(Operation Number 53404)

**LOAN AGREEMENT**

between

**ZGOUNDER MILLENNIUM SILVER MINING S.A.**

and

**EUROPEAN BANK**

**FOR RECONSTRUCTION AND DEVELOPMENT**

[redacted]

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**EXHIBITS**

# LOAN AGREEMENT

**LOAN AGREEMENT** (this "**Agreement**") d[redacted] between Zgounder Millennium Silver Mining S.A., a joint stock [redacted]*me)* organised and existing under the laws of Morocco, registered with the trade registry of Casablanca under registration number 294433 (the "**Borrower**"), and the **EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**, an international organisation formed by treaty ("**EBRD**").

**WHEREAS,** the Borrower owns and operates the Zgounder silver mine in the central Anti-Atlas mountains in Morocco (the "**Mine**") in the area covered by the Mining Licence (such and other terms used as defined in Section 1.01 (*Definitions*) below) and has requested EBRD to provide funding for the upgrade and expansion of the Mine (as more specifically described in Section 1.01 (*Definitions*) below, the "**Project**").

**AND WHEREAS,** EBRD has agreed to make funds available to the Borrower for purposes of funding the Project in accordance with the terms of this Agreement.

## ARTICLE I - DEFINITIONS

### Section 1.01. Definitions

Wherever used in this Agreement (including the Exhibits and Schedules hereto), unless the context otherwise requires, the following terms have the following meanings:

| | |
|---|---|
| **"Administrator"** | means the Federal Reserve Bank of New York (or any other person which takes over the administration or publication of the RFR, RFR index or the Central Bank Rate (as applicable)). |
| **"Affiliate"** | means, with respect to any person, any other person, directly or indirectly, controlling, controlled by, or under common control with, such person. |
| **"AGSM"** | means Aya Gold & Silver Morocco S.A., a joint stock company (*société anonyme)* organised and existing under the laws of Morocco, registered with the trade registry of Casablanca under registration number 330101. |
| **"Auditors"** | means such firm of independent accountants as the Borrower may from time to time appoint as its auditors in accordance with Section 5.05 (*Accounting*). |

**"Authorisations"** means the Mining Licence, the Office des Changes Approval and any other consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with any Governmental Authority, whether given or withheld by express action or deemed given or withheld by failure to act within any specified time period and all corporate, creditors' and shareholders' approvals or consents.

**"Bank Accounts Pledge Agreement"** means the instrument pursuant to which the Borrower grants to EBRD a first ranking security interest in the Onshore Bank Accounts (being the Proceeds Account and the Revenue Account), together with the notice published at the NERMS and acknowledgements and consents in the forms attached thereto, which instrument shall be in form and substance satisfactory to EBRD.

**"Business Day"** means a day on which commercial banks are open for the transaction of general business (including dealings in foreign exchange and foreign currency deposits) in London, England; and

(a) except for the purposes of the definitions **"Default Interest Determination Date"** and **"Interest Determination Date"**, Casablanca, Morocco and Montreal, Quebec, Canada; and

(b) on which commercial banks and foreign exchange markets settle payments in the Loan Currency in New York; and

(c) in relation to:

(i) the determination of the first day or the last day of an Interest Period for a Disbursement, or otherwise in relation to the determination of the length of such an Interest Period; or

(ii) the determination of the first day or the last day of a Default Interest Period for an overdue amount, or otherwise in relation to the determination of the length of such Default Interest Period; or

(iii) should any part of a Loan become due and payable on a date other than an Interest Payment Date or the last day of a Default Interest Period, the determination of the last day and length of the relevant period for the calculation of interest,

a RFR Banking Day relating to that Loan.

**"Business Pledge Agreement"** means the instrument pursuant to which the Borrower grants to EBRD a first ranking security interest in all of the Borrower's present and future tangible movable assets and intangible assets belonging to its ongoing business (i.e. goodwill) (*Nantissement de Fonds de Commerce*) to secure the Borrower's obligations under the Financing Agreements in accordance with articles 106 et seq. of the Commercial Code, together with the notice published at the NERMS and acknowledgements and consents in the forms attached thereto, which instrument shall be in form and substance satisfactory to EBRD.

**"Calculation Date"** means any day which is [redacted] any year.

**"Cash Available for Debt Service"** has the meaning given to the term in Section 5.12(f)(2) (*Definitions*).

**"Central Bank Rate"** has the meaning given to the term in Schedule 2 (*Cumulative Compounded RFR Rate*).

**"Charter"** means, in respect of any company, corporation, partnership, enterprise or other entity, its charter, founding act, articles of incorporation and bylaws, memorandum and articles of association, statutes or similar instrument.

**"ClientNet"** means EBRD's online portal for the transmission of documents and information between EBRD and its clients, and any replacement website as EBRD may from time to time notify the Borrower.

**"Code Of Commerce"** means Moroccan law n° 15-95.

**"Commitment Period"** means the period commencing on the date of this Agreement and terminating on the earlier of the date 24 months from the date of this Agreement and the date the obligation of



[redacted]



[redacted]

EBRD to make Disbursements hereunder terminates in accordance with the terms of this Agreement.

**"Compliance Certificate"** means a certificate substantially in the form set out in Exhibit E (*Form of Compliance Certificate).*

**"Compounded Reference Rate"** means the percentage rate per annum which is:

(a) the Compounded SOFR Index Rate; or

(b) if the Compounded SOFR Index Rate is not available, the Cumulative Compounded RFR Rate,

provided that if such rate is less than zero, the Compounded Reference Rate shall be deemed to be zero.

**"Compounded SOFR Index Rate"** means, in relation to an Interest Period or Default Interest Period (or other relevant period) for a Disbursement or overdue amount, the percentage rate per annum determined by EBRD in accordance with the methodology set out in Schedule 1 (*Compounded SOFR Index Rate*) or in any applicable Reference Rate Supplement.

**"Construction Contracts"** means collectively:

[redacted]

(or any replacement of any of the foregoing) each of which contract shall be in form and substance satisfactory to EBRD.



[redacted] 275782.00041/100014807.3 [redacted]

**"Construction Contracts Security Assignment"** means the English law instrument pursuant to which the Borrower assigns by way of security to EBRD all of its rights, interests, claims and benefits under the Construction Contracts, together with the notices and acknowledgements and consents in the forms attached thereto, which instrument shall be in form and substance satisfactory to EBRD.

**"Cost Overrun Account"** has the meaning given to that term in the GISA.

**"Country of Operation"** means Morocco.

**"CTF"** is defined in Section 3.01(2) *(Amount and Currency)*.

**"CTF M1 Achievement Date"** means the date of release of the TCFD Report (in form and substance satisfactory to EBRD) such date required to occur no later than 31 December 2023.

**"CTF M2 Achievement Date"** means the date of completion of the items earmarked for capital expenditure as set out in the TCFD Report, to the satisfaction of EBRD, such date required to occur no later than 31 December 2024.

**"CTF M3 Achievement Date"** means the date of completion of actions beyond the scope of the TCFD Report, to the satisfaction of EBRD, such date required to occur no later than 31 December 2025.

**"CTF Tranche"** means the maximum principal amount of the loan provided for in Section 3.01(2) (*Amount and Currency*) or, as the context may require, the principal amount thereof from time.

**"CTF Tranche Base Interest Rate"** has the meaning given to the term in Section 3.05(b) (*Interest*).

**"Cumulative Compounded RFR Rate"** means, in relation to an Interest Period or Default Interest Period (or other relevant period) for a Disbursement or overdue amount, the percentage rate per annum determined by EBRD in accordance with the methodology set out in Schedule 2 (*Cumulative Compounded RFR Rate*) or in any applicable Reference Rate Supplement.



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**"Debt"** means, with respect to any person, all obligations of such person, whether incurred as principal or surety and whether present, future, actual or contingent, for the payment or repayment of money, including:

(a) any amounts payable by such person under leases or similar arrangements over their respective periods;

(b) any credit to such person from a supplier of goods or under any instalment purchase or other similar arrangement; and

(c) any liabilities and obligations of third parties to the extent that they are guaranteed by such person or such person has otherwise assumed or become liable for the payment of such liabilities or obligations or to the extent that they are secured by any Lien upon property owned by such person whether or not such person has assumed or become liable for the payment of such liabilities or obligations.

**"Default"** means any Event of Default or any event which, with the giving of notice, the passage of time or the making of any determination, or any combination thereof, would become an Event of Default.

**"Default Interest Determination Date"** means the date which falls the number of days equal to the applicable Lookback Period prior to the last day of the Default Interest Period or any other date to be determined by EBRD.

**"Default Interest Period"** means, with respect to any amount overdue under this Agreement, a period commencing on the day on which such payment becomes due or, as the case may be, on the last day of the previous Default Interest Period with respect to such overdue amount, and ending on a Business Day selected by EBRD.

**"Designated Performance Requirements"** means Performance Requirements 1 through 8 and 10 (or, as the context may require, any one of such Performance Requirements) of the Performance Requirements dated April 2019 and related to EBRD's Environmental and Social Policy dated April 2019.

**"Development Plan"** means the Borrower's plan for the advancement of the Project (as may be amended or revised from time to time in accordance with this Agreement) containing detailed technical plans and specifications, a financing plan, an estimated construction schedule and budget and operating plans and procedures and comprising the following that have been delivered to EBRD prior to the date of this Agreement. The Development Plan shall include:

[redacted]

**"Direct Insurance"** is defined in Schedule 4 (*Insurance*).

**"Direct Insurer"** is defined in Schedule 4 (*Insurance*).

**"Dirham"** or **"MAD"** means the lawful currency of Morocco.

**"Disbursement"** means the disbursement of any portion of the Loans from time to time pursuant to Section 3.02 (*Disbursements*) or, as the context may require, the principal amount thereof from time to time outstanding.

**"Discount Rate"** means, as at any date of calculation, the anticipated future cost of the Financial Debt arising under this Agreement (disregarding any interest incentives or Taxes) as agreed between the Borrower and EBRD and as set out in the Financial Model.

**"Distribution Account"** has the meaning given to that term in the GISA.

**"Dollars"**, **"USD"** or **"$"** means the lawful currency of the United States of America.

**"DSRA/Licence Reserve Account"** has the meaning given to that term in the GISA.

**"Dufel Marruecos "** means Dufel Marruecos, a company to be organised under the laws of Morocco.

**"Dufel Marruecos Accession Date "** means the date on which Dufel Marruecos accedes to and becomes a party under the Umbrella Agreement

**"Duro Felguera Spain"** means Duro Felguera S.A organised under the laws of Spain.

**"EBRD Project"** means a "Bank Project" as such term is defined in the Enforcement Policy and Procedures.

**"EBRD Resources"** means ordinary capital resources of EBRD.

**"EBRD Tranche"** means the maximum principal amount of the loan provided for in Section 3.01(1) (*Amount and Currency*) or, as the context may require, the principal amount thereof from time to time outstanding.

**"Enforcement Policy and Procedures"** means EBRD's Enforcement Policy and Procedures dated 4 October 2017, as amended from time to time, and any policy or procedures adopted by EBRD as a successor to or replacement of such policy and procedures.

**"Environmental and Social Action Plan"** or **"ESAP"** means the plan of environmental and social mitigation and improvement measures dated 12 October 2022, a copy of which is attached hereto as Schedule 6, as such plan may be amended from time to time with the prior written consent of EBRD in accordance with Section 5.03(d) (*Environmental and Social Compliance*).

**"Environmental and Social Client Disclosure Documentation"** means the written information furnished by or on behalf of the Borrower to EBRD and/or the Independent Environmental and Social Consultant pursuant to the environmental and social audit and assessment report dated October 2022 containing information relating, *inter alia*, to Environmental and Social Matters and any amendment or supplement to such information which is accepted by EBRD.

**"Environmental and Social Law"** means any applicable law in any relevant jurisdiction, concerning the protection of the environment, workers, communities or project affected people.

**"Environmental and Social Matter"** means any matter that is the subject of any Environmental and Social Law, any Designated Performance Requirement or the Environmental and Social Action Plan.

**"Equipment and Machinery Pledge Agreement"** means the instrument pursuant to which the Borrower grants to EBRD a first ranking security interest in all of the equipment and machinery acquired with the proceeds of the Loan (*Nantissement sans depossession de l'outillage et du matériel d'équipement*) to secure the Borrower's obligations under the Financing Agreements in accordance with Articles 355 et seq. of the Code of Commerce, together with the notice published at the NERMS and acknowledgements and consents in the forms attached thereto, which instrument shall be substantially in form and substance satisfactory to EBRD.

**"Equity Account"** has the meaning given to that term in the GISA.

**"Euro"** and **"Eur"** means the single, unified , lawful currency of those member states of the European Union participating in the Economic and Monetary Union.

**"Event of Default"** means any one of the events or occurrences specified in Section 7.01 (*Events of Default*).

**"Excess Cash Flow"** means, for each Repayment Instalment Date:



[redacted] 275782.00041/100014807.3 [redacted]

(a) Cash Available for Debt Service for the Interest Period ending on such date;

*plus*

(b) (without double counting) the balance standing to the credit of the Proceeds Account and the Revenue Account as at such Interest Payment Date;

*less*

(c) scheduled payments of principal, interest and other amounts due in respect of this Agreement, together with amounts prepaid pursuant to Section 3.09(a) (*Prepayments*) and amounts required to fund the DSRA/Licence Reserve Account pursuant to Section 6.01 (*Offshore Bank Accounts*) of the GISA during such Interest Period.

**"FDSCR"** has the meaning given to the term in Section 5.12(b) (*Financial Ratios*).

**"Final Maturity Date"** means the sixth anniversary of this Agreement [redacted]

**"Financial Debt"** means, with respect to any person, any Debt of such person for or in respect of:

(a) moneys borrowed;

(b) any amount raised by acceptance under any acceptance credit facility;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which would in accordance with IFRS, be treated as a balance sheet liability (other than any liability in respect of a lease or hire purchase contract which would, in accordance with IFRS in force prior to 1 January 2019 have been treated as an operating lease);

(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);

(f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of borrowing;

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

(i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

**"Financial Model"** means the financial model prepared by the Borrower (with the approval of EBRD) used to prepare the financial projections for the Project, as amended from time to time pursuant to Schedule 3 (*Banking Case Procedures).*

**"Financial Statements"** means the unconsolidated financial statements (including balance sheet, income statement, statement of changes in equity, cash flow statement and notes, comprising a summary of significant accounting policies and other explanatory notes) of the Borrower prepared in the English language in accordance with IFRS.

**"Financial Year"** means the period commencing each year on 1 January and ending on the following 31 December, or such other period as the Borrower may, with EBRD's consent, from time to time designate as the accounting year of the Borrower.

**"Financing Agreements"** means:

(a) this Agreement;

(b) the Guarantee, Indemnity and Subordination Agreement;



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[redacted]

(c) the Security Documents;

(e) the Underwriting and Administration Fee Letter;

(f) the Disbursement applications referred to in Section 3.02 (*Disbursements*);

(g) any Reference Rate Supplement; and

(h) any other agreements entered into between the Borrower, any other Obligor or any other party and EBRD and notices, certificates (including Compliance Certificates) and applications issued by the Borrower or any other party to EBRD in each case in connection with this Agreement or the transactions contemplated by this Agreement.

**"Financing Plan"** means the plan for financing the Project as set forth in Section 2.01(c) (*Representations*).

**"GAAP"** means generally accepted accounting principles in Morocco.

**"Governmental Authority"** means the government of any country, or of any political subdivision thereof, whether state, regional or local, and any agency, authority, branch, department, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government or any subdivision thereof (including any supra-national bodies), and all officials, agents and representatives of each of the foregoing.

**"Guarantee, Indemnity and Subordination Agreement"** or **"GISA"** means the agreement dated on or about the date of this Agreement between the Guarantor, AGSM and the Borrower whereby, *inter alia*:

(a) the Guarantor irrevocably guarantees the amounts owing to EBRD under this Agreement;

(b) the Guarantor and AGSM agree to subordinate all amounts owing to them in respect of the Subordinated Debt to all amounts owing to EBRD under this Agreement; and





[redacted]

(c) the Guarantor makes undertakings with respect to the Offshore Bank Accounts in favour of EBRD.

**"Guarantor"** or **"Aya"** means Aya Gold & Silver Inc., a company organised under the laws of Canada.

**"HDSCR"** has the meaning given to the term in Section 5.12(a) (*Financial Ratios*).

**"IFRS"** means International Financial Reporting Standards issued or adopted by the International Accounting Standards Board and consistently applied.

**"Independent Environmental and Social Consultant"** means SLR Consulting Limited or such other firm of consultants as may be selected from time to time by EBRD for, *inter alia*, the purpose of monitoring the environmental and social aspects of the Project.

**"Independent Technical Consultant"** means SLR Consulting Limited or such other firm of consultants as may be selected from time to time by EBRD for, *inter alia,* the purpose of monitoring the technical aspects of the Project.

**"Initial Stamped Amount"** means the total amount of the recording duties (*droits d'enregistrement*) and the fees respectively paid by the Borrower to the Moroccan tax administration and to the land registry prior to the first Disbursement in connection with the registration and recordation of the Mining License Mortgage at the required offices.

**"Insurance Assignment"** or **"Master Agreement for the Delegation of Insurance Indemnities by way of Security"** means the instrument pursuant to which the Borrower assigns to EBRD all of its rights, interests, claims and benefits under all Direct Insurance now or hereafter maintained by the Borrower and all other Direct Insurance relating to the Project, together with the notices and acknowledgements and consents in the forms attached thereto, which instrument shall be in form and substance satisfactory to EBRD.

**"Insurance Proceeds"** is defined in Schedule 4 (*Insurance*).

**"Interest Determination Date"** means, for any Interest Period, the date which falls the number of days equal to the applicable Lookback Period prior to the last day of the Interest Period.

**"Interest Payment Date"** means any day which is 19 January or 19 July in any year; provided, however, that, if any Interest Payment Date would otherwise fall on a day which is not a Business Day, such Interest Payment Date shall be changed to the next succeeding Business Day in the same calendar month or, if there is no succeeding Business Day in the same calendar month, the immediately preceding Business Day.

**"Interest Period"** means, for any Disbursement, the period commencing on the date of such Disbursement and ending on the next Interest Payment Date and each period of six months thereafter commencing on an Interest Payment Date and ending on the next Interest Payment Date; provided that, if such Disbursement is made less than 15 Business Days prior to the next Interest Payment Date, the first Interest Period for such Disbursement shall commence on the date of such Disbursement and end on the Interest Payment Date following the next Interest Payment Date.

**"International Standards on Auditing"** means the International Standards on Auditing issued by the International Federation of Accountants.

**"IPAM"** means the Independent Project Accountability Mechanism of EBRD as set forth under the Project Accountability Policy dated April 2019, as amended, supplemented or replaced from time to time.

**"Law 21-18"** means the Moroccan law n°21-18 relating to movable securities.

**"Legal Reservations"** means:

(a) the principle that equitable remedies may be granted or refused at the discretion of a court;

(b) the limitation of enforcement by laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration, and other laws generally affecting the rights of creditors;



[redacted]



[redacted]

(c) the time barring of claims under the Limitation Acts;

(d) the possibility that an undertaking to assume liability for indemnifying a person against a non-payment of UK stamp duty may be void and defences of set off or counterclaim; and;

(e) similar principles, right and defences under the laws of any relevant jurisdiction as set out in any legal opinion delivered pursuant to this Agreement.

**"Liability Direct Insurance"** is defined in Schedule 4 (*Insurance*).

**"Liability Reinsurance"** is defined in Schedule 4 (*Insurance*).

**"Lien"** means any mortgage, pledge, charge, privilege, priority, hypothecation, encumbrance, assignment, lien, attachment, set-off or other security interest of any kind or any other agreement or arrangement having the effect of conferring security upon or with respect to, or any segregation of or other preferential arrangement with respect to, any present or future assets, revenues or rights, including any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy.

**"Limitation Acts"** means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

**"LLCR"** has the meaning given to the term in Section 5.12(c) (*Financial Ratios*).

**"Loan"** means, collectively, the loans made under the EBRD Tranche and the CTF Tranche or, as the context may require, the principal amount thereof from time to time outstanding.

**"Loan Currency"** means the currency in which the Loans are denominated as set forth in Section 3.01 (*Amount and Currency*).

**"Long-term Debt"** means, as of any date with respect to any person, any Financial Debt of such person all or part of which, or the final payment of which, is due more than one year after such date.

**"Lookback Period"** means:

(a) subject to paragraph (c), ten (10) RFR Banking Days;

(b) subject to paragraph (c), such other period as may be selected by EBRD with the consent of the Borrower; and

(c) in relation to a Default Interest Period, such other period as may be selected by EBRD.

**"Management Services Agreement"** means the agreement relating to the provision of management services for the benefit of the Borrower dated [redacted]

**"Margin"** [redacted]

**"Market Disruption Event"** means:

(a) on the Interest Determination Date for the relevant Interest Period or the Default Interest Determination Date for the relevant Default Interest Period, the Compounded SOFR Index Rate is not available and there is no applicable RFR or Central Bank Rate for the purposes of calculating the Cumulative Compounded RFR Rate for a RFR Banking Day during the relevant Interest Period or a Default Interest Period; or

(b) before close of business in London on the Business Day following the Interest Determination Date for the relevant Interest Period or the Default Interest Determination Date for the relevant Default Interest Period, (1) EBRD determines that or (2) EBRD receives notification from one or more Participants whose aggregate participations in the Loan exceed 50% of the Loan that, as the case may be, EBRD's or such Participant(s)' cost of funds relating to its participation in the Loan would be in excess of the Market Disruption Rate.

**"Market Disruption Rate"** means the percentage rate per annum which is the aggregate of:

(a) (i) the Compounded SOFR Index Rate for the Interest Period or the Default Interest Period of the relevant Loan; or





[redacted] [redacted]

(ii) if the Compounded SOFR Index Rate is not available, the Cumulative Compounded RFR Rate for the Interest Period or the Default Interest Period of the relevant Loan; and

(b) [redacted]

**"Material Adverse Effect"** means a material adverse effect on:

(a) the ability of any Obligor to perform or comply with any of its payment or material performance obligations under any Financing Agreement to which it is a party;

(b) the rights and remedies of EBRD in respect of any Security;

(c) the legality, validity, enforceability and binding nature of any Financing Agreement or Construction Contract or the legal rights, remedies and priorities of EBRD under any of the Financing Agreements;

(d) the Borrower's ability to implement or operate the Project substantially in the manner contemplated by the Financing Agreements and the Construction Contracts; or

(e) the Borrower's or the Guarantor's business, operations, property, financial condition or prospects.

**"Mine"** is defined in the Recitals.

**"Mining Law"** means Moroccan law n° 33-13 relating to mines.

**"Mining Licence"** means mining operating licence issued by and on behalf of the Ministry of Mines to the Borrower on 17 October 2017 under No. 393495 along with all the related present and future operatorship rights as set forth by article 47 of the Mining Law.

**"Mining Licence Expiry Date"** means on any date, the date in the future on which the term of the Mining Licence is scheduled to terminate.

**"Mining Licence Mortgage"** means the instrument pursuant to which the Borrower grants to EBRD a first ranking security interest over the

Mining Licence (including all present and future buildings, facilities and structures ("*Ouvrages*")) that are necessary to the operation of the Mine within the meaning of Article 51 of the Mining Law) securing a total amount of up to the MAD equivalent of [redacted] together with the notices and acknowledgements and consents in the forms attached thereto, which instrument shall be in form and substance satisfactory to EBRD.

**"Moroccan Exchange Office"** means the Moroccan exchange office (*Office des Changes)* whose head office is in Rabat, which is the Moroccan authority in charge notably of the establishment of the foreign exchange regulations and its enforcement.

**"Morocco"** means the Kingdom of Morocco.

**"N43-101"** National Instrument NI-43-101 or the Canadian national instrument for the *Standards of Disclosure for Mineral Projects*, and the guidelines set out in the Canadian Institute of Mining, Metallurgy and Petroleum ("**CIM**") standards on Mineral Resources and Mineral Reserves, adopted by the CIM counsel on 14 November 2004 and most recently revised on 27 November 2010, in each case to be used for reporting and displaying information related to mineral properties owned by, or explored by, companies which report these results on stock exchanges within Canada (including the Toronto Stock Exchange).

**"NERMS"** means the National Electronic Register of Movable Securities ("*Registre National Electronique des Sûretés Mobilières*") created by the Law 21-18.

**"Obligors"** means the Borrower, AGSM and the Guarantor.

**"Office des Changes Approval"** means the approval given in writing by the Moroccan Exchange Office on the following terms:

(1) (save with respect to prepayments of the Loan pursuant to Section 3.09 (*Prepayment*) which require the prior approval of the Moroccan Exchange Office), the commercial terms of the Loan (i.e., repayment schedule, maturity, applicable interest rates, charges, commissions and fees) are aligned with those prevailing on foreign

markets on the date of execution of this Agreement; and

(2) the confirmation that any proceeds resulting from the enforcement of the Security governed by the law of Morocco by EBRD under the Security Documents may be transferred to EBRD.

**"Offshore Account Bank"** [redacted]

**"Offshore Bank Accounts"** means collectively:

(a) the DSRA/Licence Reserve Account;

(b) the Equity Account;

(c) the Cost Overrun Account; and

(d) the Distribution Account.

**"Offshore Bank Accounts Control Agreement"** means the agreement between the Guarantor, the Offshore Account Bank and the EBRD concerning the management and disposition of the Offshore Bank Accounts, together with the notices and acknowledgements and consents in the forms attached thereto, which instrument shall be in form and substance satisfactory to EBRD.

**"Onshore Account Bank"** means any bank described in Section 5.13(a) (*Onshore Bank Accounts*).

**"Onshore Bank Accounts"** has the meaning given to the term in Section 5.13(a)(*Onshore Bank Accounts*).

**"Participant"** means a person from whom EBRD receives a formal commitment to acquire a Participation through the execution of, or the accession to, a participation agreement with EBRD.

**"Participation"** means a participation in the Loans or, as the context may require, in a Disbursement.

**"Parties"** means the parties to this Agreement or any other Financing Document.

**"Permitted Liens"** means the Liens referred to in Section 6.05(1) and Section 6.05(2) (*Liens*).

**"PLCR"** has the meaning given to the term in Section 5.12(d) (*Financial Ratios*).

**"Potential Event of Default"** means any event which, with the giving of notice, the passage of time or the making of any determination, or any combination thereof, would become an Event of Default.

**"Proceeds Account"** means the Dirham account opened in the name of the Borrower entitled "**Proceeds Account**" with the Onshore Account Bank for the purposes more fully described in Section 5.13(b) (*Onshore Bank Accounts*).

**"Prohibited Practice"** has the meaning defined in the Enforcement Policy and Procedures in effect as of the date of this Agreement.

**"Project"** means the expansion and environmental upgrade of the Mine, including (i) the construction of a new state of the art 2,000tpd processing plant (in addition to the current 170tpd cyanidation plant and 530tpd flotation plant); (ii) the construction of a new power line with a renewable energy power purchase agreement; (iii) the construction of a new tailing storage and water facility; and (iv) the expansion of the underground mine and a new open pit mine.

**"Project Completion Date"** means the date on which all of the conditions set out in Schedule 5 (*Project Completion*) have been satisfied.

**"Project End Date"** means, on any date of calculation, the last day on which production at the mine is scheduled to occur according to the Development Plan and the Financial Model in effect on such date.

**"Quebec Security Agreement"** means the *hypothec* pursuant to which the Borrower grants to EBRD a first ranking security interest in the Offshore Bank Accounts (being the Equity Account, the Cost Overrun Account, the DSRA/Licence Reserve Account and the Distribution Account), together with the notices and acknowledgements and consents in the forms attached thereto, which instrument shall be in form and substance satisfactory to EBRD.

**"Receivables Pledge"** means the receivables pledge instrument pursuant to which the Borrower grants to EBRD a first ranking security interest in the receivables held or to be held by the Borrower and arising from any sale agreement or offtake agreement under which a receivable is held or will be held by the Borrower pursuant to the sale of the Mine's production to secure the Borrower's obligations under the Financing Agreements, together with the notice published at the NERMS and acknowledgements and consents in the forms attached thereto, which instrument shall be in form and substance satisfactory to EBRD.

**"Reference Rate Supplement"** means a document which:

(a) is agreed in writing by the Borrower and EBRD; and

(b) has been made available to the Borrower; and

which amends and/or replaces any of the methodology or terms relating to the calculation of interest under any Financing Agreement.

**"Reinsurance"** is defined in Schedule 4 (*Insurance*).

**"Reinsurance Assignment"**

means the instrument pursuant to which the Direct Insurers assign to EBRD all of their rights, interests, claims and benefits under all Reinsurances (other than any Liability Reinsurances) now or hereafter relating to the Project, together with the notices and acknowledgements and consents in the forms attached thereto, which instrument shall be in form and substance satisfactory to EBRD.

**"Reserves"** means **"Proven Mineral Reserves"** and **"Probable Mineral Reserves"**, as such terms are used in N43-101.

**"Resources"** means **"Measured Mineral Resources"** and **"Indicated Mineral Resources"**, as such terms are used in N43-101.

**"Revenue Account"** means the Dollar account opened in the name of the Borrower entitled **"Revenue Account"** with the Onshore

Account Bank for the purposes more fully described in Section 5.13(c) (*Onshore Bank Accounts*).

**"RFR"** means the secured overnight financing rate (SOFR) administered and published by the Administrator.

**"RFR Banking Day"** means any day other than:

(a) a Saturday or Sunday; and

(b) a day on which the Securities Industry and Financial Markets Association (or any successor organisation) recommends that the fixed income departments of its members be closed for the entire day for the purposes of trading in US Government securities.

**"RTR"** has the meaning given to the term in Section 5.12(e) (*Financial Ratios*).

**"Scheduled Project Completion Date"** [redacted]

**"Security"** means the security created, expressed to be created or agreed to be created pursuant to any of the Security Documents to secure all amounts owing to EBRD under the Financing Agreements.

**"Security Documents"** means

(a) the Mining Licence Mortgage;

(c) the Equipment and Machinery Pledge Agreement;

(d) the Business Pledge Agreement;

(e) the Receivables Pledge;

(f) the Construction Contracts Security Assignment:

(g) the Insurance Assignment;

(h) the Reinsurance Assignment;

(i) the Share Pledge Agreement;

(j) the Bank Accounts Pledge Agreement; and

(k) the Quebec Security Agreement and the Offshore Bank Accounts Control Agreement, taken together.

**"Share Pledge Agreement"** means the instrument pursuant to which AGSM pledges in favour of EBRD all of its issued and outstanding shares of the Borrower, which instrument shall be in form and substance satisfactory to EBRD and shall have the Borrower as a party thereto, together with the record of the pledge in the share transfer register (*registre des transferts*) of the Borrower and the notice published at the NERMS.

**"Short-term Debt"** means, with respect to any person, any Financial Debt of such person other than Long-term Debt to the payment of all amounts payable to EBRD under the Financing Agreements.

**"Site"** means the site of the Mine covering an area of 16 square kilometres whose perimeter is defined in the Mining License that is registered with the land registry of Taroudant under the Mining License No 39/445.

**"Social Survey"** means the social survey to be completed by the Borrower with respect to actions 3.2, 5.1 and 8.1 of the Environmental and Social Action Plan.

**"Subordinated Debt"** means Debt owed by one Obligor to another Obligor which is required to be subordinated, pursuant to the GISA, to the payment of all amounts payable to EBRD under the Financing Agreements .

**"Subsidiary"** means, with respect to any entity, any other entity over 50% of whose capital is owned, directly or indirectly, by such entity or which is otherwise effectively controlled by such entity.

**"Tax"** or **"Taxes"** means any tax, royalty, stamp or other duty, assessment, levy, charge, value added tax, or impost of any nature whatsoever (including any related penalty or interest) imposed under any law.

**"TCFD"** means The Task Force on Climate-Related Financial Disclosures, a sub-division of the Financial Stability Board (www.fasb-tcfd.org).

**"TCFD Report"** means the report on the Project in accordance with TCFD guidelines, standards and recommendations.

**"Technical Due Diligence Report"** means the due diligence report relating to the technical aspects of the Project as prepared by the Independent Technical Consultant.

**"UNCITRAL Rules"** means the UNCITRAL Arbitration Rules (as revised in 2010).

**"Underwriting and Administration Fee Letter"** means the fee letter relating to the payment of an underwriting commission and administration fees in respect of the Loan entered into between the Borrower and the Bank on or about the date of this Agreement.

**"Upstamping Event"** means either of:

(a) the occurrence of an Event of Default; or

(b) the imposition of any legal requirement to the effect that the Mining Licence Mortgage shall be upstamped.

**Section 1.02. Interpretation**

(a) In this Agreement, unless the context otherwise requires, words denoting the singular include the plural and vice versa.

(b) In this Agreement, a reference to a specified Article, Section, Schedule or Exhibit shall be construed as a reference to that specified Article or Section of, or Schedule or Exhibit to, this Agreement.

(c) In this Agreement, a reference (i) to an amendment or to an agreement being amended includes a supplement, variation (including by waiver or consent), assignment, novation, restatement or re-enactment, and (ii) to an agreement shall be construed as a reference to such agreement as it may be amended from time to time.

(d) In this Agreement, the headings and the Table of Contents are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

(e) In this Agreement, "**control**" (including, with correlative meanings, the terms "**controlled by**" and "**under common control with**"), as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting shares, by contract or otherwise.

(f) In this Agreement, a Default is outstanding or continuing until it has been remedied or waived by EBRD in writing.

(g) In this Agreement, a reference to a document being "**in the Agreed Form**" means that the form of such document has been agreed by the parties hereto and that a copy thereof has been initialled for the purpose of identification by EBRD and the Borrower.

(h) In this Agreement, any reference to "**law**" means any law (including any common or customary law) and any treaty, constitution, statute, legislation, decree, normative act, rule, regulation, judgement, order, writ, injunction, determination, award or other legislative or administrative measure or judicial or arbitral decision in any jurisdiction which has the force of law or the compliance with which is in accordance with general practice in such jurisdiction.

(i) In this Agreement, any reference to a provision of law, is a reference to that provision as from time to time amended or re-enacted.

(j) In this Agreement, a reference to a "**person**" includes any person, natural or juridical entity, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing and references to a "**person**" include its successors in title, permitted transferees and permitted assigns.

(k) In this Agreement, "**including**" and "**include**" shall be deemed to be followed by "**without limitation**" where not so followed.

(l) Other than where a rounding convention is specified in this Agreement, EBRD may round any constituent part of and/or the output of any calculation or formula (or any other figure) used or referred to in this Agreement in relation to the determination of interest or default interest, to the number of decimal places selected by it in its sole discretion, provided that any such rounding is to a minimum of four decimal places.

(m) A reference in this Agreement to an index, page or screen of an information service displaying a rate shall include:

(1) any replacement index, page or screen of that information service which displays that rate; and

(2) the appropriate index, page or screen of such other information service which displays that rate from time to time in place of that information service,

and, if such index, page or screen of such information service ceases to be available, shall include any other index, page, screen of such other information service displaying that rate specified by EBRD after consultation with the Borrower.

(n) Any Reference Rate Supplement overrides:



[redacted]



[redacted]

(1) this Agreement; or

(2) any earlier Reference Rate Supplement.

## ARTICLE II - REPRESENTATIONS AND WARRANTIES

### Section 2.01. Representations Regarding the Project

The Borrower represents and warrants as follows:

(a) **Project Description.**

(1) The Project conforms in all material respects with the detailed description thereof contained in the Development Plan (subject to any modifications to which EBRD (acting reasonably) may agree in writing).

(2) The information contained in the Development Plan, other than in respect of financial forecasts or projections, is true, complete and correct in all material respects and the Development Plan contains no untrue or misleading statement and does not omit any material fact necessary to make the statements therein not untrue or misleading.

(3) As of the date of this Agreement, to the extent that any information contained in the Development Plan relates to financial forecasts or projections of future events, such forecasts and projections have been prepared in good faith, giving due and careful consideration to all relevant factors and based on assumptions that were reasonable at the time that such forecasts and projections were prepared, and so far as the Borrower is aware after due inquiry, there has been nothing since the date such forecasts and projections were prepared that would make them unreasonable.

[redacted]

(c) **Financing Plan**. The anticipated sources of financing the Project are as follows:

[redacted]

**Section 2.02. Representations Regarding the Borrower**

The Borrower represents and warrants as follows:

(a) **Incorporation**. The Borrower is a joint stock company (*société anonime*), duly organised, validly existing, and, if applicable, in good standing under the laws of Morocco and registered, to the extent required in accordance with applicable law, with all relevant registration bodies where required in any jurisdiction in which it carries on business or owns assets and has full power to own the properties which it owns or will own for the purposes of the Project and to carry out the businesses which it carries out or will carry out for the purposes of the Project.

(b) **Subsidiaries**. The Borrower has no Subsidiaries.

(c) **Share Capital**. The Borrower has a share capital of 5,000,000 Dirhams consisting of 150,000 shares with a nominal value of 100 Dirhams each. The following is a list of the shareholders in the Borrower, with their respective shareholdings, as of the date of this Agreement:

[redacted]

All of the shares listed above have been validly issued and are fully paid and all in-kind capital contributions by such shareholders have been made for full commercial value. The only issued shares of the Borrower are registered shares. There are no options, warrants or instruments convertible into, or exchangeable or exercisable for, shares or other agreements relating to the existing shares of the Borrower or for the issuance of additional shares of any class or description of the Borrower. No person has any right (other than as a shareholder) to share in the profits of the Borrower.

(d) **Directors and Officers**. As of the date of this Agreement, the Directors of the [redacted]

(e) **Financial Statements.** The balance sheet of the Borrower as at 31 December 2021 and the related income statement, statement of changes in equity, cash flow statement and notes, comprising a summary of significant accounting policies and other explanatory notes, of the Borrower for the Financial Year ending on that date, certified by the Auditors, present fairly the financial position, financial performance and cash flows of the Borrower as of the date of such balance sheet and for the period covered by such income statement, statement of changes in equity and cash flow statement and were prepared in accordance with IFRS (including as reconciled from GAAP to the extent originally used by the Borrower) . The Borrower had, as of the date of such balance sheet, no material contingent obligations, liabilities for Taxes or unusual forward or long term commitments not disclosed by, or reserved against in, such balance sheet or the notes thereto. Since the date of such balance sheet, the Borrower has not suffered any Material Adverse Effect, incurred any substantial or unusual loss or liability or undertaken or agreed to undertake any substantial or unusual obligation except under the Financing Agreements and the Construction Contracts.

(f) **Title to Assets.** The Borrower owns and has good and marketable title to all of the assets, the ownership of which is reflected in its most recent balance sheet referred to in Section 2.02(e) (*Representations*) or which are necessary for the implementation of the Project or which are referred to in the Security Documents. Such assets are free from any restrictions or covenants which might have a Material Adverse Effect. The Borrower's assets are not subject to any Lien, and the Borrower is not subject to any contract, arrangement or law, whether conditional or unconditional, pursuant to which any Lien on its assets may be created, except for Permitted Liens and the Security.

(g) **Material Contracts.** As of the date of this Agreement, the Borrower is not a party to, or committed to enter into, any agreement, other than the Financing Agreements and Construction Contracts:

(1) that involves the payment of [redacted] (or the equivalent thereof in other currencies) per year or in the aggregate more [redacted] (or the equivalent thereof in other currencies) over the term of such agreement; and

(2) that relates to the Project; or

(3) that involves any consultancy, agency, financial advisory or similar service contract or arrangement relating to the Project; or

(4) that would or might affect the judgement of a prospective lender (acting reasonably) considering whether to enter into this Agreement and lend to the Borrower.

(h) **Compliance with Law**. The Borrower is not in violation of any law applicable to it and currently in effect. To the best of the Borrower's knowledge, no law has been proposed or is expected which may have a Material Adverse Effect. All Tax returns and reports of the Borrower required by law to be filed in its jurisdiction of incorporation have been duly filed and all Taxes upon the Borrower, its properties and its income, which are due and payable, have been paid, other than those currently payable without penalty or interest. The Borrower is in compliance with all applicable laws concerning money laundering or the financing of terrorism. The Borrower is not designated as a target of (or is otherwise subject to) any economic or financial sanctions or restrictive measures adopted by the United Nations under Chapter VII of the UN Charter, and it is not owned (directly or indirectly) or controlled by, or acting on behalf of any so designated person. None of the Borrower, any other Obligor or any officers, directors, authorised employees, Affiliates, agents or representatives of the Borrower or any other Obligor has committed or engaged in any Prohibited Practice with respect to the Project or any transactions contemplated by this Agreement.

(i) **No Default.** The Borrower is not in default under any agreement, obligation or duty to which it is a party or by which it or any of its properties or assets is bound which might have a Material Adverse Effect and there exists no Default.

(j) **Environmental and Social Compliance.** The Borrower and its businesses, operations, assets, equipment, property, leaseholds and other facilities are, in all material respects, in compliance with the provisions of all Environmental and Social Laws, except for matters identified in the Environmental and Social Action Plan or otherwise disclosed in writing to EBRD by the Borrower. So far as the Borrower is aware, there are no circumstances that may give rise to any liability, obligation or duty of the Borrower for, the Borrower has been issued all required Authorisations relating to, and, except for matters identified in the Environmental and Social Action Plan or otherwise disclosed in writing to EBRD by the Borrower in the Environmental and Social Client Disclosure Documentation, has received no complaint, order, directive, claim, citation or notice from any Governmental Authority with respect to Environmental and Social Matters. The site is suitable for the implementation of the Project. Any contamination on site is not expected to impact the implementation of the Project. No material expenditure is or will be required in the next two years in order to upgrade, modify or improve any plant, equipment or infrastructure pursuant to any Environmental and Social Law or any related permits or licences, except as specifically contemplated by the Development Plan.



[redacted]



[redacted]

(k) **Litigation**. The Borrower is not engaged in, or, to the best of its knowledge, threatened by, any litigation, arbitration or administrative proceeding, the outcome of which might have a Material Adverse Effect.

(l) **Restrictions on payments**. None of the Obligors is subject to any regulation or law (including sanctions) which would or might reasonably be expected to have the effect of prohibiting, or restricting or delaying in any material respect any payment that any of them is required to make pursuant to the terms of any of the Financing Agreements or the Construction Contracts.

(m) **International Financial Institutions**. None of the Obligors or any officer, director, authorised employee, Affiliate, agent or representative of any such Obligor is listed by any international financial institution as excluded from the financings granted by any such institution and it has not otherwise been subject to any sanction from any such institution.

**Section 2.03. Representations Regarding the Agreements**

The Borrower represents and warrants as follows:

(a) **Corporate Power**. The Borrower has the corporate power to enter into, and perform its obligations under, the Financing Agreements and the Construction Contracts.

(b) **Due Authorisation; Enforceability; No Conflict**. The Financing Agreements and the Construction Contracts have been duly authorised by the Borrower. This Agreement has been duly executed by the Borrower and this Agreement constitutes, and the other Financing Agreements and the Construction Contracts, when executed and delivered, will, subject to the Legal Reservations, constitute, valid and legally binding obligations of the Borrower, enforceable in accordance with their respective terms. The making of the Financing Agreements and the Construction Contracts and the compliance with the terms thereof:

(1) will not result in violation of the Borrower's Charter or any provision contained in any law applicable to the Borrower;

(2) will not conflict with or result in the breach of any provision of, or require any consent under, or result in the imposition of any Lien under, any agreement or instrument to which the Borrower is a party or by which the Borrower or any of its assets is bound; and

(3) will not constitute a default or an event which, with the giving of notice, the passage of time or the making of any determination (or any combination thereof), would constitute a default under any such agreement or instrument.



[redacted] 275782.00041/100014807.3 [redacted]

(c) **Governmental Authorisations.** (i) Other than corporate Authorisations required in connection with the creation and organisation of Dufel Marruecos, no Authorisations from any Governmental Authority are required for:

(A) the due execution, delivery or performance by the Borrower of any Financing Agreement, or the validity or enforceability thereof, or for the carrying out of the Project or the carrying on of the business of the Borrower as it is carried on or is contemplated to be carried on, except for prior to first Disbursement, the Office des Changes Approval and construction permit of the Zgounder expansion; and

(B) the due execution and delivery or performance by the Borrower of any Construction Contract, or the validity or enforceability thereof and those Authorisations (other than the Mining Licence) which are not necessary at the time this representation is made (or repeated) and which are of a routine or minor nature and are customarily granted in due course after timely application, or which need only be obtained as the Project progresses or after construction is completed and in respect of which the Borrower is not aware of any reason for it being unable to obtain in due course such Authorisations.

(ii) The Mining Licence is in full force and effect without modification from the form referred to in Section 1.01 (*Definitions*). There has occurred no breach, and no event which with the giving of notice, the passage of time or the making of any determination, or any combination thereof, would constitute a breach, of [redacted]e date of this Agreement, the Mining Licence Expiry Date [redacted]

(d) **Pari Passu Ranking.** The Borrower's payment obligations under the Financing Agreements rank at least *pari passu* with claims of all of its other creditors, except for claims mandatorily preferred by laws applicable to companies generally.

(e) **Security**. Subject to registration of the Mining Licence Mortgage on the Mining Licence special title with the relevant land registry and payment of all tax registration and land registry recording formalities, the record of the Share Pledge Agreement in the Borrower's share transfer register (*registre des transferts*) and when applicable publication of notices related to other Security Documents governed by the laws of Morocco on NERMS and, in the case of the Quebec Security Agreement, in the Register of Personal and Moveable Real Rights, each Security Document will, when executed and delivered, constitute a valid and perfected security interest in the collateral covered by such Security Document, securing payment of all principal, interest and other amounts payable to EBRD under the Financing Agreements and ranking senior to all other Liens on such collateral. Neither the Borrower nor Aya is party to any other security agreement or instrument creating or purporting to create a Lien on such collateral. The Security is not subject to avoidance on liquidation of the Borrower or Aya or in bankruptcy,



[redacted]  [redacted]

composition or other insolvency proceedings relating to such Obligor. As of the date of this Agreement, the Borrower does not own any immovable assets other than the Mining Licence and all present buildings, facilities and structures ("*Ouvrages*") that are necessary to the operation of the Mine within the meaning of Article 51 of the Mining Law.

(f) **Construction Contracts.** The Construction Contracts (other than the Services Contract) are in full force and effect as between the Borrower and Duro Felguero Spain and, as of the date of this Agreement, without material modification from the form referred to in Section 1.01 (*Definitions*). As and from the Dufel Marruecos Accession Date, the Services Contract will be in full force and effect and the Umbrella Agreement will be in full force and effect as between all parties thereto. As far as the Borrower is aware, after due inquiry, there has occurred no breach, and no event which with the giving of notice, the passage of time or the making of any determination, or any combination thereof, would constitute a breach, of the Construction Contracts.

(g) **Taxes.** There is no Tax of any Governmental Authority of Morocco to be imposed on or by virtue of the execution, delivery or performance of any Financing Agreement or necessary to ensure the legality, validity, enforceability or admissibility in evidence thereof in Morocco (other than the fees to be paid to the NERMS, those tax registration and land registry duties relating to the registration of the Mining Licence Mortgage and when applicable the registration of all other real estate asset mortgages to be created as Security pursuant to this Agreement).

**Section 2.04. Acknowledgement and Repetition**

(a) The Borrower acknowledges that it has made the representations and warranties contained in Section 2.01, Section 2.02 and Section 2.03 (*Representations*) with the intention of inducing EBRD to enter into this Agreement and that EBRD has entered into this Agreement on the basis of, and in full reliance on, each of such representations and warranties. The Borrower warrants that it has no knowledge of any additional facts or matters the omission of which makes any of such representations and warranties misleading or which would or might reasonably be expected to affect the judgement of a prospective lender regarding lending to the Borrower.

(b) Any representation or warranty given hereunder which specifies that such representation and warranty is provided hereunder "**as of the date of this Agreement**" shall only be given on the date of this Agreement and shall not be deemed to be repeated hereafter in connection with any Disbursement made pursuant to this Agreement. In respect of all other representations and warranties provided in this Article II, such representations and warranties shall be deemed to be repeated on submission of each Disbursement request and on each Disbursement date by reference to the facts and circumstances then existing.

## ARTICLE III - LOAN

**Section 3.01. Amount and Currency**

On and subject to the terms and conditions of this Agreement, EBRD agrees to lend to the Borrower an amount not to exceed US $100,000,000 consisting of:

(1) an EBRD Tranche in an amount not to exceed US $92,000,000 which shall be funded from EBRD Resources; and

(2) a CTF Tranche in an amount not to exceed US $8,000,000 which shall be funded from Clean Technology Fund ("**CTF**") resources.

**Section 3.02. Disbursements**

(a) Subject to Section 3.03 (*Suspension and Cancellation*) and Article IV (*Conditions Precedent*), the Loan shall be disbursed by EBRD from time to time on any Business Day during the Commitment Period in one or more Disbursements upon request of the Borrower. The Borrower may request a Disbursement by submitting to EBRD an original application for such Disbursement, in the form of Exhibit A and in substance satisfactory to EBRD, at least ten Business Days prior to the proposed date of such Disbursement. Such application shall, unless EBRD otherwise agrees, be irrevocable and binding on the Borrower.

(b) Disbursements (other than a Disbursement of the entire undisbursed amount of the Loan) shall be made in amounts of not less than [redacted]

(c) Disbursements shall be made on a *pro rata* basis as between the EBRD Tranche and the CTF Tranche.

**Section 3.03. Suspension and Cancellation**

(a) From time to time, EBRD may, by notice to the Borrower, suspend or cancel the right of the Borrower to further Disbursements:

(1) if the first Disbursement has not been made by the date falling 18 months from the date of this Agreement or such other date as may be agreed by the parties hereto;

(2) if an Event of Default has occurred and is continuing; or

(3) if the Board of Governors of EBRD has decided in accordance with Article 8, paragraph 3, of the Agreement Establishing the European Bank for Reconstruction and



[redacted]



[redacted]

Development that access by the Country of Operation to EBRD resources should be suspended or otherwise modified.

Upon the issuance of such notice by EBRD, the right of the Borrower to further Disbursements shall be suspended or cancelled as indicated in the notice. The exercise by EBRD of the right of suspension shall not preclude EBRD from exercising its right of cancellation as provided in this Section 3.03, either for the same or another reason, and shall not limit any other rights of EBRD under the Financing Agreements.

(b) The Borrower shall have the right at any time, on not less than 10 days' prior notice to EBRD, to cancel in whole or in part any undisbursed portion of the Loan; provided that:

(1) the Borrower shall pay to EBRD at the same time all accrued commitment charges on the portion of the Loan to be cancelled and all other amounts due and payable hereunder;

(2) EBRD is satisfied that adequate financing will remain available to the Borrower following such cancellation to enable the Borrower to complete the Project on or prior to the Scheduled Project Completion Date;

(3) in the case of a partial cancellation of the undisbursed portion of the Loan, such cancellation shall be in an amount of not less than [redacted] and shall be applied *pro rata* to the EBRD Tranche and the CTF Tranche; and

(4) the Borrower shall pay to EBRD on the date of cancellation a cancellation fee calculated as a percentage of the principal amount of the Loan to be prepaid as follows: [redacted]

Any such notice of cancellation by the Borrower shall be irrevocable and binding on the Borrower. On termination of the Commitment Period, the Borrower shall be deemed to have cancelled any then undisbursed portion of the Loan and shall not be obliged on such date to pay the cancellation fee specified above. Amounts of the Loan which are cancelled by the Borrower may not be reinstated.

**Section 3.04. Charges, Commissions and Fees**

(a) The Borrower shall pay to EBRD during the Commitment Period a commitment charge at the [redacted] of the Margin (as in effect from time to time and computed rateably in respect of the EBRD Tranche and as if it applied to the CTF

Tranche) on so much of the Loan as has not, from time to time, been disbursed to the Borrower or cancelled. The commitment charge shall accrue from day to day from the date of this Agreement. The commitment charge shall be calculated on the basis of the actual number of days elapsed in the relevant period and a 360-day year and shall be due and payable in arrears on each Interest Payment Date (even though no interest may be payable on such date).

(b) The Borrower shall pay to EBRD a front-end commission of [redacted] in respect of the Loan. Such front-end commission shall be due and payable not later than five Business Days prior to the first Disbursement.

(c) The Borrower shall pay to EBRD an underwriting commission in accordance with the Underwriting and Administration Fee Letter.

(d) The Borrower shall pay to EBRD during the term of this Agreement an annual loan administration fee in accordance with the Underwriting and Administration Fee Letter.

(e) The charges, commissions and fees referred to in this Section 3.04 are non-refundable and are exclusive of any Tax which might be chargeable in connection with such charges, commissions or fees. If any such Tax becomes chargeable, the Borrower shall pay such Tax to EBRD at the same time that the relevant charge, commission or fee becomes due and payable.

**Section 3.05. Interest**

(a) With respect to the EBRD Tranche only, except as provided in Section 3.06 (*Default Interest*) the Borrower shall pay interest on the principal amount of each Disbursement to the extent it forms part of the EBRD Tranche from time to time outstanding during each Interest Period for such Disbursement at a rate equal to the sum of the Margin for the EBRD Tranche and, subject to Section 3.07 (*Market Disruption*), the Compounded Reference Rate for that Interest Period.

(b) With respect to the CTF Tranche only, except as provided in Section 3.06 (*Default Interest*) the Borrower shall pay interest on the principal amount of each Disbursement to the extent it forms part of the CTF Tranche from time to time outstanding during each Interest Period for such Disbursement at a rate equal to:

(1) from the date of this Agreement until the CTF M1 Achievement Date, [redacted] per annum (the "**CTF Tranche Base Interest Rate**");

(2) from the CTF MI Achievement Date to the CTF M2 Achievement Date, the rate that is the CTF Tranche Base Interest Rate *less* twenty five percent (25%);

(3) from the CTF M2 Achievement Date to the CTF M3 Achievement Date, the rate that is the CTF Tranche Base Interest Rate *less* fifty percent (50 %); and

(4) from the CTF M3 Achievement Date until the Final Maturity Date, one percent (1%) per annum,

each of the rates in (1) to (4) being a "**CTF Tranche Interest Rate**".

(c) Interest shall:

(1) accrue from day to day from and including the first day of an Interest Period to but excluding the last day of such Interest Period;

(2) be calculated on the basis of the actual number of days elapsed and a 360-day year; and

(3) be due and payable on the Interest Payment Date which is the last day of the relevant Interest Period.

(d) Except as otherwise provided in Section 3.07 (*Market Disruption*) with respect to the EBRD Tranche only, on each Interest Determination Date, EBRD shall determine the interest rates applicable during the relevant Interest Period and promptly give notice thereof to the Borrower of such interest rate and the aggregate amount of interest. Each determination by EBRD of the interest rate applicable to any portion of the Loan shall be final, conclusive and binding upon the Borrower unless shown by the Borrower to the satisfaction of EBRD that any such determination has involved manifest error.

(e) This Section shall not require EBRD to make any notification to the Borrower on a day which is not a Business Day.

**Section 3.06. Default Interest**

(a) If the Borrower fails to pay when due any amount payable by it under this Agreement, the overdue amount shall bear interest at a rate equal to the sum of:

(1) [redacted]

(2) the Margin for the EBRD Tranche; and

(3) the Compounded Reference Rate or if a Market Disruption Event has occurred, the rate which expresses as a percentage rate per annum the cost to EBRD and each Participant of funding its respective portion of the EBRD Tranche from whatever source EBRD or such Participant(s) may reasonably select (or at the option of EBRD and such Participant(s), the relevant Compounded

Reference Rate, if available), provided that if the rate pursuant to this paragraph (3) would be below zero, the rate will be deemed to be zero;

provided that, in the case of any amount payable by the Borrower under this Agreement in respect of the CTF Tranche, the overdue amount shall bear interest at a rate equal to the sum of:

(A) [redacted] and

(B) the then applicable CTF Tranche Interest Rate.

(b) Default interest shall:

(1) accrue from day to day from the due date to the date of actual payment, after as well as before judgement, if any;

(2) be calculated on the basis of the actual number of days elapsed and a 360-day year;

(3) be compounded at the end of each Default Interest Period; and

(4) be due and payable forthwith upon demand.

(c) Each determination by EBRD of the interest rates applicable to overdue amounts and of Default Interest Periods shall be final, conclusive and binding upon the Borrower unless shown by the Borrower to the satisfaction of EBRD that any such determination has involved manifest error.

**Section 3.07. Market Disruption**

(a) If a Market Disruption Event occurs, EBRD shall promptly notify the Borrower. If EBRD notifies the Borrower of the occurrence of a Market Disruption Event, interest shall accrue on the EBRD Tranche at a rate equal to the sum of:

(1) the Margin for the EBRD Tranche; and

(2) the rate, as notified by EBRD to the Borrower as soon as practicable and in any event before interest is due to be paid in respect of the relevant Interest Period, which expresses as a percentage rate per annum the cost to EBRD and each Participant of funding its respective portion of the EBRD Tranche from whatever source EBRD or the Participant may reasonably select (or, at the option of EBRD and such Participant(s), the relevant Compounded Reference Rate, if available), provided that in each

case if the rate pursuant to this sub-paragraph (2) would be below zero, the rate will be deemed to be zero,

in each case until EBRD has given notice to the Borrower that the Market Disruption Event has ceased to exist.

(b) If a Market Disruption Event has occurred, EBRD shall have the right, in its discretion, to change the duration of any relevant Interest Period for the EBRD Tranche by sending to the Borrower a written notice thereof. Any such change to an Interest Period shall take effect on the date specified by EBRD in such notice.

(c) Notwithstanding Section 3.07(a) (*Market Disruption*), if a Market Disruption Event occurs and EBRD or the Borrower so requires, within five Business Days of the notification by EBRD pursuant to Section 3.07(a) (*Market Disruption*) above, EBRD and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest applicable to the EBRD Tranche. Any alternative basis so agreed shall take effect in accordance with its terms and replace the interest rate then in effect pursuant to Section 3.07(a) (*Market Disruption*) above. If agreement cannot be reached, the Borrower may prepay the EBRD Tranche on the next Interest Payment Date in accordance with Section 3.09 (*Prepayment*), but without any prepayment fee.

**Section 3.08. Repayment**

(a) The Borrower shall repay the Loans (on a *pro rata* basis as between the EBRD Tranche and the CTF Tranche) on the following dates (each, a "**Repayment Instalment Date**") and in the following amounts:

[redacted]

From time to time while the Loans are being disbursed, Disbursements shall be allocated by EBRD for repayment on each of the remaining Repayment Instalment Dates set forth above in amounts which are *pro rata* to the amounts of the respective remaining instalments of the Loans set forth above opposite those dates (with EBRD adjusting those allocations as necessary so as to achieve whole numbers in each case). To the extent any Disbursement is made after one or more of the Repayment Instalment Dates set forth above, such allocations may result in the remaining instalments of the Loan being larger than the principal amounts set forth above.

(b) The Repayment Instalment Dates are intended to coincide with Interest Payment Dates. If any Interest Payment Date is affected by the proviso to the definition of "**Interest Payment Date**," then the corresponding Repayment Instalment Dates shall be changed to coincide with such Interest Payment Date. Amounts of the Loans repaid may not be reborrowed.

**Section 3.09. Prepayment**

(a) The Borrower shall have the right at any time, on not less than 15 Business Days' prior notice to EBRD, to prepay on any Interest Payment Date all or any part of the principal amount of the Loan then outstanding; provided that:

(1) in the case of a partial prepayment, such prepayment shall be in an amount of not less than [redacted] shall be applied *pro rata* between the EBRD Tranche and the CTF Tranche in proportion to the respective principal amounts thereof then outstanding and shall be applied to prepay the outstanding repayment instalments of the Loan in inverse order of maturity; and

(2) the Borrower shall pay to EBRD on the date of prepayment a prepayment fee calculated as a percentage of the principal amount of the Loan to be prepaid as follows: [redacted]

Any such notice of prepayment by the Borrower shall be irrevocable and binding on the Borrower and, upon delivery of such notice, the Borrower shall be obligated to prepay the Loan in accordance with the terms thereof. Amounts of the Loan prepaid by the Borrower may not be reborrowed.

(b) On each Repayment Instalment Date set forth in Section 3.08 (*Repayment*) on which the Borrower makes or intends to make a transfer to the Distribution Account pursuant to Section 5.13(e)(10)(*Onshore Bank Accounts)* for the purpose of paying a dividend or making a distribution permitted by Section 6.01 (*Dividends)*, the Borrower shall prepay the Loans in an aggregate principal amount equal [redacted] the Excess Cash Flow as at such Repayment Instalment Date with the funds then standing to the credit of the Cash Sweep Account or, if less, the aggregate principal amount of the Loan then outstanding, provided that:

(1) such prepayment shall be applied to prepay the outstanding repayment instalments of the Loans in inverse order of maturity and shall be applied *pro rata* between the EBRD Tranche and the



[redacted]



[redacted]

CTF Tranche in proportion to the respective principal amounts thereof then outstanding; and

(2) no prepayment fee shall be payable in respect of such prepayment.

(c) In the event of a loss to the assets of the Project where the insurance claims exceed [redacted]he Borrower shall, at the request of EBRD, forthwith prepay in full the aggregate principal amount of the Loan then outstanding, together with all accrued interest and other amounts payable thereon and all other amounts payable under this Agreement and the other Financing Agreements. In the event of an insurance claim described above, then, in accordance with the provisions of this Section 3.09(c) and the Insurance Assignment, EBRD has retained the proceeds of any related claim under any insurance policy, the Borrower shall, at the request of EBRD, forthwith prepay the Loan in an aggregate principal amount equal to the amount of such proceeds or, if less, the aggregate principal amount of the Loan then outstanding, together with all accrued interest and other amounts payable on the principal amount of the Loan to be prepaid; provided that, in the case of a partial prepayment of the Loan, such prepayment shall be applied to prepay the outstanding repayment instalments of the Loan in inverse order of maturity. No prepayment fee shall be payable in respect of any such prepayment.

(d) Any prepayment under this Agreement shall be made together with (1) accrued interest and all other amounts (including any unwinding costs payable in accordance with Section 3.13 (*Unwinding Costs*), any net incremental costs payable in accordance with Section 3.14 (*Increased Costs*)) payable on the principal amount of the Loan to be prepaid and any prepayment and cancellation fees payable under this Agreement and (2) all other amounts due and payable hereunder, but otherwise without premium or penalty.

**Section 3.10. Payments**

(a) All payments of principal, interest, charges, commissions, fees, expenses and any other amounts due to EBRD under this Agreement shall be made, without set-off or counterclaim, in the Loan Currency for value on the due date, to such account in New York or such other place as EBRD may from time to time designate by notice to the Borrower. Payments of amounts due to EBRD under this Agreement shall be made by the Borrower (or the Guarantor on behalf of the Borrower) or such other payer as the Borrower may from time to time agree with EBRD.

(b) The sums to be disbursed by EBRD to the Borrower hereunder shall be payable in the Loan Currency for value, unless otherwise agreed by the Borrower and EBRD, on the value date requested by the Borrower in its Disbursement application and to such Dollar account as the Borrower may designate in its certificate of incumbency and authority (with any transfer from any correspondent bank to the Borrower's account being at the Borrower's risk and expense).

(c) If the due date for any payment under this Agreement would otherwise fall on a day which is not a Business Day, then such payment shall instead be due on the next succeeding Business Day in the same calendar month or, if there is no succeeding Business Day in the same calendar month, the immediately preceding Business Day.

(d) EBRD shall have the right, to the fullest extent permitted by law, to set off any amount owed by EBRD to the Borrower, whether or not matured, against any amount then due and payable by the Borrower under any Financing Agreement, whether or not EBRD has demanded payment by the Borrower of such amount and regardless of the currency or place of payment of either such amount. EBRD shall have the right, to the fullest extent permitted by law, to deduct from the proceeds of any Disbursement any charges, commissions, fees, expenses and other amounts then due and payable by the Borrower to EBRD under any Financing Agreement.

(e) The aggregate amount of any accrued interest, commission or fee which is, or becomes, payable by the Borrower under any Financing Agreement shall be rounded to two decimal places.

(f) Without prejudice to Section 3.11 (*Insufficient Payments*), no payment shall be deemed to have been made to EBRD under this Agreement until such time as it is received in full in cleared and unblocked funds in an account or other place specified in paragraph (a) above. In the event that any purported payment by the Borrower is prohibited, restricted or delayed due to any intervention or other action relating to sanctions or restrictive measures, the Borrower will continue to be liable for the payment due to EBRD until such outstanding payment is satisfied in accordance with the terms of this Agreement. Without prejudice to the generality of the forgoing, should the Borrower fail to make any payment due under any Financing Agreement to EBRD by reason of any Moroccan foreign exchange restriction or authority decision/objection, then, as set out in the GISA, such restricted payment shall be immediately paid by the Guarantor (from whatever source) to EBRD.

**Section 3.11. Insufficient Payments**

(a) If EBRD at any time receives less than the full amount then due and payable to it under this Agreement, EBRD shall have the right to allocate and apply the amount received in any way or manner and for such purpose or purposes under this Agreement as EBRD in its sole discretion determines, notwithstanding any instruction that the Borrower may give to the contrary.

(b) The Borrower shall indemnify EBRD against any losses resulting from a payment being received, or a claim being filed or an order or judgement being given, hereunder in a currency or place other than the currency and place specified in Section 3.10(a) (*Payments*). The Borrower shall pay such additional amount as is necessary to enable EBRD to receive, after conversion to such currency at a market rate and transfer to such place, the full amount due to EBRD hereunder in the currency and at the place specified in Section 3.10(a) (*Payments*).



[redacted]



[redacted]

**Section 3.12. Taxes**

(a) The Borrower shall pay or cause to be paid, or reimburse EBRD on demand for, all present and future Taxes, now or at any time hereafter levied or imposed by any Governmental Authority of any jurisdiction out of which or through which payments hereunder are made, on or in connection with the payment of any amounts due to EBRD under this Agreement.

(b) All payments of principal, interest and other amounts due to EBRD under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes (including any value added tax); provided that:

> (1) the Borrower shall be responsible for levying and paying any value added tax in respect of any principal, interest and other amounts due to EBRD under this Agreement; and
>
> (2) in the event that the Borrower is prevented by operation of law or otherwise from making such payments free and clear of such deductions or withholdings, the principal, interest or other amount (as the case may be) due under this Agreement shall be increased to such amount as may be necessary to remit to EBRD the full amount it would have received had such payment been made without such deductions or withholdings.

(c) The provisions of Section 3.12(a) and Section 3.12(b) shall not apply to Taxes, to the extent that such Taxes arise as a direct consequence of a Participation having been acquired by a Participant whose principal office is located in the jurisdiction in which the Borrower is established or the Country of Operation (if different) or by the permanent office or establishment in the jurisdiction in which the Borrower is established or the Country of Operation (if different) of a Participant.

**Section 3.13. Unwinding Costs**

(a) The Borrower shall forthwith upon notice from EBRD reimburse EBRD for any costs, expenses and losses incurred by EBRD or any Participant, as a result of the occurrence of an Event of Default, a change in the duration of any relevant Interest Period pursuant to Section 3.07(b) (*Market Disruption*), a change in the basis for determining the rate of interest pursuant to Section 3.07(c) (*Market Disruption*), repayment or prepayment of any portion of the Loan on a date other than the last day of an Interest Period or a Default Interest Period, failure by the Borrower to pay any amount when due hereunder, EBRD or any Participant funding, or making arrangements to fund, a Disbursement requested in a Disbursement application submitted pursuant to Section 3.02 (*Disbursements*) but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of an act or omission, including any default or negligence by EBRD or such Participant, as the case may be) or failure by the



[redacted]

275782.00041/100014807.3

[redacted]

Borrower to make any prepayment in accordance with a notice of prepayment delivered pursuant to any provision of this Agreement.

(b) A certificate of EBRD as to any amount payable under this Section 3.13 (*Unwinding Costs*) shall be final, conclusive and binding on the Borrower unless shown by the Borrower to contain manifest error.

**Section 3.14. Increased Costs**

(a) The Borrower shall, from time to time on demand of EBRD, reimburse EBRD for any net incremental costs to EBRD of making or maintaining, or committing to make, the Loan or to any Participant of acquiring or maintaining its Participation which result from the introduction of, or any change in, any applicable law or any applicable guideline or policy (whether or not having the force of law), or any change in the interpretation or application thereof by any Governmental Authority charged with the administration thereof, subsequent to the date of this Agreement. A certificate of EBRD or such Participant as to the amount of such net incremental costs shall be final, conclusive and binding on the Borrower unless shown by the Borrower to contain manifest error. Notwithstanding the foregoing, the Borrower shall not be obligated to reimburse EBRD for any such net incremental costs which are a direct consequence of a Participation having been acquired by a Participant whose principal office is located in the jurisdiction in which the Borrower is established or the Country of Operation (if different) or by the permanent office or establishment of a Participant in the jurisdiction in which the Borrower is established or the Country of Operation (if different).

(b) Notwithstanding anything in Section 3.09 (*Prepayment*), the Borrower shall have the right, on not less than 30 days' notice to EBRD (which notice shall be irrevocable and binding on the Borrower), to prepay on any Interest Payment Date that portion of the Loan on which EBRD informs the Borrower that such net incremental costs are then being charged in accordance with Section 3.09(b) (*Prepayment*).

**Section 3.15. Illegality**

Notwithstanding anything in this Agreement, if it is or becomes unlawful in any jurisdiction for EBRD to make, maintain or fund the Loan or perform any of its obligations under this Agreement or for any Participant to maintain or fund its Participation, then:

(1) upon request by EBRD, the Borrower shall, on the next Interest Payment Date or such earlier date as EBRD may specify, prepay that portion of the principal amount of the Loan which EBRD notifies to the Borrower as being affected by such change in accordance with Section 3.09(b) (*Prepayment*); and

(2) upon notice from EBRD, any portion of the Loan which EBRD notifies to the Borrower as being affected by such change



[redacted]



[redacted]

and which has not theretofore been disbursed shall be cancelled immediately.

**Section 3.16. Mitigation**

(a) If, in respect of EBRD or a Participant, circumstances arise which would, or with the giving of notice would, result in:

(1) any Taxes, duties and fees or other charges becoming payable under Section 3.12 (*Taxes*), or

(2) any increased cost becoming payable under Section 3.14 (*Increased Costs*), or

(3) any prepayment or cancellation under Section 3.15 (*Illegality*),

then EBRD will take (and request a Participant to take) such reasonable steps as may be practicable to mitigate the effects of such circumstances provided always that EBRD will be under no obligation to take (or request that such Participant take) such reasonable steps if such action might be materially adverse to the interests of EBRD or that Participant.

(b) Section 3.16(a) above, does not in any way limit the obligations of the Borrower or any other party to any Financing Agreement.

**Section 3.17. Loan Account**

EBRD shall open and maintain on its books an account in the Borrower's name showing the Disbursements and repayments thereof and the computation and payment of interest, charges, commissions, fees and other amounts due and sums paid hereunder. Such account shall be final, conclusive and binding on the Borrower as to the amount at any time due from the Borrower hereunder, absent manifest error.

## ARTICLE IV CONDITIONS PRECEDENT

**Section 4.01. First Disbursement**

The obligation of EBRD to make the first Disbursement shall be subject to the prior fulfilment, in form and substance satisfactory to EBRD, or at the sole discretion of EBRD the waiver, whether in whole or part and whether subject to conditions or unconditional, of the following conditions precedent:

(a) **Financing Agreements**. EBRD shall have received duly executed originals of the following agreements:

(1) this Agreement;

(2) the GISA; and

(3) the Underwriting and Administration Fee Letter.

(b) **Construction Contracts; Management Services Agreement**. EBRD shall have received certified copies of the following agreements, duly executed by the parties thereto:

(1) the Construction Contracts (and for the avoidance of doubt, the Umbrella Agreement to be delivered as soon as practicable following any amendment or amendment and restatement, etc. in connection with the occurrence of the Dufel Marruecos Accession Date), and other agreements for the construction of the Project, provided that such contracts in aggregate represent a total value of Project works equal to or exceeding USD 100,000,000; and

(2) the Management Services Agreement.

(c) **Security**. The Security shall have been validly created and perfected in a manner satisfactory to EBRD and EBRD shall have received duly executed originals of the following Security Documents, together with any document, recording, filing, notification, registration, notarisation or other evidence required, in the opinion of EBRD, for the creation, validity, perfection or priority of the Liens of EBRD in or under such Security Documents:

(1) the Mining Licence Mortgage;

(2) the Equipment and Machinery Pledge Agreement;

(3) the Business Pledge Agreement;

(4) the Receivables Pledge;

(5) the Insurance Assignment;

(6) the Reinsurance Assignment;

(7) the Construction Contracts Security Assignment;

(8) the Bank Accounts Pledge Agreement;

(9) the Share Pledge Agreement; and

(10) the Quebec Security Agreement and the Offshore Bank Accounts Control Agreement, taken together.

In addition to the foregoing, EBRD shall have received evidence of the payment of the payment of tax registration and land registry recording duties on the Initial Stamped Amount as required in connection with the registration and recordation of the Mining Licence Mortgage at the required offices.

(d) **Charters**. EBRD shall have received certified copies of the Charters (and, if relevant, certificates of registration and good standing) of each of the Obligors and, at the request of EBRD, any other parties to the Financing Agreements and Construction Contracts, each as amended to date.

(e) **Corporate Authorisations**. EBRD shall have received certified copies of all corporate (including, if required, shareholder) Authorisations necessary for the due execution, delivery and performance of the Financing Agreements and the Construction Contracts, and any other documents in implementation thereof, by the Obligors and, at the request of EBRD, any other parties thereto and for the transactions contemplated thereby, including the authorisations of the persons signing the Financing Agreements and the Construction Contracts to sign such documents and to bind the respective parties thereby.

(f) **Specimen Signatures**. EBRD shall have received:

(1) a certificate of incumbency and authority of the Borrower substantially in the form of Exhibit B; and

(2) a certificate of an appropriate officer of each other Obligor and, at the request of EBRD, any other party to the Financing Agreements and Construction Contracts certifying the specimen signature of each person authorised to sign, on behalf of such party, the Financing Agreements and Construction Contracts to be entered into and performed by such party.

(g) **Moroccan Exchange Office clearance.** EBRD shall have received certified copies of the written Office des Changes Approval.

(h) **Share Capital; Management; Encumbrances; Insolvency**. EBRD shall have received certified copies of:

(1) the share transfer register ("*Registre des transferts*") of the Borrower showing in chronological order the subscriptions and transfers of shares of the Borrower and showing that the shareholding structure of the Borrower as at the date of execution of this Agreement is as indicated in Section 2.02(c) (*Share Capital*);

(2) the share transfer register ("*Registre des transferts*") of AGSM showing in chronological order the subscriptions and

transfers of shares of AGSM and showing that Aya owns as at the date of execution of this Agreement 99.99% of the share capital and voting rights of AGSM;

(3) the Borrower's certificate of non-bankruptcy (Model 14) dated no later than 10 days prior to the date of the first Disbursement and showing that the Borrower is still operating its business and no proceedings for any administration, suspension of payments, receivership, winding-up or similar insolvency proceedings has been registered against the company;

(4) AGSM's certificate of non-bankruptcy (Model 14) dated no later than 10 days prior to the date of the first Disbursement and showing that the Borrower is still operating its business and no proceedings for any administration, suspension of payments, receivership, winding-up or similar insolvency proceedings has been registered against the company; and

(5) the trade registry certificate of the Borrower (Model 7) and a certified search issued from the NERMS dated no later than 10 days prior to the date of the first Disbursement and showing that:

(A) the management structure of the Borrower is as shown in Section 2.02(d) (*Directors and Officers)*; and

(B) there are no encumbrances, seizures or any charges of whatever kind on the going-concern and movable assets of the Borrower; and

(6) the trade registry certificate of AGSM (Model 7) and a certified search issued from the NERMS dated no later than 10 days prior to the date of the first Disbursement and showing that:

(A) there are no Liens of whatever kind on the going-concern and movable assets of AGSM;

(B) the management structure of AGSM is as set out below:

[redacted]

[redacted]

(i) **Governmental and Other Authorisations.** EBRD shall have received certified copies of the Mining Licence and all other Authorisations then required (save as set out in Section 4.01(g) (*Moroccan Exchange Office clearance*)), including creditors' consents, necessary for the execution, delivery and performance of the Financing Agreements and the Construction Contracts by the Obligors and, at the request of EBRD, any other parties thereto and for the transactions contemplated thereby, including:

(1) the borrowing by the Borrower under this Agreement;

(2) the creation of the Security;

(3) the carrying out of the Project and the Financing Plan;

(4) the remittance to EBRD of all monies payable in respect of the Financing Agreements; and

(5) the carrying on of the business of the Borrower as it is currently carried on and is contemplated to be carried on;

other than any Authorisation of a routine or minor nature which is not necessary for the implementation of the Project at the time of the proposed Disbursement or which may only be obtained as the Project progresses or after construction is completed and in each case which is customarily granted in due course after timely application, and in respect of which the Borrower is not aware of any reason for it being unable to obtain in due course such Authorisation.

(j) **Insurance.** (1) EBRD shall have received a report on the insurance for the Borrower and the Project from insurance consultants appointed by EBRD, together with an original insurance certificate from the Borrower's insurer or insurance broker showing that all insurance policies and endorsements recommended by such report or otherwise required pursuant to Section 5.04 (*Insurance*) are in full force and effect and certified copies of such insurance policies and endorsements. (2) EBRD shall have received copies of the brokers' letter(s) of undertaking referred to in paragraph 7.1 of Schedule 4 (*Insurance*), in each case satisfactory in form and substance to EBRD.

(k) **Auditors Letter.** EBRD shall have received a copy of a letter to the Auditors from the Borrower substantially in the form of Exhibit C.

(l) **Environmental and Social Plans.** EBRD shall have received evidence and shall be satisfied in its sole and absolute discretion that compliance with the requirements of the Environmental and Social Action Plan is proceeding substantially according to the



[redacted]



[redacted]

schedule contained in the Environmental and Social Action Plan and that, based on progress to date, the requirements contained in the Environmental and Social Action Plan are expected to be satisfied within the time frame contemplated in such plan; provided that, completion of the Social Survey shall not be required. For the purposes of EBRD satisfying itself that the conditions in this paragraph (l) have been met prior to each Disbursement, the Borrower shall give EBRD access to conduct site visits to inspect the Project.

(m) **Process Agent Appointments**. EBRD shall have received written confirmation from the agents for service of process appointed by the Obligors pursuant to the Financing Agreements of their acceptances of such appointments.

(n) **Equity**. EBRD shall have received written confirmation as to the Borrower's receipt of equity (or Subordinated Debt) being the figure equal to [redacted] being the amount that will be deposited to the DSRA/Licence Reserve Account minus (3) amounts previously expended by the Borrower on the Mine.

(o) **Financing Plan**. EBRD shall have received a copy of the Financing Plan, prepared by the Borrower, as approved by the Independent Technical Consultant, and in form and substance satisfactory to EBRD.

(p) **Bank Accounts**. EBRD shall have received evidence that (a) the Onshore Bank Accounts and the Offshore Bank Accounts shall have been opened and (b) the balance standing to the credit of the Cost Overrun Account shall be at leas[redacted]

(q) **Technical Due Diligence.** EBRD shall have received a copy of the Technical Due Diligence Report, satisfactory in form and substance to it, together with approval of the contents thereof by the Independent Technical Consultant.

(r) **Financial Statements**. EBRD shall have received the Financial Statements for the Financial Year ending 31 December 2021 together with a report of the Auditors thereon prepared in accordance with International Standards on Auditing, all in a form satisfactory to EBRD.

(s) **Compliance with Financial Ratios**. EBRD shall have received evidence that the Development Plan and the Financial Model shall demonstrate that:

(1) LLCR at each Calculation Date is projected to be at least [redacted]

(2) PLCR at each Calculation Date is projected to be at least [redacted]nd

(3) RTR at each Calculation Date is projected to be at least [redacted]

(t) **Legal Opinions**. EBRD shall have received the following legal opinions regarding such matters incident to the transactions contemplated by the Financing Agreements and Construction Contracts as EBRD reasonably requests:

(1) the opinion of Dentons, Canadian counsel to the Guarantor;

(2) the opinion of [redacted] Moroccan counsel to the Borrower and AGSM with respect to the capacity of each to enter into the Financing Agreements to which it is a party;

(3) the opinion of [redacted] Moroccan counsel to EBRD with respect to the validity and enforceability of the Moroccan law-governed Security Documents; and

(4) the opinion of [redacted] English counsel to EBRD.

**Section 4.02. All Disbursements**

The obligation of EBRD to make any Disbursement shall also be subject to the fulfilment, in form and substance satisfactory to EBRD, or at the sole discretion of EBRD the waiver, whether in whole or part and whether subject to conditions or unconditional, of the conditions that, on the date of the Borrower's application for such Disbursement and on the date of such Disbursement:

(a) **Continuing Validity of Documents**. All agreements, documents and instruments delivered to EBRD pursuant to Section 4.01 (*First Disbursement*) shall be in full force and effect and unconditional (except for this Agreement having become unconditional, if that is a condition of any such agreement, document or instrument).

(b) **Representations and Warranties**. The representations and warranties made or confirmed by the Obligors in the Financing Agreements and the Construction Contracts to which they are party shall be true on and as of such dates with the same effect as though such representations and warranties had been made on and as of such dates.

(c) **No Default**. No Default shall have occurred and be continuing or shall, in the reasonable opinion of EBRD, be imminent and the Borrower shall not, as a result of such Disbursement, be in violation of its Charter, any provision contained in any agreement or instrument to which the Borrower is a party (including this Agreement) or by which the Borrower is bound or any law applicable to the Borrower.

(d) **No Material Adverse Change**. Nothing shall have occurred which, in the reasonable opinion of EBRD, might have a Material Adverse Effect.

(e) **Use of Proceeds**. The proceeds of such Disbursement shall be needed by the Borrower for the purposes of the Project (but solely as described in sub-paragraphs (a), (b) and (c) of the definition of such term) and EBRD shall have received invoices, billing statements and such other evidence (in each case satisfactory to the Independent Technical Consultant) as to the proposed utilisation of the proceeds of such Disbursement and the utilisation of the proceeds of any prior Disbursement as EBRD reasonably requests.

(f) **Fees and Expenses**. EBRD shall have received payment of all amounts due and owing to it under the Financing Agreements, including all fees and expenses described in Section 3.04 (*Charges, Commissions and Fees*) and Section 8.08 (*Costs and Expenses*).

(g) **Disbursement Application**. EBRD shall have received an original of the Borrower's timely application for such Disbursement substantially in the form of Exhibit A.

(h) **Construction Progress**. EBRD shall have received a report of the Independent Technical Consultant issued no more than three months prior to the proposed date of such Disbursement confirming to the satisfaction of EBRD that the completion of the Project is proceeding substantially according to the schedule contained in the Business Plan and that, based on progress to date, the schedule is capable of leading to completion of the Project and the achievement of the Project Completion Date by the Scheduled Project Completion Date and additionally within the timeframes permitted under the Mining Licence.

(i) **Environmental and Social Matter Progress**. EBRD shall have received evidence and shall be satisfied in its sole and absolute discretion that compliance with the requirements of the Environmental and Social Action Plan is proceeding substantially according to the schedule contained in the Environmental and Social Action Plan and that, based on progress to date, the requirements contained in the Environmental and Social Action Plan are expected to be satisfied within the time frame contemplated in such plan; provided that, with respect to the second Disbursement requested hereunder, the Social Survey shall have been completed to EBRD's satisfaction and any amendments to the Environmental and Social Action Plan shall have been agreed by EBRD. For the purposes of EBRD satisfying itself that the conditions in this paragraph (i) have been met prior to each Disbursement, the Borrower shall give EBRD access to conduct site visits to inspect the Project.

(j) **Availability of Funding**. The results of the most recent banking case prepared in accordance with Section 8.05(b) (*Financial Calculations*) shall have shown to the satisfaction of EBRD that there is no forecast funding shortfall for the Project on the basis of available funding commitments (including the Cost Overrun Account).

(k) **Reports Satisfactory**. EBRD shall have received

> (1) the latest MDA delivered pursuant to Section 5.14(b)(2) (*Furnishing of Information*) which shall be satisfactory in form and substance to EBRD;

(2) the latest Project Progress Report delivered pursuant to Section 5.14(b)(4) (*Furnishing of Information*) which shall be satisfactory in form and substance to EBRD and shall have been approved by the Independent Technical Consultant; and

(3) a version of the revised Development Plan (as and when updated in accordance with this Agreement) which shall be satisfactory in form and substance to EBRD.

(l) **Authorisations**. EBRD shall have received certified copies of all Authorisations that are required to be obtained before the relevant Disbursement.

(m) **Other**. EBRD shall have received such other documents and legal opinions as EBRD may reasonably request.

**Section 4.03. Pari Passu Disbursement**

Notwithstanding anything in this Agreement to the contrary, the obligation of EBRD to make any Disbursement shall also be subject to the condition that the aggregate amount of the Loan disbursed by EBRD shall not at any time exceed 55% of the aggregate amounts theretofore or contemporaneously disbursed (a) by EBRD and (b) by way of equity or Subordinated Debt to the Borrower.

## ARTICLE V - AFFIRMATIVE COVENANTS

The undertakings in this Article V shall remain in force from the date of this Agreement for so long as the obligation of EBRD to make Disbursements (subject to the terms and conditions of this Agreement) continues or, if later, so long as any amount is outstanding under the Financing Agreements.

Unless EBRD otherwise agrees in writing:

**Section 5.01. Project Implementation**

The Borrower shall carry out the Project in accordance with the Development Plan as furnished by the Borrower to EBRD (subject to any material modifications to which EBRD may agree in writing), and cause the financing specified in the Financing Plan to be applied exclusively to the Project and, without limiting the Guarantor's obligations under the GISA, take all actions necessary to provide adequate funds for the completion of the Project.

**Section 5.02. Maintenance and Continuity of Business**

The Borrower shall maintain its corporate existence in compliance with all applicable laws. The Borrower shall conduct its business with due diligence and efficiency, in accordance with sound engineering, financial and business practices and in compliance with (i) all laws concerning money laundering or the financing of terrorism and (ii) all other laws, to the extent that failure to comply would have a Material Adverse Effect. The Borrower shall use procurement methods which ensure a sound selection of goods and services at fair market value and that the Borrower is making its capital investments in a cost effective manner with the contracting on an arm's length basis.

**Section 5.03. Environmental and Social Compliance**

(a) Except as otherwise specified in the Environmental and Social Action Plan, the Borrower shall, and shall cause any contractor (including Duro Felguero Spain and Dufel Marruecos) to, carry out the Project and all of the Borrower's ancillary business and operations in accordance with the Designated Performance Requirements.

(b) Without limiting the foregoing, the Borrower shall diligently implement and adhere to the Environmental and Social Action Plan and monitor the implementation of such plan in accordance with the monitoring provisions contained in such plan.

(c) EBRD shall have the right to require that the Independent Environmental and Social Consultant conduct monitoring visits to the Project in accordance with Section 5.14(p) (*Furnishing of Information*) (which, unless otherwise agreed by the Borrower, shall not be more than twice a year), the costs associated with such to be borne by the Borrower.

(d) The Borrower and EBRD may from time to time agree to amend the Environmental and Social Action Plan in response to changes in the circumstances of the Project, the Borrower or the Borrower's business and operations, unforeseen events and the results of monitoring. Without limiting the generality of the foregoing,

(1) if there is any adverse environmental or social impact or issue that was not foreseen by or contemplated in the Environmental and Social Action Plan either entirely or as to its severity,

(2) if any impact mitigation measure set out in the Environmental and Social Action Plan is not sufficient to eliminate or reduce any environmental or social impact to the level contemplated by the relevant Designated Performance Requirements within the time frame set out in the Environmental and Social Action Plan, or

(3) if any material non-compliance with the Environmental and Social Action Plan or with any Environmental and Social Law has been identified by the Borrower, EBRD or by an inspection from any regulatory or enforcement authority or by any audit conducted in accordance with Section 5.03(c) (*Environmental and Social Compliance*),

the Borrower shall, as soon as reasonably practicable and subject to the consent of EBRD, develop and incorporate into the Environmental and Social Action Plan such additional or revised mitigation measures as may be necessary to achieve compliance with the Designated Performance Requirements, the Environmental and Social Action Plan or Environmental and Social Law, in each case in a manner satisfactory to EBRD.

**Section 5.04. Insurance**

The Borrower shall maintain Direct Insurances and Reinsurances against loss, damage and liability in accordance with the requirements of Schedule 4 (*Insurance*). EBRD shall be named as additional loss payee (except with respect to Liability Direct Insurances) and additional insured under the relevant policies of Direct Insurance and the interests of EBRD shall be noted thereon.

**Section 5.05. Accounting**

(a) The Borrower shall maintain books of account and other records adequate to present fairly its financial position, financial performance and cash flows and the results of its operations (including the progress of the Project) in conformity with IFRS .

(b) The Borrower shall maintain as auditors of the Borrower a firm of independent accountants acceptable to EBRD.

(c) The Borrower shall authorise, by a letter substantially in the form of Exhibit C, the Auditors to communicate directly with EBRD at any time regarding the Borrower's accounts and operations.

**Section 5.06. Continuing Governmental and Other Authorisations**

(a) The Borrower shall obtain and maintain in force (or, where appropriate, renew) the Mining Licence and all other Authorisations required for the purposes described in Section 4.01(f) and Section 4.01(h) (*First Disbursement*). The Borrower shall perform and observe all the conditions and restrictions contained in, or imposed on the Borrower by, the Mining Licence or such other Authorisations.

(b) The Borrower undertakes that all required documents and notifications will be filed with the Moroccan Exchange Office in due time as required by the provisions of the General Instruction of Exchange Operations dated 1 January 2022 ("*Instruction Générale des Opérations de Change*") as amended from time to time. The Borrower shall provide EBRD with evidence of the foregoing without delay. In particular, and without limiting the foregoing, each time a Disbursement is made, the Borrower shall provide EBRD with a certified copy of the related "*Formule 2*" within the meaning of article 13 of the General Instruction of Exchange Operations.

(c) The Borrower undertakes to make all necessary efforts and take all required measures and actions in good faith in order to apply for and obtain the Moroccan





[redacted] [redacted]

Exchange Office prior authorisation each time such authorisation is required to make a payment in foreign currency to EBRD under a Financing Agreement. The Borrower shall provide EBRD with evidence of the forgoing without delay.

(d) Without limiting paragraph (a) above, the Borrower shall keep EBRD informed as to any pending developments in connection with the Mining Licence (including the Borrower's application to extend the Mining Licence Expiry Date in accordance with its terms and the provisions of applicable law) and deliver to EBRD copies of all correspondence to and from governmental authorities in connection with the Mining Licence and the required renewal process.

**Section 5.07. Security**

(a) The Borrower shall create, perfect, maintain and, as appropriate, renew the Security created by the Security Documents to which it is party in a manner satisfactory to EBRD.

(b) After the occurrence of an Upstamping Event, and immediately upon the instruction of EBRD, the Borrower shall execute, if required, an addendum to the Mining Licence Mortgage in favour of EBRD and take all such further action as is available to it (including the payment of additional tax registration and land registry duties and any other relevant costs and expenses required) as may be deemed necessary or desirable by EBRD to ensure that the amount secured by the Mining Licence Mortgage and such addendum to the Mining Licence Mortgage is equal to such amount as EBRD may require but in no event greater than the total amount of the Loan and the other amounts outstanding under this Agreement.

**Section 5.08. Compliance with Other Obligations**

The Borrower shall comply with all material agreements to which it is a party or by which it or any of its properties or assets is bound.

**Section 5.09. Taxes**

(a) The Borrower shall pay when due all of its Taxes, including any Taxes against any of its properties, other than Taxes which are being contested in good faith and by proper proceedings and as to which adequate reserves have been set aside for the payment thereof. The Borrower shall make timely filings of all Tax returns and governmental reports required to be filed or submitted under any applicable law.

(b) The Borrower shall pay all Taxes payable on, or in connection with, the execution, issue, delivery, registration or notarisation of any Financing Agreement, any Construction Contract or any other document related to this Agreement. Upon notice from EBRD, the Borrower shall pay to EBRD, or reimburse EBRD for, an amount equal to any such Taxes levied on or paid by EBRD.

**Section 5.10. Further Documents**

The Borrower shall execute all such other documents and instruments and do all such other acts and things as EBRD may reasonably determine are necessary or desirable to give effect to the provisions of the Financing Agreements and the Construction Contracts and to cause the Financing Agreements and the Construction Contracts to be duly registered, notarised and stamped in any applicable jurisdiction. The Borrower hereby irrevocably appoints and constitutes EBRD as the Borrower's true and lawful attorney with right of substitution (in the name of the Borrower or otherwise) to execute such documents and instruments and to do such acts and things in the name of and on behalf of the Borrower in order to carry out the provisions hereof following the occurrence of a Default.

**Section 5.11. Construction Contracts**

(a) The Borrower shall maintain all Construction Contracts in full force and effect without material modification and perform its obligations in all material respects under, and not commit any breach of or default under, any such Construction Contract.

(b) The Borrower, shall as soon as is practicable, provide to EBRD a substantially final version of any agreement (other than in effect on the date of this Agreement) with an aggregate contractual value in excess of [redacted] that relates to the development, construction and operation of the Mine for its review and comment and, subject to taking into account any changes suggested by EBRD, provide a fully executed copy of such agreement following execution of such document.

**Section 5.12. Financial Ratios**

(a) **Historical Debt Service Coverage Ratio ("HDSCR")**. The Borrower shall, commencing on the Calculation Date following the second anniversary of the date of this Agreement, maintain a ratio of (i) Cash Available for Debt Service for the 6 months preceding the relevant Calculation Date to (ii) the sum of the principal repayments and interest payments on all Financial Debt due or accrued during such period, of not less than [redacted]

(b) **Forecast Debt Service Coverage Ratio ("FDSCR")**. The Borrower shall, commencing on the Calculation Date following the second anniversary of the date of this Agreement, maintain a ratio of (i) Cash Available for Debt Service forecast for the 6 months following the relevant Calculation Date to (ii) the sum of the principal repayments and interest payments on all Financial Debt forecast to be due or to accrue during such period, of not less than [redacted]

(c) **Loan Life Cover Ratio ("LLCR")**. The Borrower shall, on all Calculation Dates, maintain a ratio of (i) (a) the net present value (using the Discount Rate) of Cash Available for Debt Service for the period from such Calculation Date to the Final Maturity Date



[redacted]

plus (b) the balance standing to the credit of the DSRA/Licence Reserve Account to (ii) the amount of Financial Debt outstanding as at such date, of not more than [redacted]

(d) **Project Life Cover Ratio ("PLCR")**. The Borrower shall, on all Calculation Dates, maintain a ratio of (i) (a) the net present value (using the Discount Rate) of Cash Available for Debt Service for the period from such date to the Project End Date plus (b) the balance standing to the credit of the DSRA/Licence Reserve Account to (ii) the amount of Financial Debt outstanding as at such date of not more than [redacted]

(e) **Reserve Tail Ratio ("RTR")**. The Borrower shall, on all dates, maintain a ratio expressed as a percentage of (i) Reserves projected as at the Project End Date to (ii) Reserves as at the date of this Agreement of at least [redacted]

(f) **Definitions**. For purposes of this Section:

(1) "**Cash Flows**" means, for the Borrower, inflows and outflows of Cash and Cash Equivalents, where "**Cash**" means cash on hand and demand deposits and "**Cash Equivalents**" means short-term, highly liquid investments that are readily convertible to known amounts of Cash and which are subject to an insignificant risk of changes in value.

(2) "**Cash Available for Debt Service**" means, for the Borrower, Cash Flows arising or expected to arise from Operating Activities for any relevant period not taking into account Exceptional Gains but taking into account Exceptional Losses for such period plus (i) interest paid (if classified as net cash from Operating Activities) during such period minus (ii) those Cash Flows for such period which are applied during that period to acquire long term assets which are not funded by Long-term Debt.

(3) "**Exceptional Gains**" mean any exceptional, one-off, extraordinary or non-recurring gains.

(4) "**Exceptional Losses**" mean any exceptional, one-off, extraordinary or non-recurring losses.

(5) "**Operating Activities**" means the principal revenue-producing activities of the Borrower and other activities that are not Investing Activities or Financing Activities, where "**Investing Activities**" means the acquisition and disposal of long-term assets and other investments not included in Cash Equivalents and "**Financing Activities**" means activities that result in changes in the size and composition of the equity capital and borrowings of the Borrower.



[redacted]

**Section 5.13. Onshore Bank Accounts**

(a) To the extent permitted by the Moroccan Exchange Office, the Borrower shall establish and maintain the Proceeds Account and the Revenue Account (collectively, the "**Onshore Bank Accounts**") at such bank or banks located in Morocco as may be proposed by the Borrower and approved by EBRD, which Onshore Bank Accounts shall be pledged to EBRD as security for all amounts payable by the Borrower under the Financing Agreements.

(b) The Borrower shall ensure that all disbursements of the Loans, as well as contributions of equity and advances of Subordinated Debt and other amounts permitted by law to be remitted for the account of the Borrower (save for those required to be deposited to the Revenue Account as set out in Section 5.13(c)) are deposited into the Proceeds Account.

(c) The Borrower shall ensure that all revenues from metal sales together with , Insurance Proceeds (other than in respect of Liability Direct Insurance) and amounts owing to the Borrower under the Construction Contracts (whether described as liquidated damages, termination proceeds etc.) are deposited to the Revenues Account.

(d) As required by law, the Borrower shall transfer to the Proceeds Account, within two Business Days following receipt thereof into the Revenue Account, a minimum of 30% of the quantum of metal sales payments.

(e) As long as no Default has occurred and is continuing, the Borrower may withdraw amounts from either Onshore Bank Account for the purpose of making the following payments and transfers in the following order:

(1) for payment of royalties and Taxes;

(2) for payment of Project costs set out in the Development Plan and the Financial Model;

(3) for payment of operating costs set out in the Development Plan and the Financial Model (including pursuant to the Management Services Agreement as in effect on the date of this Agreement or otherwise amended with the prior consent of EBRD);

(4) as and from the Project Completion Date, for payment of maintenance and sustaining capital expenditures set out in the Development Plan and the Financial Model;

(5) for payment of all interest, fees and commission due and payable under this Agreement;

(6) for payment of scheduled instalments of principal under this Agreement;

(7) for mandatory prepayments of principal amounts of the Loans as set out in Section 3.09(c) (*Prepayment*);

(8) as long as the DSRA/Licence Reserve Account is funded to the extent required by the GISA, for payment of permitted capital expenditures not set out in the Development Plan and the Financial Model;

(9) for voluntary prepayments of principal amounts of the Loans as set out in Section 3.09(a) (*Prepayment*); and

(10) on any nominated Repayment Instalment Date for (a) prepayment of the Loans as set out in Section 3.09(b) (*Prepayment)* in the [redacted] of Excess Cash Flow and (b) transfer to the Distribution Account as a dividend or distribution or repayment of Subordinated Debt, subject always to the requirements of Section 6.01 (*Dividends*) and the relevant provisions of section 6.01 (g) of the GISA.

The amounts of the payments to be made by the Borrower out of the Onshore Bank Accounts under categories (5), (6), (7), (9) and (10) above shall be calculated on the date two Business Days prior to each Interest Payment Date or without duplication Repayment Instalment Date and payments shall be made by the Borrower out of the Onshore Bank Accounts under categories (5), (6), (7), (8), (9) and (10) above only on such Interest Payment Date or without duplication Repayment Instalment Date in accordance with the amounts as so calculated. The Borrower shall not withdraw amounts from either Onshore Bank Account for any other purpose without the prior written consent of EBRD. If a Default has occurred and is continuing, the Borrower shall not withdraw any amounts from either Onshore Bank Account for any purpose without the prior written consent of EBRD.

(f) The Borrower and EBRD acknowledge that the provisions concerning their respective rights and obligations in respect of the Offshore Bank Accounts are contained in the GISA, but subject to the Offshore Bank Accounts Control Agreement and the Quebec Security Agreement.

(g) If and when moneys standing to the credit of the DSRA/Licence Reserve Account are required to be used for payment of principal, interest, fees and/or commission due and payable under this Agreement, and EBRD has given its consent to the use of such moneys pursuant to the GISA, the Borrower shall, as soon as practicable following receipt of such funds from Aya and deposit thereof to the Proceeds Account, make payment of the required amount then owing under this Agreement in accordance with Section 3.10 (*Payments*).



[redacted]

**Section 5.14. Furnishing of Information**

(a) As soon as available but, in any event, within 60 days after the end of each quarter of each Financial Year, the Borrower shall furnish to EBRD the unaudited Financial Statements for such quarter, in a form satisfactory to EBRD (delivered in hard copy or pdf format) and certified by the Chief Financial Officer or Chief Accountant of the Borrower.

(b) As soon as available but, in any event, within 60 days after the end of each six month period of each Financial Year, the Borrower shall furnish to EBRD:

(1) the Financial Statements for such six month period, in a form satisfactory to EBRD (delivered in hard copy or pdf format) and certified by the Chief Financial Officer or Chief Accountant of the Borrower;

(2) a Compliance Certificate setting out (in reasonable detail), among other things, computations as to compliance with Section 5.12 (*Financial Ratios*);

(3) a management discussion and analysis ("**MDA**") of results for such six month period, including a report on any factors materially and adversely affecting or which might materially and adversely affect the Borrower's business, operations or financial condition or a statement that there are no such factors;

(4) commencing three months following the first Disbursement and continuing during implementation of the Project, a report (a "**Project Progress Report**"), in a form satisfactory to EBRD, on the implementation and progress of the Project, including a report on any factors materially and adversely affecting or which might materially and adversely affect the Project or the implementation of the Financing Plan or a statement that there are no such factors; and information on the identity and nationality of the contractor and the value of the contract in respect of any contract awarded by the Borrower relating to the Project (A) which is in respect of construction or works and has a value in excess [redacted] (or the equivalent thereof in other currencies at then current rates of exchange), or (B) which is in respect of the purchase of goods or the provision of consultancy services with a value in excess of [redacted] (or the equivalent thereof in other currencies at then current rates of exchange); and

(5) a statement of all transactions and transfers between the Borrower and each of its Affiliates during such six-month period



[redacted]

if the aggregate value of all such transactions and transfers exceeded [redacted] (or the equivalent thereof in other currencies at then current rates of exchange) or a statement that the aggregate value of such transactions was less than [redacted]

(c) As soon as available but, in any event, within 120 days after the end of each Financial Year, the Borrower shall furnish to EBRD:

(1) the Financial Statements for such Financial Year together with a report of the Auditors thereon prepared in accordance with International Standards on Auditing, (delivered in hard copy or pdf format);

(2) a Compliance Certificate setting out (in reasonable detail), among other things, computations as to compliance with Section 5.12 (*Financial Ratios*); and

(3) a statement of Reserves and Resources for such Financial Year, as such statement is determined in accordance with N43-101.

(d) The Borrower shall furnish to EBRD a report, in form and in substance satisfactory to EBRD (acting reasonably), on Environmental and Social Matters arising in relation to the Borrower or the Project at the following intervals:

(1) during construction, commissioning and the first year of operation of the Project, as soon as available but, in any event, no less frequently than once every four (4) months; and

(2) for the second year of operations until the maturity date, as soon as available but, in any event, no later than within 60 days after the end of each Financial Year,

and such report should include:

(A) information on compliance by the Borrower with the Designated Performance Requirements as described in Section 5.03(a) (*Environmental and Social Compliance*) and the implementation of the Environmental and Social Action Plan;

(B) information on how the Borrower has monitored the compliance with the Designated Performance Requirements and the Environmental and Social Action Plan by any contractor engaged for the Project and a summary of any material non-compliance by such contractor with the Designated Performance Requirements and the Environmental and Social Action Plan and of any measures taken to remedy such non-compliance;



[redacted]

(C) information on implementation of the stakeholder engagement plan and grievance mechanism required by Designated Performance Requirement 10, including a summary of any grievances received and how such grievances were resolved;

(D) information on compliance by the Borrower with Environmental and Social Laws in relation to the Project and the Borrower's business and operations, including a description of any claim, proceeding, order or investigation commenced or threatened against the Borrower, the status of any Authorisation required therefor, the results of any inspection carried out by any regulatory authority, any violation of applicable laws, regulations or standards and any remedial action or fine relating to such violation, a summary of any material notice, report and other communication on Environmental and Social Matters relating to the Project and the Borrower's business and operations submitted by the Borrower to any regulatory authority and any other circumstances giving rise to liability of the Borrower for any Environmental and Social Matter;

(E) information on occupational health and safety management and the occupational health and safety record of the Project and the Borrower's business and operations, including the rates of accidents, lost time incidents and near-misses, any preventive or mitigative measures taken or planned by the Borrower, any staff training on occupational health and safety and any other initiatives in relation to occupational health and safety management which have been implemented or planned by the Borrower;

(F) a summary of any change in Environmental and Social Laws which may have a material effect on the Project and the Borrower's business and operations;

(G) copies of any information on Environmental and Social Matters periodically submitted by the Borrower to its shareholders or the general public.

(e) As soon as available but, in any event, within 60 days after the end of each Financial Year, the Borrower shall furnish to EBRD a security certificate in the form of Exhibit D, providing EBRD with an update of any property or rights owned or acquired by the Borrower which are required to be provided as part of the Security and confirming to EBRD that each of the Security Documents constitutes a valid and perfected security interest in the collateral covered by such Security Document.



[redacted]

(f) The Borrower shall furnish to EBRD:

(1) within 30 days after the effective date of any new or renewed insurance policy issued to the Borrower, a certified copy of such policy, incorporating any loss payee and additional insured provisions required by Section 5.04 (*Insurance*); and

(2) not less than 10 days prior to the expiry date of any of the Borrower's insurance policies (or, for insurance with multiple renewal dates, not less than 10 days prior to the expiry of the policy on the principal asset) a copy of a certificate of renewal from the Borrower's insurer, insurance broker or agent confirming the renewal of that policy, containing details of the renewal period, the premium, the properties insured, the amounts and risks covered for each asset or item, the names of the loss payees, beneficiaries and assignees, the name of the insurer, any changes in terms or conditions from the policy's issue date or last renewal and any special features of the new or renewed insurance policy and confirming that the loss payee and additional insured provisions required by Section 5.04 (*Insurance*) as applicable, remain in effect.

(g) The Borrower shall promptly notify EBRD of:

(1) any proposed change in the scope, design or operation of the Project (including the location or capacity of the Project, the raw materials, technology or processes used in, or the schedule for, the Project or any other change that is likely to materially change the Project's environmental or social impacts and issues) or the business or operations of the Borrower;

(2) any material claim made by the Borrower under any insurance policy;

(3) any event or condition (including any pending or threatened litigation, arbitration or administrative proceeding and any damage to or destruction of Project facilities) which might have a Material Adverse Effect; and

(4) any notifications from the Moroccan Exchange Office approving (or as the case may be rejecting) the Borrower's rights to repay Subordinated Debt as from time to time advanced by Aya.

(h) Immediately upon the occurrence of any Default, the Borrower shall give EBRD notice thereof specifying the nature of such Default and any steps the Borrower is taking to remedy the same.



[redacted]

(i) Immediately upon the occurrence of any incident or accident relating to the Borrower or the Project which has or is likely to have a significant adverse effect on the environment, workers or on public or occupational health or safety, the Borrower shall inform EBRD and promptly thereafter give EBRD notice thereof specifying the nature of such incident or accident and any steps the Borrower is taking to remedy the same. Where an incident involves sensitive information in relation to a person or any risk of retaliation, the initial notice to EBRD shall not include any details of the identity of the persons involved. Without limiting the generality of the foregoing,

(1) an incident or accident relates to the Project if it occurs on any site used for the Project or, if it is caused by Project workers, and/or by facilities, equipment, vehicles or vessels used for or relating to the Project (whether or not being used on any site of the Project and whether or not being used by authorised or unauthorised persons);

(2) an incident or accident is considered to have a significant adverse effect on the environment or on public or occupational health or safety if:

(A) any applicable law requires notification of such incident or accident to any Governmental Authority,

(B) such incident or accident involves fatality of any person (whether or not such person is employed by the Borrower),

(C) more than one person (whether or not such persons are employed by the Borrower) has received serious injury requiring hospitalisation,

(D) such incident involves violence and harassment, bullying, intimidation, and/or exploitation, including any form of gender-based violence;

(E) such incident involves forced and child labour relating to the Project and the Borrower's business and operations; or

(F) such incident or accident has become, or is likely to become, public knowledge whether through media coverage or otherwise.

(j) The Borrower shall promptly notify EBRD of any significant protest or petition by workers or members of the public directed at or relating to the Project and the Borrower's business and operations which might have a Material Adverse Effect or which has become, or is likely to become, public knowledge through media coverage or otherwise. Within ten days following any such notification, the Borrower shall submit a report satisfactory to EBRD specifying the outcome of the Borrower's investigation into



[redacted]

such protest or petition, and any steps taken, or proposed to be taken, by the Borrower to resolve the issues raised in the protest or petition.

(k) The Borrower shall promptly (but no later than 60 days before any decision is taken in respect of such planned collective dismissal) notify EBRD of any planned collective dismissal affecting at least 10% of the Borrower's total employees or 30 of its employees (whichever is lesser) over a 30-day period. In the case of any planned collective dismissal affecting at least 25% of the Borrower's total employees or 500 of its employees (whichever is lesser) over a 30-day period, at the time it provides such notice to EBRD, the Borrower shall also provide EBRD with an applicable plan for managing the process in accordance with the Designated Performance Requirements.

(l) Upon EBRD's request, the Borrower shall furnish promptly to EBRD a copy of all notices, reports and other communications of the Borrower to its shareholders and the minutes of all shareholders' meetings. Without limiting the foregoing, the Borrower shall, on or before the date that it gives official notice to its shareholders of any shareholders' meeting, furnish EBRD with notice of such meeting and the agenda thereof. The Borrower shall permit a representative of EBRD to attend as an observer, at the Borrower's expense, the annual meeting of the Borrower's shareholders.

(m) The Borrower shall promptly notify EBRD if the Borrower obtains any information regarding a violation of Section 2.02(h) (*Compliance with Law*) or Section 6.14 (*Fraud and Corruption*) or if any international financial institution has imposed any sanction on the Borrower or any other Obligor for any Prohibited Practice. The Borrower shall cooperate in good faith with EBRD and its representatives in assessing whether such a violation has occurred and shall respond promptly and in reasonable detail to any request from EBRD regarding any such alleged violation and shall furnish documentary support for such response upon EBRD's request.

(n) The Borrower shall promptly notify EBRD of any material correspondence with or notifications from TCFD, including drafts of the TCFD Report, as soon as practicable following receipt or dispatch thereof.

(o) The Borrower shall furnish promptly to EBRD such other information as EBRD may from time to time reasonably request and shall permit representatives of EBRD (including any consultants engaged by EBRD) to visit, on at least five Business Days' notice, the Project or any of the other premises where the business of the Borrower is conducted or where the Project is being carried out and to have access to the assets, books, accounts and records of the Borrower (including in order (i) to facilitate EBRD's monitoring and evaluation of the Project and enable EBRD to examine and address any Project-related request made to IPAM and (ii) to assess whether a Prohibited Practice has occurred in relation to the Project or the transactions contemplated herein).

## ARTICLE VI - NEGATIVE COVENANTS

The undertakings in this Article VI shall remain in force from the date of this Agreement for so long as the obligation of EBRD to make Disbursements (subject to the terms and conditions of this Agreement) continues or, if later, so long as any amount is outstanding under this Agreement and the other Financing Agreements.

Unless EBRD otherwise agrees in writing:

**Section 6.01. Distributions, Dividends, etc**

Except as expressly provided herein, the Borrower shall not declare or pay any dividend, or make any distribution on its share capital, or purchase, redeem or otherwise acquire any shares of capital of the Borrower or any option over the same or pay any management, advisory or other fee to or to the order of any other Obligor or any other person, or make any payment of principal or interest on any Subordinated Debt. Notwithstanding the foregoing, the Borrower may take any such action on any Repayment Instalment Date after the first Repayment Instalment Date if:

(1) no Default has occurred and is continuing;

(2) the Borrower shall have made any payments to the extent required on or prior to such Repayment Instalment Date pursuant to the terms of Section 5.13(e) (*Onshore Bank Accounts*);

(3) the most recent Compliance Certificate delivered pursuant to Section 5.14(b)(1) (*Furnishing of Information*) demonstrates as at the most recent Calculation Date corresponding to the Repayment Instalment Date where the Borrower seeks to make a dividend:

[redacted]

(4) EBRD shall have received a certificate of a duly authorised officer of the Borrower to the effect that conditions set out in this Section 6.01 and Section 6.01 (*Offshore Bank Accounts)* have been met, together with such other evidence from the Borrower that such dividend or distribution has been approved by the relevant Onshore Account Bank and is otherwise permitted under applicable law.



[redacted]

The Parties acknowledge that, as more particularly set out in the GISA, the amount of the nominated dividend or distribution remitted by the Borrower on a Repayment Instalment Date to the Distribution Account pursuant to this Section will be held in the Distribution Account pending a period of five (5) Business Days during which EBRD will make its determination as to its satisfaction with the Borrower's certification delivered pursuant to Section 6.01(4).

**Section 6.02. Capital Expenditures**

The Borrower shall not incur expenditures or commitments for expenditures for fixed and other non-current assets (other than expenditures required for carrying out the Project or for maintenance, repairs or replacements essential to the operation of the Project) in an aggregate amount in [redacted] (or the equivalent thereof in other currencies at then [redacted] Financial Year.

**Section 6.03. Leases**

The Borrower shall not enter into any agreement or arrangement to acquire by lease the use of any property or equipment of any kind, except to the extent that the aggregate payments by the Borrower in respect of such leases do not [redacted] (or the equivalent thereof in other currencies at then current rates of exchange) in any Financial Year.

**Section 6.04. Financial Debt**

(a) The Borrower shall not incur, assume or permit to exist any Financial Debt except:

(1) that provided in the Financing Plan, including the Loan;

(2) Subordinated Debt; and

(3) Short-term Debt in an aggregate amount not to exceed USD [redacted] (or the equivalent thereof in other currencies at then current rates of exchange).

(b) The Borrower shall not enter into any agreement or arrangement to guarantee or, in any way or under any condition, to become obligated for all or any part of any financial or other obligation of another person.

**Section 6.05. Liens**

The Borrower shall not create or permit to exist any Lien on any property, revenues or other assets, present or future, of the Borrower, except:



[redacted]

(1) the Security created by the Security Documents to which it is party; and

(2) any Tax or other non-consensual Lien arising by operation of law or other statutory Lien arising in the ordinary course of trading, provided that such Lien (other than a Lien for a sum which is not yet delinquent) is discharged within 30 days after the date it is created or, if the validity or amount of such Lien or the sum secured by such Lien is being contested in good faith and by proper proceedings and adequate reserves have been set aside for the payment of such sum, within 30 days after final adjudication.

**Section 6.06. Derivative Transactions**

The Borrower shall not enter into any interest rate or currency swap, interest rate cap or collar, forward rate agreement or other interest rate, currency or commodity hedge or similar derivative transaction, except in the ordinary course of trading with an aggregate open position not to exceed [redacted] or the equivalent thereof in other currencies at then current rates of exchange.

**Section 6.07. Arm's Length Transactions**

The Borrower shall not enter into any transaction with any person except in the ordinary course of trading, on ordinary commercial terms and on the basis of arm's-length arrangements, or enter into any transaction whereby the Borrower would pay more than the ordinary commercial price for any purchase or would receive less than the full ex-works commercial price (subject to normal trade discounts) for its products or services.

**Section 6.08. Profit-sharing and Management Arrangements**

(a) The Borrower shall not enter into any partnership, profit-sharing or royalty agreement or other similar arrangement whereby the Borrower's income or profits are, or might be, shared with any other person.

(b) Save for the Management Services Agreement, the Borrower shall not enter into any management contract or similar arrangement whereby its business or operations are managed by any other person.

**Section 6.09. Investments**

The Borrower shall not form or have any Subsidiary, or make or permit to exist loans or advances to, or deposits (other than deposits with reputable banks in the ordinary course of the Borrower's banking arrangements) with, other persons or investments in any person or enterprise; provided, however, that the Borrower shall be at liberty to invest in short-term investment grade marketable securities solely to give temporary employment to the Borrower's idle resources.



[redacted]

**Section 6.10. Construction Contracts, etc.**

(a) The Borrower shall not terminate, materially amend or grant any waiver in respect of any provision of any Construction Contract to which it is a party or the Management Services Agreement or consent to any assignment of any Construction Contract or the Management Services Agreement; provided, however, the foregoing shall not apply to any amendments to the Umbrella Agreement required in connection with the occurrence of the Dufel Marruecos Accession Date and, as soon as practicable thereafter, the Borrower shall provide certified copies of the Umbrella Agreement (as so amended) as required pursuant to Section 4.01(b) (*First Disbursement*).

(b) The Borrower shall not, other than as provided for in the Development Plan, enter into contracts or agreements with an aggregate contractual value in excess of USD [redacted] that relates to the development, construction and operation of the Mine without the prior written consent of EBRD.

**Section 6.11. Changes in Business, Capital and Charter**

(a) The Borrower shall not make changes, or permit changes to be made to the nature of its present and contemplated business or operations or change the nature or scope of the Project.

(b) The Borrower shall not make changes, or permit changes to be made, to its capital except in accordance with the Financing Plan.

(c) The Borrower shall not make material changes, or permit changes to be made, to its Charter in any manner which would be inconsistent with the provisions of any Financing Agreement.

**Section 6.12. Prepayment of Long-term Debt**

The Borrower shall not (whether voluntarily or involuntarily) make any prepayment, repurchase or early redemption of any Long-term Debt (to the extent such is permitted to be in effect pursuant to the terms of this Agreement) or make any repayment of any Long-term Debt pursuant to any provision of any agreement or note which provides directly or indirectly for acceleration of repayment in time or amount, unless in any such case, if EBRD so requires, the Borrower contemporaneously makes a proportionate prepayment of the principal amount then outstanding of the Loan in accordance with the provisions of Section 3.09 (*Prepayment*) (except that there shall be no minimum amount or notice period for such prepayment).

**Section 6.13. Sale of Assets; Merger**

(a) The Borrower shall not sell, transfer, lease or otherwise dispose of all or a substantial part of its assets (whether in a single transaction or in a series of transactions, related or otherwise) except disposals in the ordinary course of business.



[redacted]

(b) The Borrower shall not undertake or permit any merger, demerger, consolidation or reorganisation.

**Section 6.14. Fraud and Corruption**

The Borrower shall not, and shall not authorise or permit any of its officers, directors, authorised employees, Affiliates, agents or representatives to, engage in any Prohibited Practice with respect to the Project or any transactions contemplated by this Agreement. Notwithstanding any other provision of this Agreement, the Borrower hereby acknowledges that EBRD may invoke the Enforcement Policy and Procedures in respect of allegations of Prohibited Practices (including with respect to Section 2.02(h) (*Compliance with Law*)) in relation to the Project and the transactions contemplated by this Agreement.

## ARTICLE VII - EVENTS OF DEFAULT

**Section 7.01. Events of Default**

Each of the following events and occurrences shall constitute an Event of Default under this Agreement:

(a) **Payments.** Any Obligor fails to pay when due any principal of, or commitment charge or interest on, the Loan as required by this Agreement or any other Financing Agreement, except where both of the following conditions apply:

(1) the failure to pay is due to an administrative error of an account bank, other than an error caused by the negligence or wilful misconduct of the relevant Obligor; and

(2) within three Business Days after the due date full payment of the same is made in accordance with this Agreement.

(b) **Covenants.** Any Obligor or any other party (other than EBRD) fails to comply with any of its obligations under any Financing Agreement or any other agreement between such Obligor (or other party) and EBRD, the failure to comply with such obligation is not referred to elsewhere in this Section 7.01 and, if capable of remedy, such failure to comply is not remedied within 30 days of the earlier of (1) EBRD giving notice thereof to the Borrower and (2) the Borrower becoming aware of such failure to comply.

(c) **Construction Contracts.** The Borrower or any counterparty to a Construction Contract defaults in any material respect under such Construction Contract and, if capable of remedy, such default is not remedied within 60 days (or any longer period agreed by EBRD) of the earlier of (1) EBRD giving notice thereof to the Borrower and (2) the Borrower becoming aware of such default; provided, however, the Borrower may effect the remedy described in this paragraph by replacing the relevant counterparty to such



[redacted]

Construction Contract and taking all actions reasonably required by EBRD in connection with such replacement.

(d) **Representations.** Any representation or warranty made or confirmed by any Obligor or any other party (other than EBRD) in any Financing Agreement or Construction Contract was false or misleading in any material respect when made or repeated and, in the case of the Construction Contracts, such false or misleading representation or warranty, if made or confirmed by any other than an Obligor, has a Material Adverse Effect.

(e) **Nationalisation.** Any Governmental Authority condemns, nationalises, seizes or otherwise expropriates all or any substantial part of the property or other assets of the Borrower or of its share capital, or assumes custody or control of such property or other assets or of the business or operations of the Borrower or of its share capital, or acquires majority ownership of the Borrower, or takes any action for the dissolution or disestablishment of the Borrower or any action that would prevent the Borrower or its officers from carrying on its business or operations or a substantial part thereof.

(f) **Bankruptcy.** A decree or order by a court is entered against any Obligor adjudging such Obligor bankrupt or insolvent or ordering the winding up or liquidation of its affairs; or a petition is filed seeking reorganisation, administration, arrangement, adjustment, composition or liquidation of or in respect of such Obligor under any applicable law and not lifted or stayed within ten (10) Business Days from the date of the filing of such petition; or a receiver, administrator, liquidator, assignee, trustee, sequestrator, secured creditor or other similar official is appointed over or in respect of such Obligor or any substantial part of its property or assets; or such Obligor institutes proceedings to be adjudicated bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it, or files a petition or answer or consent seeking reorganisation, administration, relief or liquidation under any applicable law, or consents to the filing of any such petition or to the appointment of a receiver, administrator, liquidator, assignee, trustee, sequestrator, secured creditor or other similar official of such Obligor or of any substantial part of its property, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due; or any other event occurs which under any applicable law would have an effect analogous to any of the events listed in this paragraph.

(g) **Financial Debt.**

(1) Any payment on any Financial Debt of any Obligor (other than the Loan) under any agreement evidencing Financial Debt having a principal amount (or, in the case of a derivative transaction, a calculation amount or notional amount) is not paid when due or within any applicable grace period.

(2) A default of any nature not otherwise provided for in this paragraph occurs under any agreement evidencing any such



[redacted]

Financial Debt of the Borrower or any such Financial Debt of such other Obligor and such default continues beyond any applicable period of grace.

(3) Any such Financial Debt of an Obligor becomes prematurely due and payable or is placed on demand.

(4) No Event of Default will occur under this Section 7.01(g) if the aggregate amount of Financial Debt or commitment for Financial Debt falling within (1) to (3) above is less than USD [redacted] or its equivalent in any other currency or currencies).

(h) **Change of Control.** Any change of control of the Borrower or AGSM occurs (or any change in the direct or indirect legal or beneficial ownership of the Borrower or AGSM occurs) or the Guarantor ceases at any time to own directly or indirectly at least 51% of the issued and outstanding shares of the Borrower, in each case without the prior written consent of EBRD; provided, however, that no Event of Default shall occur in connection with any transfer by AGSM of its ownership of the Borrower (or any transfer by the Guarantor of its ownership of AGSM) to another wholly owned Subsidiary of the Guarantor as long as (i) EBRD shall have given its prior written consent to such transfer and (ii) EBRD shall be satisfied in its sole and absolute discretion that its Security will still extend to the share capital of the Borrower after giving effect to such transfer.

(i) **Merger of Guarantor.** The Guarantor shall merge with, or enter into a business combination with, another entity and as a result (1) the successor entity has renounced or, in the reasonable opinion of EBRD would not be capable of continuing to pay and perform its obligations under the GISA and the other Financing Agreements or (2) EBRD is of the opinion, acting reasonably, that continuing to be party to the Financing Agreements with such entity would cause it reputational damage or would violate its lending and business principles.

(j) **Cost Overruns.**

(1) The most recent banking case prepared in accordance with Section 8.05(b) shows a forecast funding shortfall on the basis of available funding commitments (including the balance then standing to the credit of the Cost Overrun Account).

(2) EBRD reasonably determines that Project costs (including financing costs) necessary to achieve the Project Completion Date will, as a result of delays in completion or otherwise, exceed the total amount thereof set forth in Section 2.01(b) (*Estimated Project Costs*) and the balance standing to the credit of the Cost Overrun Account and the Borrower does not present a satisfactory plan to remedy such deficiency within 180 days after EBRD notifying the Borrower of such determination.



[redacted]

(k) **Ineligibility for EBRD Financing**. In accordance with EBRD's Enforcement Policy and Procedures, EBRD shall have determined that the Borrower or an Affiliate of the Borrower has engaged in a Prohibited Practice in relation to an EBRD Project and the Borrower shall be included on EBRD's list of persons or entities ineligible to be awarded an EBRD-financed contract or for EBRD funding, as such list may be found on EBRD's website.

(l) **Material Adverse Effect**. Any circumstance or event occurs which, in the reasonable opinion of EBRD, is likely to have a Material Adverse Effect.

(m) **Mining Licence**. The Mining Licence is cancelled or amended in any material respect or the Ministry of Mines informs the Borrower that it will not extend the Mining Licence Expiry Date for any reason whatsoever.

**Section 7.02. Consequences of Default**

If an Event of Default occurs and is continuing, then EBRD may at its option, by notice to the Borrower, declare all or any portion of the principal of, and accrued interest on, the Loan (together with any other amounts accrued or payable under this Agreement) to be, and the same shall thereupon become (anything in this Agreement to the contrary notwithstanding), either:

(1) due and payable on demand; or

(2) immediately due and payable without any further notice and without any presentment, demand or protest of any kind, all of which are hereby expressly waived by the Borrower.

In addition, if an Event of Default occurs and is continuing, then EBRD may at its option, by notice to the Borrower, exercise whatever rights and remedies are available under the Security Agreements and the other Financing Agreements.

## ARTICLE VIII - MISCELLANEOUS

**Section 8.01. Survival**

The indemnities and warranties of the Borrower, the provisions of Section 3.10(a), Section 3.10(d), Section 8.01, Section 8.04, Section 8.05, Section 8.08, Section 8.09, Section 8.10, Section 8.11, Section 8.12 and Section 8.14 and any other provision of this Agreement that expressly or by implication is intended to continue in force after any termination of this Agreement shall survive repayment of the Loan and any termination of this Agreement and remain in full force and effect.

[redacted]

**Section 8.02. Entire Agreement; Amendment and Waiver**

This Agreement and the documents referred to herein constitute the entire obligation of the parties hereto with respect to the subject matter hereof and shall supersede any prior expressions of intent or understandings with respect to this transaction. Any amendment to, waiver by EBRD of any of the terms or conditions of, or consent given by EBRD under, this Agreement (including this Section 8.02) shall be in writing, signed by EBRD and, in the case of an amendment, by the Borrower. The parties to this Agreement may by agreement rescind or vary this Agreement without the consent of any person that is not a party to this Agreement. In the event that EBRD waives a condition to any Disbursement, the Borrower shall, by receiving the proceeds of such Disbursement, be deemed to have agreed to all of the terms and conditions of such waiver.

**Section 8.03. Notices**

(a) Any notice, application or other communication to be given or made under this Agreement to EBRD or to the Borrower shall be in writing. Except as otherwise provided in this Agreement, such notice, application or other communication shall be deemed to have been duly given or made when it is delivered by hand, airmail or in pdf or similar format by electronic mail to the party to which it is required or permitted to be given or made at such party's address specified below or at such other address as such party designates by notice to the party giving or making such notice, application or other communication.

For the Borrower:

[redacted]



[redacted]

[redacted]

(b) EBRD may invite the Borrower to register to use ClientNet or another form of electronic communication and, if the Borrower and EBRD agree to use ClientNet or such other form of electronic communication, any notice, application or other communication from the Borrower to EBRD or from EBRD to the Borrower (other than any notice, application or other communication that is required by this Agreement or any other Financing Agreement to be in an original, certified or hard copy), may, subject to the terms and conditions of ClientNet or such other form of electronic communication, be given or made by posting such notice, application or other communication on ClientNet or sent in accordance with the terms agreed concerning such other form of electronic communication.

(c) Any notice, application or other communication delivered by hand or airmail or electronic mail or via ClientNet or another agreed form of electronic communication will only be effective when actually received (or made available) in readable form, provided that any notice, application or other communication that is received (or made available) after 5:00 p.m. in the place in which the party to whom the relevant notice, application or communication is sent has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.

**Section 8.04. English Language**

All documents to be furnished or communications to be given or made under this Agreement shall be in the English language or, if in another language, shall be accompanied by a translation into English certified by the Borrower, which translation shall be the governing version between the Borrower and EBRD.

**Section 8.05. Financial Calculations**

(a) All financial calculations to be made under, or for the purposes of, this Agreement shall be made in accordance with IFRS and, except as otherwise required to conform to the definitions contained in Section 1.01 (*Definitions)* or any other provisions of this Agreement, shall be made using the then most recently issued semi-annual Financial Statements which the Borrower is required to furnish to EBRD from time to time under Section 5.14(a) (*Furnishing of Information*) and, if applicable, on the basis of the most



[redacted]

recent banking case prepared in accordance with Section 8.05(b); provided, however, that:

(1) if the relevant semi-annual Financial Statements should be in respect of the last period of a Financial Year then, at EBRD's option, such calculations may instead be made from the audited Financial Statements for the relevant Financial Year; and

(2) if there should occur any material adverse change in the financial condition of the Borrower after the end of the period covered by the relevant Financial Statements, then such material adverse change shall also be taken into account in calculating the relevant figures.

(b) The Borrower, shall in consultation with EBRD and using the Financial Model, prepare a banking case no later than 60 days following the end of each six month period of each Financial Year in accordance with the procedures set forth in Schedule 3 (*Banking Case Procedures*).

**Section 8.06. Rights, Remedies and Waivers**

(a) The rights and remedies of EBRD in relation to any misrepresentations or breach of warranty on the part of the Borrower shall not be prejudiced by any investigation by or on behalf of EBRD into the affairs of the Borrower, by the execution or the performance of this Agreement or by any other act or thing which may be done by or on behalf of EBRD in connection with this Agreement and which might, apart from this Section, prejudice such rights or remedies.

(b) No course of dealing or waiver by EBRD in connection with any condition of Disbursement under this Agreement shall impair any right, power or remedy of EBRD with respect to any other condition of Disbursement or be construed to be a waiver thereof.

(c) No action of EBRD in respect of any Disbursement shall affect or impair any right, power or remedy of EBRD in respect of any other Disbursement. Without limiting the foregoing, the right of EBRD to require compliance with any condition under this Agreement which may be waived by EBRD in respect of any Disbursement is, unless otherwise notified to the Borrower by EBRD, expressly preserved for the purposes of any subsequent Disbursement.

(d) No course of dealing and no delay in exercising, or omission to exercise, any right, power or remedy accruing to EBRD upon any default under this Agreement or any other agreement shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence therein. No single or partial exercise of any such right, power or remedy shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No action of EBRD in respect of any such default, or



[redacted]

acquiescence by it therein, shall affect or impair any right, power or remedy of EBRD in respect of any other default.

(e) The rights and remedies provided in this Agreement and the other Financing Agreements are cumulative and not exclusive of any other rights or remedies, whether provided by applicable law or otherwise.

**Section 8.07. Indemnification**

(a) The Borrower assumes full liability for, and agrees to and shall indemnify and hold harmless EBRD and its officers, directors, employees, agents and servants against and from, any and all liabilities, obligations, losses, damages (compensatory, punitive or otherwise), penalties, claims, actions, Taxes, suits, costs and expenses (including reasonable legal counsel's fees and expenses and costs of investigation) of whatsoever kind and nature, including without prejudice to the generality of the foregoing, those arising in contract or tort (including negligence) or by strict liability or otherwise, which are imposed on, incurred by or asserted against EBRD or any of its officers, directors, employees, agents or servants (whether or not also indemnified by any other person under any other document) and which in any way relate to or arise out of, whether directly or indirectly:

(1) any of the transactions contemplated by any Financing Agreement or Construction Contract or the execution, delivery or performance thereof;

(2) the operation or maintenance of the Borrower's facilities or the ownership, control or possession thereof by the Borrower;

(3) the investigation by EBRD of any event which it reasonably believes is a Default;

(4) EBRD acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or

(5) the exercise by EBRD of any of its rights and remedies under any of the Financing Agreements;

provided that EBRD shall not have any right to be indemnified hereunder for its own gross negligence or wilful misconduct.

(b) The Borrower acknowledges that EBRD is entering into this Agreement, and has acted, solely as a lender, and not as an advisor, to the Borrower. The Borrower represents and warrants that, in entering into the Financing Agreements, it has engaged, and relied upon advice given to it by, its own legal, financial and other professional advisors and it has not relied on and will not hereafter rely on any advice given to it by EBRD.



[redacted]

**Section 8.08. Costs and Expenses**

(a) The Borrower shall, whether or not any Disbursement is made, pay to EBRD or as EBRD may direct, within 30 days of EBRD furnishing to the Borrower the invoice therefor (but, in any event, on or prior to the first Disbursement in the case of costs and expenses reasonably incurred and invoiced to the Borrower prior to the date of the first Disbursement), all out-of-pocket costs and expenses (including travel expenses and the fees and expenses of outside counsel to EBRD and all other financial, accounting, engineering, environmental and social, insurance and other consulting fees and expenses) [redacted] properly incurred by EBRD, together with an amount not to exceed USD [redacted] the aggregate for reimbursement of costs and expenses incurred by [redacted], in connection with:

> (1) the assessment, preparation, negotiation and arrangement of the Loan by EBRD;
>
> (2) the preparation, review, negotiation, execution and, where appropriate, registration, notarisation and perfection of the Financing Agreements, the Construction Contracts and the Security and any other documents related thereto;
>
> (3) the giving of any legal opinions hereunder; and
>
> (4) the administration and monitoring of the Financing Agreements, including visits by EBRD's environmental and social staff.

(b) The Borrower shall pay to EBRD or as EBRD may direct, on demand, all fees, costs and expenses (including legal fees and expenses) properly incurred by EBRD:

> (1) in the determination of whether there has occurred a Default;
>
> (2) in respect of the preservation or enforcement of any of its rights under any Financing Agreement and the collection of any amount owing to EBRD;
>
> (3) in connection with the assessment, preparation, review, negotiation, execution and, where appropriate, registration, notarisation and perfection of any amendment to or waiver of any Financing Agreement, any Construction Contract, the Security or any other document related thereto; and
>
> (4) the deregistration of any Security.

(c) The Borrower shall reimburse EBRD for all technical cooperation funds administered by EBRD and used to pay for costs and expenses incurred by the Borrower



[redacted]

(including the fees and expenses of financial, accounting, engineering, environmental, insurance, legal and other consultants employed by the Borrower) in connection with the preparation of the Project. The Borrower shall pay the amount of any such funds to EBRD or as EBRD may direct on or prior to the first Disbursement in the case of such funds expended and invoiced to the Borrower prior to the date of the first Disbursement and within 30 days of EBRD furnishing to the Borrower the invoice therefore in the case of such funds expended thereafter.

**Section 8.09. Governing Law**

This Agreement shall be governed by and construed in accordance with English law. Any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with English law.

**Section 8.10. Arbitration and Jurisdiction**

(a) Any dispute, controversy or claim arising out of or relating to (1) this Agreement, (2) the breach, termination or invalidity hereof or (3) any non-contractual obligations arising out of or in connection with this Agreement shall be settled by arbitration in accordance with the UNCITRAL Rules. There shall be one arbitrator and the appointing authority shall be LCIA (London Court of International Arbitration). The seat and place of arbitration shall be London, England and the English language shall be used throughout the arbitral proceedings. The parties hereby waive any rights under the Arbitration Act 1996 or otherwise to appeal any arbitration award to, or to seek determination of a preliminary point of law by, the courts of England. The arbitral tribunal shall not be authorised to grant, and the Borrower agrees that it shall not seek from any judicial authority, any interim measures or pre-award relief against EBRD, any provisions of the UNCITRAL Rules notwithstanding. The arbitral tribunal shall have authority to consider and include in any proceeding, decision or award any further dispute properly brought before it by EBRD (but no other party) insofar as such dispute arises out of any Financing Agreement, but, subject to the foregoing, no other parties or other disputes shall be included in, or consolidated with, the arbitral proceedings. In any arbitral proceeding, the certificate of EBRD as to any amount due to EBRD under any Financing Agreement shall be *prima facie* evidence of such amount.

(b) Notwithstanding Section 8.10(a), this Agreement and the other Financing Agreements, and any rights of EBRD arising out of or relating to this Agreement or any other Financing Agreement, may, at the option of EBRD, be enforced by EBRD in the courts of Morocco located in Casablanca or in any other courts having jurisdiction. For the benefit of EBRD, the Borrower hereby irrevocably submits to the non-exclusive jurisdiction of the courts of England with respect to any dispute, controversy or claim arising out of or relating to this Agreement or any other Financing Agreement, or the breach, termination or invalidity hereof or thereof. The Borrower hereby irrevocably designates, appoints and empowers The Law Debenture Corporation plc at its registered office (being, on the date hereof, at 8th Floor, 100 Bishopsgate, London, England, EC2N 2AG) to act as its authorised agent to receive service of process and any other legal



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summons in England for purposes of any legal action or proceeding brought by EBRD in respect of any Financing Agreement. Failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned. The Borrower hereby irrevocably consents to the service of process or any other legal summons out of such courts by mailing copies thereof by registered airmail postage prepaid to its address specified herein. The Borrower covenants and agrees that, so long as it has any obligations under this Agreement, it shall maintain a duly appointed agent to receive service of process and any other legal summons in England for purposes of any legal action or proceeding brought by EBRD in respect of any Financing Agreement and shall keep EBRD advised of the identity and location of such agent. Nothing herein shall affect the right of EBRD to commence legal actions or proceedings against the Borrower in any manner authorised by the laws of any relevant jurisdiction. The commencement by EBRD of legal actions or proceedings in one or more jurisdictions shall not preclude EBRD from commencing legal actions or proceedings in any other jurisdiction, whether concurrently or not. The Borrower irrevocably waives any objection it may now or hereafter have on any grounds whatsoever to the laying of venue of any legal action or proceeding and any claim it may now or hereafter have that any such legal action or proceeding has been brought in an inconvenient forum.

(c) EBRD shall use reasonable endeavours to provide a copy of any writ of summons or other document as shall be served on the process agent in accordance with (b) above to the Borrower in accordance with Section 8.03 (*Notices*). Failure by EBRD to serve a document in accordance with this clause (c) will not invalidate any proceedings concerned

**Section 8.11. Privileges and Immunities of EBRD**

Nothing in this Agreement shall be construed as a waiver, renunciation or other modification of any immunities, privileges or exemptions of EBRD accorded under the Agreement Establishing the European Bank for Reconstruction and Development, international convention or any applicable law. Notwithstanding the foregoing, EBRD has made an express submission to arbitration under Section 8.10(a) (*Arbitration and Jurisdiction*) and accordingly, and without prejudice to its other privileges and immunities (including the inviolability of its archives), it acknowledges that it does not have immunity from suit and legal process under Article 5(2) of Statutory Instrument 1991, No. 757 (The European Bank for Reconstruction and Development (Immunities and Privileges) Order 1991), or any similar provision under English law, in respect of the enforcement of an arbitration award duly made against it as a result of its express submission to arbitration pursuant to Section 8.10(a) (*Arbitration and Jurisdiction*).

**Section 8.12. Waiver of Sovereign Immunity**

The Borrower represents and warrants that this Agreement and the incurring by the Borrower of the Loan are commercial rather than public or governmental acts and that the Borrower is not entitled to claim immunity from legal proceedings with respect to itself or any of its assets on the grounds of sovereignty or otherwise under any law or in



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any jurisdiction where an action may be brought for the enforcement of any of the obligations arising under or relating to this Agreement. To the extent that the Borrower or any of its assets has or hereafter may acquire any right to immunity from set-off, legal proceedings, attachment prior to judgement, other attachment or execution of judgement on the grounds of sovereignty or otherwise, the Borrower hereby irrevocably waives such rights to immunity in respect of its obligations arising under or relating to this Agreement.

**Section 8.13. Successors and Assigns; Third Party Rights**

(a) This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, except that the Borrower may not assign or otherwise transfer all or any part of its rights or obligations under this Agreement without the prior written consent of EBRD.

(b) EBRD may sell, transfer, assign, novate or otherwise dispose of all or part of its rights or obligations under this Agreement and the other Financing Agreements (including by granting of Participations or otherwise) or mitigate its risks from this Agreement and the other Financing Agreements through unfunded risk Participations, insurance or other means upon the consent of the Borrower provided that such consent shall not be unreasonably withheld or delayed and provided further that no such consent shall be required (i) for granting Participations or the sale of any interest in the Loan whereby EBRD would continue to be the lender of record under this Agreement; or (ii) if a Default has occurred and is continuing.

(c) Except as provided in Section 8.13(a) or Section 8.13(b) (*Successors and Assigns; Third Party Rights*), none of the terms of this Agreement are intended to be enforceable by any third party.

**Section 8.14. Disclosure**

(a) EBRD may use or disclose such documents, information and records regarding the Obligors, the Project and this transaction (including copies of any Financing Agreements and Construction Contracts) as EBRD deems appropriate in accordance with its policy on access to information in effect at the time of such disclosure and in connection with: (a) any dispute or proceeding in relation to, or involving, the Project or any Financing Agreement for the purpose of defending, preserving or enforcing any of EBRD's rights or interests; (b) any actual or proposed Participation or any other actual or proposed sale, transfer, assignment, novation or other disposal or risk mitigation contemplated by Section 8.13 (*Successors and Assigns; Third Party Rights*); (c) the administration and monitoring of, or any dispute or proceeding involving, any other investment in, or financing to, the Borrower or any Affiliate thereof as may be made or provided directly or indirectly by EBRD from time to time; or (d) the economic interest of the CTF (including for the purpose of reporting to the CTF Trust Fund Committee).

(b) Without prejudice to Section 8.14(a) above, EBRD may disclose any information or other material made available by the Borrower (or any other Obligor) or otherwise



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related to the Project to CTF. The Borrower hereby grants to EBRD and CTF the right to use free of charge all information or other material related to the Project, in any form, provided that such use does not breach existing industrial or intellectual property rights.

**Section 8.15. Severability**

If at any time any one or more of the provisions in this Agreement is or becomes invalid, illegal or unenforceable in any respect under any law or regulation, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be in any way affected or impaired thereby.

**Section 8.16. Counterparts**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

[redacted]

**IN WITNESS WHEREOF,** the parties hereto, acting through their duly authorised representatives, have caused this Agreement to be signed in their respective names as of the date first above written.

[redacted]

*The following are the names, titles and email addresses of the persons designated as the initial contacts of the Borrower for purposes of any invitation EBRD may send to the Borrower regarding ClientNet:*

| *Name* | *Title* | [redacted] |
|---|---|---|
| Mustapha El Ouafi | Chairman of the Board and Chief Executive Officer | |

**EUROPEAN BANK**

[redacted]