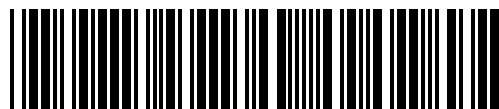




**Registration of a Charge**

Company Name: **RIO TINTO WESTERN HOLDINGS LIMITED**

Company Number: **00007132**



Received for filing in Electronic Format on the: **04/09/2023**

XCBCWDDK

**Details of Charge**

Date of creation: **25/08/2023**

Charge code: **0000 7132 0002**

Persons entitled: **FQM HOLDINGS LTD (AND ITS SUCCESSORS IN TITLE AND PERMITTED TRANSFEREES)**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **LINKLATERS LLP**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 7132

Charge code: 0000 7132 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 25th August 2023 and created by RIO TINTO WESTERN HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 4th September 2023 .

Given at Companies House, Cardiff on 5th September 2023

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

Certified that, save for material redacted pursuant to section 859G of the Companies Act 2006, this copy instrument is a correct copy of the original instrument.

Linklaters LLP

## Deed of Cross Security – La Granja

Dated 25 August 2023

created by

**Rio Tinto Western Holdings Limited**

as Shareholder Chargor A

and

**FQM Holdings Ltd**

as Shareholder Chargor B

in favour of

**La Granja UK Holdings Limited**

as JVCo

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## THE SCHEDULES

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**THIS DEED** is dated 25 August 2023 and made between:

- (1) **Rio Tinto Western Holdings Limited**, a company incorporated in the United Kingdom (company number 00007132) of 6 St James's Square, London, SW1Y 4AD, United Kingdom ("**Shareholder Chargor A**"); and
- (2) **FQM Holdings Ltd**, a corporation existing under the laws of Canada (registered number 750641-4) whose registered address is at 199 Bay Street, Suite 4000 Toronto ON M5L 1A9, Canada ("**Shareholder Chargor B**"); and
- (3) **La Granja UK Holdings Limited** (formerly known as Rio Tinto Peru Limited), a company incorporated in the United Kingdom (company number 05647302) whose registered address is at 4<sup>th</sup> Floor, The Charlotte Building, 17 Gresse Street, London W1T 1QL ("**JVCo**").

#### **Background**

- (A) The parties to this deed are also parties to the shareholders' deed – La Granja dated on or about the date of this deed (the "**Shareholders' Deed**").
- (B) The board of directors of each Shareholder Chargor is satisfied that entering into this Deed would be most likely to promote the success of that Shareholder Chargor for the benefit of its members as a whole and to the further benefit and advantage of that Shareholder Chargor.
- (C) This deed is entered into by each Shareholder Chargor to secure that Shareholder Chargor's Secured Liabilities.
- (D) Pursuant to this Deed of Cross Security each Shareholder Chargor grants a charge over its Shares in favour of each other Shareholder Chargor and the JVCo.
- (E) The Parties intend this Deed of Cross Security to rank ahead of any other Security Interests granted by a Shareholder Chargor over its Shares.

**IT IS AGREED** as follows:

#### **1. DEFINITIONS AND INTERPRETATION**

##### **1.1 Definitions**

**"Accession Party"** means any person which has become a party to this Deed by executing a Deed of Accession in the form set out in Schedule 5 (*Form of Deed of Accession*) of the Shareholders' Deed.

**"Deed of Accession"** means a deed in the form set out in Schedule 5 (*Form of Deed of Accession*) of the Shareholders' Deed.

**"Enforcement Events"** means, in relation to a Shareholder Chargor:

- (a) the Shareholder Chargor has failed to pay on the due date any Funding Contribution or amount payable by it under the Shareholders' Deed in the manner required under the Shareholders' Deed, unless its failure to pay is caused by an administrative or technical error and payment is made within five Business Days of its due date; or
- (b) any Insolvency Event relating to the Shareholder Chargor.

**"Law of Property Act"** means the Law of Property Act 1925.

**"Party"** means a party to this Deed.

**"Quasi Security"** means a transaction under which a Shareholder Chargor will:

- (a) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by the Shareholder Chargor;
- (b) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
- (c) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising financial indebtedness or of financing the acquisition of an asset.

**"Receiver"** means a receiver and manager or other receiver appointed in respect of all or any part of the Security Assets and shall, if allowed by law, include an administrative receiver.

**"Related Rights"** means, in relation to a Security Asset:

- (a) any proceeds of sale, transfer or other disposal, lease, licence, sub-licence, or agreement for sale, transfer or other disposal, lease, licence or sub-licence, of that Security Asset;
- (b) any moneys or proceeds paid or payable deriving from that Security Asset;
- (c) any rights, claims, guarantees, indemnities, Security or covenants for title in relation to that Security Asset;
- (d) any awards or judgments in favour of a Shareholder Chargor in relation to that Security Asset; and
- (e) any other assets deriving from, or relating to, that Security Asset.

**"Right"** means any right, privilege, power or immunity, or any interest or remedy, of any kind, whether it is personal or proprietary.

**"Secured Liabilities"** means, in relation to a Shareholder Chargor, its liability to pay Funding Contributions and other amounts as and when they fall due and payable under and pursuant to the Shareholders' Deed.

**"Secured Party"** means, in relation to a Shareholder Chargor, the other Shareholder Chargor(s) and JVCo.

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

**"Security Assets"** means the assets which from time to time are, or are expressed to be, the subject of the Security Interests or any part of those assets.

**"Security Interests"** means all or any of the Security created or expressed to be created in favour of each Secured Party by or pursuant to this Deed.

**"Shareholder Chargors"** means Shareholder Chargor A, Shareholder Chargor B and any Accession Party that accedes as a Shareholder Chargor.

**"Shares"** means, in relation to each Shareholder Chargor, all its right, title and interest from time to time in and to:

- (a) the shares described in Schedule 1 (*Shares*) and any other shares issued in the future by JVCo;
- (b) warrants, options and other rights to subscribe for, purchase or otherwise acquire any such shares; and
- (c) any other securities or investments deriving from any such shares or any rights attaching or relating to any such shares,

In each case including any rights against any custodian, nominee, clearing system or other similar person holding any such right, title or interest on its behalf, and all dividends and other Related Rights.

## **1.2 Incorporation of defined terms**

Unless a contrary indication appears, terms defined in the Shareholders' Deed have the same meaning in this Deed.

## **1.3 Construction**

- (a) Any reference in this Deed to the **"Shareholders' Deed"** or any other agreement or instrument is a reference to the Shareholders' Deed or other agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced.
- (b) The provisions in clause 1.2 (*Construction*) of the Shareholders' Deed apply to this Deed, except that references to the Shareholders' Deed shall be construed as references to this Deed.
- (c) Unless a contrary indication appears, references in this Deed to a Shareholder Chargor shall be construed to be references to that Shareholder Chargor solely in its capacity as a chargor granting Security under this Deed rather than as a Secured Party.

## **1.4 Third Party Rights**

- (a) Unless expressly provided to the contrary in the Shareholders' Deed, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the **"Third Parties Act"**) to enforce or to enjoy the benefit of any term of this Deed.
- (b) Notwithstanding any term of the Shareholders' Deed, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.

# **2. SECURITY INTERESTS**

## **2.1 Creation of Security Interests**

Each Shareholder Chargor, with full title guarantee and as security for the payment of all Secured Liabilities, charges in favour of the Secured Parties by way of first mortgage, all its Shares.

# **3. RESTRICTIONS ON DEALING WITH SECURITY ASSETS**

## **3.1 Negative pledge**

A Shareholder Chargor shall not create or permit to subsist any Security or Quasi Security over any Security Asset other than any Security created pursuant to this Deed.

### **3.2 Disposals**

A Shareholder Chargor shall not (and shall ensure that none of its Affiliates will) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, transfer or otherwise dispose of any Security Asset, except as permitted by the Shareholders' Deed.

## **4. FURTHER ASSURANCE**

4.1 Each Shareholder Chargor shall (and shall procure that each of its Affiliates will), at its own expense, promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as a Secured Party may determine to be necessary (acting reasonably) (and in such form as that Secured Party may reasonably require in favour of the Secured Parties):

- (a) to perfect the Security created or intended to be created under or evidenced by this Deed (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Security Interests) or for the exercise of any rights, powers and remedies of the Secured Parties provided by or pursuant to the Shareholders' Deed or by law; and/or
- (b) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security Interests.

4.2 Each Shareholder Chargor shall (and shall procure that each of its Affiliates will) take all such action as is available to it (including making and assisting with all filings, applications and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Secured Parties by or pursuant to this Deed.

## **5. SHARES**

### **5.1 Voting after enforcement**

At any time while an Enforcement Event is continuing and the JVCo has given notice to the relevant Shareholder Chargor that it intends to exercise its rights under this Clause 5.1:

- (a) the JVCo shall be entitled to exercise or direct the exercise of the voting and other rights attached to any Share; and
- (b) each Shareholder Chargor shall comply or procure the compliance with any directions of the JVCo in respect of the exercise of those rights and shall promptly execute and/or deliver to the JVCo such forms of proxy as it requires with a view to enabling such person as it selects to exercise those rights.

### **5.2 Cash dividends before enforcement**

At any time prior to the occurrence of an Enforcement Event which is continuing each Shareholder Chargor shall be entitled to retain any cash dividend deriving from the Shares.



### **5.3 Cash dividends after enforcement**

At any time while an Enforcement Event is continuing in relation to a Shareholder Chargor, the Shareholder Chargor shall hold any cash dividend deriving from the Shares received by it on trust for the Secured Parties and transfer or pay the same immediately to the JVCo or as it may direct.

## **6. GENERAL UNDERTAKINGS**

### **6.1 No other prejudicial conduct**

To the extent it is within its control, no Shareholder Chargor shall do, or permit to be done, anything which may materially and adversely affect the Security Interests.

## **7. ACCESSION TO THE DEED OF CROSS SECURITY**

### **7.1 General**

- (a) As required by the Shareholders' Deed, a person who is a holder of any Share (whether under an allotment or transfer) must enter into a Deed of Accession pursuant to which that person shall accede to this Deed and the Shareholders' Deed.
- (b) Any Shareholder Chargor wishing to transfer all or any of its Shares (or any interest in all or any of its Shares) shall comply with the Shareholders' Deed. Such transfer shall not be effective until the transferee has entered into a Deed of Accession in accordance with the Shareholders' Deed.

### **7.2 Accession**

The provisions of this Deed relating to any Accession Party shall not come into effect until such time as such Accession Party executes and delivers to the JVCo a valid Deed of Accession. The JVCo shall deliver a copy of any such Deed of Accession to the Shareholder Chargers promptly upon such receipt. Each party to this Deed irrevocably authorises the JVCo to sign such Deed of Accession on its behalf.

## **8. ENFORCEMENT OF SECURITY INTERESTS**

### **8.1 When enforceable**

The Security Interests shall be immediately enforceable on and at any time after the occurrence of an Enforcement Event which is continuing.

### **8.2 Enforcement action**

At any time after the Security Interests have become enforceable, JVCo may in its absolute discretion enforce all or any part of the Security Interests in any manner it sees fit or as directed by the Secured Parties.

### **8.3 Law of Property Act powers**

At any time after the Security Interests have become enforceable, the powers, authorities and discretions conferred by the Law of Property Act on mortgagees, including the power of sale and other powers conferred by section 101 (*Powers incident to estate or interest of mortgagee*) of the Law of Property Act, as varied and extended by this Deed, shall be immediately exercisable.

## **9. LAW OF PROPERTY ACT**

### **9.1 Section 101**

The power of sale and other powers conferred by section 101 (*Powers incident to estate or interest of mortgagee*) of the Law of Property Act on mortgagees, as varied and extended by this Deed, shall arise (and the Secured Liabilities shall be deemed due and payable for that purpose) on the date of this Deed and shall be exercisable in accordance with Clause 8.3 (*Law of Property Act powers*).

### **9.2 Section 103**

Section 103 (*Regulation of exercise of power of sale*) of the Law of Property Act shall not apply to this Deed.

### **9.3 Section 93**

Section 93 (*Restriction on consolidation of mortgages*) of the Law of Property Act shall not apply to this Deed.

## **10. APPOINTMENT OF RECEIVERS**

### **10.1 Appointment of Receivers**

If the Security Interests have become enforceable, without any notice or further notice, the JVCo may, by deed or otherwise in writing signed by the JVCo or any person authorised for this purpose by the JVCo, appoint one or more persons to be a Receiver of all or any part of the Security Assets. The JVCo may similarly remove any Receiver and appoint any person instead of any Receiver. If the JVCo appoints more than one person as Receiver, the JVCo may give those persons power to act either jointly or severally.

### **10.2 Agent of Chargor**

Any Receiver shall be the agent of the relevant Shareholder Chargor for all purposes. That Shareholder Chargor alone shall be responsible for the Receiver's contracts, engagements, acts, omissions and defaults.

### **10.3 Remuneration of Receivers**

The JVCo may determine the remuneration of any Receiver and the maximum rate specified in section 109(6) (*Appointment, powers, remuneration and duties of receiver*) of the Law of Property Act shall not apply. The JVCo may direct payment of that remuneration out of moneys it receives as Receiver. The relevant Shareholder Chargor alone shall be liable for the remuneration and all other costs, losses, liabilities and expenses of the Receiver.

## **11. RIGHTS AND LIABILITIES OF JVCO AND RECEIVERS**

### **11.1 Rights of Receivers**

Any Receiver appointed pursuant to Clause 10 (*Appointment of Receivers*) shall have:

- (a) the rights set out in Schedule 2 (*Rights of Receivers*); and
- (b) the rights, powers, privileges and immunities conferred by law, including the rights, powers, privileges and immunities conferred by the Law of Property Act and the Insolvency Act on receivers or receivers and managers.

## **11.2 Rights of the JVCo**

At any time after the Security Interests have become enforceable, to the fullest extent permitted by law, any rights conferred by the Shareholders' Deed or by law upon a Receiver may be exercised by the JVCo, whether or not the JVCo shall have appointed a Receiver of all or any part of the Security Assets.

## **11.3 Financial collateral arrangement**

- (a) To the extent that this Deed constitutes a "financial collateral arrangement" (as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (the "**Financial Collateral Regulations**")) the JVCo shall have the right at any time after the Security Interests have become enforceable, to appropriate any Security Asset which constitutes "financial collateral" (as defined in the Financial Collateral Regulations ("**Financial Collateral**")) in such manner as it sees fit in or towards satisfaction of the Secured Liabilities in accordance with the Financial Collateral Regulations.
- (b) If the JVCo is required to value any Financial Collateral for the purpose of paragraph (a) above, the value shall be:
  - (i) in the case of cash, its face value at the time of appropriation; and
  - (ii) in the case of financial instruments or other Financial Collateral, their market value at the time of appropriation as determined (after appropriation) by the JVCo by reference to a public index or other applicable generally recognised source or such other process as the JVCo may select, including a valuation carried out by an independent investment bank, firm of accountants or other valuers appointed by the JVCo,

as converted, where necessary, into the currency in which the Secured Liabilities are denominated at a market rate of exchange prevailing at the time of appropriation selected by the JVCo. The Parties agree that the methods of valuation set out in this paragraph (b) are commercially reasonable for the purpose of the Financial Collateral Regulations.

## **11.4 Possession**

If the JVCo or any Receiver takes possession of the Security Assets, it may at any time relinquish possession.

## **11.5 JVCo's liability**

Neither the JVCo nor any Receiver shall, either by reason of taking possession of the Security Assets or for any other reason and whether as mortgagee in possession or otherwise, be liable for:

- (a) any costs, losses, liabilities or expenses relating to the realisation of any Security Assets; or
- (b) any act or omission of the JVCo, any Receiver or their respective officers, employees or agents in relation to the Security Assets or in connection with the Shareholders' Deed, unless directly caused by its gross negligence or wilful misconduct.

## **12. ORDER OF APPLICATION**

All amounts from time to time received or recovered by the JVCo pursuant to the terms of this Deed or in connection with the realisation or enforcement of all or any part of the Security Interests shall be held by the JVCo on trust to apply them at any time as the JVCo (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:

- (a) in discharging all costs and expenses reasonably incurred by any Secured Party in connection with any realisation or enforcement of the Security Interests;
- (b) in payment or distribution to the JVCo on its own behalf and on behalf of the other Secured Parties for application towards the discharge of the Secured Liabilities; and
- (c) the balance, if any, in payment or distribution to the relevant Shareholder Chargor.

## **13. POWER OF ATTORNEY**

### **13.1 Appointment**

Following the occurrence of an Enforcement Event, each Shareholder Chargor by way of security irrevocably appoints the JVCo and each Receiver severally to be its attorney (with full power of substitution), on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit:

- (a) to do anything which that Shareholder Chargor is obliged to do under the Shareholders' Deed to which it is party but has failed to do (including to do all such acts or execute all such documents, assignments, transfers, mortgages, charges, notices, instructions, filings and registrations as the JVCo may reasonably specify (and in such form as the JVCo may reasonably require in favour of the JVCo or its nominee(s))); and
- (b) to exercise any of the rights conferred on the JVCo or any Receiver in relation to the Security Assets or under the Shareholders' Deed or under any law.

### **13.2 Ratification**

Each Shareholder Chargor ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in Clause 13.1 (*Appointment*).

## **14. PROTECTION OF THIRD PARTIES**

No purchaser or other person dealing with the JVCo, any Receiver or its agents shall be concerned to enquire:

- (a) whether the powers conferred on the JVCo, any Receiver or its agents have arisen;
- (b) whether the powers conferred on the JVCo, any Receiver or its agents have become exercisable;
- (c) whether any consents, regulations, restrictions or directions relating to such powers have been obtained or complied with;
- (d) whether the JVCo, any Receiver or its agents is acting within such powers;

- (e) whether any money remains due under the Shareholders' Deed and the receipt in writing of the JVCo, any Receiver or its agents shall be sufficient discharge to that purchaser or other person;
- (f) as to the propriety or validity of acts purporting or intended to be in exercise of any such powers; or
- (g) as to the application of any money paid to the JVCo, any Receiver or its agents.

## **15. SAVING PROVISIONS**

### **15.1 Continuing Security**

Subject to Clause 16 (*Discharge of Security*), the Security Interests are continuing Security and will extend to the ultimate balance of the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part.

### **15.2 Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Shareholder Chargor or any security for those obligations or otherwise) is made by a Secured Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation or otherwise, without limitation, then the liability of each Shareholder Chargor and the Security Interests will continue or be reinstated as if the discharge, release or arrangement had not occurred.

### **15.3 Waiver of defences**

Neither the obligations of each Shareholder Chargor under this Deed nor the Security Interests will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under the Shareholders' Deed or any of the Security Interests (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Shareholder Chargor;
- (b) the release of any other Shareholder Chargor under the terms of any composition or arrangement with any creditor of any of its Affiliates;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Shareholder Chargor or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Shareholder Chargor;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of the Shareholders' Deed or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under the Shareholders' Deed or any other document or security; or

- (g) any insolvency or similar proceedings.

#### **15.4 Immediate recourse**

Each Shareholder Chargor waives any right it may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Shareholder Chargor under this Deed. This waiver applies irrespective of any law or any provision of the Shareholders' Deed to the contrary.

#### **15.5 Appropriations**

Until all amounts which may be or become payable by the Shareholder Chargors under or in connection with the Shareholders' Deed have been irrevocably paid in full and no further Secured Liabilities can arise, each Secured Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Shareholder Chargor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Shareholder Chargor or on account of any Shareholder Chargor's liability under this Deed.

#### **15.6 Additional security**

The Security Interests are in addition to and are not in any way prejudiced by any other guarantee or security now or subsequently held by any Secured Party.

### **16. DISCHARGE OF SECURITY**

#### **16.1 Final redemption**

- (a) Subject to Clause 16.2 (*Retention of security*), if all the Secured Parties are satisfied that all amounts which may be or become payable by the Shareholder Chargors under or in connection with the Shareholders' Deed have been irrevocably paid in full and that no further Secured Liabilities can arise, the JVCo shall at the request and cost of the Shareholder Chargors release, reassign or discharge (as appropriate) the Security Assets from the Security Interests, without recourse to, or any representation or warranty by, the JVCo or any of the Secured Parties.
- (b) The JVCo shall, at the request of a Shareholder Chargor (and without any further instruction or direction from any other Secured Party), promptly release or discharge (as appropriate) from the Security Interests any Security Asset which is subject to a disposal by the Shareholder Chargor permitted under the Shareholders' Deed.
- (c) Each Secured Creditor authorises the JVCo to release, assign or discharge the Security Assets pursuant to this Clause 16.1.

#### **16.2 Retention of security**

If the JVCo considers that any amount paid or credited to any Secured Party under any Shareholders' Deed is capable of being avoided or otherwise set aside, that amount shall not be

considered to have been paid for the purposes of determining whether all the Secured Liabilities have been irrevocably paid.

## **17. COSTS AND EXPENSES**

### **17.1 Expenses**

Each Shareholder Chargor shall, within three Business Days of demand, pay to the JVCo the amount of all costs, losses, liabilities and expenses (including legal fees) incurred by the JVCo or any Receiver in relation to this Deed or in connection with any realisation or enforcement of the Security Interests (including the administration, protection, realisation, enforcement or preservation of any rights under or in connection with this Deed, or any consideration by the JVCo as to whether to realise or enforce the same, and/or any amendment, waiver, consent or release of this Deed and/or any other document referred to in this Deed).

### **17.2 Tax**

Clause 26 (*Tax*) of the Shareholders' Deed shall apply as if it were set out in full in this Deed.

## **18. INDEMNITY**

Each Shareholder Chargor shall, within three Business Days of demand, indemnify the JVCo and any Receiver against any cost, loss, liability or expense incurred by it or them as a result of:

- (a) any breach by any Shareholder Chargor of this Deed; or
- (b) the due exercise or purported due exercise of any of the rights, powers, discretions, authorities and remedies conferred on it or them by this Deed or otherwise relating to the Security Assets.

## **19. PAYMENTS**

### **19.1 Undertaking to pay**

Each Shareholder Chargor shall pay each of the Secured Liabilities when due in accordance with its terms.

### **19.2 Demands**

Any demand for payment made by any Secured Party under this Deed shall be valid and effective even if it contains no statement of the relevant Secured Liabilities or an inaccurate or incomplete statement of them.

### **19.3 Payments**

All payments by any Shareholder Chargor under this Deed shall be made to such account, with such financial institution and in such other manner as the JVCo may direct.

### **19.4 Contingencies**

If all or any part of the Security Interests are enforced at a time when no amount is due under the Shareholders' Deed but any such amount may or will become due, the JVCo or the Receiver may pay the proceeds of any recoveries effected by it into a suspense account.

### **19.5 Currency Indemnity**

The Shareholder Chorgors jointly and severally shall indemnify each Secured Party against any deficiency which arises out of this Deed:

- (a) that Secured Party receives or recovers under this Deed an amount in one currency (the "**Payment Currency**") in respect of an amount denominated under this Deed in another currency (the "**Due Currency**"); and
- (b) the amount actually received or recovered by that Secured Party under its normal practice when it converts the Payment Currency into the Due Currency is less than the relevant amount of the Due Currency.

## **20. REMEDIES, WAIVERS AND DETERMINATIONS**

### **20.1 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right or remedy under this Deed shall operate as a waiver of any such right or remedy or constitute an election to affirm this Deed. No waiver or election to affirm this Deed on the part of any Secured Party shall be effective unless in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

### **20.2 Certificates and Determinations**

Any certification or determination by the JVCo or any Receiver of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## **21. SEPARATE AND INDEPENDENT OBLIGATIONS**

- (a) Subject to paragraph (b) below, the Security created by each Shareholder Chargor by or in connection with this Deed is separate from and independent of the Security created or intended to be created by any other Shareholder Chargor by or in connection with this Deed.
- (b) Any reference in this Deed to a "Shareholder Chargor" in relation to any Security Asset is, if that Shareholder Chargor holds any right, title or interest in that Security Asset jointly with any other Shareholder Chargor, a reference to those Shareholder Chargors jointly.

## **22. COUNTERPARTS**

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

## **23. GOVERNING LAW**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

## **24. ENFORCEMENT**

- (a) Without prejudice to clause 31 (*Dispute Resolution*) of the Shareholders' Deed, the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "**Dispute**").



- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Notwithstanding paragraphs (a) and (b) above, the JVCo shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the JVCo may take concurrent proceedings in any number of jurisdictions.
- (d) The provisions of clause 37.7 (*Appointment of Process Agent*) of the Shareholders' Deed shall apply to this Deed, *mutatis mutandis*, as if those provisions had been set out in this Deed.

**This Deed has been delivered on the date stated at the beginning of this Deed.**

## **SCHEDULE 1**

### **SHARES**

	<b>Name of Issuer</b>	<b>No. and Type of Shares</b>	<b>Held in Certificated Form</b>
Rio Tinto Western Holdings Limited	La Granja UK Holdings Limited	840,883,161 fully paid Shares	Yes
FQM Holdings Ltd	La Granja UK Holdings Limited	165,566,839 fully paid Shares; and 862,179,247 Partly-Paid Shares	Yes

## **SCHEDULE 2**

### **RIGHTS OF RECEIVERS**

Any Receiver appointed pursuant to Clause 10 (*Appointment of Receivers*) shall have the right, either in its own name or in the name of the relevant Shareholder Chargor or otherwise and in such manner and upon such terms and conditions as the Receiver thinks fit, and either alone or jointly with any other person:

(a) **Enter into possession**

to take possession of, get in and collect all or any part of the Security Assets, and to require payment to it or to any Secured Party of any dividends;

(b) **Deal with Security Assets**

to sell, transfer, assign, exchange, hire out, lend, licence or otherwise dispose of or realise all or any part of the Security Assets, subject to the requirements of the Shareholders' Deed to any person either by public offer or auction, tender or private contract and for a consideration of any kind (which may be payable or delivered in one amount or by instalments or deferred);

(c) **Hive down**

to form a new company and to subscribe for or acquire (for cash or otherwise) any investment in or of the new company and to sell, transfer, assign, exchange and otherwise dispose of or realise any such investments or any rights attaching thereto;

(d) **Borrow money**

to borrow or raise money either unsecured or on the security of all or any part of the Security Assets (either in priority to the Security Interests or otherwise);

(e) **Rights of ownership**

to manage and use all or any part of the Security Assets and to exercise and do all such rights and things as the Receiver would be capable of exercising or doing if it were the absolute beneficial owner of all or any part of the Security Assets;

(f) **Legal actions**

to bring, prosecute, enforce, defend and abandon actions, suits and proceedings relating to all or any part of the Security Assets;

(g) **Claims**

to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person or relating to all or any part of the Security Assets;

(h) **Redemption of Security**

to redeem any Security (whether or not having priority to the Security Interests) over all or any part of the Security Assets and to settle the accounts of any person with an interest in all or any part of the Security Assets;

(i) **Delegation**

to delegate in any manner to any person any rights exercisable by the Receiver under any Finance Document, and any such delegation may be made upon such terms and conditions (including power to sub-delegate) as it thinks fit, and to pass confidential information to any such delegate;

(j) **Insolvency Act**

to exercise all powers set out in Schedule 1, Schedule B1 or (in the case of a Scottish Receiver) Schedule 2 to the Insolvency Act as now in force (whether or not in force at the date of exercise and whether or not the Receiver is an administrative receiver) and any powers added to Schedule 1 or Schedule 2, as the case may be, after the date of this Deed;

(k) **Receipts**

to give a valid receipt for any moneys and do anything which may be necessary or desirable for realising all or any part of Security Assets; and

(l) **Other powers**

to do anything else it may think fit for the realisation of all or any part of the Security Assets or incidental to the exercise of any of the rights conferred on the Receiver under or by virtue of this Deed, the Law of Property Act or the Insolvency Act.

**Shareholder Chargors**

**EXECUTED** as a **DEED** by

**RIO TINTO WESTERN HOLDINGS LIMITED**

acting by:

Andy Hodges

Director

In the presence of:

Witness's signature:

Name: Mike Pasmore

Address:

**EXECUTED** as a **DEED** by

**FQM HOLDINGS LTD**

acting by:

**Sarah Robertson**

Director

A black rectangular redaction box covering the signature of Sarah Robertson. A horizontal line passes through the center of the box.

**JVCo**

**EXECUTED as a DEED by**

**LA GRANJA UK HOLDINGS LIMITED**

**acting by:**



Andy Hodges

Elias Scafidas