

GENERAL TERMS AND CONDITIONS: APPOINTMENT AS SERVICE PROVIDER

We refer to the purchase order (the "Order") to which these general terms and conditions ("GTC's") are attached (together the "Agreement").

These GTC's are applicable to the Services (as described in the Order) to be rendered by the Vendor (hereinafter referred to as the "Consultant") to **Todal Mining (Private) Limited** (the "Company"). The Company confirms the Consultant's appointment to provide such Services on the terms set out in the Agreement.

1. DEFINITIONS

For purposes of this Agreement:

- 1.1 "Affiliate" means any other entity that directly or indirectly through one or more intermediaries, Controls or is Controlled by, or is under the Common Control with the party in question. For the purpose hereof "Control" means the beneficial ownership of the majority in number of the issued share capital of any entity (or the whole or majority of the entity's assets) and/or the right or ability to directly or otherwise control the entity or the votes attaching to the majority of the entity's issued share capital and "Controlled" or "Under Common Control" shall have a similar meaning;
 - 1.2 "Business Day" means any day which is not a Saturday, a Sunday or an official public holiday in the applicable jurisdictions of the Consultant and the Company;
 - 1.3 "Party" means a party to this Agreement and "Parties" shall have a corresponding meaning; and
 - 1.4 "VAT" means all applicable value added tax levied by the relevant authorities and applicable to the jurisdictions in which the Services are rendered.
- ### 2. APPOINTMENT
- 2.1 The Company appoints the Consultant as a non-exclusive independent contractor to perform the Services set out in the Order and all ancillary services required whether stated or not on the fee terms contained in the Order.
 - 2.2 The Consultant shall report to such person authorised or nominated by the Company in writing from time to time (the "Representative"). The Consultant shall comply with all reasonable instructions issued by the Representative and complete the Services within the time frames provided for in this Agreement, or, in the absence of any such provisions, within a reasonable time. The Consultant shall fully co-operate, in good faith, with any member of the ERG Group (being, for the purposes hereof, Eurasian Resources Group S.a.r.l ("ERG") and its Affiliates) and such members' employees, contractors, agents and other consultants who may be providing services to the Company.
 - 2.3 In performing the Services, the Consultant shall be acting as an independent contractor and this Agreement shall not be construed as creating any relationship of agency, partnership, joint venture or employment between the Parties.
- ### 3. DURATION
- 3.1 Notwithstanding the date of signature of this Agreement ("Signature Date"), the Consultant's appointment shall be valid for the period indicated on the Order commencing on the date indicated on the Order for the Services to commence (the "Commencement Date") (the period being the "Initial Period") unless otherwise terminated in accordance with this Agreement. The terms of this Agreement shall apply to all Services rendered prior to the Commencement Date, if applicable.
 - 3.2 Prior to expiry of the Initial Period, the Company may, in its sole discretion, extend the Consultant's appointment for such further period as may be agreed upon in writing. The terms set out in this Agreement (or any other terms agreed to between the Consultant and the Company in writing) shall apply during any renewal period.
- ### 4. GENERAL OBLIGATIONS
- 4.1 The Services shall be provided: (i) in a professional and workmanlike manner, with reasonable care, diligence and skill; and (ii) to a level of service which is prompt, efficient, accurate, complete, appropriate, professional and competent, having due regard to the nature of the Services and the intended purpose thereof.
 - 4.2 The Consultant shall, for the duration of this Agreement, comply with all laws, regulations, codes and generally applied standards applicable to the Services and/or to the performance thereof and/or the subject matter of the Agreement (as applicable) and all applicable ERG Group policies, procedures, directives and guidelines, if any, as may be approved by the Company or otherwise determined by the Company from time to time.
 - 4.3 Where the Consultant imports or exports any goods, equipment or Services, into or from the Democratic Republic of the Congo ("DRC"), as the case may be, the Consultant has elected to, at its cost, exclusively make use of the clearing agent services offered by Trade Services (Co., Ltd) (registered with the new Trade Register of Lubumbashi, under number CD/LSHR/CCM/14-B-1620, and having its head office at No. 194, Moëro Avenue, Commune of Lubumbashi, Lubumbashi City, DRC) in order to facilitate the movement of such goods, equipment or Services.
 - 4.4 With regard to the Services, the Consultant shall ensure that its equipment and the inventions, marks and works (including any and all documents and procedures, systems and methods of whatsoever nature) which are prepared, produced or otherwise developed in whole or in part under or in connection with this Agreement (whether in hard copy or in electronic format) ("Results of Services"): (i) are fit

for the purpose intended as provided for in this Agreement; and (ii) comply with all applicable technical codes and standards as well as international best practices.

5. SUBCONTRACTORS

- 5.1 The Services may include services rendered or work performed for the Consultant by third persons under subcontracts entered into by the Consultant in its own name. Should the Consultant wish to subcontract with third parties, the approval of the Company shall first be obtained as follows:
 - 5.1.1 the approval shall be requested by the Consultant in writing and be supported by such information as may be reasonably required by the Company to make an informed decision; and
 - 5.1.2 such approval shall not be unreasonably withheld or delayed by the Company.
 - 5.2 Notwithstanding the Company's approval under paragraph 5.1, the Consultant shall remain fully responsible for the proper performance of the Services in accordance with the terms of this Agreement and the Consultant shall ensure that all parties engaged in the provision of the Services render such services in accordance with the terms of this Agreement.
- ### 6. FEES, EXPENSES AND PAYMENT
- 6.1 In consideration for the Services, the Company shall pay the Consultant the fee ("Fee") calculated in accordance with the Order. The Fee is fixed for the duration of this Agreement and shall not be subject to variation, escalation nor any adjustment, unless agreed in writing between the Consultant and the Company.
 - 6.2 The Consultant shall, by no later than the 25th (twenty-fifth) day of a month for Services rendered during that month (the "Required Invoice Date") furnish to the Company:
 - 6.2.1 a tax invoice in respect of the amounts due to the Consultant for Services rendered in respect of the Site, which amounts shall be exclusive of any applicable taxes, for the month concerned and containing all legally required mentions; and
 - 6.2.2 a schedule to the tax invoice referred to in paragraph 6.2.1 detailing:
 - 6.2.2.1 the breakdown of the Fee for the relevant period including, as applicable, timesheets recording man-hours expended;
 - 6.2.2.2 the list of disbursements approved by the Company ("Approved Disbursements") to which the tax invoice relates (together with the documents evidencing each Approved Disbursement where applicable); and
 - 6.2.2.3 any other documents which the Consultant deems necessary and/or the Company reasonably requires to support the amounts claimed in that invoice.
 - 6.3 Further to the provisions of paragraph 6.2, the Consultant shall furnish to the Company a monthly statement capturing all the tax invoices issued by the Consultant to the Company for the relevant month, by no later than the 10th (tenth) day of the following month ("Required Statement Date").
 - 6.4 Provided the statement concerned is received by the Company on or before the Required Statement Date, the Company shall (if it has no objection in respect of such statement, which objection may be raised at any time prior to or subsequent to payment) pay the amounts due in respect of such statement to the Consultant directly into the bank account nominated by the Consultant for this purpose, within 60 (sixty) days of the date of the relevant statement into the bank account to be advised by the Consultant to the Company in writing.
 - 6.5 Notwithstanding anything to the contrary contained herein, the Company shall have the opportunity to verify the invoice and/or any specific item or items of remuneration or disbursements claimed therein and calculate the amounts due to the Consultant. The Company shall not withhold payment of any amount to which the Consultant is entitled in accordance with this Agreement.
 - 6.6 If the Company disputes any specific item/s claimed in the invoice/statement, such dispute will be referred to dispute resolution in accordance with paragraph 21. The Consultant shall continue to provide the Services pending resolution of such dispute and the Company shall pay all undisputed amounts against the issue of a credit note for the disputed amount or against the issue of a substituted invoice for the undisputed amount.

7. TAXES

- 7.1 For purposes of this paragraph 7, "Tax" shall mean any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest payable in connection with any failure or any delay in paying any of the same), paid or payable under the relevant tax laws imposed by the relevant authority within the applicable jurisdictions (the "Territory") with respect to the execution or delivery of this Agreement.

- 7.2 Save for any VAT which may be payable by the Company under and pursuant to this Agreement, the Consultant indemnifies the Company and its Affiliates for any Tax or other government charges (however denominated) due or payable, imposed by the relevant authority within the Territory with respect to the execution and delivery of this Agreement.
- ### 8. DELIVERY
- 8.1 Time shall be of the essence in respect of the performance and delivery of the Services by the Consultant under this Agreement. If all or any portion of the Services are not performed, within a reasonable time, then the Company shall, at its election:
 - 8.1.1 cancel this Agreement without prejudice to any other rights it may have in law;
 - 8.1.2 refuse to accept subsequent performance of the remaining Services by the Consultant; and/or
 - 8.1.3 charge the Consultant, who shall be liable to pay, through set-off of a portion of the Fee due, owing and payable by the Company to the Consultant, a penalty in an amount equal to 2.5% (two point five per cent) of the aggregate Fee per week that performance of the Services is delayed.
 - 8.2 The Consultant shall immediately notify the Company in writing of any delays or any expected delays in delivery or performance of the Services and provide all information regarding the reason for and/or the extent of the delay. The Consultant shall be required to take all reasonable steps to mitigate any delay.
- ### 9. MEDICAL
- To the extent that the Consultant attends at the Company's operational site(s) the Consultant indemnifies the Company, the ERG Group and their officers, agents, directors and employees and undertakes to keep each of them indemnified against all claims, damages, liabilities, losses and costs of whatsoever cause or nature which they may suffer resulting from a failure by the Consultant to have sufficient medical insurance cover in respect of its employees, including but not limited to the provision of medical evacuation services, who shall provide the Services in terms of this Agreement.
- ### 10. HEALTH, SAFETY, ENVIRONMENTAL, COMMUNITY AND HUMAN RIGHTS
- 10.1 To the extent that the Consultant attends at any of the Company's operational site(s) the Consultant undertakes to comply with all applicable health, safety and environmental laws and the Client's or its Affiliates' health, safety and environmental policies, rules and/or guidelines from time to time, including those set out in **Schedule A**, in the execution of the Services. The Consultant shall take all reasonable steps to ensure that the Consultant's employees and others under its direction and control likewise observe and comply with the foregoing.
 - 10.2 The Consultant at all times undertakes to ensure compliance with the International Labour Organisation's (ILO) labour and human rights standards, the International Finance Corporation's (IFC) Performance Standards on Environmental and Social Sustainability, the IFC sector guidelines on mining, the World Bank Group's Environmental, Health and Safety Guidelines, and its guidelines for mining, the United Nations Guiding Principles on Business and Human Rights, the OECD Guidelines for Multi-national Enterprises, OECD's Supply Chain Due Diligence Guidance Annex II and the Voluntary Principles on Security and Human Rights. The Consultant shall take all reasonable steps to ensure that the Consultant's employees and others under its direction and control likewise observe and comply with the foregoing.
 - 10.3 Further to paragraph 10.2 above, the Consultant acknowledges that it is aware that the ERG Human Rights Policy is available at the following link: (<https://www.ergafrica.com/working-at-erg/>). The Consultant warrants that it has read and understood the Human Rights Policy.
 - 10.4 The Consultant agrees that if it breaches any of the provisions of this paragraph, the Company will have the right to immediately terminate this Agreement on written notice to the Consultant. The Company shall only pay amounts due for Services properly rendered in accordance with this Agreement at the time of such termination. No additional amount shall be charged by the Consultant in the event of any such termination.
- ### 11. VARIATIONS
- The Company may, in writing, instruct a variation to the Services, which variation may include the omission of certain Services. The cost and time consequences of the variation shall be agreed by the Parties and recorded in writing as an addendum to this Agreement. If the Parties are unable to agree the cost and time consequences of the variation within 5 (five) Business Days, the Consultant shall not proceed with the variation.

12. **LIABILITY AND INDEMNITY**
- 12.1 The Company's maximum aggregate liability in terms of, in connection with and/or arising from this Agreement, shall be limited to the Fee amount that has actually been paid by the Company to the Consultant in accordance with this Agreement, at the time the claim arises.
- 12.2 The Consultant indemnifies the Company, its officers, agents, directors and employees and Affiliates and undertakes to keep each of them indemnified against all claims, damages, liabilities, losses and costs of whatsoever cause or nature which they may suffer or incur, including in respect of any physical injury or death of any person, loss of productivity, or loss or damage occurring to any property, arising out of the provision of the Services.
- 12.3 Without derogating from any other rights the Company may have in law or in terms of this Agreement, the Consultant shall promptly re-perform and make good Services which are not in accordance with this Agreement or which are otherwise incorrectly or negligently performed, at the Consultant's own cost. The Consultant indemnifies the Company against all costs, expenses and liabilities incurred by the Company as a result of any such errors, which are not timeously rectified.
13. **TERMINATION**
- 13.1 If the Consultant breaches any of the provisions of this Agreement and remains in default for a period of 7 (seven) calendar days after receipt by the Consultant of written notice from the Company calling for such breach to be remedied, the Company shall be entitled, without prejudice to any other contractual or common law rights it may have, to terminate this Agreement immediately on written notice to the Consultant.
- 13.2 Notwithstanding anything else contained in this Agreement, the Consultant agrees that the Company shall, in its sole discretion and at any time, be entitled to terminate this Agreement on 30 (thirty) calendar days' written notice to the Consultant. The Company shall only pay amounts due for Services properly rendered in accordance with this Agreement at the time of such termination. No additional amount shall be charged by the Consultant in the event of any such termination.
- 13.3 It is expressly agreed between the Parties that should the Company terminate this Agreement under and in accordance with paragraph 13.2, the Consultant shall not be entitled by way of indemnity for any direct or indirect damages or consequential loss or damage, loss of opportunity, loss of revenue, loss of profit or anticipated profit, loss of contracts, loss of goodwill, and loss arising from such termination.
- 13.4 Upon termination of this Agreement for any reason ("**Termination**"), the Consultant shall:
- 13.4.1 promptly provide the Company with all information to enable the Company's personnel, or that of any third party nominated by the Company, to fully and effectively take over the Services and shall generally co-operate with the Company to facilitate a smooth, efficient, uninterrupted, and effective take-over of the Services; and
- 13.4.2 deliver to the Company all of the Results of the Services which are capable of being delivered either in hard copy and/or in electronic format and return to the Company all keys or other instrument/s of any nature whatsoever furnished to the Consultant in order to render, or in connection with, the Services.
14. **CONFIDENTIALITY**
- 14.1 In performing the Services, the Consultant shall come into possession of information that is private or confidential in that it is not generally known or available to third parties ("**Confidential Information**") and which relates to the Company, its projects, personnel and/or information which is, or is designed to be, used in the business of the Company or the ERG Group.
- 14.2 The Consultant agrees to use the Confidential Information only for the purposes of rendering the Services. To this end the Consultant shall be entitled to disclose the Confidential Information to the Consultant's employees, directors or subcontractors to the extent strictly necessary for the performance of the Services, provided such persons are subject to written confidentiality undertakings which are no less stringent than those applicable to the Consultant under this Agreement.
- 14.3 The Consultant agrees that it shall not, without the prior written consent of the Company, either during this Agreement or after its expiry or Termination for any reason whatsoever, use or disclose such Confidential Information to any third party.
- 14.4 If the Consultant is uncertain about whether certain information is to be treated as confidential, then the Consultant is obliged to treat it as confidential until the Company advises in writing that the information can be disclosed.
- 14.5 The Consultant shall return or destroy all of the original Confidential Information and any copies and reproductions (both written and electronic) in its possession and in the possession of any third party to whom it has disclosed such Confidential Information as contemplated in paragraph 14.2 (i) at any time upon the Company giving written notice to do so; and/or (ii) within 14 (fourteen) calendar days of the date of Termination.
- 14.6 The provisions of this paragraph 14 shall survive the Termination of this Agreement.
15. **CONFLICT AND NON-SOLICITATION**
- 15.1 The Consultant shall avoid any material conflict of the Consultant's own interests and those of the Company (and any of its Affiliates) and, in particular, the Consultant:
- 15.1.1 shall not derive any economic benefit to which the Consultant is not entitled by reason of the rendering of the Services from the Company, its Affiliates or from any other person in circumstances where that benefit is obtained in conflict with the interests of the Company and/or its Affiliates; and
- 15.1.2 shall notify the Company in writing, at the earliest opportunity practical under the circumstances, of the nature and extent of any direct or indirect material conflict of interests which the Consultant may have or which may arise in respect of the Consultant's interests and those of the Company and/or any of its Affiliates.
- 15.1.3 Neither Party shall recruit the other's personnel or solicit or endeavour to solicit for employment or employ or engage any director, senior employee or manager or consultant employed or engaged by the other Party for the duration of this Agreement.
16. **INTELLECTUAL PROPERTY**
- 16.1 All intellectual property, including, without limitation, the Results of the Services, copyright, trademarks, designs, patents and any other documents made available to the Consultant for purposes of providing the Services ("**Intellectual Property**"), shall belong to and shall remain the property of the Company and/or its Affiliates, as applicable. The Consultant undertakes that it shall not, at any time, have any right, title or interest in the Intellectual Property and the Consultant undertakes that it shall not (or permit any third party to) use, reverse engineer, decompile, modify or tamper with any equipment, document or other Intellectual Property owned by the Company and/or any of its Affiliates.
- 16.2 The Consultant shall, promptly upon request from the Company, following Termination of this Agreement, deliver to the Company all Results of the Services, whether or not in final form, and, subject to any legal or procedural requirement to retain such information, destroy any copies that the Consultant has in its possession or under its control.
- 16.3 The provisions of this paragraph 16 shall survive Termination of this Agreement.
17. **PRIVATE DATA PROTECTION**
- 17.1 The Consultant undertakes to at all times take appropriate and reasonable steps to protect any personal information provided to it by the Company and to prevent the loss, destruction of or unlawful access to or unauthorised disclosure of such information and to otherwise comply with all relevant and applicable data protection laws and regulations. The Company shall have the right to inspect the security measures put in place by the Consultant to safeguard such information and to require the Consultant to make changes to such measures should the Company deem the existing measures to be inadequate.
- 17.2 The Consultant shall use the personal information solely for performing its obligations under this Agreement and shall not disclose the personal information to a third party (other than for the purpose of performing the Services pursuant to this Agreement) without the prior consent of the Company.
- 17.3 The provisions of this paragraph 17 shall survive Termination of this Agreement.
18. **ANTI-BRIBERY AND CORRUPTION, CODE OF CONDUCT AND SUPPLIER CODE OF CONDUCT**
- 18.1 The Consultant warrants that, for the duration of this Agreement, it will (and will procure that all of its employees, directors, officers, agents and subcontractors) comply with all laws, regulations or policies relating to economic sanctions, trade sanctions and/or export controls and the prevention and combating of bribery, corruption and money laundering to which the Company and/or its Affiliates is subject ("**Anti-Corruption Regulations and Sanction Regulations**").
- 18.2 The Consultant further warrants that it has, and will ensure that any of its subcontractors will for the duration of this Agreement have, an adequate anti-corruption programme in place to enable compliance with the Anti-Corruption Regulations and Sanctions Regulations.
- 18.3 In particular, the Consultant undertakes not to, and will procure that all its employees, directors, officers, agents or sub-contractors, do not:
- 18.3.1 pay, promise to pay or offer to pay, or authorise the payment of any commission, success fee, bribe, pay off or kickback related to the Services that violates any Anti-Corruption Regulations and Sanction Regulations or enter into any agreement pursuant to which any such commission, success fee, bribe, pay off or kickback may, or shall at any time, be paid; or
- 18.3.2 offer, promise or give any undue pecuniary or other advantage, whether directly or indirectly to any public official, with the intent of influencing the actions or decisions of such official in performance of his/her official duties, with the purpose of obtaining or retaining business or other improper benefit or advantage.
- 18.4 Nothing in this Agreement shall render the Company liable to reimburse the Consultant for any such consideration given or promised.
- 18.5 The Consultant shall immediately notify the Company, if any of the Company's employees, Affiliates or suppliers solicits any payment or any other item of value, whether for benefit of the employee or for any other person outside of the consideration payable under this Agreement.
- 18.6 In order to comply with the Consultant's obligation in paragraph 18.5 above, it may use the following reporting channels established by the Company for purposes of reporting suspected violations of Anti-Corruption Regulations and Sanctions Regulations and other Applicable Laws:
- 18.6.1 Web Portal: <http://erg.ethicspoint.com>
- 18.6.2 Email: compliance@erg.net
- 18.6.3 Telephone: South Africa (+27) 0800 444 461
- 18.7 The Consultant acknowledges that it is aware that the ERG Anti-Bribery and Corruption Policy and ERG Code of Conduct is available at the following link: (<https://www.ergafrica.com/working-at-erg/>). The Consultant warrants that it has read and understood the said policy and code.
- 18.8 The Consultant hereby warrants that, for the duration of this Agreement, it will (and will procure that all its employees, directors, officers, agents and subcontractors) comply with the ERG Supplier Code of Conduct to which the Company and/or its Affiliates is subject. The Consultant acknowledges that it is aware that the ERG Supplier Code of Conduct is available at the following link: (<https://www.ergafrica.com/procurement/>). The Consultant warrants that it has read and understood the content of the ERG Supplier Code of Conduct.
- 18.9 Any breach by the Consultant of the provisions of this paragraph 18 shall be a material breach of this Agreement and shall entitle the Company to cancel this Agreement immediately on written notice to the Consultant.
- 18.10 It is expressly agreed between the Parties that should the Company cancel this Agreement under and in accordance with paragraph 18.9, neither the Consultant nor any other affected person, shall be entitled by way of indemnity for any direct or indirect damages or consequential loss or damage, loss of opportunity, loss of revenue, loss of profit or anticipated profit, loss of contracts or loss of goodwill arising from such cancellation.
19. **RIGHT TO AUDIT**
- 19.1 The Company shall be entitled, within 2 (two) calendar days of the giving of notice to the Consultant to such effect, to conduct an audit of all relevant books, records, systems, data, processes, procedures and documents relating to the Services or the Consultant's obligations under this Agreement ("**Relevant Information**") in order to verify compliance by the Consultant with their obligations in terms of this Agreement and/or to assess any entitlement or claimed entitlement by the Consultant under this Agreement.
- 19.2 The Consultant shall co-operate and render all assistance and access to the Relevant Information requested by the Company relating to such audit. The Company shall have the right to take copies of any Relevant Information.
- 19.3 The Consultant shall maintain all data, records and documentation relating to this Agreement and keep full and proper records in connection with the Services and all matters related thereto (whether contained in documents or in electronic format) for the period of this Agreement, and (save to the extent otherwise required to comply with paragraph 14.2) for a period of at least 6 (six) years after Termination of this Agreement or

- completion of all of the Services (as the case may be).
20. **INSURANCE**
The Consultant shall take out and maintain in force all insurance policies necessary to cover its liability under this Agreement (whether actual or contingent). The Consultant shall make available to the Company, upon request, documentary evidence that the insurance required in terms of this paragraph has been affected and maintained and/or a copy of the insurance policy.
21. **DISPUTE RESOLUTION**
- 21.1 Should any dispute or claim arise out of, or relating to, this Agreement, including the breach, Termination or invalidity of it ("**Dispute**"), the Parties shall use all reasonable endeavours to resolve the Dispute amicably within a period of 5 (five) Business Days from the date on which the Dispute arose (or such longer period as may be agreed between the Parties).
- 21.2 If the Dispute is not resolved amicably within the period contemplated in paragraph 21.1, either Party shall be entitled to refer the Dispute to arbitration on written notice to the other Party. The Parties may agree on the arbitration procedure and on the arbitrator and, failing agreement within 5 (five) Business Days of the written notice referring the Dispute to arbitration, the arbitration shall be conducted in accordance with the UNCITRAL Arbitration Rules in force at the time of the Dispute. The appointing authority in terms of the UNCITRAL Arbitration Rules shall be the Association of Arbitrators (Southern Africa).
- 21.3 Unless agreed otherwise in writing by the Parties, the arbitration shall be administered by the Parties and the number of arbitrators shall be 1 (one). The place of the arbitration shall be Zimbabwe. The governing procedural law of the arbitration shall be the law of Zimbabwe. The arbitrator shall have the same remedial powers as a court of law in Zimbabwe would have were it adjudicating the dispute. The arbitrator shall deliver an award together with written reasons within 30 (thirty) days from the date upon which the arbitration ends. The decision of the arbitrator shall be final and binding.
- 21.4 Nothing in this paragraph 21 shall preclude a Party from seeking interim or urgent relief from a court of competent jurisdiction.
22. **FORCE MAJEURE**
- 22.1 Any delays in or failure to perform in relation to any part of the Services, shall not constitute default or give rise to any claims for damages if and to the extent such delay or failure is caused by an event of force majeure which shall include but not be limited to, decrees of government, acts of God, strikes or other concerted acts of workmen, fires, floods, explosions, riots, civil commotion, war, rebellion and sabotage or other similar occurrences beyond a Party's control. An event will only be considered a force majeure event:
- 22.1.1 if such event is beyond a Party's control;
- 22.1.2 where the affected Party could not reasonably have provided against the event before entering into this Agreement;
- 22.1.3 where the affected Party could not reasonably have avoided or overcome the event; and
- 22.1.4 where the event is not substantially attributable to the other Party.
- 22.2 It is specifically recorded that strikes affecting the Consultant only, lack of public transport, shortage of labour, equipment or materials required to comply with this Agreement as well as breakdown failure or existence of defects in equipment shall not constitute a force majeure event (unless caused by a force majeure event).
23. **ADDRESSES FOR LEGAL PROCESSES AND NOTICES**
- 23.1 For the purposes of this Agreement, including the giving of notices or communications and the serving of legal process, each Party choose the addresses set out on the Order.
- 23.2 Any notice, instruction, consent, confirmation, approval, agreement or other communication to be given to either of the Parties in terms of this Agreement shall be valid and effective only if it is given in writing, provided that any notice given by telefax or email shall be regarded for this purpose as having been given in writing.
- 23.3 Notwithstanding anything to the contrary in this paragraph 23, a written notice or other communication (excluding any notice of a claim or legal process) actually received by a Party (and for which written receipt has been obtained) shall be adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen address.
- 23.4 Either Party may, by written notice to the other Party, change its address for the purposes of paragraph 23.1 to any other address (other than a post office box number), provided that the change shall only be effective on the 5th (fifth) Business Day after the receipt of any such notice.

24. **GENERAL PROVISIONS**
- 24.1 With effect from the commencement date of the Initial Period, this Agreement supersedes and replaces any prior agreement between the parties whether written or oral. This shall be without prejudice to any rights which have already accrued to the Company.
- 24.2 This Agreement and all non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of Zimbabwe.
- 24.3 The provisions in paragraphs 14, 16, 17, 18 and 19 and any other applicable provisions of this Agreement constitute a contract for the benefit of each of the Company's Affiliates which shall be capable of acceptance at any time by any of them by written notice to that effect to the Company. Prior to acceptance, the Consultant may not withdraw the benefit of this stipulation without the prior written consent of the Company. This Agreement shall be binding on and shall inure for the benefit of the successors and permitted assigns and personal representatives (as the case may be) of each of the Parties.
- 24.4 All provisions of this Agreement (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) shall be deemed to be separate and severable from the remaining provisions of this Agreement. If any of the provisions of this Agreement (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) is found by any court of competent jurisdiction to be invalid and/or unenforceable then, notwithstanding such invalidity and/or unenforceability, the remaining provisions of this Agreement shall be and remain of full force and effect.
- 24.5 The Termination of this Agreement for any cause whatsoever shall not release a Party from any liability which at the time of Termination has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such Termination.
- 24.6 This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and no agreement, representations or warranties between the Parties other than those specifically set out in this Agreement shall be binding on the Parties.
- 24.7 No modification, amendment or waiver of any of the provisions of this Agreement shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives. No extension of time or other indulgence which either Party allows the other Party, including the failure by a Party to enforce any provision of this Agreement, shall constitute a waiver by the former of its rights to require the latter to comply with its obligations strictly in accordance with this Agreement.
- 24.8 Save as permitted by the provisions of this Agreement, the Consultant may not cede any of the Consultant's rights or delegate any of the Consultant's obligations under this Agreement without first obtaining the written approval of the Company. The Company may cede any of its rights or delegate any of its obligations under this Agreement to any of its Affiliates.
- 24.9 The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.
- 24.10 Each Party shall bear its own costs and expenses incurred by it in connection with the negotiation and preparation of this Agreement.

SCHEDULE A

SCHEDULE OF SHE CONDITIONS

For purposes of this **Schedule A**, any reference to "the Contractor" shall be deemed to be a reference to the Consultant and any reference to the "the Client" shall be deemed to be a reference to "the Company".

1 GENERAL CONDITIONS

- 1.1 The Contractor must, in consultation with the Company's Representative, familiarise all of the Contractor's employees, agents and subcontractors with and ensure compliance with the ERG Group SHE Policy and all related standards and procedures as detailed by the ERG Group's Safety and Health Management System a copy of which is available on request.
- 1.2 The Contractor must identify all potential sources of, and take all reasonable precaution and measures to minimise risk to health and property arising from work performed under the Contract.
- 1.3 The Contractor must report to the Company all incidents. This includes incidents which have or could have resulted in injury or damage to property.
- 1.4 In the execution of the Contract, the Contractor must ensure that the work under the Contract complies with, and does not breach, the Safety, Health and Environment requirements of all legislation, and ordinances, regulations, by-laws, orders or proclamations under such legislation relevant to health and safety.
- 1.5 The Contractor must comply with, and must ensure that its employees, subcontractors and agents comply with all directions issued by the Company's Representative which relate to health and safety.
- 1.6 The Contractor must ensure all plant, equipment and vehicles are safe for use before arriving at or departing from the Site.
- 1.7 Unless specifically required by the Contract, the Contractor must not without the prior written approval of the Company, permit:
 - (a) vehicles to be driven off designated roads or on unformed tracks;
 - (b) activities or work to be undertaken outside of the designated Site;
 - (c) removal of soil, vegetation or propagates;
 - (d) fires of any type to be started;
 - (e) excavations to be dug or cut;
 - (f) firearms or other items constituting offensive weapons to be brought on to the Site;
 - (g) plants, domestic pets or other animals to be brought on to the Site.
- 1.8 The Contractor must maintain housekeeping standards to the satisfaction of the Company's Representative at all times.
- 1.9 The Contractor is to note that the Contract defines the term "Site" as the location(s) for provision of services, including neighbouring areas that may otherwise be construed as off-site, but where the name of the Company or any Affiliate of the Company may be brought into disrepute.

2 PERMITS, LICENCES AND APPROVALS

- 2.1 The Contractor, in consultation with the Company's Representative, must obtain copies of, and ensure compliance with the conditions and requirements of, all relevant approvals, permits and licences in connection with the Contractor's performance of the Contract.
- 2.2 The Contractor must, at its own expense:
 - a) obtain and maintain all approvals, permits and licences, give all notices and pay all fees and deposits required by any laws in connection with the Contractor's performance of the Contract;
 - b) prepare and supply any additional documents and drawings which may be required by any law.
- 2.3 Prior to the issue of a Certificate of Contract Completion, and on demand by the Company at any time, the Contractor must provide copies of:
 - a) any documents in connection with the Contract which are issued by, or evidence the approval of statutory, public, municipal or other competent authorities;
 - b) agreements, licences, tickets, certificates and other documents relating to the operation and maintenance of the Goods, Plant and Works, associated with the Contract; and
 - c) any other documents in its possession evidencing compliance with this Contract.

3 POLLUTION PREVENTION

- 3.1 The Contractor, must at its own expense, use in the execution of the work under the Contract, plant, equipment and vehicles which comply with, and do not breach, the

requirements for operation under all legislation, and ordinances, regulations, by-laws, orders or proclamations under such legislation relevant to the protection and management of the environment.

- 3.2 The Contractor must exercise all reasonable care to prevent pollution and ensure compliance with all Statutory Obligations, Standards and Company requirements regarding the transport, storage, use and disposal of Dangerous or Hazardous Goods. The Contractor is responsible for:
 - a) seeking Company approval for the transport, storage, use and disposal of all Dangerous or Hazardous Goods required for the Contract prior to transporting to site.
 - b) safe transportation, storage and use of Dangerous or Hazardous Goods (potential pollutants) brought on Site for the Contract; and
 - c) safe disposal of all waste materials or pollutant arising from the performance of the Contract, as approved by the Company, by either their return to the manufacturer or to disposal areas or third party facilities nominated by the Company.
- 3.3 Pollutant and waste material include, without limitation, any chemical, motor fuel, oil, lubricant or other consumable, paint, solvent, concrete, rubble, derelict plant, equipment, refuse, materials (solid, liquid or gas) dumped, spilled, released or leaked from any container, vessel or Plant of the Contractor or any of its subcontractors.
- 3.4 The Contractor must immediately notify the Company's Representative of any spillage of pollutant or waste, or the potential for any pollutant or waste to leak, spill or escape.
- 3.5 The Contractor must immediately clean up and dispose of all spillages of pollutants or wastes, at the Contractor's own expense and to the satisfaction of the Company's Representative. If clean-up is not undertaken effectively or in a time efficient manner, the Company may undertake such clean-up and charge any associated costs to the Contractor.
- 3.6 The Contractor must ensure, at its own expense, that all facilities constructed or utilised by the Contractor comply with all legislation, and ordinances, regulations, by-laws, orders or proclamations under such legislation relevant to such facilities, and to the specific conditions and requirements of any licences, permits or approvals issues with regard to the facilities.
- 3.7 The Contractor must ensure, at its own expense, that drainage internal to all facilities constructed or wholly utilised by the Contractor is constructed in such a manner that contaminated water is contained and treated prior to appropriate disposal.
- 3.8 The Contractor must ensure, at its own expense, that drainage external to all facilities constructed or wholly utilised by the Contractor is prevented from entering the Contract work area by the construction of suitable diversion drainage.

4 WASTE MANAGEMENT

- 4.1 The Contractor must ensure that all waste (including liquid, domestic, inert and hazardous wastes) generated as a result of work performed under this Contract is appropriately stored, treated, transported, discharged and/or disposed of to an appropriately licensed disposal facility off-site or to the Company's approved disposal facilities under direction and written approval from the Company's Representative.
- 4.2 The Contractor must make every reasonable effort to minimise production of wastes, reuse of waste and recycling of waste materials.
- 4.3 The Contractor must ensure that scrap metal, equipment and pipe work are cleaned of contaminants before being removed from Site or left at the Company's salvage or recycling yards. Such contaminants must be appropriately contained, collected, transported and disposed of to an appropriately licensed disposal facility off-site or to the Company's approved disposal facilities under direction and written approval from the Company's Representative.

5 BIODIVERSITY AND HERITAGE

- 5.1 Without limitation, the Contractor must not remove or cause or permit damage or injury to any existing vegetation (alive or dead) or fauna except to the extent that any removal or damage is essential for the performance of the Contract and is approved by the Company prior to undertaking.
- 5.2 Where required in order for works to be performed under the Contract, the Contractor must obtain written approval from the Company before any vegetation or topsoil is removed or damaged. Grubbed vegetation and topsoil must be removed and stockpiled as directed by the Company's Representative, prior to any excavation or construction.
- 5.3 All fossils, flora and fauna, sites, artefacts, burial grounds, objects, etc. of antiquity or of anthropological or archaeological interest found on the Site during the performance of the Works are and remain the property of the person entitled to the same under any Statutory or common law. The Contractor must cease works and notify the Company if it finds any such animals, plants or other things and must not recommence work until advised by the Company's Representative, which approval does not relieve the Contractor from its obligations under this Contract or relevant Statutory Laws, and on approved recommencement must take all necessary action to prevent damage or injury to the same.
- 5.4 Without limitation the Contractor must ensure that its agents, employees, subcontractors, consultants and suppliers:
 - a) comply with the provisions of all Statutory Laws, relating to traditional (religious) sites and Congolese people's rights, entitlements and interests; and
 - b) do not enter traditional (religious) sites or disturb, interfere with or remove anything from such sites or their vicinity, except with the prior written approval of the Company's Representative, which approval does not relieve the Contractor from its Contract obligations or relevant Statutory Laws; and
 - c) comply with the Company's Representative's instructions reasonably required to enable the Company to comply with any obligations arising as a result of the operation of Statutory Laws.

6 HEALTH AND SAFETY

- 6.1 The Contractor must, at its own expense, ensure that all employees and their subcontractor employees are fit for work by means of pre-employment and annual medical examinations and a fitness for work policy which shall include, but is not limited to alcohol, drugs (recreational and prescription), illness and fatigue. The fitness for work policy must be approved by the Company. A full medical report must be sent to the ERG Chief Medical Officer who will certify "fit" or "not fit" for work" prior to arrival at the Company's or any Affiliate's site.
- 6.2 The Contractor must, at its own expense, ensure appropriate workmen compensation cover.
- 6.3 The Contractor must have employee selection and placement processes that ensure the right people are selected for employment and are placed at the right jobs.
- 6.4 The Contractor must ensure employees are trained and fully competent.
- 6.5 Without limitation the Contractor must ensure that its agents, employees, subcontractors, consultants and suppliers:
 - a) comply with the provisions of all Statutory Laws, relating to Health and Safety; and
 - b) do not enter any workplace except with the prior written approval of the Company's Representative, which approval does not relieve the Contractor from its Contract obligations or relevant Statutory Laws; and
 - c) comply with the Company's Representative's instructions reasonably required to enable the Company to comply with any obligations arising as a result of the operation of Statutory Laws.
- 6.6 The Contractor must ensure that all plant,

equipment and vehicles comply with all Statutory Laws and Site safety standards, including, but not limited to, requirements for dust suppression, guards, emergency stop buttons, fire extinguishers, first aid kits, noise control, seat belts, roll cages, flashing lights, flags, planned maintenance, pre use and pre start inspections, scaffolding, ladders.

- 6.7 The Contractor must, at its own expense, ensure that all employees are provided with sufficient personal equipment which comply, as a minimum, with South African standards. PPE includes, but is not limited to, hardhats, safety glasses, uniforms, steel capped boots/shoes, welding protection, gloves (PVC/leather), fall protection, face shields, hearing protection, PVC aprons.

7 SAFETY AND HEALTH MANAGEMENT PLAN

- 7.1 Prior to the commencement of work under this Contract the Contractor must prepare and submit to the Company for approval a Safety and Health Management Plan.

- 7.2 The Contractor must perform the Works and ensure that all Contractor personnel, agents and subcontractors perform the Works in accordance with the Safety and Health Management Plan.

- 7.3 The Safety and Health Management Plan must include but not be limited to the following:

- a) All identified Safety and Health risks, specifically but not limited to:
 - i. compliance with all Statutory Laws, Conditions and Licences (Condition 3.3);
 - ii. potential impacts on health and safety of employees and the community.
- b) List of all plant, equipment, vehicles and chemicals required to undertake the Work, and any associated risk management.
- c) Methods to control all identified Safety and Health risks.
- d) Adherence of the ERG Group Health and Safety Policy, Standards and Procedures.
- e) Waste and pollution spill clean-up procedures appropriate to the Contractor's activities and risks.
- f) A program for risk management and hazard inspection of the Contractor's work area, facilities, site and equipment.
- g) An outline of the Contractor's workforce Safety and Health education program, and methods to ensure its employees are made aware of and comply with their obligations.
- h) Emergency Response Plan and procedures appropriate to the Contractor's activities and identified Safety and Health risks.

8 INSPECTION, AUDIT AND REPORTING

- 8.1 The Contractor, in consultation with the Company's Representative, must conduct periodic inspections, audits and assessment of the Contractor's facilities and performance against the requirements as outlined in the Contract.

- 8.2 The Contractor must rectify all Safety and Health non-compliances identified during Safety and Health inspections and audits within a time frame agreed with in writing by the Company's Representative.

- 8.3 The Contractor must submit a quarterly Safety and Health Performance Report to the Company, including:

- a) compliance and corrective actions against the requirements of the Contract;
- b) status of all Safety and Health incidents occurring and actions undertaken;
- c) reporting of materials usage, including, but not limited to fuels, oils, greases and chemicals.