IN THE MATTER OF AN ARBITRATION
UNDER THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

BETWEEN OXUS GOLD PLC

Claimant

v.

THE REPUBLIC OF UZBEKISTAN,
THE STATE COMMITTEE OF UZBEKISTAN FOR GEOLOGY & MINERAL RESOURCES, AND
NAVOI MINING & METALLURGICAL KOMBINAT

Respondents

NOTICE OF ARBITRATION

Contents:

I. INTRODUCTION 3
II. REQUEST FOR ARBITRATION 4
III. THE PARTIES 5
A. Claimant: 5
B. Respondents: 5
IV. THE ARBITRATION AGREEMENT 6
V. DESCRIPTION OF THE CLAIM 7
A. The Uzbek Government's Representations and Undertakings to Foreign Investors and the Regulatory Structure Established to Encourage Foreign Investment in Uzbekistan 7
B. Claimant's Decision to Invest and Commence Mining Activity in Uzbekistan 8
1. The Khandiza Project: 9
2. The Amantaytau Project: 10
C. Respondent's Wrongful Conduct 12
1. Arbitrary Demand for a Special Dividend: 12
2. Revocation of Tax Exemption and Initiation of Improper State Audit: 13
3. Interference with Silver Refining: 14
4. Modification of Tax Code: 14
5. Refusal to Issue or Renew Licenses – Phase I: 14
6. Interference with Financing: 15
7. Failure to Issue Licenses – Phase II: 16
8. Wrongful Attempts to Liquidate AGF: 16
9. Heavy-Handed Audit and Coercion of AGF's Local Employees: 17
10. Arbitrary Detention and Wrongful Conviction of Senior AGF Employee: 18
11. Frivolous and Vexatious Legal Proceedings: 18
VI. VIOLATIONS OF APPLICABLE LAW 19
A. Respondents' Expropriation of Claimant's Investment in Violation of Article 5 of the Agreement 19
B. Respondents' Violation of the Fair and Equitable Treatment and Non-Impairment Obligations of Article 2(2) of the Agreement 20
C. Respondents' Failure to Provide Full Protection and Security under Article 2(2) of the Agreement 21
D. Respondents' Actions and Conduct Constitute a Violation of the National Treatment Obligation under Article 3 of the Agreement 22
E. Respondents' Violation of the Most Favored Nation Treatment under Article 3 of the Agreement 22
F. Respondents' Violation of Favorable Treatment under Article 11 of the Agreement 23
VII. RELIEF SOUGHT 23

I. INTRODUCTION

1. Oxus Gold plc ("Oxus" or "Claimant") is incorporated in England, the United Kingdom. Since 1996, Oxus and its wholly-owned and controlled subsidiaries Oxus Resources Corporation Limited ("ORC") and Marakand Minerals Limited ("Marakand") (collectively the "Subsidiaries") have engaged in the exploration, acquisition and development of precious/base metal properties in Central Asia.

2. In 2001, Oxus was listed on the Alternative Investment Market of the London Stock Exchange. By 2006, in order to ensure the financial viability of its operations in Uzbekistan, Oxus streamlined its operations across Central Asia to focus exclusively on its mining activities in Uzbekistan.

3. Oxus' mining activities in Uzbekistan were carried out by and through its Subsidiaries. As detailed below, as a condition to operate in Uzbekistan, Respondent, the Republic of Uzbekistan (the "Uzbek Government"), required the Subsidiaries to enter into shareholding and other ancillary joint venture agreements with Respondent the State Committee of Uzbekistan for Geology & Mineral Resources ("Goskomgeology") and Respondent Navoi Mining & Metallurgical Kombinat ("NMMK"), both of which are government instrumentalities controlled by the Uzbek Government. Additionally, pursuant to Decree 266 entitled "Additional Measures to Organize the Operation of the AGF JV," adopted by the Uzbek Cabinet of Ministers ("Cabinet") on July 11, 2000 the Uzbek Ministry of Finance obtained certain dividend rights with respect to one of the mining projects in which Oxus retains partial ownership interest.

4. Although Oxus and its Subsidiaries have always adhered to the highest standards of business conduct, they have nevertheless been subjected, commencing in 2004, to ongoing arbitrary conduct by Respondents, in violation of various of Uzbekistan's domestic laws and treaty commitments. Such wrongful conduct has interfered with the management and operations, and impaired the commercial viability, of Oxus and its Subsidiaries by, *inter alia*, inflicting unexpected revenue loss and unbudgeted compliance costs upon Oxus. Additionally, in response to Oxus' efforts to overcome the arbitrary obstacles imposed by Respondents, the wrongful conduct of Respondents has grown increasingly overt.

5. Further, Respondents have deprived Claimant of rights it legitimately relied upon when it agreed to invest in Uzbekistan by, *inter alia*, unilaterally and arbitrarily modifying laws and regulations that had been specifically implemented for the benefit of Oxus in Uzbekistan, and by failing to compensate Claimant in accordance with applicable law.

6. More recently, the Uzbek Government has wrongfully attempted to force Claimant into liquidation. In addition to employing the apparatus of the State to engage in unfettered administrative attacks, the Uzbek Government has enlisted the Uzbek courts, which have complied by issuing judgments in violation of Oxus' due process rights and elementary principles of natural justice in legal proceedings commenced against Oxus in Uzbekistan.

7. Further, the Uzbek Government commenced a wrongful collateral attack against Oxus after it was notified that Claimant was commencing international arbitration proceedings against Respondents. Specifically, on July 21, 2011, the Uzbek Government initiated proceedings in the English courts to enforce an illegal and improper Uzbek court judgment referred to in further detail below. Without prejudice to any submissions Oxus will make in the English Commercial Court, Oxus intends to demonstrate there that said Uzbek judgment was obtained wrongfully and

in violation of public policy and natural justice. Among other things, Oxus was not afforded a proper opportunity to defend against the claim asserted in the Uzbek courts. Thus, Oxus alleges in this international arbitration proceeding that the Respondent has pursued the Claimant to an improper and illegal judgment in a compliant Uzbek court, and now seeks to enforce said judgment in the English courts, with the intent of rendering Claimant insolvent and undermining Claimant's ability to pursue its legitimate claims before this Tribunal. Such conduct constitutes an abuse of court process.

8. The totality of expropriatory, unlawful, unfair and discriminatory conduct of Respondents – carried out through acts of Uzbek officials, agencies and controlled entities – has caused substantial injury to Claimant's investment, including but not limited to loss of shareholder value, lost profits and other injuries.

II. REQUEST FOR ARBITRATION

9. Claimant attempted to resolve its dispute with Respondents over the course of approximately one year, without success. On March 3, 2011, Claimant's counsel delivered a formal letter to the President of Uzbekistan, notifying him of the unfair treatment suffered by Claimant as a consequence of Respondents' ongoing expropriatory and otherwise wrongful conduct, and requesting that Respondents undertake good faith negotiations with Claimant.

10. Additionally, on March 16, 2011, Claimant contacted Dr. Hartley Booth OBE – Co-Chairman of the Uzbek-British Trade and Industry Council – with a request that he attempt to open discussions with Respondents. Further, on April 4 and April 8, 2011, Claimant requested a meeting with His Excellency Otabek Akbarov – Uzbekistan's Ambassador to the United Kingdom – to ask that he facilitate settlement negotiations. All of those overtures were ignored by Respondents.

11. On April 7 and 8, 2011 Claimant's counsel made numerous calls to the Uzbek Government's representatives to request a meeting with Claimant's counsel when they traveled to Uzbekistan on April 12, 2011. The Uzbek Government did not respond to these requests.

12. Claimant's counsel made two additional written requests – on May 24, 2011 and July 6, 2011 – to engage in good faith negotiations toward settlement of Claimant's dispute. While Oxus has since received correspondence from Goskomgeology and NMMK, the two government instrumentalities have emphasized that they are not authorized to make representations on behalf of the Uzbek Government. The Uzbek Government, in turn, has categorically refused to acknowledge any correspondence received from Claimant since March 16, 2011. Instead, the Uzbek Government initiated vexatious proceedings in the English High Court on July 21, 2011 to enforce an illegal Uzbek judgment demanding the payment of a US$10 million penalty from Claimant.

13. Despite the good faith efforts of Claimant, the dispute has not been settled amicably. Claimant hereby requests that, pursuant to Article 8 of the Agreement for the Promotion and Protection of Investments of November 24, 1993 between the United Kingdom of Great Britain and Northern Ireland and Uzbekistan ("Agreement"), and Article 3 of the Arbitration Rules of the United Nations Commission on International Trade Law adopted on December 15, 1976, as revised on December 6, 2010 ("UNCITRAL Arbitration Rules"), its dispute with Respondents be referred to arbitration under the UNCITRAL Arbitration Rules. The Uzbek Government's consent to the submission of this dispute to international arbitration is similarly found in Article 8 of the same Agreement.

III. THE PARTIES

A. Claimant:

14. The Claimant incorporated under the laws of England is:

Oxus Gold plc
52 Charles Street
London, W1J 5EU
United Kingdom

15. Claimant's legal representatives in this arbitration are:

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16. All communications concerning this matter should be directed to Claimant's counsel.

B. Respondents:

17. Respondents in this arbitration are the Republic of Uzbekistan ("Uzbekistan"), Goskomgeology and the NMMK (collectively "Respondents"). Formerly a member of the Union

of Soviet Socialist Republics, Uzbekistan is a sovereign State which declared its independence on August 31, 1991. This Notice of Arbitration has been sent to Respondents at the following address:

> His Excellency Sir Islam Abduganievich Karimov
> President of the Republic of Uzbekistan
> 43 Uzbekistanskaya Street
> Tashkent, Republic of Uzbekistan, 700163

IV. THE ARBITRATION AGREEMENT

18. Claimant submits the present dispute to arbitration under the UNCITRAL Arbitration Rules in accordance with Article 8(1) of the Agreement, which provides as follows:

> **Article 8**
> **Settlement of Disputes between an Investor and a Host State**
>
> (1) Disputes between a national or company of one Contracting party and the other Contracting Party concerning an obligation of the latter under this Agreement in relation to an investment of the former which have not been amicably settled shall, after a period of three months from written notification to a claim, be submitted to international arbitration if the national or company concerned so wishes.
>
> (2) Where the dispute is referred to international arbitration, the national or company and the Contracting party concerned in the dispute may agree to refer the dispute either to:
>
> (a) the International Centre for the Settlement of Investment Disputes (having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington DC on 18 March 1965[1] and the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings); or
>
> (b) the Court of Arbitration of the International Chamber of Commerce; or
>
> (c) an international arbitrator or *ad hoc* arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.[2]
>
> If after a period of three months from written notification of the claim there is no agreement to one of the above alternative procedures, the dispute shall at the request in writing of the national or company concerned be submitted to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as then in force. The parties to the dispute may agree in writing to modify these Rules.

[1] United Nations, *Treaty Series*, vol. 575, p. 159.
[2] *Ibid. Official Records of the General Assembly, Thirty-first Session, Supplement No.* 17 (A/31/17), p. 34.

19. Respondents' conduct described herein violates, among others, the following provisions of the Agreement with respect to Claimant's investment in Uzbekistan:

> Article 2 – Fair and Equitable Treatment; Full Protection and Security; prohibitions against Impairment by Unreasonable or Discriminatory Measures affecting the management, maintenance, use, enjoyment or disposal of an investment in Uzbekistan by a U.K. investor; and treatment no less favorable than Uzbekistan has agreed to provide to other U.K. investors;
>
> Article 3 – National Treatment and Most-Favored-Nation Treatment;
>
> Article 5 – Expropriation; and
>
> Article 11 – Treatment no Less Favorable than is accorded to Investments of Other U.K. nationals or companies Under Uzbek Law or International Law.

V. DESCRIPTION OF THE CLAIM

A. The Uzbek Government's Representations and Undertakings to Foreign Investors and the Regulatory Structure Established to Encourage Foreign Investment in Uzbekistan

20. Since the mid-1990s, Uzbekistan has repeatedly expressed a desire to attract foreign investment, as evidenced by, among other things, various legal and regulatory initiatives expressly intended to induce foreign investors to take up business activities in the country's mining sector. Indeed, in the course of conducting due diligence and evaluating the political and economic stability of Uzbekistan, Claimant relied upon various pre-existing legislative and regulatory guarantees and legal representations and undertakings by the Uzbek Government to foreign investors, before deciding to invest in mineral extraction operations at the Amantaytau deposits in the Kyzylkum region of the country ("Amantaytau") and at the Khandiza deposit in the Surkhandaria region ("Khandiza").

21. Legislative and regulatory guarantees of general application issued by the Uzbek Government included, ***inter alia***, the following:

a. The Agreement, which was signed by the President of Uzbekistan on November 24, 1993, came into force upon signing of the Agreement pursuant to Article 11. The first paragraph of the Agreement expressly states that the intent of the State parties was to "create favorable conditions for greater investment by nationals and companies of one State in the territory of the Other State." Further, the State parties expressly recognized that the substantive protections provided by the Agreement would be "conducive to the stimulation of individual business initiative." Additionally, Article 8 of the Agreement provides aggrieved investors access to investor-State dispute settlement mechanisms.

b. The Law on "Foreign Investments" and the Law on "Guarantees and Protection of the Rights of Foreign Investors," both of which were adopted on April 30, 1998, and the Law "On Investment Activity," dated December 24, 1998. These laws, amongst others, stipulated that foreign investments were to be insulated from nationalization and confiscation without the payment of compensation.

c. Decree UP-1467 concerning the "Additional Measures Stimulating the Establishment and Activity of Enterprises with Foreign Investment," issued by the President of Uzbekistan on May 31, 1996. This Decree granted additional privileges to enterprises with foreign capital participation specializing in the production of both export-oriented and import-substituting commodities.

d. The Foreign Investment Program, established pursuant to Decree UP-1647, provided, *inter alia*, that joint venture projects with a minimum foreign capital participation of 50% a seven-year absolute holiday from the payment of profit taxes, and thereafter a profit tax capped at 16%.

B. Claimant's Decision to Invest and Commence Mining Activity in Uzbekistan

22. At the invitation and encouragement of Respondents – and fully cognizant of the foregoing legal guarantees of general application, together with certain express assurances extended directly to Claimant and its Subsidiaries in the form of government resolutions – Claimant commenced commercial operations in Uzbekistan in 1997. Relying in good faith upon the existing legal framework, in addition to certain representations by Respondents as set out below, Claimant and its Subsidiaries have made investments in the form of tests, expert analysis, feasibility studies and financing agreements required by Respondents, currently estimated to be in excess of US$122 million.

23. Claimant pursued two overlapping yet distinct business operations in Uzbekistan. The first business activity related to Claimant's acquisition on August 31, 1999 of a 50% equity interest in the closed joint-stock company Amantaytau Goldfields A.O. ("AGF") through its wholly-owned subsidiary ORC, for purposes of developing the goldfields at Amantaytau (the "Amantaytau Project").

24. Claimant acquired its interest in AGF in reliance upon express assurances the Respondents provided its predecessor-in-interest, Lonrho plc. These assurances included, *inter alia*, the following legal measures specifically promulgated by Uzbekistan to induce and protect Claimant's investment:

a. Decree 477 concerning the "Formation of the Joint Venture AGF and on Matters Ensuring its Effective Functioning," which was adopted by the Cabinet on September 22, 1994. Decree 477 granted AGF the right to: (i) explore and develop the Amantaytau reserves for a period of 30 years; (ii) sell any gold, silver and other products obtained therefrom; and (iii) open and utilize an overseas bank account. Decree 477 also included a 10-year stabilization clause applicable to any changes in the tax law that might adversely affect the activities of AGF. It further granted AGF the right "to sell for freely convertible currency and at world prices gold, silver and other products obtained from mining the goldfields abroad as well as in Uzbekistan."

b. Decree 127-20 entitled "On Additional Measures to Ensure the Effective Functioning of the AGF Joint Venture", adopted by the Cabinet on March 30, 1996, which exempted AGF from, *inter alia*, the payment of value-added tax ("VAT") on materials, works and services provided by AGF until the commencement of activities relating to Phase II of the Amantaytau Project.

25. Claimant's second distinct business operation in Uzbekistan involved the acquisition of an interest in the Khandiza deposit (the "Khandiza Project") through its subsidiary Marakand. Unlike the Amantaytau Project, which required Claimant's subsidiary to enter into a joint venture agreement with certain Uzbek shareholders, the Uzbek Government initially granted Marakand the exclusive right to develop the Khandiza Project on the basis of either a production sharing or concession agreement with the Uzbek Government.

1. The Khandiza Project:

26. The Khandiza site is located in the Surkhandaria region situated in south-east Uzbekistan. Khandiza is a classic volcanogenic sulphide deposit containing sizeable copper, lead, gold, silver and zinc deposits.

27. In 1996, ORC had visited the Khandiza site, submitted a development proposal, and on December 14, 1996 entered into a Primary Exploration Agreement ("PEA") with Goskomgeology. Pursuant to the PEA, ORC and Goskomgeology agreed that they would jointly develop the Khandiza deposit and carry out geological exploration in southeast Uzbekistan.

28. In or about July 2002, the PEA was assigned to Oxus Mining Limited, a subsidiary of Claimant, which subsequently became Marakand. On October 17, 2002, the Cabinet issued Decree 359 entitled "On the Development of the Polymetallic Deposit Khandiza," pursuant to which Claimant was granted the exclusive right to negotiate with the Uzbek Government to develop the Khandiza deposit under a concession or production sharing agreement.

29. In the fall of 2002, the Chairman of Goskomgeology and representatives of State-owned Almalyk Mining and Metallurgical Combinat ("AMMC") approached Marakand about developing the Khandiza Project. AMMC is a State-run metallurgical enterprise which amongst other things refines precious metals in Uzbekistan. Accordingly, Marakand representatives visited the Surkhandaria region with representatives of Goskomgeology and AMMC, and during that visit the Regional Governor of Surkhandaria expressed interest in the Khandiza Project and gave assurances that he would assist with it.

30. In October 2003, Marakand obtained GBP 4 million in private placement financing from the Royal Bank of Canada to conclude the Khandiza feasibility study, which Marakand submitted to Goskomgeology on October 11, 2004, together with an economic model for the development of Khandiza, as required by Decree 359. Accordingly, Deputy Prime Minister Sultanov forwarded instructions to the Cabinet on November 20, 2004, requesting administrative approvals for the Khandiza Project by February 1, 2005. In anticipation of said approvals, Marakand submitted a draft concession contract to the Uzbek Government, and obtained assurances from the Nedbank Financial Group based in South Africa that it would provide financing for the development of the Khandiza Project.

31. However, despite the provisions of Decree 359, the Cabinet failed to grant Marakand the required administrative approvals for the Khandiza Project. On May 4, 2005, Claimant learned that the Cabinet had instead issued a resolution requiring that Marakand agree to a joint venture agreement as a condition for developing the Khandiza Project. Prime Minister Sultanov refused Claimant's offer of a 25% stake, demanding instead a 50% interest, assuring Claimant that, in exchange, Marakand would receive all pending administrative approvals on an expedited basis. Marakand was forced to comply in order to protect its already substantial investment in the Khandiza Project.

32. In accordance with these unlawful demands by the Uzbek Government, Marakand revised the feasibility study and economic model for the Khandiza Project, which projected far less profit for Marakand than what Claimant had been guaranteed under Decree 359.

33. Subsequently, on June 26, 2006, Marakand attended a meeting convened by Goskomgeology. During that meeting, Marakand was informed that the Uzbek Government had approved a resolution granting the State entity AMMC the exclusive right to mine all of the Khandiza reserves. When Marakand objected that it had committed substantial investment towards the development of the Khandiza Project on behalf of its shareholders, and that the Royal Bank of Canada had extended financing to Marakand, one Uzbek Government official present at the meeting cautioned Marakand to "think carefully and not say the wrong thing".

34. On August 10, 2006, the President of Uzbekistan issued Decree PP-442 entitled "On the Effective Utilization of Mineral and Raw Materials of Polymetallic Ores of the Khandiza and Uch-Kulach Deposits," which unilaterally cancelled Decree 359. Marakand was required to transfer all of its interest in the Khandiza reserves to AMMC. As of that time, Claimant had spent in excess of US$10 million in connection with developing the Khandiza Project – including but not limited to feasibility studies, environmental studies and underground drilling and development – none of which has ever been reimbursed to Claimant by the Uzbek Government or anyone else. Said actions contravene protections contained in the Agreement and in Uzbek law and international law which preclude expropriation without the payment of adequate compensation.

2. The Amantaytau Project:

35. The Amantaytau site is considered one of the world's largest undeveloped gold deposits. AGF's right to develop the Amantaytau Project was granted in the early 1990s, pursuant to a joint venture agreement between a foreign investor and Uzbek Government entities. ORC acquired its 50% interest in AGF from its predecessor-in-interest, Lonrho plc, for US$4.3 million on August 31, 1999.

36. In addition to ORC, the other AGF shareholders are Goskomgeology (40%) and NMMK (10%). Both Goskomgeology and NMMK are controlled entirely by the Uzbek Government and exercise no function whatsoever independent of the Uzbek Government.

37. Goskomgeology was established by Decree 142 entitled "Establishment of the State Committee of Uzbek Soviet Republic on Geology and Mineral Resources," issued by the President on February 2, 1991. It is a governmental entity that reports directly to the Cabinet. Similarly, NMMK is a State-owned and operated mining enterprise that reports directly to the Cabinet and is charged with managing the ownership, use and disposal of State property. Additionally, pursuant to Decree 266 the Uzbek Ministry of Finance obtained certain dividend rights in relation to AGF.

38. ORC's involvement at the Amantaytau site was based on a 1999 feasibility study that contemplated two phases. Phase I involved development of oxide deposits of Amantaytau Centralny, Uzunbulak and Vysokovoltnoye by open-pit mine and heap-leach processing ("Open-Pit Project"). AGF employed more than 650 local workers for the Open-Pit Project, which had an estimated life of 10 years.

39. Having commenced Phase I, AGF was also permitted to develop Phase II, which involved an underground mine to harness sulphide deposits found in Amantaytau Centralny and Amantaytau

Severny ("Underground Project"). The Underground Project had a planned extraction rate of 500,000 tons of ore per year, with an initial 10-year estimated duration.

40. The Underground Project was to provide Claimant with significantly higher returns on investment and, accordingly, it always represented Claimant's primary interest and consideration at the Amantaytau Project. According to estimates, an average of 190,000 ounces of gold per year could be extracted from the Underground Project. As explained below, the Uzbek Government took various measures that unlawfully prevented ORC from pursuing that project to completion. Following the approval of ORC's investment in AGF, Oxus received various legislative assurances and contractual guarantees from the Uzbek Government, including, *inter alia*, the following:

a. Decree 266 entitled "Additional Measures to Organize the Operation of the AGF JV," adopted by the Cabinet on July 11, 2000, authorized Goskomgeology to issue appropriate licenses to AGF. Decree 266 also reiterated that all rights, privileges and beneficial taxation terms guaranteed to AGF by previous government measures *would remain* in effect.

b. Decree 475, adopted by the Cabinet on December 12, 2000, confirmed that AGF would continue to enjoy the benefits of Decree UP-1467, issued (as noted earlier) by the President in 1996. Decree 475 also recognized ORC as a *bona fide* foreign partner with a minimum 50% foreign ownership interest in a joint venture project.

c. Regulation 76 entitled "Taxation, Accounting and Reporting for the AGF JV", issued by the Uzbek Ministry of Finance and the State Tax Committee, reiterated AGF's exemption from (i) the payment of VAT with respect to imported materials and equipment, works and services utilized by contractors or subcontractors until the commencement of Phase II activities; and (ii) the payment of income tax for five years from the date of the sale of the first lot of production. Regulation 76 had a tax stabilization clause providing that if changes in the Uzbek tax regime adversely affected AGF's operations, all regulatory acts existing as of June 1, 2000, including Regulation 76, would continue to apply to AGF until July 1, 2010.

d. The AGF joint venture agreement dated 23 November 1993 (as amended) and constitutional documents of AGF dated 24 November 1993 (as amended) ("Charter") granted rights that subsequently were provided for under the above legislation. Specifically, the Charter affirmed the rights of AGF under, *inter alia*, Decrees 477, 266 and 127-20. Additionally, these decrees accorded the following rights to Claimant under the joint venture:

    i. all the privileges, rights and advantages of Uzbek law and international treaties of Uzbekistan;

    ii. until the completion of commercial production of all its existing and newly discovered deposits to undertake management and render services to AGF, including the sale outside Uzbekistan of all gold produced by AGF in accordance with the usual practice of the international gold mining industry;

iii. to participate in hedging with any kind of currency, exchange rate or commodity; and

iv. the right to operate foreign currency bank accounts inshore and offshore, and to keep and use foreign currency funds offshore in order to meet foreign currency obligations.

C. Respondent's Wrongful Conduct

1. Arbitrary Demand for a Special Dividend:

41. Claimant's mining interest in Uzbekistan was supported by a project finance facility agreement between AGF and Standard Bank Limited in April 2003 (the "Project Finance Agreement"). Said agreement was approved by all AGF shareholders – including Goskomgeology and NMMK – and was duly registered with the Central Bank of Uzbekistan.

42. Shortly after AGF commenced gold production in 2004, the Uzbek Government, through its Ministry of Finance, engaged in a form of financial extortion by refusing to register AGF's Project Financing Agreement with Standard Bank unless Oxus paid an exorbitant penalty to the Uzbek Government. Specifically, the Ministry of Finance falsely claimed that it was unaware of the existence of a hedging provision in the Project Finance Agreement, despite the fact that hedging clauses are standard in virtually every project finance agreement involving commodities. Moreover, hedging requirements are not prohibited by Uzbek law and the Ministry of Finance had itself undertaken hedging in the past. The Ministry of Finance informed Claimant that the Uzbek Ministry of Foreign Economic Relations Investments and Trade would withhold registration of the Project Finance Agreement unless AGF agreed to pay 50% of the difference between the world gold price and the hedged price of gold, thereby effectively banning AGF from exporting gold. To insulate the Uzbek Government from the inevitable fluctuations in the global price of gold, the Ministry of Finance demanded that Oxus assume approximately $10 million in debt to cover all the risks associated with the hedging requirement.

43. The Ministry of Finance's demand that Oxus compensate Uzbekistan in connection with the hedging agreement had no basis in law, and was made after AGF had drawn down on the project finance agreement, built the mine, and commenced production. Said demand was wrongful and an abuse of sovereign privileges, designed to interfere with AGF's ability to obtain financing. Further, said demand was designed to, and indeed did, undermine Oxus' ongoing financial viability and impaired its liquidity. Additionally, the negotiations that followed between Oxus and the Ministry of Finance were not authentic, fair or equitable, and lacked the give-and-take of a *bona fide* negotiation. The Ministry of Financed focused exclusively upon the penalty it had proposed, and refused to consider the legal and equitable arguments advanced by Oxus. Consequently, AGF was forced to comply with the illegal unilateral demand by the Ministry of Finance.

44. Consequently, on July 12, 2004, Oxus was coerced into signing what amounts to an invalid contract of adhesion, which provided that AGF would be permitted to export gold – an activity to which it had always been entitled, pursuant to Uzbek law – upon making a payment of US$10 million to Uzbekistan (the "Contract of Adhesion").

45. In late 2010, the Uzbek Government attempted to enforce this coerced debt against Oxus. The Ministry of Finance applied to the Tashkent Commercial Court, which complied with the Ministry of Finance's request by entering a judgment against Oxus without permitting it to challenge the Ministry of Finance's demand, assert a defense, or even review the record, all in

violation of Claimant's due process rights. Uzbekistan is now attempting to enforce this illegal and improper Uzbek judgment in the English courts, in furtherance of its wrongful campaign against Claimant. Such conduct constitutes an abuse of process.

2. Revocation of Tax Exemption and Initiation of Improper State Audit:

46. In 2006, the Uzbek Government stripped Claimant of various guarantees and immunities against the imposition of taxes. Decree 133 "On the Introduction of Amendments and Consideration Null and Void, of Certain Resolutions of the Government of Uzbekistan (Decree 74)," issued by the Cabinet on May 1, 2006, abolished as of June 1, 2006 all privileges on the payment of taxes granted in earlier government resolutions. Further, Decree "On Amendments and Repeal of Certain Decisions of the Government of Uzbekistan (Decree 133 and Decree 74)," issued by the Cabinet on July 7, 2006, invalidated any privileges granted to Claimant under Decree 477 and Decree 266.

47. Respondent's revocation of the tax protections it had previously guaranteed to Claimant imposed an enormous unanticipated economic burden on Claimant. In addition, Respondents initiated an extensive and onerous tax, customs and regulatory compliance audit against AGF, leading to the assessment of additional taxes, fines, customs duties and penalties. A government audit report issued by Respondents on August 18, 2006 asserted that AGF owed the Uzbek Government approximately US$225 million.

48. The majority of said US$225 million sum constituted a 100% penalty on lawful transfers by AGF to foreign currency bank accounts located outside Uzbekistan, which were expressly permitted under the terms of AGF's joint venture agreements. Indeed, the joint venture agreements grant AGF the right to "operate foreign currency bank accounts inshore and offshore, and to keep and use foreign currency funds offshore in order to meet foreign currency obligations." Decree 477 expressly acknowledged AGF's right to operate overseas bank accounts and "to sell for freely convertible currency and at world prices gold, silver and other products obtained from mining."

49. The assessment of additional taxes and customs duties arising from the audit contravened other guarantees the Uzbek Government had extended to the Claimant. As noted above, Decree 127-20, adopted by the Cabinet on March 30, 1996, exempted AGF, *inter alia*, from the payment of VAT on materials, works and services provided prior to the commencement of activities relating to Phase II of the Amantaytau Project.

50. Subsequently, much of the US$225 million in taxes, duties, fines and penalties assessed against AGF were rejected by the Uzbek courts. Given that the Uzbek courts act at the behest of the executive branch, Oxus can only assume that the decision by the Navoi Regional Economic Court and the Tashkent Supreme Court to refuse to uphold most of the taxes, duties, fines and penalties levied against AGF stemmed from an ownership interest Zeromax GmbH acquired in Oxus in November 2006. As a Swiss-registered company, Zeromax GmbH never disclosed its real ownership. While formally owned by an Uzbek citizen identified as Mirodil Jalalov, it is widely speculated that the elder daughter of President Karimov of Uzbekistan, Gulnara Karimova, represented the majority shareholder in Zeromax GmbH.

51. While the unlawful fines, taxes and penalties were ultimately dismissed by the Uzbek courts, the audit crippled AGF's administrative capabilities for approximately nine months. As Claimant noted in its Annual Report in the year following the audit, "[t]he disruptions caused by the state audit inevitably consumed significant management time and represented a major distraction from

efforts to ensure the efficient economic operation of the AGF oxide plant, the Vysokovoltnoye silver-gold heap-leach project and the further development of the underground sulphides."

3. Interference with Silver Refining:

52. In 2007, Respondent's campaign of wrongful conduct against Claimant continued in the form of an arbitrary prohibition against exporting crude silver (containing residual amounts of gold) to be refined outside Uzbekistan, even though the State-run refinery was unable to process AGF's volume of silver output. This arbitrary prohibition by the Uzbek Government severely impaired the profitability of Claimant's operations for approximately two years. All facilities for processing and refining crude silver inside Uzbekistan are operated by a single State-owned entity, AMMC. In December 2007, AMMC announced that it lacked the production capacity to refine the volume of silver produced by AGF. Nonetheless, the Uzbek Government continued to refuse to lift its arbitrary restriction on Claimant's ability to export crude silver for refining abroad. Consequently, AGF was forced to store – rather than process and sell – an increasing stockpile of crude silver, creating a major cash flow and financing burden for Claimant.

53. In an attempt to overcome this problem, Oxus proposed to build its own silver refinery inside Uzbekistan. Claimant submitted a proposal to Goskomgeology, which approved the plan. Indeed, in October 2008, Goskomgeology's Chairman wrote to the General Director of AGF and actively encouraged AGF to accelerate its plans to construct a silver refinery. In reliance on Respondent's approval, Claimant purchased the necessary equipment and materials. However, despite unanimous approval by AGF's shareholders to construct a refinery, Goskomgeology arbitrarily refused to approve the minutes of the AGF shareholders meeting, thereby preventing Claimant from carrying out the construction. This action caused additional monetary injury to Claimant, including *inter alia*, exacerbating Claimant's existing financial difficulties.

4. Modification of Tax Code:

54. On January 1, 2009, without any advance notice to Claimant, the Uzbek Government modified the Uzbek Tax Code by changing the VAT regime for exporters of precious metals from "zero rated" to "exempt". This significantly increased AGF's tax liability and impeded its ability to recover VAT input credits. Claimant's repeated requests to offset its VAT input credits against the US$10 million special dividend liability imposed by the Ministry of Finance were arbitrarily denied.

55. These regulatory modifications specifically and unlawfully targeted and discriminated against Claimant, in that AGF was the only entity in Uzbekistan to be affected by them. This conduct by the Uzbek Government caused additional monetary injury to Claimant, thereby making it more difficult and less profitable for Claimant to operate its investment.

5. Refusal to Issue or Renew Licenses – Phase I:

56. Respondents have arbitrarily and without justification failed to issue and/or renew certain licenses relevant to AGF's operations in Uzbekistan. For example, Respondents failed to renew AGF's mining activity license for Phase I upon its expiration in November 2006, forcing AGF instead to rely on a temporary letter of authorization from Respondents purporting to grant AGF permission to continue its mining activities in the country. Indeed, although all of the relevant ministries approved AGF's 2007 application for a new mining activity license, a special licensing commission of the Cabinet arbitrarily withheld its consent – and continues to do so – based on the false assertion that AGF has ceased mining activities. Thus, Respondents have deprived

Claimant of the stability and security of a formal license, forcing AGF instead to operate under the authority of a temporary letter of authorization.

57. Further, Respondents revised the administrative procedures for AGF to obtain permits to operate individual mines. Where Respondents had previously granted AGF a general permit to operate all of the mines in the Open-Pit Project at the Amantaytau site, Respondents arbitrarily and without justification altered its procedures and required AGF to seek separate licenses for each mine in the Open-Pit Project, including the fiscally onerous requirement of a separate feasibility study for each mine. Additionally, Respondents arbitrarily refused to approve – on erroneous and inconsistent grounds – various feasibility studies submitted by AGF under the new procedures.

58. Additionally, Respondents arbitrarily and without justification failed to renew AGF's cyanide license.

59. Respondents' conduct described above has unreasonably and discriminatorily interfered with Claimant's ability to obtain financing by impeding AGF's ability to prepare the kind of feasibility study acceptable to banks and other financial institutions. Further, Respondents' conduct has injured Claimant by, *inter alia*, forcing AGF to cancel all exploration programs, notwithstanding significant expenditures and other commitments by AGF undertaken to support those programs.

6. Interference with Financing:

60. In 2009, Oxus sought a substantial infusion of equity and debt financing to mitigate the adverse financial challenges caused by Respondents' wrongful conduct. Obtaining financing was critical to the viability of Claimant's ongoing operations in Uzbekistan to undertake Phase II by expanding its open-pit heap-leach operations, constructing the Underground Project and undertaking an aggressive exploration program within the AGF license area.

61. Claimant entered into discussions with CITIC Construction Co., Ltd ("CITIC"), a Chinese equity investment management fund, regarding a potential CITIC investment of US$185 million. On September 21, 2009, Claimant notified both Goskomgeology and NMMK of said proposed financing, and neither Goskomgeology nor NMMK objected. In fact NMMK countersigned the letter sent by Claimant to NMMK and Goskomgeology. Goskomgeology sent a letter to Oxus confirming that the consent of Uzbek shareholders for the restructuring of a foreign shareholder was not required.

62. On January 6, 2010, Claimant entered into various agreements with CITIC pursuant to which the latter would provide up to US$185 million in equity and debt financing. Said agreements were conditioned upon: (a) CITIC's ability to obtain all necessary administrative approvals in China; (b) AGF's ability to obtain all outstanding licenses from Respondents; and (c) execution of a foreign investment agreement between CITIC, AGF, and several organs of the Uzbek Government.

63. To facilitate the process, in May 2010 Claimant submitted a draft foreign investment agreement to the relevant governmental organs of Uzbekistan. Additionally, Claimant continued to attempt to secure AGF's outstanding licenses from Respondents. The Uzbek Government, however, arbitrarily and without justification withheld its approval of the draft foreign investment agreement, while continuing to obstruct Claimant's efforts to remedy AGF's outstanding licensing issues.

64. The Uzbek Government's intentional interference with the satisfaction of these conditions precedent prevented Oxus from obtaining CITIC financing. Despite such wrongful conduct, CITIC remained willing to invest. However, in December 2010 the Uzbek Government took the further step of giving indications that Chinese investments would not be welcomed in Uzbekistan, thereby causing CITIC to withdraw its financing offer.

7. Failure to Issue Licenses – Phase II:

65. Respondents also improperly failed to issue licenses for Phase II of the Amantaytau Project development. In December 2007, all relevant government organs of Uzbekistan approved a preliminary feasibility study for the Underground Project. However, the Ministry of Foreign Economic Relations Investments and Trade arbitrarily withheld its approval of the final feasibility study submitted for approval in January 2009, on the purported basis that the tendering of project financing and signing contracts for major equipment should occur prior to the approval of the feasibility study.

66. Further, Respondents have arbitrarily interfered with AGF's exploration licenses for Phase II. Upon expiration in August 2007 of the exploration license that had been issued to AGF's predecessor in the 1990s, Respondents refused to issue the standard 5-year exploration license to AGF, opting instead for a license covering only a 3-year term. Additionally, similar to what occurred in Phase I, AGF's application for an exploration license covering the entire Phase II project was rejected in favor of fiscally onerous individual license for each mine. These arbitrary and unreasonable restrictions by Respondents have so severely interfered with Claimant's ability to operate its investment in Uzbekistan that they have destroyed the value of its investment.

67. On the basis of verbal permission from the Chairman of Goskomgeology to carry on exploration until the end of 2010 pending issuance of the new license, AGF continued its exploration work. However, the license was never issued. Further, on the basis of these verbal assurances, Claimant bought and financed a drill rig in 2010 at a cost of US$ 2 million, which it leased to AGF for its exploration work. Claimant has since requested on multiple occasions the return of the drill rig, but it has been misappropriated by the Respondents, who refuse to return the rig.

68. Similarly, as noted above, Respondents refused to renew AGF's cyanide license – required for extraction of gold from ore deposits – following its expiration on September 25, 2010. Instead, Respondents have issued simple letters authorizing AGF to use cyanide for three months at a time, with the most recent such letter expiring in February 2011. Respondents have provided no explanation or justification for its refusal to renew AGF's cyanide license.

8. Wrongful Attempts to Liquidate AGF:

69. Respondents have threatened and attempted to force AGF into liquidation, thereby denying Claimant the benefit of its rights and investment in Uzbekistan. Beginning in 2010, with assistance from Goskomgeology and NMMK, the Uzbek Government demanded that Oxus to declare the voluntary liquidation of AGF. When Oxus refused, the Uzbek Government attempted to coerce compliance with its demand. The Uzbek Government's first step was to instruct the Ministry of Finance to bring an application before the Commercial Court of the City of Tashkent – without properly notifying Oxus – for the immediate payment, in full, of the special dividend penalty into which Oxus had been coerced in 2004, which court proceeding (the "Special Dividend Proceeding") was commenced on October 18, 2010.

70. Prior to commencement of the Special Dividend Proceeding, Oxus had made a partial payment of US$ 1 million, but had been unable – due to the Uzbek Government's own campaign to impair Oxus' liquidity – to satisfy the full amount of the special dividend imposed by the Uzbek Government. Throughout 2010, Oxus made numerous requests for a meeting with the Ministry of Finance to discuss a payment schedule, all of which were ignored by the Uzbek Government. Consequently, Oxus was unable to come to agreement with the Ministry of Finance regarding set-offs for various sums owed by the Uzbek Government, nor did the Ministry of Finance seriously consider, or even respond to, various potential alternatives proposed by Oxus to satisfy the alleged debt, such as the transfer of stockpiled metals to the Ministry of Finance, the waiver of shareholder loans in favor of Oxus to certain Uzbek Government entities, the offset of VAT owed to AGF, or some payment from proceeds of an investment by CITIC. Thus, at the time the Uzbek Government commenced the Special Dividend Proceeding, Oxus was operating under the legitimate expectation – as required under the Contract of Adhesion itself – that the Uzbek Government would enter into negotiations with Oxus concerning a payment schedule for the special dividend.

71. The Special Dividend Proceeding constituted an abuse of process and a violation of Oxus' due process rights. Oxus was notified of the pendency of the Special Dividend Proceeding only days prior to the hearing date in the Tashkent Commercial Court, and Oxus' request for an adjournment to prepare properly for the proceedings was denied. Further, Oxus was denied an adequate opportunity to review the Ministry of Finance's submissions, and was precluded from challenging the credibility of the evidence or the truthfulness of the assertions made by the Ministry of Finance. The Tashkent Commercial Court summarily rejected Oxus' substantive argument – which was fully supported by AGF, participating as a third-party in the proceedings – that express provisions in the Contract of Adhesion required the Ministry of Finance to negotiate with Oxus in good faith prior to referring the matter to the Uzbek courts.

72. All of Oxus' efforts to reverse the decision of the Tashkent Commercial Court were unsuccessful. Despite the significant procedural irregularities in the Tashkent Commercial Court, the Court of Appeal concluded on December 2, 2010 that Oxus had failed to demonstrate a valid basis for appeal. In addition to contravening various provisions of Uzbek law, the decision of the Tashkent Commercial Court and the subsequent dismissal by the Court of Appeal did not comport with minimum international standards of justice or basic concepts of natural justice. Thus, Oxus was not afforded a fair trial in Uzbekistan.

9. Heavy-Handed Audit and Coercion of AGF's Local Employees:

73. On February 16, 2011, Respondents notified AGF that various organs of the Uzbek Government (the "Commission") would commence an audit of AGF. Said notice indicated that the audit would take place over the course of one month, commencing on February 20, 2011, and that AGF staff would be arrested if they failed to comply with the Commission's instructions. This audit was initiated arbitrarily and improperly by Respondents in order to interfere unreasonably with Claimant's operations in Uzbekistan.

74. Indeed, the Commission's audit forced AGF to completely cease its operations in Uzbekistan. Further, fundamental operational information and financial documentation have been withheld from Claimant, and AGF staff remaining in Uzbekistan have been barred from communicating with Claimant.

75. Respondents have withheld the official results of the audit from Claimant, thereby denying Claimant due process and the ability to respond or defend itself.

10. Arbitrary Detention and Wrongful Conviction of Senior AGF Employee:

76. The Uzbek Government's escalating attack on Oxus has included the arbitrary and improper arrest, detention and incarceration of a senior Oxus employee. Specifically, on March, 5, 2011, Mr. Saidkul Ashurov, AGF's chief metallurgist, was arrested at the Uzbek border, as he was traveling to his native Tajikistan. During his pretrial detention, Mr. Ashurov was denied access to counsel, held *incommunicado*, and deprived of critical adequate medical treatment for a serious existing medical condition. On August 9, 2011, an Uzbek Military Court convicted Mr. Ashurov of espionage without any compelling evidence of wrongdoing under Uzbek law, and sentenced him to twelve years of incarceration. The trial did not meet international standards of due process in that, *inter alia*, evidence submitted in support of Mr. Ashurov was rejected by the court without a proper legal basis, the purported evidence submitted by the prosecution was inadequate to support any charge of wrongdoing, and witnesses were compelled to testify falsely against Mr. Ashurov under threat of violence.

77. The basis for the false charge of espionage was a computer flash drive found in Mr. Ashurov's possession that allegedly contained State secrets. In reality, the flash drive contained no State secrets, but rather publicly available information concerning AGF's commercial operations. The sole "experts" permitted to review the contents of the flash drive were employed by the Uzbek Government. Mr. Ashurov was not given the opportunity to employ his own independent experts to examine the flash drive, and his counsel was denied the right to cross-examine the Uzbek Government's experts. Thus, the Uzbek courts relied exclusively on the testimony of non-independent "experts" concerning the contents of the flash drive, while denying Mr. Ashurov the right to challenge their testimony, all in violation of Mr. Ashurov's due process rights.

78. After Mr. Ashurov's arrest, all senior Oxus staff fled Uzbekistan due to justifiable concerns over their safety, while those AGF employees who remain in the country have been too afraid to communicate with Oxus. Thus, the Uzbek Government's arbitrary detention, prosecution and incarceration of Mr. Ashurov has had a chilling effect on Oxus' staff, further undermining Claimant's ability to conduct its business operations in Uzbekistan.

11. Frivolous and Vexatious Legal Proceedings:

79. Following notifications made by Claimant after March 2011 to commence international arbitration proceedings, the Uzbek Government has undertaken a variety of additional measures to frustrate and delay Claimant's rights.

80. It is a widely-acknowledged reality that the Uzbek courts act at the behest of the Uzbek Executive, notwithstanding the ostensible independence of the judiciary established under the Uzbek constitution. Under the law, the President appoints all judges for renewable five-year terms. As noted in a 2011 United States Department of State human rights report, "[i]n practice President Islam Karimov and the centralized executive branch dominated political life and exercised nearly complete control over the other branches".[3] Numerous other sources also cite the influence of the Uzbek Government over the country's judiciary. According to the World Bank, for example, rule of law in Uzbekistan is among the worst in the world.[4] Similarly, the

[3] http://www.state.gov/documents/organization/160482.pdf.
[4] World Bank World Wide Governance Indicators, 2009.

Economist Intelligence Unit ranked Uzbekistan near the bottom of world rankings in its democracy index, above only Chad, Turkmenistan and North Korea.[5]

81. The Uzbek Government has taken advantage of the waiting period for good faith negotiations prescribed in the Agreement, and has commenced a collateral attack through the English courts in an effort to derail international arbitration proceedings. Specifically, on July 21, 2001, the Uzbek Government commenced proceedings in the English High Courts to enforce the Uzbek judgment it improperly obtained from compliant Uzbek courts in late 2010, in connection with the coerced Contract of Adhesion. The decision by the Ministry of Finance to commence enforcement legal proceedings in the United Kingdom represents a clear abuse of process.

82. Notification delivered by Oxus to the Uzbek Government to commence these international arbitration proceedings identified the Contract of Adhesion as one of the several bases for its investment claim, as the Contract of Adhesion falls within the scope of an investment dispute. Article 2 of the Agreement provides in relevant part: "Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party." An international arbitration tribunal will consider the factual context within which Oxus was coerced into agreeing to pay the special dividend penalty, together with the various consequences that flow from the conduct of the parties since 2004. Further, an international arbitration tribunal will examine the substance of the Contract of Adhesion, not merely its form. Additionally, an international arbitration tribunal may consider whether the Ministry of Finance should be estopped from enforcing the Contract of Adhesion, and whether the Special Dividend Proceedings were tainted by procedural irregularities.

83. Additionally, on July 31, 2011 the Navoi Regional Court convened a court hearing to consider a claim brought against Oxus by the Zarafshan City Tax Committee. The Navoi Regional Court proceeded with the legal proceedings without satisfying itself that the Tax Committee had properly notified Oxus of its claim. Indeed, Oxus first learned about the claim several days after the actual hearing on August 3, 2011 when it received a belated copy of summon No. 21-1103/7987 issued by the Navoi Court bearing the date June 31, 2011. Further, Oxus was left to speculate about the basis of the underlying claim, in that it has never received notice of the charges brought by the Zarafshan City Tax Committee. Such circumvention of fundamental rules of Uzbek civil procedure underscores the deliberateness of the Navoi Court in expediting the proceedings so as to ensure that the allegations of the Zarafshan City Tax Committee were not contested by Oxus.

VI. VIOLATIONS OF APPLICABLE LAW

A. Respondents' Expropriation of Claimant's Investment in Violation of Article 5 of the Agreement

84. Article 5 of the Agreement provides as follows:

> **ARTICLE 5**
> **Expropriation**
>
> (1) Investments of nationals or companies of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter

[5] The Economist Intelligence Unit's Index of Democracy 2010

> referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Party on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial rate until the date of payment, shall be made without delay, be effectively realizable and be freely transferable. The national or company affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.
>
> (2) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such nationals or companies of the other Contracting Party who are owners of those shares.

85. Through the conduct and actions described above, the Uzbek Government has expropriated the Khandiza Project. Uzbekistan's expropriation was not carried out for any legitimate public purpose, was discriminatory, and was not undertaken in accordance with the due process of law. In the event of an expropriation, the expropriating State must indemnify the aggrieved party promptly, adequately and effectively. Five years have passed since Uzbekistan expropriated the Khandiza Project. Although the Uzbek Government has implied – through its representatives in attendance at the meeting with Marakand on June 26, 2006 – that Claimant would be compensated for its investments in the Khandiza Project, the Uzbek Government has yet to compensate Claimant as required under the Agreement, Uzbek law and international law.

86. Respondents also continue to deprive Claimant of the enjoyment of rights from its investments in the Amantaytau site. As described above, the combined effect of Respondents' actions and conduct have had a devastating impact on the Amantaytau Project. If not varied or rescinded, Respondents' actions and conduct will soon result in an indirect expropriation.

B. Respondents' Violation of the Fair and Equitable Treatment and Non-Impairment Obligations of Article 2(2) of the Agreement

87. Respondents' ongoing actions and conduct constitute a violation of the "fair and equitable" treatment obligation in clear contravention of Article 2 of the Agreement. Article 2 provides as follows:

> **ARTICLE 2**
> **Promotion and Protection of Investment**
>
> (1) Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other Contracting Party to invest in its territory, and, subject to its right to exercise powers conferred by its laws, shall admit such capital.

> (2) Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

88. In particular, Respondents' refusal to implement the promised tax and VAT regime, Respondents' unilateral modifications of the tax regime, and Respondents' extortionate imposition of the hedging liability constitute breaches of Article 2 of the Agreement.

89. The feasibility study of Amantaytau projected that AGF would accrue an aggregate of US$13.9 million in tax liability to the Uzbek Government. However, as a result of the Uzbek Government's arbitrary revocation of its tax privileges, AGF has been forced to pay taxes and duties of US$53.1 million to date. Consequently, Claimant has endured a tax burden that exceeds earlier estimates by as much as US$31.6 million.

90. Claimant's investment has been materially impaired by Respondents' arbitrary and unreasonable imposition of the various administrative and regulatory restrictions set out above, including, *inter alia*, interfering with Claimant's ability to secure financing, barring AGF from exporting raw silver, preventing AGF from using its foreign bank accounts, and withholding permits and licenses. Additionally, Claimant's investment has been materially impaired by Respondents' more recent misconduct set out above, which includes, *inter alia*, *its* attempts to forcibly liquidate AGF by resorting to the Tashkent Commercial Court, and the summary dismissal of the Claimant's leave to appeal by the Court of Appeal, the implementation of an unjustified and unreasonable audit to cripple AGF in 2011, its arrest and arbitrary conviction of AGF's Chief Metallurgist on fabricated charges, and the recent initiation of frivolous and vexatious legal proceedings, all violate Article 2 of the Agreement.

C. Respondents' Failure to Provide Full Protection and Security under Article 2(2) of the Agreement

91. Respondents' actions and conduct described above constitute a failure to fulfill the Uzbek Government's promise and obligation – as set out in Article 2(2) of the Agreement – to provide full protection and security to Claimant and its Subsidiaries. Said actions and conduct include, *inter alia*, the initiation of a comprehensive State audit in 2006 under the supervision of the Chief State Tax Inspector, and the carrying out of a highly onerous and intrusive tax audit by a heavy handed Commission in 2011, violate due process guarantees to which Oxus is entitled. In particular, the results of the 2011 Commission's audit have to this day been withheld from Oxus.

92. Additionally, the "full protection and security" clause contained in Article 2(2) of the Agreement guarantees Claimant's investment legal and economic security. The wrongful and unreasonable actions and conduct of Respondents have impeded the operations of Claimant and its Subsidiaries – including, *inter alia*, interfering with attempts to arrange financing and the ongoing financial management and operation of Claimant and its Subsidiaries – all in violation of the rights guaranteed to Claimant under Article 2(2) of the Agreement.

93. Respondents' above-mentioned measures, including repeated changes to regulations pertaining to taxes, VAT and customs duties, as best illustrated in changes to the Uzbek Tax Code in 2009, represent significant breaches to the full security and protection obligation owed to Claimant under the Agreement, Uzbek law and international law. Such changes contravened stabilization guarantees Uzbekistan expressly provided Oxus to induce it to invest and undertake mining operations in Uzbekistan.

D. Respondents' Actions and Conduct Constitute a Violation of the National Treatment Obligation under Article 3 of the Agreement

94. Article 3 of the Agreement provides as follows:

> **Article 3**
> **National Treatment and Most-Favoured-Nation Provisions**
>
> (1) Neither Contracting Party shall in its territory subject investments or returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own nationals or companies or investments or returns of nationals or companies of any third State.
>
> (2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own nationals or companies or to nationals or companies of any third State.
>
> (3) For the avoidance of doubt it is confirmed that the treatment provided for in paragraphs (1) and (2) above shall apply to the provisions of Articles 1 to 11 of this Agreement.

95. Uzbekistan has failed to treat Claimant's investments as favorably as it treats domestic investors and investments in like circumstances. As set forth above, Claimant has suffered damages as a consequence of, *inter alia*, the Uzbek Government's refusal to implement its promised tax and VAT regime, its extortionate demand for the payment of $10 million in hedging "losses" in 2004, and its arbitrary and unreasonable modifications of the administrative and regulatory regime were solely designed to harm and cripple Claimant's investment.

E. Respondents' Violation of the Most Favored Nation Treatment under Article 3 of the Agreement

96. The expansive Most Favored Nation provision set out in the above-cited Article 3 of the Agreement expressly applies to both investors and investments, and it applies to Articles 1 to 11 of the Agreement. Consequently, the Uzbek Government is obligated to treat investors and investments from the United Kingdom no less favorably than investors from other foreign countries.

97. The actions and conduct of Respondents described above were intended to secure maximum financial benefit for the Uzbek Government, at the direct expense of Claimant. Claimant is informed and believes that no other foreign investment or investor has been subjected to similar mistreatment by Respondents. Consequently, Uzbekistan has failed to honor the Most Favored Nation commitments set out in the Agreement.

F. Respondents' Violation of Favorable Treatment under Article 11 of the Agreement

98. The Uzbek Government's ongoing illegal actions and wrongful conduct constitute a violation of its obligation under Article 11 of the Agreement to accord an investment by a United Kingdom national or company treatment that is no less favorable than the treatment provided to investments by other United Kingdom nationals or companies which exceed treatment accorded under the Agreement. Article 11 provides as follows:

> **Article 11**
> **Application of Other Rules**
>
> If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by nationals or companies of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules to the extent that they are more favourable prevail over the present Agreement.

VII. RELIEF SOUGHT

99. In accordance with Article 3(3)(f) of the UNCITRAL Arbitration Rules, Claimant and its Subsidiaries respectfully request the following from the Tribunal:

a. declaring that Respondents have violated the Agreement and customary international law with respect to Claimant's investment;

b. awarding compensatory damages in favor of Claimant, in an amount to be proven and quantified in these proceedings and currently estimated as no less than US$400 million, including – by way of example only, and without limitation – the loss of shareholder value, fair market value of the seized assets and improvements to the various mineral sites thereon, lost profits that Claimant would have realized under its various agreements and associated development and feasibility plans over the course of their full term;

c. awarding moral damages in favor of Claimant for physical threats and the illegal detention of personnel of Claimant and/or its Subsidiaries;

d. awarding full costs, including, *inter alia*, all professional fees and disbursements associated with any and all proceedings undertaken in connection with this arbitration, as well as the fees of the arbitral tribunal and any administering institution;

e. awarding pre-award and post-award interest compounded at a rate and period to be fixed by the tribunal; and

f. such other relief as counsel may advise or the Tribunal may deem just and appropriate.

100. The Claimant continues to reserve its rights to supplement or otherwise amend its claims and the relief requested in connection therewith, and this Notice of Claim is served without prejudice to those rights.

Respectfully submitted,

Dated: August 31, 2011