

DATED 24 AUGUST 2020

GLENCORE INTERNATIONAL AG AND
GLENCORE (SCHWEIZ) AG
AS GUARANTORS

AND

DEUTSCHE TRUSTEE COMPANY LIMITED
AS TRUSTEE

GUARANTEE AGREEMENT
RELATING TO A U.S.\$20,000,000,000
EURO MEDIUM TERM NOTE PROGRAMME

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This **GUARANTEE AGREEMENT** is made on 24 August 2020 between:

- (1) **GLENCORE INTERNATIONAL AG** and **GLENCORE (SCHWEIZ) AG** (the "**Guarantors**"); and
- (2) **DEUTSCHE TRUSTEE COMPANY LIMITED** (the "**Trustee**", which expression shall, wherever the context so admits, include such company and all other persons or companies for the time being the Trustee or Trustees appointed under the Trust Deed).

WHEREAS

- (A) Glencore Capital Finance DAC ("**Glencore Capital**") and Glencore Finance (Europe) Limited ("**Glencore Finance**" and together with Glencore Capital, the "**Issuers**" and each, an "**Issuer**") may, from time to time, issue euro medium term notes ("**Notes**") in an initial aggregate principal amount of up to U.S.\$20,000,000,000 (or its equivalent in other currencies) pursuant to a Euro Medium Term Note Programme (the "**Programme**").
- (B) The Issuers, each of the Guarantors, Glencore plc and the Trustee have entered into an amended and restated trust deed dated 24 August 2020 (as amended, restated or supplemented from time to time, the "**Trust Deed**").
- (C) Each of the Guarantors has agreed unconditionally and irrevocably to guarantee the due and punctual payment (in accordance with the Notes and the Trust Deed) of the principal, interest and all other amounts payable in respect of the Notes and under the Trust Deed (each, a "**Guarantee**").
- (D) Each Guarantee shall be in addition to and not in substitution for or joint (or joint and several) with any other guarantee or security which the Trustee may at any time hold for or in relation to the guaranteed obligations.

1. INTERPRETATION

1.1 Definitions

Terms defined in the Trust Deed shall, unless otherwise defined, have the same meaning in this Guarantee Agreement.

1.2 Benefit of Guarantee Agreement

Subject to the following sentence, any Notes issued under the Programme on or after the date of this Guarantee Agreement shall have the benefit of this Guarantee Agreement, but shall not have the benefit of any subsequent guarantee relating to the Programme (unless expressly so provided in any such subsequent guarantee). Notes which are issued (i) prior to the date of this Guarantee Agreement or (ii) on or after the date of this Guarantee Agreement which are, in accordance with Condition 19 (*Further Issues*), intended to be fungible with a previous issue (so as to form a single Series with such Notes) and therefore intended to have the benefit of the previous guarantee given in relation to such previous issue, will not have the benefit of this Guarantee Agreement.

2. GUARANTEE

2.1 Guarantee

Each of the Guarantors hereby unconditionally and irrevocably guarantees, in accordance with Article 111 of the Swiss Code of Obligations, to the Trustee (for the benefit of the Trustee and the Noteholders and Couponholders) and, pursuant to Article 112(2) of the Swiss Code of Obligations, to the Noteholders and Couponholders (*echter Vertrag zugunsten Dritter*) the due and punctual payment of all sums expressed to be payable by the relevant Issuer under the Trust Deed or in respect of the Notes or Coupons, as and when any of the same becomes due and payable, whether at maturity, upon early redemption, upon acceleration or otherwise in accordance with the terms of the Trust Deed and the Notes or Coupons. In case of any failure by the relevant Issuer to pay any such sum as and when the same shall become due and payable as aforesaid, each of the Guarantors hereby agrees to pay or cause such payment to be made of any amount called under this Guarantee Agreement to or to the order of the Trustee.

2.2 Indemnity

Each Guarantor agrees, as an independent primary obligation, that it shall pay to or to the order of the Trustee on first demand by the Trustee or (subject to Clause 5.2) a Noteholder or Couponholder (as applicable) (*echter Vertrag zugunsten Dritter*) sums sufficient to indemnify the Trustee and each Noteholder and Couponholder against any loss sustained by the Trustee or such Noteholder or Couponholder by reason of the non-payment of any sum expressed to be payable as and when the same shall become due and payable by the relevant Issuer under the Trust Deed or in respect of the Notes or Coupons, whether by reason of any of the obligations expressed to be assumed by such Issuer in the Trust Deed or the Notes or Coupons being or becoming void, voidable or unenforceable for any reason, whether or not known to the Trustee or such Noteholders or Couponholders or for any other reason whatsoever.

2.3 Unconditional payment

If an Issuer fails to pay any sum expressed to be payable by such Issuer under the Trust Deed or in respect of the Notes or Coupons when such sum becomes due and payable, each of the Guarantors shall forthwith unconditionally pay or procure to be paid to or to the order of the Trustee in the currency in which the Notes or Coupons are payable in the principal financial centre of that currency, in same day, freely transferable funds the amount in respect of which such default has been made; **provided that** every payment of such amount made by any Guarantor to the Principal Paying Agent in the manner provided in the Paying Agency Agreement shall be deemed to cure *pro tanto* such default by such Issuer and shall be deemed for the purposes of this Clause 2 to have been paid to or for the account of the Trustee except to the extent that there is failure in the subsequent payment of such amount to the Noteholders or Couponholders in accordance with the Conditions, and everything so paid by each of the Guarantors in accordance with the Paying Agency Agreement shall have the same effect as if it had been paid thereunder by such Issuer. The Trustee or (subject to Clause 5.2), the relevant Noteholder or Couponholder (as applicable) will make a written request for any payment required by a Guarantor under this Guarantee Agreement stating that such Issuer has not met its obligations arising from the Trust Deed, the Notes or the Coupons

in the amount set out in such statement, but this is without prejudice to each of the Guarantors' obligations under this Guarantee Agreement.

2.4 **Unconditional obligation**

Each Guarantor agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Trust Deed or any Note or Coupon or any change in or amendment hereto or thereto, the absence of any action to enforce the same, any waiver or consent by any Noteholder or Couponholder or by the Trustee with respect to any provision of the Trust Deed or the Notes or Coupons, the obtaining of any judgment against the relevant Issuer or any action to enforce the same or any other circumstance (other than payment to the Trustee by a Guarantor hereunder or under the Trust Deed or the Notes or Coupons of the amount stated not to have been paid in the relevant written request of the Trustee or (subject to Clause 5.2), the relevant Noteholder or Couponholder (as applicable)) which might otherwise constitute a legal or equitable discharge or defence of a Guarantor.

2.5 **Guarantors' obligations continuing**

Each of the Guarantors waives diligence, presentment, demand of payment, filing of claims with a court in the event of merger or bankruptcy of the relevant Issuer, any right to require a proceeding first against the relevant Issuer, protest or notice with respect to any Note or Coupon or the indebtedness evidenced thereby and all demands whatsoever. Each of the Guarantors agrees that the guarantee and indemnity contained in this Clause 2 is a continuing guarantee and indemnity and shall remain in full force and effect until all amounts due as principal, interest or otherwise in respect of the Notes, Coupons and under the Trust Deed shall have been paid in full and that neither Guarantor shall be discharged by anything other than a complete performance of the obligations contained in the Trust Deed and the Notes and Coupons.

2.6 **Subrogation of Guarantors' rights**

Each of the Guarantors shall be subrogated to all rights of the Trustee or the Noteholders and Couponholders against the relevant Issuer in respect of any amounts paid by the respective Guarantors pursuant hereto; **provided that** neither of the Guarantors shall without the consent of the Trustee be entitled to enforce, or to receive any payments arising out of or based upon or prove in any insolvency or winding up of such Issuer in respect of, such right of subrogation until such time as the principal of and interest on the Notes and Coupons and all other amounts due under the Trust Deed and the Notes and Coupons have been paid in full. Furthermore, until such time as aforesaid the Guarantors shall not take any security or counter-indemnity from such Issuer in respect of the Guarantors' obligations under this Guarantee Agreement.

2.7 **No discharge of Guarantor's liability**

If any payment received by or paid to the order of the Trustee or the Principal Paying Agent pursuant to the provisions of this Guarantee Agreement, the Trust Deed or the Conditions shall, on the subsequent bankruptcy, insolvency, corporate reorganisation or other similar event affecting the relevant Issuer, be avoided, reduced, invalidated or set aside under any laws relating to bankruptcy, insolvency, corporate reorganisation or other similar events, such payment shall not be considered as discharging or

diminishing the liability of either of the Guarantors whether as guarantor, principal debtor or indemnifier and the guarantee and indemnity contained in this Clause 2 shall continue to apply as if such payment had at all times remained owing by such Issuer and each of the Guarantors shall indemnify and keep indemnified the Trustee and the Noteholders and Couponholders on the terms of the guarantee and indemnity contained in this Clause 2.

2.8 **Suspense Account**

Any amount received or recovered by the Trustee (other than as a result of a payment by an Issuer to the Principal Paying Agent in accordance with proviso 3.1.1 of clause 3.1 (*Covenant to Repay*) of the Trust Deed or by any of the Guarantors in accordance with this Clause 2) in respect of any sum payable such Issuer under the Trust Deed or the Notes or Coupons may be placed in a suspense account and kept there for so long as the Trustee thinks fit.

2.9 **Status**

The payment obligations of each of the Guarantors under this Guarantee Agreement shall constitute direct, unconditional, unsecured and unsubordinated obligations of each of the Guarantors which will at all times rank at least *pari passu* with all other present and future unsecured and unsubordinated obligations of such Guarantor, save for such obligations as may be preferred by provisions of law that are both mandatory and of general application.

2.10 **Limitation**

2.10.1 The total liability of Glencore (Schweiz) AG under this Guarantee and under the other agreements under the Programme shall not exceed at any time the amount of Glencore (Schweiz) AG's freely disposable equity in accordance with Swiss law, presently being the total shareholder equity less the total of (i) the aggregate share capital and (ii) statutory reserves and any blocking reserves, to the extent such reserves cannot be transferred into unrestricted, distributable reserves. The amount of equity freely disposable shall be determined on the basis of an audited annual or interim balance sheet of Glencore (Schweiz) AG **provided that** (1) this limitation shall only apply to the extent it is a requirement under applicable law at the time Glencore (Schweiz) AG is required to perform under this Guarantee and (2) such limitation shall not free Glencore (Schweiz) AG from its obligations in excess of the freely disposable equity, but merely postpone the performance date therefore until such times as performance is again permitted notwithstanding such limitation. If a payment to be made by Glencore (Schweiz) AG under this Guarantee Agreement has to be regarded as a deemed dividend distribution, Glencore (Schweiz) AG shall deduct Swiss Federal Withholding Tax (*Verrechnungssteuer*) (the present rate of which is 35 per cent.) from such payment and directly pay such Swiss Federal Withholding Tax to the competent Swiss federal tax authorities.

2.10.2 Glencore (Schweiz) AG shall take and cause to be taken all and any other action including, without limitation, (i) the passing of any shareholders' resolutions to approve any payment or other performance under this Guarantee and (ii) the obtaining of any confirmations (including confirmations by Glencore (Schweiz)

AG's auditors) which may be required as a matter of Swiss mandatory law in force at the time Glencore (Schweiz) AG is required to make a payment or perform other obligations under this Guarantee in order to allow a prompt payment hereunder, a prompt use of proceeds from this Guarantee as well as the performance of other obligations under this Guarantee with a minimum of limitations.

- 2.10.3 If the enforcement of obligations of Glencore (Schweiz) AG were limited due to the effects referred to in this Clause, Glencore (Schweiz) AG shall further, to the extent permitted by applicable law and Swiss accounting standards, write up or realise any of its assets that are shown in its balance sheet with a book value that is significantly lower than the market value of the assets, in the case of realisation, however, only if such assets are not necessary for Glencore (Schweiz) AG's business (*nicht betriebsnotwendig*).

2.11 Nature of Guarantee

Notwithstanding any reference herein to the Trust Deed, the Notes and the Coupons, each Guarantor hereby acknowledges and agrees that this Guarantee Agreement and the Guarantors' obligations under this Guarantee Agreement shall constitute separate, independent, primary and non-accessory guarantee obligations of each Guarantor within the meaning of Article 111 of the Swiss Code of Obligations and not a mere surety within the meaning of Article 492 *et seq.* of the Swiss Code of Obligations and will, in particular, not be affected or discharged by reason of any time or other indulgence granted by the Trustee or the winding-up, insolvency or reorganisation of any Issuer. This Guarantee Agreement and the Guarantors' obligations under this Guarantee Agreement shall in particular be independent from the legal validity and enforceability of the Trustee's, the Noteholders' or Couponholders' respective claims under the Trust Deed, the Notes and the Coupons and the Guarantors hereby waive all rights of objection and defence arising from the Trust Deed, the Notes and the Coupons (other than payment to or to the order of the Trustee by a Guarantor hereunder or under the Trust Deed, the Notes or the Coupons of the amount stated not to have been paid in the relevant written request of the Trustee). The obligations of the Guarantors are in addition to and not in substitution for or joint (or joint and several) with any other guarantee or security which the Trustee may at any time hold for or in relation to the guaranteed obligations.

2.12 Gross up

All payments by each Guarantor under its Guarantee shall be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatsoever nature imposed, levied, collected, withheld or assessed by the United Kingdom, Jersey, Switzerland or Ireland or any political subdivision or any authority thereof or therein having power to tax, unless such withholding or deduction is required by law. In that event, the Guarantors shall pay such additional amounts as will result in the receipt by the Noteholders and the Couponholders of such amounts as would have been received by them if no such withholding or deduction had been required, except that no such additional amounts shall be payable in respect of a Guarantee:

- (a) by a holder which is liable to such taxes, duties, assessments or governmental charges in respect of such payment under any Guarantee by reason of its having some connection with the United Kingdom, Jersey, Switzerland or Ireland other than the mere benefit under any Guarantee; or
- (b) where any tax is required to be withheld or deducted from a payment pursuant to laws enacted by Switzerland providing for the taxation of payments according to principles similar to those laid down in the consultation draft issued by the Swiss Federal Council on 3 April 2020, or otherwise changing the Swiss Federal Withholding Tax (*Verrechnungssteuer*) system from an issuer-based system to a paying agent-based system pursuant to which a person in Switzerland other than each Issuer or each Guarantor is required to withhold tax on any interest payments; or
- (c) more than 30 days after the Relevant Date (as defined below) except to the extent that the relevant holder would have been entitled to such additional amounts if it had presented such Note or Coupon on the last day of such period of 30 days; or
- (d) in the case of Glencore (Schweiz) AG, if such payment becomes subject to Swiss Federal Withholding Tax (*Verrechnungssteuer*) (the rate of which is 35 per cent. as of the date of this this Guarantee Agreement) because such payment has to be regarded as a deemed dividend distribution.

Notwithstanding any other provision contained herein, any amounts to be paid by any Issuer or any Guarantor on the Notes will be paid net of any deduction or withholding imposed or required pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (or any law implementing such an intergovernmental agreement) (a "**FATCA Withholding Tax**"), and neither of the Issuers nor any Guarantor will be required to pay additional amounts on account of any FATCA Withholding Tax.

If either of the Issuers, either of the Guarantors or Glencore plc becomes subject at any time to any taxing jurisdiction other than, as the case may be, the United Kingdom, Jersey, Switzerland or Ireland, references in this Clause 2.12 to the United Kingdom, Jersey, Switzerland or Ireland shall be construed as references to the United Kingdom, Jersey, Switzerland or Ireland and/or such other jurisdiction.

As used herein, "**Relevant Date**" in respect of any payment under a Guarantee means (i) the date on which such payment first becomes due or (ii) if the full amount payable has not been received by the Principal Paying Agent on or prior to such due date the date that is seven days after the date on which the Principal Paying Agent gives notice to the Noteholders that it has received the full amount payable.

3. **DEPOSIT OF GUARANTEE AGREEMENT**

A copy of this Guarantee Agreement shall be deposited with and held by the Principal Paying Agent until the date on which all the obligations of each of the Issuers and each of the Guarantors under or in respect of the Notes and Coupons and the Trust Deed have been discharged in full. Each of the Guarantors hereby acknowledges the right of every Noteholder and Couponholder to the production of a copy of this Guarantee Agreement.

4. **STAMP DUTIES**

Each of the Guarantors shall pay all stamp, registration and other taxes and duties (including any interest and penalties thereon or in connection therewith) which may be payable on or in connection with the execution and performance of this Guarantee Agreement, and shall indemnify the Trustee against any claim, demand, action, liability, damages, costs, loss or expenses (including, without limitation, legal fees and any applicable value added tax) which it may properly incur as a result or arising out of or in relation to any failure to pay or delay in paying any of the same.

5. **ENFORCEMENT BY TRUSTEE**

5.1 **Enforcement by Trustee**

The Trustee may at its discretion take such proceedings as it may think fit against the Guarantors to enforce the provisions of this Guarantee Agreement in accordance with the terms of the Trust Deed but in no event shall the Guarantors, by virtue of the institution of any such proceedings, be obliged to pay any sum or sums sooner than the same would otherwise have been payable by them.

5.2 **Only Trustee to enforce**

Notwithstanding that this Guarantee Agreement is entered into by the Guarantors and the Trustee also for the benefit of the Noteholders and Couponholders (*echter Vertrag zugunsten Dritter*), only the Trustee may enforce the provisions of this Guarantee Agreement and no Noteholder or Couponholder shall be entitled to proceed directly against any Guarantor to enforce performance of any of the provisions of this Guarantee Agreement **unless** the Trustee, having become bound to take proceedings against a Guarantor under this Guarantee Agreement in accordance with the provisions of the Trust Deed fails to do so within a reasonable period and such failure is continuing.

6. **PARTIAL INVALIDITY**

If at any time any provision hereof is or becomes illegal, invalid or unenforceable in any respect under the laws of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby.

7. **NOTICES**

7.1 All notices and other communications hereunder shall be made in writing (by letter, fax or email) and shall be sent to either Guarantor at:

Baarermattstrasse 3
P.O. Box 1363
CH-6341 Baar
Switzerland

Fax: +41 41 709 3000
Attention: Head of Finance

or to such other address, fax number or email address or for the attention of such other person or department as either Guarantor has notified to the Trustee.

- 7.2 Any notices or communications under Clause 7.1 will take effect, in the case of a letter, when delivered; in the case of a fax, when the relevant delivery receipt is received by the sender and, in the case of an email, when the email is sent; *provided that* any communication which is received (or deemed to take effect in accordance with the foregoing) after 5.00 p.m. on a business day or on a non-business day in the place of receipt shall be deemed to take effect at the opening of business on the next following business day in such place. Any notice or communication delivered to any party under this this Guarantee Agreement which is to be sent by fax or email will be written legal evidence.

8. LAW AND JURISDICTION

- 8.1 This Guarantee Agreement is governed by, and shall be construed in accordance with, the substantive laws of Switzerland (without regard to principles of conflicts of law thereof).
- 8.2 For all disputes between the parties in connection with the construction, execution or interpretation of this Guarantee Agreement, each Guarantor hereby irrevocably submits to the courts that have jurisdiction for the city of Zug, Switzerland and the English courts as per clause 16 (*Law and Jurisdictions*) of the Trust Deed, which clause is incorporated herein by reference and shall apply in the same terms *mutatis mutandis*.

IN WITNESS whereof this agreement has been entered into on the date first above written.

SIGNATURES

The Guarantors

GLENCORE INTERNATIONAL AG

By: 

GLENCORE (SCHWEIZ) AG

By: 

The Trustee

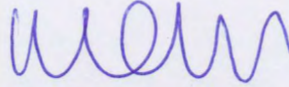
DEUTSCHE TRUSTEE COMPANY LIMITED

By:



KIERAN OEDRA
ASSOCIATE DIRECTOR

By:



Miriam Keeler
Associate Director