruptcy or



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liquidation of the other party; (b) force majeure or act of God paralyzing activities for more than 60 days; (c) suspension of the services without the previous consent of the other party; (d) in case the penalties imposed on the other party reach 10% of the total amount of the contract; (e) breaching of any substantial provision of this contract.

**Fine/penalty - termination without cause:** No fine/penalty shall be due by Mirabela Brasil if it terminates the contract observing the prior notice period.

**Fine/penalty - termination with cause:** termination as per items (ii)(a) and (ii)(b) above shall not give rise to penalties or indemnification. Termination due to items (ii)(c) to (e) above shall subject the defaulting party to a fine/penalty equivalent to 10% of total amount of the contract, plus losses and damages.

Also, CCP may terminate this contract if Mirabela Brasil: (a) fails to pay the amount for more than 60 days; (b) fails to release important information about this contract; (c) breaches any obligation under this contract and does not cure its default after a prior notification with a period to cure (the contract does not establish the number of days to be given in such notice); and (d) does not observe the minimum supply volume of 90% of the total volume of nickel concentrate established under the contract.

### Change of control

**Assignment or transfer:** CCP shall not assign or transfer – totally or partially – the contract without prior approval of Mirabela Brasil.

### (k) Services Agreement for the Production, Supply and Application of Explosives with IBQ – Indústrias Químicas Ltda. (“IBQ”)

This contract was executed by the parties on 22 November 2010, and amended on 23 July 2013 and 2 December 2013 (with retroactive effect from 1 September 2013), with a term of 60 months from the date of execution (noted that the term may be reduced in case the supply of the contracted consumption items is concluded prior to the contractual term). The price agreed is R\$141,666,000.00, to be readjusted annually based on a formula set out in the contract which takes into account price variation of consumption materials and the IPCA index within the relevant one year period.

### Scope of the contract

The scope of this contract is the provision of services of production, supply and application of explosives.

### Termination and penalty clauses

- (i) Termination without cause: the contract may be terminated without cause by either party. There is inconsistency as to the prior notice period, as clause 16.1 provides for 60 days, whereas clause 16.9 provides for 30 days.
- (ii) Termination with cause: The contract may be terminated with cause by the other party in the occurrence of (a) bankruptcy, *concordata* (an insolvency proceeding no longer applicable under Brazilian insolvency laws), dissolution or judicial/extrajudicial liquidation; (b) breach of any provision of the contract which is not cured within 10 days; (c) if IBQ fails to carry out its obligations under the contract for more than 10 consecutive days or 30 days in aggregate; (d) if IBQ acts with negligence, imprudence, lack of skill or bad faith, (e) interruption of the activities due to force majeure/act of God lasting for more than 60 days; and (f) if IBQ transfers or assigns its obligations under the contract in whole or in part without Mirabela Brasil's prior consent.



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**Fine/penalty - termination without cause:** no fine/penalty shall be due by the terminating party if the prior notice period is observed.

### **Event of early termination**

The language of the contract refers to "concordata"; this may include judicial and/or the out-of-court reorganisation proceedings.

### **Minimum volume commitments**

The contract states that there is no mandatory minimum supply of consumables that Mirabela Brasil is obliged to acquire.

### **Change of control**

Assignment or transfer: IBQ shall not assign or transfer – totally or partially – the contract without the prior approval of Mirabela Brasil.

Mirabela Brasil, however, is authorized to assign or transfer – totally or partially – the rights and obligations arising from the contract to companies belonging to the same economic group, or due to corporate restructuring, spin-off and merger.

### **Other warranties and indemnification**

If any party breaches a provision of the contract which has no specific penalty, it shall be subject to a fine of 1% of an unspecified amount.

IBQ is also subject to a daily penalty of 0.15% of the relevant amount indicated in item 5 (limited to 3%) in case of delay in meeting contractual deadlines. As noted above, however, the contract does not state any relevant amount.

### **(I) Fuel Supply Services Agreement with Ipiranga Produtos de Petróleo S.A. ("Ipiranga")**

This contract was executed by the parties on 1 November 2010, with a term of 48 months as from the date of the execution. The price agreed is R\$122,907,780.00, subject to readjustment to reflect changes to any indirect taxes or to the prices charged to Ipiranga by the refinery which supplies its diesel fuel.

### **Scope of the contract**

The scope of this contract is the supply of diesel fuel to Mirabela Brasil.

### **Termination and penalty clauses**

- (i) Termination without cause: Mirabela Brasil may terminate the contract if it ceases to operate the Santa Rita mine due to facts not attributable to it.
- (ii) Termination with cause: the contract may be terminated with cause by the other party (a) if the first party fails to comply with its obligations under the contract (subject to a 5 days cure period), (b) if the first party goes into insolvency, bankruptcy or liquidation or files for judicial or out-of-court reorganisation; (c) if the first party incurs contractual fines/penalties exceeding 5% of the total amount of the contract; and (d) due to acts or omissions of the first party which render impossible the compliance by the other party of its obligations.



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**Fine/penalty - termination without cause:** no fine/penalty shall be due to Ipiranga if the termination is without cause as described above. Ipiranga would only be entitled to receive compensation for equipment investments and improvements made in the petrol station.

**Fine/penalty - termination with cause:** The defaulting party shall pay 0.5% of the total amount of the contract to the other party, plus losses and damages (if applicable). The other party may apply for specific performance of the defaulting party's obligations.

### Event of early termination

The judicial and/or the out-of-court reorganisation of either party are events of early termination.

### Minimum volume commitments

The contract states that there is no mandatory minimum supply of diesel fuel that Mirabela Brasil is obliged to acquire.

### Change of control

**Assignment or transfer:** The parties are only authorized to assign and transfer the rights and obligations arising from the contract to companies belonging to the same economic group.

### Other warranties and indemnification

If the contract is extinguished, Mirabela Brasil shall pay to Ipiranga all the amounts due, upon duly presentation of the fuel supply.

### (m) Power Supply Services Agreement with CPFL Comercialização Brasil S.A. ("CPFL")

This contract was executed on 1 January 2013, and amended on 25 November 2013 and 19 March 2014, having a term of 36 months as from the date of the execution, i.e. until 31 December 2015. The price agreed is of R\$84,619,392.00.

### Scope of the contract

The scope of this contract is the supply of power to Mirabela Brasil.

### Termination and penalty clauses

- (i) Termination without cause: the contract is irrevocable and irreversible and cannot be terminated without cause unless (a) in the case of force majeure and/or act of God exceeding 90 days; or (b) by mutual agreement of the parties.
- (ii) Termination with cause: the contract may be terminated by the other party (a) in case of bankruptcy, dissolution, wind-up or judicial or extrajudicial liquidation of the first party; (b) if the other party loses any of the necessary government licenses/authorities to perform its obligations under the agreement; (c) if the registration of the contract with the relevant governmental authorities is cancelled pursuant to the applicable power supply laws; (d) if the corporate letter of guarantee referred to below is not provided within the contractual terms, or is cancelled or unenforceable (in which case CPFL shall be the other party entitled to terminate with cause); (e) if CPFL does not record the annual, monthly and hourly quantities of power supplied, or if Mirabela Brasil does not validate the recorded amounts (in which cases Mirabela Brasil and CPFL shall be the other parties, respectively); and (f) if Mirabela Brasil does not sign and maintain the relevant regulatory documentation in force during the term of the contract (in which



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case CPFL shall be the other party entitled to terminate with cause). The termination with cause shall observe a 15 days prior notice. Also, the defaulting party shall have 10 days to cure its default.

### Event of early termination

The judicial and/or the out-of-court reorganisation are not events of early termination.

### Change of control

Assignment or transfer: No party may assign the contract without the express consent of the other party.

### Other warranties and indemnification

Mirabela Brasil is obliged to provide and renew on a yearly basis a corporate letter of guarantee in a value corresponding to 3 months of the contracted supply.

### (n) Tailings Dam Uplift Agreement with Terrafácil ("Terrafácil")

This contract was executed by the parties on 25 February 2013, and amended on 7 January 2014. The language of the amendment (which provided for, amongst other things, an extension of term) may lead to confusion, but appears to provide that the contract has a term of 18 months, expiring on 24 August 2014. The price agreed is R\$16,777,831.19.

### Scope of the contract

The scope of this contract is the provision of tailings dam uplift services by Terrafácil.

### Termination and penalty clauses

- (i) Termination without cause: (a) By mutual agreement of the parties; (b) by Mirabela Brasil upon 30 days prior notice to Terrafácil.
- (ii) Termination with cause:
  - (1) Either party may terminate the contract: (a) in case the execution of the agreement is suspended for more than 60 days by force majeure or act of God; and (b) in the event of filing for judicial/out-of-court reorganisation of the other party and/or decree of insolvency, bankruptcy or liquidation of the other party.
  - (2) Mirabela Brasil may terminate the contract: (a) if Terrafácil does not cure any contractual defaults notified by Mirabela within the applicable cure period and having taken the appropriate mitigation measures; (b) in case Terrafácil carries out any activities or brings to the worksite any equipment not related to the scope of the agreement; and (c) in case of proven inexperience, imprudence, negligence, willful misconduct, corruption or fraud by Terrafácil or its collaborators.
  - (3) Terrafácil may terminate the contract in case of unjustified lack of payment or late payment by Mirabela Brasil.

**Fine/penalty - termination without cause:** No penalties shall apply in case of termination without cause.



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**Fine/penalty - termination with cause:** in any case of termination of the contract (a) as per item (ii)(1) above, no penalties shall apply; (b) as per item (ii)(2) above, Terrafácil shall be subject to a termination fine in the amount of 10% of the contractual value, plus losses and damages; and (c) as per item (ii)(3) above, Mirabela Brasil would be subject to a contractual interest in arrears (1% per day) and monetary readjustment (based on the IGPM index), but no late payment fine would apply.

**In any event of termination:** (a) Mirabela Brasil shall pay Terrafácil the amounts corresponding to the scope of the contract duly executed, measured and approved until the termination date, less any penalties arising from the contract; and (b) Terrafácil shall (i) stop the supply pursuant to the terms of the notice; (ii) return to Mirabela Brasil all the equipment assigned during the execution of the contract; (iii) assure that the areas assigned to Mirabela Brasil are left in a safe condition; (iv) pay all the monies due to its collaborators related to the last month of supply, as well as the severance pay and forward the evidence of fulfillment of the obligations to Mirabela Brasil; and (v) take any measure Mirabela Brasil shall deem necessary related to the termination of the contract.

### Event of early termination

The judicial and/or the out-of-court reorganisation are events of early termination.

### Change of control

**Assignment or transfer:** Terrafácil shall not assign or transfer – totally or partially – the agreement without the prior approval of Mirabela Brasil.

The parties, however, are authorized to assign or transfer – totally or partially – the rights and obligations arising from the contract to companies belonging to the same economic group, or due to corporate restructuring, spin-off or merger.

### Other warranties and indemnification

Although the contract refers to a general default penalty, the relevant Section of the contract ("Other Penalties") only provides for two specific penalties levied against Terrafácil: (i) a fine for accidents causing loss of time – 2% of the measured amount in the contractual month which the accident occurred; and (ii) a fine for delay in the agreed timetable – which fine shall be charged in a proportional amount of the percentage of the delay related to the services in the relevant contractual month.

**Safety and Security Fine** - If Terrafácil fails to comply with the provisions established in the contract under the healthy, security, quality and the environment clause, it shall be subject to a fine of 2% of the invoiced amount for the period in which the infraction has occurred.

### (o) Sand Supply Agreement with Xavier S. & Silva Ltda. ("Xavier")

This contract was executed by the parties on 3 February 2014 with a term of 7 months, entering into force on 5 February 2014. The price agreed is R\$13,600,000.00.

### Scope of the contract

The scope of this contract is the supply of sand to Mirabela Brasil.

### Termination and penalty clauses

- (i) Termination without cause: (a) by mutual agreement; or (b) by Mirabela Brasil, upon serving a 30 days prior notice to Xavier.



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### (ii) Termination with cause:

(1) Either party may terminate the contract with cause: (i) in case the execution of the contract is suspended for more than 60 days by virtue of the occurrence of force majeure or act of God; (ii) in the event of judicial/out-of-court reorganisation and/or insolvency, bankruptcy or liquidation of the other party; and (iii) in the event that the other party – or any of its collaborators – engages in a prohibited conduct according to the terms of the anti-corruption clause.

(2) Mirabela Brasil may terminate the contract with cause: (i) if after notified, Xavier does not rectify the defect or mitigate the effects of the non-compliance with the terms of the contract; (ii) in case Xavier, or its collaborators, carry out any activities or brings to the worksite any equipment not related to the scope of the agreement; and (iii) in case of proven inexperience, imprudence, negligence, willful misconduct, corruption or fraud by Xavier or its collaborators.

(3) Xavier may terminate the contract in case of unjustified lack of payment or late payment by Mirabela Brasil (there is no provision as to the length of the delayed payment that would justify termination).

**Fine/penalty - termination without cause:** No penalties shall apply in case of termination without cause.

**Fine/penalty - termination with cause:** in case of termination (a) as per item (ii)(1) above, no penalties shall apply; (b) as per item (ii)(2) above, Xavier will not be subject to a termination fine, but it shall be liable for losses and damages; and (c) as per item (ii)(3) above, Mirabela Brasil would be subject to a contractual interest in arrears (1% per month) and monetary readjustment (based on the IGPM index), but no late payment fine would apply.

**In any event of Termination:** (a) Mirabela Brasil shall pay Xavier the amounts corresponding to the scope of the contract duly executed, measured and approved until the termination date, less any penalties arising from this contract; and (b) Xavier shall (i) stop the supply pursuant to the terms of the notice; (ii) return to Mirabela Brasil all the equipment assigned during the execution of the contract; (iii) assure that the areas assigned to Mirabela Brasil are left in a safe condition; (iv) pay all the monies due to its collaborators related to the last month of supply, as well as the severance pay and forward the evidence of fulfillment of the obligations to Mirabela Brasil; and (v) take any measure Mirabela Brasil shall deem necessary related to the termination of the contract.

### Event of early termination

The judicial and/or the out-of-court reorganisation of either party are events of early termination.

### Minimum volume commitments

The contract states as a principle that the volume of services set forth in the contract is an estimate, and that such volume may vary, pursuant to Mirabela Brasil's needs.

### Change of control

Assignment or transfer: Xavier shall not assign or transfer – totally or partially – the contract without the prior approval of Mirabela Brasil.

The parties are authorized to assign or transfer in whole or in part the rights and obligations arising from the contract to companies belonging to the same economic group, or due to corporate restructuring, spin-off and merger.



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### Other warranties and indemnification

**Safety and Security Fine** - If Xavier fails to comply with the provisions established in the contract under the healthy, security, quality and the environment clause, it shall be subject to a fine of 2% of the invoiced amount for the period in which the infraction has occurred.

Although the contract refers to a general default penalty, the relevant Section of the contract ("Other Penalties") only provides for one specific penalty levied against Xavier, namely a fine for breach in the supply timetable – in the event there a shortfall in the quantities to be supplied as provided for in the contract Xavier shall pay Mirabela Brasil a fine in the amount corresponding to 50% of the quantity of sand not delivered within the term established in the contract. The amount shall be retained and will be returned to Xavier if it recovers the delivery volumes in the subsequent months. If Xavier is not able to recover the delay in 3 consecutively months, there shall be no compensation.

### (p) Catering Services Agreement with Massa Alimentação e Serviços S/A ("Massa")

This contract was executed on 13 August 2012 (with retroactive effect from 1 July 2012), and amended on 22 March 2013 (with retroactive effect from 1 August 2012). The provisions addressing the contractual term are not clear, as they state a term of 24 months as from the date of the execution (i.e., 13 August 2013, in which case the contract will terminate on 12 August 2014), but "with retroactive effects to 1 July 2013" (in in which case the contract will terminate on 30 June 2014). The price agreed is R\$10,014,878.00, subject to monetary readjustment against inflation variation by the IGPM index.

### Scope of the contract

The scope of this contract is the provision of catering services to Mirabela Brasil.

### Termination and penalty clauses

- (i) Termination without cause: by mutual agreement upon serving a 30 days prior notice to the other party.
- (ii) Termination with cause:
  - (1) Either party may terminate the contract with cause: (i) in the event judicial/out-of-court reorganisation and/or insolvency, bankruptcy or liquidation of the other party; and (ii) in case the execution of the contract is suspended for more than 90 days by virtue of force majeure or act of God.
  - (2) Mirabela Brasil may terminate the contract if Massa breaches any of the obligations established therein and it fails to remedy it.

**Fine/penalty - termination without cause:** The party seeking termination of the contract which does not observe the 30 day notice requirement will be subject to the payment of a termination fine of 2% of the outstanding amount of the contract.

**Fine/penalty - termination with cause:** if the contract is terminated by fault of Massa, there is a penalty equivalent to 10% of total amount of the contract. If terminated by virtue of insolvency procedures, force majeure or act of God, no fine/penalty shall be due to the other party.

### Event of early termination

The judicial and/or the out-of-court reorganisation are events of early termination.





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### **Change of control**

Assignment or transfer: Massa shall not assign or transfer the contract without prior approval of Mirabela Brasil.

### **Other warranties and indemnification**

If Mirabela Brasil fails to pay any amount in the due date, it shall be subject to: (i) 2% as late payment fine; and (ii) 0.66% per day as interest in arrears.

If Massa fails to comply with the terms established in the contract for the execution of its scope, it shall be subject to a daily default penalty of 0.25% over the outstanding amount of the invoice issued in respect of the month in which the breach occurred. The default penalty shall be limited to 10% of the contract value.

The breach of any obligation of the contract subjects Massa to the payment of a 5% fine over the invoiced amount for the relevant month.

If Massa does not reach a positive SLA index (70%), it shall be subject to a fine of 1% over the measured amount in the relevant 15-day period.

If Massa does not reach 85% in the average of LV, it shall be subject to a fine of 1% over the measured amount in the relevant 15-day period.

If Massa does not remedy breaches of the contract within the established cure periods, it shall be subject to a fine of 1% over the measured amount in a certain day.

Massa shall be subject to a fine of 1% over the measured amount in a certain day if there are any changes in the menu arising from a failure of planning by Massa.

If Massa obtains an average inferior of 70% in a satisfaction survey for 2 consecutive months, it shall be subject to a fine of 1% over the average measured amount of these 2 months.

If (i) there is any occurrence which indicates a food poisoning involving 10% of the food amount served; (ii) there is the proof of odd objects in the food served, Massa shall be subject to a fine of 50% over the measurement of the day in which the event occurred.

### **(q) Uplift of tailings Dam Services Agreement with U&M**

This contract was executed on 27 January 2014, with a term of 12 months from the date of execution. The price agreed is R\$117,636,355.30, subject to monetary readjustment against inflation variation by the IGPM index.

### **Scope of the contract**

The scope of this contract is the provision of services for the uplifting of the tailings dam.

### **Termination and penalty clauses**

- (i) Termination without cause: by mutual agreement or unilaterally by either party upon serving a 15 days prior written notice to U&M.
- (ii) Termination with cause:



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(1) Either party may terminate the contract with cause: (a) in case the execution of the contract is suspended for more than 60 days by virtue of the occurrence of force majeure or act of God; or (b) in the event of judicial/out-of-court reorganisation and/or insolvency, bankruptcy or liquidation of the other party;

(2) Mirabela Brasil may terminate the contract with cause: (a) if after notified, U&M does not rectify the defect or mitigate the effects of the non-compliance with the terms of the contract; (b) in case U&M, or its collaborators, carry out any activities or brings to the worksite any equipment not related to the scope of the agreement; and (c) in case of proven inexperience, imprudence, negligence, willful misconduct, corruption or fraud by U&M or its collaborators.

(3) U&M may terminate the contract (a) in case of unjustified lack of payment or late payment by Mirabela Brasil within 30 days, or (b) if, by Mirabela Brasil's fault, there is a decrease of 20% or more in the volume of the services for a period of 6 consecutive months.

**Fine/penalty - termination without cause:** No penalties shall apply in case of termination without cause.

**Fine/penalty - termination with cause:** in case of termination (a) as per item (ii)(1) above, no penalties shall apply; (b) as per item (ii)(2) above, U&M shall be subject to a termination fine of 1% of the contract value (not exceeding the limit of 10% of the outstanding contractual amount) and losses and damages; and (c) as per item (ii)(3) above, Mirabela Brasil would be subject to a termination fine of 1% of the contract value.

In any event of Termination: (a) Mirabela Brasil shall pay U&M the amounts corresponding to the scope of the contract duly executed, measured and approved until the termination date, less any penalties arising from this contract; and (b) U&M shall (i) stop the supply pursuant to the terms of the notice; (ii) return to Mirabela Brasil all the equipment assigned during the execution of the contract; (iii) assure that the areas assigned to Mirabela Brasil are left in a safe condition; (iv) pay all the monies due to its collaborators related to the last month of supply, as well as the severance pay and forward the evidence of fulfillment of the obligations to Mirabela Brasil; and (v) take any measure Mirabela Brasil shall deem necessary related to the termination of the contract.

### Event of early termination

The judicial and/or the out-of-court reorganisation of either party are events of early termination.

### Minimum Volume Commitments

The contract states as a principle that the volume of services set forth in the contract is an estimate, and that such volume may vary, pursuant to Mirabela Brasil's needs.

### Change of Control

Assignment or transfer: U&M shall not assign or transfer – totally or partially – the contract without prior approval of Mirabela Brasil.

The parties are authorized to assign or transfer in whole or in part the rights and obligations arising from the contract to companies belonging to the same economic group, or due to corporate restructuring, spin-off and merger.

Change of control: The contract is silent regarding the change of control by both parties.

### Other warranties and Indemnification



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If Mirabela Brasil fails to comply with the payment of its obligations under the contract in the term established therein, it will be subject to a fine of 2% of the invoiced amount plus a late payment fine (1% per month) and monetary readjustment (based on IGPM index).

**Safety and Security Fine** – If U&M fails to comply with the provisions established in the contract under the healthy, security, quality and the environment clause, it shall be subject to a fine of 2% of the invoiced amount for the 15-day period in which the infraction had occurred.

The contract also provides for (i) a fine for accident with loss of time – 2% of the invoiced amount for the 15-day period in which the accident occurred; (ii) a fine for accident without loss of time – 2% of the invoiced amount for the 15-day period in which the accident occurred, provided that Mirabela Brasil evidences that it was due to U&M's violation of the safety standards; (iii) fine/retention for work delay – 10% of the amount related to the services provided for in the timetable but not executed by U&M. The amount shall be retained and may be returned to U&M if it recovers the delay within 4 consecutive months.

### **(r) Santa Rita Project Concentrate Sales Agreement with Votorantim**

This contract was executed on 8 January 2008, as amended on 20 August 2008 and 15 October 2013. The term of the contract commences on the date of the contract and ends on 31 December 2014. There is also provision for extension of the term in certain circumstances.

Generally, the price payable by Votorantim for each monthly delivery is the sum of the accountable metal values (each value being the accountable metal content applicable to a specified metal multiplied by a specific reference price for that metal), (a) minus certain treatment and refining charges, any applicable penalty as a result of the magnesium oxide content and freight allowance determined in accordance with the contract, (b) plus the amount payable on account of sulphur price sharing under the contract; (d) plus the amount of taxes due by Mirabela Brasil to any government entity with respect to or levied on the sale of product in accordance with the contract.

It is important to mention that the parties are about to commence arbitration on this contract.

### **Scope of the contract**

The scope of this contract is the purchase and sales of nickel concentrate.

### **Termination and penalty clauses**

(i) Termination without cause: the contract is silent regarding the termination without cause.

(ii) Termination with cause:

(1) Mirabela Brasil may terminate the contract for any material breach or contravention of a term of the contract by Votorantim which is not remedied by Votorantim within 20 business days (or such long period as Mirabela Brasil may agree) after receipt of written notice from Mirabela Brasil requiring the breach to be remedied. If the breach or contravention is not remedied within that period, Mirabela Brasil may terminate the contract by serving notice on Votorantim in writing of its intention to terminate.

Votorantim may terminate the contract for any material breach or contravention of a term of the contract by Mirabela Brasil which is not remedied by Mirabela Brasil within 20 business days after receipt of written notice from Votorantim requiring the breach to be remedied. If the breach or contravention is not remedied within that period, Votorantim may terminate the contract by serving on Mirabela Brasil a notice in writing of its intention to terminate.



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(2) Mirabela Brasil may by notice terminate the contract if the conditions precedent are not satisfied.

If an affected party claims that its performance or part performance of the contract is prevented, suspended or delayed directly or indirectly by a force majeure event for a continuous period of 12 months, then the non-affected party may elect to terminate the contract at the end of that 12 month period by giving 30 days' notice to the affected party.

If any dispute arises as to whether a material breach or contravention of the contract has occurred or if that breach or contravention has been remedied, then that dispute shall be determined in accordance with the contract and pending that determination, any termination notice given by Mirabela Brasil or Votorantim under the termination clause shall be suspended. If a determination confirms the right of a party to terminate, then Mirabela Brasil or Votorantim, as applicable may give another termination notice and the contract terminates in accordance with the relevant provisions.

**Fine/penalty - termination without cause:** the contract is silent regarding the fine/penalty termination without cause.

**Fine/penalty - termination with cause:** the contract is silent regarding the fine/penalty termination without cause.

### **Event of early termination**

If at any time during the term of the contract (including any extension of it) Mirabela Brasil determines to build its own smelter at or near the project site, it may give not less than 18 months' notice to Votorantim to terminate the contract, provided that (a) this termination shall not take effect prior to 1 January 2013; and (b) if the offtake prepayment and all other moneys payable under the offtake prepayment agreement have not been paid and repaid by the termination date, then this contract will continue in accordance with its terms and shall not terminate until the offtake prepayment and those other moneys have been paid and repaid in full.

### **Minimum volume commitments**

Mirabela Brasil will use reasonable endeavours to deliver in each calendar year +/-10% of the indicative quantity of nickel concentrate specified with respect to such calendar year, or as otherwise agreed by Votorantim and Mirabela Brasil.

### **Change of control**

**Assignment or transfer:** no party may assign its rights under the contract without prior written consent of the other parties.

No assignment shall be effective unless and until the assignee agrees in writing with the continuing parties to be bound by and perform all of the obligations of the contract assigned to and assumed by it.

### **Other warranties and indemnification**

If there are any deviations in the specifications and moisture content of the nickel concentrate described in the contract which are materially adverse to Votorantim having regard to the specifications of that product as a whole, the parties will negotiate in good faith with full disclosure to overcome any technical issues with that product and, to the extent applicable and having regard to the



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provisions of the contract, to compensate Votorantim for any significant financial disadvantage that Votorantim may suffer as consequence of such material deviations.

Mirabela Brasil shall: (a) keep Votorantim informed of the progress of construction of the project and any related facilities, and any changes to the anticipated date of the commencement of production; (b) provide Votorantim with a forecast of its anticipated production for the next succeeding quarter; and (c) advise Votorantim promptly upon becoming aware of any variation in anticipated production from that previously provided to Votorantim.

Subject to certain provisions, if the magnesium oxide content in a monthly delivery exceeds 9.5%, then a penalty of USD 1.00 per DMT of that monthly delivery will be applied for each 0.1% by which the magnesium oxide content exceeded the 9.5%. No penalty will apply during the period of 2 months commencing from the first supply date.

The parties are subject to a confidentiality commitment with respect to the contract and all information provided by a party under it. There is no specific penalty applicable in case of violation of confidentiality obligations.

### **(s) Santa Rita Project Concentrate Sales Agreement with Norilsk**

This contract was executed on 5 September 2008. The term of this contract commences on the date of the contract and ends on the later of: (i) 31 December 2014; or (ii) the date which Mirabela Brasil delivers the 'Minimum Quantity' (which is specified in clause 5.1(a) of the contract). There is also provision for extension of the term in certain circumstances.

The price payable by Norilsk for each shipment is the sum of the accountable metal values (each value being the accountable metal content applicable to a specified metal multiplied by a specific reference price for that metal), (a) minus certain treatment and refining charges and any applicable adjustment as a result of the Fe/MgO ratio; and (b) plus Norilsk's contribution to the freight costs, which is the difference, if any, between the freight cost of a shipment delivered to a seaport other than Rotterdam, Holland against the corresponding cost of a shipment delivered to Rotterdam, Holland.

It is important to mention that this contract is governed by English law and our analysis is limited to the description of its content.

### **Scope of the contract**

The scope of this contract is the purchase and sales of nickel concentrate.

### **Termination and penalty clauses**

(i) Termination without cause: the contract is silent regarding the termination without cause.

(ii) Termination with cause:

(1) Mirabela Brasil may terminate the contract for any material breach or contravention of a term of the contract by Norilsk which is not remedied by Norilsk within 20 business days (or such long period as Mirabela Brasil may agree) after receipt of written notice from Mirabela Brasil requiring the breach to be remedied. If the breach or contravention is not remedied within that period, Mirabela Brasil may terminate the contract by serving on Norilsk notice in writing of its intention to do so.

If Norilsk claims that its performance or part performance of the contract is prevented, suspended or delayed directly or indirectly by a force majeure event for a continuous period of



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12 months, then Mirabela Brasil may elect to terminate the contract at the end of that 12 month period by giving 30 days' notice to Norilsk.

If the conditions precedent are not satisfied by the dates provided, Mirabela Brasil may by notice to Norilsk terminate the contract.

(2) Norilsk may terminate the contract for any material breach or contravention of a term of the contract by Mirabela Brasil which is not remedied by Mirabela Brasil within 20 business days after receipt of written notice from Norilsk requiring the breach to be remedied. If the breach or contravention is not remedied within that period, Norilsk may terminate the contract by serving on Mirabela Brasil notice in writing of its intention to do so.

If Mirabela Brasil claims that its performance or part performance of the contract is prevented, suspended or delayed directly or indirectly by a force majeure event for a continuous period of 12 months, then Norilsk may elect to terminate the contract at the end of that 12 month period by giving 30 days' notice to Mirabela Brasil.

If the conditions precedent are not satisfied by the dates provided, Norilsk may by notice to Mirabela Brasil terminate the contract. A termination notice may only be given by Norilsk if the following conditions precedent are not satisfied or waived: (a) the execution of an offtake loan option agreement which records the grant by Mirabela Nickel Limited of an option in favour of Norilsk under which it may require Mirabela Nickel Limited to purchase all or part of the offtake loan; (b) the execution of a legal opinion from counsel to Norilsk to be issued by a firm of solicitors approved by, and to be in a form acceptable to, Mirabela Brasil's senior lenders relating to, among other things, the enforceability of the contract against Norilsk, due power and authority and binding effect, and each of specified documents; and (c) evidence that the obligations of Mirabela Brasil under the offtake loan agreement are secured by a Quota Pledge Agreement granted by each of Mirabela Nickel Limited and Mirabela Investments Pty Ltd over all of the issued quotas in Mirabela Brasil by 15 September 2008, or such later date as may be agreed.

If any dispute arises as to whether a material breach or contravention of the contract has occurred or if that breach or contravention has been remedied, then that dispute shall be determined in accordance with the contract and pending that determination, any termination notice given by Mirabela Brasil or Norilsk under the termination clause shall be suspended. If a determination confirms the right of a party to terminate, then Mirabela Brasil or Norilsk (as applicable) may give another termination notice and the contract terminates in accordance with the relevant provisions.

**Fine/penalty - termination without cause:** the contract is silent regarding the fine/penalty termination without cause.

**Fine/penalty - termination with cause:** the contract is silent regarding the fine/penalty termination without cause.

**Pre-emptive right:** If the contract is terminated due to the fact that Mirabela Brasil determines to build its own smelter at or near the Project site, Mirabela Brasil grants to Norilsk a right of first refusal to purchase 50% of Mirabela Brasil's annual production of nickel concentrate produced by Mirabela Brasil at the Project in its refined state on specified terms.

### Event of early termination

If at any time during the term of the contract (including any extension of it) because Mirabela Brasil determines to build its own smelter at or near the Project site, it may give not less than 18 months'



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notice to Norilsk to terminate the contract, provided that such termination may not take effect prior to 1 January 2013 and provided also that if all moneys payable by Mirabela Brasil to Norilsk under the offtake loan agreement have not been paid and repaid by the termination date, the contract will continue in accordance with its terms until those moneys have been paid and repaid in full.

### **Minimum volume commitments**

The contract states that the quantity of nickel concentrate produced by Mirabela Brasil at the Project to be sold and purchased under the contract during the term of the contract will be:

- (a) in 2009, all nickel concentrate produced by Mirabela Brasil that is in excess of 35,000 DMT; and
- (b) thereafter, 50% of Mirabela Brasil's production,

provided that the minimum nickel content in product to be sold and purchased during the term will not be less than 66,500 tonnes, unless: (a) the contract is terminated due to the fact that Mirabela Brasil determines to build its own smelter at or near the Santa Rita mine site (in which event the minimum quantity will be reduced by the estimated nickel content in product that Mirabela Brasil would have been required to sell to Norilsk during the period from the termination date up to 31 December 2014; or (b) Mirabela Brasil sells nickel concentrate to a third party or third parties during the occurrence of an applicable force majeure event (where Norilsk is the affected party) in which event the minimum quantity will be reduced by the estimated nickel content in that product; or (c) the parties otherwise agree.

Mirabela Brasil will use reasonable endeavours to deliver +/-10% of the indicative quantity of nickel concentrate specified with respect to specified year, or as otherwise agreed by the parties.

### **Change of control**

Assignment or transfer: neither party may assign its rights under the contract without the prior written consent of the other party.

Mirabela Brasil may not unreasonably withhold or delay giving consent to Norilsk assigning its rights under the contract to an affiliate of it if (a) there is no increased cost to Mirabela Brasil (in Mirabela Brasil's opinion) as a consequence of such an assignment; (b) the assignee agrees in writing with the continuing party to be bound by and perform all of the obligations of the contract assigned to and assumed by it; (c) unless Mirabela Brasil otherwise agrees, Norilsk guarantees the performance by the assignee of its obligations under the contract; and (d) the assignee becomes a party to, and bound by, the direct agreement between among others Mirabela Brasil, Norilsk and Deutsche Bank Trust Company Americas as the offshore security agent acting for and on behalf of Mirabela Brasil's senior lenders which records the terms of certain agreements made between them and Norilsk in relation to the arrangements contemplated in the contract.

No assignment shall be effective until the assignee agrees in writing with the continuing party to be bound by and perform all of the obligations of the contract assigned to and assumed by it.

### **Other warranties and indemnification**

Mirabela Brasil must ensure that (subject to certain requirements): (a) a minimum of 80% of the nickel concentrate delivered under this contract will be 125 microns or smaller; (b) the moisture content of each shipment shall not exceed the transportable moisture limit provided in the International Maritime Organisation's Code of Safe Practice for Bulk Cargoes, 2004; (c) the nickel concentrate shall not exhibit radioactivity; and (d) in no event may the nickel concentrate contain hazardous substances (I)



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at a level that is inherently dangerous to the health of any person or (ii) that do not comply with any applicable laws.

Subject to certain provisions, if there are any deviations in the specifications of certain key elements and in certain matters contemplated in the contract which are materially adverse to Norilsk having regard to the specifications of that product as a whole, the parties will promptly discuss and negotiate in good faith with full disclosure to overcome any technical issues with that product and, to the extent applicable and having regard to the provisions of the contract, to compensate Norilsk for any significant financial disadvantage that Norilsk may suffer as consequence of such material deviations.

Mirabela Brasil shall keep Norilsk informed of the progress of construction of the project and any related facilities, and any changes to the anticipated date of the commencement of the production.

If Mirabela Brasil requests early payment of the provisional value of a shipment, Mirabela Brasil shall pay interest on the amount of that provisional value at the rate of LIBOR + 2.5% per annum for a certain financing period (on the basis of a 360 day year).

Any late payment by a party shall be subject to an interest charge at the rate of LIBOR + 2.5% per annum for a late payment period (on the basis of a 360 day year).

The parties are subject to a confidentiality commitment with respect to the contract and all information provided by a party under it. There is no specific penalty applicable in case of violation of confidentiality obligations.

### **(t) Purchase Contract No. 686-14-32061-P with ITH**

This contract was executed on 27 December 2013, and amended on 6 March 2014. The price payable per dry metric tonne of nickel sulphide concentrate is the sum of the payments specified for each of the metals associated with the nickel concentrate produced less the following deductions: (i) deductions reflecting the variation of nickel and copper prices; (ii) deductions proportional to the amount of magnesium oxide in the nickel concentrate; and (iii) freight and insurance depending on the method and port of shipment.

### **Scope of the contract**

The scope of this contract is the spot sale of nickel sulphide concentrate.

### **Termination and penalty clauses**

Termination with cause: Either party may terminate the contract with cause: (A) in the event of force majeure claimed by the other party which is equal to or exceeds 3 months as from the date of the force majeure notice, provided that the force majeure event is continuing; (B) the failure of a party to comply with any material obligation under the Contract which is not cured within 10 business days; (C) the inability or admitted inability or declared inability of a party to pay its debts as they fall due; or (D) in the event of the institution or commencement of any corporate action or legal proceedings in respect of a party in relation to dissolution, administration, winding up, liquidation, receivership, compulsory management or bankruptcy (noting that, in the case of "B", "C" and "D", the other party may decide to terminate only the delivery or deliveries in respect of which the event of default has occurred, or suspend performance of its obligation under this contract until such event of default is cured).

### **Minimum volume commitments**

The contract states as a principle that the volume of services is an estimate (16,500 wet metric tons). ITH may, at its discretion, tolerate a variation of approximately 10% (for shipping purposes only).





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### **Change of control**

Assignment or transfer: The parties are not authorised to assign or transfer their rights or obligations under the contract, in full or in part, without the prior written consent of the other party. Mirabela Brasil or its assigns, however, may assign, without consent from ITH, its rights to receive and obtain payment under the contract in connection with the bank funding.

Change of control: No changes in the organisation, control or management of ITH or Mirabela Brasil affect the contract, unless this causes the circumstances set out in 13.2(c)(B), 13.2(c)(C) or 13.2(c)(D).

### **Other warranties and indemnification**

If an event of default occurs and a termination date is established, the non-defaulting party may set off any and all amounts whether present or future, actual or contingent which the defaulting party owes to the non-defaulting party against any and all amounts which the non-defaulting party owes to the defaulting party.

If Mirabela Brasil (and/or any of its affiliates) fails to comply with its payment obligations under the contract or any contracts between the parties, ITH will be entitled to withhold, set off or deduct any sum under any of these contracts.

Title to and risk in the nickel sulphide concentrate shall pass from Mirabela Brasil to ITH when such product has been placed at the disposal of ITH in the bonded warehouse in Aratu or Salvador, Brazil. If ITH elects to have the product delivered at the stockyard, title to such product shall pass from Mirabela Brasil to ITH when the nickel sulphide concentrate has been delivered into the stockyard. Risk in the product shall pass from Mirabela Brasil to ITH when it has been placed at the disposal of ITH at the ITH's warehouse.

### **(u) Purchase Contract No. 686-13-31687-P with ITH**

This contract was executed on 8 November 2013, as amended on 27 November 2013 (with retroactive effect from 20 November 2013), 12 December 2013 (with retroactive effect from 9 December 2013), 14 March 2014 (with retroactive effect from 8 November 2013) and 28 April 2014 (with retroactive effect from 8 November 2013). The price payable per dry metric tonne of the nickel sulphide concentrate is the sum of the payments specified for each of the metals associated with the nickel concentrate produced, less the following deductions: (i) deductions proportional to the amount of magnesium oxide in the nickel concentrate; and (ii) freight, insurance and logistics charges depending on EXW or CIF delivery.

### **Scope of the contract**

The scope of this contract is the spot sale of nickel sulphide concentrate.

### **Termination and penalty clauses**

Termination with cause: Either party may terminate the contract with cause: (A) in the event of force majeure claimed by the other party which is equal to or exceeds 3 months as from the date of the force majeure notice, provided that the force majeure event is continuing; (B) the failure of a party to comply with any material obligation under the Contract which is not cured within 10 business days; (C) the inability or admitted inability or declared inability of a party to pay its debts as they fall due; or (D) in the event of the institution or commencement of any corporate action or legal proceedings in respect of a party in relation to dissolution, administration, winding up, liquidation, receivership, compulsory management or bankruptcy (noting that, in the case of "B", "C" and "D", the other party may decide to



## MIRABELA NICKEL

terminate only the delivery or deliveries in respect of which the event of default has occurred, or suspend performance of its obligation under this contract until such event of default is cured).

### **Minimum volume commitments**

The contract states that the quantity for a first shipment is of 7,500 dry metric tonnes of nickel sulphide concentrate. ITH may, at its discretion, tolerate a variation of approximately 10%.

The contract also states that, subject to availability, ITH shall have the option to purchase an additional quantity of 7.5 dry metric tonnes of nickel sulphide concentrate.

### **Change of control**

**Assignment or transfer:** The parties are not authorised to assign or transfer their rights or obligations under the contract, in full or in part, without the prior written consent of the other party. Mirabela Brasil or its assigns, however, may assign, without consent from ITH, its rights to receive and obtain payment under the contract in connection with the bank funding.

**Change of control:** No changes in the organisation, control or management of ITH or Mirabela Brasil shall affect the contract, unless this causes the circumstances set out in clauses 14.2(c)(B), 14.2(c)(C) or 14.2(c)(D).

### **Other warranties and indemnification**

If any party fails to comply with its payment obligations as they fall due, it shall be subject to interest on the late payment calculated from the due date to the date on which payment is made in full at the rate of 3-month LIBOR plus 3% per annum.

If an event of default occurs and a termination date is established, the non-defaulting party may set off any and all amounts whether present or future, actual or contingent which the defaulting party owes to the non-defaulting party against any and all amounts which the non-defaulting party owes to the defaulting party.

If Mirabela Brasil (and/or any of its affiliates) fails to comply with its payment obligations under the contract or any contracts between the parties, ITH will be entitled to withhold, set off or deduct any sum under any of these contracts, provided that such deduction shall not exceed the aggregate value of the goods and the sums due under the contracts.

Title to and risk in the nickel sulphide concentrate shall pass from Mirabela Brasil to ITH when such product has been placed at the disposal of ITH in ITH's warehouse. In relation to the first shipment and the additional shipment, if ITH elects to have the product delivered at the stockyard, title to such product shall pass from Mirabela Brasil to ITH when the nickel sulphide concentrate has been delivered into the stockyard. Risk in the product shall pass from Mirabela Brasil to ITH when it has been placed at the disposal of ITH at the ITH's warehouse.

## Schedule 8 Application Form

MIRABELA NICKEL LIMITED (SUBJECT TO DEED OF  
COMPANY ARRANGEMENT)  
ABN 23 108 161 593  
APPLICATION FORM – OFFERS

Share Registrar's use only	
Broker reference – stamp only	
Broker Code	Advisor Code

Please read all instructions on this form. Defined terms have the meaning given to them in the Prospectus dated 26 May 2014. Please tick/complete the appropriate boxes below.

### A Statement and number applied for

The Applicant is an Existing Noteholder with Voluntary Offering Instruction (VOI) Number  obtained after submitting their Existing Notes via The Depository Trust Company's Automated Tender Offer Program (ATOP) (or failing that, which Applicant has provided other evidence of ownership of Existing Notes satisfactory to the Company) and:

- (a)  is an **Eligible Existing Noteholder** and applies for \$  worth of Convertible Notes by delivering this Application Form and providing the Subscription Monies in immediately available funds; and/or  
(An Applicant must subscribe for at least US\$250,000 of Convertible Notes.)
- (b)  is a **Lender** and applies for:
- (i) its Pro Rata share of up to US\$60 million worth of Convertible Notes, but only to the extent that Eligible Existing Noteholders apply for less than US\$115 million worth of Convertible Notes by way of applications of the kind contemplated in paragraph (a) of this Application Form; and
  - (ii) its Pro Rata share of the Rollover Shares; and/or
- (c)  is a **New Capital Party** and applies for:
- (i) its Pro Rata share of up to US\$55 million worth of Convertible Notes, but only to the extent that Eligible Existing Noteholders apply for less than US\$55 million worth of Convertible Notes by way of applications of the kind contemplated in paragraph (a) of this Application Form; and
  - (ii) its Pro Rata share of the Fee Shares.

## **B Bank Details**

**Subscription Monies must be received in immediately available funds on or before the Closing Date for the Secured Offer, being 13 June 2014 in the following bank account:**

**Beneficiary:** Mirabela Nickel Ltd - Convertible Notes Prospectus Application Monies Trust Account

**Account No.** 3000484

**Bank:** Bank of Western Australia Ltd

**Bank address:** 300 Murray Street, Perth Western Australia 6000

**Swift Address:** BKWAAU6P

**Bank of Western Australia's USD Correspondent Bank:** Bank of New York

**Swift Address:** IRVTUS3N

Please include beneficiary narration of "Please do not convert" to ensure that funds will reach BankWest in USD.

## **C Lodgement of Applications**

Return your completed Application Form to:

**By email:** mirabela@kordamentha.com

**By Post:**

Mirabela Applications

C/- KordaMentha

GPO Box 2523

Sydney NSW 2001, Australia

## **D Investor type**

The undersigned is, or in the event that it is acting on behalf of a beneficial owner of the Existing Notes, that beneficial owner has confirmed in writing to the undersigned that it is one of the following:

- ☐ a "U.S. person" who is a "qualified institutional buyer" as defined in Rule 144A of the Securities Act; or
- ☐ a person who is not a "U.S. person" as defined in Regulation S under the Securities Act.

**Please note:**

- Paper copies of the Prospectus (and any supplementary prospectus) and this Application Form can be obtained from Mirabela Nickel Limited (Subject to Deed of Company Arrangement) free of charge by calling Aaron Swaffield on +61 2 8257 3032 or aswaffield@kordamentha.com.

**E Full name details**

title, given name(s) (no initials) and surname or company name

Name of applicant 1

Name of joint applicant 2 or &lt;account name&gt;

Name of joint applicant 3 or &lt;account name&gt;

**F Tax file number(s)/ABN**

Or exemption category

Applicant 1/company

Joint applicant 2/trust

Joint applicant 3/exemption

**G Full postal address**

Number/street

Suburb/town

State/postcode

**H Contact details**

Contact name

Contact daytime telephone number

Contact email address

**I CHESS HIN (is applicable for shares)****J Delivery Instructions for Euroclear/Clearstream**

Euroclear or Clearstream Participant

Euroclear/Clearstream Account Number

Euroclear/Clearstream Account Holder Name

**K** Return of the Application Form will constitute your offer to subscribe for Offer Securities (as defined in the Prospectus issued by the Company dated 26 May 2014 (**Prospectus**)). I/We declare that:

- (a) I/we make the warranties and representations set out in this Application Form and undertake to immediately notify the Company in writing regarding any material change in the information prior to the date and time that any Offer Securities are issued to me/us. The undersigned understands that the Company and its legal counsel will rely on the accuracy and completeness of these representations for the purpose of determining my/our suitability as a prospective investor under applicable securities laws, and that a false representation may constitute a violation of law and that any person who suffers damage as a result of a false representation may have a claim for damages;
- (b) All details and statements made by me/us, including my/our VOI number (or failing that, which Applicant has provided other evidence of ownership of Existing Notes satisfactory to the Company), are complete and accurate and this Application Form is lodged in accordance with the Prospectus and any supplementary prospectus;
- (c) I/we agree to be bound by the Constitution of the Company upon the issue of Shares to me/us;
- (d) I/we have received personally a copy of this Prospectus accompanied by or attached to the Application Form or a copy of the Application Form or a direct derivative of the Application Form, before applying for Offer Securities;
- (e) I/we represent and warrant that I/we have read and understood the Prospectus to which this Application Form relates;

- (f) I/we acknowledge that the Company will send me/us a paper copy of the Prospectus and any supplementary Prospectus (if applicable) free of charge if I/we request so during the currency of the Prospectus; and; and
- (g) I/we acknowledge and consent to the privacy disclosure statement set out in Section 1.7 of the Prospectus.

#### Signature(s) by Applicant(s)

This Application Form must be signed by all the Applicants. All joint holders must sign. If the holder is a corporation, partnership, firm, or incorporated or unincorporated association, the person(s) authorised by its constitution or other applicable constituent document must sign and state the capacity in which they are signing (e.g., Director, Secretary). If signed under power of attorney, the attorney states that no notice of revocation of power has been received.

Full name (and capacity if applicable)

Signature

Full name (and capacity if applicable)

Signature

#### Guide to the Application Form

This Application Form relates to the offer of Convertible Notes to the Eligible Existing Noteholders to raise up to approximately US\$115 million (before expenses) (Secured Offer), Fee Shares to the New Capital Parties on a Pro Rata basis (Fee Offer) and Rollover Shares to each Lender on a Pro Rata basis (Rollover Offer), pursuant to the Prospectus dated 26 May 2014. The expiry date of the Prospectus is the date that is 13 months after the date of the Prospectus. The Prospectus contains information about investing in the Company and it is advisable to read the Prospectus before applying for Offer Securities. A person who gives another person access to this Application Form must at the same time and by the same means give the other person access to the Prospectus, and any supplementary prospectus (if applicable). While the Prospectus is current, the Company will send paper copies of the Prospectus, and any supplementary prospectus (if applicable), and an Application Form, on request and without charge.

Please complete all relevant Sections of the Application Form using BLOCK LETTERS. These instructions are cross referenced to each Section of the Application Form. Further particulars and the correct forms of registrable titles to use on the Application Form are contained below.

- (a) Insert your VOI (or failing that, other evidence of ownership of Existing Notes satisfactory to the Company), tick each of the statements which applies to you, and insert the dollar amount of Offer Securities you wish to apply for or offset if a box is provided.
- (b) Write the full name you wish to appear on the statement of holders. This must be either your own name or the name of your company. Up to three joint Applicants may register. You should refer to the table below for the correct forms of registrable title. Applicants using the wrong form of title may be rejected. Clearing House Electronic Sub-Register System (CHES) participants should complete their name and address in the same format as that are presently registered in the CHES system.
- (c) Enter your Tax File Number (TFN) or exemption category. Where applicable, please enter the TFN for each joint Applicant. Collection of TFN(s) is authorised by taxation laws. Quotation of your TFN is not compulsory and will not affect your Application.
- (d) Please enter your postal address for all correspondence. All communications to you from the share registry will be mailed to the person(s) and address as shown. For Joint Applicants, only one address can be entered.
- (e) Please enter your telephone number, area code, email address and contact name in case we need to contact you in relation to your Application.
- (f) The Company participates in CHES, operated by ASX Settlement and Transfer Corporation Pty Ltd, a wholly owned subsidiary of the Australian Securities Exchange. If you are a CHES participant (or are sponsored by a CHES participant) and you wish to hold shares allotted to you under this Application on the CHES Subregister, complete Section F or forward your Application Form to your sponsoring participant for completion of this Section prior to lodgement. Otherwise, leave Section F blank and on allotment, you will be sponsored by the Company and a Securityholder Reference Number (SRN) will be allocated to you.
- (g) Before completing the Application Form the Applicant(s) should read the Prospectus to which the Application relates. By lodging the Application Form, the Applicant(s) agrees that this Application is for Offer Securities upon and subject to the terms of this Prospectus, and agrees to take the number of Offer Securities equal to the number included or calculated pursuant to Section A that may be allotted to the Applicant(s) pursuant to the Prospectus and declares that all details and statements made are complete and accurate.

### Correct form of Registrable Title

Applications must be in the name(s) of a natural person(s), companies or other legal entities acceptable to the Company. At least one full given name and the surname is required for each natural person. The name of the beneficiary or any other non-registrable title may be included by way of an account designation if completed exactly as described in the example of correct forms of registrable title below:

Type of Investor	Correct form of Registrable Title	Incorrect form of Registrable Title
<b>Individual</b> Use names in full, no initials	Mr John Alfred Smith	JA Smith
<b>Minor</b> (a person under the age of 18) Use the name of a responsible adult, do not use the name of a minor.	John Alfred Smith <Peter Smith>	Peter Smith
<b>Company</b> Use company title, no abbreviations	ABC Pty Ltd	ABC P/L ABC Co
<b>Trusts</b> Use trustee(s) personal name(s), do not use name of the trust	Mrs Sue Smith <Sue Smith Family A/C>	Sue Smith Family Trust
<b>Deceased Estates</b> Use executor(s) personal name(s), do not use the name of the deceased	Ms Jane Smith <Est John Smith A/C>	Estate of Late John Smith
<b>Partnerships</b> Use partners personal names, do not use name of the partnership	Mr John Smith and Mr Michael Smith <John Smith and Son A/C>	John Smith and Son

### Representations and warranties of Applicants

I/we acknowledge that as an Applicant for Convertible Notes offered hereby, by accepting the Convertible Notes, I/we will be deemed to have represented and agreed with the Company as follows (terms used herein that are defined in Rule 144A or Regulation S are used herein as defined therein):

- (a) the Applicant understands, acknowledges and agrees that the Convertible Notes have not been registered under the U.S. Securities Act and may not be offered, sold, pledged or otherwise transferred except in compliance with the registration requirements of the U.S. Securities Act and any other applicable securities law, pursuant to an exemption therefrom, or in a transaction not subject thereto, and in each case in compliance with the conditions for transfer in the Prospectus or this Application Form;
- (b) the Applicant understands and agrees that the Convertible Notes are being offered only in a transaction not involving any public offering within the meaning of the U.S. Securities Act, and that any offer, resale, pledge or transfer of the Convertible Notes may be made only: (i) to the Company, (ii) for so long as the Convertible Notes are eligible for resale pursuant to Rule 144A, to a person who the seller reasonably believes is a Qualified Institutional Buyer that is acquiring the Convertible Notes for its own account or for the account of one or more Qualified Institutional Buyers in a transaction meeting the requirements of Rule 144A, (iii) in an offshore transaction meeting the requirements of Rule 903 or 904 (as applicable) of Regulation S, (iv) pursuant to an exemption from registration under the U.S. Securities Act (if available), provided that as a condition to the registration of transfer of any Convertible Notes pursuant to this clause (iv) such Applicant shall provide the Issuer and the Trustee with respect to the Convertible Notes, a legal opinion, or such other evidence as the Trustee or the Issuer may require, as to compliance with any such exemption, or (v) pursuant to an effective registration statement under the U.S. Securities Act, in each case in accordance with any applicable securities laws of any state of the United States and any other jurisdiction, and such Applicant will, and each subsequent holder is required to, deliver to each person to whom this Convertible Note or interest therein is transferred a notice substantially to the effect hereof;
- (c) the Applicant acknowledges that the Convertible Notes will bear a legend to the following effect, unless the Issuer determines otherwise in compliance with applicable law:

"THE NOTES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "U.S. SECURITIES ACT"), OR ANY STATE SECURITIES LAWS AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (A) (1) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE U.S. SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR RULE 904 OF REGULATION S UNDER THE U.S. SECURITIES ACT, (3) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE U.S. SECURITIES ACT (IF AVAILABLE) OR

(4) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE U.S. SECURITIES ACT AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION" AND "UNITED STATES" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE U.S. SECURITIES ACT.;

- (d) the Applicant is the beneficial owner of, or is a securities intermediary through which one or more beneficial owners hold, the principal amounts of the Existing Notes, the rights to receive shares in consideration for such principal amounts of the Existing Notes indicated on the signature page of the Application Form;
- (e) the details on the Application Form are complete and accurate as at the date of such application;
- (f) the Application Form has been duly authorized, executed and delivered by the Applicant and is valid and legally binding, enforceable in accordance with its terms against the Applicant, except as such enforceability may be limited by (A) bankruptcy, insolvency, reorganisation, fraudulent conveyance, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights and remedies, as from time to time in effect; (B) application of equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law); and (C) considerations of public policy or the effect of applicable law relating to fiduciary duties;
- (g) the execution, delivery and performance of the Application Form by the Applicant does not and will not require any authorization or approval under or pursuant to any of the foregoing, violate the organizational documents of the Applicant, or violate in any material respect any statute, regulation, law, order, writ, injunction or decree to which the Applicant is subject;
- (h) the Applicant has obtained all authorizations, consents, approvals and clearances of all Courts, governmental agencies and authorities and such other persons, if any, required to permit the Applicant to submit the Application Form and to consummate the transactions contemplated hereby and thereby. Such purchase will not contravene any law, rule or regulation binding on the Applicant or any investment guideline or restriction applicable to the Applicant;
- (i) the Applicant confirms that it understands that the offering and sale of the shares in non-U.S. jurisdictions may be subject to additional restrictions and limitations, and will comply with all applicable laws and regulations in effect in any jurisdiction in which the Applicant purchases or sells Convertible Notes and obtain any consent, approval or permission required for such purchases or sales under the laws and regulations of any jurisdiction to which the Applicant is subject or in which the Applicant makes such purchases or sales, and the Company shall have no responsibility therefor;
- (j) the Applicant is not acting on the Company's behalf or as a nominee or agent or otherwise for any other person, and such person is acquiring the Convertible Notes for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account: (A) is a QIB under the U.S. Securities Act (as defined in Section 7 of this Prospectus) and is acquiring the Convertible Notes for its own account or for the account of one or more QIBs or (B) is not a U.S. Person under the U.S. Securities Act (as defined in Section 7 of this Prospectus), and is acquiring Convertible Notes in an offshore transaction in accordance with Regulation S;
- (k) the Applicant for Convertible Notes under the Secured Offer if in Australia is a professional or sophisticated investor for the purposes of the Corporations Act;
- (l) the Applicant has received a copy of this Prospectus, each of its exhibits, schedules and other attachments, and each document incorporated by reference therein. The Applicant has not been furnished any offering materials other than the foregoing documents and has relied only on the information contained therein;
- (m) The Applicant understands that no public market now exists for the Convertible Notes, and that the Company has made no assurances that a public market will ever exist for the Convertible Notes;
- (n) the Applicant understands that no federal or state agency has passed upon the merits or risks of an investment in the Convertible Notes or made any finding or determination concerning the fairness or advisability of this investment. This Prospectus has not been filed with the U.S. Securities and Exchange Commission or with any securities administrator under U.S. state securities law;
- (o) the Applicant understands and accepts that the purchase of the Convertible Notes involves various risks, including the risks outlined in the Prospectus. The Applicant represents that it has conducted its own investigation of the Company and the terms of the Convertible Notes that it is not relying on (and will not at any time rely on) any communication (written or oral) of the Company or any of its affiliates as investment advice or as a recommendation to purchase the Convertible Notes. It is understood that information and explanations related to the terms and conditions of the Convertible Notes provided in this Prospectus or otherwise by the Company or any of its affiliates shall not be considered investment advice or a recommendation to purchase the Convertible Notes, and that neither the Company nor any of its affiliates is acting or has acted as an advisor to the Applicant in deciding to invest in the Convertible Notes. The Applicant acknowledges that neither the Company nor any of its affiliates has made any representation regarding the proper characterization of the Convertible Notes for purposes of determining



the Applicant's authority to invest in the Convertible Notes. In deciding to purchase the Convertible Notes, the Applicant is not relying on the advice or recommendations of the Company and the Applicant has made its own independent decision that the investment in the Convertible Notes is suitable and appropriate for the Applicant. The Applicant has such knowledge, skill and experience in business, financial and investment matters that the Applicant is capable of evaluating the merits and risks of an investment in the Convertible Notes. The Applicant has considered the suitability of the Convertible Notes as an investment in light of its own circumstances and financial condition and the Applicant is able to bear the risks associated with an investment in the Convertible Notes and its authority to invest in the Convertible Notes. The Applicant has no need for liquidity in this investment and has the ability to retain the Convertible Notes, and upon conversion, the Convertible Notes, for an indefinite period and at the present time and in the foreseeable future can afford a complete loss of this investment;

- (p) the Applicant confirms that the Company has not (A) given any guarantee or representation as to the potential success, return, effect or benefit (either legal, regulatory, tax, financial, accounting or otherwise) of an investment in the Convertible Notes or (B) made any representation to the Applicant regarding the legality of an investment in the Convertible Notes under applicable legal investment or similar laws or regulations. No representations or warranties have been made to the Applicant with respect to this investment or the Company other than the representations of the Company set forth herein and the Applicant has not relied upon any representation or warranty not provided herein or therein in making this subscription; With respect to the tax and other legal consequences of an investment in the Convertible Notes, the Applicant is relying solely upon the advice of its own tax and legal advisors and not upon the general discussion of such matters as provided in this Prospectus or otherwise by the Company or any of its affiliates;
- (q) the Applicant agrees not to make a claim against the Deed Administrators in relation to the Offers or the Prospectus and will hold harmless the Deed Administrators and indemnify them for any loss in relation to any claim brought by the Applicant or an affiliate against the Company;
- (r) THE APPLICANT IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF THE TRANSACTIONS CONTEMPLATED BY THIS PROSPECTUS. EACH APPLICANT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION; (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY; AND (D) SUCH PARTY HAS BEEN INDUCED TO APPLY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION; and
- (s) THE COMPANY WILL RELY, AND YOU ACKNOWLEDGE THAT THE COMPANY AND OTHERS WILL RELY, UPON THE TRUTH AND ACCURACY OF THE FOREGOING ACKNOWLEDGEMENTS, REPRESENTATIONS AND AGREEMENTS. All representations, warranties and covenants contained in this Prospectus shall survive the issue of the Convertible Notes or Shares. You agree that if any of the acknowledgments, representations or agreements deemed to have been made by your purchase of Convertible Notes are no longer accurate, you shall promptly notify the Company.

Rule 2.7, 3.10.3, 3.10.4, 3.10.5

## Appendix 3B

### New issue announcement, application for quotation of additional securities and agreement

*Information or documents not available now must be given to ASX as soon as available. Information and documents given to ASX become ASX's property and may be made public.*

Introduced 01/07/96 Origin: Appendix 5 Amended 01/07/98, 01/09/99, 01/07/00, 30/09/01, 11/03/02, 01/01/03, 24/10/05, 01/08/12

Name of entity

Mirabela Nickel Limited (subject to deed of company arrangement)

ABN

23 108 161 593

We (the entity) give ASX the following information.

#### Part 1 - All issues

*You must complete the relevant sections (attach sheets if there is not enough space).*

- |   |  |   |
|---|--|---|
| 1 | +Class of +securities issued or to be issued   | Fully paid ordinary shares                  |
| 2 | Number of +securities issued or to be issued (if known) or maximum number which may be issued  | Up to 52,909,069 fully paid ordinary shares |
| 3 | Principal terms of the +securities (eg, if options, exercise price and expiry date; if partly paid +securities, the amount outstanding and due dates for payment; if +convertible securities, the conversion price and dates for conversion) | Fully paid ordinary shares                  |

+ See chapter 19 for defined terms.

**Appendix 3B**  
**New issue announcement**

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<p>4 Do the +securities rank equally in all respects from the date of allotment with an existing +class of quoted +securities?</p> <p>If the additional securities do not rank equally, please state:</p> <ul style="list-style-type: none"> <li>• the date from which they do</li> <li>• the extent to which they participate for the next dividend, (in the case of a trust, distribution) or interest payment</li> <li>• the extent to which they do not rank equally, other than in relation to the next dividend, distribution or interest payment</li> </ul>	<p>Yes</p>
<p>5 Issue price or consideration</p>	<p>No subscription monies are payable in connection with the issue of the fully paid ordinary shares (please refer to the Prospectus for further information)</p>
<p>6 Purpose of the issue (If issued as consideration for the acquisition of assets, clearly identify those assets)</p>	<p>See the Prospectus</p>
<p>6a Is the entity an +eligible entity that has obtained security holder approval under rule 7.1A?</p> <p>If Yes, complete sections 6b – 6h in relation to the +securities the subject of this Appendix 3B, and comply with section 6i</p>	<p>No</p>
<p>6b The date the security holder resolution under rule 7.1A was passed</p>	
<p>6c Number of +securities issued without security holder approval under rule 7.1</p>	
<p>6d Number of +securities issued with security holder approval under rule 7.1A</p>	

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+ See chapter 19 for defined terms.

6e	Number of +securities issued with security holder approval under rule 7.3, or another specific security holder approval (specify date of meeting)					
6f	Number of securities issued under an exception in rule 7.2					
6g	If securities issued under rule 7.1A, was issue price at least 75% of 15 day VWAP as calculated under rule 7.1A.3? Include the issue date and both values. Include the source of the VWAP calculation.					
6h	If securities were issued under rule 7.1A for non-cash consideration, state date on which valuation of consideration was released to ASX Market Announcements					
6i	Calculate the entity's remaining issue capacity under rule 7.1 and rule 7.1A – complete Annexure 1 and release to ASX Market Announcements	<p>The entity's total issue capacity is 131,520,172.</p> <p>If the maximum number of shares are issued, the total issue capacity would be 78,611,103.</p>				
7	Dates of entering +securities into uncertificated holdings or despatch of certificates	To be confirmed				
8	Number and +class of all +securities quoted on ASX (including the securities in section 2 if applicable)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 50%;">Number</th> <th style="width: 50%;">+Class</th> </tr> <tr> <td style="height: 100px; vertical-align: top;">876,801,147</td> <td style="vertical-align: top;">Fully paid ordinary shares</td> </tr> </table>	Number	+Class	876,801,147	Fully paid ordinary shares
Number	+Class					
876,801,147	Fully paid ordinary shares					

+ See chapter 19 for defined terms.

**Appendix 3B**  
**New issue announcement**

	Number	+Class
9 Number and +class of all +securities not quoted on ASX (including the securities in section 2 if applicable)	395,000	Secured convertible notes
	400,000	Options \$3.00 exp 30/06/14
	482,263	Performance Rights under the Old Plan
10 Dividend policy (in the case of a trust, distribution policy) on the increased capital (interests)	The Company does not currently have a dividend policy	

**Part 2 - Bonus issue or pro rata issue**

11 Is security holder approval required?	N/A
12 Is the issue renounceable or non-renounceable?	N/A
13 Ratio in which the +securities will be offered	N/A
14 +Class of +securities to which the offer relates	N/A
15 +Record date to determine entitlements	N/A
16 Will holdings on different registers (or subregisters) be aggregated for calculating entitlements?	N/A
17 Policy for deciding entitlements in relation to fractions	N/A

+ See chapter 19 for defined terms.

18	Names of countries in which the entity has +security holders who will not be sent new issue documents  Note: Security holders must be told how their entitlements are to be dealt with.  Cross reference: rule 7.7.	N/A
19	Closing date for receipt of acceptances or renunciations	N/A
20	Names of any underwriters	N/A
21	Amount of any underwriting fee or commission	N/A
22	Names of any brokers to the issue	N/A
23	Fee or commission payable to the broker to the issue	N/A
24	Amount of any handling fee payable to brokers who lodge acceptances or renunciations on behalf of +security holders	N/A
25	If the issue is contingent on +security holders' approval, the date of the meeting	N/A
26	Date entitlement and acceptance form and prospectus or Product Disclosure Statement will be sent to persons entitled	N/A
27	If the entity has issued options, and the terms entitle option holders to participate on exercise, the date on which notices will be sent to option holders	N/A
28	Date rights trading will begin (if applicable)	N/A
29	Date rights trading will end (if applicable)	N/A
30	How do +security holders sell their entitlements <i>in full</i> through	N/A

+ See chapter 19 for defined terms.

## Appendix 3B

### New issue announcement

	a broker?	
31	How do +security holders sell part of their entitlements through a broker and accept for the balance?	N/A
32	How do +security holders dispose of their entitlements (except by sale through a broker)?	N/A
33	+Despatch date	N/A

## Part 3 - Quotation of securities

*You need only complete this section if you are applying for quotation of securities*

34 Type of securities  
(tick one)

(a) ☒ Securities described in Part 1

(b) ☐ All other securities

Example: restricted securities at the end of the escrowed period, partly paid securities that become fully paid, employee incentive share securities when restriction ends, securities issued on expiry or conversion of convertible securities

### Entities that have ticked box 34(a)

### Additional securities forming a new class of securities

*Tick to indicate you are providing the information or documents*

35 ☐ If the +securities are +equity securities, the names of the 20 largest holders of the additional +securities, and the number and percentage of additional +securities held by those holders

36 ☐ If the +securities are +equity securities, a distribution schedule of the additional +securities setting out the number of holders in the categories

1 - 1,000  
1,001 - 5,000  
5,001 - 10,000  
10,001 - 100,000  
100,001 and over

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+ See chapter 19 for defined terms.

37 ☐ A copy of any trust deed for the additional +securities

**Entities that have ticked box 34(b)**

38 Number of securities for which  
+quotation is sought

39 Class of +securities for which  
quotation is sought

40 Do the +securities rank equally in  
all respects from the date of  
allotment with an existing +class  
of quoted +securities?

If the additional securities do not  
rank equally, please state:

- the date from which they do
- the extent to which they  
participate for the next  
dividend, (in the case of a  
trust, distribution) or interest  
payment
- the extent to which they do  
not rank equally, other than in  
relation to the next dividend,  
distribution or interest  
payment

41 Reason for request for quotation  
now

Example: In the case of restricted securities, end  
of restriction period

(if issued upon conversion of  
another security, clearly identify  
that other security)

	Number	+Class
42 Number and +class of all +securities quoted on ASX (including the securities in clause 38)		

+ See chapter 19 for defined terms.



### Quotation agreement

- 1 +Quotation of our additional +securities is in ASX's absolute discretion. ASX may quote the +securities on any conditions it decides.
- 2 We warrant the following to ASX.
  - The issue of the +securities to be quoted complies with the law and is not for an illegal purpose.
  - There is no reason why those +securities should not be granted +quotation.
  - An offer of the +securities for sale within 12 months after their issue will not require disclosure under section 707(3) or section 1012C(6) of the Corporations Act.  
Note: An entity may need to obtain appropriate warranties from subscribers for the securities in order to be able to give this warranty
  - Section 724 or section 1016E of the Corporations Act does not apply to any applications received by us in relation to any +securities to be quoted and that no-one has any right to return any +securities to be quoted under sections 737, 738 or 1016F of the Corporations Act at the time that we request that the +securities be quoted.
  - If we are a trust, we warrant that no person has the right to return the +securities to be quoted under section 1019B of the Corporations Act at the time that we request that the +securities be quoted.
- 3 We will indemnify ASX to the fullest extent permitted by law in respect of any claim, action or expense arising from or connected with any breach of the warranties in this agreement.
- 4 We give ASX the information and documents required by this form. If any information or document not available now, will give it to ASX before +quotation of the +securities begins. We acknowledge that ASX is relying on the information and documents. We warrant that they are (will be) true and complete.

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+ See chapter 19 for defined terms.

**Capacity as Deed Administrators ('Administrators')**

1. The Administrators provide this Appendix 3B only in their capacity as Administrators of the Deed of Company Arrangement entered into by the Company on 13 May 2014, and in their capacity as agent of the Company pursuant to that Deed of Company Arrangement.
2. Any liability of the Administrators arising under or in connection with this Appendix 3B or any transaction entered into under or in connection with this letter is limited to the extent to which it can be satisfied out of the Company's property and only to the extent that the Administrators are indemnified for that liability under their deed of appointment.

Sign here: Martin Madden Date: 26 May 2014

Martin Madden in his capacity as deed administrator of Mirabela Nickel Limited  
(subject to deed of company arrangement)

## Appendix 3B – Annexure 1

### Calculation of placement capacity under rule 7.1 and rule 7.1A for eligible entities

Introduced 01/08/12 Amended 04/03/13

#### Part 1

Rule 7.1 – Issues exceeding 15% of capital	
<b>Step 1: Calculate “A”, the base figure from which the placement capacity is calculated</b>	
<b>Insert</b> number of fully paid +ordinary securities on issue 12 months before the +issue date or date of agreement to issue	876,801,147
<b>Add</b> the following: <ul style="list-style-type: none"> <li>Number of fully paid +ordinary securities issued in that 12 month period under an exception in rule 7.2</li> <li>Number of fully paid +ordinary securities issued in that 12 month period with shareholder approval</li> <li>Number of partly paid +ordinary securities that became fully paid in that 12 month period</li> </ul> <b>Note:</b> <ul style="list-style-type: none"> <li>Include only ordinary securities here – other classes of equity securities cannot be added</li> <li>Include here (if applicable) the securities the subject of the Appendix 3B to which this form is annexed</li> <li>It may be useful to set out issues of securities on different dates as separate line items</li> </ul>	Nil  Nil  Nil
<b>Subtract</b> the number of fully paid +ordinary securities cancelled during that 12 month period	
<b>“A”</b>	876,801,147

+ See chapter 19 for defined terms.

<b>Step 2: Calculate 15% of "A"</b>	
<b>"B"</b>	0.15 <i>[Note: this value cannot be changed]</i>
<b>Multiply "A" by 0.15</b>	131,520,172
<b>Step 3: Calculate "C", the amount of placement capacity under rule 7.1 that has already been used</b>	
<p><i>Insert</i> number of +equity securities issued or agreed to be issued in that 12 month period <i>not counting</i> those issued:</p> <ul style="list-style-type: none"> <li>• Under an exception in rule 7.2</li> <li>• Under rule 7.1A</li> <li>• With security holder approval under rule 7.1 or rule 7.4</li> </ul> <p><i>Note:</i></p> <ul style="list-style-type: none"> <li>• <i>This applies to equity securities, unless specifically excluded – not just ordinary securities</i></li> <li>• <i>Include here (if applicable) the securities the subject of the Appendix 3B to which this form is annexed</i></li> <li>• <i>It may be useful to set out issues of securities on different dates as separate line items</i></li> </ul>	N/A. See section 5.2 of the Prospectus regarding regulatory relief
<b>"C"</b>	
<b>Step 4: Subtract "C" from ["A" x "B"] to calculate remaining placement capacity under rule 7.1</b>	
<p>"A" x 0.15</p> <p><i>Note: number must be same as shown in Step 2</i></p>	131,520,172
<p><b>Subtract "C"</b></p> <p><i>Note: number must be same as shown in Step 3</i></p>	N/A. See section 5.2 of the Prospectus regarding regulatory relief
<b>Total ["A" x 0.15] – "C"</b>	131,520,172 <i>[Note: this is the remaining placement capacity under rule 7.1]</i>

+ See chapter 19 for defined terms.

## Part 2

<b>Rule 7.1A – Additional placement capacity for eligible entities</b>	
<b>Step 1: Calculate “A”, the base figure from which the placement capacity is calculated</b>	
<b>“A”</b> <i>Note: number must be same as shown in Step 1 of Part 1</i>	
<b>Step 2: Calculate 10% of “A”</b>	
<b>“D”</b>	0.10 <i>Note: this value cannot be changed</i>
<b>Multiply “A” by 0.10</b>	
<b>Step 3: Calculate “E”, the amount of placement capacity under rule 7.1A that has already been used</b>	
<b>Insert</b> number of <sup>+</sup> equity securities issued or agreed to be issued in that 12 month period under rule 7.1A <b>Notes:</b> <ul style="list-style-type: none"> <li>• This applies to equity securities – not just ordinary securities</li> <li>• Include here – if applicable – the securities the subject of the Appendix 3B to which this form is annexed</li> <li>• Do not include equity securities issued under rule 7.1 (they must be dealt with in Part 1), or for which specific security holder approval has been obtained</li> <li>• It may be useful to set out issues of securities on different dates as separate line items</li> </ul>	
<b>“E”</b>	

+ See chapter 19 for defined terms.

<b>Step 4: Subtract "E" from ["A" x "D"] to calculate remaining placement capacity under rule 7.1A</b>	
<b>"A" x 0.10</b> <i>Note: number must be same as shown in Step 2</i>	
<b>Subtract "E"</b> <i>Note: number must be same as shown in Step 3</i>	
<b>Total ["A" x 0.10] – "E"</b>	<i>Note: this is the remaining placement capacity under rule 7.1A</i>

+ See chapter 19 for defined terms.