

Vážení,

v příloze si Vám dovoluujeme zaslat podání ve věci KSOS 25 INS 10525/2016. Originály budou předány zítra dopoledne na podatelně soudu.

Dovolujeme si Vás zdvořile požádat o promptní předání podání panu soudci Mgr. Petrovi Kulovi a jeho neprodlené zveřejnění v insolvenčním rejstříku.

Děkuji a jsem s pozdravem

Jan Solich
předseda představenstva OKD, a.s.

Krajské státní zastupitelství v Ostravě

Na Hradbách 1836/1

729 01 Ostrava 1

K rukám JUDr. Roberta Hradišťana, státního zástupce

Alcentra Limited

160 Queen Victoria Street

EC4V 4LA Londýn

Spojené království Velké Británie a Severního Irska

K rukám: Kevina Lennona

Mgr. Jiří Tomola, advokát

Dentons Europe CS LLP

Platněřská 4

110 00 Praha 1

Na vědomí:

Nejvyšší státní zastupitelství

Jezuitská 4

660 55 Brno

K rukám Mgr. Jana Záruby, ředitele odboru veřejné žaloby v netrestních věcech

Krajský soud v Ostravě

Havlíčkovo nábř. č. 34

728 81 Ostrava 1

K rukám Mgr. Petra Kuly, soudce

Ben Oldman Partners

309 Ugland House, Grand Cayman

KY1-1104 Cayman

K rukám: Isaaca Benzaquena

Centerbridge Partners Europe, LLP,

10 New Burlington St.

W1S 3BE Londýn

Spojené království Velké Británie a Severního Irska

K rukám: Jeda A. Harta

V Karviné dne 11. května 2017

REAKCE NA DOPIS ZE DNE 2. KVĚTNA 2017 A VÝZVA K ZDRŽENÍ SE PROTIPRÁVNÍHO ZASAHOVÁNÍ DO PRŮBĚHU INSOLVENČNÍHO ŘÍZENÍ

Odkazujeme se na dopis společnosti Alcentra Limited, se sídlem 160 Queen Victoria Street, Londýn, EC4V 4LA, Spojené království Velké Británie a Severního Irska (dále též „**Alcentra**“) ze dne 2. května 2017 (dále též „**Dopis**“). K Dopisu uvádíme následující:

A. Průběh nabídkového procesu

Společnost OKD, a.s., IČO: 26863154 (dále též „**OKD**“) poskytla věřitelskému výboru informace k nabídkovému procesu a obsahu nabídek zájemců v souladu s insolvenčním zákonem. Věřitelský výbor

byl informován nejen o průběhu nabídkového procesu, ale byly mu plně zpřístupněny originály doručených závazných nabídek. S průběhem nabídkového procesu a obsahem nabídek byl seznámen také insolvenční správce, který se navíc účastnil procesu otevírání závazných nabídek. Věřitelé pak byli s průběhem nabídkového procesu seznámeni na schůzi věřitelů konané dne 6. dubna 2017, přípisem ze dne 7. dubna 2017, který byl zveřejněn v insolvenčním rejstříku, a v rámci reorganizačního plánu.

Nabídkový proces byl zahájen dne 4. listopadu 2016. Osloveno bylo více než 223 subjektů. Proběhla mediální prezentace nabídkového procesu. Lhůta k podání indikativních nabídek byla prvním procesním dopisem určena do 15. prosince 2016. Společnost Alcentra indikativní nabídku v uvedené lhůtě nepodala. Zájemcům, kteří podali indikativní nabídku, byl následně zaslán druhý procesní dopis a byl jim umožněn vstup do dataroomu, setkání s vedením OKD a prohlídka prostor OKD, včetně prohlídky dolů. Lhůta k podání závazných nabídek byla stanovena na 24. února 2017.

Teprve dne 1. února 2017 bylo OKD dopisem osloveno ze strany zahraničních fondů spravovaných třemi osobami (Alcentra, Ben Oldman a Centerbridge), kteří sami sebe označili za tzv. *Nové investory* (dále též „**Zájemci**“), a kteří projevíli zájem o odkup OKD nebo aktiv OKD. V uvedeném dopise bylo OKD informováno, že Zájemci nabyli podíl na dluhu NWR a ovládají majoritní počet hlasů „Senior Secured Notes“ a podstatnou část „Senior Secured Facility“, tj. pohledávky, které jsou do insolvenčního řízení OKD přihlášeny ze strany Citibank N.A., London Branch, registrační číslo: BR001018, a které jsou předmětem incidenčního sporu. Tuto skutečnost dokládáme v příloze č. 1 tohoto vyjádření.

Přestože nabídkový proces byl již ve velmi pokročilé fázi, OKD umožnilo Zájemcům vstup do nabídkového procesu a poskytlo jim potřebnou součinnost. I s ohledem na projevovaný zájem o odkup OKD nebo aktiv OKD ze strany Zájemců byla lhůta k podání závazných nabídek prodloužena do 1. března 2017. V dataroomu Noví investoři strávili pouhých 14 dní, a to od 16. února 2017 do 1. března 2017. Společnost OKD pak osobně navštívili ve dnech 22. a 23. února 2017.

Závaznou nabídku na odkup majetkové podstaty OKD (dále též „**Nabídka**“) podali pouze dva ze shora uvedených Zájemců (dále též „**Zbylí zájemci**“), a to společnosti Alcentra a Ben Oldman Partners (dále též „**Ben Oldman**“). Osoba Centerbridge ze sdružení Nových investorů odstoupila. Celý text Nabídky dokládáme v příloze č. 2 tohoto vyjádření. Dopisem ze dne 4. dubna 2017 jsme byli informováni, že společnost Alcentra měla převzít závazky druhého ze Zbylých zájemců, tj. společnosti Ben Oldman.

B. Splnění formálních podmínek nabídkového procesu

Podle pravidel nabídkového procesu měla závazná nabídka splňovat stanovené podmínky a obsahovat mimo jiné:

- (i) uspokojivý důkaz nebo prohlášení, že zájemce bude připraven a má zájem na své náklady provést útlum dolů OKD, včetně informací o způsobu financování a/nebo prohlášení o dostatečném množství finančních prostředků k financování útlumu dolů, a
- (ii) popis současných obchodních aktivit, identity a důkazu o vlastnictví zájemce, včetně identity ultimátní mateřské společnosti, akcionářů a beneficentů a identity a vlastnictví společností, které podaly nabídku (jsou-li odlišné).

Žádnou z uvedených podmínek Zájemci, resp. Zbylí zájemci nesplnili.

Uvedené podmínky nebyly stanoveny bezdůvodně. Z hlediska úspěšného provedení reorganizace a maximálního uspokojení věřitelů je podstatné, aby bylo postaveno na jisto, že nabyvatel obchodního závodu OKD nebude spjat se Zdeňkem Bakalou, Peterem Kadasem, bývalým vedením OKD, osobami

jim blízkými nebo osobami tvořící s nimi koncern. Sepětí se shora uvedenými osobami by mohlo vážně ohrozit vymahatelnost pohledávek za některými z uvedených osob (zejména pohledávek, které jsou předmětem žaloby OKD vůči Zdeňkovi Bakalovi a NWR N.V. a pohledávek OKD za bývalými členy představenstva a dozorčí rady OKD). Toto riziko nespočívá jen v možnosti případného přístupu těchto osob k informacím OKD, ale také v riziku znemožnění přístupu k informacím vztahujícím se k příslušným pohledávkám, a to osobám, které budou dané pohledávky vymáhat. Vyloučení tohoto rizika bylo nezbytné zejména za situace, kdy někteří z klíčových poradců Zájemců vykonávali v minulosti činnost pro skupinu NWR. Otázka poradců Zájemců byla klíčová, protože veškerá zkušenost a schopnost řídit společnost typu OKD se odvíjela téměř výlučně od zkušenosti a schopnosti poradců Zájemců (takovou zkušeností ani schopností Zájemci sami nevládli). Ke snížení rizika nevymožení takových pohledávek sloužila mimo jiné i podmínka poskytnutí informace o koncových vlastnících zájemců a beneficiantů. Tuto podmínku Zbylí zájemci nesplnili (viz výše).

Z hlediska zajištění podmínky podle § 348 odst. 2 insolvenčního zákona, aby nedošlo k opakovanému úpadku OKD (či společnosti nabývající obchodní závod OKD) bylo nezbytné zajistit, aby nabyvatel disponoval potřebnými zkušenostmi a schopnosti s řízením závodů typu OKD a byl dostatečně solventní k zajištění útlumu jednotlivých důlních závodů. I přes následné výzvy Zájemci, resp. Zbylí zájemci, nedoložili, že mají s obdobnými transakcemi potřebné zkušenosti, a že budou schopni řádně provozovat OKD a provést postupný útlum důlních závodů. Naopak společnost Alcentra je známa schopností vstupovat do dluhových operací na finančním trhu a nikoliv do majetkových dlouhodobých pozic s nutností poskytnout vlastní finanční prostředky a dlouhodobou správu a řízení komplexních provozů jako jsou důlní závody. Navíc Zbylí zájemci v Nabídce výslovně uvedli, že financování útlumu se předpokládá z prostředků OKD (nikoliv z jejich vlastních prostředků), s tím, že se pokusí ve spolupráci s OKD zajistit státní podporu od České republiky ve výši 600 mil. Kč pro pokrytí sociálních nákladů spojených s uzavřením dolu Paskov. Ani tuto podmínku Zbylí zájemci tudíž nesplnili (viz výše).

C. Vyhodnocení Nabídky

Nabídka byla učiněna s výhradou 23 (!) podmínek, které by musely být splněny, aby mohla být Nabídka vtělena do transakční dokumentace. Některé z podmínek byly velmi obtížně splnitelné (např. uzavření požadované smlouvy o přechodném poskytování služeb mezi Zbylými zájemci a OKD, avšak bez uvedení návrhu obsahu takové smlouvy), některé podmínky byly závislé na vůli třetích osob (např. narovnání komplexních sporných vztahů s třetími osobami), některé byly do značné míry závislé na vůli Zbylých zájemců (např. transakční dokumentace bude sjednána za podmínek uspokojivých pro Zbylé zájemce nebo termín vypořádání transakce do 1. září 2017).

Nabídka kupní ceny porušovala pravidlo nabídkového procesu nabídnout kupní cenu tzv. na „cash free debt free“ bázi, když podmínkou nabídnuté kupní ceny ve výši 540 mil Kč ze strany Zbylých zájemců bylo, aby převáděný obchodní závod obsahoval hotovost ve výši nejméně 886 mil Kč (viz bod 22 písm. c) Nabídky) plus veškerou další hotovost vygenerovanou OKD od 1. ledna 2017 do vnesení majetku OKD do společnosti založené pro účely realizace transakce (viz bod 20 písm. (a) Nabídky). Jinými slovy, za 1 investovanou korunu by si Zbylí zájemci měli pořídit okamžitě hotovost (bez ohledu na další majetek) v hodnotě nejméně 1,6 koruny.

Navíc výše kupní ceny uvedená v Nabídce byla učiněna na základě dalších 4 plus 12 (!) předpokladů, které by musely být plně naplněny. Pokud by nebyly podmínky naplněny, došlo by ke snížení kupní ceny či zmaření transakce. Podmínky snížení kupní ceny byly stanoveny natolik široce, že by umožňovaly Zbylým zájemcům kupní cenu snížit bez vůle OKD.

Jakkoliv shora uvedené by bez dalšího postačovalo k odmítnutí Nabídky, OKD provedla podrobnou finanční analýzu Nabídky (stejně jako ostatních nabídek jiných zájemců) a vytvořila odhad finančního plnění ve prospěch věřitelů. Podle provedeného odhadu finančního plnění (zejména po vytvoření rezerv potřebných k naplnění či vyplývajících z požadavků, podmínek a předpokladů Zbylých zájemců) jsme došli k závěru, že výše plnění (i bez ohodnocení shora uvedených a dalších rizik) ze strany Zbylých zájemců je pro nezajištěné věřitele OKD nulová.

D. Protiprávní zásah společnosti Alcentra

Dopisem společnost Alcentra brojí proti výsledkům nabídkového procesu a proti reorganizačnímu plánu OKD, přestože ke dnešnímu dni nedošlo ke zveřejnění zprávy o reorganizačním plánu v insolvenčním rejstříku, čehož si je společnost Alcentra vědoma.

Dopisem společnost Alcentra zjevně porušila ustanovení § 338 odst. 2 insolvenčního zákona podle, kterého *„Reorganizační plán se předkládá insolvenčnímu soudu. Po jeho předložení nesmí nikdo až do zprávy o reorganizačním plánu vyvíjet činnost směřující k jeho přijetí či odmítnutí...“* (dále též **„Protiprávní zásah“**).

Společnost Alcentra zneužila insolvenční rejstřík k Protiprávnímu zásahu, který představuje podstatné porušení práv předkladatele reorganizačního plánu i věřitelů. Protiprávní zásah je o to vážnější, že podle všeho k němu došlo ze strany společnosti Alcentra úmyslně. Nic nebránilo společnosti Alcentra vyčkat se zveřejněním Dopisu do okamžiku zveřejnění zprávy o reorganizačním plánu, ledaže její úmysly jsou nepoctivé. Nelze vyloučit, že protiprávní zásah může být činěn se záměrem zmaření reorganizace či sjednání neoprávněné výhody ve prospěch některého z věřitelů OKD, na kterém má společnost Alcentra ekonomický zájem. Budeme po společnosti Alcentra vymáhat veškerou újmu, která nám v důsledku Protiprávního zásahu vznikla. Tímto nejsou dotčena naše práva vůči všem či některým ze Zájemců ani další nároky vůči společnosti Alcentra.

Vyzýváme společnost Alcentra ke zdržení se protiprávních zásahů do insolvenčního řízení OKD.

E. Shrnutí

Noví investoři na poslední chvíli (téměř tři měsíce po zahájení nabídkového procesu) projevili zájem nabýt obchodní závod OKD. Společnost Alcentra vystupovala ve sdružení, které se postupně rozpadalo – ani závaznou nabídku nepodalo ve složení, ve kterém podalo indikativní nabídku, přestože mezi těmito událostmi uplynulo pouze 26 kalendářních dnů. Uvedené sdružení nebylo schopno doložit dostatek finančních prostředků k zajištění útlumu ani referenční projekty, které by zakládaly důvěru ve schopnost či zkušenost řídit a spravovat komplexní provozy zabývající se důlní činností.

Finanční vyhodnocení Nabídky vedlo k závěru, že Nabídka ze strany Zbylých zájemců představuje (nanejvýše) spekulativní finanční zájem, který by mohl vést ke konkursu OKD či opakované insolvenční nabyvatel obchodního závodu OKD.

Krátký čas strávený na zjištění stavu společnosti OKD ze strany Zájemců (jen ten kdo OKD již zná, nepotřebuje čas na podrobnou analýzu) ve spojení se shora uvedeným ekonomickým vztahem k NWR a kontroverzním dluhopisovým věřitelům OKD a odmítnutím poskytnout potvrzení o konečných vlastnicích, zakládalo opodstatněné obavy ohledně skutečných zájmů Zbylých zájemců. Protiprávní zásah ze strany společnosti Alcentra dále potvrdil, že její zájmy nejsou důvěryhodné.



Z výše uvedených důvodů Nabídka neumožňovala reálně předpokládat, že reorganizační plán OKD bude na základě Nabídky přijat a reorganizace bude proveditelná.

OKD poskytuje toto vyjádření v době do zveřejnění zprávy o reorganizačním plánu pouze v důsledku Protiprávního zásahu ze strany společnosti Alcentra, aby zabránila vzniku další újmy. Podrobnosti týkající se vyhodnocení nabídkového procesu budou součástí zprávy o reorganizačním plánu.

V úctě

Ing. Antonín Klimša, MBA

výkonný ředitel a člen představenstva OKD, a.s.
na základě pověření ze dne 23. prosince 2016

To:

OKD, a.s.

Stonavská 2179

Post Code: 735 06, Doly, Karviná, the Czech Republic

Mgr. Petr Kuhn, legal representative of OKD, a.s.

BADOKH - Kuhn Dostál advokátní kancelář s.r.o.

28. října 767/12

Post Code: 110 00, Prague 1, the Czech Republic

CC:

Ing. Lee Louda, insolvency trustee of OKD, a.s.

Vodičkova 41

Post Code: 110 00 Prague 1, the Czech Republic

Subject: New Investors proposed offer for OKD

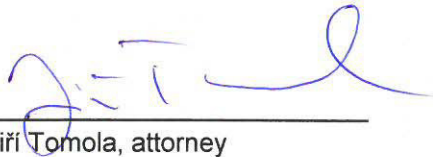
Dear Sirs,

1. We act for various funds managed by Alcentra, Ben Oldman and Centerbridge (the **New Investors**).
2. The New Investors write to express their interest in purchasing OKD a.s. or its assets (together **OKD**). To that end, they wish to enter the sales process that forms part of the financial restructuring of OKD and propose to submit an offer for OKD as soon as possible.
3. In connection with their intention to submit an offer, the New Investors request access to OKD's dataroom including the latest business plan and projections. The New Investors can also promptly agree an NDA to facilitate such access and they have financial advisors ready to engage. Subject to satisfactory completion of this due diligence and if it is deemed necessary, they confirm that they are able to consider the provision of new capital in order to help OKD return to being a successful business.
4. The New Investors expect to submit an offer quickly after being granted access. The New Investors will dedicate all necessary resources and engage with advisors so that this can happen as soon as possible and before the end of February.
5. The New Investors believe that their offer needs to balance the different interests of the various parties who are involved with OKD and its mining operations. The New Investors propose to work cooperatively with OKD's other stakeholders and potentially some of the key customers with operational experience. With that, the New Investors are confident that their offer will provide the best outcome achievable for all the various parties interested in OKD, including the employees and unions for whom this is such an important matter. The New Investors' proposal will also give due

consideration to the treatment of trade creditors who are owed money by OKD and with whom the company seeks to have an ongoing business relationship in the future.

6. To help build constructive relationships with OKD's stakeholders, the New Investors would like to express their desire to travel to Prague in order to meet with the key parties involved in the process. The New Investors believe that those meetings will provide an excellent opportunity to understand better the different parties' interests and to formulate their offer in a way that helps OKD's business as a whole. Accordingly, we have been instructed by the New Investors to set up those meetings for as soon as is convenient for the other parties, ideally next week.
7. Separately, with a view to successfully acquiring OKD, recently the New Investors have acquired interests in the NWR debt and they now control an instructing majority of the Senior Secured Notes and a significant portion of the Senior Secured Facility. The New Investors are aware of the dispute around whether those debt claims are validly guaranteed by OKD and the related legal actions. The New Investors' offer will address the Guarantee and related legal proceedings, so that this historic matter can be left behind as OKD and its business moves ahead to a successful and profitable future.
8. By way of further background, details on the New Investors can be found on the internet (see www.alcentra.com, www.benoldman.com and www.centerbridge.com) and additional details can be provided on request if that would be helpful. For the avoidance of doubt, we can also confirm that the New Investors have no links with Zdeněk Bakala or his associated companies and none of the New Investors were members of the ad hoc group which put forward proposals in the period leading up to OKD's filing for insolvency in May 2016.
9. To conclude, the New Investors are keen to progress this quickly and cooperatively and, as mentioned, envisage making an offer quickly after being given access to the business information.
10. We look forward to working with you alongside the New Investors and will be in touch to coordinate diaries to arrange meetings. In the meantime, please do not hesitate to get in touch if there is anything you would like to discuss.

On behalf of New Investors



Mgr. Jiří Tomola, attorney

Strictly Private & Confidential

OKD a.s.
Stonavská 2179
735 06 Karviná
Czech Republic
Attn: Mr Michal Sládek, Chief Financial Officer

Subject: The Final Offer

Dear Sirs

On behalf of Alcentra Limited and Ben Oldman Partners (together the **New Investors**) we are pleased to enclose our confidential offer to acquire the enterprise of OKD a.s. (the **Enterprise**) pursuant to the terms and conditions set out in the attached letter (the **Final Offer**).

The New Investors are extremely interested in acquiring the Enterprise and believe that, in addition to delivering significant cash for the business and creditors, they represent the ideal ongoing owner and manager of the Enterprise:

- They are experienced investors who will bring a new, independent approach to the ownership and stewardship of the Enterprise;
- The acquisition would be a strategic investment by funds whose business model includes owning assets in similar challenging situations;
- They have significant financial resources that may be utilised to fund the cash consideration as well as working capital needs for the ongoing operations of the business.

It is important that OKD a.s. (the **Company**) and the Czech State understand that the New Investors do not have, and never have had, any commercial arrangements with Mr Zdenek Bakala, Mr Peter Kadas or BXR Group Limited (**BXR**) and are independent from NWR and BXR.

The importance of the Company and its Enterprise to various stakeholder groups in the Czech Republic is fully recognised and the New Investors wish to emphasise their ongoing commitment to the mines operated by the Company, the existing management team and employees.

In keeping with their investment philosophy, the New Investors intend to work with the current management towards the full development of the Enterprise's prospects and the successful achievement of its current business plan and intend to introduce bonus and performance plans that will enable management and employees to share in any outperformance and to become shareholders of the company which will hold the Enterprise.

The New Investors have committed funding available to complete the transaction and are confident that they are best-placed to deliver the greatest benefit for all relevant stakeholders involved.

Consideration

The Final Offer comprises cash consideration that we believe will make a significant difference to the creditors of OKD. During management meetings in the Czech Republic it was indicated that a significant uncertainty exists with regards to the ability of the Company to fund operations during its

remaining productive life, in particular during 2017. To guarantee that cash actually flows to the insolvency estate, the Final Offer provides assurance of a cash payment to creditors irrespective of the cash balance in the Company or the future cash requirements of the operations, including costs related to the closure of Paskov in the middle of this year.

Furthermore, the New Investors aim to establish an independent trust to fund mine closure costs, supported by a share of cashflows from the business which cannot be touched to fund dividends or the ongoing operations (in particular losses) of the mining business. The exact mechanics would need to be worked out with the relevant parties during the finalisation of the re-organisation plan.

Nevertheless, the New Investors want to state here that they would seek to work with OKD to re-establish earlier committed public funding and they would like to assess if funds are available from the European Union for such special situations, in particular for the funding of social costs related to the closure of the mines. They would appreciate the co-operation of the Czech State in this regard.

Summary

The New Investors are keen to make available immediately additional relevant expertise to support the establishment of a credible re-organisation plan for the Company and wish to be closely involved from the time of this letter in decisions that will have an impact on the operations of the Company.

The New Investors are extremely positive about the prospect for the business under their ownership and have prepared a Final Offer which they believe will be attractive to all parties.

Contact information

Should you wish to discuss our Final Offer in more detail, or if there are any sections of it which you wish to clarify please contact the following persons:

Firm	Key contact	Details
Dentons Europe CS LLP	Mr Jiri Tomola	<i>jiri.tomola@dentons.com</i> +420 236 082 239
	Mr Ladislav Smejkal	<i>ladislav.smejkal@dentons.com</i> +420 236 082 242
Hannam & Partners (Advisory) LLP	Mr Ingo Hofmaier	<i>ingo@hannamandpartners.com</i> +44 (0) 207 907 8500

On 1 March 2017

Yours faithfully


Ladislav Smejkal
Dentons Europe CS LLP

STRICTLY PRIVATE & CONFIDENTIAL

To: OKD a.s. / Attn: Mr Michal Sladek, Chief Financial Officer

From:

Alcentra Limited (as investment manager on behalf of the Alcentra Funds (as defined in Appendix 1)), registered at 160 Queen Victoria Street, London, EC4V 4LA, United Kingdom; and

Ben Oldman Partners (as investment manager of Ben Oldman Special Situations Fund, L.P.) registered at 309 Uglan House, Grand Cayman, KY1-1104, Cayman Islands,

(together, the *New Investors*)

1 March 2017

Dear Mr Sladek

OKD, a.s., identification no. (ICO) 268 63 154 (OKD or the *Company*)

Summary of Final Offer

1. Further to your letter of 15 February 2017 (the *Process Letter*), we are pleased to submit this binding confidential offer, more particularly as described in this letter and the appendices here (the *Final Offer*). We wish to draw your attention to the following key elements:

- (a) Scope of the Final Offer: as described in paragraphs 2 to 4 below, the Final Offer relates to the Enterprise (as defined in paragraph 2), but shall be implemented by way of transfer of share capital in a NewCo (as defined in paragraph 3) following the Enterprise Contribution into a NewCo in the manner set out in paragraph 3; and
- (b) Consideration: the consideration for the sale of the Enterprise would comprise, subject to the terms and conditions set out in paragraphs 17 to 22 (inclusive), a Purchase Price of CZK 540 million which would be payable in cash at Closing (as defined in paragraph 9).

2. Pursuant to this Final Offer, and as described herein, the New Investors wish to acquire the enterprise of OKD (the *Enterprise*) comprising: (i) the assets of OKD as described in Appendix 2 (the *Assets*); and (ii) the post-insolvency liabilities of OKD as described in Appendix 3, relating to the operation of the Enterprise (*Operating Post-Insolvency Liabilities*). The Enterprise shall not include:

- (a) non-operating claims (in Czech *neprovozní pohledávky*) recorded under an accounting unit claim management center (in Czech *středisko správy pohledávek*) (the *Non-Operating Claims*) which include in particular the Ostrava Regional Court lawsuit by OKD against NWR and former co-owner Mr Zdenek Bakala and potential future claims concerning the claw-back actions of OKD's insolvency trustee (the *Insolvency Trustee*);
- (b) liabilities corresponding to claims registered or asserted by OKD's creditors in OKD's insolvency proceedings, including liabilities corresponding to claims which

have not been registered notwithstanding that they should have been so registered (the *Pre-Insolvency Liabilities*);

- (c) liabilities which do not relate to the operation of OKD's business, as set out in Appendix 4 (the *Non-Operating Post-Insolvency Liabilities*); and
- (d) any other assets and liabilities of OKD which do not relate to the Enterprise operations.

Proposed Transaction

3. In order to effect the above described acquisition, our Final Offer assumes that OKD is restructured by way of a transfer of the Enterprise from OKD to a newly incorporated Czech limited liability company or a Czech joint-stock company (*NewCo*). For the purposes of the tax integrity of the Transaction (under (§9(1)a)) of the Act No. 340/2013 Coll., namely to benefit from the exemption from payment of real estate acquisition tax), our Final Offer assumes that (i) in advance of Closing one or more creditors of OKD (selected by us upon discussion with OKD) (the *Selected Creditor(s)*) shall subscribe for shares in NewCo, which Selected Creditor(s) shall be placed into a special creditor class under the contemplated reorganisation plan (the *Reorganisation Plan*); and (ii) that OKD will contribute the Enterprise to NewCo as an in-kind contribution to the share capital of NewCo (the *Enterprise Contribution*) under an Enterprise Contribution Agreement (defined in paragraph 33 (m)). Immediately prior to closing of the acquisition, NewCo will therefore be jointly owned by OKD and the Selected Creditor(s).

4. A company jointly owned by the New Investors and newly established for the purpose of the acquisition (*BidCo*) will, following the Enterprise Contribution, then acquire 100% of the issued share capital of NewCo (which will comprise only one class of ordinary shares) from OKD and the Selected Creditor(s) (the *Transaction*).

5. We confirm that the Final Offer is made by the New Investors acting as principals.

The New Investors

6. The New Investors are experienced investors who will bring a new, independent approach to the ownership and stewardship of the Enterprise. The New Investors are institutional investment funds whose business model includes owning assets. They are experienced in managing companies in similar challenging situations and believe that this experience makes them well placed to deliver the greatest benefit for all stakeholders in the Enterprise during their ownership. The New Investors have significant financial resources and could provide sufficient working capital facilities necessary for the ongoing operations following Closing. The New Investors have combined assets under management of around US\$30.5 billion.

7. We fully recognise the importance of OKD and its Enterprise to stakeholders in the Czech Republic and its status as a major source of employment in the Moravian-Silesian Region. We wish to emphasise our ongoing commitment to the OKD mines, existing management team and employees.

8. The New Investors have devoted significant time and resources to the Transaction, including the engagement of multiple Czech and international advisers to review and evaluate information provided by the Company via the data room and during management presentations, site visits and the Q&A process.

9. The New Investors are keen to contribute their expertise to the preparation and establishment of a credible Reorganisation Plan and, if this Final Offer is accepted, would expect to be involved in the development and implementation of the Reorganisation Plan preceding the complete consummation of the Transaction (*Closing*). The New Investors believe that there is a scope for improvement, in certain areas, of the financial performance of the Enterprise over the coming years and wish to discuss these areas with the current management. We believe that we represent the ideal owner and manager of the operations.

10. The New Investors wish to work closely and constructively with key customers of OKD, to assess and establish a stable framework of co-operation which will provide for the smooth continuity of OKD's business following Closing. The New Investors consider that to maximise the opportunity for a successful Transaction, it would be in the best interests of the Company that the New Investors commence discussions with key customers and stakeholders upon submission of this Final Offer. The New Investors are willing to discuss with OKD the terms on which such discussions take place and acknowledge the existing terms of the confidentiality agreement between (among others) the New Investors and OKD dated 15 February 2017 (the *NDA*). Therefore from the date of this Final Offer, the New Investors seek OKD's consent under paragraphs 2.1(b)(i) and (ii) of the NDA to reveal that negotiations are taking place between OKD and the New Investors, and to disclose and discuss their interest in the Transaction.

11. The New Investors wish to confirm that they do not have, and never have had, any commercial arrangements with Mr Zdenek Bakala, Mr Peter Kadas or BXR Group Limited (*BXR*). The New Investors are, and BidCo will be independent from BXR, NWR Plc, New World Resources N.V. and New World Resources B.V..

12. The New Investors together own around 43% of the EUR 300 million Senior Secured Notes (the *SSNs*) issued by New World Resources N.V.. The SSNs, taking into account any accrued interest, total approximately EUR 370 million. The principal amount of SSNs held by the New Investors (the *New Investor SSNs*) is around EUR 161 million. The New Investors also have significant claims under the super senior credit facility owed by New World Resources N.V. (the *SSCF*).

13. The New Investors did not participate in any negotiations with the Company preceding the initiation of the insolvency proceedings of OKD on 3 May 2016 and acquired almost all of their SSNs following OKD's entry into insolvency. The Security Agent (on behalf of the holders of the SSNs and the SSCF) is currently seeking recognition from the Czech courts of a guarantee given by OKD in respect of the SSNs registered in the amount of CZK 9.53 billion (the *SSN Guarantee*) and SSCF registered in the amount of CZK 621 million. The New Investor SSN proportion of the claim in respect of the SSN Guarantee is worth approximately CZK 4.09 billion.

14. With a significant portion of New Investor SSNs claimed through the SSN Guarantee, the New Investors are ready to support the Reorganisation Plan and seek ways to maximize the benefits of the Transaction for OKD's creditors. Accordingly, the New Investors are willing to consider and discuss with OKD any method by which the New Investors could support the Reorganisation Plan as an influential stakeholder in conjunction with the Transaction.

15. The New Investors are not seeking to acquire as part of the Transaction any interest in the Non-Operating Claims. Therefore, the New Investors assume that the Non-Operating Claims shall not be part of the Enterprise Contribution and such claims shall remain assets of OKD. The New Investors consider that the proposed Transaction, whereby OKD would perform an in-kind contribution of the Enterprise into NewCo, is the best available structure

for separating the Non-Operating Claims from the Enterprise and to preserve current legal standing of OKD as claimant in those claims.

16. As a result of the above, the Non-Operating Claims will continue to be dealt with and driven forward by OKD and the Insolvency Trustee of OKD.

17. The Final Offer is subject to the terms and conditions set out in this letter. The terms otherwise not defined herein shall have the meanings given to them in the Process Letter.

Purchase Price

18. The New Investors propose to acquire NewCo for a price of **CZK 540 million** (the **Purchase Price**) on the terms set out in this letter and as more fully detailed in the sale and purchase agreement appended to this Final Offer (**SPA**), the TSA (as defined in paragraph 33c) below), the Enterprise Contribution Agreement (as defined in paragraph 33 (m), the Licence Transfer Agreement (as defined in paragraph 22(a)) and other related and/or ancillary agreements and documents as are necessary in order to effect the Transaction upon the terms envisaged herein, in each case on terms to be negotiated, and agreed, between the New Investors and the Company (the **Transaction Documents**). As requested in the Process Letter, we have provided certain high level comments upon the draft SPA provided, but reserve the right to supplement these in light of further discussions with you as to the terms of this Final Offer and implementation thereof.

19. The New Investors will acquire NewCo free from all financial debt (including non-trade liabilities such as off-balance sheet financing, tax balances and unfunded pension liabilities), assuming that the interim financing facility provided to OKD by the state-owned company PRISKO, a.s. (the **Prisko Loan**) is repaid in accordance with paragraph 20(c) with no impact on the Purchase Price.

20. The Purchase Price assumes that the economic risk and reward relating to the operation of the Enterprise shall effectively pass to the New Investors with effect from the 31 December 2016 (the **Last Accounts Date**.) This means, among other things, that:

- (a) cash held by OKD as at the Last Accounts Date and all cash generated by the Enterprise between the Last Accounts Date and the date of the Enterprise Contribution (together, **Enterprise Cash**), shall be included in the Assets to be transferred to NewCo pursuant to the Enterprise Contribution, unless and to the extent such cash is utilised in the ordinary course of business of the Enterprise prior to the date of the Enterprise Contribution;
- (b) if and to the extent that between the Last Accounts Date and the date of Closing, Enterprise Cash is utilised for any purpose other than the operation of the Enterprise in the ordinary course of business, the Purchase Price shall be reduced accordingly, on a CZK per CZK basis. For the avoidance of doubt, the utilisation of Enterprise Cash to discharge any of the liabilities listed in paragraphs 2(a) to 2(d) of this Final Offer shall require a downward adjustment of the Purchase Price on a CZK per CZK basis;
- (c) if and to the extent that the Prisko Loan (as defined in paragraph 22(h) of this Final Offer) is repaid by OKD, this shall not require an adjustment of the Purchase Price, provided that any monies drawn under the Prisko Loan after the Last Accounts Date were utilised solely for the operation of the Enterprise in the ordinary course of business;

- (d) if and to the extent that the Enterprise requires additional debt financing after the Last Accounts Date in order to fund operations of the Enterprise in the ordinary course of business, such further financial debt may be added (in the sole discretion of the New Investors) to the Operating Post-Insolvency Liabilities without making an adjustment to the Purchase Price; and
 - (e) the Purchase Price shall be adjusted downwards for any losses, expenses and liabilities arising, directly or indirectly, in respect of circumstances or events, actions or omissions of OKD existing or occurring prior to the Last Accounts Date (including, without limitation, any breach of applicable law or regulation, decision of a public authority, contract, agreement or undertaking), unless provisions have been properly made for such losses, expenses and liabilities in the annual financial statements for the full year ended on 31 December 2016.
21. A detailed price adjustment mechanism shall be agreed in the SPA.

Final Offer Price Assumptions

22. Our offer price is based on the following assumptions:
- a) OKD will make the Enterprise Contribution pursuant to the terms of documentation to be agreed between OKD and the New Investors (such agreed form documentation to be appended to the share purchase agreement relating to the acquisition of NewCo by BidCo) which should include, among other items, the Enterprise Contribution Agreement and a public law agreement on transfer of mining licences (*Licence Transfer Agreement*);
 - b) NewCo will acquire all of the Enterprise pursuant to the terms of the applicable Transaction Documents, save for the Assets forming part of the Enterprise which have been disposed of in the ordinary course of business (provided that such disposals shall not have materially affected the operations or value of the Enterprise in the view of the New Investors);
 - c) as at the Last Accounts Date, OKD had cash on its balance sheet in relation to the Enterprise of not less than CZK 886 million;
 - d) since the Last Accounts Date, OKD has continued (and from the date of the Enterprise Contribution, NewCo will continue to trade) in all material respects in accordance with the manner in which OKD has traded since 3 May 2016 and as set out in the business plan in section 1.5.3 of the data room and entitled "OKD_DDV OKD (leden 2017)_v12_DR_170126 (the *Business Plan*)";
 - e) as part of the Reorganisation Plan, NewCo will not acquire or assume any Pre-Insolvency Liabilities, which liabilities (being subject to proportionate reduction and qualifying for the satisfaction under the Reorganisation Plan) will be settled by OKD as part of the Reorganisation Plan;
 - f) the Non-Operating Post Insolvency Liabilities will remain liabilities of OKD and will be settled by OKD in the course of its continuing insolvency proceedings. No Non-Operating Post Insolvency Liabilities shall be transferred to and/or assumed by NewCo;
 - g) the Non-Operating Claims will remain with OKD following Closing and will not be transferred to and/or assumed by NewCo;

- h) NewCo. will acquire and discharge Operating Post-Insolvency Liabilities. However, the New Investors assume that the Prisko Loan is to be repaid prior to Closing and that any payment obligations under the Prisko Loan are cancelled;
- i) the New Investors will participate in the development of the Reorganisation Plan, in cooperation with OKD, the Insolvency Trustee of OKD, the Czech courts and the other stakeholders and the proposed Reorganisation Plan will be in form and content satisfactory to the New Investors before it is proposed to OKD's creditors;
- j) the New Investors' have based their valuation of the Enterprise on the basis and in reliance upon the information supplied by OKD, including but not limited to information contained in the data room, the Information Memorandum of November 2016, the Supplementing Document to the Information Memorandum of December 2016 and information provided by the OKD management during site visits undertaken during the week of 20 February 2017 (the *Site Visits*) (together, the *Business Information*). It is assumed that all such Business Information is accurate;
- k) prior to the signing of the Transaction Documents, the Company shall provide all reasonable assistance to the New Investors in relation to any confirmatory due diligence regarding the Enterprise, and shall provide to the New Investors' and their advisors all information, documentation and assistance requested in connection with the structuring of the Transaction, in each case promptly following any request made by any of the New Investors; and
- l) prior to the signing of the Transaction Documents, no information comes to light, which adversely affects the New Investors' understanding of the value and/or prospects of the Enterprise,

together, the *Final Offer Price Assumptions*.

Financing

23. The New Investors intend to fund the Transaction through cash which they will provide (or procure provision of) to BidCo to enable it to pay the Purchase Price. As at 1 March 2017, the New Investors have agreed to commit CZK 540 million of funding to BidCo. The equity commitment letter signed by the New Investors, detailing funds available to BidCo, is appended to this letter (see Appendix 5).

24. A working capital facility will be made available by BidCo at the time of Closing to fund the ongoing operation of the Enterprise, if necessary. This working capital facility will be funded by the New Investors.

25. BidCo does not intend to fund the Transaction via any third-party debt.

Management and personnel

26. In keeping with the New Investors' investment philosophy, we intend to work with the current management towards the full development of the Enterprise's prospects and the successful achievement of its current Business Plan.

27. We anticipate that substantially all of OKD's management team will be retained under our ownership although we will also look to recruit additional personnel with experience of managing similar mining assets both operationally and through closure.

28. Our intention is to retain those personnel employed to operate the Enterprise subject to completion of satisfactory negotiations with regards to the relevant employment arrangements.

29. It is our intention to introduce bonus and performance share plans following Closing. These will enable both management and employees to share in any economic outperformance of the Enterprise compared to the Business Plan and to become shareholders of the business subject to the attainment of certain financial and operational performance targets.

Mine closure costs

30. OKD's Business Plan indicates that OKD expects the Enterprise to generate sufficient funds to meet the closure costs of the mines.

31. The New Investors propose that NewCo will set up an independent trust (the *Trust*) to fund future closure costs, both technical and social, via cash contributions from a portion of the free cash flows of the Enterprise. The New Investors are confident that the Enterprise can be managed and operated in a way that significant cashflows can be contributed towards future expected closure commitments, as outlined by the management.

32. Further, the New Investors will seek to work with OKD to re-establish the CZK 600 million commitment of public funding from the Czech State as approved by the European Commission on 12 February 2015 to help cover the social costs associated with the closure of the Paskov mine.

Conditions of the Final Offer

33. The Final Offer is subject to New Investors confirming that the following principal conditions and qualifications (*in Czech: vyhrady*) have been satisfied:

- a) promptly following the submission of this Final Offer, OKD providing its consent under paragraph 2.1(b)(i) and (ii) of the NDA for the New Investors to reveal that negotiations are taking place between OKD and the New Investors, and to disclose and discuss their interest in the Transaction with such parties as the New Investors may determine and notify to OKD;
- b) Closing shall occur as soon as practicable and no later than 1 September 2017;
- c) an interim transitional services agreement shall be agreed and entered into by NewCo, BidCo and OKD governing how the Enterprise and the business operations of OKD and NewCo are managed during the period between the New Investors entering into transaction and Closing (the *TSA*);
- d) the Enterprise transferred from OKD to NewCo pursuant to the Enterprise Contribution Agreement will comprise the Assets, being all assets required to continue the Enterprise's existing operations and contracts (with the exception of the Non-Operating Claims);
- e) save for in the ordinary course of trading, no part of the Enterprise transferred to NewCo pursuant to the Enterprise Contribution will be transferred out of NewCo prior to Closing and no liabilities other than the Operating Post Insolvency Liabilities (with the exception of the Prisko Loan) will be transferred to, or assumed by, NewCo prior to or at Closing;

- f) OKD shall repay or procure the repayment of the Prisko Loan before the date of the Enterprise Contribution;
- g) NewCo has only ever owned and does only own the Enterprise;
- h) the receipt by NewCo of all necessary approvals, consents, licences, permits, waivers and clearances from all governmental and regulatory authorities required for continuing the mining operations which are currently carried out by OKD as at the date of this letter and (as applicable) the transfer of existing contractual arrangements of OKD to NewCo to the satisfaction of the New Investors such that all such operations and arrangements remain valid and can continue post-Closing;
- i) receipt of all necessary anti-trust and competition clearances as the New Investors and the Company, acting reasonably, each deem to be required for Closing to occur (on the basis of the information we have received and reviewed, we expect no substantive problems with any of these clearances and our advisers will work closely with yours to obtain these approvals as quickly as possible);
- j) the making of all and any necessary tax filings and notifications;
- k) under the Reorganisation Plan, OKD will settle the Pre-Insolvency Liabilities and will obtain satisfactory assurances under the Reorganisation Plan that creditors in respect of the Pre-Insolvency Liabilities will not be entitled to claim any satisfaction of the Pre-Insolvency Liabilities from NewCo;
- l) the approval by the New Investors of the proposed Reorganisation Plan, and subsequently by OKD's creditors and the Czech courts, of a satisfactory Reorganisation Plan sufficient to achieve the Transaction;
- m) the negotiation of a satisfactory enterprise contribution agreement between OKD and NewCo (in a form agreed between OKD and the New Investors) which will be appended to the share purchase agreement relating to the acquisition of NewCo by BidCo (the *Enterprise Contribution Agreement*);
- n) the negotiation of Transaction Documents on terms satisfactory to the New Investors;
- o) receipt of satisfactory assurances from OKD that certain key employees and managers will be employed by NewCo for at least twelve months from Closing and that NewCo will have access to the services of sufficient personnel to operate the Enterprise in compliance with all applicable laws and regulations, including health and safety regulations;
- p) the Final Offer Price Assumptions in paragraph 22 above are all fully correct;
- q) on Closing, the prices achieved for the Enterprise's products in 2017 have not been significantly different from the prices achieved by OKD in 2016 or from the guidance provided by OKD management during the Site Visits, and there has been no material adverse change in, or any development involving a prospective material adverse change in or affecting, the condition or results of the operations of the Enterprise;
- r) in advance of Closing, that the New Investors have received satisfactory evidence and information as to the following items, all of which were noted or follow from due diligence conducted to date (the *Due Diligence Items*):

- a. evidence that either the Framework Agreement on Supply of Utilities and Services dated 27 November 2008 and entered into between OKD as customer and Veolia Průmyslové služby ČR, a.s. and Veolia Komodity ČR, s.r.o. as suppliers (as amended) has been successfully renegotiated or that Veolia Průmyslové služby ČR, a.s. and Veolia Komodity ČR, s.r.o. have not brought a claim for repayment of of the fixed payment (as defined under the Framework Agreement) under Section 203 of Act No. 182/2006 Coll., the Insolvency Act, on terms acceptable to the New Investors;
- b. evidence of and confirmation as to the compliance by OKD and (in respect of the period from the date of the Enterprise Contribution) NewCo with all financial and reporting obligations arising out of any mining laws and regulations and administrative decisions or binding instructions of the Czech Mining Authority issued in relation thereto;
- c. the provision of detailed information concerning OKD and NewCo as to (i) payments of all statutory concession fees by OKD and (following the date of the Enterprise Contribution) NewCo including information that all such statutory concession fees were duly paid; (ii) formation, maintenance and use of mandatory financial reserves, which are required by the mining laws and regulations, and administrative decisions or binding instructions of the Czech Mining Authority issued in relation thereto for purposes of (1) redressing damage caused by mining activities; (2) covering cost of re-cultivations of land; and (3) covering cost of disposing with the mining waste material, including information that all mandatory financial reserves were duly formed, maintained and used; and (iii) formation of financial reserves in relation to liquidation (former, present or future) of any mines forming part of the Enterprise; together with such documentation and/or confirmation from the Czech Mining Authority as to the foregoing as is reasonably requested by the New Investors;
- d. confirmation from the Czech Mining Authority that as at Closing, NewCo shall be legal holder of, and beneficiary under, all permits or authorizations required by the mining laws and regulations for proper operations of the Enterprise, and decisions issued by the Czech Mining Authority in relation thereto, including a confirmation as to no deficiencies in relation to (i) payments of all statutory concession fees by OKD; (ii) formation, maintenance and use of mandatory financial reserves, which are required by the mining laws and regulations, and administrative decisions or binding instructions of the Czech Mining Authority issued in relation thereto for purposes of (1) redressing damage caused by mining activities; (2) covering cost of re-cultivations of land; and (3) covering cost of disposing with the mining waste material, including any amounts deposited on special bank account(s) or held in permitted debt investment instruments; and/or (iii) formation of other financial reserves in relation to liquidation (former, present or future) of any mines forming part of the Enterprise;
- e. evidence that NWR was invited to register its claim against OKD in the insolvency proceedings under Section 430 of Act No. 182/2006 Coll., the Insolvency Act (as it appears that it could have a significant claim against OKD which should be made subject to the Reorganisation Plan); and
- f. evidence that (i) all Assets (including, without limitation, real estate) have been transferred to NewCo pursuant to, and in accordance with, the

Enterprise Contribution Agreement and/or the Licence Transfer Agreement in full compliance with all applicable laws and regulations and having first obtained any necessary and/or (in the New Investors' view) desirable consents, approvals and/or permissions from any applicable third party, and (ii) full rights, title and interest to all such Assets shall vest with NewCo immediately following the Enterprise Contribution.

Sale Documentation

34. We have reviewed the draft SPA provided by OKD's legal counsel in the data room with our advisers and attach high level comments on the SPA in Appendix 6.

35. We undertake that subject to the assumptions and conditions set out in this Final Offer, we would be willing to sign the Transaction Documents (in such form as are agreed between us), and would envisage that it is reasonable that such documents may be agreed and signed not later than 30 April 2017.

Regulatory approvals

36. NewCo will require the relevant mining authorisations and mining permits as are necessary in order to pursue mining activities carried on by Company, including, without limitation:

- a) a General Mining Authorisation pursuant to the Mining Act (*in Czech „oprávnění k hornické činnosti nebo k činnosti prováděné hornickým způsobem“*);
- b) authorisations to Exploit a Mineral Deposit pursuant to the Mineral Resources Act (*in Czech „oprávnění k dobývání výhradního ložiska“*) with respect to each of the mining areas: Doubrava u Orlové, Karviná - Doly I, Darkov, Karviná - Doly II, Stonava, Dolní Suchá, Lazy, Petřvald I, Staříč, Louky and Trojanovice;
- c) IPPC permits and/or separate permits for off-take of water and discharge of waste waters to rivers, permits for operation of sources of air pollution; and
- d) Mining Permits pursuant to the Mining Act (*in Czech „povolení k otvírce, přípravě a dobývání výhradních ložisek nebo jejich částí“*) with respect to the above mentioned mining areas.

37. From information obtained during management discussions and provided in the data room, we understand that the Company envisages that it would procure all necessary authorisations and permits for NewCo in order for it to be fully operational from the day of Enterprise Contribution. We confirm that we will cooperate with the Company or persons nominated by the Company (insofar we are permitted by applicable law and regulation) or applicable regulatory, competition and anti-trust matters. Further, we will consider in good faith any requests from the relevant authorities in connection with any undertakings required for the purpose of obtaining such clearances.

Internal Approvals

38. Details of the corporate, shareholder and internal approval process required prior to the execution of binding transaction documentation are appended to this letter at Appendix 7.

39. We confirm that we have obtained all necessary internal approvals to submit this Final Offer.

Existing business activities

40. Details of the New Investors' business activities are set out in Appendix 8. The New Investors are subject to obligations of confidentiality to their investors which restrict their ability to share information. However, the New Investors will provide standard Know Your Customer and Anti Money Laundering documents if selected as the preferred bidder.

New Investor confirmations

41. Up to date commercial extracts from each of the New Investors are appended to this letter at Appendix 9 together with evidence that its representatives are authorised to sign and submit this Final Offer.

Expenses

42. Each party will pay its own expenses in connection with the proposed Transaction.

Confidentiality and Announcements

43. This Final Offer is submitted on the understanding that the Company shall keep both it, and any discussions arising from it, confidential and except as required by applicable law, shall not make or issue any public announcement, circular or disclosure in respect of it before or upon signature of the definitive agreement(s) implementing this transaction without express prior written approval from the other party (such approval not to be unreasonably withheld or delayed). The New Investors agree to keep the terms of this Final Offer confidential under the terms of the NDA.

Governing Law

44. The terms of this letter and any non-contractual obligations arising out of or in connection with it shall be governed by, and interpreted in accordance with, Czech law.

Term of the Final Offer

45. We confirm that this Final Offer is valid, binding and irrevocable and will remain open for acceptance until 30 April 2017 subject to the terms, conditions and assumptions herein.

Contact information

46. Should you wish to discuss our Final Offer in more detail, or if there are any sections of which you wish to clarify please contact the following persons.

Firm	Key contact	Details
Dentons Europe CS LLP	Mr Jiri Tomola	<i>jiri.tomola@dentons.com</i> +420 236 082 239
Hannam & Partners (Advisory) LLP	Mr Ingo Hofmaier	<i>ingo@hannamandpartners.com</i> +44 (0) 207 907 8500

Once again, we would like to reiterate our enthusiasm for the Transaction.


We firmly believe this is a unique opportunity to realise full value for OKD and are confident our Final Offer will provide the best achievable outcome for OKD's various stakeholders, including the Czech State, OKD management, employees and unions, trade creditors and those interested in reclamation of land affected by mining and closure costs.

We look forward to hearing from you.

Yours faithfully

In London on 1 March 2017

Alcentra Limited (as investment manager on behalf of the Alcentra Funds)

By: 
Name: KEVIN LENNON
Title: AUTHORISED SIGNATORY

In London on 1 March 2017

Ben Oldman Partners (as investment manager of Ben Oldman Special Situations Fund,
L.P.)

By:

Name:

Title:

Isaac Bentzen
ISAAC BENTZEN
DIRECTOR

Appendix 1

The Alcentra Funds

Alcentra Global Special Situations Luxembourg SARL (“AGSSL”)

Kneiff Tower SARL (“KT”)

Alcentra MS SARL (“MS” and together with AGSSL and KT, the “**Alcentra Funds**”)

Appendix 2

The Assets

Assets means:

(i) all assets (including real estate) owned by OKD as at 3 May 2016 (together with all other assets (including real estate) acquired by OKD after such date), excluding any assets (other than real estate) disposed of in the ordinary course of business and consistent with past practice;

(ii) without prejudice to the foregoing, all assets of OKD which are necessary and/or desirable to own and operate the business operations of OKD (or any part thereof) as at Closing;

(iii) the Enterprise Cash;

(iv) a General Mining Authorisation, authorisations to Exploit a Mineral Deposit, IPPC permits and/or separate permits for off-take of water and discharge of waste waters to rivers, permits for operation of sources of air pollution, Mining Permits as well as any other permits necessary for the OKD's business operation;

(v) any mandatory financial reserves under mining laws and regulations (whether in cash or in permitted debt instruments);

(vi) without prejudice to the foregoing, the following real estate registered in the real estate cadastre:

Cadastral area	Municipality	Title number
600121 Albrechtice u Českého Těšína	598925 Albrechtice	1625
715085 Bartovice	554821 Ostrava	1290
613380 Brušperk	598038 Brušperk	275
651150 Chlebovice	598003 Frýdek-Místek	84
664014 Darkov	598917 Karviná	268
664014 Darkov	598917 Karviná	515
664014 Darkov	598917 Karviná	803
664014 Darkov	598917 Karviná	1211
766607 Dolní Těrlicko	599158 Těrlicko	269
631167 Doubrava u Orlové	568864 Doubrava	151
631167 Doubrava u Orlové	568864 Doubrava	228
631167 Doubrava u Orlové	568864 Doubrava	241
631167 Doubrava u Orlové	568864 Doubrava	349
631167 Doubrava u Orlové	568864 Doubrava	363
631167 Doubrava u Orlové	568864 Doubrava	446
631167 Doubrava u Orlové	568864 Doubrava	559
631167 Doubrava u Orlové	568864 Doubrava	573
631167 Doubrava u Orlové	568864 Doubrava	998
631167 Doubrava u Orlové	568864 Doubrava	1016
631167 Doubrava u Orlové	568864 Doubrava	1201
631167 Doubrava u Orlové	568864 Doubrava	1270
631167 Doubrava u Orlové	568864 Doubrava	1308
634719 Frenštát pod Radhoštěm	599344 Frenštát pod Radhoštěm	1292
634808 Frýčovice	598135 Frýčovice	715
712531 Horní Lutyně	599069 Orlová	5920
644404 Horní Suchá	552739 Horní suchá	2029
714534 Hrabová	554821 Ostrava	2379

664103 Karviná-Doly	598917 Karviná	196
664103 Karviná-Doly	598917 Karviná	213
664103 Karviná-Doly	598917 Karviná	277
664103 Karviná-Doly	598917 Karviná	297
664103 Karviná-Doly	598917 Karviná	568
663824 Karviná-město	598917 Karviná	2950
625973 Koukolná	598941 Dětmorovice	917
677094 Kunčice pod Ondřejníkem	598356 Kunčice pod Ondřejníkem	582
714241 Kunčičky	554821 Ostrava	643
712434 Lazy u Orlové	599069 Orlová	100
712434 Lazy u Orlové	599069 Orlová	162
712434 Lazy u Orlové	599069 Orlová	399
687308 Louky nad Olší	598917 Karviná	86
687308 Louky nad Olší	598917 Karviná	132
687308 Louky nad Olší	598917 Karviná	166
687308 Louky nad Olší	598917 Karviná	253
687308 Louky nad Olší	598917 Karviná	342
687308 Louky nad Olší	598917 Karviná	382
687308 Louky nad Olší	598917 Karviná	790
687308 Louky nad Olší	598917 Karviná	994
687308 Louky nad Olší	598917 Karviná	1018
687308 Louky nad Olší	598917 Karviná	1019
687308 Louky nad Olší	598917 Karviná	1020
687308 Louky nad Olší	598917 Karviná	1024
687308 Louky nad Olší	598917 Karviná	1037
687308 Louky nad Olší	598917 Karviná	1042
687308 Louky nad Olší	598917 Karviná	1043
687308 Louky nad Olší	598917 Karviná	1044
713520 Moravská Ostrava	554821 Ostrava	9776
704946 Nová Bělá	554821 Ostrava	1015
712361 Orlová	599069 Orlová	100
718211 Paskov	598569 Paskov	1704
712493 Poruba u Orlové	599069 Orlová	100
715018 Radvanice	554821 Ostrava	1823
663981 Ráj	598917 Karviná	6305
714828 Slezská Ostrava	554821 Ostrava	4216
664197 Staré Město u Karviné	598917 Karviná	97
664197 Staré Město u Karviné	598917 Karviná	113
664197 Staré Město u Karviné	598917 Karviná	219
664197 Staré Město u Karviné	598917 Karviná	392
664197 Staré Město u Karviné	598917 Karviná	393
664197 Staré Město u Karviné	598917 Karviná	399
664197 Staré Město u Karviné	598917 Karviná	403
664197 Staré Město u Karviné	598917 Karviná	468
664197 Staré Město u Karviné	598917 Karviná	559
664197 Staré Město u Karviné	598917 Karviná	668
664197 Staré Město u Karviné	598917 Karviná	703
664197 Staré Město u Karviné	598917 Karviná	871
664197 Staré Město u Karviné	598917 Karviná	2026
664197 Staré Město u Karviné	598917 Karviná	2090
664197 Staré Město u Karviné	598917 Karviná	2091
664197 Staré Město u Karviné	598917 Karviná	2123
664197 Staré Město u Karviné	598917 Karviná	2130
664197 Staré Město u Karviné	598917 Karviná	2168
664197 Staré Město u Karviné	598917 Karviná	2170
664197 Staré Město u Karviné	598917 Karviná	2295

755290 Staříč	552569 Staříč	4
755630 Stonava	599140 Stovana	118
755630 Stonava	599140 Stovana	122
755630 Stonava	599140 Stovana	1088
755630 Stonava	599140 Stovana	1113
755630 Stonava	599140 Stovana	1171
755630 Stonava	599140 Stovana	1272
755630 Stonava	599140 Stovana	1390
755630 Stonava	599140 Stovana	1458
755630 Stonava	599140 Stovana	1503
755630 Stonava	599140 Stovana	1510
760676 Sviadnov	569631 Sviadnov	34
766992 Tichá na Moravě	599956 Tichá	656
768499 Trojanovice	599999 Trojanovice	959
768499 Trojanovice	599999 Trojanovice	2600
768499 Trojanovice	599999 Trojanovice	2601
785601 Vratimov	598879 Vratimov	3103
745197 Řepiště	568830 Řepiště	521
794139 Žabeň	552691 Žabeň	290

(vii) without prejudice to the foregoing, all of the assets in the list of OKD's insolvency estate prepared by the Insolvency Trustee and published in the Czech insolvency register under Ref. No. B-152 and B-240;

provided that in each case, the Assets shall not include the Non-Operating Claims.

Appendix 3

The Operating Post-Insolvency Liabilities

Operating Post-Insolvency Liabilities means the following OKD's liabilities incurred after the declaration of insolvency of OKD:

- Liabilities under the interim debtor-in-possession financing, including the Prisko Loan as defined in paragraph 22(h)(Section 168(1)f) of the Insolvency Act)
- Liabilities for costs of maintenance of the Assets (Section 168(2)b) of the Insolvency Act)
- Taxes, fees and similar payments, social insurance, contributions the state employment policy, public health insurance payments (Section 168(2)e) of the Insolvency Act)
- Liabilities from agreements executed by OKD in course of the insolvency proceedings (Section 168(2)f) of the Insolvency Act)
- Liabilities from agreements whose performance was not rejected by OKD (Section 168(2)g) of the Insolvency Act)
- Liabilities from agreements whose performance was rejected and arising between the declaration of insolvency and rejection of performance (Section 168(2)h) of the Insolvency Act)
- Liabilities to employees (Section 169(1)a) of the Insolvency Act)
- Liabilities stemming from compensation for damage to health (Section 169(1)b) of the Insolvency Act)
- Liabilities to state for compensation of wages (Section 169(1)c) of the Insolvency Act)
- Liabilities for costs of third parties incurred in increasing the value of OKD's estate under unjust enrichment rules (Section 169(1)f) of the Insolvency Act)

Appendix 4

The Non-Operating Post-Insolvency Liabilities

Non-Operating Post-Insolvency Liabilities means:

- Reimbursement of Insolvency Trustee's remuneration and costs (Section 168(1)a), (2)a) of the Insolvency Act)
- Reimbursement of creditors' committee members remuneration and costs (Section 168(1)c) of the Insolvency Act)
- Prepayments made towards the costs of the insolvency proceeding (if any) (Section 168(1)d) of the Insolvency Act)
- Remuneration and costs of the court appointed expert in the insolvency proceeding to evaluate the insolvency estate (Section 168(2)d) of the Insolvency Act)

Appendix 5

Equity Commitment Letters

From:

1. Alcentra Limited (as investment manager on behalf of the Alcentra funds listed in paragraphs 1(a)-1(c) in column 1 of Schedule 1), registered at 160 Queen Victoria Street, London, EC4V 4LA, United Kingdom; and
2. Ben Oldman Partners (as investment manager of Ben Oldman Special Situations Fund, L.P.), registered at 309 Ugland House, Grand Cayman, KY1-1104, Cayman Islands;

(each an *Investor* and together, the *Investors*)

To: **OKD, a.s, identification no. (ICO) 268 63 154 (OKD or the *Company*)**

1 March 2017

Dear Sir/Madam

OKD Offering Process – equity commitment and funding confirmation letter

We are writing in relation to the proposed acquisition of 100% of the issued share capital of NewCo (as defined in the Bid Letter defined below) (the *Transaction*) by a special purpose company wholly and indirectly owned by the Investors (the *Purchaser*).

This letter is provided to support and is subject to the terms, conditions and assumptions of, the Investors' offer letter dated on or about the date hereof provided in respect of the Transaction (the *Bid Letter*). In providing this letter, each of the Investors is acting in its capacity as a manager of the funds specified in column 1 of Schedule 1 and enters into the commitments described in this letter on behalf of such funds.

The obligations and undertakings in this letter are given on the condition and in consideration of, OKD, its creditors and/or its shareholder(s) agreeing to enter into the sale and purchase agreement to effect the Transaction (the *SPA*) with the Purchaser and any other related transaction documents, in each case on the terms acceptable to the Purchaser. For the avoidance of doubt, the obligations and undertakings in this letter on the part of any of the Investors are several as between each Investor and are not joint or joint and several.

1. Equity Commitment

Subject to the provisions of paragraphs 2 (*Conditions*) and 3 (*Limitation of Liability*) below, each Investor hereby severally and irrevocably undertakes to the Purchaser to procure that, at the earlier of:

- (a) immediately prior to completion of the Transaction under the SPA; and
- (b) such other time when the Purchaser is unconditionally obliged to immediately perform its purchase price payment obligations (the *Payment Obligations*) in accordance with the terms of the SPA,

there is provided, directly or indirectly, to the Purchaser the amount set out opposite that Investor's name in column 2 of Schedule 1 to this letter (each Investor's

commitment being an *Individual Equity Commitment*, and the Investors' Individual Equity Commitments in aggregate being the *Equity Commitment*) in cash, in immediately available funds. Where the purchase price is reduced in accordance with the terms of the SPA, the aggregate Equity Commitment shall be deemed to be reduced accordingly and an Individual Equity Commitment of each Investor shall be reduced pro rata to such Investor's share specified in column 3 of Schedule 1.

2. Conditions

The obligation of each Investor set out in paragraph 1 (*Equity Commitment*) of this letter is subject to and conditional upon (i) the offer conditions set out in the Bid Letter having been fulfilled or waived by the Investors; (ii) the terms of the SPA and any other applicable transactions documents having been agreed between OKD, its creditors/shareholder(s) and the Purchaser and validly executed and not having been terminated by withdrawal or otherwise; and (ii) the Purchaser being unconditionally obliged to perform its Payment Obligations in accordance with the terms of the SPA.

3. Limitation of Liability

None of the Investors will be under any obligation at any time to fund or procure the funding of more than its Individual Equity Commitment or to assume any further obligations or liabilities in doing so.

No person other than each party to this letter shall have any obligation hereunder and there shall be no recourse against any former, current or future director, officer, agent, affiliate, employee, general or limited partner, member, manager, securityholder or stockholder of any Investor (*Related Party*). Nothing in this paragraph 3 shall be deemed in any way to limit or restrict the Investors from exercising any rights they may have against any such Related Party in connection with the satisfaction of any amounts payable hereunder.

4. Termination

Notwithstanding any other provision of this letter, this letter shall automatically terminate and be of no further force or effect upon the earlier of: (i) the expiry of the offer made pursuant to the Bid Letter, unless the SPA has been validly entered into by the Purchaser; (ii) the Purchaser's Payment Obligations under the SPA having been satisfied in accordance with the terms of the SPA; and (iii) the termination of the SPA.

5. Confidentiality

This letter is intended for your exclusive use and is delivered on the express understanding that it shall be treated strictly confidential and shall not, without our prior written consent, be disclosed in whole or in part to any person, other than to your directors, officers, employees, creditors and professional advisors on a confidential basis for the purposes of the Transaction.

6. General

- 6.1 Each Investor may assign some of all of its Individual Equity Commitment to an affiliate or related fund, however, it shall continue to be liable for the assigned Equity

Commitment if such affiliate or related fund, respectively, fails to perform its obligations under the terms and conditions of this letter. Except for the foregoing, unless the parties specifically agree in writing, no person shall assign, transfer, charge or otherwise deal with all or any of its rights under this letter nor grant, declare, create or dispose of any right or interest in it. Any purported assignment in contravention of this paragraph 6.1 shall be void.

- 6.2 No amendment of this letter shall be valid unless it is in writing and signed by the parties hereto.
- 6.3 A person who is not a party to this letter shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 6.4 This letter constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements, written or oral, between them in respect thereof.
- 6.5 This letter may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this letter by e-mail attachment (PDF) or telecopy shall be an effective mode of delivery.
- 6.6 The invalidity, illegality or unenforceability of any provision of this letter shall not affect the continuation in force of the remainder of this letter.

7. Governing Law and Jurisdiction

- 7.1 The terms of this letter and any non-contractual obligations arising out of or in connection with it shall be governed by, and interpreted in accordance with, English law.
- 7.2 The English courts shall have exclusive jurisdiction in relation to all disputes (including claims for set-off and counterclaims) arising out of or in connection with this letter including, without limitation, disputes arising out of or in connection with this letter.

Schedule 1
Individual Equity Commitments

Column 1	Column 2	Column 3
Investor	Individual Equity Commitment (CZK)	Relevant proportion contributed by each Investor (%)
1. <i>Alcentra Limited</i> , as investment manager on behalf of the Alcentra funds listed in paragraphs (a)-(c) below.	<i>378,000,000 CZK</i>	<i>70%, of which:</i>
<i>a. Alcentra MS SARL</i>	<i>9,990,000 CZK</i>	<i>1.85%</i>
<i>b. Kneiff Tower SARL</i>	<i>159,786,000 CZK</i>	<i>29.59%</i>
<i>c. Alcentra Global Special Situations Luxembourg SARL</i>	<i>208,224,000 CZK</i>	<i>38.56%</i>
2. <i>Ben Oldman Partners</i> (as investment manager of Ben Oldman Special Situations Fund, L.P.)	<i>162,000,000 CZK</i>	<i>30%, of which:</i>
<i>a. Ben Oldman Special Situations Fund, L.P.</i>	<i>162,000,000 CZK</i>	<i>30%</i>
Total	540,000,000 CZK	100%

Yours faithfully

Signed by

Alcentra Limited

By: 

Name: KEVIN LENNON

Title: AUTHORIZED SIGNATORY

Ben Oldman Partners

By: Isaac Benzaquen
Name: Mr Isaac Benzaquen
Title: Director

Yours faithfully

Signed by

Alcentra Limited

By: _____

Name:

Title:

Ben Oldman Partners

By: _____

Name:

Title:

We confirm that we agree and accept the terms of this letter and intend to be legally bound by its terms.

OKD, a.s.

By: _____

Name:

Title:

Appendix 6

Initial Comments on SPA Draft

General comment: the proposed mark-up of the Share Purchase Agreement (the “SPA”) is subject to and shall be reviewed in conjunction with, the terms of the final offer letter dated 1 March 2017 (the “Bid Letter”). The New Investors’ position is that the final draft SPA shall fully reflect the terms of the Bid Letter, unless otherwise expressly and unanimously agreed by the New Investors. Please refer also to the terms of the Bid Letter which should be read alongside the comments within this document.

SHARE PURCHASE AGREEMENT

concluded by and between

OKD, a.s.

as the seller

and

[●]

as the purchaser

THIS SHARE PURCHASE AGREEMENT (the "**Agreement**") is on the day provided below by and among the following parties:

- (1) **OKD, a.s.**, Identification No. 268 63 154, with its registered seat at Stonavská 2179, Doly, 735 06 Karviná, entered in the Commercial Register maintained by the Regional Court in Ostrava under file No. B 2900 (the "**Seller**");
 - (2) [●], Identification No.: [●], with its registered seat at [●], entered in the Commercial Register maintained by [●] Court in [●] under file No. [●] (the "**Purchaser**"); and
- (each of the Seller and the Purchaser the "**Party**", and collectively the "**Parties**").

WHEREAS:

- (A) The Seller was declared insolvent by resolution of the Regional Court in Ostrava, ref. No. KSOS 25 INS 10525/2016-A19 dated May 9, 2016, and its Reorganization was permitted subsequently;
- (B) The Seller established the Company in connection with the Reorganization, intends to submit to the said court, a Reorganization Plan which anticipates a Registered Capital Increase¹ by contributing a Part of an Enterprise thereto as an in-kind contribution, and to sell the Shares to the Purchaser who will be able to take care of further operation and phase-out of the Part of an Enterprise;
- (C) Pursuant to [share subscription agreement dated [●]], [●], Identification No.: [●], with its registered seat at [●], entered in the Commercial Register maintained by [●] Court in [●] under file No. [●] (the **Creditor Shareholder**) subscribed for [●] ordinary shares in the capital of the Company (the **Creditor Shares**); and as at the date of this Agreement, the Creditor Shareholder holds [●] Current Shares; and the Seller holds [●] Current Shares and [●] New Shares.
- (D) The Seller wishes, on terms and conditions set out herein and for consideration, to sell and transfer ownership title to the Shares to the Purchaser, and the Purchaser wishes to acquire the Shares from the Seller for consideration, to pay the Purchase Price for the Shares to the Seller on terms and conditions set out herein, and to take care of the operation and cover the Mining Operations Phase-out Costs;
- (E) Pursuant to a sale and purchase agreement dated [●] between the Purchaser and the Creditor Shareholder (the **CS SPA**), the Purchaser has agreed to acquire the Creditor Shares from the Creditor Shareholder.

¹ The Seller reserves the right to change the structure of the transaction, whereby, instead of the Registered Capital Increase and subscription of New Shares (and the related contribution of the Part of an Enterprise to the Company), the Part of an Enterprise would be contributed to the Company pursuant to the a decision of the Company's sole shareholder on additional paid-in capital. [Note: *If the alternative structure is selected, we reserve the right to comment on this alternative structure*]

THEREFORE, THE PARTIES NOW AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless expressly stipulated otherwise, or unless the context requires otherwise, terms indicated and defined in Schedule 1 hereto shall have the meanings assigned thereto in this Agreement or Schedule 1, as applicable.
- 1.2 In the interpretation of this Agreement, save where the context does not permit, beyond any doubt, or where such interpretation would be in conflict with the expressly agreed terms and conditions hereof, the following shall apply:
- (1) references to a "*person*" shall include both natural persons and legal entities;
 - (2) "*Party*" shall include a reference to legal successors of such Party, or to persons to whom the Party is entitled to assign its contractual rights, claims and obligations under this Agreement;
 - (3) "*includes*" or "*including*" shall not be interpreted to mean a restrictive list;
 - (4) "*herein/in this Agreement*", "*hereof/of this Agreement*", "*in accordance with this Agreement*" and other similar expressions refer to this Agreement in its entirety, rather than to only some of its provisions;
 - (5) "*cause*" means to fulfill whatever was agreed, rather than only encourage a third party the fulfill;
 - (6) references to provisions or paragraphs are deemed to mean references to provisions or paragraphs of this Agreement;
 - (7) schedules to this Agreement shall form its integral part;
 - (8) titles of individual parts of this Agreement are used for ease of orientation only, and shall not have any impact on the interpretation of the content of this Agreement; and
 - (9) all references to time shall be deemed to refer to Prague time.

2. SALE AND PURCHASE OF SHARES

- 2.1 Pursuant to this Agreement, and on terms and conditions set out herein, the Seller hereby sells to the Purchaser and transfers to the Purchaser the Shares, together with any and all rights attached thereto, and the Purchaser hereby purchases the Shares from the Seller, together with any and all rights attached thereto.
- 2.2 The Purchaser undertakes to the Seller to pay the Purchase Price for the Shares in the manner and on terms and conditions set forth herein.

- 2.3 The Parties hereby agree that the ownership title to the Shares (as well as any and all rights attached thereto) shall transfer from the Seller to the Purchaser when the Seller delivers, on terms and conditions set forth herein, to the Purchaser the Shares, duly endorsed to the order of the Purchaser, in compliance with the form attached hereto as Schedule 2.

3. PURCHASE PRICE²

- 3.1 The Parties agree that for the transfer of the Shares, together with any and all rights attached thereto, by the Seller to the Purchaser pursuant to this Agreement, the Seller shall be entitled to the amount of CZK [●] (to wit: [●] Czech crowns) (the "**Purchase Price**") [(subject to adjustment in accordance with Article [●])]; of that, the purchase price for the Current Shares held by the Seller and rights attached thereto shall be CZK [●] (to wit: [●] Czech crowns), the purchase price for the New Shares and rights attached thereto shall be CZK [●] (to wit: [●] Czech crowns). [*Note: Subject to additional provisions to reflect the Purchase Price adjustment structure described the Bid Letter (the Purchase Price Adjustment).*]
- 3.2 The Parties expressly agree that, except as otherwise provided for in Articles [●] [*Note: to refer to the provisions on the Purchase Price Adjustment*], the Purchase Price shall be final and not subject to any other adjustments. [*Note: We understand that no transaction taxes shall apply under the proposed transaction structure.*]
- 3.3 The Parties hereby state and stipulate that the Purchase Price amount was set with a view to the provisions of Article 7.2 hereof.
- 3.4 [The Purchaser undertakes to deposit the Purchase Price not later than [●] Business Days in advance of Closing into the Escrow Account, from which it shall be released to the Seller into the Seller's Account on terms and conditions of the Escrow Agreement.] [*Practicalities of Closing to be subject to further discussion between the Parties.*]
- 3.5 The payment of the Purchase Price shall be deemed made when the Purchase Price is credited into the Seller's Account.
- 3.6 The Seller undertakes to repay all Pre-Insolvency Liabilities from the Purchase Price which it receives pursuant to this Agreement, in accordance with the terms of the Reorganization Plan.

4. CONDITIONS PRECEDENT TO SHARE TRANSFER

- 4.1 The Parties hereby agree that the Seller shall be obliged to deliver the Shares to the Purchaser, and the Purchaser shall be obliged to accept the Shares and pay the

² Note: The Purchaser will provide additional drafting in relation to the SNN Contribution as described in the Bid Letter.

Purchase Price within the term stipulated in Article 4.5 after all of the conditions precedent set forth below are satisfied (the "Transfer Conditions"):

- (a) any of the Parties has received a decision of the Competition Office permitting the transfer of the Shares pursuant to this Agreement from the Seller to the Purchaser, with the date of entry into force indicated thereon, or a statement from the Competition Office to the effect that the transaction pursuant to this Agreement is not subject to its approval;
- (b) the Purchaser has received (i) the original decision approving the Reorganization Plan, or a certified copy thereof, with the date of entry into force indicated thereon; and (ii) original or certified copies of the Contribution Agreement and the Licence Transfer Agreement;
- (c) the Purchaser has received the original extract from the Commercial Register for the Company, or a certified copy thereof, showing that the Registered Capital Increase has occurred and the Part of an Enterprise has been contributed to the Company;
- (d) the Purchaser has received the original decision of a Public Authority, or a certified copy thereof, showing that Requisite Licenses have been granted to the Company;

[Note: The Purchaser reserves the right to require other Transfer Conditions, including the delivery of such documents as are required in order to confirm that the Enterprise was duly transferred as envisaged in the Bid Letter and all applicable assets remain with the Company as at Closing.]

- 4.2 The Parties acknowledge that the Transfer Conditions are drafted for the benefit of both Parties, and neither of the Parties is authorized to waive any of the Transfer Conditions by way of a unilateral written waiver.
- 4.3 In the event that the fulfillment of any of the Transfer Conditions requires active involvement of either Party or any of its Group companies, or the cooperation of either Party or any of its Group companies, the Parties undertake to lend each other utmost assistance, and to cause its Group companies to provide such assistance as well.
- 4.4 The Seller and the Purchaser shall be obliged to inform each other in writing about the satisfaction of individual Transfer Conditions without delay.
- 4.5 The Parties undertake that within [five (5)] Business Days from the satisfaction of the last of the Transfer Conditions, the Parties shall take the following acts [simultaneously with the closing under the CS SPA]³:
 - (a) the Parties shall sign a joint declaration of the Parties on satisfaction of the Transfer Conditions;

³ Note: Closing mechanics to be discussed and agreed between the Parties.

- (b) [the Parties shall satisfy all the terms and conditions under the Escrow Agreement so that the Purchase Price could be released from the Escrow Account into the Seller's account;]
 - (c) the Purchase Price shall be credited to the Seller's Account;
 - (d) the Seller shall duly endorse the Shares and deliver them to the Purchaser;
 - (e) the Purchaser shall accept the endorsed Shares;
 - (f) the Parties shall execute a Waiver;
 - (g) the Parties shall sign the Shares Delivery Record;
 - (h) the Purchaser shall recall the current members of the Company's bodies and appoint new members of the Company's bodies in their stead.
- 4.6 [The Parties have agreed that the joint declaration on satisfaction of the Transfer Conditions, delivery and acceptance of the Shares, delivery of the Waiver to the Seller, and the Shares Delivery Record shall be signed at the Seller's seat, or at such other place and time as the Seller and the Purchaser may agree on in writing.]
[*Subject to further negotiation depending on the scope of warranties and Purchase Price Adjustment mechanism*]
- 5. TRANSITIONAL PERIOD⁴**
- 5.1 The Seller undertakes to operate both the Company and the Part of an Enterprise with due diligence even during the Transitional Period.
- 5.2 During the Transitional Period, the Seller shall be obliged to:
- (a) pay any claims against the estate and claims ranking *pari passu* with claims against the estate;
 - (b) contribute the Part of an Enterprise to the Company as an in-kind contribution; and
 - (c) render any performance as may be agreed in the Reorganization Plan.
- For the purposes of this Agreement, such action shall not be deemed to constitute Seller's actions contrary to the duty of care.
- 5.3 The Seller further undertakes to inform the Purchaser in writing over the entire Transitional Period, in regular monthly intervals and to a reasonable extent:
- (a) results of operation of the Enterprise (from the moment of its contribution into the Company) and the Company; and
 - (b) material facts concerning the operation of the Part of an Enterprise (from the moment of its contribution into the Company) and the Company.]

⁴ Note: In accordance with the Bid Letter the Seller and the Purchaser should also sign a Transitional Services Agreement to regulate conduct prior to Closing.

[Note: The scope of applicable Transitional Period covenants is subject to further review and comment. To the maximum extent practicable under applicable laws, the Purchaser would wish to have observer rights and in relation to substantial decisions, a contractual veto right to object.]

6. REGISTERED CAPITAL INCREASE AND CONTRIBUTION OF THE PART OF AN ENTERPRISE TO THE COMPANY

6.1 The Parties have agreed that the Seller shall decide on the Registered Capital Increase without undue delay upon the satisfaction of the following conditions:

- (a) the Creditors' Committee of the Seller shall grant consent to the Registered Capital Increase, conclusion of the Share Subscription Agreement and the Contribution Agreement;
- (b) the Insolvency Trustee exercising the powers of the General Meeting of the Seller shall grant consent to the Registered Capital Increase and the contribution of the Part of an Enterprise to the Company's registered capital.

6.2 The Purchaser acknowledges and agrees that in connection with the contribution of the Part of an Enterprise to the Company, liabilities associated with the Part of an Enterprise (excluding any Pre-Insolvency Liabilities and Non-Operating Liabilities) and corresponding to claims against the estate and claims ranking *pari passu* with claims against the estate shall also transfer to the Company.

7. NO LIABILITY OF THE PARTIES

7.1 The Parties state and stipulate that prior to the execution of this Agreement, the Purchaser had duly acquainted itself with the relevant parts of the Dataroom as to the legal and factual status of the Current Shares, the Part of an Enterprise and the Company, as well as any and all facts pertaining to the Current Shares, the Part of an Enterprise and the Company. The Purchaser further stipulates that it agrees with the Registered Capital Increase and the contribution of the Part of an Enterprise to the Company.

7.2 [The Parties shall execute the Waiver on the Closing Date by which they waive all mutual rights and obligations from liability under this Agreement except for those specifically excluded from the Waiver or those from violation of the representation and warranties. After execution of the Closing Steps, the Parties shall have no further mutual rights and obligations other than those set out in Articles [8, 9, 10 and 11] of this Agreement and/or those exempted from the Waiver.] *[Subject to further negotiation depending on the scope of warranties and Purchase Price Adjustment mechanism]*

8. PHASE OUT OF MINES

The Purchaser acknowledges that Mining Operations Phase-out Costs are estimated at CZK [●] (to wit: [●] Czech crowns). *[Note: Please see comments in the Bid Letter as to funding for the gradual phase out of Mining Operations.]*

9. CONTRACTUAL FINE

- 9.1 In the event that the Purchaser breaches any duty referred to in Articles [3.4] or [4.5] hereof, the Purchaser undertakes to pay to the Seller a contractual fine in the aggregate amount of CZK [●] (to wit: [●] Czech crowns). The contractual fine pursuant to the preceding sentence shall be payable into the Seller's Account within three (3) Business Days from the inception of the Seller's right to the Contractual fine pursuant to the preceding sentence.
- 9.2 In case the Seller breaches any obligation specified in Section **Error! Reference source not found.** and **Error! Reference source not found.** hereof, the Seller agrees to pay a contractual penalty to the Purchaser in the amount of CZK [●] (to wit: [●] Czech crowns). *[Note: The Purchaser reserves the right to require that the Purchaser provide security for obligations under this Agreement.]*
- 9.3 The Parties agree that the right to the contractual fine pursuant to this agreement shall not preclude any exercise of the right to seek compensation for damages.

10. TERMINATION OF THIS AGREEMENT

- 10.1 The Seller shall only be entitled to withdraw from this Agreement in the event that:
- (a) the Reorganization Plan does not enter into effect by [1 September 2017], for reasons that are not on the part of the Seller;
 - (b) the Purchaser is in default with the deposition of the Purchase Price or any part thereof into the Escrow Account;
 - (c) the Transfer Conditions are not satisfied by [1 September 2017], for reasons that are not on the part of the Seller;
 - (d) any Representation of the Purchaser is (even in part) incomplete, false, incorrect or misleading;
 - (e) the Purchaser breaches any duty referred to in Article 4.5 hereof;
 - (f) [a change of circumstances within the meaning of Section 1764 *et seq.* of the Civil Code occurs.]
- 10.2 The Purchaser shall only be entitled to withdraw from this Agreement in the event that:
- (a) any of the transactions contemplated by this Agreement are not settled by [1 September 2017], for reasons that are not on the part of the Purchaser or its Group companies or affiliates or entities otherwise acting in concert with the Purchaser;
 - (b) the Seller breaches any obligation specified in Article 4.5;
 - (c) the Transfer Conditions are not satisfied by [1 September 2017], for reasons that are not attributable to the Purchaser;
 - (d) any Representation of the Seller is (even in part) incomplete, false, incorrect or misleading [as at the Closing Date];

- (e) [the Purchase Price is less than [0 CZK] as a result of application of the Purchase Price Adjustment mechanism set out in Articles [●]].
- 10.3 [The Parties have agreed that in the event that at any time before the transfer of ownership title to the Shares from the Seller to the Purchaser, a final transformation of the Seller's reorganization into bankruptcy occurs, this Agreement shall terminate upon the entry into force of the competent court's decision on the transformation of the Seller's reorganization into bankruptcy, and the Parties shall be obliged to return any performance rendered to each other.]
- 10.4 The Parties expressly agree that this Agreement can only be terminated by satisfaction, or, as provided for in this Article 10. For the avoidance of doubt, the Parties hereby represent that this Agreement or the obligations provided for herein cannot be terminated by unilateral action (and no application for their termination can be sought in court) on any grounds other than those expressly agreed on in Sections 10.1 through 10.3 hereof.
- 10.5 The termination of this Agreement shall create no prejudice to claims on account of liability for any injury, confidentiality, or other provisions and claims to survive the termination of this Agreement by definition, including this provision.
- 10.6 [Neither Party shall be entitled to withdraw from this Agreement after the delivery of the endorsed Shares to the Purchaser.]

11. WARRANTIES OF PARTIES

- 11.1 The Seller represents, undertakes and warrants to the Purchaser as of the execution date hereof that the representations and warranties provided in Schedule 3 hereto (the "**Seller's Representations and Warranties**") are true, correct, complete and not misleading, and acknowledges the fact that the Purchaser acts in full reliance on the Seller's Representations and Warranties. The Seller further undertakes to provide the Purchaser as of the Closing Date with a written declaration confirming that the Seller's Representations and Warranties are true, correct, complete and not misleading as of that day.
- 11.2 Purchaser represents, undertakes and warrants to the Seller as of the execution date hereof that the representations and warranties provided in Schedule 4 hereto (the "**Purchaser's Representations and Warranties**") are true, correct, complete and not misleading, and acknowledges the fact that the Seller acts in full reliance on the Purchaser's Representations and Warranties. The Purchaser further undertakes to provide the Seller as of the Closing Date with a written declaration with notarized signatures of the Purchaser's authorized representatives, confirming that the Purchaser's Representations and Warranties are true, correct, complete and not misleading as of that day.

- 11.3 Seller's Representations and Warranties are made subject to the facts which the Purchaser could reasonably have established from the documents contained in the Dataroom. For the avoidance of any doubt, it is noted that the Seller shall not be liable for any damage arising from this Agreement or in connection with this Agreement as a result of the breach of any of the Seller's Representations and Warranties, provided that the Purchaser could reasonably have established the same from documents contained in the Dataroom.
- 11.4 In the event that any party discovers that any of its Representations and Warranties is incorrect, incomplete or false, even in part, it shall notify such fact to the other Party in writing without delay.
- 11.5 In the event of any breach of any of the Representations and Warranties provided pursuant to this Agreement, the Party who made such Representation or Warranty shall be obliged to take urgent action to rectify such breach of Representation or Warranty.
- 11.6 [Nothing in this Agreement shall be interpreted as a representation of the Seller concerning the Enterprise, its properties or quality, and the Purchaser expressly represents that it has not insisted on any qualities of the Part of an Enterprise in this Agreement or in negotiations leading up to this Agreement.]
- 11.7 The Seller undertakes to compensate the Purchaser for any damage suffered by the Purchaser as a result of any incomplete, false, incorrect or misleading Representation or Warranty of the Seller, or caused by the fact that such Representation or Warranty of the Seller is incomplete, false, incorrect or misleading, such compensation to not exceed 1/10th of the Purchase Price (except for the Representation or Warranty of the Seller confirming that the Company shall not assume any of the Pre-Insolvency Liabilities and Non-Operating Post-Insolvency Liabilities under the Contribution Agreement for which the compensation shall be unlimited).
- 11.8 The Purchaser undertakes to compensate the Seller for any damage suffered by the Seller (even in part) as a result of any incomplete, false, incorrect or misleading (even in part) Representation or Warranty of the Purchaser, or in connection therewith; such compensation to not exceed 1/10th of the Purchase Price.

12. CONFIDENTIALITY

- 12.1 The Parties agree that this Agreement, as well as any information contained or referred to herein, and the transactions contemplated hereby (including any information passed on between the Parties or Parties' Representatives in connection with the execution of transactions contemplated by this Agreement, whether in writing or orally, and notwithstanding whether it constitutes confidential information prior to, or after, the execution date hereof (collectively, the "**Confidential Information**"). Each of the Parties undertakes to maintain the Confidential Information confidential, and not to disclose same to third parties without prior

written consent of the other Party. The Party shall be authorized to disclose Confidential Information to its Representatives even without the other Party's written consent, but only in the event that these are Representatives who have been actively and directly involved in the assessment or implementation of transactions contemplated by this Agreement, and only provided that such Representatives of that Party were bound to maintain confidentiality of the Confidential Information in accordance with the provisions of this Agreement.

This provision shall not apply to the disclosure of information or communication required under the law or pursuant to decisions or other acts of any Public Authority. This provision further creates no prejudice to the Parties' obligation to obtain consent from competent Public Authorities (e.g., the Competition Office) for the purpose of implementation of transactions, and to have the transactions contemplated by this Agreement registered in public registers, lists and registries.

Notwithstanding other provisions of this Agreement, the provision of this Article 12.1 shall remain in force and effect for three (3) years from the execution date hereof, notwithstanding any earlier termination of this Agreement for whatever reason and in any way.

12.2 Unless agreed otherwise herein, neither of the Parties shall be authorized to public any information concerning this Agreement, its execution, transactions contemplated thereby or other related matters without the prior written consent of the other Party.

12.3 The Purchaser expressly agrees that this Agreement shall be attached to the Reorganization Plan to be submitted in the course of the Insolvency Proceeding, and as such, it will become public upon the publication of the relevant Reorganization Plan in accordance with the Insolvency Act. For the avoidance of doubt, the Parties hereby state that the publication of this Agreement in the insolvency register shall not be deemed to constitute a violation of this Agreement.

12.4 The Parties have agreed that the Seller shall be authorized to disclose the content of this Agreement, as well as information concerning and/or relating to this Agreement to the Creditors' Committee and the Insolvency Trustee.

13. NOTICES

13.1 Any and all notices, statements, instructions or documents to be delivered between the Parties pursuant to this Agreement must be delivered by hand, by a courier service or by post to the address of the relevant Party, as provided hereinafter, or to other address within the Czech Republic as may be specified by the relevant Party to the other Party in accordance with the delivery method provided for in this article at least fifteen (15) Business Days in advance. Any and all notices, statements, instructions or documents to be delivered between the Parties pursuant to this Agreement shall be deemed delivered as follows: (i) if delivered by hand or by a courier service, upon delivery or refusal to take delivery; or (ii) if delivered by post, three (3) Business

Days after the same is deposited at the post office in an envelope addressed in accordance with this article, postage prepaid. Delivery addresses of the Parties:

Seller:

Address: [Stonavská 2179, Doly, 735 06 Karviná]
Tel: +420 [602 415 215]
Email: [jan.solich@okd.cz]
Attn.: [Mgr. Jan Solich]

Purchaser:

Address: [●]
Tel: +420 [●]
Email: [●]
Attn.: [●].

14. FINAL PROVISIONS

- 14.1 This Agreement shall be concluded and shall enter into force and effect upon its execution by authorized representatives of the Parties.
- 14.2 This Agreement is made out in [three (3)] counterparts having the force of the original, of which each Party shall receive one (1) counterpart, and one (1) counterpart shall be attached to the Reorganization Plan.
- 14.3 This Agreement may be amended solely in writing by way of amendments marked as amendments to this Agreement and signed by the Parties or their authorized representatives.
- 14.4 The Parties have agreed to provide each other with any assistance as may be required in connection with the registration of all changes in public lists, registers and other registries so as to give effect to this Agreement.
- 14.5 In the event that any provision of this Agreement is found to be invalid, such fact shall create no prejudice to the validity of the balance of this Agreement, provided the invalid provision can be severed therefrom. Should such situation occur, the Parties undertake to replace such invalid provision with a valid provision without delay, such new provision to be as close as possible to the provision being replaced in terms of legally permissible meaning and economic purpose.
- 14.6 Unless expressly stipulated otherwise herein, neither Party shall be authorized to assign, pledge or otherwise transfer its rights, claims, obligations and debts under this Agreement, or this Agreement as a whole, without the prior written consent of the other Party.
- 14.7 [Neither of the Parties shall be entitled to make any unilateral set off of any due and payable or outstanding but not yet payable, contingent or unconditional, current or future, monetary or in-kind claim against the other Party, arising from on in connection with this Agreement.]
- 14.8 A Party may waive its right to seek performance of any contractual obligation by the other Party only by way of a written waiver, duly signed by the waiving Party. If, in the event of any breach of contractual duty arising from the provisions of this Agreement, the non-breaching Party does not seek rectification, such fact shall not imply, and shall not be interpreted as, a waiver by the non-breaching Party of the right to seek satisfaction of contractual obligations from the breaching Party in the event of a recurrent breach of such provision by the breaching Party. In the event that the non-breaching Party grants a grace period for the satisfaction of the contractual obligation or performance of an act required under this Agreement, such fact shall not imply, and shall not be interpreted as, the granting of a grace period to the breaching Party for the

satisfaction of any other contractual obligation or performance of any other act required under this Agreement.

- 14.9 A Party shall be entitled to compensation for damages (both actual damage and lost profit) or other injury as may be sustained due to any failure to discharge obligations under this Agreement, even if such compensation is covered by a contractual fine or default interest.
- 14.10 The Parties have agreed that each of the Parties shall bear its own costs incurred and/or to be incurred in connection with the negotiation, execution and performance of this Agreement.
- 14.11 The Parties accepts the risk of change of circumstances within the meaning of Section 1765 of the Civil Code.
- 14.12 The Parties note and stipulate that no provision of this Agreement can be deemed to impose any unreasonable advantage on any of the Parties, and that the mutual performance to be rendered by the Parties pursuant to this Agreement is not grossly disproportionate. The Parties further note and stipulate that they were duly legally represented for the purpose of negotiation of the terms and conditions of this Agreement, they fully comprehend the content of this Agreement and fully agree with all the risks, including the risk of change of situation and circumstances, and risks relating to the Insolvency Proceeding.
- 14.13 This Agreement contains the entire agreement between the Parties concerning the transfer of the Shares contemplated by this Agreement, and supersedes any and all prior arrangements, understanding and agreements concluded by the Parties in connection with the transfer of the Shares from the Seller to the Purchaser.
- 14.14 Any and all disputes arising from or in connection with this Agreement shall be resolved solely by Czech courts of competent jurisdiction *pro ratione loci* and *materiae*.
- 14.15 This Agreement shall be governed by and interpreted in accordance with the applicable legal regulations of the Czech Republic. The Parties have agreed that to the extent permissible by legal regulations of general application, the following provisions shall not apply to this Agreement (not even *per analogiam*): Section 558 (2) (second sentence), Section 1726 (second sentence), Section 1727 (second and third sentences), Section 1748, Section 1765, Section 1766, Section 1793, Section 1899, Section 1900, and Section 1925 of the Civil Code.
- 14.16 The Parties have agreed that those schedules to this Agreement which, by agreement between the Parties, are to be made out in electronic form only because of their scope (the "Electronic Schedules"), shall be captured on DVD-ROM data carriers, and one

data carrier containing such Electronic Schedules shall be attached to each counterpart of this Agreement. Each such data carrier shall be sealed in an envelope protected against tampering with its content, and firmly affixed to the relevant counterpart of this Agreement (the "**Authenticated Data Carrier**"). Further, each of the Parties shall receive another DVD-ROM data carrier with the Electronic Schedules with each counterpart of this Agreement, and such second DVD-ROM carrier shall not be affixed to the counterpart of this Agreement. The Parties have agreed that in the event of any dispute, the content of the Electronic Schedules captured on the Authenticated Data Carrier shall prevail.

14.17 Schedules shall form an integral part of this Agreement.

List of Schedules:

(Unless indicated otherwise, the relevant schedule is provided in the form of a hard copy)

Schedule 1: Definitions

- hard copy

Schedule 2: Form Endorsement

- hard copy

Schedule 3: Seller's Representations and Warranties

- hard copy

Schedule 4: Purchaser's Representations and Warranties

- hard copy

Schedule 5: Form Shares Delivery Record

- hard copy

Schedule 6: Reorganization Plan

- hard copy

Schedule 7: Escrow Agreement

- hard copy

Schedule 8: Darkov and 9. květen Sites

- hard copy + DVD-ROM

Schedule 9: Lazy and ČSA Sites

- hard copy + DVD-ROM

Schedule 10: Mining Operation 2

- hard copy + DVD-ROM;

Schedule 11: Phase-out Operation - South

- hard copy + DVD-ROM

Schedule 12: Servicing Plant

- hard copy + DVD-ROM;

Schedule 13: Preparatory Plant

- hard copy + DVD-ROM;

Schedule 14: Part of an Enterprise

- hard copy + DVD-ROM;

Schedule 15: Dataroom

- hard copy + DVD-ROM;
Schedule 16: Draft Contribution Agreement
- hard copy;
Schedule 17: Draft Subscription Agreement
- hard copy;
Schedule 18: Waiver
- hard copy
Schedule 19: OKD Enterprise
- hard copy + DVD-ROM;
Schedule 20: Draft Licence Transfer Agreement
- hard copy;

14.18 The Parties represent that before executing this Agreement, they have familiarized themselves with its content, comprehend same and agree with same. The Parties further represent that this Agreement is an expression of their own true, free and earnest will, in witness whereof they append their signatures below.

< signatures of persons authorized to act on behalf of the Parties follow >

HAVING READ AND UNDERSTOOD THIS AGREEMENT, the Parties hereby represent that its content, the obligations provided for therein, representations made therein and duties established thereby are an expression of their own true, free and earnest will, and that they are entering into this Agreement after mutual negotiations, without duress or on terms onerous for any of the Parties.

_____, _____

_____, _____

For **OKD, a.s.**

For **[●]**

By:
Title:

By:
Title:

Schedule 1
Definitions

The following capitalized terms shall have the following meanings in this Agreement:

"Shares"	means the Current Shares and New Shares;
"HBZS Shares"	shall mean Seller's shares in OKD, HBZS, a.s., Identification No. 47676019, with its registered seat at Lihovarská 1199/10, Radvanice, 716 00 Ostrava, entered in the Commercial Register maintained by the Regional Court in Ostrava under file No. B 766, i.e., 3 common registered shares in certificated form, with a par value of CZK 50,000,000 (to wit: fifty million Czech crowns), and 1 common registered shares in certificated form, with a par value of CZK 13,396,000 (to wit: thirteen million three hundred and ninety six thousand Czech crowns), with the total par value of CZK 163,396,000 (to wit: one hundred and sixty three million three hundred and ninety six thousand Czech crowns);
"IPE Shares"	shall mean Seller's shares in IP Exit, a.s., Identification No. 45316619, with its registered seat in Prague 1, Senovážné náměstí č.32/čp.976, PSČ 11403, entered in the Commercial Register maintained by the Municipal Court in Prague under file No. B 1351, i.e., 308,560 book-entry common registered shares, with a par value of CZK 100 (to wit: one hundred Czech crowns), with the total par value of CZK 30,856,000 (to wit: thirty million eight hundred and fifty six thousand Czech crowns);
"MO Shares"	shall mean Seller's shares in Moravskoslezská obchodní, a.s. v likvidaci, Identification No. 47151706, with its registered seat at Nemocniční 2902/13, Moravská Ostrava, 702 00 Ostrava, entered in the Commercial Register maintained by the Regional Court in Ostrava under file No. B 522, i.e., 5 common registered shares in certificated form, with a par value of CZK 20,000 (to wit: twenty thousand Czech crowns), with the total par value of CZK 100,000 (to wit: one hundred thousand Czech crowns);
"Authenticated Data Carrier"	shall have the meaning indicated in Section 14.15 hereof;
"Execution Date"	means the date of execution of this Agreement by the Parties;

- "Part of an Enterprise"** shall mean a part of the Seller's business enterprise operated under business name OKD, a.s. and consisting of Mining Operation 1, Mining Operation 2, Phase-out Operation – South, OKD Enterprise, Servicing Plant and Preparatory Plant, which in turn consist of components listed in Schedule 2 hereto. For avoidance of doubt, the Parties affirmatively declare that the Non-operating Claims which form a part of the Claim Management Center, the Pre-Insolvency Liabilities and Non-Operating Post Insolvency Liabilities; these continue to be held by, and be binding on, the Seller;
- "Mining Operation 1"** shall mean the Seller's organization unit which represents a separate accounting unit, or enterprise; this mining operation was created by the merger of the original "Darkov Mine" and "Karviná Mine" operations as of January 1, 2015, and consists of the following mining sites: (i) Lazy and ČSA Sites, and (ii) Darkov and 9. květen Sites;
- "Mining Operation 2"** shall mean the Seller's organization unit which represents a separate accounting unit, or enterprise; this mining operation was created by a change of the name of the original "Závod Důl ČSM" as of January 1, 2015 and is located in the eastern part of the Karviná side basin; it is divided into two mining areas, "North" and "South", with separate pairs of downcast and upcast air shafts, which, however, are connected underground; the excavation area is in the cadastral areas of Stonava, Karviná, Albrechtice u Českého Těšína and Chotěbuz, and a delineation of the sites is provided in Schedule 10;
- "Mining Operation"** means mining operations of the Seller, in particular Mining Operation 1, Mining Operation 2, [Phase-out Operation - South];
- "Confidential Information"** shall have the meaning indicated in Section 12.1 hereof;
- "Electronic Schedules"** shall have the meaning indicated in Section 14.15 hereof;
- "Insolvency Proceeding"** shall mean the insolvency proceeding pending against the Seller at the Regional Court in Ostrava under file No. KSOS 25 INS 10525/2016;
- "Insolvency Trustee"** shall mean the insolvency trustee of the Seller, Ing. Lee Louda,

with his registered seat in Vodičkova 791/41, 110 00 Prague 1;

"Insolvency Act"	shall mean Act No. 182/2006 Coll., on Insolvency and Insolvency Resolution Methods (the Insolvency Act), as amended;
"Purchase Price"	shall have the meaning indicated in Section 3.1 hereof;
"Darkov and 9. květen Sites"	shall mean separate excavation areas - Darkov, Karviná, Doly II and Stonava, as detailed in Schedule 8; "Darkov" and "9. květen" were formerly a part of the former "Závod Důl Darkov";
"Lazy and ČSA Sites"	shall mean mining site (i) "Lazy" in the south-western part of the Karviná side basin, the excavation area being located in the cadastral areas of Orlová and Karviná, and (ii) "ČSA" (<i>Československé armády</i>), which is now located in two excavation areas, Karviná Doly I and Doubrava u Orlové; a delineation of the sites is provided in Schedule 9; "Lazy" and "ČSA" were formerly a part of the former "Závod Důl Karviná", created in 2008 by the merger of the former "Lazy Mine" and "ČSA Mine" into a single organizational unit;
"Equity Stakes"	shall mean HBZS Shares, IPE Shares and MO Shares;
"Mining Operations Phase-out Costs"	shall mean the costs of technical liquidation of the individual Mining Operations or their parts, social costs related to the closure of individual Mining Operations or their parts, costs of reclamation and recultivation of the individual Mining Operations or their parts, and costs relating to mining damage attributable to the individual Mining Operations or their parts;
"Liability Claims"	shall mean any and all claims of the Purchaser against the Seller on account of the Seller's liability vis-à-vis the Purchaser under this Agreement and/or legal regulations in connection with the purchase of the Shares, including without limitation, the Purchaser's claims against the Seller on account of defects, and Purchaser's claims against the Seller on account of compensation for damages;
"Non-operating Claims"	shall mean (i) the Seller's claim against New World Resources N.V. and ZB in the amount of [CZK 65,273,405,025], on account of [Seller's claims for compensation for damages and surrender of unjust enrichment, sustained by the Seller in connection with an authorized decision on the allocation and distribution of profit and other capital funds of the Seller for

the accounting periods of 2006 through 2011, when the relevant funds were transferred, without authorization, to New World Resources N.V., and subsequently to ZB; in order to collect on a part of the above-referenced claim (specifically, in the amount of CZK 24,546,499,252), an action was filed and a proceeding is pending at the Regional Court in Ostrava under file No. 15 Cm 225/2016], (ii) Seller's claim against members of the Seller's Board of Directors: Mr. Klaus-Dieter Beck (born [REDACTED]), Mr. Ján Fabián (born [REDACTED]), Mr. Karl Friedrich Jacob (born [REDACTED]), Mr. Marek Jelínek (born [REDACTED]), Mr. Miklos Salamon (born [REDACTED]), Mr. Stanley C. Subolewski (born [REDACTED]) and Ms. Miroslava Trgíňová (born [REDACTED]), and members of the Seller's Supervisory Board: Mr. Luboš Řežábek (born [REDACTED]), Mr. Jan Hanousek (born [REDACTED]), Mr. Otto Jelínek (born [REDACTED]), Mr. Miroslav Syrový (born [REDACTED]), Mr. František Válek (born [REDACTED]), and Mr. Jaroslav Vlach (born [REDACTED]), in the amount of [CZK 2,786,785,110], on account for [compensation for damages suffered in connection with lack of due diligence, when, instead of using the Seller's own resources, they decided to indebt the Seller by a intra-group loan so that they could pay high dividends to the Seller's sole shareholder], (iii) Seller's claims on account of refutable legal acts within the meaning of Section 589 *et seq.* of the Civil Code and null and void legal acts within the meaning of Section 235 *et seq.* of the Insolvency Act, and (iv) any other claims of the Seller against PK, ZB, officials, shareholders or managers of the Seller and other persons from the PK or ZB groups and the group of persons managed or controlled by PK and/or ZB, in particular claims arising in connection with the breach of duty of due diligence by such persons, or on account of compensation for damages asserted against such persons.

"New World Resources N.V."

shall mean New World Resources N.V., reg. No. 342 39 108, with its registered seat c/o Duff & Phelps Ltd., The Shard, 32 London Bridge Street, Postal Code SE19SG, London, United Kingdom of Great Britain and Northern Ireland;

"Requisite Licenses" means [●]⁵;

"Transfer Licenses" means [●]⁶;

⁵ TBC.

"New Shares"	means shares in the Company, to be issued in connection with the Registered Capital Increase, i.e., [●] common registered shares issued as a security, with a par value of CZK [●] (to wit: [●] Czech crowns) per shares, in the total par value of CZK [●] (to wit: [●] Czech crowns);
"Civil Code"	shall mean Act No. 89/2012 Coll., the Civil Code;
"Public Authority"	shall mean a court or any other body of public administration or local self-government, whether seated in the Czech Republic or in any other jurisdiction;
"PK"	shall mean Mr. Peter Kadas, born February 27, 1962, residing at 3 Streatley Place, NW3 1HP London, United Kingdom of Great Britain and Northern Ireland;
"Transfer Conditions"	shall have the meaning indicated in Section 4.1 hereof;
"OKD Enterprise"	shall mean the Seller's organization unit which represents a separate accounting unit, or enterprise, and which provides central management services to the Mining Operation 1, Mining Operation 2, Phase-out Operation – South, OKD Enterprise, Servicing Plant and Preparatory Plant, and which includes the Equity Stakes, as described in more detail in Schedule 19 hereto;
"Business Day"	shall mean any day (except for Saturdays and Sundays) when banks in the Czech Republic are open for business and operate in a regular fashion;
"Third Party Rights"	shall mean any encumbrance, whether established by contract, declaration, legal regulation or decision of any public authority (e.g., mortgage or pledge, lien, encroachment, usufructory lease, lease, loan, precarium, pre-emptive right, right of retention, security lien or any other similar security or encumbrance;
"Waiver"	means a waiver with notarized signatures of the Parties' respective authorized representatives, attached hereto as Schedule 18;
"Transitional"	shall mean the transitional period between the execution of this Agreement and the acquisition of title to the Part of an

⁶ TBC.

Period"	Enterprise by the Purchaser;
"Reorganization"	shall mean the Seller's reorganization, as permitted by resolution of the Regional Court in Ostrava dated August 12, 2016, ref. No. KSOS 25 INS 10525/2016-B181;
"Reorganization Plan"	shall mean the Seller's reorganization plan submitted in the course of the Insolvency Proceeding, with heads of terms provided in Schedule 6 hereto;
"Group"	means, in relation to the respective Party, influential, influenced, controlling and managing persons and persons within the same concern, persons affiliated or otherwise associated with the Party (through property, interlocking directorates or otherwise);
"Contribution Agreement"	means an agreement on the contribution of the Part of an Enterprise, pursuant to which the Seller shall contribute the Part of an Enterprise to the Company and subscribe the New Shares, to be issued in connection with the Registered Capital Increase; a form of the agreement is attached hereto as Schedule 16;
"Subscription Agreement"	means an agreement on the subscription of the New Shares, to be concluded by and among the Seller and the Company in connection with the Registered Capital Increase; a form of the agreement is attached hereto as Schedule 17;
"Company"	means [●], a.s., Id. No. [●], with its registered seat at [●], entered in the Commercial Register maintained by [●] Court in [●] under file No. B [●];
"Articles of Association"	shall mean the Seller's Articles of Association in the wording in force as of the execution of this Agreement;
"Current Shares"	means the Seller's shares in the Company, i.e., [●] common registered shares issued as a security, with a par value of CZK [●] (to wit: [●] Czech crowns) per shares, in the total par value of CZK [●] (to wit: [●] Czech crowns); and the Creditor Shareholder's shares in the Company, i.e., [●] common registered shares issued as a security, with a par value of CZK [●] (to wit: [●] Czech crowns) per shares, in the total par value of CZK [●] (to wit: [●] Czech crowns);
"Claim Management"	[shall mean the Seller's organization unit within the Enterprise, which represents a separate accounting unit, or

"Center"	enterprise, and which includes the Non-operating Claims];
"Seller's Account"	shall mean Seller's bank account No. [●], maintained by [●];
"Escrow Account"	shall mean bank account No. [●], maintained by [●] under the [Escrow Agreement];
"Escrow Agreement"	shall mean an agreement on [escrow account] dated [●] , concluded by and among the Seller, the Purchaser and [●], a copy of which forms Schedule 7 hereto;
"Representations and Warranties"	shall mean the Purchaser's Representations and Warranties and/or the Seller's Representations and Warranties;
"Purchaser's Representations and Warranties"	shall mean representations and warranties of the Purchaser, as specified in Section 11.2 hereof;
"Seller's Representations and Warranties"	shall mean representations and warranties of the Seller, as specified in 11.1 hereof;
"Competition Office"	shall mean the Office for the Protection of Economic Competition, Identification No.: 65349423, with its registered seat at třída Kpt. Jaroše 1926/7, Černá Pole (Brno-střed), 602 00 Brno;
"Creditors' Committee"	shall mean the creditors' committee set up in accordance with Section 56 and related provisions of the Insolvency Act in the course of the Insolvency Proceeding;
"Business Corporations Act"	shall mean Act No. 90/2012 Coll., on Business Corporations and Cooperatives (the Business Corporations Act);
"Representatives of the Parties"	shall mean statutory bodies of the Parties, their managers, employees, agents, financial advisors, professional advisors, legal counsel, accountants, auditors and financing banks;
"Servicing Plant"	shall mean the Seller's organization unit which represents a separate accounting unit, or enterprise, and which procures centralized surface services for all the mining operations and the Preparatory Plant in the area of repairs, storage and material handling and metal waste management, a description of which is provided in Schedule 12 hereto;
"Preparatory Plant"	shall mean the Seller's organization unit which represents a separate accounting unit, or enterprise, which manages the

operation of preparatory facilities of Mining Operation 1, Mining Operation 2 and Phase-out Operation - South, and a description of which is provided in Schedule 13 hereto;

Phase-out Operation - South shall mean the Seller's organization unit which represents a separate accounting unit, or enterprise; [it came into existence as of January 1, 2015 and is located approx. 20 kilometers south of Ostrava, and consists of mining sites Sviadnov, Staříč and Chlebovice and the Frenštát Mine site], and a delineation of the sites is provided in Schedule 11;

"ZB" shall mean Mr. Zdeněk Bakala, born [REDACTED] residing [REDACTED]

"Registered Capital Increase" shall mean an increase of the Company's registered capital from CZK [●] to CZK [●], on which the Seller as the sole shareholder of the Company shall decide, and in connection with which the Part of an Enterprise shall be contributed to the Company and New Shares shall be issued to the Seller.

"Pre-Insolvency Liabilities" shall mean any liabilities arising prior to the declaration of insolvency of the Seller, especially those registered in the Insolvency Proceeding of the Seller and which shall not be assumed by the Company under the Contribution Agreement

"Non-Operating Post Insolvency Liabilities" shall mean any liabilities of the Seller under Sections 168 (2) b), e), f), g), h) and 169 (1) a), b), c), d), f) of the Insolvency Act which shall not be assumed by the Company under the Contribution Agreement.

"Licence Transfer Agreement" means a public law licence assignment, pursuant to which the Seller shall transfer to the Company all of the Transfer Licenses held by the Seller; a form of the agreement is attached hereto as Schedule 20.

Schedule 2
Form Endorsement

On our behalf to the order of [●], a.s., Id. No. [●], with its registered seat at [●], entered in the Commercial Register maintained by [●] Court in [●] under file No. [●].

on behalf of **OKD, a.s.**
[●], [●]

Schedule 3
Seller's Representations and Warranties

The Seller hereby presents the following Seller's Representations and Warranties to the Purchaser:

- (a) The Seller has the requisite power and authority to enter into this Agreement and perform all the obligations arising therefrom.
- (b) This Agreement shall represent a valid and effective obligation of the Seller, enforceable in accordance with its terms.
- (c) The Seller is authorized to conduct its business as recorded in the Commercial Register for the Seller.
- (d) No decision was adopted and no act taken to transform the Company in any way.
- (e) No decision was adopted by the Company's bodies, court, administrative body or other person concerning the winding up of the Company, and no winding up of the Company is threatening.
- (f) The Company is not in the process of liquidation.
- (g) The Company is not conducting, and is not aware of being the subject of, any judicial, administrative, arbitration, criminal or other similar proceeding, and no claims were asserted against the Company that would or might prejudice the transfer of ownership title to the Shares and its individual parts hereunder.
- (h) The Company is in good standing with regard to all of its tax obligations, is duly registered for all the applicable types of tax, and has duly filed all tax returns, statements and other information required by tax regulations or tax authorities.
- (i) The Company has not assumed and shall not assume any Pre-Insolvency Liabilities and Non-Operating Post-Insolvency Liabilities.
- (j) No circumstance has occurred that allows the insolvency court to decide on transformation of the Reorganization into bankruptcy pursuant to Section 363 (1) of the Insolvency Act.
- (k) The Seller's disposition rights (in Czech *dispoziční oprávnění*) have not been restricted by the insolvency court.
- (l) Following the Reorganization, the Shares shall comprise the entire issued share capital of the Company, and no person has any rights to any other securities of the Company.

[The Purchaser reserves its right to require that other key assumptions (including those as described in the Bid Letter) be added as Seller's Representations and Warranties and require that part of the Purchase Price is reserved in the Escrow Account for some time after Closing to allow the Purchaser to confirm that there any no material breaches of Seller warranties and representations in respect of the Company and its business.]

Schedule 4
Purchaser's Representations and Warranties

The Purchaser hereby presents the following Purchaser's Representations and Warranties to the Seller:

- (a) The Purchaser is a legal entity duly established and existing pursuant to the laws of the Czech Republic.
- (b) The Purchaser is authorized to enter into this Agreement and to perform its obligations under this Agreement, and this Agreement and its performance by the Purchaser shall not operate to breach any third party rights.
- (c) No resolution on the winding up or liquidation of the Purchaser was adopted, and no meeting was convened to adopt same.
- (d) The Purchaser is not insolvent or threatened with insolvency, no petition in insolvency was filed against the Purchaser, and no such is threatening, and no insolvency petition or similar other motion was dismissed due to lack of assets on the part of the Purchaser.
- (e) No enforcement proceeding is pending against the Purchaser which would prevent the Purchaser from meeting its obligations under this Agreement, and no court summons to present a declaration of assets was served on the Purchaser, and there is no similar circumstance which would operate to invalidate or annul any legal acts taken by the Purchaser pursuant to this Agreement.
- (f) The Purchaser is not conducting any judicial, administrative, arbitration, criminal or other similar proceeding, and no such proceeding is pending against the Purchaser, and no claims were asserted against the Purchaser that would prejudice the transfer of ownership title to the Shares hereunder or prevent the Purchaser from meeting its obligations hereunder.
- (g) The conclusion of this Agreement and performance of obligations arising therefrom is not in conflict with the laws of the Czech Republic or the Purchaser's Memorandum of Association, and does not constitute a violation of any agreement to which the Purchaser is party.
- (h) The Purchaser has sufficient funds for the payment of the Purchase Price.
- (i) The Purchaser's funds to be used to pay the Purchase Price (or to deposit same in the Escrow Account) are owned solely by the Purchaser who is authorized to dispense with them freely, were acquired in accordance with the law and do not represent proceeds of crime, were not obtained by a transfer or conversion of proceeds of crime and/or through other unlawful means.

- (j) The Purchaser is aware of the fact that it is acquiring the Company, or Shares, in the course of the Insolvency Proceeding.

Schedule 5
Form Shares Delivery Record

THIS SHARES DELIVERY RECORD is made out on [●] by among the following parties:

- (1) **OKD, a.s.**, Identification No. 268 63 154, with its registered seat at Stonavská 2179, Doly, 735 06 Karviná, entered in the Commercial Register maintained by the Regional Court in Ostrava under file No. B 2900 (the "**Delivering Party**"); and
- (2) [●], a.s., Id. No. [●], with its registered seat at [●], entered in the Commercial Register maintained by [●] Court in [●] under file No. [●] (the "**Accepting Party**").

We hereby refer to the share purchase agreement concluded on [●] by and among the Delivering Party as the seller, and the Accepting Party as the purchaser (the "**SPA**").

Capitalized terms not defined herein shall have the meanings attributed thereto in the SPA.

The Delivering Party hereby confirms in connection with the execution of the SPA that on the day, month and year first provided above, the Delivering Party delivered to the Accepting Party [●] ([●]) duly endorsed common registered shares, each with a par value of CZK [●] (to wit: [●] Czech crowns), numbered [●] through [●], which together represent a 100% participation interest in the Company's registered capital (the "**Shares**"), and the Accepting Party hereby confirms receipt and acceptance of the Shares from the Delivering Party.

On behalf of **OKD, a.s.**

On behalf of [●]

Name:

Title:

Name:

Title:

Schedule 6
Reorganization Plan - Heads of Terms

Schedule 7
Escrow Agreement

Schedule 8
Darkov and 9. květen Sites

Schedule 9
Lazy and ČSA Sites

Schedule 10
Mining Operation 2

Schedule 11
Phase-out Operation - South

Schedule 12
Servicing Plant

Schedule 13
Preparatory Plant

Schedule 14
Part of an Enterprise

1 Description of Part of an Enterprise

1.1 [•].

2 Components of Part of an Enterprise

The Part of an Enterprise consists in particular of other assets and liabilities of the Seller (including rights and obligations under labor relations), which were (or should have been) booked in the Seller's SAP R/3 - Enterprise accounting system, specifically, in accounting categories [•], as of the execution date hereof, including real properties.

2.1 Claims

(a) [•];

(b) [•];

(c) [•].

2.2 Debts

(a) Due and payable and not yet due debts to suppliers, corresponding exclusively to counter-performance for goods, supplies and services provided with regard to the Part of an Enterprise;

(b) Prepayments received from customers pursuant to [•];

(c) [•];

(d) Uninvoiced deliveries from suppliers pursuant to [•];

(e) [•].

2.3 Agreements

(a) Supply agreements [•]

Internal code	Counterparty	Title	Date of execution	Status
[•]	[•]	[•]	[•]	[•]

(b) Agreements on [•]

Internal code	Counterparty	Title	Date of execution	Status
[•]	[•]	[•]	[•]	[•]

(c) Other agreements

Internal code	Counterparty	Title	Date of execution	Status
[•]	[•]	[•]	[•]	[•]

2.4 Real Properties

The Part of an Enterprise includes the following real properties:

- (a) [•];
- (b) [•];
- (c) [•].

2.5 Intangible Assets

The Part of an Enterprise includes:

- (a) [•];
- (b) [•].

2.6 Bank Accounts

The Part of an Enterprise includes the following rights to bank accounts Nos:

- (a) [•];
- (b) [•];

maintained by [•] a.s., including balances in such accounts.

2.7 Movables

The Part of an Enterprise includes the following movable property:

- (a) [●];
- (b) [●];
- (c) [●].

2.8 Employees

The Part of an Enterprise includes the following employees:

- (a) [●];
- (b) [●];
- (c) [●].

3 Balance sheet as of [31. 12. 2016] (in CZK '000)

[●]

4 Components excluded from the Part of an Enterprise transfer

- (a) [Non-operating Claims];
- (b) [Pre-Insolvency Liabilities];
- (c) [Non-Operating Post-Insolvency Liabilities].

[Note: The Purchaser reserves the right to update the above categories as appropriate, having regard to the terms of the Bid Letter.]

Schedule 15
Dataroom

Schedule 16
Contribution Agreement

Schedule 17
Subscription Agreement

Schedule 18
Waiver

[Note: Subject to further comments.]

Each of:

OKD, a.s., Identification No. 268 63 154, with its registered seat at Stonavská 2179, Doly, 735 06 Karviná, entered in the Commercial Register maintained by the Regional Court in Ostrava under file No. B 2900 (the "Seller"),

[●], a.s., Id. No. [●], with its registered seat at [●], entered in the Commercial Register maintained by [●] Court in [●] under file No. [●] (the "Purchaser" and together with the Seller, the "Parties"),

Hereby within the meaning of Section 1916 (2) of Act No. 89/2012 Coll., the Civil Code, respectively waives any and all rights and claims (whether current, future, contingent or potential) on account of (i) defects in any and all shares of [●], a.s., Id. No. [●], with its registered seat at [●], entered in the Commercial Register maintained by [●] Court in [●] under file No. [●] (the "Company"), i.e., i.e., [●] common registered shares issued as a security, with a par value of CZK [●] (to wit: [●] Czech crowns) per shares, in the total par value of CZK [●] (to wit: [●] Czech crowns) (the "Shares"), (ii) defective performance of the Seller rendered pursuant to the share purchase agreement concluded by and among the Seller and the Purchaser on [●] (the "Agreement"), (iii) any and all claims of one Party against another Party in connection with the Seller's liability to the Purchaser under the Agreement and/or legal regulations in connection with the purchase of the Shares, including without limitation, claims of the Purchaser against the Seller under liability for defects, and claims of the Purchaser against the Seller for compensation for damages, and (iv) on account of the Seller's liability in its capacity as an influential and/or controlling person of the Company, for any injury as may be suffered by the Company. This waive does not apply to mutual rights and obligations under Articles [●] of the Agreement under which each Party is entitled to claim its respective rights against the other Party. The Purchaser undertakes that the Company shall not claim from or enforce against the Seller any damage on account of the Seller's liability in its capacity as an influential and/or controlling person of the Company, as may be suffered by the Company;

_____ , _____

On behalf of [●]

Name:

Title:

Schedule 19
OKD Enterprise

General comment: the proposed mark-up of the Share Purchase Agreement (the "SPA") is subject to and shall be reviewed in conjunction with, the terms of the final offer letter dated 1 March 2017 (the "Bid Letter"). The New Investors' position is that the final draft SPA shall fully reflect the terms of the Bid Letter, unless otherwise expressly and unanimously agreed by the New Investors. Please refer also to the terms of the Bid Letter which should be read alongside the comments within this document.

SHARE PURCHASE AGREEMENT

concluded by and between

OKD, a.s.

as the seller

and

[•]

as the purchaser

THIS SHARE PURCHASE AGREEMENT (the "Agreement") is on the day provided below by and among the following parties:

- (1) **OKD, a.s.**, Identification No. 268 63 154, with its registered seat at Stonavská 2179, Doly, 735 06 Karviná, entered in the Commercial Register maintained by the Regional Court in Ostrava under file No. B 2900 (the "Seller");
- (2) [●], Identification No.: [●], with its registered seat at [●], entered in the Commercial Register maintained by [●] Court in [●] under file No. [●] (the "Purchaser"); and

(each of the Seller and the Purchaser the "Party", and collectively the "Parties").

WHEREAS:

- (A) The Seller was declared insolvent by resolution of the Regional Court in Ostrava, ref. No. KSOS 25 INS 10525/2016-A19 dated May 9, 2016, and its Reorganization was permitted subsequently;
- (B) The Seller established the Company in connection with the Reorganization, intends to ~~carry out~~ submit to the said court, a Reorganization Plan which anticipates a Registered Capital Increase¹ by contributing a Part of an Enterprise thereto as an in-kind contribution, and to sell the Shares to the Purchaser who will be able to take care of further operation and phase-out of the Part of an Enterprise;
- (C) Pursuant to [share subscription agreement dated [●]], [●], Identification No.: [●], with its registered seat at [●], entered in the Commercial Register maintained by [●] Court in [●] under file No. [●] (the *Creditor Shareholder*) subscribed for [●] ordinary shares in the capital of the Company (the *Creditor Shares*); and as at the date of this Agreement, the Creditor Shareholder holds [●] Current Shares; and the Seller holds [●] Current Shares and [●] New Shares.
- (D) ~~(C) The Seller wishes, on terms and conditions set out herein and for consideration, to sell and transfer ownership title to the Shares to the Purchaser, and the Purchaser wishes to acquire the Shares from the Seller for consideration, to pay the Purchase Price for the Shares to the Seller on terms and conditions set out herein, and to take care of the operation and phase-out of the Part of an Enterprise in terms of financing and organization~~ cover the Mining Operations Phase-out Costs;
- (E) Pursuant to a sale and purchase agreement dated [●] between the Purchaser and the Creditor Shareholder (the *CS SP4*), the Purchaser has agreed to acquire the Creditor Shares from the Creditor Shareholder.

THEREFORE, THE PARTIES NOW AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

¹ The Seller reserves the right to change the structure of the transaction, whereby, instead of the Registered Capital Increase and subscription of New Shares (and the related contribution of the Part of an Enterprise to the Company), the Part of an Enterprise would be contributed to the Company pursuant to the a decision of the Company's sole shareholder on additional paid-in capital. [Note: If the alternative structure is selected, we reserve the right to comment on this alternative structure]

SUBJECT TO CONTRACT

- 1.1 Unless expressly stipulated otherwise, or unless the context requires otherwise, terms indicated and defined in Schedule 1 hereto shall have the meanings assigned thereto in this Agreement or Schedule 1, as applicable.
- 2.1 In the interpretation of this Agreement, save where the context does not permit, beyond any doubt, or where such interpretation would be in conflict with the expressly agreed terms and conditions hereof, the following shall apply:
- (1) references to a "*person*" shall include both natural persons and legal entities;
 - (2) "*Party*" shall include a reference to legal successors of such Party, or to persons to whom the Party is entitled to assign its contractual rights, claims and obligations under this Agreement;
 - (3) "*includes*" or "*including*" shall not be interpreted to mean a restrictive list;
 - (4) "*herein/in this Agreement*", "*hereof/of this Agreement*", "*in accordance with this Agreement*" and other similar expressions refer to this Agreement in its entirety, rather than to only some of its provisions;
 - (5) "*cause*" means to fulfill whatever was agreed, rather than only encourage a third party the fulfill;
 - (6) references to provisions or paragraphs are deemed to mean references to provisions or paragraphs of this Agreement;
 - (7) schedules to this Agreement shall form its integral part;
 - (8) titles of individual parts of this Agreement are used for ease of orientation only, and shall not have any impact on the interpretation of the content of this Agreement; and
 - (9) all references to time shall be deemed to refer to Prague time.

2. SALE AND PURCHASE OF SHARES

- 2.1 Pursuant to this Agreement, and on terms and conditions set out herein, the Seller hereby sells to the Purchaser and transfers to the Purchaser the Shares, together with any and all rights attached thereto, and the Purchaser hereby purchases the Shares from the Seller, together with any and all rights attached thereto.
- 2.2 The Purchaser undertakes to the Seller to pay the Purchase Price for the Shares in the manner and on terms and conditions set forth herein.
- 2.3 The Parties hereby agree that the ownership title to the Shares (as well as any and all rights attached thereto) shall transfer from the Seller to the Purchaser when the Seller delivers, on terms and conditions set forth herein, to the Purchaser the Shares, duly

endorsed to the order of the Purchaser, in compliance with the form attached hereto as Schedule 2.

~~2.4 By executing this Agreement, the Purchaser consents to its registration in the Commercial Register within the meaning of Section 12 of Act No. 304/2013 Coll., on Public Registers of Legal Entities and Natural Persons, as amended.~~

3. PURCHASE PRICE²

3.1 The Parties agree that for the transfer of the Shares, together with any and all rights attached thereto, by the Seller to the Purchaser pursuant to this Agreement, the Seller shall be entitled to the amount of CZK [●] (to wit: [●] Czech crowns) (the "**Purchase Price**") ~~[(subject to adjustment in accordance with Article [●])]~~; of that, the purchase price for the Current Shares held by the Seller and rights attached thereto shall be CZK [●] (to wit: [●] Czech crowns), the purchase price for the New Shares and rights attached thereto shall be CZK [●] (to wit: [●] Czech crowns). [Note: Subject to additional provisions to reflect the Purchase Price adjustment structure described the Bid Letter (the Purchase Price Adjustment).]

3.2 The Parties expressly agree that, ~~except as otherwise provided for in Articles [●]~~ [Note: to refer to the provisions on the Purchase Price Adjustment], the Purchase Price shall be final and not subject to adjustment. ~~Any and all taxes, fees and similar costs, whether payable by the Seller or the Purchaser under applicable legal regulations, shall be borne solely by the Purchaser. In the event that the Seller becomes obliged to pay any taxes, fees and similar costs in connection with the transfer of the Shares, the Purchaser undertakes to pay such amount to the Seller without undue delay, such payment to be made into the Seller's Account or other bank account as may be notified to the Purchaser by the Seller in writing, any other adjustments.~~ [Note: We understand that no transaction taxes shall apply under the proposed transaction structure.]

3.3 The Parties hereby state and stipulate that the Purchase Price amount was set with a view to the provisions of ~~Articles~~ Article 7.2, 7.3, 8 and 14.11 hereof.

3.4 ~~[The Purchaser undertakes to deposit the Purchase Price on or before [March 29, 2017] not later than [●] Business Days in advance of Closing into the Escrow Account, from which it shall be released to the Seller into the Seller's Account on terms and~~

² Note: The Purchaser will provide additional drafting in relation to the SNN Contribution as described in the Bid Letter.

SUBJECT TO CONTRACT

conditions of the Escrow Agreement.^{2]} [Practicalities of Closing to be subject to further discussion between the Parties.]

3.5 The payment of the Purchase Price shall be deemed made when the Purchase Price is credited into the Seller's Account.

3.6 The Seller undertakes to repay all Pre-Insolvency Liabilities from the Purchase Price which it receives pursuant to this Agreement, in accordance with the terms of the Reorganization Plan.

4. CONDITIONS PRECEDENT TO SHARE TRANSFER

4.1 The Parties hereby agree that the Seller shall be obliged to deliver the Shares to the Purchaser, and the Purchaser shall be obliged to accept the Shares and pay the Purchase Price within the term stipulated in Article 4.5 after all of the conditions precedent set forth below are satisfied (the "Transfer Conditions"):

- (a) any of the Parties has received a decision of the Competition Office permitting the transfer of the Shares pursuant to this Agreement from the Seller to the Purchaser, with the date of entry into force indicated thereon, or a statement from the Competition Office to the effect that the transaction pursuant to this Agreement is not subject to its approval;
- (b) the Purchaser has received (i) the original decision approving the Reorganization Plan, or a certified copy thereof, with the date of entry into force indicated thereon; and (ii) original or certified copies of the Contribution Agreement and the Licence Transfer Agreement;
- (c) the Purchaser has received the original extract from the Commercial Register for the Company, or a certified copy thereof, showing that the Registered Capital

² Another option would be to replace the duty to deposit the Purchase Price into the Escrow Account by the Purchaser's duty to deliver to the Seller a bank guarantee as outlined in the alternative provision below.¹

¹

~~"The Purchaser undertakes that on or before [March 29, 2017], the Purchaser shall deliver to the Seller an original irrevocable and unconditional bank guarantee, payable upon first demand, as security for the Seller's claims under this Agreement, up to the amount of the Purchase Price, such bank guarantee to be issued by a reputable bank with its seat or branch in the territory of the Czech Republic, to be governed by Czech law, and in a wording subject to the Seller's written consent (the "Bank Guarantee")."~~¹

¹

~~The Purchaser undertakes to maintain the Bank Guarantee for the requisite amount in force and effect until full settlement of all the transactions referred to herein, and then for a further six (6) months."~~¹

¹

~~Without prejudice to the Seller's claims under this Agreement or under the law, the Seller shall be entitled to exercise its rights under the Bank Guarantee during the term of this Agreement, and to call on the issuing bank to provide funds for the satisfaction of the Seller's claims against the Purchaser, whether such claims arose under this Agreement or under the law."~~¹

¹

~~The Purchaser undertakes, in the event that the Seller calls on the Bank Guarantee, to replenish the Bank Guarantee to the amount before the Bank Guarantee was drawn, or to deposit the relevant portion of that amount into the Escrow Account, without delay, but in any case within five (5) Business Days from the delivery of the Seller's written notice to the effect that the Bank Guarantee had been called."~~¹

SUBJECT TO CONTRACT

Increase has occurred and the Part of an Enterprise has been contributed to the Company; and

- (d) the Purchaser has received the original decision of a Public Authority, or a certified copy thereof, showing that Requisite Licenses have been granted to the Company;

[Note: The Purchaser reserves the right to require other Transfer Conditions, including the delivery of such documents as are required in order to confirm that the Enterprise was duly transferred as envisaged in the Bid Letter and all applicable assets remain with the Company as at Closing.]

- 4.2 The Parties acknowledge that the Transfer Conditions are drafted for the benefit of both Parties, and neither of the Parties is authorized to waive any of the Transfer Conditions by way of a unilateral written waiver.
- 4.3 In the event that the fulfillment of any of the Transfer Conditions requires active involvement of either Party or any of its Group companies, or the cooperation of either Party or any of its Group companies, the Parties undertake to lend each other utmost assistance, and to cause its Group companies to provide such assistance as well.
- 4.4 The Seller and the Purchaser shall be obliged to inform each other in writing about the satisfaction of individual Transfer Conditions without delay.
- 4.5 The Parties undertake that within [five (5)] Business Days from the satisfaction of the last of the Transfer Conditions, the Parties shall take the following acts, ~~in the order provided below~~ [simultaneously with the closing under the CS SPA]³:
- (a) the Parties shall sign a joint declaration of the Parties on satisfaction of the Transfer Conditions;
 - (b) [the Parties shall satisfy all the terms and conditions under the Escrow Agreement so that the Purchase Price could be released from the Escrow Account into the Seller's account;],
 - (c) the Purchase Price shall be credited to the Seller's Account;
 - (d) the Seller shall duly endorse the Shares and deliver them to the Purchaser;
 - (e) the Purchaser shall accept the endorsed Shares;
 - (f) ~~the Purchaser~~ Parties shall ~~deliver the~~ execute a Waiver to the Seller;
 - (g) the Parties shall sign the Shares Delivery Record;
 - (h) the Purchaser shall recall the current members of the Company's bodies and appoint new members of the Company's bodies in their stead.
- 4.6 [The Parties have agreed that the joint declaration on satisfaction of the Transfer Conditions, delivery and acceptance of the Shares, delivery of the Waiver to the Seller, and the Shares Delivery Record shall be signed at the Seller's seat, or at such

³ Note: Closing mechanics to be discussed and agreed between the Parties.

other place and time as the Seller and the Purchaser may agree on in writing. 1
[Subject to further negotiation depending on the scope of warranties and Purchase Price Adjustment mechanism]

5. TRANSITIONAL PERIOD⁴

5.1 The Seller undertakes to operate both the Company and the Part of an Enterprise with due diligence even during the Transitional Period.

5.2 During the Transitional Period, the Seller shall be obliged to:

- (a) pay any claims against the estate and claims ranking *pari passu* with claims against the estate;
- (b) contribute the Part of an Enterprise to the Company as an in-kind contribution; and
- (c) render any performance as may be agreed in the Reorganization Plan.

For the purposes of this Agreement, such action shall not be deemed to constitute Seller's actions contrary to the duty of care.

5.3 The Seller further undertakes to inform the Purchaser in writing over the entire Transitional Period, in regular monthly intervals and to a reasonable extent:

- (a) results of operation of the Enterprise (from the moment of its contribution into the Company) and the Company; and
- (b) material facts concerning the operation of the Part of an Enterprise (from the moment of its contribution into the Company) and the Company.]

[Note: The scope of applicable Transitional Period covenants is subject to further review and comment. To the maximum extent practicable under applicable laws, the Purchaser would wish to have observer rights and in relation to substantial decisions, a contractual veto right to object.]

6. REGISTERED CAPITAL INCREASE AND CONTRIBUTION OF THE PART OF AN ENTERPRISE TO THE COMPANY

6.1 The Parties have agreed that the Seller shall decide on the Registered Capital Increase without undue delay upon the satisfaction of the following conditions:

- (a) the Creditors' Committee of the Seller shall grant consent to the Registered Capital Increase, conclusion of the Share Subscription Agreement and the Contribution Agreement;
- (b) the Insolvency Trustee exercising the powers of the General Meeting of the Seller shall grant consent to the Registered Capital Increase and the contribution of the Part of an Enterprise to the Company's registered capital.

6.2 The Purchaser acknowledges and agrees that in connection with the contribution of the Part of an Enterprise to the Company, ~~debts relating to liabilities associated with the Part of an Enterprise~~ (excluding any Pre-Insolvency Liabilities and Non-Operating

⁴ Note: In accordance with the Bid Letter the Seller and the Purchaser should also sign a Transitional Services Agreement to regulate conduct prior to Closing.

Liabilities) and corresponding to claims against the estate and claims ranking *pari passu* with claims against the estate shall also transfer to the Company.

7. NO LIABILITY OF SELLER~~THE PARTIES~~

7.1 The Parties state and stipulate that prior to the execution of this Agreement, the Purchaser had duly acquainted itself with the relevant parts of the Dataroom as to the legal and factual status of the Current Shares, the Part of an Enterprise and the Company, as well as any and all facts pertaining to the Current Shares, the Part of an Enterprise and the Company. The Purchaser further stipulates that it agrees with ~~and~~ wishes for the Registered Capital Increase and the contribution of the Part of an Enterprise to the Company.

7.2 ~~The Purchaser shall, within the meaning of Section 1916 (2) of the Civil Code, waive any and all rights and claims (whether current, future, contingent or potential) on account of (i) any defects in the Current Shares, (ii) any defects in the New Shares, (iii) defective performance of the Seller pursuant to this Agreement, (iv) Liability Claims, (v) the Seller's liability in its capacity as an influential and/or controlling person of the Company, for any injury as may be suffered by the Company. The Purchaser undertakes that the Company shall not claim from or enforce against the Seller any damage on account of the Seller's liability in its capacity as an influential and/or controlling person of the Company, as may be suffered by the Company.~~ The Parties shall execute the Waiver on the Closing Date by which they waive all mutual rights and obligations from liability under this Agreement except for those specifically excluded from the Waiver or those from violation of the representation and warranties. After execution of the Closing Steps, the Parties shall have no further mutual rights and obligations other than those set out in Articles [8, 9, 10 and 11] of this Agreement and/or those exempted from the Waiver.] [Subject to further negotiation depending on the scope of warranties and Purchase Price Adjustment mechanism]

7.3 ~~The Purchaser hereby waives any objections against the validity of this Agreement on account of (i) insufficient, indeterminate or otherwise defective definition of the Current Shares, New Shares and/or obligations agreed herein, (ii) defective performance by either Party and/or defects (including the absence of) in consents granted by bodies of the Parties, consents of Public Authorities, or the consent of any private and/or public third party, and (iii) legal and/or factual condition of the Company and/or Shares and/or items and/or debts constituting the Company's equity.~~

8. PHASE OUT OF MINES

8.1 ~~The Purchaser acknowledges that in connection with the gradual phase out of Mining Operations to be contributed to the Company, or other components of the Part of an Enterprise, Mining Operations Phase-out Costs, which costs are estimated at CZK [●] (to wit: [●] Czech crowns).~~ [Note: Please see comments in the Bid Letter as to funding for the gradual phase out of Mining Operations.]

SUBJECT TO CONTRACT

- 8.2 ~~The Purchaser represents that it has acquainted itself and acknowledges the amount and nature of the Mining Operations Phase out Costs, all the related obligations, and undertakes to procure and bear the Mining Operations Phase out Costs, and to carry out the phase out of the Mining Operations in accordance with the law.~~
- 8.3 ~~The Purchaser undertakes to procure sufficient funding for the payment of all the Mining Operations Phase out Costs and any and all costs related to the Preparatory Plant and Servicing Plant. The Purchaser further undertakes that until a financial provision equivalent at least to the above estimated Mining Operations Phase out Costs is created, the Purchaser shall not take any acts capable of jeopardizing due phase out of the Mining Operations or any part thereof, out of the Purchaser's funds, [funds of its Group] or the funds of any entity which owns any of the Mining Operation or its part, including without limitation, [(i) no dividend or profit share shall be paid, and no other financial performance rendered, additional paid in capital shall not be refunded, fees for advisory services or other fees, loans or other performance to shareholders or members of the Purchaser, its members/shareholders, or their affiliates, or any entity who will own any of the Mining Operations (e.g., as a result of any registered capital reduction), and (ii) shall not create, or permit the creation of, any indebtedness of the Purchaser or any entity who will own any of the Mining Operations, in excess of [CZK 1,300,000,000 (to wit: [one billion three hundred million] Czech crowns)] (including liabilities arising from leases, L/Cs, suretyship, financial guarantees, assumption of debt, indemnity, etc.)].~~
- 8.4 ~~The Purchaser undertakes not to transfer or otherwise dispose of any Mining Operation or any part thereof, and not to transfer same, directly or indirectly, to any third party within any transaction (and not to place the same on trust), without having first ensured due phase out of the relevant Mining Operation or its part, and without ensuring that the Purchaser would have sufficient funds for the phase out of the relevant Mining Operation or its part.~~

9. CONTRACTUAL FINE

- 9.1 In the event that the Purchaser breaches any duty referred to in Articles [3.4,] or [4.5- or 8.4] hereof, the Purchaser undertakes to pay to the Seller a contractual fine in the aggregate amount of CZK [●] (to wit: [●] Czech crowns). The contractual fine pursuant to the preceding sentence shall be payable into the Seller's Account within three (3) Business Days from the inception of the Seller's right to the Contractual fine pursuant to the preceding sentence.
- 9.2 In case the Seller breaches any obligation specified in Section 4.5 and 6.2 hereof, the Seller agrees to pay a contractual penalty to the Purchaser in the amount of CZK [●] (to wit: [●] Czech crowns). [Note: The Purchaser reserves the right to require that the Purchaser provide security for obligations under this Agreement.]
- 9.3 ~~9.2~~ The Parties agree that the right to the contractual fine pursuant to this agreement shall not preclude any exercise of the right to seek compensation for damages.

10. TERMINATION OF THIS AGREEMENT

10.1 The Seller shall only be entitled to withdraw from this Agreement in the event that:

- (a) the Reorganization Plan does not enter into effect by [~~December 31, 2018~~ September 2017], for reasons that are not on the part of the Seller;
- (b) the Purchaser is in default with the deposition of the Purchase Price or any part thereof into the Escrow Account;
- (c) the Transfer Conditions are not satisfied by [~~December 31, 2018~~ September 2017], for reasons that are not on the part of the Seller;
- (d) any Representation of the Purchaser is (even in part) incomplete, false, incorrect or misleading;
- (e) the Purchaser breaches any duty referred to in Article 4.5 hereof;
- (f) [~~the Purchaser breaches any duty referred to in Article 8 hereof~~]; (g) —a change of circumstances within the meaning of Section 1764 *et seq.* of the Civil Code occurs.]

10.2 The Purchaser shall only be entitled to withdraw from this Agreement in the event that :

- (a) any of the transactions contemplated by this Agreement are not settled by [~~December 31, 2018~~ September 2017], for reasons that are not on the part of the Purchaser or its Group companies or affiliates or entities otherwise acting in concert with the Purchaser;
- (b) the Seller breaches any obligation specified in Article 4.5;
- (c) the Transfer Conditions are not satisfied by [1 September 2017], for reasons that are not attributable to the Purchaser;
- (d) any Representation of the Seller is (even in part) incomplete, false, incorrect or misleading [as at the Closing Date];
- (e) [the Purchase Price is less than [0 CZK] as a result of application of the Purchase Price Adjustment mechanism set out in Articles [•]].

10.3 [The Parties have agreed that in the event that at any time before the transfer of ownership title to the Shares from the Seller to the Purchaser, a final transformation of the Seller's reorganization into bankruptcy occurs, this Agreement shall terminate upon the entry into force of the competent court's decision on the transformation of the Seller's reorganization into bankruptcy, and the Parties shall be obliged to return any performance rendered to each other.]

10.4 The Parties expressly agree that this Agreement can only be terminated by satisfaction, or, as provided for in this Article 10. For the avoidance of doubt, the Parties hereby represent that this Agreement or the obligations provided for herein cannot be terminated by unilateral action (and no application for their termination can

SUBJECT TO CONTRACT

be sought in court) on any grounds other than those expressly agreed on in Sections 10.1 through 10.3 hereof.

- 10.5 The termination of this Agreement shall create no prejudice to claims on account of liability for any injury, confidentiality, or other provisions and claims to survive the termination of this Agreement by definition, including this provision.

- 10.6 ~~In the event of the Seller's withdrawal~~[Neither Party shall be entitled to withdraw from this Agreement after the delivery of the endorsed Shares to the Purchaser, ~~the Purchaser hereby empowers the Seller for representation at any and all General Meetings of the Company within the meaning of Section 399 of the Business Corporations Act, as may be held, or as may be adopted from the moment of the Seller's withdrawal from this Agreement until the delivery of the endorsed Shares back to the Seller. The Parties have agreed that such authorization can only be revoked in the event that the Seller causes any damage to the Company by the exercise of shareholding rights while exercising the authorization pursuant to this article.]~~

- ~~10.7 In the event of the Seller's withdrawal from this Agreement after the delivery of the endorsed Shares to the Purchaser, the Parties have agreed that the Seller's obligation to return the Purchase Price shall only arise when (i) the Purchaser delivers to the Seller Shares endorsed to the order of the Seller, free of any third party rights, from which no rights shall be severed, (ii) the Purchaser shall issue and deliver to the Seller a Purchaser's affidavit with a notarized signature, confirming that the Purchaser has not severed any proprietary or voting rights from the Shares; and that for the entire duration of ownership of the Shares, the Company was managed with due diligence, and that the Purchaser refrained from any acts (whether taken directly or through a third party) detrimental to the Company.~~

11. WARRANTIES OF PARTIES

- 11.1 The Seller represents, undertakes and warrants to the Purchaser as of the execution date hereof that the representations and warranties provided in Schedule 3 hereto (the "**Seller's Representations and Warranties**") are true, correct, complete and not misleading, and acknowledges the fact that the Purchaser acts in full reliance on the Seller's Representations and Warranties. The Seller further undertakes to provide the Purchaser as of the ~~day of delivery of the Shares~~Closing Date with a written declaration confirming that the Seller's Representations and Warranties are true, correct, complete and not misleading as of that day.
- 11.2 Purchaser represents, undertakes and warrants to the Seller as of the execution date hereof that the representations and warranties provided in Schedule 4 hereto (the "**Purchaser's Representations and Warranties**") are true, correct, complete and not misleading, and acknowledges the fact that the Seller acts in full reliance on the Purchaser's Representations and Warranties. The Purchaser further undertakes to provide the Seller as of the ~~day of delivery of the Shares~~Closing Date with a written declaration with notarized signatures of the Purchaser's authorized representatives,

SUBJECT TO CONTRACT

confirming that the Purchaser's Representations and Warranties are true, correct, complete and not misleading as of that day.

- 11.3 Seller's Representations and Warranties are made subject to ~~the facts of which the Purchaser was informed or~~ which the Purchaser could reasonably have established from ~~the~~ documents contained in the Dataroom. For the avoidance of any doubt, it is noted that the Seller shall not be liable for any damage arising from this Agreement or in connection with this Agreement as a result of the breach of any of the Seller's Representations and Warranties, provided that the Purchaser ~~was informed about such act, omission to act, event or circumstance responsible for the damage, or~~ could reasonably have established the same from documents contained in the Dataroom.
- 11.4 In the event that any party discovers that any of its Representations and Warranties is incorrect, incomplete or false, even in part, it shall notify such fact to the other Party in writing without delay.
- 11.5 In the event of any breach of any of the Representations and Warranties provided pursuant to this Agreement, the Party who made such Representation or Warranty shall be obliged to take urgent action to rectify such breach of Representation or Warranty.
- 11.6 [Nothing in this Agreement shall be interpreted as a representation of the Seller concerning the Enterprise, its properties or quality, and the Purchaser expressly represents that it has not insisted on any ~~properties~~qualities of the Part of an Enterprise in this Agreement or in negotiations leading up to this Agreement.]
- 11.7 The Seller undertakes to compensate the Purchaser for any damage suffered by the Purchaser as a result of any incomplete, false, incorrect or misleading Representation or Warranty of the Seller, or caused by the fact that such Representation or Warranty of the Seller is incomplete, false, incorrect or misleading, such compensation to equal not exceed 1/10th of the Purchase Price at the most (except for the Representation or Warranty of the Seller confirming that the Company shall not assume any of the Pre-Insolvency Liabilities and Non-Operating Post-Insolvency Liabilities under the Contribution Agreement for which the compensation shall be unlimited).
- 11.8 The Purchaser undertakes to compensate the Seller for any damage suffered by the Seller (even in part) as a result of any incomplete, false, incorrect or misleading (even in part) Representation or Warranty of the Purchaser, or in connection therewith; such compensation to not exceed 1/10th of the Purchase Price.

12. CONFIDENTIALITY

- 12.1 The Parties agree that this Agreement, as well as any information contained or referred to herein, and the transactions contemplated hereby (including any information passed on between the Parties or Parties' Representatives in connection with the execution of transactions contemplated by this Agreement, whether in

writing or orally, and notwithstanding whether it constitutes confidential information prior to, or after, the execution date hereof (collectively, the "**Confidential Information**"). Each of the Parties undertakes to maintain the Confidential Information confidential, and not to disclose same to third parties without prior written consent of the other Party. The Party shall be authorized to disclose Confidential Information to its Representatives even without the other Party's written consent, but only in the event that these are Representatives who have been actively and directly involved in the assessment or implementation of transactions contemplated by this Agreement, and only provided that such Representatives of that Party were bound to maintain confidentiality of the Confidential Information in accordance with the provisions of this Agreement.

This provision shall not apply to the disclosure of information or communication required under the law or pursuant to decisions or other acts of any Public Authority. This provision further creates no prejudice to the Parties' obligation to obtain consent from competent Public Authorities (e.g., the Competition Office) for the purpose of implementation of transactions, and to have the transactions contemplated by this Agreement registered in public registers, lists and registries.

Notwithstanding other provisions of this Agreement, the provision of this Article 12.1 shall remain in force and effect for three (3) years from the execution date hereof, notwithstanding any earlier termination of this Agreement for whatever reason and in any way.

- 12.2 Unless agreed otherwise herein, neither of the Parties shall be authorized to public any information concerning this Agreement, its execution, transactions contemplated thereby or other related matters without the prior written consent of the other Party.
- 12.3 The Purchaser expressly agrees that this Agreement shall be attached to the Reorganization Plan to be submitted in the course of the Insolvency Proceeding, and as such, it will become public upon the publication of the relevant Reorganization Plan in accordance with the Insolvency Act. For the avoidance of doubt, the Parties hereby state that the publication of this Agreement in the insolvency register shall not be deemed to constitute a violation of this Agreement.
- 12.4 The Parties have agreed that the Seller shall be authorized to disclose the content of this Agreement, as well as information concerning and/or relating to this Agreement to the Creditors' Committee and the Insolvency Trustee.

13. NOTICES

- 13.1 Any and all notices, statements, instructions or documents to be delivered between the Parties pursuant to this Agreement must be delivered by hand, by a courier service or by post to the address of the relevant Party, as provided hereinafter, or to other address within the Czech Republic as may be specified by the relevant Party to the other Party in accordance with the delivery method provided for in this article at least fifteen (15)

Business Days in advance. Any and all notices, statements, instructions or documents to be delivered between the Parties pursuant to this Agreement shall be deemed delivered as follows: (i) if delivered by hand or by a courier service, upon delivery or refusal to take delivery; or (ii) if delivered by post, three (3) Business Days after the same is deposited at the post office in an envelope addressed in accordance with this article, postage prepaid. Delivery addresses of the Parties:

Seller:

Address: [Stonavská 2179, Doly, 735 06 Karviná]
Tel: +420 [602 415 215]
Email: [jan.solich@okd.cz]
Attn.: [Mgr. Jan Solich]

Purchaser:

Address: [●]
Tel: +420 [●]
Email: [●]
Attn.: [●].

14. FINAL PROVISIONS

- 14.1 This Agreement shall be concluded and shall enter into force and effect upon its execution by authorized representatives of the Parties.
- 14.2 This Agreement is made out in [three (3)] counterparts having the force of the original, of which each Party shall receive one (1) counterpart, and one (1) counterpart shall be attached to the Reorganization Plan.
- 14.3 This Agreement may be amended solely in writing by way of amendments marked as amendments to this Agreement and signed by the Parties or their authorized representatives.
- 14.4 The Parties have agreed to provide each other with any assistance as may be required in connection with the registration of all changes in public lists, registers and other registries so as to give effect to this Agreement.
- 14.5 In the event that any provision of this Agreement is found to be invalid, such fact shall create no prejudice to the validity of the balance of this Agreement, provided the invalid provision can be severed therefrom. Should such situation occur, the Parties undertake to replace such invalid provision with a valid provision without delay, such new provision to be as close as possible to the provision being replaced in terms of legally permissible meaning and economic purpose.
- 14.6 Unless expressly stipulated otherwise herein, ~~the Purchaser~~ neither Party shall ~~not~~ be authorized to assign, pledge or otherwise transfer its rights, claims, obligations and

SUBJECT TO CONTRACT

debts under this Agreement, or this Agreement as a whole, without the prior written consent of the ~~Seller~~ other Party.

- 14.7 [Neither of the Parties shall be entitled to make any unilateral set off of any due and payable or outstanding but not yet payable, contingent or unconditional, current or future, monetary or in-kind claim against the other Party, arising from on in connection with this Agreement.]
- 14.8 A Party may waive its right to seek performance of any contractual obligation by the other Party only by way of a written waiver, duly signed by the waiving Party. If, in the event of any breach of contractual duty arising from the provisions of this Agreement, the non-breaching Party does not seek rectification, such fact shall not imply, and shall not be interpreted as, a waiver by the non-breaching Party of the right to seek satisfaction of contractual obligations from the breaching Party in the event of a recurrent breach of such provision by the breaching Party. In the event that the non-breaching Party grants a grace period for the satisfaction of the contractual obligation or performance of an act required under this Agreement, such fact shall not imply, and shall not be interpreted as, the granting of a grace period to the breaching Party for the satisfaction of any other contractual obligation or performance of any other act required under this Agreement.
- 14.9 A Party shall be entitled to compensation for damages (both actual damage and lost profit) or other injury as may be sustained due to any failure to discharge obligations under this Agreement, even if such compensation is covered by a contractual fine or default interest.
- 14.10 The Parties have agreed that each of the Parties shall bear its own costs incurred and/or to be incurred in connection with the negotiation, execution and performance of this Agreement.
- 14.11 The ~~Purchaser~~ Parties accepts the risk of change of circumstances within the meaning of Section 1765 of the Civil Code.
- 14.12 The Parties note and stipulate that no provision of this Agreement can be deemed to impose any unreasonable advantage on any of the Parties, and that the mutual performance to be rendered by the Parties pursuant to this Agreement is not grossly disproportionate. The Parties further note and stipulate that they were duly legally represented for the purpose of negotiation of the terms and conditions of this Agreement, they fully comprehend the content of this Agreement and fully agree with all the risks, including the risk of change of situation and circumstances, and risks relating to the Insolvency Proceeding.

SUBJECT TO CONTRACT

- 14.13 This Agreement contains the entire agreement between the Parties concerning the transfer of the Shares contemplated by this Agreement, and supersedes any and all prior arrangements, understanding and agreements concluded by the Parties in connection with the transfer of the Shares from the Seller to the Purchaser.
- 14.14 Any and all disputes arising from or in connection with this Agreement shall be resolved solely by Czech courts of competent jurisdiction *pro ratione loci* and *materiae*.
- 14.15 This Agreement shall be governed by and interpreted in accordance with the applicable legal regulations of the Czech Republic. The Parties have agreed that to the extent permissible by legal regulations of general application, the following provisions shall not apply to this Agreement (not even *per analogiam*): Section 558 (2) (second sentence), Section 1726 (second sentence), Section 1727 (second and third sentences), Section 1748, Section 1765, Section 1766, Section 1793, Section 1899, Section 1900, and Section 1925 of the Civil Code.
- 14.16 The Parties have agreed that those schedules to this Agreement which, by agreement between the Parties, are to be made out in electronic form only because of their scope (the "**Electronic Schedules**"), shall be captured on DVD-ROM data carriers, and one data carrier containing such Electronic Schedules shall be attached to each counterpart of this Agreement. Each such data carrier shall be sealed in an envelope protected against tampering with its content, and firmly affixed to the relevant counterpart of this Agreement (the "**Authenticated Data Carrier**"). Further, each of the Parties shall receive another DVD-ROM data carrier with the Electronic Schedules with each counterpart of this Agreement, and such second DVD-ROM carrier shall not be affixed to the counterpart of this Agreement. The Parties have agreed that in the event of any dispute, the content of the Electronic Schedules captured on the Authenticated Data Carrier shall prevail.
- 14.17 Schedules shall form an integral part of this Agreement.

List of Schedules:

(Unless indicated otherwise, the relevant schedule is provided in the form of a hard copy)

Schedule 1: Definitions

- hard copy

Schedule 2: Form Endorsement

- hard copy

Schedule 3: Seller's Representations and Warranties

- hard copy

Schedule 4: Purchaser's Representations and Warranties

- hard copy

SUBJECT TO CONTRACT

Schedule 5: Form Shares Delivery Record

- hard copy

Schedule 6: Reorganization Plan

- hard copy

Schedule 7: Escrow Agreement

- hard copy

Schedule 8: Darkov and 9. květen Sites

- hard copy + DVD-ROM

Schedule 9: Lazy and ČSA Sites

- hard copy + DVD-ROM

Schedule 10: Mining Operation 2

- hard copy + DVD-ROM;

Schedule 11: Phase-out Operation - South

- hard copy + DVD-ROM

Schedule 12: Servicing Plant

- hard copy + DVD-ROM;

Schedule 13: Preparatory Plant

- hard copy + DVD-ROM;

Schedule 14: Part of an Enterprise

- hard copy + DVD-ROM;

Schedule 15: Dataroom

- hard copy + DVD-ROM;

Schedule 16: Draft Contribution Agreement

- hard copy + DVD-ROM;

Schedule 17: Draft Subscription Agreement

- hard copy + DVD-ROM;

Schedule 18: Waiver

- hard copy

Schedule 19: OKD Enterprise

- hard copy + DVD-ROM;

Schedule 20: Draft Licence Transfer Agreement

- hard copy;

14.18 The Parties represent that before executing this Agreement, they have familiarized themselves with its content, comprehend same and agree with same. The Parties further represent that this Agreement is an expression of their own true, free and earnest will, in witness whereof they append their signatures below.

< signatures of persons authorized to act on behalf of the Parties follow >

SUBJECT TO CONTRACT

HAVING READ AND UNDERSTOOD THIS AGREEMENT, the Parties hereby represent that its content, the obligations provided for therein, representations made therein and duties established thereby are an expression of their own true, free and earnest will, and that they are entering into this Agreement after mutual negotiations, without duress or on terms onerous for any of the Parties.

_____, _____

_____, _____

For OKD, a.s.

For [●]

By:

Title:

By:

Title:

Schedule 1

Definitions

The following capitalized terms shall have the following meanings in this Agreement:

"Shares"	means the Current Shares and New Shares;
"HBZS Shares"	shall mean Seller's shares in OKD, HBZS, a.s., Identification No. 47676019, with its registered seat at Lihovarská 1199/10, Radvanice, 716 00 Ostrava, entered in the Commercial Register maintained by the Regional Court in Ostrava under file No. B 766, i.e., 3 common registered shares in certificated form, with a par value of CZK 50,000,000 (to wit: fifty million Czech crowns), and 1 common registered shares in certificated form, with a par value of CZK 13,396,000 (to wit: thirteen million three hundred and ninety six thousand Czech crowns), with the total par value of CZK 163,396,000 (to wit: one hundred and sixty three million three hundred and ninety six thousand Czech crowns);
"IPE Shares"	shall mean Seller's shares in IP Exit, a.s., Identification No. 45316619, with its registered seat in Prague 1, Senovážné náměstí č.32/čp.976, PSČ 11403, entered in the Commercial Register maintained by the Municipal Court in Prague under file No. B 1351, i.e., 308,560 book-entry common registered shares, with a par value of CZK 100 (to wit: one hundred Czech crowns), with the total par value of CZK 30,856,000 (to wit: thirty million eight hundred and fifty six thousand Czech crowns);
"MO Shares"	shall mean Seller's shares in Moravskoslezská obchodní, a.s. v likvidaci, Identification No. 47151706, with its registered seat at Nemocniční 2902/13, Moravská Ostrava, 702 00 Ostrava, entered in the Commercial Register maintained by the Regional Court in Ostrava under file No. B 522, i.e., 5 common registered shares in certificated form, with a par value of CZK 20,000 (to wit: twenty thousand Czech crowns), with the total par value of CZK 100,000 (to wit: one hundred thousand Czech crowns);
"Authenticated Data Carrier"	shall have the meaning indicated in Section 14.15 hereof;

SUBJECT TO CONTRACT

"Execution Date"	means the date of execution of this Agreement by the Parties;
"Part of an Enterprise"	shall mean a part of the Seller's business enterprise operated under business name OKD, a.s. and consisting of Mining Operation 1, Mining Operation 2, Phase-out Operation – South, OKD Enterprise, Servicing Plant and Preparatory Plant, which in turn consist of components listed in Schedule 2 hereto. For avoidance of doubt, the Parties affirmatively declare that the Non-operating Claims which form a part of the Claim Management Center, and Seller's debts incurred up to the moment of declaration of insolvency of the Seller, <u>the Pre-Insolvency Liabilities and Non-Operating Post Insolvency Liabilities</u> ; these continue to be held by, and be binding on, the Seller;
"Proof of Purchase of the Part of an Enterprise"	shall have the meaning indicated in Section 4.5 hereof;
"Mining Operation 1"	shall mean the Seller's organization unit which represents a separate accounting unit, or enterprise; this mining operation was created by the merger of the original "Darkov Mine" and "Karviná Mine" operations as of January 1, 2015, and consists of the following mining sites: (i) Lazy and ČSA Sites, and (ii) Darkov and 9. květen Sites;
"Mining Operation 2"	shall mean the Seller's organization unit which represents a separate accounting unit, or enterprise; this mining operation was created by a change of the name of the original "Závod Důl ČSM" as of January 1, 2015 and is located in the eastern part of the Karviná side basin; it is divided into two mining areas, "North" and "South", with separate pairs of downcast and upcast air shafts, which, however, are connected underground; the excavation area is in the cadastral areas of Stonava, Karviná, Albrechtice u Českého Těšína and Chotěbuz, and a delineation of the sites is provided in Schedule 10;
"Mining Operation"	means mining operations of the Seller, in particular Mining Operation 1, Mining Operation 2, [Phase-out Operation - South];
"Confidential Information"	shall have the meaning indicated in Section 12.1 hereof;
"Electronic"	

SUBJECT TO CONTRACT

Schedules"	shall have the meaning indicated in Section 14.15 hereof;
"Insolvency Proceeding"	shall mean the insolvency proceeding pending against the Seller at the Regional Court in Ostrava under file No. KSOS 25 INS 10525/2016;
"Insolvency Trustee"	shall mean the insolvency trustee of the Seller, Ing. Lee Louda, with his registered seat in Vodičkova 791/41, 110 00 Prague 1;
"Insolvency Act"	shall mean Act No. 182/2006 Coll., on Insolvency and Insolvency Resolution Methods (the Insolvency Act), as amended;
"Purchase Price"	shall have the meaning indicated in Section 3.1 hereof;
"Darkov and 9. květen Sites"	shall mean separate excavation areas - Darkov, Karviná, Doly II and Stonava, as detailed in Schedule 8; "Darkov" and "9. květen" were formerly a part of the former "Závod Důl Darkov";
"Lazy and ČSA Sites"	shall mean mining site (i) "Lazy" in the south-western part of the Karviná side basin, the excavation area being located in the cadastral areas of Orlová and Karviná, and (ii) "ČSA" (<i>Československé armády</i>), which is now located in two excavation areas, Karviná Doly I and Doubrava u Orlové; a delineation of the sites is provided in Schedule 9; "Lazy" and "ČSA" were formerly a part of the former "Závod Důl Karviná", created in 2008 by the merger of the former "Lazy Mine" and "ČSA Mine" into a single organizational unit;
"Equity Stakes"	shall mean HBZS Shares, IPE Shares and MO Shares;
"Mining Operations Phase-out Costs"	shall mean the costs of technical liquidation of the individual Mining Operations or their parts, social costs related to the closure of individual Mining Operations or their parts, costs of reclamation and recultivation of the individual Mining Operations or their parts, and costs relating to mining damage attributable to the individual Mining Operations or their parts;
"Liability Claims"	shall mean any and all claims of the Purchaser against the Seller on account of the Seller's liability vis-à-vis the Purchaser under this Agreement and/or legal regulations in connection with the purchase of the Shares, including without limitation, the Purchaser's claims against the Seller on account of defects, and Purchaser's claims against the Seller on account of compensation for damages;

**"Non-operating
Claims"**

shall mean (i) the Seller's claim against New World Resources N.V. and ZB in the amount of [CZK 65,273,405,025], on account of [Seller's claims for compensation for damages and surrender of unjust enrichment, sustained by the Seller in connection with an authorized decision on the allocation and distribution of profit and other capital funds of the Seller for the accounting periods of 2006 through 2011, when the relevant funds were transferred, without authorization, to New World Resources N.V., and subsequently to ZB; in order to collect on a part of the above-referenced claim (specifically, in the amount of CZK 24,546,499,252), an action was filed and a proceeding is pending at the Regional Court in Ostrava under file No. 15 Cm 225/2016], (ii) Seller's claim against members of the Seller's Board of Directors: Mr. Klaus-Dieter Beck (born [REDACTED]), Mr. Ján Fabián (born [REDACTED]), Mr. Karl Friedrich Jacob (born [REDACTED]), Mr. Marek Jelínek (born [REDACTED]), Mr. Miklos Salamon (born [REDACTED]), Mr. Stanley C. Subolewski (born [REDACTED]) and Ms. Miroslava Trgíňová (born [REDACTED]), and members of the Seller's Supervisory Board: Mr. Luboš Řežábek (born [REDACTED]), Mr. Jan Hanousek (born [REDACTED]), Mr. Otto Jelínek (born [REDACTED]), Mr. Miroslav Syrový (born [REDACTED]), Mr. František Válek (born [REDACTED]), and Mr. Jaroslav Vlach (born [REDACTED]), in the amount of [CZK 2,786,785,110], on account for [compensation for damages suffered in connection with lack of due diligence, when, instead of using the Seller's own resources, they decided to indebt the Seller by a intra-group loan so that they could pay high dividends to the Seller's sole shareholder], (iii) Seller's claims on account of refutable legal acts within the meaning of Section 589 *et seq.* of the Civil Code and null and void legal acts within the meaning of Section 235 *et seq.* of the Insolvency Act, and (iv) any other claims of the Seller against PK, ZB, officials, shareholders or managers of the Seller and other persons from the PK or ZB groups and the group of persons managed or controlled by PK and/or ZB, in particular claims arising in connection with the breach of duty of due diligence by such persons, or on account of compensation for damages asserted against such persons.

**"New World
Resources N.V."**

shall mean New World Resources N.V., reg. No. 342 39 108, with its registered seat c/o Duff & Phelps Ltd., The Shard, 32 London Bridge Street, Postal Code SE19SG, London, United Kingdom of Great Britain and Northern Ireland;

SUBJECT TO CONTRACT

"Requisite Licenses" means [●]³⁵;

"Transfer Licenses" means [●]⁶;

"New Shares" means shares in the Company, to be issued in connection with the Registered Capital Increase, i.e., [●] common registered shares issued as a security, with a par value of CZK [●] (to wit: [●] Czech crowns) per shares, in the total par value of CZK [●] (to wit: [●] Czech crowns);

"Civil Code" shall mean Act No. 89/2012 Coll., the Civil Code;

"Public Authority" shall mean a court or any other body of public administration or local self-government, whether seated in the Czech Republic or in any other jurisdiction;

"PK" shall mean Mr. Peter Kadas, born [REDACTED] residing [REDACTED]

"Transfer Conditions" shall have the meaning indicated in Section 4.1 hereof;

" OKD Enterprise" shall mean the Seller's organization unit which represents a separate accounting unit, or enterprise, and which provides central management services to the Mining Operation 1, Mining Operation 2, Phase-out Operation – South, OKD Enterprise, Servicing Plant and Preparatory Plant, and which includes the Equity Stakes, as described in more detail in Schedule 19 hereto;

"Business Day" shall mean any day (except for Saturdays and Sundays) when banks in the Czech Republic are open for business and operate in a regular fashion;

"Third Party Rights" shall mean any encumbrance, whether established by contract, declaration, legal regulation or decision of any public authority (e.g., mortgage or pledge, lien, encroachment, usufructory lease, lease, loan, precarium, pre-emptive right, right of retention, security lien or any other similar security or encumbrance;

"Waiver" means a ~~Purchaser's~~ waiver with notarized signatures of the ~~Purchaser's~~ Parties' respective authorized representatives,

³⁵ TBC.

⁶ TBC

attached hereto as Schedule 18;

"Transitional Period"	shall mean the transitional period between the execution of this Agreement and the acquisition of title to the Part of an Enterprise by the Purchaser;
"Reorganization"	shall mean the Seller's reorganization, as permitted by resolution of the Regional Court in Ostrava dated August 12, 2016, ref. No. KSOS 25 INS 10525/2016-B181;
"Reorganization Plan"	shall mean the Seller's reorganization plan submitted in the course of the Insolvency Proceeding, with heads of terms provided in Schedule 6 hereto;
"Group"	means, in relation to the respective Party, influential, influenced, controlling and managing persons and persons within the same concern, persons affiliated or otherwise associated with the Party (through property, interlocking directorates or otherwise);
"Contribution Agreement"	means an agreement on the contribution of the Part of an Enterprise, pursuant to which the Seller shall contribute the Part of an Enterprise to the Company and subscribe the New Shares, to be issued in connection with the Registered Capital Increase; a form of the agreement is attached hereto as Schedule 16;
"Subscription Agreement"	means an agreement on the subscription of the New Shares, to be concluded by and among the Seller and the Company in connection with the Registered Capital Increase; a form of the agreement is attached hereto as Schedule 17;
"Company"	means [●], a.s., Id. No. [●], with its registered seat at [●], entered in the Commercial Register maintained by [●] Court in [●] under file No. B [●];
"Articles of Association"	shall mean the Seller's Articles of Association in the wording in force as of the execution of this Agreement;
"Current Shares"	means the Seller's shares in the Company, i.e., [●] common registered shares issued as a security, with a par value of CZK [●] (to wit: [●] Czech crowns) per shares, in the total par value of CZK [●] (to wit: [●] Czech crowns); <u>and the Creditor Shareholder's shares in the Company, i.e., [●] common registered shares issued as a security, with a par value of CZK [●] (to wit: [●] Czech crowns) per shares, in the total par value</u>

SUBJECT TO CONTRACT

of CZK [●] (to wit: [●] Czech crowns);

- "Claim Management Center"** [shall mean the Seller's organization unit within the Enterprise, which represents a separate accounting unit, or enterprise, and which includes the Non-operating Claims];
- "Seller's Account"** shall mean Seller's bank account No. [●], maintained by [●];
- "Escrow Account"** shall mean bank account No. [●], maintained by [●] under the [Escrow Agreement];
- "Escrow Agreement"** shall mean an agreement on [escrow account] dated [●] , concluded by and among the Seller, the Purchaser and [●], a copy of which forms Schedule 7 hereto;
- "Representations and Warranties"** shall mean the Purchaser's Representations and Warranties and/or the Seller's Representations and Warranties;
- "Purchaser's Representations and Warranties"** shall mean representations and warranties of the Purchaser, as specified in Section 11.2 hereof;
- "Seller's Representations and Warranties"** shall mean representations and warranties of the Seller, as specified in 11.1 hereof;
- "Competition Office"** shall mean the Office for the Protection of Economic Competition, Identification No.: 65349423, with its registered seat at třída Kpt. Jaroše 1926/7, Černá Pole (Brno-střed), 602 00 Brno;
- "Creditors' Committee"** shall mean the creditors' committee set up in accordance with Section 56 and related provisions of the Insolvency Act in the course of the Insolvency Proceeding;
- "Business Corporations Act"** shall mean Act No. 90/2012 Coll., on Business Corporations and Cooperatives (the Business Corporations Act);
- "Representatives of the Parties"** shall mean statutory bodies of the Parties, their managers, employees, agents, financial advisors, professional advisors, legal counsel, accountants, auditors and financing banks;
- "Servicing Plant"** shall mean the Seller's organization unit which represents a separate accounting unit, or enterprise, and which procures centralized surface services for all the mining operations and the Preparatory Plant in the area of repairs, storage and material handling and metal waste management, a description

of which is provided in Schedule 12 hereto;

"Preparatory Plant" shall mean the Seller's organization unit which represents a separate accounting unit, or enterprise, which manages the operation of preparatory facilities of Mining Operation 1, Mining Operation 2 and Phase-out Operation - South, and a description of which is provided in Schedule 13 hereto;

Phase-out Operation - South shall mean the Seller's organization unit which represents a separate accounting unit, or enterprise; [it came into existence as of January 1, 2015 and is located approx. 20 kilometers south of Ostrava, and consists of mining sites Sviadnov, Staříč and Chlebovice and the Frenštát Mine site], and a delineation of the sites is provided in Schedule 11;

"ZB" shall mean Mr. Zdeněk Bakala, born [REDACTED] residing at [REDACTED]

"Registered Capital Increase" shall mean an increase of the Company's registered capital from CZK [●] to CZK [●], on which the Seller as the sole shareholder of the Company shall decide, and in connection with which the Part of an Enterprise shall be contributed to the Company and New Shares shall be issued to the Seller.

"Pre-Insolvency Liabilities" shall mean any liabilities arising prior to the declaration of insolvency of the Seller, especially those registered in the Insolvency Proceeding of the Seller and which shall not be assumed by the Company under the Contribution Agreement

"Non-Operating Post Insolvency Liabilities" shall mean any liabilities of the Seller under Sections 168 (2) b), e), f), g), h) and 169 (1) a), b), c), d), f) of the Insolvency Act which shall not be assumed by the Company under the Contribution Agreement.

"Licence Transfer Agreement" means a public law licence assignment, pursuant to which the Seller shall transfer to the Company all of the Transfer Licenses held by the Seller; a form of the agreement is attached hereto as Schedule 20.

SUBJECT TO CONTRACT

Schedule 2
Form Endorsement

On ~~my~~your behalf to the order of [●], a.s., Id. No. [●], with its registered seat at [●], entered in the Commercial Register maintained by [●] Court in [●] under file No. [●].

on behalf of **OKD, a.s.**

[●], [●]

Schedule 3
Seller's Representations and Warranties

The Seller hereby presents the following Seller's Representations and Warranties to the Purchaser:

- (a) The Seller has the requisite power and authority to enter into this Agreement and perform all the obligations arising therefrom.
- (b) This Agreement shall represent a valid and effective obligation of the Seller, enforceable in accordance with its terms.
- (c) ~~The Company~~Seller is authorized to conduct its business as recorded in the Commercial Register for the Seller.
- (d) No decision was adopted and no act taken to transform the Company in any way.
- (e) No decision was adopted by the Company's bodies, court, administrative body or other person concerning the winding up of the Company, and no winding up of the Company is threatening.
- (f) The Company is not in the process of liquidation.
- (g) The Company is not conducting, and is not aware of being the subject of, any judicial, administrative, arbitration, criminal or other similar proceeding, and no claims were asserted against the Company that would or might prejudice the transfer of ownership title to the Shares and its individual parts hereunder.
- (h) The Company is in good standing with regard to all of its tax obligations, is duly registered for all the applicable types of tax, and has duly filed all tax returns, statements and other information required by tax regulations or tax authorities.
- (i) The Company has not assumed and shall not assume any Pre-Insolvency Liabilities and Non-Operating Post-Insolvency Liabilities.
- (j) No circumstance has occurred that allows the insolvency court to decide on transformation of the Reorganization into bankruptcy pursuant to Section 363 (1) of the Insolvency Act.
- (k) The Seller's disposition rights (in Czech *dispoziční oprávnění*) have not been restricted by the insolvency court.
- (l) Following the Reorganization, the Shares shall comprise the entire issued share capital of the Company, and no person has any rights to any other securities of the Company.

SUBJECT TO CONTRACT

[The Purchaser reserves its right to require that other key assumptions (including those as described in the Bid Letter) be added as Seller's Representations and Warranties and require that part of the Purchase Price is reserved in the Escrow Account for some time after Closing to allow the Purchaser to confirm that there any no material breaches of Seller warranties and representations in respect of the Company _____ and _____ its _____ business.]

Schedule 4
Purchaser's Representations and Warranties

The Purchaser hereby presents the following Purchaser's Representations and Warranties to the Seller:

- (a) The Purchaser is a legal entity duly established and existing pursuant to the laws of the Czech Republic.
- (b) The Purchaser is authorized to enter into this Agreement and to perform its obligations under this Agreement, and this Agreement and its performance by the Purchaser shall not operate to breach any third party rights.
- (c) No resolution on the winding up or liquidation of the Purchaser was adopted, and no meeting was convened to adopt same.
- (d) The Purchaser is not insolvent or threatened with insolvency, no petition in insolvency was filed against the Purchaser, and no such is threatening, and no insolvency petition or similar other motion was dismissed due to lack of assets on the part of the Purchaser.
- (e) No enforcement proceeding is pending against the Purchaser which would prevent the Purchaser from meeting its obligations under this Agreement, and no court summons to present a declaration of assets was served on the Purchaser, and there is no similar circumstance which would operate to invalidate or annul any legal acts taken by the Purchaser pursuant to this Agreement.
- (f) The Purchaser is not conducting any judicial, administrative, arbitration, criminal or other similar proceeding, and no such proceeding is pending against the Purchaser, and no claims were asserted against the Purchaser that would prejudice the transfer of ownership title to the Shares hereunder or prevent the Purchaser from meeting its obligations hereunder.
- (g) The conclusion of this Agreement and performance of obligations arising therefrom is not in conflict with the laws of the Czech Republic or the Purchaser's Memorandum of Association, and does not constitute a violation of any agreement to which the Purchaser is party.
- (h) ~~The Purchaser has sufficient funds for the phase out of individual Mining Operations to be acquired by the Purchaser as part of the acquisition of the Company, or the Shares (in particular Phase out Costs).(i) The Purchaser has sufficient funds for the phase out of individual Mining Operations to be acquired by the Purchaser as part of the Part of an Enterprise, and for the payment of the Purchase Price.~~

SUBJECT TO CONTRACT

- (i) ~~(j)~~ The Purchaser's funds to be used to pay the Purchase Price (or to deposit same in the Escrow Account) are owned solely by the Purchaser who is authorized to dispense with them freely, were acquired in accordance with the law and do not represent proceeds of crime, were not obtained by a transfer or conversion of proceeds of crime and/or through other unlawful means.
- ~~(j)~~ ~~(k)~~ The Purchaser is aware of the fact that it is acquiring the Company, or Shares, in the course of the Insolvency Proceeding.

Schedule 5
Form Shares Delivery Record

THIS SHARES DELIVERY RECORD is made out on [●] by among the following parties:

- (1) **OKD, a.s.**, Identification No. 268 63 154, with its registered seat at Stonavská 2179, Doly, 735 06 Karviná, entered in the Commercial Register maintained by the Regional Court in Ostrava under file No. B 2900 (the "**Delivering Party**"); and
- (2) [●], a.s., Id. No. [●], with its registered seat at [●], entered in the Commercial Register maintained by [●] Court in [●] under file No. [●] (the "**Accepting Party**").

We hereby refer to the share purchase agreement concluded on [●] by and among the Delivering Party as the seller, and the Accepting Party as the purchaser (the "**SPA**").

Capitalized terms not defined herein shall have the meanings attributed thereto in the SPA.

The Delivering Party hereby confirms in connection with the execution of the SPA that on the day, month and year first provided above, the Delivering Party delivered to the Accepting Party [●] ([●]) duly endorsed common registered shares, each with a par value of CZK [●] (to wit: [●] Czech crowns), numbered [●] through [●], which together represent a 100% participation interest in the Company's registered capital (the "**Shares**"), and the Accepting Party hereby confirms receipt and acceptance of the Shares from the Delivering Party.

On behalf of **OKD, a.s.**

On behalf of [●]

Name:

Title:

Name:

Title:

SUBJECT TO CONTRACT

Schedule 6
Reorganization Plan - Heads of Terms

SUBJECT TO CONTRACT

Schedule 7
Escrow Agreement

SUBJECT TO CONTRACT

Schedule 8
Darkov and 9. květen Sites

SUBJECT TO CONTRACT

Schedule 9
Lazy and CSA Sites

SUBJECT TO CONTRACT

Schedule 10
Mining Operation 2

SUBJECT TO CONTRACT

Schedule 11
Phase-out Operation - South

SUBJECT TO CONTRACT

Schedule 12
Servicing Plant

SUBJECT TO CONTRACT

Schedule 13
Preparatory Plant

Schedule 14
Part of an Enterprise

1 Description of Part of an Enterprise

1.1 [●].

2 Components of Part of an Enterprise

The Part of an Enterprise consists in particular of other assets and liabilities of the Seller (including rights and obligations under labor relations), which were (or should have been) booked in the Seller's SAP R/3 - Enterprise accounting system, specifically, in accounting categories [●], as of the execution date hereof, including real properties.

2.1 Claims

(a) [●];

(b) [●];

(c) [●].

2.2 Debts

(a) Due and payable and not yet due debts to suppliers, corresponding exclusively to counter-performance for goods, supplies and services provided with regard to the Part of an Enterprise;

(b) Prepayments received from customers pursuant to [●];

(c) [●];

(d) Uninvoiced deliveries from suppliers pursuant to [●];

(e) [●].

2.3 Agreements

(a) Supply agreements [●]

Internal code	Counterparty	Title	Date of execution	Status
[•]	[•]	[•]	[•]	[•]

(b) Agreements on [•]

Internal code	Counterparty	Title	Date of execution	Status
[•]	[•]	[•]	[•]	[•]

(c) Other agreements

Internal code	Counterparty	Title	Date of execution	Status
[•]	[•]	[•]	[•]	[•]

2.4 Real Properties

The Part of an Enterprise includes the following real properties:

- (a) [•];
- (b) [•];
- (c) [•].

2.5 Intangible Assets

The Part of an Enterprise includes:

- (a) [•];
- (b) [•].

2.6 Bank Accounts

The Part of an Enterprise includes the following rights to bank accounts Nos:

- (a) [•];
- (b) [•];

maintained by [•] a.s., including balances in such accounts.

2.7 Movables

The Part of an Enterprise includes the following movable property:

- (a) [●];
- (b) [●];
- (c) [●].

2.8 Employees

The Part of an Enterprise includes the following employees:

- (a) [●];
- (b) [●];
- (c) [●].

3 Balance sheet as of [31. 12. 2016] (in CZK '000)

[●]

4 Components excluded from the Part of an Enterprise transfer

- (a) [Non-operating Claims];
- (b) [~~Seller's obligations incurred before the declaration of insolvency with regard to the Seller~~]; Pre-Insolvency Liabilities;
- (c) [~~●~~]; Non-Operating Post-Insolvency Liabilities.

[Note: The Purchaser reserves the right to update the above categories as appropriate, having regard to the terms of the Bid Letter.]

SUBJECT TO CONTRACT

Schedule 15
Dataroom

SUBJECT TO CONTRACT

Schedule 16
Contribution Agreement

SUBJECT TO CONTRACT

Schedule 17
Subscription Agreement

Schedule 18

Waiver

To: ~~OKD, a.s.~~
~~Stonavská 2179~~
~~735 06 Karviná~~

/•Note: Subject to further comments./

Each of:

OKD, a.s., Identification No. 268 63 154, with its registered seat at Stonavská 2179, Doly, 735 06 Karviná, entered in the Commercial Register maintained by the Regional Court in Ostrava under file No. B 2900 (the "Seller").

[•], a.s., Id. No. [•], with its registered seat at [•], entered in the Commercial Register maintained by [•] Court in [•] under file No. [•] (the "Purchaser" and together with the Seller, the "Parties").

Hereby: a) — within the meaning of Section 1916 (2) of Act No. 89/2012 Coll., the Civil Code, respectively waives any and all rights and claims (whether current, future, contingent or potential) on account of (i) defects in any and all shares of OKD, a.s., Identification No. 268 63 154, with its registered seat at Stonavská 2179, Doly, 735 06 Karviná, entered in the Commercial Register maintained by the Regional Court in Ostrava under file No. B 2900 (the "Seller"), in [•], a.s., Id. No. [•], with its registered seat at [•], entered in the Commercial Register maintained by [•] Court in [•] under file No. [•] (the "Company"), i.e., i.e., [•] common registered shares issued as a security, with a par value of CZK [•] (to wit: [•] Czech crowns) per shares, in the total par value of CZK [•] (to wit: [•] Czech crowns) (the "Shares"), (ii) defective performance of the Seller rendered pursuant to the share purchase agreement concluded by and among the Seller and the Purchaser on [•] (the "Agreement"), (iii) any and all claims of the Purchaser one Party against the Seller another Party in connection with the Seller's liability to the Purchaser under the Agreement and/or legal regulations in connection with the purchase of the Shares, including without limitation, claims of the Purchaser against the Seller under liability for defects, and claims of the Purchaser against the Seller for compensation for damages, and (iv) on account of the Seller's liability in its capacity as an influential and/or controlling person of the Company, for any injury as may be suffered by the Company. This waive does not apply to mutual rights and obligations under Articles [•] of the Agreement under which each Party is entitled to claim its respective rights against the other Party. The Purchaser undertakes that the Company shall not claim from or enforce against the Seller any damage on account of the Seller's liability in its capacity as an influential and/or controlling person of the Company, as may be suffered by the Company;

b) ~~hereby waives any objections against the validity of this Agreement on account of (i) insufficient, indeterminate or otherwise defective definition of the Shares and/or obligations provided for in the Agreement, (ii) defective performance by the Seller or the Purchaser and/or defects (including the absence of) in consents granted by bodies of the~~

SUBJECT TO CONTRACT

~~Seller or the Purchaser, consents of public authorities, or the consent of any private and/or public third party, and (iii) legal and/or factual condition of the Company and/or Shares and/or items and/or debts constituting the Company's equity as of the date of delivery of the Shares.~~

_____, _____

On behalf of [●]

Name:

Title:

SUBJECT TO CONTRACT

Schedule 19
OKD Enterprise

SUBJECT TO CONTRACT

Schedule 20
Licence Transfer Agreement

Appendix 7

Details of Internal Approvals

The Alcentra Funds

The Alcentra Funds have received final investment committee approval to submit the Final Offer (subject to the terms and conditions set out in the Final Offer). The Alcentra Funds will require ratification from the investment committee at the time of execution of the documents required to effect the Transaction. Such approval is capable of being obtained shortly following the agreement of the final terms of documents required to effect the Transaction. No other corporate, shareholder or other internal approval processes are required.

Ben Oldman Partners

Ben Oldman Partners have received final investment committee approval to submit the Final Offer (subject to the terms and conditions set out in the Final Offer). Ben Oldman Partners will require ratification from the investment committee at the time of execution of the documents required to effect the Transaction. Such approval is capable of being obtained shortly following the agreement of the final terms of the documents required to effect the Transaction. No other corporate, shareholder or other internal approval processes are required.

Appendix 8

Existing Business Activities

The Alcentra Funds

Alcentra Limited (an FCA regulated and SEC approved entity) acts as investment manager on behalf of each of the Alcentra Funds. Alcentra Limited is one of the largest and longest tenured managers of private debt and sub-investment grade corporate credit and capital in Europe and has approximately US\$ 30.1 billion in capital under management. Each of the Alcentra Funds has an investment strategy focusing on the provision of sub-investment grade credit and/or capital to companies in stressed or distressed circumstances.

The investors into the Alcentra Funds (and ultimate beneficial owners) are a mix of institutional investors, such as pension funds, local authorities, insurance companies, sovereign wealth funds and family offices. The list of investors is confidential however Alcentra Limited can provide standard Anti Money Laundering and Know Your Customer letters in due course.

Ben Oldman Partners

Ben Oldman Partners acts as the sole manager of Ben Oldman Special Situations Fund, L.P. Established in 2013, Ben Oldman Partners is focused on global credit securities including both, private debt and sub-investment grade corporate credit. The primary investment objective is to provide our investors with attractive risk adjusted returns over a long investment horizon by applying a multi-strategy approach, which includes special situations, distressed debt and event-driven opportunities.

Identifying misunderstood or complex situations and unlocking value for all stakeholders is at the core of our investment thesis – we have owned a number of significant businesses and successfully taken them through a restructuring process. Our geographic focus has been in Spain and Europe, North America, Latin America as well as certain Emerging Markets. Our investment team has a proven track record with over 40 years of experience, including a number of transactions in the Metals & Mining industry.

The investors into the Ben Oldman Special Situations Funds, L.P. (and ultimate beneficial owners) are a mix of institutional investors and family offices. The list of investors is confidential however we can provide Standard Anti-Money Laundering and Know Your Customer letters in due course.

Appendix 9

Commercial Extracts

FILE COPY



**CERTIFICATE OF INCORPORATION
ON CHANGE OF NAME**

Company No. 2958399

The Registrar of Companies for England and Wales hereby certifies that

BARCLAYS CAPITAL ASSET MANAGEMENT LIMITED

having by special resolution changed its name, is now incorporated
under the name of

ALCENTRA LIMITED

Given at Companies House, London, the 4th March 2003



C029583993



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES



Companies House

— for the record —



Companies House

CS01 (ef)

Confirmation Statement

Company Name: **ALCENTRA LIMITED**

Company Number: **02958399**



X5DMM3P4

Received for filing in Electronic Format on the: **18/08/2016**

Company Name: **ALCENTRA LIMITED**

Company Number: **02958399**

Confirmation **11/08/2016**

Statement date:

Alcentra Limited
10 Gresham Street
London
EC2V 7JD



Phone +44(0) 20 7367 5000
Fax: +44(0) 20 7367 5020

BY THIS POWER OF ATTORNEY made by way of deed this 13th Day of October 2016 Alcentra Limited, a company incorporated in England and Wales with number 0295 8399 and with its registered office situate at 10 Gresham Street, London EC2V 7JD (the "Company"),

HEREBY APPOINTS

Graham Rainbow
Kevin Lennon

acting severally as the Company's true and lawful attorney (the "Attorney") with full powers and authority to do the following acts and things in the name of and on behalf of the Company in connection with the normal day-to-day business of the Company:

- (1) to sign or to execute as a deed and deliver any documents in connection with the Company's appointment from time to time as collateral manager or investment adviser to one or more CDO, CBO or similar funds; and
- (2) to sign or to execute as a deed and deliver any documents in connection with the Company's role as a collateral manager or investment adviser to one or more CDO, CBO or similar funds including, but not limited to, the following: amendment agreements, amendment and restatement agreements, waiver requests, participation and sub-participation agreements, risk participation agreements, purchase rate letters, assignment agreements, transfer certificates, restructuring agreements, inter-creditor agreements and cash transfer instructions,

but excluding trade confirmations and pricing letters,

And

HEREBY APPOINTS

Alex Walker
David Wallace

as the Company's true and lawful attorney (the "Attorney") with full powers and authority to execute non-disclosure, release letters, reliance letters and any other confidentiality agreements in the name of and on behalf of the Company.

The Company hereby agrees to ratify and confirm whatsoever the said Attorney shall lawfully do by virtue of this deed.

Registered Office
10 Gresham Street London EC2V 7JD
Phone: +44 20 7367 5000
Fax: +44 20 7367 5020

Alcentra Limited, Registered in England No. 02958399
Authorised and Regulated by the Financial Conduct Authority

This Power of Attorney is governed by and construed in accordance with English law and shall be effective from the date hereof for a period of two years whereupon it will terminate automatically.

IN WITNESS whereof this deed has been duly executed on the date first above written.

Signatories to the Power of Attorney

Executed as a deed by
Alcentra Limited



DANIEL FABIAN
DIRECTOR

In the presence of

Witness name:

Jerry Kirby-Houlihan

Address:

10 Gresham Street, London, EC2V 7JD



Companies House

AP01 (ef)

Appointment of Director



X5COLYD4

Company Name: **ALCENTRA LIMITED**

Company Number: **02958399**

Received for filing in Electronic Format on the: **04/08/2016**

New Appointment Details

Date of Appointment: **04/08/2016**

Name: **DANIEL STEVEN FABIAN**

The company confirms that the person named has consented to act as a director.

Service Address recorded as Company's registered office

Country/State Usually Resident: **ENGLAND**

Date of Birth: ****/05/1981**

Nationality: **BRITISH**

Occupation: **CHIEF FINANCIAL OFFICER**

Former Names:

Authorisation

Authenticated

This form was authorised by one of the following:

Director, Secretary, Person Authorised, Administrator, Administrative Receiver, Receiver, Receiver Manager, Charity Commission Receiver and Manager, CIC Manager, Judicial Factor.

**Registre de Commerce
et des Sociétés
Luxembourg**



EXTRAIT

Alcentra Global Special Situations Luxembourg S.à r.l.

Numéro d'immatriculation : **B141163**

Date d'immatriculation

02/09/2008

Dénomination ou raison sociale

Alcentra Global Special Situations Luxembourg S.à r.l.

Forme juridique

Société à responsabilité limitée

Siège social

Numéro	Rue
2-4	Rue Eugène Ruppert
Code postal	Localité
2453	Luxembourg

Objet social

Extrait de l'inscription : Pour le détail prière de se reporter au dossier

La Société a pour objet l'acquisition, la détention et la cession de créances, ainsi que l'administration et la gestion de ces créances. La Société peut faire des dépôts auprès de banques (notamment des dépôts fiduciaires) ou tous autres dépositaires. La Société peut emprunter sous quelque forme que ce soit et procéder à l'émission d'obligations, de billets à ordre ou tout autre instrument de dette et consentir des garanties ou sûretés sous quelque forme que ce soit en relation avec l'émission d'obligations, de billets à ordre ou tout autre instrument de dettes. La Société peut exercer toutes transactions, commerciales ou financières qui se rapportent, directement ou indirectement, à son objet social, à l'exclusion de toute activité bancaire et de toute autre activité financière...

Capital social / Fonds social

Type	Montant	Devise	Etat de libération
Fixe	12 500	Euro	Total

Date de constitution

12/08/2008

Durée

Illimitée

Exercice social
Premier exercice ou exercice raccourci

Du	Au
12/08/2008	31/12/2008

Exercice social

Du	Au
01/01	31/12

Registre de Commerce
et des Sociétés
Luxembourg



Associé(s)

Alcentra Fund S.C.A SICAV-SIF

N° d'immatriculation au RCS B147219 Dénomination ou raison sociale Alcentra Fund S.C.A SICAV-SIF
Forme juridique Société en commandite par actions Mention supplémentaire Société d'investissement à capital variable - Fonds d'investissement spécialisé

Siège social

Numéro Rue
2-4 Rue Eugène Ruppert
Code postal Localité Pays
2453 Luxembourg Luxembourg

Parts détenues

Nombre	Type(s) de parts
1 241 000	parts sociales ordinaires
1 000	parts sociales de catégorie A
1 000	parts sociales de catégorie B
1 000	parts sociales de catégorie C
1 000	parts sociales de catégorie D
1 000	parts sociales de catégorie E
1 000	parts sociales de catégorie F
1 000	parts sociales de catégorie G
1 000	parts sociales de catégorie H
1 000	parts sociales de catégorie I

Administrateur(s) / Gérant(s)

Régime de signature statutaire
Vis-à-vis des tiers, si la société est gérée et administrée par un ou deux gérants, la société sera engagée par la seule signature d'un administrateur ou par la signature, conjointe ou individuelle, de toutes personnes à qui un tel pouvoir de signature aura été délégué par un administrateur, mais seulement dans les limites de ce pouvoir. Vis-à-vis des tiers, si la société est gérée et administrée par un conseil de gérance, la société sera engagée par la signature conjointe de deux administrateurs ou par la signature, conjointe ou individuelle, de toutes personnes à qui un tel pouvoir de signature aura été délégué par le conseil de gérance, mais seulement dans les limites de ce pouvoir.

Algar James

Nom Prénom(s)
Algar James

Adresse privée ou professionnelle

Numéro Rue
10 Gresham Street
Code postal Localité Pays
EC2V 7JD Londres Royaume-Uni

Type de mandat

Organe Fonction
Conseil de gérance gérant

Durée du mandat

Date de nomination Durée du mandat
01/02/2016 Indéterminée

Barnes Simon

Nom Prénom(s)
Barnes Simon

Registre de Commerce
et des Sociétés
Luxembourg



Adresse privée ou professionnelle

Numéro Rue
15 rue Jean-Pierre Brasseur
Code postal Localité Pays
1258 Luxembourg Luxembourg

Type de mandat

Organe Fonction
Conseil de gérance gérant

Durée du mandat

Date de nomination Durée du mandat
01/02/2016 Indéterminée

Hoellermann Jens

Nom Prénom(s)
Hoellermann Jens

Adresse privée ou professionnelle

Numéro Rue
15 rue Jean-Pierre Brasseur
Code postal Localité Pays
1258 Luxembourg Luxembourg

Type de mandat

Organe Fonction
Conseil de gérance gérant

Durée du mandat

Date de nomination Durée du mandat
01/02/2016 Indéterminée

Personne(s) chargée(s) du contrôle des comptes

KPMG AUDIT

N° d'immatriculation au RCS Dénomination ou raison sociale
8103590 KPMG AUDIT

Forme juridique
Société à responsabilité limitée

Siège social

Numéro Rue
9 Allée Scheffer
Code postal Localité Pays
2520 Luxembourg Luxembourg

Type de mandat

Réviseur d'entreprises agréé

Durée du mandat

Date de nomination Durée du mandat
07/08/2009 Indéterminée

Registre de Commerce
et des Sociétés
Luxembourg



Pour extrait conforme ^[1]

Luxembourg, le 13/10/2016

Pour le gestionnaire du registre de commerce et des sociétés ^[2]



[1] En application de l'article 21 paragraphe 2 de la loi modifiée du 19 décembre 2002 concernant le registre de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises et l'article 21 du règlement grand-ducal modifié du 23 janvier 2003 portant exécution de la loi du 19 décembre 2002, le présent extrait reprend au moins la situation à jour des données communiquées au registre de commerce et des sociétés jusqu'à trois jours avant la date d'émission dudit extrait. Si une modification a été notifiée au registre de commerce et des sociétés entre temps, il se peut qu'elle n'ait pas été prise en compte lors de l'émission de l'extrait.

[2] Le présent extrait est établi et signé électroniquement. Le gestionnaire du registre de commerce et des sociétés ne garantit l'authenticité de l'origine et l'intégrité des informations contenues sur le présent extrait par rapport aux informations inscrites au registre de commerce et des sociétés que si le présent extrait comporte une signature électronique émise par le gestionnaire du registre de commerce et des sociétés.

Registre de Commerce
et des Sociétés
Luxembourg

R C S

EXTRAIT

Kneiff Tower S.à r.l.
Numéro d'immatriculation : **B159102**

Date d'immatriculation

25/02/2011

Dénomination ou raison sociale

Kneiff Tower S.à r.l.

Forme juridique

Société à responsabilité limitée

Siège social

Numéro	Rue
6D	Route de Trèves
Code postal	Localité
2633	Senningerberg

Objet social

Extrait de l'inscription : Pour le détail prière de se reporter au dossier

5.1. La Société a pour objet social de s'engager, de fonctionner et de servir comme véhicule pour toute transaction de titrisation permise par la Loi sur la Titrisation. A cet effet, la Société peut, entre autre, acquérir ou assumer, directement ou par l'intermédiaire d'un autre organisme, les risques liés à la détention de titres, de polices d'assurance, de créances et de tous biens, mobiliers ou immobiliers, corporels ou incorporels ainsi que ceux résultant d'engagements assumés par des tiers ou inhérents à tout ou partie des activités réalisées par des tiers en émettant des valeurs mobilières dont la valeur ou le rendement dépendent de ces risques. 5.2. La Société peut prendre en charge ces risques en acquérant par tout moyen les titres, créances et/ou biens, en garantissant les dettes ou les engagements ou en s'obligeant de toute autre manière.

Capital social / Fonds social

Type	Montant	Devise	Etat de libération
Fixe	12 500	Euro	Total

Date de constitution

08/02/2011

Durée

Illimitée

Exercice social**Premier exercice ou exercice raccourci**

Du	Au
08/02/2011	30/06/2011

Exercice social

Du	Au
01/07	30/06

Registre de Commerce
et des Sociétés
Luxembourg

R C S

Associé(s)

Gold Coast Global Limited

Dénomination ou raison sociale
Gold Coast Global Limited

Pays
Caïmanes, Iles
Forme juridique étrangère
exempted Company

Siège

Numéro Rue
non inscrit South Church Street
Bâtiment
Ugland House
Code postal Localité Pays
KY1-1104 George Town Caïmanes, Iles

Parts détenues

Nombre
125

Administrateur(s) / Gérant(s)

Régime de signature statutaire

18.1. La Société (comprenant, pour écarter tout doute, tout Compartiment) sera engagé, en toutes circonstances, vis-à-vis des tiers par la signature conjointe de deux gérants, ou par les signatures conjointes ou uniques de toute autre personne à qui de tels pouvoirs de signature auront été délégués par le Conseil et ce dans les limites des pouvoirs qui leur auront été conférés. 18.2. En ce qui concerne la gestion journalière, la Société est engagé vis-à-vis des tiers par la signature du délégué à la gestion journalière de la Société, s'il y en a un, ou de l'un d'eux s'ils sont plusieurs.

Lachance Stéphane

Nom Prénom(s)
Lachance Stéphane

Adresse privée ou professionnelle

Numéro Rue
6D route de Trèves
Code postal Localité Pays
2633 Senningerberg Luxembourg

Type de mandat

Organe Fonction
conseil de gérance gérant

Durée du mandat

Date de nomination Durée du mandat jusqu'à l'assemblée générale qui se tiendra en l'année
25/01/2017 Déterminée 2017

McAdams-Origer Michelle

Nom Prénom(s)
McAdams-Origer Michelle

Adresse privée ou professionnelle

Numéro Rue
6D route de Trèves
Code postal Localité Pays
2633 Senningerberg Luxembourg

Type de mandat

Organe Fonction
Conseil de gérance Gérant

Registre de Commerce
et des Sociétés
Luxembourg

R C S

Durée du mandat

Date de nomination	Durée du mandat	jusqu'à l'assemblée générale qui se tiendra en l'année
16/09/2015	Déterminée	2016

SCHMIDT Constanze

Nom	Prénom(s)
SCHMIDT	Constanze

Adresse privée ou professionnelle

Numéro	Rue	
6	route de Trèves	
Bâtiment		
D		
Code postal	Localité	Pays
2633	Senningerberg	Luxembourg

Type de mandat

Organe	Fonction
Conseil de gérance	Gérant

Durée du mandat

Date de nomination	Durée du mandat	jusqu'à l'assemblée générale qui se tiendra en l'année
30/06/2014	Déterminée	2015

Pour extrait conforme ⁽¹⁾

Luxembourg, le 26/01/2017

Pour le gestionnaire du registre de commerce et des sociétés ⁽²⁾



(1) En application de l'article 21 paragraphe 2 de la loi modifiée du 19 décembre 2002 concernant le registre de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises et l'article 21 du règlement grand-ducal modifié du 23 janvier 2003 portant exécution de la loi du 19 décembre 2002, le présent extrait reprend au moins la situation à jour des données communiquées au registre de commerce et des sociétés jusqu'à trois jours avant la date d'émission dudit extrait. Si une modification a été notifiée au registre de commerce et des sociétés entre temps, il se peut qu'elle n'ait pas été prise en compte lors de l'émission de l'extrait.

(2) Le présent extrait est établi et signé électroniquement. Le gestionnaire du registre de commerce et des sociétés ne garantit l'authenticité de l'origine et l'intégrité des informations contenues sur le présent extrait par rapport aux informations inscrites au registre de commerce et des sociétés que si le présent extrait comporte une signature électronique émise par le gestionnaire du registre de commerce et des sociétés.

Document muni d'une signature électronique avancée

Le présent document est établi électroniquement et est muni d'une signature électronique avancée par le gestionnaire du registre de commerce et des sociétés de manière à garantir l'authenticité de l'origine et l'intégrité des informations contenues sur ce document par rapport aux informations inscrites ou par rapport aux documents déposés au registre de commerce et des sociétés.

Gisèle Massen

Digitally signed by Gisèle Massen
DN: c=LU, l=LU, o=RCSL GIE, ou=C24, cn=Gisèle
Massen, sn=Massen, givenName=Gisèle,
serialNumber=10200144900031522688,
title=Professional Person
Date: 2015.07.15 10:16:42 +02'00'



EXTRAIT

Alcentra MS S.à r.l.

Numéro d'immatriculation : B 181841

Date d'immatriculation / d'inscription : 26/11/2013

Dénomination(s) ou raison(s) sociale(s) :

Alcentra MS S.à r.l.

Forme juridique : Société à responsabilité limitée

Siège social :

51, avenue John F. Kennedy
L - 1855 Luxembourg

Indication de l'objet social : 3.1 La Société a pour objet social de s'engager, de fonctionner et de servir comme véhicule pour toute transaction de titrisation permise par la Loi sur la Titrisation. A cet effet, la Société peut, entre autres, acquérir ou supporter, directement ou par l'intermédiaire d'une autre entité ou d'un autre organisme, les risques existants ou potentiels liés à la détention de titres, de créances et de tous biens, mobiliers ou immobiliers, corporels ou incorporels et/ou les risques liés aux dettes ou engagements de tiers ou inhérents à tout ou partie des activités réalisées par des tiers en émettant des titres de toute sorte dont la valeur ou le rendement dépendent de ces risques. 3.2 La Société peut prendre en charge ces risques en acquérant par tout moyen les titres, créances et/ou biens, en garantissant les dettes ou les engagements de tiers ou en s'obligeant de toute autre manière. 3.3 La Société peut procéder à (i) l'acquisition, la détention et la cession, sous quelque forme que ce soit et par tous moyens, par voie directe ou indirecte, de participations, droits, intérêts et engagements dans des sociétés luxembourgeoises ou étrangères, (ii) l'acquisition par achat, souscription ou de toute autre manière, ainsi que l'aliénation par vente, échange ou de toute autre manière de titres, obligations, créances, billets et autres valeurs ou instruments financiers de toutes espèces, (*)

Capital social / fonds social :

Montant : 20.000 USD

Etat de libération: Entièrement libéré

Date de constitution : 25/10/2013

Durée :

Illimitée

Exercice social :

Par exception, l'exercice social ayant débuté en date du 25/10/2013 se terminera en date du 31/12/2013.

Du: 01/01 au: 31/12

Associé(s) :

Dénomination ou raison sociale : The Bank of New York Mellon Corporation en tant que trustee de Alcentra Multi-Strategy European Credit Fund
Forme juridique : Corporation
Pays : Etats Unis d'Amérique
Numéro d'immatriculation : 4299124
Nom du registre : Delaware Division of Corporations
Siège social de la personne morale :
One Wall Street, USA - NY10286 New York
Parts détenues : 20.000

Administrateur(s)/gérant(s) :

Régime de signature statutaire : Si un Gérant unique a été nommé, la Société sera engagée à l'égard des tiers par la seule signature de ce Gérant ainsi que par la signature jointe ou la signature simple de toute personne à qui le Gérant a délégué ce pouvoir de signature, dans les limites de ce pouvoir. Dans le cas où la Société est gérée par un Conseil de Gérance, conformément à ce qui suit, la Société sera engagée à l'égard des tiers par la signature jointe de deux Gérants ainsi que par la signature jointe ou la signature simple de toute personne à qui le Conseil de Gérance a délégué ce pouvoir de signature, dans les limites de ce pouvoir. Nonobstant le paragraphe précédent, si l'associé unique ou, le cas échéant, l'assemblée générale des associés a nommé un ou plusieurs Gérants de Classe A et un ou plusieurs Gérants de Classe B, la Société sera engagée à l'égard des tiers par la signature jointe d'un Gérant de Classe A et d'un Gérant de Classe B, ainsi que par la signature jointe ou la signature simple de toute personne à qui le Conseil de Gérance a délégué de tels pouvoirs de signature, dans les limites de ce pouvoir.

Organe : conseil de gérance

Nom : Caspers Prénom(s) : Rolf

Fonction : gérant

Adresse privée ou professionnelle de la personne physique :

51, avenue John F. Kennedy, L - 1855 Luxembourg

Durée du mandat : Indéterminée Date de nomination : 18/08/2014

Nom : Mcleod Prénom(s) : Iain

Fonction : gérant

Adresse privée ou professionnelle de la personne physique :

59, Cité Millewee, L - 8064 Bertrange

Durée du mandat : Indéterminée Date de nomination : 25/10/2013

Nom : Fantuz Prénom(s) : Alexandra

Fonction : gérant

Adresse privée ou professionnelle de la personne physique :

51, avenue John F. Kennedy, L - 1855 Luxembourg

Durée du mandat : Indéterminée Date de nomination : 25/10/2013

Personne(s) chargée(s) du contrôle des comptes:

Dénomination ou raison sociale : KPMG Luxembourg

Numéro d'immatriculation : B 149133

Fonction : Réviseur d'entreprises agréé

Siège social de la personne morale :

9, Allée Scheffer, L - 2520 Luxembourg

Durée du mandat : Déterminée

Date de nomination : 01/04/2014

Jusqu'à l'assemblée générale qui se tiendra en l'année : 2015

(*) Extrait de l'inscription : Pour le détail prière de se reporter au dossier.

Pour extrait conforme (*)

Luxembourg, le 15/07/2015

Le gestionnaire du registre de commerce et des sociétés (*)

¹ En application de l'article 21 paragraphe 2 de la loi modifiée du 19 décembre 2002 concernant le registre de commerce et des sociétés ainsi que la comptabilité et les comptes annuels des entreprises et l'article 21 du règlement grand-ducal modifié du 23 janvier 2003 portant exécution de la loi du 19 décembre 2002, le présent extrait reprend au moins la situation à jour des données communiquées au registre de commerce et des sociétés jusqu'à trois jours avant la date d'émission dudit extrait. Si une modification a été notifiée au registre de commerce et des sociétés entre temps, il se peut qu'elle n'ait pas été prise en compte lors de l'émission de l'extrait.

² Le présent extrait est établi et signé électroniquement.

Le gestionnaire du registre de commerce et des sociétés ne garantit l'authenticité de l'origine et l'intégrité des informations contenues sur le présent extrait par rapport aux informations inscrites au registre de commerce et des sociétés que si le présent extrait comporte une signature électronique émise par le gestionnaire du registre de commerce et des sociétés.

MC-277128

Certificate Of Incorporation

I, D. EVADNE EBANKS Assistant Registrar of Companies of the Cayman Islands
DO HEREBY CERTIFY, pursuant to the Companies Law, CAP. 22, that all requirements of the said
Law in respect of registration were complied with by

Ben Oldman Partners

an Exempted Company incorporated in the Cayman Islands with Limited Liability with effect from the
22nd day of April Two Thousand Thirteen

Given under my hand and Seal at George Town in the
Island of Grand Cayman this 22nd day of April
Two Thousand Thirteen



CERTIFIED A TRUE COPY OF THE ORIGINAL

[Signature]

For and on behalf of
Maples Corporate Services Limited
PO Box 308, Ugland House
Grand Cayman, KY1-1104
Cayman Islands

Date 13 MAY 2013

[Signature]
Assistant Registrar of Companies,
Cayman Islands.

MC-71463

Certificate of Registration of Exempted Limited Partnership

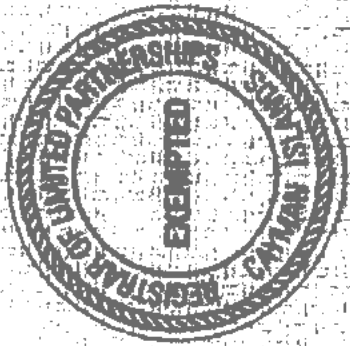
L. D. EVANS, BRANES & COMPANY, LIMITED is a limited partnership in the
Cayman Islands DO HERBY EXEMPTED LIMITED PARTNERSHIP LAW, 1991 that all the
requirements of the said Law in respect of the registration of limited partnership have been

Ben O'Connell, General Secretary, Limited, L.P.

an Exempted Limited Partnership registered in the Cayman Islands on the 6th day of May Two
Thousand Thirteen

Witness my hand and the seal of the Registrar of Companies in George Town in the
Cayman Islands on the 3rd day of May

CERTIFIED - A TRUE COPY OF THE ORIGINAL



For and on behalf of
Matthew Corporate Services Limited
PO Box 308, Upland House
Grand Cayman, KY1-1104
Cayman Islands
Date 3 November 2013

Registrar, Registrar of Exempted Limited Partnership
Cayman Islands

**REGISTER OF DIRECTORS AND OFFICERS
OF
BEN OLDMAN PARTNERS**

23 November 2016

NAME	ADDRESS	OFFICE HELD	DATE APPOINTED	DATE RESIGNED OR REMOVED	DATE REGISTRAR NOTIFIED OF APPOINTMENT	DATE REGISTRAR NOTIFIED OF RESIGNATION OR REMOVAL
Isaac Benzaquen	Ellat 61, Apt 2004, Tel Aviv 66845, Israel	Director	22 Apr 2013		29 Apr 2013	
Elie Gugenheim	Fuente de San Pedro 36, Col. Lomas de Tecamachalco, 53950 Naucalpan, Mexico	Director	22 Apr 2013		29 Apr 2013	

CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL

[Signature]

Name: Andrew Keast

For and on behalf of
Maples Corporate Services Limited
P.O. Box 309, Ugland House
Grand Cayman KY1-1104
Cayman Islands

Date: 23 November 2016

*Admitted as an attorney in the
Cayman Islands*

Text těla emailové zprávy z podání 86599/2017

Od: Jan.Solich@okd.cz

Komu: podatelna@ksoud.ova.justice.cz

Kopie: Jakub.Hrabanek@badokh.com

Předmět: Podání ve věci KSOS 25 INS 10525/2016

Vážení,

v příloze si Vám dovoluujeme zaslat podání ve věci KSOS 25 INS 10525/2016. Originály budou předány zítra dopoledne na podatelně soudu.

Dovolujeme si Vás zdvořile požádat o promptní předání podání panu soudci Mgr. Petrovi Kulovi a jeho neprodlené zveřejnění v insolvenčním rejstříku.

Děkuji a jsem s pozdravem

Jan Solich

předseda představenstva OKD, a.s.

Záznam o ověření elektronického podání doručeného na elektronickou podatelnu: Krajský soud v Ostravě

dle vyhlášky 259/2012 Sb.

Pořadové číslo zprávy:

86599 / 2017

Ev. číslo:

e99d1c52-1a88-4b89-9a84-31b4677a5cd3

Druh podání:

Elektronická pošta

ID zprávy:

Věc:

Podání ve věci KSOS 25 INS 10525/2016

Odesílatel:

ID schránky:

Typ datové schránky:

Osoba:

Adresa:

Jan.Solich@okd.cz

Doručeno do emailové schránky dne:

11.05.2017 20:03:13

Č.j. příjemce:

Č.j. odesílatele:

Sp.zn. příjemce:

Sp.zn. odesílatele:

Lhůta končí:

K rukám:

Ne

Číslo zákona:

Paragraf v zákoně:

Odstavec paragrafu:

Písmeno v paragrafu:

Ověření obálky:

Podpis není připojen (žádný podpis)

Podepsal:

Vystavil:

Sériové číslo certifikátu:

Platnost:

Antivirový test:

Proběhl v mailovém systému

Obsah podání:

OK

Elektronický podpis:

Nepřipojen

Časové razítko:

Nepřipojeno

Certifikát:

Datum a čas autom. ověření:

11.05.2017 20:08:40

Počet podaných příloh:1

Číslo přílohy	Výsledek	Název příl. CRL	Identifikace podepisující osoby	Identifikace vystavitele certifikátu	T	U	K	P	R	A	C	V
1		170511_OKD_Noví investoři_Reakce na dopis_KSZ_F.pdf										
	Podpis není připojen (žádný podpis).				A	N	N					

Čas ověření příloh:

11.05.2017 20:08:40

Ověření příloh:

ověřováno automaticky

Vysvětlení stavů při ověření příloh (vztaheno vždy k datu a času dodání):

Stav "?" znamená, že systém tuto operaci ještě neprovedl, ale provedena bude
Stav "-" znamená, že systém tuto operaci neprovádí
Stav "!" znamená, že systém tuto operaci nemůže provést
Stav "*" znamená, že bylo ověřeno proti CRL z uvedeného data.

T	Technické parametry ¹ :	A=splňuje	N=nesplňuje
U	Uznávaný elektronický podpis / značka:	A=připojen	N=nepřipojen
K	Kvalifikované časové razítko:	A=připojeno	N=nepřipojeno
P	Uznáv. el. podpis kvalif. certifikát (platnost):	A=platný	N=neplatný
R	Kvalifikované časové razítko (platnost):	A=platné	N=neplatné
A	Akreditovaný poskytovatel certifik. služeb ² :	A=ano	N=ne
C	Kvalifikované časové razítko:	A=platné	N=neplatné
V	Vytvořeno před zneplatněním certifikátu:	A=ano	N=ne

¹ Technické parametry - velikost, formát, škodlivý kód.

² Stav "Z"(Zahraniční) = certifikát není od české certifikační autority

Kontrola podpisů a razítek byla provedena na základě CRL seznamů platných k datu a času ověření datové zprávy.