

This Contract is made the 14th of February, 2023 between

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

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

and

DUFEL MARRUECOS, a corporation to be incorporated under the laws of Morocco, having its registered address at [REDACTED] Casablanca, Kingdom of Morocco (hereinafter referred to as "**Contractor**").

(collectively, the "**Parties**")

WHEREAS, Client desires to engage Contractor and Contractor desires to be engaged to provide services related to the engineering construction, erection, start up and commissioning, testing and putting into commercial operation of the Plant at the Zgounder Silver Mine in Morocco; and

WHEREAS, it is the mutual desire of Client and Contractor to set forth the terms and conditions upon which Contractor is agreeable to provide services related to the engineering, construction, erection, start up, commissioning testing and putting into commercial operation of the Plant;

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

1. DEFINITIONS AND INTERPRETATIONS

1.1. Definitions

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

- 1.1.1. "**Adjustment**" means an adjustment of the Works and/or the Contract Price and/or the Time Schedule and/or Completion Date as result of an Adjustment Event that is calculated in accordance with Clause 12 (*Adjustments*).
- 1.1.2. "**Adjustment Event**" shall have the meaning assigned at Clause 12 (*Adjustments*).
- 1.1.3. "**Affiliate**" means a corporation, company or other entity, now or hereafter, directly or indirectly, owned or controlled by, or owning or controlling, or under common control with one of the Parties, but such corporation, company or other entity shall be deemed to be an Affiliate only so long as such ownership or control exists. For purposes of this definition "control" of a corporation, company or other entity shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation, company or other entity, whether (i) through the ownership of voting securities providing for the right to elect or appoint, directly or indirectly, the majority of the board of directors, or a similar managing authority, (ii) by contract or (iii) otherwise.

- 1.1.4. **"Business Day"** means every day other than a Saturday, Sunday or a day on which banks are permitted or required to remain closed in Morocco.
- 1.1.5. **"Certificate of Receipt"** shall have the meaning assigned at Clause 5.3 (*Delivery*).
- 1.1.6. **"Change in Law"** means any change in applicable Laws or introduction of new Laws which materially and adversely affects the Works, which change occurs after the date of signing of this Contract and are Unforeseeable.
- 1.1.7. **"Change in the Works"** shall have the meaning assigned at Clause 11 (*Variations*).
- 1.1.8. **"Change Order"** shall have the meaning assigned at Clause 11 (*Variations*).
- 1.1.9. **"Change Order Proposal"** shall have the meaning assigned at Clause 11 (*Variations*).
- 1.1.10. **"Change Order Request"** shall have the meaning assigned at Clause 11 (*Variations*).
- 1.1.11. **"Claim"** means any actual or threatened civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, suit, investigation or proceeding and any claim or demand resulting therefrom or any other claim or demand of whatever nature or kind.
- 1.1.12. **"Commencement Date"** shall have the meaning assigned at Clause 2.3 (*Conditions Precedent and Term of Contract*).
- 1.1.13. **"Commissioning"** means the commissioning of the Works in accordance with the procedures described in Annex F (*Commissioning Procedures*).
- 1.1.14. **"Conditions Precedent"** means the conditions precedent set out in Clause 2.1 (*Conditions Precedent and Term of Contract*).
- 1.1.15. **"Confidential Information"** shall have the meaning assigned at Clause 27 (*Confidentiality and Publications*).
- 1.1.16. **"Contract"** or **"Service Contract"** means this contract and its Annexes as amended from time to time.
- 1.1.17. **"Contractor's Project Manager"** shall have the meaning assigned at Clause 6 (*Representatives*).
- 1.1.18. **"Contract Price"** means the sum stated in Annex A (*Contract Price*) as payable by the Client to the Contractor as consideration for the Works, which shall include, for greater certainty, any amounts paid under LNTF Agreement.
- 1.1.19. **"Contractor's Drawings"** means all drawings, samples, patterns and models to be submitted by the Contractor to the Client or prepared by the Contractor in connection with the Works.
- 1.1.20. **"Defect"** means, in reference to any item of the Works, that such item of the Works is deficient in design, construction or workmanship, is non-compliant with the Specifications, or does not comply with any requirement of this Contract, applicable Laws or Industry Standards and includes Serial Defects.
- 1.1.21. **"Delay LD Cap "** shall have the meaning assigned in Clause 13.2
- 1.1.22. **"Client Caused Delay"** means a delay that adversely affects the critical path of the Works (or causes any portion of the Works to become part of the critical path), which delay was caused directly as a result of and to the extent of: (i) acts or omissions of the Client or any of its employees and subcontractors other than the Contractor or any of its Affiliates; or (ii) any failure of the Client to perform its obligations under this Contract for which the Client is directly responsible, provided that Client Caused Delay shall not

include any delay to the extent attributable to any failure of the Contractor to comply with its obligations under this Contract.

- 1.1.23. **"Client Permits"** means those Permits relating to the possession, ownership and operation of the Plant which are expressly set forth in Annex P (*Client Permits*).
- 1.1.24. **"Client's Documents and Information"** means all the documents, drawings, reports, presentations, calculations and any information provided by the Client to the Contractor prior to the execution date of this Contract, a copy of which as attached in Annex E (*Client's Documents and Information*).
- 1.1.25. **"Client's Project Manager"** shall have the meaning assigned at Clause 6 (Representatives).
- 1.1.26. **"Final Completion"** shall have the meaning assigned under Clause 13.10.
- 1.1.27. **"Final Completion Certificate"** shall have the meaning assigned under Clause 13.9.
- 1.1.28. **"Final Completion Notice"** shall have the meaning assigned under Clause 13.9.
- 1.1.29. **"First Dore"** means the pouring of the first silver bar at the Plant's foundry in accordance with Annex F (*Commissioning Procedures*).
- 1.1.30. **"Force Majeure"** means in respect of a Party, any event or circumstance which does not exist as of the date of this Agreement and (a) which is beyond such Party's control; (b) which such Party could not reasonably have provided against; (c) which having arisen, such Party could not reasonably have avoided or overcome; (d) which is not substantially attributable to such Party (including to the extent resulting from a breach of the terms hereof); and (e) which materially affects the performance of the obligations and/or the safety on Site of the affected Party under this Contract, including events or circumstances, among others, listed below, so long as the aforementioned conditions are satisfied:
 - (I) war, hostilities (whether declared or undeclared), invasion, act of foreign enemies;
 - (II) rebellion, revolution, insurrection, military or usurped power, or civil war;
 - (III) terrorism;
 - (IV) acts of civil or military authority, absence of adequate supply of raw materials due to acts or omissions (including delay, failure to act, or priority) of any Governmental Authority, acts or omissions (including delay, failure to act, or priority) of any Governmental Authority, or embargo, provided that the good faith exercise of discretionary authority by a Governmental Authority shall not, in and of itself, constitute a Force Majeure;
 - (V) epidemics (as an increase, often sudden, in the number of cases of a disease, above what is normally expected in that population in that area), or pandemics (as an epidemic that has spread over several countries or continents, usually affecting a large number of people and leading to transportation delays not reasonably foreseeable, adverse governmental actions);
 - (VI) riot, civil commotion or disorder, sabotage, strike or lockout by persons other than the Contractor's personnel and other employees of the Contractor and Subcontractors; or

- (VII) natural disasters, acts of God, natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

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

- 1.1.31. **"Governmental Approvals"** means any authorization, consent, approval, ruling, permit, certification, re-certification, exemption, filing, registration, license, waiver, variance or any other similar action of a Governmental Authority.
- 1.1.32. **"Governmental Authority"** means any national, federal, state or local government including any agencies, authorities, departments or other subdivision of each, having or claiming a regulatory interest in or jurisdiction over the Works and includes duly constituted courts and other tribunals having the authority to make binding rulings.
- 1.1.33. **"Hazardous Material"** means all materials identified by applicable Laws as hazardous to health and safety or the environment (including but not limited to those artificial mineral fibres identified as hazardous to health and safety by applicable European standards for Hazardous Materials., munitions of war, explosive materials and materials exposed to ionising radiation or contamination by radio-activity).
- 1.1.34. **"Hazardous Waste"** means waste materials bearing risk of endangering health or environment, including but not limited to waste materials containing Hazardous Material.
- 1.1.35. **"Industry Standards"** means those practices, methods, techniques, codes and standards which are generally accepted and commonly used by contractors exercising that degree of skill, diligence, prudence, foresight and care reasonably expected of first tier contractors with respect to the engineering, design, procurement, manufacturing, construction, delivery, erection and commissioning of mineral processing plants of type, size and location similar to the Plant.
- 1.1.36. **"Intellectual Property Right"** means any copyright, patent, registered design, design right, trade mark, trade name, or any other legally protected intellectual property right.
- 1.1.37. **"Law(s)"** means any law, statute, rule, regulation, requirement, instruction, direction, consent, authorization, rule of law, order, or ordinance, or specified standards, or other legislative or administrative act of a Governmental Authority, or a decree, judgment or order of a court or tribunal (including administrative tribunals), which is or becomes legally binding including but not limited to any precedents or judgments of the competent courts.
- 1.1.38. **"Lenders"** shall have the meaning assigned at Clause 31.1 (*Financing*).

- 1.1.39. **"Liability"** means all damages, losses, liabilities, costs, fees, expenses, awards, settlements or judgments, including, without limitation, all interest, penalties, fines and other sanctions, and any reasonable costs or expenses in connection therewith, including, without limitation, attorneys' fees, court costs and expenses.
- 1.1.40. **"LNTP Agreement"** shall mean a limited notice to proceed agreement entered between the Parties in relation to certain limited works to be performed in anticipation of the Notice to Proceed.
- 1.1.41. **"LNTP Works"** means any work carried out by the Contractor under an LNTP Agreement.
- 1.1.42. **"Longstop Date"** means the date which is twelve weeks and 90 days from the Target Completion Date.
- 1.1.43. **"Milestone"** means each milestone identified in Annex A (*Contract Price*).
- 1.1.44. **"Milestone Completion Certificate"** means a certificate to be submitted by the Contractor upon completion of each Milestone in accordance with Clause 9.2 (*Application for Milestone Payments*) which shall be in the form set out in Annex A (*Contract Price*).
- 1.1.45. **"Milestone Payment Request"** a statement submitted by the Contractor as part of an application for payment under Clause 9.1 (*Terms of Payment*) in substantially the form set out in Annex A (*Contract Price*).
- 1.1.46. **"Minimum Performance Ratio"** means the Minimum Performance Ratio set out in Annex L (*Performance Tests*).
- 1.1.47. **"Notice to Proceed"** means the notice issued by the Client to the Contractor pursuant to Clause 2.3 (*Commencement Date*).
- 1.1.48. **"Parts"** means the same parts or items comprised in the Works (including the Supply). Same parts or items shall in this context mean that such items have been produced to the same design or fulfil the same role in the Plant.
- 1.1.49. **"Party"** means the Client or the Contractor, as the context requires.
- 1.1.50. **"Performance Liquidated Damages"** has the meaning assigned under Clause 17.4.
- 1.1.51. **"Performance Ratio"** or **"PR"** shall have the meaning set out in Annex L (*Performance Tests*).
- 1.1.52. **"Performance Tests"** means the performance tests to be performed by the Contractor as more particularly described Annex L (*Performance Tests*).
- 1.1.53. **"Permits"** means any approval, authorization, consent, certificate, re-certification, exemption, filing, ruling, identification number, registration, permit, license or Governmental Approval required for the possession, erection, installation, connection, commissioning, use, operation, and maintenance of the Plant.
- 1.1.54. **"Plant"** means the new mineral processing plant of the Client to be erected at the Site, with a production capacity of 2,000 t/d, to be constructed, tested and commissioned under this Contract.
- 1.1.55. **"Provisional Acceptance"** shall have the meaning assigned under Clause 13.7.
- 1.1.56. **"Provisional Acceptance Certificate"** shall have the meaning assigned under Clause 13.7.

- 1.1.57. **"Provisional Acceptance Performance Criteria"** has the meaning ascribed to it in Annex L (*Performance Tests*) whereby the Contractor meets the Target Performance Ratio.
- 1.1.58. **"Provisional Acceptance Notice"** shall have the meaning assigned under Clause 13.7.
- 1.1.59. **"Punch List Items"** shall have the meaning assigned under Clause 13.6.2.1. which, with respect to the Plant, are those items of work approved by Client and Lender, minor in nature, which have not been completed by Contractor as of the date of issuance of the Provisional Acceptance Certificate and which are not material to the operation of the Plant in the normal course of business and which can be completed without interfering with the operation of the Plant.
- 1.1.60. **"Risk Transfer Date"** means the date when the risk of loss of or damage to the Works passes from the Contractor to the Client in accordance with Clause 15 (*Care of the Works and Passing of Risk*).
- 1.1.61. **"Serial Defect"** means any identical, similar or different Defect which occurs or is discovered during the Warranty Period on or in a certain threshold percentage or more of the same Parts or replacement Parts therefor, as set out in Annex S (*Serial Defects*).
- 1.1.62. **"Site"** means the place provided or made available by the Client where the Plant is to be erected.
- 1.1.63. **"Site Manager"** shall have the meaning assigned at Clause 6 (*Representatives*).
- 1.1.64. **"Specifications"** means the specifications of the Works attached hereto under Annex B (*Technical Specifications*).
- 1.1.65. **"Subcontractor"** means any person acting as subcontractor of the Contractor for the performance of any part of the Works, as permitted in accordance with this Contract, and such persons' legal successors in title.
- 1.1.66. **"Supply"** means all equipment, materials, components, parts and other goods which have to be engineered, designed, procured or manufactured and delivered by the Client, and which the Client makes available to the Contractor for the purpose of the construction, erection, start up and commissioning of the Plant.
- 1.1.67. **"Target Commissioning Date"** [REDACTED] unless such date is extended in accordance with the terms of this Contract.
- 1.1.68. **"Target Completion Date"** [REDACTED] unless such date is extended in accordance with the terms of this Contract.
- 1.1.69. **"Target First Dore Date"** [REDACTED] unless such date is extended in accordance with the terms of this Contract.
- 1.1.70. **"Tax Exoneration"** means a tax and custom related Permit which includes exonérations, exemptions, waivers and other documents required by any Governmental Authority in Morocco to give effect to the implementation of the Zgounder Investment Agreement.
- 1.1.71. **"Time Schedule"** means the time schedule for the performance of the Works attached as Annex C (*Service Time Schedule*), as the same may be modified from time to time in accordance with this Contract.
- 1.1.72. **"Transit Delivery Point"** shall have the meaning assigned at Clause 5.1 (*Delivery of Supply*).
- 1.1.73. **"Trash"** means trash, rubbish, waste or waste materials not classified or regulated as Hazardous Waste and which do not otherwise require special handling or Permits for the treatment, storage or disposal thereof under applicable Laws.

- 1.1.74. **"Unforeseeable"** means not reasonably foreseeable by an experienced contractor in accordance with Industry Standards on the date of signing the Contract.
- 1.1.75. **"Warranty Period"** means the period of time during which the Contractor is responsible for making good Defects, as defined in Clause 18.5 (*Warranty Period*).
- 1.1.76. **"Warranty Period Guarantee"** shall have the meaning assigned under Clause 18.8.
- 1.1.77. **"Works"** shall have the meaning assigned at Clause 3.1 (*General Obligations of the Contractor*).

1.2. Contract Documents

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

Annex A	Contract Price
Annex B	Technical Specifications
Annex C	Service Time Schedule
Annex D	Contractor's Documents
Annex E	Client's Documents and Information
Annex F	Commissioning Procedures
Annex G	Form of Warranty Period Guarantee
Annex H	Storage Conditions
Annex I	Form of Change Order
Annex J	Form of Advance Payment Guarantee
Annex K	Form of Performance Guarantee
Annex L	Performance Tests
Annex M	Plan of HSE
Annex N	List of Subcontractors
Annex O	Compliance
Annex P	Client Permits
Annex Q	N/A
Annex R	Form of Partial Lien Release
Annex S	Serial Defects

1.3. Priority of documents

The priority of the Contract documents shall be as follows:

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

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

1.4. Interpretation

- 1.4.1. Words importing persons or parties shall include firms and corporations and any organisation having legal capacity.
- 1.4.2. Words importing the singular only also include the plural and vice versa where the context requires.
- 1.4.3. Any reference to "days" shall mean a reference to calendar days except as otherwise provided for under this Contract.
- 1.4.4. Reference to a "Preamble", "Clause", "Annex" or "Addendum" are references to the Preamble, a clause or an annex of, or an addendum to, this Contract, as the case may be.
- 1.4.5. References to "include", "includes", or "including" shall be read as being followed by the words "without limitation" except where the context otherwise requires.
- 1.4.6. No provision of this Contract will be construed adversely to a Party solely on the grounds that the Party was responsible for the preparation of this Contract or that provision.
- 1.4.7. The headings and titles in the Contract shall not be deemed part thereof or be taken into consideration in the interpretation or construction of the Contract.
- 1.4.8. Wherever in the Contract provision is made for the giving of notice, consent, approval or request by any person, such notice, consent, approval or request shall be in writing. Any consent or approval shall not be unreasonably withheld.
- 1.4.9. Wherever in the Contract provision is made for a communication to be "written" or "in writing", this means any hand-written, type-written or printed communication, including telex, cable, e-mail (with confirmation of receipt) and facsimile transmission.
- 1.4.10. Any reference to "month" and/or "year" shall mean a reference to the Gregorian calendar. A "month" shall mean the period from a certain day of a calendar month to the respective day of the next calendar month and a "year" shall mean the period from a certain day of a calendar year until the respective day of the next calendar year.
- 1.4.11. Where versions of the Contract are prepared in different languages, the version in English shall prevail. The language of such version is referred to as the ruling language.
- 1.4.12. The Parties agree that any references to terms like "warranty", "guarantee", "guaranteed performance characteristics", "warrants", "guarantees" and other performance descriptions and technical data under this Contract shall not be considered as a specific guarantee of quality and condition under any statutory provision.

2. CONDITIONS PRECEDENT AND TERM OF CONTRACT

2.1. Conditions Precedent

The Contract shall come into force and effect upon the date of this Contract. Notwithstanding the foregoing, except under this Clause 2 and Clause, 21 and 27, neither Party shall have any obligations under this Contract unless and until all the following conditions precedents shall have been fulfilled:

2.1.1. The Client shall have provided to the Contractor:

- 2.1.1.1. proof of financing for the Contract;
- 2.1.1.2. sufficient access to the Site;
- 2.1.1.3. proof of obtainment of the Client Permits

2.1.1.4. full notice to proceed under the Contract; and

2.1.2. The Contractor shall have delivered to the Client:

2.1.2.1. an executed advance payment guarantee in the form set out in Annex J (*Form of Advance Payment Guarantee*), which guarantee shall remain in force from the date of receipt by the Contractor of the advance payment until the advance payment has been recovered in full in accordance with Clause 9.1.3; and

2.1.2.2. an executed performance guarantee for an amount equal to ten per cent (10%) of the Contract Price, which guarantee shall remain in force until Provisional Acceptance, provided that it shall automatically reduce by three (3) points of percentage on the date when the Contractor has paid to the Client all Delay Liquidated Damages and Performance Liquidated Damages (if any) and by two (2) additional points of percentage on the date the Contractor cures the Punch List Items, which shall be in the form of Annex K (*Form of Performance Guarantee*).

If a relevant guarantee has an expiry date which is earlier than the time for which it must remain in force, the Contractor will prior to a date falling 30 days before the expiry of the relevant guarantee, provide a replacement or renewed guarantee substantially in the same form as the guarantee it is replacing in an amount equal to the then unused portion of the relevant guarantee. The replacement guarantee must take effect no less than 15 days prior to the expiry of the guarantee which is being replaced.

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

2.2. Expiry Date

If the Conditions Precedent have not been fulfilled to the Parties' satisfaction, acting reasonably, on or prior to the date that is three (3) months from the date hereof, either Party may terminate this Contract by written notice to the other Party and the Contract shall be, subject to Clause 34.4, of no further force and effect, without any indemnity or penalty being payable by any Party, provided however, that if the fulfilment of any such Condition Precedent remaining unfulfilled is underway and the Client or the Contractor, as the case may be, can demonstrate that such fulfilment is reasonably to occur within an additional 60 days, then such period shall be extended by a further 60 days, provided that such extension shall not serve to extend or delay the Target Completion Date.

2.3. Commencement Date

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

2.4. LNTP

2.4.1. On and from the Commencement Date, any LNTP Agreement entered into between the Parties shall be deemed to form part of this Contract and shall be subject to the terms and

conditions hereof as though the rights, obligations, acts and omissions of the Contractor under the LNTP Agreement were those of the Contractor hereunder and as if the rights, obligations, acts and omissions of the Client under the LNTP Agreement were those of the Client hereunder.

- 2.4.2. Where the Contractor has effected any design, services or works under the LNTP Agreement, such activities shall be deemed to have been carried out pursuant to, and shall be subject to the terms and conditions of, this Contract, and the warranties and undertakings set out in this Contract shall apply to such activities (without prejudice to the generality of such warranties and undertakings). Notwithstanding the date on which the same were performed the Contractor hereby acknowledges that it accepts full responsibility for the LNTP Works as if those works had been carried out under and pursuant to this Contract.
- 2.4.3. Any information or documentation provided or given to the Contractor by the Client in accordance with the LNTP Agreement shall be deemed to be "**Client's Information**" under this Contract and any information or documentation provided or given to the Client by the Contractor in accordance with the LNTP Agreement shall be deemed to be "**Contractor's Documents**" under this Contract.
- 2.4.4. Any instructions, directions, comments, waivers or approvals provided or given to the Contractor by the Client in accordance with the LNTP Agreement shall be treated as having been given by the Client to the Contractor pursuant to this Contract and any instructions, directions, comments, waivers or approvals provided or given by the Contractor to the Client in accordance with the LNTP Agreement shall be treated as having been given by the Contractor to the Client pursuant to this Contract.
- 2.4.5. Any payments made to the Contractor pursuant to the LNTP Agreement shall be treated as having been made by the Client to the Contractor on account of the Contract Price. When submitting its first application for interim payment under this Contract the Contractor must take into account any payment invoiced by it in respect of the LNTP Works carried out by the Contractor up to the date on which the first application for interim payment is made.
- 2.4.6. In the event of any contradiction or inconsistency between any LNTP Agreement and this Contract, the provisions of the LNTP Agreement shall govern, but only (i) to the extent of such contradiction or inconsistency, and (ii) for the period prior to the Commencement Date.

3. GENERAL OBLIGATIONS OF THE CONTRACTOR

- 3.1. The Contractor shall, in accordance with the Contract, engineer, assemble, install, construct, erect the Supply provided by Client, start-up, commission, test and put into operation the Plant and provide related services, in accordance with the technical specification set forth in Annex B (*Technical Requirements*), the Time Schedule and the other provisions of this Contract (the "**Works**"). The Works include (i) delivery of the Supply from the Transit Delivery Point to the Site, (ii) all equipment, materials, components, parts, supplies, goods, works, labour and services (other than the Supply) necessary to comply with the Specifications and the other provisions of this Contract, and (iii) all additional equipment, materials, components, parts, supplies, goods, works, labour and services (other than the Supply) that may be reasonably inferred from this Contract as being required to produce the intended result.
- 3.2. The Contractor shall ensure that the Works are fit for purpose of the construction, erection, start-up, commissioning, testing and putting into operation of the Plant meeting the

Performance Ratio, and delivering the resulting throughput as described in Annex B (*Technical Requirements*).

- 3.3. The Contractor shall perform the Works based on the information provided by the Client in Client's Documents and Information. Contractor shall comply with applicable Laws, in particular, and without limitation, health, safety, security and environmental rules (HSE plan) applicable on Site as defined in Annex M (*Plan of HSE*).
- 3.4. The Contractor will employ staff and labour which is sufficient, skilled, experienced and otherwise qualified to ensure proper, timely and effective execution of the Works. All personnel shall comply with applicable Moroccan labour Laws and health and safety Laws for the proper execution of the Works.
- 3.5. The Contractor shall supervise, coordinate, and direct the Work in accordance with Industry Standards. The Contractor shall employ, or cause to be employed, only supervisory personnel who are appropriately qualified, trained and experienced in safety, efficiency and quality of work supervision.
- 3.6. The Contractor shall enforce strict discipline and good order among the Contractor's employees, Subcontractors' employees and any other persons carrying out the Work. The Contractor shall not permit the employment of unfit persons, or persons not skilled in tasks assigned to them. The Contractor shall promptly remove any employee or other individual that the Client deems incompetent, careless, negligent, unreasonable, uncooperative, unfit, under the influence or in possession of drugs or alcohol, or otherwise reasonably objectionable. Any costs or increased costs or expenses associated with any such removal of employees or other individuals shall be borne solely by the Contractor.
- 3.7. The Contractor will attend weekly meetings with the Client's Project Manager, which may be in person or via phone conferences. A monthly written report related to the progress of the Works, containing such information as maybe reasonably requested by Client, will be sent to the Client. Upon any reasonable request from the Client, the Contractor shall supplement any such report wit such additional information as may be required to present a complete and accurate picture of the progress of the Works.
- 3.8. The Contractor and the Client shall set in place a design review process allowing the Client to comment on the design prepared by the Contractor.
- 3.9. Before undertaking any part of the Works, the Contractor shall carefully review the Client's Documents and Information and check and verify pertinent figures shown thereon and all applicable field measurements, and make its own assessment and verification of the parameters relevant to the Works, including Plant design, mineral processing, civil engineering and construction, civil works, data on climatic, hydrological, geological and other general conditions on the Site (including the soil investigation). The Contractor shall promptly report to the Client any conflict, error, inaccuracy, incompleteness, ambiguity or discrepancy which the Contractor may discover in the Client's Documents and Information and shall obtain supplemental instructions before proceeding with any Works affected thereby. The Contractor shall not be entitled to any Adjustment in the event of any errors, inaccuracies or incompleteness in Annex E (*Client's Documents and Information*). For further clarity, should the Contractor not be satisfied with the Client's Documents and Information, it shall make a recommendation to the Client to conduct further work and investigation to make itself satisfied with the Client's Documents. The Client shall be responsible for conducting this work at its own cost.
- 3.10. The Contractor shall be responsible for all means, methods, techniques, sequences, procedures and safety programs for the performance of the Works.

- 3.11. The Contractor hereby confirms that, prior to the commencement of the Works, the Contractor has conducted its own assessment and verification of the Site.
- 3.12. The Contractor shall perform the Works or cause the Works to be performed in a professional and competent manner to achieve Provisional Acceptance prior to the Target Completion Date and in accordance with (i) the provisions of this Contract; (ii) all applicable Laws; (iii) Industry Standards and (iv) all Permits.
- 3.13. The Contractor shall keep full and detailed books, records, and accounts as necessary for proper financial management under this Contract, including but not limited to the provisions of Clause 34.1, and such obligation shall continue for up to ten (10) years after Provisional Acceptance.

4. GENERAL OBLIGATIONS OF THE EMPLOYER

- 4.1. The Client shall pay to the Contractor the Contract Price in accordance with Clause 9 (*Payment*).
- 4.2. Any registration fees required for the construction of the Plant are the responsibility of the Client in accordance with the terms of the Zgounder Investment Agreement.
- 4.3. Any permit, as established in Clause 8 hereunder, required for the construction of the Plant are the responsibility of the Client.
- 4.4. The Client shall grant the Contractor non-exclusive access to the Site for the purposes of performing its obligations under this Contract. Such access shall include but not be limited to, easements and rights of way (including access to the same) as may be necessary for the Contractor to perform its obligations under this Contract.

5. DELIVERY OF SUPPLY

- 5.1. The Contractor acknowledges that the Client will deliver all items of the Supply onboard the means of transportation, on the date set out therefor in the Time Schedule, at a location agreed with Contractor (the "**Transit Delivery Point**").
- 5.2. The Contractor shall, upon delivery by the Client of the Supply to the Transit Delivery Point, take possession of the items and deliver said Supply, to Site.

- 5.3. [REDACTED]

[REDACTED]

or [REDACTED]

[REDACTED]

- 5.4. The Contractor shall be responsible for and assume the care of and the risk of loss or damage to each item of the Supply from the time of the acceptance of the delivery at the Transit Delivery Point in accordance with Clause 5.2 in respect of the applicable item of the Supply.
- 5.5. The Contractor shall be responsible for the reception and unloading of such item from the Client's mean of transportation. The Contractor shall provide all necessary equipment, machinery, including offloading cranes, and personnel to properly and adequately proceed to such reception and unloading.
- 5.6. After reception and unloading of any item of the Supply, the Contractor shall store such item of the Supply at the Site in accordance with the storage conditions attached as Annex H (*Storage Conditions*).
- 5.7. Notwithstanding any provision to the contrary in this Contract, the issuance of a Certificate of Receipt in respect of any item of the Supply shall not preclude the subsequent exercise by the Client of its rights under Clause 18 if such item is found not to be in compliance with the provisions of Clause 18.1.

6. REPRESENTATIVES

- 6.1. Within thirty (30) days of the Commencement Date, the Contractor shall, by written notice to the Client, designate the individual(s) to be representative(s) of the Contractor (the "**Contractor's Project Manager**"). The Contractor may designate a different Contractor's Project Manager at any time by written notice to the Client provided that the new Project Manager has at least similar qualifications and experience as the replaced Project Manager.
- 6.2. The Contractor shall employ one or more representative(s) to supervise the carrying out of the Works on Site (the "**Site Manager**"), whose name shall be communicated in writing to the Client before the Works begin at the Site.
- 6.3. Within thirty (30) days of the Commencement Date, the Client shall, by written notice to the Contractor, designate the individual(s) to be the representative(s) of the Client (the "**Client's Project Manager**"). The Client may designate a different Client's Project Manager at any time by written notice to the Contractor.
- 6.4. The Contractor's Project Manager and the Client's Project Manager shall have the necessary authorizations regarding the day-to-day administration of this Contract.
- 6.5. The language for day-to-day communications between the Parties shall be English. The language for day-to-day operations on Site shall be French or English. The Site Manager shall be fluent in French.

7. SITE ACCESS AND POSSESSION

The Client shall grant the Contractor non-exclusive access to the Site for the purposes of performing the Works. Such access shall include but not be limited to, easements and rights of way (including access to the same) as may be necessary for the Contractor to perform and complete the Works.

8. PERMITS

- 8.1. The Client shall be solely responsible for obtaining the Client Permits. The Contractor shall assist the Client in obtaining the Client Permits to the extent possible in providing the Client with required documentation and information.
- 8.2. Except for the Client Permits, the Contractor shall be solely responsible for obtaining all Permits. The Client shall reasonably assist the Contractor in obtaining such Permits and in ascertaining the nature and extent of applicable Laws which may affect the Contractor in the performance of its obligations under the Contract, it being understood that the Contractor shall use its own legal counsel and other advisors as required for the performance of the Works. The Client shall, if so requested, help procure for the Contractor copies of applicable Laws and information relating thereto at the Contractor's cost. For the avoidance of doubt, Client failing to assist the Contractor shall not relieve the Contractor of its obligations pursuant this Clause, provided that Client has not acted with wilful misconduct, and his failure to assist the Contractor has not resulted in the non-obtaining of the Permits.

9. PAYMENT

9.1. Terms of Payment

- 9.1.1. Subject to the applicable provisions of this Contract, the Client shall pay the Contractor the Contract Price which is a lump sum fixed price. The Contract Price constitutes the total lump sum compensation payable by the Client to the Contractor for performing the Works (including all overhead and profit of the Contractor and all costs of the Contractor performing the Works) and is firm and fixed as of the date of execution of this Contract and is not subject to change, except as provided in Clauses 11 and 12. Payments hereunder shall be made by the Client in accordance with this Clause 9.
- 9.1.2. The Client shall pay to the Contractor an advance payment equal to ten percent (10%) of the Contract Price within fifteen (15) calendar days from the later of the date of issuance of the Notice to Proceed and the date on which the Client has received the advance payment guarantee referred to in Clause 2.1.2.1. In case the Client fails to timely make the advance payment, the Contractor will be entitled to an extension of the Target First Dore Date, the Target Commissioning Date and the Target Completion Date on day-to-day basis, and entitled, subject to Clause 13, to claim for the payment of any additional costs incurred by such delay. Any dispute between the Contractor and the Client as to the additional costs or time claimed by the Contractor shall be submitted to the dispute resolution procedure set forth in Clause 32.
- 9.1.3. On the amount of each invoice, for payment of a milestone payment in accordance with Clause 9.1.1, the Contractor shall credit an amount equal to ten per cent (10%) of the amount of such invoice, which credit corresponds to the applicable portion of the advance payment described in Clause 9.1.2 attributable to such invoice. Such credit will be considered as a return of advance payment (when each invoice will be submitted) and

will reduce in the same amount the advance payment guarantee received by the Contractor in accordance with above Clause 9.1.2.

- 9.1.4. The Contract Price includes, with the sole exception of VAT, if applicable all withholding taxes, privilege, sales, use, excise, or other similar taxes arising in Morocco which are or may become payable in respect of the Contract Price which may now or hereafter be applicable to, or imposed by the Kingdom of Morocco or any Governmental Authority in Morocco in respect of the Works. In addition, Contract Price does not include any customs, import duties, import taxes and fees imposed by the Kingdom of Morocco, all of them are under Client's scope and responsibility.
 - 9.1.5. In case any Tax Exonerations apply, the Client shall timely obtain such Tax Exonerations and shall not, through its acts or omissions, cause the Contractor a delay and/or costs in said procedures.
 - 9.1.6. The Contractor shall be entitled to an Adjustment in accordance with this Contract if a Governmental Authority unduly refuses to issue the Tax Exonerations provided that the Contractor is not in breach with the terms of this Contract.
 - 9.1.7. The Contractor shall invoice and the Client shall pay the Contract Price in MAD for service executed in Morocco and in USD or EURO for services performed outside of Morocco.
 - 9.1.8. Before making any payment under this Contract, the Contractor shall furnish to the Client a letter issued by the Contractor in the form of Annex R (*Form of Partial Lien Release*) warranting that (i) the Contractor is in compliance with applicable Laws, including those pertaining to labour and health and safety matters, (ii) there are no liens, claims, security interests or encumbrances of whatsoever nature affecting the Works other than liens created by the Client.
 - 9.1.9. Further, following Client's request the Contractor shall provide the statements from Contractor's subcontractors which certify that all uncontested invoices are paid, that no owing and outstanding amounts remain unpaid, including proof of payment of such invoices and that no liens have been registered by any subcontractor. In case of a contested invoice, the proof of payment of the uncontested portion of the invoice may be provided by the Contractor to satisfy this obligation. To this effect Contractor shall, inter alia, furnish copy of subcontract agreements (including payment schedules) as needed but can delete commercial sensitive data.
 - 9.1.10. If the Contractor does not comply with the Client's requests in accordance with Clause 9.1.8 and Clause 9.1.9, the Client shall have the right to withhold any payment otherwise due and payable to the Contractor.
- 9.2. Application for Milestone Payments
- 9.2.1. Contractor shall submit, in a form satisfactory to Client and in accordance with Section 3 of Annex A (*Contract Price*), a draft Milestone Completion Certificate on completion of each Milestone in accordance with Annex A (*Contract Price*) including the corresponding amounts to which Contractor considers itself to be entitled, together with supporting documents to demonstrate achievement of a Milestone and shall include the most recent report on progress. The Contractor may apply for certification of multiple Milestones completion in a single Milestone Completion Certificate.
 - 9.2.2. Within seven (7) Business Days following Client's receipt of a draft Milestone Completion Certificate that complies with the requirements under Clause 9.2.1, Client shall notify Contractor in writing as to whether the relevant Milestone(s) have been achieved by Contractor.

- 9.2.3. If Client is not satisfied that the Milestone(s) included in the draft Milestone Completion Certificate have been achieved, Client shall notify the Contractor within the seven (7) Business Day period mentioned in Clause 9.2.2 above, and shall then give further notice to the Contractor within five (5) days of that initial notice of the outstanding Works which must be completed for any non-complete Milestones that are the subject of the draft Milestone Completion Certificate to be achieved. Upon receipt of such details, Contractor shall then issue a revised draft Milestone Completion Certificate in respect of only the completed Milestones and the process above shall be repeated. In the event the Contractor fails to submit a revised Milestone Completion Certificate in accordance with this Clause, Client has the right to, make any correction or modification to the previous draft Milestone Completion Certificate received in its own complete independent discretion to certify the amount due. Approval of a Milestone Completion Certificate shall not be deemed to indicate Client's acceptance, approval, consent or satisfaction of the Works (or any part thereof).
- 9.2.4. Following approval of a draft Milestone Completion Certificate by Client, Contractor shall submit the Milestone Payment Request (which shall include the formal invoice) for the amount approved in the corresponding Milestone Completion Certificate. Each Milestone Payment Request invoice shall be in accordance with the requirements set out in Annex A (*Contract Price*), and shall include the following items, as applicable, in the sequence listed:
- (i) value of the completed Milestones (as set out in Annex A (*Contract Price*)), including Variations as sub-items but excluding items described in paragraphs (ii) to (iv) below, and a copy of the relevant approved Milestone Completion Certificate (if any);
 - (ii) any other additions or deductions which may have become due under this Contract;
 - (iii) the deduction of amounts included in previous approved Milestone Payment Requests; and
 - (iv) the previous totals shown on a Milestone Payment Request, which shall correspond to the amounts certified as payable against the Milestone Payment Request from the previous month.
- 9.2.5. All Milestone Payment Requests shall be broken down into the various work breakdown elements with Milestones identified where applicable and cost coded accordingly. Payment requests for Variations shall be similarly broken down and cost coded.
- 9.2.6. Any Dispute arising in connection with a Milestone Payment Request shall be resolved in accordance with Clause 32.
- 9.3. Timing of Payments
- 9.3.1. Client shall pay to Contractor the undisputed amount which is due in respect of each Milestone Payment Request within thirty (30) days after the Contractor has submitted the relevant Milestone Payment Request in accordance with Clause 9.2.
- 9.3.2. Payment shall not be deemed to indicate Client's acceptance, approval, consent or satisfaction of the Works.
- 9.4. Delayed Payment

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

9.5. Right to Set-Off

The Client shall have the right to set-off, against any amount owing by the Client to the Contractor under this Contract, any undisputed amount owing by the Contractor to the Client under this Contract in connection with the same project.

10. EMPLOYER APPROVAL

No assistance, approval, expression of satisfaction, comment, review, test, inspection, payment or certificate made or given (or any failure to make or give or attend the same) by the Client under the Contract, or by the Client's representatives, shall relieve the Contractor of any of its obligations, risks or liabilities under the Contract.

11. VARIATIONS

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

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

11.2.1. The Client shall submit to the Contractor a request (a "Change Order Request") which explicitly describes in writing the Changes in the Works.

11.2.2. Within two (2) weeks after receipt of such Change Order Request, the Contractor shall submit to the Client in writing a proposed amendment to this Contract describing the changes to the Works, the Time Schedule and the Contract Price required to satisfy the Client's Change Order Request (a "Change Order Proposal"). The Contractor's Change Order Proposal shall include detailed supporting calculations for pricing the change based upon, where reasonably practicable, applicable pricing in the Specifications, and include revisions, if any, to the Contractor's Drawings.

11.2.3. Within a further two (2) weeks after the receipt by the Client of the Change Order Proposal, the Parties shall negotiate in good faith with a view to entering into an amendment to this Contract incorporating the Change in the Works requested by the Client.

- 11.2.4. If the Parties agree on the proposed amendment, the Parties shall sign an amendment to this Contract incorporating the Change in the Works requested by the Client (a "**Change Order**") and the Contractor shall diligently perform the Works in accordance with the terms of this Contract, as amended by such Change Order.
- 11.2.5. If the Parties cannot agree on a Change Order within the two (2) week period referred to in paragraph 11.2.3 above, then until a Change Order is agreed upon or a dispute regarding such Change Order is finally settled, unless the Client in its sole discretion withdraws its Change Order Request by notice to the Contractor, the Contractor shall diligently proceed with the Change in the Works requested by the Client in its Change Order Request pending an agreement or settlement between the Parties regarding such Change Order.
- 11.3. If the Parties cannot mutually agree on a Change Order within forty-five (45) days after receipt by the Client of the Contractor's Change Order Proposal, the dispute shall be submitted to Clause 32.
- 11.4. For further clarity, any urgent safety and safeguard measure or procedure specifically requested by the Client as a result of a Force Majeure event which goes above and beyond the Contractor's obligations, shall be considered a change order under this Clause 11 and not an adjustment in accordance with Clause 12. The foregoing does not in any way limit any of the Contractor's obligations to safeguard and maintain the Works and the Site.

12. ADJUSTMENTS

- 12.1. If any of the following events arise (each, an "**Adjustment Event**"):
 - 12.1.1. Force Majeure;
 - 12.1.2. Client Caused Delay;
 - 12.1.3. Change in Law; or
 - 12.1.4. any other event or circumstance identified in this Contract which is expressly to constitute an Adjustment Event,

which directly has a detrimental impact on Contractor's ability to perform its obligations under the Contract, or materially impacts the cost of performance of the Works then, provided the requirements of Clause 12 are satisfied, an Adjustment may be sought.

- 12.2. The Contractor shall notify the Client as soon as practicable but no later than (i) seven (7) Business Days for Force Majeure and Change in Law and (ii) fourteen (14) Business Days in all other events, after the time when it actually knows of or reasonably should have known that an Adjustment Event has occurred. Within twenty-eight (28) calendar days after the expiry of the seven (7) Business day-period or the fourteen (14) Business Day-period (as applicable) referred to above, the Contractor shall submit an initial analysis of the impact of such Adjustment Event, specifying the impact upon the various portions of the Works occasioned by reason thereof, and any corresponding impact on the Works, the Contract Price and the Time Schedule, and shall substantiate the foregoing to the reasonable satisfaction of the Client. This analysis shall include, insofar as that information may be reasonably known by the Contractor at that time: (i) the anticipated term of duration of the delay, if any; (ii) the cause of the delay, if any; (iii) the information or sources in which the proof of the delay, if any, shall be based to apply for a change to the Target First Dore Date, the Target Commissioning Date and/or the Target Completion Date, as applicable, (iv) the amount of the Adjustment calculated in accordance with Clause 12.4; and (v) other relevant information known by the Contractor. In the event that it is impracticable to specify the impact upon the Works at the

time of such submission, the Contractor shall, immediately upon such information being available, provide the Client with periodic supplemental submissions during the period that the impact continues, detailing any developments, progress or other relevant information of which the Contractor is aware.

12.3. To the extent the Client agrees with the Contractor's determination of the impact of the Adjustment Event, the Parties shall, within 15 Business Days following receipt of the Contractor's submission pursuant to Clause 12.2, execute an amendment to this Contract reflecting the required Adjustment. In the event that the Client does not accept the Contractor's submissions or the Adjustment for such Adjustment Event, the matter may be referred for dispute resolution pursuant to Clause 32.

12.4. Any Adjustment shall be assessed in accordance with the following provisions:

12.4.1. any change to the Time Schedule shall be assessed, amongst the Parties, based on a time impact analysis methodology;

12.4.2. the Contractor shall not be entitled to an increase in the Contract Price and the Client shall not be entitled to a decrease in the Contract Price, save where the Adjustment Event is a Client Caused Delay, a Change in Law, a Force Majeure event which lasts for a period greater than fifteen (15) consecutive days or an Adjustment Event that, in each case, could not reasonably have avoided pursuant to Clause 9.1.5, 20.1.2, 20.2.2 or 26.4.3 and in the case of a Force Majeure event the only and if the Client actually receives corresponding compensation under the Zgounder Investment Agreement or other insurance coverage. Any such increase to the Contract Price shall be made by way of reimbursement by the Client of all the necessary costs directly resulting from the situation and duly justified, including but not limited to (i) demobilization and remobilization costs, (ii) security costs and (iii) salaries of all mobilized or retained Contractor's staff; unless the Client fails to make the relevant claim for compensation under the Zgounder Investment Agreement or other insurance coverage in accordance with Clause 12.4.7, in which case the Contractor shall be entitled to include any such lost increase to the Contract Price as losses incurred by the Contractor should the Contractor pursue a Claim against the Client in respect of its failure to comply with Clause 12.4.7.

12.4.3. Intentionally omitted

12.4.4. the Contractor shall mitigate any extension of time required or costs incurred as a result of any such delays; and

12.4.5. whenever pursuant to this Clause 12.3 the Contractor is entitled to an increase in Contract Price, such increase shall be based on the reasonable and direct material, equipment and labour costs, directly related handling and transportation charges, reasonable travel, outside services and other reasonable expenses incurred by the Contractor or invoiced by a Subcontractor, plus reasonable allocated overheads, general and administrative expenses and profit which were necessary to be incurred as a result of the Adjustment Event. Overheads, general and administrative expenses and profit shall be reasonably agreed by the Parties and shall not exceed [REDACTED] [REDACTED] [REDACTED] [REDACTED]. In all cases the amount of the increase, including overhead, administrative expenses and profits, shall be reduced by the amount of any savings generated, directly or indirectly, as a result of the relevant Adjustment Event.

12.4.6. In order to ascertain any such delays, the Parties shall take into account the critical path analysis as per the Contract.

12.4.7. The Client shall be responsible for making any Claims under the Zgounder Investment Agreement or any insurance coverage that correspond to any Adjustment Event notified

by the Contractor. The Contractor shall provide all reasonable support to the Client to enable the Client to make any aforementioned corresponding Claims.

13. COMMISSIONING, PROVISIONAL ACCEPTANCE, AND FINAL COMPLETION

13.1. The Contractor warrants that:

- 13.1.1. It shall make reasonable efforts to ensure that the First Dore shall occur, as evidenced by the issuance of the First Dore Certificate, by no later than the Target First Dore Date;
- 13.1.2. It shall make reasonable efforts to ensure that the Commissioning shall be completed, as evidenced by issuance of the Commissioning Certificate, by no later than the Target Commissioning Date; and
- 13.1.3. Provisional Acceptance shall occur, as evidenced by the Provisional Acceptance Certificate, by no later than the Target Completion Date.

13.2. In the event that Provisional Acceptance does not occur within the two week period following the Target Completion Date, the Contractor shall pay to the Client delay liquidated damages at the rate of [REDACTED] of the Contract Price for each [REDACTED] delay from such date (such amounts, the "Delay Liquidated Damages"), provided that the liability of the Contractor for Delay Liquidated Damages shall not exceed 10 % of the Contract Price (the "Delay LD Cap") in the aggregate.

13.3. Commencement of Commissioning

- 13.3.1. When the Contractor considers that the assembly, erection and installation of the Supply and Works is sufficiently advanced to commence the Commissioning, the Contractor shall perform the Commissioning in accordance with the detailed Commissioning procedures set out at Annex F (Commissioning Procedures).
- 13.3.2. The Commissioning shall be considered completed when all procedures described in Annex F (*Commissioning Procedures*) have been successfully completed and a certificate to such effect has been issued by the Client.

13.4. Commissioning – Punch list Items

- 13.4.1. No later than thirty (30) days prior to the anticipated Provisional Acceptance, the Contractor shall issue to the Client a first draft of the Punch List Items.
- 13.4.2. Thereafter, the Parties shall meet on a weekly basis in order to assess and discuss the extent of the Punch List Items and the activities that the Contractor suggests to implement to cure the Punch List Items following Provisional Acceptance.
- 13.4.3. The aim of this process is to reduce the Punch List Items to a minimum at the Provisional Acceptance.
- 13.5. When the Contractor considers the Works to have achieved readiness for commissioning, the Contractor shall certify in writing to the Client that Commissioning has been achieved (such certificate, the "Commissioning Notice") and request the Client to issue a certificate confirming the Client's agreement that Commissioning Acceptance has been achieved (the "Commissioning Certificate"). Within ten (10) Business Days after receipt of the Commissioning Notice, the Client and the Contractor shall make a joint inspection of the Works to determine whether or not the Works have achieved Completion and in any case within ten (10) Business Days from said inspection: (i) if the Client, acting reasonably, does not consider the Works to have achieved Completion, the Client shall notify the Contractor in

writing giving the reasons therefor; or (ii) if the Client considers the Works to have achieved Completion, the Client shall issue the Commissioning Certificate which said certificate shall be dated on the date of the Commissioning Notice. If the Contractor receives a notice pursuant to (i) above, then the Contractor shall promptly take such corrective measures which are necessary in order to achieve Completion. The procedures in this Clause 13.5 shall apply until a Commissioning Certificate is issued by the Client, provided that on any reapplication of such procedures the foregoing ten (10) Business Day period shall be reduced to five (5) Business Days. In the event of a reapplication the date of the Commissioning Certificate shall be dated the date of the reapplication. If the Client fails either to issue the Commissioning Certificate or to reject the Contractor's application within the period, and if the Works are substantially in accordance with the Contract, the Commissioning Certificate shall be deemed to have been issued on the date of the Commissioning Notice.

The Client shall not use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by the Parties) unless and until a Commissioning Certificate is issued. If the Client operates the Plant without the approval of the Contractor before the Commissioning Certificate is issued, then:

- (i) the Commissioning Certificate shall be deemed issued; and
- (ii) care and responsibility over the Works shall be transferred to the Client since the date of use.

13.6. **"Commissioning"** means that stage of the Works when:

13.6.1. the Commissioning has been successfully completed in accordance with this Clause 13 and Annex F (*Commissioning Procedures*),

13.6.2. all Works have been completed in accordance with this Contract, except for:

13.6.2.1. any punch list items identified during the Commissioning which do not affect the safety, availability or reliability of the Plant (each a **"Punch List Item"** and collectively, the **"Punch List Items"**), and / or

13.6.2.2. the Contractor's obligation to reach Provisional Acceptance and to make good Defects pursuant to Clause 18;

13.6.3. the documents described in Clause 29.1 and any documents or other deliverables required by this Contract have been delivered by the Contractor to the Client; and

13.6.4. all undisputed amounts owed by the Contractor to the Client pursuant to this Contract or any other contract between the Client and the Contractor, including for any undisputed applicable Delay Liquidated Damages or Performance Liquidated Damages, have been paid in full to the Client.

13.7. When the Contractor considers the Works to have achieved Provisional Acceptance, which date shall occur by the Target Completion Date, the Contractor shall certify in writing to the Client that Provisional Acceptance has been achieved (such certificate, the **"Provisional Acceptance Notice"**) and request the Client to issue a certificate confirming the Client's agreement that Provisional Acceptance has been achieved (the **"Provisional Acceptance Certificate"**). Within ten (10) Business Days after receipt of the Provisional Acceptance Notice, the Client and the Contractor shall make a joint inspection of the Works to determine whether or not the Works have achieved Provisional Acceptance and:

13.7.1. if the Client does not consider the Works to have achieved Provisional Acceptance, the Client shall notify the Contractor in writing giving the reasons therefor; or

- 13.7.2. if the Client considers the Works to have achieved Provisional Acceptance, the Client shall issue the Provisional Acceptance Certificate.

If the Contractor receives a notice pursuant to Clause 13.7.1 above, then the Contractor shall promptly take such corrective measures which are necessary in order to achieve Provisional Acceptance. The procedures in this Clause 13.7 shall apply until a Provisional Acceptance Certificate is issued by the Client, provided that on any reapplication of such procedures the foregoing ten (10) Business Day period shall be reduced to five (5) Business Days.

- 13.8. **"Provisional Acceptance"** means that stage of the Works when:

- 13.8.1. the Provisional Acceptance Certificate has been issued by the Client in accordance with Clause 13.5;
- 13.8.2. the Client and the Contractor have agreed the Punch List Items,
- 13.8.3. the Contractor has paid or has committed to pay to the Client all Delay Liquidated Damages and Performance Liquidated Damages due under the Contract (if any);
- 13.8.4. the Provisional Acceptance Performance Criteria have been met;
- 13.8.5. the Contractor has delivered the Warranty Period Guarantee to the Client in accordance with Clause 18.8; and
- 13.8.6. the Contractor has paid or has committed to pay to the Client all undisputed amounts owed by the Contractor to the Client pursuant to this Contract.

- 13.9. When the Contractor considers the Works to have achieved Final Completion, the Contractor shall certify in writing to the Client that Final Completion has been achieved (such certificate, the **"Final Completion Notice"**) and request the Client to issue a certificate confirming the Client's agreement that Final Completion has been achieved (the **"Final Completion Certificate"**). Within ten (10) Business Days after receipt of the Final Completion Notice, the Client and the Contractor shall make a joint inspection of the Works to determine whether or not the Works have achieved Final Completion and:

- 13.9.1. if the Client does not consider the Works to have achieved Final Completion, the Client shall notify the Contractor in writing giving the reasons therefor; or
- 13.9.2. if the Client considers the Works to have achieved Final Completion, the Client shall issue the Final Completion Certificate.

If the Contractor receives a notice pursuant to Clause 13.9.1 above, then the Contractor shall promptly take such corrective measures which are necessary in order to achieve Final Completion. The procedures in this Clause 13.9 shall apply until a Final Completion Certificate is issued by the Client, provided that on any reapplication of such procedures the foregoing ten (10) Business Day period shall be reduced to five (5) Business Days.

- 13.10. **"Final Completion"** means that stage of the Works when:

- 13.10.1. the Provisional Acceptance Certificate has been issued by the Client in accordance with Clause 13.5;
- 13.10.2. all Works have been completed in accordance with this Contract, including the Punch List Items;
- 13.10.3. all Defects which are apparent or would be expected to be discoverable by a professional Service Provider as of the date of Final Completion have been made good in accordance with Clause 18; and

- 13.10.4. all undisputed amounts owed by the Contractor to the Client pursuant to this Contract or have been paid in full to the Client.

14. OWNERSHIP OF WORKS

Title to each item of the Works shall pass to the Client upon the earlier of (i) the time of issuance of the Commissioning Certificate in accordance with Clause 14.4, and (ii) the date the Contractor has received payment of the Milestone corresponding to such item of the Works. The Contractor hereby represents and warrants to the Client that, at the time title to each item of the Works shall pass to the Client pursuant to this Clause 14, such item of the Works shall be free and clear of all liens, claims, security interests or encumbrances of whatsoever nature.

15. CARE OF THE WORKS AND PASSING OF RISK

- 15.1. The Risk Transfer Date in relation to the Works is the earlier of:

15.1.1. the time of issuance of the Commissioning Certificate in accordance with Clause 13.5, or

15.1.2. the date on which the Contract is terminated.

- 15.2. The Contractor shall be responsible for the care of the Works from the Commencement Date and until the Risk Transfer Date. The risk of loss of or damage to the Works shall pass from the Contractor to the Client at the same time.

16. NO OBLIGATION TO DE-INSTALL

Notwithstanding any provision of this Contract, the warranty obligations of the Contractor pursuant to Clause 18 (*Warranty*) shall not extend to the removal or recycling of any equipment, machinery or any other parts forming part of the Works having reached their life time, as such life time is specified in the Specifications.

17. PERFORMANCE TESTS

- 17.1. Following the successful completion of Commissioning, the Contractor shall, at a time of his choosing and prior to the Completion Date, commence the Performance Tests. The Contractor shall give the Client at least five (5) Business Days' prior notice of the scheduled date for commencement of the Performance Tests to give the Client and the Lenders an opportunity to witness and independently verify the results of the Performance Tests.

- 17.2. If, during the performance of the Performance Tests, the Plant fails to achieve at least the Performance Ratio, then the Contractor shall make all such corrections or other changes to the Works, at its own cost and risk, as may be necessary to achieve the Performance Ratio and to re-perform the Performance Tests as required to achieve at least the Performance Ratio. For the avoidance of doubt, the Contractor will be required to give the Client at least a five (5) Business Days' prior notice before it repeats the Performance Tests to give the Client and the Lenders an opportunity to witness and independently verify the results of the Performance Tests.

- 17.3. If, by the Longstop Date, the Plant has failed to achieve at least the Minimum Performance Ratio, the Client shall be entitled, at any time thereafter and at its sole discretion, to either:

- 17.3.1. issue the Provisional Acceptance Certificate (subject to all other conditions of Clause 15.2 being met) and require the Contractor to pay the maximum Performance Liquidated Damages and maximum Delay Liquidated Damages payable under this Contract;
- 17.3.2. terminate this Contract in accordance with Clause 21.1 and require the Contractor to make the Client whole in accordance with Clause 21.3; or
- 17.3.3. reject the Works and terminate this Contract and require the Contractor to:
 - 17.3.3.1. pay to the Client all sums previously paid to Contractor plus all costs, losses and damages (including any amounts payable in respect of penalties, interest charges, capital payments, damages, and costs related to financing or loan documents with the Lenders and other agreements with third parties such as shareholders, other subcontractors) incurred by Client in connection with the termination; and
 - 17.3.3.2. remove all movable property belonging to the Contractor on the Site and/or reinstate the Site to the condition it was prior to commencement of the works at the Contractor's own cost.
- 17.4. If, by the Longstop Date, the Plant has met the Minimum Performance Ratio but has not met the Performance Ratio, the Contractor shall pay to the Client performance liquidated damages calculated in accordance with Annex L (*Performance Tests*) for the shortfall in the Performance Ratio ("**Performance Liquidated Damages**").
- 17.5. Except for the Contractor's obligation to make good on Defects in accordance with the Contracts, the obligations of the Contractor under Clause 17.3.2, the Client's right to terminate the Contract pursuant to Clauses 17.3.2, 17.3.3 and 21.1 and the corresponding entitlements under Clause 21.3, the payment of Performance Liquidated Damages shall be the exclusive remedy of the Client and shall constitute the exclusive liability of the Contractor for damages or losses resulting from failure of the Plant to achieve the Performance Ratio, and the Client shall have no other remedies of any kind whatsoever whether in contract, tort (including negligence and strict liability) or otherwise in regards to such damages or losses. Notwithstanding the foregoing, the Parties acknowledge that it would be difficult to estimate as of the date of this Contract the Liabilities which would be incurred by the Client if the Contractor fails to achieve the Performance Ratio, and that the Performance Liquidated Damages constitute a genuine estimate of the Liabilities which would be incurred by the Client if the Contractor fails to achieve the Performance Ratio, and not a penalty. If the Performance Liquidated Damages are held to be invalid, the Client shall have the right to recover from the Contractor the actual Liabilities incurred by the Client due to the failure of the Contractor to achieve the Performance Ratio.

18. WARRANTY

18.1. General Principle

The Contractor warrants to the Client that the Works shall comply with the requirements of this Contract, applicable Laws and Industry Standards, and shall be free from Defects during the Warranty Period without prejudice to this Clause.

18.2. Correction of Defects

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

- 18.2.1. If at any time during the Warranty Period the Client identifies any Defect in the Works, the Client shall promptly, and in any event prior to the expiry of the Warranty Period in respect of such item of the Works, present a written claim to the Contractor for the correction of such Defect. The Contractor shall, as soon as reasonably possible and in any event not later than ten (10) Business Days after the date of receipt of the Client's claim or such longer period as may be agreed between the Parties if the Defect cannot reasonably be corrected within such period, at the sole cost and expense of the Contractor, take all corrective measures necessary to eliminate such Defect and make the Works compliant with the requirements of Clause 18.1 by repairing, replacing or re-performing the relevant items or parts of the Works and any other part of the Works which may have been damaged or which is non-compliant with the requirements of Clause 18.1 due to such Defect. For greater certainty, any item or part of the Works which is replaced by the Contractor shall be replaced with an item or part that is new (excluding, for greater certainty, any refurbished item or part) and which complies with the requirements of Clause 18.1. The Contractor shall bear all costs and expenses associated with any such repairs, replacements or re-performance. Without limiting the foregoing, (a) the Contractor shall be liable for the cost of gaining access to any item of the Works for disassembly or reassembly, or for transportation to and from the Site; (b) all travelling expenses for the Contractor's employees and its Subcontractors shall be assumed by the Contractor; and (c) the Contractor shall assume the cost of removal, transportation or shipping if the Contractor decides that any item of the Works shall be removed, transported or shipped from the Site to perform any repairs or replacement.
- 18.2.2. For the purpose of correcting Defects, the Client shall make available, free of cost to the Contractor, those available materials and spare parts from the Client's inventory and access to the Plant as reasonably required by the Contractor. If the Contractor uses materials or spare parts from the Client's inventory, the Contractor shall at its own cost and as soon as reasonably possible, but before the end of the Warranty Period, replenish the Client's inventory with the same or similar materials if no longer available at the Client's satisfaction.
- 18.2.3. If the Contractor fails to repair, replace or re-perform any item or part of the Works as required pursuant to this Clause 18.2.1, the Client shall have the right to retain any third party contractor to perform such repair, replacement or re-performance, at the cost and risk of the Contractor. Upon the request of the Client, the Contractor shall promptly reimburse any costs incurred and substantiated by the Client pursuant to this Clause 18.2.3. For the avoidance of doubt, the performance of remedial work by a third party contractor pursuant to this Clause 18.2.3 shall not, to the extent performed in accordance with Industry Standards and the Specifications, affect the warranties or performance guarantees under this Contract (including the Performance Ratio and the Contractor's continued responsibility for the correction of Defects).
- 18.2.4. The Client shall provide, without cost to Contractor and upon Contractor's request, reasonable access to the Plant and the defective items or parts, as well as to operating and maintenance data, including continuous access to the control system and associated data for monitoring purposes, as required for the performance by the Contractor of its obligations under this Clause 18.2.1.

18.3. Serial Defects

- 18.3.1. Each Party shall, as soon as reasonably possible after discovery or becoming aware of any actual or potential Serial Defect, promptly notify the other Party thereof. If the Contractor discovers, becomes aware of, or is notified by the Client of any actual or potential Serial Defect, the Contractor shall promptly perform a thorough investigation and root cause analysis of the affected Parts to ascertain the existence and cause of such Serial Defect and provide a written report of same to the Client. The Contractor shall provide such report to the Client within thirty (30) Business Days (or, provided that the Contractor started acting during such thirty (30)-Business Day period and proceeds diligently thereafter, such longer period as may be agreed to by the Client (acting reasonably) given the nature, extent and complexity of such actual or potential Serial Defect, which additional time period shall not in any event exceed thirty (30) Business Days). If the report concludes to the existence of a Serial Defect, the report shall include the Contractor's recommendations for remedying the Serial Defect.
- 18.3.2. If the Contractor denies liability in respect of any Serial Defect claimed by the Client under Clause 18.3.1, or if the Client disagrees with the recommendations for remedying any Serial Defect set forth in a report referred to in Clause 18.3.1, such dispute shall be settled, at the request of any Party, using a mutually agreed independent third party expert evaluating and eventually inspecting the claimed Serial Defect or the recommendations of the Contractor for remedying same, as applicable.
- 18.3.3. The expert determination under this Clause shall be conducted by an independent industry expert to be agreed between the Parties, , within 21 calendar days of Contractor denying liability in respect of any Serial Defect claimed by the Client under Clause 18.3.1, or of the Client disagreeing with the recommendations for remedying any Serial Defect set forth in a report referred to in Clause 18.3.1, or failing such agreement to be nominated by the International Chamber of Commerce (ICC) International Centre for Expertise in accordance with the ICC's Rules for Expertise.
- 18.3.4. Unless otherwise agreed between the Parties, the Expert must notify the Parties of his or her decision within 28 days from the acceptance by the expert of his or her appointment.
- 18.3.5. At the sole cost and expense of the Contractor, the Contractor shall promptly take all corrective measures necessary to eliminate any Serial Defect which has been established in the report referred to in Clause 18.3.1 or the existence of which has been mutually agreed upon between the Parties or confirmed by the expert referred to in Clause 18.3.2, by either repairing or replacing the relevant items or parts of the Works affected by such Serial Defect and any other item or part of the Works which may have been damaged by such Serial Defect, regardless of whether such items or parts of the Works have yet failed. If the expert appointed pursuant to Clause 18.3.3 determines that there is a Serial Defect, the Contractor shall be responsible for the costs of, and incurred by, the expert. In the event the expert determines that there is no Serial Defect, the Client shall be responsible for the costs of, and incurred by, the expert.

18.4. Warranty Conditions

The warranties and remedies set forth in this Clause 18 (*Warranty*) and Contractor's obligations arising thereof are conditional upon:

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

Notwithstanding the foregoing, none of the conditions set forth in this Clause 18.4 shall limit the warranties and remedies of the Client pursuant to this Clause 18 (*Warranty*) to the extent that any non-compliance with such conditions results from the acts or omissions of the Contractor or of Contractor's Subcontractors, and the Contractor agrees and accepts that:

- (a) if it delegates any of its responsibilities under this Contract to any Subcontractor, the Contractor will be responsible for the acts, defaults and neglects of such Subcontractor, its agents, servants or workmen as fully as if they were the acts, defaults and neglects of the Contractor, his agents, servants or workmen performing its obligations under the Contract; or
- (b) the acts, defaults and neglects of any Subcontractor, its agents, servants or workmen in undertaking any parts of the Works shall not relieve the Contractor of its responsibilities in respect of Defects during the Warranty Period.

18.5. Warranty Period

- 18.5.1. The warranty period in respect of all items of the Works (subject to any extension pursuant to Clause 18.5.2, the "**Warranty Period**") shall expire on the date which is [REDACTED] after the date of issuance of the Provisional Acceptance Certificate.
- 18.5.2. Items of the Works which are repaired, replaced or re-performed pursuant to Clause 18.2.1 shall be subject to and covered by the provisions of this Clause 18, provided that the Warranty Period applicable in respect of such repair, replacement or re-performance only shall expire on the later of (i) the expiration of the initial Warranty Period in respect of such item so repaired, replaced or re-performed, and (ii) the date which is [REDACTED] months after the date of such repair, replacement or re-performance.

18.6. Assignment of Warranties

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

18.7. Limitation of Liability for Defects

The remedies set forth in this Clause 18 (*Warranty*) for the correction of Defects in the manner and for the period of time provided herein shall constitute Contractor's and Contractor's Subcontractor's sole Liabilities and Client's exclusive remedies for failure of the Contractor to

meet its warranty obligations under Clause 18.1, whether Claims of the Client are based in contract, in tort, or otherwise.

18.8. Warranty Period Guarantee

By no later than the date of Provisional Acceptance, the Contractor shall deliver to the Client an executed guarantee for an amount equal to five percent (5%) of the Contract Price in the form set out in Annex G (*Form of Warranty Period Guarantee*) which shall remain in force until the expiration of the Warranty Period (the "**Warranty Period Guarantee**"). The Warranty Period Guarantee shall secure the full and faithful performance of the Contractor's obligations set forth in this Contract, including the obligations of the Contractor set forth in this Clause 18, until the expiration of the Warranty Period.

19. FORCE MAJEURE

19.1. Effect of Force Majeure

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

19.2. Notice of Occurrence

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

19.3. Continued Performance

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

19.4. Duty to Avoid

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

19.5. Termination for Continuing Force Majeure

If any Force Majeure continues for a period of more than [REDACTED] consecutive days, either Party shall be entitled to terminate this Contract upon providing a twenty-eight (28) day prior notice to the other Party.

19.6. Payment on Termination for Force Majeure

If the Contract is terminated due to Force Majeure in accordance with Clause 19.5, the following provisions shall apply:

19.6.1. the Contractor shall stop all Works and place no further orders or subcontracts;

- 19.6.2. the Client shall pay the Contractor for the Works required by this Contract prior to Contract termination and which have been performed and meet the requirements of this Contract;
- 19.6.3. the Client shall pay the cost of plant and materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this plant and materials shall become the property of (and be at the risk of) the Client when paid for by the Client, and the Contractor shall place the same at the Client's disposal;
- 19.6.4. The Client shall pay the Contractor for the cost of removal of temporary works and demobilization of his equipment and personnel.
- 19.6.5. the Client shall be entitled to take possession of the Works performed up to the date of termination following payment by the Client to the Contractor of any amount then outstanding which is owed by the Client to the Contractor and is not disputed by the Client;
- 19.6.6. the Contractor shall reimburse to the Client any portion of the Contract Price which has been paid by the Client in excess of Works performed up to the termination date, as reasonably determined by the Client;
- 19.6.7. the Contractor shall, upon the written request of the Client following payment by the Client to the Contractor of any amount then outstanding which is owed by the Client to the Contractor and is not disputed by the Client, execute such documents and take such other action as the Client may reasonably require to (i) effectively assign to the Client the interest of the Contractor in any of the subcontracts entered into between the Contractor and its Subcontractors in respect of the Works (as well as the interest of the Contractor in any bond or other performance security held by the Contractor in respect of any such subcontracts) as may be designated in such request or (ii) to effectively transfer to the Client title to the Works (including title to the Supply and the Contractor's Drawings) as may be designated in such request; and
- 19.6.8. (i) the Contractor shall remain liable in respect of the Works completed prior to such termination, including in respect of its obligations under Clauses 14 and 18, and (ii) the Contractor, if requested by the Client and in such case at the Contractor's cost, shall have the obligation to complete or alter such parts of the Works as may be required to leave the Site safe and not subject to risk of causing damage to the environment.

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

20. **SUSPENSION OF WORKS**

20.1. Suspension by Client

- 20.1.1. The Client shall be entitled to suspend this Contract by prior written notice to the Contractor if the Contractor is in breach of a material provision of this Contract and does not cure the breach within a reasonable time period indicated by the Client in a written notice to the Contractor, which time period shall not be less than thirty (30) days from the date of the notice. During any such suspension, the Contractor shall protect and secure the Works wherever located against any deterioration, loss or damage, at its own cost.

- 20.1.2. At any time and for any reason (other than in the circumstances described in Clause 20.1.1), the Client may suspend the Works or any portion thereof for a period of no more than 30 days by notice in writing to the Contractor which shall specify the anticipated date on which the Works shall be resumed. During any such suspension, the Contractor shall protect and secure the Works wherever located against any deterioration, loss or damage, at the cost of the Client. The Contractor shall use reasonable efforts to mitigate the impact of such suspension and resume the Works on the date specified by the Client, provided that, (i) should the suspension be 30 days or less, upon resumption of the Works the Contractor shall have the right to an Adjustment Event, which Adjustment Event cost shall have been paid prior to the recommencement of the work hereunder or (ii) should the suspension be for greater than 30 days, the parties shall agree to the Adjustment Event cost and its payment schedule during the suspension.

20.2. Suspension by Contractor

- 20.2.1. The Contractor may at its option suspend wholly or partly the performance of the Works if the Client fails to pay any undisputed amount due and payable to the Contractor within twenty (20) days of the due date of such payment.
- 20.2.2. In the event the Contractor suspends the performance of the Works in accordance with Clause 20.2.1, the Contractor shall protect and secure the Works wherever located against any deterioration, loss or damage at the cost of the Client as an Adjustment Event and shall have the right to an Adjustment Event. The Adjustment shall have been paid to the Contractor prior to resumption the Works.

21. **TERMINATION**

21.1. Termination by Client for Contractor Default

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

- 21.1.1. the Contractor is insolvent or if any proceeding is instituted against the Contractor seeking to adjudicate the Contractor as bankrupt or insolvent, or if the Contractor makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of the Contractor, or if the Contractor files a petition seeking to take advantage of any Law relating to bankruptcy, insolvency, winding up or composition or readjustment of debts and, in the case of any such proceeding instituted against the Contractor (but not by the Contractor) if such proceeding is not dismissed within forty-five (45) days of such filing;
- 21.1.2. by the Longstop Date, the Plant has failed to achieve at least the Minimum Performance Ratio;
- 21.1.3. the Contractor abandons the Works for a reason not attributable to the occurrence of a Force Majeure, or any other reason stipulated in the Contract without prejudice to the Contractors other obligations under this Contract (including under Clause 19.3), and such breach is not cured within thirty (30) days after receipt of a written notice from the Client of such breach;
- 21.1.4. the Contractor fails to comply with the provisions of Annex O (*Compliance*), and such breach is not cured within sixty (60) days after receipt of a written notice from the Client of such breach;

- 21.1.5. any of the guarantees referred to in Clause 2.1.2 or the Warranty Period Guarantee is terminated or cancelled or is not renewed (and notice has been received by the Client of such renewal) at least 30 days prior to its expiry in accordance with Clause 2.1.2, unless such guarantee is no longer required to remain in place in accordance with the terms of this Contract;
- 21.1.6. the Contractor assigns this Contract or any part of its rights or obligations under this Contract, except as permitted pursuant to Clause 25.1;
- 21.1.7. the Contractor fails to obtain or maintain any of the insurance policies referred to in Clause 24 or any of such insurance policies is terminated or cancelled or is not renewed prior to its expiry, and such breach is not cured within thirty (30) days after receipt of a written notice from Contractor of such breach;
- 21.1.8. the Contractor is in breach of any other material provision of this Contract, and such breach is not cured within sixty (60) days after receipt of a written notice from the Client of such breach.

21.2. Termination by Client for Convenience

The Client may, without cause and for any reason, elect to terminate this Contract upon a thirty (30)-day prior written notice to the Contractor, in which case the provisions of Clause 21.5 shall apply, *mutatis mutandis*, provided that the Client shall not terminate the Contract under this Sub-Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor.

21.3. If the Client elects to terminate this Contract pursuant to Clause 21.1 (*Termination by Client for Contractor Default*) or 17.3 (failure to meet the Minimum Performance Ratio by the Longstop Date), the following provisions shall apply:

- 21.3.1. the Contractor shall stop all Works and place no further orders or subcontracts;
- 21.3.2. the Contractor shall not be entitled to receive any further payment until all the Works required by this Contract prior to Contract termination have been performed and meet the requirements of this Contract;
- 21.3.3. the Client shall be entitled to take possession of the Works performed up to the date of termination duly paid by Client;
- 21.3.4. the Contractor shall reimburse to the Client any portion of the Contract Price which has been paid by the Client in excess of Works performed up to the termination date, as reasonably determined by the Client;
- 21.3.5. the Client shall be entitled to enforce its rights under the advance payment guarantee described in Clause 2.1.2.1 (if still in force), the performance guarantee described in Clause 2.1.2.2 and the Warranty Period Guarantee, for the amounts to which the Client is entitled under the Contract, it being specified that unless there are unpaid (disputed or undisputed) amounts due by the Contractor to the Client under the Contract, the Client shall return the Advance Payment Guarantee, the Performance Guarantee and/or the Warranty Period Guarantee, as applicable;
- 21.3.6. the Contractor shall, upon the written request of the Client, execute such documents and take such other action as the Client may reasonably require to (i) effectively assign to the Client the interest of the Contractor in any of the subcontracts entered into between the Contractor and its Subcontractors in respect of the Works (as well as the interest of the Contractor in any bond or other performance security held by the Contractor in respect of any such subcontracts) as may be designated in such

request or (ii) to effectively transfer to the Client title to the Works (including title to the Supply and the Contractor's Drawings) as may be designated in such request;

- 21.3.7. the Client shall be entitled to, or appoint a third party to, perform any outstanding Works to complete the Plant, at the cost and expense of the Contractor and, if applicable, without limiting any claim in respect of additional amounts, use the proceeds under the advance payment guarantee described in Clause 2.1.2.1, the performance guarantee described in Clause 2.1.2.2 and the Warranty Period Guarantee to pay for such Works;
- 21.3.8. if (i) the direct costs to the Client of termination (including reasonably and properly incurred compensation for additional professional services and all out-of-pocket costs incurred in having all the Works completed, and compensation for any delay in completion of the Works), and (ii) the amounts incurred by the Client in respect of penalties, interest charges, capital payments, damages and costs incurred in connection with financing or loan documents with the Lenders and other agreements with third parties such as shareholders, other subcontractors exceed any unpaid balance of the Contract Price, the Contractor shall pay the difference to the Client; and
- 21.3.9. (i) the Contractor shall remain liable in respect of the Works completed prior to such termination, including in respect of its obligations under Clauses 14 and 18, and (ii) the Contractor, if requested by the Client and in such case at the Contractor's cost, shall have the obligation to complete or alter such parts of the Works as may be required to leave the Site safe and not subject to risk of causing damage to the environment.

21.4. Termination by Contractor

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

- 21.4.1. any suspension pursuant to Clause 20.1.2 or Clause 26.4.2 (*Risk Evaluation, Health, Safety and Handling of Hazardous Materials*) continues for more than ninety (90) consecutive days; or
- 21.4.2. the Client is insolvent or if any proceeding is instituted against the Client seeking to adjudicate the Client as bankrupt or insolvent, or if the Client makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of the Client, or if the Client files a petition seeking to take advantage of any Law relating to bankruptcy, insolvency, winding up or composition or readjustment of debts and, in the case of any such proceeding instituted against the Client (but not by the Client) if such proceeding is not dismissed within forty-five (45) days of such filing; or
- 21.4.3. the Client having failed to pay any undisputed amount due and payable to the Contractor within forty-five (45) days of the due date of such payment; or
- 21.4.4. the Client fails to comply with the provisions of Annex O (*Compliance*), and such breach is not cured within forty-five (45) days after receipt of a written notice from the Contractor of such breach.

For the avoidance of doubt:

- (a) the Client shall not be considered to be in breach or default if, (i) such default is caused by or is otherwise attributable to a breach by the Client's

obligations under this Contract, or (ii) subject to Clause 21, occurs as a result of a Force Majeure Event declared by either Party in accordance with Clause 21; and

- (b) an assignment by the Client pursuant to Clause 27.2 shall not constitute an Client Default pursuant to Clause 23.4.2 above.

21.5. If the Contractor elects to terminate this Contract pursuant to Clause 21.4 (*Termination by Contractor*) or if the Client elects to do so pursuant to Clause 21.2, the following provisions shall apply:

- 21.5.1. the Contractor shall stop all Works and place no further orders or subcontracts;
- 21.5.2. the Client shall be entitled to take possession of the Works performed up to the date of termination duly paid by Client;
- 21.5.3. the Contractor shall reimburse to the Client any portion of the Contract Price which has been paid by the Client in excess of the aggregated amount of Works performed up to the termination date, as reasonably determined by the Client;
- 21.5.4. the Contractor shall, upon the written request of the Client and following payment by the Client to the Contractor of all amount then outstanding which are owed by the Client to the Contractor and is not disputed by the Client, execute such documents and take such other action as the Client may reasonably require to (i) effectively assign to the Client the interest of the Contractor in any of the subcontracts entered into between the Contractor and its Subcontractors in respect of the Works (as well as the interest of the Contractor in any bond or other performance security held by the Contractor in respect of any such subcontracts) as may be designated in such request or (ii) to effectively transfer to the Client title to the Works (including title to the Supply and the Contractor's Drawings) as may be designated in such request;
- 21.5.5. the Client shall pay the Contractor for the unpaid portion of any Works performed up to the effective date of termination of the Contract;
- 21.5.6. the Client shall promptly pay the Contractor for reasonable additional costs which are reasonably incurred and directly related to the termination of this Contract, including, but not limited to, reasonable costs, applicable namely to terminated subcontracts entered into between the Contractor and its Subcontractors in respect of the Works, provided that support documentation satisfactory to the Client is submitted by the Contractor;
- 21.5.7. the Client shall promptly pay to the Contractor an element of loss profit equal [REDACTED] of the outstanding portion of the Contract Price on the date of termination of the Contract; and
- 21.5.8. (i) the Contractor shall remain liable in respect of the Works completed prior to such termination, including in respect of its obligations under Clauses 14 and 18, and (ii) the Contractor, if requested by the Client and in such case at the Client's cost, shall have the obligation to complete or alter such parts of the Works as may be required to leave the Site safe and not subject to risk of causing damage to the environment.

22. INDEMNIFICATION

22.1. Contractor's Indemnity

22.1.1. The Contractor shall indemnify and hold harmless the Client, its Affiliates and their respective officers, directors, employees and agents from and against any Liability or Claim incurred or suffered by any of them arising out of or resulting from any Claim of a third party in respect of injury to or death of persons, or damage to or loss of physical property, to the extent caused by (i) negligent acts or omissions of the Contractor or its Subcontractors, or (ii) any failure of the Contractor to comply with its obligations under this Contract. The Client shall promptly notify the Contractor of any third-party Claim which may give rise to the Contractor's obligation to indemnification pursuant to this Clause 22.1. The Contractor may, at its own cost, conduct all negotiations for the settlement of the Claim and any litigation that may arise in relation thereto to the extent that it does not affect the rights of the Client or the ownership, operation or maintenance of the Plant.

22.2. Client's Indemnity

The Client shall indemnify and hold harmless the Contractor, its Affiliates and their respective officers, directors, employees and agents from and against any Liability or Claim incurred or suffered by any of them arising out of or resulting from any Claim of a third party in respect of injury to or death of persons, or damage to or loss of physical property, to the extent caused by (i) negligent acts or omissions of the Client, or (ii) any failure of the Client to comply with its obligations under this Contract. The Contractor shall promptly notify the Client of any third-party Claim which may give rise to the Client's obligation to indemnification pursuant to this Clause 22.2. The Client may, at its own cost, conduct all negotiations for the settlement of the Claim and any litigation that may arise in relation thereto to the extent that it does not affect the rights of the Contractor.

23. LIMITATION OF LIABILITY

23.1. Liability for damages

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

23.2. Maximum cap on Liability

23.2.1. Subject to Clause 23.2.2 and 23.2.3, each Party expressly agrees that under no circumstances shall the aggregate liability of the other Party under this Contract, under any theory of recovery (including reimbursement of costs incurred by such Party), exceed [REDACTED] of the Contract Price.

23.2.2. The limitations of liability set forth in Clause 23.2.1 shall not apply in respect of any Liability or Claim incurred or suffered by any Party arising out of or resulting from:

23.2.2.1. gross negligence, fraud, criminal or wilful misconduct of a Party;

23.2.2.2. any defect in the title to the Works at the time of its transfer in accordance with Clause 14;

23.2.2.3. warranty obligations of the Contractor related to the correction of Defects discovered in the Works during Warranty Period and pursuant to the conditions hereof, including Serial Defects, in respect of which the [REDACTED]

aggregate liability of the Contractor shall, subject to Clause 23.2.3, be limited to [REDACTED] of the Contract Price;

23.2.2.4. the obligation of such Party to indemnify the other Party in respect of third-party Claims;

23.2.2.5. any obligation of the Contractor pursuant to Clause 28;

23.2.2.6. the breach of any confidentiality obligations under this Contract; or

23.2.3. Notwithstanding the foregoing, (i) amounts which the Contractor or the Purchaser has received or recovered pursuant to receipt of insurance proceeds from any insurer, and (ii) amounts recovered, received or saved, and other compensation or value received, by the Contractor as a result of the enforcement of its own warranty and other rights as against its own suppliers, service providers, contractors or sub-contractors in respect of the correction of any Defects in the Works, including Serial Defects, shall not be counted in the calculation of the foregoing limitations of liability.

23.3. Extent of Liability

23.3.1. The provisions of this Clause 23 (*Limitation of Liability*) shall prevail over any conflicting or inconsistent provisions set forth elsewhere in this Contract.

23.3.2. In all cases the Party claiming a right to be indemnified in accordance with the Contract shall be obliged to take all reasonable measures to mitigate the Liability resulting from the applicable event.

24. INSURANCE

24.1. The Client shall, at their own expense, maintain the following insurance:

24.1.1. Construction/Erection All Risk Insurance. Such insurance shall:

24.1.1.1. Insure the Supply and the Works against loss or damage while located at the Site;

24.1.1.2. Provide coverage on a replacement cost basis with a policy limit of not less than the value of the Plant, subject to certain sub-limits and aggregate limits;

24.1.1.3. Be maintained until the Risk Transfer Date and with respect to extended maintenance coverage continue until the expiry of the Warranty Period;

24.1.1.4. Name the Contractor and subcontractors of any tier as additional insureds, as their interests may appear;

24.1.1.5. Provide 45 days' notice of cancellation to the Contractor (or lesser period as the policy allows for cancellation due to non-payment of premium);

24.1.1.6. Be subject to a deductible not to [REDACTED] per occurrence which shall be previously agreed with Contractor;

24.1.1.7. The rest of the terms and conditions of this policy shall be agreed between Client and Contractor before the policy is issued.

24.1.2. Contract Works Public Liability Insurance. Such insurance shall:

- 24.1.2.1. Insure against legal liability arising out of third party bodily injury or property damage occurring at the Site and arising out of the Supply or Services;
- 24.1.2.2. Provide a limit of liability of not less than [REDACTED] per occurrence, subject to certain sub-limits and aggregate limits which shall be previously agreed with Contractor
- 24.1.2.3. Be maintained until the Risk Transfer Date;
- 24.1.2.4. Name the Contractor and Subcontractors or any tier as additional insureds;
- 24.1.2.5. Contain severability of interest and cross liability clause;
- 24.1.2.6. Provide 45 days' notice of cancellation to the Contractor (or lesser period as the policy allows for cancellation due to non-payment of premium);
- 24.1.2.7. Be subject to a deductible not to exceed [REDACTED] [REDACTED] occurrence, [REDACTED] [REDACTED] respect of sudden & accidental pollution liability and Client's liability in respect of foreign nationals and USD25,000 in respect of other claims which shall be previously agreed with Contractor;
- 24.1.2.8. Name the Contractor and subcontractors of any tier as additional insureds, as their interests may appear;
- 24.1.2.9. The rest of the terms and conditions of this policy shall be agreed between Client and Contractor before the policy is issued.

24.1.3. Professional Liability Insurance. Such insurance shall:

- 24.1.3.1. Insure against legal liability arising out of any negligent act, error or omission of the Contractor in the performance of the Services.
- 24.1.3.2. Provide a limit of liability of not less than [REDACTED] in the aggregate and shall be previously agreed with Contractor;
- 24.1.3.3. Be maintained until expiry date of the Warranty Period;
- 24.1.3.4. Name the Contractor and subcontractors of any tier as additional insureds, as their interests may appear;
- 24.1.3.5. The rest of the terms and conditions of this policy shall be agreed between Client and Contractor before the policy is issued.

24.1.4. Public Liability Insurance. Such insurance shall:

- 24.1.4.1. Insure against legal liability arising out of third party bodily injury or property damage occurring away from the Site;
- 24.1.4.2. Include Clients' liability coverage (including injury occurring at the Site);
- 24.1.4.3. Provide a limit of liability of not less than [REDACTED] [REDACTED] per occurrence;
- 24.1.4.4. Be maintained until the expiry of the Warranty Period;

- 24.1.4.5. Name the Client, the Lenders and their respective Affiliates, officers, directors, employees, agents and indemnitees as additional insureds; and subcontractors of any tier will be included as additional insured.
- 24.1.4.6. Contain severability of interest and cross liability clause;
- 24.1.4.7. Contractor, shall provide 45 days' notice of cancellation to the Client (or lesser period as the policy allows for cancellation due to non-payment of premium);
- 24.1.4.8. Be subject to a deductible not to exceed [REDACTED] per occurrence.
- 24.1.5. Automobile Liability Insurance (if licensed motor vehicles are used in the performance of the Services). Such insurance shall:
 - 24.1.5.1. Insure all licensed motor vehicles owned, leased, operated or used by the Contractor in connection with the Services;
 - 24.1.5.2. Provide a limit of liability (in conjunction with any excess liability insurance);
 - 24.1.5.3. Be maintained until the vehicles are no longer used in the performance of the Services;
 - 24.1.5.4. Be subject to a deductible to be agreed on between the Parties.
- 24.1.6. All Risk insurance. Such insurance shall:
 - 24.1.6.1. Insure against loss or damage to plant, equipment, and other property (other than the Supply and the Works) owned, leased, or supplied by the Contractor, while located at the Site;
 - 24.1.6.2. Be maintained until the expiry of the Warranty Period or until the equipment and materials are no longer required in connection with the Services and have been removed from the Site;
 - 24.1.6.3. Be subject to a deductible not to exceed [REDACTED] per occurrence;
 - 24.1.6.4. Name the Contractor and subcontractors of any tier as additional insureds, as their interests may appear;
 - 24.1.6.5. The rest of the terms and conditions of this policy shall be agreed between Client and Contractor before the policy is issued.

The Client shall not be responsible for providing insurance on behalf of the Contractor or Subcontractors covering injury to their employees.

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

- 24.2. Without limiting any of the obligations and liabilities of the Contractor under this Contract, the Contractor shall, at its own expense, maintain the following insurance:

- 24.2.1. Workers' compensation and other compulsory insurance as required by applicable law.

Each policy shall provide primary coverage without right of contribution of any insurance carried by the Owner or the Lenders.

All insurances described in Clause 26.2 shall be in a form and placed with financially sound and reputable insurers acceptable to the Owner and the Lenders.

- 24.3. The Contractor shall require each Subcontractor to maintain insurance of a type and in an amount as would normally be required by a prudent contractor involved in the construction of a mineral processing plant of comparable size and risk profile to the Project which does not self-insure, including but not limited to workers' compensation and other compulsory insurance as required by applicable law.
- 24.4. Each Party shall provide the other with certificates of insurance, and upon request detailed certificates to the reasonable satisfaction of the Client, evidencing insurance as required herein.

25. TRANSFER, ASSIGNMENT AND SUBCONTRACTING

25.1. Assignment

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

25.2. Subcontracting

25.2.1.1. Contractor Subcontractors

25.2.1.2. The Contractor shall have the right to subcontract parts of the Works but not all of the Works. Annex N (*List of Potential Subcontractors and Suppliers*) sets out a list of potential Subcontractors which the Contractor may use for the elements of the Works identified in that Annex and against which the Client declares having no objection as of the date of this Contract. Should the Contractor wish to use a Subcontractor not in Annex N for the supply of corresponding equipment, or where a Subcontractor listed in Annex N is to perform a different element of Work to that stated Annex N, before using any Subcontractor, the Contractor shall notify the Client in writing of the identity of such proposed Subcontractor and that the Client (acting reasonably) will have the right to object to the identity of Subcontractors, within 5 Business Days since the notice of the Contractor, in which case the Contractor shall refrain from using such Subcontractor.

25.2.1.3. The Contractor shall ensure that Subcontractors comply with [IFC Environmental and Social Performance Standards and applicable World Bank Group Environmental, Health, and Safety Guidelines].

25.2.1.4. The Contractor shall be responsible for the acts, omissions, defaults and negligence of any of its Subcontractors as if they were the acts, omissions, defaults or negligence of the Contractor.

25.2.1.5. The Contractor shall ensure that each subcontract entered into with a Subcontractor for a value of more than [REDACTED]

expressly authorizes the assignment by the Contractor of all of its interest in such subcontract to the Client upon the termination of this Contract due a default of the Contractor.

25.2.2. Client subcontractors

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

26. ENVIRONMENTAL COMPLIANCE

26.1. Environmental and Social Action Plan / Stakeholder Engagement Plan

Contractor shall respect the Environmental and Social Action Plan of the Plant and the Climate Corporate Governance Action Plan and the HSE Plan (Annex M).

26.2. Asbestos and Other Hazardous Materials

The Client is responsible for ensuring that the Site, including the ambient air and all parts of the Site where the Supply will be installed, is free of asbestos and other Hazardous Materials on the Commencement Date. Thereafter the responsibility shall be with the Contractor. The ambient air shall be deemed free of asbestos if the airborne asbestos fiber concentration does not exceed one thousand (1000) fibers/m³ measured in accordance with a procedure acceptable to the Contractor. In the event this level is exceeded, the provisions of Clause 26.4 (*Risk Evaluation, Health, Safety and Handling of Hazardous Materials*) shall apply mutatis mutandis.

26.3. Hazardous Material and Trash

The Contractor shall only use Hazardous Materials to perform the Works to the extent permitted by applicable Laws and in accordance with applicable Laws and Industry Standards. The Contractor shall handle and store, at the Site, in such locations and containers as the Contractor may consider appropriate and in accordance with applicable Laws and Industry Standards, any Hazardous Wastes and Trash which it generates during the performance of the Works. The Contractor shall designate a waste storage facility at the Site where Hazardous Waste and Trash shall be placed by the Contractor. The Contractor shall dispose of all Hazardous Waste and Trash in accordance with applicable Laws.

26.4. Risk Evaluation, Health, Safety and Handling of Hazardous Materials

26.4.1. The Client shall inform the Contractor, prior to the Commencement Date, about any Hazardous Materials which may exist at the Site as of the Commencement Date.

26.4.2. The Contractor shall provide reasonable support to the Client in the assessment of the existence of any health or safety risks related to Hazardous Materials present at the Site as of the Commencement Date and of protective or preventive measures which should be taken in connection with the foregoing. If in the course of the Works a health or safety risk arises in connection with Hazardous Materials present at the Site as of the Commencement Date (including the case where the applicable limit values for Hazardous Materials are exceeded) which the Client could not reasonably discover prior to the Commencement Date or if the Contractor has reasonable and substantiated doubt concerning the same, then, without limiting its other rights and remedies, the Contractor shall be entitled to suspend the Works until the respective

health or safety risk has been permanently eliminated, or the respective doubt has been proven to be unsubstantiated, or agreed protective or preventive measures have been taken by the Client.

- 26.4.3. The Contractor shall have the right to an Adjustment Event to comply with any special protective or preventive measures taken by the Client as well as costs resulting from any suspension of the Works pursuant to Clause 26.4.2.

27. CONFIDENTIALITY AND PUBLICATIONS

- 27.1. Each Party shall keep confidential the information received from the other Party in connection with this Contract (the "**Confidential Information**") and shall not disclose such Confidential Information to a third party, nor disclose it in changed or processed form, without the prior consent of the other Party and shall use it for the sole purpose of this Contract. This obligation shall not apply to information which can be proven to be
- 27.1.1. part of the public domain at the time of receipt or becomes part of the public domain thereafter through no fault of the recipient; or
 - 27.1.2. already known to the recipient at the time of receipt or has been disclosed to him thereafter by others without any confidentiality obligation; or
 - 27.1.3. independently developed by the recipient without reference to the Confidential Information.
- 27.2. Notwithstanding Clause 27.1, each Party shall have to right to disclose Confidential Information of the other Party to its directors, officers, employees, consultants, subcontractors and other representatives or the Lenders (and its consultants) and those of its Affiliates who have a need to know such Confidential Information for the purpose of the performance by such Party of its obligations under this Contract or otherwise for the purpose of the construction, operation, maintenance, financing, refinancing or transfer of the Plant, provided that any such person is bound by confidentiality obligations to an extent not less stringent than the obligations imposed on the Parties under this Clause 27.
- 27.3. When required to disclose Confidential Information pursuant to applicable Laws, a Party may disclose Confidential Information of the other Party; provided, however, that prior to making any such disclosure, such Party shall: (a) provide the disclosing Party with a timely prior written notice of the Confidential Information requested to be disclosed; (b) minimize the amount of Confidential Information to be provided in accordance with the interests of the disclosing Party and the requirements of applicable Laws; and (c) make every commercially reasonable effort (which may include participation by the disclosing Party in discussions with any applicable Governmental Authority involved) to secure confidential treatment and minimization of the Confidential Information to be disclosed. In the event that efforts to secure confidential treatment are unsuccessful, to the extent reasonably possible and not in breach of applicable Laws the disclosing Party shall have the prior right to revise such information to be disclosed to minimize the disclosure of such information in a manner consistent with its interests and the requirements of applicable Laws.

28. INTELLECTUAL PROPERTY

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

perpetual, irrevocable, non-exclusive, transferable and sub-licensable and royalty-free license to use any Intellectual Property Rights contained in the Works and/or the Contractor's Drawings and Software for the purpose of the construction, operation and maintenance, adjustment, repair, replacing or renewing of the Plant. Such license shall not include the right to disclose the Contractor's confidential know-how or trade secrets to any third party or to grant any sub-licenses.

- 28.2. All Intellectual Property Rights developed by Contractor during the performance of the Contract, including any improvement to the Works, shall exclusively vest in the Contractor. The Contractor hereby grants the Client a perpetual, irrevocable, non-exclusive, non-transferable (other than with the Project), sub-licensable and royalty-free license to use any Intellectual Property Rights contained in the Works and/or the Contractor's Drawings and Software for the purpose of the construction, operation and maintenance of the Plant.
- 28.3. Such license shall not include the right to disclose the Contractor's confidential know-how or trade secrets to any third party or to grant any sub-licenses. Any other use of such Intellectual Property Rights, including, without limitation, its copying or use for a modification, duplication or replication of the Work, is not permitted.
- 28.4. In the event Claims, whether in or out of court, are brought against the Client for infringement of Intellectual Property Rights in connection with the fabrication, manufacture, installation or use of the Works, the Contractor shall hold harmless and indemnify the Client from and against such Claims and any Liability incurred or suffered by the Client arising out of or resulting from such Claims.
- 28.5. The Client shall promptly inform the Contractor of such Claims and shall provide the Contractor with necessary information and, to the extent possible, shall leave the conduct of any resulting legal proceeding to Contractor.
- 28.6. Without the Contractor's prior written consent, the Client shall not settle any Claim of alleged infringement by a holder of Intellectual Property Rights.
- 28.7. The Contractor shall be entitled to acquire Intellectual Property Rights or licenses in order to enable lawful use of the Works.
- 28.8. Where the Contractor is unable to obtain necessary Intellectual Property Rights, the Client shall, upon the Contractor's request, use its commercially reasonable efforts, at Contractor's expense, to obtain such rights and licenses. In addition, the Contractor shall also be entitled to replace or modify the infringing items of the Works as long as such items remain in compliance with the requirements of this Contract.

29. DRAWINGS, MANUALS AND SOFTWARE

29.1. Drawings and Manuals

Prior to Provisional Acceptance, the Contractor shall deliver to the Client three (3) copies of preliminary as-built (red marked) drawings of the Works, final (in paper and source digital (Autocad) as-built drawings, operation and maintenance manuals and any other final document to be provided by Contractor according to Annex D (*Contractor's Documents*) and the Specifications.

30. ERRORS IN CONTRACTOR'S DRAWINGS

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

30.1. Software

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

31. **FINANCING**

31.1. Assistance for Financing of Project

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

31.2. Amendment of this Contract

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

32. **RESOLUTION OF DISPUTES**

32.1. Settlement by the Parties

If any dispute arises in connection with this Contract, including any question regarding the existence, validity or termination or any subsequent amendment of the Contract (a "**Dispute**"), the responsible representatives of the Parties shall attempt, in fair dealing and in good faith, to settle such Dispute.

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

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

32.2. Arbitration

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

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

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

The decision of the arbitrator(s) shall be final and not subject to appeal in front of a national court.

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

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

32.3. Language

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

32.4. Performance to Continue

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

33. APPLICABLE LAW

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

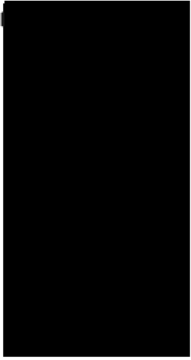
The Parties commit themselves to take all measures necessary to prevent corruption according to Annex O (*Compliance*).

34. MISCELLANEOUS

34.1. No Right to Audit

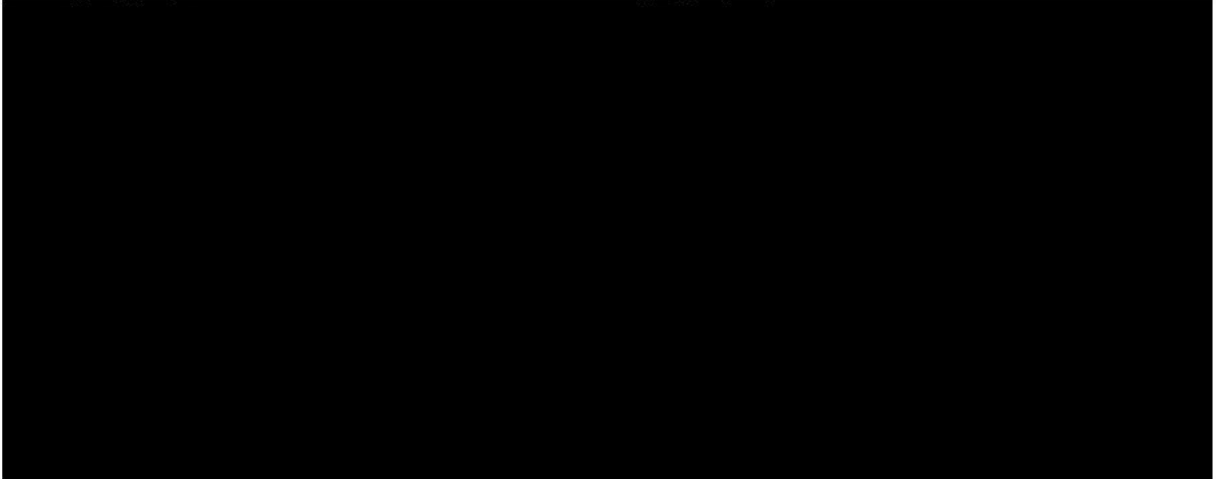
The Client shall have no right to inspect, copy or audit any of the Contractor's books, accounts, time cards, records or estimates for Works performed pursuant to this Contract. Notwithstanding the foregoing, (i) where pursuant to this Contract the Contractor is required to provide the Client with estimates or invoices for additional costs or expenses, the Client shall have the right to audit the books, accounts, time cards, records and estimates of the Contractor as required to verify that the amounts and charges set forth in such estimates or invoices were

accurately calculated by the Contractor, and (ii) the Client shall have the right to audit the books, accounts, time cards, records of the Contractor as required to assess the compliance by the Contractor with its anti-corruption, environmental and health and safety obligations under the Contract.

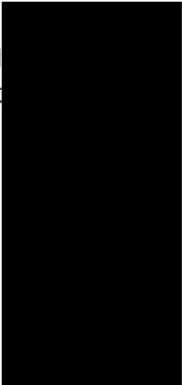


34.2. Notices

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



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



34.3. Non-Waiver

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

34.4. Survival

Notwithstanding any other provision of this Contract, the Parties' obligations under Clauses 23, 24, 28, 29 and 33 shall survive the termination of this Contract.

34.5. Entire Agreement

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

34.6. Joint Effort

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

34.7. Independent Contractor

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

34.8. Counterparts

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

34.9. Severability

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

(Signature page to follow)

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

For and on behalf of **Client**

Signature

Name: _____

Position: _____

Date: _____

For and on behalf of **Contractor**

Signature

Name: _____

Position: _____

Date: 14 February 2023