

GENERAL TERMS AND CONDITIONS – ERG AFRICA
CONDITIONS GENERALES – ERG AFRICA

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The Seller/Consultant acknowledges and confirms its adherence to the GPC/GTC:

Signature of duly authorised signatory _____

Seller/Consultant (Company Name) _____

Name of duly authorised signatory _____

Title of duly authorised signatory _____

Date of signature _____

GENERAL TERMS AND CONDITIONS OF PURCHASE OF GOODS

1. SCOPE OF APPLICATION

- 1.1 To the extent that the Parties have concluded an agreement in addition to these General Terms and Conditions of Purchase ("**GPC**"), in respect of the subject matter hereof, the terms of such agreement will prevail over these GPC's.
- 1.2 Subject to **clause 1.1** above these GPC's shall apply to the purchase by Todal Mining (Private) Limited ("**Buyer**") of any equipment, materials, products, components, software or other items ("**Goods**") offered, sold or provided by any third party ("**Seller**") (collectively referred to as the "**Parties**" or "**Party**" as the context may require) in terms of any purchase order (or amendment thereto) provided by the Buyer to the Seller ("**Order**").
- 1.3 No terms and conditions other than these GPC, the provisions of the Order and any and all documents incorporated therein by reference shall be binding upon the Buyer unless expressly accepted in writing by the Buyer. Neither acceptance of any Goods by the Buyer (including any signature by any representative of the Buyer on any quotation or delivery confirmation) nor payment therefore shall constitute an acceptance by the Buyer of any such terms and conditions.
- 1.4 No Order, variation or amendment thereof, addition or a complement thereto shall be binding on the Buyer other than an Order or change Order issued by the Buyer and duly signed by an authorised representative of the Buyer.
- 1.5 If and when applicable, the Seller warrants it is acting in accordance with the Law No. 17/001 of 8 February 2017, fixing the rules applicable to subcontracting in private sector in the DRC, and its related decrees ("**Subcontracting Law**"), and the Seller hereby irrevocably agrees to indemnify and hold harmless the Buyer, for any penalty imposed on the Buyer due to a non-compliance finding by the Subcontracting Regulatory Authority ("**ARSP**") in relation to the Seller's Subcontracting Law compliance. The Seller agrees that if any such penalty is imposed on the Buyer, the Buyer may set-off any such amount from any payments due to the Seller, or alternatively, request the Seller to reimburse the Buyer with such amount.
- 1.6 If individual terms of these GPC cannot be applied for any reason whatsoever in respect of a particular Order, such terms shall be severed from the remaining terms of these GPC, which remaining terms and conditions will remain unaffected and binding on the Buyer and Seller.
- 1.7 Special provisions of an Order and specific terms agreed in writing by the Buyer and the Seller, which may be in contradiction with these GPC, shall prevail over the corresponding GPC provisions.
- ### 2. PRICES - QUOTATION - CONDITIONS OF PAYMENT - INVOICING
- 2.1 Any offer/s, proposals and/or price quotation/s delivered by the Seller to the Buyer shall be subject to the terms and conditions set out on the initial quotation received by the Seller.
- 2.2 All Order prices are fixed, firm and not subject to revision or escalation for any reason whatsoever, including but not limited to as a result of variations to exchange rates or metal prices unless expressly stated otherwise in the Order. Prices shall be inclusive of all applicable taxes (including the taxes due by the Seller on behalf of the Buyer), contributions, insurances and all other costs incurred by the Seller in performing the Order, including, the costs of: (i) Delivering the Goods at the location designated by the Buyer, (ii) all

packaging, protecting, lashing and anchoring materials required for packing and transporting the Goods, (iii) all necessary documents, accessories, devices and/or appropriate tools necessary for the complete and functional use and maintenance of the Goods, and (iv) all necessary licence fees or other payments for the use by the Buyer of any intellectual property rights in relation to the Goods, including those of third parties.

- 2.3 If and when applicable under the Subcontracting Law, the Seller agrees that a withholding tax of 1.2% on the invoice amount of any eligible item (excluding VAT) will be withheld by the Buyer and paid by the Buyer to the ARSP in adherence to the provisions of the Subcontracting Law.
- 2.4 After each Delivery of Goods pursuant to an Order, the Seller shall send duplicate invoices in accordance with all applicable laws and regulations and the Buyer's requirements, which invoices shall reflect the Buyer's Order number, date, the Seller's references, the relevant stage of contractual performance at which a progress payment may be invoiced in accordance with the Order, and shall specify the amount of any progress payment or balance requested. No invoice shall relate to more than one Order.
- 2.5 The Buyer shall pay the amount of duly issued and undisputed invoices within 60 (sixty) days, after date of receipt of the statement. For the avoidance of doubt, payment shall only be made in respect of the Goods that have in fact been delivered to the Buyer prior to the date of receipt of the statement. Notwithstanding anything else contained in these GPC, the Buyer is not required to pay the amount of any invoice if the Seller fails to meet the requirements of the Order. In this case, the Seller shall have no claim for interest (even on a portion of the price), penalties or any other compensation whatsoever in relation to such non-payment.
- 2.6 The absence of an express rejection of an invoice shall not constitute acceptance thereof or of the Goods by the Buyer and payment of an invoice shall not constitute acceptance by the Buyer of any Goods ordered or Delivered. Any acceptance of Goods by the Buyer shall be without prejudice to the Buyer's rights in terms of the Warranties or any of its other rights or remedies in terms of these GPC or in law.
- ### 3. QUALITY, SAFETY, SUSTAINABLE DEVELOPMENT AND HUMAN RIGHTS
- 3.1 Before making any offer or quotation, the Seller will (i) obtain all information relating to the Buyer's needs and foreseeable use of the Goods, in order to provide the Buyer with all necessary advice and information on Goods to be proposed by the Seller, and (ii) inform itself fully with regard to any quality or other standards, customs, policies, rules or laws applicable to the Goods and the Delivery thereof. For the proper performance of its obligations relating to Orders, the Seller shall (i) define and apply quality assurance programs and (ii) conduct all necessary quality investigations and testing in relation to the Goods. The Seller shall keep the Buyer fully informed of the results of such measures.
- 3.2 The Seller shall provide the Buyer with Goods and/or any necessary equipment referred to in **clause 4.1** hereof ("**Necessary Equipment**"), which fully satisfy the safety, health, social dialogue and environmental laws, rules and policies applicable to the Goods and each Delivery, including but not limited to the Buyer's health, safety and security policies and environmental laws and regulations.
- 3.3 Without derogating from the obligations of the Buyer in terms of **clause 3.2** above, the Seller shall inform the Buyer of any pertinent information in the areas of safety, health, security or the

environment that relates to the Goods and/or their Delivery, processing, handling or use. To this end, the Seller shall request information from the Buyer with regard to all special features (configuration, activities, transportation, traffic and circulation) of the specified place of Delivery. Such information provided to the Seller shall in no way limit the Seller's liability in terms of these GPC, or otherwise. Should the Seller breach any of its obligations in relation to safety, health or environmental compliance, the Buyer will be entitled to cancel any Order, and the Seller shall bear all expenses and liability arising there from. For the avoidance of doubt, the Seller shall have no claim of whatsoever nature against the Buyer as a result of such cancellation.

- 3.4 The Seller shall procure that all its employees, representatives and agents shall, at all times ensure that all Goods and/or any Necessary Equipment to be transported to the Buyer as contemplated in **clause 4.1** or otherwise in accordance with any Order or these GPC shall be transported in a such a manner so as to avoid causing any Pollution.
- 3.5 The Seller indemnifies the Buyer and holds it harmless against all loss, liability, damage or expense which the Buyer may suffer as a result of, or which may be attributable to any claims or liabilities as a result of a breach by the Seller of the provisions of this **clause 3**.
- 3.6 For purposes of **clause 3**:
- 3.6.1 "**Pollution**" includes contamination, release or spilling of hazardous or toxic materials and/or hazardous or toxic substances or emissions. To this end, the Seller shall, at its own cost, be responsible for any Environmental Liability that may arise as result of any Pollution caused on any site and/or its surrounding areas while the Seller is transporting the Goods and/or any Necessary Equipment to the Buyer in accordance with any Order or these GPC; and
- 3.6.2 "**Environmental Liability**" means any liability or obligation (including any liability for damages, costs of environmental remediation or reclamation, fines, penalties, orders or indemnities), directly or indirectly resulting from or based upon all applicable laws relating (in whole or in part) to the protection and/or preservation of the environment, human or animal health safety and the use, handling, transport, treatment, storage, disposal, presence, release or threatened release of or exposure to any hazardous materials and/or toxic substances.
- 3.7 The Seller agrees that if it breaches any of the provisions of this clause, the Buyer will have the right to immediately terminate the Order on written notice to the Seller. The provisions of **clause 10** shall apply, in so far as it is applicable, in the event of any such termination.
- ### 4. DELIVERY TRANSFER OF TITLE PACKAGING - TRANSPORTATION
- 4.1 Unless otherwise agreed in writing, all Goods shall be sold DAP, Buyer's indicated warehouse or such other location (as specified in the relevant Order), in accordance with Incoterms 2010 or its successor, as amended by these GPC, and shall be unloaded at the final destination indicated by the Buyer to the Seller ("**Delivery**"), and all variations thereof shall have corresponding meanings). If no specific place of Delivery is specified, Delivery can be made only at the place where the Buyer usually takes Delivery of such Goods. Before Delivery:

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- 4.1.1 The Seller shall inspect the Goods for compliance with the Order specifications, quality, weight, and physical dimensions, as well as for any damage to the Goods or their packaging.
- 4.1.2 Without prejudice to the terms of **clause 4.1.1**, the Buyer reserves the right to verify the progress and proper performance of any obligation relating to an Order by the Seller and to conduct any quality investigations and testing it deems advisable in respect of the Goods, or otherwise. The Seller shall provide the Buyer and its representatives or agents free access to the Seller's workshop/s at all reasonable times during the Seller's normal working hours. Any verification or inspection by the Buyer pursuant to this clause shall in no way relieve the Seller from its obligations in terms of the Order or these GPC, or limit such obligations in any way.
- 4.1.3 The Goods shall be packaged in full accordance with the **"Packing and Marking Specification"** contemplated in or accompanying the relevant Order so that they will not be damaged during transportation or handling. All items shall be properly marked according to (i) applicable rules and laws, especially in the case of hazardous or dangerous goods, and (ii) the Buyer's instructions.
- 4.1.4 If the Seller requires the use of the Buyer's lifting equipment or employees to assist with unloading at the place of Delivery, the Buyer will require at least 24 hours' notice and their use by the Seller shall be at the Seller's risk.
- 4.2 **Transportation and Supply:**
- 4.2.1 The Seller undertakes to take all measures necessary to perform proper transportation or supply of the Goods by all appropriate means and using all appropriate equipment and accessories, and with the assistance of competent and solvent agents or subcontractors where necessary. The Seller shall organize transportation or supply of the Goods to the place of Delivery in a manner designed to avoid damage to the Goods, and so as to avoid difficulties in unloading the Goods at the place of Delivery.
- 4.2.2 Delivery times set out in the Order shall be of the essence. If the Order is not performed within the specified time, the Buyer shall be entitled to cancel the Order. The Buyer reserves the right to refuse partial or early Deliveries, and in such cases may return the Goods or, in its discretion, store them, at the Seller's cost and risk.
- 4.2.3 The Seller shall immediately notify the Buyer in writing of any delays in Delivering the Goods and simultaneously provide all information concerning the reason for and/or extent of the delay, as well as details relating to the efforts the Seller is making or intends to make in order to avoid further delay and expedite Delivery. In the event of a repeated delay in Delivery, the Buyer shall be entitled, without prejudice to any other remedies or rights it may have in terms of these GPC or in law, to liquidated damages in the amount of 1% of the Order price for each full week of delay, not to exceed a maximum of 10% of the Order price. The Buyer shall be entitled to set off the amount of such liquidated damages against the amount owing by the Buyer to the Seller in respect of any invoice relating to such Order and/or any previous Orders not yet paid in full by the Buyer. The Buyer shall communicate its decision to claim liquidated damages to the Seller by no later than the date of payment of the first invoice following the delay. The Seller agrees that the liquidated damages constitute a reasonable pre-estimate of the minimum damages which the Buyer may suffer as a result of the delay by the Seller. Such liquidated damages shall be without prejudice to the Buyer's rights to claim damages related to other aspects of Seller's performance or in relation to the Goods.
- 4.3 Title to the Goods shall transfer unconditionally to the Buyer upon receipt of payment thereof (whether in terms of **clause 4.1** or otherwise). Risk will, however, remain with the Seller until formal acceptance of the Goods in accordance with **clause 2.5**, without prejudice to the Buyer's rights in terms of the warranties provided by the Seller in terms of these GPC or otherwise.
5. **TECHNICAL DOCUMENTATION: OPERATING AND MAINTENANCE MANUALS**
- 5.1 The Seller shall deliver to the Buyer at such times as may be agreed with the Seller, but at the latest, upon Delivery of the Goods, all technical documentation relating to the Goods, such as operating and maintenance manuals, training manuals, drawings, technical data sheets, product safety sheets, inspection certificates, certificates of conformity and any other supporting documentation ("**Manuals**"). If not otherwise specified in the Order, the Delivery of software or of Goods containing software, will include, for maintenance and/or adaptability reasons, all source and object codes relating to such software and/or Goods. Such technical documentation or any special tools in relation to Orders shall be the property of the Buyer and shall be considered an integral part of the Goods within the meaning of these GPC.
- 5.2 In the event that the Manuals are not delivered by the Seller as aforesaid, the Buyer shall be entitled to withhold payment of the Order, until the Buyer is in receipt of same.
6. **WARRANTY – LIABILITY**
- 6.1 The Seller represents and warrants that: (i) the Goods shall comply with all specifications and requirements contained in the Order or agreed in writing between the Buyer and Seller; (ii) the Goods shall be state of the art and new; (iii) the Goods shall be fit for the particular purposes that such specific Goods will usually be expected to be used for; (iv) the Goods shall be free from defects in design, materials and workmanship; (v) the Goods shall satisfactorily comply with the performance requirements expected by the Buyer; and (vi) the Goods shall meet all applicable statutory requirements and standards, especially those relating to the environment, safety and health (individually "**Warranty**" and collectively the "**Warranties**"). Any representations or warranties relating to the Goods and included in the Seller's catalogues, brochures, proposals, sales literature and quality systems or otherwise made by the Seller to the Buyer (whether verbally or in writing) shall be binding on Seller. The Seller warrants the adequacy of the technical specifications of the Order to meet the specific needs of the Buyer, and the Seller acknowledges having examined those specifications thoroughly.
- 6.2 The Seller warrants that all Goods sold and delivered to the Buyer (whether in terms of **clause 4.1** or otherwise) are free from any lien or encumbrance of any nature whatsoever and upon delivery (whether in terms of **clause 4.1** or otherwise), of the Goods to the Buyer, free and unencumbered ownership of the Goods shall pass to the Buyer upon receipt of payment for the Goods and thereafter the Buyer will be the sole owner of, and have valid and exclusive title to, the Goods. The Seller warrants further that no third party shall have any right to acquire the Goods.
- 6.3 The Seller warrants that the Goods will comply with the Manufacturers' Warranty from date of delivery thereof.
- 6.4 If any Goods at any time are found not to comply with the Manufacturers' Warranty, the Buyer shall be entitled, at its sole discretion, by written notice to the Seller to: (a) rescind the Order according to the provisions of **clause 10** (Termination); (b) accept such Goods with a reduction in price equal to a reasonable estimate of the reduced utility of the Goods to the Buyer; or (c) to reject such non-complying Goods and, in its sole discretion, require Delivery of replacement Goods or the repair of the Goods, at the Seller's expense.
- 6.5 All Goods rejected, due to a fault and inherent defect caused by the Seller must be collected by the Seller or will be returned to the Seller, at the Seller's risk and expense, and will be stored at the Seller's risk in the Buyer's warehouses until such time as they are collected by the Seller or its agent or sub-contractor. Should the Seller fail to collect the Goods within 15 (fifteen) days following notification of rejection, the Seller shall be liable to pay warehouse storage charges for the Goods from that date until the date on which the Goods are collected. Notwithstanding the above, should the Seller fail to collect the Goods within 30 (thirty) days following notification of rejection, the Buyer shall be entitled to have the rejected Goods delivered to the Seller's address appearing on the Order at the Seller's risk and expense.
- 6.6 If the Seller fails to Deliver suitable replacements or make repairs promptly to the Goods, as the case may be, the Buyer shall be entitled to repair the Goods itself, or to appoint any contractor to do so, or to replace the Goods through any alternative supplier and recover all costs relating to such repair or replacement from the Seller.
- 6.7 Any Goods repaired or replaced shall be subject to the provisions of this **clause 6**, and the warranty period hereunder shall start anew following such Delivery of replacement Goods or completion of repair of the Goods, to the satisfaction of the Buyer.
- 6.8 The Seller shall be liable on the scale set out in **clause 4.2.3** for any direct, damages, incurred by the Buyer as a result of any delays in Delivery, any defects in the Goods, any breach of the Warranties or any other non-compliance by the Seller with the provisions of the Order or these GPC. The Seller's liability will not be affected by the Buyer's choice of remedy or the period taken by the Buyer to elect an appropriate remedy.
- 6.9 No inspection, approval or acceptance of Delivery of Goods shall relieve the Seller from responsibility for defects or other failures to meet the requirements of the Order or comply with these GPC.
- 6.10 The Seller shall supply the Goods and all spare parts, accessories or components thereof for repair, maintenance or extensions of the Goods ("**Parts**"), through the whole period of the Order and thereafter for a period of 2 (two) years after the relevant Goods have been put into service and warrants that the production and/or distribution of the Goods and the Parts will not be discontinued. If the Seller intends to stop production and/or distribution of all or part of the Goods or the Parts after the Delivery date of the Order, the Seller shall inform the Buyer of this fact at least 1 (one) year in advance, so that the Buyer still has an opportunity to place additional orders and obtain sufficient Parts.
- 6.11 Without prejudice to any of the rights of the Buyer arising from any of the provisions of these GPC, the Seller indemnifies the Buyer and holds it harmless against all loss, liability, damage or expense which the Buyer may suffer as a result of, or which may be attributable to

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- any claims or liabilities as a result of a breach by the Seller of any of the Warranties or other obligations set out these GPC and/or arising from any negligent act or omission of the Seller or any of its employees or agents in relation to the performance of its obligations in terms of any Order or these GPC.
7. **INTELLECTUAL PROPERTY RIGHTS**
- 7.1 The Seller warrants that neither the Goods nor the sale thereof covered by the Order will infringe upon or violate any trademarks, patents, copyright, inventions, designs, drawings, protectable creations and the like or other legal rights of third parties, whether or not capable of registration ("**Intellectual Property Rights**"). The Seller indemnifies the Buyer against all actions, claims, liability, loss, costs, attorneys' fees, expenses and damages due to or arising from any infringement of the Intellectual Property Rights of any third party. The Seller shall, at its own expense, if so requested by the Buyer, defend the Buyer against all such claims, proceedings and suits and shall fully co-operate with and follow all lawful instructions of the Buyer in respect thereof.
- 7.2 In the event that the Goods become the subject of any actions or claims of infringement of Intellectual Property Rights, the Seller shall either, in the shortest possible period, obtain the right for the Buyer to use the Goods, or modify or replace the Goods so that the infringement ends. Modification or replacement of the Goods shall never result in a decrease or reduction of the functionality or fitness of the Goods for the particular purpose for which the Goods were ordered by the Buyer. If the Seller fails to carry out its obligations as set out herein, the Buyer, with 5 (five) business days advance notice to the Seller, shall be entitled to take such actions as it deems necessary and to recover the total cost of the Goods from the Seller.
- 7.3 Patentable inventions and protectable creations as well as their results, insofar as they arise from the Order, shall belong to the Buyer unless the Seller establishes that they arise from the Seller's sole inventive capacity, and were developed independently of the Order.
- 7.4 Where the Seller has (or will acquire) any Intellectual Property Rights in respect of the Goods, or any software relating thereto, it shall grant to the Buyer a perpetual, non-exclusive licence to use the Goods for the purpose for which they were ordered by the Buyer.
8. **NON-DISCLOSURE - PROPRIETARY RIGHTS**
- 8.1 All written or verbal information supplied by the Buyer to the Seller regarding the Buyer's know how, specifications, procedures, needs, business strategies and all technical information, documents and data ("**Confidential Information**") shall be treated as confidential and shall not be disclosed by the Seller to third parties without the Buyer's prior written consent. Such information shall be used exclusively by the Seller for the performance of any obligation relating to an Order, including, without limitation, for the purpose of preparing offers or quotations.
- 8.2 The rights of ownership and copyright in any samples, designs, drawings and other technical documents delivered to the Seller by the Buyer shall belong to Buyer and such items shall not be duplicated or disclosed to third parties at any time without the Buyer's prior written consent.
- 8.3 The Seller agrees that it shall, immediately on receipt of a written notice from the Buyer requesting the Seller to do so, 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 the Seller has disclosed such Confidential Information as contemplated in **clause 8.1**.
9. **FORCE MAJEURE**
- 9.1 A Party affected by an event beyond its reasonable control, which prevents it from complying with any of its obligations under an Order or these GPC ("**Affected Party**"), and which could not reasonably have been foreseen or avoided, including (without limitation) terrorism, insurrection, epidemic, flood, earthquake or like natural disaster ("**Force Majeure Event**"), shall immediately notify the other Party in writing of such event and furnish the other Party with all relevant information and proof relating thereto, and particularly the period of time the Force Majeure Event may delay the timely performance of any obligation in respect of an Order. In the case of the Seller, strikes affecting the Seller only, lack of public transportation, a shortage of labour, equipment, materials and supplies required to comply with the Order as well as the breakdown, failure or existence of defects in the Seller's equipment or machinery shall not, however, constitute a Force Majeure Event. An event of any type (including those defined as a Force Majeure Event hereunder) which affects the Seller's subcontractors or suppliers shall not be considered a Force Majeure Event for the purposes of this **clause 9**. The Affected Party shall immediately notify the other Party of the cessation of a Force Majeure Event.
- 9.2 In the event of a Force Majeure Event affecting the Seller, the Buyer shall be entitled, in its sole discretion:
- (a) to agree with the Seller on an extension of time for Delivery of the Goods; or
- (b) to terminate the Order or any part thereof, at any time, without further obligation or liability, in which case the Buyer shall be entitled to reimbursement by the Seller of any sums already paid by the Buyer in respect of those Goods within 7 (seven) days of such termination.
- 9.3 The price of any Goods Delivered to the Buyer prior to the Force Majeure Event occurring shall only be due and payable by the Buyer to the Seller if those Goods may be fully used by the Buyer notwithstanding the subsequent failure to Deliver the rest of the Goods relating to that Order as a result of the Force Majeure Event. If the Buyer elects to terminate the remaining obligations of the Buyer under that Order, any excess amount paid as an advance by the Buyer shall be refunded by the Seller to the Buyer within 7 (seven) days of such termination.
- 9.4 Equipment breakdowns, shortage of materials, or any other cause beyond the reasonable control of the Buyer preventing the use of the Goods or reducing the needs of the Buyer or the Seller with respect to the Goods shall entitle the Buyer, at its option, to suspend or postpone Delivery of the ordered Goods or to terminate the Order, in whole or in part, without further obligation or liability.
10. **TERMINATION**
- 10.1 The Buyer shall always be entitled, even though the Seller is not in breach of any obligation, to suspend the Order for a period determined by the Buyer, or to terminate the same, in whole or in part, by giving 10 (ten) days' prior written notice to the Seller.
- 10.2 In the event of a suspension by the Buyer in terms of **clause 10.1**, the Seller shall protect, store and secure the Goods, or part thereof against any deterioration, loss or damage for the duration of the period of suspension. If the Seller suffers delay and/or incurs costs as a direct result of the suspension, the Seller shall be entitled to an extension of time for the delay corresponding to the period of suspension, and payment of costs necessarily and reasonably incurred by it during the period of suspension, provided that:
- 10.2.1 the Seller must take all reasonable measures to mitigate such costs immediately on receipt of the notice of suspension in terms of **clause 10.1** above;
- 10.2.2 the Seller will not be entitled to payment of any costs incurred as a result of its negligence, wilful default or delay in protecting, storing or securing the Goods or any breach by the Seller of any of its obligations, representations or warranties in the Order or these GPC; and
- 10.2.3 where the suspension arises as a result of any action or omission by the Seller, the Seller will not be entitled to claim any costs incurred in relation thereto.
- 10.3 If the period for which the Buyer suspends any Order in terms of **clause 10.1** exceeds 90 (ninety) days, the Seller may notify the Buyer that unless the suspension is lifted within a further 30 (thirty) days from the date of the notice, the Seller shall be entitled to terminate the Order, on notice to the Buyer.
- 10.4 In no event shall the Seller be entitled to indemnification by the Buyer for any incidental or consequential damages, including loss of profits, arising from such a suspension or termination.
- 10.5 If the Seller breaches any term or condition of an Order, the Buyer shall be entitled, by written notice to the Seller and without prejudice to any other remedy that may be available to it in terms of these GPC, in law or otherwise, to terminate the Order, in whole or in part, without any further liability or obligation, and to recover from the Seller all moneys paid by the Buyer in respect thereof, from any additional costs incurred in procuring replacement Goods from an alternative supplier and indemnification for losses or damages incurred by the Buyer as the result of the Seller's breach or failure to comply. If, in the sole discretion of the Buyer, the Seller has failed to make sufficient progress in producing or assembling the Goods so as to endanger the timely Delivery of the Goods in terms of the Order, the Buyer may terminate the Order, in whole or in part, without prejudice to any other remedy that may be available to it in terms of these GPC, in law or otherwise, and the foregoing provisions will apply.
- 10.6 Without detracting from the Buyer's discretion in **clause 10.5**, the Buyer shall be entitled to terminate the Order with immediate effect without any further obligation or liability if the Buyer has good reason to believe that the Seller will be unable to normally execute its obligations in full as and when they fall due and/or in the event that the Seller is liquidated, wound-up, deregistered, sequestered or otherwise commits an act of insolvency as contemplated in insolvency laws. The Seller shall immediately notify the Buyer of any insolvency proceeding (provisional or final) that may be threatened or pending against the Seller.
11. **INSURANCE**
- The Seller shall take out and maintain in force all insurance policies necessary to cover its liability under these GPC (whether actual or contingent). The Seller agrees to provide the Buyer, upon request, with evidence of insurance pursuant to any Buyer requirements regarding insurance coverage, and to comply with such requirements, including third party liability as well liability towards the Buyer.
12. **SUBCONTRACTING**
- The Seller shall not be entitled to sub-contract any of its obligations to any person without the prior written consent of the Buyer. If the Seller is so authorized to sub-contract all or part of its obligations to

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third parties, such sub-contracting shall be at its sole expense and under its sole responsibility. The Seller shall inform all sub-contractors of the provisions of these GPC as well as those of the Order and shall procure that such sub-contractors comply with all of the obligations contained in these GPC and the relevant Order, and shall provide them with all information regarding the Buyer's requirements, especially in respect of applicable health, safety, security and environmental rules and policies. The Buyer reserves the right to reject any of Seller's sub-contractors that do not comply with these GPC or the Buyer's rules and policies. The Seller shall remain fully liable to the Buyer for all acts or omissions of its sub-contractors in terms of the relevant Order and these GPC.

13. **ERG GROUP POLICY RELATED PROVISIONS**

The Seller shall adhere to all the provisions relating to ERG Group policies contained in Schedules A and B.

14. **NOTICES AND DOMICILIA**

14.1 For the purposes of the Order and these GPC, including the giving of notices or communications and the serving of legal process, the Parties choose the addresses set out on the Order as their respective *domicilium citandi et executandi*.

14.2 Any notice, instruction, consent, confirmation, approval, agreement or other communication to be given to either of the Parties in terms of these GPC shall be valid and effective only if it is given in writing, provided that any notice given by email shall be regarded for this purpose as having been given in writing.

14.3 Notwithstanding anything to the contrary in this **clause 14**, a written notice or other communication actually received by a Party (and for which written receipt has been obtained) shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

14.4 Either Party may, by written notice to the other Party, change its address for the purposes of **clause 14.1** to any other address (other than a post office box number), provided that the change shall only be effective on the 5th business day after the receipt of any such notice.

15. **ARBITRATION**

15.1 Should any dispute or claim arise out of, or relating to, these GPC, 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).

15.2 If the Dispute is not resolved amicably within the period contemplated in **clause 15.1**, 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 International Chamber of Commerce (ICC) Arbitration Rules in force at the time of the Dispute.

15.3 Unless agreed otherwise in writing by the Parties, the arbitration shall be administered by the Parties and the number of arbitrators shall be 1. The place of the arbitration shall be Harare, 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 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.

15.4 Nothing in this **clause 15** shall preclude a Party from seeking interim or urgent relief from a court of competent jurisdiction in the relevant jurisdiction.

16. **GENERAL PROVISIONS**

16.1 Headings are inserted in these GPC for ease of reference only and do not form part of it for the purposes of interpretation.

16.2 The Order and these GPC shall be governed by and construed exclusively in accordance with the laws of Zimbabwe.

16.3 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 these GPC's.

16.4 Subject to **clauses 1.2 and 6.1**, these GPC together with the Order, and such other document/s agreed to by the Buyer and the Seller in writing constitute the entire agreement between the Buyer and the Seller relating to its subject matter.

16.5 The Seller shall not cede any rights under the Order (including, without limitation, any receivables due from Buyer and rights accruing under **clauses 6 and 7**) or these GPC or delegate any obligations in terms of the Order or these GPC without the prior written consent of the Buyer. The Buyer shall be entitled to cede any rights in terms of the relevant Order or these GPC, including, without limitation, any rights in terms of the Warranties, or to delegate any obligations in terms of the relevant Order or these GPC to any person without the consent of the Seller.

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GENERAL TERMS AND CONDITIONS FOR SERVICES

We refer to the purchase order (“**Order**”) to which these general terms and conditions are attached (“**GTCs**”) as well as the supplementary letter (“**Letter**”), if applicable, (collectively referred to as (“**Agreement**”).

These GTC’s are applicable to the services, as described in the Letter and/or the Order (“**Services**”), to be rendered by the Vendor (hereinafter referred to as the “**Consultant**”) to Todal Mining (Private) Limited (“**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 "**Affected Party**" has the meaning ascribed to it in **paragraph 18.3**;
- 1.2 "**Agreement**" has the meaning ascribed to it in the introduction paragraph above;
- 1.3 "**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;
- 1.4 "**Approved Disbursements**" has the meaning ascribed to it in **paragraph 6.2.2.2**;
- 1.5 "**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;
- 1.6 "**Commencement Date**" has the meaning ascribed to it in **paragraph 3.1**;
- 1.7 "**Company**" has the meaning ascribed to it in the introduction paragraph above;
- 1.8 "**Confidential Information**" has the meaning ascribed to it in **paragraph 12.1**;
- 1.9 "**Consultant**" has the meaning ascribed to it in the introduction paragraph above;
- 1.10 "**ERG**" means Eurasian Resources Group S.a.r.l.;
- 1.11 "**ERG Group**" means ERG and its Affiliates;
- 1.12 "**Event of Force Majeure**" has the meaning ascribed to it in **paragraph 18.3**;
- 1.13 "**Fee**" has the meaning ascribed to it in **paragraph 6.1**;
- 1.14 "**Initial Period**" has the meaning ascribed to it in **paragraph 3.1**;
- 1.15 "**Intellectual Property**" has the meaning ascribed to it in **paragraph 14.1**
- 1.16 "**Party**" means a party to this Agreement and "**Parties**" shall have a corresponding meaning;
- 1.17 "**Representative**" has the meaning ascribed to it in **paragraph 2.2**;
- 1.18 "**Required Statement Date**" as the meaning ascribed to it in **paragraph 6.3**;
- 1.19 "**Results of Services**" has the meaning ascribed to it in **paragraph 4.4**;
- 1.20 "**Services**" has the meaning ascribed to it in the introduction paragraph above;
- 1.21 "**Signature Date**" means the date on which the last Party signs this Agreement;

- 1.22 "**Site**" means the project, operational and/or other site(s) of the Company or any of its Affiliates which the Consultant may be required to attend in the performance of the Services;
 - 1.23 "**Tax**" means 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 in the Territory or any other applicable jurisdiction with respect to the execution or delivery of this Agreement;
 - 1.24 "**Territory**" means any country where the Company has its registered offices, conduct its main business or is resident for tax purposes, or any other applicable jurisdiction;
 - 1.25 "**Unaffected Party**" has the meaning ascribed to it in **paragraph 18.3.1**; and
 - 1.26 "**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 in the Letter and/or Order and all ancillary services required whether stated or not on the fee terms contained in the Letter and/or Order.
 - 2.2 The Consultant shall report to such person authorised or nominated by the Company in writing from time to time ("**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 Letter and/or Order commencing on the date indicated on the Letter and/or Order for the Services to commence ("**Commencement Date**") (the period being the "**Initial Period**") unless otherwise terminated earlier 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 services offered by an agent designated by the Company 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.
- 4.5 The Consultant shall ensure, at its own cost, that all its employees, directors, officers, agents, representatives or sub-contractors have adequate and legal work permits, visas and/or any official documentation needed of any nature as required by any applicable authorities, including but not limited to the any labour law authorities and/or tax authorities of the applicable territory, from time to time. The Consultant agrees thereto that if the Company or any of its Affiliates incur penalties as result of the non-compliance by the Consultant or any of its employees, directors, officers, agents, representatives or sub-contractors with this requirement, such amount will be deducted from any tax invoice rendered by the Consultant.
- 4.6 If and when applicable, the Consultant warrants it is acting in accordance with the Law No. 17/001 of 8 February 2017, fixing the rules applicable to subcontracting in private sector in the DRC, and its related decrees ("**Subcontracting Law**"), and the Consultant hereby irrevocably agrees to indemnify and hold harmless the Company for any penalty imposed on the Company due to a non-compliance finding by the Subcontracting Regulatory Authority ("**ARSP**") in relation to the Consultant’s Subcontracting Law compliance. The Consultant agrees that if any such penalty is imposed on the Company, the Company may set-off any such amount from any payments due to the Consultant, or alternatively, request the Consultant to reimburse the Company with such amount.
- 4.7 The Consultant further undertakes to:
 - 4.7.1 not do anything which is calculated to injure the reputation or goodwill of the Company and/or the ERG Group;
 - 4.7.2 not make any representations or give any warranties or undertakings of any nature whatsoever about the Company to any third party; and/or
 - 4.7.3 not to make any payments or incur any liability on behalf of the Company unless expressly authorised to do so in terms of this Agreement or agreed in writing with the Company prior to making any payments or incurring any liability, in which event

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such authority shall be limited in accordance with the terms of this Agreement or agreement in writing.

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 Letter and/or 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 not later than the 25th (twenty-fifth) day of a month for Services rendered during that month 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 17**. 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 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.

7.2 If and when applicable under the Subcontracting Law, the Consultant agrees that a withholding tax of 1.2% on the invoice amount of any eligible item (excluding VAT) will be withheld by the Company and paid by the Company to the ARSP in adherence to the provisions of the Subcontracting Law.

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. VARIATIONS

9.1 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.

10. LIABILITY AND INDEMNITY

10.1 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.

10.2 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.

10.3 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.

11. TERMINATION

11.1 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.

11.2 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.

11.3 It is expressly agreed between the Parties that should the Company terminate this Agreement under and in accordance with **paragraph 11.2**, 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.

11.4 Upon termination of this Agreement for any reason, the Consultant shall:

- 11.4.1 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
- 11.4.2 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.

12. CONFIDENTIALITY

12.1 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.

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- 12.2 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.
- 12.3 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.
- 12.4 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.
- 12.5 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 12.2** (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.
- 12.6 The provisions of this **paragraph 12** shall survive the termination of this Agreement.
- 13. CONFLICT AND NON-SOLICITATION**
- 13.1 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:
- 13.1.1 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
- 13.1.2 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.
- 13.2 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.
- 14. INTELLECTUAL PROPERTY**
- 14.1 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.
- 14.2 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.
- 14.3 The provisions of this **paragraph 14** shall survive termination of this Agreement.
- 15. ERG GROUP POLICY RELATED PROVISIONS**
- 15.1 The Consultant shall adhere to all the provisions relating to ERG Group policies contained in **Schedules A and B**.
- 16. INSURANCE**
- 16.1 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.
- 17. DISPUTE RESOLUTION**
- 17.1 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).
- 17.2 If the Dispute is not resolved amicably within the period contemplated in **paragraph 17.1**, 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 International Chamber of Commerce (ICC) Arbitration Rules in force at the time of the Dispute.
- 17.3 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 Harare, 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 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.
- 17.4 Nothing in this **paragraph 17** shall preclude a Party from seeking interim or urgent relief from a court of competent jurisdiction.
- 18. FORCE MAJEURE**
- 18.1 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:
- 18.1.1 if such event is beyond a Party's control;
- 18.1.2 where the affected Party could not reasonably have provided against the event before entering into this Agreement;
- 18.1.3 where the affected Party could not reasonably have avoided or overcome the event; and
- 18.1.4 where the event is not substantially attributable to the other Party.
- 18.2 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).
- 18.3 Should a Party to this Agreement ("**Affected Party**") be prevented from fulfilling any of its obligations in terms of this Agreement as a result of an Event of Force Majeure, then:
- 18.3.1 those obligations shall be deemed to have been suspended to the extent that and for so long as the Affected Party is so prevented from fulfilling them and the corresponding obligations of the other Party ("**Unaffected Party**") shall be suspended to the corresponding extent; and
- 18.3.2 the Affected Party shall promptly notify the Unaffected Party in writing of such Event of Force Majeure and such notice shall include an estimation of the approximate period for which the suspension in terms of **paragraph 18.3.1** will endure (which estimate shall not be binding on the Affected Party).
- 18.4 Should the Affected Party partially or completely cease to be prevented from fulfilling its obligations by the Event of Force Majeure, the Affected Party shall immediately give written notice to the Unaffected Party of such cessation and the Affected Party shall, as soon as possible, fulfil its obligations which were previously suspended; provided that in the event and to the extent that fulfilment is no longer possible or the other Party has given written notice that it no longer requires such fulfilment, the Affected Party shall not be obliged to fulfil its suspended obligations and the Unaffected Party shall not be obliged to fulfil its corresponding obligations.
- 18.5 The Affected Party shall use all reasonable endeavours to overcome the Event of Force Majeure as soon as practically possible and shall mitigate the effect thereof to the extent possible.
- 18.6 Should the Event of Force Majeure continue for more than 30 (thirty) calendar days after the date of the notice referred to in **paragraph 18.3.2** and should notice of cessation in terms of **paragraph 18.4** not have been given, then the Unaffected Party shall be entitled (but not obliged) to terminate this Agreement by giving not less than 14 (fourteen) days written notice to the Affected Party to that effect.
- 18.7 If the Affected Party is the Consultant, the Company shall not be liable to pay the Fee for the period that the Consultant is not able to perform its obligations due to the Event of Force Majeure.
- 18.8 In the event that this Agreement is terminated by reason of Force Majeure, no early termination fee of any kind shall be payable by the Company to the Consultant.
- 18.9 Notwithstanding any other provision of this Agreement, it is agreed that the indemnity and limitation of liability provisions in **paragraph 10** shall be unaffected by any Event of Force Majeure.
- 19. ADDRESSES FOR LEGAL PROCESSES AND NOTICES**
- 19.1 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 Letter and/or Order.
- 19.2 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 email shall be regarded for this purpose as having been given in writing.

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- 19.3 Notwithstanding anything to the contrary in this **paragraph 19**, 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.
- 19.4 Either Party may, by written notice to the other Party, change its address for the purposes of **paragraph 19.1** 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.
- 20. GENERAL PROVISIONS**
- 20.1 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.
- 20.2 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.
- 20.3 The provisions in **paragraphs 12, 14, 15, 17 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.
- 20.4 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.
- 20.5 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.
- 20.6 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.
- 20.7 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.
- 20.8 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.
- 20.9 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.
- 20.10 Each Party shall bear its own costs and expenses incurred by it in connection with the negotiation and preparation of this Agreement.

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SCHEDULE A

ERG GROUP POLICY RELATED PROVISIONS

For purposes of this **Schedule A**, any reference to the “**Seller**” shall be deemed to be a reference to the Consultant and any reference to the “**Buyer**” shall be deemed to be a reference to the Company.

1. DEFINITIONS FOR SCHEDULE A

For purposes of this **Schedule A**, the following capitalised word and expressions will have the following meanings in this Schedule:

- 1.1 “**Adequate Procedures**” has the meaning ascribed in s.7 of the UK Bribery Act 2010;
- 1.2 “**Anti-Corruption Regulations**” means the anti-bribery and anti-corruption policies of the ERG Group and applicable to the Buyer, as updated from time to time;
- 1.3 “**Associate**” or “**Associated Person**” means a person (individual or body incorporated /unincorporated) who performs services for or on behalf of a commercial organisation;
- 1.4 “**Bribery**” means any payment, gift, loan, remuneration, commission, success fee, pay off or kickback or any non-monetary benefit intended to induce any person to do, or reward any person for doing, something dishonest or illegal, or to abuse someone’s trust, and includes, without limitation, conduct that would constitute “bribery of foreign public officials” as defined in Article 1 of the Convention of the Organization for Economic Cooperation and Development on Combating Bribery of Foreign Public Officials in International Business Transactions dated November 21, 1997;
- 1.5 “**Compliance Documents**” has the meaning ascribed to it in **Paragraph 7.1** of this **Schedule A**;
- 1.6 “**Data Subject**” means an identifiable natural person or juristic person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person and/or juristic person, as the case may be;
- 1.7 “**Financial Crime**” has the meaning ascribed to it in **Paragraph 8.4** of this **Schedule A**;
- 1.8 “**Ownership**” means that person (individual or body incorporated / unincorporated) holds a legal interest in a commercial organisation;
- 1.9 “**Paragraph**” will be references to a paragraph in this **Schedule A**;
- 1.10 “**Personal Data and Information**” means any data or information relating to a Data Subject;
- 1.11 “**Politically Exposed Person**” means an individual who is entrusted with Prominent Public Functions, other than as a middle-ranking or more junior official;
- 1.12 “**Public Official**” means any government officer or government employee (including officers and employees of government-owned or government-controlled entities or public international organizations), any person acting in an official capacity for or on behalf of any government entity, or any political party, party official, or candidate for public office;
- 1.13 “**Relevant Information**” has the meaning ascribed to it in **Paragraph 6.2** of this **Schedule A**;
- 1.14 “**Sanctioned Person**” means any person or corporate entities subject to any Sanctions;
- 1.15 “**Sanctions**” means any sanctions or designations administered or enforced by the U.S. Department of Treasury’s Office of Foreign

Assets Control (“**OFAC**”) (including but not limited to inclusion on the List of Specially Designated Nationals and Blocked Persons maintained by OFAC),) the United Nations Security Council, the European Union, Her Majesty’s Treasury (“**HMT**”), or any other relevant Sanctions Authority;

- 1.16 “**Sanctions Authority**” means the government of the Territory, the government of the territory of the Seller, the United Nations, the African Union, the European Union, Her Majesty’s Treasury in the United Kingdom, the United States Department of Treasury’s Office of Foreign Assets Control or any other regulatory body responsible for enforcing economic and trade sanctions in the Territory and/or the territory of the Seller;
- 1.17 “**Sanctions Regulations**” means any law, statute, regulation, policy, official embargo, or convention which prohibits or restricts (a) economic activity, trade and/or investment with and in a specified country or territory (b) transactions with specified persons and (c) is imposed and enforceable by the Sanctions Authority;
- 1.18 “**Sanctions Territory**” means a country or territory that is the subject of comprehensive economic Sanctions including, without limitation, Cuba, Iran, North Korea, Syria and the Crimea;
- 1.19 “**SHE Conditions**” means (a) the ERG SHE Policies and Conditions; and (b) all Applicable Laws, codes, standards, and Government Consents relating to workplace or worksite health and safety, as well as the environment that apply to the Site;
- 1.20 “**Site Specific Policies**” has the meaning ascribed to it in **Paragraph 2.1** of this **Schedule A**.

2. ACCESS TO AND USE OF THE SITE

- 2.1 Where the Seller requires access to and use of any Site, the Seller acknowledges that any access to, and its continued presence on, the Site may be provided by the Buyer in its sole discretion, and that any person, vehicle, or other property entering or brought upon or exiting or removed from, the Site, shall be subject to the rules, policies and procedures (including but not limited to, working hours, induction procedures, work-site health and safety, environmental protection and stakeholder management, applicable to the Site (“**Site Specific Policies**”) and the ERG SHE Policies and Conditions contained in **Schedule B**.
- 2.2 To the extent the Seller requires access to and use of the Site for purposes of performing its obligations, the Buyer hereby grants to the Seller, the Seller’s personnel, the Seller’s agents, subcontractors or assigns, such right of access which shall include the right to ingress to and egress from, and the right to traverse or use the Site, subject to compliance with these provisions, any applicable laws, the ERG SHE Policies and Conditions, the Site Specific Policies (where applicable) and the such other conditions as the Buyer may impose in its absolute discretion. The Seller must as a minimum comply with the following:
 - 2.2.1 prior to going onto the Site obtain from the Buyer’s Representative, and acquaint itself, and fully comply with, the Site Specific Policies;
 - 2.2.2 ensure that its personnel, subcontractors, agents and assigns are aware of, adhere to, and comply with the SHE Conditions and Site Specific Policies;
 - 2.2.3 where the Seller wishes to establish temporary

structures on the Site for purposes of performing its obligations, the Seller must consult with and obtain the prior written consent of the Buyer’s Representative, which consent shall be granted at the sole and absolute discretion of the Buyer’s Representative;

- 2.2.4 subject to **Paragraph 2.2.3**, any installation, construction, erection, establishment or maintenance as well as the removal of temporary structures at the Site shall be at the sole risk and cost of the Seller;
- 2.2.5 the Seller must ensure that all work-site injuries, illnesses and deaths are reported to the Buyer’s Representative, and where applicable, to the relevant authorities in accordance with any applicable laws; and
- 2.2.6 in the event the Seller intends to bring hazardous materials onto the Site for purposes of performing its obligations, the Seller shall procure the prior written consent of the Buyer’s Representative, provided that where such consent is granted, the Seller shall keep a materials register recording the nature of the hazardous materials (including comprehensive safety data sheets in respect thereof), used or stored at the Site and must ensure that only competent, trained and qualified personnel are allowed to handle such hazardous materials.

3. HEALTH, SAFETY AND ENVIRONMENTAL POLICIES AND PROCEDURES AND MEDICAL

- 3.1 If the Seller is required to deliver the Goods at, or have access to, the Site, the Buyer shall procure that the Seller is granted the necessary access to the Site, and the Seller shall (and shall procure that all its personnel) comply with the health, safety, access, and induction policies, standards and procedures applicable to the Site, as well as the ERG SHE Policies and Conditions set out in **Schedule B**.
- 3.2 The Seller shall and hereby indemnifies the Buyer, its Affiliates 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 any act or omission by the Seller in the performance of its obligations (including any failure by the Seller to have sufficient medical insurance cover in respect of its employees, including but not limited to the provision of medical evacuation services, who are required to be at the Site for purposes of performing any obligations of the Seller).
- 3.3 Should the Seller’s personnel require medical attention and/or evacuation while on Site, and if, for any reason, the Buyer is required to and does provide, or procure the provision of, such medical attention and/or evacuation, the costs thereof shall be for the account of the Seller. Accordingly, the Seller indemnifies the Buyer against any claims, loss or damage that may result from the Buyer’s performance of any obligation imposed by this Paragraph.

4. COMMUNITY AND HUMAN RIGHTS

- 4.1 The Seller 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

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- 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 Seller shall take all reasonable steps to ensure that the Seller's employees and others under its direction and control likewise observe and comply with the foregoing.
- 4.2 The Seller agrees that if it breaches any of the provisions of the Paragraph above, the Buyer will have the right to immediately terminate their agreement on written notice to the Seller. The Buyer shall only pay amounts due for Goods or Services properly delivered in accordance with their agreement at the time of such termination. No additional amount shall be charged by the Seller in the event of any such termination.
- 4.3 It is expressly agreed between the Parties that should the Buyer cancel their agreement under and in accordance with **Paragraph 4.2**, neither the Seller 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.
5. **ANTI-BRIBERY, ANTI-CORRUPTION REGULATIONS AND SANCTIONS REGULATIONS**
- 5.1 The Seller warrants that 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 Buyer and/or its Affiliates is subject, including the Anti-corruption Regulations and Sanctions Regulations.
- 5.2 The Seller 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.
- 5.3 In particular, the Seller undertakes not to, and will procure that all its employees, directors, officers, agents or subcontractors, do not:
- 5.3.1 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 delivery of the Goods 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
- 5.3.2 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.
- 5.4 Nothing in these terms and conditions shall render the Buyer liable to reimburse the Seller for any such consideration given or promised.
- 5.5 The Seller shall immediately notify the Buyer, if any of the
- Buyer'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 their agreement.
- 5.6 In order to comply with the Seller's obligation in **Paragraph 5.5** above, it may use the following reporting channels established by the Buyer for purposes of reporting suspected violations of Anti-Corruption Regulations and Sanctions Regulations and other applicable laws:
- 5.6.1 Web Portal: <http://erg.integrityline.org>
- 5.6.2 Telephone: as provided on <http://erg.integrityline.org>
6. **RIGHT TO AUDIT**
- 6.1 The Seller shall keep detailed, up-to-date books, accounts, and records, including a full record of all transactions and all expenses incurred, in carrying out its obligations with the Buyer.
- 6.2 The Buyer (or an agent appointed by the Buyer) shall be entitled to give the Seller at least 2 (two) Business Days written notice, for the Buyer (or an agent acting on behalf of the Buyer) to conduct an audit to verify compliance by the Seller with the terms and conditions of their agreement (including but not limited to compliance with the SHE Conditions, anti-bribery and Anti-Corruption Regulations and any provisions of their agreement), which audit may include a perusal, review, and assessment of all relevant books, records, systems, data, processes, procedures and documents relating to or in connection with their agreement ("**Relevant Information**").
- 6.3 The Seller shall co-operate and render all assistance to the Buyer (or an agent appointed by the Buyer), and provide access to the Relevant Information required for purposes of conducting such audit both during the term of their agreement and in the 6 (six) years after their termination or expiry. The Buyer (or an agent acting on behalf of the Buyer) may, at its sole discretion, make copies of any such Relevant Information.
- 6.4 The Seller shall keep, maintain, and retain copies of all data, records and documentation relating to this Agreement and keep full and proper records in connection with the Goods and Services and all matters related thereto (whether contained in documents or in electronic format) including all work product for the period of their agreements, and for a period of at least 6 (six) years after termination of such agreements.
- 6.5 The Seller shall give reasonable assistance and cooperation to the Buyer in relation to any litigation, or any investigation, inquiry or enforcement proceedings by any governmental, administrative, regulatory or international body or any internal investigation notified to the Buyer, regarding the alleged making or receipt of a Bribe, or any breach of Sanctions or Financial Crime both during the term of their agreements and in the 6 (six) years after its termination or expiry.
7. **WARRANTIES**
- The Seller warrants that:
- 7.1 it has received, read and understood the following documents ("**Compliance Documents**"):
- 7.1.1 ERG's Anti-Bribery and Corruption Policy (a copy hereof is available from the following website link: <https://www.ergafrica.com/working-at-erg/>);
- 7.1.2 ERG's Code of Conduct (a copy hereof is available from the following website link: <https://www.ergafrica.com/working-at-erg/>);
- 7.1.3 ERG'S Data Protection Policy (a copy hereof is available from the following website link: <https://www.ergafrica.com/working-at-erg/>);
- 7.1.4 ERG's Human Rights Policy (a copy hereof is available from the following website link: <https://www.ergafrica.com/working-at-erg/>); and
- 7.1.5 ERG's Supplier Code of Conduct (a copy hereof is available from the following website link: <https://www.ergafrica.com/procurement/>);
- 7.2 all information provided to the Buyer by the Seller including, in particular, relating to its Ownership, Control, experience, and compliance with laws and regulations (including the existence and nature of its compliance policies and procedures) is accurate, comprehensive, and not misleading in any material particular;
- 7.3 the Seller has in place (and requires its subcontractors to have in place) Adequate Procedures designed to prevent Bribery and corruption. These Adequate Procedures shall include:
- 7.3.1 a comprehensive code of conduct and supporting policies;
- 7.3.2 internal training;
- 7.3.3 maintenance of complete and accurate books and records;
- 7.3.4 training and audits of any subcontractors; and
- 7.3.5 an effective system of internal accounting controls necessary to ensure proper recording and authorisation of the Seller's and/or sub-contractor's expenditures and dispositions;
- 7.4 the Seller does not, directly or indirectly have as an owner, or engage as a partner, service provider, employee, or sub-contractor in order to carry out any of its obligations on behalf of the Buyer, any Politically Exposed Persons or any such person with a familial connection to a Politically Exposed Persons other than those disclosed to the Buyer;
- 7.5 the Seller has not, and to the best of its knowledge, its owner(s), partner(s), service provider(s), employee(s), or sub-contractor(s) have not been convicted of, or otherwise been subjected to any administrative sanction or penalty for, any offence involving fraud, Bribery, corruption, money laundering, breach of sanctions, or any other criminal offence involving dishonesty as an element;
- 7.6 the Seller is not and has not been:
- 7.6.1 the subject of any litigation, or any investigation, inquiry or enforcement proceedings by any governmental, administrative, regulatory or international body, in which is alleged to have made or received a bribe, or facilitated the making or receipt of a bribe by a third party, and no such litigation or investigation, inquiry or proceedings have been threatened or are pending; or
- 7.6.2 listed by any governmental, administrative, regulatory or international body as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for funding or participation in procurement programs;
- 7.7 the Seller is not and has not been:
- 7.7.1 the subject of any sanctions administered or

- enforced by a Sanctions Authority;
- 7.7.2 located, organised or resident in a Sanctioned Territory;
- 7.7.3 the subject of any Sanctions investigation; or
- 7.7.4 indirectly or directly owned (regardless of ownership share) or controlled by any person: (a) subject to Sanctions, (b) the subject of a Sanctions investigation, or (c) located, organised or resident in a Sanctioned Territory;
- 7.8 the Seller has not used, and will not at any time hereafter use, any assets, including but not limited to any funds received or which you or they may in the future receive from the Buyer, to directly or indirectly:
- 7.8.1 pay, lend, contribute, or otherwise benefit any person that is, at the time of such payment, loan, contribution or making of other benefit; (a) the subject of Sanctions; or (b) located, organised or resident in a Sanctioned Territory;
- 7.8.2 facilitate any activity of or business or transaction with any person that, is at the time of such funding or facilitation: (a) the subject of Sanctions, or (b) is located, organised, or resident in a Sanctioned Territory; or
- 7.8.3 result in a violation of Sanctions by any person;
- 7.9 the Seller has not received, and will not in the future, receive, any funds whether directly or indirectly from a Sanctioned Person or any person in a Sanctioned Territory;
- 7.10 the Seller has not engaged in and will not engage in, any direct or indirect dealings or transactions in violation of applicable Sanctions, including but not limited to, any attempt to obscure or conceal the actual parties to or true nature of a transaction, or to evade sanctions;
- 7.11 the Seller further warrants and represents that, during the course of your business relationship with the Buyer it or any entity that is either directly or indirectly owned (including but not limited to, by owning directly or indirectly 50% (fifty percent) or more of the shares or the equivalent in said entity) or controlled (including but not limited to by (a) holding a majority of the voting rights in it, or (b) being a member of it and having the right to appoint or remove a majority of its board of directors, or (c) being a member of it and controlling alone, pursuant to an agreement with other members or a majority of the voting rights) by it, has not had any dealings and/or connections with Dan Gertler or any entity owned or controlled, directly or indirectly, by Dan Gertler.
- 8. UNDERTAKINGS**
- The Seller undertakes and/or agrees that:
- 8.1 the Compliance Documents will be updated from time to time and the term "Compliance Documents" shall refer to the latest version of each of the Buyer's Compliance Documents, as published on the Buyer Website and/or otherwise communicated to the Seller;
- 8.2 it shall comply with the Compliance Documents and ensure, at all times, that its employees, subcontractors, agents, associates, subsidiaries or other third parties comply with the Compliance Documents;
- 8.3 it shall ensure that its employees, subcontractors, agents, associated, subsidiaries or other third parties are provided with a copy of the Compliance Documents;
- 8.4 it shall comply with, and ensure, at all times, that its employees, subcontractors, agents, associated, subsidiaries or other third

- parties comply with all applicable laws, statutes, regulations, and codes relating to Bribery and corruption, fraud, money laundering and the financing of terrorism ("**Financial Crime**") and not engage in any activity, practice or conduct that would constitute an offence under any applicable laws in relation to the agreement or any activities conducted for or on behalf of the Buyer;
- 8.5 it shall comply with all international, regional, and national sanctions restrictions when conducting its operations independently and on behalf of the Buyer, including economic sanctions, trade sanctions and import/export controls;
- 8.6 it shall comply with all applicable health, safety and environmental laws and the Buyer's health, safety and environmental and human rights and responsible supply chain policies, rules and/or guidelines as notified from time to time, in the execution of its obligations;
- 8.7 it shall comply with applicable state, national, and international laws, rules, and regulations relating to human rights (including, without limitation, human trafficking, and slavery and conflict mineral sourcing), environmental protection and sustainable development, including any legislation or regulation implementing the Principles including 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, as well as the Voluntary Principles on Security and Human Rights and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas;
- 8.8 such Adequate Procedures shall prevent, in particular, the following prohibited practices:
- 8.8.1 the offering, promising or providing, directly or indirectly, of anything of value, including cash or kickbacks of any kind to any employee, representative, customer or Public Official in connection with any transaction or business dealing connected with the Agreement. This includes the offer, promise or providing of compensation in return for the acceleration formalities;
- 8.8.2 the offering, promising or providing of gifts to any employee, representative, customer or Public Official connected with the Agreement or otherwise in the course of carrying out activities for or on behalf of the Buyer, otherwise than in accordance with the Buyer's Gifts and Hospitality policy; and
- 8.8.3 the offering of business entertainment to any employee, representative, customer or Public Official connected with the agreement or otherwise in the course of carrying out activities for or on behalf of the Buyer, otherwise than in accordance with the Buyer's Gifts and Hospitality policy;
- 8.9 it shall prohibit, and shall put in place procedures to prevent, the sharing or exchanging of any price, cost or other competitive information or the undertaking of any other collusive conduct with any other third party supplier/bidder with respect to any proposed, pending or current procurement connected with the agreement.

9. NOTIFICATION

The Seller shall notify the Buyer immediately if any of the warranties in **Paragraph 7 or Paragraph 8** cease to be valid. In particular, the Seller

shall notify the Buyer:

- 9.1 of any material changes relating to Ownership, experience, and compliance with laws and regulations (including the existence and nature of its compliance policies and procedures); and
- 9.2 if the Seller or any of its owner(s), partner(s), service provider(s), employee(s), or sub-contractor(s) is the subject of any internal or external investigation into allegations of any offence involving fraud, Bribery, corruption, money laundering, breach of sanctions, or any other criminal offence involving dishonesty as an element.
- 10. SELLER AUTHORITY**
- 10.1 The Seller shall not, and shall have no right or authority to:
- 10.1.1 act or make any promise, warranty, guarantee, or representation, incur any liability, commence legal proceedings, execute any contract, hold itself out to have the right to accept any official or formal notices from anyone, or otherwise assume any obligation or responsibility in the name of or on behalf of the Buyer unless specifically authorised in writing by the Buyer; or
- 10.1.2 appoint any subcontractors or agents to perform any of its obligations under their agreement unless and to the extent permitted by this Agreement or any amendments made thereto. Where the Seller is permitted to subcontract, the Seller is required to notify the Buyer of its intention to do and obtain prior written authorisation.
- 10.2 The Buyer will not be under any obligation to carry out any action or make any omission to the extent that the Buyer reasonably believes it would be in breach of the Compliance Documents and/or any relevant legislation.
- 10.3 The Seller undertakes to provide a written confirmation to the Buyer as and when requested that it remains in compliance with this Paragraph. A failure to provide written confirmation on request will entitle the Buyer to suspend payments due until the statement is provided.
- 10.4 If any Agents Policy is applicable, the Seller undertakes to provide a written confirmation to the Buyer on an annual basis that it remains in compliance with this Article. A failure to provide the written confirmation on request will entitle the Buyer to suspend payments due until the statement is provided.
- 11. PRIVATE DATA PROTECTION**
- 11.1 The Seller undertakes to at all times take appropriate and reasonable steps to protect any personal information provided to it by the Buyer 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, including the South African law for Protection of Personal Information Act 4 of 2013 and the General Data Protection Regulation of the EU. The Seller further undertakes to adhere specifically to the ERG Group Data Protection Policy. The Buyer shall have the right to inspect the security measures put in place by the Seller to safeguard such information and to require the Seller to make changes to such measures should the Buyer deem the existing measures to be inadequate.
- 11.2 The Seller shall use the personal information solely for performing its obligations and shall not disclose the personal information to a third party (other than for the purpose of performing its obligations) without the prior consent of the Buyer.
- 11.3 To the extent applicable, the Seller shall, in relation to Personal Data and Information:

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- 11.3.1 ensure that in relation to all Personal Data and Information obtained and collected in the context of its relationship with the disclosing party, fully complies to all requirements imposed by all relevant and applicable data protection laws and regulations;
- 11.3.2 process Personal Data and Information only in accordance with the data processing agreement between the Parties, if applicable;
- 11.3.3 not transfer or allow Personal Data and Information received during its relationship with the Buyer to be transferred outside the Seller's jurisdiction, unless upon express written consent of the disclosing party or unless adequate mechanisms have been employed to ensure an adequate level of protection for the Personal Data and Information (standard contract clauses, binding corporate rules, others);
- 11.3.4 guarantee that sufficient and appropriate security measures are in place and apply all appropriate measures to ensure that any Personal Data and Information belonging to the Buyer or its Affiliates which is held or processed by the Seller is protected against loss, unauthorized access, use, modification, disclosure or misuse, and that only authorized personnel have access to the Personal Data and Information;
- 11.3.5 guarantee that to the extent that the Personal Data and Information is no longer necessary or required for the business purposes, it is destroyed or returned to the disclosing party following express instructions of the Buyer;
- 11.3.6 guarantee that the Buyer is immediately (and in any way within 24 (twenty-four) hours from receiving notice) alerted in writing (with full details) of any unauthorized access or disclosure or any possible (potential) breach of Personal Data and Information belonging to the Buyer and that the Seller undertakes all necessary steps to prevent further unauthorized access or disclosure and mitigate the breach, including providing the Buyer with a full report of the incident.
- 11.4 The Seller will keep all Confidential Information, including Personal Data, safe in a secure place and properly protected against theft, damage, loss and unauthorised access and destruction (including, but not limited to, access by electronic means) and, without prejudice to the foregoing, the receiving party will take all reasonable steps and exercise reasonable skill and care to keep the same confidential, secure the integrity thereof and exercise in relation to Confidential Information no lesser security measures and degree of care as the Seller applies to its own confidential information and all documents and other material reproducing or incorporating any of the Confidential Information will be kept separate from the Seller's own confidential information.
- 11.5 The provisions of this **Paragraph 11** survive termination of the agreements between the Buyer and the Seller.
- 12. BREACH**
- 12.1 Any Breach of **Paragraphs 5, 6, 7, 8, 9, 10 and 11** of this **Schedule A** by the Seller shall be deemed to be a fundamental, material breach of the Agreement for the purpose of termination of agreements under **clause 10** of the GTC.
- 12.2 The Buyer shall be entitled to terminate all agreements with immediate effect and without prior notice, if:
- 12.2.1 any binding judgment by any competent authority confirms any improper conduct by or on behalf of the Seller or by any director, officer, employee of the Seller; or
- 12.2.2 any of the warranties in **Paragraph 7** of this Schedule A is or becomes untrue; or
- 12.2.3 there is a material breach of any of the provisions of **Paragraphs 5, 6, 7, 8, 9, 10 and 11** of this Schedule A by the Seller; or
- 12.2.4 the Seller becomes the subject of Sanctions Regulations.
- 12.3 The Seller shall promptly notify the Buyer without delay of any breach of the terms of these **Paragraphs 5, 6, 7, 8, 9, 10 and 11** of this **Schedule A** or potential breach of any applicable laws, statutes, regulations and codes relating to Bribery and corruption, fraud, money laundering and the financing of terrorism in connection with the Agreement or any activities conducted for or on behalf of the Buyer that it becomes aware of, and shall co-operate with the Buyer and provide to the Buyer all information that is reasonably requested by the Buyer for the purpose of assessing the Buyer's own potential liability under any applicable laws and regulations.
- 12.4 In order to comply with the obligations in this Article, the Seller may use the reporting channels established by the Buyer for purposes of reporting suspected violations as set out in **Paragraph 5.6 of this Schedule A** above.
- 12.5 The Seller shall indemnify the Buyer to the maximum extent permissible by law against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Buyer as a result of any breach of any of the above representations and warranties by the Seller or any action or omission by the Seller in breach of its obligations hereunder.
- 12.6 It is expressly agreed between the Parties that should the Buyer terminate any agreement, neither the Seller 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 termination.

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SCHEDULE B: SHE CONDITIONS

For purposes of this **Schedule B**, any reference to the “**Contractor**” shall be deemed to be a reference to the Seller/Consultant (as the case may be) and any reference to the “**Company**” shall be deemed to be a reference to the Buyer.

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.
- 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 its obligations, the Contractor must ensure that the work 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 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 or delivery of Goods, 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 dispute.

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.

BIODIVERSITY AND HERITAGE

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.

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.

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 commencement must take all necessary action to prevent damage or injury to the same.

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 sub-contractor 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

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- 6.4 that ensure the right people are selected for employment and are placed at the right jobs. 7
- 6.5 The Contractor must ensure employees are trained and fully competent. 7.1 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 7.2
 - 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 Law;3 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.

SAFETY AND HEALTH MANAGEMENT PLAN

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.

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.

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;
 - 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.

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