

This Contract is made the [REDACTED] between

ZGOUNDER MILLENIUM SILVER MINING S.A., a corporation incorporated under the laws of the Kingdom of Morocco, having its registered address [REDACTED], Casablanca, Kingdom of Morocco;

(hereinafter referred to as "**Purchaser**");

and

DURO FELGUERA, S.A., a corporation incorporated under the laws of Spain, having its registered address at [REDACTED];

(hereinafter called "**Supplier**").

(the Purchaser and the Supplier collectively, the "**Parties**")

WHEREAS, Purchaser desires to engage Supplier and Supplier desires to be engaged to design, engineer, manufacture, procure and deliver the Supply for the construction of the Plant; and

WHEREAS, it is the mutual desire of Purchaser and Supplier to set forth the terms and conditions upon which Supplier is agreeable to design, engineer, manufacture, procure and deliver the Supply for the construction of the Plant;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1. Definitions

In this Contract, the following words and expressions when initially capitalized shall have the meanings hereby assigned to them below. The meanings specified herein are applicable to both the singular and the plural.

- 1.1.1. "**Adjustment**" means an adjustment of the Works and/or the Contract Price and/or the Time Schedule and/or Time for Completion as result of an Adjustment Event that is calculated in accordance with Clause 9 (*Adjustments*).
- 1.1.2. "**Adjustment Event**" has the meaning assigned at Clause 9 (*Adjustments*).
- 1.1.3. "**Affiliate**" means a corporation, company or other entity, now or hereafter, directly or indirectly, owned or controlled by, or owning or controlling, or under common control with one of the Parties, but such corporation, company or other entity shall be deemed to be an Affiliate only so long as such ownership or control exists. For purposes of this definition "control" of a corporation, company or other entity shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation, company or other entity, whether (i) through the ownership of voting securities providing for the right to elect or appoint, directly or indirectly, the majority of the board of directors, or a similar managing authority, (ii) by contract or (iii) otherwise.
- 1.1.4. "**Business Day**" means every day other than a Saturday, Sunday or a day on which banks are permitted or required to remain closed in Morocco.
- 1.1.5. "**Change in Law**" means any change in applicable Laws or introduction of new Laws which materially and adversely affects the Works, which change occurs after the date of signing of this Contract and is Unforeseeable.

- 1.1.6. **"Change in the Works"** shall have the meaning assigned at Clause 8 (*Variations*).
- 1.1.7. **"Change Order"** shall have the meaning assigned at Clause 8 (*Variations*).
- 1.1.8. **"Change Order Proposal"** shall have the meaning assigned at Clause 8 (*Variations*).
- 1.1.9. **"Change Order Request"** shall have the meaning assigned at Clause 8 (*Variations*).
- 1.1.10. **"Claim"** means any actual or threatened civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, suit, investigation or proceeding and any claim or demand resulting therefrom or any other claim or demand of whatever nature or kind.
- 1.1.11. **"Commencement Date"** has the meaning assigned at Clause 2.3 (*Commencement Date*).
- 1.1.12. **"Conditions Precedent"** means the conditions precedent set out in Clause 2.1 (*Conditions Precedent and Term of Contract*).
- 1.1.13. **"Confidential Information"** shall have the meaning assigned at Clause 23 (*Confidentiality and Publications*).
- 1.1.14. **"Contract"** or **"Supply Contract"** means this contract and its Annexes as amended from time to time.
- 1.1.15. **"Contract Price"** means the sum stated in Annex A (*Contract Price*) as payable by Purchaser to the Supplier as consideration for the Works, which shall include, for greater certainty, any amounts paid under the LNTP Agreement.
- 1.1.16. **"Defect"** means, in reference to any item of the Works, that such item of the Works is deficient in design, material, construction or workmanship, is non-compliant with the Specifications, or does not comply with any requirement of this Contract, applicable Laws or Industry Standards, and includes Serial Defects.
- 1.1.17. **"Delivery Point"** or **"Transit Delivery Point"** shall have the meaning assigned at Clause 6.2 (*Delivery*).
- 1.1.18. **"Force Majeure"** means in respect of a Party, any event or circumstance which, does not exist as of the date of this Agreement and is (a) beyond such Party's control; (b) which such Party could not reasonably have provided against; (c) which having arisen, such Party could not reasonably have avoided or overcome; (d) which is not substantially attributable to such Party (including to the extent resulting from a breach of the terms hereof); and (e) which materially affects the performance of the obligations and/or the safety on Site of the affected Party under this Contract, including events or circumstances, among others, listed below, so long as the aforementioned conditions are satisfied:
- (I) war, hostilities (whether declared or undeclared), invasion, act of foreign enemies;
 - (II) rebellion, revolution, insurrection, military or usurped power, or civil war;
 - (III) terrorism;
 - (IV) acts of civil or military authority, absence of adequate supply of raw materials due to acts or omissions (including delay, failure to act, or priority) of any Governmental Authority, acts or omissions (including delay, failure to act, or priority) of any Governmental Authority, or embargo, provided that the good faith exercise of discretionary authority by a Governmental Authority shall not, in and of itself, constitute a Force Majeure;
 - (V) epidemics (as an increase, often sudden, in the number of cases of a disease, above what is normally expected in that population in that area), or pandemics (as an epidemic that has spread over several countries or continents, usually

- affecting a large number of people and leading to transportation delays not reasonably foreseeable, adverse governmental actions);
- (VI) riot, civil commotion or disorder, sabotage, strike or lockout by persons other than the Supplier or its Subcontractors and its or their Affiliates, personnel and other employees; or
 - (VII) natural disasters, acts of God, natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

Notwithstanding anything to the contrary in this Contract, (A) any lack of funds and any consequences resulting from the lack of funds and (B) any acts or omissions of any third party, including any Subcontractor shall not be a Force Majeure, unless itself caused by a Force Majeure. Further, in light of the pre-existing nature of the Covid-19 pandemics (including the appearance of subsequent variants) and the armed conflict in Ukraine as of the date of this Contract, the Parties agree that (i) quarantines, shelter-in-place orders, travel restrictions, social distancing requirements and other Covid-19 related impacts (including unavailability or limited availability and/or cost of containers or of vessels) other than (a) border closures put into effect after the date hereof or (b) impossibility of supply, and (ii) trade and financial embargoes, trade and financial restrictions, supply chain disturbances or other related impacts of the armed conflict in Ukraine, in effect before the date of this Contract shall not form the basis of a claim of Force Majeure.

The Supplier shall protect and secure the Works wherever located against any deterioration, loss or damage.

- 1.1.19. **"Governmental Approvals"** means any authorization, consent, approval, ruling, permit, certification, re-certification, exemption, filing, registration, license, waiver, variance or any other similar action of a Governmental Authority.
- 1.1.20. **"Governmental Authority"** means any federal, state or local government including any agencies, authorities, departments or other subdivision of each, having or claiming a regulatory interest in or jurisdiction over the Works, and includes duly constituted courts and other tribunals having the authority to make binding rulings.
- 1.1.21. **"Industry Standards"** means those practices, methods, techniques, codes and standards which are generally accepted and commonly used by contractors exercising that degree of skill, diligence, prudence, foresight and care reasonably expected of first tier contractors with respect to the engineering, design, procurement, manufacturing, construction, delivery, erection and commissioning of mineral processing plants of type, size and location similar to the Plant.
- 1.1.22. **"Intellectual Property Right"** means any copyright, patent, registered design, design right, trade mark, trade name, or any other legally protected intellectual property right.
- 1.1.23. **"Law(s)"** means any law, statute, rule, regulation, requirement, instruction, direction, consent, authorization, rule of law, order, or ordinance, or specified standards, or other legislative or administrative act of a Governmental Authority, or a decree, judgment or order of a court or tribunal (including administrative tribunals), which is or becomes legally binding including but not limited to any precedents or judgments of the competent courts.
- 1.1.24. **"Lenders"** shall have the meaning assigned at Clause 26.1 (*Financing*).
- 1.1.25. **"Liability"** means all damages, losses, liabilities, costs, fees, expenses, awards, settlements or judgments, including, without limitation, all interest, penalties, fines and

other sanctions, and any reasonable costs or expenses in connection therewith, including, without limitation, attorneys' fees, court costs and expenses.

- 1.1.26. **"LNTP Agreement"** shall mean a limited notice to proceed agreement entered between the Parties in relation to certain limited works to be performed in anticipation of the Notice to Proceed.
- 1.1.27. **"LNTP Works"** means any work carried out by the Supplier under an LNTP Agreement.
- 1.1.28. **"Milestone"** means each milestone identified in Annex A (*Contract Price*).
- 1.1.29. **"Milestone Completion Certificate"** means a certificate to be submitted by the Supplier upon completion of each Milestone in accordance with Clause 7.2 (*Application for Milestone Payments*), which shall be in the form set out in Annex A (*Contract Price*).
- 1.1.30. **"Milestone Payment Request"** a statement submitted by Supplier as part of an application for payment under Clause 7.2 (*Application for Milestone Payments*) in substantially the form set out in Annex A (*Contract Price*).
- 1.1.31. **"Notice to Proceed"** means the notice issued by the Purchaser to the Supplier pursuant to Clause 2.3 (*Commencement Date*).
- 1.1.32. **"Parts"** means the same parts or items comprised in the Works (including the Supply). Same parts or items shall in this context mean that such items have been produced to the same design or fulfil the same role in the Plant.
- 1.1.33. **"Party"** means the Purchaser or the Supplier, as the context requires.
- 1.1.34. **"Permits"** means any approval, authorization, consent, certificate, re-certification, exemption, filing, ruling, identification number, registration, permit, license or Governmental Approval required for the possession, erection, installation, commissioning, use, operation, and maintenance of the Plant.
- 1.1.35. **"Plant"** shall have the meaning assigned to that term under this Contract Annex B.
- 1.1.36. **"Provisional Acceptance"** means the time when the Supply has been successfully and safely installed and commissioned by the Purchaser Contractor and the Provisional Acceptance Certificate has been issued by the Purchaser.
- 1.1.37. **"Provisional Acceptance Certificate"** means a certificate issued by the Purchaser to signify that Provisional Acceptance has been achieved and to record the date when the Provisional Acceptance has been achieved.
- 1.1.38. **"Purchaser Caused Delay"** means a delay that adversely affects the critical path of the Works (which critical path takes into account such delay), which delay was caused directly as a result of and to the extent of: (i) acts or omissions of the Purchaser, its personnel or any of its third-party subcontractors other than any Affiliate of the Supplier; or (ii) any failure of the Purchaser to perform its obligations under this Contract for which it is directly responsible, provided that Purchaser Caused Delay shall not include any delay to the extent attributable to any failure of the Supplier to comply with its obligations under this Contract, any failure of any Affiliate of the Supplier to comply with its obligations under any contract with the Purchaser, or to any requirement of applicable Laws in force on the date hereof.
- 1.1.39. **"Purchaser Contractor"** means the contractor which will be retained by the Purchaser to assemble, install and erect the Supply and start-up and commission the Plant.
- 1.1.40. **"Purchaser Permits"** means those Permits relating to the right of operating a mine as well as to the possession, ownership and operation of the Plant which are expressly set forth in Annex M (*Purchaser Permits*).

- 1.1.41. **"Purchaser's Documents and Information"** means all the documents, drawings, reports, presentations, calculations and other information provided by the Purchaser to the Supplier prior to the execution date of this Contract, a copy of which is attached in Annex D (*Purchaser's Documents and Information*).
- 1.1.42. **"Purchaser's Project Manager"** shall have the meaning assigned under Clause 5.2 (*Representatives*).
- 1.1.43. **"Risk Transfer Date"** means the date when the risk of loss of or damage to the Supply passes from the Supplier to the Purchaser Contractor in accordance with Clause 11 (*Care of the Supply and Passing of Risk*).
- 1.1.44. **"Serial Defect"** means any (identical, similar or different) Defect which occurs or is discovered during the Warranty Period on or in a certain threshold percentage or more of the same Parts or replacement parts therefor, as set out in Annex P (*Serial Defects*).
- 1.1.45. **"Site"** means the place provided or made available by the Purchaser where the Plant is to be erected.
- 1.1.46. **"Specifications"** means the specifications of the Supply attached hereto under Annex B (*Technical Specifications*).
- 1.1.47. **"Subcontractor"** means any person acting as direct or indirect subcontractor of the Supplier for the performance of any part of the Works, at any level, as permitted in accordance with this Contract, and such persons' legal successors in title.
- 1.1.48. **"Supplier's Drawings"** means all drawings, samples, patterns and models to be submitted by the Supplier to the Purchaser or prepared by the Supplier in connection with the Works.
- 1.1.49. **"Supplier's Project Manager"** shall have the meaning assigned under Clause 5.1 (*Representatives*).
- 1.1.50. **"Supply"** means all equipment, materials, components, parts, spare parts and other goods which have to be engineered, designed, procured or manufactured by the Supplier and delivered by the Supplier to the Purchaser for the purpose of the construction, erection, start-up and commissioning of the Plant, including those described in the Specifications.
- 1.1.51. **"Tax Exoneration"** means a tax and custom related Permit which includes exoneration, exemptions, waivers and other documents required by any Governmental Authority in Morocco to give effect to the implementation of the Convention d'Investissement (Zgounder Investment Agreement) and the exoneration provided thereunder.
- 1.1.52. **"Time Schedule"** means the time schedule for the performance of the Works attached as Annex C (*Time Schedule*), as the same may be modified from time to time in accordance with this Contract.
- 1.1.53. **"Transit Delivery Point"** shall have the meaning assigned under Clause 6.1.
- 1.1.54. **"Unforeseeable"** means not reasonably foreseeable by an experienced contractor in accordance with Industry Standards on the date of signing the Contract.
- 1.1.55. **"Warranty Period"** means the period of time during which the Supplier is responsible for making good Defects, as defined in Clause 13.5 (*Warranty Period*).
- 1.1.56. **"Warranty Period Guarantee"** shall have the meaning assigned under Clause 13.9.
- 1.1.57. **"Works"** shall have the meaning assigned at Clause 3.1 (*General Obligations of Supplier*).

1.2. Contract Documents

This Contract consists of this document itself and the following Annexes which are specifically made a part hereof by reference:

Annex A	Contract Price
Annex B	Technical Specifications
Annex C	Time Schedule
Annex D	Purchaser's Documents and Information
Annex E	Spare Parts List
Annex F	Change Order Form
Annex G	Form of Advance payment guarantee
Annex H	Form of Performance guarantee
Annex I	Form of Warranty Period guarantee
Annex J	List of Suppliers
Annex K	Compliance
Annex L	Performance Test
Annex M	Purchaser Permits
Annex N	N/A
Annex O	Form of Partial Lien Release
Annex P	Serial Defects

1.3. Priority of documents

The priority of the Contract documents shall be as follows:

- (1) This main body of the Contract;
- (2) Annexes A to P.

The Contract Documents shall be taken as mutually explanatory. In the event of any conflict between the main body of the Contract and any Annex thereto, the terms and provisions of the main body of the Contract, as amended from time to time, shall prevail.

1.4. Interpretation

- 1.4.1. Words importing persons or parties shall include firms and corporations and any organisation having legal capacity.
- 1.4.2. Words importing the singular only also include the plural and vice versa where the context requires.
- 1.4.3. Any reference to "days" shall mean a reference to calendar days except as otherwise provided for under this Contract.
- 1.4.4. Reference to a "Preamble", "Clause", "Annex" or "Addendum" are references to the Preamble, a clause or an annex of, or an addendum to, this Contract, as the case may be.
- 1.4.5. References to "include", "includes", or "including" shall be read as being followed by the words "without limitation" except where the context otherwise requires.
- 1.4.6. No provision of this Contract will be construed adversely to a Party solely on the grounds that the Party was responsible for the preparation of this Contract or that provision.

- 1.4.7. The headings and titles in the Contract shall not be deemed part thereof or be taken into consideration in the interpretation or construction of the Contract.
- 1.4.8. Wherever in the Contract provision is made for the giving of notice, consent, approval or request by any person, such notice, consent, approval or request shall be in writing. Any consent or approval shall not be unreasonably withheld.
- 1.4.9. Wherever in the Contract provision is made for a communication to be "written" or "in writing", this means any hand-written, type-written or printed communication, including telex, cable, e-mail (with confirmation of receipt) and facsimile transmission.
- 1.4.10. Any reference to "month" and/or "year" shall mean a reference to the Gregorian calendar. A "month" shall mean the period from a certain day of a calendar month to the respective day of the next calendar month and a "year" shall mean the period from a certain day of a calendar year until the respective day of the next calendar year.
- 1.4.11. Where versions of the Contract are prepared in different languages, the version in English shall prevail. The language of such version is referred to as the ruling language.
- 1.4.12. The Parties agree that any references to terms like "warranty", "guarantee", "guaranteed performance characteristics", "warrants", "guarantees" and other performance descriptions and technical data under this Contract shall not be considered as a specific guarantee of quality and condition under any statutory provision.

2. CONDITIONS PRECEDENT AND TERM OF CONTRACT

2.1. Conditions Precedent

The Contract shall come into force and effect upon the date of this Contract. Notwithstanding the foregoing, except under this Clause 2, Clause 16 and Clause 23, each Party shall have no obligations under this Contract unless and until all the following conditions precedents shall have been fulfilled:

2.1.1. The Purchaser shall have provided to the Supplier:

- 2.1.1.1. proof of financing for the Contract;
- 2.1.1.2. proof of obtainment of the Purchaser Permits; and

2.1.2. The Supplier shall have delivered to the Purchaser:

- 2.1.2.1. an executed advance payment guarantee in the form set out in Annex G (*Form of Advance Payment Guarantee*), which guarantee shall remain in force from the date of receipt by the Supplier of the advance payment until the advance payment has been recovered in full in accordance with Clause 7.1.2; and
- 2.1.2.2. an executed performance guarantee for an amount equal to 10 per cent (10%) of the Contract Price, or such lower amount as may be agreed to by the parties in writing from time to time, which guarantee shall remain in force for the term of this Contract or such shorter period as may be agreed to by the parties in writing from time to time.

If the relevant guarantee has an expiry date which is earlier than the time for which it must remain in force, the Supplier will prior to a date falling 30 days before the expiry of the relevant guarantee, provide a replacement or renewed guarantee substantially in the same form as the guarantee it is replacing in an amount equal to the then unused portion of the relevant

guarantee. The replacement guarantee must take effect no less than 15 days prior to the expiry of the guarantee which is being replaced.

The above conditions shall be collectively referred to as the "**Conditions Precedent**". Notwithstanding any provision of this Contract to the contrary, the Supplier shall have the obligation to deliver to the Purchaser the advance payment guarantee referred to in Clause 2.1.2.1 and the performance guarantee referred to in Clause 2.1.2.2 within sixty (60) Days following its receipt from the Purchaser of a written notice to the effect that it is ready to issue the Notice to Proceed.

2.2. Expiry Date

If the Conditions Precedent have not been fulfilled to the Parties' satisfaction, acting reasonably, on or prior to the date which is six (6) months from the date hereof, either Party may terminate this Contract by written notice to the other Party and the Contract shall be, subject to Clause 28.4, of no further force and effect, without any indemnity or penalty being payable by any Party.

2.3. Commencement Date

All of the obligations of the Parties under this Contract shall commence on the date each Condition Precedent has been fulfilled by the Party responsible for such Condition Precedent (or has been waived at its discretion by the other Party) and the Notice to Proceed is issued by the Purchaser to the Supplier (the "**Commencement Date**").

2.4. LNTP

- 2.4.1. On and from the Commencement Date, any LNTP Agreement shall be deemed to form part of this Contract and shall be subject to the terms and conditions hereof as though the rights, obligations, acts and omissions of the Supplier under the LNTP Agreement were those of the Supplier hereunder and as if the rights, obligations, acts and omissions of the Purchaser under the LNTP Agreement were those of the Purchaser hereunder.
- 2.4.2. Where the Supplier has effected any design, services or works under the LNTP Agreement, such activities shall be deemed to have been carried out pursuant to, and shall be subject to the terms and conditions of, this Contract, and the warranties and undertakings set out in this Contract shall apply to such activities (without prejudice to the generality of such warranties and undertakings). Notwithstanding the date on which the same were performed the Supplier hereby acknowledges that it accepts full responsibility for the LNTP Works as if those works had been carried out under and pursuant to this Contract.
- 2.4.3. Any information or documentation provided or given to the Supplier by the Purchaser in accordance with the LNTP Agreement shall be deemed to be "**Purchaser's Information**" under this Contract and any information or documentation provided or given to the Purchaser by the Supplier in accordance with the LNTP Agreement shall be deemed to be "**Supplier's Documents**" under this Contract.
- 2.4.4. Any instructions, directions, comments, waivers or approvals provided or given to the Supplier by the Purchaser in accordance with the LNTP Agreement shall be treated as having been given by the Purchaser to the Supplier pursuant to this Contract and any instructions, directions, comments, waivers or approvals provided or given by the Supplier to the Purchaser in accordance with the LNTP Agreement shall be treated as having been given by the Supplier to the Purchaser pursuant to this Contract.
- 2.4.5. Any payments made to the Supplier pursuant to the LNTP Agreement shall be treated as having been made by the Purchaser to the Supplier on account of the Contract Price. When submitting its first application for interim payment under this Contract the Supplier

must take into account any payment invoiced by it in respect of the LNTP Works carried out by the Supplier up to the date on which the first application for interim payment is made.

3. GENERAL OBLIGATIONS OF THE SUPPLIER

- 3.1. The Supplier shall, in accordance with the Contract, design, engineer, manufacture, procure and deliver the Supply to Transit Delivery Point and provide related services, including the spare parts listed in Annex E (*Spare Parts List*), in accordance with the Time Schedule and the other provisions of this Contract (the "**Works**"). The Works include (i) all equipment, materials, components, parts, supplies, goods, works, labor and services necessary to comply with the Specifications and the other provisions of this Contract, and (ii) all equipment, materials, components, parts, supplies, goods, works, labor and services that may be reasonably inferred from this Contract as being required to produce the intended result.
- 3.2. The Supplier shall ensure that the Works are fit for purpose of the construction, erection, start-up and commissioning of the Plant, a silver mineral processing plant of similar size and nature with a performance ratio as described in Annex L (*Performance Test*), and delivering the resulting 2700 tpd of throughput as described in Annex B (*Technical Specifications*).
- 3.3. The Supplier hereby confirms that, prior to the execution of this Contract, the Supplier has conducted its own assessment and verification of the Purchaser Documents, including of the information regarding the subsurface and hydrological conditions existing at the Site.
- 3.4. Except for the Purchaser Permits, the Supplier shall be solely responsible for obtaining all Permits on a timely basis.
- 3.5. The Supplier shall assist the Purchaser in obtaining the Purchaser Permits to the extent reasonably possible including providing the Purchaser with required documentation and information. The Supplier shall be responsible for all means, methods, techniques, sequences, procedures and safety programs for the performance of the Works.
- 3.6. The Supplier will employ staff and labor which is sufficient, skilled, experienced and otherwise qualified to ensure proper, timely and effective execution of the Works. All personnel shall comply with applicable local labor Laws and health and safety Laws for the proper execution of the Works.
- 3.7. The Supplier shall supervise, coordinate, and direct the Work in accordance with Industry Standards. The Supplier shall employ, or cause to be employed, only supervisory personnel who are appropriately qualified, trained and experienced in safety, efficiency and quality of work supervision.
- 3.8. The Supplier shall enforce strict discipline and good order among the Supplier's employees, Subcontractors' employees and any other persons carrying out the Work. The Supplier shall not permit the employment of unfit persons, or persons not skilled in tasks assigned to them. The Supplier shall promptly remove any employee or other individual that the Purchaser deems incompetent, careless, negligent, unreasonable, uncooperative, unfit, under the influence or in possession of drugs or alcohol, or otherwise reasonably objectionable. Any costs or increased costs or expenses associated with any such removal of employees or other individuals shall be borne solely by the Supplier.
- 3.9. The Supplier will attend weekly meetings with the Purchaser's Project Manager, which may be in person or via phone conferences. A monthly written report related to the progress of the Works, containing such information as maybe reasonably requested by Purchaser, will be sent to the Purchaser. Upon any reasonable request from the Purchaser, the Supplier

shall supplement any such report with such additional information as may be required to present a complete and accurate picture of the progress of the Works.

- 3.10. The Supplier and the Purchaser have set in place a design review process allowing the Purchaser to comment on the design prepared by the Supplier.
- 3.11. Before undertaking any part of the Works, the Supplier shall carefully review the Purchaser's Documents and Information and check and verify pertinent figures shown thereon and all applicable field measurements, and make its own assessment and verification of all engineering drawings and information including, data on climatic, hydrological, geological, mineral and other general conditions on the Site (including the soil investigation). The Supplier shall promptly report to the Purchaser any conflict, error, inaccuracy, incompleteness, ambiguity or discrepancy which the Supplier may discover in Purchaser's Documents and Information and shall obtain supplemental instructions before proceeding with any Works affected thereby. The Supplier shall not be entitled to any Adjustment in the event of any errors, inaccuracies or incompleteness in the Purchaser's Documents and Information. For further clarity, should the Supplier not be satisfied with the Purchaser Documents and Information, it shall make a recommendation to the Purchaser to conduct further work and investigation to make itself satisfied with the Purchaser Documents. The Purchaser shall be responsible for conducting this work at its own cost.
- 3.12. The Supplier shall perform the Works or cause the Works to be performed in a professional and competent manner, as expeditiously and economically as is consistent with the best interests of the Purchaser, so as to permit the Purchaser Contractor to achieve Provisional Acceptance within the schedule and deadlines set forth for Provisional Acceptance (a copy of which the Supplier acknowledges having received and accepted), as such schedule and deadlines may be amended from time to time, and in accordance with (i) the provisions of this Contract; (ii) all applicable Laws; (iii) Industry Standards and (iv) all Permits.
- 3.13. The Supplier shall keep full and detailed books, records, and accounts as necessary for proper financial management under this Contract, including but not limited to the provisions of Clause 28.1, and such obligation shall continue for up to ten (10) years after the Substantial Performance Date.

4. GENERAL OBLIGATIONS OF THE PURCHASER

- 4.1. The Purchaser shall pay to the Supplier the Contract Price in accordance with Clause 7 (*Payment*).
- 4.2. Subject to Clause 3.5, the Purchaser shall be responsible for obtaining the Purchaser Permits set forth in the Annex M.
- 4.3. The Purchaser shall reasonably assist the Supplier in obtaining the Permits and Tax Exonerations (other than the Purchaser Permits) and in ascertaining the nature and extent of applicable Laws which may affect the Supplier in the performance of its obligations under the Contract, it being understood that the Supplier shall use its own legal counsel and other advisors as required for the performance of the Works. The Purchaser shall, if so requested, help procure for the Supplier copies of applicable Laws and information relating thereto at the Supplier's cost. For the avoidance of doubt, nothing contained in this Clause 4.2 shall operate to relieve the Supplier of its obligations pursuant this Clause, provided that Purchaser has not acted with wilful misconduct.
- 4.4. No assistance, approval, expression of satisfaction, comment, review, test, inspection, or certificate made or given (or any failure to make or give or attend the same) by the Purchaser under the Contract, or by the Purchaser's representatives, shall relieve the Supplier of any of

its obligations, risks or liabilities under the Contract provided that Purchaser has not acted with willful misconduct.

- 4.5. The Purchaser shall grant the Supplier non-exclusive access to the Site for the purposes of performing its obligations under this Contract. Such access shall include but not be limited to, easements and rights of way (including access to the same) as may be necessary for the Supplier to perform its obligations under this Contract.

5. REPRESENTATIVES

- 5.1. Within thirty (30) days of the Commencement Date, the Supplier shall, by written notice to the Purchaser, designate the individual(s) to be representative(s) of the Supplier (the **"Supplier's Project Manager"**), who shall have the responsibilities designated by the Supplier in such notice. The Supplier may designate a different Supplier's Project Manager at any time by written notice to the Purchaser provided that the new Project Manager has at least similar qualifications and experience as the replaced Project Manager.
- 5.2. Within thirty (30) days of the Commencement Date, the Purchaser shall, by written notice to the Supplier, designate the individual(s) to be the representative(s) of the Purchaser (the **"Purchaser's Project Manager"**), who shall have the responsibilities designated by the Purchaser in such notice. The Purchaser may designate a different Purchaser's Project Manager at any time by written notice to the Supplier.
- 5.3. The Supplier's Project Manager and the Purchaser's Project Manager shall have the necessary authorizations regarding the day-to-day administration of this Contract.
- 5.4. The language for day to day communications between the Parties shall be English [or French].

6. DELIVERY

- 6.1. The Supplier shall deliver the Supply on-board by the Supplier's means of transportation at a location (Port or Location which can be one or several depending on the means of transportation) to be designated by the Supplier, with the consent of the Purchaser-, and coordinated with the Purchaser Contractor (the **"Transit Delivery Point"**), in accordance with the Time Schedule and the other applicable provisions of this Contract.
- 6.2. Delivery of the Supply shall be made [REDACTED] the Transit Delivery Point, subject to the provisions of this Contract. The Supplier shall coordinate each delivery with the Purchaser and the Purchaser Contractor. For the avoidance of doubt, the responsibility for any customs, import duties, import taxes and fees relating to the Supply shall be always under Purchaser scope and responsibility in accordance with clause 20.1 (*Customs and Import Duties*) and according to CPT (Incoterms 2010) delivery terms or any other Incoterm (or variation thereof) agreed upon in writing between the Parties.
- 6.3. Unless otherwise instructed by the Purchaser:
- 6.3.1. the Supplier shall be fully responsible for the proper packing of the Supply to avoid damage during shipment and storage for a maximum period of [REDACTED] proper storage conditions;
 - 6.3.2. the Supplier shall protect the Supply with suitable coatings to allow exterior storage when applicable without damage and clearly identify, in English or French, boxes containing items of the Supply that must be stored inside or in a particular manner;
 - 6.3.3. packing shall ensure reasonable safety of all items of the Supply from damage, including but not limited to damage caused by corrosion, impact, or penetration

from other objects, during transport, off-loading and handling, and during storage for a maximum period of [REDACTED] in proper storage conditions; and

- 6.3.4. unless special shipping instructions are received by the Supplier within a reasonable period of time before any proposed shipment date, the Supplier shall use its own reasonable and prudent judgment as to the best means of shipment and routing consistent with this Contract, the nature of the applicable items of Supply, the Time Schedule and Industry Standards; the Supplier shall promptly inform the Purchaser and the Purchaser Contractor of all shipping details.

- 6.4. The Purchaser (or the Purchaser Contractor) shall be entitled to refuse delivery of any item of the Supply which does not comply with the provisions of Clause 13.1, until such item is brought into compliance with the provisions of Clause 13.1 at the cost and expense of the Supplier provided that if the Supplier disagrees with the Purchaser's decision not to accept the delivery it shall be entitled to refer the matter to dispute resolution in accordance with Clause 27.

7. PAYMENT

7.1. Terms of Payment

- 7.1.1. Subject to the applicable provisions of this Contract, the Purchaser shall pay the Supplier the Contract Price which is a lump sum fixed price. The Contract Price constitutes the total lump sum compensation payable by the Purchaser to the Supplier for performing the Works (including all overhead and profit of the Supplier and all costs of the Supplier performing the Works) and is firm and fixed as of the date of execution of this Contract and is not subject to change, except as provided in Clauses 8 and 9. Except as otherwise provided in this Contract, payments hereunder shall be made by the Purchaser upon the completion of the Works in accordance with Clause 7.2.
- 7.1.2. The Purchaser shall ensure that the Supplier will receive the full amount of advance payment within (15) calendar days from the later of the date of issuance of the Notice to Proceed and the date on which the Purchaser has received the advance payment guarantee referred to in Clause 2.1.2.1, being an amount equal to twenty per cent (20%) of the Contract Price as an advance payment for the Works. In case the Purchaser fails in ensuring the advance payment to be received by the Supplier within the time specified thereof, the Supplier will be entitled to an extension of time on day-to-day basis, and entitled, subject to Clause 9, to claim for the payment of any additional cost incurred by such delay. Any dispute between the Supplier and the Purchaser as to the additional costs or time claimed by the Supplier shall be submitted to Clause 27.
- 7.1.3. On the amount of each invoice for payment of a milestone payment in accordance with Clause 7.1.1, the Supplier shall credit an amount equal to twenty percent (20%) of the amount of such invoice, which credit corresponds to the applicable portion of the advance payment described in Clause 7.1.2 attributable to such invoice. Such credit of 20% of each invoice, will be considered as a return payment of advance payment (when each invoice will be submitted) and will reduce in the same amount the advance payment guarantee received by the Contractor in accordance to above clause 7.1.2.

- 7.1.4. The Contract Price includes, with the sole exception of VAT, if applicable, all withholding taxes, privilege, sales, use, excise, or other similar taxes arising in Morocco which are or may become payable in respect of the Contract Price which may now or hereafter be applicable to measured by, or imposed by the Kingdom of Morocco or any Governmental Authority in Morocco in respect of the Supply and/or Works. The Contract Price does not include, however, any customs, import duties and import taxes and fees imposed by the Kingdom of Morocco on the import of the Supply, which shall remain the responsibility of the Purchaser
 - 7.1.5. To the extent that any withholding tax is applicable with regard to the Supply under Morocco Tax Law, Supplier shall provide the appropriate tax certificate from Spanish Tax Authorities. Upon the receipt thereof, any deduction and withholding of taxes shall be made at the appropriate treaty tax rate and Purchaser shall issue a statement noting the amount that has been withheld and paid to the tax authorities.
 - 7.1.6. In case any Tax Exoneration apply, the Purchaser shall obtain such Tax Exonerations and Purchaser shall not, through its acts or omissions, cause the Supplier a delay and/or cost in said procedures.
 - 7.1.7. The Supplier shall invoice, and Purchaser shall pay, the Contract Price in EUR and/or USD in accordance with the currency set out in Annex A (*Contract Price*) for the items comprising such invoice.
 - 7.1.8. Before making any payment under this Contract, the Supplier shall furnish to the Purchaser a letter issued by the Supplier in the format of Annex O (*Form of Partial Lien Release*) warranting that (i) the Supplier is in compliance with applicable Laws, including those pertaining to labour and health and safety matters, (ii) there are no liens, claims, security interests or encumbrances of whatsoever nature affecting the Works other than liens created by the Purchaser.
 - 7.1.9. Further, following Purchaser's request the Supplier shall provide the statements from Subcontractors which certify that all uncontested invoices are paid and that no owing and outstanding amounts remain unpaid. In case of a contested invoice between the Supplier and his Subcontractor, the proof of payment by the Supplier of the uncontested portion of the invoice may be provided by the Supplier to satisfy this obligation. To this effect Supplier shall, inter alia, furnish copy of subcontract or supplier agreements (including payment schedules) as needed but can delete commercial sensitive data.
 - 7.1.10. If the Supplier does not comply with the Purchaser's requests in accordance with Clause 7.1.8 and Clause 7.1.9 (only to the extent of the contested amount), the Purchaser shall have the right to withhold any payment otherwise due and payable to the Supplier.
- 7.2. Application for Milestone Payments
- 7.2.1. Supplier shall submit, in a form satisfactory to Purchaser and in accordance with Annex A (*Contract Price*), a draft Milestone Completion Certificate on completion of each Milestone in accordance with Annex A (*Contract Price*) including the corresponding amounts to which Supplier considers itself to be entitled, together with supporting documents to demonstrate achievement of a Milestone and shall include the most recent report on progress. The Supplier may apply for certification of multiple Milestones completion in a single Milestone Completion Certificate.
 - 7.2.2. Within seven (7) Business Days following Purchaser's receipt of a draft Milestone Completion Certificate that complies with the requirements under Clause 7.2.1,

Purchaser shall notify Supplier in writing as to whether the relevant Milestone(s) have been achieved by Supplier.

- 7.2.3. If Purchaser is not satisfied that the Milestone(s) included in the draft Milestone Completion Certificate have been achieved, Purchaser shall notify the Supplier within the seven (7) Business Day period mentioned in Clause 7.2.2 above, and shall then give further notice to the Supplier within five (5) days of that initial notice, or such longer period as may reasonably be required in the circumstances, of the outstanding Works which must be completed for any non-complete Milestones that are the subject of the draft Milestone Completion Certificate to be achieved. Upon receipt of such details, Supplier shall then issue a revised draft Milestone Completion Certificate in respect of only the completed Milestones, if any, and the process above shall be repeated. In the event the Supplier fails to submit a revised Milestone Completion Certificate in accordance with this Clause, Purchaser has the right to, make any correction or modification to the previous draft Milestone Completion Certificate received in its own complete independent discretion to certify the amount due. Approval of a Milestone Completion Certificate shall not be deemed to indicate Purchaser's acceptance, approval, consent or satisfaction of the Works (or any part thereof).
- 7.2.4. Following approval of a draft Milestone Completion Certificate by Purchaser, Supplier shall submit the Milestone Payment Request (which shall include the formal invoice) for the amount approved in the corresponding Milestone Completion Certificate. Each Milestone Payment Request invoice shall be in accordance with the requirements set out in Annex A (*Contract Price*), and shall include the following items, as applicable, in the sequence listed:
- (i) value of the completed Milestones (as set out in of Annex A (*Contract Price*)), including Variations as sub-items but excluding items described in paragraphs (ii) to (iv) below, and a copy of the relevant approved Milestone Completion Certificate (if any);
 - (ii) any other additions or deductions which may have become due under this Contract;
 - (iii) the deduction of amounts included in previous approved Milestone Payment Requests; and
 - (iv) the previous totals shown on a Milestone Payment Request, which shall correspond to the amounts certified as payable against the Milestone Payment Request from the previous month.
- 7.2.5. All Milestone Payment Requests shall be broken down into the various work breakdown elements with Milestones identified where applicable and cost coded accordingly. Payment requests for Variations shall be similarly broken down and cost coded.
- 7.2.6. Any Dispute arising in connection with a Milestone Payment Request shall be resolved in accordance with Clause 27.

7.3. Timing of Payments

- 7.3.1. Purchaser shall pay to Supplier the undisputed amount which is due in respect of each Milestone Payment Request within thirty (30) days after the Supplier has submitted the relevant Milestone Payment Request in accordance with Clause 7.2.
- 7.3.2. Payment shall not be deemed to indicate Purchaser's acceptance, approval, consent or satisfaction of the Works.

7.4. Delayed Payment

If payment of any undisputed amount payable under this Contract is delayed, the Supplier shall be entitled to receive interest on the amount unpaid during the period of delay. The interest shall be at the annual rate of three percent (3%) above the discount rate of the six (6) month European Interbank Offered Rate (EURIBOR) as quoted by Reuters at 11:00 a.m. Brussels time, on the banking day before the start of the relevant interest period, provided that if such rate is below zero, EURIBOR shall be deemed to be zero. The Supplier shall be entitled to such payment without formal notice and without prejudice to any other right or remedy.

7.5. Right to Set-Off

The Purchaser shall have the right to set-off, against any amount owing by the Purchaser to the Supplier under this Contract, any undisputed amount owing by the Supplier to the Purchaser under this Contract,

8. VARIATIONS

With the prior written consent of the Purchaser, the Supplier shall have the right to make technical modifications to the Supply which do not result in additional costs to the Purchaser or in any delay in the performance of the Works, provided that such modifications do not result either in a deviation from the Specifications or adversely affect the performance, operation, safety, licensability or maintainability of the Plant.

The Purchaser may from time to time and at any time prior to the issuance of the Provisional Acceptance Certificate require additions [REDACTED] of the value of the Works), deletions (provided that (i) the Purchaser may not require a deletions to then obtain the deleted portion from another contractor or to perform the deleted works by itself, and that (ii) for authorised deletions which are in excess of [REDACTED] of the value of the Works, the Purchaser shall compensate the Supplier by paying an amount equal [REDACTED] of the value of the deletion, revisions or other changes in the Works (each, a **"Change in the Works"**) according to the following procedure:

- a) The Purchaser shall submit to the Supplier a request (a **"Change Order Request"**) which explicitly describes in writing the Change in the Works.
- b) Within two (2) weeks after receipt of such Change Order Request, the Supplier shall submit to the Purchaser in writing a proposed amendment to this Contract describing the changes to the Works, the Time Schedule and the Contract Price required to satisfy the Purchaser's Change Order Request (a **"Change Order Proposal"**). The Supplier's Change Order Proposal shall include detailed supporting calculations for pricing the change based upon, where reasonably practicable, applicable pricing in the Specifications, and include revisions, if any, to the Supplier's Drawings.
- c) Within a further two (2) weeks after the receipt by the Purchaser of the Change Order Proposal, the Parties shall negotiate in good faith with a view to entering into an amendment to this Contract incorporating the Change in the Works requested by the Purchaser.
- d) If the Parties agree on the proposed amendment, the Parties shall sign an amendment to this Contract incorporating the Change in the Works requested by the Purchaser (a **"Change Order"**) and the Supplier shall diligently perform the Works in accordance with the terms of this Contract, as amended by such Change Order.

- e) If the Parties cannot agree on a Change Order within the two (2) week period referred to in paragraph c) above, then until a Change Order is agreed upon or a dispute regarding such Change Order is finally settled, unless the Purchaser in its sole discretion withdraws its Change Order Request by notice to the Supplier, the Supplier shall diligently proceed with the Change in the Works requested by the Purchaser in its Change Order Request pending an agreement or settlement between the Parties regarding such Change Order.
- f) If the Parties cannot mutually agree on a Change Order within forty-five (45) days after receipt by the Purchaser of the Supplier's Change Order Proposal, the dispute shall be submitted to Clause 27.
- g) For further clarity, any urgent safety and safeguard measure or procedure specifically requested by the Purchaser as a result of a Force Majeure event which goes above and beyond the Supplier's obligations, shall be considered a Change Order under this Clause 8 and not an adjustment in accordance with Clause 9. The foregoing does not in any way limit any of the Supplier's obligations to safeguard and maintain the Supply.

9. ADJUSTMENTS

9.1. If any of the following events arise (each, an "**Adjustment Event**"):

- 9.1.1. Force Majeure; or
- 9.1.2. Purchaser Caused Delay; or
- 9.1.3. Change in Law; or
- 9.1.4. any other event or circumstance identified in this Contract which is expressly to constitute an Adjustment Event;

which directly has a detrimental impact on Supplier's ability to perform its obligations under the Contract, or materially impacts the cost of performance of the Works, then, provided the requirements of Clause 9 are satisfied, an Adjustment may be sought.

- 9.2. The Supplier shall notify the Purchaser as soon as practicable but no later than (i) seven (7) Business Days for Force Majeure and Change in Law and (ii) fourteen (14) Business Days in all other events, after the time when it actually knows of or reasonably should have known that an Adjustment Event has occurred. Within twenty-eight (28) calendar days after the expiry of the seven (7) or the fourteen (14) Business Day-period (as applicable) referred to above, the Supplier shall submit an initial analysis of the impact of such Adjustment Event, specifying the impact upon the various portions of the Works occasioned by reason thereof, and any corresponding impact on the Works, the Contract Price and the Time Schedule, and shall substantiate the foregoing to the reasonable satisfaction of the Purchaser. This analysis shall include, insofar as that information may be reasonably known by the Supplier at that time: (i) the anticipated term of duration of the delay, if any; (ii) the cause of the delay, if any; (iii) the information or sources in which the proof of the delay, if any, shall be based to apply for a change to the Time for Completion; (iv) the amount of the Adjustment calculated in accordance with Clause 9.4 and (v) other relevant information known by the Supplier. In the event that it is impracticable to specify the impact upon the Works at the time of such submission, the Supplier shall, immediately upon such information being available, provide the Purchaser with periodic supplemental submissions during the period that the impact continues, detailing any developments, progress or other relevant information of which the Supplier is aware.

- 9.3. To the extent the Purchaser agrees with the Supplier's determination of the impact of the Adjustment Event, the Parties shall, within 15 Business Days following receipt of the Supplier's submission pursuant to Clause 9.2, execute an amendment to this Contract reflecting the required Adjustment. In the event that the Purchaser does not accept the Supplier's submissions, requests or the Adjustment for such Adjustment Event, the matter may be referred to amicable dispute resolution in accordance with Clause 27.
- 9.4. Any Adjustment shall be assessed in accordance with the following provisions:
- 9.4.1. any change to the Time Schedule shall be assessed, amongst the Parties, based on a time impact analysis methodology;
 - 9.4.2. the Supplier shall not be entitled to an increase in the Contract Price and the Purchaser shall not be entitled to a decrease in the Contract Price, save where the Adjustment Event is a Purchaser Caused Delay, a Change in Law, a Force Majeure event which lasts for a period greater than fifteen (15) consecutive days or an Adjustment Event that, in each case, could not reasonably have avoided pursuant to Clause 14.3 or 14.4 and in the case of a Force Majeure event the Parties agree that, only and if the Purchaser actually receives corresponding compensation under the Zgounder Investment Agreement or other insurance coverage, any such increase to the Contract Price shall be made by way of reimbursement by the Purchaser of all the necessary costs directly resulting from the situation and duly justified, including but not limited to (i) demobilization and remobilization costs, (ii) security costs and (iii) salaries of all mobilized or retained Supplier's staff; unless the Purchaser fails to make the relevant claim for compensation under the Zgounder Investment Agreement or other insurance coverage in accordance with Clause 9.4.6, in which case the Supplier shall be entitled to include any such lost increase to the Contract Price as losses incurred by the Supplier should the Supplier pursue a Claim against the Purchaser in respect of its failure to comply with Clause 9.4.6.
 - 9.4.3. the Supplier shall mitigate any extension of time required or costs incurred as a result of any such delays; and
 - 9.4.4. whenever pursuant to this Clause 9.4 the Supplier is entitled to an increase in Contract Price, such increase shall be based on the reasonable and direct material, equipment and labour costs, directly related handling and transportation charges, reasonable travel, outside services and other reasonable expenses incurred by the Supplier or invoiced by a Subcontractor, plus reasonable allocated overheads, general and administrative expenses and profit which were necessary to be incurred as a result of the Adjustment Event. Overheads, general and administrative expenses and profit shall be reasonably agreed by the Parties but shall not exceed fifteen percent (15%) of the increase. In all cases the amount of the increase, including overhead, administrative expenses and profits, shall be reduced by the amount of any savings generated, directly or indirectly, as a result of the relevant Adjustment Event.
 - 9.4.5. In order to ascertain any such delays, the Parties shall take into account the critical path analysis as per the Contract.
 - 9.4.6. The Purchaser shall be responsible for making any Claims under Agreement(s) with Government Authority of Morocco or other entities, if applicable, and/or any insurance coverage that correspond to any Adjustment Event notified by the Supplier. The Supplier will provide all reasonable support to the Purchaser to enable the Purchaser to make any aforementioned corresponding Claims.

10. OWNERSHIP

Title to each item of the Supply shall pass to the Purchaser free and clear of all liens, claims, security interests or encumbrances of whatsoever nature, upon the latest of (i) the issuance of a Milestone Completion Certificate in respect of such item, and (ii) the date the Supplier has received payment of the Milestone corresponding to such item of the Supply. The Supplier hereby represents and warrants to the Purchaser that, at the time title to each item of the Supply shall pass to the Purchaser pursuant to this Clause 10, such item of the Supply shall be free and clear of all liens, claims, security interests or encumbrances of whatsoever nature.

11. CARE OF THE SUPPLY AND PASSING OF RISK

The Risk Transfer Date in relation to any item of the Supply is determined accordingly to the [REDACTED] referred in Clause 6.2.

In respect of each item of the Supply, the Supplier shall be responsible for the care of such item of the Supply from the Commencement Date until the Risk Transfer Date in respect of such item. The risk of loss of or damage to any item of the Supply shall pass from the Supplier to the Purchaser Contractor at the same time.

12. NO OBLIGATION TO DE-INSTALL

Notwithstanding any provision of this Contract, the warranty obligations of the Supplier pursuant to Clause 13 (*Warranty*) shall not extend to the removal or recycling of any equipment, machinery or any other parts forming part of the Works having reached their life time, as such life time is specified in the Specifications.

13. WARRANTY

13.1. General Principle

The Supplier warrants to the Purchaser that the Works (and the Supplier's delivery of the Work) shall comply with the requirements of this Contract, applicable Laws and Industry Standards, and shall be free from Defects during the Warranty Period without prejudice to this Clause and that all items of Supply furnished under this Contract shall be of good quality and new. For clarity, the warranty applicable during the Warranty Period shall apply to all Works and components thereof, whether manufactured or supplied directly by Supplier or by any Subcontractor.

13.2. Correction of Defects

The correction of Defects during the Warranty Period shall be performed as follows:

- 13.2.1. If at any time during the Warranty Period the Purchaser identifies any Defect in the Works, the Purchaser shall promptly, and in any event prior to the expiry of the Warranty Period in respect of such item of the Works, present a written claim (with substantiating documents and evidences) to the Supplier for the correction of such Defect. The Supplier shall, as soon as reasonably possible and in any event not later than ten (10) Business Days after the date of receipt of the Purchaser's claim or such longer period as may be agreed between the Parties if the Defect cannot reasonably be corrected within such period, at the sole cost and expense of the Supplier, take all corrective measures necessary to eliminate such Defect and make the Works compliant with the requirements of Clause 13.1 by repairing, replacing or re-performing the relevant items or parts of the Works and any other part of the Works which may have been damaged or which is not

compliant with the requirements of Clause 13.1 due to such Defect. For greater certainty, any item or part of the Works which is replaced by the Supplier shall be replaced with an item or part that is new (excluding, for greater certainty, any refurbished item or part) and which complies with the requirements of Clause 13.1. The Supplier shall bear all costs and expenses, including labour costs, associated with any such repairs, replacements or re-performance. Without limiting the foregoing, (a) the Supplier shall be liable for the cost of gaining access to any item of the Works for disassembly or reassembly, or for transportation to and from the Site; (b) all travelling expenses for the Supplier's employees and its Subcontractors shall be assumed by the Supplier; and (c) the Supplier shall assume the cost of removal, transportation or shipping if the Supplier decides that any item of the Works shall be removed, transported or shipped from the Site to perform any repairs or replacement.

- 13.2.2. For the purpose of correcting Defects, the Purchaser shall make available, free of cost to the Supplier, those available materials and spare parts from the Purchaser's inventory and access to the Plant as reasonably required by the Supplier. If the Supplier uses materials or spare parts from the Purchaser's inventory, the Supplier shall at its own cost and as soon as reasonably possible, but in any event before the end of the Warranty Period, replenish the Purchaser's inventory with the same or similar materials if no longer available at the Purchaser's satisfaction. Supplier shall ensure that it has access to appropriate materials and spare parts for the duration of the Warranty Period and a subsequent period of 4 years from the date thereof.
- 13.2.3. If the Supplier fails to repair, replace or re-perform any item or part of the Works as required pursuant to this Clause 13.2, the Purchaser shall have the right to retain any third party contractor to perform such repair, replacement or re-performance, at the cost and risk of the Supplier. Upon the request of the Purchaser, the Supplier shall promptly reimburse any costs incurred and substantiated by the Purchaser pursuant to this Clause 13.2.3. For the avoidance of doubt, the performance of remedial work by a third party contractor pursuant to this Clause 13.2.3 shall not, to the extent performed in accordance with Industry Standards and the Specifications, affect the warranties or performance guarantees under this Contract (including the Supplier's continued responsibility for the correction of Defects).
- 13.2.4. The Purchaser shall provide, without cost to Supplier and upon Supplier's request, reasonable access to the Plant and the defective items or parts, as well as to operating and maintenance data, including access to the control system and associated data for monitoring purposes, as required for the performance by the Supplier of its obligations under this Clause 13.2.
- 13.3. Serial Defects
- 13.3.1. Each Party shall, as soon as reasonably possible after discovery or becoming aware of any actual or potential Serial Defect, promptly notify the other Party thereof. If the Supplier discovers, becomes aware of, or is notified by the Purchaser of any actual or potential Serial Defect, the Supplier shall promptly perform a thorough investigation and root cause analysis of the affected Parts to ascertain the existence and cause of such Serial Defect and provide a written report of same to the Purchaser. The Supplier shall provide such report to the Purchaser within thirty (30) Business Days or, provided that the Supplier started acting during such thirty (30)-Business Day period and proceeds diligently thereafter, such longer period as may be agreed to by the Purchaser (acting reasonably) given the nature, extent and complexity of such actual or potential Serial Defect, which additional time period shall not in any event exceed thirty (30) Business

Days). If the report concludes to the existence of a Serial Defect, the report shall include the Supplier's recommendations for remedying the Serial Defect.

- 13.3.2. If the Supplier denies liability in respect of any Serial Defect claimed by the Purchaser under Clause 13.3.1, or if the Purchaser disagrees with the recommendations for remedying any Serial Defect set forth in a report referred to in Clause 13.3.1, such dispute shall be settled, at the request of any Party, by expert determination using a mutually agreed independent third party expert evaluating and eventually inspecting the claimed Serial Defect or the recommendations of the Supplier for remedying same, as applicable.
- 13.3.3. The expert determination under this Clause shall be conducted by an independent industry expert to be agreed between the Parties within 21 calendar days of Supplier denying liability in respect of any Serial Defect claimed by the Purchaser under Clause 13.3.1, or of the Purchaser disagreeing with the recommendations for remedying any Serial Defect set forth in a report referred to in Clause 13.3.1 or, failing such agreement, to be nominated by the International Chamber of Commerce (ICC) International Centre for Expertise in accordance with the ICC's Rules for Expertise.
- 13.3.4. Unless otherwise agreed between the Parties, the Expert must notify the Parties of his or her decision within 28 days from the acceptance by the expert of his or her appointment.
- 13.3.5. At the sole cost and expense of the Supplier, the Supplier shall promptly take all corrective measures necessary to eliminate any Serial Defect which has been established in the report referred to in Clause 13.3.1 or the existence of which has been mutually agreed upon between the Parties or confirmed by the expert referred to in Clause 13.3.2, by either repairing or replacing the relevant items or parts of the Works affected by such Serial Defect and any other item or part of the Works which may have been damaged by such Serial Defect, regardless of whether such items or parts of the Works have yet failed. If the expert appointed pursuant to Clause 13.3.2 determines that there is a Serial Defect, the Supplier shall be responsible for the costs of, and incurred by, the expert. In the event the expert determines that there is no Serial Defect, the Purchaser shall be responsible for the costs of, and incurred by, the expert.

13.4. Warranty Conditions

The warranties and remedies set forth in this Clause 13 (*Warranty*) and Supplier's obligations arising thereof are conditional upon:

- 13.4.1. the Works not being and not having been subject to any accident, alteration, repair or replacement, other than by Supplier or Supplier's Subcontractors or in accordance with the Supplier's instructions unless permitted under the Contract; and
- 13.4.2. the Works having been used within the limits of the manufacturer specifications and manuals; and
- 13.4.3. the Defect in question not being attributable to acts or omissions of the Purchaser or its Subcontractors, or a third party that the Supplier is not responsible for under this Contract.

Notwithstanding the foregoing, none of the conditions set forth in this Clause 13.4 shall limit the warranties and remedies of the Purchaser pursuant to this Clause 13 (*Warranty*) to the extent that any non-compliance with such conditions results from the acts or omissions of the Supplier or of Supplier's Subcontractors and the Supplier agrees and accepts that:

- (a) if it delegates any of its responsibilities under this Contract to any Subcontractor, the Supplier will be responsible for the acts, defaults and neglects of such Subcontractor, its agents, servants or workmen as fully as if they were the acts, defaults and neglects

of the Supplier, his agents, servants or workmen performing its obligations under the Contract; or

- (b) the acts, defaults and neglects of any Subcontractor, its agents, servants or workmen in undertaking the Works or other related services shall not relieve the Supplier of its responsibilities in respect of Defects during the Warranty Period.

13.5. Warranty Period

13.5.1. The warranty period in respect of all items of the Works (subject to any extension pursuant to Clause 13.5.2, the "**Warranty Period**") shall expire on the date which is twenty-four (24) months after the date of the issuance of the Provisional Acceptance Certificate.

13.5.2. Items of the Works which are repaired, replaced or re-performed pursuant to Clause 13.2 shall be subject to and covered by the provisions of this Clause 13.1, provided that the Warranty Period applicable in respect of such repair, replacement or re-performance only shall expire on the later of (i) the expiration of the initial Warranty Period in respect of such item so repaired, replaced or re-performed, and (ii) the date which is twelve (12) months after the date of such repair, replacement or re-performance.

13.6. Primary Liability

The Supplier shall have primary liability with respect to the warranties set forth in this Contract, whether or not any defect, deficiency or other matter is also covered by a warranty of a Subcontractor, and the Purchaser shall only be required to make claim and seek recourse from the Supplier for corrective action. In addition, the Supplier's warranties expressed herein shall not be restricted in any manner by any warranty of a Subcontractor and the refusal of a Subcontractor to correct defective, deficient or nonconforming Work shall not excuse the Supplier from its liability as to the warranties provided herein.

13.7. Assignment of Warranties

By no later than the expiration of the Warranty Period, the Supplier shall assign to the Purchaser all of the Supplier's rights in warranties obtained from its Subcontractors or other manufacturers of the Supply the duration of which extends beyond the Warranty Period and shall provide to the Purchaser proof that such warranties and their assignment will be enforceable by the Purchaser. After the expiration of the Warranty Period, at the request of the Purchaser, the Supplier shall use commercially reasonable efforts to assist the Purchaser in enforcing such warranties with the Subcontractors or other manufacturers of the Supply.

13.8. Limitation of Liability for Defects

The remedies set forth in this Clause 13 (*Warranty*) for the correction of Defects in the manner and for the period of time provided herein shall constitute Supplier's and Supplier's Subcontractor's sole Liabilities and Purchaser's exclusive remedies for failure of the Supplier to meet its warranty obligations under Clause 13.1, whether Claims of the Purchaser are based in contract, in tort, or otherwise.

13.9. Warranty Period Guarantee

By no later than the date of Provisional Acceptance, the Supplier shall deliver to the Purchaser an executed guarantee for an amount equal to [REDACTED] of the Contract Price in the form set out in Annex I (*Form of Warranty Period Guarantee*) which shall remain in force until the expiration of the Warranty Period (the "**Warranty Period Guarantee**"). The Warranty Period Guarantee shall secure the full and faithful performance of the Supplier's obligations set forth in this Contract, including the obligations of the Supplier set forth in this Clause 13, until the expiration of the Warranty Period.

14.FORCE MAJEURE

14.1. Effect of Force Majeure

A Party shall not be liable for failure to perform any obligation under this Contract or for delay in the performance of any obligation under this Contract due to Force Majeure provided that it complies with the provisions of this Section 14. Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make outstanding payments to the other Party under the Contract.

14.2. Notice of Occurrence

If either Party considers that any circumstances of Force Majeure have occurred which may affect the performance of its obligations under this Contract, it shall promptly notify the other Party thereof.

14.3. Continued Performance

Upon the occurrence of any Force Majeure, the Supplier shall endeavour to continue to perform its obligations under the Contract which are affected by such Force Majeure so far as reasonably practicable. The Supplier shall notify the Purchaser of the steps it proposes to take, including any reasonable alternative means for performance which are not prevented by such Force Majeure. The Supplier shall not take any such steps unless directed to do so by the Purchaser.

14.4. Duty to Avoid and Mitigate

Each Party shall take all reasonable measures to anticipate and avoid Force Majeure events, wherever possible, to mitigate the effects thereof if such an event of Force Majeure has occurred, and to keep the other fully informed of all potential Force Majeure situations, particularly potential strikes and labour disturbances, to enable the Parties to consult and endeavour to take steps to mitigate their effect on the Work.

14.5. Termination for Continuing Force Majeure

If any Force Majeure continues for a period of more than [REDACTED] days, either Party shall be entitled to terminate this Contract upon providing the other Party a thirty (30) day prior notice to such effect.

14.6. Payment on Termination for Force Majeure

If the Contract is terminated due to Force Majeure in accordance with Clause 14.5, the following provisions shall apply:

- 14.6.1. the Supplier shall stop all Works and place no further orders or subcontracts;
- 14.6.2. the Purchaser shall pay the Supplier for the Works required by this Contract prior to Contract termination and which have been performed and meet the requirements of this Contract;
- 14.6.3. the Purchaser shall pay the cost of plant and materials ordered for the Works which have been delivered to the Purchaser, or of which the Supplier is liable to accept delivery; this plant and materials shall become the property of (and be at the risk of) the Purchaser when paid for by the Purchaser, and the Supplier shall place the same at the Purchaser's disposal;
- 14.6.4. the Purchaser shall be entitled to take possession of the Works performed and Supply delivered up to the date of termination following payment by the Purchaser to the Supplier of all amount then outstanding which are owed by the Purchaser to the Supplier.

- 14.6.5. the Supplier shall reimburse to the Purchaser any portion of the Contract Price which has been paid by the Purchaser in excess of Works performed and Supply delivered up to the termination date, as reasonably determined by the Purchaser;
- 14.6.6. the Supplier shall, upon the written request of the Purchaser following payment by the Purchaser to the Supplier of all amount then outstanding which are owed by the Purchaser to the Supplier and is not disputed by the Purchaser, execute such documents and take such other action as the Purchaser may reasonably require to (i) effectively assign to the Purchaser the interest of the Supplier in any of the subcontracts entered into between the Supplier and its Subcontractors in respect of the Works and Supply (as well as the interest of the Supplier in any bond or other performance security held by the Supplier in respect of any such subcontracts) as may be designated in such request or (ii) to effectively transfer to the Purchaser title to the Works (including title to the Supply and the Supplier's Drawings) as may be designated in such request; and
- 14.6.7. the Supplier shall remain liable in respect of the Works completed and Supply delivered prior to such termination, including in respect of its obligations under Clauses 10 and 13.

For clarity, any event of Force Majeure shall not excuse any late payment by Purchaser.

15.SUSPENSION

15.1. Suspension by Purchaser

- 15.1.1. Purchaser shall be entitled to suspend this Contract by prior written notice to Supplier if the Supplier is in breach of a material provision of this Contract and does not cure the breach within a reasonable time period indicated by the Purchaser in a written notice to the Supplier, which time period shall not be less than thirty (30) days from the date of the notice. During any such suspension, the Supplier shall protect and secure the Supply wherever located against any deterioration, loss or damage, at its own cost.
- 15.1.2. At any time and for any reason (other than in the circumstances described in Clause 15.1.1), the Purchaser may suspend the Works or any portion thereof for a period of no more than 30 days by notice in writing to the Supplier which shall specify the anticipated date on which the Works shall be resumed. During any such suspension, the Supplier shall protect and secure the Supply wherever located against any deterioration, loss or damage, at the cost of the Purchaser. The Supplier shall use reasonable efforts to mitigate the impact of such suspension and resume the Works on the date specified by the Purchaser, provided that, (i) should the suspension be 30 days or less upon resumption of the Works the Supplier shall have the right to an Adjustment Event, which Adjustment Event cost shall have been paid prior to the recommencement of the work hereunder or (ii) should the suspension be for greater than 30 days, the parties shall agree to the Adjustment Event cost and its payment schedule during the suspension.

15.2. Suspension by Supplier

- 15.2.1. The Supplier may at its option suspend wholly or partly the performance of the Works if the Purchaser fails to pay any undisputed amount due and payable to the Supplier within twenty (20) days of the due date of such payment.
- 15.2.2. In the event the Supplier suspends the performance of the Works in accordance with Clause 15.2.1, the Supplier shall protect and secure the Supply wherever located against any deterioration, loss or damage at the cost of the Purchaser as an Adjustment Event and shall have the right to an Adjustment Event.

- 15.2.3. In order to resume Works by the Supplier, any outstanding and undisputed amounts shall have been paid in accordance with the terms of this Agreement.

16. TERMINATION

16.1. Termination by Purchaser for Supplier Default

The Purchaser shall have the right to terminate this Contract upon providing a written notice to the Supplier if:

- 16.1.1. the Supplier is insolvent or if any proceeding is instituted against the Supplier seeking to adjudicate the Supplier as bankrupt or insolvent, or if the Supplier makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of the Supplier, or if the Supplier files a petition seeking to take advantage of any Law relating to bankruptcy, insolvency, winding up or composition or readjustment of debts and, in the case of any such proceeding instituted against the Supplier (but not by the Supplier) if such proceeding is not dismissed within forty-five (45) days of such filing;
- 16.1.2. the Supplier abandons the Works except as expressly permitted under this Contract, without prejudice to the Supplier's other obligations under this Contract (including under Clause 14.3), and such breach is not cured within thirty (30) days after receipt of a written notice from the Purchaser of such breach;
- 16.1.3. the Supplier fails to comply with the provisions of Annex K (*Compliance*), and such breach is not cured within sixty (60) days after receipt of a written notice from the Purchaser of such breach;
- 16.1.4. any of the guarantees referred to in Clause 2.1.2 or the Warranty Period Guarantee is terminated or cancelled or is not renewed (and notice has been received by the Purchaser of such renewal) at least 30 days prior to its expiry in accordance with Clause 2.1.2, unless such guarantee is no longer required to remain in place in accordance with the terms of this Contract;
- 16.1.5. the Supplier assigns or purports to assign this Contract or any part of its rights or obligations under this Contract, except as permitted pursuant to Clause 22.1;
- 16.1.6. the Supplier fails to obtain or maintain any of the insurance policies referred to in Clause 19 or any of such insurance policies is terminated or cancelled or is not renewed prior to its expiry, and such breach is not cured within thirty (30) days after receipt of a written notice from the Purchaser of such breach;
- 16.1.7. the Supplier is in breach of any other material provision of this Contract, and such breach is not cured within sixty (60) days after receipt of a written notice from the Purchaser of such breach. This period is reduced to ten (10) days should the breach be that of applicable laws.

16.2. Termination by Purchaser for Convenience

The Purchaser may, without cause and for any reason, elect to terminate this Contract upon a thirty (30)-day prior written notice to the Supplier, in which case the provisions of Clause 16.5 shall apply, *mutatis mutandis*.

16.3. If the Purchaser elects to terminate this Contract pursuant to Clause 16.1 (*Termination by Purchaser for Supplier Default*), the following provisions shall apply:

- 16.3.1. the Supplier shall stop all Works and place no further orders or subcontracts;

- 16.3.2. the Supplier shall not be entitled to receive any further payment until all the Works required by this Contract prior to contract termination have been performed and meet the requirements of this Contract;
- 16.3.3. the Purchaser shall be entitled to take possession of the Works performed up to the date of termination;
- 16.3.4. the Supplier shall reimburse to the Purchaser any portion of the Contract Price which has been paid by the Purchaser in excess of Works performed up to the termination date, as reasonably determined by the Purchaser;
- 16.3.5. without prejudice to its other rights hereunder or at law, the Purchaser shall be entitled to enforce its rights under the advance payment guarantee described in Clause 2.1.2.1 (if still in force), the performance guarantee described in Clause 2.1.2.2 and the Warranty Period Guarantee, for the amounts to which the Purchaser is entitled under the Contract;
- 16.3.6. the Supplier shall, upon the written request of the Purchaser, execute such documents and take such other action as the Purchaser may reasonably require to (i) effectively assign to the Purchaser the interest of the Supplier in any of the subcontracts entered into between the Supplier and its Subcontractors, or between such Subcontractors and their subcontractors of any level, in respect of the Works (as well as the interest of the Supplier in any bond or other performance security held by the Supplier in respect of any such subcontracts) as may be designated in such request or (ii) to effectively transfer to the Purchaser title to the Works (including title to the Supply and the Supplier's Drawings) as may be designated in such request;
- 16.3.7. the Purchaser shall be entitled to, or appoint a third party to, perform any outstanding Works to complete the Plant at the cost and expense of the Supplier and, if applicable, without limiting any Claim in respect of additional amounts, use the proceeds under the advance payment guarantee described in Clause 2.1.2.1, the performance guarantee described in Clause 2.1.2.2 and the Warranty Period Guarantee to pay for such Works;
- 16.3.8. if (i) the direct costs to the Purchaser of termination (including reasonably and properly incurred compensation for additional professional services and all out-of-pocket costs incurred in having all the Works/Supply completed or delivered, and compensation for any delay in completion of the Works or delivery of Supply), and (ii) the amounts incurred by the Purchaser in respect of penalties, interest charges, capital payments, damages and costs incurred in connection with financing or loan documents with the Lenders and other agreements with third parties such as shareholders and other contractors, exceed any unpaid balance of the Contract Price, the Supplier shall pay the difference to the Purchaser; and
- 16.3.9. (i) the Supplier shall remain liable in respect of the Works completed prior to such termination, including in respect of its obligations under Clauses 10 and 13, and (ii) the Supplier, if requested by the Purchaser and in such case at the Supplier's cost, shall have the obligation to complete or alter such parts of the Works as may be required to leave the Site safe and not subject to risk of causing damage to the environment.

16.4. Termination by Supplier

Subject to the terms of any direct agreement which may be entered into between the Supplier and any Lender the Supplier shall have the right to terminate this Contract upon providing a written notice to the Purchaser if:

- 16.4.1. any suspension pursuant to Clause 15.1.2 continues for more than consecutive days; or

- 16.4.2. the Purchaser is insolvent or if any proceeding is instituted against the Purchaser seeking to adjudicate the Purchaser as bankrupt or insolvent, or if the Purchaser makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of the Purchaser, or if the Purchaser files a petition seeking to take advantage of any Law relating to bankruptcy, insolvency, winding up or composition or readjustment of debts and, in the case of any such proceeding instituted against the Purchaser (but not by the Purchaser) if such proceeding is not dismissed within forty-five (45) days of such filing; or
- 16.4.3. the Purchaser having failed to pay any undisputed amount due and payable to the Supplier within forty-five (45) days of the due date of such payment; or
- 16.4.4. the Purchaser fails to comply with the provisions of Annex K (*Compliance*), and such breach is not cured within forty-five (45) days after receipt of a written notice from the Supplier of such breach.

For the avoidance of doubt:

- (A) Purchaser shall not be considered to be in breach or default if, (i) such default is caused by or is otherwise attributable to a breach by the Supplier or any of its Affiliates, or (ii) subject to Clause 14, occurs as a result of a Force Majeure Event declared by either Party in accordance with Clause 14; and
 - (B) an assignment by the Purchaser pursuant to Clause 22.1 shall not constitute a Purchaser Default pursuant to Clause 16.4.2 above.
- 16.5. If the Supplier elects to terminate this Contract pursuant to Clause 16.4 (*Termination by Supplier*) or if the Purchaser elects to do so pursuant to Clause 16.2 (*Termination by Purchaser for Convenience*), the following provisions shall apply:
- 16.5.1. the Supplier shall stop Works and place no further orders or subcontracts;
 - 16.5.2. the Purchaser shall be entitled to take possession of the Works performed up to the date of termination.
 - 16.5.3. the Supplier shall reimburse to the Purchaser any portion of the Contract Price which has been paid by the Purchaser in excess of the aggregated amount of Works performed up to the termination date, as reasonably determined by the Purchaser;
 - 16.5.4. the Supplier shall, upon the written request of the Purchaser and following payment by the Purchaser to the Supplier of all amount then outstanding which are owed by the Purchaser to the Supplier and is not disputed by the Purchaser, execute such documents and take such other action as the Purchaser may reasonably require to (i) effectively assign to the Purchaser the interest of the Supplier in any of the subcontracts entered into between the Supplier and its Subcontractors in respect of the Works (as well as the interest of the Supplier in any bond or other performance security held by the Supplier in respect of any such subcontracts) as may be designated in such request or (ii) to effectively transfer to the Purchaser title to the Works (including title to the Supply and the Supplier's Drawings) as may be designated in such request;
 - 16.5.5. the Purchaser shall pay the Supplier for the unpaid portion of any Works performed up to the effective date of termination of the Contract;
 - 16.5.6. the Purchaser shall promptly pay the Supplier for reasonable additional costs which are reasonably incurred and directly related to the termination of this Contract, including, but not limited to, reasonable costs, applicable to terminated subcontracts entered into between the Supplier and its Subcontractors in respect of the Works, provided that support documentation satisfactory to the Purchaser is submitted by the Supplier;

- 16.5.7. the Purchaser shall promptly pay to the Supplier an element of loss profit equal to five percent (5%) of the outstanding portion of the Contract Price on the date of termination of the Contract; and
- 16.5.8. (i) the Supplier shall remain liable in respect of the Works completed prior to such termination, including in respect of its obligations under Clauses 10 and 13, and (ii) the Supplier, if requested by the Purchaser and in such case at the Purchaser's cost, shall have the obligation to complete or alter such parts of the Works as may be required to leave the Site safe and not subject to risk of causing damage to the environment.

17. INDEMNIFICATION

17.1. Supplier's Indemnity

- 17.1.1. The Supplier shall indemnify and hold harmless the Purchaser, its Affiliates and their respective officers, directors, employees and agents from and against any Liability or Claim incurred or suffered by any of them arising out of or resulting from any claim of a third party in respect of injury to or death of persons, damage to or loss of physical property, or any other direct loss to the extent caused by (i) negligent acts or omissions of the Supplier or the Subcontractors, or (ii) any failure of the Supplier to comply with its obligations under this Contract. The Purchaser shall promptly notify the Supplier of any third-party Claim which may give rise to the Supplier's obligation to indemnification pursuant to this Clause 17.1. The Supplier may, at its own cost, conduct all negotiations for the settlement of the Claim and any litigation that may arise in relation thereto to the extent that it does not affect the rights of the Purchaser, including the Purchaser's use of the Works, or the ownership, operation or maintenance of the Plant.

17.2. Purchaser's Indemnity

- 17.2.1. The Purchaser shall indemnify and hold harmless the Supplier, its Affiliates and their respective officers, directors, employees and agents from and against any Liability or Claim incurred or suffered by any of them arising out of or resulting from any Claim of a third party in respect of injury to or death of persons, or damage to or loss of physical property, to the extent caused by (i) negligent acts or omissions of the Purchaser, or (ii) any failure of the Purchaser to comply with its obligations under this Contract. The Supplier shall promptly notify the Purchaser of any third-party Claim which may give rise to the Purchaser's obligation to indemnification pursuant to this Clause 17.2. The Purchaser may, at its own cost, conduct all negotiations for the settlement of the Claim and any litigation that may arise in relation thereto to the extent that it does not affect the rights of the Supplier.

18. LIMITATION OF LIABILITY

18.1. Liability for damages

Each Party expressly agrees that the other Party shall not, under any circumstances, be liable under any theory of recovery, whether based in contract, in tort (including negligence and strict liability), under warranty, indemnity or otherwise, for any indirect, special, incidental, collateral or consequential loss or damage whatsoever; loss of profit or revenue; loss of use of the Plant. The Parties acknowledge and agree that amounts expressly payable under this Contract shall not be excluded for the purposes of the foregoing sentence.

18.2. Maximum cap on Liability

- 18.2.1. Subject to Clause 18.2.2 and 18.2.3, each Party expressly agrees that under no circumstances shall the aggregate liability of the other Party under this Contract, under any theory of recovery (including reimbursement of costs incurred by such Party), exceed [REDACTED] of the Contract Price.
- 18.2.2. The limitations of liability set forth in Clauses 18.2.1 shall not apply in respect of any Liability or Claim incurred or suffered by any Party arising out of or resulting from:
- 18.2.2.1. gross negligence, criminal acts, fraud or wilful misconduct of a Party;
 - 18.2.2.2. any defect in title to the Supply at the time of the transfer of title in accordance with Clause 10;
 - 18.2.2.3. warranty obligations of the Supplier related to the correction of Defects discovered in the Supply during Warranty Period and pursuant to the conditions hereof, including Serial Defects, in respect of which the aggregate liability of the Supplier shall, subject to Clause 18.2.3, be limited to [REDACTED] of the Contract Price; the obligation of such Party to indemnify the other Party in respect of third-party Claims;
 - 18.2.2.4. any obligation of the Supplier pursuant to Clause 24; or
 - 18.2.2.5. the breach of any confidentiality obligations under this Contract.
- 18.2.3. Notwithstanding the foregoing, (i) amounts which the Supplier or the Purchaser has received or recovered pursuant to receipt of insurance proceeds from any insurer, and (ii) amounts recovered, received or saved, and other compensation or value received, by the Supplier as a result of the enforcement of its own warranty and other rights as against its own service providers, suppliers or sub-suppliers in respect of the correction of any Defects in the Supply, including Serial Defects, shall not be counted in the calculation of the foregoing limitations of liability;
- 18.3. Extent of Liability
- 18.3.1. The provisions of this Clause 18 (*Limitation of Liability*) shall prevail over any conflicting or inconsistent provisions set forth elsewhere in this Contract.
 - 18.3.2. In all cases the Party claiming a right to be indemnified in accordance with the Contract shall be obliged to take all reasonable measures to mitigate the Liability resulting from the applicable event.

19.INSURANCE

The Supplier shall, at their own expense, maintain the following insurance:

19.1. Marine Cargo Insurance. Such insurance shall:

- 19.1.1. Insure the Supply against loss or damage while in transit to the Transit Delivery Point;
- 19.1.2. Insure each delivery for not less than one hundred ten percent (110%) of [REDACTED];
- 19.1.3. Provide coverage in accordance with Institute Cargo Clauses (A);
- 19.1.4. Commence coverage in respect of each delivery when it leaves the seller's warehouse and continue until unloaded at the Site;
- 19.1.5. Be maintained until all deliveries have been completed or until the Risk Transfer Date, whichever last occurs;
- 19.1.6. Name the Supplier as an insured, as their interests may appear;

19.1.7. Provide 45 days' notice of cancellation to the Supplier (or lesser period as the policy allows for cancellation due to non-payment of premium and subject to automatic termination clauses as per the policy);

19.1.8. Be subject to a deductible not to exceed [REDACTED] per occurrence.

The deductible will be borne by the Party responsible for the loss. Where fault cannot be reasonably attributed to either Party, then the deductible shall be borne by the Party that suffers the loss.

The Supplier shall provide the Purchaser with a certificate of insurance, and upon request copies of policies, evidencing insurance as required herein.

20. CUSTOMS

20.1. Customs and Import Duties

Subject to clause 7.1.5, the Purchaser (Importer of Record in Morocco), shall be responsible for and shall pay all customs, import duties and import taxes imposed by the Kingdom of Morocco or Governmental Authority in Morocco regarding the importation of the Supply. The Supplier shall be responsible for all other analogous taxes, duties and fees which may be imposed by any Governmental Authority outside of Morocco.

20.2. Clearance through Customs

20.2.1. The Purchaser shall obtain clearance through customs of all Supply in Morocco in due time and form. The costs incurred by the Supplier in connection with the customs clearance process (if any) are not included in the Contract Price.

20.2.2. The Supplier shall provide reasonable assistance to the Purchaser in obtaining clearance through the customs of all Supplier equipment and in Purchaser to be in charge of procuring any necessary Governmental Approval to the re-export of Supplier's equipment when it is removed from the Site.

20.2.3. In case of delays by Purchaser in its customs obligations above mentioned all related extra costs that may arise are under Purchaser scope and responsibility and Supplier is entitled to an extension in Delivery Date accordingly (if applicable)

[REDACTED], therefore all services, fees and costs after [REDACTED] are not included in Contract Price and scope.

21. TIME FOR COMPLETION

The Supplier shall deliver the Works by no later than the respective dates which are set in the Time Schedule, unless such delay is extended in accordance with the terms of this Contract (the "Time for Completion").

22. TRANSFER, ASSIGNMENT AND SUBCONTRACTING

22.1. Assignment

Neither Party shall assign the Contract or any part of its rights or obligations under this Contract without the prior written consent of the other Party and any purported assignment without the required consent shall be null and void. Notwithstanding the foregoing, the Purchaser may assign or novate the Contract, in whole or in part, as security to any Lender.

22.2. Subcontracting

22.2.1. Supplier Subcontractors

- a. The Supplier shall have the right to subcontract parts of the Works but not all of the Works. Annex J (*List of Suppliers*) sets out a list of potential Subcontractors which the Supplier may use for the elements of the Works identified in that Annex and against which the Purchaser declares having no objection as of the date of this Contract. Should the Supplier wish to use a Subcontractor not in Annex J for the supply of corresponding services, or where a Subcontractor is listed in Annex J is to perform a different element of Work to that stated in Annex J, before using any Subcontractor, the Supplier shall notify the Purchaser in writing of the identity of such proposed Subcontractor and the element of Work to be carried by such Subcontractor and the Supplier shall not use such Subcontractor or subcontract such element of Work, as the case may be, without the written consent of the Purchaser (acting reasonably). Should the Supplier subcontract part of the Works, each such subcontract which has a value in [REDACTED] shall be based on terms and conditions substantially similar to those found herein to the extent applicable.
- b. The Supplier shall be responsible for the acts, omissions, defaults and negligence of any of its Subcontractors as if they were the acts, omissions, defaults or negligence of the Supplier.
- c. The exercise by the Supplier of the right to subcontract will not in any way increase the costs, expenses or liabilities of the Purchaser. Further, nothing contained in this Contract is intended to or will create any contractual relation between any Subcontractor (or sub-Subcontractor) and the Purchaser or any obligation on the part of the Purchaser to pay or see to the payment of any moneys due to any Subcontractor (or sub-Subcontractor) or its personnel.
- d. The Supplier shall ensure that each subcontract entered into with a Subcontractor for a value of more than \$100,000 USD expressly authorizes the assignment by the Supplier of all of its interest in such subcontract to the Purchaser upon the termination of this Contract.

22.2.2. Purchaser subcontractors

Purchaser shall be responsible for the acts, omissions, defaults and negligence of any of its subcontractor, agents or employees as if they were the acts, omissions, defaults or negligence of the Purchaser. This extension of liability shall not apply where the subcontractor, whether under this Contract or another agreement, is the Supplier, or an Affiliate thereof.

23. CONFIDENTIALITY AND PUBLICATIONS

23.1. Each Party shall keep confidential the information received from the other Party in connection with this Contract (the "**Confidential Information**") and shall not disclose such Confidential Information to a third party, nor disclose it in changed or processed form, without the prior consent of the other Party and shall use it for the sole purpose of this Contract. This obligation shall not apply to information which can be proven to be

- (I) part of the public domain at the time of receipt or becomes part of the public domain thereafter through no fault of the recipient; or
- (II) already known to the recipient at the time of receipt or has been disclosed to him thereafter by others without any confidentiality obligation; or

- (III) independently developed by the recipient without reference to the Confidential Information.

- 23.2. Notwithstanding Clause 23.1, each Party shall have the right to disclose Confidential Information of the other Party to its directors, officers, employees, consultants, subcontractors, and other representatives or the Lenders (and its consultants) and those of its Affiliates who have a need to know such Confidential Information for the purpose of the performance by such Party of its obligations under this Contract or otherwise for the purpose of the construction, operation, maintenance, financing, refinancing or transfer of the Plant, provided that any such person is bound by confidentiality obligations to an extent not less stringent than the obligations imposed on the Parties under this Clause 23.
- 23.3. When required to disclose Confidential Information pursuant to applicable Laws, a Party may disclose Confidential Information of the other Party; provided, however, that prior to making any such disclosure, such Party shall: (a) provide the disclosing Party with a timely prior written notice of the Confidential Information requested to be disclosed; (b) minimize the amount of Confidential Information to be provided in accordance with the interests of the disclosing Party and the requirements of applicable Laws; and (c) make every commercially reasonable effort (which may include participation by the disclosing Party in discussions with any applicable Governmental Authority involved) to secure confidential treatment and minimization of the Confidential Information to be disclosed. In the event that efforts to secure confidential treatment are unsuccessful, to the extent reasonably possible and not in breach of applicable Laws, the disclosing Party shall have the prior right to revise such information to be disclosed to minimize the disclosure of such information in a manner consistent with its interests and the requirements of applicable Laws.

24. INTELLECTUAL PROPERTY

The Supplier shall perform and deliver the Works without infringement of third-party Intellectual Property Rights and pay all license fees and royalties and assume all costs incidental to the use in the performance of the Works or the incorporation in the Works of any Intellectual Property Rights of third parties.

All Intellectual Property Rights developed by Supplier during the performance of the Contract, including any improvement to the Supply, shall exclusively vest in the Supplier. The Supplier hereby grants the Purchaser a perpetual, irrevocable, non-exclusive, non-transferable (other than in connection with the Project) and sub-licensable and royalty-free license to use any Intellectual Property Rights contained in the Works and/or the Supplier's Drawings and Software for the purpose of the construction, operation and maintenance of the Plant.

Such license shall not include the right to disclose the Supplier's confidential know-how or trade secrets to any third party or to grant any sub-licenses. Any other use of such Intellectual Property Rights, including, without limitation, its copying or use for a modification, duplication or replication of the Supply, is not permitted.

In the event Claims, whether in or out of court, are brought against the Purchaser for infringement of Intellectual Property Rights in connection with the fabrication, manufacture, installation or use of the Works, the Supplier shall hold harmless and indemnify the Purchaser from and against such Claims and any Liability incurred or suffered by the Purchaser arising out of or resulting from such claims.

The Purchaser shall promptly inform the Supplier of such Claims and shall provide the Supplier with necessary information and, to the extent possible, shall leave the conduct of any resulting legal proceeding to Supplier.

Without the Supplier's prior written consent, the Purchaser shall not settle any Claim of alleged infringement by a holder of Intellectual Property Rights.

The Supplier shall be entitled to acquire Intellectual Property Rights or licenses in order to enable lawful use of the Works.

Where the Supplier is unable to obtain necessary Intellectual Property Rights, the Purchaser shall, upon the Supplier's request, use its commercially reasonable efforts, at Supplier's expense, to obtain such rights and licenses. In addition, the Supplier shall also be entitled to replace or modify the infringing items of the Works as long as such items remain in compliance with the requirements of this Contract.

25.DOCUMENTS, MANUALS AND SOFTWARE

25.1. Errors in Supplier's Drawings

The Supplier shall be responsible for any errors or omissions in the Supplier's Drawings.

25.2. Software

All title and ownership of the software, including without limitation the copyright to such software, shall remain exclusively with the Supplier or its licensor.

26.FINANCING

26.1. Assistance for Financing of Project

If requested by the Purchaser, the Supplier shall use all reasonable efforts to assist the Purchaser in its dealings with the lenders providing financing to the Purchaser for the Plant (the "**Lenders**"). Without limitation, the Supplier shall upon the request of the Purchaser negotiate reasonable amendments to this Contract and/or execute a direct agreement with the Lenders as the Lenders may reasonably request.

26.2. Amendment of this Contract

For the purpose of the financing of the Plant, the Supplier agrees to cooperate with the Purchaser in the negotiation and execution of such amendments or additions to this Contract as the Lenders may request, provided that same shall not materially increase the Supplier's risks or costs under this Contract (unless such increased risk or cost is compensated at Purchaser's sole discretion). The Supplier's risks and costs shall not be deemed to increase by any collateral assignment of this Contract to the Lenders or any coordination between, or subordination of the Supplier's rights to the rights of the Lenders. The Supplier further agrees to execute such certifications and acknowledgments as the Purchaser may reasonably request for the Lenders to evidence their collateral rights in this Contract and in the Work to be performed by the Supplier pursuant to this Contract, and to make available to the Purchaser for the Lenders, or their advisors, such data, reports, certifications, and other documents and information or assistance, as the Purchaser may request from time to time, subject to the execution by the Lenders of the customary confidentiality agreement.

27.RESOLUTION OF DISPUTES

27.1. Settlement by the Parties

If any dispute arises in connection with this Contract, including any question regarding the existence, validity or termination or any subsequent amendment of the Contract (a "**Dispute**")

the responsible representatives of the Parties shall attempt, in fair dealing and in good faith, to settle such Dispute.

If a Party provides written notification to the other Party that such attempt has failed, then each Party shall promptly appoint a senior representative duly authorized to resolve such Dispute. Each Party shall give notice of the appointment of such senior representative to the other Party and such senior representatives shall try to find an amicable settlement. If such senior representatives have not been appointed or are not able to find an amicable settlement within a time period of thirty (30) days after notice of appointment of the first senior representative or such other time period as the Parties may agree in writing, then each Party may, by written notification to the other Party, require that the Dispute be resolved by Arbitration in accordance with the ICC Arbitration Rules.

Nothing in this and the following Clauses shall limit the right of the Parties to request conservatory or interim measures, such as preliminary injunctions, from the competent national courts, and/or the arbitral tribunal.

27.2. Arbitration

All Disputes which cannot be settled pursuant to the above and all claims in connection therewith in respect of which no Dispute exists but which require enforcement, shall be finally settled by arbitration in accordance with the ICC Rules of Arbitration then in effect (the "Rules") and the arbitration will be carried out under the auspices of the International Court of Arbitration of the ICC. In respect of the taking of evidence, the International Bar Association (IBA) Rules on the Taking of Evidence in International Commercial Arbitration of 17 December 2020, or any subsequent version of such rules, shall apply; the work product of an (outside or in-house) attorney and communication between an (outside or in-house) attorney and a client shall be subject to the privilege provided for in Article 9 section 2 of said IBA Rules and shall not be disclosed.

If the value of the matter in Dispute is less than [REDACTED] EUR, the arbitral tribunal shall consist of one arbitrator, and if the value of the matter in Dispute is [REDACTED] or more the arbitral tribunal shall consist of three arbitrators. In case of counterclaims, the value of the matter in Dispute shall be determined by adding the amounts of all claims and counterclaims. If the Parties cannot agree whether the value is below [REDACTED] or not, the appointing authority shall decide on the number of arbitrators on request by one of the Parties.

The appointment of the arbitral tribunal shall be effected as foreseen in article 12 of the ICC Rules of Arbitration.

The Parties agree that they shall request that the nominated arbitrator(s) settle and resolve the Dispute within a period of six (6) months from the date of nomination.

The seat and place of arbitration shall be London, England. The procedural law of such seat of arbitration as applicable to international arbitration proceedings shall apply where the ICC Rules of Arbitration are silent.

27.2.1. Performance to Continue

Except as otherwise expressly provided for hereunder, performance of this Contract shall continue during the resolution of any Disputes.

27.3. Language

The language to be used in the mediation and the arbitration proceedings shall be English.

27.4. Applicable Law

This Contract shall be governed by the substantive laws of England without regard to its private international law and with exclusion of the UN Convention on Contracts for the International Sale of Goods.

The Parties commit themselves to take all measures necessary to prevent corruption according to Annex K (*Compliance*).

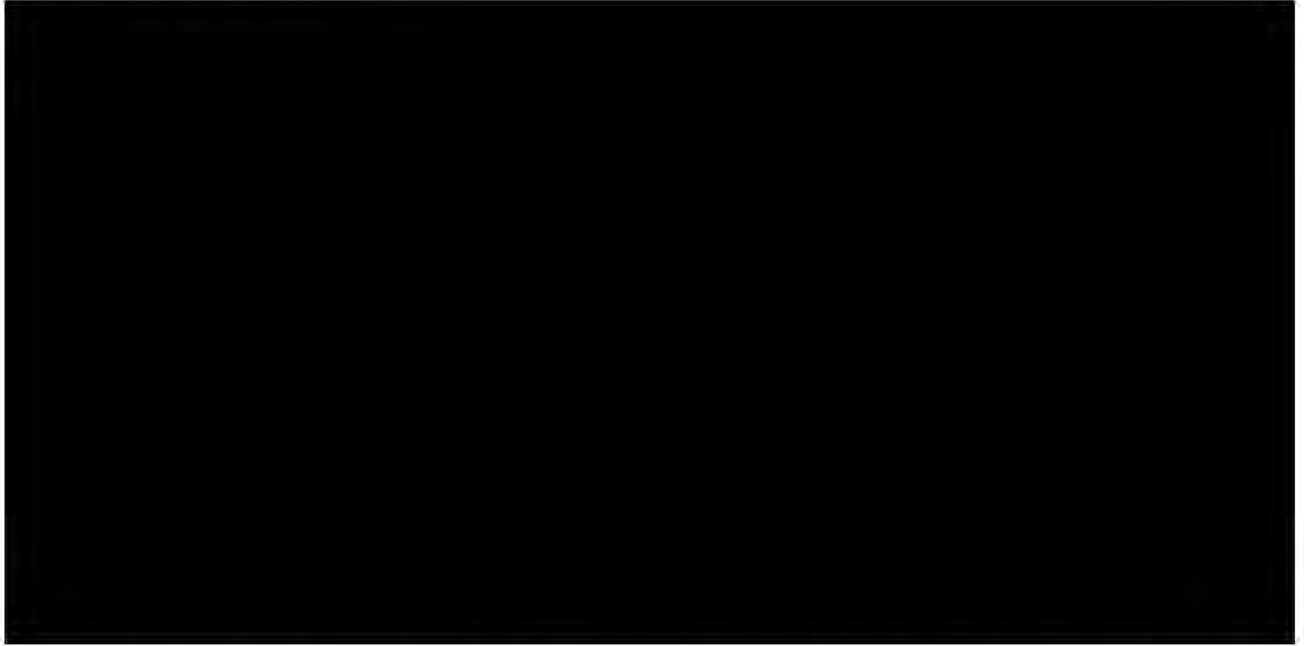
28.MISCELLANEOUS

28.1. No Right to Audit

The Purchaser shall have no right to inspect, copy or audit any of the Supplier's books, accounts, time cards, records or estimates for Works performed pursuant to this Contract. Notwithstanding the foregoing, (i) where pursuant to this Contract the Supplier is required to provide the Purchaser with estimates or invoices for additional costs or expenses, the Purchaser shall have the right to audit the books, accounts, time cards, records and estimates of the Supplier as required to verify that the amounts and charges set forth in such estimates or invoices were accurately calculated by the Supplier, and (ii) the Purchaser shall have the right to audit the books, accounts, time cards, records of the Supplier as required to assess the compliance by the Supplier with its anti-corruption, environmental and health and safety obligations under this Contract.

28.2. Notices

Any notice, direction, instruction, request, or other communication required or permitted under this Contract, including payment invoices from Supplier to Purchaser, shall be in the English language and shall be deemed to have been duly given on the date of receipt, and shall be served personally or by digital means of communication or by registered mail, all postage prepaid or recognized courier service to the Party to whom notice is to be given at the respective address set out below.



Notices from the Purchaser to the Supplier and notices from the Supplier to the Purchaser recorded in minutes signed by the authorized representative(s) of each Party shall constitute valid notices for the purposes of the Contract.



28.3. Non-Waiver

Any failure of any Party to enforce any of the provisions of this Contract or to require compliance with any of its terms at any time the Contract is in effect shall in no way affect the validity of this Contract, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.

28.4. Survival

Notwithstanding any other provision of this Contract, the Parties' obligations under Clauses 17, 18, 23, 24 and 27 shall survive the termination of this Contract.

28.5. Entire Agreement

The Parties agree that the Contract constitute the entire agreement between the Purchaser and the Supplier concerning the subject matter hereof. All previous documents, undertakings and agreements, whether verbal, written or otherwise, between the Parties concerning the subject matter hereof are hereby cancelled and shall not affect or modify any of the terms or obligations set forth in the Contract, except as the same may be made part of the Contract in accordance with its terms.

28.6. Joint Effort

Preparation and negotiation of this Contract has been a joint effort of the Parties and neither the Contract nor any of its provisions shall be construed against either of the Parties as the drafting party or otherwise. Each Party has retained its own experts and professionals, and has not relied on the expert or professional advice of the other Party hereto.

28.7. Independent Supplier

The Supplier shall perform and execute the provisions of this Contract as an independent contractor to the Purchaser and shall not be an agent, partner or employee of the Purchaser.

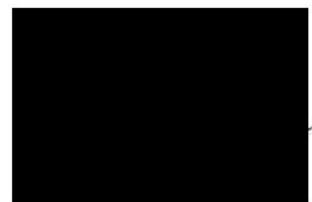
28.8. Counterparts

This Contract may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by both Parties.

28.9. Severability

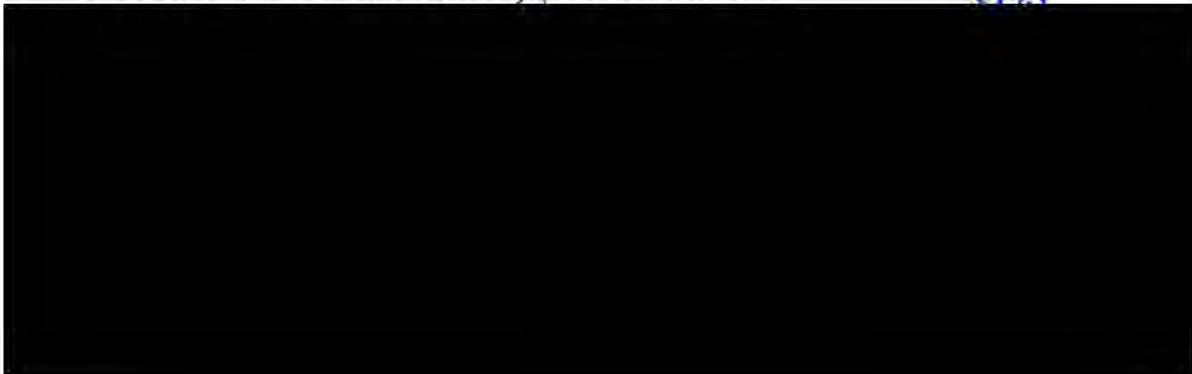
In case provisions of this Contract shall be or become invalid (or in case of a gap), the validity of the remaining provisions of this Contract shall not be affected, provided it can be assumed that the Parties would have entered into the Contract anyway. Instead, the invalid provision or the gap in this Contract shall be filled by a legally permissible provision that shall conform to the largest extent possible to the Parties' intention or, in case of a gap, would have conformed to the Parties' intention considering the purpose and intent of this Contract, if they had detected the gap on conclusion of the Contract.

(Signature page to follow)



IN WITNESS WHEREOF, the Parties have executed this Contract on the date first written above:

For and on behalf of **ZGOUNDER MILLENIUM SILVER MINING**

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Position: CEO

Date: November 30, 2022



